

Chapter 22 - Membership of the family

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Chapter 22 - Membership of the family

Introduction

22001 This Chapter gives guidance on how to establish membership of a family and membership of the claimant's household for JSA(IB) and IS. The guidance relates to both benefits, unless the text states otherwise.

Meaning of claimant

22002 Claimant means¹ either

1. one person who claims JSA or IS **or**
2. in the case of a joint claim for JSA
 - 2.1 the couple **or**
 - 2.2 each member of the couple, as the context requires.

1 JS Act 95, s 35 (1); IS Gen Regs, reg 2(1)

Meaning of family

22003 A family is¹

1. a couple **or**
2. a couple and any child or young person who is
 - 2.1 a member of the same household **and**
 - 2.2 the responsibility of either or both members of the couple **or**
3. a person who is not a member of a couple (this will usually be a lone parent) and any child or young person who is
 - 3.1 a member of the same household **and**
 - 3.2 the responsibility of that person.
4. a couple and any child or young person who has
 - 4.1 died **and**
 - 4.2 CHB in respect of them is extended following their death².

Note: The child or young person stops being a member of the family when entitlement to CHB ends.

1 JS Act 95, s 35(1); SS CB Act 92, s 137(1); 2 IS (Gen) Regs, reg 14(3), JSA Regs, reg 76(3)

22004 In the case of a polygamous marriage, the claimant's family includes¹

1. any partner **and**
2. any child or young person who is
 - 2.1 a member of the claimant's household **and**
 - 2.2 treated as the responsibility of the claimant or one of the partners.

Note 1: This definition applies, unless the context calls for it to be different, to any reference in the JSA Regs and IS (Gen) Regs to the claimant's family or to a member of that family. It does not apply to any other legislation.

Note 2: This definition does not apply to a polygamous **relationship**.

1 JSA Regs, reg 1(5); IS (Gen) Regs, reg 2(3)

Definitions

Couple

22005 Couple means¹

1. two people who are married to, or civil partners of, each other and are members of the same household
2. two people who are not married to, or civil partners of, each other but are LTAMC.

1 JSA Act 95, s 35(1); SS CB Act 92, s 137(1)

Note 1: Where one or both members of a couple are under the age of 16, they cannot be a couple. This is because the person under 16 is either a child and therefore **not** a man or a woman, or not eligible to register as a civil partner.

22006

Child

22007 Child means¹ a person under the age of 16.

Note: There is no need for the person to be receiving education for this definition to apply.

1 JS Act 95, s 35(1); SS CB Act 92; s 137(1)

Young person

22008 Young person

1. means¹ a person who is a

1.1 child **or**

1.2 qualifying young person **but**

2. does not include a person who²

2.1 is entitled to JSA(IB), ESA(IR) or IS **or**

2.2 would be entitled to JSA(IB), ESA(IR) or IS, if another member of the family were not entitled to the same benefit **or**

2.3 is not entitled to JSA(IB), ESA(IR), IS or HB because he is a care leaver

Note: To be entitled to JSA(IB), ESA(IR) or IS the person must make a claim for that benefit³. It is not sufficient that the conditions of entitlement would be satisfied if a claim were made. Para 2. does not apply for the purposes of Part VI of the JSA Regs (entitlement of 16 and 17 year olds to JSA).

1 JSA Regs, reg 76; IS (Gen) Regs, reg 14; 2 JSA Regs, reg 76(2); IS (Gen) Regs, reg 14(2);

3 SS A Act 92, s 1(1)

Qualifying young person

22009 A qualifying young person is a person

1. who has left education or training, is aged 16 years (in Scotland also a 15 year old), until the 31st August that next follows their 16th birthday¹

2. aged 16 years or over who is undertaking a course of full-time education at a school, college or other establishment that is approved by HMRC Commissioners, which is not advanced education (see DMG 30026) **or**

3. aged 16 years or over who is undertaking approved training that is not provided through a contract of employment **or**

4. having undertaken a course/approved training as in 2. or 3. and has been accepted or is enrolled on a further such course/approved training².

1 Child Benefit (General) Regulations 2006, reg 4; 2 reg 3(2)

22010 For the purposes of DMG 22009 **2.** and **3.** above the person

1. if aged 19 years, must have commenced the course of FTE or approved training before reaching that age¹ **and**
2. must be less than 20 years of age².

