

# Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF LEGAL GROUP)

## Decision Makers Guide

### Volume 10

### Amendment 43 – June 2016

1. This letter provides details on Amendment 43; the changes have already been incorporated in to the Intranet and Internet versions of the DMG.
2. PDF amendment packages are also available. These can be printed with the amended pages being reproduced in full. Each page will contain the amendment number in the footer

PDF amendment packages can be found on the **Intranet** at:

<http://intranet/1/lg/acileeds/guidance/decision%20makers%20guide/index.asp>

or on the **Internet** at the 'Amdt Packages' tab on the following link:

<http://www.dwp.gov.uk/publications/specialist-guides/decision-makers-guide/>

Note: When printing PDF packages set the print properties to Duplex/Long Edge in order to produce double sided prints.

4. Amendment 43 affects the list of abbreviations, chapters 58 & 63. The changes
  - Chapter 58 – clarify the conditions of entitlement for WMA, clarify the guidance on GMP
  - Chapter 63 – incorporates memo DMG 11/16. clarifys the conditions of entitlement for BPT, WPA and BA. make minor and consequential changes.
5. The last two amendment packages amending Volume 10 were  
Amendment 42 [February 2016]  
Amendment 41 [October 2015]
6. **For reference purposes Decision Makers may find it useful to retain deleted pages for a short period after the introduction of this package.**
7. If using a PDF amendment package remove the sheets as stated in the left hand column of the Remove and Insert table below and insert the new sheets as stated in the right hand column (note the record of amendments at the back of the Volume).

## **Remove**

### **Abbreviations**

LCW – YT (3 pages)

### **Chapter 58**

58201 – 58260 (2 pages)

58343 – 58999 (1 page)

### **Chapter 63**

63007 – 63051 (5 pages)

63091 – 63102 (1 page)

## **Insert**

### **Abbreviations**

LCW – YT (3 pages)

### **Chapter 58**

58201 – 58260 (2 pages)

58343 – 58999 (1 page)

### **Chapter 63**

63007 – 63051 (5 pages)

63091 – 63102 (1 page)

LCW	Limited capability for work
LCWA	Limited capability for work assessment
LCWRA	Limited capability for work related activity
LEA	Local Education Authority
LEC	Local Enterprise Council
LEL	Lower Earnings Limit
LETS	Local Exchange Trading System
LPP	Lone Parent Premium
LPRO	Lone Parent run-on
LQPM	Legally Qualified Panel Member
LRP	Liable Relative Payment
LSC	Learning and Skills Council
LT	Linking Term
LTACP	Living Together as Civil Partners
LTAMC	Living Together as Married Couple
LTAHAW	Living Together as Husband And Wife
MA	Maternity Allowance
MAP	Maternity Allowance Period
MB	Maternity Benefit
MDB	Miscellaneous Diseases Benefit
MG	Maternity Grant
MID	Mortgage Interest Direct
MIRO	Mortgage Interest run-on
MP	Member of Parliament
MPP	Maternity Pay Period
MSC	Maximum Savings Credit
MSP	Member of the Scottish Parliament
NASS	National Asylum Support Service
NCET	National Council for Education and Training
NCIP	Non-Contributory Invalidation Pension
ND	New Deal
NDLP	New Deal for Lone Parents
NDP	New Deal for Partners
NDYP	New Deal for Young People
ND18-24	New Deal for 18-24 year olds
ND25+	New Deal for claimants aged 25 years and over
NHS	National Health Service
NI	National Insurance
NINO	National Insurance Number
NMW	National Minimum Wage

NRP	Non-Resident Parent
NVQ	National Vocational Qualification
OOT	Own Occupation Test
OPB	One Parent Benefit
PA	Personal Adviser
PAYE	Pay As You Earn
PB and MDB	Pneumoconiosis, Byssinosis and Miscellaneous Diseases Benefits scheme
PCA	Personal Capability Assessment
PD	Prescribed Disease
PETA	Personal Expenses Transitional Addition
PFA	Person(s) From Abroad
PIE	Period of Interruption of Employment
PILON	Pay In Lieu Of Notice
PILOR	Pay In Lieu Of Remuneration
PIP	Personal Independence Payment
PIW	Period of Incapacity for Work
PLCW	Period of limited capability for work
PLCWA	Period of limited capability for work assessment
PO	Post Office
POAOB	Payment on Account of Benefit
POA	Power of Attorney
PP	Pensioner Premium
PR	Preserved Right
PSIC	Person Subject to Immigration Control
P/T	Part-Time
PW	Pay-Week
PWC	Person With Care
PWHL	Permitted Work Higher Limit
PW HLS	Permitted Work Higher Limit subsequent period
PWK	Permitted Work
PWLL	Permitted Work Lower Limit
PWP	Permitted Work Period
QB	Qualifying Benefit
QBP	Qualifying Benefit or Pension
QD	Qualifying Days
QEF	Qualifying earnings factor
QI	Qualifying Income
QP	Qualifying Period

