

**IS/JSA APPLICABLE AMOUNTS – TWO CHILD LIMIT**

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## INTRODUCTION

- 1 This memo provides guidance on amendments to legislation, in particular those regulations which provide for the amount of the child personal allowance in IS and JSA.
- 2 These amendments are made by the Social Security (Restrictions on Amounts for Children and Qualifying Young Persons) Amendment Regulations 2017 (SI 2017/376) and come into force on 6.04.17.<sup>1</sup>

*1 The Social Security (Restrictions on Amounts for Children and Qualifying Young Persons) Amendment Regulations 2017, reg 1*

## BACKGROUND

- 3 Support for children within IS and JSA is made by the addition of a child personal allowance which is awarded in respect of each child or young person who is a member of the claimant's family. This child personal allowance is only available to those claimants that have received IS/JSA continuously since 8.9.05 where their award already included a child allowance.
- 4 In the Written Ministerial Statement it was announced that from April 2017 the number of children or qualifying young persons in respect of whom the child element in UC is payable will be limited to a maximum of two. Legislation<sup>1</sup> will be introduced so that IS and JSA claimants will attract a similar restriction to ensure equitable treatment across all income related benefits.

*1 The Social Security (Restrictions on Amounts for Children and Qualifying Young Persons) Amendment Regulations 2017, reg 5 & 6*

## TIMING

- 5 Where any of the amendments covered by this memo applies to an existing award of IS or JSA, that amendment has effect for the purposes of that award
  1. where benefit is paid in arrears, from the first day of the benefit week which includes 6.4.17<sup>1</sup>

2. where benefit is paid in advance, from the first day of the benefit week, if it coincides with 6.4.17. If it does not, from the first day of the next benefit week<sup>2</sup>.

**Note:** A claimant is only able to establish/retain entitlement to a child allowance on claims made before 8.9.05.

*1 SS CS (D&A) Regs, Sch 3A, para 1(a); 2 para 1(b)*

## CHANGES

### Child personal allowance

- 6 The claimant will continue to receive a personal allowance in respect of each child or young person in his family where that child or young person was born on or before 6.4.17.
- 7 A child personal allowance can also be awarded for a child born after 6.4.17 but only where the claimant already has one other child/young person in their family. (this would include a child or young person joining the family after 6.4.17 but who was born on or before 6.4.17).
- 8 A 3<sup>rd</sup> or subsequent child born after 6.4.17 can only be included in the claimant's award where they meet the prescribed circumstances described in paragraphs 11 to 20 below.
- 9 From 6.4.17 the child personal allowance will not be awarded in respect of a 3<sup>rd</sup> or subsequent child born after that date where
  1. there are at least 2 other children or young persons in respect of whom an amount is already included in the claimant's applicable amount **and**
  2. two or more of those children or young persons remain members of the claimant's family<sup>1</sup>.

*1 The Social Security (Restrictions on Amounts for Children and Qualifying Young Persons) Amendment Regulations 2017, reg 5 & 6*

- 10 These amendments do not apply to a claimant (and he will continue to be entitled to a child allowance) where, if the claimant were entitled to UC, one of the UC child limit exceptions would have applied<sup>1</sup>. (see paragraph 11 to 20)

*1 The Social Security (Restrictions on Amounts for Children and Qualifying Young Persons) Amendment Regulations 2017, reg 5(2) & 6(2)*

## EXCEPTIONS

- 11 There are 5 categories that fall into the UC exceptions described at paragraph 10
1. multiple births (paragraph 12)
  2. adoptions (paragraph 13 – 14)
  3. non-parental caring arrangements (paragraph 15 – 16)
  4. non-consensual conception (paragraph 17 – 19)
  5. continuation of existing exception (paragraph 20).

### Multiple births

- 12 An exception applies where
1. the claimant is a parent (other than an adoptive parent) of the child **and**
  2. the child was one of two or more children born as a result of the same pregnancy **and**
  3. the claimant is responsible for at least two of the children born as a result of that pregnancy **and**
  4. the child is not the first in the order of multiple birth children established under paragraph 21.<sup>1</sup>

**Note:** The following examples assume the claimant had other children that are no longer a member of their family but were previously relevant in retaining the claimant's entitlement to child allowances.

