

# TAX CREDITS ACT 2002

---

## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 2: Child Benefit and Guardian's Allowance**

##### ***Section 49: Functions transferred to Treasury***

171. **Section 49** transfers to the Treasury responsibility for policy relating to child benefit and guardian's allowance, for setting the level of those benefits, and for the rules concerning entitlement. The functions transferred consist mainly of the exercise of powers to make subordinate legislation in relation to those benefits. This section covers the transfer of policy relating to those benefits within both Great Britain and Northern Ireland.

##### ***Section 50: Functions transferred to Board***

172. **Section 50** transfers to the Board the functions relating to child benefit and guardian's allowance which are not transferred to the Treasury by section 49. It transfers to the Board the day-to-day operational functions currently discharged by the Child Benefit Centre on behalf of the Secretary of State, and by the Child Benefit Office in Northern Ireland on behalf of DSD.
173. Existing social security legislation contains extensive powers to make regulations. To the extent that these powers relate to child benefit or guardian's allowance, they are specifically transferred under sections 49 or 50 to either the Treasury or the Board.

##### ***Section 51: Consequential amendments***

174. **Section 51** gives effect to Schedule 4, which makes amendments to the law about child benefit and guardian's allowance needed in consequence of the transfer of functions made by sections 49 and 50.

##### ***Schedule 4: Transfer of functions: consequential amendments***

#### **Social Security Administration Act 1992**

175. **Paragraph 2** removes the power to deduct overpaid child benefit or guardian's allowance from other benefits. At present, the power to recover benefits from child benefit or guardian's allowance is limited in effect, as it requires the consent of the claimant. As a result of the transfer to the Board, the link between child benefit and other social security benefits will be severed. In future, overpaid child benefit or guardian's allowance will only be recoverable directly from the claimant or from future payments.
176. **Paragraph 3** relates to the responsibility for setting rates of child benefit and guardian's allowance. For those benefits which remain the responsibility of the Secretary of State, any power to change the rates of those benefits will remain subject to the consent of the Treasury.

### **Social Security Administration (Northern Ireland) Act 1992**

177. *Paragraph 8* mirrors the amendment made in paragraph 2 by removing the power to deduct overpaid child benefit or guardian's allowance from other social security benefits payable under Northern Ireland legislation.
178. *Paragraph 9* ensures that where an order is made in Great Britain up-rating child benefit or guardian's allowance, or where a mistake in the calculation of the rate of these benefits is rectified by the Treasury under its power to do so by regulations, the effect of the change is mirrored in Northern Ireland.

### **Social Security Act 1998**

179. *Paragraph 15* provides for references to decisions by the Secretary of State to be construed, in relation to child benefit and guardian's allowance, as references to a decision of the Board, or of an officer of the Board.

### **Social Security (Northern Ireland) Order 1998**

180. *Paragraph 19* provides for references to decisions by the Department in Northern Ireland to be construed, in relation to child benefit and guardian's allowance, as references to a decision of the Board, or of an officer of the Board.

### **Immigration and Asylum Act 1999**

181. *Paragraph 21* enables the Treasury to make regulations providing that persons subject to immigration control are entitled to child benefit in prescribed circumstances. *Paragraph 22* provides for the Treasury to make regulations allowing the backdating of entitlement to child benefit and guardian's allowance in certain circumstances when people who were subject to immigration control acquire refugee status.

### ***Section 52: Transfer of property, rights and liabilities***

182. The Child Benefit Centre, and its Northern Ireland equivalent, receive goods and services under a wide range of contracts. Those contracts relating wholly to functions transferred to the Treasury or the Board will, from the date of transfer, become contracts with those Departments. However, the Child Benefit Centre and its Northern Ireland equivalent also receive goods and services under contracts that provide for the supply of goods and services to other parts of DWP or, in Northern Ireland, DSD. In those cases, the right to enforce those contracts and liabilities resulting from them is transferred but only to the extent that they relate to the functions transferred.
183. *Section 52* makes provision for the transfer of any property, rights or liabilities associated wholly with the functions relating to the operation of child benefit or guardian's allowance to be transferred to the Treasury or the Board, as appropriate. It enables the Treasury or the Board to issue a certificate, where required, as evidence that the transfer has taken place (*subsection (3)*) and ensures that all rights and liabilities are to be transferred, even where the contract itself states that they should not be (*subsection (4)*).
184. *Subsections (5) and (6)* deal with those contracts which relate partly to functions transferred to the Board or Treasury and partly to functions retained by the Secretary of State or the original Departments. They provide for the transfer of rights and liabilities under those contracts, but only so far as they relate to child benefit and guardian's allowance and the functions being transferred.
185. *Subsection (7)* also allows the transfer by Order in Council to the Home Civil Service of staff currently employed in administering child benefit and guardian's allowance in Northern Ireland. Those staff are currently members of the Northern Ireland Civil Service.

