



# RESPONSE TO SCOSS' CALL FOR VIEWS ON THE DRAFT TWO CHILD PAYMENT (SCOTLAND) REGULATIONS

August 2025

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The Child Poverty Action Group (CPAG) in Scotland works for the one in four children in Scotland growing up in poverty. We collect evidence from families living in poverty and campaign for solutions to bring about a society where children have a fair chance in life free from hardship. We provide training, advice and information on social security to frontline workers to make sure families get the financial support they need.

Unless stated otherwise the case studies in the response have come from CPAG in Scotland's [Early Warning System](#).

## 1. The regulations do not allow backdating of the Two Child Limit Payment. What issues could this create for your clients?

Evidence from CPAG in Scotland's Early Warning System highlights individuals often lose out on money they would have been entitled to if they applied earlier because entitlement cannot be backdated to a date before the application was received. For example:

Entitlement to Scottish child payment is dependent on the individual already getting a qualifying benefit, such as universal credit.

*A mum claimed Scottish child payment once she was awarded universal credit. She successfully challenged the date the universal credit was paid from so that it was paid from the date she first applied, 5 months earlier. If mum had claimed Scottish child payment at the same time as she claimed universal credit, Scottish child payment could have been paid from the date 5 months earlier too, but because it currently cannot be paid from a date before the application was received, this is not possible.*

*A Polish mum was getting Scottish child payment for her two children, until the eldest turned six and was no longer eligible (pre-full roll out). The mum's Social Security Scotland records note that all correspondence must be sent in Polish, but when Scottish child payment was extended to children aged six and over, the invitation to claim Scottish child payment for her oldest child was sent in English. Mum's adviser spotted that she was only getting*

*Scottish child payment for one child in February '23 and helped get the older child added back onto the award, but only from February and not November '22 because of the Scottish child payment backdating rules.*

In our response to the Scottish Government's consultation on mitigating the two-child limit we stated the ideal would be to make a determination of entitlement and make payment without requiring an application, but if this was not possible within the timeframe, backdating should be included to ensure that those who apply late are not disadvantaged. We understand the trade-off between automating payments and making payments as soon as possible but are disappointed that there is no provision for backdating.

Scottish child payment allows up to four weeks backdating if you are already getting it for another child<sup>1</sup>, for consistency this should be replicated for two-child limit mitigation, although we would argue backdating should be more generous for both.

## 2. Eligibility for the Two Child Limit Payment will require the child or young person to be included in the claimants Universal Credit claim.

**Do you have examples of where there has been an error or delay in including a third or subsequent child on a Universal Credit claim?**

CPAG's Strengthening Social Security project found that some families do not claim Scottish child payment or child benefit for third and subsequent children because they mistakenly believe the two-child limit applies to those benefits as well.<sup>2</sup>

*A mum's third child was born during a coercively controlling relationship which ended before the child was born. Mum did not know that she could get an exemption from the two-child limit until recently. She told DWP who included the child element in her UC from the date of notification but should have awarded it from the date the child was born as there is no time limit for reporting non-consensual conception. The decision should have been revised rather than superseded.*

*UC claimants have three children but only get child elements for the older two because of the two-child limit. They thought this also applied to child benefit so did not claim for their youngest, who is now six, losing out on more than £4,000. They are only getting Scottish child payment for the older two children because Social Security Scotland say they have not proved responsibility for the youngest child.*

However, we also have examples where the delay was caused by the DWP. For example:

*It took a long time for client's baby twins to be added to her UC claim after she reported their birth. When they were added, the child element for the six-year-old child stopped. The client should be getting three child elements as there is an exception for multiple births. She has been advised to challenge the decision stopping the child element for the older child and to request payment of the third element from the date DWP were notified of the twins' birth.*

*A lone parent has two dependent children of her own and is a kinship carer for her grandson under s.11 of the Children (Scotland) Act 1995. This exempts her from the two-child limit, but DWP refuse to include the grandson in the UC award. She has asked DWP to review this several times to no avail.*

### Are there specific types of cases where this is more likely to happen?

Evidence from the Early Warning System suggests this is more likely to happen for families with kinship care or who have come to the UK under a family reunion visa. For example:

*A lone parent has two birth children and two kinship children under s.11 kinship care orders. This type of order means they should be exempt from the two-child limit, but DWP keep refuting this, so she is only getting UC child elements for two of the children.*

*A refugee's wife and three children joined him on a family reunion visa. He is getting UC for himself and his wife but has been trying unsuccessfully to get his children added to the claim for over two months. The two-child limit will apply once the children are successfully added to the claim.*

Not specific to third and subsequent children we have received reports of child elements being omitted from UC awards following migration from tax credits.

