



Exceptions to the limiting of the individual Child Element of Child Tax Credit and the Child Element of Universal Credit to a maximum of two children

CPAG's response

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A. CPAG's view on the two-child limit for tax credits and universal credit

1. CPAG remains completely opposed to the policy of limiting tax credits and universal credit to two children in a family, for the following reasons:
2. It breaks the link between assessed need and the provision of a minimum level of support, which is a fundamental pillar of a means-tested social security system.
3. It places into statute a view which we believe is immoral: that some children, because of the circumstances of their birth, are less deserving than others of a decent standard of living.
4. It will increase and deepen poverty. The Institute for Fiscal Studies has projected that 600,000 more children will live in absolute child poverty by 2020/21 compared with 2015/16, *all of them in families with three or more children*.ⁱ The two-child limit accounts for around a third of this impact. The deeper families move into poverty, the harder it is for them to 'work their way out'.
5. Children in larger families are already at an elevated risk of poverty: 36 per cent of children in families with three or more children live in poverty after housing costs, compared with 26 per cent for those in families with one or two children.ⁱⁱ A family with *two* children, where both parents work full time on the national minimum wage, already falls 12 per cent short of the income needed for a minimum acceptable standard of living.ⁱⁱⁱ Families with three children, if not entitled to any additional tax credit or universal credit payments, will clearly fall much further behind than this.
6. The policy is extremely likely to contravene human rights treaties to which the UK is a signatory. The policy seeks to restrict women's basic reproductive rights, contrary to Article 16 of the Convention on the Elimination of all Forms of Discrimination Against Women. It would also discriminate against groups with a conscientious objection to contraception and abortion or for whom large families are a central tenet of faith, in breach of Article 14 of the European Convention of Human Rights. It also fails to give primary consideration to the best interest of the child in contravention of Article 3(1) of the UN Convention on the Rights of the Child. The UN Committee on Economic, Social and Cultural Rights raised a specific concern about the effect of cuts to social security on the standard of living enjoyed by families with two or more children in the Concluding Observations of its recent review of the UK's compliance with the International Covenant on Economic, Social and Cultural Rights.^{iv}
7. The policy creates perverse incentives which risk harm to families and children. It will create incentives for the separation of larger families and for women to have abortions, and against the formation of blended families by partners who already have children. It may also lead to residency decisions for the children of separated parents go against the child's best interests, but are based instead on the desire to maximise tax credit/universal credit awards. And the proposed design of the exceptions for children in kinship care and adopted children, while welcome, does not go far enough to avoid disincentivising kinship care and adoption (see below).

8. The logic on which it is based is fundamentally flawed. The policy is intended to inform the choices made by families as to their finances and number of children, by withdrawing state support for third and subsequent children. This reasoning is based on two implicit assumptions which do not have a strong basis in reality.
9. First, the policy assumes that the conception and birth of children can be neatly categorised as either “voluntary” or “involuntary” (the language used by Lord Freud during the House of Lords committee debate on the passage of the Welfare Reform and Work Bill).^v In reality, however, women’s degree of control over their reproductive choices is rarely either complete or completely absent; it is subject to many shades of grey which this policy fails to address. Consider for example: contraception failure (all methods have a failure rate, even with perfect use); the ability of women with certain learning disabilities or mental health conditions to make informed decisions about family planning; and the coercion of women by abusive and controlling partners into sex or into having more children than they might otherwise choose.
10. Second, the policy assumes that it is possible to plan one’s future financial circumstances eighteen years into the future, at the time of the decision to have a child, and to guarantee that the household will be financially secure throughout their childhood. In reality this is impossible. There are no guarantees against relationship breakdown, disability, long-term illness or widowhood affecting the income of any family. To deny families assistance when they fall upon hard times such as this is unsupportable, as well as likely to be counter-productive in the long run. Box 1 gives an example of such a family from CPAG’s early warning system in Scotland, who would have faced the two child limit if their situation had arisen after April 2016 in a Universal Credit full service area.
11. It is also widely accepted that the job market is increasingly insecure, with widespread use of short term and variable hours contracts across a range of sectors, including even some high-status professions such as academia. Many of the ‘just about managing’ families which the government wishes to support will be in this type of employment. Even parents in apparently secure and well-paid jobs cannot guarantee that they will not face redundancy or a decrease in pay over an eighteen year period.
12. Finally, the policy can have only two outcomes: the impoverishment of children who continue to be born in larger families, and/or a reduction in births among lower income families. The government cannot in good conscience wish to increase the number of poor children. Nor need it seek a reduction in births: fertility in the UK is already below replacement rate, and the children of today will be the workers and taxpayers of tomorrow.

