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

Introduction

This advice sheet is for parents and carers who receive benefits and/or tax credits and whose child goes into care or begins living with someone else. There are some benefits or credits that you can only get if a child lives with you, so these will stop if the child moves out; there are others that might be reduced 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 or credits you are receiving.

This advice sheet covers basic information about the key benefits and credits that are affected, but the law is complicated and the rules change frequently. If you want more detailed advice, you should contact your local Citizens Advice Bureau 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 – contact details at the end of this advice sheet.

You may also want to ask a friend or your solicitor to explain anything in the advice sheet that you don't understand. We have included the references for all the legal and practice requirements in notes which you can find at the end of the advice sheet. For full details of all the documents referred to in the notes, see the references section also at the end of the advice sheet.

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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.

What are the main changes to the welfare system that may affect me?

Many changes are happening to benefits in 2014 and beyond, including:

- Disability Living Allowance (DLA) for people aged 16 to 64 is stopping, and being replaced by a Personal Independence Payment (PIP) by 2018. But DLA remains for those aged under 16.
- Since October 2013, a new benefit called Universal Credit has begun to replace tax credits, income support, housing benefit and the means-tested versions of jobseekers allowance and employment and support allowance. It is being introduced in some pilot areas initially and won't be available across the whole of the UK until 2017. But if you are in one of the pilot areas, you will need to find out how Universal Credit affects you.
- Council tax **support** has replaced council tax **benefit** – and that means different councils have different rules about who can claim and how much help they might get.
- There are 'benefit caps' that apply to some families and 'under-occupation penalties' that apply to others.
- You can no longer get community care grants and crisis loans from the Social Fund section of the Department for Work & Pensions but your local council has 'inherited' that money to help local welfare schemes so you might have to contact them for help instead.

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

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

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 page 4) .

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- If the only reason your child has gone into care is because of their disability, see page 7 below.
- The consequences of losing child benefit for your housing benefit and child tax credit are set out on page 4.

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 tell the Revenue (tax credits office) that they no longer live 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 the section below. Universal Credit is administered by the Department for Work & Pensions so you will need to tell them instead, as they will be including an amount for your children within the Universal Credit payment.

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

Your right to claim DLA on your child's behalf is also affected if they go into care. The DLA follows the child, so it may become payable to the foster carer for example. They must use it for the child's benefit. There are special rules if your child goes into residential accommodation – see below. The PIP rules are the same as DLA.

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

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

Child Benefit³:

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 of the child being in care).

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 week⁴

Child Tax Credit:

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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'⁵.

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) and council tax support for any weeks in which your child visits⁶. This may be especially important for council tax support if your child is under 5 or disabled as some councils are giving more help with council tax to those families than they do to other families.

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

If your child is in hospital or 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, 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.

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

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.⁷

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 the Revenue's decision to transfer it.

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.

What will happen to my income support now that my child benefit has stopped?

If you are getting income support because you are a lone parent, then once you stop getting any child benefit you may no longer be able to claim income support⁸ and may have to claim jobseekers allowance instead. If you are getting Universal Credit as a lone parent, you will keep that benefit by 'signing-on' as unemployed instead. This could also happen if you are a lone parent with other children still at home, but those children are older than 5.

Even if you keep income support (or Universal Credit without having to sign on) because you have other children aged 1-4 still at home, you will have to start attending the Job Centre for regular interviews about being ready to look for work once your youngest child reaches 5.

If you are unfit for work or disabled you may need to claim Employment and Support Allowance instead of JSA. You should get advice.

Will my housing benefit and council tax support change now that my child benefit has stopped?

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, even briefly, 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,

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and especially if you expect your child to return home, ask your council about a **discretionary housing payment**.

Also, **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.

UNDER-OCCUPATION PENALTY (known as the Bedroom Tax)

Since April 2013, 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.

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. 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 fund. You can also ask Children's Services to make a payment under s17 CA89 to help you meet your rental payments until a decision has been made about where your child is going to live.

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 your child benefit should carry on for at least 12 weeks. 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.

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- Your child's disability living allowance (care element) will stop:
 - o after 12 weeks if under 16, and
 - o after 4 weeks if they are 16 or over.
- Your child's PIP (daily living) will also stop after 4 weeks too.

However, DLA/PIP can be re-claimed for every day or part-day that your child spends at home. Your carers allowance will also be affected if the DLA (care) or PIP (daily living) stops – get advice about this if you are a carer – see pages 7-9.

I am on parental leave from work – is this affected by my child not living with me any more?

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.

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. 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 new rules in 2014 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 a Citizens Advice Bureau (CAB).

Where can I get further help?

Citizens Advice: is an independent organisation providing free, confidential and impartial advice on all subjects to anyone. The address and telephone number of your local CAB can be found in the telephone directory. There is also advice on line on their website.

Website www.citizensadvice.org.uk

Advice on line Website www.adviceguide.org.uk

Civil Legal Advice: A free and confidential advice service. It provides information directly to the public on a range of common legal issues and helps people find legal help and information. 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. Contact

- emailhelp@civillegaladvice.org.uk
- Telephone: 0845 345 4 345 Monday to Friday, 9am to 8pm or Saturday, 9am to 12:30pm

Minicom: 0845 609 6677

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.
- You can also visit www.frg.org.uk/advice_sheets.html where you can download other relevant advice sheets or join the FRG parents' or family and friends carers' discussion boards.

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. To obtain this publication call their information line on 0207 261 1884 or visit their website: www.fostering.net

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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

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

Disability Living Allowance Tel: 0345 712 3456

Personal Independence Payment: Tel - 0800 917 2222

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

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

Last Updated 13th August 2014

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

² CTCR reg 3, Rule 4.1

³ CBR reg 16(b)(i-iii)

⁴ CBR reg 16(b)(iv)

⁵ CTCR reg 3, Rule 4.1

⁶ HBR reg 21(5); CTBR reg 11(4); HB(PC)R reg 21(5); CTB (PC)R reg 11(4)

⁷ SSCBA section 143(2); SSCBA schedule 10 para 1

⁸ ISR reg 15(1); schedule 1B para 1

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

¹⁰ CTCR reg 3(1) Rule 4.2; CBR reg 9