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Advice NI Information Briefing

Universal Credit Support for childcare costs and changes to the meaning of relevant childcare

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Universal Credit
Support for childcare costs and changes to the meaning of relevant childcare

Support from the government for the cost of childcare is a feature carried over to Universal Credit from the Tax Credits system. The purpose is ostensibly to remove one of the primary barriers to parents taking up employment, supporting the government's widely-quoted intention to 'make work pay'.[1] Lowering the burden of childcare costs has long been recognised as crucial to encouraging parents into employment, as rising costs of childcare have reduced the financial margins between paid work and benefit entitlement.[2]

Recent policy developments have seen an increase in schemes for parents to help with childcare costs, with the introduction of Tax-Free Childcare in addition to the roll-out of Universal Credit and improvements to the Adviser Discretion Fund to provide assistance with childcare costs when starting a new job.[3]

The primary purpose of this briefing is to address entitlement to the Universal Credit childcare element, with specific reference to issues relating to recent changes to the definition of 'relevant' (i.e. qualifying) childcare. However, the briefing will also address other sources of support with the costs of childcare for low income families, as well as considering how the relative value of the support available might impact better-off calculations for those claimants.

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[1] 'Universal Credit makes work pay', DWP Press Release, 15 February 2015
[2] Vidhya Alakeson & Alex Hurrell (Resolution Foundation), *Counting the Costs of Childcare* (2012)
[3] The Expansion to the Adviser Discretion Fund including an amendment to the childcare costs element of Universal Credit, 13 September 2021

Entitlement to the Childcare Costs Element

To access support for childcare costs in Universal Credit, two basic conditions apply: the work condition and the childcare costs condition. In short, the claimant must be working and paying for 'relevant childcare' to allow them to work.

As with Tax Credits, claimants will only be able to receive the childcare element of Universal Credit if they are in paid work, or due to start paid work before the end of the next assessment period.[4] In the case of a joint claim, both members of a couple will need to be in paid work, or one member of the couple will need to be working and the other subject to one of the following defined exemptions:

i. has limited capability for work;
ii. has regular and substantial caring responsibilities for a severely disabled person;
iii. is temporarily absent from the claimant's household.[5]

A run-on also applies, where a claimant continues to be treated as being in paid work for both the assessment period in which their work ends and the following assessment period. If a claimant's work ends in the month immediately prior to their claim for Universal Credit, they will be eligible for childcare costs during the first two assessment periods of that claim. Finally, any Universal Credit claimant in receipt of either statutory sick pay, statutory maternity, paternity, shared paternity or adoption pay, or maternity allowance, will also be treated as being in paid work for the purposes of entitlement to the childcare costs element.[6]

On first reading, the childcare costs condition is far more straightforward, in that the claimant must have paid charges for relevant childcare in the assessment period in question.[7] The first important caveat is that the charges must have been paid in respect of a child or qualifying young person 'for whom the claimant is responsible'.[8] The question of who is responsible is determined by the regulations as the person with whom the child or qualifying young person 'normally lives' and who has 'main responsibility'.[9] However, neither of those terms are defined in legislation and therefore remain open to a degree of interpretation and dispute.

A second important caveat relates to the meaning of relevant childcare, and we will deal with that through an analysis of an important amendment to the regulations relevant to claimants living or working across the border with the Republic of Ireland.

[4] Advice for Decision Making Guide (hereafter ADM) F7011; Universal Credit Regulations (Northern Ireland) 2016 (hereafter UC Regs (NI) 16), reg 33(1)(a) (use the Department's Blue Volumes for the most up-to-date version of legislation). For Tax Credits, see Tax Credits Technical Manual (hereafter TCTM) 02610; Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002, Reg. 13(1).
[5] ADM F7012-13; UC Regs (NI) 16, reg 33(1)(b). In Tax Credits the exemptions are that the partner is either incapacitated, an inpatient in hospital, in prison or entitled to carer's allowance (TCTM02610).
[6] ADM F7015; UC Regs (NI) 16, reg 33(2)
[7] ADM F7030; UC Regs (NI) 16, reg 34(1)(a). For Tax Credits, see TCTM02630.
[8] UC Regs (NI) 16, reg 34(1)(b)
[9] ADM F1056; UC Regs (NI) 16, reg 4

