

# Chapter 43 - Membership of the household

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# **Chapter 43 - Membership of the household**

## **Introduction**

43001 This Chapter gives guidance on how to establish membership of a family and membership of the claimant's household for ESA(IR). There is no need for the DM to establish membership of a family and household for ESA(Cont).

43002



# Definitions

## Claimant

43003 Claimant means<sup>1</sup> a person who has claimed ESA.

*1 WR Act 07, s 24(1)*

## Family

43004 A family is<sup>1</sup>

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.

*1 ESA Regs, reg 2(1)*

43005 In the case of a polygamous marriage, the claimant's family includes<sup>1</sup>

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 to any reference in ESA legislation 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 ESA Regs, reg 2(3)*

## Couple

43006 Couple means<sup>1</sup>

1. two people who are married to, or civil partners of, each other and are members of the same household **or**
2. two people who are not married to, or civil partners of, each other but are living together as if they were a married couple or civil partners.

*1 ESA Regs, reg 2(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.

## Child

43007 Child means<sup>1</sup> 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 ESA Regs, reg 2(1)*

## Young person

43008 Young person

1. means<sup>1</sup> a person who is a qualifying young person **but**
2. does not include a person who
  - 2.1 is an eligible child **or**
  - 2.2 is a relevant child **or**
  - 2.3 in Scotland is a person of a prescribed description under certain legislation<sup>2</sup>.

DMG Chapter 30 provides guidance on who is a relevant or eligible child and who is a person of a prescribed description. DMG 43076 - 43079 provides further guidance on membership of the family and these young people.

*1 ESA Regs, reg 2(1); 2 Children (Leaving Care) Act 2000, s 6*

43009 - 43010

## Qualifying young person

43011 Where any of the conditions in DMG 43012 to 43026 below applies, the person is a qualifying young person<sup>1</sup>. Where more than one of the conditions in DMG 43012 to 43026 below apply, the person remains a qualifying young person until the last of them ceases to be satisfied<sup>2</sup>.

*1 ESA Regs, reg 2(1); 2 CHB (Gen) Regs, reg 2(2)*

## Education and training condition

- 43012 This condition applies to a person who has not reached age 20<sup>1</sup> **and**
1. is undertaking a course of full-time education which is not advanced education or provided by virtue of his employment or any office held but which is provided
    - 1.1 at a school or college **or**
    - 1.2 elsewhere but is approved by HMRC Commissioners and the full-time education was being received there when that person was still a child **or**
  2. is undertaking approved training that is not provided through a contract of employment **or**
  3. having undertaken such a course/approved training as is mentioned in 1. or 2. above, has been accepted or is enrolled on a further such course/approved training.

*1 CHB (Gen) Regs, reg 3(1)-(3)*

- 43013 A person aged 19 can only satisfy the conditions in DMG 43012 1. and 2. above if
1. the education or training began **or**
  2. the person was accepted or enrolled on the education or training
- before they were 19<sup>1</sup>.

*1 reg 3(4)*

### 16 year olds (15 year olds in Scotland)

- 43014 A 16 year old (in Scotland also a 15 year old) who has left relevant education or training will still be a qualifying young person until the 31st August following their 16th birthday<sup>1</sup>.

*1 reg 4*

### Extension period for 16 and 17 year olds

- 43015 The extension period<sup>1</sup>
1. begins on the first day of the week after that in which the 16/17 year old ceased to be in education or training **and**
  2. ends 20 weeks later.

*1 reg 5*

- 43016 This period applies to those aged 16 and 17 years
1. who have ceased to be in education or training **and**
  2. who are registered for work, education or training with a qualifying body<sup>1</sup> **and**
  3. who are 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
  - 5.1 was entitled to CHB for them immediately before the extension period began **and**
  - 5.2 has made a written request to the HMRC Commissioners within three months of the education or training ceasing for the payment of CHB during the extension period

and so are still a qualifying young person by virtue of being in the CHB extension period.

