



**Final Response to Department for Work and Pensions Public Consultation:
Exceptions to the limiting of the individual element of Child Tax Credit and the child
element of Universal Credit to a maximum of two children**

November 2016

CEL CIS is the Centre for Excellence for Looked after Children in Scotland, based at the University of Strathclyde. We work with partners to improve the lives of Scotland's looked after children and care leavers, using a collaborative approach to support changes in systems and services which will benefit children and their families. There are approximately 15,500 looked after children in Scotland, of which just over one quarter (27%) are in a formal kinship care placement.¹ Analysis of the 2011 Census estimated 12,630 (1.2%) children were living in kinship care living in Scotland.² The vast majority of these children are living in an informal kinship care arrangement. Research has highlighted that children in kinship care families are disproportionately living in the poorest households across Scotland and the rest of the United Kingdom.³ Children living in kinship care should be exempt from any limitation to Child Tax Credit and element of Universal Credit based on the number of children in the household.

We welcome this opportunity to respond to the DWP public consultation to highlight the important distinctions in the provision of kinship care in Scotland, compared to the rest of the UK when implementing this policy change. Although this consultation wishes to explore the exemptions to the policy, we do not agree with the policy directive to no longer award the individual Child Element of Child Tax Credit and the Child Element of Universal Credit for third and subsequent children or qualifying young persons in a household who are born on or after 6th April 2017. We remain concerned about the impact of this change on child poverty in families. Furthermore, the policy will penalise children based on their birth order, rather than their individual entitlement to support from the state due to being a child.

Our response is focused on the subset of questions in Chapter four: Children living long-term with family and friends. There is a policy statement where this group of children are described as 'living long term with family or friends because they are unable to live with their parents and could otherwise be at risk of entering the care system' (pg.6). However, it should be recognised that in Scotland, living long-term with family and friends is a key element of the care system. This differs in definition from England and Wales where a kinship carer is akin to a foster carer; instead, kinship

¹ Scottish Government (2016) [Children's Social Work Statistics Scotland 2014/15](#), Edinburgh: Scottish Government.

² Wijidasa, D (Forthcoming) [Kinship Care Revisited - Using Census 2011 microdata to examine the extent and nature of kinship care in the UK](#), Bristol: University of Bristol.

³ Nandy, S, Selwyn, J, Farmer, E and Vaisey, P (2011) [Spotlight on kinship care: Using Census microdata to examine the extent and nature of kinship care in the UK at the turn of the Twentieth century](#), Bristol: University of Bristol.

carers are a distinct category of carer as set out in [Part V: Kinship Care of the Looked after Children \(Scotland\) Regulations 2009](#). Therefore, there should be some attention to the language used in describing this policy directive to avoid confusion.

Q2. Are there any other formal arrangements for caring for the children of friends and family which have not been considered above?

The consultation does not provide detail on the arrangements for non-looked after children living with friends or relatives in Scotland. There could be confusion in using the language of ‘formal caring arrangements’ to refer to children who are not looked after but subject to a legal order.

The legal orders for caring for children with families and friends who are not looked after children include:

- A residence order under section 11 of the Children (Scotland) Act 1995
- Under section 72 (1) of the Children and Young Person (Scotland) Act 2014, a kinship care order means—
 - (a) an order under section 11(1) of the 1995 Act which gives to a qualifying person the right mentioned in section 2(1)(a) of that Act in relation to a child,
 - (b) a residence order which has the effect that a child is to live with, or live predominantly with, a qualifying person, or
 - (c) an order under section 11(1) of the 1995 Act appointing a qualifying person as a guardian of a child.
- A person may be appointed as a guardian of a child under section 7 or section 11 of the Children (Scotland) Act 1995. Under section 7, a child’s parent may appoint a person to be a guardian for a child in the event of a parent’s death.

The DWP policy consultation automatically excludes looked after children who are not eligible for Child Tax Credit and the child element of Universal Credit. However, due to the different status of kinship care in Scotland this policy does have implications for kinship carers for looked after children. 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.

Child benefit

The kinship carer should usually be able to claim child benefit for the child they are caring for. The exception to this is where the local authority is making payments under regulation 33 of the Looked After Children (Scotland) Regulations 2009. In this situation it is likely that HM Revenue and Customs will decide that they are not entitled to child benefit.

Child tax credit

If a child is looked after by the local authority, but the local authority payment is not in respect of accommodation or maintenance, then the kinship carer should be able to get child tax credit (CTC) for the child. A payment made under section 22 of the Children (Scotland) Act 1995 will often be for expenses other than accommodation or maintenance. If the local authority payment is in respect of accommodation and/or maintenance, then the kinship carer will not be able to get CTC. A payment made under section 50 of the Children Act 1975 is, by definition, for maintenance.

Child element

Universal Credit can include an amount for dependent children, called the child element. Kinship carers of a non-looked after child will have the child element included in their UC. Kinship carers of a looked after child will not get the child element unless they have legal parental responsibility for the child (most kinship carers of looked after children will not have legal parental responsibility).

Child Poverty Action Group Scotland (March 2016) [Kinship Care and benefits – the essentials](#), Glasgow: CPAG.

Q3. Do you agree that evidence from a social worker is the best approach to providing the necessary evidence of the need for an informal family and friends care arrangement?

& Q4. Are there circumstances where a professional other than a social worker may be able to provide such evidence? We would be grateful for information as to what these circumstances might be and which professionals may be suitable.

Many informal kinship care arrangements would not involve a social work department. Therefore, there is a particular challenge in asking for evidence from a social worker as a gatekeeping role to social security benefits. Firstly, there would be a practical capacity issue in social workers being asked to provide evidence of children living long-term with family and friends. As indicated, this could impact on many families and present significant resource issues for local social work departments. There could also be a pressure of time for the immediate financial entitlement for the child. Secondly, in involving a social worker, there could be a tacit understanding that there has been an agreement that this placement is in the best interests of the child. This may not always be the case and may require a detailed assessment. Thirdly, there could be conflict arising within families with regards to the long-term living arrangements for the child. 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. However, research indicates that this transition can prove to be very difficult.

Professionals who are involved in children's lives are much more likely to know about a child's living circumstances (for example, health visitors, nursery workers, teachers, and college staff, alongside General Practitioners and potentially Paediatricians). However, there may be challenges similarly experienced by social workers in their provision of evidence. There would

need to be clarity of what evidence is required. As highlighted, whilst some family circumstances would be straightforward, it should be anticipated that family dynamics can be complicated.

Q5. Are there any further considerations we should make in relation to this group of children?

We would strongly agree that a child who becomes a parent themselves should be in receipt as an individual, as well as for the new baby, of relevant financial support and the number of children in these households are exempt from the two child rule. We agree that the Government should support claimants in these circumstances and to make an exception for the grandchild/new child where s/he is the third or subsequent child in the claimant's household.

Furthermore, we would recommend that all children in kinship care, or those who have been adopted, be discounted for the purposes of determining whether children in the same household receive an entitlement under this policy.

We welcome further comment and discussion.

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