



## Kinship care and benefits – the essentials

Child Poverty Action Group works on behalf of the one in four children in Scotland growing up in poverty. It doesn't have to be like this. We use our understanding of what causes poverty and the impact it has on children's lives to campaign for policies that will prevent and solve poverty – for good.

We provide training, advice and information to make sure low income families get the financial support they need.

This factsheet explains the benefits and tax credits rules for kinship carers. First it is important to know whether the child who is living with a kinship carer is 'looked after' by the local authority or not. See the information below to check this.

### What is kinship care?

Where a child is not able to live with their parents they sometimes 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, by the local authority or by 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.

### Looked after by the local authority or not?

Some kinship care arrangements are formalised by the courts, the local authority or the children's hearing system, others are not. The basis for kinship care arrangements varies depending on the circumstances of a particular situation. It is very important to know whether or not a child in a kinship care situation 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 kinship care order (sometimes called a residence order) under section 11 of the Children (Scotland) Act 1995) has been granted in favour of the kinship carer.	The child is accommodated by a local authority under section 25 of the Children (Scotland) Act 1995
	There is a permanence order under Part 2 of the Adoption and Children (Scotland) Act 2007 in respect of the child

### Local authority payments to kinship carers

Many, but not all, kinship carers get regular payments from the local authority. If a kinship carer gets regular payments from the local authority, these are likely to be made under section 22 of the Children (Scotland) Act 1995, section 50 of the Children Act 1975 or regulation 33 of the Looked After Children (Scotland) Regulations 2009 (sometimes referred to as section 110 of the Adoption and Children (Scotland) Act 2007). At present, there is no national set minimum rate of kinship care payment and there is variation in the level of payments made by different local authorities to kinship carers.

#### **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'. 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, for the impact on benefits and tax credits, 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 (called 'approved kinship carers').

## Kinship carer allowances – Scottish Government guidance

There is an agreement between the Scottish Government and local authorities that certain kinship carers should get financial support at the same level as the local authority's fostering allowance rate (not including fostering fees). The agreement covers:

- Kinship carers of looked after children;
- Kinship carers where the child is subject to a kinship care order under section 11 of the Children (Scotland) Act 1995 or the carer is the child's guardian under section 7 of the Children (Scotland) Act 1995, *and*
  - the child was previously looked after by the local authority, *or*
  - the child is at risk of becoming looked after, *or*
  - was placed with the kinship carer by the local authority.

Scottish Government guidance suggests that local authorities deduct any 'child-related' benefits to which the kinship carer is entitled, and that a foster carer would not get, from the amount of the allowance. Specifically, child benefit and child tax credit (although not the disability or severe disability element) should be deducted if the kinship carer is eligible for these benefits. Guardian's allowance, if payable, should not be deducted.

### *Example*

*Betty cares for her eight year old grandson, Joe, and has been granted a kinship carer order. Before she got the kinship care order Joe was subject to a compulsory supervision order and was therefore 'looked after' by the local authority. Betty gets child benefit and child tax credit for Joe and this amounts to £84.54 a week. A foster carer would not get these benefits for a child in their care. The local authority where Betty lives pay a fostering allowance on £150 a week. The local authority deducts £84.54 from this amount and pays Betty £65.46 a week kinship care allowance.*

### 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 - child not looked after by the local authority**

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 for the child if they satisfy the normal rules. For example, a kinship carer may be able to claim child benefit. They may also be able to claim and increase for the child in means-tested benefits such as universal credit or for kinship carers who do not come under the universal credit system, child tax credit and/or other means-tested benefits like housing benefit.

The main issues which may arise are:

- priority between claimants if someone else is claiming benefits for the child;
- delays in getting benefits sorted out;
- the 'two-child limit'; *or*
- whether local authority payments (where any are made) affect benefits.

### **Priority between claimants**

#### **Child benefit**

Only one claimant can get child benefit for a particular child. Often, when a child comes to live with a kinship carer someone else will be getting the child benefit.

To get child benefit the claimant must be responsible for the child. This usually, but not always, 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 their claim. This means that the kinship carer will not normally become entitled to child benefit until three weeks after the week in which they claim. The only exception to this rule is where the other person gives up their entitlement at an earlier date.

#### **Universal credit**

If a kinship carer gets universal credit it should include a child element for the child/children they care for, as long as they count as being responsible for the child or children. This means that the child or children normally lives with the kinship carer. The kinship carer does not have to be getting child benefit for the child.

