

**DWP consultation – Exceptions to the limiting of the individual child element of child tax credit and the child element of universal credit to a maximum of two children
Response from the Low Incomes Tax Reform Group (LITRG)**

1 Introduction

- 1.1 We do not generally comment on rates or levels of taxation or of welfare benefits, and we do not make any representations here about whether it is right in principle to limit support provided by the tax credits and universal credit systems in the way indicated. However, we do have an interest in the impact of any change of policy on low income families and it is against this backdrop that we are submitting this response.
- 1.2 The consultation document makes it clear that the purpose of the two child limit is to ensure that households think carefully about whether they are financially prepared to support a new child without relying on the tax credits or means-tested benefits system. The rationale given is that currently benefit entitlement adjusts automatically to family size, whilst families supporting themselves solely through work do not see their incomes rise in the same way if they have more children.
- 1.3 The government recognises that some parents or carers for children are not in the same position to make choices about the number of children in their family as others are and in acknowledgement of this lack of choice, various exceptions have been announced and are set-out in the consultation document.
- 1.4 If the rationale for the policy is about choice, we think it is important that those without some element of choice are exempt from the limit *in all cases*. Whilst the exceptions set-out in the consultation cover some of the possible scenarios, we believe there is a strong case

for having a general exception that applies where it would be unreasonable for the two child limit to apply and we would fully support such an approach.

1.5 We have offered some comments in Section 4 of this response in answer to the questions set out in the consultation document. There are of course specialist organisations who can comment in much greater detail on any particular exceptions. In addition, there are some general points that will be relevant when writing the Regulations and we have set out those areas in Section 3. We are particularly concerned about:

- **Practical implementation** – Despite the policy appearing to give the impression of being simple, we think that the exceptions may be very difficult to implement operationally. There needs to be a clear understanding of the legal decisions underpinning implementation in specific types of cases, a commitment to ensure claimants are given appeal rights at the appropriate times and very careful thought given when the Regulations are drafted regarding how long an exception lasts and what happens if circumstances change (for example an older child leaves and then returns to the claim).
- **Availability of the exceptions** – It appears that the burden will be on claimants to understand the range of exceptions and ask for one to be applied if appropriate. This will rely on an excellent communication strategy from both HMRC and DWP and currently this is something which is of major concern to us. If all communication products cannot be fully updated for the 6 April 2017 to explain the exceptions, the qualifying conditions and relevant information for the disabled child elements and the childcare element, then the policy should be delayed until this can be achieved. It is already concerning that women who are currently pregnant will face uncertainty about their position from 6 April 2017.
- **Risk of people not reporting changes** – There is a risk that people will fail to report the birth of a third or subsequent child if they are not going to receive an additional payment for that child at that time, which could lead to them missing out on money in the future. We have similar concerns in relation to claiming child benefit and other elements of tax credits such as the disabled child element and the childcare element. Again, good communication materials will be essential to cover this point - especially for existing claimants

2 About Us

2.1 The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low income workers, pensioners, migrants, students, disabled people and carers.

2.2 LITRG works extensively with HM Revenue & Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not

designed with the low-income user in mind and this often makes life difficult for those we try to help.

- 2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

3 General comments

3.1 *Practical Implementation*

- 3.1.1 Putting aside for one moment the issues around defining the exceptions and the evidence requirements for each of them, we are very concerned about how the exceptions will work in practice. Due to our familiarity with the tax credits system, most of these comments apply to tax credits but we presume that similar issues will arise in UC if the computer system is designed in a similar way.
- 3.1.2 Our understanding is that the tax credits IT system orders children by age and puts them into different payment positions with the oldest child on a claim occupying payment position 1, even if they are added to the claim at a later date. This leads to a number of questions and issues around what legal decisions are made and issued to claimants when children are added/removed from claims and exceptions are applied. It is important that there is a full analysis and that both HMRC and DWP ensure that appeal rights are triggered at the appropriate points and that the legislation allows the swapping around of children on a claim in this way.
- 3.1.3 One particular scenario that concerns us is where an exception is needed for a non-exception child. For example, say a claimant has a tax credit claim including child 1 (born in 2006) and child 2 (born in 2018). Child 3 is adopted in May 2019 (born in 2010). We know that the policy intention in this case is to allow child elements for all three children, but to do that there would need to be an exception in the Regulations for child 2, not child 3 who is the adopted child.
- 3.1.4 It is very likely that families will experience changes such as older children moving on and off the claim and households joining together or separating. It is important that when the Regulations are written thought is given to how long an exception will last and what will happen when various changes happen to the composition of the family.

