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The High Income Child Benefit Charge



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Summary

The [High Income Child Benefit Charge \(HICBC\)](#) provides for Child Benefit to be clawed back through the tax system from families where the highest earner has an income in excess of £50,000, to be withdrawn completely where that person has an incomes of over £60,000. The HICBC was introduced in 2013, following initial proposals announced by the then Chancellor George Osborne in October 2010 for withdrawing Child Benefit from higher rate payers, which Mr Osborne modified in the 2012 Budget. (The policy background to the introduction of the HICBC is discussed in, [Child Benefit for higher income families](#), Commons Library briefing CBP6299, 16 April 2012.)

The [HICBC](#) is collected through [self assessment](#), so that individuals who are liable to pay it are required to file an annual tax return if they do not already do so. There have been concerns about the number of taxpayers who have been charged penalties for failing to register their liability and pay the charge through their tax return, as well as the rise in taxpayers liable to pay the charge as the £50,000 threshold has not been increased since the HICBC was introduced.

Rather than pay the HICBC, individuals who have been awarded Child Benefit may make an election not to receive this payment. There have also been concerns that some families have decided simply not to claim Child Benefit, without being aware of the potential impact this may have on their entitlement to contributory benefits.

This note gives a short background to the introduction of the HICBC and long-standing criticisms that have been made of its design, before looking at these two sets of concerns about its operation, and recent debate as to whether the HICBC should be reformed.

1 Introduction

The proposal to cap child benefit for those on higher incomes was first announced by the then Chancellor George Osborne in October 2010, and in the 2012 Budget Mr Osborne confirmed the introduction of the High Income Child Benefit Charge (HICBC) from January 2013.¹

The HICBC provides for Child Benefit to be clawed back through the tax system from families where the highest earner has an income in excess of £50,000 and withdrawn completely at incomes of £60,000 or more. The tax charge is equal to 1 per cent of the total Child Benefit received for every £100 earned over £50,000. For those with an annual income in excess of £60,000, the tax charge is equal to 100 per cent of Child Benefit payments received. The Charge is collected through [self assessment](#). Individuals who are liable to pay it are required to file an annual tax return if they do not already do so.²

Statutory provision for the HICBC was made by [s8 & Schedule 1 of the Finance Act 2012](#). At the time it was estimated that this change would raise £185m in 2012/13, rising to £690m in its first full year.³

Rather than pay the HICBC, individuals who have been awarded Child Benefit may make an election not to receive this payment. There is a basic explanation of this process [on Gov.uk](#) – as well as [guidance on making this type of election](#). Someone can also decide to revoke this election, if say their circumstances change, and their income fell below £50,000.

The Low Incomes Tax Reform Group (LITRG) publish guidance on the HICBC, which underlines that couples that have opted not to receive Child Benefit payments can re-start them, while they still have their underlying entitlement:

If you have stopped your child benefit payments because of liability to the HICBC but your circumstances change (for example, you have an unexpected fall in income such that the child benefit is not fully clawed back via the HICBC) then you can [restart](#) child benefit payments.

You can also request to reinstate payments for the two previous tax years, if applicable, by contacting the child benefit office via [telephone](#). Alternatively, you can contact them by using

¹ [Budget 2012, HC 1853, March 2012 para 1.175-8](#); HMRC, [Budget 2012: Child Benefit Income Tax Charge](#), March 2012.

² HMRC, [Issue briefing: High Income Child Benefit Charge](#), 3 October 2018

³ [Budget 2012, HC 1853, March 2012 p50 \(Table 2.1 – item 2\)](#)

this [online form](#), but you should be aware that you are not provided with confirmation of the submission.

In either case, you should make a note of the information provided. ⁴

⁴ LITRG, [The high income child benefit charge](#), updated 19 July 2021

2

Criticisms of the design of the HICBC

2.1

The treatment of single-earner and two-earner households

A persistent criticism of this approach to withdrawing Child Benefit from those on higher incomes has been the way that it can impact different families. While a single earner couple earning £60,000 would have the whole of their Child Benefit clawed back, a dual earner couple each earning just under £50,000 – with a much larger combined household income – retain their Child Benefit in full. However, as the Government stated at the time the HICBC was introduced, the only way to get around the problem would be to introduce some sort of household means test for Child Benefit.

[In their report on the 2012 Budget](#), the Treasury Committee acknowledged that “the Government needs to take difficult decisions to tackle the budget deficit”, but went on to suggest that, “the Government’s latest proposals for reform of Child Benefit solve only one of the two main problems identified with its original policy”:

In the 2010 Spending Review, the Government announced that it would withdraw Child Benefit through the tax system for households with a higher rate taxpayer from January 2013. This proposal attracted criticism owing to the fact that it:

- presented a cliff-edge at the higher rate threshold where an increase in salary could lead to a decrease in income as the benefit was withdrawn, and
- meant that Child Benefit entitlement would depend only on the income of the higher-income person in the family. This led to the situation where a family with two incomes of £40,000 and therefore a joint income of £80,000 would receive the full benefit but a family with one income earning £45,000 would not receive the benefit at all.

... In the Red Book the Government amended its proposal so that:

- Child Benefit will be withdrawn through an income tax charge, and that the charge will only apply to households where someone has an income over £50,000 a year, and

- for households where someone has an income between £50,000 and £60,000 the charge will apply gradually, preventing a cliff edge effect. Only households where someone has an income in excess of £60,000 a year will no longer gain from Child Benefit.

... The Government has amended its policy to remove the cliff-edge problem but has not removed the bias against single-earner households being punished relative to two-earner households.

[In evidence to the Committee, Carl Emmerson, deputy director at the Institute for Fiscal Studies] said:

“In terms of how individuals lose their child benefit as their incomes rise there is now no cliff edge. It is not the case that people will find themselves worse off after getting a pay rise, which would have been true for some individuals under the original system. It is now the case, as long as you have fewer than eight children, that you will not face an effective withdrawal rate of over 100 per cent. So they have dealt with that problem. The other problem that people identified with the initial proposal was that one-earner households could be punished relative to two-earner households. You might not think that that is fair. Clearly there is still an issue, and people who were concerned about that before may well still be concerned about it.”⁵

The Committee also noted that the Government’s revised approach had “added to the administrative burden of Child Benefit”:

HMRC has estimated that 500,000 more people will have to do self-assessment forms because of the child benefit changes, and that it will cost £100 million in staff over five years and £8 million in IT spending. [In evidence to the Committee, John Whiting, Tax Policy Director at the Chartered Institute of Taxation] made the point that, “The administrative load must not be underestimated. There is a big need for proper and careful communication, and for making sure that people do not get the wrong message about things such as having to give it up, or not staying on the register in case they lose their job. It is all an extra problem.” ...

[In his evidence] the Chancellor defended the extra administrative costs associated with the changes to Child Benefit, saying that, “once you accept the premise—of course, there are some people who don't accept the premise—and take the decision to remove child benefit payments from better-off families, and we are talking here about the top 10 per cent of families by income, you then have to consider how best to do it. The alternative implied by your

⁵ Treasury Committee, *Budget 2012*, HC 1901-1, 18 April 2012 para 115, para 109, paras 111-2

question would put 7 million or 8 million people into some form of household means test requiring a complicated form.”⁶

Statutory provisions to introduce the HICBC were debated and agreed at the Committee stage of the Finance Bill on 19 April 2012, the day after the Treasury Committee’s report was published.⁷

On this occasion Christopher Chope MP noted the issue had “been well covered by the Treasury Select Committee’s recent report, as well as by the Chartered Institute of Taxation and other expert bodies. The fundamental issue is the proposals’ lack of fairness, as between one family and another ... two people on £50,000 a year with children will not have to pay the high income child benefit charge, whereas a family with children with one person earning over £60,000 will have to pay it.”⁸ Speaking for the Opposition on this occasion Cathy Jamieson made the same point: “some of the changes being proposed [in the Budget] might be small steps forward, but they do not change the fundamental unfairness ... A couple with children where one earner is on £60,000 and another is on £10,000 will lose all their benefit, whereas a dual-earner couple on £50,000 each will potentially keep it all.”⁹

In response to these concerns Treasury Minister David Gauke said, “For those who are in the tax credit system, we currently make an assessment of household income. If a person is not in the tax credit system, we do not make an assessment of household income and so have information only on individual income. Were we to try to do this on the basis of household income ... we would have to accept that that would involve putting everybody claiming child benefit, all 8 million, into the tax credit system which would be a substantial administrative burden on the state and on those individuals.”¹⁰

The issue was the subject of a Westminster Hall debate in May 2012; on this occasion Treasury Minister David Gauke set out the Government’s case:

We propose to withdraw the financial gain from child benefit from those families where one partner has income of more than £60,000, and reduce the gains where one partner has income of more than £50,000. By applying a tax charge on those on high incomes using existing processes, we are doing it in the most efficient and pragmatic way. The charge will apply to an individual in receipt of child benefit, or their partner, where they are married or in a civil partnership, or living as if they are married or in a civil partnership. I hope that that answers the point about what a household is. It uses the current definitions of partners within social security legislation, and means that other adults living within the household do not affect the liability.

⁶ *op.cit.* para 113

⁷ [HC Deb 19 April 2012 cc 602-629](#)

⁸ *op.cit.* cc604-5

⁹ *op.cit.* cc609-10

¹⁰ *op.cit.* c616. [In the event the House divided](#), and approved of these provisions by 289 votes to 234.

It will remain the case that two earners just below the threshold will not have their child benefit withdrawn. To introduce a new means test for family income would be complicated, costly and confusing—the very things that we wish to avoid. We would need to assess all of the 8 million households receiving child benefit, and we would need to do so each year.¹¹

The Minister went on to give details of how the HICBC would be collected:

Let me turn to the mechanics behind the changes that we are introducing.

First, the changes will not affect those receiving child benefit who have income under £50,000, or whose partner does. That will mean that 85% of families receiving child benefit need not be troubled by the changes—85% means more than 7 million families. Where an individual or their partner has income of more than £50,000, the charge will be tapered depending on their income. The equivalent of 1% of the child benefit award will be charged for every £100 increase over £50,000 in adjusted net income. That means that child benefit is fully withdrawn at an income of £60,000. Furthermore, the thresholds between which the taper operates are not dependent on the number of children.

Those affected—around 1.2 million taxpayers—will declare their liability through the income tax self-assessment process, though just over half are already within the SA system. Although we recognise that the charge will bring some taxpayers into self-assessment for the first time, using self-assessment means that the tax can be calculated on the basis of the amount of child benefit received, and the taxpayer's actual income.

That is preferable to including an estimate in a taxpayer's PAYE code, only to discover an underpayment or overpayment of tax at the year-end as actual income proves to be different from estimated income. Even as small a change as £100 will change the amount of tax due for an individual on the taper. As a third of taxpayers affected will benefit from a reduced liability as they are on the taper, using PAYE rather than self-assessment would generate large numbers of under and overpayments.

The changes will take effect from 7 January 2013, with individuals affected including information relating to the charge for the first time in their self-assessment returns for the tax year 2012/13. The first payments of the charge will be due by 31 January 2014 if a taxpayer chooses to pay in a lump sum. Otherwise, the amount due for 2012/13 will be collected through the tax code in 2014/15.¹²

¹¹ [HC Deb 22 May 2012 c21WH](#)

¹² [HC Deb 22 May 2012 cc21-2WH](#)

2.2

The operation of the £50,000 threshold

More recently there has been criticism of the fact that the £50,000 threshold has not been indexed in line with inflation.