**Note:** Whilst the young person is under 18, CHB can be extended every time the conditions described in DMG 43015 and 43016 above are satisfied.

*1 CHB (Gen) Regs, reg 5(4)*

### **Interruptions**

- 43017 Up to the age of 20, where a person's education or training has been interrupted and immediately before it was interrupted they were a qualifying young person under the conditions in DMG 43012 to 43016 above, they will remain a qualifying young person for the duration of the interruption.
- 43018 Subject to the exception in DMG 43019 below, the condition in DMG 43017 above 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 illness or disability and for a period that is considered reasonable in the opinion of the HMRC Commissioners<sup>1</sup>.

*1 reg 6(3)*

- 43019 Where the period of interruption is immediately followed by a period during which the person
1. has provision made to undertake non approved training **or**
  2. is receiving advanced education **or**
  3. is receiving education by virtue of his employment or any office held
- then they will not satisfy the condition in DMG 43018 above<sup>1</sup>.

*1 reg 6(4)*

43020 - 43022



## **Reasonable cause**

43023 Examples of reasonable cause for interruption include

1. individual holidays, other than official holidays, during term-time
2. temporary closure of the educational establishment during term-time
3. authorized absence following contact with an infectious disease
4. illness or disability (mental or physical)
5. absence due to illness or death in the family
6. disruption of normal transport with no reasonable alternative available
7. change of educational establishment
8. authorized absences to follow a course of study elsewhere, for example
  - 8.1 to study at home for an examination **or**
  - 8.2 a field course **or**
  - 8.3 an educational cruise.

## **School holidays**

43024 Treat school holidays as a period of interruption due to a reasonable cause if the person intends to return after the holidays.

## **Full-time education**

43025 The meaning of full-time education<sup>1</sup> must involve education undertaken in pursuit of a course where the person must spend in total more than twelve hours a week

1. receiving instruction and tuition
2. engaging in practical work
3. taking part in supervised study
4. taking examinations.

However time on meal breaks or unsupervised study (including homework done on or off the premises of the educational establishment) is not included.

*1 CHB (Gen) Regs, reg 1(3)*

## **Not advanced education**

43026 Not advanced education<sup>1</sup> 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 (up to Advanced Higher Grade)
4. GCE (advanced level)
5. national diploma or national certificate of Edexcel.

*1 CHB (Gen) Regs, reg 1(3)*

## Household

43027 Household is not defined in legislation. It should be given its normal everyday meaning, that is a domestic establishment containing the essentials of home life<sup>1</sup>. Household may refer to people held together by a particular kind of tie, even if temporarily separated<sup>2</sup>. 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

Jon and Kate 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

Andy, 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 Andy's room. Andy and Bob pay rent separately to the landlord. Apart from occupying the same room Andy and Bob share no living arrangements. Andy and Bob each have their own household, although they share a room.

## Responsible

43028 Guidance on the circumstances in which someone is responsible for a child or young person is in DMG 43041 et seq.

## Lone parent

43029 Lone parent means<sup>1</sup> a person who

1. has no partner **and**
2. is
  - 2.1 responsible for **and**
  - 2.2 a member of the same household as a child or 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 ESA Regs, reg 2(1)*

## Partner

43030 Partner means<sup>1</sup>, where the claimant is

1. a member of a couple, the other member of that couple **or**
2. married polygamously, the other members of the marriage.

*1 reg 2(1)*

## Polygamous marriage

43031 Polygamous marriage means<sup>1</sup> any marriage

1. in which one of the parties to it is married to more than one person **and**
2. which was entered into under a law which permits polygamy **and**
3. where the claimant, the other party to the marriage and the additional spouses are members of the same household.

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

*1 reg 2(1)*

## Polygamous relationship

43032 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.

## Voluntary organization

43033 In this guidance voluntary organization means<sup>1</sup> a body that is not a

1. public authority **or**
2. LA

whose activities are not carried out for profit.

