



Tax credits: Mandatory consideration of revision before appeal

Consultation document

Publication date: 3 July 2012

Closing date for comments: 2 October 2012

Subject of this consultation:	To seek views on the impacts of changing the tax credits appeals process to mirror the Department for Work and Pensions planned changes to their appeals process which was announced in the Welfare Reform Act 2012 and subject to a consultation process between February and May 2012.
Scope of this consultation:	This consultation applies to England, Wales and Scotland and concerns the tax credits appeals legislation and processes. The aim is to explore ways of simplifying the tax credits appeals process by introducing a mandatory consideration of revision before appeal. It is anticipated that this will significantly reduce the number of appeals to be heard by the Courts and Tribunal Service and ensure continued alignment and consistency of treatment with the revised DWP appeals legislation and processes which DWP are aiming to bring in by April 2013. Tax Credits appeals are heard in the Social Entitlement Tribunal Chamber and follow the same procedures as DWP cases now. This change will ensure that the processes continue to be aligned.
Who should read this:	HMRC would like to hear from claimants and their representatives and other interested parties.
Duration:	The consultation will run from 3 July until 2 October 2012.
Lead official:	Trevor Sanders, Benefits & Credits, Customer, Strategy, Policy & Change
How to respond or enquire about this consultation:	Please send responses by e-mail to: Trevor.sanders@hmrc.gsi.gov.uk or by post to; Trevor Sanders HMRC Room 1E/14 100 Parliament Street London SW1A 2BQ, or By Fax to 020 7147 2531
Additional ways to be involved:	Please indicate whether you are willing to discuss these issues with HMRC. HMRC will consider meeting interested parties to discuss the issues during this consultation. The timing, format and venue of these meetings will be informed by the expressions of interest received.
After the consultation:	A response document will be published. Responses will influence any legislative changes taken forward. The intention is to make an announcement on the outcome of the consultation by 30 November 2012. Subject to this consultation exercise, HMRC propose to introduce changes to the appeals process from April 2013.
Getting to this stage:	This consultation follows DWP's plans to change their appeals process as announced in the Welfare Reform Act 2012 and following a public consultation between February and May 2012.
Previous engagement:	None

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1. Introduction

Why consider changing the process?

An increase in the volume of appeals has led to a substantial increase in the Tribunals Service's caseload and longer waiting times for appeals to be heard. The Welfare Reform Act 2012 enables regulations to be made to require claimants and other persons who disagree with a decision to request consideration of revision before they may appeal. The Department for Work and Pensions (DWP) is currently developing the implementation of these regulations and undertook a consultation between February and May 2012. The DWP consultation included Child Benefit and Guardians Allowance appeals because it is Social Security legislation which covers the appeals process for these payments. It now seems appropriate to widen the consultation to include Tax Credit appeals.

As with DWP appeals, tax credits appeals are heard in the Social Entitlement Chamber of the First-tier Tribunal where social security appeals are heard and follow the same general approach as appeals administered by DWP. The current DWP review opens the door for HMRC to consult and to continue to ensure alignment and consistency of approach.

The tax credits appeals process currently requires us to carry out a full review and to seek a settlement with the appellant before the case is passed to the First-tier Tribunal. This is set out in section 63 Tax Credits Act 2002.

As tax credits are to be replaced by Universal Credit over a period of time from October 2013 to October 2017, changes to the tax credits appeals processes to align, where possible, with the DWP changes will help provide consistency of approach and aid a smooth transition from one form of financial support to the other.

What are the Policy objectives and the intended effects?

The policy change will lead to the introduction of legislation which will require customers to apply for a decision to be looked at again before an appeal can be made to the First-tier Tribunal. The application for a revision will trigger a process known as "reconsideration" and it is anticipated that the change will deliver timely, proportionate and efficient justice for customers and reduce unnecessary demands on the tribunals.

