

Social Security Advisory Committee
Minutes of the meeting held on 21 April 2021
Caxton House, Tothill Street, London, SW1H 9NA

Chair: Dr Stephen Brien

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

1. Private session

[RESERVED IN PART]

Postal Regulations

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

- *The Social Fund Funeral Expenses (Amendment) Regulations 2021*
- *The Housing Benefit and Universal Credit (Care leavers and Homeless) Amendment Regulations 2021*

1.5 The Chair asked the Committee Secretary to notify the Department that the regulations may proceed. However, in the case of the Social Fund regulations the Committee had some further questions for the policy officials to address, and asked that these be followed up as soon as possible.¹

¹ The questions, along with responses received from the Department, are held at annex C.

2. The Childcare Payments (Miscellaneous)(Amendment) Regulations 2021²

2.1 The Chair welcomed Phil Mattacks of Her Majesty's Revenue and Customs (HMRC) to the meeting.

2.2 Opening the session, Phil Mattacks provided an overview of the changes. He noted that the regulations for Childcare Payments, referred to as Tax-Free Childcare (TFC), put into effect necessary changes to reflect the UK's withdrawal from the EU. They are being introduced at this time in order to deal with the end of the 'grace period' – at which point the ability to make applications to the European Union Settlement Scheme (EUSS) ends - on 30 June. The definition of 'EEA state' is changing to set out how the transition will be dealt with. In determining whether or not an applicant has the relevant qualifying status, the system relies on a real time digital service which looks up other systems to come up with that yes/no answer – in this case to answer whether the person has the necessary EUSS status. If they do not then they are not eligible, but if they later become eligible HMRC will use Compensatory Payments to pay back those monies.

2.3 Continuing, Phil noted that other elements of these regulations involve corrections that make no material changes in terms of content. Comments made by the Joint Committee on Statutory Instruments concerning certain changes made in December in response to continuing Covid easements, have been taken into account but do not change the working of the scheme.³

2.4 Committee Members raised the following main questions in discussion:

(a) It was mentioned that other systems are connected to in order to determine eligibility. What work is being done to co-ordinate with those officials in other areas or departments?

One cannot be in Universal Credit (UC) and TFC at same time. One cannot be using TFC and Tax Credits at the same time – TFC ends a Tax Credits award. So there is not an overlap with normal in-work benefits. TFC applies to parents who are working but need help with childcare costs. The focus is currently on making sure customers are aware of what they need to do at this stage. The data from the Home Office suggests we have about 4,000 TFC recipients who could lose their eligibility after the 30 June. HMRC are sending nudge letters to those persons to encourage them to get their EUSS status settled in time. TFC gives the applicant three month's eligibility. It does not change over that period, so there is no intervention in that three months if they become ineligible during

² These regulations were subsequently amended, and further scrutinised by the Committee at its meeting on 16 June.

³ The comments from the Joint Committee of Statutory Instruments is attached at annex B.

that period, rather they retain eligibility for that whole period. Therefore, more care must be taken about eligibility – there is no mechanism for clawing back these monies.

(b) If an applicant becomes ineligible due to their EUSS decision being pending can they apply to UC?

Yes – they could apply to UC if not eligible for TFC. They can also apply to UC midway in a TFC eligibility period, if their circumstances change. So there can be periods of dual entitlement to UC and TFC.

(c) How does the claimant journey work for existing TFC applicants and for new applicants?

If an applicant is already in the TFC scheme, then this is reconfirmed in the last month of the eligibility period. If they retain eligibility, then their childcare account retains full functionality. For instance, if they applied in late June (prior to the date that the grace period ends) they would get eligibility through to September. If they reconfirmed in mid-July, and their EUSS status was not in place, then they would not have eligibility and their account would become 'pay only'. That means they can still use the money already in the account but no more monies would go in. If EUSS status is later confirmed, then the compensatory payment would be paid to cover what would have been paid to them.

For a new applicant in July, whose EUSS application was outstanding, they would not have an account opened as they are ineligible. They would have to reapply once their EUSS status is confirmed, but they would still have compensatory payments paid.

(d) The timing of the application to TFC seems critical in this context. Does the applicant have any choice on this?