Box 1. A case from CPAG's early warning system in Scotland

The client and his wife have three children, including two of pre-school age. Recently the client's wife suffered a serious head injury. She is in hospital and may never return home, and he has had to reduce his working hours in order to look after the children. This has left the family short of the income they need. The children's mother may not survive, and if she survives she may be unable to work again and may require significant care. Their father hopes to increase his working hours again in the future but in the meantime tax credits are vital for the family to manage.

B. Timing of implementation and retrospective application of the policy under Universal Credit

13. The intention of the policy, as per the consultation document, is to ensure that families “think carefully about whether they are financially prepared to support a new child without relying on the tax credits or means-tested benefit systems”. It is clearly irrational to expect the policy to influence decisions which took place before it was announced. The impact assessment appears to recognise this, noting that “entitlement will remain at the level for two children for households who make the choice to have more children, *in the knowledge of the policy*” [emphasis added].^{vi}
14. Yet the current reality is that many families will be affected by the limit who conceived a child while unaware of the policy. This includes current pregnancies due after April 2017 (although legislated earlier this year, the policy has not been widely publicised in the media, it does not appear on the main gov.uk pages relating to universal credit, and to our knowledge families with two or more children currently claiming tax credits or universal credit have not been targeted with letters informing them of the policy). It also includes many families who have three or more children already, all born before the policy was announced, who may not be claiming support now but who might need to make a universal credit claim at some point in the future.
15. For families to be able to take a decision about the number and timing of children “in the knowledge of the policy”, they would need to be informed at least 10 months before it comes into effect.
16. For these reasons we call for a delayed implementation date until at least 10 months after exceptions have been finalised and letters have been sent to all tax credit and universal credit claimants with two or more children, in order to give families time to prepare.
17. We also insist that any child born before the new implementation date ought to be completely exempted from the restriction on entitlements, whether their parents claim tax credits or universal credit and regardless of the date of claim.

C. CPAG's view on the government's proposed exceptions

18. CPAG welcomes some of the exceptions proposed by the government, which will protect some very vulnerable children, but we have comments on their design and in some cases serious concerns about the proposed design, as follows.

Multiple births

19. The exception as proposed in the consultation document recognises that a family “will not be able to plan for a multiple birth when considering whether they can afford to look after an additional child”. This is absolutely true and we support this exception.
20. The same logic, however, also applies to third and subsequent births, and therefore the exception ought to be extended to recognise this. Parents receiving tax credits/universal credit in respect of two children might calculate that they could afford to support a third child using their earnings, without additional support from the state, but might not be able to support four or five if they have twins or triplets.
21. We therefore suggest that if a family already receiving awards for two children has any subsequent multiple birth, awards ought to be given in respect of the “extra” children over and above the one which the family has planned for. So awards would be made for one child in the case of twins, two in the case of triplets, and so on.

Children living long-term with family or friends

22. We absolutely agree that an exception is appropriate for children in kinship care arrangements, to encourage these arrangements and help prevent children entering the care system.
23. Paragraph 18 of the consultation document states that:
“Claimants with children or qualifying young persons looked after by the local authority are not eligible for the Child Tax Credit or Universal Credit Child Element if they receive an allowance from the local authority in respect of the child or young person’s accommodation or maintenance. This is to avoid making dual provision for the same child. Thus, children looked after by the local authority will not be affected by the policy change.”
24. This correctly states the legal position in relation to child tax credit (although not in relation to universal credit, where a looked after child in kinship care will not receive the child element of UC regardless of the payment made by the local authority). However, it is not accurate to say that looked after children will therefore not be affected by this policy. In the Scottish context, some kinship carers of looked after children do not receive a payment from the local authority in respect of accommodation or maintenance. They are therefore legally entitled to claim child tax credit. If an exception is not made for these kinship carers, then they will be impacted by this policy change.
25. We therefore call for the exception to be extended to include children looked after by the local authority where the family does not receive payment in respect of accommodation or maintenance.

