

What happens to your benefits when your child goes into care or lives with someone else?

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1. What information will I find in this advice sheet?

This advice sheet is for any parent or carer who receive benefits, universal credit and/or tax credits and whose child goes into care or begins living with someone else.

Some benefits or credits you can only get if a child lives with you; these will stop if the child moves out. There are others that might be reduced, or start to be paid to someone else, if the child moves out. So if a child who has been living with you moves to live somewhere else, it will affect any benefits/credits you are receiving.

This advice sheet covers basic information about the key benefits and credits that are affected. The law is however complicated and the rules do change frequently therefore if you want more detailed advice:

- You should contact your local Citizens Advice or specialist benefits advice service in your area.
- Foster carers may also find it helpful to read the Fostering Network's detailed pamphlets on benefits (see contact details at the end of this advice sheet).
- You may also want to ask a friend, your social worker, or your solicitor to explain anything in the advice sheet that you don't understand. The references for the different legal and practice requirements mentioned throughout this advice sheet can be found in section 11 below.

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Note: “Social services” are now known as “Children’s Services”. This is how they are referred to throughout this advice sheet.

2. What changes to the welfare system may affect me?

Many changes are happening to benefits, including:

- Disability Living Allowance (DLA) for people aged 16 to 64 is stopping. It is being replaced by a Personal Independence Payment (PIP) by 2018. But DLA remains for those aged under 16.
- A new benefit called Universal Credit (UC) has begun to replace tax credits, income support, housing benefit and the means-tested versions of jobseekers allowance and employment and support allowance (these are all known as ‘legacy benefits’). UC is being introduced in pilot areas initially and won’t be fully available across the whole of the UK until 2018 for new claims. Existing claimants of the ‘legacy benefits’ will not be moved across to UC until the 2019-2022 period unless they have a change of circumstance (for example, starting or stopping a job; falling ill; having to register as unemployed because a child/children have left home; a child/children returning home after being away; and any other changes that, under legacy benefits, would lead to a change of benefit). You will need to find out how UC affects you.
- Council tax **support** has replaced council tax **benefit** – and that means different councils have different rules about who can claim help with the cost of council tax and how much help they might get.
- There are ‘benefit caps’ and a new ‘two child policy’ that applies to some families. There are also ‘under-occupation penalties’ that apply to others. When these caps, policies and penalties apply and what effect they have is explained later in this advice sheet.
- You can no longer get community care grants and crisis loans from the Social Fund section of the Department for Work & Pensions. Your local council or devolved Government may have a local welfare scheme so you might have to contact them for help instead.

We discuss all of these changes in more detail further on in this advice sheet.

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3. My child is being looked after in the care system – what will happen to my child benefit, tax credits and other benefits?

3.1 Child Benefit¹:

- Your child benefit will normally stop once your child has been in care for eight weeks in a row, although there are some exceptions to this rule (see paragraph 4.1).
- If the only reason your child has gone into care is because of their disability then the information at section 6 below will be relevant to you.
- The consequences of losing child benefit for your child tax credit, housing benefit, and income support are set out below.

3.2 Child Tax Credit (and Universal Credit if applicable):

Your right to get child tax credit for a particular child will stop as soon as that child goes into care². You should therefore:

- Tell HMRC (the tax credits office) that the child no longer lives with you and when they moved out. You may have to pay back any child tax credit you have been paid since they moved out. If your child is in residential accommodation due to a disability, however, see section 6 below.
- If you receive Universal Credit (UC), you should instead tell the Department for Work & Pensions (DWP) this information. This is because they are the department that administers Universal Credit and they will be including an amount for your children within the UC payment.

The two-child policy

The DWP has introduced a new policy which means that anyone getting child tax credit or universal credit who has a 3rd or later child after 5 April 2017 will not normally get additional benefit for that child, unless certain exemptions apply. It doesn't affect children born before that date.

- If you have had your benefit limited because of the 'two-child' policy, but one of your children goes to live elsewhere, then let HMRC/the DWP know about this

change. This is because your third child may, in effect, become your 2nd child, so benefit would be reinstated for them.

The benefit cap

The benefit cap puts an overall limit on the amount of benefit income the household can receive from housing benefit, universal credit, child benefit, tax credits, income support etc. If the cap affects you, your Housing Benefit or Universal Credit is reduced. Some people are exempt from the cap, such as carers or people who are disabled. Currently, the total benefit income cap is £384 a week outside London and £442 a week inside.