In January 2019 the Institute for Fiscal Studies published a short brief, which noted that as a consequence of freezing the threshold, “around 36%, or 370,000, more families will lose some Child Benefit in 2019–20 than in 2013–14. Continuing the freeze would mean that, from April 2021, significant numbers of families who do not contain a higher rate income taxpayer will begin to lose some of their Child Benefit for the first time. Moreover, by 2022 more than one in five families with children are set to lose at least some of their Child Benefit - up from one in eight when the policy was introduced.”¹³

However, the Government’s consistent position has been that the HICBC remains the most effective way to cap child benefit, as set out in a written answer in October 2018:

Laura Smith : To ask the Chancellor of the Exchequer, whether the Government plans to abolish the high income child benefit tax charge.

Elizabeth Truss : The High Income Child Benefit Charge came into force in January 2013 to help reduce the deficit and target support at those who need it most. It is a tax charge that applies to anyone with an adjusted net income over £50,000 who claims Child Benefit or whose partner claims it. The charge is tapered, increasing gradually for taxpayers with incomes between £50,000 and £60,000.

For families where an individual has income over £60,000, the Child Benefit recipient can choose to either keep receiving Child Benefit payments and the highest earner pays the charge, or opt out of Child Benefit payments and not have to pay the charge. Around 1.1 million families are in scope of the charge, and over 0.5 million have opted out of receiving Child Benefit payments. The Government has no plans to abolish the High Income Child Benefit Charge, but keeps all policies under review.¹⁴

In answer to a subsequent PQ in July 2019 the Minister said, “if total household income was taken into account, information on the incomes of everyone in each of the eight million households receiving Child Benefit would need to be collected and would effectively introduce a new means test. The Government’s approach withdraws Child Benefit from those on higher

¹³ Carl Emmerson, Robert Joyce and Tom Waters, [Stealthy changes mean that soon one in five families with children will be losing some Child Benefit](#), Institute for Fiscal Studies, 7 January 2019. See also, Adam Corlett, [CB40: Happy 40th birthday to child benefit! But will it last another twenty?](#), Resolution Foundation, 2 April 2019.

¹⁴ [PQ176607, 12 October 2018](#)

incomes, whilst having no impact on the majority of claimants.”¹⁵ More recently in answer to a PQ in March 2021 the Financial Secretary Jesse Norman said the following:

As with all elements of tax policy, the Government keeps the High Income Child Benefit Charge (HICBC) threshold under review. At present, the adjusted net income threshold of £50,000 only affects a small minority of those with comparatively high incomes. The Government therefore believes that the current threshold for HICBC remains the best option.¹⁶

¹⁵ [PQ277264, 18 July 2019](#)

¹⁶ [PQ155212](#), 1 March 2021. Prior to this see, [PQ66085, 7 July 2020](#)

3 ‘Failure to notify’ penalties (2017-2021)

3.1 Introduction

At the time of the 2012 Budget HMRC estimated that 500,000 more people would need to complete self assessment tax returns as a consequence of the HICBC.¹⁷ It was widely reported that a significant number of parents were unaware of this new requirement.¹⁸

The fact that a significant number of taxpayers may have failed to notify HMRC of their liability to the new charge, and the consequences of their having done so, was raised in a series of linked PQs in October 2017 (**emphasis added**):

Lesley Laird : To ask Mr Chancellor of the Exchequer, what the average (a) annual and (b) total amount people have been required to repay after failing to register for a self-assessment for the high income child benefit charge.

Mel Stride : The High Income Child Benefit Charge (HICBC) was introduced in January 2013. HM Revenue and Customs (HMRC) took considerable steps to raise awareness and ran extensive communications campaigns when the tax charge was introduced. This included writing to around 800,000 families affected by the charge when it was launched. HMRC also ran a high profile advertising and media campaign over summer 2013 to prompt those who did not stop their payments to register for Self-Assessment in order to declare and pay the charge. HMRC continues to make information on the HICBC widely available, and include it in the packs for new parents telling them how to claim Child Benefit. HMRC also give guidance online on Gov.uk.

Individuals who are not in Self-Assessment and are liable for the charge should tell HMRC they are chargeable within 6 months of the end of the tax year. If they do not notify HMRC within 6 months, they should contact HMRC at the earliest opportunity. A penalty may be charged where someone fails to notify HMRC on time. For those who do not, HMRC uses existing compliance processes and penalties.

¹⁷ HMRC, [Child Benefit: Income Tax Charge for Those on Higher Incomes](#), 21 March 2012

¹⁸ “Over 100,000 parents face child benefits tax fine”, Daily Telegraph, 23 January 2014

The rules on interest charged for late payment of the HICBC are the same as those applied to other taxes and duties. Interest is charged from the due and payable date of the tax. HMRC charges interest on penalties for failure to notify liability to tax which are being appealed against. HMRC charges interest where the penalty is paid late and will pay interest to the individual if the penalty is reduced or withdrawn.

HMRC Call Centre staff have been provided with guidance on HICBC since HICBC was introduced. All call centre guidance is reviewed and updated regularly. HMRC do not have data on the number of taxpayers who have failed to tell HMRC about their liability for HICBC, or the total number who have been required to register for SA each year since the charge was introduced.¹⁹

HMRC's guidance on 'Failure to Notify' penalties explains that a penalty is not charged "if all of the following apply":

- you have a reasonable excuse for the failure
- the failure was not deliberate
- you told us without unreasonable delay after your reasonable excuse ended. ...

A reasonable excuse is something that stopped you from meeting a tax obligation on time which you took reasonable care to meet. It might be due to circumstances outside your control or a combination of events. Once the reasonable excuse has ended, you must put things right without any unnecessary delay.

Whether you have a reasonable excuse depends upon the particular circumstances in which the failure occurred and your particular circumstances and abilities. This may mean that what is a reasonable excuse for one person may not be a reasonable excuse for someone else. If you think you have a reasonable excuse please tell us. If we accept that you have a reasonable excuse, we will not charge you a penalty.

If there was anything about your health or personal circumstances that made it difficult for you to notify us of your liability to tax, please tell the officer that is carrying out the check. Telling them will mean that they can take this into account when considering whether you had a reasonable excuse.²⁰

HMRC's [Compliance Handbook](#) provides further details on 'Failure to Notify' penalties (from [para 7000](#)), and what a 'reasonable excuse' constitutes (from

¹⁹ [PQ 108289, 25 October 2017](#)

²⁰ HMRC, [Compliance checks: penalties for failure to notify – Factsheet CC/FS11](#), July 2021 p2. See also, LITRG, [Tax penalties](#), updated 19 October 2021

[para CH16000](#)). An extended extract from the latter section is reproduced over the next two pages:

Reasonable excuse: what ‘reasonable excuse’ means

‘Reasonable excuse’ has its ordinary meaning and is not specific to HMRC penalties. Tax law does not provide a comprehensive list of circumstances which will or will not be a reasonable excuse.

There is no statutory definition of reasonable excuse, which “is a matter to be considered in the light of all circumstances of the particular case” (*Rowland v HMRC* [2006] STC (SCD) 536 at paragraph 18). For example, in *Anthony Wood, trading as Propaye v HMRC* (2011 UK FTT 136 TC 001010), the First-tier Tribunal applied this definition in their decision released on 23 February 2011.

Whether a person has a reasonable excuse depends on the circumstances in which the failure to meet the obligation occurred, as well as the circumstances and abilities of the person who has failed in their tax obligations. What is a reasonable excuse for one person may not be a reasonable excuse for another person.

When considering this you must look at what a reasonable person with the same attributes and abilities who wanted to comply with their tax obligations would have done in the same circumstances and determine if the actions of the person met that standard. If there is a reasonable excuse it must exist throughout the period of default.

How HMRC interprets ‘Reasonable Excuse’

HMRC consider reasonable excuse to be something that stops a person from meeting a tax obligation despite them having taken reasonable care to meet that obligation. It is necessary to consider what a reasonable person with the same experience and attributes as the taxpayer, who wanted to meet their obligation, would have done in the same circumstances and decide if the action of the person met that standard, as outlined by Judge Medd in *The Clean Car Company* (LON/90/138X)

“In reaching a conclusion the first question that arises is, can the fact that the taxpayer honestly and genuinely believed that what he did was in accordance with his duty in relation to claiming input tax, by itself provide him with a reasonable excuse. In my view it cannot. It has been said before in cases arising from default surcharges that the test of whether or not there is a reasonable excuse is an objective one. In my judgment it is an objective test in this sense.

One must ask oneself: was what the taxpayer did a reasonable thing for a responsible trader conscious of and intending to comply with his obligations regarding tax, but having the experience and other relevant attributes of the taxpayer and placed in the situation that

the taxpayer found himself at the relevant time, a reasonable thing to do? Put in another way which does not I think alter the sense of the question; was what the taxpayer did not an unreasonable thing for a trader of the sort I have envisaged, in the position that the taxpayer found himself, to do?

It seems to me that Parliament in passing this legislation must have intended that the question of whether a particular trader had a reasonable excuse should be judged by the standards of reasonableness which one would expect to be exhibited by a taxpayer, but who in other respects shared such attributes of the particular appellant as the Tribunal considered relevant to the situation being considered.

Thus, though such a taxpayer would give a reasonable priority to complying with his duties in regard to tax and would conscientiously seek to ensure that his returns were accurate and made timeously, his age and experience, his health or the incidence of some particular difficulty or misfortune and, doubtless, many other facts, may all have a bearing on whether, in acting as he did, he acted reasonably and so had a reasonable excuse.”

The Upper Tribunal endorsed this approach in *Marlow Rowing Club v Revenue & Customs*, [2020] UKUT 20 (TCC) ...

This means that all relevant facts must be considered together to make an overall assessment of each case. ...

What is or is not a reasonable excuse is personal to the individual’s abilities and circumstances. Those abilities and circumstances may mean that what is a reasonable excuse for one person may not be a reasonable excuse for another. For example, there are some situations which we will not normally accept, on their own, as a reasonable excuse, such as:

- pressure of work
- lack of information
- lack of a reminder from HMRC

Statute identifies two specific situations that are not a reasonable excuse, unless certain conditions are met. These are:

- insufficiency of funds, and
- reliance on a third person, but follow the guidance in [CH160700](#).²¹

²¹ HMRC, Compliance Handbook, para [CH160200](#) & [CH160800](#) ret’d November 2021

3.2

Number of penalties issued

The Government has provided figures for the numbers of taxpayers paying the HICBC since its introduction, which show a fall from 360,000 in 2012/13 to 279,000 in 2017/18.²² However, in the past HMRC has not published estimates for the number of taxpayers who had failed to pay the charge on time:²³

Baroness Lister of Burtersett : To ask Her Majesty's Government, further to the Written Answer by Lord Bates on 6 March (HL13927), in how many cases there has been a failure by the claimant to pay the High Income Child Benefit Charge which the claimant had then been required to repay.

Lord Bates : High Income Child Benefit Charge (HICBC) is part of the Self-Assessment (SA) process and is reflected in each individual's overall SA tax charge. This HICBC charge is included in the individual's annual SA tax return and, where HICBC is recoverable, will form part of the overall tax due by that person. It is therefore not possible to distinguish HICBC charges from other SA charges that may be included for that tax year. For SA overall, 8% of people did not pay by the due date, meaning the vast majority (92%) paid on time.

Nevertheless there have continued to be concerns about the numbers of parents that HMRC have had to notify of their failure to pay the charge:

Laura Smith : To ask Mr Chancellor of the Exchequer, what assessment he has made of the reasons for the time taken for HMRC to notify people affected by the high-income child benefit charge of the money to be repaid.

