

Housing Benefit and Council Tax Benefit Circular

Department for Work and Pensions

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HB/CTB A19/2010

ADJUDICATION AND OPERATIONS CIRCULAR

WHO SHOULD READ	All Housing Benefit (HB) and Council Tax Benefit (CTB) staff
ACTION	For information
SUBJECT	The Housing Benefit and Council Tax Benefit (Miscellaneous Amendments) Regulations 2010

Guidance Manual

The information in this circular does affect the content of the HB/CTB Guidance Manual. Please annotate this circular number against *paragraphs A2 P2.493, A2 W2.640, A4 4.1540, A6 6.163, A6 W6.361, BW3 W3.78.*

The information in this circular also affects the HB/CTB Local Housing Allowance Manual *paragraph 2.031.*

Queries

If you

- want **extra copies of this circular/copies of previous circulars**, they can be found on the website at <http://www.dwp.gov.uk/local-authority-staff/housing-benefit/user-communications/hbctb-circulars/>
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The Housing Benefit and Council Tax Benefit (Miscellaneous Amendments) Regulations 2010

Introduction

- 1 This circular provides information on the main provisions in the [Housing Benefit and Council Tax Benefit \(Miscellaneous Amendments\) Regulations 2010](#) (SI 2011/2449) that were laid in Parliament on 11 October. The regulations also include some routine updates and corrections of errors or omissions, and these minor changes are not described in this circular.
- 2 The regulations can be viewed free of charge, either on [DWP's website](#), or via the website of the [Office of Public Information](#). The explanatory memorandum that is published with the regulations can also be viewed on the [Office of Public Information](#) website.

Coming into force

- 3 Subject to parliamentary approval, the majority of the provisions, including all minor technical amendments, will come into force on **1 November 2010**. The main provisions that will come into force on this date are
 - the restoration of the intended operation of the regulations following Upper Tribunal judgements on
 - the pensioner 'time for claiming' provisions, and
 - application of the size criteria when the household includes a foster child
 - clarification that a request for backdating does not constitute a claim that is separate from an ongoing claim
 - greater discretion to accept a report from a customer of a change of circumstances by telephone
 - the discretion for LAs to make payment direct to a bank account where the first payment of rent allowance is to be made to the landlord
- 4 The following provisions will come into force in **April 2011**
 - abolition of the baby element in the Family Premium to reflect the abolition of the baby credit in Child Tax Credit (CTC)
 - introduction of a full disregard of special guardianship order and residence order payments

Provisions coming into force on 1 November 2010

The pensioner 'time for claiming' provisions

- 5 Paragraphs 64(1) of the HB pensioner regulations and 53(1ZA) of the CTB pensioner regulations prescribe a 'time for claiming' period which effectively provides automatic backdating for a pensioner's HB/CTB claim of up to three months. Paragraphs 64(6) and 53(5) of these regulations also prescribe certain circumstances that enable the date of claim to be advanced to an earlier date than the claim was actually made.
- 6 The Upper Tribunal considered the interaction of these provisions in [CH/0392/2009](#) and, as described in HB/CTB circular [A20/2009](#), ruled that they worked in such a way that customers could receive three months' more HB/CTB than DWP guidance had hitherto advised. The extra backdating resulting from this judgement has become known as 'piggybacking'. The circular explained that we would amend the regulations when the opportunity arose, so that this 'piggybacking' would no longer apply.
- 7 [CH/0392/2009](#) concerned probably the most common instance where LAs need to consider this interaction - where an HB/CTB customer has also claimed State Pension Credit (SPC) and is awarded Guarantee Credit. It is this scenario that an amendment in the new regulations is intended to address.
- 8 Before the ruling, the provisions were applied so that the three month 'time for claiming' period would synchronise with the same three months' 'time for claiming' that exists for SPC, rather than 'piggybacking' to give three months' extra backdated HB/CTB. The amendment restores this synchronisation by inserting a new sub-paragraph into the HB/CTB pensioner regulations that specifies that no HB/CTB should be awarded for a period before the date that the SPC claim was made, or treated as made after applying the SPC 'time for claiming' provision.
- 9 This amendment comes into force from 1 November 2010. If a claim is received after that date, but is made or treated as made before it, 'piggybacking' may apply.

Example 1

A customer contacts the Pension, Disability and Carers Service (PDCS) to make a SPC claim on 1 November 2010.

The SPC claim is taken by PDCS on 28 November 2010.

