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STATUTORY INSTRUMENTS

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**2003 No. 654**

**TAX CREDITS**

**The Tax Credits (Residence) Regulations 2003**

*Made* - - - - *11th March 2003*  
*Laid before Parliament* *11th March 2003*  
*Coming into force* - - *6th April 2003*

The Treasury, in exercise of the powers conferred upon them by sections 3(7) and 65(1), (7) and (9) of the Tax Credits Act 2002<sup>(1)</sup>, hereby make the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Tax Credits (Residence) Regulations 2003 and shall come into force on 6th April 2003.

**Interpretation**

2.—(1) In these Regulations—

“the Act” means the Tax Credits Act 2002;

“child” has the same meaning as it has in the Child Tax Credit Regulations 2002<sup>(2)</sup>;

“Crown servant posted overseas” has the meaning given in regulation 5(2);

“partner” means where a person is a member of a married or unmarried couple, the other member of that couple;

“qualifying young person” has the meaning given in regulation 2, read with regulation 5, of the Child Tax Credit Regulations 2002;

“relative” means brother, sister, ancestor or lineal descendant.

(2) In these Regulations a person is responsible for a child or qualifying young person if he is treated as being responsible for that child or qualifying young person in accordance with the rules contained in regulation 3 of the Child Tax Credit Regulations 2002.

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(1) 2002 c. 21.

(2) S.I.2002/2007.

### **Circumstances in which a person is treated as not being in the United Kingdom**

3.—(1) A person shall be treated as not being in the United Kingdom for the purposes of Part 1 of the Act if he is not ordinarily resident in the United Kingdom.

(2) Paragraph (1) does not apply to a Crown servant posted overseas or his partner.

(3) A person who is in the United Kingdom as a result of his deportation, expulsion or other removal by compulsion of law from another country to the United Kingdom shall be treated as being ordinarily resident in the United Kingdom.

(4) For the purposes of working tax credit, a person shall be treated as being ordinarily resident if he is exercising in the United Kingdom his rights as a worker pursuant to Council Regulation (EEC) No.1612/68<sup>(3)</sup> or Commission Regulation (EEC) No.1251/70<sup>(4)</sup> or he is a person with a right to reside in the United Kingdom pursuant to Council Directive No.68/360/EEC<sup>(5)</sup> or No. 73/148/EEC<sup>(6)</sup>.

### **Persons temporarily absent from the United Kingdom**

4.—(1) A person who is ordinarily resident in the United Kingdom and is temporarily absent from the United Kingdom shall be treated as being in the United Kingdom during the first—

- (a) 8 weeks of any period of absence; or
- (b) 12 weeks of any period of absence where that period of absence, or any extension to that period of absence, is in connection with—
  - (i) the treatment of his illness or physical or mental disability;
  - (ii) the treatment of his partner's illness or physical or mental disability;
  - (iii) the death of a person who, immediately prior to the date of death, was his partner;
  - (iv) the death, or the treatment of the illness or physical or mental disability, of a child or qualifying young person for whom either he or his partner is, or both of them are, responsible; or
  - (v) the death, or the treatment of the illness or physical or mental disability, of his or his partner's relative.

(2) A person is temporarily absent from the United Kingdom if at the beginning of the period of absence his absence is unlikely to exceed 52 weeks.

### **Crown servants posted overseas**

5.—(1) A Crown servant posted overseas shall be treated as being in the United Kingdom.

(2) A Crown servant posted overseas is a person performing overseas the duties of any office or employment under the Crown in right of the United Kingdom —

- (a) who is, or was, immediately prior to his posting or his first of consecutive postings, ordinarily resident in the United Kingdom; or
- (b) who, immediately prior to his posting or his first of consecutive postings, was in the United Kingdom in connection with that posting.

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(3) OJ No. L257, 19.10.1968, p. 2.

(4) OJ No. L142, 30.6.1970, p. 24.

(5) OJ No. L257, 19.10.1968, p. 13.

(6) OJ No. L172, 28.06.1973, p. 14.

### **Partners of Crown servants posted overseas**

6.—(1) The partner of a Crown servant posted overseas who is accompanying the Crown servant posted overseas shall be treated as being in the United Kingdom when he is either—

- (a) in the country where the Crown servant is posted, or
- (b) absent from that country in accordance with regulation 4 as modified by paragraphs (3) and (4).

