

# **TAX CREDITS BRIEFING 3**

## **CHILDCARE COSTS**



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## INTRODUCTION

Childcare costs are a major financial strain on many families. Working Tax Credit (WTC) offers help in certain circumstances to those who qualify for the basic element of WTC. Childcare costs cannot be claimed as part of Child Tax Credit or on their own.

This briefing covers the law on the childcare element of WTC, including:

- who can claim the childcare element;
- the definition of eligible childcare costs;
- how to calculate relevant childcare costs; and
- what amounts to relevant changes of circumstances.

Throughout the document, the term claimant refers to an individual claimant if the application is made by a single person or lone parent or to both partners in a heterosexual or same sex couple as couples need to make joint claims for tax credits.

## 1. WHAT IS A CHILDCARE ELEMENT?

WTC is a means-tested benefit payable to working families depending on their financial circumstances. The childcare element is an amount which can be claimed as part of WTC.

The maximum rate of the childcare element is 70 per cent of actual childcare costs of up to £175 per week for one child or £300 per week for two or more children. This means that the most a claimant can receive in childcare element is £122.50 per week if s/he has one child or £210 per week where s/he has two or more children.

## 2. WHO CAN CLAIM?

In order to claim a childcare element of WTC, the claimant must be responsible for at least one child. The claimant need not be the child's parent. Regulation 3 of the Child Tax Credit Regulation 2002 provides that a claimant shall be treated as responsible for a child or qualifying young person who is normally living with her/him.

The regulation sets out who is treated as responsible where there are competing claims. Problems may arise where residency of a child is shared. In such cases, the child will be treated as the responsibility of the person who has main responsibility for her/him.

If residency is equally shared, the law provides that only one claimant will be able to claim WTC for the child and relevant childcare costs. Her Majesty's Revenue and Customs (HMRC) will, in the first instance, give the parties an opportunity to decide which one will be treated as mainly responsible for the child. If there is no agreement,



the Board of HMRC will make the decision in light of all the evidence. The decision can be appealed. The Board of HMRC will often follow the Child Benefit decision on the matter but is not obliged to do so.

A childcare element can be paid to certain people incurring charges for relevant childcare, namely:

- a person who is not a member of a couple who is working at least sixteen hours per week; or a member of a married or unmarried couple and either:
  - both are working at least sixteen hours per week; or
  - one is working at least sixteen hours per week and the other is in hospital or in prison, either on remand or as a sentenced prisoner, or entitled to carer's allowance or is incapacitated.

A claimant is treated as incapacitated if s/he:

- is getting the short-term higher rate or long-term Incapacity Benefit, Severe Disablement Allowance, Attendance Allowance, Disability Living Allowance (DLA) (or an equivalent award paid as an increase under the war pensions or industrial injuries disablement scheme) or would be receiving it but for the fact that s/he is in hospital, or;
- has been getting Contributions-based Employment and Support Allowance (ESA(C)) or, provided s/he has satisfied the national insurance contribution conditions for ESA(C), a combination of that and Statutory Sick Pay, for at least 28 weeks (28 weeks in one period, or linked periods);
- Industrial Injuries Disablement Benefit with Constant Attendance Allowance or;
- an award of Housing Benefit which includes a disability premium or a childcare earnings disregard because the non earning member of the couple is incapacitated or;
- has an invalid carriage or similar vehicle.

### 3. QUALIFYING AGE FOR A CHILD

The child or children being claimed for must meet the qualifying age. For the childcare element that age is from birth up to the 1 September following the child's fifteenth birthday, or her/his sixteenth birthday if s/he is disabled. 'Disabled child' means a child:

- who receives DLA; or
- whose DLA has been suspended because s/he is a hospital in-patient; or
- who is certified as severely sight impaired or blind by a consultant ophthalmologist (or treated as such for a 28 week period where a person ceases to be so certified).



## 4. MATERNITY LEAVE

A person can claim the childcare element for a new baby as well as for any other children for whom s/he is responsible while s/he is on Statutory Maternity or Adoption Leave (for first 39 weeks only), Paternity Leave (two weeks) or while being paid Maternity Allowance.

## 5. RELEVANT CHILDCARE

Regulation 14 of The Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 defines 'relevant childcare' as childcare provided by the following:

- childcare registered by a health and social care trust;
- other registered childcare providers, such as nurseries, after school clubs and local councils providing day care services;
- schools or establishments exempt from registration;
- an out of hours club on school premises run by the school or local health and social care trust or education and library board;
- a foster parent or carer who provides childcare for someone other than the child or children being fostered.

