
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Child Benefit (General) Regulations 2006 (S.I. 2006/223) (“the Child Benefit Regulations”) and the Tax Credits (Residence) Regulations 2003 (S.I. 2003/654) (“the Tax Credits Regulations”).

In order to be eligible for either child benefit or child tax credit, a claimant is required to be in the UK: see section 146(2) of the Social Security Contributions and Benefits Act 1992 (c. 4), section 142(2) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) and section 3(3) of the Tax Credits Act 2002 (c. 21). Regulations 23 and 27 of the Child Benefit Regulations and regulation 3 of the Tax Credits Regulations each prescribe circumstances where a claimant for child benefit and child tax credit respectively are treated as not being “in” Great Britain, Northern Ireland or the United Kingdom for the purposes of eligibility to child benefit and child tax credit and include a requirement that the person must have a right of residence.

The amendments made by these Regulations to the Child Benefit Regulations and the Tax Credits Regulations apply so as to exclude a claimant from eligibility to child benefit and child tax credit where their right of residence is of a specified type, namely the right of a person who requires that right of residence in order that a British citizen is not deprived of the genuine enjoyment of the substance of the rights attaching to the status of a European Union citizen. That right is recognised in the judgment of the Court of Justice of the European Union in Case C-34/09 *Gerardo Ruiz Zambrano v Office national de l'emploi (ONEm)* as arising from Article 20 of the Treaty on the Functioning of the European Union and in regulation 15A(1) of the Immigration (European Economic Area) Regulations 2006 (S.I. 2006/1003) where the claimant satisfies the criteria in regulation 15A(4A) of those Regulations. Regulations 3 and 4 of these Regulations accordingly amend regulations 23(4) and 27(3) of the Child Benefit Regulations in relation to child benefit and regulation 6 of these Regulations amends regulation 3(5) of the Tax Credits Regulations in relation to child tax credit.

A full Impact Assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.