Elizabeth Truss : The High Income Child Benefit Charge (HICBC) was introduced to ensure that support is targeted at those who need it most. It applies to anyone with an income over £50,000 who claims Child Benefit, or whose partner claims Child Benefit. The tax charge increases gradually for taxpayers with incomes between £50,000 and £60,000. Families in which at least one taxpayer has an income over £60,000 can choose not to receive the Child Benefit, which means that they do not have to pay the tax charge at all.

Those who continue to receive Child Benefit must register for Self Assessment to declare their Child Benefit payments and pay the tax charge through their tax return. HM Revenue and Customs (HMRC) encourages customers to contact it straightaway to pay the tax charge and the vast majority do so. Information on HICBC widely available, including in packs for new parents telling them how to

²² [PQ HL13927, 6 March 2019](#)

²³ [PQ HL14460, 26 March 2019](#)

claim Child Benefit, as well as on the Child Benefit claim form itself. Guidance is also available online on gov.uk. HMRC has a duty to apply tax legislation fairly and in an even-handed way, and takes every opportunity to make individuals aware of their responsibilities, including notifying of any taxes due.²⁴

3.3 Review of cases where penalties issued

In November 2018 HMRC announced that it was reviewing cases where a ‘Failure to Notify’ penalty was issued for the period 2013/14-2015/16, to customers who had not registered for the HICBC, and that it would issue penalty refunds if it found the customer had a reasonable excuse for not meeting their tax obligation:

HMRC has announced that it is reviewing cases where a ‘Failure to Notify’ penalty was issued for the tax years 2013 to 2014, 2014 to 2015, and 2015 to 2016, to customers who did not register for the High Income Child Benefit Charge.

The department will review cases for these years and issue penalty refunds if it finds the customer had a reasonable excuse for not meeting their tax obligation. A reasonable excuse is something that stopped someone from meeting a tax obligation which they took appropriate care to meet. Decisions on what constitutes a reasonable excuse are based on an objective assessment of individual circumstances.

Normally customers have to explain why they have a reasonable excuse, however following feedback HMRC is proactively reviewing these cases. This will include families who made a claim for Child Benefit before High Income Child Benefit Charge was introduced, and where one partner’s income subsequently increased to over £50,000 in or after the 2013 to 2014 tax year. This is because the higher earner in a household who pays the charge may not be the same person claiming Child Benefit on behalf of the household.

The review will not include anyone who received communications from HMRC about High Income Child Benefit Charge or claimed Child Benefit after the charge was introduced in 2012 to 2013.

Alongside this, HMRC is already writing to customers who might be liable to High Income Child Benefit Charge in 2016 to 2017 and 2017 to

²⁴ [PQ167778, 10 September 2018](#). See also, “Mother hit with £4,500 tax charge for child benefit”, Guardian, 9 February 2019

2018, to help them meet their tax obligations in time to avoid paying a penalty.²⁵

In June 2019 HMRC published details of the outcome of this review:²⁶

HMRC has completed its review into HICBC cases where a ‘Failure to Notify’ penalty was issued. HMRC took the decision to review cases where a ‘Failure to Notify’ penalty was issued for the tax years 2013/14, 2014/15, and 2015/16, to customers who had not registered for the HICBC. HMRC listened to customers and stakeholders, and changed its view of when some customers may have a reasonable excuse for failing to notify liability to HICBC. A reasonable excuse is something that stopped someone from meeting a tax obligation that they took appropriate care to meet.

Refunds

Refunds have been sent to families that claimed Child Benefit before HICBC was introduced, and where one partner’s income subsequently increased to over £50,000, and to families where the liability to HICBC arose in the 2013/14, 2014/15, or 2015/16 tax years as a result of the formation of a new partnership.

HMRC reviewed 35,000 cases where a ‘Failure to Notify’ penalty had been charged and cancelled the penalties of over 6,000 customers who had a reasonable excuse for not notifying their liability for the tax years 2013/14, 2014/15 and 2015/16. Refunds were made in 4,885 cases and totalled £1.8 million.

All customers entitled to a refund will now have received one and do not need to contact HMRC.

Informing customers

HMRC checks each year and where all the relevant information is held, writes to customers explaining what they need to do to pay HICBC and avoid penalties. HMRC is also improving Child Benefit forms, guidance and communications, setting out options to pay the charge or to claim Child Benefit but elect not to receive payments. In this way the claiming parent can continue to receive non-monetary benefits, such as National Insurance credits, that may preserve entitlement to the state pension, without having to pay HICBC.

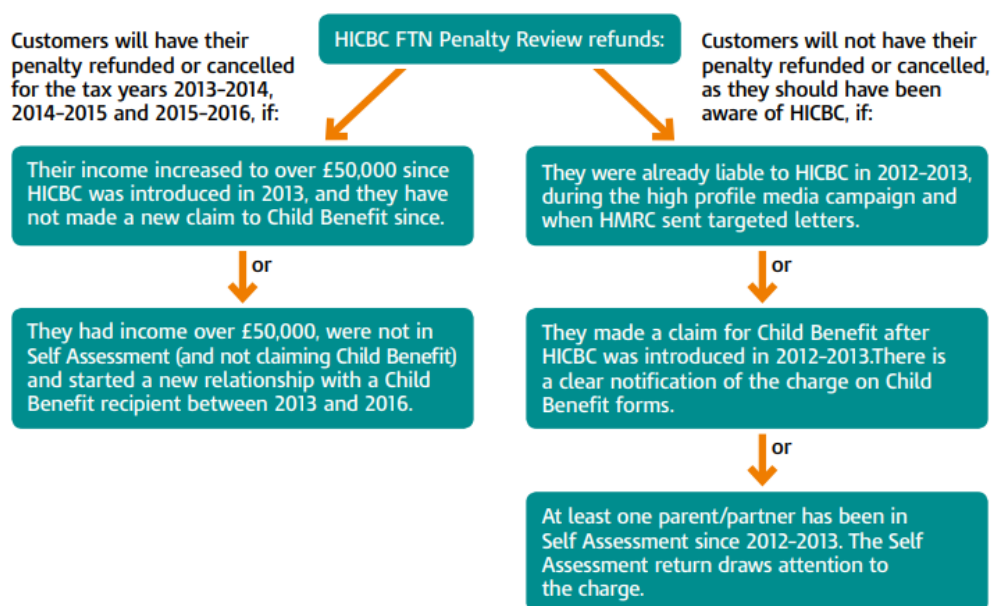
To find out more, see [HICBC customer flowchart](#) [copied below]

High Income Child Benefit Charge (HICBC) penalty refund

²⁵ HMRC press notice, [HMRC to review HICBC penalty cases](#), 1 November 2018. See also, LITRG press notice, [High Income Child Benefit Charge – HMRC to review penalties, 8 November 2018](#); “HMRC to refund child benefit fines for higher earners”, Financial Times, 1 November 2018

²⁶ HMRC press notice, [Review for HICBC penalty cases concludes](#), 6 June 2019

This explains circumstances where we issued cancellations and refunds of ‘Failure to Notify’ (FTN) penalties for the High Income Child Benefit Charge (HICBC). These refunds were issued for the tax years 2013 to 2014, 2014 to 2015 and 2015 to 2016. Penalties have been cancelled and refunded where families made their claim for Child Benefit before HICBC was introduced, and where one partner’s income subsequently increased to over £50,000 in or after the 2013 to 2014 tax year.



Alongside this, HMRC published three research reports related to Child Benefit and the HICBC ...

- [Child Benefit Customer Survey: HMRC Research Report 470](#), ... which explored customers’ views, experience and overall levels of satisfaction with the Child Benefit service, and the importance of Child Benefit to customers and how they used the payments.
- [Customer research into the Child Benefit claim form: HMRC Research Report 532](#) ... which looked at the impact of HMRC’s redesign of this claim form, “to communicate key information more effectively about the HICBC ... [and] to better communicate information about the non-financial benefits of claiming Child Benefit.”
- [High Income Child Benefit Charge: awareness, understanding and decision-making processes: HMRC Research Report 533](#)...to explore “Child Benefit claimants’ understanding of the HICBC, benefits of claiming and reasons why some people don’t claim.”

... and figures on the numbers of taxpayers paying the HICBC, as well as the numbers who have opted out of receiving Child Benefit, and the numbers who have been penalised, either for not registering with HMRC or initially paying the wrong amount.

HMRC published updated figures in September 2020; an extract from this FOI release is reproduced below: ²⁷

Where an individual is currently receiving Child Benefit they can either:

- carry on getting Child Benefit payments and pay any charge at the end of each tax year via Self Assessment,
- [or] choose not to receive Child Benefit payments and not have to pay the tax charge - sometimes known as 'opting out'.

The tables below show the numbers of customers who continued to receive Child Benefit and had a corresponding tax charge liability in relation to the years shown. This may differ from when the charge was actually paid. Numbers are based on the most recent information and will increase in response to late tax returns or compliance activity.

The tables also show the number who opted out of receiving Child Benefit on 31 August of each year...

	2013-14	2014-15	2015-16	2016-17	2017-18	2018-2019	2019-20
Number of people paying the High Income Child Benefit Charge	366,000	319,000	297,000	294,000	355,000	354,000	-

Information for 2019 to 2020 is not available at this time.

	2013	2014	2015	2016	2017	2018	2019
Families that have opted out of receiving Child Benefit payment at August of each year	397,000	476,000	492,000	504,000	516,000	545,000	582,000

Penalties for not paying the charge

HMRC check taxpayer records each year and, where they hold all the relevant information, write to customers who may need to register for Self Assessment to pay HICBC.

Since the introduction of HICBC, HMRC have also carried out compliance checks on those who either did not register for Self Assessment to pay the charge or paid the incorrect amount on their Self Assessment tax return.

The below table provides a breakdown of the number of compliance checks by the tax year they were opened.

²⁷ HMRC, [High Income Child Benefit Charge: FOI release](#), updated 17 September 2020

	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
Customers who have not registered for Self Assessment	0	22	8,815	1,811	4,090	39,158	41,257	61,881
Customers who have returned the incorrect amount	0	<5	12,465	36,394	33,804	25,326	22,334	63,713

Of the customers contacted, the following table sets out the percentage of those who agreed that tax was owing.

	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
Compliance checks resulting in HICBC owing (%)	-	92%	80%	87%	89%	92%	95%	96%

HMRC may charge penalties if customers fail to notify them of their liability to HICBC or send an inaccurate return which results in HICBC being unpaid.

The table below provides a breakdown of the penalties issued by the tax year they relate to:

	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
Number of penalties	16,013	30,771	44,559	44,917	16,945	15,319	314	-
Value of penalties	£611,679	£3,999,400	£5,755,064	£5,074,325	£618,237	£2,846,714	2,115	-

The time limit to notify liability to income tax for 2019 to 2020 is 5 October 2020. Penalties for failure to notify liability relating to 2019 to 2020 will be updated after 5 April 2021.

In December 2019 the LITRG issued a press notice underlining the importance for new parents to be aware of the operation of the HICBC:

Despite an HMRC marketing campaign when the HICBC was first introduced, many of those affected were unaware of [the obligation to file a return] ... and as a result have received penalties for their ‘failure to notify’.

HMRC recently reviewed these penalties for tax years 2013/14 to 2015/16 inclusive, and in recognition of the fact that those not in scope of the HICBC at the time of its introduction may not have taken notice of the marketing campaign, in June 2019 HMRC automatically and retrospectively granted a ‘reasonable excuse’ for the failure to notify in two specific cases: those where child benefit was claimed before the introduction of the HICBC and one partner’s income subsequently rose to over £50,000, and those where a HICBC arose as a result of the formation of a new partnership. This meant that no penalty applied.

