



SOCIAL SECURITY ADVISORY COMMITTEE

New Court, 48 Carey Street, London WC2A 2LS
Telephone 020 7412 1509 Fax: 020 7412 1570

From the Chairman

The Rt Hon Alistair Darling MP
Secretary of State for Social Security
Richmond House
79 Whitehall
London SW1A 2NS

October 2000

REPORT OF THE SOCIAL SECURITY ADVISORY COMMITTEE MADE UNDER SECTION 174 OF THE SOCIAL SECURITY ADMINISTRATION ACT 1992 ON THE HOUSING BENEFIT AND COUNCIL TAX BENEFIT (GENERAL) AMENDMENT (No.X) REGULATIONS 2000

Introduction

1. We give below our report on these amending regulations, which would, from April 2001, reduce the period for which Housing Benefit (HB) and Council Tax Benefit (CTB) may be backdated from 52 weeks to three months and would replace existing “good cause” provisions with a prescribed list within regulations.

2. The draft regulations were referred to us on 5 July 2000. On 7 July, we published a press release inviting comments on the effects of the proposals to reach us by 18 August. As the proposals would mirror the changes introduced to the other income-related benefits in 1997 we asked for evidence

of whether experience in the implementation of the 1997 provisions would provide lessons relevant to the proposals. We were able to take into account representations from the 83 organisations and individuals listed at [Appendix 1](#) to this report.

3. We invited the Department of Social Security to comment on the points made in the representations.

Acknowledgements

4. We are grateful to those who took the time and trouble to write to us, and to officials of the Department of Social Security for their assistance in resolving our queries, and in the preparation of this report.

Northern Ireland

5. Separate, but similar, regulations are proposed for Northern Ireland.

The Department's proposals

6. The scope and purpose of the proposed amending regulations were set out in an explanatory memorandum provided for us by the Department of Social Security. It is reproduced at [Appendix 2](#) of this report. The changes would mirror those made to the other income-related benefits during 1997 by reducing the period for which either new or renewal claims for HB/CTB could be backdated from 52 weeks to three months. Three months, rather than 13 weeks has been selected as it would align with the Income Support regulations. The proposals would also mirror the 1997 changes by replacing the broad definition of good cause as justification for backdating claims with a set of prescriptive circumstances set out within regulations. Changes of circumstances would not come within the scope of these regulations, which only refer to new or renewal claims.

7. The proposals would take effect from April 2001 and would be linked to an increase in the subsidy payable to local authorities as reimbursement of benefit expenditure on backdated awards. The increase would be from 50% to full subsidy for rent allowances, Scottish rent-rebates, non Housing Revenue Account (HRA) rent rebates and CTB. Subsidy policy on HRA rent rebates (ie. for "council tenants") in England and Wales, is the responsibility of the Department for the Environment Transport and the Regions and the National Assembly for Wales who are aware of the backdating proposals.

8. The changes have been put forward because, from April 2001, the Government proposes to make changes to the HB/CTB appeals system, whereby, instead of local authorities dealing with disputes through Review Boards consisting of elected council members, a right of appeal to the Appeals Service would be introduced. The Government believes that it would be appropriate to align the HB/CTB backdating provisions with those of other benefits at the same time.

9. The memorandum also states the Government's beliefs that the changes would:

- instil in claimants a sense of rights and responsibilities by encouraging them to claim on time;
- mean that the backdating rules would be fairer as the current good cause provisions are open to differences in interpretation, thus entitlement could effectively depend on which local authority deals with the claim; and,
- mean that the system would be easier for claimants to understand as the circumstances for backdating would be laid down in legislation, thus making the scheme less open to dispute.

The Government also contends that the changes would play a part in modernising and integrating HB/CTB with other income related benefits and are intended to fit in with the move to a single appeals route and the spirit of ONE.

10. The Department has been unable to provide details of the likely number of claims that would be affected. However, it has assumed that the programme costs would be broadly cost-neutral, because of the interaction between the more tightly drawn backdating provisions, shorter time period and the increase in subsidy levels. Set-up costs, mainly for local authority software changes, are estimated to be around £1.3m.

The introduction of appeal rights

11. Along with the overwhelming majority of our respondents, the Committee welcomes the proposal to introduce a right of appeal to a tribunal. HB Review Boards have long been regarded as an anomaly within the benefits system; adjudication on all other benefits is by a tribunal chaired by a legally qualified person. The Review Board system has also meant that no case law has been developed in respect of HB/CTB, other than decisions following judicial reviews. Appeal Service tribunals have experience in applying legal tests and precedents set by Commissioners and the Courts. Therefore, we believe that the standard of HB/CTB decision-making will be improved and case law on legal provisions will develop within the HB/CTB context.

