



## BRIEFING PAPER

Number 2967, 11 September 2019

# Financial support for family and friends carers (kinship carers)

By Manjit Gheera, Steven Kennedy and Hannah Cromarty

### Contents:

1. Local authority support
2. Kinship care in Scotland
3. Social security benefits and tax credits
4. Further information (for England and Wales)



# Contents

<b>Summary</b>	<b>3</b>
<b>1. Local authority support</b>	<b>4</b>
1.1 Private non-statutory arrangements	4
1.2 Private fostering	5
1.3 Local authority foster carers	6
National minimum fostering allowances	7
1.4 Court orders	8
i) Child Arrangements Orders (formerly residence orders)	8
ii) Special Guardianship Orders	9
<b>2. Kinship care in Scotland</b>	<b>12</b>
<b>3. Social security benefits and tax credits</b>	<b>13</b>
Universal Credit	16
Two-child limit for Child Tax Credit and Universal Credit	16
<b>4. Further information (for England and Wales)</b>	<b>19</b>

## Summary

This House of Commons Library briefing paper considers what help is available for grandparents and other family and friends carers (also known as kinship carers) looking after children where their parents are not in a position to do so.

There are a number of different types of arrangement for family and friends care, including: private arrangements (both statutory and non-statutory), family and friends local authority foster care, child arrangement orders and special guardianship orders.

Financial help may be available for family and friends carers from local authorities and/or the social security/tax credits systems. Eligibility for assistance may depend upon the legal basis of the care arrangement and financial assistance may be means-tested.

The first section of this note provides information on financial support available from local authorities for different types of kinship care arrangements, and the second gives details of the social security benefits and tax credits that may be available.

**Any individual considering taking responsibility for a child or young person should seek legal or professional advice.**

This briefing paper applies to England and Wales. Links to information on kinship care in Scotland are provided in section 2 of the paper.

# 1. Local authority support

Whether or not a family or friend carer qualifies for support from a local authority will depend on the legal nature of the arrangement. Other than in limited cases, local authorities are **not** obliged to provide support where care arrangements have been made without their involvement. This section sets out the implications of different care arrangements for children and eligibility for local authority support.

Family or friend care is often referred to as kinship care. Kinship carers (or kinship foster carers) are not terms that are statutorily defined.

## 1.1 Private non-statutory arrangements

A number of kinship care arrangements fall within the term “private non-statutory arrangements”. This type arrangement is when someone is a close relative of the child and the child’s parent has asked the close relative to care for the child, and a local authority’s Children’s Services were not involved in these arrangements.<sup>1</sup>

The legal text Children Law and Practice provides more information on when a private non-statutory arrangement for kinship can be made:

- the child is a non-disabled child over the age of 16 years;
- the child is cared for, and provided with accommodation by either:
  - a parent of his (whether or not he has parental responsibility); or
  - a person who is not a parent of his, but who has parental responsibility; or
  - a relative;<sup>2</sup>
- the child is accommodated by the person caring for him for less than 28 days and that person does not intend to accommodate him for a period of 28 days or more;
- the child concerned comes within the exemptions specified by CA [Children Act] 1989, Sch [Schedule] 8.<sup>3</sup>

If the above conditions are not fulfilled but a local authority is again not involved in arranging or making the placement, then it would be deemed as a private statutory fostering arrangement (often referred to as “private fostering”) – see section 1.2 below.

Where a child is cared for under a private non-statutory arrangement, the local authority is not obliged to provide financial support to the carers.

---

<sup>1</sup> Family Rights Group, [Support from children’s services for relatives and friends looking after someone else’s child](#), Advice Sheet 21A, 21 November 2018, p8, section 4.1

<sup>2</sup> The definition of ‘relative’ includes a “step-parent, grandparent, brother, sister, uncle or aunt (whether of full blood or half blood or by marriage or civil partnership)” [Children Act 1989, section 105(1)]

<sup>3</sup> Hershman and McFarlane, Children Law and Practice, para H22

Local authorities do, however, have a discretion under section 17 of the *Children Act 1989* to provide financial assistance for children assessed as in need (see Box 1).<sup>4</sup>

### Box 1: General duties to children in need

Under section 17 of the *Children Act 1989* (as amended), a child<sup>5</sup> in need should receive support from the responsible local authority. A child is considered to be in need if:

- they are unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for them of services by a local authority;
- their health or development is likely to be significantly impaired, or further impaired, without the provision for them of such services; or
- they are disabled.