For tax years 2016/17 onwards, HMRC have been writing directly to those individuals it believes are affected by the HICBC and therefore it is no longer accepting ignorance of the charge as a reasonable excuse. If you come forward voluntarily, penalties are likely to be lower than if HMRC spot the failure first.²⁸

3.4 Recent case law - backdated assessments

In June 2020 HMRC lost a case before the First Tier Tribunal that involved the HICBC – specifically, its powers to assess the charge for past years in a case where the revenue authority had not issued the taxpayer with a notice to file a Self Assessment tax return.²⁹ In a commentary on the case the Low Incomes Tax Reform Group (LITRG) summarised the Tribunal’s decision ...

If you are liable to the HICBC, three things are supposed to happen:

1. You are legally required to notify HMRC of your chargeability to income tax.
2. In response to such a notification, HMRC will issue you a notice to file a Self Assessment tax return.
3. On that tax return, you self-assess your liability to the HICBC. This creates a legally enforceable income tax debt.

In cases where both steps 1 and 2 haven’t happened, HMRC have other mechanisms to create the debt (in other words, to assess the tax).

In *Wilkes* [2020] TC 07740, HMRC attempted to assess the high income child benefit charge under the ‘discovery assessment’ provisions (section 29 of the Taxes Management Act 1970), which can be used if HMRC discover:

- a) that any income which ought to have been assessed to income tax, or chargeable gains which ought to have been assessed to capital gains tax, have not been assessed, or
- b) that an assessment to tax is or has become insufficient, or
- c) that any relief that has been given is or has become excessive.

However, it was found that there was no such ‘income’ which ought to have been assessed which was not assessed. The child benefit itself is not taxable, and the high income child benefit charge is not

²⁸ LITRG, [The High Income Child Benefit Charge – what do I need to know?](#), 11 December 2019

²⁹ [Wilkes \[2020\] TC 07740](#), 15 June 2020

income, it is a charge to income tax. The assessment, which was made under paragraph (a), was therefore held to be invalid.

The result was that the taxpayer's appeal against the assessment was allowed and the backdated HICBC for tax years 2014/15 to 2016/17 – which totalled £4,244 – was not payable.

... before underlining that this decision did not guarantee that someone who had received a similar assessment would have it cancelled:

Unfortunately for those concerned, it does not mean that everyone who has received similar assessments from HMRC will have them cancelled. FTT decisions are not binding on either HMRC or on other judgements made at the first tier. Also, HMRC are likely to appeal to the Upper Tribunal, where the FTT decision may be overruled.³⁰

(In its detailed guidance on the HICBC, Revenue Benefits note “the decision [in *Wilkes*] is not binding on HMRC or on other judgments at the first-tier tribunal: for example, see [Haslam v HMRC \[2020\] UKFTT 304 \(TC\)](#) in which the judge decided that a “rectifying interpretation” of the legislation was justified such that a discovery assessment could be used to assess the charge.”³¹)

This issue does not appear to have been raised in the House, although there has continued to be coverage in the technical press of tribunal cases where taxpayers have failed to notify HMRC of their liability to the HICBC and the tribunal has judged whether they had a reasonable excuse for this or not.

In a recent tribunal case ([J Hayden TC 08037](#)), in which the judge held that the taxpayer had had a reasonable excuse in failing to notify for 2014/15 and 2015/16, the defendant pointed out that they had not received notification from HMRC (the SA252 letter) when their first child was born, and had been quite unaware of HMRC's initial campaign to alert parents to their potential responsibility to file a return. In their decision the judge acknowledged that HMRC rightly recognised that self assessment was possible only when taxpayers were aware of their obligations, but went on to add “The idea that taxpayers whose only source of income is employment income, the tax on which is administered by HMRC through their employer and who receive benefits such as child benefit, that is also administered by HMRC, are likely to be monitoring HMRC's website to see if there is a new obligation to file a return is fanciful. That is not the real world.”³²

³⁰ LITRG press notice, [HMRC told high income child benefit charge assessments not valid](#), 14 July 2020. In its press notice the charity went on to discuss someone's options if they are asked by HMRC to pay the HICBC for previous years.

³¹ Revenue Benefits, [Child Benefit and Guardian's Allowance: High Income Child Benefit Charge](#), 20 January 2021

³² See, “High income child benefit charge successes”, *Taxation*, 12 October 2020; “Briefing — Private client review for October”, *Tax Journal*, 16 October 2020; “High income child benefit charge and reasonable excuse”, *Taxation*, 10 November 2020; “Lack of Lack of clarity in high income child benefit charge form”, *Taxation*, 19 April 2021.

Turning back to the *Wilkes* case, HMRC appealed the First Tier Tribunal decision, but this was upheld by the Upper Tribunal on 30 June.³³ Reporting this judgement the Times quoted Guy Sterling (Moore Kingston Smith) as saying “The tribunal decision means the law does not allow for the discovery rules to be used in this way. If other taxpayers have paid the charge under a discovery assessment, they should be able to ask HMRC to repay it.” The paper also quoted HMRC who confirmed “officials were considering the ruling. “All the taxpayers who have been assessed are still liable to the high-income child benefit charge, and nothing in the tribunal’s judgment calls that into question,” a spokesman said.”³⁴

The LITRG has published a second briefing on the implications of the case, which summarised what the Upper Tribunal decision means ...

Unlike the First-tier Tribunal decision, a decision from the Upper Tribunal is binding on HMRC and on other First-tier Tribunals. This means that HMRC can no longer use discovery assessments to try and collect the HICBC in similar circumstances. It also means that a First-tier Tribunal judge must decide a case in a way which is consistent with that decision.

At this stage, it is not clear how HMRC intend to respond to the Upper Tribunal decision. They have until 30 July 2021 to ask for permission to appeal, which if granted, will mean that the case will be heard by the Court of Appeal. The Court of Appeal could either agree with the Upper Tribunal (and First-tier Tribunal) decision, or come to a different conclusion.

... why HMRC used a discovery assessment ...

HMRC must ‘assess’, or the taxpayer must ‘self assess’, a tax liability for it to be legally enforceable.

A discovery assessment is commonly used by HMRC to collect tax on untaxed income. But HMRC have other ways of collecting tax which is owed. For example, HMRC can issue a notice to file a [Self Assessment](#) tax return, in response to which the taxpayer is legally required to make their own Self Assessment. However, this involves time and cost for both HMRC and the taxpayer.

From 2016/17, HMRC can also issue [Simple Assessments](#).

There are different time limits which apply to each of these mechanisms. For a discovery assessment, if a taxpayer has failed to notify HMRC of their liability to tax, HMRC can assess going back 20

³³ [The Commissioners for HM Revenue and Customs v Jason Wilkes](#) [2021] UKUT 0150 (TCC), 30 June 2021. See also, “High income child benefit charge was not income”, Taxation, 8 July 2021.

³⁴ “Child benefit tax grab on middle earners unravels”, Times, 9 July 2021. See also, “[Child benefit: HMRC faces calls to refund thousands of taxpayers](#)”, Guardian, 10 July 2021; “Child benefit tax ruling sparks widespread concern”, Financial Times, 16 July 2021.

years (though for tax years prior to 2009/10, there must be negligent conduct). The discovery assessment is therefore a powerful tool which can be used for all the tax years which the HICBC has been in existence (from 2012/13 onwards).

For Self Assessments, HMRC must issue the taxpayer with a notice to file within four years after the end of the relevant tax year.

Simple Assessments cannot be used for tax years prior to 2016/17, since it was only introduced from that tax year. HMRC have also stated that as a matter of policy they currently only use Simple Assessments for [certain groups of taxpayers](#).

Therefore, for tax years 2015/16 and earlier, HMRC's only mechanism to assess the tax from the HICBC would have been via a discovery assessment.

... and the options for someone who has already received a discovery assessment for the HICBC:

If you have already received a discovery assessment from HMRC, you should consider whether you wish to [appeal](#) it (even if you have already paid the tax). HMRC may not refund the tax paid automatically.

Our understanding is that, as a public law principle, acts by public bodies (such as HMRC) are deemed to be valid unless they are found to be invalid. The decision in *Wilkes* only applies to the discovery assessments in *Wilkes*. Previous discovery assessments made by HMRC therefore continue to be valid unless they are appealed and found to be invalid by a court.

You should note that there are time limits to make an appeal. Normally, a taxpayer only has 30 days from the date of a 'decision' (in this case, this means the discovery assessment) to appeal. But note that HMRC are allowing an additional three months for appeals due to the coronavirus pandemic.

If you are out of time to make an appeal, then a late appeal can still be made but it is at the discretion of HMRC or the courts. The law states that HMRC must accept a late appeal (in writing) if you have a unreasonable delay after the excuse has ceased. If HMRC do not accept a late appeal, then you can apply to the tribunal to ask if they will consider it.

It is not clear whether late appeals will be accepted by HMRC or the tribunal in this case. If you decide to make an appeal but you delay doing so, and so either become late (or later), then you might jeopardise your chances of the late appeal being accepted. On the other hand, you may prefer to wait to see whether HMRC will appeal the Upper Tribunal decision or take action themselves to identify

those affected and issue refunds. You may wish to seek independent [advice](#) on what to do.

If you decide to appeal, then you should bear in mind that depending on the circumstances HMRC have other mechanisms to collect the tax (if you have not already paid it), in most cases for at least back to 2016/17.

Therefore, even if you are successful in appealing the discovery assessment, then HMRC may replace those discovery assessments with Simple Assessments (or issue Self Assessment tax returns) for the tax years they are in time to do so.³⁵

In a detailed commentary on the case, Marika Lemos (Devereux Chambers) and James Austen (Collyer Bristow) concluded, “many taxpayers in a similar position to Mr Wilkes will be hoping that HMRC will voluntarily approach them to offer refunds”:

However, HMRC may regard this as contrary to its primary duty to collect all the tax that is due. Much may depend on how the tribunals will approach the question of extending time limits for appealing assessment. One hopes that HMRC is working with Treasury officials behind the scenes to improve the design and collection of the HICBC. After all, it is in nobody’s interest for taxes to be badly designed and difficult to collect.³⁶

3.5 Autumn 2021 Budget and Finance (No.2) Bill 2021-22

The Chancellor presented the Autumn Budget and Spending Review 2021 on 27 October.³⁷ HM Treasury’s [Overview of Tax Legislation and Rates](#) document, which is published alongside the Budget report, provides details of each tax policy measure announced in the Budget, and of previously announced measures that will be included in the forthcoming Finance Bill. This noted that the Bill would include provision regarding HMRC’s use of discovery assessments:

The government will legislate in Finance Bill 2021-22 to put beyond doubt that HMRC may use its “discovery” assessing powers to recover certain tax charges including the High Income Child Benefit Charge (HICBC), those relating to Gift Aid Donations and a number of pension charges. This measure will apply prospectively and retrospectively to provide certainty that HMRC may use section 29(1)(a) of the Taxes Management Act 1970 as designed and

³⁵ LITRG press notice, [High income child benefit charge: what the Wilkes decision means](#), 19 July 2021

³⁶ “Analysis: The high income child benefit charge post-Wilkes”, Tax Journal, 30 July 2021

³⁷ [HC Deb 27 October 2021 cc273-287](#)

intended, following recent challenges before the courts that previously issued assessments were invalid. The measure does not create any new or additional obligations or liabilities for taxpayers. It clarifies the legislation to ensure the rules work as designed and intended. The measure also makes some minor technical changes to ensure the requirement for an individual to notify chargeability to income tax works as intended.³⁸

Further details were provided in HMRC's impact assessment of this measure:

Where individuals fail to report and pay certain tax charges to HMRC, existing tax legislation provides that HMRC may issue "discovery" assessments to recover the tax owed. This measure does not change this policy but makes a technical clarification to clarify the law to provide legal certainty and maintain the status quo.

