STATUTORY INSTRUMENTS

2019 No. 1431

EXITING THE EUROPEAN UNION

SOCIAL SECURITY

TAX CREDITS

The Social Security, Child Benefit and Child Tax Credit (Amendment) (EU Exit) Regulations 2019

Made - - - - *30th October 2019*

Laid before Parliament *31st October 2019*

Coming into force in accordance with regulation 1

The Treasury, in exercise of the powers conferred by sections 146(3) and 175(3) of the Social Security Contributions and Benefits Act 1992(**a**), section 142(3) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**b**), section 115(3) and (4) of the Immigration and Asylum Act 1999(**c**) and now exercisable by them(**d**), and section 3(7) of the Tax Credits Act 2002(**e**), make regulations 1, 4, 5 and 6, and regulations 2 and 3 but only to the extent they relate to child benefit, and the Secretary of State, in exercise of the powers conferred by section 115(3) and (4) of the Immigration and Asylum Act 1999(**f**) and section 175(3) of the Social Security Contributions and Benefits Act 1992(**g**), makes regulations 1 and 2 to the extent they do not relate to child benefit and child tax credit:

(**a**) 1992 c. 4; section 146 was substituted by section 56(1) of the Tax Credits Act 2002 (c. 21) and subsection (3) of section 146 was subsequently amended by paragraph 13(3)(b) of Part 1 of Schedule 1 to the Child Benefit Act 2005 (c. 6). Section 175(3) is applied by virtue of section 115(7) of the Immigration and Asylum Act 1999. Section 147(1) defines "prescribed" as meaning "prescribed by regulations".

(**b**) 1992 c. 7; section 142 was substituted by section 56(2) of the Tax Credits Act 2002 and subsection (3) of section 142 was subsequently amended by paragraph 39(3) of Part 2 of Schedule 1 to the Child Benefit Act 2005. Section 143(1) defines "prescribed" as meaning "prescribed by regulations".

(**c**) 1999 c. 33; section 115 was amended by paragraph 21 of Schedule 4 to the Tax Credits Act 2002. In relation to child benefit, section 115(5) defines "prescribed" as meaning "prescribed by regulations made by the Treasury."

(**d**) The powers of the Secretary of State under section 146(3) of the Social Security Contributions and Benefits Act 1992 were transferred to the Treasury by section 49(1)(b) of the Tax Credits Act 2002. The powers of the Department for Social Development in Northern Ireland under section 142(3) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 were transferred to the Treasury by section 49(2)(b) of the Tax Credits Act 2002.

(**e**) 2002 c. 21; section 3 was repealed by Part 1 of Schedule 14 to the Welfare Reform Act 2012 (c. 5), subject to savings specified in article 3 of S.I. 2019/167. Section 67 defines "prescribed" as meaning "prescribed by regulations". Section 67 has been amended, but the amendment is not relevant for the purposes of this instrument.

(**f**) Section 167 defines "prescribed" as meaning "prescribed by regulations by the Secretary of State".

(**g**) 1992 c. 4; section 175(3) is applied by virtue of section 115(7) of the Immigration and Asylum Act 1999.

Citation and commencement

1. These Regulations may be cited as the Social Security, Child Benefit and Child Tax Credit (Amendment) (EU Exit) Regulations 2019 and come into force on exit day(**a**).

Amendment of the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000

2.—(1) The Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000(**b**) are amended as follows.

(2) In Part II of the Schedule (persons not excluded under section 115 of the Immigration and Asylum Act 1999 from entitlement to certain benefits)(**c**), for paragraph 2 substitute—

> "**2.** A person who is lawfully working in Great Britain and is a national of a State with which—
>
> (a) the European Union has concluded an agreement under Article 217 of the Treaty on the Functioning of the European Union(**d**) (an "EU Agreement") providing, in the field of social security, for the equal treatment of workers who are nationals of the signatory State and their families; or
>
> (b) the United Kingdom has concluded an agreement which replaces in whole or in part an EU Agreement in sub-paragraph (a) which has ceased to apply to, and in, the United Kingdom, providing, in the field of social security, for the equal treatment of workers who are nationals of the signatory State and their families.".

Amendment of the Social Security (Immigration and Asylum) Consequential Amendments Regulations (Northern Ireland) 2000

3.—(1) In so far as they relate to child benefit, the Social Security (Immigration and Asylum) Consequential Amendments Regulations (Northern Ireland) 2000(**e**) are amended as follows.

