

2002 No. 2007

TAX CREDITS

The Child Tax Credit Regulations 2002

Made - - - - 30th July 2002

Coming into force in accordance with regulation 1

Whereas a draft of this instrument, which contains the first regulations made under section 9 of the Tax Credits Act 2002**(a)**, has been laid before, and approved by resolution of, each House of Parliament:

Now, therefore, the Treasury, in exercise of the powers conferred on them by sections 8, 9, 65 and 67 of the Tax Credits Act 2002**(b)**, hereby make the following Regulations:

Citation, commencement and effect

1. These Regulations may be cited as the Child Tax Credit Regulations 2002 and shall come into force—

- (a) for the purpose of enabling claims to be made, on 1st August 2002;
- (b) for the purpose of enabling awards to be made, on 1st January 2003; and
- (c) for all other purposes on 6th April 2003;

and shall have effect for the tax year beginning on 6th April 2003 and subsequent tax years.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

“the Act” means the Tax Credits Act 2002;

“advanced education” means full-time education for the purposes of—

- (a) a course in preparation for a degree, a diploma of higher education, a higher national diploma, a higher national diploma or higher national certificate of Edexcel or the Scottish Qualifications Authority, or a teaching qualification; or
- (b) any other course which is of a standard above ordinary national diploma, a national diploma or national certificate of Edexcel or the Scottish Qualifications Authority, a general certificate of education (advanced level), a Scottish certificate of education (higher level) or a Scottish certificate of sixth year studies;

“the Careers Service” means—

- (a) in England and Wales, a person with whom the Secretary of State or the National Assembly of Wales has made arrangements under section 10(1) of the Employment Act**(c)**, and a local education authority to whom the Secretary of

(a) 2002 c.21.

(b) Section 67 is cited because of the meaning ascribed to “prescribed”.

(c) 1973 c.50.

State or the National Assembly of Wales has given a direction under section 10(2) of that Act,

(b) in Scotland, a person with whom the Scottish Ministers have made arrangements under section 10(1) of the Employment Act and any education authority to which a direction has been given by the Scottish Ministers under section 10(2) of that Act, and

(c) in Northern Ireland, a person with whom the Department for Employment and Learning has made arrangements under section 10(1) of the Employment Act and any education authority to which a direction has been given by that Department under section 10(2) of that Act;

“child” means a person who has not attained the age of sixteen or who falls within the terms of regulation 4;

“claimant” has the meaning in section 9(8) of the Act, except in regulation 7, where that expression and “joint claimants” have the meanings given in regulation 7(1);

“the Connexions Service” means a person of any description with whom the Secretary of State has made an arrangement under section 114(2)(a) of the Learning and Skills Act 2000(a) and section 10(1) of the Employment Act, and any person to whom he has given a direction under section 114(2)(b) of the former Act and section 10(2) of the latter Act;

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992(b);

“custodial sentence”—

(a) in England and Wales, has the meaning in section 76 of the Powers of Criminal Courts (Sentencing) Act 2000(c),

(b) in Scotland, means detention under a sentence imposed by a court under sections 44, 205, 207 or 208 of the Criminal Procedure (Scotland) Act 1995(d), and

(c) in Northern Ireland, means a custodial sentence under the Criminal Justice (Children) (Northern Ireland) Order 1998(e);

“disability living allowance” means a disability living allowance under section 71 of the Contributions and Benefits Act;

“the Employment Act” means the Employment and Training Act 1973;

“the family element of child tax credit” and “the individual element of child tax credit” shall be construed in accordance with section 9(3) of the Act;

“joint claim” and “single claim” shall be construed in accordance with section 3(8) of the Act;

“looked after by a local authority” has the meaning in section 22 of the Children Act 1989(f), section 17(6) of the Children (Scotland) Act 1995(g) or (in Northern Ireland) Article 25 of the Children (Northern Ireland) Order 1995(h) (with the modification that for the reference to a local authority there is substituted a reference to an authority within the meaning in Article 2 of that Order);

the “main responsibility test” has the meaning given in Rule 2.2. of regulation 3;

the “normally living with test” has the meaning given in Rule 1.1. of regulation 3;

“Part 1” means Part 1 of the Act;

“patient” means a person (other than a person who is serving a custodial sentence) who is regarded as receiving free in-patient treatment within the meaning of the Social Security (Hospital In-patients) Regulations 1975(i), or the Social Security (Hospital In-patients) Regulations (Northern Ireland) 1975(j);

(a) 2000 c.21.

(b) 1992 c.4.

(c) 2000 c.6.

(d) 1995 c.46.

(e) S.I. 1998/1504 (N.I. 9).

(f) 1989 c.41.

(g) 1995 c.36.

