

Kinship care and benefits – the essentials

This factsheet explains the benefits and tax credits rules for kinship carers. First read the information on pages 2 and 3 to check which section applies to you.

What is kinship care?

Where a child is not able to live with her or his parents they may go and live full-time with relatives or friends. This is often called 'kinship care'. Sometimes this is a formal arrangement made through the courts or the children's hearing system, sometimes it is less formal and arranged within the family. This leaflet provides information on benefits and tax credits for kinship carers and the children they care for.

The legal basis for kinship care

Some kinship care arrangements are formalised by the courts or the children's hearing system, others are not. The basis for kinship care arrangements varies depending on the family's particular situation. It is very important to know whether or not a child in kinship care is looked after by the local authority.

Whether the child is **looked after** or not will depend on how the arrangement has come about. This table explains the main routes into kinship care, and whether the child is a looked after child or not.

Not looked after	Looked after
An informal arrangement has been made by the family	The child is subject to a compulsory supervision order or interim compulsory supervision order under the Children's Hearings (Scotland) Act 2011, which requires her/him to live with the kinship carer
A residence order under section 11 of the Children (Scotland) Act 1995 has been granted in favour of the kinship carer	There is a permanence order under Part 2 of the Adoption and Children (Scotland) Act 2007 in respect of the child
	The child is accommodated by a local authority under section 25 of the Children (Scotland) Act 1995

Local authority payments to kinship carers

Local authorities generally make regular payments to kinship carers of looked after children, although there is a lot of variation in the amount paid. Where the child is not a looked after child many local authorities do not make regular payments to kinship carers. However, some do. Payments are usually made under either section 22 of the Children (Scotland) Act 1995 or section 50 of the Children Act 1975. Some local authorities make payments under section 110 of the Adoption and Children (Scotland) Act 2007/regulation 33 of the Looked After Children (Scotland) Regulations 2009, but this is more unusual.

Section 22 Children (Scotland) Act 1995

Section 22 of the Children (Scotland) Act 1995 sets out the local authority's duty to safeguard and promote the welfare of children in its area who are 'in need'. Help can be given under section 22 either in cash or in kind. Section 22 powers are often used to make occasional or short-term payments, but are also sometimes used to make regular payments. Section 22 payments can be made for a wide range of purposes and so it is important to know what the payment is for.

Section 50 Children Act 1975

Section 50 of the Children Act 1975 allows the local authority to make payments for the **maintenance** of a child who is under age 18 and who is living with a person other than her/his parent. Section 50 allows the local authority to make payments to kinship carers, but does not oblige it to do so.

Regulation 33 Looked After Children (Scotland) Regulations 2009

Regulation 33 of the Looked After Children (Scotland) Regulations 2009 together with section 110 of the Adoption and Children (Scotland) Act 2007 allows the local authority to pay an allowance to kinship carers of looked after children. At present, few local authorities use these powers to make kinship care payments and are more likely to make section 22 or section 50 payments.

Which section of the leaflet to use

If the child in kinship care is not looked after by the local authority go to Section A. If the child is looked after by the local authority go to Section B.

Section A:

This section applies if the child is not a looked after child.

In this situation there are no special rules for kinship carers and they should be able to claim benefits/tax credits for the child if they satisfy the normal conditions of entitlement. The main issues which may arise are:

- priority between claimants
- delays in getting benefits and tax credits sorted out
- how local authority payments (where any are made) affect benefits and tax credits

Priority between claimants

Child benefit and child tax credit

The main child-related benefits and tax credits that the kinship carer may wish to claim are child benefit and child tax credit (CTC). These are paid by different offices which are part of Her Majesty's Revenue and Customs (HMRC). Only one claimant can get child benefit and CTC for a particular child. Often when a child comes to live with a kinship carer someone else will still be claiming child benefit and CTC for the child. This section explains the rules for who should get the child benefit and CTC for a particular child.

To get child benefit the claimant must be responsible for the child. This usually means that the child lives with the claimant. 'Living with' means that the child lives in the same house or residence and has a settled course of daily living there with the claimant. Where there are competing claims for child benefit the person with whom the child normally lives has priority. However, if someone else is getting child benefit for the child when a kinship carer makes their claim, the other person will usually retain priority over the kinship carer for three weeks after the kinship carer makes her/his claim. This means that the kinship carer will not normally become entitled to child benefit until three weeks after the week in which s/he claims. The only exception to this rule is where the other person gives up their entitlement at an earlier date.

A claimant should get CTC if the child 'normally lives with her/him'. HMRC says this means that the child 'regularly, usually, typically' lives with her/him. The claimant does not have to be getting child benefit for the child to be classed as responsible for her/him for CTC purposes.

