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# *C1 Aggregation of needs and resources*

## *About this chapter*

- 1.00 This chapter gives guidance on how to establish who lives with the claimant, and how their presence in the claimant's home affects the amount of benefit to which the claimant may be entitled.
- 1.01 If the person living in the claimant's home is considered to be a
- member of the claimant's family, their needs and resources should be included with the claimant's when deciding entitlement to benefit
  - non-dependant, a deduction may be made from a claimant's maximum Housing Benefit (HB) and Council Tax Benefit (CTB). These deductions are called non-dependant deductions
  - tenant, sub-tenant or boarder, the income that the claimant receives from the tenant, sub-tenant or boarder is taken into account in the assessment of the claimant's income, see *BW2* or *BP2 Income from sub-tenants* and *Income from a boarder* earlier in this manual.
- 1.02 These three categories are looked at in more detail below.
- 1.03-1.09

## *Deciding who is a member of the claimant's family*

### *Definition of family*

- 1.10 The Social Security Contributions and Benefits Act 1992 and the HB/CTB Regulations contain precise definitions of membership of the family.
- 1.11 The Act's definition of family does **not** cover polygamous relationships, but can mean a married or unmarried couple, with or without children, lone parents and civil partnerships.
- SSCBA S.137*
- 1.12-1.19

1.20-1.29

### *Definition of couple*

1.20 The Act also defines

- married and unmarried couples

S.137; SSCBA

- a married couple means a man and a woman who are married to each other, and are members of the same household
- an unmarried couple means a man and a woman who are not married to each other, but who are living together as husband and wife (LTAHAW). This means that people of the same sex who live together cannot be treated as a couple
- civil partnerships and couples living together as civil partners
  - a civil partnership means a same sex couple who have formed a civil partnership
  - living together as if they have formed a civil partnership means a same sex couple who have not formed a formal civil partnership but live together as if they have

1.21 The emphasis is on the existence of an actual contract of marriage/civil partnership or, in the case of an unmarried couple/couple who live together as civil partners, living together as though a contract of marriage/civil partnership existed between them. A marriage contract/civil partnership in this instance is taken as meaning a commitment to mutual support and dependency.

1.22 The majority of claims from unmarried couples/couples who live together as a civil partnership are straightforward, with both partners acknowledging their relationship and agreeing to be treated as a married couple/civil partnership for benefit purposes.

1.23 Some individuals who appear to be sharing a household with a partner will deny that they are LTAHAW or that they should be treated as a such.

1.24 LAs will need to make further enquiries before deciding these claims and to make a decision as to whether or not the couple are LTAHAW. Guidance on making this decision is shown at *Annex A* at the end of this chapter.

1.25-1.29

### *Temporary absence*

- 1.30 Treat couples as members of the same household if
- one is living at home and the other is temporarily absent from the home, or
  - both are temporarily absent from the home

- 1.31 The absence may be because

*HB Reg 21; CTB Reg 11*

- of work
- one partner has moved house ahead of the other
- there is no suitable accommodation available for the family at the time
- one partner is abroad

For further information about the effect of temporary absence on HB, see *A3 Temporary absence from home* earlier in this manual.

### *Remaining partner is aged under 25 years*

- 1.32 If the absent partner intends to return to the household, and the remaining partner is aged under 25, you should consider
- Regulation 15, which states when the remaining partner should continue to be treated as part of a couple, and
  - Regulation 5, which states when the absent partner should or should not be treated as still occupying the dwelling as their home

- 1.33 If a partner is absent from the household for a period of more than 13 weeks but less than 52 weeks and intends to return to the household, regard the remaining partner as one of a couple, **not** a young individual and **not** subject to the SRR.

1.34-1.39

1.40-1.43

### ***Circumstances when couples should not be treated as members of the same household***

1.40 When one partner has left the household, do not treat them as a member of the family if the

*HB Reg 21*

- period of absence has lasted less than 52 weeks, but is likely to exceed this period unless there are exceptional circumstances, eg the person is in hospital, and the absence is unlikely to substantially exceed 52 weeks
- absence has lasted for 52 weeks or more, or
- LA determines that the partner has left the household and will not be returning

### ***Polygamous marriages***

1.41 For a polygamous marriage to be recognised for HB/CTB purposes, the regulations state

- there must have been a marriage ceremony in a country which permits polygamy, and
- the marriage must be between the claimant and more than one partner of the opposite sex, the relationship with each partner being that of a married couple

1.42 Any polygamous relationship formed in this country is excluded. In these circumstances, treat a second or subsequent partner as a non-dependant.

*HB Reg 2; CTB Reg 2*

1.43 If you are satisfied that a valid marriage took place in a country where polygamy is permitted, for HB and CTB purposes, the claimant's family will consist of

- the claimant
- any person to whom the claimant is married and who usually lives in the same household, and
- any child or young person who usually lives in the claimant's household and for whom they or any partner is responsible

***Circumstances when partners of a polygamous marriage should not be treated as members of the same household***

- 1.44 In a polygamous marriage, if the claimant is absent from home for 52 weeks, or you consider that they are likely to be absent for a period in excess of 52 weeks unless there are exceptional circumstances, eg the person is in hospital, and the absence is unlikely to substantially exceed 52 weeks, do not treat them as a member of the household.
- 1.45 If a partner in a polygamous marriage is absent from home, the usual rules apply, treat the claimant and remaining partner(s) as members of the same household.