1 Child Benefit (General) Regulations 2006, reg 3(4); 2 reg 3(1)

Note: A person shall be treated as undertaking a course of FTE during the period between the end of one course and the start of another where the person is enrolled on and starts the latter course.

22011 Where a person is aged 16 or 17, a qualifying young person is a person

1. who has ceased to be in education or training **and**
2. who is registered for work, education or training with a qualifying body **and**
3. who is not engaged in remunerative work **and**
4. whose extension period has not expired **and**
5. where the person who is responsible for the 16/17 year old was entitled to CHB for them immediately before the extension period began¹ **and**
 - 5.1 has made a written request to the HMRC Commissioners within 3 months of the education or training ceasing for the payment of CHB during the extension period.

Note: The extension period begins on the first day of the benefit week after that in which the 16/17 year old ceased to be in education or training and ends 20 weeks later.

1 reg 5(4)

22012 A qualifying young person can be up to, and including, the age of 19 where that person's education or training has been relevantly interrupted. If immediately before the interruption they were a qualifying young person under the conditions in DMG 22009 to 22011, they will remain a qualifying young person for the duration of the interruption.

22013 Subject to an exception, the condition in DMG 22012 will only apply where the period of interruption is

1. one of up to six months duration, even if it began before the person was 16, but only to the extent that it is considered to be reasonable in the opinion of the HMRC Commissioners **and**
2. due to mental or physical illness or disability and for a period that is considered reasonable in the opinion of the HMRC Commissioners¹.

Note: The exception is where the period of interruption is, or is likely to be, followed immediately by a period during which the person is undertaking non approved training, receiving advanced education or receiving education by virtue of his employment or any office held by him².

1 Child Benefit (General) Regulations 2006 reg 6(3); 2 reg 6(4)

Full-time education

22014 Full-time¹ education must involve education undertaken in pursuit of a course where,

1. the young person spends on average more than twelve hours a week during term time in
 - 1.1 receiving instruction and tuition
 - 1.2 doing supervised study
 - 1.3 doing examinations or practical work
 - 1.4 taking part in any exercise, experiment or project which is part of the course **and**

this must not include meal breaks or unsupervised study, including homework, whether done on or off the premises of the educational establishment.

1 Child Benefit (General) Regulations 2006 reg 1(3)

Non-advanced education

22015 Non-advanced education means any course up to, and including, the standard of

1. ordinary national diploma
2. BTEC national diploma
3. national certificate of the Scottish Qualifications Authority
4. GCE (advanced level)
5. Scottish certificate of education (higher grade)
6. Scottish certificate of sixth year studies
7. National certificate of Edexcel.

Household

22016 Household is not defined in legislation. It should be given its normal everyday meaning, that is a domestic establishment containing the essentials of home life¹. Household may refer to people held together by a particular kind of tie, even if temporarily separated². People living in one dwelling (for example a house, flat, caravan) do not necessarily live together in the same household.

1 R(SB)4/83; 2 Santos v Santos [1972] All ER 246

Example 1

Andy and Aniza are estranged and continue to live in the same house. They do not financially support each other or share domestic and social activities. One partner is reluctant to leave, until a satisfactory financial agreement has been reached with the other partner. They each have separate households.

Example 2

Alan, a single man rents a room in a house. He shares other facilities in the house with other tenants. Another man moves into the house and shares Alan's room. Alan and Robert pay rent separately to the landlord. Apart from occupying the same room Alan and Robert share no living arrangements. Alan and Robert each have their own household, although they share a room.

Lone parent

22017 Lone parent means¹ a person who

1. has no partner **and**
2. is responsible for and a member of the same household as
 - 2.1 a child **or**
 - 2.2 young person.

Note: The claimant's status as a lone parent is not affected by the presence of another adult, for example when the claimant lives with parents.

The DM should accept that a claimant is a lone parent unless there is an indication that the person may have a partner. When members of a couple claim to be estranged while still living at the same address, the DM should consider whether they are members of the same household.

1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)

Lone parents - IS prescribed category of person

22018 Entitlement of lone parents to IS where they do not satisfy any other prescribed category, will depend on the age of their child or youngest child. So where a person who is a lone parent

1. is responsible for and a member of the same household as
 - 1.1 a single child aged under 5 **or**
 - 1.2 more than one child where the youngest child is aged under 5 **or**
2. aged under 18¹.

The DM should accept that a claimant is a lone parent unless there is an indication that the person may have a partner. When members of a couple claim to be estranged while still living at the same address, the DM should consider whether they are members of the same household.