QRW	Qualifying remunerative work
QW	Qualifying Week
QWfl	Quarterly Work-focused interview
RA	Retirement Allowance
RBD	Reduced Benefit Direction
RCH	Residential Care Home
REA	Reduced Earnings Allowance
Reg(s)	Regulation(s)
Res A	Residential Allowance
RISWR	Redundant Iron and Steel Employees re-adaptation scheme
RMPS	Redundant Mineworkers Payment scheme
RP	Retirement Pension
RQC	Relevant Qualifying Condition
RVU	Relationship Validation Unit
S	Section (of an Act)
S2P	State Second Pension
SAP	Shared Additional Pension
SAYE	Save As You Earn
SB	Sickness Benefit
SC	Savings Credit
Sch	Schedule (as in an Act)
SCT	Savings Credit Threshold
SDA	Severe Disablement Allowance
SDM	Sector Decision Maker
SDP	Severe Disability Premium
S/E	Self-Employed
Sec	Section (of an Act)
SED	Scottish Education Department
SERPS	State Earnings Related Pension Scheme
Sev DP	Severely Disabled Person
SF	Social Fund
SFFP	Social Fund Funeral Payment(s)
SFO	Social Fund Officer
SHA	Special Hardship Allowance
SI	Statutory Instrument
SIR	Standard Interest Rate
SJP	Supervised Jobsearch Pilot Scheme
SMG	Standard Minimum Guarantee
SMP	Statutory Maternity Pay
SP	State Pensions

SPC	State Pension Credit
SpTA	Special Transitional Addition
SPW	Supported Permitted Work
SRPS	Shipbuilding Redundancy Payment Scheme
SS	Social Security
SS benefits	Benefits payable under SS(CB) Act 92
SSMG	Sure Start Maternity Grant
SSP	Statutory Sick Pay
STCP	Skills Training Conditionality Pilot
Supp B	Supplementary Benefit
SVQ	Scottish Vocational Qualification
TA	Transitional Addition
TAW	Temporary Allowance for Widow(ers)
TBI	Total Benefit Income
TD	Trade Dispute
TE	Transitional Element
TEC	Training and Enterprise Council
TFEU	Treaty on the Functioning of the European Union
TS	Tribunals Service
TU	Trade Union
UB	Unemployment Benefit
UC	Universal Credit
UCP	Urgent Case Payment
UEL	Upper Earnings Limit
UK	United Kingdom
US	Unemployability Supplement
UT	Upper Tribunal
VAT	Value Added Tax
VSO	Voluntary Sector Option of New Deal for young people
WA	Widow's Allowance
WB	Widow's Benefit
WBLA	Work Based Learning for Adults
WBLfYP	Work Based Learning for Young People
WBTfA	Work Based Training for Adults
WBTfYP	Work Based Training for Young People
WC	Workmen's Compensation
WC(S)	The Workmen's Compensation (Supplementation) Scheme

WC (Supp)	Workmen's Compensation (supplementation) scheme
WCA	Work capability assessment
WDisP	War Disablement Pension
WFHRA	Work focused health related assessment
Wfi	Work-focused Interview
WFP	Winter Fuel Payment
WFTC	Working Families Tax Credit
WMA	Widowed Mother's Allowance
WMA(C)	WMA payable where late husband entitled to Cat C retirement pension
WP	Widow's Pension
Wp	Work programme
WPA	Widowed Parent's Allowance
WP(C)	Widow's Pension payable where late husband entitled to Cat C retirement Pension
WPT	Widow's Payment
WRAC	Work-related activity component
WRAG	Work-related activity group
WTB	Work and training beneficiary(ies)
WTC	Working Tax Credit
WtWB	Welfare to Work Beneficiary
WWP	War Widow's Pension/War Widower's Pension
YT	Youth Training





2. child or qualifying young person in respect of whom her late husband was immediately before his death entitled to CHB<sup>2</sup> **or**
3. child or qualifying young person for whom the woman was entitled to CHB before her husband's death if they were living together immediately before his death<sup>3</sup>.

**Note:** Before 7.10.08 a woman entitled to CHB for a child who did not live with her was not entitled to WMA unless she also made additional contributions for the cost of providing for that child at a rate not less than the rate of GA.

*1 SS CB Act 92, s 37(2)(a); 2 s 37(2)(b); 3 s 37(2)(c)*

58201 For the purpose of DMG 58200 **2.** where fertilisation occurs after the deceased husband's death using the husband's sperm, and he consented, the child is that of the deceased spouse and surviving spouse<sup>1</sup>. Where fertilisation occurs after the deceased husband's death using the sperm of a third party, the child is not treated as being that of the deceased spouse and surviving spouse.

*1 Human Fertility and Embryology Act 1990 s 28(5A)*

58202 If a claim for CHB is decided after the husband died and entitlement starts from a date before his death, the condition in DMG 58200 **2.** is satisfied.

## Decisions on entitlement to child benefit

58203 WMA (except pregnancy cases) and the increase of WMA for a child depend on the claimant being entitled to CHB. Decisions on entitlement to CHB are now given by HMRC. DMs should seek evidence from HMRC about entitlement to CHB.

## Treating as entitled to child benefit where married more than once

58204 For the purposes of DMG 58200 **2.**, the late husband is treated as entitled to CHB in respect of any child or qualifying young person where<sup>1</sup>

1. the widow has a child or qualifying young person by a previous marriage **and**
2. the previous marriage ended by the death of her previous husband **and**
3. that previous husband was entitled or treated as entitled to CHB for the child or qualifying young person immediately before death **and**
4. the widow was entitled or treated as entitled to CHB immediately before the death of the recently deceased husband.

*1 SS (WB & RP) Regs, reg 16(2)*

58205 DMG 58204 applies where the

1. surviving spouse has been married more than once **and**

2. they were not residing with the deceased spouse immediately before their death.

58206 - 58240

## Payment

- 58241 WMA is paid from the first day of entitlement and with WPT. WMA is not affected by the widow's earnings.

## Rate

- 58242 The weekly rate of WMA may consist of

1. a BP **and**
2. an AP<sup>1</sup>.

**Note:** The weekly rate of WMA is no longer linked automatically to the weekly rate of RP. Instead the weekly rate will be prescribed<sup>2</sup>.