Any service which the local authority provides to a child in need under its general duty<sup>6</sup> may also be provided to the child's family, or any member of the family,<sup>7</sup> as a family support service, if it is provided "with a view to safeguarding or promoting the child's welfare".<sup>8</sup>

The range of support services that a local authority can provide are broad and could, for example, include:

- a) advice, guidance and counselling;
- b) occupational, social, cultural or recreational activities;
- c) home help (which may include laundry facilities);
- d) facilities for, or assistance with, travelling to and from home for the purpose of taking advantage of any other service provided under this Act or of any similar service;
- e) assistance to enable the child concerned and his family to have a holiday.<sup>9</sup>

For more information, see the Library briefing paper [Local authority support for children in need \(England\)](#).

## 1.2 Private fostering

A statutory private fostering arrangement is essentially one that is made privately (i.e. without the involvement of local authority Children's Services) for the care of a child under the age of 16 (under 18 if disabled) by someone **other than** a parent or other person with parental responsibility for them, or a close relative for 28 days or more.<sup>10</sup>

Although local authorities are not involved in arranging a private fostering placement, they do have duties in relation to the children involved in such arrangements, including carrying out criminal records checks on the private foster carer. The Department for Education's

<sup>4</sup> Details of assessment process for children in need are set out in the statutory guidance issued by the Government, [Working Together to Safeguard Children](#), July 2018. The equivalent guidance for Wales, [Safeguarding children: working together under the Children Act](#) (Welsh Government, 2006), has been replaced with the relevant volumes of the [Working together to safeguard people guidance](#) (Welsh Government, 2017).

<sup>5</sup> A child means a person under the age of 18 years (*Children Act 1989*, section 105(1))

<sup>6</sup> As set out in section 17 and Part 1 of Schedule 2 of the *Children Act 1989*.

<sup>7</sup> The term 'family', in relation to such a child, includes any person who has parental responsibility for the child and any other person with whom he has been living (*Children Act 1989*, section 17(10)).

<sup>8</sup> Hershman and McFarlane, *Children Law and Practice*, para G43

<sup>9</sup> *Children Act 1989*, Schedule 2, Part 1, Paragraph 8

<sup>10</sup> The definition of 'relative' includes a "step-parent, grandparent, brother, sister, uncle or aunt (whether of full blood or half blood or by marriage or civil partnership)" [*Children Act 1989*, section 105(1)]

## 6 Financial support for family and friends carers (kinship carers)

statutory guidance “[Children Act 1989: Private Fostering](#)” sets out local authority duties with respect to private fostering arrangements.<sup>11</sup> The guidance is drawn up by the Secretary of State under the *Local Authority and Social Services Act 1970* and local authorities in England must adhere to it.<sup>12</sup>

In common with other private caring arrangements, there is no automatic right to financial assistance from the local authority for a private fostering arrangement. The charity Grandparents Plus explains that:

There is no support specifically available for private foster carers. However, local authorities do have a duty to safeguard and promote the welfare of children in their area who are ‘in need’ by providing a range of family support services under section 17 of the Children Act 1989 [see box 1 above]. This can include financial support, although it’s likely to be restricted to those in particularly difficult circumstances.<sup>13</sup>

It is the responsibility of the parent to pay the private foster carer maintenance for the up-keep of their child, although the foster carer may be able claim certain benefits for the child. For more information on welfare benefits and tax credits, see section 3 below.

### 1.3 Local authority foster carers

In general, local authorities have a statutory duty to promote the upbringing of a child by their family where that is consistent with the duty to safeguard and promote the welfare of that child.<sup>14</sup>

[Statutory guidance](#) to the *Children Act 1989* makes it clear that, before considering applying for a care order to take a child into the care of a local authority (and so become a “looked after child”), consideration should be given to placing a child with family and friends with assistance through family support services.<sup>15</sup>

Where this is not possible (for example, because a child’s family cannot, or refuse, to look after the child) and the child becomes looked-after by the local authority, then there is a duty to place the child with a parent or other person with [parental responsibility](#).<sup>16</sup> If a local authority is unable to make such a placement, then there is a duty to place the child in the most appropriate placement available, unless it is inconsistent with the child’s welfare or not reasonably practical to do so.

