

Housing Benefit Circular

Department for Work and Pensions
Caxton House, Tothill Street, London SW1H 9NA

HB A5/2017

ADJUDICATION AND OPERATIONS CIRCULAR

WHO SHOULD READ	All Housing Benefit staff
ACTION	This circular is for internal information only until 6 April when the changes come into force
SUBJECT	The Social Security (Restrictions on Amounts for Children and Qualifying Young Persons) Amendment Regulations 2017

Guidance Manual

The information in this circular does affect the content of the HB Guidance Manual. Please annotate this circular number against

BW3 paragraphs W3.45 – W3.48 and BP3 paragraphs P3.46 – P3.50

Queries

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

Introduction

1. This circular provides information about the Social Security (Restrictions on Amounts for Children and Qualifying Young Persons) Amendment Regulations 2017 (SI 2017/376).
2. These regulations make amendments to:
 - the Housing Benefit Regulations 2006; and
 - the Housing Benefit (persons who have attained the qualifying age for State Pension Credit) Regulations 2006

to limit to 2 the number of personal allowances which can be included in the Housing Benefit (HB) applicable amount in respect of children and young people.
3. The changes will come in to force on 6 April 2017.

Background

4. It was announced in the 2015 Summer Budget that changes would need to be made to HB to reflect that the individual element of Child Tax Credit (CTC) is to be limited to a maximum of 2 children/qualifying young persons from 6 April 2017, as a result of reforms contained in the Welfare Reform and Work Act 2016. People claiming CTC for more than 2 children or qualifying young persons who were born before 6 April 2017 will continue to be entitled to the individual element for each of those children or qualifying young persons.
5. CTC is taken into account as income in working age HB, but is offset by an equivalent increase in the HB applicable amount. The changes to HB are required so that claimants don't receive a higher award of HB as a result of the reduction in the CTC award. If claimants continued to receive an amount for each extra child, despite being limited to 2 children under CTC rules, their HB award would be higher than it should be. Changes are also needed to pension age HB to ensure consistency within HB as a whole.

Outline of the changes

6. The changes to limit support to no more than 2 children will apply to all new entitlements to HB arising on or after 6 April 2017, or where, in an existing HB case, a new child or young person becomes part of the family on or after that date and are not included in the claimant's CTC assessment.
7. The restriction only applies to the personal allowances for children/young people to be included in the applicable amount. Every child/young person in the

household will continue to be relevant for the purposes of other elements of HB entitlement, such as determining the number of rooms a claimant is deemed to need and the award of premiums.

The “default” rule

8. As stated in paragraph 6 above, the default rule is that for HB entitlements arising on or after 6 April 2017, the number of personal allowances in respect of children/young people that can be included in the HB applicable amount is restricted to 2, unless they have a CTC Award Notice which specifies more than 2 children have been included in the CTC decision.

Exceptions and interaction with CTC

9. As described above, if the claimant’s CTC assessment includes more than 2 children/young people, the HB decision will follow the decision made on the CTC claim. The 2 children limit in CTC will only apply to children born on or after 6 April 2017. Where a claim for CTC includes a third or subsequent child born after that date, HM Revenue & Customs (HMRC) will decide whether an exception to the limit should apply.
10. Consideration of whether the exception should apply might involve HMRC asking for what might be regarded as personal and/or sensitive information. Therefore, the rule whereby HB will follow the CTC decision avoids asking vulnerable claimants to go through the process of applying for exceptions twice, and means that a situation should never arise where the local authority (LA) finds differently to HMRC as regarding an exception for a child or young person.
11. The position therefore, from 6 April 2017 is that the default limit of 2 children / qualifying young persons should apply unless the claimant provides a copy of their award notice which states that CTC has allowed more than 2 children / qualifying young persons in its assessment (**NB:** sufficient information for these purposes is not currently available via the Customer Information System (CIS) or the Automated Transfer to Local Authority Systems (ATLAS)). Where the award notice confirms that more than 2 children/qualifying young persons have been included in the CTC assessment, only then can personal allowances be included in the HB assessment for those children/young persons.
12. This rule means that, in effect, to have personal allowances for more than 2 children/young persons in the HB applicable amount, a claimant must claim or have claimed CTC. That is the case even if they turn out not to be entitled to CTC. If a claimant states that they should have more than two personal allowances for children/young people in their HB award, but they have not claimed CTC, they should be advised to do so.
13. HMRC has confirmed that in the event of a properly made, fully assessed CTC case for which there is no current entitlement (nil award), then the CTC award notice will still show the number of children/young persons included in the assessment.