*1 SS CB Act 92, s 39(1); 2 s 39(2A)*

## Basic pension

- 58243 Entitlement to a standard rate BP is subject to the late husband satisfying two contribution conditions<sup>1</sup>.

*1 SS CB Act 92, Sch 3, Part 1, para. 5*

- 58244 The first contribution condition is satisfied by

1. the payment of sufficient class 1, 2 or 3 contributions in any one year<sup>1</sup> **or**
2. being entitled to IBLT at anytime during the year
  - 2.1 in which the late husband died **or**
  - 2.2 immediately before the year in which they died<sup>2</sup> **or**
3. being entitled to ESA(Cont)<sup>3</sup> or ESA(IR)<sup>4</sup> which includes the support component or WRAC<sup>5</sup> at anytime during the year
  - 3.1 during the year in which they reached pensionable age or died under that age **or**
  - 3.2 immediately before the year in which they died<sup>6</sup> **or**
4. the payment of not less than 50 contributions before 6.4.75<sup>7</sup>.

*1 SS CB Act 92, Sch 3, Part 1, para. 5(2); 2 Sch 3, Part 1, para. 5(6);*

*3 WR Act 07, s 2(1)(b); 4 s 4(2)(b); 5 SS CB Act 92, Sch 3, Part 1, para 5(6B);*

*6 Sch 3, Part 1, para 5(6A); 7 SS (WB, RP & OB) (Trans) Regs, reg 6(1)*

58245 The second contribution condition is satisfied by

1. the
  - 1.1 payment of, or being credited with, contributions **or**
  - 1.2 crediting of earnings from 6.4.87for a specified number of years **and**
2. having an earnings factor equal to, or greater than, the qualifying earnings factor for each of those years<sup>1</sup>.

However, if the second contribution condition is not fully satisfied, there may be entitlement to a BP at a reduced rate as long as at least 25% of the working years are also qualifying years<sup>2</sup>.

*1 SS CB Act 92, Sch 3, Part I, para 5(3); 2 s 60(1), SS (WB & RP) Regs, reg 6*

58246 Where

1. class 1 contributions have been paid or treated as paid in any tax year from 1987/88 **and**
2. the amount paid, plus any class 2 or class 3 contributions paid or credited, is not enough to make the year a qualifying year by £50 or less

the earnings factor is increased by the amount required to make the year a qualifying year<sup>1</sup>. This applies to both the first and second contribution condition.

*1 Social Security (Earnings Factor) Regulations 1979, Sch 1, para 4*

58247 Where the husband died on or after 11.4.88 as a result of an IA or PD the contribution conditions are treated as fully satisfied<sup>1</sup>.

*1 SS CB Act 92, s 60(2) & (8)*

## **Additional pension**

58248 AP is earnings-related. It is calculated by using any surpluses in the late husband's earnings for the tax years from 1978/79 and ends with the last complete tax year before he would have reached pensionable age up to a maximum of 49 years<sup>1</sup>. For WMA purposes an AP consists of SERPS (see DMG 58250).

*1 SS CB Act 92, s 39, 45(1) & 46*

58249 To be entitled to AP the first contribution condition must be satisfied. However, there may be entitlement to AP even if there is no entitlement to the BP because of a failure to satisfy the second contribution condition<sup>1</sup>.

**Note:** The first contribution condition can be satisfied by the payment of voluntary class 3 contributions (see DMG 58244).

*1 SS (WB & RP) Regs, reg 6(2) & (3A)*

## **State earnings related pension scheme**

58250 SERPS is based on earnings during the period from 6.4.78. From and including 6.4.97 people had to be contracted-in<sup>1</sup>. Before 6.4.97 a person who was contracted out could continue to receive an AP but it was subject to the normal GMP reduction<sup>2</sup>.

*1 PS Act 93, s 48A; 2 s 46, R(P) 1/04*

58251 - 58253

## **Increase for children**

58254 Increases to the weekly rate of WMA through entitlement to CDIs were abolished from 6.4.03. However, where a claimant is entitled to and being paid a CDI on 5.4.03, the CDI entitlement and payability will continue<sup>1</sup>. Guidance on CDIs can be found in DMG Chapter 16.

*1 Tax Credit Commencement No 3 Order, art. 3(1) & 3(2)*

58255 - 58260

1. personal pensions beginning on 1.7.88<sup>1</sup> **and**
2. money purchase schemes beginning on 6.4.88<sup>2</sup>.

*1 Personal Pension Schemes (Appropriate Schemes) Regs, reg 5; 2 Personal & Occupational Pension Schemes (Consequent Provisions) Regs, reg 4(3)*

58343 If the widow is entitled to receive a GMP from her late husband's occupational pension scheme, her WMA or WP is reduced by the lower<sup>1</sup> of

1. the amount of the AP **or**
2. the total amount of any GMP.

*1 PS Act 93, s 46(1)*

58344 A widow over pensionable age may be entitled to a GMP in her own right. If she does not claim RP her WMA or WP will, from age 60, be reduced by

1. her late husband's GMP **and**
2. her own GMP<sup>1</sup>

*1 PS Act 93, s 46(1)(a) & (b)*

58345 WMA or WP is reduced to take account of GMP **after** any adjustment for the widow's age (see DMG 58265 and 58282).

58346 Female pensionable age is changing (see DMG Chapter 75). However, WMA and WP claimants continue to be entitled to their own GMP at age 60<sup>1</sup>. This means that deductions should be made in respect of both

1. personal GMP **and**
2. any inherited GMP (see DMG 56338)

of WMA and WP claimants from age 60, unless they are in respect of an appropriate personal pension scheme or a contracted-out money purchase scheme (see DMG 58347).

