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STATUTORY INSTRUMENTS

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**1987 No. 1973**

**The Family Credit (General) Regulations 1987**

**PART II**

**PRESENCE IN GREAT BRITAIN AND REMUNERATIVE WORK**

**Circumstances in which a person is treated as being or as not being in Great Britain**

**3.—(1)** A person shall be treated as being in Great Britain if, on the date of claim—

(a) he is present and ordinarily resident in Great Britain; and

[<sup>F1</sup>(aa) subject to paragraph (1A), [<sup>F2</sup>he is not a person subject to immigration control (within the meaning of section 115 of the Immigration and Asylum Act 1999)]; and]

(b) his partner, if any, is ordinarily resident in the United Kingdom; and

(c) his earnings or the earnings of his partner, if any, derive at least in part from remunerative work in the United Kingdom; and

(d) his earnings do not wholly derive from remunerative work outside the United Kingdom nor do the earnings of his partner, if any.

(1ZA) [<sup>F3</sup>A Crown servant posted overseas, or his partner, shall be treated as being in Great Britain for the duration of his posting.]

[<sup>F4</sup>(1A) For the purposes of paragraph (1)(aa), a [<sup>F5</sup>person is not subject to immigration control] if—

<sup>F6</sup>(a) .....

<sup>F6</sup>(b) .....

(c) he is a national, or a member of the family of a national, of a State contracting party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993; or

(d) he is a person who is—

(i) lawfully working in Great Britain and is a national of a State with which the [<sup>F7</sup>EU] has concluded an Agreement under article 238 of the Treaty establishing the European Community providing, in the field of social security, for the equal treatment of workers who are nationals of the signatory State and their families, or

(ii) a member of the family of, and living with, such a person;][<sup>F8</sup>or

(e) he is a person who—

(i) has been given leave to enter, or remain in, the United Kingdom by the Secretary of State upon the undertaking of another person, or persons, pursuant to the immigration rules within the meaning of the Immigration Act 1971, to be responsible for his maintenance and accommodation, and

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- (ii) has been resident in the United Kingdom for a period of at least 5 years beginning with his date of entry into the United Kingdom, or the date on which the undertaking was given in respect of him, whichever is the later, or
- (f) he is a person who—
- (i) has been given leave to enter, or remain in, the United Kingdom by the Secretary of State upon the undertaking of another person, or persons, pursuant to the immigration rules mentioned in sub-paragraph (e) above, to be responsible for his maintenance and accommodation, and
- (ii) has been resident in the United Kingdom for less than 5 years beginning with his date of entry into the United Kingdom, or the date on which the undertaking was given in respect of him, whichever is the later, but the person giving the undertaking has died or, where the undertaking was given by more than one person, they have all died.]
- (2) A person shall be treated as not being in Great Britain during any period for which he, or his partner, is entitled to be paid [<sup>F9</sup>working families' tax credit][<sup>F10</sup> or [<sup>F11</sup>disabled person's tax credit]] under the law of Northern Ireland.

#### Textual Amendments

- F1** Reg. 3(1)(aa) inserted (5.2.1996) by [The Social Security \(Persons From Abroad\) Miscellaneous Amendments Regulations 1996 \(S.I. 1996/30\)](#), regs. 1(1), 6(a)
- F2** Words in reg. 3(1)(aa) substituted (with effect in accordance with reg. 1(1) of the amending S.I.) by [The Tax Credits Schemes \(Miscellaneous Amendments\) Regulations 2000 \(S.I. 2000/795\)](#), regs. 1(1), **3(a)**
- F3** Reg. 3(1ZA) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [Tax Credits \(Miscellaneous Amendments No.4\) Regulations 2002 \(S.I. 2002/1696\)](#), regs. 1(1), **6**
- F4** Reg. 3(1A) inserted (5.2.1996) by [The Social Security \(Persons From Abroad\) Miscellaneous Amendments Regulations 1996 \(S.I. 1996/30\)](#), regs. 1(1), 6(b)
- F5** Words in reg. 3(1A) substituted (with effect in accordance with reg. 1(1) of the amending S.I.) by [The Tax Credits Schemes \(Miscellaneous Amendments\) Regulations 2000 \(S.I. 2000/795\)](#), regs. 1(1), **3(b)(i)**
- F6** Reg. 3(1A)(a)(b) omitted (with effect in accordance with reg. 1(1) of the amending S.I.) by virtue of [The Tax Credits Schemes \(Miscellaneous Amendments\) Regulations 2000 \(S.I. 2000/795\)](#), regs. 1(1), **3(b)(ii)**
- F7** Word in Regulations substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 2, **3-6**
- F8** Reg. 3(1A)(e)(f) and word added (with effect in accordance with reg. 3(3) of the amending S.I.) by [The Tax Credits Schemes \(Miscellaneous Amendments No. 4\) Regulations 2000 \(S.I. 2000/2978\)](#), regs. 1(1), **3(2)**
- F9** Words in reg. 3(2) substituted (5.10.1999) by [The Tax Credits Schemes \(Miscellaneous Amendments\) Regulations 1999 \(S.I. 1999/2487\)](#), regs. 1(1), 26(1), **Sch. 1 para. 1(iii)**
- F10** Words in reg. 3(2) added (6.4.1992) by [The Disability Living Allowance and Disability Working Allowance \(Consequential Provisions\) Regulations 1991 \(S.I. 1991/2742\)](#), regs. 1(1), **13(3)**
- F11** Words in reg. 3(2) substituted (5.10.1999) by [The Tax Credits Schemes \(Miscellaneous Amendments\) Regulations 1999 \(S.I. 1999/2487\)](#), regs. 1(1), 26(2), **Sch. 2 para. 1(i)**

