

Social Security Advisory Committee

Minutes of the meeting held on 22 January 2025

Chair: Dr Stephen Brien

Members: Les Allamby
Bruce Calderwood
Rachel Chiu
Carl Emmerson
Daphne Hall
Professor Stephen Hardy
Philip Jones
Jacob Meagher
Dr Suzy Walton

1. & 2. Private Sessions

[RESERVED ITEMS]

3. The Child Benefit and Guardian's Allowance (Miscellaneous Amendments) Regulations 2025

3.1 The Chair welcomed the following officials to the meeting: Denise Newman (HM Revenue and Customs (HMRC)), Christopher Orton (HMRC), Michelle Decort (HMRC), Anthony Hignett (HMRC), Tunde Adelakun (HMRC), Matthew Jones (HMRC), Louise Humphries (HMRC), and Graeme Connor (Deputy Director, DWP Universal Credit Policy).

3.2 The Committee noted that it intended to focus its scrutiny on:

- the Child Benefit (ChB) backdating measure, relating to asylum seekers who obtain refugee status and those given leave under Section 67;¹
- the removal of the provision for “illegitimate children” and scenarios relating to the “whereabouts unknown”² provision for Guardian’s Allowance (GA); and
- ChB for those under the age of 16.

Child Benefit: Backdating for refugees and those given leave under section 67

¹ [Immigration Act 2016](#)

² This is provided for under [s.77\(2\)\(b\) of the Social Security Contributions and Benefits Act 1992](#)

3.3 Introducing the item, Denise Newman explained the background and the reasoning behind this measure being introduced. She explained that currently ChB can be backdated for three months, but for refugees and those granted Section 67 Leave, they can have their ChB backdated to when they made their application for asylum. To do this, they must make their ChB claim within three months of being notified of their refugee status. HMRC receive details of when their refugee notification was sent and from what date they were granted refugee status.

3.4 These proposals being brought forward are due, in part, to the difficulty in administering these claims; specifically, the difficulty HMRC face to determine historic entitlement. The Home Office (HO) do not generally record when someone has met the conditions of becoming a refugee because they have no business need to do so and so cannot share this information with HMRC. This, alongside having to currently rely on case law when making decisions, is adding to the administrative burden and complexities for HMRC and claimants which is leading to a disproportionate number of appeals.

3.5 These proposals will bring ChB and GA backdating rules in line with those applied to all other claimants and the Department for Work and Pensions (DWP) benefits, which do not have different rules on backdating for refugees. In addition, National Asylum Support Service (NASS) payments are the financial support the Government provides to asylum seekers, and currently ChB is duplicating that support.

3.6 Overall, these measures will:

- ensure all ChB claims are treated the same
- provide certainty to refugees as to what their entitlement is and when it shall commence
- not affect anyone who has become a refugee prior to these regulations coming into force by providing transitional protection which will apply so long as they make a ChB claim within the current three-month period after they receive notification of their refugee status
- ensures that refugees can continue to access the ChB that they are entitled to under Articles 23 and 24 of the Convention and Protocol Relating to the Status of Refugees 1951 (Refugee Convention)

3.7 Committee members raised the following questions in discussion:

- (a) **These changes appear driven by equity and administration difficulties. However, some asylum claims may be dealt with quicker than others, which creates unfairness as to how much they receive. In addition, asylum seekers receive £49.18 per week, or less if accommodation is**

provided. Has thought been given to the fact that they and the Section 67 cohort are not in the same position as the majority of child benefit claimants?

Consideration has been centred around the fairness of the system. Currently, someone may get a larger backdated payment of ChB if it takes longer for their refugee status to be decided. This can also involve several appeals being made for ChB, as well as the appeals that could be made based on the refusal of their refugee status. This all leads to further complexities. HMRC has held discussions with both DWP and the HO, including with respect to NASS payments which are there to support asylum seekers until their asylum claim is decided. The current ChB system is providing a lump sum back payment for a period where childcare costs have already been incurred. There is no strong rationale to support this continuing.

- (b) Should those who encounter delays getting their refugee status granted because of backlogs or flaws within the HO system be penalised for this?**

There is an understanding of that rationale, however, asylum seekers are not entitled to public funds until they have obtained refugee status. ChB is currently an outlier with this backdating position.