*1 PS Act 93, s 46(1) & 181(1)*

58347 There can be entitlement to WMA and WP after pensionable age has been reached (see DMG 58016 and 58289). Deductions in respect of an appropriate personal pension scheme or a contracted-out money purchase scheme will apply from female pensionable age<sup>1</sup>.

**Note:** See DMG Chapter 74 for guidance on pensionable age for women who reach that age on or after 6.4.16 and DMG Chapter 75 for guidance on pensionable age for women who reach that age before 6.4.16.

*1 PS Act 93, s 48; Pensions Act 1995, Sch 4, Part I, para 1*

58348 Therefore, if a widow remains entitled to WMA or WP after she reaches female pensionable age there may be

1. a deduction at age 60 **and**

2. a further deduction in respect of an appropriate personal pension scheme or a contracted-out money purchase scheme when female pensionable age is reached.

58349 - 58354

## **Marriage**

- 58355 References in legislation to “a widow” require the existence of a legal marriage. Guidance is given in DMG Chapter 10.

58356 - 58359

## **Remarriage or the formation of a civil partnership**

- 58360 A widow is not entitled to WMA or WP for any period after she remarries or forms a civil partnership<sup>1</sup> although it will remain payable until the end of the pay week in which she remarried or formed a civil partnership<sup>2</sup>.

*1 SS CB Act 92, s 37(3) & 38(2); 2 SS (C&P) Regs, reg 16(2)*

- 58361 A widow who has remarried or formed a civil partnership may seek reinstatement of her WMA or WP if her remarriage or civil partnership has been declared void or voidable. It is possible to reinstate WMA or WP following a void marriage or civil partnership. Such action is not possible, except in Scotland, in the case of a voidable marriage or civil partnership. Guidance on void and voidable marriages and civil partnerships is in DMG Chapter 10.

58362 - 58364

## **Living together as married couple**

- 58365 WMA or WP, including an increase for a child or children, is not payable for any period when the widow is LTAMC<sup>1</sup>. Legislation does not define LTAMC. Guidance is in DMG Chapter 11.

*1 SS CB Act 92, 37(4)(b) & 38(3)(c)*

- 58366 Where the DM decides that a widow is LTAMC, the DM should revise or supersede the decision awarding WB as appropriate (see DMG Chapters 03 and 04).

58367 – 58999

**The content of the examples in this document (including use of imagery) is for illustrative purposes only**

## Bereavement payments

63007 A person whose spouse dies on or after 9.4.01 or whose civil partner dies on or after 5.12.05 will be entitled to a lump sum BPT if

1. at the date of death
  - 1.1 the surviving spouse or civil partner was under pensionable age **or**
  - 1.2 the late spouse or civil partner was
    - 1.2.a over pensionable age **and**
    - 1.2.b not entitled to a Cat A RP or SP<sup>1</sup> **and**
2. the late spouse or civil partner
  - 2.1 satisfied the contribution condition<sup>2</sup> **or**
  - 2.2 is treated as satisfying the contribution condition
    - 2.2.a by satisfaction of conditions in early years of contribution<sup>3</sup> **or**
    - 2.2.b because the first contribution condition had been satisfied on a previous claim for IBST or MA<sup>4</sup> **or**
    - 2.2.c as a result of an IA or PD where the late spouse died on or after 11.4.88<sup>5</sup> or the late civil partner died on or after 5.12.05.

**Note 1:** A spouse is a person married in the conventional sense to the other spouse, including a same sex spouse<sup>6</sup>, following a proper legally recognised ceremony.

**Note 2:** See DMG 63010 et seq for guidance on entitlement to a Cat A RP.

**Note 3:** 2.2 would also apply where there the first contribution condition is satisfied had been satisfied on a previous claim for SB before 13.4.95 or UB before 7.10.96.

**Note 4:** 1.2.b will only apply until bereavement support payment is introduced<sup>7</sup>.

*1 SS CB Act 92, s 36(1)(a); 2 s 36(1)(b) & Sch 3, Part I, para 4; 3 Sch 3, Part II, para 7; 4 Sch 3, Part II, para 9; 5 s 60(2) & 60(8); 6 Marr (SSC) Act 13, Sch 3, Part 1, para 1(1); 7 Pensions Act 14 (Transitional and Transitory Provisions) Order 2016, art 1(3)*

63008 The DM should decide that DMG 63007 2.2.c applies if the IA or PD caused or materially accelerated the death<sup>1</sup>. Advice should be sought from an IIDB DM (see procedural instructions).

*1 R(I) 6/85*

63009 There is no entitlement to a lump sum BPT where the late spouse or civil partner was receiving a Cat A RP which is increased to the rate of Cat B RP<sup>1</sup>.

*1 R(G) 1/06*

## Entitlement to a Category A retirement pension

63010 If a person dies after claiming RP and an award is subsequently made, that person will have been entitled at the date of death. There will not be entitlement if the claim is withdrawn by the person's personal representative before a decision is made.

63011 A person **is entitled** to Cat A RP even though they are

1. disqualified from receiving it because of being in legal custody or absent from GB<sup>1</sup> **or**
2. not receiving it because of the overlapping benefits rules<sup>2</sup>.

*1 SS CB Act 92, s 113(1) & (3); 2 SS (Gen Ben) Regs, reg 10(1) & Sch 1*

63012 A person who has not made a claim for RP before death is **not entitled** to Cat A RP. However, if a personal representative claims RP for the deceased<sup>1</sup> and a Cat A RP is awarded, the deceased will have been entitled at the date of death (see DMG Chapter 02).