Guarantee Credit is awarded. Applying the SPC time for claiming provision, award is made from 1 August 2010.

The LA receives the HB/CTB claim on 26 December 2010.

Applying HB SPC 64(6)(a) and/or CTB SPC 53(5)(a) gives a HB/CTB claim date of 1 August.

Since this date of claim is before the 1 November in force date for the new provisions (HB SPC 64(1A) and CTB SPC 53(1ZB)), 'piggybacking' still applies so that the HB/CTB date of claim becomes 1 May 2010 (and paid from 3 May).

Example 2

A customer contacts PDCS to make a SPC claim on 31 January 2011.

The SPC claim is taken by PDCS on 28 February 2011.

Guarantee Credit is awarded. Applying the SPC time for claiming provision, award is made from 31 October 2010.

The LA receives the HB/CTB claim on 26 March 2011.

Applying HB SPC 64(6)(a) and/or CTB SPC 53(5)(a) gives a HB/CTB claim date of 31 October 2010.

Since this date of claim is before the 1 November in force date for the new provisions, 'piggybacking' still applies so that the HB/CTB date of claim becomes 31 July 2010 (and paid from 2 August).

Example 3

A customer contacts PDCS to make a SPC claim on 1 February 2011.

The SPC claim is taken by PDCS on 28 February 2011.

Guarantee Credit is awarded. Applying the SPC time for claiming provision, award is made from 1 November 2010.

The LA receives the HB/CTB claim on 26 March 2011.

Applying HB SPC 64(6)(a) and/or CTB SPC 53(5)(a) gives a HB/CTB claim date of 1 November 2010.

The new provisions (HB SPC 64(1A) and CTB SPC 53(1ZB)) have the effect that the HB/CTB claim date remains 1 November 2010 (and paid from 8 November).

Application of the size criteria when the household includes a foster child

- 10 HB/CTB General Information Bulletin [G11/2010](#) advised that the Upper Tribunal had ruled on two cases involving the treatment of foster children and the application of the size criteria ([CH/1608/2009](#) and CH/3000/2009). The ruling was that a foster child should be treated as an occupier for the purposes of the application of the size criteria in Local Housing Allowance (LHA) cases.
- 11 In the bulletin, we said that we would be amending the regulations at the earliest opportunity because the policy intention is that foster children should be disregarded when applying the size criteria. The new regulations include this amendment so that, from 1 November 2010, foster children should no longer be included when deciding on the number of rooms a customer needs.

Treatment of backdated claims

- 12 Until now the working age HB/CTB regulations have not specified whether a request for backdated benefit is to be treated as a part of the ongoing claim with which it is commonly submitted, or whether it is to be treated as a separate claim.
- 13 For HB, the question of whether there are one or two claims has financial implications, because the way in which the backdated claim is treated will determine the LHA rate that is applied to the current claim. If a successful backdated claim is treated as part of the current claim, then the LHA rate that applied at the beginning of the backdated claim will be used for the current claim too. On the other hand, if the backdated claim is treated separately, then the LHA rate that applies to the start of the current claim will be used, regardless of whether the backdated claim is allowed or not.
- 14 Clarification is thus needed to ensure a consistent approach, and an amendment has been inserted to make explicit that a backdated claim is not to be treated as a separate claim where there is no gap between the backdating period and any current claim. In such cases, and where the backdating claim is successful, the LHA rate will be established from the start of the backdated period and also applied to the ongoing claim.

Example 1

HB claim made on 1 September 2010.

Backdating requested for period 1 May 2010 to 31 August, and good cause shown.

The LHA rate for May is applied both for the backdated claim and the current claim.

Example 2

HB claim made on 1 September 2010.

Backdating also requested for period 1 May to 31 July, and good cause shown.

The LHA rate for May is applied to the backdated claim.

The LHA rate for September is applied to the current claim.

Taking change notifications by telephone

- 15 Although the HB/CTB regulations gave all LAs limited discretion to accept notifications of a change of circumstances by phone, only those LAs that had published a phone number for taking new claims could routinely do so. As a result, most change notifications had to be made in writing.

- 16 An amendment has been made to give LAs the option of accepting more change notifications by phone, even if they do not wish to offer a phone service for taking new claims. LAs can now publish a phone number for customers to use to notify a change without any obligation also to take new claims in this way. LAs that do so can still require a customer to report the change in writing, in case of any doubt.
- 17 LAs that decide to accept more change notifications by phone will need to consider how to ensure that there is an adequate audit trail for any benefit decisions made as a result of a phone notification, for example by keeping recordings of phone calls.