- (c) Can HMRC not determine when an original claim for asylum was made? Despite appeals and court hearings, this date should be known in order to assess when ChB should start from?**

The asylum application date(s) are known to HMRC; however, the HO does not record details of when individuals meet the criteria of the Refugee Convention because there is no business need for them to record this.

- (d) Has it been discussed with the HO whether they could change how they record, collect and provide information when a claim is made?**

There is close collaboration between HMRC and HO on a case-by-case basis. However, HO have confirmed there is no means of establishing when someone meets the criteria of the Refugee Convention. The HO is reluctant to change how they record or provide information because there is no business need for them to do so.

- (e) NASS payments do not amount to an income of parity, compared to what a normal British citizen would receive. When asylum seekers are subject to immigration control, they are not entitled to receive benefits; however, if the HO were meeting their internal targets this would not be**

an issue because everyone should receive ChB at the earliest opportunity. This appears to be due to backlogs, which is not the fault of the individual.

This has been taken on board; however, this is no different to DWP benefits, which they will not receive until their refugee status has been determined. ChB is currently an outlier and being more generous. These measures bring it in line.

- (f) Carer's Allowance (CA) is dependent on the person being cared for being in receipt of Personal Independence Payment (PIP). If a claim is made and the outcome of the PIP claim is still being decided, the CA can be backdated to when that individual's PIP entitlement begins, which could amount to years of back pay. This is analogous to this situation, so not all DWP benefits work in this way.**

The connection that is being drawn can be seen; however, the Government does not believe that the rationale for the current policy is strong enough. Payment should be made from when someone is determined to be a refugee. This is meeting the Government's legal obligations under the Refugee Convention, it will make ChB administration more efficient, and it will reduce ChB appeals going through the Tribunal system.

- (g) The cut off for when this takes effect seems harsh because it will apply to those who have not been given refugee status by the time these regulations come into force. An individual cannot make the HO decide more quickly, so it is outside of their control.**

This policy requires a line to be drawn, and this seems like the fairest place. In the current system there is also a cliff edge. If someone applies for ChB three months and a day after their notification of refugee status, they will not receive a backdate of ChB.

- (h) But that is under the control of the individual as to when they make their claim. The motivation for this change seems to be on administrative and technical grounds. However, the policy intent has not been articulated clearly. What are Ministers trying to achieve? The Committee is trying to establish the basis on which to scrutinise these regulations. There is no strong principle-based approach. Can it be articulated?**

The current policy has rationale; however, ChB is an outlier, and the Government believes that extended ChB backdating should be ended to ensure consistency with other benefits that refugees engage with. Another advantage is the simplification of ChB administration.

- (i) What consultation will be done moving forwards, will it only involve those in the HMRC stakeholder forum or include others who work directly with asylum seekers?**

HMRC will present the change at the Individuals Stakeholder Forum and write to other relevant stakeholders. This will cover the relevant stakeholders in this space and mean that their networks are prepared for the change. A list of stakeholders expected to be engaged with can be provided.³

- (j) The judge in the recent Ellen Clifford Judicial Review (JR)⁴ raised similar points to what the Committee are making. The unfair burden of having to deal with a consultation at short notice, with there being limited time to gather information from that consultation. There is also reference to the lack of an equality impact assessment and process-based issues. As a result, how is that judgement impacting on decisions that are being made and what amendments are being considered to ensure this does not happen again? More specifically, how does it affect how HMRC will carry out its consultation?**

HMRC is confident that it is consulting adequately on this policy change. HMRC will take on board the views of the Committee, including its views on the cut off period for the current backdating rules any further views the Committee provides.

DWP is still absorbing the JR and what it means for wider consultation. The Department agreed to come back to the Committee on what the findings and implications are.

Guardian's Allowance: Whereabouts unknown of father

3.8 The Committee explored certain scenarios that may arise in relation to the proposed measure to remove the provision on “illegitimate children”, ultimately relying on the “whereabouts unknown” provision:

- (k) To clarify, if HMRC could ascertain that the paternity of a child is limited to a small group of men but could not determine who the actual father is, for example in a cult scenario, would this fall under Section 77 of the relevant Act and the “whereabouts unknown” rule?**

³ A proposal of who HMRC will approach and a list of stakeholders who will attend each forum was provided following the meeting and presented at Annex B.