This part of the measure is introduced with retrospective effect for HICBC, Gift Aid and the pensions charges. It does not introduce any additional obligations or liabilities for customers. With prospective effect, the measure provides that discovery assessments may be used to recover any income tax or capital gains tax that ought to have been assessed but has not been assessed.

Additionally, the measure also confirms that individuals chargeable to these income tax charges need to notify HMRC. This part of the measure is introduced with prospective effect.³⁹

This impact assessment also discusses the background to this measure specifically in relation to the HICBC ...

In a recent case the Upper Tribunal found that HMRC did not have the power to recover an individual's HICBC by issuing a discovery assessment under Section 29(1)(a) of the Taxes Management Act 1970 where that individual had failed to report their HICBC to HMRC and failed to file a tax return for the relevant tax year. The tribunal accepted that the individual was still liable to HICBC, but concluded that the assessments were not validly raised.

HMRC does not believe the judgment of the Upper Tribunal was correct and is appealing the decision to the Court of Appeal. In advance of that appeal, this measure will provide certainty that HMRC may recover HICBC through the issue of a discovery assessment.

The measure will ensure that individuals who do not report their HICBC liability to HMRC will still have to pay, and they will not have

³⁸ HMT, [Overview of Tax Legislation & Rates](#), October 2021 para 1.44. As this document notes, this measure was not discussed in the Budget report (see Table 2).

³⁹ HMRC, [Discovery assessments](#), 27 October 2021

an unfair advantage over compliant individuals who report their HICBC to HMRC.

... before setting out the current law in each of the relevant areas ...

Current law

Section 29(1)(a) of the Taxes Management Act 1970 provides that HMRC may issue discovery assessments.

Section 7 of the Taxes Management Act 1970 requires individuals to notify HMRC when they are chargeable to income tax or capital gains tax. Section 30 of the Income Tax Act 2007 brings certain tax charges into the calculation of income tax liability.

HICBC : Section 681B of the Income Tax (Earnings and Pensions) Act 2003 provides the rules relating to liability for HICBC.

Pension Charges : The various pension charges are set out in the following legislation: Sections 205, 206, 208, 209, 214, 227 & 244A of the Finance Act 2004; Registered Pension Schemes (Accounting and Assessment) Regulations 2005; Schedule 34 to the Finance Act 2004.

Gift Aid : Sections 424 and 520 of the Income Tax Act 2007 covers gift aid and the circumstances in which a tax charge may be due.

... and how this will be changed:

HMRC's longstanding position is that the assessing provisions in Section 29(1)(a) of the Taxes Management Act 1970 may be used to recover tax charges arising on HICBC, Gift Aid, and certain pensions charges.

A recent case before the Upper Tribunal challenged HMRC's use of that assessing provision to recover HICBC. The Upper Tribunal ruled against HMRC and that decision is subject to a further appeal by HMRC to the Court of Appeal.

The government will legislate in Finance Bill 21-22 to put beyond doubt that HMRC may use these discovery assessments to recover all of the above-mentioned tax charges.

This legislation will apply retrospectively to HICBC, Gift Aid and the pensions charges, in order to provide certainty to taxpayers and prevent unnecessary litigation costs. With prospective effect only, the measure provides that discovery assessments may be used to recover any income tax or capital gains tax that ought to have been assessed but has not been assessed.

The legislation will not apply retrospectively to those individuals who previously received a discovery assessment and:

- who submitted an appeal to HMRC, on the basis of the arguments considered by the upper tribunal, on or before 30 June 2021 (the date at which the Upper Tribunal handed down its decision in the relevant case.); or
- whose appeal, made on or before 30 June 2021, has been stood over by the Tribunal pending the final outcome of the relevant litigation

These individuals will be able to pursue their appeals on the basis of the legislation as currently enacted. Those considering submitting a late appeal on the same grounds should consider if they have any prospect of success, as any new appeal would be on the basis of the legislation as retrospectively amended.

Section 7 of the Taxes Management Act 1970 will be revised, with prospective effect only, to confirm that individuals who are chargeable to the income tax charges listed in Section 30 of the Income Taxes Act 2007, need to notify chargeability to HMRC. The measure also makes a minor (prospective only) correction to the list of charges included in section 30 of the Income Tax Act 1970.⁴⁰

Finally HMRC's assessment goes on to address the impact of this measure on individuals and households:

There is no expected impact on individuals and liability to HICBC, pensions and Gift Aid charges is unaffected. Payment and reporting processes are not affected by the measure, which affirms the law with regard to HMRC using the assessing provisions provided in Section 29 of the Taxes Management Act 1970 to recover tax liabilities arising through the HICBC, Gift Aid, and certain pensions charges. There is expected to be no impact on family formation, stability or breakdown.

However, the retrospective legislation will not apply to a small number of individuals who either: submitted an appeal to HMRC, on the basis of the arguments considered by the Upper Tribunal, on or before the 30 June 2021; or whose appeal, made on or before 30 June 2021, has been stood over by the Tribunal pending the final outcome in the relevant case. These individuals also remain liable to the tax in question, but the validity of HMRC's use of discovery assessments to recover that tax will be determined by the continuing litigation.⁴¹

In its round-up of measures announced in the Budget, the Low Incomes Tax Reform Group noted this measure:

Following the decision of *Wilkes v HMRC* at the Upper Tribunal on 30 June 2021, in which Mr Wilkes successfully argued that HMRC were

⁴⁰ HMRC, [Discovery assessments](#), 27 October 2021

⁴¹ [ibid.](#)

unable to use certain ‘discovery assessment’ powers to collect backdated assessments of the HICBC where the taxpayer had failed to notify their liability, the Government have stated that they will legislate to prevent further challenge on this point.

The change will apply both retrospectively and prospectively, unless taxpayers had already submitted an appeal before 30 June 2021 which was either based on the same arguments as Mr Wilkes or otherwise had been stood over by the Tribunal pending the final outcome of the *Wilkes* case. This means that those who had made an ‘opportunistic’ appeal after the Upper Tribunal decision in *Wilkes*, even if before the Budget announcement, look set to be unsuccessful.⁴²

Writing in Taxation magazine the editor Andrew Hubbard was strongly critical, arguing that “there is probably a case for retrospection in extreme cases – on analysis this is not one of them”:

This is not the case of an avoidance scheme being closed down retrospectively after HMRC had given a warning: it is a case of trying to close the stable door after the horse has bolted in a situation where many people genuinely were not aware that they were riding a horse.

HMRC’s explanation for the need for retrospection – to provide certainty to taxpayers and prevent unnecessary litigation costs – is disingenuous to say the least. People are being deprived of their normal right to litigate a tax dispute. Fairness works both ways. If the Court of Appeal and or Supreme Court upholds the *Wilkes* decision then new unfairnesses will be created between those who made an appeal before the grandfathering date of 30 June and those who did not. How can this be justified?⁴³

In their representation to the Treasury Select Committee on the Budget, the Chartered Institute of Taxation also raised concerns about this measure:

The HICBC is a good example of a tax that was introduced without enough regard to how complex it was going to be to design it into the current tax administration framework (and hence how easy it would be for people to understand it and comply with it), because there is no interaction between the PAYE and self-assessment (SA) systems in HMRC or with other government departments.

There has been significant non-compliance with the HICBC leading to many taxpayers suffering penalties, leading to a loss of trust in the tax system. Many HICBC penalties were cancelled or refunded by HMRC accepting that taxpayers had a reasonable excuse. This is surely an indicator of the complexity of the charge and lack of

⁴² LITRG press notice, [LITRG Autumn Budget 2021 round-up](#), 28 October 2021

⁴³ “This week: retrospection is the wrong approach here”, Taxation, 18 November 2021

awareness amongst taxpayers. Recently, HMRC's power to assess the HICBC on taxpayers who have failed to report it on a self-assessment tax return has been rejected by the Upper Tribunal in its decision in the case of Jason Wilkes which held that the discovery assessment provisions cannot be construed as extending to the HICBC.

Now the Government is attempting to fix this problem through the Finance Bill by retrospectively taking away protections that some taxpayers may have as the law now seems to stand. Yet, child benefit claims data is data that the Government holds and problems could have been avoided by automating the systems by joining up tax and benefit data and HMRC automatically imposing the HICBC once people have tripped over the threshold. If a system cannot be designed to administer a tax, then that strongly calls into question whether that tax was sensible in the first place.⁴⁴

Provision to this effect is included in the [Finance \(No.2\) Bill 2021-22](#), which was published on 4 November (specifically clause 95 of the Bill).

⁴⁴ CIOT, [Treasury Committee Inquiry into the Autumn Budget and Spending Review 2021: response by the CIOT](#), 15 November 2021 para 4.27

4

Implications of not claiming Child Benefit (2018-2019)

One other issue has been the subject of some recent debate in relation to the HICBC – the potential impact that someone’s decision not to claim Child Benefit may have on their entitlement to contributory benefits.

To give a little context, individuals who are not in work, paying Class 1 National Insurance contributions (NICs) on their earnings, can maintain their contributions record in one of two ways. First they may choose to pay voluntary Class 3 NICs – which count toward their entitlement to the state pension, as well as bereavement benefits. Rather than being based on the level of one’s earnings, voluntary Class 3 NICs are set at a fixed rate per week ([£15.40 for 2021/22](#)).

Second, individuals may be ‘credited’ with having made Class 1 contributions or with Class 3 contributions. Individuals may be eligible for NI credits in a variety of situations – such as looking for work, or being in receipt of maternity pay – and, depending on the circumstances, they may receive credits automatically, or have to make a claim for them. Parents and carers may be eligible for Class 3 credits, and, Class 3 credits are awarded automatically to a parent registered for Child Benefit for a child under 12.⁴⁵

There is a basic outline of NI credits [on Gov.uk](#), and more detailed guidance in HMRC’s online [Manual on National Insurance – para 41256](#) covers the provision of credits for those awarded Child Benefit. In this context it is worth underlining that the legislation underpinning Child Benefit sets a strict time limit for any claim. Normally a claim for Child Benefit can only be backdated for a maximum of three months.⁴⁶

As noted, the statutory test for NI credits refers to someone being **awarded** Child Benefit. As noted in the Child Poverty Action Group’s Welfare Benefits and Tax Credits Handbook, “if you elect not be paid (rather than just not claiming child benefit, or ending or withdrawing your claim), your underlying entitlement to child benefit continues. This means that you (or someone with whom you live or who cares for your child) may still qualify for NI credits.”⁴⁷ In the past the Low Incomes Tax Reform Group has noted the importance for

⁴⁵ Statutory provision for parent and carer credits is made by s23A of the [Social Security Contributions and Benefits Act \(SSCBA\) 1992](#); subsection 3(a) provides for credits to be awarded to someone “awarded child benefit for any part of that week in respect of a child under the age of 12.”

⁴⁶ under reg 6(1) of the Child Benefit and Guardian’s Allowance (Administration) Regulations 2003/492

⁴⁷ CPAG, Welfare Benefits and Tax Credits Handbook, 2019/20 ed. p595

many benefit claimants to continue claiming child benefit even if this triggered a HICBC liability:

If you are aged 16 or over and claim child benefit for looking after a child under the age of 12, you may automatically receive Class 3 National Insurance credits that count towards your state pension and some bereavement benefits. If you qualify, these credits are still given automatically, even if you have elected not to receive any payments because you or your partner are subject to the HICBC.