#### Remunerative work

[<sup>F12</sup>4.—(1) For the purposes of Part II of the Act as it applies to [<sup>F13</sup>working families' tax credit], and subject to paragraph (3), a person shall be treated as engaged in remunerative work where—

- (a) the work he undertakes is for not less than 16 hours per week;

- (b) the work is done for payment or in expectation of payment; and
  - (c) he is employed at the date of claim and satisfies the requirements of paragraph (5).
- (2) A person who does not satisfy all the requirements of sub-paragraphs (a) to (c) of paragraph (1) shall not be treated as engaged in remunerative work.
- (3) <sup>F14</sup>A person who otherwise satisfies all the requirements of paragraph (1) shall not be treated as engaged in remunerative work insofar as—
- (a) he is engaged by a charitable or voluntary organisation or is a volunteer, where the only payment received by him or due to be paid to him is a payment which is to be disregarded under regulation 24(2) and paragraph 2 of Schedule 2 (sums to be disregarded in the calculation of income other than earnings);
  - (b) he is engaged in caring for a person in respect of whom he receives payments to which paragraph 24 of Schedule 2 refers; or
  - (c) he is engaged on a scheme for which a training allowance is being paid.]
- <sup>F15</sup>(da) he is participating in the Intensive Activity Period specified in regulation 75(1)(a)(iv) of the Jobseeker's Allowance Regulations 1996 or in the Intensive Activity Period for 50 plus;]
- <sup>F16</sup>(e) he is engaged in an activity in respect of which—
- (i) a sports award has been made, or is to be made, to him; and
  - (ii) no other payment is made or is expected to be made to him;]<sup>F17</sup>or
- (f) he is in receipt of an employment zone subsistence allowance.]
- (4) <sup>F18</sup>Subject to <sup>F19</sup>paragraphs (4A) and (4B)] ,] in determining for the purposes of sub-paragraph (a) of paragraph (1) whether the work a person undertakes is for not less than 16 hours per week—
- (a) there shall be included in the calculation any time allowed for meals or refreshment but only where the person is, or expects to be, paid earnings in respect of that time; and
  - (b) if he is a person to whom regulation 14(5) (normal weekly earnings of employed earners) applies, the hours worked shall be calculated by reference to the average number of hours which his employer expects him to work in a week; or
  - (c) where paragraph (b) does not apply and—
    - (i) a recognised cycle of working has been established at the date of claim, the hours worked shall be calculated by reference to the average number of hours worked in a week over the period of one complete cycle (including, where the cycle involves periods in which the person does not normally work, those periods, but disregarding any other absences); or
    - (ii) no recognised cycle of working has been established at the date of claim, the hours worked shall be calculated by reference to—
      - (aa) the average number of hours worked over the five weeks immediately preceding the week of claim, or such other longer time preceding that week as may, in the particular case, enable the person's weekly average hours of work to be determined more accurately; or
      - (bb) where he is a self-employed earner <sup>F20</sup>or director] and he has worked for less than 5 weeks at the date of claim, <sup>F21</sup>or he has, in the five weeks immediately preceding the week of claim, increased the number of hours that he works from below 16 hours to 16 hours or more per week,] the average number of hours he expects to work in a week; <sup>F22</sup>or

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- (d) in the case of a woman on maternity leave at the date of the claim, the hours worked shall be calculated on the basis of a declaration made by her of the average hours worked per week prior to the commencement of her maternity leave;]<sup>F23</sup>or
- (e) in the case of a man on paternity leave at the date of the claim, the hours worked shall be calculated on the basis of a declaration made by him of the average hours worked per week prior to the commencement of his paternity leave.]