Changes to the meaning of relevant childcare

As originally enacted, Universal Credit regulations only included those providers formally registered in Northern Ireland under the definition of 'relevant childcare', or, if the provider was outside Northern Ireland, where they were 'approved by an organisation accredited by the Secretary of State.'[10] This definition was expanded with effect from 13 July 2020 to explicitly incorporate bleproviders outside Northern Ireland 'approved or accredited under the legislation of the relevant state'.[11] This is a welcome change removing a layer of bureaucracy from the process of accreditation of providers outside of Northern Ireland, although it should be noted that the onus is now on the claimant rather than the relevant authorities to establish that the provider has the proper accreditation.

At the time of writing, the Advice for Decision Making Guide has not been updated to reflect these changes.[12] An Advice for Decision Making Memo was published by the Department following the amendment to the regulations, but it provides no additional guidance beyond the content of the legislation.[13] Nevertheless, the amendments to the regulations are reasonably clear and do not appear to provide much grounds for discretion in the application of the new rules. One would expect that all the claimant needs to provide is evidence that the childcare provider is appropriately registered within the relevant state (in the cases we are likely to encounter, the Republic of Ireland[14]).

It is regrettable, therefore, that reports have emerged from within the independent advice network of claimants being asked by Universal Credit to provide substantially more information than appears to be warranted under the legislation. This involved requests to claimants for proof that the provider outside Northern Ireland is closer to the claimant's home address, which is not a feature of the regulations. Parents have a number of factors to weigh up when selecting childcare, and it is appropriate that the regulations do not impose restrictions on that choice.

In light of these concerns, the issue was raised with Universal Credit in October 2021 and the Department agreed to look into questions surrounding the application of the rules. They have advised that new guidance for staff has been written and is currently awaiting approval. It is expected that this guidance will confirm the interpretation of the regulations outlined above, and we will update the briefing accordingly once this is confirmed.

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[10] UC Regs (NI) 16, reg 37 (as enacted)

[11] Universal Credit (Miscellaneous Amendments) Regulations (Northern Ireland) 2020, reg 2(1); Tax Credits, Child Benefit and Childcare Payments (Miscellaneous Amendments) Regulations 2019, reg 2(4)(b), effective from 21st March 2019.

[12] ADM F7031 et seq

[13] ADM Memo 13/20

[14] Child care providers in the Republic of Ireland must register with the Child and Family Agency, Tusla: Early Years (Pre School) Inspectorate; School Age Services. The Department for Communities advise that they are working on processes to confirm accreditation of providers via Tusla.

Better-Off Calculations and the Childcare Costs Element

The most recent data on childcare costs in Northern Ireland is stark, with some 71% of childcare providers reporting that they are either just breaking even or are making a loss and 41% of parents reporting that they regularly have to use means other than their income (savings, credit cards, payday loans) to pay for childcare – a figure that rises to 55% of lone parents.[15] As a consequence, it is positive that the amount paid towards childcare costs is more generous under Universal Credit than under the Tax Credits system, as the following table demonstrates:

	Proportion of costs payable	Maximum element for 1 child	Maximum element for 2 or more children
Working Tax Credit	70%[16]	£122.50 per week[17]	£210 per week[18]
Universal Credit	85%[19]	£646.35 per month[20]	£1,108.04 per month[21]

The increased support could mean reducing the burden of childcare costs by as much as £26.65 per week for parents of 1 child and £45.70 per week for parents of 2 or more children. However, the maximum amount payable for 1 child under Universal Credit is still £36.84 less than the average cost of a week's provision in a private day nursery in Northern Ireland, and parents with more than 1 child would experience a substantially greater shortfall.[22]

Of course, not all children will require full-time childcare, and once they become eligible for statutory provision the costs to the parent will reduce accordingly. Nevertheless, this demonstrates the balancing act that low-income families have to perform with their finances just to be able to make ends meet, and often that task is insurmountable. As such, it is essential that in giving advice to these clients we deal with their actual circumstances and that we take a cautious approach. This is particularly true with regard to lone parents, claimants with disabilities or those in receipt of Housing Benefit.