- If you are subject to the total benefit income cap, then let DWP/HMRC/Housing Benefit know as soon as possible if a child or children no longer lives with you. It is important to do this as the change in your circumstances might take you out of capping.

3.3 Housing Benefit

It is important to let the council housing benefit department or your housing officer know if a child or children leave home. This may affect how many bedrooms they will allow for and how much housing benefit and council tax support you get if you are working, as your family size will have reduced:

- If you are living in a property which you rent from the council or housing association and your child is no longer living at home, you may be affected by the under occupation penalty or 'bedroom tax' – see the information box below. Even if they are only away for a short time, your housing benefit and council tax support may be reduced. You may also be told that your housing benefit will be reduced because you need to live in a smaller property. If that happens, and especially if you expect your child to return home, ask your council about a **discretionary housing payment** to cover the shortfall in housing benefit.
- If you are living in private rented accommodation, and your child is no longer living at home, this may also affect your housing benefit and council tax support. You should contact your benefits office immediately to find out what changes may be made.

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- If you are on Universal Credit, the housing costs element is affected in the same way that housing benefit is.

Under-occupation penalty – also known as ‘bedroom tax’

Tenants who claim housing benefit and are living in social housing are affected by a ‘bedroom tax’. Housing benefit is reduced or restricted if you have more bedrooms than the council says you need. A similar principle applies to tenants who rent privately, who have their housing benefit limited to what is called the Local Housing Allowance figure.

Two children of different genders are expected to share until age 10 and two young people of the same gender who are under 16 are also expected to share a bedroom. There are special rules for disabled children who need a room of their own at night-time. If your child is living with someone else, this may affect the number of bedrooms that you ‘need’ under these rules. You must notify your landlord immediately of any changes to the number of people living in your home

If you are badly affected by these rules, ask your local council for a payment from their discretionary housing payment fund if getting housing benefit or universal credit. You can also ask Children’s Services to make a payment under Section 17 Children Act 1989 to help you meet your rental payments until a decision has been made about where your child is going to live.

3.4 Income Support and Jobseekers Allowance (JSA)

If the child you were caring for goes into care or begins living with someone else then you need to let the DWP know about this change in your circumstances. This is because it could affect whether you have to start ‘signing-on’ as unemployed and whether you are expected to spend longer looking for work if unemployed:

- If you are getting income support because you are a lone parent with a child aged under 5 years old, then once you stop getting any child benefit for that child

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you may no longer be able to claim income support³ and would have to claim jobseekers allowance instead;

- If you are getting Universal Credit as a lone parent with a child aged under 3 years old, you will keep that benefit by 'signing-on' as unemployed instead if that child leaves home;
- Even if you keep income support (or Universal Credit) without having to sign on because you have other young children still at home, you will have to start attending the Job Centre for regular interviews about preparing to look for work;
- If you are unfit for work or disabled you may need to claim Employment and Support Allowance instead of JSA. You should get advice.

3.5 Disability Living Allowance (under 16's)/Personal Independence Payment (16 or over)

Your right to claim Disability Living Allowance (DLA) on your child's behalf is also affected if they go into care or move to live with someone else. The DLA or Personal Independence Payment (PIP) follows the child, so it may become payable to the person who now cares for your child (e.g. the foster carer) and they must use it for the child's benefit.

There are special rules if your child goes into residential accommodation – see section 6 below. The PIP rules are the same as DLA.

3.6 Child maintenance/child support

If you are getting child support for a child who has now gone into care or moved elsewhere, then you should also tell the **Child Maintenance Service** or **Child Support Agency** about the new situation.

4. Can I get any benefits if my child is living with me but is under a care order or emergency protection order?

4.1 Child Benefit:

If your child regularly stays with you at least one day a week (for one whole day and two nights), then Child Benefit does not stop at all (even after the initial 8 week period

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of the child being in care)⁴. Also, if your child comes to stay with you for at least a week (Monday to Sunday), child benefit can be paid for that week and any part-weeks either side of that week.⁵

4.2 Child Tax Credit and Universal Credit:

You will not be able to get child tax credit (or child elements of Universal Credit) unless you can show that the child 'normally lives with you'.⁶

4.3 Housing Benefit and Council Tax Support:

You should tell the council when your child comes to stay because:

- You may be able to get more housing benefit (or Universal Credit for housing costs) for any weeks in which your child visits⁷;
- You may be able to get council tax support, particularly if your child is under 5 or disabled as some councils will give additional help to those families;
- Having a child back home might mean that you are no longer caught by the 'under-occupation penalty' sometimes known as "bedroom tax" (see the information box above);
- Having an extra child living with you might mean that the extra benefits you can claim push you over the benefit cap limits (£384 a week for a family outside London; £442 for a family within London – see information box above).