*1 reg 156(9); Children Act 89, s 105; Social Work (Scotland) Act 68, s 94*

43034 - 43040



# Responsibility for a child or young person

## Who can have responsibility

- 43041 In any benefit week a child or young person can be treated as the responsibility of more than one person. There is no restriction to prevent a child or young person being the responsibility of more than one person in any given week.

## Who is the responsible person

- 43042 The responsible person is the person who the child or young person usually lives with<sup>1</sup>.

*1 ESA Regs, reg 156(10)*

- 43043 “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

Lloyd has a young son, Neil, who lives with him. Neil doesn't live anywhere else nor with anyone else. Lloyd is the responsible person for Neil.

### Example 2

Alan and Frances have a daughter, Gail, for whom they receive CHB. Gail lives from Monday to Friday with her grandmother. She spends alternate weekends with her mother and father. 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.

43044 - 43050



# Membership of the household - general

## Who may be members of the claimant's household

43051 The claimant's household may include

1. the claimant
2. the claimant's partner or partners
3. any child or young person who is the responsibility of anyone in **1. or 2.**
4. any child who is the responsibility of anyone in **3**<sup>1</sup>.

This applies even if any of these people are temporarily living away from the other members of the family<sup>2</sup>, for example to work or visit relatives.

*1 ESA Regs, reg 156(1); 2 reg 156(2)*

## People not treated as members of the claimant's household

43052 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 family<sup>1</sup> **or**
2. is likely to be away from the family for more than 52 weeks<sup>2</sup>.

*1 ESA Regs, reg 156(3)(a); 2 reg 156(3)(b)*

### Exception

43053 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 weeks<sup>1</sup> 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 ESA Regs, reg 156(3)(b)*

**Example 1**

Huw is claiming ESA. 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 ESA 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 being granted entry.

43054 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 43061 et seq and those that apply to children and young persons in DMG 43071 et seq.

43055 - 43060



## Membership of the household - adults

### Which adults may be members of the same household

43061 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 partners in a polygamous marriage.

### Partners in a polygamous marriage

43062 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 partners<sup>1</sup>.

A claim from any of the other parties to the marriage should be referred to Decision Making and Appeals (Leeds) for guidance.

*1 ESA Regs, reg 2(1)*

### Members of a polygamous relationship

43063 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 44061 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 ESA 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

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

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

43064 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 high security psychiatric services hospital in England or Wales, or a state hospital in Scotland<sup>1</sup> **or**
  - 1.2 held in custody<sup>2</sup>
    - 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 custody<sup>3</sup> **or**
2. one of them is permanently in<sup>4</sup>
  - 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 absence<sup>5</sup>. (see DMG 071140)

**Note:** If either 1.1 or 2. applies the absent member can make a separate claim for ESA.

*1 ESA Regs, reg 156(4)(a); 2 reg 156(4)(b)(i); 3 reg 156(4)(b)(ii);  
4 reg 156(4)(d); 5 reg 156(4)(c)*

43065 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

- 43066 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.
- 43067 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<sup>1</sup> whether the couple
1. can 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. can 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 decide who can come and stay with them, and for how long
  4. can insist that other people do not enter their accommodation without permission
  5. can decide the decor and furnishing of their accommodation
  6. have some facilities for preparing food and making tea, coffee and other hot drinks
  7. have responsibility for running the household? (For example, are they responsible for getting repairs done, replacing domestic appliances or buying food).

**Note 1:** This list is not definitive or exhaustive. None of these questions on its own is decisive.

**Note 2:** Absence abroad for NHS treatment or to receive medical treatment abroad see DMG 071140

*1 R(IS) 1/99*

### Example 1

Alan and Liz are husband and wife. Alan has had a severe stroke, and Liz has heart problems and arthritis so they both go into a care home. Alan needs more skilled care than could be provided in the care home so he goes into an independent hospital. Two years later Liz goes into the same independent hospital because her health has deteriorated. She and Alan have separate rooms, and are billed separately. Alan and Liz are not members of the same household. They do not have a domestic establishment in the independent hospital.