If a child comes to live with a kinship carer full-time and the arrangement is reasonably settled, then it is very likely that HMRC will decide that the child normally lives with the kinship carer. This means that if someone else has been getting tax credits for the child their payments will stop. If they have continued to get tax credits during a period when, in fact, the child has been normally living with the kinship carer, HMRC may decide that they have been overpaid.

Income support and income-based jobseeker's allowance

An income support (IS) or jobseeker's allowance (JSA) claimant is treated as responsible for a child if:

- s/he gets child benefit for the child; *or*
- no-one gets child benefit for the child, and she/he usually lives with the claimant or the claimant is the only person who has claimed child benefit for her/him.

This may be important for the following reasons:

- to be able to claim IS as a lone parent
- as a joint claim for JSA is not necessary if the claimant has a partner
- to have amounts included in IS/income-based JSA for the child (pre-April 2004 claims only)

Housing benefit/council tax reduction

A housing benefit and council tax reduction (HB/CTR) claimant is treated as responsible for a child where the child is normally living with the claimant. This means the child spends more time in the claimant's household than in any other. If it is unclear whose household the child normally lives in, or where s/he spends equal time in more than one household, a claimant is treated as having responsibility if,

- s/he gets child benefit for the child; or
- no one gets child benefit but s/he has claimed it; or
- no one has claimed child benefit, or more than one person has claimed it, but s/he appears to have most responsibility.

Being treated as part of the household can be important for the following reasons:

- being responsible for a child or children increases the applicable amount (the figure used to calculate how much HB/CTR the kinship carer gets);
- if HB is calculated on the basis of a local housing allowance the local housing allowance which applies might change because the kinship carer requires more rooms;
- for HB, if the kinship carer been affected by the 'bedroom tax' and they are no longer deemed to be under-occupying their home, the bedroom tax deduction should stop.

Disability living allowance

If a child is getting disability living allowance (DLA) the kinship carer can apply to become the appointee. The appointee receives the DLA on behalf of the child.

Carer's allowance

If the child gets DLA care component at the middle or highest rate the kinship carer may be able to claim carer's allowance (CA) in respect of her/him. Only one person can claim CA for a particular disabled person. If there is more than one person who could be entitled, they can agree who will claim or, if agreement is not possible, the DWP will decide.

Delays

Delays in getting benefits and tax credits sorted out can cause hardship for kinship carers. There is often no easy solution, but the following are tactics which might help.

Financial help from the social work department

The social work department can make payments to help the kinship carer continue to care for the child.

Interim payments of benefit

An interim payment of child benefit can be made where it seems that the claimant is or may be entitled to benefit and where, for example, the claimant has claimed correctly but it is not possible for the claim to be dealt with immediately. For more information about interim payments see CPAG's *Children's Handbook Scotland*, available online at <http://scottishhandbooks.cpag.org.uk>

Crisis grants

It may be possible to claim a crisis grant from the Scottish Welfare Fund to help with living expenses. The kinship carer should contact their local authority for more information.

Complaints procedure

Use the complaints procedure and consider involving the claimant's MP in getting benefits and tax credits sorted out.

Treatment of local authority payments

Normally any payment that the kinship carer receives from the local authority is disregarded for all benefits and tax credits. The exception is where the kinship carer is receiving income support or income-based JSA which still includes amounts for a child or children. In this situation section 50 payments count as income up to the amount of the child dependant's allowance and any disabled child premium for the child concerned. The amount of section 50 payment above this level is disregarded. If the kinship carer is in this situation they should seek advice about claiming child tax credit instead as section 50 payments are completely disregarded for child tax credit.

Section B:

This section applies if the child is looked after by the local authority. The local authority may describe this as being an 'approved kinship carer'.

It is important to know what type of payment the local authority is making and what it is for, in order to advise the kinship carer properly about their benefits and tax credits.

Child benefit

The kinship carer should usually be able to claim child benefit for the child they are caring for. The exception to this is where the local authority is making payments under regulation 33 of the Looked After Children (Scotland) Regulations 2009. In this situation it is likely that HMRC will decide that they are not entitled to child benefit.

Child tax credit

If a child is looked after by the local authority and the local authority is paying towards the child's maintenance and/or accommodation the kinship carer is unlikely to get child tax credit (CTC) in respect of the child. This is because of special rules within the tax credit system. It is important to know what the local authority payment is for as these special rules only apply if the payment is for accommodation and/or maintenance. Note: section 22 payments can be for a wide range of needs, whereas section 50 payments are, by definition, for maintenance.