If a child does become a looked after child – either as a result of a care order being made, or the local authority providing accommodation for the child (under section 20 of the *Children Act 1989*) – then the child can be placed with local authority foster carers. Under the *Children Act*

---

<sup>11</sup> Department for Education, [Replacement Children Act 1989 Guidance on Private Fostering](#), 25 July 2005

<sup>12</sup> *Local Authority and Social Services Act 1970*, section 7

<sup>13</sup> Grandparents Plus, [Private fostering](#) [Accessed 1 August 2019]

<sup>14</sup> *Children Act 1989*, section 17

<sup>15</sup> Department for Education, [Children Act 1989: family and friends care](#), March 2011 (England only)

<sup>16</sup> Section 22C, *Children Act 1989* Further information on parental responsibility is set out in the [Library note SN/SP/2827](#)

1989, a local authority foster parent is classed as someone who the local authority has decided shall provide accommodation and maintenance for any child whom they are looking after.

It is possible for a close relative to be a local authority foster carer, subject to meeting the relevant criteria and being approved to perform this role.

A person falls **outside** of the definition of a local authority foster parent if they are:

- a) a parent of the child;
- b) a person who is not a parent of the child but who has parental responsibility for him; or
- c) where the child is in care and there was a child arrangements order relating to residence in force with respect to him immediately before the care order was made, a person in whose favour the residence order was made.<sup>17</sup>

In addition, for someone to be classed as a local authority foster parent, they must be approved as a foster parent by the placing authority or (provided certain conditions are met) by another fostering service provider. Thus, a grandparent, for example, must be approved as a local authority foster parent before the child is placed with them.<sup>18</sup>

### National minimum fostering allowances

Local authority foster carers are entitled to an allowance to cover the cost of caring for foster children in their home.<sup>19</sup>

The **national minimum fostering weekly allowances in England for 2019-20** are:

	Babies	Pre-Primary	Primary	Secondary (11-15)	Secondary (16-17)
London	£149	£152	£171	£193	£226
South East	£143	£147	£163	£185	£218
Rest of England	£129	£132	£146	£167	£194

Source: [Gov.uk: help with the cost of fostering](https://www.gov.uk/help-with-the-cost-of-fostering)

The latest rates can be found on the GOV.UK webpage: [Foster carers: Help with the cost of fostering](https://www.gov.uk/help-with-the-cost-of-fostering).

The national minimum allowances for foster carers in Wales 2017-2020 are set out in a [letter from the Welsh Government to local authority chief executives and others, dated 12 January 2017](#).

<sup>17</sup> *Children Act 1989*, section 23(4)

<sup>18</sup> Further information on foster placements is set out in the Library standard note [Fostering – long-term, emergency, temporary and private placements; and care orders](#) (SN06316)

<sup>19</sup> *Children Act 2004*, section 49

## 8 Financial support for family and friends carers (kinship carers)

The Department of Education explains that the 'national minimum allowance relates to the basic core allowance which foster carers receive to cover the costs involved in looking after any fostered child'.<sup>20</sup> The amounts are intended to be a **minimum** allowance; the amount payable, and the basis on which it is calculated, varies from authority to authority.<sup>21</sup> A foster-carer may receive a greater amount if the child has specific needs, the carer has certain skills, or makes a particularly large commitment to fostering.<sup>22</sup>

In England, local authority policies covering the payment of fostering allowances must make clear which costs carers are expected to meet from the allowance and any additional payments which may be available, such as for specialist equipment or extra-curricular activities.<sup>23</sup>

Local authorities should pay all local authority approved foster parents the same level of foster allowance, whether they are related to the child or not.<sup>24</sup>

Every year The [Fostering Network](#) checks the allowances paid by all local authorities in England and Wales and health and social services trusts in Northern Ireland to ensure they meet national minimum levels, and campaigns for them to be brought up to these levels where they are falling short.<sup>25</sup>

A person receiving a fostering allowance is not eligible for Child Benefit or Child Tax Credit for that child (see section 3 of this briefing paper).

### 1.4 Court orders

Family and friends carers may apply to the courts for orders which provide legal recognition of a caring arrangement. Depending on the nature of the order, it may also confer parental responsibility for the child on the carer. A decision on whether to apply for a court order, providing legal recognition of a care placement, should be made after careful consideration, as a change in the legal nature of a placement can affect entitlement to financial support.

