

# The Tax Credits (Residence) Regulations 2003

Statutory Instrument 2003 No. 654

As at 1<sup>st</sup> July 2014



1. This version of the Tax Credit (Residence) Regulations 2003 (“the regulations”) consolidates the amendments listed in the table overleaf, and is up to date to 1<sup>st</sup> July 2014. Amendments from the original are highlighted in red.
2. For polygamous units, this version of the regulations *must* be read alongside the modifications made by the Tax Credits (Polygamous Marriages) Regulations 2003 (SI 2003/742) (April 6, 2003).
3. For Universal Credit ‘transition’ cases, this version of the Regulations *must* be read alongside the modifications made by regulation 17 and the Schedule in the Universal Credit (Transitional Provisions) Regulations 2013 (SI 2013/386) (April 29, 2013).
4. Throughout these regulations, references to “the Board” should be taken as a reference to the Commissioners for HM Revenue & Customs (section 50 of the Commissioners for Revenue and Customs Act 2005).
5. Any suggestions for improvements or amendments to this document should be notified to the authors at the address below.

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This document was prepared by  
HM Revenue & Customs, Benefits and Credits (Preston),  
2<sup>nd</sup> Floor , North Wing,  
St Mary’s House,  
St Mary’s Street,  
Preston,  
Lancashire PR1 4AT



***Table of Amendments***

<b>Amendment</b>	<b>Source</b>	<b>Wef</b>
1	Amended by SI 2004 No. 1243	1/5/04
2	Amended by SI 2005 No. 2919	5/12/05
3	Amended by SI 2006 No. 766	6/4/06
3Z	Amended by SI 2012 No. 848	6/4/12
4	Amended by SI 2012 No. 2612	8/11/12
5	Amended by SI 2014/1511	1/7/14



## The Tax Credits (Residence) Regulations 2003

<i>The Tax Credits (Residence)</i> .....	1
<i>Regulations 2003</i> .....	1
<b>THE TAX CREDITS (RESIDENCE) REGULATIONS 2003</b> .....	<b>9</b>
1. CITATION AND COMMENCEMENT .....	9
2. INTERPRETATION .....	9
3. CIRCUMSTANCES IN WHICH A PERSON IS TREATED AS NOT BEING IN THE UNITED KINGDOM.....	10
4. PERSONS TEMPORARILY ABSENT FROM THE UNITED KINGDOM.....	12
5. CROWN SERVANTS POSTED OVERSEAS.....	13
6. PARTNERS OF CROWN SERVANTS POSTED OVERSEAS .....	13
7. TRANSITIONAL PROVISION –INCOME SUPPORT AND INCOME-BASED JOBSEEKER’S ALLOWANCE ....	13
<b>EXPLANATORY NOTE</b> .....	<b>15</b>





## STATUTORY INSTRUMENTS

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(a), hereby make the following Regulations:

#### **1. Citation and commencement**

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

#### **2. Interpretation**

(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(b);

[<sup>2</sup>“couple” has the same meaning given by section 3(5A) of the Act;]

“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.

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

(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) **[<sup>5</sup> Paragraphs (1) and (6) do]** 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 **[<sup>5</sup> and paragraph (6) shall not apply].**

(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 [<sup>32</sup> Parliament and Council Regulations (EU) No 492/2011] or he is a person with a right to reside in the United Kingdom pursuant to [<sup>3</sup> Council Directive No. 2004/38/EC].

[<sup>1</sup>(5) A person shall be treated as not being in the United Kingdom for the purposes of Part 1 of the Act where he –

(a) makes a claim for child tax credit (other than being treated as making a claim, under regulation 11 or 12 of the Tax Credits (Claims and Notifications) Regulations 2002 or otherwise), on or after 1st May 2004; and

[<sup>4</sup>(b) (i) does not have a right to reside in the United Kingdom; or

(ii) has a right to reside in the United Kingdom under:

— regulation 15A(1) of the Immigration (European Economic Area) Regulations 2006, but only in a case where the right exists under that regulation because the person satisfies the criteria in regulation 15A(4A) of those Regulations; or

— Article 20 of the Treaty on the Functioning of the European Union (in a case where the right to reside arises because a British citizen would otherwise be deprived of the genuine enjoyment of the substance of their rights as a European Union citizen).]]

**[<sup>5</sup> “(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;
- (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.]

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

(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.

## **5. Crown servants posted overseas**

(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.

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

(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.

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

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;

(ii) paragraph (b) or (c) in the definition of “person from abroad” in regulation 85(4) of the Jobseeker’s Allowance Regulations 1996;

(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;

(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.

John Heppell

Philip Woolas

11th March 2003 Two of the Lords Commissioners of Her Majesty’s Treasury

## 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)).