[15] Northern Ireland Childcare Survey 2021
[16] Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002, reg 20(2)
[17] Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002, reg 20(3)(a)
[18] Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002, reg 20(3)(b)
[19] UC Regs (NI) 16, reg 35(1)(a)
[20] UC Regs (NI) 16, reg 38
[21] UC Regs (NI) 16, reg 38
[22] See Northern Ireland Childcare Survey 2021 for childcare cost figures.

Additional Support for the Costs of Childcare

We have seen that the level of support for working parents provided through means-tested benefits is not necessarily sufficient to meet the costs of childcare. However, there are other sources of financial assistance for working families in this area. Whether a client qualifies will depend on their circumstances, and certain benefits preclude entitlement to others, so it is important to familiarise ourselves with the criteria that apply.

Adviser Discretion Fund (ADF)

As part of its role to aid people in finding employment, the Department for Communities has the authority to provide whatever assistance it deems appropriate to remove a particular barrier to entering work.[23] It achieves this duty in practice through the Adviser Discretion Fund, which currently provides additional financial assistance up to a maximum of £1,500 within a 12-month period. The ADF can address a range of different barriers identified by a Work Coach, including help with upfront childcare costs where they are a barrier to moving into or returning to work or significantly increasing the number of hours worked.

The advantage is that, whereas wages and benefit will be paid in arrears, childcare providers will ordinarily require payment in advance. Therefore, claimants can cover the initial outlay through the ADF and, in the case of Universal Credit, submit the invoice to the relevant benefit to have the childcare costs element included in their subsequent payment.[24] As payments under the ADF are non-repayable grants there will be no resulting debt incurred.

To access the ADF, the claimant, or their partner, must be in receipt of at least one of the following benefits:

Universal Credit
Working Tax Credit
Jobseeker's Allowance
Employment and Support Allowance
Pension Credit
Housing Benefit
Carer's Allowance or Carer's Credit
Maternity Allowance
Income Support
Incapacity Benefit

They should then approach a Work Coach at their local Jobs and Benefits office to discuss the possibility of accessing the Fund. Claimants would also be advised to communicate with their childcare provider, as the Department advise that payment will take at least a week to be issued due to the payment system that is used, and in some cases clients have encountered longer delays.

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23 The Expansion to the Adviser Discretion Fund including an amendment to the childcare costs element of Universal Credit, p. 2; Employment and Training Act (Northern Ireland) 1950, §1

24 Universal Credit (Childcare Costs) (Amendment) Regulations (Northern Ireland) 2021

Childcare Vouchers

Voucher schemes to pay for the costs of childcare were closed to new applicants from 4 October 2018 following the introduction of Tax-Free Childcare (see below). However, those already using Childcare Vouchers will remain eligible for them so long as they remain with the same employer and make at least one payment into their Childcare Voucher account every 52 weeks.

The voucher scheme works via salary sacrifice: parents make a set monthly contribution that is deducted from their salary at source by the employer, similar to employee pension contributions.[25] This means that the money paid into the voucher scheme is not subject to income tax or National Insurance deductions, thereby saving up to £933 per parent, per year.[26] The maximum amount that an employee can sacrifice under the voucher scheme is £243 per month.

One significant advantage of childcare vouchers is that they can be used alongside means-tested benefits, such as Universal Credit and Working Tax Credit. As the sum sacrificed is exempt from taxation it is therefore excluded from being treated as employed earnings.[27] However, clients are best advised to establish their entitlement to childcare costs through Working Tax Credit or Universal Credit in the first instance, and only use the voucher system to cover any shortfall. This will be straightforward for clients whose income is fairly fixed, but could present substantial challenges for anyone whose earnings fluctuate.

