



HM Government

# Consultation response – 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

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## Introduction

- 1) The Welfare Reform and Work Act 2016 restricts the number of children or qualifying young persons<sup>1</sup> in respect of whom the Child Element in Universal Credit and the Individual Child Element in Child Tax Credit is payable to a maximum of two. At the Summer Budget 2015 when the Chancellor announced the policy and during the passage of the legislation through Parliament four exceptions to this policy were announced (<https://www.gov.uk/government/topical-events/budget-july-2015>).
- 2) We asked people to send us their views in relation to the detailed design and implementation of these four announced **exceptions**. The consultation (*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 – Public Consultation*) was published on GOV.UK. It ran from 21 October 2016 to 27 November 2016 and we alerted around 100 organisations across the UK who might have an interest in the policy.
- 3) We received 82 responses with around 50 from organisations. We would like to thank all those who responded. The organisations who responded are listed in Annex A.
- 4) Many of those who responded did so to comment on the overall policy, impacts on claimants and other potential exceptions. The policy to limit entitlement to the Child Element in Universal Credit and the individual Child Element in Child Tax Credit was legislated for by Parliament in the Welfare Reform and Work Act 2016. When bringing forward the legislation the Government set out its intention to restore fairness in the benefit system between those receiving benefits and those funding the system, with those on benefits having to make the same financial decisions as those supporting themselves solely through work. An impact assessment was published shortly after the introduction of the legislation to Parliament. Therefore comments in consultation responses addressing only the overall policy itself are not reflected in this document. In relation to other potential exceptions, the Government's view is that the announced exceptions cover the circumstances where parents or carers of children are not in the same position to make choices about the number of children in their family as others are.
- 5) This publication:
  - summarises the main points made in response to our specific questions;
  - records the Government's response to them; and
  - announces some amendments to the implementation of the exceptions as a result.

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<sup>1</sup> References to children throughout this document also include qualifying young persons

## Summary of Responses to the Consultation

- 6) The *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 – Public Consultation* contained 10 questions. Not everybody responded to all the questions and some gave general views, these have been summarised under the question they best addressed.

## Multiple Births

- 7) The Government announced at Summer Budget 2015 that children born in a multiple birth would be exempt from the policy in both Child Tax Credit and Universal Credit if there were previously fewer than two children in the household. This is on the basis that families will not be able to plan for a multiple birth when considering whether they can afford to look after an additional child. The exception would not apply if there were already two or more children in the household prior to the multiple birth.

### **Question 1. Do you have any views on the proposed model for multiple births?**

- 8) The majority of respondents agreed with this principle.
- 9) However, some concern was expressed for families which already have two children and then have a multiple birth, as they too are unable to prepare for this situation. These respondents thought it unfair that the children born out of this multiple birth would not also be exempt.
- 10) Government Response: The Government has considered the additional burdens and expense a multiple birth can entail and the fact that whilst a family may choose to have one additional child and bear the cost of that child, they do not generally choose to have a multiple birth. We have therefore decided to expand this exception so the child element is awarded for all third or subsequent children in a family born as part of a multiple birth, other than the first born. Where the first child of the multiple birth is either the first or second child in the household, a child element will also be awarded for that child.

# Children living long-term with family or friends

## Formal caring arrangements

11) We proposed that an exception should apply in respect of third or subsequent children who are cared for by the claimant, where the claimant:

- has a Child Arrangement Order conferring residence or Special Guardianship Order (or their equivalents in Scotland and Northern Ireland and predecessor arrangements) in place; **or**
- is entitled to Guardian's Allowance; **and**
- is neither the parent nor step-parent of the child.

### **Question 2. Are there any other formal arrangements for caring for the children of friends and family which have not been considered above?**

12) No further **formal** arrangements have been highlighted. Some concerns were raised that kinship carers of looked after children in Scotland should be included in this exception. Some respondents also highlighted that some of the relevant court orders expire when a child reaches age 16.

13) Government Response: Claimants with children looked after by the local authority (e.g. in foster care) are not normally eligible for the Child Tax Credit or Universal Credit Child Element. This is to avoid making dual provision for the same child and applies across the whole of the UK, not only Scotland. Thus, children looked after by the local authority will not be affected by the policy change. Children that are not looked after by the local authority, or who are looked after but for whom the carer has parental responsibility, would be covered by the exception if they have a formal kinship care or permanence order in place in Scotland, if they are appointed as a guardian, or if they meet the relevant criteria for informal caring arrangements.