If you are in a household affected by HICBC and decide you want to stop receiving child benefit payments to avoid the tax charge, you still remain entitled to child benefit and so your National Insurance credits will be protected. This is particularly important if you are a low earner or have no income, despite the fact your partner falls into the high income charge. If you have another child, you should still claim child benefit for them even if you choose not to receive payments. This again is to protect your National Insurance record through the award of National Insurance credits as explained on GOV.UK.⁴⁸

There have been concerns that a number of parents may have decided not to claim child benefit, without being aware of the implications for their entitlement to NI credits. In November 2018 Steve Webb, one-time Pensions Minister, launched a petition for the Government to allow backdated claims to cover this eventuality.⁴⁹ However, in answers to PQs at this time, Ministers stated that the Government did not think the 3 month deadline for claiming child benefit should be changed:

Dr Rosena Allin-Khan : To ask the Chancellor of the Exchequer, what recent representations he has received on parents who have mistakenly omitted to claim child benefit and as a result lost out on national insurance state pension credits; and what steps his Department is taking to help those people.

Mel Stride : The Government has always urged families to claim Child Benefit to help protect their future right to the State Pension. Child Benefit claimants on a high income can then opt not to receive payments so they do not have to pay the High Income Child Benefit Charge. Families should still complete the Child Benefit claim form in order to qualify for National Insurance Credits and thus build qualifying years towards the State Pension. Parents are advised to do this on the Child Benefit claim form (which is included in Bounty Packs that go to new parents), through the HMRC helpline, online at GOV.UK and through partners such as Citizen's Advice. The Government is continuously looking at ways in which

⁴⁸ LITRG press notice, [HICBC – should you make a claim for Child Benefit?](#), 20 July 2017

⁴⁹ “Webb launches petition for pension credits”, [Financial Times Adviser](#), 16 November 2018

communications can be improved further, both at the birth of a child and for existing Child Benefit claimants.⁵⁰

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Dr Rosena Allin-Khan : To ask the Chancellor of the Exchequer, pursuant to the Answer of 23 October 2018 to Question 179286, whether the Government plans to make back payments of child benefit to those parents who have mistakenly omitted to claim that benefit and as a result lost out on national insurance state pension credits.

Elizabeth Truss : The Government has always urged families to claim Child Benefit to help protect their future right to the State Pension. The legislation sets out that claims for Child Benefit (and the accompanying National Insurance credit) can only be backdated for three months. Successive governments have considered that three months is a fair and reasonable time in which to allow those wishing to claim Child Benefit to do so. Even though there may be no question that some parents would have been entitled to Child Benefit had they claimed earlier, such certainty is not obvious in every case. The longer the delay, the harder it is to establish entitlement, given the need to verify evidence and ensure consistent treatment.⁵¹

During 2018 the Treasury Committee also raised concerns over this issue,⁵² and in correspondence with the Committee in summer 2018, Jon Thompson, then HMRC Permanent Secretary, [said the Department](#) would review the scale of the problem.⁵³ In turn HMRC wrote to the Committee in January 2019; part of their response is copied below:

HMRC's administrative data on Child Benefit does not contain information on the identity of both parents, only the Child Benefit claimant. This means it is not possible for us to produce a robust estimate of this population from our data sources. However, to assist the Committee, I asked my analysts to undertake further investigation of additional data sources.

Using the Department for Work and Pensions Family Resources Survey (a detailed annual survey of over 19,000 UK households) analysts have produced an estimate of the number of households in the position described above. The Committee should note that as this estimate is sample-based, it is subject to a high degree of uncertainty. Published National Statistics relating to August 2017

⁵⁰ [PQ179286, 23 October 2018](#)

⁵¹ [PQ192115, 23 November 2018](#)

⁵² Treasury Committee, [Letter from the Chair to the Financial Secretary to the Treasury and Paymaster General](#), 16 March 2018; [Letter from the Financial Secretary to the Treasury regarding High Income Child Benefit Charge and State Pension entitlement](#), 28 March 2018

⁵³ Treasury Committee, [Correspondence from the Permanent Secretary of HMRC regarding Child Benefit](#), 29 August 2018

show that the number of UK Child Benefit claimants, including those who have opted out of receiving payments, was around 7.9 million. Our work suggests there may be around 3% of households claiming Child Benefit and not benefitting from NI credits because the Child Benefit is claimed by the higher earner in the household. This only arises where there is a child under 12 and the actual claimant's partner is earning below the lower earnings limit and is not receiving NI credits from another source.

It does not mean that these individuals will miss out on State Pension entitlements. This is because the analysis is a snapshot in time and they may build up sufficient qualifying years over their working life (most individuals under the age of 50 will get a full state pension with 35 qualifying years). It is also possible that some of these individuals will be receiving NI credits if they have been transferred from their partner.⁵⁴

In turn the Chair of the Committee issued a press notice, saying the following:

“The Treasury Committee has long-warned the Government of the risk that for families with one earner and one non-earner, that if the sole-earner claims Child Benefit, the non-earner, with childcare commitments, forgoes National Insurance credits and, potentially therefore, their entitlement to a full future State Pension. New figures today from HMRC show that over 200,000 parents may be in this situation, and therefore missing out on their pension. Now we have an idea of the scale of this problem, the Government needs to pull its finger out and make sure people are aware of the issue and know how to put it right.”⁵⁵

Treasury Minister Elizabeth Truss gave some details of HMRC's actions to improve taxpayers' understanding of this link between the HICBC and NI credits in answer to a PQ the following month:

Tommy Sheppard : To ask the Chancellor of the Exchequer, what steps his Department has taken to improve public understanding of the link between national insurance credits and child benefit; and what assessment his Department has made of the effect on the pension income of stay-at-home parents who do not claim child benefit of the high-income child benefit tax charge.

Elizabeth Truss : The government has always encouraged families to claim Child Benefit to receive the associated National Insurance credits and help protect their future right to the State Pension.

⁵⁴ Treasury Committee, [HMRC to Chair re Child Benefit](#), 23 January 2019

⁵⁵ Treasury Committee, [Over 200,000 parents could be missing out on State Pension](#), 23 January 2019

Parents are advised to do this on the Child Benefit claim form (which is included in Bounty Packs that go to new parents), through the HMRC helpline, and online at GOV.UK.

From April 2019 the Child Benefit claim form and accompanying notes will further emphasise the non-monetary benefits a Child Benefit award provides: in particular, the associated National Insurance credits which protect their State Pension.

In addition, HMRC is developing social media content and material that can be distributed to external partners, to further promote the importance of claiming.

Most parents are able to qualify for the new State Pension, even if there are gaps of up to 15 years in their National Insurance records. This means that those parents who have not claimed Child Benefit still have the opportunity to achieve the full State Pension.⁵⁶

⁵⁶ [PQ214595, 4 February 2019](#)

5 Recent debate of the HICBC (since 2019)

5.1 Westminster Hall debate (Sept 2019)

On 3 September 2019 the HICBC was the subject of a debate in Westminster Hall, initiated by Craig Mackinlay MP.⁵⁷ In his speech Mr Mackinlay raised a series concerns about the design of the HICBC, the method of its collection, the growing number of taxpayers liable to pay the charge and the number charged penalties for having failed to register with HMRC, as well as the potential consequences for parents who decided not to claim child benefit.

A few extracts from the Member's speech are reproduced below; first on the general operation of the HICBC...

[The HICBC] is a salutary lesson in how not to withdraw a universal benefit through the tax system. What we have on the statute book, which runs to many tens of pages of tax law, is the truly mad basis of trying to claw back a benefit. It is not related to overall family income, which many people describe as one of the real drawbacks of the system ...

I feel that this situation has led to an inherent unfairness in the system ... My other concern is the means of collection ... The real madness in the system—we should have tax systems that make things easier—is that the implementation of these measures forced 500,000 more people into the requirement to fill in a self-assessment tax return. It is a huge bureaucratic cost to taxpayers, and managing the system must also be a significant cost to Her Majesty's Revenue and Customs ...

Many PAYE employees have had never had to touch the tax system or fill in a self-assessment return. Luckily for them, they have been merrily ignorant of anything to do with tax. It is all done at source by their employers—if they have no further complicated tax affairs, they need do no more. The current situation has been a particular hardship for these taxpayers. They might not have spotted the advertising that was fairly extensive at the time. They perhaps received less than £50,000 at the time, but over the years their income has crept over that figure due to wage rises and better business ...

⁵⁷ [HC Deb 3 September 2019 cc60-76WH](#)

... on the imposition of penalties for failure to notify ...

Of the constituents who have been found not to have done what they should have done ... they have been, well, not happy, but comfortable enough ... that they should pay the money back. They are quite happy with that. However, many of these people have faced a tax-gearred penalty under section 97 of, and schedule 24 to, the Finance Act 2007. That penalty has generally been at the lowest rate of 15% under the careless but prompted regime, under HMRC's fines regime. However, they have also faced statutory interest, which is currently at 3.75%. Many people understand that, if they have been in receipt of child benefit for a few years and should not have been, they should pay it back, but they feel particularly aggrieved about a 15% penalty and the statutory interest ...

I am very surprised that the House did not pick up at the time on the fact that the system completely blows away the independent status of taxation for couples ... The system blows that away because one partner now needs to ask the other, "What do you earn, because I need to determine whether it is you or I who pays the high income child benefit tax charge?" The partner in receipt of the child benefit might not be the one paying the charge; it always falls on the higher earner. Whereas before there was decent independence and secrecy between partners should they so wish, that was blown away by the legislation, and I do not feel that could ever be right ...

... on the importance of a taxpayer's 'adjusted net income' in relation to the HICBC ...

At the start of my speech, I mentioned the concept of adjusted net income, which is income from PAYE, rents, dividends and whatever else one might receive. Changes to buy-to-let allowability of mortgage interest, however, have had an unforeseen impact. Years ago, rental income less expenses and mortgage interest would give a net figure, which would form the top end of the tax return and be part of the creation of the relevant net income.

With the gradual restriction of the allowability of mortgage interest ... the tax return looks different. Net relevant income for rental purposes does not include the deduction for mortgage interest, which now comes at the bottom part of the tax return. Instantly, the net relevant income at the top part of the tax return is now bigger for many people with mortgage interest, even though the net effect for cash flow and everything else might be the same. There is now some relief for mortgage interest at the bottom part of the tax return, by way of a credit of tax.

I did not see the full shortcomings of that piece of legislation at the time, even though, at that Budget statement some years ago, I raised concerns about changing the whole deductibility regime, which is fundamental to tax. That legislation has caused another

group of families, who are doing nothing particularly exotic, to be dragged into the high income child benefit tax charge, as their income has pitched into the £50,000-plus bracket because of the deductibility of mortgage interest, even though nothing has changed ...

... and the options facing new parents who might be concerned about the charge:

Earlier I described what people might do when they have a new baby. If they have earnings of more than £60,000, they might think, “I just can’t be bothered to fill in the form. I’m not going to get anything; why would I bother?” The CH2 form is not unreasonable or too complex—it is actually quite free flowing and easy to understand—but a lot of people do not bother at all.

The other choice they have, by filling in form CH2, is to take the child benefit and then pay it back annually through their self-assessment return, or to register for a nil award so that they are in receipt of child benefit but at nil value. That is really important for those who do not follow that route. They do not want the hassle of a self-assessment return, so they decide to do nothing. The partner in that relationship, who is perhaps not working, will not be building up a national insurance record, because if someone fills in form CH2 and decides not to take any child benefit, they will at least be crediting up a national insurance contribution under class 3. My concern is that people do not know that this is there for them and are saying, as many of us do, “I can’t be bothered to fill in another form. I don’t think I will get anything. I won’t do it.”

