

Tax credits - penalties



May 2021

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 hard-up families get the financial support they need.

Tax credits - penalties is one of a series of Child Poverty Action Group in Scotland leaflets giving guidance to advisers and those working with families in Scotland about aspects of the tax credit system of particular concern.

Introduction

There are two types of tax credit; *child tax credit* and *working tax credit*. You may get either or both. Tax credits are administered by Her Majesty's Revenue and Customs (HMRC).

Tax credits are gradually being replaced by universal credit. If you are currently getting tax credits, you can continue to get them unless you make a claim for universal credit, and will be able to renew your claim until you are transferred onto universal credit. The process of transferring most people from tax credits to universal credit is expected to happen between 2022 and 2026. See [Tax credits: moving on to universal credit](#) for more information.

What is a penalty?

The tax credit system allows HMRC to impose financial penalties in certain situations. For example, if you fail to report certain changes of circumstances or if you give incorrect information. This leaflet explains when a penalty can be imposed, how much it might be and what you can do to challenge it.

Penalty – up to £300

In some circumstances HMRC can impose a penalty of **up to** £300. These are the situations when this can happen.

Failure to tell HMRC about a notifiable change of circumstances

There are only certain changes that you must tell HMRC about within one month. Changes which must be notified are as follows:

- You stop being part of a couple, or start being part of a couple
- Childcare costs stop or go down by £10 or more per week for 4 weeks in a row
- You stop working at least 16, (or 24 for some couples with children) or 30 hours per week
- You no longer count as responsible for a child, e.g., they move out, leave full-time education, claim benefits in their own right
- You leave the UK permanently, or for more than 8 (or 12 in connection with illness or bereavement) weeks
- For child tax credit, you lose the right to reside

If you fail to tell HMRC about one of these changes, and you do not have a reasonable excuse, HMRC can impose a penalty of up to £300.

Example

Ben is a disabled worker, working for 35 hours per week. He is claiming working tax credit. In October his hours drop to 28 per week. He doesn't tell HMRC until he returns his annual declaration in the following May. HMRC may decide to impose a penalty on Ben for failing to tell them about this change in his circumstances.

Failure to provide information or evidence requested

Sometimes HMRC decides it needs more information or evidence from you. This might be at the start of your claim, or at some point after tax credits have been awarded. Usually HMRC will send you an 'informal request' for the information/evidence. If you don't comply then it may then decide to send a 'formal request'. If you still fail to comply with this without reasonable excuse, it is possible for a penalty of **up to** £300 to be imposed. However, HMRC must refer your case to an independent appeal tribunal for the decision on a penalty in this situation. If an initial penalty is imposed, then a further £60 can be added for each day you continue not to supply the requested information/evidence. HMRC may also suspend your payments if you fail to provide information requested.

Failure to comply with a requirement regarding a final notice

The final notice is the form that HMRC sends out after the end of the tax year to check the previous year's entitlement and renew the claim for the current year. Many claimants are instructed to return an annual declaration form by a particular date (usually 31 July). HMRC can impose a penalty of up to £300 if you fail, without a reasonable excuse, to comply with any of the final notice requirements (such as returning the annual declaration). However, HMRC says it will not normally impose a penalty in this situation as it simply stops payments if the annual declaration is not returned.

What is a reasonable excuse?

HMRC should only think about imposing a penalty if you do not have a 'reasonable excuse'. This might be serious illness, bereavement, wrong advice from HMRC, postal disruption, or any other event or circumstance has prevented you from complying. HMRC says that being too busy will not be accepted as a reasonable excuse.

Discretion

Remember: £300 is the maximum penalty which HMRC can impose in these situations. Even if you do not have a reasonable excuse, HMRC can decide that there should be no penalty, or that the penalty should be less than £300.

Remember: you always have a right to request a review then appeal against the decision to impose a penalty and against the amount of the penalty

Penalty – up to £3000

A much higher penalty of up to £3000 can be imposed where HMRC decides that you have either fraudulently or negligently given an incorrect statement or declaration, or fraudulently or negligently given incorrect information or evidence.

What counts as negligence?

HMRC says that if you didn't take reasonable steps to make a correct claim then it can be negligence. 'Plain carelessness' can be negligence.

Example

Sophia claims tax credits. She receives child tax credit and working tax credit, including the childcare element. This is based on the information she gave on her claim which was that she has childcare costs of £90 per week. HMRC checks her case and finds that she only has these costs during term-time and none during the school holidays. HMRC may find that she 'negligently' gave incorrect information and may decide to impose a penalty.

Joint claims

Even if it is your partner in a joint claim who has given incorrect information, a penalty can be imposed on you, unless you didn't know, and couldn't have reasonably been expected to know that your partner had given incorrect information. However, if both partners in a joint claim are penalised, the total penalties can amount to no more than £3000.

