

Memorandum to the Social Security Advisory Committee

THE HOUSING BENEFIT AND COUNCIL TAX BENEFIT (GENERAL) AMENDMENT (NO. X) REGULATIONS 2000.

Summary

From April 2001, the Government proposes to introduce a right of appeal on HB/CTB to the Appeals Service. In order to fit in with this, the Government proposes to introduce regulations which will align the HB/CTB backdating rules with those for other income-related benefits.

These regulations will make amendments to Regulation 72 of the Housing Benefit (General) Regulations 1987 and Regulation 52 of the Council Tax Benefit (General) Regulation 1992 which will replace the current 52 week limit resting on a broad definition of “good cause” with a three month limit based on a set of prescriptive circumstances.

In addition it is proposed that instead of the current 50%, local authorities should receive full subsidy on backdated claims. As the new arrangement will mean a more prescriptive scheme, it will no longer be feasible not to fund these claims in full. This change can be covered in secondary legislation – by way of an amendment to the HB/CTB Subsidy Order.

NB: HB and CTB differ from other income-related benefits in that they are awarded for specified periods, otherwise known as “benefit periods”. Whilst the maximum benefit period is usually 60 weeks, the authority may decide on a lesser period if appropriate. The claimant must renew his claim not more than 13 weeks before his benefit period is due to end or not more than 4 weeks after it. Each renewal claim is legally a new claim, and so would be subject to these changes.

These proposals will instil in claimants a sense of rights and responsibility by encouraging them to claim on time. They will also mean that the backdating rules will be fairer as the current “good cause” provisions are open to differences in interpretation, so a claimant’s entitlement could effectively depend on which local authority covers his claim. The new system will be easier for claimants to understand as the circumstances for backdating would be laid down in legislation, this should make the scheme less open to dispute.

Background

The current arrangements

Backdating may be allowed where a claimant can prove continuous “good cause” for failure to claim earlier; for up to 52 weeks. Good cause is not defined any further in regulations; DSS guidance advises that:-

“....the authority must be satisfied that the reason for the claimant’s failure to claim earlier is such that any reasonable person of that age, health and experience would probably have failed to claim in the same way as the claimant.....it will be necessary for the authority to examine the relevant facts in each individual case”.

Authorities are also referred to an Annex from the pre-1997 DSS Adjudication Officer’s Guide (such guides have now been abolished), which gives examples of circumstances which could fall under the good cause provisions. It also states that “good cause” will include any facts which would probably have caused a reasonable person to act as the claimant did, for example age, health, background and knowledge of the Social Security system and information the claimant had received or could have received.

Current regulations

The current regulations which cover HB/CTB backdating are regulations 72(15) and 62(16) of the Housing Benefit (General) Regulations 1987 and the Council Tax Benefit (General) Regulations 1992 respectively. They state that where a claimant makes a claim in respect of a past period and from a day in that period up to the date of the claim he had continuous good cause for failure to claim on time, his claim shall be treated as made on whichever is later of the first day of continuous good cause and the day 52 weeks before that date of the claim for backdating.

The proposed changes

Aligning with the rules for other income related benefits would mean that there would be a list of prescribed circumstances under which backdating may occur, limited to three months. In order for a claim to be backdated;

- one or more of the following circumstances must apply (or have applied);
- as a result of that circumstance (or those circumstances), the claimant could not have reasonably been expected to claim earlier.

The circumstances are as follows:-

- the claimant has difficulty communicating because there are learning, language or literacy difficulties or is deaf or blind and there is no one else to make the claim;
- except in the case of a claim for jobseeker's allowance, the claimant is ill or disabled, and there is no one else to make the claim
- the claimant is caring for a person who is ill or disabled, and there is no one else to make the claim

- the claimant was given misleading information by an officer of the DSS, DfEE ONE personal advisor, Commissioners of Inland Revenue, or local authority
- the claimant was given misleading advice in writing by a solicitor or other professional adviser, or by a medical practitioner, a landlord or by a person working in a Citizens Advice Bureau or a similar advice agency
- the claimant or his partner was given misleading written information about his income or capital by his employer or former employer, or by a bank or building society
- the claimant is required to deal with a domestic emergency affecting him and there is no one else to make his claim;
- the claimant is prevented by adverse weather conditions from attending the appropriate office
- the office was closed and no alternative arrangements were available;
- the claimant could not attend the office due to transport difficulties and there was no reasonable alternative available;
- there were adverse postal conditions, eg. a strike;
- the claimant was previously in receipt of another benefit, and notification that it was due to expire was not sent;
- the claimant recently separated from his/her partner
- a close relative (partner, parent, son, daughter, brother or sister) of the claimant recently died.