(h) S.I. 1995/7559 (N.I. 2).

(i) S.I. 1975/555.

(j) S.R. 1975 No. 109.

“placing for adoption” means placing for adoption in accordance with the Adoption Agencies Regulations 1983(a), the Adoption Agencies (Scotland) Regulations 1984(b) or the Adoption Agencies Regulations (Northern Ireland) 1989(c);

“qualifying young person” means a person, other than a child, who—

- (a) has not attained the age of nineteen, and
- (b) satisfies the conditions in regulation 5(3) and (4);

“recognised educational establishment” means an establishment recognised by the Secretary of State, the Scottish Ministers or the Department for Employment and Learning, as the case may be, as being, or as comparable to, a university, college or school;

“relevant training programme” means—

- (a) arrangements made under section 2 of the Employment Act(d), section 2 of the Enterprise and New Towns (Scotland) Act 1990(e) or section 1 of the Employment and Training Act (Northern Ireland) 1950(f),
- (b) arrangements made by the Secretary of State for persons enlisted in Her Majesty’s forces for any special term of service specified in regulations made under section 2 of the Armed Forces Act 1966(g), or
- (c) for the purposes of the application of Council Regulation (EEC) No. 1408/71(h), any corresponding provisions operated in another member State,

“remunerative work” means work which is—

- (a) done for payment or in expectation of payment,
- (b) undertaken for not less than 24 hours a week, calculated in accordance with regulation 4(3) of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002(i), and
- (c) not excluded from the meaning of engagement in remunerative work by regulation 4(2) of those Regulations;

and other expressions have the same meanings as defined in the Act.

(2) In the application of these Regulations to Northern Ireland, a reference to a provision of an enactment which applies only to Great Britain or England and Wales, shall be construed, so far as necessary, as including a reference to the corresponding enactment applying to Northern Ireland.

Circumstances in which a person is or is not responsible for a child or qualifying young person

3.—(1) For the purposes of child tax credit the circumstances in which a person is or is not responsible for a child or qualifying young person shall be determined in accordance with the following Rules.

Rule 1

1.1. A person shall be treated as responsible for a child or qualifying young person who is normally living with him (the “normally living with test”).

(a) S.I. 1983/1964.

(b) S.I. 1984/988.

(c) S.R. 1989 No. 253.

(d) Section 2 was substituted by section 25(1) of the Employment Act 1988 (c.19).

(e) 1990 c.35.

(f) 1950 c.29 (N.I.): section 1(1) and (1A) were substituted by Article 3 of the Employment and Training (Amendment) (Northern Ireland) Order 1988 (S.I. 1988/1087 (N.I. 10)).

(g) 1966 c.45.

(h) O.J. No. L149, 5.7.1971, restated in amended form in Council Regulation (EEC) No. 2001/83 (O.J. No. L230, 22.8.1983).

(i) S.I. 2002/2005.

1.2. This Rule is subject to Rules 2 to 4.

Rule 2 (Competing claims)

2.1. This Rule applies where—

- (a) a child or qualifying young person normally lives with two or more persons in—
 - (i) different households, or
 - (ii) the same household, where those persons are not limited to the members of a married couple or unmarried couple, or
 - (iii) a combination of (i) and (ii), and
- (b) two or more of those persons make separate claims (that is, not a single joint claim made by a married couple or unmarried couple) for child tax credit in respect of the child or qualifying young person.

2.2. The child or qualifying young person shall be treated as the responsibility of—

- (a) only one of those persons making such claims, and
- (b) whichever of them has (comparing between them) the main responsibility for him (the “main responsibility test”),

subject to Rules 3 and 4.

Rule 3

3.1. The persons mentioned in Rule 2.2. (other than the child or qualifying young person) may jointly elect as to which of them satisfies the main responsibility test for the child or qualifying young person, and in default of agreement the Board may determine that question on the information available to them at the time of their determination.

Rule 4

4.1. A child or qualifying young person shall be treated as not being the responsibility of any person during any period in which any of the following Cases applies.

Case A The child or qualifying young person is provided with, or placed in, accommodation under Part III of the Children Act 1989**(a)**, Part II of the Children (Scotland) Act 1995**(b)** or Part IV of the Children (Northern Ireland) Order 1995**(c)**, and the cost of that child’s or qualifying young person’s accommodation or maintenance is borne wholly or partly—

- (i) out of local authority funds under section 23 of the Children Act 1989 or section 26 of the Children (Scotland) Act 1995,
- (ii) in Northern Ireland, by an authority, within the meaning in Article 2, and under Article 27, of that Order, or
- (iii) out of other public funds.

This Case shall not apply in the circumstances prescribed in regulation 3 of the Child Benefit (General) Regulations 1976**(d)**, or regulation 3 of the Child Benefit (General) Regulations (Northern Ireland) 1979**(e)**.