*1 SS (C&P) Regs, reg 30*

63013 A person who dies

1. on or after the date on which the right to a Cat A RP starts **but**
2. before the first pension payday

is entitled to a Cat A RP when they died for the purpose of the entitlement of the survivor to BPT<sup>1</sup>.

*1 CG 98/50 (K.L.)*

63014 A person is **not** entitled to a Cat A RP<sup>1</sup> if, given the choice between a

1. Cat A RP **or**
2. Cat B RP

that person chooses to receive Cat B RP.

*1 SS CB Act 92, s 43(1), (3), (4) & (5); R(G) 1/06*

## Payment

63015 The amount of a BPT is the amount current at the date of death<sup>1</sup>. There are no increases for dependents.

*1 SS CB Act 92, Sch 4, Part II*

63016 A BPT is not payable if the surviving spouse or civil partner is LTAMC<sup>1</sup>. If a person remarries or forms a subsequent civil partnership this does not affect the BPT.

*1 SS CB Act 92, s 36(2)*



# Widowed Parent's Allowance

63017 A surviving spouse or civil partner is entitled to WPA if

1. the
  - 1.1 late spouse died on or after 9.4.01 or late civil partner died on or after 5.12.05 and the surviving spouse or civil partner is under pensionable age at the time of death<sup>1</sup> **or**
  - 1.2 surviving spouse is a man whose wife died before 9.4.01, who has not remarried before that day and is under pensionable age on that day<sup>2</sup> **and**
2. their late spouse or civil partner
  - 2.1 satisfied the contributions conditions<sup>3</sup> **or**
  - 2.2 was treated as satisfying the first contribution condition by being entitled to IBLT at anytime
    - 2.2.a during the year in which he or she reached pensionable age or died under that age **or**
    - 2.2.b immediately before the year in 2.2.a<sup>4</sup> **or**
  - 2.3 was treated as satisfying the first contribution condition by being entitled to ESA(Cont)<sup>5</sup> or ESA(IR)<sup>6</sup> which includes the support component or WRAC<sup>7</sup> at anytime
    - 2.3.a during the year in which they reached pensionable age or died under that age **or**
    - 2.3.b immediately before the year in 2.3.a<sup>8</sup> **or**
  - 2.4 was treated as satisfying contribution conditions as a result of an IA or PD<sup>9</sup> **and**
3. the surviving
  - 3.1 spouse or civil partner is entitled to CHB for a child or qualifying young person (see DMG 63020 - 63021) for whom DMG 63026 is satisfied<sup>10</sup> **or**
  - 3.2 spouse is a woman who<sup>11</sup>
    - 3.2.a is pregnant by her late husband **or**
    - 3.2.b was living with her husband immediately before he died and is pregnant by<sup>12</sup> artificial insemination before the date of death with the semen of some person other than her husband or the implantation before the date of death of an egg or embryo **or**
  - 3.3 civil partner is a woman who<sup>13</sup>

**3.3.a** was living with her civil partner immediately before she died  
**and**

**3.3.b** is pregnant by artificial insemination before the date of death with the semen of some person or the implantation, before the date of death, of an egg or embryo.

**Note 1:** A spouse is a person married in the conventional sense to the other spouse, including a same sex spouse<sup>14</sup>, following a proper legally recognised ceremony.

**Note 2:** A woman who conceives a child by artificial insemination after her husband's death but with her husband's sperm can satisfy **3.2.a**.

**Note 3:** For the purposes of **1.2**, a male to female transsexual claimant will continue to be entitled to WPA if a full GRC is issued and immediately before the full GRC is issued the claimant was entitled to WPA or would have been entitled to WPA if a claim had been made<sup>15</sup>.

*1 SS CB Act 92, s 39A(1)(a); 2 s 39A(1)(b); 3 s 39A(2) & Sch 3, Part I, para 5; 4 Sch 3, Part I, para 5(6); 5 WR Act 07, s 2(1)(b); 6 s 4(2)(b); 7 SS CB Act 92, Sch 3, Part I, para 5(6B); 8 Sch 3, Part I, para 5(6A); 9 s 60(2) & 60(8); 10 s 39A(2)(a); 11 s 39A(2)(b); 12 s 37(1)(c); 13 s 39A(2)(c); 14 Marr (SSC) Act 13, Sch 3, Part 1, para 1(1); 15 GR Act 04, Sch 5, paras 1 & 5*

63018 The DM should decide that DMG 63017 **2.4** applies if the IA or PD caused or materially accelerated the death<sup>1</sup>. Advice should be sought from an IIDB DM (see procedural instructions).

*1 R(I) 6/85*

63019 WPA entitlement stops<sup>1</sup> when

1. the surviving
  - 1.1 spouse remarries or forms a civil partnership **or**
  - 1.2 civil partner marries or forms a subsequent civil partnership **or**
2. the surviving spouse or civil partner reaches pensionable age.

*1 SS CB Act 92, s 39A(4) & (4A)*

## Meaning of child

63020 A child is a person who has not reached age 16<sup>1</sup>.

*1 SS CB Act 92, s 122(1) & 142(1)*

## Meaning of qualifying young person

63021 A qualifying young person is a person, other than a child, who

1. has not reached a prescribed age<sup>1</sup> which is
  - 1.1 age 17<sup>2</sup> **or**
  - 1.2 age 18<sup>3</sup> **or**
  - 1.3 age 20<sup>4</sup> **or**

2. satisfies other conditions<sup>5</sup>.

However, a person who reached age 19 before 10.4.06 cannot be a qualifying young person<sup>6</sup>.