The objective is to help to ensure that there is a proportionate dispute resolution procedure for tax credits decisions so that, as far as is reasonably possible, disputes between customers and HMRC about tax credit entitlement are resolved through internal processes. The customer will only be able to make an appeal after receiving the outcome of the reconsideration process, so that the appeal is only made after HMRC has had the opportunity to fully reconsider the case, together with any new information provided, and the customer has been notified of the outcome. The intended effect is that this will lead to more disputes being resolved through the internal reconsideration process, rather than resulting in an appeal to the First-tier Tribunal. Only where the customer remains unhappy with the outcome of the reconsideration would an appeal then be made to the tribunal.

2. Mandatory consideration of revision before appeal

Current appeal process

The tax credits appeals legislation is set out in sections 38 and 63 Tax Credits Act 2002, which is attached at Annex B, and in the Tax Credits (Appeals) Regulations 2002 (S.I. 2002/2926) and the Tax Credits (Appeals No2) Regulations 2002 (S.I. 2002/3196). If the claimant considers that a decision is wrong, then they have 30 days from the date of the decision notice to appeal to HMRC. Late appeals may be accepted if there is a reasonable excuse for the lateness but no appeal will be accepted if made more than 13 months after the relevant decision.

The recipient has two options available to them if they wish to dispute the decision or the recovery of an overpayment;

- appeal the decision if they feel HMRC have made a mistake, or
- dispute the recovery of an overpayment if they feel recovery is not appropriate

A dispute will not follow the appeals route; these cases are dealt with using internal processes. Appeals will be reviewed which will result in either the appeal being settled or a submission to the tribunal.

Proposed new appeal process

The changes proposed by DWP would introduce a reconsideration process before an appeal could be made to the tribunal. This new approach would increase the likelihood that the decision to appeal would be based on the customer's view of whether the reconsideration process had provided them with an adequate second opinion as well as a clear justification for the original decision. It is expected that some customers, having followed the reconsideration process, may decide that this process has satisfactorily resolved their disagreement and they decide not to appeal.

DWP proposals, in conjunction with the Tribunals Procedure Committee, are to introduce changes to the way an appeal is lodged. In contrast to the current position, after the reconsideration process, customers would have to make a positive choice they wish to appeal to the tribunal. This change would be clearly explained in the reconsideration process response which would set out the next steps. The proposed HMRC changes would also provide that any appeal sent to the Tribunal Service in advance of the reconsideration process would be referred back to the customer with guidance to contact HMRC for a 'reconsideration' before an appeal could be made to the tribunal.

Step	Current Process	New Process
1	Customer appeals the decision	Customer requests a reconsideration of the decision
2	HMRC review the case requesting additional information if required	HMRC review the case requesting additional information if required
3	HMRC write to the customer either upholding the original decision or agreeing the grounds of the appeal	HMRC write to the customer either upholding the original decision or agreeing the grounds for reconsideration
4	Customer not happy or no response: <ul style="list-style-type: none"> case progresses to Tribunal and HMRC draft a submission Customer happy with decision: <ul style="list-style-type: none"> appeal closed 	Customer not happy: <ul style="list-style-type: none"> customer needs to submit an appeal Customer happy with decision/no response: <ul style="list-style-type: none"> reconsideration closed

There are currently no time limits within which HMRC must send an appeal to the Tribunals Service. This is mainly because the process of reconsideration and the preparation for appeal run together. It is also the case that the length of time taken for the reconsideration aspect of the process can vary significantly from case to case.

HMRC currently undertake a reconsideration process in every case where an appeal is received. The proposed changes will separate the reconsideration and the appeals processes and, if they go ahead, it seems perfectly reasonable that HMRC should send a response to the Tribunal Service within a specified time after receiving a copy of the appeal from the Tribunal. The Tribunal Procedures Committee has undertaken an open consultation, which ran until 15 June 2012, requiring decision-makers to respond to appeals within a specified time. A link to the consultation document is attached at annex B. It is anticipated that the proposed new appeals and reconsideration processes will adopt the time limits advised by the Tribunal Procedure Committee consultation but any comments or suggestions made as part of this consultation will be considered.