*When client migrated from tax credits to universal credit her award did not include child elements, despite her verifying her two children when she was asked. As well as being underpaid UC, this caused her SCP to stop.*

*Adviser reports child elements are commonly missing from UC awards following managed migration*

### 3. In some circumstances both parents could make a claim for Two Child Limit Payment and Social Security Scotland will have discretion to decide which applicant is entitled to the payment.

#### What should Social Security Scotland consider when making such decision?

Regulation 8 implies the only situation in which competing claims are possible is if both parents are part of the same joint UC claim. Eligibility for the two-child limit payment is dependent on the child being named on the UC claim. A child can only be named on one UC claim. There isn't a situation where two parents could be getting UC separately and make competing claims for the two-child limit payment.

A competing claim could only come from parents who have a joint claim for UC but cannot agree on which parent should receive the two-child limit payment. In this instance Social Security Scotland must have regard to the possibility of financial abuse within the household.

'Best interests of the child,' should be added to regulation 8 and robust guidance will be required for decision makers with a similar depth of detail to the child disability payment guidance in relation to resolving disputes about who should act on behalf of a child. <sup>3</sup>

## A similar rule applies to Scottish Child Payment, are you aware of any issues that have arisen from this?

As described above, the situation in which a competing claim could be made for a two-child limit payment is restricted to two parents who share the same joint UC claim. This is not the case for Scottish child payment, where responsibility for the child is evidenced either by receipt of child benefit or the child element of universal credit in respect of the child. It is possible for both separated parents to get a payment in respect of the same child, i.e. one gets the child element, the other the child benefit, establishing eligibility for SCP for both parents (assuming both parents get UC.)

For example:

*When mum separated from her husband, she tried to claim UC, Scottish child payment, and child benefit. Dad is still getting Scottish child payment and child benefit for the 3 children. Mum is having difficulty establishing responsibility for the children for Scottish child payment. Social Security Scotland asked her to provide a letter from UC stating the 3 children she is trying to apply for Scottish child payment for are the same 3 children she has been awarded UC for. UC will not provide this. Scottish child payment was refused and unchanged at re-determination.*

The Scottish Child Payment regulations were amended in December 2021 to state that Scottish Ministers should have regard to the circumstances of the child in determining competing claims for SCP.<sup>4</sup> However Social Security Scotland's guidance has not been updated to direct how 'having regard to the circumstances of the child,' should be interpreted.

## 4. Only people getting Universal Credit will be eligible for the Two Child Limit Payment.

### Are you aware of any situations where someone may be impacted by the two-child limit, yet not be entitled to Universal Credit, therefore not be eligible for a Two Child Limit Payment?

CPAG supported the development of the mitigation linked to UC as we believe this is the quickest route to getting money into the pockets of most families affected by the two-child limit. However, it does mean there are some families who will miss out on support because they are not in receipt of UC but would be if they were not subject to the two-child limit. For example:

*Ellie has three children but is not affected by the two-child limit. (due to an exception or because her children were born before 2017) Her rent is £1795.08 which is the maximum UC will pay for private rented 3-bedroom property in Glasgow. The maximum UC she could get would be £3073.65, but due to her earnings her UC is reduced to £215.85.*

*Anya also has three children and is subject to the two-child limit. Her rent and earnings are the same as Ellie's, but she does not receive UC. The maximum UC she could receive would be £2780.84 (since only 2 children are included in the calculation) but her earnings reduce her UC entitlement to zero. (hypothetical examples)*

CPAG estimates that 3,000 households (or 10,000 children) in Scotland miss out on UC because of the two-child limit.<sup>5</sup>

## What are the impacts of them not being eligible for the Two Child Limit Payment?

It is difficult to predict the level of income at which the families missing out lose entitlement to UC as this is dependent on earnings, household composition, the elements included in calculating UC (such as disabled child or carer element) and any housing costs.

However, it is inevitable that some of the families who miss out will still be in poverty and not able to access assistance such as the two-child limit payment and Scottish child payment that would help lift them above the relative poverty line.

## 5. People who are exempt from the two-child limit will not be eligible for a Two Child Limit Payment.

Our understanding of the draft regs is that people who have been granted an exception will not be eligible for a two-child limit payment. This is an important distinction as it allows claimants to make a choice (assuming they are aware of their options, which may not always be the case.)