So, for example, where the claimant is prevented by adverse weather conditions from attending the office where he was expected to make a claim, and he could otherwise have submitted a claim form by post, backdating would not be appropriate.

Changes of circumstances

These proposed amending regulations apply only to cases where the claimant makes a new or renewal claim to benefit in respect of a past period. They do not affect payment of arrears of benefit in other cases, such as on a change in the claimant's circumstances

It is proposed to align the HB/CTB rules for payment of arrears on a change of circumstances, and in other situations, with those for other benefits. It is intended that this will take effect from April 2001; and will form part of the proposals to bring HB and CTB into the mainstream decision-making and appeals arrangements. We would be pleased to talk to the Committee about the proposed new HB/CTB decision-making and appeals arrangements later in the year when draft regulations are available.

The proposed amendment regulations

These amendment regulations will cover these changes by way of the insertion of a new regulation, 72D into the Housing Benefit (General) Regulations 1987, and a similar new regulation into the Council Tax Benefit (General) Regulations 1992. The existing regulations covering backdating will be revoked.

Numbers affected

It is not possible to obtain details of the numbers affected because caseload data is neither collected via the subsidy claim form nor via the Management Information Statistics. We do not hold any information on how long, on average authorities backdate their claims. We would expect these new arrangements to lead to a “cultural” change with claimants making efforts to ensure that they get their claims in on time.

Nor is any information collected on the reasons that authorities define as good cause. Currently, there are bound to be a mix of authorities who at one end of the spectrum will be generous in the application of good cause whilst at the other end will be strict. However on the whole, we could expect anything which appears in the new lists to currently lead a reasonable local authority to conclude that good cause has been satisfied.

Costs/savings

Overall, we assume programme costs to be broadly cost neutral because of the interplay between the tighter prescription and the increase in subsidy. Administration costs are estimated at around £1.3m, which would mainly comprise software changes.

Operational Issues

These changes will play a part in modernising and integrating HB/CTB with other income related benefits and are intended to fit in both with the move to a single appeals route and the spirit of ONE. The new arrangements will be easier for local authorities to administer; there will be distinct categories which have to apply to the claimant rather than the current broad good cause definition which can often require detailed deliberations on the part of the local authorities.

Publicity

The Department intends to produce publicity material, in conjunction with the local authorities, that will promote awareness of the new arrangements

**THE HOUSING BENEFIT AND COUNCIL TAX BENEFIT (GENERAL)
AMENDMENT (NO X) REGULATIONS 2000**

Synopsis

Regulation 1 (1)

Sets out the title of these amendment regulations and states that they shall come into force on 2nd April 2001.

Regulation 1(2):-

Sets out shorthand references for the Housing Benefit (General) Regulations 1987 and the Council Tax Benefit (General) Regulations 1992.

Regulation 2.

This regulation inserts a new regulation, 72(D), into the Housing Benefit (General) Regulations 1987 as follows:-

New regulation 72D(1)

States that a claim in respect of a past period shall be treated as made on an earlier date if any of a list of specified circumstances apply (or had applied) to the claimant *and as a result of that circumstance* the claimant could not reasonably have been expected to make that claim earlier.

New regulation 72D(2)

Defines “an earlier date”, and thus has the effect of limiting the maximum period over which backdating may occur. “An earlier date” is defined as one which is no more than three months earlier than the date of claim as defined in Regulation 72(5) of the Housing Benefit (General) Regulations 1987.

New regulation 72D(3)

Lists the circumstances under which backdating may occur. They are as follows:-

- a) the claimant has difficulty communicating because there are learning, language or literacy difficulties or is deaf or blind and it was not practicable for someone else to help the claimant to make the claim;
- b) the claimant was ill or disabled, and it was not practicable for someone else to help the claimant to make the claim;
- c) the claimant was caring for a person who is ill or disabled, and it was not practicable for someone else to help the claimant to make the claim;