#### i) Child Arrangements Orders (formerly residence orders)

A child arrangements order relating to whom a child should live, made under section 8 of the *Children Act 1989*, confers parental responsibility on the holder of the order. Such an order is made by a court and can

---

<sup>20</sup> Department for Education, [The National Minimum Fostering Allowance: 2010-11, 2011-12, 2012-13](#)

<sup>21</sup> Hershman and McFarlane, *Children Law and Practice*, para H337

<sup>22</sup> [www.gov.uk/foster-carers/help-with-the-cost-of-fostering](http://www.gov.uk/foster-carers/help-with-the-cost-of-fostering) [Accessed 24/07/19]

<sup>23</sup> Department for Education, [The Children Act 1989 Guidance and Regulations Volume 4: Fostering Services](#), 8 March 2011, Para 3.111

<sup>24</sup> Further to the ruling in *R (L and others) v Manchester City Council* [2001] EWHC Admin 707, [2002] 1 FLR 43

<sup>25</sup> The survey reports can be accessed online here: <https://www.thefosteringnetwork.org.uk/allowances>

only be varied or terminated by a court; it therefore provides greater security than fostering arrangements.<sup>26</sup>

### **Child arrangements order allowance**

The holder of a child arrangements order relating to residence may be entitled to contributions from the local authority towards the cost of the accommodation and maintenance of the child. However, whether payments are made, and the amounts, are at the discretion of the local authority; there is no entitlement to a child arrangements order allowance. The relevant provision of the *Children Act 1989* provides:

1. Where a child lives, or is to live, with a person as the result of a child arrangements order, a local authority **may** make contributions to that person towards the cost of the accommodation and maintenance of the child.
2. Sub-paragraph (1) does not apply where the person with whom the child lives, or is to live, is a parent of the child or the husband or wife or civil partner of a parent of the child.<sup>27</sup>

Grandparents Plus, a national charity dedicated to supporting kinship carers advises:

Once you've got your Child Arrangements Order, there's no additional entitlement to support, although you will be able to claim Child Benefit and Child Tax Credits if applicable. Local authorities have the power to pay an allowance to a carer with a Child Arrangements Order. This is more likely to be paid if the child was previously looked after by the local authority, but even then there is no automatic entitlement.<sup>28</sup>

### **ii) Special Guardianship Orders**

The Special Guardianship provisions were introduced by the *Adoption and Children Act 2002* into the *Children Act 1989* with the aim of placing a child through a private law order with a non-parent with a degree of permanence greater than a residence order, but less final and immutable than a full adoption. Like an adoptive parent, a special guardian has parental responsibility for the child (a foster parent, for example, does not). The charity Grandparents Plus notes that:

A Special Guardianship Order (often known as an SGO) is a legal order where the court appoints a carer – usually a relative – as the 'Special Guardian' of a child until they turn 18. The Special Guardian then shares parental responsibility for the child with the parents, and can make nearly all the major decisions about the child without having to consult them.<sup>29</sup>

The following individuals are entitled to apply for a special guardianship order with respect to a child:

- Any guardian of the child

---

<sup>26</sup> Further information on applying for a child arrangements order and other related orders is set out in the House of Commons Library briefing paper [Children: residence and contact orders and related matters for parents, grandparents and others](#).

<sup>27</sup> *Children Act 1989*, Schedule 1, para 15 [emphasis added]

<sup>28</sup> Grandparents Plus, [Child Arrangement Orders \(residence\)](#) [Accessed 1 August 2019]

<sup>29</sup> Grandparents Plus, [Special Guardianship Orders](#) [Accessed 1 August 2019]

## 10 Financial support for family and friends carers (kinship carers)

- A local authority foster carer with whom the child has lived for one year immediately preceding the application
- A relative with whom the child has lived for a period of at least one year immediately preceding the application
- Anyone who holds a child arrangements order relating to residence with respect to the child, or who has the consent of all those in whose favour such an order is in force
- Anyone with whom the child has lived for three out of the last five years
- Where the child is in the care of a local authority, any person who has the consent of the local authority
- Anyone who has the consent of all those with parental responsibility for the child
- Any person, including the child, who has the leave of the court to apply.<sup>30</sup>

Gov.uk provides further information on [Becoming a special guardian](#).

### Financial support for Special Guardians

The [Special Guardianship Regulations 2005 \(as amended\)](#)<sup>31</sup> and [Special Guardianship \(Wales\) Regulations 2005 \(as amended\)](#)<sup>32</sup> set out local authority duties to provide support services, including financial support, to special guardians.