1 IS (Gen) Regs, Sch 1B, para 1

Note: The claimant's status as a lone parent is not affected by the presence of another adult, for example when the claimant lives with parents.

22019 - 22020

Partner

22021 Partner means¹, where the claimant is

1. a member of a couple - the other member of that couple **or**
2. married polygamously to two or more people who live in the same household as the claimant - any of those people **but**
3. is not a member of a joint-claim couple.

1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)

Polygamous marriage

22022 Polygamous marriage means¹ any marriage in which

1. one of the parties to it is married to more than one person **and**
2. the ceremony took place in a country which allows polygamy.

Note: The DM should obtain evidence of the marriage, if a claimant declares more than one wife.

1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)

Polygamous relationship

22023 A polygamous or multiple relationship occurs when someone has a relationship similar to marriage with more than one person, but is not married to any of them.

22024 - 22030

Responsibility for a child or young person

Who can have responsibility

22031 In any benefit week¹ a child or young person can be treated as the responsibility of only one person², except where³ the child or young person

1. is
 - 1.1 being looked after by a LA under specified legislation **or**
 - 1.2 being held in custody pending trial or sentencing **or**
 - 1.3 in custody serving a sentence imposed by a court **and**
2. is at home for only part of the benefit week.

Responsibility cannot otherwise be shared by people who the child or young person spends part weeks with, for example weekdays with one parent and weekends with the other (but see DMG 22033).

1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1); 2 JSA Regs, reg 77(5); IS (Gen) Regs, reg 15(4);

3 JSA Regs, reg 77(4); IS (Gen) Regs, reg 15(3)

Who is the responsible person

22032 The responsible person is

1. the person receiving CHB for the child or young person¹ **or**
2. where the CHB is in payment to another child, the person who is responsible for that child² **or**
3. where CHB is not in payment
 - 3.1 and only one claim for CHB has been made, the person who has made that claim³ **or**
 - 3.2 in any other case, the person who the child or young person usually lives with⁴.

1 JSA Regs, reg 77(1); IS (Gen) Regs, reg 15(1); 2 JSA Regs, reg 77(2); IS (Gen) Regs, reg 15(1A);

3 JSA Regs, reg 77(3)(b); IS (Gen) Regs, reg 15(2)(b); 4 JSA Regs, reg 77(3)(a); IS (Gen) Regs, reg 15(2)(a)

“Usually lives” is not defined in legislation and should be given its everyday meaning. The test should be applied on a weekly basis rather than looking at the overall picture over a longer period.

Example 1

Alan is claiming IS. He lives with his partner, Barbara, her daughter Caroline, aged 15, and Caroline's daughter Danielle, aged 1. Barbara receives CHB for Caroline. She is the responsible person for Caroline. Caroline receives CHB for Danielle, but Caroline, at 15, is herself a child. The responsible person for Danielle is Barbara.

Example 2

Alan's son Eric has recently left LA care. He spends Monday to Thursday nights with his mother, Frances, and Friday to Sunday nights with Alan and Barbara. Frances has claimed CHB for Eric. She is the responsible person for Eric. Alan cannot be treated as the responsible person for Eric for any part of the week.

Note: Although Alan is a substantial minority carer he cannot be responsible for Eric under the disapplication principle described at DMG 22033 because that only applies to JSA claimants and Alan receives IS.

Example 3

Alan and Frances have a daughter, Gail, who lives from Monday to Friday with her grandmother. She spends alternate weekends with her mother and father. No-one has claimed CHB for her. As Gail usually lives with her grandmother, she is the responsible person for Gail. Neither Alan nor Frances can be treated as responsible for Gail for the time she spends with them.

Shared care

22033 From 8.9.05 the test of responsibility described at DMG 22032 should be disappplied to either men or women that

1. are already receiving JSA including child allowances **and**
2. have minority, but substantial, care responsibilities for another child.

Note: For an IS claimant that has minority but substantial care responsibilities for a child the DM should refer to DMG 22032

22034 Substantial minority care will arise where

1. the claimant has care responsibilities for a child for a period or periods within a week **and**
2. they do not receive child benefit in respect of that child.

Note: The care responsibilities should be more than visiting or occasional contact, the child should have a settled course of daily living and, it is likely, but not essential, that the period will include an overnight stay.