### **Example 2**

Miles and Pauline 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. Miles and Pauline are not members of the same household.

### **Sheltered accommodation**

43068 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.

43069 - 43070

# Membership of the household - children and young persons

## Children and young people who may be members of the household

43071 Any child or young person who is the responsibility of the claimant or partner may be a member of the claimant's household. These may be

1. the claimant's children **or**
2. the children of the claimant's partner if the claimant is a member of a couple **or**
3. the children of the claimant's partners if the claimant is a member of a polygamous marriage **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

43072 There may be other children or young persons living with the claimant who do not come into the categories in DMG 43071.

## Under the control of a local authority or awaiting adoption

43073 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 organization<sup>1</sup> **or**
  - 1.2 while waiting for adoption<sup>2</sup> **or**
2. boarded out under a relevant enactment with the claimant or partner, whether or not with a view to adoption<sup>3</sup> **or**
3. placed for adoption with the claimant or partner while a decision is awaited<sup>4</sup>.

*1* ESA Regs, reg 156(5)(a); Children Act 89, s 22C(2) & 59(1)(a); Child Care Act 1980; SS Well being(Wales) Act 14, s 81(2); *2* ESA Regs, reg 156(5)(b); *3* reg 156(5)(c) & reg (2)(1); *4* reg 156(5)(d); Adoption Agencies Regs 1983; Adoption Agencies (Scotland) Regs 1996

43074 - 43075

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

43076 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.

43077 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 household<sup>1</sup>.

*1 Children (Leaving Care) Act 2000 (Comm No. 2 and Consequential Provisions) Order, Sch 1, para (b) & Sch 4 para (b)*

43078 Where a young person has been placed with a person or family under the relevant legislation<sup>1</sup> and has stayed for at least six months, the young person is not a relevant child, despite falling within the definition<sup>2</sup>, 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 LA<sup>3</sup>.

*1 Children Act 1989, s 23(4); 2 Children (Leaving Care) (England) Regs 2001, reg 4(5); Children (Leaving Care) (Wales) Regs 2001, reg 4(4); Support and Assistance of Young People Leaving Care (Scotland) Regs 2003, reg 13; 3 Children (Leaving Care) (England) Regs 2001, reg 4(6); Children (Leaving Care) (Wales) Regs 2001, reg 4(5); Support and Assistance of Young People Leaving Care (Scotland) Regs 2003, reg 13*

43079 Where the young person ceases to live with the person or family they should again be treated as a relevant child<sup>1</sup>.

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

## **Child or young person not living with the claimant**

43080 A child or young person who comes within the categories in DMG 43071 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**

43081 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 for the sole purpose of receiving medical treatment<sup>1</sup> **and**
2. for a continuous period of more than twenty six weeks beginning on the
  - 2.1 date of claim<sup>2</sup> if
    - 2.1.a the child or young person went abroad before that date **and**
    - 2.1.b immediately before the current entitlement to ESA began there was no entitlement to either IS or JSA(IB)<sup>3</sup> **or**
  - 2.2 day after the child or young person went abroad, in any other case<sup>4</sup>.

*1 ESA Regs, reg 156(6)(b); 2 reg 156(6)(b)(i); 3 reg 156(7); 4 reg 156(6)(b)(ii)*

## **Child or young person abroad for other reasons**

43082 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 weeks<sup>1</sup> beginning on the

1. date of claim<sup>2</sup> if
  - 1.1 the child or young person went abroad before that date **and**
  - 1.2 immediately before the current entitlement to ESA began there was no entitlement to either IS or JSA(IB)<sup>3</sup> **or**
2. day after the child or young person went abroad, in any other case<sup>4</sup>.