(2) In Part II of the Schedule (persons not excluded under section 115 of the Immigration and Asylum Act 1999 from entitlement to certain benefits)(**f**), for paragraph 2 substitute—

> "**2.** A person who is lawfully working in Northern Ireland and is a national of a State with which—
>
> (a) the European Union has concluded an agreement under Article 217 of the Treaty on the Functioning of the European Union (an "EU Agreement") providing, in the field of social security, for the equal treatment of workers who are nationals of the signatory State and their families; or
>
> (b) the United Kingdom has concluded an agreement which replaces in whole or in part an EU Agreement in sub-paragraph (a) which has ceased to apply to, and in, the United Kingdom, providing, in the field of social security, for the equal treatment of workers who are nationals of the signatory State and their families.".

(**a**) Schedule 1 to the Interpretation Act 1978 (c. 30) provides that "exit day" has the same meaning as in the European Union (Withdrawal) Act 2018 (c. 16). Section 20(1) to (5) of the European Union (Withdrawal) Act 2018 contains the interpretation provisions for "exit day".

(**b**) S.I. 2000/636; relevant amending instruments are S.I. 2002/2497, S.I. 2011/1043 and S.I. 2013/388.

(**c**) Part II was relevantly amended by paragraphs 1 and 2 of Schedule 2 to S.I. 2002/2497, articles 4 and 5 of S.I. 2011/1043 and paragraph 23(4) in Part 2 of the Schedule to S.I. 2013/388.

(**d**) OJ C 202, 7.6.2016, p.144.

(**e**) S.R. 2000 No. 71; relevant amending instruments are S.R. 2002 No. 323 and S.R. 2016 No. 228. This instrument amends S.R. 2000 No. 71 in relation to child benefit. It is intended that a separate amending instrument will make an identical amendment in relation to attendance allowance, severe disablement allowance, carer's allowance, disability living allowance, personal independence payment, and a social fund payment.

(**f**) Part II was amended by paragraph 1(s) of the Schedule to S.R. 2002 No. 323 and regulation 22(4) of S.R. 2016 No. 228.

Amendment of the Tax Credits (Immigration) Regulations 2003

4.—(1) The Tax Credits (Immigration) Regulations 2003(**a**) are amended as follows.

(2) In regulation 3(1) (exclusion of persons subject to immigration control from entitlement to tax credits), in Case 5, for the text after "he is" until the end substitute—

"a person who is lawfully working in the United Kingdom and is a national of a State with which—

(a) the European Union has concluded an agreement under Article 217 of the Treaty on the Functioning of the European Union (an "EU Agreement") providing, in the field of social security, for the equal treatment of workers who are nationals of the signatory State and their families; or

(b) the United Kingdom has concluded an agreement which replaces in whole or in part an EU Agreement in sub-paragraph (a) which has ceased to apply to, and in, the United Kingdom, providing, in the field of social security, for the equal treatment of workers who are nationals of the signatory State and their families.".

Amendment of the Tax Credits (Residence) Regulations 2003

5.—(1) The Tax Credits (Residence) Regulations 2003(**b**) are amended as follows.

(2) In regulation 3 (circumstances in which a person is treated as not being in the United Kingdom)(**c**), for paragraph (5A) substitute—

"(5A) Paragraph (5)(b)(ii) does not apply to a person who is lawfully working in the United Kingdom and is a national of a State with which—

(a) the European Union has concluded an agreement under Article 217 of the Treaty on the Functioning of the European Union (an "EU Agreement") providing, in the field of social security, for the equal treatment of workers who are nationals of the signatory State and their families; or

(b) the United Kingdom has concluded an agreement which replaces in whole or in part an EU Agreement in sub-paragraph (a) which has ceased to apply to, and in, the United Kingdom, providing, in the field of social security, for the equal treatment of workers who are nationals of the signatory State and their families.".

Amendment of the Child Benefit (General) Regulations 2006

6.—(1) The Child Benefit (General) Regulations 2006(**d**) are amended as follows.