⁴ [Clifford v SSWP Judgment 16 January 2025](#)

In such a circumstance, it is unlikely that GA will be claimed because there would be someone taking responsibility as a parent. However, if there is a third party involved, there would be no ability to force a paternity test, so a broad view would be taken that the father is unknown.

Child Benefit: Parents under 16

3.9 While there were no concerns with the policy intent of this particular measure, the Committee had a few questions about the planned communications approach:

(l) How will these changes be communicated to those who currently do not have access to the benefits system?

These changes affect a small group of people, so it will not involve a full communication campaign. Anyone who has a child will receive a pack providing information on how to claim ChB. HMRC will be reaching out to Family Lives, Gingerbread and Young Family hubs. DWP will also update their guidance and send information out to Work Coaches. In practice, under 16s usually attempt to make a claim and they are turned down, so it is just communicating that they will no longer be turned down.

(m) There is likely to be social worker and local authority involvement with parents who are under 16, as well as members of the voluntary sector, so in consulting on this, it would be good to ensure these areas are covered.

That is a good idea and will take that recommendation forward.

(n) Health visitors must see every child, so if a child was to slip through the social service gap it would be useful to engage with those health visitors and the health trusts, as well as newspapers.

There has been no engagement yet, but they are on the list for HMRC to engage with.

(o) The DWP has provided further information prior to the meeting on this issue, but to clarify, where grandparents are claiming UC and the under 16 parent and their child are in that household, are there any issues with benefit being affected, be it Universal Credit (UC) or Housing Benefit (HB)?

There will be no benefit issues arising for either UC or HB.

3.10 The Chair thanked officials for attending and answering the Committee's questions. In closing, he encouraged officials to ensure it had a clearer articulation of the policy intent for the change in backdating rules for refugees and those who obtain Section 67 Leave when carrying out the consultation, as well as the considerations it had taken into account when deciding when this measure should come into force.⁵

4. 5. & 6. Private Sessions

[RESERVED ITEMS]

7. Date of next meeting

7.1 The next meeting is scheduled to take place on 14 February 2025.

⁵ The Committee's queries and subsequent responses from HMRC are presented at Annex B

Attendees

Item 3: Denise Newman (HMRC)
Christopher Orton (HMRC)
Michelle Decort (HMRC)
Anthony Hignett (HMRC)
Tunde Adelakun (HMRC)
Matthew Jones (HMRC)
Louise Humphries (HMRC)
Graeme Connor (Deputy Director, DWP Universal Credit Policy)

Secretariat: Denise Whitehead (Committee Secretary)
Dale Cullum (Secretariat)
Kenneth Ashworth (Secretariat)

The Child Benefit and Guardian's Allowance (Miscellaneous Amendments) Regulations 2025

Further information provided by HM Revenue and Customs outside of the meeting in response to the Committee's questions.

Policy intent

To be able to undertake an effective scrutiny of draft regulations, the Committee requires a succinct and clearly articulated definition of the policy intent. This is so that the Committee can satisfy itself that the proposals deliver that. As discussed at the meeting the Committee was of the view that a clearer presentation of the policy intent would be helpful so that they can be assured that these proposals deliver it effectively. Would you be able to review and submit a revised version please?

The policy is to amend the provisions that allow refugees and individuals with section 67 leave to claim backdated Child Benefit and Guardian's Allowance beyond three months. This will standardise the backdating rules so that they apply equally to all Child Benefit and Guardian's Allowance claimants, irrespective of their immigration status, on to a maximum period of three months.

The policy will better align Child Benefit and Guardian's Allowance with wider government policy on access to public funds and to simplify the administration of those benefits. In particular, it is government policy that individuals who have submitted a refugee application are subject to immigration control and are not entitled to claim public funds. The government has therefore put in place separate financial provision, including cash support and an additional payment for mothers and young children, for individuals who are waiting for a decision on their refugee application and meet the relevant entitlement conditions. This change will end the exceptional situation where HMRC pays a backdated Child Benefit amount that is calculated with respect to a period for which the government has already made separate financial support arrangements. This change is consistent with the approach taken to other government benefits, such as Universal Credit, where there are no exceptional rules entitling refugees to receive back payments.

