

MIXED AGE COUPLES IN SPC

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INTRODUCTION

1. This memo replaces Memo DMG 1/19 and 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) and The Welfare Reform Act 2012 (Commencement No. 31 and Savings and Transitional Provisions (Amendment) Order 2019 (2019/935)¹. Memo DMG 1/19 should now be cancelled.

1 WR Act 12 (Commencement No. 31 etc.) Order 2019; WR Act 12 (Commencement No. 31 etc)(Amendment) 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 age¹ (a mixed-age couple²). 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. But see paragraph 19 below for guidance on transitional provisions where restrictions on UC claims apply.

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 not¹.

1 WR Act 12 (Commencement No. 31 etc.) Order 2018, art 2(2)(b)

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 mixed age 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 marriage¹.

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. both¹

on 14.5.19, continues to be so entitled on or after 15.5.19.

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

6. The savings provisions will cease to have effect to the member of the mixed-age couple on or after 15.5.19 when that person is not entitled to either SPC or pension age HB as part of the same mixed-age couple¹.

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 couples¹.

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. The awards do not include the SDP. 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.

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

9. 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)¹. 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

10. The normal rules on the 3 month time limit for claiming SPC¹ 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.

TRANSITIONAL PROVISIONS: TREATMENT OF COUPLES AND POLYGAMOUS MARRIAGES

11. Where a member of a mixed-age couple 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 applying UC rules for the treatment of couples and polygamous marriages¹.

Note: For cases covered by the savings provisions as described in paragraphs 5 – 7 above, the current rules on the treatment of polygamous marriages and when a couple are treated as a couple for SPC/HB purposes will continue to apply.

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

12. Where the qualifying age for SPC has been reached by

1. both of the parties in a polygamous marriage who are to be treated as a couple one of them may claim or remain entitled to SPC as part of that couple and one of them may claim or remain entitled to pension-age HB as part of that couple¹
or
2. a party who is to be treated as a single person by virtue of
 - 2.1 not being treated as part of a couple in a polygamous marriage as in 1.
above **or**

2.2 being a member of a couple who may make a claim as a single person due to the other member of the couple being in the following categories

2.2.a under 18 (ADM E2017)

2.2.b not in GB (ADM E2017)

2.2.c a prisoner (ADM E2021)

2.2.d member of a religious order (ADM E2021)

2.2.e PSIC (E2022) **or**

2.3 being a member of a couple where the other member is temporarily absent from the claimant's household and that absence is expected to exceed or does exceed 6 months

they may claim or remain entitled to SPC or pension-age HB as a single person².

Note: Where only one member of the mixed-age couple has reached the qualifying age, 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, subject to the transitional provision detailed in paragraphs 15 – 23 below.

1 WR Act 12 (Commencement No. 31 etc.) Order, art 7(3)(a); 2 art 7(3)(b)

Example

Andy and Gemma are a mixed-age couple claiming UC. On 1.9.19, Gemma moves into their daughter's home to help care for their grandchild while her daughter recovers from an operation. When it becomes clear she will be absent from her normal home for more than 6 months, they cease to be treated as a couple for UC. As Andy is over SPa, he cannot remain on UC as a single claimant but can claim PC and HB as a single person until Gemma returns home.

13. For the purposes of paragraph 12 above

- 1.** UC provisions allow for 2 of the parties to a polygamous marriage to be treated as a couple and the remaining parties to be treated as a single person **and**
- 2.** all other conditions relating to the assessment of entitlement to SPC and pension-age HB will continue to apply so that claims and awards may be made to claimants who are part of a couple or who are single.

14. Any additional party as in paragraph 12 **2.1** above who has reached the qualifying age may claim or remain entitled to SPC and/or pension age HB as a single person¹.

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 UC¹.

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 (subject to the SDP Gateway – see paragraphs 15 – 23 below).

TRANSITIONAL PROVISIONS: RESTRICTIONS ON CLAIMS FOR UC

15. Note 2 to paragraph 2 above states that mixed-age couples may be entitled to UC instead of SPC. However, these claimants may be restricted from claiming UC¹ – see paragraph 16 for details. The conditions of entitlement to IS, old style JSA, old style ESA and HB are amended to allow them to claim those benefits instead² – see paragraph 18 below for details.