Relevant factors

Although HMRC has considerable powers to impose penalties, it will often decide not to do so. Also, where a penalty is imposed, it will often be less than the maximum allowed. HMRC says that whether a penalty is imposed, and the level of any penalty, will depend on factors such as the amount of any resultant overpayment, any previous penalties, and the extent of your 'cooperation'. It also says that no penalty should be imposed where the award was not incorrect, even where there has been fraudulent or negligent behaviour.

The amount of a penalty

According to HMRC's factsheet, (*Tax Credits Penalties WTC7*), the amount of a penalty for a 'deliberate and wrong' new claim is:

- £600 for a first wrong new claim
- £1,000 for a second wrong new claim
- £1,500 for a third and subsequent wrong new claim

The amount of a penalty for a 'deliberate and wrong' declaration when reporting any other information is:

- for a first wrong declaration, 30% of the over-claimed tax credits up to a maximum of £3,000
- for a second wrong declaration, 50% of the over-claimed tax credits up to a maximum of £3,000
- for a third or subsequent wrong declaration, 100% of the over-claimed tax credits up to a maximum of £3,000

How to challenge a penalty

You can ask HMRC to review its decision to impose a penalty. This is known as 'mandatory reconsideration'. Once you have been notified of the outcome, if you are still unhappy, you can appeal to an independent First-tier Tribunal. If the penalty is for failing to provide information/evidence, it will have been imposed by a tribunal. In this case the appeal is to the Upper Tribunal. The tribunal can decide that:

- There should be no penalty
- That the penalty is correct
- The amount of the penalty should be reduced because it is excessive
- The amount of the penalty should be increased because it is insufficient.

Possible appeal arguments:

- That you had reasonable excuse for failing to report a change or failing to respond to a request for information/evidence. There is no legal definition of 'reasonable excuse'. HMRC's own guidance gives some examples of situations which will provide reasonable excuse, for example, very serious ill-health or bereavement. However, this is only guidance and many other situations may be accepted by an appeal tribunal judge. It is therefore worth fully explaining any relevant circumstances, such as ill-health, family crisis, or information not being available.
- That, although you gave incorrect information, it was not as a result of negligence and that you have not acted fraudulently. For example, HMRC has decided that your single claim was made fraudulently because you have been living as part of a couple, but you fundamentally disagree with this decision.

Example

Ben

HMRC imposes a penalty on Ben for failing to report a drop in his working hours. The maximum penalty is £300 and HMRC decides that a £200 penalty is appropriate. Ben gets advice and the adviser suggests that he should request a review. He argues that he had a reasonable excuse because of literacy problems, coupled with family difficulties (his mother, who normally helps him with forms, had been very ill during the relevant period and he had been helping to care for her). HMRC reconsiders the decision and decides to cancel the penalty.

Sophia

HMRC imposes a penalty on Sophia for 'negligently' giving incorrect information in relation to childcare costs. The maximum penalty is £3000 and HMRC decides that a £1000 penalty is appropriate. Sophia requests a review but the decision is not changed. She appeals against the decision, arguing that, although she did give misleading information, she did not do so negligently. She found the forms difficult to understand and, while she did put the wrong figure on her claim form, she attached a letter with the form stating that she had no childcare costs during school holidays. This letter seems to have been ignored by HMRC.

How are penalties collected?

Penalties are collected directly from you – they are not collected along with overpayments or by deduction from your tax credits. Although HMRC will make a demand for the full amount, you should be able to arrange to pay by instalments. Sometimes HMRC will add on interest if you do this. If you don't pay, HMRC can take civil action to recover the money from you.

What if you can't afford to pay?

If you disagree with a penalty decision, you should request a review then appeal (see above). If, however, you don't win your appeal, or you don't feel you have any grounds to appeal, you will be left with a penalty to pay. However, HMRC has the discretion **not** to recover a penalty. If you cannot afford to pay you should argue that HMRC should waive the penalty on the grounds of severe hardship. You should fully explain your financial circumstances and what might happen if you have to pay the penalty (e.g., detrimental effects on your health, impact on ability to pay for essentials).

Further information and advice

Child Poverty Action Group in Scotland

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

Email: advice@cpagscotland.org.uk

email advice for advisers on benefits and tax credits

cpag.org.uk/scotland/welfare-rights/tax-credits

for more tax credit leaflets from CPAG in Scotland

CPAG publishes the *Welfare Benefits and Tax Credits Handbook*, a comprehensive guide to benefits and tax credits for claimants and advisers.

CPAG in Scotland's advice line is only for advisers. If you are having problems with your own tax credit or benefit claim and are in need of advice you should contact your citizens advice bureau or other local welfare rights service.

HM Revenue and Customs

Tax Credit Helpline 0345 300 3900
(textphone 0345 300 3909)

gov.uk/topic/benefits-credits/tax-credits

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CPAG in Scotland's Tax Credits & Early Years Project is funded by the Scottish Government.