- d) the claimant was given misleading information by an officer of a local authority, DSS, DfEE, Inland Revenue [where WFTC or DPTC is also being claimed] or a ONE personal advisor;
- e) the claimant was given misleading advice in writing by a solicitor or other professional adviser, or by a landlord, a medical practitioner, or by a person working in a Citizens Advice Bureau or a similar advice agency;
- f) the claimant or his partner was given misleading written information about his income or capital by his employer or former employer, or by a bank or building society;
- g) the claimant was required to deal with a domestic emergency affecting him and it was not practicable for someone else to help the claimant to make the claim;
- h) the claimant was prevented by bad weather conditions from attending the office where he would be expected to make a claim;
- i) the office where the claimant would be expected to make a claim was closed and there were no alternative arrangements were available;
- j) the claimant could not attend the office he would be expected to make a claim due to transport difficulties and there was no reasonable alternative available;
- k) there were adverse postal conditions, eg. a strike;
- l) the claimant was previously in receipt of another benefit, and notification that it was due to expire was not sent;
- m) the claimant recently separated from his spouse or partner;
- n) a close relative (partner, parent, son, daughter, brother or sister) of the claimant recently died .

New regulation 72D(4)

This regulation defines the “the Board” as meaning the Inland Revenue. It also defines a landlord to include a person to whom rent is payable, and a “relevant office” for the purposes of para (d) of the previous regulation (ONE personal advisor).

Regulation 3

This regulation includes a reference to Regulation 72D in Regulation 72(5) of the Housing Benefit (General) Regulations 1987, and omits Regulation 72(15), which contains the current backdating provisions, from these regulations

Regulation 4

This regulation inserts a new regulation, 62(D), into the Council Tax Benefit (General) Regulations 1992 as follows:-

New regulation 62D(1)

States that a claim in respect of a past period shall be treated as made on an earlier date if any of a list of specified circumstances apply (or had applied) to the claimant *and as a result of that circumstance* the claimant could not reasonably have been expected to make that claim earlier.

New regulation 62D(2)

Defines “an earlier date”, and thus has the effect of limiting the maximum period over which backdating may occur. “An earlier date” is defined as one which is no more than three months earlier than the date of claim as defined in Regulation 62(5) of the Council Tax Benefit (General) Regulations 1992.

New regulation 62D(3)

Lists the circumstances under which backdating may occur. They are as follows:-

- a) the claimant has difficulty communicating because there are learning, language or literacy difficulties or is deaf or blind and it was not practicable for someone else to help the claimant to make the claim;
- b) the claimant was ill or disabled, and it was not practicable for someone else to help the claimant to make the claim;
- c) the claimant was caring for a person who is ill or disabled, and it was not practicable for someone else to help the claimant to make the claim;
- d) the claimant was given misleading information by an officer of a local authority, DSS, DfEE, Inland Revenue [where WFTC or DPTC is also being claimed] or a ONE personal advisor;
- e) the claimant was given misleading advice in writing by a solicitor or other professional adviser, landlord, or by a medical practitioner, or by a person working in a Citizens Advice Bureau or a similar advice agency;
- f) the claimant or his partner was given misleading written information about his income or capital by his employer or former employer, or by a bank or building society;

- g) the claimant was required to deal with a domestic emergency affecting him and it was not practicable for someone else to help the claimant to make the claim;
- h) the claimant was prevented by bad weather conditions from attending the office where he would be expected to make a claim;
- i) the office where the claimant would be expected to make a claim was closed and there were no alternative arrangements were available;
- j) the claimant could not attend the office he would be expected to make a claim due to transport difficulties and there was no reasonable alternative available;
- k) there were adverse postal conditions, eg. a strike;
- l) the claimant was previously in receipt of another benefit, and notification that it was due to expire was not sent;
- m) the claimant recently separated from his spouse or partner;
- n) a close relative (partner, parent, son, daughter, brother or sister) of the claimant recently died .

New regulation 62D(4)

This regulation defines the “the Board” as meaning the Inland Revenue. It also defines a landlord to include a person to whom rent is payable, and a “relevant office” for the purposes of para (d) of the previous regulation (ONE personal advisor).

