

# Kinship care and benefits – the essentials

This factsheet explains the benefit and tax credit rules for kinship carers. Section A deals with kinship carers of children who are **not looked after** by the local authority. Section B deals with kinship carers of children who are **looked after** by the local authority.

## What is kinship care?

By kinship care we mean a full-time care arrangement provided by a child’s extended family or wider network of friends. The Looked After Children (Scotland) Regulations 2009, which came into force on 28 September 2009, introduced a legal definition of kinship carer. In the context of these regulations ‘kinship carer’ means a person approved as a kinship carer by the local authority. A person may be approved as a kinship carer where they are caring for a child who is **looked after** by the local authority and they are either related to the child or they are known to the child and have a pre-existing relationship with her/him. Other carers, who are not approved under the new regulations will still view themselves, and describe themselves, as kinship carers.

## 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 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. If the child is **not looked after** by the local authority the kinship carer will not be approved under the 2009 regulations. Whether the child is looked after or not will depend on how the arrangement has come about.

This table explains the different 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 supervision requirement under section 70 of the Children (Scotland) Act 1995 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

**If the child is not a looked after child, see Section A for impact on benefits and tax credits. If the child is a looked after child see Section B.**

## Local authority payments to kinship carers

Most local authorities are either making, or planning to make, regular payments to kinship carers of looked after children. Where the child is not a looked after child many local authorities do not make regular payments to kinship carers. However, some do. Where the local authority is making a payment it will be using one of three powers: either section 22 of the Children (Scotland) Act 1995, section 26 of the Children (Scotland) Act 1995 or section 50 of the Children Act 1975.

### 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 26 Children (Scotland) Act 1995**

Section 26 of the Children (Scotland) Act 1995 sets out how the local authority may provide accommodation for looked after children, including a provision to pay. Section 26 can only be used where the child is a looked after child.

## **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. Payments under section 50 cannot be made to foster carers. Section 50 allows the local authority to make payments to kinship carers, but does not oblige it to do so.

## **Section A: Benefits and tax credits – kinship carers of non-looked after children**

### **General**

Where the kinship care arrangement has come about either as a result of an informal arrangement made by the family or a residence order under section 11 of the Children (Scotland) Act 1995 the child is not a looked after child. In this situation there are no special benefit/tax credit 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 arise for kinship carers of non-looked after children 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). 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 about 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'. The Revenue 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.

If a child comes to live with a kinship carer full-time and the arrangement is reasonably settled, then it is very likely that the Revenue 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, the Revenue 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 s/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
- so 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)

## **Pension Credit**

There are no additional amounts for children in pension credit and local authority payments are disregarded in full.

## **Housing benefit/council tax benefit**

A housing benefit and council tax benefit (HB/CTB) claimant is treated as responsible for a child where the child is normally living with the claimant. This means the child spends more time with the claimant than with anyone else. If it is unclear whose household the child normally lives in, or if 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.

This may 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/CTB you get);
- if HB is calculated on the basis of a local housing allowance the local housing allowance which applies might change because you require more rooms.

## **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 in respect of her/him. Only one person can claim carer's allowance 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 benefit 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*.

## Crisis loans

It may be possible to claim a crisis loan to help with living expenses. Obviously this is less helpful than the above options as a crisis loan has to be repaid.

## 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

This table explains how payments from the local authority affect means-tested benefits and tax credits. Remember this is for kinship carers of non-looked after children.

Benefit/tax credit	Section 50 payment	Section 22 payment
Income support/ income-based JSA, if no amounts for child or children included	Disregarded	Disregarded
Income support/ income- based JSA, if still has amounts for child or children included (pre- 2004 claims only)	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 any payment above this level is ignored.	Arguably disregarded as 'voluntary payments'
Employment and support allowance	Disregarded	Disregarded
Pension credit	Disregarded	Disregarded
Housing benefit/council tax benefit (aged under 60), not on IS, income- based JSA, guarantee PC, income-related ESA	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 any payment above this level is ignored.	Arguably disregarded as 'voluntary payments'
Housing benefit/council tax benefit, aged 60 or over	Disregarded	Disregarded
Tax credits	Disregarded (confirmed by HMRC in email to CPAG)	Disregarded (confirmed by HMRC in email to CPAG)

## Section B: Benefits and tax credits – kinship carers of looked after children

### General

To work out the impact on benefits and tax credits it is very important to know the following:

- whether the local authority is making regular payments to the kinship carer
- if so, what the payment is for and what legal power the local authority is using to make the payment

If a kinship carer is caring for a looked after child, but the local authority is **not** making any payment in respect of the child's accommodation and/or maintenance then there are no special benefit/tax credit rules. In this situation see Section A of this factsheet.

