

2014 No. 1511

SOCIAL SECURITY

TAX CREDITS

**The Child Benefit (General) and the Tax Credits (Residence)
(Amendment) Regulations 2014**

<i>Made</i> - - - -	<i>9th June 2014</i>
<i>Laid before Parliament</i>	<i>10th June 2014</i>
<i>Coming into force</i> - -	<i>1st July 2014</i>

The Treasury, in exercise of the powers conferred by sections 146(3) and 175(1), (1A)(a), (3) and (4) of the Social Security Contributions and Benefits Act 1992(a), sections 142(3) and 171(3), (4) and (10) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(b) and sections 3(7) and 65(1), (7) and (9) of the Tax Credits Act 2002(c) and now exercisable by them(d), make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Child Benefit (General) and the Tax Credits (Residence) (Amendment) Regulations 2014 and come into force on 1st July 2014.

Amendment of the Child Benefit (General) Regulations 2006

2. The Child Benefit (General) Regulations 2006(e) are amended as follows.

3.—(1) Amend regulation 23 (circumstances in which person treated as not being in Great Britain) as follows.

(2) In paragraph (2) for “Paragraph (1) does” substitute “Paragraphs (1) and (5) do”.

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- (a) 1992 c. 4. Section 146 was substituted by section 56(1) of the Tax Credits Act 2002 (c. 21) and subsection (3) was subsequently amended by paragraphs 13(1) and (3) of Part 1 of Schedule 1 to the Child Benefit Act 2005 (c. 6). Subsection (1A) of section 175 was inserted by, and subsections (1) and (4) of section 175, were amended by paragraph 29 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2) and subsection (1A)(a) was subsequently amended by Schedule 6 to the Tax Credits Act 2002.
- (b) 1992 c. 7. Section 142 was substituted by section 56(2) of the Tax Credits Act 2002 and subsection (3) was subsequently amended by paragraph 39(3) of Part 2 of Schedule 1 to the Child Benefit Act 2005. Section 170(10) was substituted by paragraph 28(3) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671).
- (c) 2002 c. 21.
- (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) S.I. 2006/223, relevantly amended by S.I. 2007/2150 and S.I. 2012/2612; there are other amending instruments but none is relevant.

(3) At the end of paragraph (3) insert “and paragraph (5) shall not apply”.

(4) After paragraph (4) insert—

“(5) Subject to paragraph (6), a person is to be treated as being in Great Britain for the purposes of section 146(2) of SSCBA only if that person has been living in the United Kingdom for 3 months ending on the first day of the week referred to in that section.

(6) Paragraph (5) does not apply where the person—

- (a) most recently entered the United Kingdom before 1st July 2014;
- (b) is a worker or a self-employed person in the United Kingdom for the purposes of Council Directive 2004/38/EC (rights of citizens of the European Union and their family members to move and reside freely within the territory of the Member States)(a);
- (c) retains the status of a worker or self-employed person in the United Kingdom pursuant to Article 7(3) of Council Directive 2004/38/EC;
- (d) is treated as a worker in the United Kingdom pursuant to regulation 5 of the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013 (right of residence of a Croatian who is an “accession State national subject to worker authorisation”)(b);
- (e) is a family member of a person referred to in sub-paragraphs (b), (c), (d) or (i);
- (f) is a person to whom regulation 24 applies (persons temporarily absent from Great Britain) and who returns to Great Britain within 52 weeks starting from the first day of the temporary absence;
- (g) returns to the United Kingdom after a period abroad of less than 52 weeks where immediately before departing from the United Kingdom that person had been ordinarily resident in the United Kingdom for a continuous period of 3 months;
- (h) returns to Great Britain otherwise than as a worker or self-employed person after a period abroad and where, otherwise than for a period of up to 3 months ending on the day of returning, that person has paid either Class 1 or Class 2 contributions by virtue of regulation 114, 118, 146 or 147 of the Social Security (Contributions) Regulations 2001(c) or pursuant to an Order in Council having effect under section 179 of the Social Security Administration Act 1992(d);
- (i) is not a national of an EEA State and would be a worker or self-employed person in the United Kingdom for the purposes of Council Directive 2004/38/EC if that person were a national of an EEA State;
- (j) is a refugee as defined in Article 1 of the Convention relating to the Status of Refugees done at Geneva on 28th July 1951(e), as extended by Article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31st January 1967(f);
- (k) has been granted leave, or is deemed to have been granted leave, outside the rules made under section 3(2) of the Immigration Act 1971(g) where the leave is —
 - (i) granted by the Secretary of State with recourse to public funds, or

(a) OJ L 158, 30.4.2004, p77.

(b) S.I. 2013/1460, the relevant amending instrument is S.I. 2014/530.

(c) S.I. 2001/1004; amended by S.I. 2007/1838; there are other amending instruments but none is relevant.

