Notes for using this template

* **Detail how the circumstances leading to the grant of asylum were the same at the time of the first and successful claims.**
* Edits needed if child was already born when asylum was first claimed
* Edits needed if male claimant
* Edit all text in [square brackets] and text in red
* **DELETE BOX BEFORE POSTING**

HMRC

By post and email to:

Our Ref:

DATE

Dear Sir or Madam

**Mandatory Reconsideration Request by NAME, ADDRESS, NINO, DOB**

We are writing on behalf of [NAME] and enclose [her] signed authority to do so. [NAME] is challenging HMRC’s decision of [DATE] not to backdate [her] Child Benefit (“**CB**”) to [DATE], which is the date of [her] first claim for asylum / the date of the birth of [her] child which post-dated the date of [her] first claim for asylum, when the conditions which led to [her] grant of refugee status existed at the time [she] first claimed asylum. We are asking for a response by [DATE].

# Background

1. [NAME] arrived in the UK on DATE. [She] claimed asylum on [DATE] and received payments and housing support from the Asylum Support for the period [DATE] to [DATE] because she was not permitted to work and was ineligible for public funds, including social security.
2. The following year, C became pregnant and her daughter, X was born on [DATE].
3. On [DATE] C received a negative decision on her first asylum claim.
4. On [DATE] C made a second claim for asylum. This was rejected on [DATE]. C submitted further evidence and requested a review. [Her] claim was initially rejected but, following further reconsideration by the Home Office, [she] was granted refugee status on [DATE]. C’s eventual grant of asylum was based on circumstances that were in place from the outset of her initial asylum claim. [details]
5. On [DATE], with support from [AGENCY], C submitted a new claim for CB, with a covering letter requesting that it be backdated to [DATE], when [X ]was born, as this was later than the date that C first claimed asylum on [DATE] / the date of her first claim for asylum, [DATE]. This claim was refused on the grounds that C did not have refugee status until [DATE].
6. It was accepted by HMRC our client was entitled to CB from [DATE], the date of [her] successful claim for asylum only, prior to that date, HMRC state that [name] could not be treated as being in Great Britain.

# The legal background

*Treated as being in Great Britain:*

1. In the refusal to backdate our client’s award to [her] child’s birth, which post-dates [her] asylum claim, HMRC state that [she] was not entitled to CB before the date of [her] successful claim for asylum, as [she] could not be treated as being in Great Britain before this date. Their decision cites s146 of the Social Security Contributions and Benefits Act 1992 (“**SSCBA**”) in support of this. This section reads:

***146.-*** *(1) No child benefit shall be payable in respect of a child or qualifying young person for a week unless he is in Great Britain in that week.*

* + - 1. *No person shall be entitled to child benefit for a week unless he is in Great Britain in that week.*
			2. *Circumstances may be prescribed in which any person is to be treated for the purposes of subsection (1) or (2) above as being, or as not being, in Great Britain.*
1. The circumstances in which a person is treated as being or not being in Great Britain are set out in regulation 23 of the Child Benefit (General) Regulations 2006 (“**CB Regs**”). The relevant paragraphs are as follows:

 ***23.-*** *(1) […]*

*[…]*

 *(4) A person shall be treated as not being in Great Britain for the purposes of section 146(2) of SSCBA where he makes a claim for child benefit on or after 1st May 2004 and*

* + - * 1. *does not have a right to reside in the United Kingdom; or*
				2. *has a right to reside by virtue of paragraph (1) of regulation 16 of the Immigration (European Economic Area) Regulations 2016, but only in a case where a right exists under that regulation because that person only satisfies the criteria in paragraph 5 of that regulation.*

*(5)  Subject to paragraph (6), a person is to be treated as being in Great Britain for the purposes of*[*section 146(2)*](https://uk.westlaw.com/Document/IB50286A0E44C11DA8D70A0E70A78ED65/View/FullText.html?originationContext=document&transitionType=DocumentItem&contextData=(sc.DocLink))*of SSCBA only if that person has been living in the United Kingdom for 3 months ending on the first day of the week referred to in that section.*

 *(6) Paragraph (5) does not apply where the person –*

*[…]*

*(j) is a refugee as defined in Article 1 of the Convention relating to the Status of Refugees done at Geneva on 28th July 1951, as extended by Article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31st January 1967.*

1. A person recognised as a refugee has a right to reside and therefore is not a person who is treated as not being in Great Britain under regulation 23(4). A refugee is therefore not prevented from claiming CB by s146 SSCBA. Further, under regulation 23 paragraphs (5) and (6) of the CB Regs, a refugee does not need to have been living in the UK for three months before being eligible to claim CB; they are treated as being in Great Britain immediately.
2. [Name’s]’s status as a refugee was recognised on [DATE]. This was the outcome of [her] claim for asylum on [DATE] and subsequent submissions on [DATE]. It confirmed that [her] claim for asylum was genuine and that [she] was a refugee when [she] arrived in the UK. [She] was therefore a refugee when [her] daughter was born on [DATE], even though this was not recognised until [DATE].