12. Transfer to the Appeals Service will also ensure that claimants are treated fairly in line with the European Convention on Human Rights. However, it has not been made clear to us why this undeniably positive step should be linked to a restriction in time limits for backdating and to the introduction of more stringent tests for eligibility for a backdated award.

Alignment of Backdating Arrangements

13. The Government's first stated reason for alignment, apart from the introduction of appeal rights, is to *instil in claimants a sense of rights and responsibility by encouraging them to claim on time*. This implies that claimants deliberately delay making their claim or renewing their entitlement. We are at a loss as to why they should want to do so, as there can be no financial advantage in delaying a claim for benefits whose sole purpose is to meet an identifiable, continuous and inescapable need. The Department's memorandum does not give any indication of how many do take this course of deliberate inaction nor indeed how many people are successful in having their eligibility backdated. We believe that failure to claim arises for a variety of reasons which are to do with the overall complexity of the scheme, ie its rules and claims processes, and the general standards of its administration. Our respondents have confirmed that the reasons could be many, compound and due, not to indolence, but to the unique nature of HB/CTB.

Reasons for delayed HB/CTB claims

The complexity of the current arrangements

14. HB/CTB rules are complicated; a point recognised by the Government in its recent Housing Green Paper wherein it states "*The benefit rules are complex. Claimants don't understand them and often don't know what benefit rules apply to them and what support they might be entitled to*"¹ The complexity of the systems also means that Benefits Agency Staff, Local Authority Staff and advice agencies find it very difficult to advise on eligibility. The quality of advice is also variable. As a result claimants may be misinformed or not informed at all and will fail to make a claim when they should because they believe they have no entitlement. This could particularly be the case for those in low paid full time work. It is common for people not to realise that HB/CTB are in-work as well as out-of-work benefits.

¹ *Quality and Choice: A Decent Home For All*. DETR and DSS, April 2000, paragraph 11.4.

The claims process

15. The claims process is also complex, particularly for those in privately rented accommodation when the information required on the type of accommodation occupied is very detailed. Moreover, if a private sector tenant also concurrently claims Income Support or income-based Jobseeker's Allowance, he will be supplied with national, standard HB/CTB claim forms. However, it is normal for the local authority to also ask for one of their locally produced forms to be completed in order to gain the information about the accommodation, required for the rent officer referral.

16. The complexity becomes greater for people with particular personal problems, for example, inexperience with the system, old age (the majority of HB/CTB claimants are pensioners), mental health problems, a lack of language or literacy skills, chaotic lifestyles, drug or alcohol addiction or chronic sickness or disability. A person with any one or indeed a combination of the above would have severe difficulties with negotiating the claims process, or with understanding the decision notices or requests for further information sent to them.

The requirement to renew claims

17. Another unique aspect of HB/CTB is that, unlike Income Support and income-based Jobseeker's Allowance, which are awarded indefinitely, subject to relevant changes of circumstance, HB/CTB claims must be renewed at most every 60 weeks, although it can be more frequently especially following the introduction of the Verification Framework process. The council is required to send a renewal claim form 13 weeks before the period of award (benefit period) is due to expire. The renewal form must be returned within 4 weeks of the end of the benefit period. If all the information has not been completed, the claim is treated as defective and the council will ask the claimant for the missing details. If the claimant fails to do this within 4 weeks of being asked, they will have no direct benefit help towards their rent and council tax from that date until such time a new claim form is received.

18. This renewal process would seem to contain significant safeguards for the claimant. However, because it does not form a part of the other income-related benefits' process, claimants are unused to it and fail to complete the forms, assuming there has been an error or because, as in the examples of personal difficulties quoted in paragraph 16 above, fail to understand what is required of them. They only become aware that there is a problem when they receive notification of rent/council tax arrears. It is generally at this point that they make a claim for a backdated award.