Regulation 5

This regulation includes a reference to Regulation 62D in Regulation 62(5) of the Council Tax Benefit (General) Regulations 1992, and omits Regulation 62(16), which contains the current backdating provisions, from these regulations

2000 No. 100

SOCIAL SECURITY

[The Housing Benefit and Council Tax Benefit (General)
Amendment (No. X) Regulations 2000]

Made - - - - - 2000
Laid before Parliament 2000
Coming into force - - - X April 2001

The Secretary of State for Social Security, in exercise of the powers conferred by sections 5(1)(b), 6(1)(b), 189(1), (4), (5) and (6) and 191 of the Social Security Administration Act 1992⁽¹⁾ and of all other powers enabling him in that behalf, after consultation with organisations appearing to him to be representative of the authorities concerned⁽²⁾ [and after agreement by the Social Security Advisory Committee that proposals in respect of these Regulations should not be referred to it⁽³⁾,] hereby makes the following Regulations:

Citation, commencement and interpretation

1 —1. These Regulations may be cited as the Housing Benefit and Council Tax Benefit (General) Amendment (No. X) Regulations 2000 and shall come into force on 2nd April 2001.

(1) In these Regulations –

“the Housing Benefit Regulations” means the Housing Benefit (General) Regulations 1987⁽⁴⁾;

“the Council Tax Benefit Regulations” means the Council Tax Benefit (General) Regulations 1992⁽⁵⁾.

Insertion of new regulation 72D in the Housing Benefit Regulations

2 After regulation 72C of the Housing Benefit Regulations there shall be inserted the following regulation –

⁽¹⁾ 1992 c.5; section 191 is cited because of the meaning ascribed to the word “prescribe”.

⁽²⁾ See the Social Security Administration Act 1992 (c.5), section 176(1)(a).

⁽³⁾ See the Social Security Administration Act 1992, section 173(1)(b).

⁽⁴⁾ S.I. 1987/1971 [to be completed near final draft]

⁽⁵⁾ S.I. 1992/1814 [to be completed near final draft]

“Date of claim

72D.-(1) Where a claimant makes a claim in respect of a past period , and –

- (a) any of the circumstances specified in paragraph (3) applies or has applied to the claimant; and
 - (b) as a result of that circumstance or those circumstances the claimant could not reasonably have been expected to make the claim earlier,
- the claim shall be treated as having been made on an earlier date.

(2) For the purposes of paragraph (1), the reference to an earlier date means a date which is no more than 3 months earlier than the date of the claim for backdating.

(3) The circumstances referred to in paragraph (1) are –

- (a) the claimant has difficulty communicating because –
 - (i) he has learning, language or literacy difficulties; or
 - (ii) he is deaf or blind,and it was not reasonably practicable for the claimant to obtain assistance from another person to make his claim;
- (b) the claimant was ill or disabled, and it was not reasonably practicable for the claimant to obtain assistance from another person to make his claim;
- (c) the claimant was caring for a person who is ill or disabled, and it was not reasonably practicable for the claimant to obtain assistance from another person to make his claim;
- (d) the claimant was given information by an officer of the Department of Social Security, the Department of Education and Employment or [where the claimant also claims of working families’s tax credit or a disabled person’s tax credit], the Board, or a representative of the appropriate authority or relevant authority, which led the claimant to believe that a claim for benefit would not succeed;
- (e) the claimant was given written advice by a solicitor or other professional adviser, a medical practitioner, a person working in a Citizens Advice Bureau or a similar advice agency, or his landlord which led the claimant to believe that a claim for benefit would not succeed;
- (f) the claimant or his partner was given written information about his income or capital by his employer or former employer, or by a bank or building society, which led the claimant to believe that a claim for benefit would not succeed;
- (g) the claimant was required to deal with a domestic emergency affecting him and it was not reasonably practicable for him to provide assistance from another person to make his claim;
- (h) the claimant was prevented by adverse weather conditions from attending the designated office , appropriate DSS office, or as the case may be the relevant office;
- (i) the designated office, appropriate DSS office, or as the case may be the relevant office where the claimant would be expected to make a claim was closed and alternative arrangements were not available;
- (j) the claimant was unable to attend the designated office, appropriate DSS office or as the case may be the relevant office due to difficulties with his normal mode of transport and there was no reasonable alternative available;

- (k) there were adverse postal conditions;
- (l) the claimant was previously in receipt of another benefit, and notification of expiry of entitlement to that benefit was not sent to the claimant before the date that his entitlement expired.
- (m) the claimant had ceased to be a member of a married or unmarried couple within the period of three months before the claim was made; or
- (n) during the period of three months before the claim was made a close relative of the claimant had died, and for this purpose “close relative” means partner, parent, son, daughter, brother or sister.