Case B The child or qualifying young person—

- (i) is being looked after by a local authority, and
- (ii) has been placed for adoption by that authority in the home of a person proposing to adopt him,

and a local authority is making a payment in respect of the child’s or qualifying young person’s accommodation or maintenance, or both, under section 23 of the

(a) 1989 c.41.
(b) 1995 c.36.
(c) S.I. 1995/7559 (N.I. 2).
(d) S.I. 1976/965: regulation 3 was substituted by regulation 3 of S.I. 2000/2891.
(e) S.R. 1979 No. 5.

Children Act 1989, section 26 of the Children (Scotland) Act 1995 or Article 27 of the Children (Northern Ireland) Order 1995.

This Case applies in Northern Ireland with the modification that for references to a local authority there are substituted references to an authority (within the meaning in Article 2 of that Order).

Case C A custodial sentence—

- (a) for life,
- (b) without limit of time,
- (c) of detention during Her Majesty's pleasure,
- (d) in Northern Ireland, of detention during the pleasure of the Secretary of State, or
- (e) for a term or period of more than four months,

has been passed on the child or qualifying young person.

Case D The child (having attained the age of sixteen) or qualifying young person claims and is awarded child tax credit in his or her own right, in respect of a child for whom he or she is responsible, for that period.

(2) Where—

- (a) a claimant is treated as responsible for a child or qualifying young person by virtue of the preceding Rules, and
- (b) the child or qualifying young person has a child of his or her own, normally living with him or her,

the claimant shall also be treated as responsible for, and as having made a claim for child tax credit in respect of, the child of the child or qualifying young person (but without prejudice to the facts as to which of them is mainly responsible for that child).

Period for which a person who attains the age of sixteen remains a child

4. A person who attains the age of sixteen remains a child for the purposes of Part 1 from the date on which he attained that age until immediately before the 1st September which next follows that date.

Maximum age and prescribed conditions for a qualifying young person

5.—(1) For the purposes of Part 1 a person ceases to be a qualifying young person (unless disqualified earlier under the following paragraphs) on the date on which he attains the age of nineteen.

(2) A person who is not a child, but has not attained the age of nineteen years, is a qualifying young person for any period during which the following conditions are satisfied with regard to him.

(3) The first condition is that he is either—

- (a) receiving full-time education, not being—
 - (i) advanced education, or
 - (ii) education received by that person by virtue of his employment or of any office held by him; or
- (b) under the age of eighteen years and—
 - (i) has ceased to receive full-time education,
 - (ii) is registered for work or training with the Careers Service, Connexions Service or the Department for Employment and Learning, and
 - (iii) has not fallen within the preceding terms of this sub-paragraph for a consecutive period of twenty weeks.

(4) The second condition is that the period in question is not (and does not include)—

- (a) a week in which he (having ceased to receive full-time education) becomes engaged in remunerative work;

- (b) a period—
 - (i) in which training for that person is being provided under a relevant training programme; and
 - (ii) in respect of which an allowance may be paid under that programme to that person; or
- (c) a period in respect of which that person receives income support or income-based jobseeker's allowance within the meaning of section 1(4) of the Jobseekers Act 1995^(a).

(5) For the purposes of paragraphs (3) and (4) full-time education is education received by a person attending a course of education—

- (a) at a recognised educational establishment, or
- (b) if the education is recognised by the Secretary of State, the Scottish Ministers or the Department for Employment and Learning, elsewhere,

where in pursuit of that course, the time spent receiving instruction or tuition, undertaking supervised study, examination or practical work or taking part in any exercise, experiment or project for which provision is made in the curriculum of the course, exceeds or exceeds on average 12 hours a week in normal term-time, and shall include normal gaps between the ending of one course and the commencement of another, where the person is enrolled on and commences the latter course.

(6) In calculating the time spent in pursuit of the course, no account shall be taken of time occupied by meal breaks or spent on unsupervised study.

Entitlement to child tax credit after death of child or qualifying young person

6. If—
- (a) a child or qualifying young person dies, and
 - (b) a person is (or would, if a claim had been made, have been) entitled to child tax credit in respect of the child or qualifying young person immediately before the death,

that person shall be entitled to child tax credit in respect of the child or qualifying young person for the period of eight weeks immediately following the death or, in the case of a qualifying young person, until the date on which he or she would have attained the age of nineteen, if earlier.

Determination of the maximum rate at which a person or persons may be entitled to child tax credit

7.—(1) In the following paragraphs—

- (a) in the case of a single claim (but not a joint claim), the person making the claim is referred to as the “claimant”; and
- (b) in the case of a joint claim, the members of the married couple or unmarried couple making the claim are referred to as the “joint claimants”.