4.4 Disability Living Allowance (DLA) Care/Personal Independence Payment (PIP) (Daily Living)

If your child is in residential accommodation (for example to give you a short break or because they have special educational needs) and they are entitled to DLA/PIP but the payments have been suspended because they are away from home then:

- You can still get one seventh of the weekly rate of DLA/PIP for each day or part of a day that they spend back home with you.
- DLA/PIP does not stop if your child goes into hospital, following a test court decision in 2016.

5. My child is now living with her grandparents or other relatives or friends – what will happen to my child benefit and child tax credit?

5.1 Child benefit:

If your child has been away for 56 days in the last 16 weeks, you are no longer entitled to child benefit for them as they are not living with you:

- This rule doesn't apply if your child is living away from home in a residential school but is not in the care system.⁸
- Your claim for child benefit will end sooner than 56 days if the new 'carer' makes a child benefit claim themselves and you agree to the transfer. If they do this you will be able to keep getting child benefit for three weeks and then the claim should be transferred to them.

If you think the child benefit should remain with you (because the child spends part of each week with you for example) then you can challenge HMRC's decision to transfer it.

5.2 Child Tax credit/ Universal credit:

You should also tell the tax credits office (or Department for Work & Pensions if you are getting Universal Credit) that your child does not live with you anymore, even if you've already told the child benefit centre as well:

- You should try to tell them as soon as possible and particularly within one month of your child moving, to make sure that you do not have much to pay back and to avoid paying a penalty.
- The new carer should also take-over any DLA/PIP claim that relates to the child, after 8 weeks.

6. Will my benefits change because my child is now being looked after in residential accommodation because of his disability?

If your child is in residential accommodation for education or social care reasons, this may have an impact on the benefits you receive:

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- Your child benefit should carry on for at least 12 weeks and it will continue indefinitely if you are ‘incurring expenditure’ for them, for example giving pocket money or making visits⁹.
- Your child tax credit will also continue, for as long as your child is living away from you because of their disability, or because their health would be at risk if s/he were not in this residential accommodation¹⁰.
- Your child’s DLA (mobility) and PIP (mobility) continues to be paid.
- Your child’s disability living allowance (care element) will stop:
 - (i) after 12 weeks if they are under 16, and
 - (ii) after 4 weeks if they are 16 or over.
- Your child’s PIP (daily living) will stop after 4 weeks. However, DLA/PIP can be re-claimed for every day or every part of a day that your child spends at home.
- Your carers allowance will also be affected if the DLA (care) or PIP (daily living) stops.

See section 9 for where to get further detailed advice about your benefits.

7. I am on parental leave from work – is this affected by my child not living with me anymore?

Yes. If you have taken unpaid leave from your work to care for your child (known as parental leave) and they no longer live with you, you must tell your employer and you will have to return to work.

8. How can I challenge decisions about my benefit?

Mistakes are often made when benefit applications are processed. Most decisions about benefits can be challenged and there is usually a four-week time limit for doing this. You will normally have to ask the DWP or Revenue to ‘revise’ their decision first. This is called a Mandatory Reconsideration. If they don’t, then you can appeal to an independent Tribunal. Because the law is complicated it is usually best to get specialist advice. See below for details of where to go for further help.

Have you come from abroad?

If you have come from abroad to live in the UK, you should check that your immigration status does not prevent you from applying for benefit – and that any claim for benefit will not harm any application you are making to the Home Office to stay in the UK. There are specific regulations in place now about people coming to the UK from the European Union, and for migrants who have children. You should get specialist advice from an immigration solicitor, if you have one, or an advice centre like Citizens Advice.

