

## MIXED AGE COUPLES IN SPC

Contents	Paragraphs
Introduction	1
The changes	2 - 4
Savings	5 - 8
Transitional provisions: polygamous marriages	9 - 12
What is the effect of changes on advance claims for SPC	13
What is the effect of these changes on backdated claims	14
Annotations	
Contacts	

### INTRODUCTION

- 1 This memo provides guidance on changes to the categories of person who are excluded from entitlement to SPC and pension age HB under The Welfare Reform Act 2012 (Commencement No. 31 and Savings and Transitional Provisions and Commencement No. 21 and 23 and Transitional and Transitory Provisions (Amendment)) Order 2019 (SI 2019/37)<sup>1</sup>.

*1 WR Act 12 (Commencement No. 31 etc.) Order 2019*

### THE CHANGES

- 2 From 15.5.19, where a new claim to SPC or pension age HB is made, a claimant is not entitled if they are a member of a couple and the other member has not reached the qualifying age<sup>1</sup> (a mixed-age couple<sup>2</sup>). These changes are subject to certain savings provisions as detailed in paragraphs 5 - 8 below.

**Note 1:** This is a different definition of mixed-age couple to that for the purposes of entitlement to the SPC savings credit which remains as it is (see DMG 77167).

**Note 2:** Such mixed-age couples may be eligible for UC instead or if the younger member of the couple was entitled to IS, ESA(IR) or JSA(IB), they may be able to

retain that entitlement with the older member of the couple as partner. Alternatively, the younger member of the couple may assume responsibility for a JSA(IB) joint-claim for both members of the couple. All subject of course to the relevant entitlement conditions being satisfied.

*1 SPC Act 02, s 1(6) & s 4(1A); 2 WR Act 12 (Commencement No. 31 etc.) Order 2018, art 2(2)(a)*

- 3 The definition of mixed-age couples includes a polygamous marriage where at least one party to the polygamous marriage has reached the SPC qualifying age and at least one party has not<sup>1</sup>.

*1 WR Act 12 (Commencement No. 31 etc.) Order 2018, art 2(2)(b); UC Regs, reg 3(5)*

- 4 For the purposes of these changes

1. the period for which an individual is entitled to SPC or pension age HB is a period beginning with any day that the conditions of entitlement to the benefit are met (including the requirement to make a valid claim), regardless of whether entitlement for payability purposes begins at a later date, until the day before entitlement ends **and**
2. any reference to claiming or entitlement to SPC or pension age HB as part of a couple is a reference to the claim being made or the person being entitled on the basis that a person is a member of a couple or a member of a polygamous marriage<sup>1</sup>.

*1 WR Act 12 (Commencement No. 31 etc.) Order, art 2(4)*

### **Example**

The claimant made a claim for SPC on 14.5.19 as part of a mixed-age couple. He is a Tuesday payday and is paid in arrears meaning that his first benefit week is 15.5.19 to 21.5.19. Although no payment is due before 15.5.19, the conditions of entitlement were met on 14.5.19 and so the claimant is entitled to SPC as part of a mixed-age couple.

### **SAVINGS**

- 5 Savings provisions have effect as though the exclusion of mixed-age couples from SPC had not come into force so that a member of a mixed-age couple who was entitled to

1. SPC **or**

2. pension age HB **or**
3. both

on 14.5.19, continues to be so entitled on or after 15.5.19<sup>1</sup>.

*1 WR Act 12 (Commencement No. 31 etc.) Order, art 4(1)*

- 6 These savings will cease to have effect in relation to the member of the mixed-age couple on any day after 15.5.19 when that person is not entitled to either SPC or pension age HB as part of the same mixed-age couple<sup>1</sup>.

*1 WR Act 12 (Commencement No. 31 etc.) Order, art 4(2)*

- 7 These savings provisions apply to parties to a polygamous marriage in the same way as other mixed-age couples<sup>1</sup>.

*1 WR Act 12 (Commencement No. 31 etc.) Order, art 7(1)*

#### **Example 1 – New claim from a mixed-age couple**

The claimant and partner have been continuously entitled to pension age HB since December 2018. The claimant is receiving an adult dependency increase with his SP for his wife, which is removed in April 2020. Following the drop in income he makes a new claim for SPC. As they are still entitled to pension age HB on the date their claim is made/treated as made, they are able to make a claim for SPC.

#### **Example 2 – Repeat claim from a mixed-age couple**

The claimant and partner have been continuously entitled to both SPC and pension age HB since November 2018. In June 2019 the partner starts part time work. The partner's earnings, in combination with the couple's other income, take them off SPC but are not high enough to end entitlement to pension age HB.

The part time job ends in January 2020 and the claimant reapplies for SPC. As they are still entitled to pension age HB on the date their claim is made/treated as made, they are able to make a repeat claim for SPC.

#### **Example 3 – No longer entitled to either SPC or pension age HB as part of the same mixed-age couple**

The claimant and partner have been continuously entitled to SPC and pension age HB since November 2016. In October 2019 the partner starts a temporary job. Their total income takes them off both SPC and pension age HB. When the partner's job ends they reapply for SPC and pension age HB. However, as they have not been

continuously entitled to one or other benefit since 14.5.19, they are not able to re-qualify and would need to make a claim for UC.