*1 UC Regs, Sch 12, para 2*

**Example:** Kevin and Penny have two children Jack aged 5 and Jill aged 3 in their family when twins Alex and Luke are born, on 20.12.17. Kevin is the parent of and responsible for the twins, they were born as a result of the same pregnancy and the DM decides that Alex is first in the child order of the twins therefore Kevin is entitled to a child personal allowance for Jack, Jill and also a child allowance for Luke (under the UC multiple birth exception criteria).

### Adoptions

- 13 An exception applies<sup>1</sup> where

1. the child or young person has been

1.1 adopted **or**

1.2 placed for adoption

with the claimant under legislation.<sup>2</sup>

*1 UC Regs, Sch 12, para 3; 2 Adoption and Children Act 2002, Adoption and Children (Scotland) Act 2007;*

14 The exception at paragraph 13 does not apply where the claimant or, if the claimant is a member of a couple, the other member

1. was immediately prior to the child's adoption, a step parent of the child **or**

2. has at any time been a parent of the child **or**

3. adopted the child under a convention adoption order or an external adoption<sup>1</sup> **or**

4. had already adopted the child under the law of any country or territory outside the British Islands<sup>2</sup>(see paragraph 26)

*1 Adoption and Children Act 2002, s144 ; Adoption and Children Scotland Act 2007, s119(1); 2 UC Regs, Sch 12, para 3*

## **Non-parental caring arrangements**

15 An exception applies where the claimant is

1. a friend or family carer of the child **or**

2. responsible for a child who is also a parent of a child<sup>1</sup>.

*UC Regs, Sch 12, para 4*

**Example:** Kevin and Penny have two children Jack aged 10 and Jill aged 15, Jill's son Alex is born on 20.12.17. As Kevin is responsible for Jill (who is the parent of Alex) he is entitled to a child allowance for Jack and Jill and also for Alex (under the UC non-parental caring exception criteria).

16 For the purposes of paragraph 15.1 the term friend or family carer means a person who is responsible for the child, but is not that child's parent or step parent **and**

1. is named in a child arrangements order, under legislation<sup>1</sup>, as a person with whom the child is to live **or**

2. is a guardian or special guardian<sup>2</sup> of the child **or**

3. is entitled to a guardian's allowance<sup>3</sup> in respect of that child **or**
4. in Scotland
  - 4.1 has a kinship care order<sup>4</sup> in respect of that child
  - 4.2 is a guardian<sup>5</sup> of that child
  - 4.3 one or more of the parental responsibilities or parental rights<sup>6</sup> are vested by a permanence order made in respect of that child under legislation<sup>7</sup> **or**
5. fell within any of the above (1. to 4.) immediately prior to the child's 16<sup>th</sup> birthday and has since continued to be responsible for that child<sup>8</sup> **or**
6. has taken care of the child in circumstances in which it is likely that child would otherwise be looked after by a local authority<sup>9</sup>.

**Note:** the family carer should provide evidence from a social worker to support the declaration that the child would otherwise be looked after by a local authority.

*1 Children Act 1989, s8; 2 s5 & s14A; 3 C & B Act, s77; 4 Children and Young People (Scotland) Act 2014, s72(1); 5 Children (Scotland) Act 1995, s7; 6 s1 or 2; 7 Adoption and Children (Scotland) Act 2007, s80; 8 UC Regs, Sch 12, para 4(2)(g); 9 para 4(2)(h)*

## **Non-consensual conception**

17 An exception applies where

1. the claimant is the child's parent **and**
2. the DM determines (see paragraph 19) that
  - 2.1 the child is likely to have been conceived as a result of sexual intercourse to which the parent did not agree by choice or did not have the freedom and capacity to agree by choice **and**
  - 2.2 the parent is not living at the same address as the other party to that sexual intercourse<sup>1</sup>.