(2) Regulation 4 applies to the partner of a Crown servant posted overseas with the modifications set out in paragraphs (3) and (4).

(3) Omit the words “ordinarily resident in the United Kingdom and is”.

(4) In relation to a partner who is accompanying the Crown servant posted overseas the references to “United Kingdom” in the phrase “temporarily absent from the United Kingdom”, in both places where it occurs, shall be construed as references to the country where the Crown servant is posted.

### **Transitional Provision –income support and income-based jobseeker’s allowance**

7. A person is exempt from the requirement to be ordinarily resident in the United Kingdom (which is set out in regulation 3(1)) in respect of child tax credit on and for three years after the date on which the award of child tax credit is made where —

- (a) the award of child tax credit would be made on or after 6th April 2004;
- (b) immediately before the award of child tax credit is made, he is, or will be on the making of a claim, entitled to any of the amounts in relation to income support and income-based jobseeker’s allowance which are described in section 1(3)(d) of the Act; and
- (c) he is a person to which one or more of the following provisions applies—
  - (i) paragraph (b) or (c) in the definition of “person from abroad” in regulation 21(3) of the Income Support (General) Regulations 1987(7);
  - (ii) paragraph (b) or (c) in the definition of “person from abroad” in regulation 85(4) of the Jobseeker’s Allowance Regulations 1996(8);
  - (iii) paragraph (b) or (c) in the definition of “person from abroad” in regulation 21(3) of the Income Support (General) (Northern Ireland) Regulations 1987(9);
  - (iv) paragraph (b) or (c) in the definition of “person from abroad” in regulation 85(4) of the Jobseeker’s Allowance Regulations (Northern Ireland) 1996(10).

*John Heppell*  
*Philip Woolas*

Two of the Lords Commissioners of Her  
Majesty’s Treasury

11th March 2003

(7) S.I. 1987/1967. The definition of “person from abroad” is inserted by S.I. 1994/1807, and amended by S.I. 1996/1944, S.I. 1998/563, S.I. 2000/636 and S.I. 2000/979.

(8) S.I. 1996/207. The definition of “person from abroad” is amended by S.I. 1996/1516, S.I. 1998/563, S.I. 2000/636 and S.I. 2000/979.

(9) S.R. 1987 No. 459. The definition of “person from abroad” is inserted by S.R. 1994 No. 266, and amended by S.R. 1996 No. 405, S.R. 1998 No. 81, S.R. 2000 No. 71 and S.R. 2000 No. 125.

(10) S.R. 1996 No. 198. The definition of “person from abroad” is amended by S.R. 1996 No. 356, S.R. 1998 No. 81, S.R. 2000 No. 71 and S.R. 2000 No. 125.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations prescribe circumstances in which a person is to be treated for the purposes of Part 1 of the Tax Credits Act 2002 (c. 21) as being, or as not being, in the United Kingdom.

Regulation 1 provides for the citation and commencement of the Regulations and regulation 2 for interpretation.

Regulation 3 sets out the requirement that a person who is not ordinarily resident in the United Kingdom will not be treated as being in the United Kingdom. This regulation does not apply to Crown servants posted overseas and their partners.

This regulation also provides that a person shall be treated as being ordinarily resident if he is in the United Kingdom as a result of his deportation, expulsion or other removal by compulsion of law from another country to the United Kingdom. In addition it provides that, for the purposes of working tax credit, a person who is exercising in the United Kingdom his rights as a worker under Council Regulation (EEC) No. 1612/68 or Commission Regulation (EEC) No. 1251/70 or a person with a right to reside under Council Directive No. 68/360/EEC or No. 73/148/EEC shall be treated as being ordinarily resident.

Regulation 4 provides for when a person who is ordinarily resident in the United Kingdom and is temporarily absent from the United Kingdom is treated as being in the United Kingdom.

Regulations 5 and 6 set out when Crown servants posted overseas and their partners are treated as being in the United Kingdom.

Regulation 7 is a transitional provision for people in receipt of the elements of income support and income-based jobseeker's allowance described in section 1(3)(d) of the Tax Credits Act 2002. It exempts certain of those people from the requirement to be ordinarily resident until 5th April 2006.

A regulatory impact assessment in respect of the Tax Credits Act 2002 has been prepared and placed in the Library of each House of Parliament. A copy may be found on the Inland Revenue website ([www.inlandrevenue.gov.uk](http://www.inlandrevenue.gov.uk)).