#### **Example 4 – Existing mixed-age couples who separate**

The claimant and partner have been continuously entitled to SPC and pension age HB since September 2017. Due to a change of circumstances in June 2019 they are no longer treated as a couple. The claimant's SPC and pension age HB award continues as an award for a single person. The couple subsequently re-form and the partner is still under pensionable age but the claimant ceases to be entitled to SPC/pension age HB. This is because the exemption from the new rule excluding mixed-age couples from entitlement to SPC/pension age HB only applies to claimants who have remained continuously entitled to either benefit since 14.5.19 as part of the same couple.

#### **Single pensioners who form a mixed-age couple**

- 8 If a single pensioner forms a couple with a person below the qualifying age on or after 15.5.19, entitlement to SPC and/or pension age HB will end.

#### **Example**

The claimant has been in receipt of SPC and pension age HB from November 18. The claimant forms a couple with a person below the qualifying age on 4.6.19. This is a change of circumstances which ends the claimant's entitlement to SPC and pension age HB.

### **TRANSITIONAL PROVISIONS: POLYGAMOUS MARRIAGES**

- 9 Where parties to a polygamous marriage would be prevented from claiming SPC or pension age HB because at least one party is under the qualifying age, their entitlement is to be assessed by
1. applying the UC legislation relating to the treatment of polygamous marriage<sup>1</sup> so that
    - 1.1 the two parties to the earliest marriage are treated as a couple **and**
    - 1.2 any additional party is treated as a single claimant **and**
  2. separately assessing the entitlement of
    - 2.1 the couple in paragraph 9 1.1 above **and**

**2.2** any additional party in paragraph 9 **1.2** above.

*1 UC Regs, reg 3(4); WR Act 12 (Commencement No. 31 etc.) Order, art 7(2)(b)*

10 Where

1. both parties to the couple in paragraph 9 **1.1** above have reached the qualifying age, either of them may claim or remain entitled to SPC or pension age HB **or**
2. one of the parties to the couple in paragraph 9 **1.1** above has reached the qualifying age but the other has not, the couple may not claim SPC or pension age HB<sup>1</sup>.

**Note:** Where 10.2 applies, the mixed-age couple may either remain on IS/JSA(IB)/ESA(IR) where the younger person is the claimant, or where they are part of a JSA(IB) joint-claim, the younger person assumes sole responsibility for the claim. Otherwise they may claim UC instead.

*1 WR Act 12 (Commencement No. 31 etc.) Order 2018, art 7(3)(a)*

11 Any additional party as in paragraph 9 **1.2** above who has reached the qualifying age may claim or remain entitled to SPC and/or pension age HB as a single person<sup>1</sup>.

**Note:** If they have not reached the qualifying age and they were entitled to IS, ESA(IR) or JSA(IB), they may be able to retain that entitlement, otherwise they will have to claim UC<sup>1</sup>.

*1 WR Act 12 (Commencement No. 31 etc.) Order 2018, art 7(3)(b)*

12 All other conditions relating to the assessment of entitlement for SPC and pension age HB will continue to apply to

1. the parties treated as a couple, as if they are a couple **and**
2. any additional party treated as a single claimant, as if they are a single claimant<sup>1</sup>.

**Note:** Once all parties to the polygamous marriage reach the qualifying age, their entitlement to SPC is assessed as a polygamous unit in the usual way<sup>2</sup>.

*1 WR Act 12 (Commencement No. 31 etc.) Order 2018, art 7(2)(b); 2 SPC Act 02, s 12(1); SPC Regs, Sch III, para 1*

### **Example**

Ravi, Imina and Kara are a polygamous unit, who make a claim for SPC on a date after 15.5.19. Ravi and Imina's marriage was the earliest and, as they are both over

the qualifying age, they are able to make a claim for SPC and pension age HB as a couple. However, as Kara has not reached the qualifying age, she has to make a claim for UC as a single claimant. Once Kara reaches the qualifying age, Ravi, Imina and Kara will be entitled to SPC as a polygamous unit.

## **WHAT IS THE EFFECT OF THESE CHANGES ON ADVANCE CLAIMS FOR SPC**

- 13 Existing legislation allows for a claim for SPC to be made up to 4 months before a person attains the qualifying age (see DMG 02565 et seq)<sup>1</sup>. DMs can decide SPC claims made in advance for periods starting on or after 15.5.19 based on the changes being made to the excluded groups from 15.5.19.

*1 SS (C&P) Regs, reg 13D(1)*

## **WHAT IS THE EFFECT OF THESE CHANGES ON BACKDATED CLAIMS**

- 14 The normal rules on the 3 month time limit for claiming SPC<sup>1</sup> will apply (see DMG 02330 et seq). This means that claims made on or before 13.8.19 can be backdated to before the rule change applies, provided the claimant meets the entitlement conditions applicable on the earlier date.

*1 SS (C&P) regs, reg 19(2)&(3)(i)*

### **Example**

A claim is made by the older partner in a mixed-age couple on 13.8.19. The claimant satisfied the conditions of entitlement that applied on 14.5.19. Therefore the claim has been made in time for 14.5.19 onwards and SPC for a mixed-age couple can be awarded.

## **ANNOTATIONS**

Please annotate the number of this memo (DMG 01/19) to the following DMG paragraphs: 02560 et seq, 77002, 77012, 77015, 77030, 77032, 77033, 77052 and 78600

## **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 23/16](#) - Obtaining legal advice and guidance on the Law.

**DMA Leeds: February 2019**

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