<sup>F24</sup>(4A) Where for the purpose of paragraph (4)(c)(i), a person's recognised cycle of work at a school, other educational establishment or other place of employment is one year and includes periods of school holidays or similar vacations during which he does not work, those periods and any other periods not forming part of such holidays or vacations during which he is not required to work shall be disregarded in establishing the average hours for which he is engaged in work.]

<sup>F25</sup>(4B) Any period where a person is absent from work by reason of jury service shall be disregarded in establishing the average hours for which he is engaged in work.]

- (5) Subject to paragraph (6), the requirements of this paragraph are that the person—
  - (a) worked not less than 16 hours in either—
    - (i) the week of claim; or
    - (ii) either of the two weeks immediately preceding the week of claim; or
  - (b) is expected by his employer to work or, where he is a self-employed earner he expects to work, not less than 16 hours in the week next following the week of claim; or
  - (c) cannot satisfy the requirements of either sub-paragraph (a) or (b) above and at the date of claim he is absent from work by reason of a recognised, customary or other holiday but he is expected by his employer to work or, where he is a self-employed earner he expects to work, not less than 16 hours in the week following his return to work from that holiday;]<sup>F26</sup>or
  - (d) cannot satisfy the requirements of sub-paragraph (a) or (b) above and at the date of claim he is absent from work by reason of jury service but he is expected by his employer to work or, where he is a self-employed earner, he expects to work, not less than 16 hours in the week following his return to work from that jury service;]
  - <sup>F27</sup>(e) cannot satisfy the requirements of sub-paragraph (a) or (b) above at the date of claim because she is on maternity leave at that date but—
    - (i) prior to the commencement of her maternity leave, she worked, on average, not less than 16 hours a week, and
    - (ii) she is entitled to maternity allowance or statutory maternity pay at the date of the claim;]<sup>F28</sup>or
    - (f) cannot satisfy the requirements of sub-paragraph (a) or (b) above because he is on paternity leave at that date but, prior to the commencement of his paternity leave, he worked, on average, not less than 16 hours a week,]

and for the purposes of calculating the number of hours worked, sub-paragraph (a) of paragraph (4) shall apply to this paragraph as it applies to sub-paragraph (a) of paragraph (1).

- (6) <sup>F29</sup>For the purposes of paragraph (5)—
  - (a) work which a person does only qualifies if—
    - (i) it is the work he normally does, and
    - (ii) it is likely to last for a period of 5 weeks or more beginning with the week of claim; and

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(b) a person shall be treated as not on a recognised, customary or other holiday on any day on which the person is on maternity leave or is absent from work because he is ill.]

(7) Where a person is treated as engaged in remunerative work in accordance with the above paragraphs, he shall also be treated as normally engaged in remunerative work.]

<sup>F30</sup>(8) .....