#### **Child tax credit and other benefits**

Child tax credit (CTC), working tax credit, housing benefit, income support, income-based jobseeker's allowance and income-related employment and support allowance are all being replaced by universal credit. These benefits are often referred to 'legacy benefits'. Many kinship carers may still be on one or more of these benefits while universal credit is being rolled out. The most important of these for many kinship carers is CTC. A claimant should get CTC if the child 'normally lives with her/him'. HM Revenue & Customs 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.

### **Council tax reduction**

For council tax reduction a 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 in order that the kinship carer gets an increase in the 'applicable amount' (the figure used to calculate how much council tax reduction the kinship carer get).

### **Pension credit**

From February 2019 some pension credit claimants who are responsible for a child get an additional amount in their pension credit (instead of child tax credit). Being responsible for a child means the child normally lives with the kinship carer. The claimant does not have to be getting child benefit for the child.

### **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 sorted out can cause hardship for kinship carers. Here are some ideas 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/ short term advances

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. A repayable short-term advance of universal credit can be made where the kinship carer is waiting for universal credit to be paid. For more information about interim payments and short-term advances see CPAG's *Children's Handbook Scotland*.

### 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.

## The 'two child limit' and kinship carers

A 'two-child limit' was introduced on 6 April 2017. This mainly affects universal credit and child tax credit. For many people it means that universal credit or child tax credit amounts will only be paid for two children, even if there are more than two children in the family. However, there are exceptions to this rule including for some kinship carers.

The two-child limit does not apply to children in kinship care if the kinship carer:

- has a kinship care order under section 11 of the Children (Scotland) Act 1995;
- is appointed as guardian under section 7 of the Children (Scotland) Act 1995;
- is entitled to guardian's allowance for the child/children;
- one of the above applied before the child turned 16 and the kinship carer continues to care for the child;
- took on the care of the child where otherwise it is likely that they would have been looked after by the local authority.

### *Example*

*Sally and Bob have one child already when they take on the care of their niece and nephew. They have kinship care orders in place for both children. They can get universal credit amounts for all three children. Two years later they have another baby and they are able to get universal credit for the baby as well because the two 'kinship' children are disregarded for the 'two-child limit'.*

### **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. There is an exception 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. This is now a very unusual situation.

## **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 HM Revenue and Customs will decide that they are not entitled to child benefit.

### **Universal credit**

If the child is looked after by the local authority the kinship carer will not be able to get universal credit amount for the child unless they have legal parental responsibilities for the child and certain other conditions apply. Most kinship carers of a looked after child do not have legal parental responsibilities and therefore do not get the universal credit ‘child element’ for the child.

From 6 April 2017 a ‘two-child limit’ means that normally there is a maximum of two children included in your universal credit for children born on or after 6 April 2017. There are some exceptions to this rule. If a kinship carer has parental rights for a child as a result of a permanence order, the child is exempt from the two child limit.

### **Child tax credit and other benefits**

Child tax credit (CTC), working tax credit, housing benefit, income support, income-based jobseeker’s allowance and income-related employment and support allowance are all being replaced by universal credit. These benefits are often referred to ‘legacy benefits’. Many kinship carers may still be on one or more of these benefits while universal credit is being rolled out. The most important of these for many kinship carers is CTC.

If a child is looked after by the local authority, but the local authority payment **is not** in respect of accommodation or maintenance, then the kinship carer should be able to get CTC for the child. A payment made under section 22 of the Children (Scotland) Act 1995 will often be for expenses other than accommodation or maintenance.

If the local authority payment **is** in respect of accommodation and/or maintenance, then the kinship carer will not be able to get CTC. A payment made under section 50 of the Children Act 1975 is, by definition, for maintenance.

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.



## **Pension credit**

From February 2019 some pension credit claimants who are responsible for a child get an additional amount in their pension credit (instead of child tax credit). A kinship carer will not get this additional amount for a looked after child unless they have legal parental responsibilities for the child and certain other conditions apply.

<p><b>Note:</b> local authority payments to kinship carers are disregarded for tax credits and means-tested benefits like universal credit and pension credit.</p>
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## **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.

## Further information and advice

CPAG in Scotland advice line for advisers on benefits and tax credits:

0141 552 0552

Monday to Thursday 10am – 4pm and Friday 10am to 12 noon

**Email:** [advice@cpagscotland.org.uk](mailto:advice@cpagscotland.org.uk)

**Website:** [www.cpag.org.uk](http://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 <https://www.onlinepublications.cpag.org.uk/>

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