The award is reliant upon the award of another benefit

19. A further example of the special nature of HB/CTB leading to requests for backdating is that awards of HB/CTB are often reliant upon eligibility to another benefit. Certain benefits such as Attendance Allowance, Disability Living Allowance and Invalid Care Allowance can qualify a claimant, through entitlement to certain premiums in HB/CTB, to receive either higher levels of HB/CTB or can mean a claimant becomes entitled to HB/CTB once the qualifying benefit is awarded. However, it can take some time for claims to be decided, especially if they are only awarded following an appeal. The award of the other benefit may give rise to a claim for a backdated award of HB/CTB. Until recently, this situation arose in the other means-tested benefits. We understand that the Social Security (Claims and Payments) Regulations 1997 have been amended to prevent this from occurring by allowing the date of the failed claim to be treated as the same date as the start of the period in respect of which entitlement to the main benefit begins.

When Income Support ceases

20. Another area of complexity and a cause of requests for backdated claims is when HB/CTB, awarded on the basis of entitlement to Income Support, ceases because another benefit has been awarded. One example is when a move to the higher short-term rate of Incapacity Benefit (awarded after 28 weeks of incapacity) lifts the claimant's income above the Income Support threshold. At this point, HB/CTB must also be cancelled. It may be some time before the claimant realises that his HB/CTB have stopped

because the increased Incapacity Benefit is automatically awarded and the payments continue to be made by the Benefits Agency.

When entitlement to another benefit is re-created

21. Further problems can arise when the claimant becomes automatically entitled to the long-term rate of Incapacity Benefit (normally after one year of incapacity). This rate can re-create entitlement to Income Support because it brings entitlement to the disability premium. In these cases a further claim will need to be made. This complex interaction of benefits is extremely confusing to claimants.

The retrospective cancellation of another benefit

22. HB/CTB can also be reliant upon the award of Income Support and/or income-based Jobseeker's Allowance. It can be that these benefits, through no fault of the claimant, are retrospectively cancelled, for example if an official error was made. Whenever Income Support or income-based Jobseeker's Allowance entitlement ceases HB/CTB must be cancelled from the same date, even though the claimant may continue to be entitled to HB/CTB on low income grounds. The local authority must invite the renewal claim based on grounds of low income. However, there will be a need to make a backdated claim for the period between the effective date of the Income Support/income-based Jobseeker's Allowance cancellation and the receipt of the new HB/CTB claim.

Temporary absence from home

23. Temporary absence from home also creates difficulties. Persons entering hospital have their Income Support reduced after 6 weeks under the hospital in-patient rules. If they have only a small amount of Income Support, because for example they have an occupational pension, their entitlement will end along with that of their HB/CTB. The Council should send a renewal form but the claimant will not be at home to receive or complete it. Also they may be too ill to do so and may have no one to deal with it for them. It is often the case that the form is only completed once the claimant has returned home

which may mean a claim for backdating. Similar problems can occur if the benefit period ends during the time in hospital.

24. Persons who go abroad for more than 4 weeks but less than 13 weeks lose their entitlement to Income Support but retain their rights to HB/CTB. They may also need to make a backdated claim because they have not been at home to deal with the claim processes. Similarly, there could be a need for a backdated claim for those in bail hostels, prison and insecure accommodation.

Payment to third parties

25. Another aspect of the claims process particular to HB/CTB and giving rise to claims for backdating is that the majority of payments are made directly to third parties in arrears. No local authority tenants receive their benefit directly in cash. Instead, the entitlement is credited against their council rent liability, usually by one department to another within the same local authority. Tenants in the private sector may have their rent paid to them by cheque or to their landlord. Some 70% of tenants in the private and Registered Social Landlord sectors have their rent paid directly to their landlord or property agent. In May 1998, 1,290,000 HB recipients had their rent paid in this way. Council Tax Benefit is always credited against the council tax account. At February 2000 there were 4.9m CTB recipients.

26. A significant number of people whose benefit is sent directly to a third party could make a late claim through no fault of their own because not receiving a cash payment personally can lead to a delay before claimants are made aware that either benefit has ceased or has not been awarded and that action is needed. This is a particular problem with social landlords who do not run continuous rent assessments on their properties, when it could routinely be, especially where the tenant does not receive maximum benefit, some considerable time before the landlord tells their tenants that they are in arrears.

Administration of the HB/CTB scheme

27. The statutory duty to fund and administer the HB and CTB schemes rests with local authorities and this can give rise to particular difficulties. The problems that local authorities have had with the administration of the two benefits are serious, widespread and have been well documented. In its Sixth Report of Session 1999-2000, published in July 2000, the Social Security Select Committee set out the problems caused to both claimants and to authorities by the complexity of the regulations. It also reiterated the Audit Commission findings in 1999 that 44% of authorities in England and Wales were providing a poor service. However, it did not identify the absence of responsibility by claimants as a problem. The Government has itself accepted in its Housing Green Paper that the performance of local authorities is inconsistent and that improvements are needed².