The Department for Education has issued [statutory guidance](#) to support local authorities in England in complying with their duties under the 2005 regulations.<sup>33</sup>

The guidance sets out the central principle that financial support should be payable in accordance with the Regulations to help secure a suitable special guardianship arrangement, where such an arrangement cannot be readily made because of a financial obstacle.<sup>34</sup>

Financial support may be provided for one-off expenditure or on a more regular basis. In practice, the level of financial support can vary as it will be based on the particular child's support needs.<sup>35</sup> When considering providing financial support, local authorities will normally consider the special guardian's means.

Financial support cannot normally include the payment of remuneration to the special guardian for care of the child. However, regulation 7 (in England) provides that where the special guardian previously fostered the child and received an element of remuneration in the financial support paid to them as the child's foster parent, then the local authority may continue to pay that element of remuneration for two years from the date of the special guardianship order. This two-year

---

<sup>30</sup> *Children Act 1989*, section 14A(5)

<sup>31</sup> Special Guardianship Regulations 2005 (SI 2005/1109)

<sup>32</sup> [Special Guardianship \(Wales\) Regulations 2005](#) (SI 2005/1513/W117)

<sup>33</sup> Department for Education, [Special Guardianship Guidance](#), last updated 26 January 2017

<sup>34</sup> As above, para 37

<sup>35</sup> SI 2005/1109, regulation 12; SI 2005/1513/W117 regulation 7

transitional provision is intended to give the family time to adjust to their new circumstances.<sup>36</sup>

In relation to ongoing financial support for the child the [Special Guardianship Guidance](#) for England provides:

In determining the amount of any ongoing financial support, the local authority should have regard to the amount of fostering allowance which would have been payable if the child were fostered. The local authority's core allowance plus any enhancement that would be payable in respect of the particular child, will make up the maximum payment the local authority could consider paying the family. Any means test carried out as appropriate to the circumstances would use this maximum payment as a basis.<sup>37</sup>

Following a consultation in 2017, the Welsh Government issued a [Code of Practice on Special Guardianship](#) (July 2018), to which local authorities in Wales must have regard when exercising their social services functions in respect of special guardianship orders.<sup>38</sup> Chapter 5 of the Code covers financial support for special guardians.

---

<sup>36</sup> Department for Education, [Special Guardianship Guidance](#), last updated 26 January 2017, paras 42-43

<sup>37</sup> Ibid, para 65

<sup>38</sup> Welsh Government, [Special Guardianship: Code of Practice on the exercise of social services functions in relation to special guardianship orders](#), July 2018

## 2. Kinship care in Scotland

The Scottish Parliament Information Centre (SPICe) briefing paper 16/87 on [Kinship Care](#) provides an overview of kinship care in Scotland. It sets out the different requirements for local authority assistance and briefly looks at the effect this has on social security benefits. It states the law as at April 2016.

The charity Mentor has published a [Kinship Care Guide for Scotland](#) (2016) which outlines the legal rights, financial rights and support for kinship carers in Scotland, and offers step-by-step guidance on each of the processes that kinship carers may be involved in.

Citizens Advice Scotland provides [information on kinship care](#) and support that may be available for carers.

The Kinship Care Advice Service for Scotland provides information and advice for the public:

**Kinship Care Advice Service for Scotland**

Helpline: 0808 800 0006 (Mon-Fri 9am-5pm)

Email: [contact form](#) available on the website

Website: [www.kinshipcarescotland.org.uk](http://www.kinshipcarescotland.org.uk)

### 3. Social security benefits and tax credits

The main social security benefits which may be of relevance to family and friends carers are Child Benefit, Child Tax Credit,<sup>39</sup> Guardian's Allowance and Universal Credit.<sup>40</sup> Additional amounts for children may also be available for people receiving Housing Benefit. Both Child Benefit and Child Tax Credit are administered by HM Revenue and Customs (HMRC), while local authorities have responsibility for Housing Benefit.

The general situation is that a person may be entitled to both **Child Benefit** and **Child Tax Credit** for a child or "qualifying young person" if they are responsible for him/her. For Child Benefit, a person is treated as "responsible" for a child if the child lives with them, or if they are contributing towards the maintenance of the child at a rate of at least the amount of Child Benefit.<sup>41</sup> Where there are competing claims, payment is made to the person with whom the child lives.<sup>42</sup> Even if a new claim has priority over an existing claim, Child Benefit continues to be paid to the existing claimant for three weeks following the week in which the new claim is made, unless the existing claimant withdraws his/her claim prior to this.<sup>43</sup> Only one person may claim Child Benefit for any one child at a particular point in time.