## Are you aware of any situations where someone would be better off applying for an exemption, rather than the Two Child Limit Payment?

Families who are on the cusp of losing UC if they have a small increase in earnings may be better off applying for an exemption (if eligible) as including additional child elements will raise the threshold at which they lose entitlement to UC i.e. they will be able to earn more before their UC stops.

## Are you aware of any situations where someone would be better off applying for the Two Child Limit Payment rather than applying for an exemption from the two-child limit?

### *Financially better off*

#### **Universal credit transitional element**

If someone is granted an exception while there is a transitional element included in their UC award, the additional child element will erode the transitional amount. In this instance the family would be better off applying for a two-child element payment.

#### **Benefit cap**

A family may not get the benefit of the exception if they are also subject to the benefit cap.

*Client has a teenager and twins but is only getting two-child elements paid in her UC award. An exception should have been applied for the multiple birth. However, the client is subject to the benefit cap, so even if the exception is applied correctly her award will not increase.*

In some circumstances families will have to claim the two-child limit payment and a discretionary housing payment to mitigate the two-child limit and the benefit cap in full.

For example:

Agga has three children but is exempt from the two-child limit. Her rent is £700

Maximum UC	£1978.57
Child benefit	£262.38
Total	£2240.95

She is subject to the benefit cap, so her UC award is reduced by £405.95 but this is fully mitigated by a DHP, so her income remains at £2240.95.

Fatima also has three children and her rent is £700, but she is subject to the two-child limit. Her maximum UC is lower than Agga's because it contains two child elements instead on three.

Maximum UC	1685.76
Child benefit	£262.38
Total	£1948.14

Fatima is also subject to the benefit cap, so her UC award is reduced by £113.40 but this is fully mitigated by a DHP, so her income remains at £1948.14. The DHP can only be awarded up to the maximum UC and does not mitigate the two-child limit.

Fatima is awarded a two-child limit mitigation payment of £292.81 which brings her income up to £2240.95, the same as Agga's.

### *Emotionally better off*

#### **Non-consensual conception**

The choice of claiming a two-child limit payment means that women will no longer have to go through the trauma and indignity of having to disclose the circumstances in which a child was conceived in order to access financial support for a child born as the result of non-consensual sex or a coercive controlling relationship.

### Informal kinship care

Some families may prefer to apply for a two-child limit payment rather than having to enter a formal kinship care arrangement through the local authority in order to access an exemption. For example:

*Eldest sister has two children of her own. Her younger teenage twin sisters moved in with her after their mother moved away. Additional child elements will not be included in the eldest sister's UC unless a formal kinship care arrangement is set up through the local authority.*

### What information and/or support may be needed for claimants to make this decision?

Claimants must be informed of their choice to claim an exception (if eligible) or a two-child limit payment. Claimants with income from earnings should be advised to seek a better-off calculation before deciding.

## 6. In general, what lessons can be learnt from the Scottish Child Payment in the delivery of Two Child Limit Payment?

### Confusion about entitlement

CPAG's [Strengthening Social Security Project](#) highlighted that families are missing out on benefits they are entitled to because of confusion about eligibility, often conflating the universal credit child element with child benefit and Scottish child payment. Some families have been claiming one or two of these benefits in respect of their children, but not all three. Information about the two-child-limit payment must make it clear that families can also get child benefit and Scottish child payment in addition.

### Fluctuating incomes

Gaps in UC entitlement cause corresponding gaps in SCP entitlement. These gaps can be caused by a temporary increase in earnings or getting two wages in one assessment period causing UC and SCP to become unpredictable. Claimants and advisers are not always clear about what action they need to take if they lose UC entitlement for one or a series of months due to a temporary fluctuation of income.

Social Security Scotland should provide detailed guidance to support families with fluctuating incomes including information about the process followed by Social Security Scotland when UC entitlement is lost and the action and information that individuals are responsible for taking if they temporarily lost their qualifying benefit entitlement.

## 7. Do you have any general comments on the draft regulations and their likely impact?

The Scottish Government's own analysis shows the single most cost-effective way to reduce child poverty would be to end the two-child limit. Internal analysis by CPAG estimates that this measure could lift approximately

15,000 children out of poverty. CPAG, alongside many other organisations, continues to advocate for the UK government to scrap the policy entirely.

The Social Security (Amendment) (Scotland) Act 2025 introduced changes to the 2018 Act that have not yet been commenced. These regulations have been drafted with regard to the legislation as it currently stands. They will need be amended in future so that they continue to align with the provisions in the primary legislation.

## Contact

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