(d) 1992 c. 5, relevantly amended by paragraph 70 of Schedule 2 to the Jobseekers Act 1995 (c. 18), paragraph 107 of Schedule 7 to the Social Security Act 1998 (c. 14), paragraph 15 of Schedule 7 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), paragraph 21 of Part 2 of Schedule 2 of the State Pension Credit Act 2002 (c. 16), Schedule 6 to the Tax Credits Act 2002 (c. 21), paragraph 10(29) of Schedule 3 to the Welfare Reform Act 2007 (c. 5), Part 1 of Schedule 7 to the Welfare Reform Act 2009 (c. 24), paragraph 27 of Schedule 2 and Part 1 of Schedule 14 to the Welfare Reform Act 2012 (c. 5), S.I. 1999/671 and S.I. 2011/2425.

(e) Cmd. 9171.

(f) Cmnd. 3906.

(g) 1971 c. 77.

(ii) deemed to have been granted by virtue of regulation 3 of the Displaced Persons (Temporary Protection) Regulations 2005(a);

(l) has been granted leave to remain in the United Kingdom by the Secretary of State pending an application for indefinite leave to remain as a victim of domestic violence(b);

(m) has been granted humanitarian protection by the Secretary of State under rule 339C of Part 11 of the rules made under section 3(2) of the Immigration Act 1971(c).

(7) In this regulation, a “family member” means a person who is defined as a family member of another person in Article 2 of Council Directive 2004/38/EC.”.

4.—(1) Amend regulation 27 (circumstances in which person treated as not being in Northern Ireland) as follows.

(2) At the end of paragraph (2) insert “and paragraph (4) shall not apply”.

(3) After paragraph (3) insert—

“(4) Subject to paragraph (5), a person is to be treated as being in Northern Ireland for the purposes of section 142(2) of SSCB(NI)A only if that person has been living in the United Kingdom for 3 months ending on the first day of the week referred to in that section.

(5) Paragraph (4) does not apply where the person—

(a) most recently entered the United Kingdom before 1st July 2014;

(b) is a worker or a self-employed person in the United Kingdom for the purposes of Council Directive 2004/38/EC;

(c) retains the status of a worker or self-employed person in the United Kingdom pursuant to Article 7(3) of Council Directive 2004/38/EC;

(d) is treated as a worker in the United Kingdom pursuant to regulation 5 of the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013 (right of residence of a Croatian who is an “accession State national subject to worker authorisation”);

(e) is a family member of a person referred to in sub-paragraphs (b), (c), (d) or (i);

(f) is a person to whom regulation 28 applies (persons temporarily absent from Northern Ireland) and who returns to Northern Ireland within 52 weeks starting from the first day of the temporary absence;

(g) returns to the United Kingdom after a period abroad of less than 52 weeks where immediately before departing from the United Kingdom that person had been ordinarily resident in the United Kingdom for a continuous period of 3 months;

(h) returns to Northern Ireland otherwise than as a worker or self-employed person after a period abroad and where, otherwise than for a period of up to 3 months ending on the day of returning, that person has paid either Class 1 or Class 2 contributions by virtue of regulation 114, 118, 146 or 147 of the Social Security (Contributions) Regulations 2001 or pursuant to an Order in Council having effect under section 179 of the Social Security Administration Act 1992;

(i) is not a national of an EEA State and would be a worker or self-employed person in the United Kingdom for the purposes of Council Directive 2004/38/EC if that person were a national of an EEA State;

(j) is a refugee as defined in Article 1 of the Convention relating to the Status of Refugees done at Geneva on 28th July 1951, as extended by Article 1(2) of the

(a) S.I.2005/1379.

(b) Details on applying for indefinite leave to remain as a victim of domestic violence can be found at <https://www.gov.uk/government/publications/application-for-benefits-for-visa-holder-domestic-violence>

(c) The Immigration Rules which can be found at: <https://www.gov.uk/government/collections/immigration-rules>

Protocol relating to the Status of Refugees done at New York on 31st January 1967;

- (k) has been granted leave, or is deemed to have been granted leave, outside the rules made under section 3(2) of the Immigration Act 1971 where that leave is—
 - (i) granted by the Secretary of State with recourse to public funds, or
 - (ii) deemed to have been granted by virtue of regulation 3 of the Displaced Persons (Temporary Protection) Regulations 2005;
- (l) has been granted leave to remain in the United Kingdom by the Secretary of State pending an application for indefinite leave to remain as a victim of domestic violence;
- (m) has been granted humanitarian protection by the Secretary of State under Rule 339C of Part 11 of the rules made under section 3(2) of the Immigration Act 1971.

(6) In this regulation, a “family member” means a person who is defined as a family member of another person in Article 2 of Council Directive 2004/38/EC.”.

Amendment of the Tax Credits (Residence) Regulations 2003

5. The Tax Credits (Residence) Regulations 2003(a) are amended as follows.

6.—(1) Amend regulation 3 (circumstances in which a person is treated as not being in the United Kingdom) as follows.

- (2) In paragraph (2) for “Paragraph (1) does” insert “Paragraphs (1) and (6) do”.
- (3) At the end of paragraph (3) add “and paragraph (6) shall not apply”.
- (4) After paragraph (5) insert—

“(6) Subject to paragraph (7), a person is to be treated as being in the United Kingdom for the purposes of Part 1 of the Act(b) where he makes a claim for child tax credit only if that person has been living in the United Kingdom for 3 months before that claim plus any time taken into account by regulation 7 of the Tax Credits (Claims and Notifications) Regulations 2002(c) for determining for the purpose of that regulation when the claim is treated as having been made.