Examples

1. Couple entitled to HB from 6 February 2017. Couple have one child included in their HB assessment. Second child born 28 April 2017. Personal allowance for second child included in HB assessment. Thereafter, should the couple become responsible for other children/young person, the default limit of two will apply.
2. Couple entitled to HB from 5 December 2016. One personal allowance for one child and one personal allowance for a young person included in HB applicable amount. New child born 6 September 2017. No personal allowance can be included in the HB applicable amount in respect of the new child, (unless the child is included in assessment of CTC).

14. Due to the nature of the cases, it might take HMRC time to consider whether an exception should apply. This means that there might be two adjustments to make to the HB assessment once HMRC has decided that an exception applies:
 - (a) to include personal allowances in the HB applicable amount in respect of the children/young persons included in the CTC assessment
 - (b) to take into account a new rate of CTC.

Example

Claimant entitled to HB and CTC. CTC assessment includes two children. HB applicable amount includes personal allowances for the 2 children.

Third child born on 1 June 2017. Claimant approaches HMRC to ask them to consider that the child is in an exception category, and that CTC should allow for the child.

HMRC makes enquiries of the claimant, and decides on 1 August 2017 that the child is in an exception category. CTC increases from 1 August 2017. Arrears of CTC for period 1 June to 31 July paid in lump sum to the claimant.

LA has two supersession decisions:

- (a) to reassess HB to include a personal allowance for the third child from 6 June 2017. This it can do using DMA regulation 9
- (b) to reassess HB to take the new rate of CTC into account from 7 August. This it can do using HB regulation 79(1).

The arrears of CTC are disregarded as capital for 52 weeks.

Transitional provisions

15. Regulation 9 of SI 2017/376 contains transitional provisions for the situation where, on 5 April 2017, a claimant is entitled to HB and the claimant/partner is responsible for more than 2 children or young persons referred to as 'protected individuals' who are members of their household.
16. In these cases, the transitional provisions apply until:
- a new claim for HB is made; or
 - the claimant/partner becomes responsible for a new individual.

Example 1

Claimant in receipt of HB is responsible for 3 children who are all included in their applicable amount on 5 April 2017. On 6 April 2017, the regulations limiting support to 2 children come into force, but as the claimant was receiving HB for 3 individuals on the relevant date, the children are protected individuals and there is no change in the HB applicable amount.

Until the claimant makes a new claim for HB or they become responsible for a new individual, their HB entitlement will continue to include an amount for all 3 children.

Example 2

Claimant (resident in LA1) in receipt of HB is responsible for 4 children, who are all included in their applicable amount on 5 April 2017. On 6 April 2017, the regulations limiting support to 2 children come into force, but as the claimant was receiving HB for 4 individuals on the relevant date, the children are protected individuals, and there is no change in the HB applicable amount.

Family moves to new LA (LA2) on 1 October 2017. New claim made in LA2. Transitional provisions cease to apply. Default rule of 2 personal allowances for children applies to HB claim in LA2, unless the family is still claiming CTC, and the CTC assessment continues to include amounts for more than 2 children, in which case the LA2 should allow personal allowances for those children in the HB applicable amount, thus shadowing the CTC assessment.

Example 3

Claimant in receipt of HB is responsible for 3 children, who are all included in their applicable amount on 5 April 2017. On 6 April 2017, the regulations limiting support to 2 children come into force, but as the claimant was receiving HB for 3 individuals on the relevant date, the children are protected individuals, and there is no change in the HB applicable amount.