For **Child Tax Credit (CTC)**, a person is treated as responsible for a child if the child "normally lives" with them.<sup>44</sup> This is not defined in regulations. If there are competing claims for CTC for the same child, it is paid to the person with "main responsibility" for him/her. Again, this is not defined in the regulations, but HMRC guidance gives the following examples of factors that may be taken into account:

- who the child or qualifying young person normally lives with and where they keep the majority of their belongings such as clothes, toys
- who is responsible for the day to day spending for the child or qualifying young person such as buying clothes, food and providing pocket money
- who the main contact is for school/college/nursery/childcare
- who is responsible for the health care and hygiene of the child or qualifying young person such as making appointments with the doctor/dentist, doing the child or qualifying young person's laundry

---

<sup>39</sup> Child Tax Credit has now been replaced by Universal Credit for most people. New claims for CTC can only be made in very limited circumstances; see [Gov.uk: Child Tax Credit](https://www.gov.uk/child-tax-credit)

<sup>40</sup> As a general rule, if you claim Universal Credit, you will now no longer be able to qualify for CTC or WTC.

<sup>41</sup> Section 143(1) *Social Security Contributions and Benefits Act 1992*

<sup>42</sup> Ibid Schedule 10 para 2. If it is not clear with whom the child lives, the parent of the child has priority over all other claimants (Schedule 10 para 4).

<sup>43</sup> Ibid. Schedule 10 para 1(2)

<sup>44</sup> Regulation 3(1) *Child Tax Credit Regulations* SI 2002/2007

## 14 Financial support for family and friends carers (kinship carers)

- what is the registered address for contact for the school/college/nursery/childcare, healthcare
- who has legal custody of the child or qualifying young person
- normally, a child or qualifying young person who is placed as a result of a Residence Order, a child arrangement order or a Special Guardianship Order, is considered the responsibility of the person named on that order.<sup>45</sup>

This is not an exhaustive list, however; other factors may be taken into account. The HMRC guidance states that when deciding who has the main responsibility for a child or qualifying young person, the fact that someone receives Child Benefit for that child or qualifying young person should not be considered.<sup>46</sup>

As with Child Benefit, there is no provision to split CTC for a particular child between different people who each care for the child for a proportion of the time.

If the child is being looked after by the local authority and has been placed (under fostering arrangements, or prior to adoption) with a family and friends carer who is receiving a payment from the local authority for his/her accommodation and maintenance, neither Child Benefit nor Child Tax Credit are payable. The principle here is that children in this situation are already being supported out of public funds, and that to pay benefit on top of this would be duplicating provision.<sup>47</sup> Foster carers may however be able to claim working tax credits on the basis that they are a [self-employed foster carer](#).<sup>48</sup>

Further information on entitlement to Child Benefit and Child Tax Credit for people who are foster carers or prospective adopters is available on [Gov.uk website](#).<sup>49</sup>

For **Housing Benefit**, the rules governing who is deemed responsible for a child are broadly similar. A person is responsible for a child if the child “normally lives” with them (i.e. spends more time with them than with anyone else). Where it is unclear whose household the child lives in, receipt of Child Benefit may be the decisive factor.<sup>50</sup> Following the introduction of a deduction from Housing Benefit where a working-age household living in social rented housing is deemed to be under-occupying, i.e. to have a spare bedroom, the position of foster carers and kinship carers attracted attention. The original regulations did not exempt foster carers and those keeping a spare bedroom in expectation of a child placement from the under-occupation restrictions. However, in a Written Ministerial Statement on 12 March 2013, Iain Duncan

---

<sup>45</sup> HM Revenue and Customs, *Tax Credits Technical Manual*, [para TCTM02201](#)

<sup>46</sup> HM Revenue and Customs, *Tax Credits Technical Manual*, [para TCTM02205](#)

<sup>47</sup> HC Deb 20 October 2011 cc1089-1090w

<sup>48</sup> As a general rule, if you claim Universal Credit, you will now no longer be able to qualify for CTC or WTC. You can make a new claim for CTC if you are already entitled to WTC, and a new claim for WTC if you are already entitled to CTC.

