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STATUTORY INSTRUMENTS

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**2012 No. 2612**

**SOCIAL SECURITY  
TAX CREDITS**

**The Child Benefit and Child Tax Credit  
(Miscellaneous Amendments) Regulations 2012**

*Made* - - - - *16th October 2012*  
*Laid before Parliament* *17th October 2012*  
*Coming into force* - - *8th November 2012*

The Treasury, in exercise of the powers conferred by section 146(3) of the Social Security Contributions and Benefits Act 1992(1), section 142(3) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(2) and section 3(7) of the Tax Credits Act 2002(3) and now exercisable by them(4), make the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Child Benefit and Child Tax Credit (Miscellaneous Amendments) Regulations 2012 and shall come into force on 8th November 2012.

**Amendment of the Child Benefit (General) Regulations 2006**

2. The Child Benefit (General) Regulations 2006(5) are amended as follows.

3. In regulation 23(4) (circumstances in which person treated as not being in Great Britain), for “and does not have a right to reside in the United Kingdom” substitute—

“and

(a) does not have a right to reside in the United Kingdom; or

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- (1) 1992 c. 4. Section 146 was substituted by section 56(1) of the Tax Credits Act 2002 (c. 21) and sub-section (3) was subsequently amended by paragraphs 13(1) and (3)(b) of Part 1 of Schedule 1 to the Child Benefit Act 2005 (c. 6).
- (2) 1992 c. 7. Section 142 was substituted by section 56(2) of the Tax Credits Act 2002 and sub-section (3) was subsequently amended by paragraph 39(3) of Part 2 to Schedule 1 to the Child Benefit Act 2005.
- (3) 2002 c. 21.
- (4) 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) 1992 were transferred to the Treasury by section 49(2)(b) of the Tax Credits Act 2002.
- (5) S.I. 2006/223, amended by S.I. 2007/2150; there are other amending instruments but none is relevant.

- (b) has a right to reside in the United Kingdom by virtue of—
  - (i) regulation 15A(1) of the Immigration (European Economic Area) Regulations 2006<sup>(6)</sup>, 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
  - (ii) 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).”.

4. In regulation 27(3) (circumstances in which person treated as not being in Northern Ireland), for “and does not have a right to reside in the United Kingdom” substitute—

“and

- (a) does not have a right to reside in the United Kingdom; or
- (b) has a right to reside in the United Kingdom by virtue of—
  - (i) 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
  - (ii) 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).”.

#### **Amendment of the Tax Credits (Residence) Regulations 2003**

5. The Tax Credits (Residence) Regulations 2003<sup>(7)</sup> are amended as follows.

6. In regulation 3(5) (circumstances in which a person is treated as not being in the United Kingdom), for paragraph (b) substitute—

- “(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).”.

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<sup>(6)</sup> S.I. 2006/1003; regulation 15A(1) was inserted by S.I. 2012/1547 and regulation 15A(4A) was inserted by S.I. 2012/2560.

<sup>(7)</sup> S.I. 2003/654, regulation 3(5) was inserted by S.I. 2004/1243; there are other amending instruments but none is relevant.

16th October 2012

*Robert Goodwill*  
*Anne Milton*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## 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 (ONE)* 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.