



Kinship carers and universal credit

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 universal credit rules for kinship carers. See CPAG in Scotland's factsheet *Kinship care and benefits – the essentials* for information about other benefits.

Firstly, 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 universal credit 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. 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

An informal arrangement has been made by the family

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.

Looked after

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

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 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. For example, if a kinship carer gets the child element of universal credit, this would be deducted.

Universal credit

Universal credit (UC) is replacing means-tested benefits and tax credits for working age claimants. The following benefits and tax credits are being replaced by universal credit:

- income support
- income-based JSA
- income-related employment and support allowance
- housing benefit (for most claimants under pension age)
- working tax credit
- child tax credit

UC can include amounts for dependent children (child element), an amount to help with rent (housing costs element), an amount to help people in paid work with the cost of child-care (childcare costs element) as well as additional elements if you are caring for a disabled person or you are unwell.

Child element

UC can include an amount for dependent children, called the **child element**. If the child has a disability a disabled child addition might also be included.

Kinship carers of a *non-looked after child* should get the child element, including any disabled child addition, in their UC providing the child is normally living with them.

Kinship carers of a *looked after* child will not normally get the child element (including the disabled child addition). There is an exception if the kinship carer has legal parental responsibility for the child and certain other conditions apply. This is unusual and would not apply to most kinship carers of a looked after child.

Housing costs element

UC can include a housing costs element to help with rent. The amount of the housing costs element is based on how many bedrooms the UC claimant is treated as needing (the 'size criteria').

Non-looked after children in kinship care 'count' for the 'size criteria'.

Looked after children are not usually included in the size criteria. Kinship carers of looked after children (often called 'approved kinship carers') are allowed one extra room in the size criteria, regardless of how many children they care for.

Example

Sophia cares for her three grand-children, aged 5, 7 and 10. The children are looked after by the local authority. Sophia and the three children live in a private-rented flat. She claims universal credit and her universal credit includes a 'housing costs element' to help with the rent. When calculating the housing costs element for universal credit, the three children are not counted, because they are looked after by the local authority. Sophia is treated as needing one bedroom for herself and one other bedroom because she is a kinship carer of looked after children – two bedrooms in total, even though there are four people in the flat. This means her housing costs element will be limited to the amount payable for a two-bedroom property in her area and may not cover the full rent.

Childcare costs element

If the claimant is working, UC can include a childcare costs element for a dependent child or children, but only if they get the child element for that child. This means that a kinship carer of a *looked after child* cannot usually get help with childcare costs for that child through UC.

Work allowance

The 'work allowance' is an amount that some UC claimants are allowed to earn before their earnings start affecting the amount of UC they get. Only claimants with a dependent child or children or who have 'limited capability for work' get a work allowance. If a kinship carer does not get the child element for a child they care for the child does not count as their dependent for this purpose.

Treatment of local authority payments

Any payments made by the local authority are disregarded as income for universal credit.

The UC '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;

- has parental rights/responsibilities as a result of a permanence order in respect of the child;
- 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'.

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

Website: 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 askcpag.org.uk/publications/scotland

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Registered office: 30 Micawber Street, London N1 7TB

CPAG in Scotland's welfare rights projects are supported by the Scottish Government