We are potentially building up a problem of people—let us be frank, it is probably predominantly women—who will find in the future that they do not have the national insurance record that they thought they had. When they get their DWP statement with details of the award they will receive with the new state pension some six months before retirement age, they will find it is rather less than they thought.⁵⁸

In concluding his remarks Mr Mackinlay acknowledged, “I like a debate to end with a solution, but there is no easy solution to this one”:

The easier option would be to restore the universality of child benefit. Nothing is simpler than that—everyone gets it without means testing or complication—but the Government and the Treasury understandably want to claw back that benefit from people in receipt of higher income. A complicated solution—or, rather, a politically difficult one—would be to reduce the personal allowance

⁵⁸ *op.cit.* cc60-64WH. For more details on the change the Member mentions to the tax-deductibility of mortgage interest see, [Tax relief on landlords' finance costs: s24 of Finance \(No.2\) Act 2015](#), Commons Library briefing CBP6361, 15 March 2019.

for those with children. They would get their full child benefit but pay a little more in tax. At least that could be coded out—they need not worry about the self-assessment system—and for the PAYE taxpayer with simple affairs, things would be just as they are. However, that would be a difficult way to do it.

It would be simpler, perhaps, to make a higher universal child benefit payment, which this year is £20.70 for the first child and £13.70 for subsequent children, subject to the benefits cap. Any increased child benefit, however, should be made a taxable benefit. Therefore, through coding, the Government could claw back 20% from a basic rate taxpayer, and 40% from a 40% taxpayer. For those with complicated tax affairs, adding the layer of clawing back the high income child benefit tax charge is no great difficulty. Something similar happens already. The retired have a simple coding adjustment for private pensions to reflect the level of their state pension.

We need a new and elegant solution, and to learn the lesson that whenever Governments in future claw back benefit, they should not do it in this way, through the tax system. It has created bureaucracy and angst, and I am worried that normal, law-abiding taxpayers now feel that they have done something very wrong because of those levels of penalties.⁵⁹

Speaking for the Opposition on this occasion Anneliese Dodds noted that “the Labour party has consistently objected to the removal of the universal nature of child benefit”, adding that “there are also practical reasons why the high-income charge is unfit. It has added unnecessary complications, many of which we have already heard about, and it has had a significant impact by requiring up to around half a million people to engage in self-assessment, which is not an easy process”:

It is important that the Minister explains what is being done to deal with the long-term problem of people inadvertently becoming unable to accrue state pension credits because they do not qualify for national insurance contributions or indicate that they want to be part of the system. Obviously, that disproportionately discriminates against women ... It would also be useful to understand any possible disincentive effects of this measure ... Obviously, I hope the whole high-income child benefit charge is abandoned. I do not expect him to make quite as dramatic an announcement here, but I hope he rules out any reduction in the availability of other universal benefits, given the kinds of issues we have discussed and the impact on equity.⁶⁰

⁵⁹ *op.cit.* c65WH

⁶⁰ *op.cit.* c70WH, c71WH

Ms Dodds also noted the impact of ‘fiscal drag’ on the numbers liable to pay the charge:

New research on the high-income child benefit charge indicates that much larger numbers of people are being drawn into the system than were initially. The Institute for Fiscal Studies indicated that since the £50,000 threshold has not shifted upwards, about 36% more people—370,000 more families— will lose child benefit in 2019-20 than in 2013-14.⁶¹

In his response the Financial Secretary to the Treasury Jesse Norman argued that, given the constraints placed on the Government, the design of the HICBC reflected the best course of action:

Here we have one of those difficult decisions for the Government about what is the right thing to do. The judgment made in 2013 was that it was better to take that approach than to base a charge on household incomes, because that would require HMRC to assess annually both household composition and the incomes of everyone in the 8 million or so households eligible for child benefit, which would effectively introduce a new means test, creating a substantial administrative burden on both the state and families. That is the dilemma.

The effect of the charge is to introduce a high marginal tax rate. That is an unattractive aspect of the policy; we should be clear about that. If I may say so, it is not a salutary lesson in how not to withdraw a benefit, because the alternatives of not levying the charge at all or levying it on a cliff edge rather than by gradual withdrawal are worse. It is open to others to take the view that one of the alternatives is better, and my hon. Friend may do so, but not subject to the fiscal constraints in which we have operated.⁶²

The Minister went on to note the efforts made by HMRC to alert parents as to the importance of claiming child benefit ...

Information on the charge is included in packs for new parents telling them how to claim child benefit. The front page of the child benefit application form includes a prominent message about the charge to help people make a decision on whether they should claim and be paid child benefit, about the importance of claiming even if they do not receive payments, and about the important issue of eligibility, which was rightly highlighted in the debate. Guidelines are available online formally through gov.uk and through innumerable organisations and groups.

... and its review of the penalties issued for taxpayers’ failure to notify:

⁶¹ op.cit. c70WH

⁶² op.cit. c73WH

Individuals who pay the charge need to make a self-assessment tax return and may face a failure to notify penalty if they do not. I think he will know that HMRC announced a review of cases where a failure to notify penalty was issued for three tax years. It reviewed 35,000 cases and responded by reviewing the amount for over 6,000 people.⁶³

The Minister also picked up on Ms Dodd’s mention of the fact that the HICBC threshold had not been increased in line with inflation: “The hon. Member for Oxford East mentioned fiscal drag. That is an important issue, but I do not think she is right that the charge has removed the universal nature of child benefit; it merely allows for a charge against it.”⁶⁴

Closing the debate Mr Mackinlay said he was “pleased to receive a degree of assurance from the Financial Secretary to the Treasury”:

He accepted that the charge was a measure of its time, when urgent measures were needed to respond to the state of the country’s finances ... My observation has been that, if we are to have methods of clawback, we need to design systems that are more elegant than this one. I hope he will pass on to HMRC my issues regarding the penalty regime. Perhaps this can be the last of it, with people made aware that, yes, if they do wrong in the future, a penalty regime may apply. However, I would like to see a softer touch, given the modest amounts involved, for those stuck in cases at the moment.⁶⁵

5.2

The Office of Tax Simplification’s ‘Life Events Review’ (Oct 2019)

In October 2019 the Office of Tax Simplification (OTS) published a report looking at people’s experiences with the tax system in relation to a variety of life events – such as having a child, entering work, and drawing a pension – and made a number of recommendations for making things easier to taxpayers.⁶⁶

As part of this the OTS argued that the operation of the HICBC created considerable difficulties to those affected, as parents “have various options about what to do” and that “the consequences of the options are not obvious.” The authors acknowledged that HMRC had sought to improve taxpayers’ understanding of the consequences of not claiming child benefit, “but it is unreasonable that the way the linkages in the system work mean

⁶³ *op.cit.* cc73-4WH

⁶⁴ *op.cit.* c74WH

⁶⁵ *op.cit.* cc74-5WH

⁶⁶ OTS, [OTS Life Events review: Simplifying tax for individuals](#), 10 October 2019

people can easily disadvantage themselves, especially if they cannot correct this later.”⁶⁷

They went on to recommend that the Government should “review the administrative arrangements linked to the operation of Child Benefit”, as well as “consider the potential for enabling national insurance credits to be restored to those people who have lost out through not claiming Child Benefit.”⁶⁸

The report also noted that one other consequence of parents deciding not to claim benefit when their child was born was that “their son or daughter will not automatically receive a national insurance number at age 16” and that “under current arrangements, the child will then have to actively contact the relevant department to receive one. This can involve a face to face interview with a DWP official.” Given that it was likely the numbers of children affected by this would rise in future years, the authors argued the Government should also seek to make it easier for children in this position to get a national insurance number.⁶⁹

After the 2019 General Election the LITRG published a brief in which it argued that the new Conservative Government should implement the OTS’ recommendations and, at the least, reconsider the fixed £50,000 threshold:

LITRG is calling on the new Government to address the problems with the HICBC. These are exacerbated by the fact that the threshold has remained static since it was introduced nearly seven years ago ...

Victoria Todd, Head of LITRG Team, said: ... “HMRC have improved the guidance on the child benefit claim form but there is a risk of that guidance being missed if people do not get as far as requesting a form. It is important for HMRC to improve communications and awareness and consider other ways of ensuring lower earners do not miss out on these valuable credits, especially as the current rules only allow child benefit, and therefore the associated National Insurance credits, to be backdated for three months.

“This is a problem which is affecting an increasing number of families because the £50,000 threshold has remained static since the charge was introduced in 2013. At that time, the HICBC was intended to affect only the top 10 per cent of earners, but each year the proportion of those affected increases as wages rise.”⁷⁰

LITRG recommends that the next Government considers uprating the £50,000 threshold, just like some other tax thresholds and

⁶⁷ OTS, [Taxation and Life Events: Simplifying tax for individuals](#), October 2019 para p7, p18

⁶⁸ op.cit. p23

⁶⁹ op.cit. p23

⁷⁰ The Institute for Fiscal Studies states that “around 36%, of 370,000, more families will lose Child Benefit in 2019/20 than in 2013/14” as a result of freezing the threshold ([Stealthy changes mean that soon one in five families with children will be losing some Child Benefit](#), IFS, 7 January 2019).

allowances, to minimise the adverse consequences for those families it affects and ensure the policy works in the way originally intended.”⁷¹

The Government has not published an official response to the OTS’ report. In answer to a PQ in February 2020 the then Financial Secretary Jesse Norman said, “the OTS undertook the review of ‘Taxation and Life Events’ as an own initiative review. Officials will continue to consider the recommendations made in ‘Taxation and Life Events’ carefully.”⁷²

5.3 Further calls for reform (2020-2021)

In January 2020 the Times newspaper launched a campaign calling for a number of reforms to the design of the HICBC and its administration.⁷³

In a leader the paper concurred that that the Coalition Government had a “good case” for restricting child benefit for higher earners, but went on to argue that a number of reforms should now be made to the HICBC: an increase in the £50,000 threshold; a household income test; and a “guarantee that no parents will lose out in their retirement incomes if they have not registered for child benefit.” The article also criticised the fact that taxpayers who became liable to the Charge would be expected to know they needed to complete a tax return, if they were not doing so already, suggesting that this was “neither fair nor efficient.”⁷⁴

James Coney, editor of the Money section in the *Sunday Times*, also wrote a piece, arguing that “it seems clear that the Treasury never fully realises how complicated implementing [the Charge] would be, and so has had to iron out wrinkles ever since.”⁷⁵

The campaign was not discussed at any length in the House, although the impact of the HICBC was raised in two linked PQs at this time:

Stephen Farry : To ask the Chancellor of the Exchequer, what recent assessment he has made of the effectiveness of the operation of the high income child benefit charge.

Stephen Farry : To ask the Chancellor of the Exchequer, whether he has made an assessment of the potential merits of applying the high income child benefit charge to the higher-earning parent regardless of which parent takes main caring responsibility.

⁷¹ LITRG press notice, [Review high income child benefit charge, say campaigners](#), 13 December 2019

⁷² [PQ10421](#), 4 February 2020

⁷³ “Child benefit: time for a change”, Times, 25 January 2020

⁷⁴ “Leader: The Times view on the unfairness of child benefit: Cash Back”, Times, 25 January 2020

⁷⁵ “Comment: Child benefit needs to be fairer”, Times, 25 January 2020. See also, “My £7,000 bill for owed child benefit”, Sunday Times, 16 February 2020.

