**The two-child limit for Universal Credit and Child Tax Credit**

*Richard Machin explores the background to, and likely impact of, the two-child limit on the child element in Universal Credit and the Child Tax Credit, which was introduced by the Welfare Reform and Work Act 2016*

**Background**

‘Benefit entitlement adjusts automatically to family size, whilst families supporting themselves solely through work do not see their incomes rise in the same way when they have more children.’(1)

In the summer budget of 2015, the Government announced the child element of Universal Credit (UC) and the individual child element of Child Tax Credit (CTC) will no longer be awarded for the third or subsequent children or qualifying young persons born on or after 6 April 2017. The then Prime Minister, David Cameron, and Chancellor of the Exchequer, George Osborne, argued that these changes were necessary to deliver a fair deal to the taxpayer and to incentivise work. They emphasised that Child Benefit will continue regardless of family size, and that working families are supported by the national living wage and increases in the income tax personal allowance.

Section 13 of the Welfare Reform and Work Act(2) specifies that for CTC the two-child limit applies only to the third or subsequent child born after April 2017. Section 14 brings in the rule for UC from 6 April 2017, but the Government has said that until November 2018, existing claimants with more than two children who would otherwise claim UC will be directed to claim CTC instead (by introducing new gateway conditions in live UC areas). Equivalent changes to CTC will be made in relation to Housing Benefit to ensure consistency.

There has been a significant amount of political, professional and religious opposition to this policy. Child Poverty Action Group (CPAG)(3) fundamentally opposes the ideology behind linking eligibility of means-tested benefits to size of family, thus placing the issue of morality on the statute book, with some children assessed as being more deserving than others. CPAG cites research undertaken by the Institute for Fiscal Studies which indicates 600,000 more children will live in absolute poverty in 2020/21 compared with 2015/16 and says it believes the two-child policy will contribute to this increase. CPAG questions the changes in behaviour the Government wishes to see as a result of this policy, stating: ‘It is clearly irrational to expect the policy to influence decisions which took place before it was announced.’ Many families will be affected who conceived a child while unaware of a policy that has not been widely publicised or promoted. Other families with three or more children already may not currently need to claim a means-tested benefit to support their family, but may need to in the future.

The Children’s Society(4) has expressed particular concerns for families with disabled children. It highlights that, alongside the potential loss of the child element, families with disabled children have already seen a significant fall in income as a result of reductions in the disabled child element of UC. It expresses concerns about the ability of bereaved families to cope financially where the death of a partner results in the need to claim UC and there are more than two children in the household.

An alliance of the UK’s biggest churches and Jewish groups(5) argues that the two-child limit is anti-family and could disproportionately affect those who have larger families for religious reasons. Organisations campaigning for women’s rights(6) have argued that the policy will push women into poverty and have a disproportionate impact on minority ethnic women and refugee women, who are more likely to have three or more children.

**Financial impact of this policy**

* It is estimated that by 2020/21, 640,000 families will be affected by this policy
* The policy will deliver estimated savings of £1,365 million by 2020/21
* The restriction of the child element of CTC will mean that each family with three or more children in receipt of tax credits will lose up to £2,780 for each additional child per year

**Exceptions to this policy**

A consultation on exceptions to the limiting of CTC and UC to two children ran from 21 October 2016 to 27 November 2016(7). A total of 82 responses (52 from organisations) was received. The Government published its response on 20 January 2017,(8) with exceptions to the policy being accepted in three circumstances:

**1. Multiple births**

The Government announced in the summer budget of 2015 that children born in a multiple birth would be exempt from the policy if there were previously fewer than two children or qualifying young persons in the household. It was proposed that this exception would not apply if there were already two or more children before the multiple birth. The Government argued that in these circumstances an exception is reasonable as families cannot plan for a multiple birth.

Responses were received through the consultation raising concerns that families who already have two children and then have a multiple birth are unable to plan for this situation. In response, the Government has expanded the exception so the child element is awarded for all third or subsequent children in a family born following a multiple birth, other than the first-born.