*1 reg 156(6)(a); 2 reg 156(6)(a)(i); 3 reg 156(7); 4 reg 156(6)(a)(ii)*

## **Child or young person in hospital**

43083 Do not treat as a member of the claimant's household a child or young person who has

1. been receiving in-patient treatment in a hospital or similar institution (see DMG Chapter 54) for a continuous period of more than twelve weeks beginning on the

- 1.1 date of claim<sup>1</sup> 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 ESA began there was no entitlement to either IS or JSA(IB)<sup>2</sup> **or**
- 1.2 day the child or young person went into hospital, in any other case<sup>3</sup>  
**and**
- 2. not been in regular contact with the claimant or any member of the family<sup>4</sup>.

*1 ESA Regs, reg 156(6)(c)(i); 2 reg 156(7); 3 reg 156(6)(c)(ii); 4 reg 156(6)(c)*

### **Regular contact**

- 43084 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.
- 43085 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 home provided by a local authority**

- 43086 Do not treat as a member of the claimant's household a child or young person who has
  - 1. been in a home provided by an LA<sup>1</sup> 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 them<sup>2</sup> **or**
      - 1.1.b expectant or nursing mothers needing care and attention not otherwise available to them<sup>3</sup> **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 people<sup>4</sup> **or**
      - 1.2.b people who are or have been suffering from mental disorder<sup>5</sup>  
**and**
  - 2. been in that accommodation<sup>6</sup> for a continuous period of more than twelve weeks beginning on the
    - 2.1 date of claim<sup>7</sup> 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 ESA began there was no entitlement to either IS or JSA(IB)<sup>8</sup> **or**
- 2.2 day the child or young person went into hospital, in any other case<sup>9</sup> **and**
- 3. not been in regular contact with the claimant or any member of the family<sup>10</sup>.

**Note:** The accommodation referred to in 1. and 2. means accommodation where the stay has become other than temporary<sup>11</sup>.

*1 National Assistance Act 48, s 24; Social Work (Scotland) Act 68, s 59; 2 National Assistance Act 48, s 21(1)(a); 3 s 21(1)(b); 4 Social Work (Scotland) Act 68, s 13B; 5 Mental Health (Scotland) Act 84, s 7; 6 ESA Regs, reg 156(9); 7 reg 156(6)(c)(i); 8 reg 156(7); 9 reg 156(6)(c)(ii); 10 reg 156(6)(c); 11 reg 156(9)*

### **Alternate periods in hospital and a care home**

43087 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 ESA for himself. He also has 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**

43088 Do not treat as a member of the claimant's household any child or young person who

- 1. is being looked after or in the care of an LA under a relevant enactment<sup>1</sup> **or**
- 2. has been placed with someone other than the claimant while waiting for adoption<sup>2</sup> **or**
- 3. has been boarded out under a relevant enactment with someone other than the claimant while waiting for adoption<sup>3</sup> **or**
- 4. has been placed for adoption<sup>4</sup>.

*1 reg 156(6)(d) & reg 2(1); 2 reg 156(6)(e) & reg 2(1); 3 reg 156(6)(f); 4 reg 156(6)(g); Adoption Agencies Regs 1983; Adoption Agencies (Scotland) Regs 1996*

## **Child or young person held in custody**

43089 Do not treat as a member of the claimant's household any child or young person who is in custody<sup>1</sup>

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

*1 ESA Regs, reg 156(6)(h)*

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

43090 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 43088 1.) **or**
  - 1.2 in the care of an LA (see DMG 43088 1.) **or**
  - 1.3 being held in custody (see DMG 43089) **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 home<sup>1</sup>. Treat the child as living at home if a settled course of daily living is established or resumed for the period in question<sup>2</sup>. 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 claimant<sup>3</sup>.

*1 reg 156(8); 2 R(F) 2/81; 3 Social Security & Child Support (Decision & Appeals) Regulations 1999, Sch 3C*

### **Example**

Shobu is claiming ESA. 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).

43091 - 43999

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