26. We are also very concerned that the exception is restricted to cases where children in kinship care are the third or subsequent children in a household. Under current proposals a couple who have two children and subsequently take on their two nieces will receive support for all four children, whereas a couple who take on the two nieces before they have their own children will not be eligible for any support for their later biological children. We believe this is unfair and will discourage younger people, single people and those who have not yet had their own children from becoming kinship carers, resulting in more children entering the care system.
27. Families who currently look after children in kinship care arrangements may also decide that they have to move the children into the care system in order to afford to have their own children. The design of this exception therefore risks separating current family set-ups.
28. The consequences of more children entering the care system are well known and include much poorer wellbeing and outcomes for children and very high costs to government (far exceeding the cost of a child element of tax credits/universal credit).
29. We therefore recommend that all children in kinship care in a family be discounted for the purposes of determining whether subsequent children receive an entitlement under this policy.

Children adopted from local authority care

30. Although not included in the consultation document, the exception model for adopted children presents similar problems in terms of discouraging young people, single people and those who have not already had their own children from becoming adopters. We therefore recommend that all adopted children in a family also be discounted for the purposes of determining whether subsequent children receive an entitlement under this policy.

Children likely to have been conceived as a result of rape

31. The consultation document shows that some consideration has gone into the design of this exception, but we believe that the concerns raised by a large number of expert organisations have not been adequately addressed. We remain extremely concerned about whether the exception can be implemented fairly and safely, and without breaching the right of rape victims to privacy.

Risk of trauma

32. Women who have been raped should in no circumstances be forced to disclose the rape except at the time they choose, to the person they choose. Yet this policy will require them to do this or risk impoverishment and harm to their children. It may be re-traumatising for a woman to disclose on a forced basis, with negative consequences for her mental health.
33. The consultation document notes that “many women need time to come to terms with what has happened to them before they disclose that they have been raped”. Under current proposals these women would suffer a financial penalty as awards for a child are dependent on disclosure.

The third party evidence model

34. The proposed third party evidence model requires that a woman reports her rape to a professional who then makes an assessment as to whether “the circumstances are consistent

with those of a person who has had intercourse without consenting to it". It is disappointing that no indication is given as to how the professional is expected to make this assessment and what "circumstances" would be considered consistent with a woman who has been a victim of rape.

35. We are very anxious that women might face humiliating and intrusive questioning, might be judged for whether their behaviour matches (often unrealistic) assumptions about 'what a rape victim looks like', or might be required to provide corroborating evidence which may not exist. The professionals listed will not necessarily be trained or experienced in dealing with victims of trauma and there is a very real risk of women being disbelieved. There is already evidence that police officers under-record reported rapes as crimes (indicating that they do not believe a criminal act occurred), for example.^{vii}
36. If the third party evidence model is to be adopted, it should simply require that women have told a third party that they have been raped. We also strongly recommend that the list of third parties be extended to friends, family members and religious leaders or support workers, as some women may feel more comfortable disclosing a rape to somebody they already know and trust.

Protection of victims' privacy

37. There is no way in which the exception can be implemented while guaranteeing victims' right to privacy, and we believe that the exposure of sensitive information is very likely. The consultation document notes that the information will be handled with discretion, that women will not have to give details of the rape to DWP or HMRC officials, and that documentation sent to claimants will not include the reason for the additional payment of the child element. In practice, however, there are many commonplace situations in which it would quickly become apparent to family members and other agencies that the rape exception has been applied.
38. First, many of the women who receive the rape exception will have a joint tax credit/ universal credit claim with a partner, either at the time of the rape or later in their life. It will be evident to these partners that they are receiving a third child element, and partners will typically know that none of the other exceptions apply (i.e. that the third child was not part of a multiple birth and the children are not adopted or under kinship care). Partners could thus easily deduce that the rape exception has been applied. A woman who has been raped should have the absolute right to decide whether, when and how to disclose a rape to her current or future partner, but this will be effectively impossible. The same might apply to an older child – even the child conceived out of rape themselves - who helps their parents with managing money or with correspondence, or who stumbles on a letter from the DWP/HMRC. It cannot be assumed that family members will not know about the two-child rule or the possible exceptions. Such accidental disclosures could be traumatic for the victim and her entire family.
39. Second, the rape exception may be evident when a woman applies for range of other benefits. Applications for housing benefit (at least in some areas) and student childcare support require that children's birth certificates be submitted as well as proof of tax credit/universal credit receipt. It would be clear to anyone reviewing a woman's claim that she was in receipt of a child element for a third child but that this child was not part of a multiple birth, adopted or under a kinship care arrangement. They could immediately deduce that the rape exception must have

been applied. The same could also occur in claims for other benefits such as council tax reduction, local authority assistance, the Healthy Start scheme, free childcare for two year olds, free school meals, clothing grants, help with health costs and energy schemes. The risk of exposure could lead to women not making claims for other benefits to which they are entitled.

