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The Social Security (Restrictions on Amounts for Children and Qualifying Young Persons) Amendment Regulations 2017

The Department presented the above proposals to the Committee for informal scrutiny, together with parallel proposals to amend Child Tax Credit legislation. The Committee was grateful to have this opportunity, and appreciated the constructive dialogue we had with officials.

Consistent with the Committee's statutory role, we limited our scrutiny to the four exceptions¹ outlined in the draft secondary legislation, rather than considering the broader underpinning principle of limiting financial support to two children, which has been approved by Parliament and is enshrined in primary legislation.

During the Committee's consideration of these regulations, we recognised that the Department faces a number of complex challenges in ensuring that the proposals are delivered in an effective, fair and safe way. I thought it would be helpful to share some of our observations with you.

Non consensual conception

You will not be surprised to learn that the majority of our comments focus on this aspect of the proposals. The very nature of the exception will require sensitive handling, and failure to have strong arrangements in place to do so may have serious consequences for all concerned.

¹ There are four proposed exceptions:

- born to the claimant in a multiple birth, other than the first child;
- adopted from Local Authority Care;
- living long-term with family or friends in a formal caring arrangement (otherwise likely to be in Local Authority Care); and
- likely to have been born as a result of non-consensual conception.

Privacy

Due to the very nature of the four exceptions, a process of simple elimination may enable a third party to deduce that any additional support for a third child must be on the grounds of a non-consensual conception. That could present a serious risk for a claimant who may wish to keep this matter private – including from a new partner or the child concerned – and cause significant distress and/or harm.

We acknowledge that the Department has strong safeguards in place to protect the information that it holds. However the limited number of exceptions proposed, coupled with the ease by which the others could be discounted, mean that the Department loses some of its ability to protect an individual in such circumstances. It will therefore be important that the Department takes care to ensure that claimants are made aware of the position so that they can make a fully informed choice when the option of making a claim on the basis of non-consensual conception.

Separation from the perpetrator

The Committee understands that where a woman has a third child as a consequence of non-consensual conception she would receive financial support for the third child unless she lived with the alleged perpetrator. We were advised that this is designed to ensure the alleged abuser does not benefit financially. The Committee discussed situations where it would be extremely difficult for a woman to leave an abusive relationship, for instance disabled women who have abusive partners also providing 'care'; and women from some faith communities where separation is culturally taboo. We wonder whether attention has been given to signposting women (in general) living with abusers to organisations with expertise in supporting women who have been abused (such as rape crisis centres or women's aid); and, where needed, to specialist disability or community organisations that can support women for whom leaving an abusive partner may be especially difficult.

Decision-making

The Committee understands that, while the formal responsibility for each decision would lie with DWP and HMRC decision-makers, the outcome would in practice be determined by a third party professional's opinion on the credibility of the witness and the degree to which the account presented was consistent with the requirements of the exemption. In cases where the professional could testify that the account was credible and consistent, the decision would follow automatically. Similarly where the account was held to be improbable, the matter is unlikely to come before a decision-maker, but if it did it would result in a negative decision.

However there will inevitably be cases where the narrative falls somewhere in between those two extremes and a finely balanced judgement is required. In such situations the opinion of the professional is likely to be expressed cautiously. The Committee would welcome an understanding of how the guidance would deal with such cases – especially in scenarios where the credibility of the claimant remained unclear.

The decisions taken – and the way in which they are communicated to the claimant – are a matter of great sensitivity and the Committee discussed the need for assurance that this will be done appropriately by people with the requisite knowledge of good practice in relation to women who have faced sexual abuse.

Third party professionals

We understand that the list of approved third party professionals from whom evidence will be required will be set out in guidance rather than legislation. As the Government intends to introduce these proposals in April 2017, we would encourage the Department to complete its work to secure a list of approved professionals, and to develop the guidance, as a priority.

Adoption and formal long-term care arrangements

The Committee was concerned to note that, for parents who adopt or who have long-term formal caring responsibilities, the proposals result in inequality of treatment which is wholly dependent on something as arbitrary as the order in which the children arrived.

By way of illustration, a couple with two adopted children who subsequently decided to have a child of their own would not receive state support for their third child. By contrast, a couple with two children of their own who subsequently decided to extend their family by adopting a child would receive an increase in their Universal Credit or Tax Credits. That could result in two neighbouring families, with similarly constituted family groupings, receiving different amounts of benefit based solely on the order in which their children joined the household.

The Department has told us:

As part of the Government's on-going commitment to support those who come forward and adopt children from local authority care, this exception will apply to all third or subsequent children or qualifying young people who are adopted by a claimant from local authority care.

The Committee is of the view that that support should be extended to claimants who have adopted, or taken on long-term formal caring responsibilities for a family member, ahead of having a child of their own. It is not hard to envisage a case where someone takes on caring responsibilities for the children of a sibling who has died before the circumstances have been right to start a family of their own. It is difficult to understand why they should be penalised for taking on that responsibility for children that might otherwise be in Local Authority care. And in very hard cases, where perhaps an individual could not otherwise afford to have a child of their own, it is conceivable that they would take the decision to put into Local Authority care one or more of the children they had been looking after.

The Committee urges the Government to look again at this inequity in the system with a view to supporting families in these circumstances to have at least one child of their own rather than penalising them.

Responsibilities of the claimant

We understand that HMRC does not intend to investigate individual circumstances in third child cases, and that the intention is simply to direct claimants to GOV.UK when a claim is made or a relevant change of circumstances is notified. It would therefore be incumbent on them to find out the rules for themselves and present the required evidence.

This is a significant shift from the current position where claimants have a duty to make the claim and produce the required evidence in support of it, and that DWP/HMRC has a responsibility to ask relevant questions, and require relevant supporting evidence, necessary to determine the claim correctly.

We would welcome reassurance that this is simply an oversight and that the current position will continue to apply.

I am copying this letter to the Chief Secretary to the Treasury, Lord Henley, Jon Thompson, Robert Devereux, Jeremy Moore and James Wolfe.

Paul Gray
Chair