

**Social Security Advisory Committee**  
**Minutes of the meeting held on 16 June 2021**  
**(held via Microsoft Teams)**

Chair: Dr Stephen Brien

Members: Bruce Calderwood  
Carl Emmerson  
Kayley Hignell  
Phil Jones  
Grainne McKeever  
Seyi Obakin  
Charlotte Pickles  
Liz Sayce

Apologies: Chris Goulden  
Dom Morris

**1. Private session**

*[PARTIALLY RESERVED ITEM]*

***Postal Regulations***

1.4 The Committee agreed the Postal Regulations sub-group's recommendations that the following regulations may be cleared by correspondence:

- *The Child Benefit (General) (Coronavirus) (Amendment) Regulations 2021*
- *The Tax Credits and Child Benefit (Miscellaneous and Coronavirus Amendments) Regulations 2021*

1.5 The Chair asked the Committee Secretary to notify the Department that the regulations may proceed.

**2. The Childcare Payments (Miscellaneous Amendment) Regulations 2021**

2.1 The Chair welcomed Phil Mattacks and David Malcolm of Her Majesty's Revenue and Customs (HMRC) to the meeting. These regulations were originally reviewed at the Committee's meeting on 21 April however, following some amendments to the regulations since that date, the policy officials had been invited back so that the Committee could examine those changes.

**(a) Please could you explain your rationale as you decided to make these amendments?**

The original regulations were based on the normal way that Tax Free Childcare (TFC) deals with a qualifying status. Where someone needs a certain status in order to be considered eligible for TFC HMRC waits until the person has that status confirmed before they are treated as eligible for a three-month period. If circumstances change in middle of an eligibility period such that they lose that status, they remain entitled for the full period, and those monies would not be clawed back. If someone is denied eligibility because they did not have the correct status at the time of the TFC application, but that status is later confirmed for that earlier time, HMRC makes compensation payments to cover that period.

However, when it came to the question of whether someone had EU settled status, it was found that our original regulations were technically against the Withdrawal Agreement (WA). The WA grants legal protection for those who had applied to the EU Settlement Scheme (EUSS) by the deadline of 30 June. So in order to comply with the WA it was decided that those who had applied to the EUSS in time had to be treated as eligible from the outset, pending confirmation of their application.

**(b) The policy intent and legal force of the WA took precedence over the normal practice?**

Correct, greater weight was given to the WA and its impact on settled status than would normally be given to statuses which were yet to be confirmed.

**(c) Another change to these regulations extends the ability of people to be eligible for tax free childcare to those who have applied to the EUSS out of time. How is that group defined?**

Anyone who needs settled status in order to be eligible, and who applies after 30 June will not be deemed eligible until their settled status is confirmed. If the Home Office decides to give them that status, then HMRC will follow suit and they will be eligible for TFC, and for compensatory payments. That will work the same as any other type of government status. For example, if a parent is unable to work because they are a carer and they have applied for Carer's Allowance, HMRC will not give them TFC until it is confirmed they get Carer's Allowance. However, it would give them compensatory payments for the period when that status was pending but ultimately was confirmed. Someone who has not applied for EUSS by 30 June will not be eligible whilst their application is pending, but if they are later granted settled status then HMRC will give them compensatory payments.

- (d) So, people who apply on time get the presumption of settled status, whereas those who apply afterwards do not?**

It is less about presumption, rather the Home Office WA legislation provides a legal status to applicants as long as they applied within the grace period 30 June deadline. That person is protected until they are deemed not eligible for settled status, so in the meantime they are treated as in the same position as they were in prior to EU Exit. However, the person who applies on or after 1 July has no right to be treated in the same way.

TFC looks at the circumstances at the date someone makes their declaration, so if those circumstances change during the eligibility period but HMRC would not claw back entitlement. If someone has applied to EUSS by 30 June, but the Home Office turns then down HMRC would not claw back the entitlement.

- (e) To summarise, on the first change you have subsequently recognised the legally protected status of EUSS applicants, and for the second change was to give the non-protected EUSS applicant cohort the chance to receive compensatory payments?**

That is correct. Also, the compensatory payment change will apply to people who will have to apply to the EUSS in future, such as those who have reserved rights, such as family members. They will be able to take advantage of these terms going forward.

- 2.2 The Chair thanked Phil Mattacks and David Malcolm for attending the meeting and answering the Committee's questions. He confirmed that the Committee was content for the regulations to proceed.

### **3 & 4. PRIVATE SESSIONS**

*[PARTIALLY RESERVED ITEMS]*

*Date of next meeting*

The Committee's next meeting would take place on 7 July 2021.

**Attendees**

Guests and Officials

Item 2: Phil Mattacks (HMRC)  
David Malcolm (HMRC)

Secretariat: Denise Whitehead (Committee Secretary)  
Jaishree Patel (Assistant Secretary)  
Richard Whitaker (Assistant Secretary)