*Rules on backdating:*

1. In recognition of the fact that refugees may not have their status recognised for some time after they first claim asylum, there are specific regulations relating to the timing of a claim made by a refugee. The Child Benefit and Guardian’s Allowance (Administration) Regulations 2003 (“**CBGA Regs**”) state as follows:

 ***6.-*** *(1) The time within which a claim for child benefit or guardian’s allowance is to be made is 3 months beginning with any day on which, apart from satisfying the conditions for making the claim, the person making the claim is entitled to the benefit or allowance.*

*(2) Paragraph (1) shall not apply where –*

*[…]*

*(d) a person who has claimed asylum and, on or after 6th April 2004, makes a claim for that benefit or allowance and satisfies the following conditions –*

*the person is notified that he has been recorded as a refugee by the Secretary of State; and*

*he claims that benefit or allowance within 3 months of receiving that notification.*

*(e) a person who has been granted section 67 leave makes a claim for that benefit or allowance within three months of receiving notification from the Secretary of State of the grant of that leave.*

*(3) In a case falling within paragraph 2(d) or 2(e) the person making the claim shall be treated as having made it on the date when he submitted his claim for asylum.*

# Incorrect refusal to grant backdating of child benefit

1. The regulations make specific provision for the backdating of CB in cases of asylum seekers. It is clear from the regulations that, provided that a claim for CB is made within three months of the claimant receiving notification that they have been recorded as a refugee, the CB should be backdated to the date that they first claimed asylum where the claimant satisfied the conditions for refugee status at the time of their initial claim and their circumstances have not changed. This is because the process of recording a person as a refugee is not what grants them that status, but is a recognition of the fact that they are a refugee. This was discussed by Judge Jacobs in the Upper Tribunal in *FK v HMRC* [2009] UKUT 134 (AAC) at [10]:

*“A person is a refugee from the moment that the conditions set out in international law by the Convention relating to the Status of Refugees 1951 are satisfied. The domestic claim process merely provides the mechanism by which that status is identified.”*

1. This position was applied in the First-tier Tribunal (March 2020) by Judge O B Oluleye (case ref SC/312/19/02284); a case on similar facts concerning backdating of Child Benefit to the date of the claimant’s first claim for asylum in the UK. Judge Oluleye found for the claimant and HMRC’s decision was set aside. The claimant had applied for asylum more than once and had also had a period of Discretionary Leave; she was eligible for Child Benefit from the date of her first claim for asylum in the UK.
2. C applied for asylum on [DATE] and the later recognition of her status as a refugee means that she was a refugee from that date. She should therefore have been entitled to CB from the date that her daughter was born and so her claim should have been backdated to [DATE].
3. C’s claim for asylum was initially refused and it was the submission of further evidence in [DATE] that resulted in her status as a refugee being recognised. The relevant date is therefore the date that asylum was first claimed providing the grounds for asylum existed at that date. This was discussed in *FK v HMRC*, cited above:

*“…****the evidence that finally establishes the claimant’s status is irrelevant. It matters not whether it is provided with the initial claim for asylum or only becomes available later and is used in support of a new claim.*** *For the purposes of the domestic adjudication process, it may be appropriate to treat the claimant as making separate claims for asylum. However, the State’s duties in international law arise in respect of refugees. It follows that those duties arise with retrospective effect once a person’s status as a refugee is established.”*

(Emphasis added)

1. D’s ‘Child Benefit Technical Manual’ guidance confirms this with reference to *FK* at para CBTM10140*:*

***Refugees and backdating***

*The UK has international law obligations in relation to refugees. Those obligations arise because the UK is a contacting party to the Convention Relating to the Status of Refugees 1951.*

*Under Regulation 6 of the Child Benefit and Guardian’s Allowance (Administration) Regulations 2003, where a person claims Child Benefit within 3 months of being informed either:*

* *that they have been recorded as a refugee, or*
* *that they have been granted leave to remain under Section 67 of the Immigration Act 2016*

*their Child Benefit claim is treated as having been made ‘on the date they submitted their claim for asylum’.*

***The Upper Tribunal’s judgement in the case of FK v HMRC ([2009] UKUT 134 (AAC)) makes clear that Regulation 6 means that, where there has been more than one claim to asylum, and the claimant satisified [sic] the conditions for refugee status at the date of an earlier asylum claim, the benefits claim should be backdated to the date of that earlier asylum claim.***

(Emphasis added)

1. [name ] made a new claim for CB on [DATE, within two weeks] of being notified of [her] grant of asylum on DATE, and well within the three months required by reg 6(2)(d) of the CBGA Regs. This claim should have been backdated to the date of [name’s] child’s birth, as this post-dates C’s claim for asylum.
2. There is no lawful reason behind HMRC’s refusal to backdate [name]’s claim to the date that [her] child was born. At the time of [her] child’s birth, C had an undetermined claim for asylum, which was later accepted by the Home Office, confirming [her] status as a refugee. According to the relevant legislation and caselaw, this means that [name] was a refugee on the date that [her] child was born and, providing that [she] made a claim for CB within three months of receiving notification that [her] asylum claim was successful, [her] CB should be backdated to the date that [she] first claimed asylum (or, in C’s case, the later date of [her] child’s birth). C made [her] new claim within that time period and so HMRC’s refusal to backdate the claim is wrong.

**Summary**

HMRC’s refusal to backdate our client’s CB to the date that she first claimed asylum when the conditions which led to her grant of refugee status existed at the time she first claimed asylum is contrary to regulations 6(2)(d) and 6(3) of the Child Benefit and Guardian’s Allowance (Administration) Regulations 2003 and should be revised.

**Enclosures**

Please find enclosed copies of the following documents:

* + Letter from Home Office confirming C’s status
	+ C’s CB claim of DATE,
	+ Copy of C’s child’s birth certificate

**Proposed reply date**

We expect a reply promptly and in any event no later than DATE (14 days).

Yours faithfully