Example

In March 2005 Stephen separates from his partner and claims JSA for himself and 15 year old son Max. In October his daughter Amy, who normally lives with her mother (she receives the CHB in respect of Amy) starts to regularly visit her father each week, occasionally staying over on Friday nights. The DM decides that Stephen has been in receipt of JSA child allowances (for Max) since before 8.9.05,

that he now has substantial minority care responsibilities for another child (Amy) and awards an increase of the appropriate child applicable amount and premiums for Amy.

22035 - 22040

Membership of the household - general

Who may be members of the claimant's household

22041 The claimant's household may include

1. the claimant
2. the claimant's partner or partners
3. the members of a joint-claim couple
4. any child or young person who is the responsibility of anyone in 1. or 2.

This applies even if any of these people are temporarily living away from the other members of the family¹, for example to work or visit relatives.

Note: The definition of a claimant for JSA(IB) in DMG 22002

1 JSA Regs, reg 78(1), (1A); IS (Gen) Regs, reg 16(1)

When can they not be treated as members of the claimant's household

22042 A person who is living away from the other members of the family cannot be treated as a member of the claimant's household if that person

1. does not intend to resume living with the rest of the family¹ **or**
2. is likely to be away from the family for more than 52 weeks².

1 JSA Regs, reg 78(2)(a); IS (Gen) Regs, reg 16(2)(a); 2 JSA Regs, reg 78(2)(b); IS (Gen) Regs, reg 16(2)(b)

Exception

22043 The absent member may be treated as a member of the claimant's household if

1. that person intends to resume living with the family **and**
2. the absence is unlikely to last
 - 2.1 more than 52 weeks **or**
 - 2.2 substantially more than 52 weeks¹ where exceptional circumstances apply.

Substantially is not defined in legislation and should be given its everyday meaning, that is, in this context - of large size or amount.

Note: This exception only applies if the family has previously lived as members of the same household, (notwithstanding that that household may have been abroad) and the intention to resume living with the family must not be conditional.

1 JSA Regs, reg 78(2)(b); IS (Gen) Regs, reg 16(2)(b)

Example 1

Huw is claiming IS. He and his wife Isobel and their three children are all living in the same household. Isobel is involved in a road accident and is admitted to hospital. She needs prolonged treatment and rehabilitation and is expected to be in hospital about 14 months. The DM treats her as part of Huw's household during her absence.

Example 2

Janet is claiming IS having recently returned from France where she had been living with her partner Henri. Henri will come and join her in a months time. Janet and Henri are a couple and members of the same household.

Example 3

Amrit returns from a visit to her husband, Daljit, in Pakistan. Daljit intends to come and live with Amrit in the UK and has applied for permission to enter the country. Permission has not yet been granted. Amrit and Daljit are not members of the same household because, although they intend to resume living together, the intention is conditional upon Daljit been granted entry.

22044 These general rules apply to all possible members of the claimant's household. The specific rules that apply to adults can be found in DMG 22051 et seq and those that apply to children and young persons in DMG 22061 et seq.

22045 - 22050

Membership of the household - adults

Which adults may be members of the claimant's household

22051 Anyone who is not a child or a young person is an adult. Adults who may be members of the same household are

1. a single claimant
2. a lone parent
3. a couple
4. the members of a joint-claim couple
5. the partners in a polygamous marriage.

Partners in a polygamous marriage

22052 It is usually the person with more than one partner who claims benefit. The adult members of the claimant's household in such cases are

1. the claimant **and**
2. all of the claimant's partners¹.

A claim from any of the other parties to the marriage should be referred to DMA Leeds for guidance.

1 JSA Regs, reg 1(1); IS (Gen) Regs, reg 2(1)

Members of a polygamous relationship

22053 When a claimant has a relationship similar to marriage with two or more people, none of them can form an unmarried couple. The DM should treat each member of the relationship as a single claimant or, if appropriate, lone parent. See DMG 23034 for guidance if the claimant is married to any of the members of the relationship.

Example 1

Alan, Bronwyn and Carol live in the same home but are not married to each other. Alan who is aged 31, claims JSA and states that he is in a multiple relationship with both Bronwyn and Carol. He is treated as a single claimant and is awarded the personal allowance for a person aged 25 or over. Bronwyn and Carol are also treated as single.