Working tax credit

If the kinship carer is 'approved' by the local authority and is receiving a kinship care allowance they may be able to claim working tax credit as a self-employed carer. See CPAG's *Children's Handbook Scotland* for more information.

Income support and income-based JSA

Being a kinship carer of a looked after child can impact on income support (IS) and income-based JSA in a number of ways.

- If the kinship carer is an 'approved kinship carer' of a child aged under 16 and they do not have a partner they should be able to claim IS on that basis.
- Some couples have to make a joint claim for JSA, which means they both need to claim, 'sign on' and look for work. This does not apply if they are caring for a child as kinship carer.
- If the kinship carer has been getting IS/income-based JSA since before 6 April 2004 and has a dependent child or children, they may still be getting amounts in their IS/income-based JSA for them. For this to continue in respect of the looked after child s/he must be treated as part of their household (see below).

Part of the household?

Sometimes, even though a child lives full-time with someone, s/he is not treated as part of their household for IS/JSA purposes. It is possible that a child living with a kinship carer may not be treated as part of their household – this is because the rules about this are not clear. If the DWP decides that the child is not part of kinship carer's household and they lose money as a result the kinship carer should seek expert advice.

Treatment of local authority payments

Any payment the local authority makes is disregarded in full except where the kinship carer is still receiving amounts in their income support/income-related JSA for a child or children. In this situation section 50 payments count as income up to the amount of the child dependant's allowance and any disabled child premium for the child concerned. The amount of section 50 payment above this level is disregarded.

Housing benefit/council tax reduction

Housing benefit (HB) and council tax reduction (CTR) may be affected in several different ways for a kinship carer of a looked after child.

Housing benefit

The child may not be treated as part of the kinship carer's household or as 'occupying the home' for HB purposes, even though s/he lives with the kinship carer. This can affect HB in a number of ways.

- If the child is not part of the household the HB 'applicable amount' (the amount used to calculate HB) will not include amounts for the child.
- If the kinship carer lives in private-rented accommodation their HB will probably be calculated using the 'local housing allowance'. This is based partly on how many rooms you are deemed to need (called the 'size criteria'). The size criteria will not include a looked after child in kinship care. However, the kinship carer will be allowed one extra room in the size criteria because they are an 'approved kinship carer'.
- If the kinship carer is under pension credit age and lives in the social rented sector they may be affected by the bedroom tax. This is because a looked after child in kinship care is not 'counted' when deciding whether or not the kinship carer is under-occupying their home. However, the kinship carer will be allowed one extra room in the size criteria because they are an 'approved kinship carer'.

Council tax reduction

If the kinship carer is on income support, income-based JSA, income-related ESA or guarantee pension credit they are passported to maximum council tax reduction (CTR). If they are not passported to maximum CTR, the amount they get will depend on whether the child they care for counts as part of their household for CTR purposes. Sometimes, although the child lives with the kinship carer, s/he is not considered part of their household: this is because the rules that affect kinship carers in this situation are not clear. If the local authority decides that the child is not part of the kinship carer's household and they lose out as a result, they should seek advice.

Treatment of local authority payments

Any payment the local authority makes should be disregarded in full for HB and CTR.

Disability living allowance

If a child is getting disability living allowance (DLA) the kinship carer can apply to become the appointee. The appointee receives the DLA on behalf of the child.

Carer's allowance

If the child gets DLA care component at the middle or highest rate the kinship carer may be able to claim carer's allowance (CA) in respect of her/him. Only one person can claim CA for a particular disabled person. If there is more than one person who could be entitled, they can agree who will claim or, if agreement is not possible, the DWP will decide.

Universal credit

A new benefit called universal credit has started to replace means-tested benefits and tax credits. Eventually the following benefits and tax credits will be replaced by universal credit:

- Income support
- Income-based JSA
- Income-related employment and support allowance
- Housing benefit
- Working tax credit
- Child tax credit

Universal credit can include an amount for dependent children, called the child element. Kinship carers of a non-looked after child will have the child element included in their universal credit. Kinship carers of a looked after child will not get the child element unless they have legal parental responsibility for the child. Any payment made by the local authority should be disregarded as income for universal credit.

Further information and advice

Child Poverty Action Group in Scotland

CPAG in Scotland advice line for advisers

0141 552 0552 advice line for advisers on benefits and tax credits,
Monday to Thursday 10am – 4pm and Friday 10am to 12 noon

Email: advice@cpagscotland.org.uk

Website: www.cpag.org.uk

For more detailed information about all of the issues covered please see CPAG's *Children's Handbook Scotland* available free online at <http://scottishhandbooks.cpag.org.uk>

**CHILD
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