**Note:** For 2.2 the DM should accept the claimant's statement if it confirms that they were not living at the same address as the other party.<sup>2</sup>

*1 UC Regs, Sch 12, para 5(1); 2 para 5(4)*

18 The freedom or capacity to agree by choice, as prescribed at paragraph 17.2.1 includes, at or around the time the child was conceived, such circumstances in which

1. the parents were personally connected **and**
2. one parent was repeatedly or continuously engaging in behaviour towards the other parent that was controlling or coercive **and**
3. that behaviour had a serious effect on the recipient.<sup>1</sup>

**Note 1:** the parents are personally connected if they are in an intimate personal relationship with each other or they were living together and were members of the same family or they were living together and have previously been in an intimate personal relationship with each other<sup>2</sup>.

**Note 2:** the behaviour will have had a serious effect where it causes fear, on at least two occasions, that violence will be used against the parent or it causes serious alarm or distress which has a substantial adverse effect on the parent's day to day activities<sup>3</sup>.

*1 UC Regs, Sch 12, para 5(2); 2 para 5(5); 3 para 5(6)*

19 The DM can only make the determination described at paragraph 17.2.1 where

1. a parent provides evidence (that evidence will probably take the form of a completed pro forma) from an approved person that shows
  - 1.1 they had contact with that approved person (see paragraph 25) or another approved person **and**
  - 1.2 their circumstances are consistent with those of a person to whom 1. and 2.1 of paragraph 17 would apply **or**
2. there has been
  - 2.1 a conviction for an offence of rape under legislation<sup>1</sup>
  - 2.2 a conviction for an offence of controlling or coercive behaviour in an intimate or family relationship under legislation<sup>2</sup>
  - 2.3 a conviction for any offence under the law of a country outside GB that the DM considers to be comparable to either offence mentioned above
  - 2.4 an award under the Criminal Injuries Compensation Scheme in respect of a relevant criminal injury

and the DM considers it likely that the offence or injury (**2.1** to **2.4** above)

**2.5** was caused by one parent or

**2.6** diminished the other parents freedom or capacity to agree to the sexual intercourse

which resulted in the conception of the child<sup>3</sup>.

**Note 1:** no time limit is placed on when the report needs to be made to the approved person after the actual incident that resulted in the pregnancy, in order to be eligible for the exception.

**Note 2:** There is no requirement to provide evidence from an approved person where the DM is satisfied that the same evidence had already been provided to HMRC in relation to a CTC exception.<sup>4</sup>

*1 Sexual Offences Act 2003, s1 & Sexual Offences (Scotland) Act 2009, s1; 2 Serious Crime Act 2015, s76; 3 UC Regs, Sch 12, para 5(3); 4 UC (TP) Regs, reg 42(2)*

## Continuation of existing exception

- 20 The DM does not have to consider whether the claimant falls within the continuation exception<sup>1</sup> because it envisages breaks in a claim and any such previous break in the claimant's entitlement would have removed access to any and all child allowances.

*1 UC Regs, Sch 12, para 6;*

## ORDER OF CHILDREN

- 21 The order of children or young persons in the claimant's household is established by reference to a specific date<sup>1</sup> in relation to each child or young person for whom the claimant is responsible.

*1 UC Regs, reg 24B(1)*

- 22 The specific date for each child is

1. the child's date of birth<sup>1</sup> where the claimant, or if the claimant is a member of a couple, the other member, is the child's parent or step parent **or**
2. where 1. does not apply
  - 2.1 the date on which the claimant became responsible for the child **or**

- 2.2** in the case of joint claimants where each of them became responsible for the child on a different date, the earliest date<sup>2</sup>.

**Note:** when placing the children in specific date order the earliest date will equate/relate to the first child.

*1 UC Regs, reg 24B(1)(a); 2 reg 24B (1)(b)*

**Example:** Kevin and Penny already have two children, Tom aged 5 and Dick aged 3, when they adopt Harry who is aged 6. For the purposes of the two child limit the order of children arranged by considering date of birth and date of responsibility is Tom, Dick then Harry.