Jesse Norman : The Government introduced the High Income Child Benefit Charge (HICBC) from January 2013 to ensure that support is targeted at those who need it most. The latest published figures on the operation of HICBC can be found at:

<https://www.gov.uk/government/publications/high-income-child-benefit-charge-data/high-income-child-benefit-charge>.⁷⁶

In answer to a subsequent PQ the Minister said, “the Government believes that [the £50,000 and £60,000 thresholds] ... are currently the right levels for the HICBC thresholds, but as with all elements of tax policy this remains under review.”⁷⁷

As noted, after the 2019 General Election the LITRG published a brief in which it argued that the new Conservative Government should implement the OTS’ recommendations regarding the HICBC,⁷⁸ and the charity published a detailed representation to the Treasury in advance of the 2020 Budget.⁷⁹ The LITRG argued that the Government should review its whole policy ...

Despite its name and the fact that the charge itself applies to the partner with the higher adjusted net income, the way the HICBC operates has consequences for the whole household, including the partner with the lower income and the child. For this reason, it is within scope of our remit to represent low-income and unrepresented taxpayers.

The HICBC has been a controversial policy since its introduction. Questions have been raised about the fairness of the policy and whether it is cost-effective. For these reasons, we think it is sensible for a review of the policy to be carried out to assess if it is working as intended and whether it meets its original objectives.

... but went on to make three specific recommendations, should the Charge remain in its current format:

First, some families affected think that making a child benefit claim is not worthwhile if it will be clawed back in full (or even in part) via the tax charge ... but not to claim the child benefit in this scenario carries unforeseen consequences for the would-be claimant .. accordingly, LITRG endorses the ... recommendations made by the OTS in their report, Taxation and life events ...⁸⁰

We recommend that the Government should allow a claim for NI credits for years where the person (or their partner) would have been

⁷⁶ [PQ760](#) & [PQ761](#), 19 February 2020

⁷⁷ [PQ20540](#), 4 March 2020

⁷⁸ LITRG press notice, [Review high income child benefit charge, say campaigners](#), 13 December 2019

⁷⁹ LITRG press notice, [Budget Representation 2020: High Income Child Benefit Charge](#), 10 February 2020

⁸⁰ For sake of clarity, the ability for NI credits to be restored should be available to those who have **and will have** lost out through not claiming child benefit. In other words, this should be a rolling facility and not just a one-off resolution for those who have missed out up to a certain point of time.

entitled to child benefit and they (or their partner) had adjusted net income over the HICBC threshold. There should be no time limit on this ... some further thought will need to be given about the evidence that may be required to support such a claim but we suggest this be fairly basic.

Second, given that the £50,000 threshold has remained static since the charge was introduced in 2013, the HICBC is affecting an increasing number of families. We therefore suggest that the £50,000 threshold should be updated to £60,000 in order to minimise the impact of the charge and to ensure the policy works in the way originally intended. Thereafter, the threshold should be reviewed regularly, or preferably provision made to automatically update it annually in line with inflation.

Third, there is a particular issue which affects families in which child benefit is claimed where the higher-income partner has adjusted net income of between £50,000 and £60,000 a year: the effective marginal rate applicable to that person.

This is exacerbated when there are large numbers of children involved, which is not uncommon in families of certain origin, and so may be said to be discriminatory. For these families, finances are already likely to be stretched. Accordingly, we recommend that the point at which child benefit is fully withdrawn should be increased from £60,000 to at least £75,000. Alternatively, the child benefit could be withdrawn instead by a fixed amount for each £100 above the initial threshold, rather than a percentage of the total child benefit received.⁸¹

As it transpired there was no mention of the HICBC either in the Chancellor's speech,⁸² or the 2020 Budget report.⁸³ Subsequently in answer to PQs Ministers reiterated the Government had "no current plans to review HICBC but, as with all elements of tax policy, keeps this under review."⁸⁴

With the continuing economic impact of Covid-19 over 2020, the Chancellor gave a number of statements on the economy over the year, and as a consequence the Budget, anticipated in the Autumn, was postponed to 3 March 2021.⁸⁵ In their Budget representation the LITRG reiterated its call for the HICBC threshold to be increased,⁸⁶ noting that from April 2021 the higher rate threshold would lie **above** £50,000.⁸⁷

⁸¹ LITRG, [Budget 2020 representation – High Income Child Benefit Charge](#), 7 February 2020 pp1-2

⁸² [HC Deb 11 March 2020 cc278-293](#)

⁸³ [Budget 2020](#), HC 121, March 2020

⁸⁴ [PQ39705](#), 28 April 2020; [PQ66085](#), 7 July 2020. See also, [PQ155212](#), 1 March 2021

⁸⁵ [Written Statement HCWS679](#), 17 December 2020; HMT press notice, [Budget 2021](#), 17 December 2020

⁸⁶ LITRG press notice, [Concern as HICBC hits basic rate taxpayers](#), 21 January 2021

⁸⁷ Income tax allowances and thresholds for 2021/22 have been set by secondary legislation ([SI 2020/111](#)). For further press comment see, "Why it's time for a complete rethink on child benefit" & "Child benefit is a mess. We need to fix it", *Times*, 17 April 2021.

The Chancellor Rishi Sunak did not make any mention of the HICBC in his Budget speech, although notably the Chancellor did announce that from 2022/23 the higher rate threshold would be frozen for the next four years.⁸⁸ At the time the Government was asked how many basic rate taxpayers would be expected to pay the charge in 2021/22, but stated that this information “could only be made available at disproportionate cost.”⁸⁹

In its submission to the Treasury Committee on the Budget the Chartered Institute of Taxation (CIOT) welcomed the decision to announce the freeze some time in advance, as it “complies with many of the Committee’s principles (certainty, stability etc). It will also raise substantial revenues whilst, prima facie, not damaging growth.” The CIOT went on to argue that “having frozen these thresholds, the opportunity should be taken to consider what future policy should be in these areas”, and flagged the fact that from April 2021 basic rate taxpayers would come within the scope of the HICBC:

The personal allowance and higher-rate threshold will increase for 2021-22 in line with the September 2020 CPI, as announced in the November 2020 Spending Review. As a result, the higher-rate threshold for 2021/22 is set to be £50,270. This means that basic rate taxpayers, for the first time, will be affected by the High Income Child Benefit Charge (HICBC). This is directly contrary to the original policy intent of the HICBC announced in the spending review ten years earlier, which stated that the charge should only affect families with a higher-rate taxpayer.

It is therefore disappointing that the Government did not take the opportunity to increase the threshold at which the HICBC begins to at least £60,000 as suggested by LITRG in their pre-budget representation. At the very least, in line with the Committee’s principle of ensuring there is ongoing monitoring of tax measures, we think that the HICBC is due a public review of whether the policy is working effectively – the number of cases reaching the First-tier Tribunal concerned with backdated assessments to the charge suggests that it is not.⁹⁰

The Financial Secretary answered a PQ about the Government’s approach to the HICBC in May:

Claire Hanna : To ask the Chancellor of the Exchequer, if he will review the High Income Child Benefit Tax Charge to remove the disparity between a household with two individual incomes of £49,000 that receives full child benefit entitlement and a single parent household income of £50,000 that is required to pay the High Income Child Benefit Tax Charge.

⁸⁸ [Budget 2021](#), HC 1226, March 2021 para 2.74-6. See also, [Budget 2021: personal allowance & higher rate threshold](#), Commons Briefing paper CBP9186, 26 July 2021.

⁸⁹ [PQ16454Q](#), 16 March 2021

⁹⁰ Treasury Committee, [Budget 2021: Written Evidence – CIOT \(BGT0001\)](#), 15 April 2021 para 6.2-3, 6.7

Jesse Norman: The Government introduced the High Income Child Benefit Charge (HICBC) from January 2013 to ensure that support for families is targeted at those who need it most. The tax charge applies to anyone with an individual income over £50,000 who claims Child Benefit, or whose partner claims it. HICBC is calculated on an individual rather than a household basis, in line with other income tax policy.

Basing HICBC on household incomes would mean finding out the incomes of everyone in each of the 7.8 million households currently registered for Child Benefit. This would effectively introduce a new means test, which would be costly to administer and create burdens on the majority of families who receive Child Benefit. The Government has no current plans to review HICBC but as with all elements of tax policy, keeps this under review as part of the annual Budget process.⁹¹

In answer to a further PQ in June about the £50,000 threshold, the Minister said, “the adjusted net income threshold of £50,000 used in the administration of the HICBC only affects a small minority of those with comparatively high incomes. The Government therefore believes that the current threshold for HICBC remains the best option at present.”⁹²

In early September the Chancellor announced that he would present the new Budget on 27 October, along with the Government’s Spending Review, returning to the practice of presenting the annual Budget in the autumn.⁹³ The Treasury invited representations to be considered in the run-up to the Budget,⁹⁴ and the LITRG has reiterated its call for the Chancellor to reconsider the level of the HICBC threshold:

“When the HICBC was announced in 2010, and introduced in January 2013, the Government’s policy intent was that it would only affect higher-rate taxpayers. For the 2012/13 tax year, the higher-rate threshold – the point at which an individual is liable to the higher rate of tax – was £42,475. Since then, the higher-rate threshold has risen broadly in line with inflation but the £50,000 threshold for the HICBC has remained static. The Government has so far resisted calls to up-rate the £50,000 threshold, but we believe this intransigence is untenable because the higher-rate threshold overtook it from 6 April 2021.”

Taxpayers liable to the charge must file a Self Assessment tax return, even though HMRC may already know about all of a taxpayer’s income through the PAYE system. An individual can be liable to the charge even though it was their partner who claimed child benefit, which is contrary to the principle of independent taxation (this is

⁹¹ [PQ521](#), 17 May 2021

⁹² [PQ13146](#), 18 June 2021

⁹³ [Written Statement HCWS268](#), 7 September 2021

⁹⁴ HMT, [Autumn Budget and Spending Review 2021 representations](#), 7 September 2021

supposed to mean individuals are taxed separately on their income and capital gains without reference to their partner).

LITRG points out that, despite its name, the HICBC can have consequences for those who do not consider themselves to have a high income. This is because the measure used to determine liability to the charge ignores factors such as whether the household has only a single earner, housing costs or family size. This means families can be caught by the charge despite having very little disposable income.

Alternatively, individuals who usually have a lower income may end up being liable to the charge because of a one-off event, such as taking money out of their pension. And as the charge can affect taxpayers whose only source of income is already fully taxed under PAYE, there is a significant lack of awareness among those affected. This has led to taxpayers receiving backdated assessments of unaffordable sums.

In its Budget representation, LITRG also calls for the point at which child benefit is fully clawed back to increase from £60,000 to £75,000. This is to address the fact that larger families can face high effective marginal tax rates when they are liable to the charge. For example, where the charge applies to withdraw a child benefit claim for two children, the taxpayer must pay £60 in tax and National Insurance for an additional £100 earned between £50,000 and £60,000. For three children, the rate increases to £67 for an additional £100 earned.⁹⁵

However, the Chancellor made no mention of the HICBC in either his Budget statement to the House on 27 October, or in the Budget report which accompanied it.⁹⁶

⁹⁵ LITRG press release, '[Raise income threshold for child benefit clawback to £60,000](#)', 8 October 2021. See also, Association of Tax Technicians, [HICBC: Budget representation](#), 4 October 2021

⁹⁶ [HC Deb 27 October 2021 cc273-287](#); [Autumn Budget and Spending Review 2021](#), HC 822, October 2021

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