This policy will also end the administrative challenges inherent in the current legislation and case law whereby HMRC is required to backdate Child Benefit payments to the date a person attains the status of refugee under the Convention and Protocol Relating to the Status of Refugees 1951 (Refugee Convention) but does not have access to a reliable source for this information. These challenges create an effectively unworkable situation for HMRC, a lack of certainty for

customers regarding their entitlement, and a disproportionate number of appeals which put pressure on the Tribunal system. Following the change, refugees will be able to access Child Benefit and Guardian's Allowance from the date they are recorded as a refugee by the Home Office which is data to which HMRC has access when deciding a benefit claim.

The policy change will not impact anyone who is granted refugee status before the regulations take effect on 7 April 2025 and is designed to ensure that refugees can continue to access the Child Benefit that they are entitled to under Article 23 and Article 24 of the Convention and Protocol Relating to the Status of Refugees 1951 (Refugee Convention).

Regulation 2

As currently proposed, an asylum seeker who is granted refugee status before 7 April (the date the regulations are scheduled to come into force) will be entitled to have their claim backdated to the date of their claim for asylum. However, if they are granted refugee status on or after 7 April, they will be restricted to up to three months backdating. This raises three issues:

- 1. a person may miss the hard deadline because of circumstances beyond the control - when the Home Office makes the decision;**
- 2. they may have been given expectations that they will receive the backdated child benefit once refugee status has been given, as that is the current situation;**
- 3. there is no incentive for the government to process asylum claims of potentially affected individuals timeously - in fact, it could be argued that there is a disincentive for them to do so.**

The Committee would be keen to understand what consideration has been given to an alternative cut-off date whereby the new regulations apply to those who seek asylum on or after 7 April. While this would mean that asylum claims to which extended CB backdating would apply would remain in the system for longer, it would have the effect of incentivising the government to deal with those claims. In addition, it would not produce the situation whereby people may have been given false expectations of receiving backdated payments. Are you able to provide further information on this point?

Thank you to the committee for providing feedback about how best to bring this measure into legal effect. As part of the policy development process, HMRC officials considered an option of bringing the measure into force based on the date an individual submitted a claim to asylum. This option was not taken forward for three reasons:

1. This would delay the full realisation of the policy intention to bring Child Benefit backdating rules into line with wider government policy on access to public funds for an open-ended and potentially lengthy period
2. This would delay the full realisation of the Child Benefit administrative simplification for a similar period and maintain during that time the current challenges for customers and HMRC in administering the backdating rules
3. HMRC understands that asylum seekers may have certain expectations as to the benefits they will receive, in our view those expectations are not legitimate since they are yet to crystallise and may never do so, even were the current back-dating provision preserved.

We can also assure the Committee that we do not believe there will be any impact from this policy change on Home Office plans to restore order to the asylum system so that it operates swiftly, firmly and fairly.

The change will take effect 21 days after the regulations are laid before parliament, in line with the parliamentary convention about allowing appropriate time to prepare for a change in the law. As we explained on the 22 January, HMRC will also be separately presenting the change at the HMRC Individuals Stakeholder Forum and writing to a number of other interested stakeholders.

HMRC intends to present the change at the next meeting of the Individuals Stakeholder Forum and to write to members of the Tax Credits Consultation Forum. HMRC will also write to the Refugee Council. The members of the forums are below:

What consultation will be done moving forwards, will it only involve those in the HMRC stakeholder forum or include others who work directly with asylum seekers?

Individuals Stakeholder Forum

- Advice Northern Ireland
- Advice Direct Scotland
- Citizens Advice
- Good Things Foundation
- Low Incomes Tax Reform Group (LITRG)
- Money Advice Trust
- Refugee & Migrant Centre
- Royal National Institute for the Blind (RNIB)
- Royal Association for Deaf People (RAD)
- TaxAid
- Tax Help for Older People

- The Tax Academy

Tax Credits Consultative Forum

- Advice Northern Ireland
- Advice Direct Scotland
- Citizens Advice
- Communities NI
- Equity
- Good Things Foundation
- Low Incomes Tax Reform Group (LITRG)
- Child Poverty Action Group
- Department of Work and Pensions (DWP)
- Peabody
- Royal Association for Deaf People (RAD)
- Royal National Institute of Blind People (RNIB)