*1 SS CB Act 92, s 122(1) & 142(2)(a); 2 CHB (Gen) Regs, reg 4(1); 3 reg 5(1); 4 reg 3(1), 6(1), 7(1) & 8(1); 5 SS CB Act 92, s 122(1) & 142(2)(b); CHB (Gen) Regs, regs 2 - 8; 6 reg 2(5)*

## Pregnancy

- 63022 A widow or surviving civil partner may be entitled to WPA if she is pregnant (see DMG 63017 **3.2** and **3.3**). Entitlement under this provision stops when the pregnancy ends, whether by confinement, miscarriage or abortion.
- 63023 If the pregnancy results in the birth of a child there will be entitlement to WPA on the basis that the child is, or in the case of artificial insemination is treated as, a child of the widow and her late husband<sup>1</sup>.

*1 Human Fertilisation and Embryology Act 1990, s 28(2)*

- 63024 The DM should note that there is a presumption in law that a child or qualifying young person born in wedlock to a married woman is a child or qualifying young person of the husband. Evidence which shows that it is more probable that the child or qualifying young person is not the child or qualifying young person of the husband<sup>1</sup> needs to be strong for the DM to disallow.

*1 R(G) 1/92*

63025

## Entitlement to child benefit for a child or qualifying young person

- 63026 For the purposes of DMG 63017 **3.1** a child or qualifying young person is a
1. son or daughter of the surviving spouse or civil partner and the deceased spouse or civil partner<sup>1</sup> **or**
  2. child or qualifying young person in respect of whom the deceased spouse or civil partner was immediately before their death entitled to CHB<sup>2</sup> **or**
  3. child or qualifying young person for whom the surviving spouse or civil partner was entitled to CHB before the date of death if the surviving spouse or civil partner and the deceased spouse or civil partner were living together immediately before the deceased's death<sup>3</sup>.

**Note 1:** Before 7.10.08 a person entitled to CHB for a child who did not live with them was not entitled to WPA unless they also made additional contributions for the cost of providing for that child at a rate not less than the rate of GA.

**Note 2:** **3.** is satisfied if a claim for CHB is decided after the death of the spouse or civil partner and entitlement starts from a date before the date of death.

*1 SS CB Act 92, s 39A(3)(a); 2 s 39A(3)(b); 3 s 39A(3)(c)*

63027 For the purposes of DMG 63026 **2.** where fertilization occurs after the deceased husband's death using the husband's sperm and he consented the child is that of the deceased spouse and the surviving spouse<sup>1</sup>. If the sperm is that of a third party, the deceased husband is regarded as the father or parent of the child where he had consented to the process. Where he did not consent, he is not the father<sup>2</sup>.

*1 Human Fertilization and Embryology Act 1990, s 28(5A); 2 s 28(5C)*

## **Decisions on entitlement to child benefit**

63028 WPA (except pregnancy cases) and the increase of WPA for a child depend on the claimant being entitled to CHB.

63029 Decisions on entitlement to CHB are now given by HMRC. DMs should seek evidence from HMRC about entitlement to CHB.

## **Child or qualifying young person absent from Great Britain**

63030 For the purposes of the conditions in DMG 63026 **2.**, a person is treated as entitled to CHB for a child or qualifying young person where there would have been entitlement if<sup>1</sup>

1. the child or qualifying young person had not been absent from GB **and**
2. a claim for CHB had been made.

These conditions enable the surviving or deceased spouse or civil partner to be treated as entitled to CHB before the latter's death for the purposes of deciding whether DMG 63026 is satisfied. When this is the case the surviving spouse or civil partner is treated as entitled to CHB for the purposes of DMG 63017 **3.1.**

*1 SS (WB & RP) Regs, reg 16ZA(1)*

63031 - 63032

## **Treated as entitled to child benefit where married more than once or in more than one civil partnership**

63033 DMG 63034 applies where the

1. surviving spouse has been married more than once or has been married and in a civil partnership **or**
2. surviving civil partner has been in more than one civil partnership or been in a civil partnership and married **and**

they were not residing with the deceased spouse or civil partner immediately before their death.

63034 For the purposes of DMG 63026 **2.**, the deceased spouse or civil partner is treated as entitled to CHB in respect of any child or qualifying young person where<sup>1</sup>

1. the surviving spouse or civil partner has a child or qualifying young person by a previous marriage or civil partnership **and**
2. the previous marriage or civil partnership ended by the death of the other spouse or civil partner **and**
3. that other spouse or civil partner was entitled or treated as entitled to CHB for the child or qualifying young person immediately before death **and**
4. the surviving spouse or civil partner was entitled or treated as entitled to CHB at the time of death of the recently deceased spouse or civil partner.

*1 SS (WB & RP) Regs, reg 16ZA(2)*

63035 - 63036

## Payment

63037 WPA is not payable for any period when the surviving spouse or civil partner is LTAMC<sup>1</sup>.

*1 SS CB Act 92, s 39A(5)(b)*

## Rate

63038 As from 1.1.11 the weekly rate of WPA is no longer linked automatically to the weekly rate of RP. Instead the weekly rate of WPA will be prescribed<sup>1</sup>. The rate calculated can include a basic allowance (equivalent to a BP) and an additional allowance (equivalent to an AP)<sup>2</sup>.

**Note 1:** Before 1.1.11 the weekly rate of WPA was worked out in the same way as a Cat A RP, based on the deceased spouse's or civil partner's contributions.

**Note 2:** There are to be changes in the calculation of AP for RP from the introduction of the FRIY. The FRIY is the tax year beginning 6.4.12<sup>3</sup>. However, those changes will **not** apply to the additional allowance for WPA where the deceased spouse or civil partner died under pensionable age<sup>4</sup>.