1 UC (TP) Regs, reg 4 & 4A; WR Act 12 (Commencement No. 32 etc.) Order;

2 WR Act 12 (Commencement No. 31 etc.) Order, art 8

16. Claims for UC may not be made where

1. the Secretary of State has determined that claims for UC may not be made in any area or category of case¹ (see M5006) **or**

2. a single claimant, or joint claimants either of whom,²

2.1 is, or within the past month has been, entitled to an award of an existing benefit which includes the SDP **and**

2.2 in a case where the award ended during that month, continues to satisfy the SDP conditions (see Memo ADM 1/19 for further details) **or**

3. the claimant is a frontier worker³ (see Memo ADM 3/19 for further details).

Note: Currently there are no restrictions on claims for the purposes of sub - paragraph **1.** above.

1 UC (TP) Regs, reg 4; 2 reg 4A; 3 WR Act 12 (Commencement No. 32 etc.) Order, art 4(11)

17. DMs should note that references to “entitlement to an existing benefit which includes the SDP”, in relation to HB, are where the claimant’s applicable amount includes the SDP for the purposes of entitlement to HB¹.

1 SS C&B Act 92, s 130

Changes to conditions of entitlement for IS, JSA, ESA and HB

18. A condition of entitlement to JSA(IB) and ESA(IR) is that the claimant has not reached pensionable age¹. For IS and HB, a condition is that the claimant has not reached the qualifying age for SPC².

1 JS Act 95, s 1(2)(h); WR Act 07, s 1(3)(c); 2 SS (C&B) Act 92, s 124(1)(aa); HB Regs, reg 5; HB (SPC) Regs, reg 5

19. Where a mixed-age couple is

1. excluded from entitlement to SPC **and**

2. restricted from claiming UC

the member of the mixed-age couple who has attained the qualifying age for SPC is treated as satisfying the age-related condition of entitlement for the benefits in paragraph 18 for the purposes of an award of those benefits to that member of the couple¹. This allows new claims for the benefits in paragraph 18 above to be made and awards to continue.

1 WR Act 12 (Commencement No. 31 etc.) Order, art 8(2)

Example

Flo has LCWRA and is entitled to ESA(IR) and HB for herself and her partner George. Her ESA award includes the higher rate SDP. Flo reaches pensionable age, and entitlement to ESA(IR) and HB would normally terminate as she does not satisfy the age-related conditions of entitlement. As George is under pensionable age, the couple cannot be entitled to SPC. Flo and George are also prevented from claiming UC due

to the SDP entitlement. George does not have LCW, so cannot claim ESA(IR) instead of Flo. Flo is treated as satisfying the age-related conditions of entitlement, and as not having reached the qualifying age for SPC, so remains entitled to ESA(IR) and HB.

20. Where an award of benefit is made as in paragraph 19, the claimant is treated as satisfying the age-related condition of entitlement until the award of benefit ends. This applies even if the restrictions on claiming UC in paragraph 16 above are removed during the period of the award¹.

1 WR Act 12 (Commencement No. 31 etc.) Order, art 8(3)

21. Once the younger member of the couple reaches the qualifying age for SPC, they cease to be a mixed-age couple. The award of benefit made as in paragraph 19 above ends, and the couple are eligible to claim SPC and pension age HB.

IS pensioner premiums

22. Normally a pensioner premium is payable in respect of an IS claimant's partner who is aged not less than the qualifying age for SPC, and who

1. for the PP is aged less than 75¹ **or**

2. for the EPP is aged less than 80² **or**

3. for the HPP is either²

3.1 aged not less than 80 **or**

3.2 aged less than 80, and satisfies the conditions in DMG 23110 2.
or 3..

Note: See DMG Chapter 23 for detailed guidance on the pensioner premiums.

1 IS (Gen) Regs, Sch 2 para 9; 2 para 9A; 3 para 10 & 12(1)

23. Where an award of IS is made to a claimant who is over the qualifying age for SPC, but is treated as meeting the age-related condition as in paragraph 19, the conditions for the award of the pensioner premiums are treated as if it is the claimant rather than the partner who must meet the conditions in paragraph 22 above¹.

ANNOTATIONS

Please annotate the number of this memo (DMG 07/19) to the following DMG paragraphs: 02560 et seq, 20003, 20022, 23091, 23110, 41012, 77002, 77012, 77015, 77030, 77032, 77033, 77052, 78600 and to memo ADM mg4/19.

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 04/19 - Requesting case guidance

DMA Leeds: May 2019

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