**2. Children living long-term with family and friends**

The Government recognises that children and young people may live with family or close friends in ‘kinship care arrangements’. In these situations carers may be entitled to receive CTC or UC for a qualifying child or young person. Children looked after by the local authority are unaffected by this policy where an allowance is received from the local authority for the child or young person’s accommodation or maintenance. In these circumstances there is no entitlement to CTC or UC. The Government’s position when announcing this policy in 2015 was that family and friend carers are not in the same position as parents to make choices about the number of children in the household. Therefore, the Government announced an exception for any child or qualifying young person who is unable to be cared for by their own parents and is instead cared for by family or friends who is the third or subsequent child or qualifying young person in that household, and would otherwise be at risk of entering the care system. This exception does not apply to step-parents.

In response to the consultation, the Government confirmed that the exception would apply where the claimant:

* has a Child Arrangement Order conferring residence or Special Guardianship Order in place; or
* is entitled to Guardian’s Allowance; and
* is neither the parent nor step-parent of the child.

Some concerns were raised during the consultation about court orders which expire when a child reaches the age of 16, and the Government confirmed that the exception will remain in place if the claimant has been continuously responsible for them since that time.

The Government considered the position of more informal care arrangements where there is no entitlement to Guardian’s Allowance and no formal order in place. The Government accepted that in these circumstances the third or subsequent child should be exempt from the child element limit, as is the case for formal arrangements. The consultation sought views on who would be best placed to provide evidence to confirm these informal care arrangements. Concerns were expressed that a requirement for social workers to provide evidence would not always be appropriate. It was argued that social workers might not be aware of the arrangements or have the capacity to deal with requests for evidence. Some respondents felt the involvement of social services would jeopardise informal caring arrangements which have been established without the involvement of a social worker.

The Government rejected these arguments and confirmed that social workers are the most appropriate professionals to provide evidence. The Government believes this is consistent with evidence requirements established under Section 17 of the Children’s Act 1989, and has stated it will monitor any additional burdens this places on local authorities. The Government will review these evidence requirements and has confirmed that if the adjudication of this exception proves other professionals are equally well-placed to provide evidence (e.g. Housing Association staff or other council employees) this may be considered

in the future.

If a claimant is in receipt of CTC or UC for a child under 16, and the child then has a child of their own, the grandchild/child is added to the claimant’s CTC or UC claim. The Government has confirmed that where the child of a child is a third or subsequent child in the household, they will be counted as an exception.

**3. Children likely to have been conceived as a result of rape**

This exception drew the most scrutiny and concerns through the consultation process. The Government’s position is that an exception will apply where a third or subsequent child is conceived as a result of rape. The Government believes a third-party evidence model is appropriate to establish whether a claimant meets this exception (this model is already used for UC to establish if work-related requirements should be relaxed due to domestic violence). Under this model claimants will be required to engage with a third party; it will then be the responsibility of the third party to provide evidence to demonstrate that the claimant’s circumstances are consistent with those of a person who has had non-consensual intercourse.

The Government argues that this model removes the need for women to provide evidence directly to the DWP or HMRC, and eligibility can be confirmed without the need for criminal investigation or conviction. The Government has identified professionals who should be recognised as approved third parties (see below). Suggestions were made through the consultation process that this list should be extended to include (amongst others) local authority employees and staff from housing organisations.

The Government has stated that these professionals will not initially be recognised as professional third parties, but that this will be reviewed in light of the operation

of this exception:

* Health care professionals (including GPs, other doctors and nurses, midwives and health visitors)
* Police officers
* Registered social workers
* Registered counsellors
* Independent Sexual Violence Advisers
* Other organisations such as specialist rape charities approved by the Secretary of State (in the case of UC) or by the Treasury (in the case of CTC).

As an alternative to the third-party evidence model, the exception will also apply where there has been a successful conviction or award of compensation from the Criminal Injuries Compensation Authority for rape or controlling and coercive behaviour in an intimate or family relationship. It has to be shown that the rape or domestic abuse was at a time when the child’s conception might have resulted.