The only issue subject to this consultation is the alignment of the tax credit appeals process with that proposed for DWP appeals. A link to the DWP consultation document is provided in Annex B.

Question 1.

Does the proposed alignment of the tax credit appeals process with that proposed for DWP appeals deliver a fair and efficient process?

Question 2.

Do the proposals for change deliver an effective process and a fair outcome for all parties?

Question 3.

Do you have any comments on the time limits proposed by the Tribunal Service Committee?

Which appeals will the new process apply to?

The proposed change will apply to all tax credit decisions which are appealable.

Implementation

Any changes will be implemented by a Treasury Order made under section 124 of Finance Act 2008 from 6 April 2013.

Draft Order

A draft order will be available from around September 2012. Because any changes will be introduced under section 124 of FA 2008 they will be subject to debate in both Houses of Parliament.

3. Impact Assessment

A detailed Impact Assessment has been undertaken by the Department for Work and Pensions. This is available using the following link.

<http://www.dwp.gov.uk/docs/consideration-of-revision-wr2011-ia.pdf>

4. Summary of Consultation Questions

Question 1.

Does the proposed alignment of the tax credit appeals process with that proposed for DWP appeals deliver a fair and efficient process?

Question 2.

Do the proposals for change deliver an effective process and a fair outcome for all parties?

Question 3.

Do you have any comments on the time limits proposed by the Tribunal Service Committee?

5. The Consultation Process

The purpose of the consultation is to seek views on the detailed policy design and a framework for implementation of a specific proposal, rather than to seek views on alternative proposals.

How to respond

A summary of the questions in this consultation is included at chapter 4.

Responses should be sent by 2 October 2012, by e-mail to Trevor.sanders@hmrc.gsi.gov.uk or by post to: Trevor Sanders, HMRC, Room 1E/14, 100 Parliament Street, London SW1A 2BQ

Or by fax to 020 7147 2531

Telephone enquiries 020 7147 2272. (From a text phone prefix this number with 18001)

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from the HMRC Internet site at <http://www.hmrc.gov.uk/consultations/index.htm>. All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs (HMRC).

HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

The Consultation Code of Practice

This consultation is being conducted in accordance with the Code of Practice on Consultation. A copy of the Code of Practice criteria and a contact for any comments on the consultation process can be found in Annex A.

Annex A: The Code of Practice on Consultation

About the consultation process

This consultation is being conducted in accordance with the Code of Practice on Consultation.

The consultation criteria

1. When to consult - Formal consultation should take place at a stage when there is scope to influence the policy outcome.
2. Duration of consultation exercises - Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. Clarity of scope and impact - Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. Accessibility of consultation exercise - Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. The burden of consultation - Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. Responsiveness of consultation exercises - Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. Capacity to consult - Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

If you feel that this consultation does not satisfy these criteria, or if you have any complaints or comments about the process, please contact:

Amy Burgess, Consultation Coordinator, Budget & Finance Bill Coordination Group, HM Revenue & Customs, 100 Parliament Street, London, SW1A 2BQ

Email: hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk

Annex B: Relevant (current) Government Legislation

The Tax Credits Act 2002

Section 38 Appeals

(1) An appeal may be brought against—

(a) a decision under section 14(1), 15(1), 16(1), 19(3) or 20(1) or (4) or regulations under section 21,

(b) the relevant section 18 decision in relation to a person or persons and a tax credit for a tax year and any revision of that decision under that section,

(c) a determination of a penalty under paragraph 1 of Schedule 2, and

(d) a decision under section 37(1).