28. Evidence submitted by our respondents supports these findings. We have been provided with many examples of poor performance. For example, authorities or their agents may take a long time to process claims because of large backlogs of claims, even when all the required information has been provided (we have been given one example of claims regularly taking 6 months and another example of a local authority having 87,000 outstanding claims). Whilst failure to act on a fully substantiated claim would not create a need for backdating, it can cause confusion or claimant inactivity as we illustrate below.

29. Completed claim forms may be not received or lost or claims wrongly closed. Renewal claim forms may not be sent out or not received by the claimant. We have been advised of a situation where sufficient complaints have been made by claimants about the administrative disorganisation and poor service levels that the Local Government Ombudsman called a meeting of the Chief Executives of the councils concerned to discuss systemic problems with late or non-payment of HB.

² *Quality and Choice: A Decent Home For All*. DETR and DSS, April 2000, Chapter 11.

30. However, we do not accept that difficulties faced by local authorities and their contractors are entirely of their own making. The complexity of the system they must administer does not aid speed or accuracy. This is especially the case for private tenant cases where a variety of rules can apply, for example, depending on whether people have been in tenancies before or after January 1996 or they are young single claimants. Councils also have to deal with frequent and complex changes to the rules, for example the recent supported housing provisions and the Verification Framework.

31. Problems may also arise because of the interface with the Benefits Agency. We have been advised that Benefits Agency staff may fail to notify the local authority that benefit has been awarded or cancelled or the notifications may be lost in transit between office locations. This is likely to be a problem when local authority and Benefits Agency boundaries do not coincide. It is very common for Benefits Agency areas to overlap with more than one local authority area and vice versa. With the volume of computer produced notifications generated, it is inevitable that information will go astray.

The adequacy of three months backdating

Problems created by unsatisfactory administration

32. The administrative difficulties faced by local authorities and the delays these create can almost all be accommodated within the 52 week rule. Whilst we would strongly wish to see improvements in local authority performance, we have no reason to believe that these will be forthcoming in the foreseeable future. Where claims or substantiating evidence are lost and the claimant is not aware that there is problem because, for example, he has not been advised that the rent is in arrears or because he is aware that the local authority can take a long time to process claims, 52 weeks is sufficient time for the claimant and local authority to resolve the issue. However, under the terms of the proposals, if the local authority ordinarily takes more than 3 months to process claims and the claimant waits longer than that before making enquiries, only to find out at that point that his claim has not been

received or has been lost, he will lose benefit for any part of the period exceeding 3 months. This would be through no fault of his own.

The retrospective award of another benefit

33. Where Attendance Allowance, Disability Living Allowance or Invalid care Allowance are retrospectively awarded and they bring entitlement to HB/CTB or an increase to them, 52 weeks are normally sufficient to allow full redress. However, the Department has advised us that the targets for determining these three benefits are either almost three months or exceed it. The targets are as follows:

	New Claims	Renewal Claims	Reconsiderations	Supersessions
Attendance Allowance	95% in 63 working days	95% in 66 working days	95% in 87 working days	95% in 87 working days
Disability Living Allowance	95% in 73 working days	95% in 84 working days	95% in 99 working days	95% in 99 working days

The clearance of new claims target for Invalid Care Allowance is 95% in 72 working days, for maintenance of existing claims 95% in 64 working days and appeals 93% in 90 working days.

34. All, save two (new Attendance Allowance claims and maintenance of Invalid Care Allowance claims) exceed the proposed backdating period, some greatly exceed it. Whilst we accept that many claims will be cleared well within the set targets, there can be no assurance that this will be universal. Therefore, there would be potential for a significant number of people, through no fault of their own, to be adversely affected by a reduction to a maximum of 3 months. This potentially serious effect could be removed if the provision to allow the second claim to be treated as made on the date of the first (disallowed) claim, introduced for the other social security benefits via amendment to the Social Security Claims and Payments Regulations 1997 (paragraph 19 above), were also introduced for HB/CTB.

The retrospective cancellation of another benefit

35. Difficulties with a reduced period may also arise when Income Support or income-based Jobseeker's Allowance are retrospectively cancelled. It will not normally be that the cancellation is effective more than 52 weeks prior to the decision, however it will be far more common for it be effective more than 3 months before. People in hospital for periods exceeding 3 months may also incur large amounts of arrears if the situation we describe above in paragraph 23 above should arise.