***Section 53: General functions of Board***

186. **Section 53** brings child benefit and guardian's allowance under the care and management of the Board. Child benefit and guardian's allowance are also brought within the definition of 'inland revenue' as set out in the Inland Revenue Regulation Act 1890.
187. This section also provides for the Board to appoint staff to operate, pay and account for child benefit and guardian's allowance and sets out the accounting requirements (*subsections (3) and (4)*). The Board will be required separately to identify the amounts of child benefit and guardian's allowance paid out in any period, the costs of operating each system and amounts received in respect of those benefits.
188. In addition, this section makes similar provision in relation to the declaration of secrecy made by members of Inland Revenue staff and the General and Special Commissioners under the Taxes Management Act 1970 as is made by section 2(6) (*subsection (5)*).

***Section 54: Transitional provisions***

189. The transfer of functions will not be effective until a date appointed by a commencement order. Until that date, the Secretary of State will continue to carry out all functions in relation to child benefit and guardian's allowance.
190. The effect of *subsections (4) to (9)* is to ensure that anything done by the Secretary of State or DSD, in the exercise of any of those functions before transfer will continue to have effect after the date of transfer, as if they had been actions of the Treasury or the Board. It follows that any decisions made, appeals against such decisions, or actions being taken by or against the Secretary of State or DSD become the responsibility of the Treasury or the Board from the date of transfer, depending on the function to which they relate. The Treasury or the Board would be substituted for the Secretary of State or DSD in any contracts, legal proceedings or other instruments.
191. Before the date of transfer, the Treasury or the Board will need to exercise certain of the functions to be transferred to them, to enable them to take over responsibility from the date of transfer. To allow for a smooth transfer, regulations need to be in force to provide the Board with the power to carry out those functions from that date. *Subsections (1) and (2)* therefore confer a power on the Treasury and the Board to make regulations during the period after Royal Assent but prior to commencement of the transfer, to enable them to prepare for transfer. Such regulations cannot come into force, however, until the date of transfer.
192. *Subsection (10)* enables an order made before the transfer of functions facilitating electronic communications in respect of child benefit or guardian's allowance to stay in force after transfer.

***Section 55: Continuing entitlement after death of child***

193. In the current child benefit system, entitlement ceases immediately a child dies. In addition, if a child dies within days or hours of its birth, the family may never become entitled to child benefit for that child. Under current legislation, the child must be alive before, and into, the first day of the next complete benefit week (Monday) for the family to become entitled.
194. **Section 55** extends entitlement to child benefit after the death of the child in question for a period to be specified in regulations. The section also provides for a person to receive child benefit during that extension period in cases where they would normally have been excluded from entitlement because the child did not survive until the Monday following its birth.
195. **Section 55** also provides that the surviving partner of a person entitled to child benefit for a child who has died can claim child benefit for the extension period if:

*These notes refer to the Tax Credits Act 2002  
(c.21) which received Royal Assent on 8 July 2002*

- the child benefit claimant dies as well as the child; and
  - the claimant and the surviving partner were a married or unmarried couple who were living together at the time of the claimant's death.
196. Entitlement to guardian's allowance is extended in the same way as entitlement to child benefit.

***Section 56: Presence in United Kingdom***

197. **Section 56** introduces a change to the child benefit rules to bring them closer into line with the rules proposed for the child tax credit. It retains the requirement for both the child and the claimant to be in Great Britain or Northern Ireland, as appropriate, for any week of a claim for child benefit, subject to prescribed exceptions enabling entitlement to continue during periods of temporary absence. But it removes the requirement for both the child and the claimant to have been present for 182 days before entitlement begins. Instead, the section provides a power to set out in secondary legislation when a person may be treated as being, or not being, in Great Britain or Northern Ireland for purposes of child benefit.

***Section 57: Abolition of exclusion of tax exempt persons***

198. This section removes the provision that anyone who has income exempt from UK income tax (or whose partner has such income) is excluded from child benefit entitlement. Child benefit originated in an earlier income tax relief and retained this restriction on claims from that relief. One of its effects is to exclude some people from child benefit entitlement who do pay UK tax. There will be no such restriction on claims for child tax credit and this change brings the rules for child benefit into line with those for that tax credit.