The three protected individuals remain in the household, and a new child is born on 10 November 2017. Transitional provisions cease to apply. Personal allowance for new child cannot be included in the HB assessment. Number of personal allowances for children allowed in the HB assessment remains only those which apply to the protected individuals; that is three.

NB: Should the family claim CTC, and the CTC assessment includes an amount for more than 3 children, then the LA should allow personal allowances for those children in the HB applicable amount, thus shadowing the CTC assessment.

Specified/Supported Exempt Accommodation cases

17. For Specified/Supported Exempt Accommodation cases, where there is entitlement to both Universal Credit and HB, the Universal Credit entitlement acts, in effect, as a passport to full eligible HB, so you do not need to consider how many children have been included in the Universal Credit assessment.

Universal Credit

18. From 6 April 2017, new claimants with three or more children/young people will not be able to claim Universal Credit, unless the claimant has been in receipt of Universal Credit within the previous six month period. Instead, they will be directed to legacy benefits, including HB where appropriate. LAs must not re-direct these claimants back to claim Universal Credit. It is anticipated that this will be the case until November 2018.

19. Therefore LAs that are in Universal Credit Full Service areas will need to be aware that new claims for HB will be taken through the existing legacy routes:

- claimants with more than 2 children will need to apply for CTC and any other legacy benefits including HB that they may be entitled to
- the gateway will be opened so that claimants can make claims for legacy benefits where the household has more than 2 children at the point of new claim. Therefore, we will direct new claims from families with more than two children to HMRC and GOV.UK until November 2018
- claimants already in receipt of Universal Credit will remain on Universal Credit and, where a third or subsequent child is born or moves into the household on or after 6 April 2017, a decision will be made on entitlement, taking into account whether any exception applies

20. You will receive LAID and LACI forms for HB claims and ATLAS notifications will be sent for any changes in circumstances to support these claimants. The Data Hub will still need to be accessed for this information as per business as usual processes.
21. You need to be aware of this process to ensure that new claims to HB are accepted and that claims falling into this category are not rejected and referred back to Universal Credit.

Income Support

22. There are still claimants in receipt of Income Support (IS) that are also being paid a child addition rather than claiming CTC. Where a claim is received for a third or subsequent child, DWP will assess and maintain these cases clerically. A clerical award notice will be issued to the LA which will include details of all children in the household and will also confirm that a dependent's addition is being paid for the children. As IS entitlement acts as a passport to full eligible HB you do not need to consider how many children have been included in the IS assessment.

Appeals

23. If a customer states that they wish to appeal the decision to restrict HB to 2 children then they should be signposted to HMRC. To have the decision changed, an appeal would need to be lodged against the HMRC CTC decision not to pay CTC for the third or subsequent child / young person joining the household on or after 6 April 2017.

Q & A

Q: If a claim is created post 5 April, for example, 1 May 2017 but the entitlement commences pre 6 April, for example, 23 March do the children present as at 5 April 2017 have the protection applied?

A: Regulations will provide that the protection is for people **entitled** to HB on 5 April and who are responsible for 3 or more children.

Q: Is it the responsibility of the LA to record which children are present in HB claims as at 5 April 2017 and therefore 'protected'?

A: We would expect that LAs will gather information about the children present anyway, as part of routine data gather, both pre and post April, as they are relevant for things like room allowances.

Q: Is it right to assume that there is a protection for the number of children on a CTC claim as at 5 April as in HB?

A: The CTC restrictions do not apply to children born before 6 April 2017.

Q: In HB legislation, where a claimant changes address and in doing so changes the LA responsible for administering their claim, they are treated as making a new claim at their new address. What happens with the CTC assessment in this case, do they continue to be assessed as a 3 child claim?

A: CTC doesn't have a structure like HB, so a change of address wouldn't of itself require a new CTC claim. Upon a change of address, the HB protection would cease, but should the CTC award still include more than 2 children, then HB would still shadow that.