3.2 *Availability of the exceptions/communications*

- 3.2.1 The consultation document focuses on the definitional issues around the exceptions and does not cover the mechanism for claiming an exception. There is a risk that the work done to protect certain groups via the various exceptions will be lost if they are not explained fully to claimants or straightforward to claim.
- 3.2.2 Our understanding from discussions with HMRC via the Benefits and Credits Consultation Group (BCCG) is that claimants, as they do now, will be required to report the addition of a

child/qualifying young person to the household (as it is now) but they will also then need to go a step further and request that an exception be applied in their case.

- 3.2.3 HMRC and DWP need to ensure all tax credit and universal credit materials (including claim forms, guidance notes, renewal packs, award notices, leaflets and online guidance) include references to the available exceptions from 6 April 2017. It is not enough just to mention the possibility of exceptions, the information needs to be sufficiently full and clear so that people can understand the range of exceptions and the qualification conditions for each. It is also crucial that the materials are clear that claimants can still claim the disabled child elements and the childcare element even if the 2 child limit applies to them in respect of the child element. Similar messages need to be given in respect of child benefit. If this cannot be done for April 2017 when the policy is due to commence then the commencement date should be delayed until it can be communicated properly.
- 3.2.4 We understand that GOV.UK will be updated with more detailed information but it is crucial that printed forms and guidance also contain the information as not everyone is able to access online information.
- 3.2.5 In order to mitigate some of these risks, processes need to be put in place to ensure that people are alerted to the exceptions. For example, when a claimant contacts the tax credits helpline to add a child or young person to the claim they should be asked in every case whether an exception applies to that child and the operator should be able to outline each of the exceptions. Similarly, where changes are reported online, a second question should be asked about whether an exception applies and it should link to more detailed information.

3.3 ***Risk of claimants not reporting changes***

- 3.3.1 We are concerned that there is a danger that people will not report the addition of third or subsequent children to HMRC or DWP if they believe it will make no difference to their claim. Whilst this failure to report will make no immediate difference to the amount they receive, it may mean they miss out on money in the future.
- 3.3.2 For example, assume that a claimant has 2 children (born before 6 April 2016) and then has a third child born in May 2017. They will not receive a child element for that child under the new policy. However, if in May 2018, their oldest child leaves the claim then they would be entitled to a child element for the youngest child born in May 2017. This would presumably be paid automatically if the youngest child was already on the system, but if their birth had not been reported to HMRC the claimant would need to do so within a month otherwise they could potentially miss out on the child element for that child.
- 3.3.3 Similarly, where HMRC are aware of say four children and are only paying for two (born before 6 April 2017) under the new policy, the claimant may not report that a child or young person has left the household. So for example, if the older child leaves the household technically the child element should be stopped for them and started for one of the younger children. However the claimant may not report this change because it will make no overall

difference to their award. We assume in such cases that, for tax credits, whilst there would be a technical overpayment for the older child, that there would be an underpayment for the younger child (because HMRC are aware the claimant is responsible for them) and that the two would cancel each other. It would be helpful if both HMRC and DWP can confirm that is the case.