40. Were a much wider range of exceptions to be permitted it would be less likely that privacy would be automatically breached in this way, but the risk would not be completely eliminated.

Requirement that the victim not be living with the perpetrator

41. We are concerned about the requirement that the victim not be living with the perpetrator. While it might be desirable that no woman lives with an abusive partner, leaving (or making an abusive partner leave) can be far from straightforward for many reasons (e.g. fear or threats of violence from their partner, emotional dependence, lack of money, or having nowhere else to live and not knowing where to turn for help). It will also be important to have clarity on what will happen if a victim does leave and claims the rape exception, but subsequently moves back in with the partner.

Women in violent or controlling relationships

42. We note that the rape exception makes no provision for women who have been subject to violent or controlling and coercive behaviour in an intimate relationship (now a recognised criminal offence) and who were threatened or pressured into sex or into having a child. We recommend that the rape exception be extended to women in these circumstances.

Order of children in the family and fairness to rape victims

43. Finally, the proposed model for this exception specifies that the child believed to result from rape must be the third or subsequent child in order to qualify. A woman who has two children and conceives a third child as a result of a rape will receive support for all three children. Yet a woman who has a child as a result of rape, then subsequently marries and wishes to have two children with her husband, will only be entitled to support for two children in total. This is unfair and punishes rape victims in terms of later opportunities for a planned family.

D. CPAG proposals for further exceptions

44. We believe that the exceptions so far proposed do not go nearly far enough to prevent harm to families and children, or to avoid perverse incentives and address flaws in the rationale for this policy. We therefore call for the following additional exceptions.

Births resulting from the failure of contraception

45. The logic for the exception for children deemed likely to have been born as a result of rape is that the government wishes to distinguish between the “voluntary” and “involuntary” having of children. Yet rape is not the only way to have an unplanned child. Involuntary conceptions regularly occur as a result of contraception failure. This is not the result of irresponsibility; there is no contraception method that offers 100% effectiveness.

46. If support is not available for children conceived in this way, the policy will amount to a clear financial incentive for abortion. Women who already have children already account for more than half of abortions, and financial stress may form part of their decision. Women who do not wish to have an abortion or who cannot access one will simply be financially punished. This will include, in particular, women in Northern Ireland where access to abortion is severely restricted

Families in unforeseeable financial hardship due to the death, ill-health, new caring responsibilities, involuntary reduction in hours/earnings, redundancy or separation of parents or responsible carers

47. Many families decide to have a third child when in comfortable financial circumstances, but later experience hardship that could not have been foreseen, for one of the above reasons. In such circumstances a complete exemption from the policy ought to apply, for a grace period of at least 39 weeks, to allow the family to adjust to its new circumstances.

48. This would be a compassionate response but also a practical one: if families in these circumstances do not have access to an adequate financial buffer they may fall into debt, suffer further stress and ill-health or even lose their home, making it more difficult for them to recover and return to self-sufficiency.

Children born to women with a learning disability or mental health condition

49. Women with certain learning disabilities or mental health conditions may find it more difficult to make the kind of decisions about finances and family planning envisaged in the design of this policy and more difficult to use contraception reliably. They may also be particularly vulnerable to coercion or pressure from a partner to have children or to have unprotected sex. This group therefore ought to be exempted from the policy completely.

Families with a conscientious or religious objection to the use of contraception or abortion

50. The two-child limit is predicated on families having completely free choice as to the timing and number of children. For families with a conscientious objection to contraception or abortion, this is evidently not the case and the limit could amount to a breach of their human rights.

Persons who have been victims or are at risk of domestic abuse

51. Victims of domestic abuse may feel unable to leave an abusive relationship because of financial dependence on their partner. This will be exacerbated for families with more than two children if

the victim knows that she will only be able to claim support for two children after leaving her partner. We call for an exemption from the two-child rule for parents fleeing domestic abuse, at least for a grace period.