Usually mid-month is the date of end of eligibility to avoid problems with end of month bills. The applicant can reconfirm at any point in the final month – so if eligibility would end at the start of July they can reconfirm throughout June.

(e) Within the 'nudge' letters you raised is there any mention about the timing of their reconfirmation?

The 'nudge' letter emphasises the importance of finalising their EUSS status but it does not mention about the timing of the reconfirmation. The nudge is to make sure applicants know the import of the 30 June date and the possible loss of eligibility.

(f) Can TFC be used to pay for childcare provision in the Republic of Ireland (ROI)?

The rules do allow childcare providers to be paid in a 'prescribed state' – i.e. an EEA state. The process is more difficult. The system normally involves getting lists from the national regulators of each regulated childcare provider in that jurisdiction. However, that is not done for the ROI. However, these changes do not create any change for how the scheme works in relation to Northern Ireland and ROI.

(g) You mentioned there were about 4,000 TFC recipients who do not yet have their EUSS status confirmed. Of that 4,000 do we know how many have applied to the EUSS scheme, and how many have not? Is there sufficient time to deal with the applications at this point?

The information about where those people are in their application process is held by the Home Office. In principle they should still have time to have their EUSS application dealt with by 30 June.

(h) Does the EUSS application process take longer for some groups rather than others?

This is information that the Home Office may have. It may be worth emphasising that most people who are TFC recipients will be successful in their EUSS application. In order to get TFC they must be living and working in the UK, they must have a National Insurance Number, they will have a significant footprint. This makes them more likely to be successful. Also, the TFC recipients are likely to be familiar with our IT systems as they will have had to set up their credentials on Gov.UK and follow various online instructions to manage the scheme. So, they should be able to understand and navigate the EUSS system.

(i) As there is not a significant risk of customers gaming the system and you expect most customers to get EUSS, why not allow those still applying to Home Office to be eligible?

It is agreed there is nothing to be gained by trying to game the system, and by leaving the application to the last minute, but some customers will inevitably not get EUSS from Home Office. It is a digital, automated, system that checks information held on other systems, and comes back with results. It does not give eligibility when there is not a status in place – it is designed this way to interact with real time data sources. If it did assume statuses, then wrongly given government support could not be recovered when the status is never obtained.

- (j) **Could this be considered as the tail wagging the dog – i.e. as the computer systems work this way, this is the way it must work?**

Applicants are not losing out through this system. There is an occasional back payment but they end up in same financial position as they would have been had eligibility been in place from the start.

- (k) **Applicants may have finely balanced budgets. Could not having to pay out 20% more in childcare costs, albeit for a temporary period and with compensatory payments made at a later date, cause hardship?**

The idea of TFC is to check first, pay later – so to find that someone is not eligible, but still give them support, goes against that system. HMRC has ways of compensating them later. Where this kind of process has been dealt with in other schemes – where you cross check statuses and either give or refuse eligibility – no reports of acute hardships have been made.

- (l) **The TFC payment is a companion piece to the 30 hour free childcare schemes. Are similar regulations being introduced for those schemes?**

HMRC only delivers the English offer via this portal. The processes are different in the different jurisdictions. Scotland offers are all universal so there is no need for an extended application process. The 30-hour free childcare scheme process in England will basically work the same way as TFC, but in the 30-hour scheme there will be more leeway as they have got more time to reconfirm. A first time applicant would normally apply in July, and they would have until the end of August to apply in time, so that gives more time to get the EUSS application sorted. Within this scheme exists a similar compensatory payment mechanism as is found with TFC.

2.5 The Chair thanked Phil Mattacks for attending the meeting and answering the Committee's questions. Following private discussion, the Committee requested that HMRC provide the following additional information:⁴

- Of the approximately 4,000 TFC recipients who have not secured their EUSS status, is there any information on what their characteristics are? In other words, are these arrangements likely to impact on some groups of EEA citizens more than others?
- Of those 4,000, could you provide numbers for how many have made an EUSS application, and how many are yet to make an application?

⁴ HMRC's responses to these questions can be found at annex C.