14) In relation to a child where the relevant court order expires on reaching age 16 we plan to specify that the qualifying young person is, or remains exempt, if the claimant has been continuously responsible for them since that time.

## Informal caring arrangements

15) The Government considered the position of a child living with friends or family because they are unable to live with their parents and who, without this arrangement, is likely to be looked after by the local authority. We proposed that where they are the third or subsequent child in the carer's household they should be an exception to the Child Element limit. To establish eligibility for the exception and ensure that the exception is provided to those for whom it is intended (where there is no formal order in place or entitlement to Guardian's Allowance), the friend or family carer will need to provide evidence from a social worker to support this.

### **Question 3. 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?**

16) Responses were supportive of including informal caring arrangements within the exception and felt it was important to recognise people that fall into this category. Many supported the use of social workers for evidence purposes, whilst some stated that social workers are not always involved or aware of these situations. Some expressed concerns that involving social services might put arrangements in jeopardy, suggesting that some people would prefer social services to not be involved. It was recommended that we accept evidence from other professionals such as GPs, support workers and teachers who are often involved in or aware of these arrangements.

17) Concern was also expressed about social services not having sufficient resources or capacity to provide evidence, particularly in a timely manner.

18) Government Response: The exception is intended only for third and subsequent children who would otherwise likely be looked after by the local authority. Given this, we maintain that it is in the child's and the carers' interests that social workers be involved and that they are best placed to confirm that the arrangements meet the requirements of the exception.

19) The process for providing evidence will be similar to that provided for under section 17 of the Children's Act 1989 (and the equivalent in the Devolved Administrations) that social workers already undertake when assessing whether a child is in need of local authority services to safeguard and promote their welfare. It is in the best interests of the child to involve social services, even if it is only to make them aware of a new caring arrangement and ensure the needs of the child are being met.

20)Where a new central Government policy places an additional burden on local authorities we are required to undertake an assessment of any additional costs and ensure they are fully funded. Whilst we expect that a low number of families across the UK are likely to require this exception, we shall be undertaking such a review in conjunction with the Department for Communities and Local Government and HM Treasury to establish any potential additional burdens.

**Question 4. 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.

21)Other suggestions for professionals who could provide such evidence were:

- Local council employees e.g. homelessness services
- Advocates
- Police
- Medical professionals
- Support workers
- Housing association staff
- Teachers

22)Government Response: We recognise that social services may not currently be involved in all informal care arrangements, but feel it is important to ensure that the exception is only applied to those who meet the criteria. We also think it important, and in the best interests of the child, that where an arrangement is in place that potentially avoids children being placed into care, social services become aware of those family circumstances where support may be required.

23)Whilst we believe that social services are best placed to provide verification of the claim, we will want to evaluate how this exception works in practice once the policy is introduced. We therefore plan to specify that only social workers may provide this verification, but allow flexibility for evidence from others to be accepted. This would be in the light of experience in delivering this exception if it becomes apparent that this is required or appropriate.

## Children under 16 who become the parents of a child

24)If a claimant receives Universal Credit or Child Tax Credit in respect of a child under the age of 16, who then also has a child while still living with them, this grandchild/new child is added to the claimant's Universal Credit or Child Tax

Credit claim. The grandchild/new child is therefore added to the existing number of dependent children in the household. This child of a child will be included as an exception where they are the third or subsequent child in the claimant's household.

**Question 5. Are there any further considerations we should make in relation to this group of children?**

25) Most respondents to this question supported this exception.

## Children likely to have been conceived as a result of rape

26) At the Summer Budget 2015, it was announced that an exception to the policy would apply where third or subsequent children were conceived as a result of rape. The Minister of State for Welfare Reform set out further details, recognising that this exception deals with an extremely sensitive issue and it is important that we design and implement the policy sensitively, while providing the right assurance to Government that the additional support is going to those for whom it is intended. He set out that the Government is exploring a third party evidence model.<sup>2</sup>

## Determining whether a child is likely to have been conceived as a result of rape

27) A third party evidence model is already used in Universal Credit for the temporary relaxation of mandatory work-related requirements for recent victims of domestic violence. We are developing a similar model where a claimant requests the exception and engages with a professional third party. Evidence from this professional third party, demonstrating that the claimant's circumstances are consistent with those of a person who has had intercourse without consenting to it (at a time when the conception of her third or subsequent child might have resulted), will normally be used to determine eligibility for the exception. Thus women are not placed in the position of having to give details about the rape to DWP or HMRC officials and eligibility can be met without a conviction or any judicial finding. The Government will handle this extremely sensitive information discreetly and confidentially, in line with its strict data protection rules. Any documentation sent to claimants will not include the reason for the additional

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<sup>2</sup> January 27<sup>th</sup> 2016. <http://www.publications.parliament.uk/pa/ld201516/ldhansrd/text/160127-0001.htm>



payment of the Child Element.