Children who move from the household of one parent to another

52. The decision about which parent a child lives with ought to be based solely on the child's best interest. This policy, however, creates a risk that children will instead be 'spread' between parents on the basis of maximising tax credit or universal credit claims. To prevent this we believe that children who move from the home of one parent to another ought to retain any entitlement to a child element when they move.
53. The move could be for any reason and there should be no requirement to justify it, but examples of why this exception is important include: violence within the household, inability of one parent to care adequately for the child, unsuitable housing, the need to be close to a suitable school or services for a child with particular needs, keeping a child in the same school if one parent moves to a new area, or the child's strongly held wish to live with a particular parent or to live with their siblings. In such circumstances any disincentive for the child to live with the parent and in the home which can best meet their needs must be avoided.

Children whose parents have made a new claim as a result of separation

54. There is a similar risk to children with two or more siblings, whose parents have separated and made a new claim for tax credits/universal credit following separation. There will be a strong incentive in such cases for no more than two children to remain with one parent in order to maximise entitlement to child elements, which could override consideration of what is in the children's best interests (for examples see previous paragraph). To prevent this, we argue that for any new claims resulting from the separation of a family with three or more children, the two-child limit should not be applied.

Children who move into a new household following the death of the parent they were living with

55. Children who are bereaved of the parent they were living with ought to move to the home where they can receive the best possible care and support, with minimum disruption. We therefore argue that a child in these circumstances should be excepted from the two-child limit. This would avoid the risk that their other parent feels unable to take them on for financial reasons, or that taking on the child causes financial hardship which would harm both this child and the entire family (others of whom may also be coping with bereavement), and which the newly arrived child may (wrongly) feel responsible for.

Children who join a household as part of a blended family

56. Children who join a household as part of the formation of a blended family should retain entitlement to a child element if they were entitled to this when previously living with a single parent. Otherwise the policy will create a clear disincentive for single parents to repartner. This self-evidently would fail the Government's own Family Test.

Families with a disabled family member

57. Disability, whether of a parent or child, brings additional costs (for example of equipment, transport, clothing, activities, special food, carers and heating) and difficulty generating high

income from work (either because a parent cannot work, employment discrimination or because they have to stay at home to look after their child). Families with a disabled member are already at elevated risk of poverty and least able to work their way out of poverty. We recommend a complete exemption from the policy for this group.

Third children whose older sibling is not expected to survive childhood

58. Some families will have planned to have two children, but will learn that one of their two children is tragically not expected to survive childhood, meaning that they will at some stage be left with one child. In such circumstances we believe that a third child ought to be excepted from the two-child limit.

'Saviour siblings' (children conceived to provide a match for medical treatment of a sibling)

59. This will affect a very small number of families but an exception for these children could make it affordable for families to have a 'saviour sibling', relieving the suffering or saving the life of an older child.^{viii}

Endnotes

ⁱ Institute for Fiscal Studies (2016) Living standards, poverty and inequality in the UK: 2015-16 to 2020-21

<https://www.ifs.org.uk/publications/8171>

ⁱⁱ Households Below Average Income 1994-5 to 2015-15 <https://www.gov.uk/government/statistics/households-below-average-income-199495-to-201415>

ⁱⁱⁱ Hirsch, D. (2016) The cost of a child in 2016. Child Poverty Action Group. <http://www.cpag.org.uk/cost-of-a-child-2016>

^{iv} UN Committee on Economic, Social, and Cultural Rights (2016) Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGBR%2fCO%2f6&Lang=en

^v Hansard report, House of Lords, 7th December 2015.

<http://www.publications.parliament.uk/pa/ld201516/ldhansrd/text/151207-0001.htm>

^{vi} HM Treasury / DWP (2015) Welfare Reform and Work Bill: Impact Assessment of Tax Credits and Universal Credit, changes to Child Element and Family Element <http://www.parliament.uk/documents/impact-assessments/IA15-006E.pdf>

^{vii} HM Inspectorate of Constabulary (2014) Crime-recording: making the victim count.

<http://www.justiceinspectorates.gov.uk/hmic/wp-content/uploads/crime-recording-making-the-victim-count.pdf>

^{viii} For more information see <http://www.hfea.gov.uk/preimplantation-tissue-typing.html>