(7) Paragraph (6) shall not apply where the person—

- (a) most recently entered the United Kingdom before 1st July 2014;
- (b) is a worker or a self-employed person in the United Kingdom for the purposes of Council Directive 2004/38/EC (rights of citizens of the European Union and their family members to move and reside freely within the territory of the Member States);
- (c) retains the status of a worker or self-employed person in the United Kingdom pursuant to Article 7(3) of Council Directive 2004/38/EC;
- (d) is treated as a worker in the United Kingdom pursuant to regulation 5 of the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013 (right of residence of a Croatian who is an “accession State national subject to worker authorisation”);
- (e) is a family member of a person referred to in sub-paragraphs (b), (c), (d) or (i);
- (f) is a person to whom regulation 4 applies (persons temporarily absent from the United Kingdom) and who returns to the United Kingdom within 52 weeks starting from the first day of the temporary absence;

(a) S.I. 2003/654; amended by S.I. 2012/2612, there are other amending instruments but none is relevant.

(b) Regulation 2(1) of S.I. 2003/654 defines “the Act” as the Tax Credits Act 2002.

(c) S.I. 2002/2014; amended by S.I. 2003/723, S.I. 2009/2887 and S.I. 2012/848, there are other amending instruments but none is relevant.

- (g) returns to the United Kingdom after a period abroad of less than 52 weeks where immediately before departing from the United Kingdom that person had been ordinarily resident in the United Kingdom for a continuous period of 3 months;
- (h) returns to the United Kingdom otherwise as a worker or self-employed person after a period abroad and where, otherwise than for a period of up to 3 months ending on the day of returning, that person has paid either Class 1 or Class 2 contributions pursuant to regulation 114, 118, 146 or 147 of the Social Security (Contributions) Regulations 2001 or pursuant to an Order in Council having effect under section 179 of the Social Security Administration Act 1992;
- (i) is not a national of an EEA State and would be a worker or self-employed person in the United Kingdom for the purposes of Council Directive 2004/38/EC if that person were a national of an EEA State;
- (j) is a refugee as defined in Article 1 of the Convention relating to the Status of Refugees done at Geneva on 28th July 1951, as extended by Article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31st January 1967;
- (k) has been granted leave, or is deemed to have been granted leave, outside the rules made under section 3(2) of the Immigration Act 1971 where that leave is—
 - (i) granted by the Secretary of State with recourse to public funds, or
 - (ii) deemed to have been granted by virtue of regulation 3 of the Displaced Persons (Temporary Protection) Regulations 2005;
- (l) has been granted leave to remain in the United Kingdom by the Secretary of State pending an application for indefinite leave to remain as a victim of domestic violence;
- (m) has been granted humanitarian protection by the Secretary of State under Rule 339C of Part 11 of the rules made under section 3(2) of the Immigration Act 1971.

(8) In this regulation, a “family member” means a person who is defined as a family member of another person in Article 2 of Council Directive 2004/38/EC.

(9) In this regulation, “EEA State”, in relation to any time, means a state which at that time is a member State, or any other state which at that time is a party to the agreement on the European Economic Area signed at Oporto on 2nd May, together with the Protocol adjusting that Agreement signed at Brussels on 17th March 1993, as modified or supplemented from time to time.”

Mark Lancaster
Stephen Crabb

9th June 2014

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend regulations 23 and 27 of the Child Benefit (General) Regulations 2006 (S.I. 2006/223) (“the Child Benefit Regulations”) and regulation 3 of the Tax Credits (Residence) Regulations 2003 (S.I. 2003/654) (“the Tax Credits Regulations”).

Regulations 3 and 4 of these Regulations insert new regulations 23(5) to (7) and 27(4) to (6) respectively into the Child Benefit Regulations so as to introduce an additional condition for eligibility for child benefit in Great Britain and Northern Ireland respectively with the application of certain exemptions. The new condition is that a claimant who last entered into Great Britain or Northern Ireland (as appropriate) on or after 1 July 2014 must have been living in the United Kingdom for 3 months before becoming entitled to child benefit unless they fall within one of the specified exceptions listed in new paragraph (6) of regulation 23 or new paragraph (5) of regulation 27 of the Child Benefit Regulations. Regulations 3(2), 3(3) and 4(2) of these Regulations amend regulations 23(2), 23(3) and 27(2) of the Child Benefit Regulations so that Crown servants posted overseas or their partners and persons in the United Kingdom as a result of their deportation, expulsion or other removal by compulsion of law from another country are also exempted from having to satisfy the 3 month condition.

Regulations 5 and 6 of these Regulations make similar changes in respect for claims for child tax credit by amending the Tax Credits 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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£6.00

UK2014060952 06/2014 19585

<http://www.legislation.gov.uk/id/uksi/2014/1511>

ISBN 978-0-11-111635-7



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