Example 2

Alan, Bronwyn and Carol live in the same house. Alan is married to Bronwyn but in his claim for JSA states that he is also in a relationship with Carol. Alan is treated as a member of a couple with his wife Bronwyn and is awarded the personal allowance for a couple. Carol is treated as single.

When are relevant adults not to be treated as members of the claimant's household

22054 Do not treat members of a couple or polygamous marriage as members of the same household when

1. one or more of them are
 - 1.1 held in a special hospital in England or Wales, or a state hospital in Scotland¹ **or**
 - 1.2 held in custody²
 - 1.2.a awaiting trial or sentencing **or**
 - 1.2.b serving a sentence imposed by a court **or**
 - 1.3 on temporary release from custody³ **or**
2. one of them is permanently in⁴
 - 2.1 a care home **or**
 - 2.2 an Abbeyfield Home **or**
 - 2.3 an independent hospital **or**
3. the claimant is abroad and does not satisfy the conditions for being treated as in GB during a temporary absence⁵.

Note: If 1.1 applies, the absent member can make a separate claim for IS. If 2. applies the absent member can make a separate claim for JSA or IS, as appropriate.

1 JSA Regs, reg 78(3)(a); IS (Gen) Regs, reg 16(3)(a); 2 JSA Regs, reg 78(3)(b)(i); IS (Gen) Regs, reg 16(3)(b)(i);

3 JSA Regs, reg 78(3)(b)(ii); IS (Gen) Regs, reg 16(3)(b)(ii); 4 JSA Regs, reg 78(3)(d);

IS (Gen) Regs, reg 16(3)(e); 5 JSA Regs, reg 78(3)(c); IS (Gen) Regs, reg 16(3)(d)

22055 Where both members of a couple or all members of a polygamous marriage are permanently in

1. a care home **or**
2. an Abbeyfield Home **or**
3. an independent hospital **or**

4. sheltered accommodation

the normal rules as to whether they are members of the same household apply. Each case should be decided on its facts.

Care home, Abbeyfield Home, independent hospital or other similar accommodation

22056 For people to be members of the same household they have to share a domestic establishment. A domestic establishment requires a reasonable level of independence and responsibility for the occupants.

22057 Whether members of a couple or polygamous marriage who are permanently in a care home, Abbeyfield Home, independent hospital or other similar accommodation are members of the same household is a question of fact and degree. DMs should establish all the facts of the particular case. DMs may find it useful to consider the following issues¹

1. Do the couple decide how their days will be structured. For example do they decide (even by default) at what time to get up, have meals, go to bed etc.
2. Do they decide how the accommodation they live in is to be arranged. For example, do they decide which room is to be the dining room, the living room etc.
3. Can they decide who can come and stay with them, and for how long?
4. Can they insist that other people do not enter their accommodation without permission?
5. Can they decide the decor and furnishing of their accommodation?
6. Do they have some facilities for preparing food and making tea, coffee and other hot drinks?
7. Do they have responsibility for running the household? For example, are they responsible for getting repairs done, replacing domestic appliances or buying food?

Note: The list of questions above is not definitive or exhaustive. None of these questions on its own is decisive.

1 R(IS) 1/99

Example 1

Robin and Marion are husband and wife. Robin has had a severe stroke, and Marion has heart problems and arthritis so they both go into a care home. Robin needs more skilled care than could be provided in the care home so he goes into an independent hospital. Two years later Marion goes into the same independent hospital because her health has deteriorated. She and Robin have separate rooms,

and are billed separately. Robin and Marion are not members of the same household. They do not have a domestic establishment in the independent hospital.

Example 2

Paul and Annette are husband and wife. Both suffer from senile dementia and go into a care home to be cared for. Although they share a room, they do not understand that they are husband and wife. They are each billed separately by the care home. Paul and Annette are not members of the same household.

Sheltered accommodation

22058 Where both members of a couple or all members of a polygamous marriage are permanently in a flat in sheltered accommodation (that is a separate, self-contained flat but with a warden to keep an eye on the occupants) they are members of the same household.

22059 - 22060

Membership of the household - children and young persons

Children and young people who may be members of the household

22061 Any child or young person who is the responsibility of an adult member of the claimant's household may be a member of the claimant's household. These may be

1. the claimant's children **or**
2. if the claimant is a member of a couple, the children of the claimant's partner **or**
3. if the claimant is a member of a polygamous marriage, the children of the claimant's partners **or**
4. any child or young person living with the claimant for whom the claimant or any partner is the responsible person **or**
5. the children of any of the children in 1. to 4..