Another potential difficulty is that changes to the client's sacrifice arrangement require a change to their employment contract. Although this request can be made fairly simply through the eVoucher portal, employer rules on this type of change will vary and may include restrictions on the frequency of any changes.[28] Some employees may have concerns about the impact on their employment rights.[29]

In other respects, Childcare Vouchers are much more flexible. For example, as they do not expire, any sum accrued in a client's account can be used at a later date and will not be lost. Childcare Vouchers can be used to pay for any type of registered childcare, including childminders, day nurseries, crèches, playgroups, afterschool and breakfast clubs and holiday schemes, and at least until the 1 September after the child's 15th birthday. Moreover, vouchers accessible to a parent are not tied to an individual child, and can be used to pay for more than one type of childcare.[30]

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[25] Employment Income Manual, EIM42750 et seq.
[26] Figure taken from the Employers For Childcare website: Childcare Vouchers
[27] ADM H3108 & H3115; UC Regs (NI) 16, reg 55(2)(b); Income Tax (Earnings and Pensions) Act 2003, §270A
[28] See Employee User Guide for guidance on how to make changes using the portal.
[29] A client's employment rights are enshrined in the Employment Rights (Northern Ireland) Order 1996. Part III relates specifically to employment contracts.
[30] Employee's Guide to Salary Sacrifice (Scheme Rules) Salary Sacrifice Childcare Voucher Scheme; Employee Terms and Conditions

Tax-Free Childcare

Tax-Free Childcare allows working parents, including the self-employed, to receive 20% of their childcare costs from the government. Parents register for an online childcare account with HMRC and make payments into the account via bank transfer or card transaction. The government will top up 25% of the amount paid into the account by the parent (equivalent to £2 for every £8 paid in).[31] The money in the account can then be used to pay for approved childcare provided by childminders, nurseries and nannies, as well as after school clubs and play schemes, although the provider must be signed up to receive payments.[32]

As with Universal Credit and Working Tax Credit, those using Tax-Free Childcare can continue to be treated as meeting the work requirement if they are on any form of statutory leave.[33] In addition, couples where only one parent is working can also access Tax-Free Childcare if the other partner is in receipt of either Incapacity Benefit, Severe Disablement Allowance, Carer's Allowance or contribution-based Employment and Support Allowance.[34] It is also important to be aware of the earnings limits that apply to eligibility for Tax-Free Childcare. At the lower end of the scale, parents must have an 'expected income' of at least £1,853.28 in the 3-month 'entitlement period' (equivalent to 16 hours per week at the National Living Wage, which is currently £8.91 per hour).[35]

Given that those in receipt of either Universal Credit or Working Tax Credit are not eligible for Tax-Free Childcare,[36] it will only be those whose income substantially reduces their entitlement to either of the means-tested benefits that would be advised to consider relinquishing their claim to gain access to Tax-Free Childcare. Parents can access a maximum government contribution of £500 per child in any 3-month entitlement period (this doubles to £1,000 in respect of a disabled child), but the key figure for comparison will be 20% of their eligible childcare costs.

Whether Tax-Free Childcare or Childcare Vouchers are the better option for clients is more complicated. Tax-Free Childcare is much easier to calculate due to the flat rate of the government top-up, which also means that everyone eligible receives the same level of support. It is also possible, in theory, to save substantially more overall through Tax-Free Childcare – up to £2,000 per child per year and £4,000 per year for a disabled child, compared to £933 per parent per year through Childcare Vouchers – but those in the 20% tax bracket whose children are not in full-time childcare may be able to save more through the voucher scheme, providing they continue to be eligible.

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[31] Childcare Payments Act 2014, §1(4)
[32] Childcare you can get help paying for; Childcare Payments Regulations 2015, reg 3
[33] Childcare Payments (Eligibility) Regulations 2015, reg 12
[34] Childcare Payments (Eligibility) Regulations 2015, reg 13
[35] Childcare Payments (Eligibility) Regulations 2015, reg 9. National Minimum Wage and National Living Wage rates. See Tax-Free Childcare: Paid work: Expected income vs. hours for further information on the interpretation of 'expected income'.
[36] Childcare Payments Act 2014, §11 and 13

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