**Question 6. Do you have views on using a third party evidence model?**

28) This exception elicited the most responses, with many stating that it was unacceptable for Government to ask women to re-live the ordeal of a rape just in order to make a claim for benefit. There were concerns around the mental health impact on victims and pre-conceived perceptions of what a victim should look like if a judgement is being made by a third party. Some respondents felt the measure was intrusive or unworkable and concerns were expressed about protection and retention of sensitive data.

29) Government Response: The Government does recognise that the handling of this exception is very sensitive and understands the concerns expressed, but feels it is important to have an exception in place to support claimants in these circumstances. As we introduce the measure we will set up procedures that are mindful of the sensitivities involved. Neither DWP nor HMRC staff will question the claimant about the incident other than to take the claim and receive the supporting evidence from the third party professional.

30) We propose that the assurance required from third party professionals be based solely on evidence that the claimant has made contact with the third party and demonstrated that their circumstances are consistent with those of a person whose child has been conceived as a result of non-consensual sex. This would be outlined in guidance for third parties, claimants and staff.

31) Respondents were clear that many victims need time to come to terms with what has happened to them before they disclose it to anyone. We appreciate and respect this, and therefore there will be no time limit placed on when the report needs to be made to the third party professional after the actual incident that resulted in the pregnancy, in order to be eligible for the exception.

32) Any data or evidence received will be handled in accordance with the rules that DWP and HMRC already use for holding and using extremely sensitive data.

## Who is recognised as a professional third party

**Question 7.** As part of exploring a third party evidence model approach, we have been considering the list of possible third parties and **would be grateful for advice as to whether this is the right list, or whether there are other professionals and bodies that should be added:**

- Health care professionals (including GPs, other doctors and nurses, midwives and health visitors)
- Police officers
- Registered social workers
- Registered counsellors
- Independent Sexual Violence Advisers
- Other organisations such as specialist rape charities approved by the Secretary of State (in the case of Universal Credit) or by the Treasury (in the case of Child Tax Credit)

33) Consultation responses did ask for the third parties list to be broadened with suggestions including, for example, local authority homelessness services and housing organisations.

34) Government Response: We have considered this question very carefully, balancing the need to have only suitable professionals who are able to make the proposed assessment and provide support to claimants in these circumstances against the need for the professionals to be readily accessible to all claimants. On balance, our view is that it is important to limit the list to professionals who are trained to deal with such sensitive situations and with whom it would be beneficial for the claimant to engage in order to obtain relevant guidance and support. In order to allow flexibility the list will be set out in guidance and approved by the Secretary of State or by the Commissioners for Her Majesty's Revenue and Customs. It will include health care professionals, social workers and relevant specialist charities, with the ability to add third parties as appropriate in the light of experience in delivering this exception.

**Question 8.** We are interested in hearing from third parties about any considerations we should take account of as part of the process of providing evidence for the exception. In particular, if there are any issues which might make it more difficult for a third party to assess a claim for exception, including non-recent cases.

35) Most responses were concerned about the claimant having to talk to anyone about their experience. However, some did feel that if an exception was to be

introduced a third party model was probably the best way forward and the list of professional groups was broadly right.

36)Government Response: We recognise the extremely difficult circumstances that those claiming this exception will be in. We agree that a third party model is the best approach to take with this exception, with no time limit placed on when the report needs to be made to the third party professional after the actual incident that resulted in the pregnancy.

## Coercion and control

37)The consultation responses have highlighted the difficulty of identifying consent within abusive relationships and particularly distinguishing between rape and sexual intercourse which takes place within a domestic abuse situation involving coercion and control.

38)Government Response: We believe it is important to take account of those in controlling and coercive relationships. We have therefore decided to include third or subsequent children conceived in such circumstances within the non-consensual conception exception. We will use aspects of the legal definition of the criminal offence of “controlling or coercive behaviour in an intimate or family relationship”, recently legislated for by the Home Office.