The Approval of Home Child Care Providers Scheme came into operation in Northern Ireland on 6 April 2006 [under the Tax Credits (Approval of Home Child Care Providers) Scheme (Northern Ireland) 2006]. This scheme extends the scope of relevant childcare to childcare provided in a child's own home by a person approved to care for children by a health and social care trust.

The approval conditions are that a person:

- must be aged eighteen or over; and
- prior to approval being given, either:
  - has obtained one of the qualifications from a list maintained by the health and social care trust; or
  - has attended one of the basic childcare training courses from the list maintained by the health and social care trust; and
- has obtained a relevant first aid certificate; and
- is not considered unsuitable to work with or have unsupervised access to children.

The following childcare is excluded:

- childcare provided in the child's own home by a parent or relative; or
- childcare provided in a relative's home by a parent or relative if such care is provided solely for a child or children of that parent or relative.



Under the scheme, a 'relative' is defined as a step-parent, grandparent, brother, sister, uncle or aunt.

## 6. HOW TO CALCULATE THE CHILDCARE ELEMENT

### Step 1. Work out the number of days in the relevant period

The relevant period is based around the tax year running from 6 April to 5 April. If a claim is made at the beginning of a new tax year, the relevant period will be one year. If the claim is made after the beginning of the tax year, the relevant period will be from the date the claim is made to the end of the tax year.

If there is a change in circumstances during the relevant period, that relevant period will end and a new one will begin, taking account of the new circumstances. The new relevant period will again end at the end of the tax year.

Relevant changes of circumstances are covered in paragraph 7 below.

### Step 2. Calculate relevant childcare charge

This is an average weekly charge. The method of calculation depends on whether childcare is paid weekly, monthly or at some other interval and whether the amount varies.

- Where childcare is paid on a weekly basis and the charge is a fixed weekly amount, add together the charges in the most recent four weeks before the claim and divide the total by four.
- If childcare is paid on a weekly basis and the charge varies, add together the charges in the 52 weeks prior to the claim and divide the total by 52 to obtain the weekly average figure. This includes taking account of any increases in costs during school holidays or at any other times and can include weeks when no childcare was paid.
- If childcare is paid monthly and is for a fixed or variable amount, add together the charges for the prior twelve months and divide the total by 52 rounded up to the nearest penny to obtain the relevant weekly figure.

HMRC has discretion to use any method which it considers reasonable to decide the weekly childcare figure where in its opinion it has insufficient information from the claimant to establish the weekly charge.

If the claimant has entered into an agreement for childcare which will start during the period of the award, the average weekly charge can be based on a written estimate of the future weekly charges provided by the claimant.

When the average weekly childcare charge has been decided, round the figure up to the nearest whole pound.



### **Step 3. Calculate actual childcare costs for the relevant period**

To do this, multiply the weekly charge by 52 to calculate the annual amount. Divide this figure by the number of days in the current tax year to find the daily rate. Then multiply this daily rate by the number of days in the particular claimant's relevant period. This gives the childcare costs for the relevant period.

### **Step 4. Calculate maximum eligible childcare costs for the relevant period**

Divide the maximum eligible weekly childcare cost by seven to find the daily rate. Round this figure up to the nearest penny and then multiply this by the number of days in the relevant period.

### **Step 5. Calculate the childcare element for the relevant period**

Take the lower of the two figures found in steps 3 and 4 and calculate 70 per cent of that figure. Round that up to the nearest penny: this gives the childcare element for the relevant period.

## **Example**

Tracy paid a fixed amount of £140 every week in eligible childcare costs for her two children, during each of the four weeks before her application for tax credits was made. She makes an application for WTC in advance of the new tax year. She will continue to pay £140 per week for the same childcare throughout the tax year. Her childcare element for the whole of a tax year is found as follows.

#### **Step 1**

Tracy's relevant period is one year (365 days).

#### **Step 2**

Her relevant childcare charge is £140. (This is her average weekly charge).

#### **Step 3**

$£140 \times 52 = £7,280$

#### **Step 4**

The maximum weekly eligible childcare cost for Tracy is £300, as she has two children. The daily rate is  $£300 \div 7 = £42.86$  (rounded up to the nearest penny).