- For the cohort who have made an application, how many are likely to have had that EUSS application dealt with by the 30 June deadline? What is the average waiting time for an application at this point?
- For the cohort who have not made an EUSS application what would be the expected final day that an application could arrive with the Home Office for it to be dealt with by 30 June?
- It has been stated that an existing TFC recipient can re-apply at any point in the final month of their 3-month eligibility period. Is there merit in using the 'nudge' letters to encourage the relevant TFC recipients to apply for reconfirmation in advance of 30 June, to avoid being caught by the deadline?
- Where a TFC recipient makes a late application to EUSS (i.e. post 30 June) and it is accepted and approved by the Home Office, will that be dealt with the same way as an application made before 30 June, in terms of TFC?
- For someone who was deemed ineligible for TFC due to their EUSS status being outstanding, how long would it take for you to process their new TFC application once their status is confirmed, and then to provide Compensatory Payment?
- What is the average amount that a TFC recipient receives in top up payments per 3-month period?
- Will these Regulations have any impact on the Child Benefit and Child Tax Credit (Persons of Northern Ireland) (Amendment) Regulations 2020 (SI.No.672/2020) which amend the Child Benefit (General) Regulations 2006 and the Tax Credits (Residence) Regulations 2003? Under the 2020 (Persons of NI) Regulations, family members of someone in Northern Ireland who has limited leave to enter or remain is currently able to claim child benefit or child tax credit, *'as long as the person of Northern Ireland whom they are a family member of, if they were treated as being an EEA national having exercised a Treaty right, would have a qualifying right to reside under the Immigration (European Economic Area) Regulations 2016.'* So, for example, two brothers and their children come from Liechtenstein to Ireland. Brother A goes to Dublin and brother B goes to Belfast. Under the 2020 Regulations, A can currently come to Belfast and claim child benefit or

CTC through B. Does this also entitle A to claim TFC and, if so, do the new 2021 Regulations impact on this entitlement?

3&4. Private sessions

[RESERVED IN PART]

Date of next meeting

4.2 The Committee's next meeting was scheduled to take place on 19 May.

Annex A

Attendees

Guests and Officials

Item 2: Phil Mattacks (HMRC)

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

Annex B



JOINT COMMITTEE ON STATUTORY INSTRUMENTS

Andrea Hastick
HM Treasury

03 March 2021

Dear Andrea,

NON-REPORTABLE ERRORS IN STATUTORY INSTRUMENTS

In considering these instruments the following minor errors were noticed. The Committee is not expected to wish to mention these errors in a Report (although it may decide to do so), but the Department will doubtless wish to consider them with a view to determining whether and how they should be corrected, and with a view to taking steps to avoid recurrence in other instruments. It should not be assumed that these errors are necessarily sufficiently trivial to be capable of being addressed by correction slip. There is no need to notify the Committee of any decision made, or action taken, in response to this letter.

**S.I. 2020/1515: TAX CREDITS, CHILDCARE PAYMENTS AND CHILDCARE (EXTENDED ENTITLEMENT) (CORONAVIRUS AND MISCELLANEOUS AMENDMENTS) REGULATIONS
2020**

<i>Provision</i>	<i>Error</i>	<i>Comments</i>
Preamble, fn.(a)	s.67 Tax Credits Act 2002 defines “prescribed” as “prescribed by regulations” not “prescribed by regulations made by the Treasury”	
Reg.2(5)(a)(ii), inserted sub-para.(e)	The first para.(ii) should be numbered (i) In that para., (“a statutory absence”) should be “(a “statutory absence”)” In para.(iii), “work providing” should be “work, providing”	For consistency with the way it is used in (ii): “that period of statutory absence”
Reg.2(5)(b)(ii)	“substitute “paragraph (2)(d)” should be “substitute “, paragraph (2)(d)”	
Reg.2(5)(e), substituted para.(5)	“on the earlier of” should be “on the earliest of”	For both sense and consistency with 2(5)(h), substituted para.(7)
Reg.2(5)(f)(i)	“(6)” should not be in the substituted words In the opening words of para.(6)(a), there should be no comma in “the period of eight weeks, beginning” In para.(6)(a)(ii): “four week” should be “four-week” “coronavirus- impacted” should be “coronavirus-impacted”	The substitution is only from “Where” to the end of sub-para.(a)