The third-party evidence model has drawn much criticism from expert organisations and campaigning groups, who highlight the inappropriateness of forcing women to re-live the trauma of rape in order to secure payment of a social security benefit. Concerns were raised about the impact on the mental health of victims and the judgements that will be made by a third party about women’s behaviour and perceptions of what a victim should look like. CPAG(9) emphasised that women who have been raped should not be forced to disclose the rape except at the time they choose. However, this policy requires a disclosure if a financial penalty is not to be incurred. Furthermore, it has been strongly argued that this policy cannot guarantee victims’ right to privacy as there will be a wide range of situations in which it is apparent that the ‘rape exception’ has been applied. For example, this may arise where there are joint claims for CTC or UC, where an individual is seeking support with their finances/debt or where claims are made for other benefits, local assistance or student finance.

In response to these concerns, the Government has acknowledged the sensitivity of this exception but believes procedures will be in place to safeguard claimants. They state that neither DWP or HMRC staff will question the evidence provided by a third-party claimant, that there will be no time limits placed on when a disclosure needs to be made to a third party, and that robust processes are already in place to deal with sensitive information.

**Coercion and control**

The Government states it is the intention of this policy to take into account controlling and coercive relationships. Therefore, third or subsequent children conceived as a result of these circumstances fall within an exempt group. For this exception to apply the claimant needs to confirm she is no longer living with the alleged perpetrator. Many consultation responses highlighted the difficulty for victims to leave an abusive partner. However, the Government refused to remove this requirement, arguing that alleged perpetrators who remain living with the victim of coercion or control would benefit financially from the exception.

The Government has stated it will bring forward regulations to make provision for these exceptions before this policy is introduced on 6 April 2017, and make consequential changes in Housing Benefit, Income Support and Jobseekers Allowance.

**Conclusion**The impact assessment carried out by the Government makes it clear that well over half a million families will be affected by the two-child policy and that the Treasury will make significant savings. What is less clear is the extent to which this policy will produce the behavioural changes the Government wishes to see. There is little evidence to suggest the introduction of the ‘bedroom tax’ and the roll-out of UC have resulted in the changes in behaviour that the Government intended (for example, downsizing to smaller properties or managing a household budget on a monthly basis).

What we have seen with these, and other elements of welfare reform, is a reduction in income for some of the most vulnerable members of society who are the least equipped to make the ‘informed choices’ the Government demands. Advisers and campaigners will need to monitor the impact of the two-child policy and support claimants with the exceptions rules where these apply.

**Endnotes**

1. HM Government (2017) Consultation response – 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. Available at: <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/561641/exceptions-to-the-limiting-of-the-individual-child-element-of-child-tax-credit-and-the-child-element-of-universal-credit-to-a-maximum-of-2-children.pdf>
2. Welfare Reform and Work Act 2016, available at: <http://www.legislation.gov.uk/ukpga/2016/7/enacted>
3. CPAG (2015) 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. CPAG’s response. Available at: <http://www.cpag.org.uk/sites/default/files/Two%20child%20limit%20consultation_CPAG%20response.pdf>
4. Children’s Society (2015) Welfare Reform and Work Bill: Report and 3rd reading. Briefing – Two Child Limit. Available at: <http://www.childrenssociety.org.uk/sites/default/files/The%20Childrens%20Society%203rd%20Reading%20Briefing%20-%20Two%20Child%20Limit.pdf>
5. Joint Faith Group Briefing (2015) Child tax credits and Universal Credit: limit on support for families with more than two children. Available at: <https://www.churchofengland.org/media/2400405/joint_faith_group_briefing_on_two-child_limit_final.pdf>
6. Engender (2016) UK Government consultation on exceptions to the reforms which limit the child elements in Child Tax Credit and Universal Credit to a maximum of two children. Available at: <https://www.engender.org.uk/content/publications/Engender-two-child-limit-consultation-November-2016.pdf>
7. DWP (2016) 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. Available at: <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/561641/exceptions-to-the-limiting-of-the-individual-child-element-of-child-tax-credit-and-the-child-element-of-universal-credit-to-a-maximum-of-2-children.pdf>
8. HM Government (2017) Consultation response – 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. Available at: <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/584802/government-response-to-universal-credit-and-child-tax-credit-exceptions-to-the-2-child-limit-consultation.pdf>
9. See Note 3

*Richard Machin is a lecturer in social welfare law, policy and advice practice at Staffordshire University and is a member of the Adviser Editorial Board*