If the local authority is making regular payments for accommodation and/or maintenance, then the benefit/tax credit rules can be more complicated.

## **Child benefit**

If a child is looked after and the local authority is paying towards the child's maintenance and/or accommodation the Revenue may decide that child benefit is not payable in respect of the child. If this happens, the claimant should consider appealing and seek advice. There is information in CPAG's *Children's Handbook Scotland* about an argument the claimant could make in their appeal.

## **Child tax credit**

If a child is looked after and the local authority is paying towards the child's maintenance and/or accommodation the kinship carer cannot get child tax credit (CTC) in respect of the child. This is because the tax credit rules prevent the claimant being treated as responsible for a child where the child is provided with or placed in accommodation under Part II of the Children (Scotland) Act 1995 and the cost of the child's accommodation or maintenance is borne wholly or partly out of public funds.

A kinship carer may still qualify for CTC if s/he has other dependent children who do not fall into this category.

## **Working tax credit**

Where there is a supervision requirement under section 70 of the Children (Scotland) Act 1995 and the kinship carer is receiving payment from the local authority they may be able to claim working tax credit as a self-employed 'foster 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 does not have a partner they may be able to claim IS on the basis of being a lone parent. In order to be classed as a lone parent the child they are caring for must be treated as part of their household (see below) and must be under 10
- Payments the kinship carer gets from the local authority might impact on the amount of benefit they get – how payments are treated may depend on whether the child is treated as part of their household (see below)
- 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 the kinship carer's household (see below)

## **Part of the household?**

Sometimes, even though a child lives 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 are not clear. If the DWP decides that the child is not part of the kinship carer's household and they lose money as a result the kinship carer should seek expert advice.

## **Treatment of local authority payments**

Section 26 payments – disregarded in full.

Section 22 and section 50 payments -

- If the child is **not** treated as part of the household, any amount of the payment used for the child is disregarded
- If the child is treated as part of the household how payments are treated depends on what type of payment it is and whether the kinship carer still gets amounts in their IS/JSA for the child (pre-April 2004 claims with no CTC). Check the table below to find out how the payment is treated

	Section 50	Section 22
IS/income-based JSA with no amounts for child/ren	Disregarded in full	Arguably disregarded because paid in respect of the child
IS/income-based JSA with amounts for child/ren included	Counts as income up to the amount of the child's personal allowance and any disabled child premium for the child concerned	Arguably disregarded as 'voluntary payments'

## Pension Credit

There are no additional amounts for children in pension credit and local authority payments are disregarded in full.

## Housing benefit/council tax benefit

If the kinship carer is getting IS, income-based JSA, income-related ESA or guarantee pension credit s/he will be passported to maximum housing benefit (HB) and council tax benefit (CTB). In this situation any payments from the local authority (as a kinship carer) are, in effect, disregarded as income for HB/CTB.

If the kinship carer is not passported to maximum HB/CTB how much HB/CTB s/he gets may depend on whether or not the looked after child counts as a member of the household for HB/CTB purposes. This is because if the child is not part of the household there will be no amounts included in the claimant's 'applicable amount' in respect of the child. Also, the payments from the local authority may be treated in a different way (see the table below).

Sometimes, even though a child lives with someone, s/he is not treated as part of their household for HB/CTB purposes. It is possible that the local authority may not treat a child in kinship care as part of the kinship carer's household for HB/CTB. This is because the rules that affect kinship carers are not as clear as they could be.

If the local authority decides that the child is not part of the kinship carer's household for HB/CTB purposes and the kinship carer loses benefit as a result, they should seek expert advice.

## Treatment of local authority payments

Section 26 payments – disregarded in full.

Section 22 and section 50 payments -

- If the kinship carer or their partner is aged 60 or over any payment is disregarded in full
- If the kinship carer (and their partner if they have one) is aged under 60 how the payment is treated depends on what type of payment it is and whether the child is treated as part of the household or not. Check the table below to find out how the payment is treated.

	Section 50	Section 22
Child treated as part of household	Counts as income up to the amount of the child dependant's allowance and any disabled child premium for the child concerned.	Arguably disregarded as 'voluntary payments'
Child treated as not part of household	Any amount of payment that is used for the child is disregarded.	Any amount of payment that is used for the child is disregarded.

## 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 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

### **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, Tuesday, Wednesday and Thursday 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>

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