Reg.2(5)(h), substituted para.(7)	<p>“paragraph (6) and (6A)” should be “paragraphs (6) and (6A)”</p> <p>At the end of sub-para.(b), “ , and” should be “; or”</p>	For sense and consistency with reg.2(5)(e), substituted para.(5)
Reg.3(3)(b), inserted entry 38	Superfluous comma in “any payment, made”	
Reg.3(3)(d), inserted entry 40	<p>Superfluous comma in “any payment, made”</p> <p>Missing comma after “Welsh Government” (or in the alternative, superfluous comma after “England”)</p>	
Reg.4(3)	There is already a regulation 9(1)(c); as a result if this amendment there will be two	
Regs.4(3) and 5(3), opening line of inserted text	““; or,” should be ““; or”	
Reg.5(3), inserted sub-para.(c)	<p>“either an employed or self-employed person” should be “either an employed or a self-employed person”</p> <p>There should be an Em-dash at the end of the opening words, after “person”</p> <p>In para.(ii), the comma before “or” should be a semi-colon</p> <p>Para.(iv) does not follow grammatically from the opening words (“and the person where the person is employed, their employer is claiming a grant....”)</p>	Not suitable for amendment by correction slip

Yours sincerely

Daniel Greenberg CB

Annex C

Post-meeting questions raised by Committee members, and responses received from the Department or HMRC.

The Social Fund Funeral Expenses (Amendment) Regulations 2021

The mistake in the Social Fund regulations occurred because when the regulations referred to the European Union it originally was inclusive of the UK. Is there the possibility that this same problem is present in other regulations, where the meaning of ‘European Union’ has changed but the regulation has been unchanged, and there is a material impact?

As noted previously DWP carried out a large amount of work ahead of the end of the transition period to identify “day 1 critical changes” which met the Cabinet Office’s test for prioritisation which needed to be passed between September and December 2020.

We have now proceeded with another tranche of changes identified, some with only minor changes needed like removing references to the EU, which did not meet the test to be prioritised last year, whenever they were identified, given that there were no material impacts on staff or claimants.

We can be very open with SSAC that we expect further changes to be needed, due to the complexities in retained EU law and the interactions between different pieces of legislation, and we will be engaging with SSAC on these as they come forwards.

Comprehensive guidance has been provided for staff on the impacts as a result of the UKs withdrawal from the EU which sets out the position from 1 January 2021 in line with the new agreements with the EU on social security.

The Childcare Payments (Miscellaneous Amendments) Regulations 2021⁵

Of the approximately 4000 TFC recipients who have not secured their EUSS status, is there any information on what their characteristics are? In other words, are these arrangements likely to impact on some groups of EEA citizens more than others?

⁵ These regulations were subsequently amended and further scrutinised by the Committee at its meeting on 16 June.

We do not have detailed analysis of Childcare Service users but overall, for each country, EEA nationals that use HMRC run schemes and are still awaiting EUSS decisions seem roughly proportionate to the number of such nationals living in the UK.

Of those that have not secured status, could you provide numbers for how many have made an EUSS application, and how many are yet to make an application?

The Home Office regularly publish updates on the number of applications received and the number of statuses granted. More than 5.4 million applications were made and over 5.1 million concluded by 30 April. Refused applications to date account for only 1% of total applications received, while 2% have been considered invalid, withdrawn or void.

It is not possible to determine precisely how many eligible individuals are yet to make an application; further details as to why it is not possible to directly compare the rate of uptake to the EU Settlement Scheme with the resident population of EU/EEA nationals in the UK can be found at [Home Office EU Settlement Scheme statistics: user guide - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/eu-settlement-scheme-statistics-user-guide).

To encourage as many eligible individuals as possible to signed up to the scheme by the deadline, the Home Office have led an extensive public information campaign which has been supported by HMRC, DWP and other departments. A further communication campaign to HMRC customers is currently in progress to encourage take up to the EU Settlement Scheme.

For the cohort who have made an application, how many are likely to have had that EUSS application dealt with by the 30 June deadline? What is the average waiting time for an application at this point?