The effects of a reduced period

36. The loss of benefit has a particular and unique impact in respect of HB/CTB. In contrast to Income Support and income-based Jobseeker's Allowance, HB/CTB are paid to meet particular and known liabilities. If Income Support or Jobseeker's Allowance is not paid, budgeting adjustments may be made. However, if HB/CTB are not paid, the debt remains until it is cleared. The amounts could be substantial as the Housing Benefit sums paid are considerable: the average payment is £46.70 per week³. If the claimant would have been entitled to 52 weeks but only receives 3 months, the shortfall would exceed £1800, which would need to be cleared from the claimant's own resources. Such a sum would take years to refund, and during this time the claimant would be living below a minimum income level.

37. If rent is not paid the tenant would be faced with possible eviction. In England and Wales, where there is an assured shorthold tenancy, the landlord has a right to an outright order for possession if a tenant has 8 weeks/2months of rent arrears. In Scotland, where there is an assured tenancy, the landlord has a right to an outright order for possession if a tenant has three months of rent arrears both on the date on which the notice of proceedings was served and at the date of the court hearing. The Court has no power to refuse or suspend such an order, irrespective of the

³ Housing Benefit and Council Tax Benefit Quarterly Summary Statistics November 1999, DSS.

circumstances which gave rise to the rent arrears or the needs of the tenant. Even if the effect of the rule change does not result in eviction, a limit of 3 months would mean that tenants on low income would have to pay the arrears from their benefits. By definition they have only the most limited means. If the claimants were evicted, they would be likely to have difficulty obtaining other accommodation because to be re-housed they must establish that they are not intentionally homeless and that they are a priority need.

38. There is evidence that rent arrears are increasingly becoming the reason for possession action by social housing providers - local authority and registered social landlords. The number of possession orders granted increased by 70 percent in the 5 years to 1999⁴.

39. A limit of 3 months would also impact upon the third parties to whom the debt is due. Social landlords would be likely to face cash flow problems, an increase in rent debts and, hence, in costs associated with debt recovery. It is also likely to result in a further disincentive for private sector landlords to let to HB/CTB claimants. Local Authorities would face increased rent/council tax debt, and would need to increase their expenditure on debt recovery and on re-housing or social services activities.

Council tax issues

40. We have discussed above the complexities that may cause late HB/CTB claims. However, there are complexities specific to council tax and hence to CTB. First, the amount of council tax payable can be difficult to determine because it can be reduced in a number of ways including disability reductions, exemptions and discounts. Therefore, there is a strong likelihood that the amount of the liability is miscalculated. If this were an underestimation the subsequent higher calculation may result in CTB eligibility and a need for backdating.

⁴ *Eviction epidemic*, Julian Birch in *Roof* Jan/Feb 1999.

41. Secondly, establishing liability and hence eligibility to CTB is exceptionally complex. Some residents may become liable some time after they take up occupation, for example because they reach age 18, or a couple separate and there is a dispute over the residence of the property and who should have responsibility for the payment of council tax, or because another adult in the household becomes unemployed.

42. Liability for council tax is annual. The consequences of failure to pay can be grave. In England and Wales, the first stage is a liability order. The second, if the debt remains, is enforcement procedures; this can include the levying of distress, ie bailiffs are called in to obtain possessions to clear the debt. The third stage is magistrate's court action which could result in imprisonment. Neither the authority nor the court have the power to remit the debt on the grounds of poverty although the authority may write it off if as uneconomical to pursue and can reinstate it at a later date if circumstances change.

43. In Scotland, the initial stage is usually summary warrant but the council may raise a court action for payment of the debt. The second stage is, as in England and Wales, enforcement procedures. This can include earnings arrestment, arrestment and furthcoming and poinding and sale. Also, as in England and Wales, Scottish Councils do not have the power to remit council tax debts on grounds of poverty, but they may decide not to pursue it. We believe that these possible consequences, together with the problems with determining liability and the amount payable, is not serious whilst backdating is allowed for up to 52 weeks but could be if it were limited to three months.

44. A reduction to a maximum of 3 months is likely to have a considerable impact on council tax debt. One of our respondents has advised that, according to the most recent available DSS data, in 1995-96 nearly 200,000 backdating claims were paid. Of these 134,453 were in respect of CTB.

Backdating - Conclusion

45. Having been advised of the possible causes for the need for backdating and effects that non payment may have, we believe that reducing the period for which backdated awards can be made from a maximum of 52 weeks to 3 months could create serious difficulties for a significant number of people. Because these difficulties would not be due to claimant irresponsibility but due to the inherent problems of the system, we believe that there is no justification for the reduction of the maximum and we **recommend** that it should not be reduced. We make no secondary recommendations.