## Requirement to not be living with the alleged perpetrator

39)The consultation proposed making it a requirement for eligibility for the exception that the claimant confirms that she is not living with the alleged perpetrator. Beyond the need to confirm this, there will be no requirement to identify the alleged perpetrator.

### **Question 9. Are there other considerations we should take into account in respect of the requirement to not be living with the alleged perpetrator?**

40)Many consultation responses highlighted the difficulty for victims leaving abusive partners, and the threat of further violence, and asked to remove this requirement.

41)Government Response: The Government recognises that victims’ circumstances differ. Our intention is to minimise the risk of harm to the victim, whilst acknowledging that not all victims will feel able to leave the perpetrator, and that victims may return to the perpetrator later in time. However we are concerned that paying the Child Element to claimants for third and subsequent children born in

these circumstances, where they have not left the alleged perpetrator, would allow the alleged perpetrator to financially benefit from the abuse. This would put them in an advantageous position in comparison to other families who would be limited to support for two children. Rather than financial support through benefits for those who do remain with the perpetrator, we think other forms of victim support are more appropriate.

42) On 8 March, to mark International Women's Day, the Government published its Violence Against Women and Girls (VAWG) Strategy for this Parliament. Over this spending review period, we are providing £80m of dedicated VAWG funding to continue to provide a bedrock of critical services for VAWG, and to support a transformation in local service delivery to support local areas to build coherent pathways of support for victims at every stage.

43) The Government has also announced money from the Tampon Tax will go to support victims of domestic violence.

## Where there has been a conviction or compensation award for rape

44) Alternatively to the third party evidence model, we proposed that the exception will apply where there is a successful conviction or award of compensation from the Criminal Injuries Compensation Authority for rape occurring (at a time when the child's conception might have resulted).

### **Question 10. Do you agree with this approach?**

45) Responses agreed that this should be used as evidence, but should not be used as the only form of corroboration for the exception.

46) Government Response: We intend to provide for this approach as an alternative to the third party model as a means of evidencing that a third or subsequent child is likely to have been conceived through non-consensual sex (whether this was rape or within circumstances of domestic coercion and control). The exception will therefore also apply where there has been a conviction for the criminal offence of controlling or coercive behaviour in an intimate or family relationship, or a relevant criminal injuries compensation award, where this is likely to have led to the conception of the child.

## Legislation

47) The Government will bring forward the regulations to provide for the exceptions in Child Tax Credit and Universal Credit in time for the introduction of the policy from 6 April 2017. These regulations will also include the other necessary consequential changes in Housing Benefit, Income Support and Jobseekers Allowance.

## Organisations who responded to the Consultation

Agudas Israel Community Services  
Auchmuty learning Centre  
Bromsgrove District Housing Trust (BDHT)  
Caritas Social Action Network (CSAN)  
Centre for Excellence For Looked After Children in Scotland (CELCIS)  
Child Poverty Action Group (CPAG)  
Citizens Advice  
Citizens Advice Coventry  
Citizens Advice Reigate & Banstead Bureau  
Citizens Advice Scotland  
Community Housing Cymru (CHC)  
Contact a Family  
Cross Keys Homes  
Dumfries and Galloway Citizens Advice Service (DAGCAS)  
Durham County Council  
Engender  
Equality and Human Rights Commission (EHRC)  
Gipton Supported Independent Living (GIPSIL)  
Glasgow City Council  
Grandparents Plus  
Gwent Welfare Reform Partnership (GWRP)  
Hertfordshire County Council  
Interlink Foundation  
Jewish Community Council of Gateshead (JCCG)  
Kinship Care Alliance (KCA)  
Local Government Association Social Security Advisors  
Low Incomes Tax Reform Group (LITRG)  
North Ayrshire Health & Social Care Partnership (NAHSCP)  
North Tyneside Citizens Advice Bureau  
Parenting Northern Ireland

Peabody  
Portsmouth City Council  
Radian  
Rape Crisis  
Rape Crisis Scotland  
Regenda Homes  
Reigate and Banstead - Women's Aid  
SNP Westminster Group  
South Lanarkshire Council Brandon Gate  
St Christopher's Hospice  
Surrey County Council  
Surrey Welfare Rights Unit  
The Board of Deputies of British Jews  
The Children's Society  
The Disability Resource Centre  
Twins and Multiple Births Association (TAMBA)  
Women's Aid

Some of these organisations have responded as part of a joint response and some organisations responded more than once but for ease of reference all organisations that contributed to a response have been listed once