Note: In this paragraph children has its everyday meaning and includes young persons.

Child or young person living with the claimant

22062 There may be other children or young persons living with the claimant who do not come into the categories in DMG 22061.

Under the control of a local authority or awaiting adoption

22063 Do not treat as a member of the claimant's household any child or young person who is

1. in England and Wales, placed with the claimant or partner
 - 1.1 by a LA or voluntary organization¹ **or**
 - 1.2 while waiting for adoption² **or**
2. in Scotland, boarded out with the claimant or partner, whether or not with a view to adoption³ **or**
3. placed for adoption with the claimant or partner while a decision is awaited⁴.

1 JSA Regs, reg 78(4)(a); IS (Gen) Regs, reg 16(4)(a); Children Act 89, s 22C(2) & 59(1)(a); Child Care Act 1980; SS Wellbeing (Wales) Act 14, s 81(2); 2 JSA Regs, reg 78(4)(b); IS (Gen) Regs, reg 16(4)(b); 3 JSA Regs, reg 78(4)(c) & (9)(b); IS (Gen) Regs, reg 16(4)(a) & (b) [Scotland] & (8); 4 JSA Regs, reg 78(4)(d); IS (Gen) Regs, reg 16(4)(c); Adoption Agencies Regs 1983; Adoption Agencies (Scotland) Regs 1996

Boarded with claimant for educational purposes

22064 Do not treat as a member of the claimant's household any child or young person who is

1. living with the claimant or partner to be able to attend the educational establishment at which relevant education is being received **and**
2. not the responsibility of the claimant or partner.

The child or young person should be treated as a member of the household of the responsible person (see DMG 22032)¹.

1 JSA Regs, reg 78(8); IS (Gen) Regs, reg 16(7)

Meaning of relevant education

22065 Relevant education is¹

1. undertaken by a child or young person **and**
2. FTE **and**
3. a non-advanced course of education.

Further guidance on relevant education is in DMG Chapter 20.

1 JSA Regs, reg 54(1); IS (Gen) Regs, reg 12(1)

Eligible child, relevant child or person of prescribed description living with the claimant

22066 The terms "eligible child", "relevant child" and person of prescribed description apply to certain 16 or 17 year olds who have been looked after by a LA. See DMG Chapter 30 for the definitions of who is an eligible child, a relevant child or a person of prescribed description.

22067 A young person aged 16 or 17 who is no longer living in accommodation provided by a LA **cannot** form part of the claimant's family if the young person is an eligible child, a relevant child or a person of prescribed description unless the young person is either

1. a lone parent **or**
2. a single person looking after foster children **or**
3. incapable of work **or**
4. a disabled worker **or**
5. a disabled or deaf student **or**
6. blind **or**
7. appealing against a decision that they are not incapable of work **or**

8. in relevant education, severely mentally or physically handicapped and unlikely to obtain employment within the next twelve months **or**
9. in relevant education, a lone parent of a child for whom they are treated as responsible and is treated as a member of their household¹.

1 The Children (Leaving Care) Act 2000 (Comm No. 2 and Consequential Provisions) Order, Sch 1, para (b) & Sch 4 para (b); JSA Regs, reg 76; IS (Gen) Regs, reg 14

22068 Where a young person has been placed with a person or family under the relevant legislation¹ and has stayed for at least six months, the young person is not a relevant child, despite falling within the definition², and can form part of the claimant's family. This applies whether or not the six month period began before or after the young person ceased to be looked after by an LA³.

1 The Children Act 1989, s 23(4) 2 The Children (Leaving Care) (England) Regs 2001, reg 4(5); The Children (Leaving Care) (Wales) Regs 2001, reg 4(4); 3 The Children (Leaving Care) (England) Regs 2001, reg 4(6); The Children (Leaving Care) (Wales) Regs 2001, reg 4(5)

22069 Where the young person ceases to live with the person or family they should again be treated as a relevant child¹.

1 The Children (Leaving Care) (England) Regs 2001, reg 4(7)

Child or young person not living with the claimant

22070 A child or young person who comes within the categories in DMG 22061 may be living away from the family. In certain circumstances an absent child or young person cannot be treated as a member of the claimant's household.