(4) For the purposes of this regulation –

“the Board” means the Commissioners of Inland Revenue;

“landlord” includes a person to whom rent is payable by the claimant;

“relevant office” means an office of the description given in paragraph (1) of regulation 72B”;

Amendment of Regulation 72 of the Housing Benefit Regulations

3 Regulation 72 of the Housing Benefit Regulations (time and manner in which claims are to be made) shall be amended as follows –

- (a) In paragraph (5)(6), for the words “and to regulation 72A” there shall be substituted “regulation 72A, 72B and 72D”; and
- (b) paragraph (15) shall be omitted.

Insertion of new regulation 62D in the Council Tax Benefit Regulations

4 After regulation 62C of the Council Tax Benefit Regulations there shall be inserted the following regulation –

“Date of claim

62D.-(1) Where a claimant makes a claim in respect of a past period , and –

- (a) any of the circumstances specified in paragraph (3) applies or has applied to the claimant; and
 - (b) as a result of that circumstance or those circumstances the claimant could not reasonably have been expected to make the claim earlier,
- the claim shall be treated as having been made on an earlier date.

(2) For the purposes of paragraph (1), the reference to an earlier date means a date which is no more than 3 months earlier than the date of the claim for backdating.

(3) The circumstances referred to in paragraph (1) are –

- (a) the claimant has difficulty communicating because –

(i) he has learning, language or literacy difficulties; or

(ii) he is deaf or blind,

and it was not reasonably practicable for the claimant to obtain assistance from another person to make his claim;

- (b) the claimant was ill or disabled, and it was not reasonably practicable for the claimant to obtain assistance from another person to make his claim;
- (c) the claimant was caring for a person who is ill or disabled, and it was not reasonably practicable for the claimant to obtain assistance from another person to make his claim;
- (d) the claimant was given information by an officer of the Department of Social Security, the Department of Education and Employment or [where the claimant also claims working families' tax credit or a disabled person's tax credit], the Board, or a representative of the appropriate authority or relevant authority, which led the claimant to believe that a claim for benefit would not succeed;
- (e) the claimant was given written advice by a solicitor or other professional adviser, a medical practitioner, a person working in a Citizens Advice Bureau or a similar advice agency, or his landlord which led the claimant to believe that a claim for benefit would not succeed;
- (f) the claimant or his partner was given written information about his income or capital by his employer or former employer, or by a bank or building society, which led the claimant to believe that a claim for benefit would not succeed;
- (g) the claimant was required to deal with a domestic emergency affecting him and it was not reasonably practicable for him to provide assistance from another person to make his claim;
- (h) the claimant was prevented by adverse weather conditions from attending the designated office, appropriate DSS office, or as the case may be the relevant office;
- (i) the designated office, appropriate DSS office, or as the case may be the relevant office where the claimant would be expected to make a claim was closed and alternative arrangements were not available;
- (j) the claimant was unable to attend the designated office, appropriate DSS office or as the case may be the relevant office due to difficulties with his normal mode of transport and there was no reasonable alternative available;
- (k) there were adverse postal conditions;
- (l) the claimant was previously in receipt of another benefit, and notification of expiry of entitlement to that benefit was not sent to the claimant before the date that his entitlement expired.
- (m) the claimant had ceased to be a member of a married or unmarried couple within the period of three months before the claim was made; or
- (n) during the period of three months before the claim was made a close relative of the claimant had died, and for this purpose "close relative" means partner, parent, son, daughter, brother or sister.

(4) For the purposes of this regulation –

“the Board” means the Commissioners of Inland Revenue;

“landlord” includes a person to whom rent is payable by the claimant; and

“relevant office” means an office of the description given in paragraph (1) of regulation 72B”;

Amendment of Regulation 62 of the Council Tax Benefit Regulations

5 Regulation 62 of the Council Tax Benefit Regulations (time and manner in which claims are to be made) shall be amended as follows –

(c) In paragraph (5)(7), for the words “and to regulation 62A” there shall be substituted “regulations 62A, 62B and 62D”; and

(d) paragraph (16) shall be omitted.

Signed by authority of the Secretary of State for Social Security

[2000]

Name
Minister of State
Department of Social Security

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971) and the Council Tax Benefit (General) Regulations 1992 (S.I. 1992/1814).

Regulation 2 amends existing provisions in respect of housing benefit claims for a past period (claims for back dating). In particular, it prescribes the circumstances in which such benefit is to be payable, and limits the period over which it may be paid to a maximum of 3 months. Regulation 4 makes parallel provisions in respect of council tax benefit.

Regulations 3 and 5 make minor consequential amendments.

These Regulations do not impose a charge on businesses.