Good Cause

The 1997 changes

46. All the comments received on the implementation of the 1997 reforms have related to the introduction of a prescribed list of reasons for backdating, ie good cause. We have been advised that, contrary to the expectations for the current proposals, the introduction of a list has not significantly reduced the number of appeals against a refusal to backdate claims. It has, however, created problems. We have been advised that the lack of a catch-all category for cases has led tribunals to stretch the interpretation of the regulations to accommodate hard cases.

47. Problems have occurred because people have been misled, not by incorrect information given by the Benefits Agency or Department for Education and Employment staff, but by a lack of information eg. sick claimants have been advised about Incapacity Benefit but not Income Support. Claim packs for Incapacity Benefit do not routinely contain Income Support claim packs. Therefore, if the claim for Incapacity Benefit fails, claims for backdated awards of Income Support, which must be disallowed, frequently follow. Tribunals have interpreted the regulations to mean that not being advised as being the same as being led to believe that a claim could not succeed and have allowed backdated awards. This must bring the law into disrepute.

48. A further problem has been with the process related to the award of Incapacity Benefit and its effects on Income Support. The award of the higher short-term rate of Incapacity Benefit, payable after 28 weeks of incapacity, can mean that Income Support ceases. After 52 weeks, Incapacity Benefit is increased to the long-term rate and entitlement to Income Support may return because a disability premium becomes payable. Understandably, not all claimants are aware of these rules and make backdated claims for Income Support. These claims are correctly refused because the circumstances do not fall within the prescribed list.

49. The format of information has also created problems. Advice agencies rarely confirm the advice given to claimants in writing, thus, even if a claimant has been misinformed by them, he will not qualify for a backdated award.

50. We have also been advised that there have been difficulties with the interpretation of *"it was not reasonably practicable for the person to obtain assistance from another person to make his claim"*. It is believed that this term is too widely cast because it has led to decisions to refuse backdating where other family members have been present.

51. We have received evidence that there has been widespread unfairness to pensioners. The Government's initiatives to help pensioners, the Minimum Income Guarantee (MIG) has been affected because the efforts to identify potential MIG recipients were delayed which meant that some people were not aware of the provisions when they were introduced in April 1999. In response to two written Parliamentary Questions on 6 March 2000, the Minister said there were around 500,000 who may not be claiming their MIG and that the prescribed time limit for claiming Income Support could prevent any claim, even with an extension for special circumstances, from being backdated for more than three months prior to the date of claim. Thus, potentially 500,000 were not been able to claim full arrears and may also have been denied maximum HB/CTB.

The existing HB/CTB provisions

52. The good cause rule has been a part of the benefit system for many years. The most often cited description of the rule comes from a case decided in 1949 (CS/371/49). It said:

"Good cause means some fact which having regard to all of the circumstances (including the claimant's state of health and the information he had received and that he might have obtained) would probably have caused a reasonable person of this age and experience to act (or fail to act) as the claimant did."

53. Thus, claims can only be backdated if the individual has a reasonable excuse for the delay. Extenuating circumstances may be taken into account, but the claimant still has to show that they acted reasonably in all the circumstances. Currently, tenants can have their HB/CTB backdated if they can show continuous good cause for why they have not claimed earlier.

The proposals

54. We accept that the Government's statement in the memorandum that current HB/CTB good cause provisions can be open to different interpretations between local authorities. However, we believe they are important in allowing flexibility to ensure tenants in need, but whose circumstances are not prescribed within regulations, should have the opportunity for HB/CTB payments to be backdated. The development of case law as a result of the proposed changes in the appeals system should do much to eliminate any gross anomalies in the interpretation of good cause. We are concerned, given the nature of the information supplied on the problems with the 1997 changes, that changing the good cause rule to one of a prescribed list of circumstances that does not contain a "catch all" provision, would, given the fact that HB/CTB are awarded to meet a specific, continuous need, be too narrow and inflexible. The proposed list would not allow authorities to acknowledge the wide range of reasons for the need for backdating to arise and to consider people's individual circumstances. Thus,

entitlement would be unfairly restricted because, as we have discussed earlier, the reasons may have been no fault of the claimant.