Child or young person abroad to receive medical treatment

22071 Do not treat as a member of the claimant's household a child or young person who has been absent from GB

1. accompanied by the claimant and any other member of the claimant's family, for the sole purpose of receiving medical treatment¹ **and**
2. for a continuous period of more than eight weeks beginning on the
 - 2.1 date of claim² if
 - 2.1.a the child or young person went abroad before that date **and**
 - 2.1.b immediately before the current entitlement to JSA(IB) or IS began there was no entitlement to the other benefit³ **or**
 - 2.2 day after the child or young person went abroad, in any other case⁴.

1 JSA Regs, reg 78(5)(b); IS (Gen) Regs, reg 16(5)(aa); 2 JSA Regs, reg 78(5)(b)(i); IS (Gen) Regs, reg 16(5)(aa)(i); 3 JSA Regs, reg 78(6); IS (Gen) Regs, reg 16(5A); 4 JSA Regs, reg 78(5)(b)(ii); IS (Gen) Regs, reg 16(5)(aa)(ii)

Child or young person abroad for other reasons

22072 Do not treat as a member of the claimant's household a child or young person who has been absent from GB for a continuous period of more than four weeks¹ beginning on the

1. date of claim² if
 - 1.1 the child or young person went abroad before that date **and**
 - 1.2 immediately before the current entitlement to JSA(IB) or IS began there was no entitlement to the other benefit³ **or**

2. day after the child or young person went abroad, in any other case⁴.

1 JSA Regs, reg 78(5)(a); IS (Gen) Regs, reg 16(5)(a); 2 JSA Regs, reg 78(5)(a)(i); IS (Gen) Regs, reg 16(5)(a)(i); 3 JSA Regs, reg 78(6); IS (Gen) Regs, reg 16(5A); 4 JSA Regs, reg 78(5)(a)(ii); IS (Gen) Regs, reg 16(5)(a)(ii)

Child or young person in hospital

22073 Do not treat as a member of the claimant's household a child or young person who has

1. been receiving free in-patient treatment in a hospital or similar institution (see DMG Chapter 24) for a continuous period of more than twelve weeks beginning on the
 - 1.1 date of claim¹ if
 - 1.1.a the child or young person went into hospital before that date **and**
 - 1.1.b immediately before the current entitlement to JSA(IB) or IS began there was no entitlement to the other benefit² **or**
 - 1.2 day the child or young person went into hospital, in any other case³ **and**
2. not been in regular contact with the claimant or any member of the family⁴.

1 JSA Regs, reg 78(5)(c)(i); IS (Gen) Regs, reg 16(5)(b)(i); 2 JSA Regs, reg 78(6); IS (Gen) Regs, reg 16(5A); 3 JSA Regs, reg 78(5)(c)(ii); IS (Gen) Regs, reg 16(5)(b)(ii); 4 JSA Regs, reg 78(5)(c); IS (Gen) Regs, reg 16(5)(b)

Regular contact

22074 Regular contact has no specific legal meaning and so should be given its everyday meaning. It should include visits, letters and telephone calls and should take place frequently or regularly. Weekly or monthly visits are regular contact.

22075 Child Benefit Centre normally consider the question of regular contact and the DM should continue to treat the child or young person as a member of the claimant's household while Child Benefit Centre remains in payment. The DM should request confirmation that the question has been considered by Child Benefit Centre if there is any doubt that regular contact is being maintained.

Child or young person in a care home

22076 Do not treat as a member of the claimant's household a child or young person who has

1. been in a care home provided by an LA¹ for
 - 1.1 in England and Wales
 - 1.1.a people aged 18 or over who, because of illness, disability or any other circumstances, need care and attention not otherwise available to them² **or**
 - 1.1.b expectant or nursing mothers needing care and attention not otherwise available to them³ **or**
 - 1.2 in Scotland
 - 1.2.a the prevention of illness, the care of people suffering from illness, and the after-care of such people⁴ **or**
 - 1.2.b people who are or have been suffering from mental disorder⁵ **and**
2. been in that accommodation for a continuous period of more than twelve weeks beginning on the
 - 2.1 date of claim⁶ if
 - 2.1.a the child or young person went into the accommodation before that date **and**
 - 2.1.b immediately before the current entitlement to JSA(IB), or IS began there was no entitlement to the other benefit⁷ **or**
 - 2.2 day the child or young person went into hospital, in any other case⁸ **and**
3. not been in regular contact with the claimant or any member of the family⁹.