9. Where can I get further help?

Citizens Advice: is an independent organisation providing free, confidential and impartial advice. Their goal is to help everyone find a way forward, whatever problem they face. This may be money, benefits, housing or employment problems. You may be facing a crisis, or just considering your options. Online advice is available on the Citizens Advice website. They also have a national phone service called Adviceline. This is available in Wales for people who live or work there and is being rolled out in England:

- For England telephone: 03444 111 444
- For Wales telephone: 03444 77 2020
- TextRelay users should telephone: 03444 111 445
- Website: citizensadvice.org.uk

Civil Legal Advice: A free and confidential advice service run on behalf of the government. It provides information directly to the public on a range of common legal issues; helps people find out if they are eligible for free legal advice from a solicitor; and helps them find a solicitor. It can also help you find legal advisors and find out if you are eligible for publicly funded free legal help. Check to see if you're eligible for advice on www.gov.uk/check-legal-aid or apply online:

- Telephone: 0345 345 4345 Mondays to Friday, 9am to 8pm and Saturday 9am to 12.30pm
- Minicom: 0345 609 6677

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- Text 'legalaid' and your name to 80010 to ask CLA to call you back. This costs the same as a normal text message.
- Website: gov.uk/civil-legal-advice

Family Rights Group: is an organisation which provides free telephone and email advice to family members who are involved with Children's Services about the care and protection of their children:

- Contact FRG's advice line for specific advice about your case on 0808 801 0366. It is open Monday-Friday 9.30am-3.00pm (excluding bank holidays).
- Visit <http://www.frg.org.uk/need-help-or-advice/our-advice-service/advice-sheets> where you can download other relevant advice sheets
- Join FRG's parent's discussion board at: <https://www.frg.org.uk/ParentsForum>
- Join FRG's family and friends carers' discussion board at <https://www.frg.org.uk/FandFCForum/>

Fostering Network: is an organisation which provides advice to foster carers who are approved by Children's Services. They produce detailed pamphlets on benefits and tax as it affects foster carers:

- Telephone information line: 0207 261 1884
- Website: www.fostering.net.

10. Benefit enquiry lines:

Child Benefit

PO Box 1, Newcastle-upon Tyne, NE88 1AA

Tel : 0300 200 3100

www.gov.uk/browse/benefits/child

Working Tax Credit/Child Tax Credit: Tel 0345 300 3900

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Child Maintenance Service and Child Support Agency Tel: 0345 7133 133

Disability Living Allowance Tel: 0345 605 6055

Personal Independence Payment: Tel - 0345 850 3322

Universal Credit Helpline : Tel 0345 600 0723

“Entitled To”: Calculator to help you work out your entitlement to benefits and tax credits - www.entitledto.co.uk/benefits-calculator

11. References:

SSCBA	Social Security Contributions and Benefits Act 1992 http://www.legislation.gov.uk/ukpga/1992/4/contents/enacted
CBR	Child Benefit (General) Regulations 2006 SI 223 http://www.legislation.gov.uk/uksi/2006/223/contents/made
CTCR	Child Tax Credit Regulations 2002 SI 2007 http://www.legislation.gov.uk/uksi/2002/2007/contents/made
HBR	Housing Benefit Regulations 2006 SI 213 http://www.legislation.gov.uk/uksi/2006/213/contents/made
HB(PC)R	Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 SI 214 http://www.legislation.gov.uk/uksi/2006/214/contents/made
CTBR	Council Tax Benefit Regulations 2006 SI 215 http://www.legislation.gov.uk/uksi/2006/215/contents/made
CTB(PC)R	Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 SI 216 http://www.legislation.gov.uk/uksi/2006/216/note/made
ISR	Income Support (General) Regulations 1987 SI 1967 The Income Support (General) Regulations 1987

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¹ SSCBA schedule 9, para 1(c); CBR regs 16 and 18

² CTCR reg 3, Rule 4.1

³ ISR reg 15(1); schedule 1B para 1

⁴ CBR reg 16(b)(i-iii)

⁵ CBR reg 16(b)(iv)

⁶ CTCR reg 3, Rule 4.1

⁷ HBR reg 21(5); CTBR reg 11(4); HB(PC)R reg 21(5); CTB (PC)R reg 11(4)

⁸ SSCBA section 143(2); SSCBA schedule 10 para 1

⁹ SSCBA section 143(3)(c) & (4); CBR reg 10

¹⁰ CTCR reg 3(1) Rule 4.2; CBR reg 9