55. Whilst we agree that the prescribed circumstances would be easier for claimants to understand, we believe they would not, as stated in the memorandum, be fairer and there is a risk that they too would be open to differences in interpretation. For example, what is meant by "ill" or "disabled", a disabled person could be perfectly capable of attending the relevant office. And under what circumstances should "*it was not reasonably practicable for the claimant to obtain assistance from another person to make his claim*" apply?

56. We are particularly concerned that the introduction of the term "another person" into the prescribed list will lead local authorities to introduce discretion when making decisions about "another person" and that there will be a wide scope for refusing requests for backdating and hence unfairness. Claimants must show not only why they did not claim on time but also why they did not seek help or why another person could not help them. We also fear that local authorities would apply blanket rules about the existence of other people who should have helped the claimant, and would apply the law prescriptively by ignoring the fact that a test of reasonableness would remain.

57. We are also concerned about the possible effects if claimants do not receive information about HB/CTB from Departmental or local authority officials.

Specific comments on the draft regulations

58. Some of our respondents have raised issues specific to the drafting of the proposed regulations. Current regulation 72(15) of the Housing Benefit (General) Regulations requires good cause to be continuous through the whole period for which backdating is claimed. The proposed regulations do not appear to contain this requirement because the draft regulation 3(b) states that the existing regulation 72(15) shall be omitted. A similar provision has

also been included for CTB. It therefore would appear that the proposals would allow a person to claim up to 3 months without good cause existing during the whole period. Surely this cannot be the intention.

59. Concern has also been expressed about the wording of draft regulation 72D(3)(e), which requires written advice from advice agencies. The inclusion of "landlord" could lead to unscrupulous landlords stating that they had advised their tenant not to claim in order to gain benefit in respect of rent that was not payable. We think that the regulation should be amended to show that it covers registered social landlords only.

Good Cause - Conclusion

60. From the evidence supplied to us it is clear that the prescriptive list for reasons for allowing a late claim introduced in 1997 has caused difficulties for claimants and has introduced doubts about the integrity of the law. The introduction of a similar list for HB/CB must extend these effects.

61. We have welcomed the intention to introduce a right of appeal to an Appeals Service tribunal but we do not believe that the introduction of a prescriptive list is necessary to bring HB/CTB into the integrated appeals system. That system already encompasses benefits with widely different rules. Different benefits have different backdating rules, different contribution requirements, different earnings limits and different capital limits. The appeals system is able to accommodate these variations, therefore, it seems disingenuous to say these changes are needed to fit HB/CTB into the social security appeals system.

62. Under the existing system, claimants must show continuous good cause. Those claimants whose only reason for a late claim is deliberate, cannot currently receive a backdated award. Therefore, the proposals would not affect them, but those who failed to claim for a reason related to the nature of HB/CTB.

63. We, therefore, **recommend** that the proposal to replace the existing good cause provisions with a prescribed list within regulations should not be introduced. Instead, the Government should examine ways of reducing the need for backdating that are created specifically by the HB/CTB claims system. For example, the requirement to renew claims could be removed, particularly for pensioners in local authority property and in receipt of Income Support. Their only change of circumstances is likely to be an annual increase in their rent and council tax; a change of which the local authority will be fully aware.

64. The requirement to end the benefit period when Income Support or Jobseeker's Allowance ends could be removed and the cessation treated as a change of circumstances. This would resolve the problems for those temporarily absent from home and those whose Income Support or income-based Jobseeker's Allowance is retrospectively cancelled.

65. Appeal Tribunals and staff administering the benefits could be given guidance as currently exists on how to make a decision.

66. If the Government decides to reject this main recommendation, for the reasons we have set out we **recommend** the following:

- a) that the proposed regulations 72(D)(3) and 62D(3) be amended as follows:
 - i) "it was not reasonably practicable for the claimant to obtain assistance from another person" should be removed from (a), (b) and (c);
 - ii) in (a), difficulty with communicating should include mental health problems, and drug and/or alcohol addiction problems;

iii) in (d), the provision should be extended to include the situation where information provided by the officers listed did not include that pertaining to potential entitlement to another benefit;

iv) in (e), the requirement for information given by other advice agencies to be in writing should be amended to include oral information. And "landlord" should be amended to "social landlord".

b) Further categories should be added to regulation 72(D)(3) and 62D(3) as follows:

i) A notification that the benefit period is due to end and/or the invitation to renew the claim was not sent or received and the claimant submits a new claim as soon as reasonably practicable after this;

ii) A completed claim form was returned but was not processed by the local authority because the claim and/or substantiating evidence were lost or because the claim was closed in error.

iii) Where it was reasonable given the claimant's circumstances for the claimant to have failed to claim earlier.

c) To ensure that HB/CTB claimants have similar rights to those of other means tested benefits, a failed HB/CTB claim, which would have succeeded had a "qualifying benefit" been awarded at the time of the HB/CTB claim, should be treated as made on the date of its original claim.