## 23 Where

1. the same date is established, under paragraph 22 above, in relation to two or more children or young persons for whom the claimant is responsible **or**
2. the claimant gave birth to a child less than 10 months after becoming responsible for a child or young person under the exception described at paragraph 15 (non-parental caring arrangements)

the order of the children or young people in the claimant's family should be determined by the DM to ensure the greatest number of children qualify for the child allowance<sup>1</sup>

*1 UC Regs, reg 24B(2)*

**Example:** Kevin and Penny are the parents of Dick aged 3 and the guardian of Tom aged 5, when Harry is born. They became Tom's guardian on 10.7.17 and Harry was born on 20.11.17. For the purposes of the two child limit the order of children arranged by considering date of birth and date of responsibility should be Dick, Tom then Harry however under this configuration Kevin wouldn't qualify for a child allowance for Harry. The order is re-arranged in to the more beneficial order of Dick, Harry then Tom. Kevin now qualifies for the child allowance for all 3 children as Tom falls into an exception.

## INCOME

### Child benefit

- 24 The child benefit in respect of any child or young person who does not qualify for a personal allowance under these provisions is to be disregarded<sup>1</sup>.

*1 The Social Security (Restrictions on Amounts for Children and Qualifying Young Persons) Amendment Regulations 2017, reg 5(3) & 6(3)*

**Example:** Kevin and Penny have two children Jack aged 5 and Jill aged 3 in their family when twins Alex and Luke are born, on 20.12.17. Kevin is the parent of and responsible for the twins and they were born as a result of the same pregnancy. The DM decides that Alex is first in the child order of the twins therefore Kevin is entitled to a child personal allowance for Jack, Jill and also a child allowance for Luke under the exception criteria. In calculating Kevin's overall requirements the DM takes account of Jack, Jill and Luke's child benefit but ignores the child benefit for Alex.

## Definitions

### Approved person

25 An approved person is a person of a description specified on an approved list.

**Note:** the approved list will be of 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.

### British Islands

26 The British Islands means the UK, the Channel Islands and the Isle of Man.

### Criminal Injuries Compensation Scheme

27 Criminal injuries compensation scheme has the meaning specified in legislation<sup>1</sup>.

*1 Criminal Injuries Compensation Act 1995*

### Members of the same family

28 Parents are members of the same family where

1. they are, or have been married to or civil partners of each other
2. they are relatives as specified in legislation<sup>1</sup>
3. they have agreed to marry each other
4. they have entered into a civil partnership agreement under specified legislation<sup>2</sup>
5. they are both parents of the same child
6. they have, or have had, parental responsibility<sup>3</sup> for the same child.

*1 Family Law Act 1996, s63(1); 2 Civil Partnership Act 2004, s73; 3 UC Regs, reg 4A(2)*

### **Relevant criminal injury**

29 Relevant criminal injury means

1. a sexual offence (including a pregnancy sustained as a direct result of being the victim of a sexual offence)
2. physical abuse of an adult, including domestic abuse
3. mental injury

as described in the tariff of injuries in the Criminal Injuries Compensation Scheme.

### **Step-parent**

30 In relation to a child or young person a step-parent is a person who is not the child's parent but

1. is a member of a couple, the other member of which is a parent of the child, where both are responsible for that child **or**
2. was previously a member of a couple, the other member of which was a parent of the child, where immediately prior to ceasing to be a member of that couple the person was, and has since continued to be, responsible for that child<sup>1</sup>.

*1UC Regs, reg 2*

## **ANNOTATIONS**

Please annotate the number of this memo (DMG 10/17) against the following DMG paragraphs: [22003](#), [23010](#), [23031](#), [23039](#)

## **CONTACTS**

If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds, 1S25, Quarry House, Leeds. Existing arrangements for such referrals should be followed, as set out in Memo [DMG 3/13](#) - Obtaining legal advice and guidance from DMA Leeds.

**DMA Leeds: March 2017**