(2) In regulation 23 (circumstances in which person treated as not being in Great Britain)(**e**), for paragraph (4A) substitute—

"(4A) Paragraph (4)(b) does not apply to a person who is lawfully working in Great Britain and is a national of a State with which—

(a) the European Union has concluded an agreement under Article 217 of the Treaty on the Functioning of the European Union (an "EU Agreement") providing, in the field of social security, for the equal treatment of workers who are nationals of the signatory State and their families; or

(b) the United Kingdom has concluded an agreement which replaces in whole or in part an EU Agreement in sub-paragraph (a) which has ceased to apply to, and in,

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(**a**) S.I. 2003/653. There are amending instruments but none is relevant.
(**b**) S.I. 2003/654; relevant amending instruments are S.I. 2004/1243, S.I. 2012/2612 and S.I. 2019/364.
(**c**) Paragraph (5) was relevantly amended by regulation 3 of S.I. 2004/1243 and regulation 6 of S.I. 2012/1612. Paragraph (5A) of regulation 3 was inserted by regulation 7 of S.I. 2019/ 364.
(**d**) S.I. 2006/223; relevant amending instruments are S.I. 2007/2150, S.I. 2012/2612 and S.I. 2019/364.
(**e**) Paragraph (4) was relevantly amended by regulation 8 of S.I. 2007/2150 and regulation 3 of S.I. 2012/2612. Paragraph (4A) of regulation 23 was inserted by regulation 11 of S.I. 2019/364.

the United Kingdom, providing, in the field of social security, for the equal treatment of workers who are nationals of the signatory State and their families.".

(3) In regulation 27 (circumstances in which person treated as not being in Northern Ireland)(**a**), for paragraph (3A) substitute—

"(3A) Paragraph (3)(b) does not apply to a person who is lawfully working in Northern Ireland and is a national of a State with which:

(a) the European Union has concluded an agreement under Article 217 of the Treaty on the Functioning of the European Union (an "EU Agreement") providing, in the field of social security, for the equal treatment of workers who are nationals of the signatory State and their families; or

(b) the United Kingdom has concluded an agreement which replaces in whole or in part an EU Agreement in sub-paragraph (a) which has ceased to apply to, and in, the United Kingdom, providing, in the field of social security, for the equal treatment of workers who are nationals of the signatory State and their families.".

Mike Freer
Rebecca Harris
30th October 2019 — Two of the Lords Commissioners of Her Majesty's Treasury

Signed by authority of the Secretary of State for Work and Pensions

Justin Tomlinson
Minister for Disabled People, Health and Work
30th October 2019 — Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend social security and tax credits legislation to reflect the United Kingdom's transition to trade and partnership agreements, which replace association agreements concluded with third countries under Article 217 of the Treaty on the Functioning of the European Union, as a consequence of the United Kingdom's exit from the European Union.

These Regulations amend the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000 (S.I. 2000/636) ("the Great Britain Social Security Regulations"), the Social Security (Immigration and Asylum) Consequential Amendments Regulations (Northern Ireland) 2000 (S.R. 2000 No. 71) ("the Northern Ireland Social Security Regulations"), the Tax Credits (Immigration) Regulations 2003 (S.I. 2003/653) ("the Immigration Regulations"), the Tax Credits (Residence) Regulations 2003 (S.I. 2003/654) ("the Residence Regulations"), and the Child Benefit (General) Regulations 2006 (S.I. 2006/223) ("the Child Benefit Regulations").

Regulation 2 amends Part II of the Schedule to the Great Britain Social Security Regulations so that a person who is lawfully working in Great Britain and who is a national of a State with which the United Kingdom has concluded an agreement which replaces an EU Agreement providing for equal treatment in the field of social security, and where that EU Agreement has ceased to apply in whole or in part to, and in, the United Kingdom, is not treated as a person subject to immigration control for the purposes of the benefits specified in regulation 2(2) of the Great Britain Social Security Regulations. "EU Agreement" is defined as an agreement concluded by the European Union under Article 217 of the Treaty on the Functioning of the European Union.

(**a**) Paragraph (3) was relevantly amended by regulation 10 of S.I. 2007/2150 and regulation 4 of S.I. 2012/2612. Paragraph (3A) of regulation 27 was inserted by regulation 11 of S.I. 2019/364.

Regulation 3 makes an equivalent amendment to the Northern Ireland Social Security Regulations in so far as those Regulations relate to child benefit. Regulation 4 makes an equivalent amendment to the Immigration Regulations.

Regulation 5 amends regulation 3 of the Residence Regulations so that paragraph (5)(b)(ii) of that regulation does not apply to a person who is lawfully working in the United Kingdom and who is a national of a state with which the United Kingdom has concluded an agreement which replaces an EU Agreement providing for equal treatment in the field of social security, and where that EU Agreement has ceased to apply in whole or in part to, and in, the United Kingdom.

Regulation 6 makes equivalent amendments to the Child Benefit Regulations.

A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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