Q: Will the individual children who are protected be identified to the LA or will the only information the LA receives be that the customer's CTC award has been assessed based on x number of children?

A: HMRC have confirmed that the CTC award notice will include the name of each child and whether they are included and an exception applies.

Q: Can you confirm that if no claim for CTC has been made by the HB claimant and/or partner then the dependant's allowance will be restricted to 2 dependants regardless of any other factors?

A: Yes, if the transitional protection for children or young persons forming part of the family as at 5 April 2017 does not apply, or ceases to apply, then the maximum will be an applicable amount for 2 children.

Q: What prompts will be provided to LAs to indicate that there has been a change in the CTC decision on this specific issue?

A: The claimant will be expected to provide this information to the LA until a data sharing solution between HMRC and the LAs is developed.

Q: When LAs receive a CTC ATLAS record, this does not tell us how many children CTC is in payment for. Is there any intention to change ATLAS to include this information?

A: We are working with HMRC on a data sharing solution. However, in the interim, LAs will need to request this information from the claimant, in the form of their CTC award notice.

Q: Is it the intention that for HB, the LA would limit to 2 children in the first instance and then rely on claimant to tell us otherwise?

A: Correct, unless the claimant can provide a CTC award notice which states that an exception for a third or subsequent child applies then the HB award will be for a maximum of 2 children in the case of **new claims** as of 6 April 2017. The maximum of 2 children will also apply to any new child who joins the family on or after 6 April 2017.

Q: Will the claimant even realise we have limited the child premium to 2 children or be aware of the circumstances when exceptions apply?

A: Both the department and HMRC are developing communications products to ensure that claimants are aware of how this policy will work.

Q: Why have the regulations for CTC not simply been replicated in HB?

A: The reason is for simplicity: to avoid

- HB decision makers having to make exception decisions
- claimants having to give often sensitive information more than once
- different decisions between HB and CTC and the consequent difficulties this would cause.

Q: What happens when someone with 3 children fails to renew their CTC award, would the premium for HB drop to 2? If CTC were then reinstated with 3 children included would the HB award be amended to allow 3 premiums and would this be retrospective? How would we know?

A: Yes, only 2 children would be included and it would be the responsibility of the claimant to inform the LA when CTC is reinstated. The normal change of circumstance rules would apply.

Q: What if a claim comes in and has 3 dependants and would meet one of the exceptions, but they have not claimed CTC, or there is a dispute over this, or over who is claiming child benefit for which children? Do we only award the additional allowance from the date the CTC award includes the third child?

A: You can only adjust HB on the basis of the CTC award. Up until that point, the 2 child default pertains. There would have to be a CTC award (whether or not any amount of CTC is actually payable) before the default rule could be overcome

Q: If a protected child is moved by social services, for example, and then are allowed to return to the original household, do they retain the protection?

A: If they move back and nothing has changed, as things stand, the transitional protection would still apply.

Q: If a claimant applies for an 'exception through tax credits' and this is awarded at a later date (more than a month) there does not appear to be any amendment to the DMA regulations to allow HB to be superseded from the earlier date. Would the claimant have to apply for an extension of time under DMA regulation 9 in the normal way?

A: Yes, where HMRC decide on an award of CTC at a later date, then you can do the following using DMA regulation 9:

- (i) readjust HB for the increased rate of CTC as per normal; and
- (ii) adjust the number of children in the HB applicable amount to reflect the effective date when HMRC included them in the CTC assessment.

Q: If a customer with 3 children makes a new claim for HB on the 8 May 2017 and they are receiving CTC, should we only include 2 children in the HB award and amend the award once they provide a copy of the CTC award notice?

A: The default rule should be applied on a new claim that only 2 children should be included in the HB assessment, until the CTC award notice has been seen. However, if the CTC award notice is provided during the initial claim gather of information, then there is no reason why more than 2 children can't be included from the outset. LAs are free to decide the best way to manage the information gathering.