The annual rate is  $£42.86 \times 365$  (see above) = £15,643.90



### Step 5

The lower figure from steps 3 and 4 is £7,280.

Childcare element is 70 per cent of £7,280=£5,096.

**Tracy's childcare element for the relevant period (in this case, one whole tax year) is £5,096.**

## 7. RELEVANT CHANGES OF CIRCUMSTANCES

A claimant will have a duty to notify HMRC of any relevant changes of circumstances during the period of the award. This is defined in regulation 16 of The Tax Credit (Entitlement and Maximum Rate) Regulations 2002 as including:

- any change in the childcare provided during the period of an award; or
- an increase or decrease in childcare costs of £10 a week or more over four consecutive weeks; or
- childcare costs have stopped.

The change must be notified to HMRC within one month of the change in the childcare arrangements.

If the childcare costs increase, HMRC can adjust an award to take the increase into consideration from the first day of the week from which the change occurred. However, if there has been a delay in notification, the increase can only be backdated up to a maximum of one month.

Where the childcare costs have decreased or have become ineligible, the award will be adjusted from the first day of the week following the four consecutive weeks in which the change occurred [regulation 16(5)(b) Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002].

Where the childcare costs have decreased in a case where the award is for a fixed period, the award will be adjusted from the first day of the week following the end of that fixed period (regulation 16(5)(b)(i) Working Tax Credit entitlement and Maximum Rate Regulations 2002).

The child care element is part of WTC, so any payments will stop if the claimant ceases to qualify for WTC. A claimant should inform HMRC straightaway if:

- s/he stops working; or
- normal working hours go below sixteen hours a week.

Where a person or one member of a couple stops working or her/his normal working hours go below sixteen hours a week, s/he is entitled to a four weeks WTC run on. This includes all elements of WTC to which s/he was formerly entitled, including the childcare element. This will help people experiencing changes to their work situation by continuing to provide support for four weeks after people cease to qualify for WTC.



## 8. USEFUL ADDRESSES

### 8.1 Her Majesty's Revenue and Customs

#### Postal correspondence

Tax Credit Office, Preston PR1 4AT

#### Local enquiry centres

##### Antrim

12-14 Castle Street, Antrim BT41 4JE

##### Ballymena

Kilpatrick House, 38-54 High Street, Ballymena BT43 6DR

##### Banbridge

Bridgewater House, 25 Castlewellan Rd, Banbridge T32 4AX

##### Belfast

Beaufort House, 31 Wellington Place, Belfast BT1 6BH

##### Coleraine

Fern House, 1A Adelaide Avenue, Coleraine BT52 1AJ

##### Craigavon

Marlborough House, Central Way, Craigavon BT64 1AH

##### Enniskillen

Abbey House, Head Street, Enniskillen BT74 7JL

##### Lisburn

Moira House, 121 Hillsborough Road, Lisburn BT28 1LA

##### Derry

Foyle House, Duncreggan Road, Londonderry BT48 0AA

##### Newry

Downshire House, 22 Merchants Quay, Newry BT35 6HS

#### Telephone helpline

0345 300 3900

0345 300 3909 (text phone)

0845 302 1429 (Tax Credit Overpayment helpline)

0845 302 1429 (Payment Helpline)



**Welfare rights workers priority helpline**

0845 300 3946

**Website**

[www.hmrc.gov.uk](http://www.hmrc.gov.uk)

## **8.2 Adjudicator**

**Adjudicator's office**

PO Box 10280

Nottingham

England

NG2 9PF

**Telephone**

0300 057 1111

**Website**

[www.adjudicatorsoffice.gov.uk](http://www.adjudicatorsoffice.gov.uk)

## **8.3 Ombudsman**

**Office of the Parliamentary Commissioner for Administration**

Millbank Tower, Millbank, London SW1 4QP

**Telephone**

0345 015 4033

**E-mail**

[phso.enquiries@ombudsman.org.uk](mailto:phso.enquiries@ombudsman.org.uk)

**Website**

[www.ombudsman.org.uk](http://www.ombudsman.org.uk)



## 8.4 Law Centre (NI)

### **Belfast office**

124 Donegall Street, Belfast BT1 2GY

Advice line: 028 9024 4401; 9.30 am-1.00 pm (Monday to Friday)

Textphone: 028 9023 9938

### **Western Area office**

9 Clarendon Street, Derry BT48 7EP

### **Website**

[www.lawcentreni.org](http://www.lawcentreni.org)

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