<sup>49</sup> [Looking after someone else's child](#)

<sup>50</sup> Regulation 20 *Housing Benefit Regulations* SI 2006/213

Smith announced that the Regulations would be amended to allow an additional room for approved foster carers:

I am pleased to announce that we intend to lay amending regulations to clarify the size criteria rules for two specific groups of Housing Benefit recipient, Foster Carers and Armed Forces personnel.

People who are approved foster carers will be allowed an additional room, whether or not a child has been placed with them or they are between placements, so long as they have fostered a child, or become an approved foster carer in the last 12 months.<sup>51</sup>

The [Housing Benefit \(Amendment\) Regulations 2013](#) (SI 2013/665) came into force on 1 April 2013. [Housing Benefit Circular A10/2013](#) provides full guidance on the circumstances in which foster carers and kinship carers in Scotland are exempt from an under-occupation deduction.

In certain circumstances a person is not deemed, for means-tested purposes, to be responsible for a child living with him/her. This includes where the child is being fostered by the person on behalf of a local authority following a formal placement (where the child is being fostered under less formal arrangements, or is being fostered privately, benefit may however be payable). Children who have been placed with the claimant by social services or by an adoption agency prior to adoption are also not included in the claimant's household. These rules apply regardless of whether a local authority is making a contribution towards the child's maintenance and/or accommodation.

As to how payments received by family and friends carers may affect entitlement to means-tested benefits and tax credits, the situation is complicated.

For means-tested benefits payable to people under the qualifying age for Pension Credit, fostering allowances paid by a local authority should be ignored. Payments to people with a child arrangements order (formerly residence order allowances) and Special guardianship allowances are normally ignored, but there may be exceptions in certain circumstances.

For people over the qualifying age for Pension Credit, the above payments and allowances are ignored in full for means-tested benefit purposes.

For tax credits, fostering allowances paid by a local authority are disregarded for the purposes of calculating entitlement provided payments do not exceed £10,000 a year, plus £200 a week for each child under 11 and £250 a week for each child aged 11 or over. Special guardianship allowances and payments to people with a child arrangements order are ignored completely.

Finally, family and friend carers receiving Child Benefit may also be able to get **Guardian's Allowance**. This is a non means-tested, non-contributory benefit for people bringing up a child because one or both

---

<sup>51</sup> [HC Deb 12 March 2013 cc9-10WS](#)

of the parents has died. It is payable if both parents have died, or if one parent is dead and the whereabouts of the other is unknown (and was unknown at the time of death), or if one parent is dead and the other is in prison.<sup>52</sup>

### Universal Credit

**Universal Credit** is replacing means-tested benefits and tax credits for working-age families, although for many it may be some time yet before UC replaces the “legacy benefits.”<sup>53</sup> The rules for family and friends carers mirror those for Child Tax Credit. A child element will be included in the UC calculation for each child who “normally lives” with the claimant, but a child will not be included in the calculation if he or she is looked after by a local authority, since in these circumstances the local authority is responsible for providing financial support for the child’s accommodation and maintenance.<sup>54</sup>

Under UC, fostering allowances, special guardianship allowances and payments to people with a child arrangement order will not count as income.

Child Benefit will remain as a separate benefit under Universal Credit.

### Two-child limit for Child Tax Credit and Universal Credit

As a result of provisions in the *Welfare Reform and Work Act 2016*, the per child element in Child Tax Credit and the equivalent element in Universal Credit will be limited to two children for new claims and births from 6 April 2017. The change means that anyone who is responsible for a child born on or after that date will not receive the child element for that child unless:

- there is no more than one child already on the claim
- an exception applies
- transitional protection applies under UC.<sup>55</sup>

A child element will continue to be paid for all children born before 6 April 2017.

Exceptions to the two-child limit include where a third or subsequent child is placed with a family or friend as an alternative to entering the care system. The five exceptions are for:

1. Multiple births
2. Adoption

---

<sup>52</sup> Further information is available at [GOV.UK](https://www.gov.uk)

<sup>53</sup> For most benefits claimants, [managed migration to Universal Credit](#) is not expected to begin until the end of 2020.

<sup>54</sup> See DWP, [Advice on Decision Making Chapter F1: Child Element](#), paras F1020-1025

<sup>55</sup> The Government have said that anyone that is ‘managed migrated’ over to Universal Credit will not lose out in cash terms where their circumstances remain the same. In order to ensure this happens, UC will include a transitional protection in the form of an additional amount to broadly make up the difference between UC amount awarded and what the claimant was receiving in total from legacy benefits (for example tax credits).