The Home Office attempt to process applications as quickly as possible. The time to conclude each application is dependent on the individual case and the level of information that the customer has provided. Where an application is submitted on-line and the Home Office are able to validate the customer's identity and verify their residence, the application will be concluded in a matter of days. The customer is informed of their digital status by an e-mail sent to the e-mail address they provide. However, if for example insufficient information is provided by the customer, further enquiries may be needed which can extend the time taken to make a final decision.

For the cohort who have not made an EUSS application what would be the expected final day that an application could arrive with the Home Office for it to be dealt with by 30 June?

The critical issue is that a valid application is submitted by the deadline. Where an eligible individual submits a valid application to the scheme by the deadline, their rights to access benefits and services will be protected even if they are not granted status until a later date. Therefore, it is not essential that all applications are concluded by 30 June 2021. There are a number of ways in which a

customer can apply, via the App, on-line or for some cohorts on a paper application form submitted by the postal route. For applications made through the postal route the postmark of the application will be used as a reference point and regarded as the date of receipt.

You have stated that an existing TFC recipient can re-apply at any point in the final month of their 3-month eligibility period. Is there merit in using the 'nudge' letters to encourage the relevant TFC recipients to apply for reconfirmation in advance of 30 June, to avoid being caught by the deadline?

It is impractical to tailor nudge letters in this way. Letters will go to all HMRC customers, some of whom will use more than one HMRC scheme (for instance TFC and Child Benefit), and they need to give a clear and simple message.

Where a TFC recipient makes a late application to EUSS (i.e. post 30 June) and it is accepted and approved by the Home Office, will that be dealt with the same way as an application made before 30 June, in terms of TFC?

The Childcare Service will be blind to when any customer applied for EUSS and will only look at whether Home Office reports that they have or do not have that status. So, if customers apply late and Home Office accepts and processes the applications they will be accepted by Childcare Service.

For someone who was deemed ineligible for TFC due to their EUSS status being outstanding, how long would it take for you to process their new TFC application once their status is confirmed, and then to provide Compensatory Payment?

Customers will be able to reapply or reconfirm as soon as Home Office confirms their status. If all other eligibility criteria check out they will get renewed service, a new account or a 30 hours code in near real time. TFC customers will then be able to apply for compensation using standard forms provided. Compensation turnaround times are typically only a week or two.

What is the average amount that a TFC recipient receives in top up payments per 3-month period?

This is not a simple question as some accounts are not used at any given time, for instance where the parent's application was primarily for 30 hours and they do not currently need additional childcare. But, looking only at accounts that have been used in any month, government top-up averages in the region of £100 per month. So £300 per quarter.

Will these Regulations have any impact on the Child Benefit and Child Tax Credit (Persons of Northern Ireland) (Amendment) Regulations 2020 (SI.No.672/2020) which amend the Child Benefit (General) Regulations 2006 and the Tax Credits (Residence) Regulations 2003? Under the 2020 (Persons of NI) Regulations, family members of someone in Northern Ireland who has limited leave to enter or remain is currently able to claim child benefit or child tax credit, 'as long as the person of Northern Ireland whom they are a family member of, if they were

treated as being an EEA national having exercised a Treaty right, would have a qualifying right to reside under the Immigration (European Economic Area) Regulations 2016.' So, for example, two brothers and their children come from Liechtenstein to Ireland. Brother A goes to Dublin and brother B goes to Belfast. Under the 2020 Regulations, A can currently come to Belfast and claim child benefit or CTC through B. Does this also entitle A to claim TFC and, if so, do the new 2021 Regulations impact on this entitlement?

The PONI rules were created to prevent unfairness in certain Child Benefit and Child Tax Credits scenarios. Working parents in NI will not need to rely on them for eligibility for TFC, as their work status will allow them to apply for TFC in the same way any working parent can across the UK. Also, TFC does not look at whether any child has a right to reside in the UK, only at whether the parent is in the UK, responsible for the child and needs childcare for work. Turning to your example;

- B cannot set up childcare accounts for A's children as he is not responsible for them, A is
- If A is an Irish national, has EUSS or otherwise has recourse to government funds in the UK and is working in NI he will be able to open his own childcare accounts for his children. This is under normal TFC rules.