*1 SS CB Act 92, s 39C(1A); 2 s 39C(1), s 44-45AA & Sch. 4A-4B;  
3 s 122(1); Social Security Pensions (Flat Rate Introduction Year) Order, art 2; 4 SS CB Act 92, s 46(4)*

63039 When calculating the rate of WPA based on the rate of Cat A RP, the DM should note that where the deceased spouse or civil partner was

1. over pensionable age at the time of their death, references to pensioner were to the deceased spouse or civil partner<sup>1</sup> **or**

2. under pensionable age at the time of their death, references to pensioner and the tax year in which pensionable age was reached, were to the deceased spouse or civil partner and the tax year in which they died<sup>2</sup>.

*1 SS CB Act 92, s 39C(3)(a), s 44-45AA & Sch 4A-4B; 2 s 39C(3)(b), s 44-45AA & Sch 4A-4B*

## Basic allowance

- 63040 Entitlement to standard rate basic allowance is subject to the late spouse or civil partner satisfying two contribution conditions<sup>1</sup>.

*1 SS CB Act 92, Sch 3, para 5;*

- 63041 The first contribution condition is satisfied by

1. the payment of sufficient class 1, 2 or 3 contributions in any one year<sup>1</sup> **or**
2. being entitled to IBLT at anytime during the year
  - 2.1 in which the late spouse or civil partner died **or**
  - 2.2 immediately before the year in which they died<sup>2</sup> **or**
3. being entitled to ESA(Cont)<sup>3</sup> or ESA(IR)<sup>4</sup> which includes the support component or WRAC<sup>5</sup> at anytime during the year
  - 3.1 during the year in which they reached pensionable age or died under that age **or**
  - 3.2 immediately before the year in which they died<sup>6</sup> **or**
4. the payment of not less than 50 contributions before 6.4.75<sup>7</sup>.

*1 SS CB Act 92, Sch 3, para 5(2); 2 Sch 3, para 5(6); 3 WR Act 07, s 2(1)(b); 4 s 4(2)(b); 5 SS CB Act 92, Sch 3, Part 1, para 5(6B); 6 Sch 3, Part 1, para 5(6A); 7 SS (WB, RP & OB) (Trans) Regs, reg 6(1)*

- 63042 The second contribution condition is satisfied by

1. the
  - 1.1 payment of, or being credited with, contributions **or**
  - 1.2 crediting of earnings from 6.4.87for a specified number of years **and**
2. having an earnings factor equal to, or greater than, the qualifying earnings factor for each of those years<sup>1</sup>.

However, if the second contribution condition is not fully satisfied, there may be entitlement to a BP at a reduced rate as long as at least 25% of the working years are also qualifying years<sup>2</sup>.

*1 SS CB Act 92, Sch 3, Part 1, para 5(3); 2 s 60(1), SS (WB & RP) Regs, reg 6*

- 63043 Where

1. class 1 contributions have been paid or treated as paid in any tax year from 1987/88 **and**

2. the amount paid, plus any class 2 or class 3 contributions paid or credited, is not enough to make the year a qualifying year by £50 or less

the earnings factor is increased by the amount required to make the year a qualifying year<sup>1</sup>. This applies to both the first and second contribution condition.

*1 Social Security (Earnings Factor) Regulations 1979, Sch 1, para 4*

63044 Where the

1. spouse died on or after 11.4.88 **or**
2. civil partner died on or after 5.12.05

as a result of an IA or PD the contribution conditions are treated as fully satisfied<sup>1</sup>.

*1 SS CB Act 92, s 60(2) & (8)*

### **Late payment of contributions**

63045 Where contributions are paid late it may be necessary to revise or supersede a WPA award. The DM's action is the same as in RP cases (see DMG Chapter 75 for full guidance).

### **Payment of additional class 3 contributions for past periods**

63046 The contribution conditions for WPA include payment of class 3 contributions. Therefore the payment of additional class 3 contributions for past periods may affect entitlement to WPA. The DM's action is the same as in RP cases (see DMG Chapter 75 for full guidance).

### **Additional allowance**

63047 Additional allowance is earnings-related. It is calculated from the late spouse's or civil partner's earnings in complete tax years between 6.4.78 and the late spouse's or civil partner's date of death, up to a maximum of 49 years<sup>1</sup>. An AP can be made up of

1. SERPS (see DMG 63048) **or**
2. S2P (see DMG 63050) **or**
3. a combination of SERPS and S2P.

**Note 1:** For deaths occurring on or after 6.10.02 only half of the late husband's AP can be inherited<sup>2</sup>.

**Note 2:** There are changes to the calculation of AP from 6.4.09 (see DMG Chapter 75 for full guidance). There will be further changes to AP from the introduction of the FRIY (see DMG 63038).

*1 SS CB Act 92, s 39C(1), 45(1) & 46; 2 s 39C(4) & Sch 4A-4B*

## State earnings related pension scheme

63048 SERPS is based on earnings during the period from 6.4.78 to 5.4.02. From and including 6.4.97 people had to be contracted-in<sup>1</sup>. Before 6.4.97 a person who was contracted out could continue to receive an AP but it was subject to the normal GMP reduction<sup>2</sup>.

*1 PS Act 93, s 48A; 2 s 46; R(P)1/04*

63049 Female pensionable age is changing (see DMG Chapter 75). However, female claimants continue to be entitled to their own GMP at age 60<sup>1</sup>. This means that deductions should be made in respect of both

1. personal GMP **and**
2. any inherited GMP

of a female claimant from age 60, unless they are in respect of an appropriate personal pension scheme or a contracted-out money purchase scheme<sup>2</sup>.