Note: The HB/CTB regulations contain a regulation '*Person from whom recovery may be sought*' - e.g. HB regulation 101. This regulation contains a provision that a landlord may not be liable for any overpayment recovery, provided that he has reported *in writing* his suspicion that there has been an overpayment. The amendment to permit increased use of change notifications by phone does not affect this provision, and landlords will still need to report the suspected overpayment in writing.

First payment of rent allowance direct to the landlord

- 18 The regulations permit the first payment of rent allowance to be sent to the customer, but made payable to the landlord, when the customer has not yet paid rent for the period concerned and 'it would be in the interests of the efficient administration of housing benefit' for payment to be made in this way.
- 19 The requirement that this payment is made by an instrument payable to the landlord but sent to the customer means that there is no option but to make it by cheque. Since many organisations now prefer not to use cheques, an amendment has been made to allow first payment directly to the landlord's bank account.
- 20 Before crediting the landlord's bank account in such cases, LAs will need to confirm with the customer and/or landlord that rent is still due for the period concerned. It is possible that the customer may have already paid the rent while HB/CTB was being assessed, and that the payment should therefore be made to them, rather than the landlord.
- 21 The option of payment by cheque is still available, and some LAs may decide that this method is still preferable, since the customer will have the chance to identify whether the landlord is owed that money before it is banked.
- 22 LAs should note that this provision only applies to the first payment of rent allowance. Normal rules apply to future payments, and for LHA claims this will mean that these will normally be made to the customer, subject to the application of the safeguards.

Provisions coming into force in April 2011

The removal of the baby element of the Family Premium

- 23 Currently HB Schedule 3, Paragraph 3(2), CTB Schedule 1, Paragraph 3 (2), and their equivalent in the HB/CTB SPC Regulations allow for a higher rate of the HB/CTB Family Premium where at least one child is under the age of one year. The amount payable (£10.50) reflects the additional family element paid as part of CTC when there is a child under the age of one. This amount is commonly known as the baby element.
- 24 In the budget of 22 June 2010 the Chancellor announced the abolition of the baby element in CTC from 6 April 2011 as part of a wider package of changes to Tax Credits. This will apply to both new and existing cases with effect from that date. There is to be no transitional protection. Her Majesty's Revenues and Customs (UK) (HMRC) intend to make the necessary changes in their uprating regulations.
- 25 These regulations introduce a corresponding change in HB/CTB. They provide that with effect from the 1st/4th April 2011, the HB/CTB applicable amount will only include the baby element in the Family Premium where the customer or customer's partner is in receipt of CTC which includes the baby element.
- 26 From 1st/4th April 2011, customers with entitlement to the baby element in HB/CTB will only continue to do so where it is also still in payment in CTC. Customers receiving the baby element in HB/CTB but who for whatever reason are not receiving CTC will lose entitlement to the baby element from 1st/4th April 2011. Other claims will need to be reassessed when the corresponding baby element is removed from payment of CTC on or after 7 April 2011.

A full disregard of special guardianship order and residence order payments

- 27 HB Schedule 5, Paragraph 25, and CTB Schedule 4, Paragraph 26, allow for a disregard in working age HB/CTB of discretionary payments made by an LA to a customer in respect of a person who is a member of his family, pursuant to specified provisions of the Children Act 1989, (in Scotland the Children Act 1975) or the Adoption and Children Act 2002 (in Scotland, the Adoption (Scotland) Act 1978).
- 28 These payments include
- certain adoption payments
 - contributions to a child's maintenance where the child is living with a person as a result of a residence order, and
 - those made in accordance with special guardianship orders

- 29 The payments commonly relate to arrangements whereby relatives or close friends take responsibility for the care of a child or young person when their parents cannot and are different from formal fostering arrangements that apply to children in the care of the LA.
- 30 The current disregard is the amount in excess of the personal allowance (and any disabled child premium) payable in respect of the child or young person.
- 31 These payments are already fully disregarded for pensioners in HB/CTB. HB Schedule 5, Paragraph 25, and CTB Schedule 4, Paragraph 26, have been amended to also allow for a full disregard of these payments in working age HB/CTB with effect from 1st/4th April 2011. Cases with a partial disregard should be reassessed at uprating. Passported cases will not be affected.