(2) The maximum rate at which a claimant or joint claimants may be entitled to child tax credit shall be the aggregate of—

- (a) the family element of child tax credit, and
- (b) an individual element of child tax credit, in respect of each child or qualifying young person for whom—
 - (i) the claimant, or
 - (ii) either or both of the joint claimants,
 as the case may be, is or are responsible.

(3) The family element of child tax credit—

- (a) in a case where any of the children referred to in paragraph (2)(b) above is under the age of one year, is £1,090; and

^(a) 1995 c.18.

(b) in any other case, is £545.

(4) The individual element of child tax credit for any child or qualifying young person referred to in paragraph (2)(b) above—

- (a) where the child is disabled, is £3,600;
- (b) where the child is severely disabled, is £4,465;
- (c) in the case of any other child, is £1,445;
- (d) where the qualifying young person is disabled, is £3,600;
- (e) where the qualifying young person is severely disabled, is £4,465; and
- (f) in the case of any other qualifying young person, is £1,445.

Prescribed conditions for a disabled or severely disabled child or qualifying young person

8.—(1) For the purposes of section 9 of the Act a child or qualifying young person—

- (a) is disabled if he satisfies the requirements of paragraph (2); and
- (b) is severely disabled if he satisfies the requirements of paragraph (3).

(2) A person satisfies the requirements of this paragraph if—

- (a) disability living allowance is payable in respect of him, or has ceased to be so payable solely because he is a patient; or
- (b) he is—
 - (i) registered as blind in a register compiled by a local authority under section 29 of the National Assistance Act 1948 (welfare services)(**a**),
 - (ii) in Scotland, has been certified as blind in a register maintained by or on behalf of a local government area (as defined in the Local Government etc. (Scotland) Act 1994(**b**)), or
 - (iii) in Northern Ireland, has been certified as blind and in consequence is registered as blind in a register maintained by or on behalf of a Health and Social Services Board; or
- (c) he ceased to be so registered or certified as blind within the 28 weeks immediately preceding the date of claim.

(3) A person satisfies the requirements of this paragraph if the care component of disability living allowance—

- (a) is payable in respect of him, or
- (b) would be so payable but for either a suspension of benefit in accordance with regulations under section 113(2) of the Contributions and Benefits Act(**c**) or an abatement as a consequence of hospitalisation,

at the highest rate prescribed under section 72(3) of that Act.

Jim Fitzpatrick
John Heppell

30th July 2002

Two of the Lords Commissioners of Her Majesty's Treasury

(a) 1948 c.29.
(b) 1994 c.39.
(c) 1992 c.4.

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Tax Credits Act 2002 (“the Act”) introduces new tax credits—child tax credit and working tax credit—which will be available from 6th April 2003.

Section 8 of the Act provides that entitlement of a person or persons to child tax credit is dependent on him, or (in the case of a joint claim) either or both of them, being responsible for a child or qualifying young person. These Regulations provide the meaning of “responsible” and set out ages and qualifying conditions for children and qualifying young persons. They also set out the circumstances in which child tax credit is paid for up to eight weeks after a child or qualifying young person has died.

Section 9 of the Act provides for the determination of the maximum rate of child tax credit. Subsection (2) of that section provides that the determination must include first the family element of child tax credit and, secondly, an individual element of child tax credit in respect of each child or qualifying young person for whom the claimant or (in the case of a joint claim) either or both of the joint claimants is or are responsible.

Subsection (5) of section 9 provides that the amount of those elements may vary according to the age of the child or qualifying young person or otherwise, and must be subject to cumulative increases where he or she is disabled or severely disabled.

Regulations 1 and 2 provide for the citation, commencement and effect of the Regulations, and for interpretation.

Regulation 3 determines the circumstances in which a person is or is not responsible for a child or qualifying young person, for child tax credit purposes.

Regulation 4 provides for a person who has attained the age of 16 years to remain a “child” for the purposes of child tax credit and working tax credit until the 1st September following their sixteenth birthday.

Regulation 5 provides for the maximum age for a qualifying young person (the date on which he or she attains 19 years), and the conditions which a person who is no longer a child but is under 19 has to fulfil to be a qualifying young person.

Regulation 6 prescribes the circumstances in which a person is entitled to Child Tax Credit for a child or qualifying young person who has died.

Regulation 7 prescribes the maximum rate at which a person or persons may be entitled to Child Tax Credit.

Regulation 8 defines “disabled” and “severely disabled” for the purposes of section 9 of the Act.

A regulatory impact assessment in respect of the Act has been prepared and placed in the Library of each House of Parliament. A copy can be found on the Inland Revenue website (www.inlandrevenue.gov.uk).

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