- 3.3.4 HMRC and DWP will need to ensure that they make it clear to claimants in their communication products that even though the award may not change, it is still important to continue to report to HMRC/DWP when a child/qualifying young person joins or leaves the household.
- 3.3.5 It is also possible that claimants may think the same rules apply to child benefit and they may fail to claim child benefit for later children. It is important that communication products for child benefit make it clear that they can claim for all children and that there is no two child limit.
- 3.3.6 Similar considerations apply to the disabled child elements and the childcare element of tax credits. It will need to be made clear to claimants that they are still entitled to claim these elements for children who are subject to the two child limit in respect of the child element.

4 Answers to consultation questions

4.1 *Q1: Do you have any views on the proposed model for implementing the multiple birth exception?*

- 4.1.1 We agree that there should be an exception for multiple births, however we think it should be wider than that which is proposed in the consultation document.
- 4.1.2 The proposal in Paragraph 15 is that the exception would not apply if there were already two or more children or qualifying young people in the household prior to the multiple birth. For example, if a family already have 3 children on their claim (child 1, 2 and 3 born before 6 April 2017) and they then go to have twins after the 6 April 2017 they would not receive child elements for either of the twins (child 4 and child 5). Whilst refusing a child element for child 4 fits with the general policy set out at the start of the consultation document about choice, we do not think that the same argument applies in respect of child 5.
- 4.1.3 On that basis, we think that there should be an exception for all but the first child in multiple birth cases no matter how many children are already on the claim. So in the example above, child elements would be payable for child 1, child 2, child 3 and child 5.

4.2 *Q2: Are there any other formal arrangements not covered in chapter 4 for caring for the children of friends and family?*

- 4.2.1 Other organisations are better placed to answer this question.

4.3 **Q3: Where a formal order does not exist, do you agree that evidence from a social worker is the best approach to providing the necessary evidence of the need for an informal family and friends care arrangement? And Q4: Are there circumstances where a professional, other than a social worker, may be able to provide such evidence?**

4.3.1 We think there needs to be thought given to the potential impact on the workload of social workers in providing proof. This is an additional burden that is likely to add to their already pressured jobs.

4.3.2 We are also concerned about potential data protection issues. It is important that the people providing the information about a claimant to HMRC have authority to do so.

4.3.3 We think there are many other people who could provide the evidence needed depending on the circumstances and evidence should be accepted from the most appropriate person in a particular case. This is particularly so for informal arrangements where family and friends often step in to pre-empt children's services involvement. Other people who should be able to provide evidence include:

- Health and hospital staff in primary care and acute settings
- School/college staff
- Children's centre staff
- Prison staff

4.4 **Q5: Are there any further considerations we should make in relation to exempting grandchildren/new children (where the parent is 16 and the grandchild/new child is on the claimants/grandparents claim)?**

4.4.1 Please see our general concerns about implementation in changing family environments in Section 3. We think that any exception that disincentivises family care arrangements should not be introduced. For example, if a claimant has one child on their claim (child 1 age 16) and child 1 has a child of their own (child 1A), the claimant can claim for their grandchild and so the claim will include child 1, and child 1A. However, if the claimant then has a child of their own (child 2), they will not receive a child element for that child. This will cause particular difficulties if both the claimant and child 1 are pregnant at the same time and may affect the claimant's decision on whether they can look after their grandchild as well. We therefore think that an exception should apply to child 2 so that the claimant is not penalised for caring for their grandchild.

4.4.2 We also think the exception should cover situations where more than one child of the claimant has a baby (so the claimant has to claim for more than one grandchild).

4.5 **Questions 6 to 10 – proposed rape exception**

4.5.1 This particular exception is highly sensitive. Given that the number of people who are likely to qualify for this exception is low, we believe the best approach is one that accepts the claim for the exception without the requirement for any additional evidence. We would envisage that this could be done via a specialist team within HMRC/DWP. We believe that

the potential risk of fraud is low and any risk can be borne by HMRC/DWP given the potential distress that could be caused for claimants of an invasive or lengthy process to access the exception.

- 4.5.2 If a third party model is adopted, it may take some time for claimants to access the relevant third party services and therefore consideration should be given to allowing extended backdating in such situations given the extra step required.

LITRG
27 November 2016