*1 PS Act 93, s 46(1); 2 s 48*

## State second pension

63050 S2P replaced SERPS from 6.4.02<sup>1</sup>. S2P is based on

1. earnings **or**
2. deemed earnings factors<sup>2</sup>.

**Note:** There are changes to deemed earnings factors from 6.4.09 (see DMG Chapter 75 for full guidance).

*1 Child Support, Pensions and Social Security Act 2000, s 30; 2 SS CB Act 92, s 44A*

## Tax years before 2010/11

63051 For the purposes of DMG 63050 **2.** people have deemed earnings factors if

1. they have earnings which are
  - 1.1 at or above the QEF **and**
  - 1.2 less than the low earnings threshold<sup>1</sup> **or**
2. CA
  - 2.1 was payable **or**
  - 2.2 would have been payable if it had not been reduced to nil under the overlapping benefit provisions<sup>2</sup> **or**
3. CHB was payable for a child under the age of six<sup>3</sup> **or**



## Bereavement Allowance

- 63091 A surviving spouse or civil partner is entitled to BA if<sup>1</sup>
1. the late spouse died on or after 9.4.01 or the late civil partner died on or after 5.12.05 **and**
  2. the late spouse or civil partner
    - 2.1 satisfied the contributions conditions<sup>2</sup> **or**
    - 2.2 was treated as satisfying the first contribution condition by being entitled to IBLT at anytime
      - 2.2.a during the year in which they reached pensionable age or died under that age **or**
      - 2.2.b immediately before the year in 2.2.a<sup>3</sup> **or**
    - 2.3 was treated as satisfying the first contribution condition by being entitled to ESA(Cont)<sup>4</sup> or ESA(IR)<sup>5</sup> which includes the support component or WRAC<sup>6</sup> at anytime
      - 2.3.a during the year in which they reached pensionable age or died under that age **or**
      - 2.3.b immediately before the year in 2.3.a<sup>7</sup> **or**
    - 2.4 was treated as satisfying contribution conditions as a result of an IA or PD<sup>8</sup> **and**
  3. the surviving spouse or civil partner was over the age of 45, but under pensionable age when the late spouse or civil partner died<sup>9</sup>.

**Note 1:** A spouse is a person married in the conventional sense to the other spouse, including a same sex spouse<sup>10</sup>, following a proper legally recognised ceremony.

**Note 2:** See DMG 63094 for guidance on payment of BA.

**Note 3:** Cases where the late spouse or civil partner had a GRC should be sent to DMA Leeds for advice.

*1 SS CB Act 92, s 39B(1) & s 39B(2); 2 s 39B(2) & Sch 3, Part 1, para 5; 3 Sch 3, Part 1, para 5(6); 4 WR Act 07, s 2(1)(b); 5 s 4(2)(b); 6 SS CB Act 92, Sch 3, Part 1, para 5(6B); 7 Sch 3, Part 1, para 5(6A); 8 s 60(2) & s 60(8); 9 s 39B(1); 10 Marr (SSC) Act 13, Sch 3, Part 1, para 1(1)*

- 63092 The DM should decide that DMG 63017 **2.4** applies if the IA or PD caused or materially accelerated the death<sup>1</sup>. Procedural instructions provide for obtaining advice regarding this.

*1 R(I) 6/85*

### Period of entitlement

- 63093 Entitlement to BA ends on the earliest<sup>1</sup> of the
1. end of the 52 week period beginning with the date

- 1.1 of the late spouse's or civil partner's death **or**
- 1.2 on which entitlement begins under certain legislation<sup>2</sup> **or**
- 2. date on which the surviving spouse or civil partner reaches pensionable age **or**
- 3. date of any marriage, remarriage or formation of a civil partnership.

*1 SS CB Act 92, s 39B(3), (4) & (4A); 2 SS A Act 92, s 5(1)(k)*

## Payment

63094 BA is not payable for any period when the surviving spouse or civil partner is<sup>1</sup>

- 1. entitled to WPA **or**
- 2. LTAMC.

However, BA can be paid for the remainder of the 52 week period if WPA entitlement stops before then.

**Note:** A person is entitled to WPA (and so is not entitled to BA) even if disqualified (for example because they are in prison).

*1 SS CB Act 92, s 39B(5)*

63095 - 63100

## Rate

63101 As from 1.1.11 the weekly rate of BA is no longer linked automatically to the weekly rate of RP. Instead the weekly rate of BA will be the same as the weekly rate of WPA<sup>1</sup>. Entitlement to a standard rate basic allowance is subject to the late spouse or civil partner satisfying the contribution conditions<sup>2</sup>. If the contribution conditions are only partly satisfied, there may be entitlement to a basic allowance at a lower rate<sup>3</sup>.

**Note:** Before 1.1.11 BA was worked out in the same way as a Cat A RP, based on the deceased spouse's or civil partner's contributions. But only a basic allowance (equivalent to a BP) was payable.

*1 SS CB Act 92, s 39C(2); s 44(3)(a); 2 Sch 3, para 5; 3 s 60; SS (WB & RP) Regs, reg 6;*

63102 When calculating the rate of BA based on the rate of basic Cat A RP, the DM should note that where the deceased spouse or civil partner was

- 1. over pensionable age at death, references to pensioner were to the deceased spouse or civil partner<sup>1</sup> **or**
- 2. under pensionable age at death, references to pensioner and the tax year in which pensionable age was reached were to the deceased spouse or civil partner and the tax year in which they died<sup>2</sup>.

*1 SS CB Act 92, s 39C(3)(a), s 44-45AA & Sch 4A-4B; 2 s 39C(3)(b), s 44-45AA & Sch 4A-4B*