1 NA Act 48, s 24; SW (Scot) Act 68, s 59; 2 NA Act 48, s 21(1)(a); 3 s 21(1)(b); 4 SW (Scot) Act 68, s 13B; 5 Mental Health (Scotland) Act 1984, s 7; 6 JSA Regs, reg 78(5)(c)(i); IS (Gen) Regs, reg 16(5)(b)(i); 7 JSA Regs, reg 78(6); IS (Gen) Regs, reg 16(5A); 8 JSA Regs, reg 78(5)(c)(ii); IS (Gen) Regs, reg 16(5)(b)(ii); 9 JSA Regs, reg 78(5)(c); IS (Gen) Regs, reg 16(5)(b)

Alternate periods in hospital and a care home

22077 If a child or young person moves between hospital and a care home, the twelve weeks absence from the family should be calculated by adding together the periods in each.

Example

Quentin is claiming IS for himself and his three children. His daughter, Pandora, goes into a care home on April 4. On May 20 she goes into hospital and returns to the care home on May 28. The twelve weeks period of absence from her family is calculated from April 4.

Under the control of a local authority or awaiting adoption

22078 Do not treat as a member of the claimant's household any child or young person who

1. in England and Wales
 - 1.1 is being looked after by an LA¹ **or**
 - 1.2 has been placed with someone other than the claimant while waiting for adoption² **or**
2. in Scotland
 - 2.1 is in the care of an LA³ **or**
 - 2.2 has been boarded out with someone other than the claimant while waiting for adoption⁴ **or**
3. has been placed for adoption⁵.

1 JSA Regs, reg 78(5)(d); IS (Gen) Regs, reg 16(5)(c); Army Act 1955; SW (Scot) Act 68; Matrimonial Causes Act 1973; Adoption (Scotland) Act 1978; Family Law Act 1986; Children Act 1989; Children (Scotland) Act 1995; 2 JSA Regs, reg 78(5)(e); IS (Gen) Regs, reg 16(5)(d); 3 JSA Regs, reg 78(5)(f) & (9)(b); IS (Gen) Regs, reg 16(5)(c) [Scotland] & (8); 4 JSA Regs, reg 78(5)(g) & (9)(b); IS (Gen) Regs, reg 16(5)(d) [Scotland] & (8); 5 JSA Regs, reg 78(5)(h); IS (Gen) Regs, reg 16(5)(e); Adoption Agencies Regs 1983; Adoption Agencies (Scotland) Regs 1996

Child or young person held in custody

22079 Do not treat as a member of the claimant's household any child or young person who is in custody¹

1. awaiting trial or sentencing **or**
2. serving a sentence imposed by a court.

1 JSA Regs, reg 78(5)(i); IS (Gen) Regs, reg 16(5)(f)

Child or young person at home for part of a benefit week

22080 The DM should treat as a member of the claimant's household any child or young person who

1. is
 - 1.1 being looked after by an LA (see DMG 22078 1.1) **or**
 - 1.2 in the care of an LA (see DMG 22078 2.1) **or**
 - 1.3 being held in custody **and**
2. returns to live with the claimant for less than a full benefit week

for the part of the benefit week that the person is at home¹. Treat the child as living at home if a settled course of daily living is established or resumed for the period in question². It is likely but not essential that the period would include an overnight stay.

Treat the day of coming out of the LA accommodation or custody and day of return as days with the claimant³.

1 JSA Regs, reg 78(7); IS (Gen) Regs, reg 16(6); 2 R(F) 2/81; 3 SS & CS (D&A) Regs, Sch 3A

22081 Any increased applicable amount in respect of a child for the days with the claimant, as described in DMG 22080, is only appropriate where the claimant is already receiving child allowances in respect of a different child or where he is the only child, there is no break in the child allowance .

Example 1

Shobu is claiming IS. Her son, Rhashan, is in the care of the LA. He goes to stay with her on the Wednesday of the half-term holiday and returns to the LA home on the following Sunday. Rhashan is treated as a member of Shobu's household from Wednesday to Sunday (both days included), but Shobu does not receive an increased applicable amount in respect of Rhasan for those days.

Example 2

Janet is claiming IS for herself and daughter Nicky. Her son, Stan, is in the care of the LA. He goes to stay with her on the Wednesday of the half-term holiday and returns to the LA home on the following Sunday. Stan is treated as a member of Janet's household from Wednesday to Sunday (both days included) and her IS is increased to include the appropriate child allowances in respect of Stan for those days.

22082 - 22999

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