### Textual Amendments

- F12** Reg. 4 substituted, reg. 004 & 005 substituted by reg. 004, (7.4.1992) by [The Family Credit \(General\) Amendment Regulations 1992 \(S.I. 1992/573\)](#), regs. 1(1), 3
- F13** Words in reg. 4(1) substituted (5.10.1999) by [The Tax Credits Schemes \(Miscellaneous Amendments\) Regulations 1999 \(S.I. 1999/2487\)](#), regs. 1(1), 26(1), **Sch. 1 para. 1(iv)**
- F14** Reg. 4(3) substituted (4.10.1994) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No.5\) Regulations 1994 \(S.I. 1994/2139\)](#), regs. 1(1)(b), 11(a)
- F15** Reg. 4(3)(da) inserted (24.4.2001) by [The Tax Credits \(New Deal Consequential Amendments\) Regulations 2001 \(S.I. 2001/1334\)](#), regs. 1, **5(2)**
- F16** Reg. 4(3)(e) added (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Social Security Amendment \(Sports Awards\) Regulations 1999 \(S.I. 1999/2165\)](#), regs. 1(1), **4(2)**
- F17** Reg. 4(3)(f) and word inserted (28.11.2000 with effect in accordance with reg. 4(6) of the amending S.I.) by [The Tax Credits Schemes \(Miscellaneous Amendments No. 4\) Regulations 2000 \(S.I. 2000/2978\)](#), regs. 1(1), **4(2)**
- F18** Words in reg. 4(4) inserted (11.4.1995) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1995 \(S.I. 1995/516\)](#), **regs. 1(1)(b), 11(a)**
- F19** Words in reg. 4(4) substituted (28.11.2000 with effect in accordance with reg. 4(6) of the amending S.I.) by [The Tax Credits Schemes \(Miscellaneous Amendments No. 4\) Regulations 2000 \(S.I. 2000/2978\)](#), regs. 1(1), **4(3)**
- F20** Words in reg. 4(4)(c)(ii)(bb) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Tax Credits Schemes \(Miscellaneous Amendments No. 3\) Regulations 2000 \(S.I. 2000/1807\)](#), regs. 1(1), (2), 3
- F21** Words in reg. 4(4)(c)(ii)(bb) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Family Credit and Disability Working Allowance \(General\) Amendment Regulations 1997 \(S.I. 1997/806\)](#), regs. 1(1), **2**
- F22** Reg. 4(4)(d) and word inserted (with effect in accordance with reg. 1(4) of the amending S.I.) by [The Tax Credits \(Miscellaneous Amendments No. 3\) Regulations 2001 \(S.I. 2001/892\)](#), regs. 1(2), **12(2)**
- F23** Reg. 4(4)(e) and word added (with effect in accordance with reg. 1(2) of the amending S.I.) by [Tax Credits \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/44\)](#), regs. 1(1), **9(2)**
- F24** Reg. 4(4A) inserted (11.4.1995) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1995 \(S.I. 1995/516\)](#), **regs. 1(1)(b), 11(b)**
- F25** Reg. 4(4B) inserted (28.11.2000 with effect in accordance with reg. 4(6) of the amending S.I.) by [The Tax Credits Schemes \(Miscellaneous Amendments No. 4\) Regulations 2000 \(S.I. 2000/2978\)](#), regs. 1(1), **4(4)**
- F26** Reg. 4(5)(d) and word inserted (28.11.2000 with effect in accordance with reg. 4(6) of the amending S.I.) by [The Tax Credits Schemes \(Miscellaneous Amendments No. 4\) Regulations 2000 \(S.I. 2000/2978\)](#), regs. 1(1), **4(5)**
- F27** Reg. 4(5)(d) and word added (with effect in accordance with reg. 1(4) of the amending S.I.) by [The Tax Credits \(Miscellaneous Amendments No. 3\) Regulations 2001 \(S.I. 2001/892\)](#), regs. 1(2), **12(3)**
- F28** Reg. 4(5)(f) and word inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [Tax Credits \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/44\)](#), regs. 1(1), **9(3)**
- F29** Reg. 4(6) substituted (5.10.1993) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), regs. 1(1)(b), 26
- F30** Reg. 4(8) omitted (11.4.1995) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1995 \(S.I. 1995/516\)](#), **regs. 1(1)(b), 11(c)**

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#### Modifications etc. (not altering text)

- C1** Reg. 4 modified (temp. until 27.11.2001) (28.11.2000) by [The Social Security \(New Deal Pilot\) Regulations 2000 \(S.I. 2000/3134\)](#), regs. 1(1)(b), **13(4)**

#### [<sup>F31</sup>Further provision as to remunerative work

**4A.** Whether, for the purposes of regulation 46(1)(aa) (determination of appropriate maximum [<sup>F32</sup>working families' tax credit]) and paragraph 1A of Schedule 4, the work a person undertakes is for not less than 30 hours per week shall be determined in accordance with regulation 4(1)(b), (3), (4) and (4A) except that for the words “16 hours” in paragraph (4) there shall be substituted the words “30 hours”.]

#### Textual Amendments

- F31** Reg. 4A inserted (18.7.1995 (in accordance with reg. 1(2)(a)(b))) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 2\) Regulations 1995 \(S.I. 1995/1339\)](#), **reg. 1(2)(a)(b)**, 6
- F32** Words in reg. 4A substituted (5.10.1999) by [The Tax Credits Schemes \(Miscellaneous Amendments\) Regulations 1999 \(S.I. 1999/2487\)](#), regs. 1(1), 26(1), **Sch. 1 para. 1(v)**

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