- d) Consideration be given to the effects of omitting existing regulation 72(15) and 62(16) which require good cause to be continuous.

Costs/savings

67. We welcome the proposal to increase to the maximum the amount of subsidy payable to local authorities in respect of late claims. The existing system works as a direct disincentive to make full use of powers to backdate because local authorities do not receive full recompense, even when the need for backdating has not been caused by local authority error/maladministration.

68. The assertion in the memorandum that the costs of these proposals would be neutral appears based on little if any evidence. Moreover, it can only hold good in the strict sense of the programme costs of the DSS budget. The implication that a higher proportion of local authority expenditure will be picked up by central government without any increase in budget must be that there will be an equivalent reduction in payments to claimants. We do not believe that it is justifiable to fund a sensible increase in the subvention to local authorities at the expense of claimants, by reducing the amount of benefit that they would receive under the current arrangements. Furthermore, the memorandum has not taken into account the potential additional costs that could arise indirectly. Housing and social services costs could increase to meet the need to deal with homelessness. Social services may need to help additional people through community care issues and Children Act legislation where tenants with dependent children are evicted. The proposals could also lead to the provision of more temporary accommodation, which is more expensive.

Conclusions

69. HB/CTB were singled out for omission from the 1997 changes, because they are administered by local authorities. Ministers have given no indication in the memorandum of why it is now considered appropriate to align

the rules, other than because of the introduction of a right of a appeal to an Appeals Service tribunal. The proposals appear to be simplifying the benefits system by aligning the provisions for HB/CTB with those of the other income-related benefits. However, as we have illustrated, there are significant differences between HB/CTB and those other benefits which justify and indeed require a regime which operates more favourably to the HB/CTB claimant.

70. We believe the proposed changes:

- are not necessary to integrate HB/CTB into the Appeals Service system;
- will make the system less flexible but not fairer;
- will not make claimants claim earlier but will reduce the number of successfully backdated claims through their narrower definitions;
- will particularly adversely affect the chronically sick and disabled, those with mental health problems, the elderly, the housebound, those whose first language is not English, ethnic minority groups those with communication problems and those with addiction problems;
- will increase rent arrears and, potentially, homelessness;
- will adversely affect Registered Social landlords as well as the Housing Revenue and Council Tax accounts of local authorities;
- will clash with the Government's social exclusion and tackling poverty agendas.

71. Therefore, we **recommend** that the proposal to restrict backdating to 3 months should not proceed. We also **recommend** that good cause should not be replaced by a prescribed list of very limited circumstances. Instead, the Government should examine ways of improving the service delivery and research the impact of the proposed restrictions on claimants and on the levels of rent and council tax arrears.

72. If the recommendation concerning good cause is not accepted we **recommend** that the proposals on amendments to regulations, made in paragraph 66 above, should be implemented so as to safeguard claimants

whose need for backdating arises from poor administration by the local authority or Benefits Agency.

Summary of recommendations

- **A reduction of the maximum period for which awards may be backdated should not be made (paragraph 45);**

- **Good cause should not be replaced by a prescriptive list within regulations (paragraph 63). If this recommendation is not accepted, the draft regulations should be amended to (paragraph 66):**
 - **remove the requirement for another person to give assistance**

 - **add mental health problems and drug and/or alcohol addiction problems to the reasons for having difficulty with communicating**

 - **replace "landlord" with "social landlord"**

 - **allow the following to be a reason for backdating:**
 - **not being given information about potential entitlement to another benefit by an official**

 - **oral information given by outside advice agencies**

 - **failure to notify that the benefit period is due to end and/or failure to invite a renewal claim**

 - **a completed claim form was not processed because it and/or the substantiating evidence were lost or because the claim was closed in error**

- where it was reasonable given the claimant's circumstances for the claimant to have failed to make a claim

and

- Regulation 6 of the Social Security Claims and Payments Regulations 1997 should be amended so as to allow a claim that would have succeeded, had the qualifying benefit been awarded at that time, to be treated as made on the date of the original claim;

and

- consideration should be given to the effects of omitting regulations 72(15) of the HB regulations and regulation 62(16) of the CTB regulations

THOMAS BOYD-CARPENTER