(2) “The relevant section 18 decision” means—

(a) in a case in which a decision must be made under subsection (6) of section 18 in relation to the person or persons and the tax credit for the tax year, that decision, and

(b) in any other case, the decision under subsection (1) of that section in relation to the person or persons and the tax credit for the tax year.

Section 63 Tax credits appeals etc.: temporary modifications

1) Until such day as the Treasury may by order appoint, Part 1 of this Act has effect subject to the modifications specified in this section; and an order under this subsection may include any transitional provisions or savings which appear appropriate.

(2) Except in the case of an appeal against an employer penalty, an appeal under section 38 is to—

(a) in Great Britain, the First-tier Tribunal; or

(b) in Northern Ireland, the appeal tribunal;

and in either case section 39(6) shall not apply.

(3) The function of giving a direction under section 19(10) is a function of—

(a) in Great Britain, the First-tier Tribunal; or

(b) in Northern Ireland, the appeal tribunal;

and in either case the relevant provisions of Part 5 of the Taxes Management Act 1970 shall not apply.

(4) In Northern Ireland, except in the case of an employer information penalty, proceedings under paragraph 3 of Schedule 2 are by way of information in writing, made to the appeal tribunal (rather than to the tribunal), and upon summons issued by them to the defendant to appear before them at a time and place stated in the summons; and they must hear and decide each case in a summary way.

(5) So far as is appropriate in consequence of subsections (2) to (4)—

(a) the references to the tribunal in section 19(10) and paragraphs 2 and 3(2) of Schedule 2 are to [the First-tier Tribunal or the appeal tribunal, . . .

(b) . . .

(6) In Northern Ireland, an appeal under paragraph 2(2) or 4(1) of Schedule 2 from a decision of, or against the determination of a penalty by, the appeal tribunal lies to the Northern Ireland Social Security Commissioner (rather than to the Upper Tribunal).

(7) So far as is appropriate in consequence of subsection (6), the references in paragraphs 2(2) and 4 of Schedule 2 to the Upper Tribunal are to the Northern Ireland Social Security Commissioner.

(8) Regulations may apply any provision contained in—

(a) Chapter 2 of Part 1 of the Social Security Act 1998 (c 14) (social security appeals: Great Britain),

(b) Chapter 2 of Part 2 of the Social Security (Northern Ireland) Order 1998 (SI 1998/1506 (NI 10)) (social security appeals: Northern Ireland), or

(c) section 54 of the Taxes Management Act 1970 (c 9) (settling of appeals by agreement),

in relation to appeals which, by virtue of this section, are to the First-tier Tribunal or the appeal tribunal or lie to a Northern Ireland Social Security Commissioner, but subject to such modifications as are prescribed.

(9) . . .

(10) “Appeal tribunal” means an appeal tribunal constituted under Chapter 1 of Part 2 of the Social Security (Northern Ireland) Order 1998.

(11) “Employer penalty” means—

(a) a penalty under section 31 or 32 relating to a requirement imposed by virtue of regulations under section 25, or

(b) a penalty under section 33.

(12) “Employer information penalty” means a penalty under section 32(2)(a) relating to a requirement imposed by virtue of regulations under section 25.

(13) “Northern Ireland Social Security Commissioner” means the Chief Social Security Commissioner or any other Social Security Commissioner appointed under the Social Security Administration (Northern Ireland) Act 1992 (c 8) or a tribunal of two or more Commissioners constituted under Article 16(7) of the Social Security (Northern Ireland) Order 1998 (SI 1998/1506 (NI 10)).

(14) “Tribunal” (other than in the expression “appeal tribunal”) shall have the meaning in section 47C of the Taxes Management Act 1970.

The Tribunal Procedures Committee Open Consultation Document

<http://www.justice.gov.uk/about/moj/advisory-groups/tribunal-procedure-committee/ts-committee-open-consultations>

DWP Mandatory Consideration of Revision before Appeal Consultation Document

<http://www.dwp.gov.uk/consultations/2012/mandatory-consideration.shtml>