3. Non-parental care arrangements
4. Where a child of the claimant has a child of their own
5. Non-consensual conception.<sup>56</sup>

The change does not affect **Child Benefit** and eligible families will continue to be entitled to Child Benefit for each child regardless of the number of children they have.

### **The two-child rule and kinship care arrangements**

The original two child rule introduced from April 2017 had particular implications for some kinship carers. For example, a child element would be payable for a third child joining a family under a kinship care arrangement; or if a family already had two children and one or both were being looked after under kinship care. However, if the family had another child of their own, the child element would not be payable for that (third) child. So in other words, a child element was available to three children if the family had two biological children and then took on a child in kinship care, but not if the child in kinship care arrived first. Hence the order in which the child became a member of the household mattered.

A case brought by the [Child Poverty Action Group](#) on behalf of one claimant household argued that the exception to the two-child rule for cared-for children was perverse because it was only available where the cared-for child was the third or subsequent child. In April 2018, the High Court accepted CPAG's arguments that the ordering restriction on the kinship care exception was perverse and therefore unlawful. A wider challenge to the two-child rule as a whole, was, however, dismissed.<sup>57</sup>

The Government accepted the High Court's decision in relation to children joining a family under kinship care arrangements. The then Secretary of State for Work and Pensions, Esther McVey, confirmed that the exceptions to the two-child limit would be extended for children who would otherwise be likely to be in local authority care **and** to those who are adopted, for whom the ordering or sequencing issue also applies.<sup>58</sup>

The changes were made by the [Universal Credit and Jobseeker's Allowance \(Miscellaneous Amendments\) Regulations 2018 \(SI 2018/1129\)](#), and the [Child Tax Credit \(Amendment\) Regulations 2018 \(SI 2018/1130\)](#), and came into force on 28 November 2018.

---

<sup>56</sup> Further information on the two child limit, including examples of how the rules may impact different family arrangements is set out on the [Revenue Benefits website](#).

<sup>57</sup> [SC & Ors v Secretary of State for Work And Pensions & Ors](#) [2018] EWHC 864 (Admin).

<sup>58</sup> [Extending support in Universal Credit and Child Tax Credit: Written statement - HCWS653](#), 27 April 2018; and [More support for non-parental carers](#), DWP press release, 27 April 2018.

## 18 Financial support for family and friends carers (kinship carers)

Further information on the two-child limit under Universal Credit is available in the Library briefing paper [Two child limit in Universal Credit and child tax credits](#) (CBP 7935).

## 4. Further information (for England and Wales)

Further information for individuals looking after someone else's child is available on the Gov.uk website:

<https://www.gov.uk/looking-after-someone-elses-child>

The following organisations provide support and/or information to grandparents and others looking after their grandchildren:

Age UK

<http://www.ageuk.org.uk/>

British Association for Adoption and Fostering

<http://www.baaf.org.uk>

Buttle UK

[www.buttleuk.org](http://www.buttleuk.org)

Family Rights Group

<http://www.frg.org.uk>

Grandparents Plus

<http://www.grandparentsplus.org.uk>

Grandparents as Parents

<http://www.grandparentsasparents.org.uk/>

### About the Library

The House of Commons Library research service provides MPs and their staff with the impartial briefing and evidence base they need to do their work in scrutinising Government, proposing legislation, and supporting constituents.

As well as providing MPs with a confidential service we publish open briefing papers, which are available on the Parliament website.

Every effort is made to ensure that the information contained in these publicly available research briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

If you have any comments on our briefings please email [papers@parliament.uk](mailto:papers@parliament.uk). Authors are available to discuss the content of this briefing only with Members and their staff.

If you have any general questions about the work of the House of Commons you can email [hcenquiries@parliament.uk](mailto:hcenquiries@parliament.uk).

### Disclaimer

This information is provided to Members of Parliament in support of their parliamentary duties. It is a general briefing only and should not be relied on as a substitute for specific advice. The House of Commons or the author(s) shall not be liable for any errors or omissions, or for any loss or damage of any kind arising from its use, and may remove, vary or amend any information at any time without prior notice.

The House of Commons accepts no responsibility for any references or links to, or the content of, information maintained by third parties. This information is provided subject to the [conditions of the Open Parliament Licence](#).