1.46-1.59

***Children and young persons***

***Definition of child***

- 1.60 A child is defined in the SSCBA as a person under the age of 16 years.  
*S.137 SSCBA; HB Reg 19; CTB Reg 9*

***Definition of qualifying young person***

- 1.61 A qualifying young person (QYP) is a
- person aged 16 years, from the date they reach 16 until and including 31 August following that date
  - person aged 16 years or over who is following a course of full time normal advance education (FTNAE) that is not provided by way of employment or office they hold
  - person aged 16 years or over who is undertaking approved training that is not provided through a contract of employment, or
  - 16/17 during the Child Benefit (ChB) extension period providing they meet the requirements
- 1.62 ChB is payable for QYPs who turned 19 after 10 April 2006 who have not completed their FTNAE or approved training provided they commenced their course before attaining age 19. It remains payable until the end of the QYPs course or their 20<sup>th</sup> birthday, whichever occurs earliest.

For further information, see *Relevant education* later in this chapter.

1.63-1.68

1.63 There are two criteria to be met before you can treat a child or young person as a member of the claimant's family. These are

- 1 the claimant or claimant's partner must be responsible for the child or young person, **and**
- 2 the child or young person must be a member of the same household as the claimant. This can include a temporary absence from home.

*HB Reg 20; CTB Reg 10*

### *Young person is relevant care-leaver*

1.64 Care-leavers are fully supported by their responsible LA which will provide them with maintenance and accommodation until they reach their 18th birthday, in

- England and Wales, from 1 October 2001
- Scotland from 1 April 2004

*HB Sch 5 Paras 25-28; CTB Sch 4 Paras 26-29; HB/CTB Sch 6 Para 28*

1.65 If a relevant care-leaver is living in the claimant's household

- disregard any financial support the care-leaver receives

*HB Reg 19; CTB Reg 9*

- do not include the care leaver in the claimant's applicable amount, see *BW3* or *BP3 Applicable amounts*, earlier in this manual

### *Young person entitled to IS/JSA(IB)/ESA(IR) in own right*

1.66 A young person who receives Income Support (IS), income-based Jobseeker's Allowance (JSA(IB)) or income-related Employment and Support Allowance (ESA(IR)) in their own right is excluded from the definition of young person.

1.67 A young person under the age of 18 years is entitled to IS or JSA(IB) only in certain circumstances. These are

- those not required to be available for work. This includes lone parents, disabled people who are incapable of work and certain people in relevant education
- couples with a child. **Remember:** One of the couple is usually required to be available for work unless exempt
- a person who is required to be available for work and is registered for a job or Youth Training, but who has no parent or guardian and has good reason for living away from home
- a person who is the subject of a direction from the Secretary of State that JSA(IB) should be paid to avoid severe hardship

*HB Reg 19; CTB Reg 9*

1.68 A young person under the age of 18 years is entitled to ESA(IR) if they are receiving education and entitled to Disability Living Allowance (DLA).

### ***Young person starts to receive SDA***

- 1.69 ChB stops when a disabled young person starts receiving Severe Disablement Allowance (SDA). Continue to treat a young person receiving SDA as a member of the claimant's family as long as they are
- under the age of 20 years, **and**
  - following a course of relevant education, **and**
  - not receiving IS in their own right

### ***Child/young person with a dependant of their own***

- 1.70 If a child/young person has a dependant of their own, you should decide in each case whether they should be treated as members of the claimant's family.
- 1.71 If the young person claims and receives IS for themselves and their child in their own right, which they may do even though continuing in full-time education, do **not** treat them as members of the claimant's family.
- 1.72 If the young person does not claim IS, or is a child and therefore too young to be entitled to IS, consider whether the
- child/young person and their dependant usually lives with the claimant, and
  - claimant is responsible for the child/young person and their dependant
- See *Deciding who the child/young person usually lives with* later in this chapter.
- 1.73 If these two criteria are met, treat the child/young person and their dependant as members of the claimant's family.

### ***Relevant education***

- 1.74 Relevant education means full-time, non-advanced education at a school, college or comparable establishment, or elsewhere if recognised by the Secretary of State. The course which the young person is following must
- be considered to be full-time for ChB purposes, that is the course must include over 12 hours of supervised study each week
  - be undertaken at a recognised educational establishment, or elsewhere if the education is recognised by the Secretary of State, and
  - not involve study above A level standard or equivalent
- 1.75 In some cases you can treat a child/young person as a dependant while they are taking a course of study at home. In these circumstances, you must be satisfied that the education has been recognised by the Secretary of State for ChB purposes. If ChB is in payment for the child or young person treat this as recognition.

1.76-1.80

### 1.76 Remember

- it is the course which determines the level of education and not the status of the establishment. For example, a young person may follow a course of non-advanced education at a place of further education which also offers degree courses
- treat all studies at a university as above A level standard
- do not regard holidays or periods of absence through sickness as interrupting relevant education

### *Young person reaches their 20<sup>th</sup> birthday*

1.77 A young person stops being defined as a young person from the earlier of the following

- they reach age 20, or
- ChB stops being paid

### *Death of a child or young person*

1.78 The personal allowance and any related premium for a child or young person continue for up to eight weeks after the death of that child or young person. If, however, ChB ends earlier than this, eg the young person would have reached age 20 years before the end of the eight-week period, then the personal allowance and any related premium cease at the same time. The child or young person is still regarded as part of the family for this period.

*HB Reg 19; CTB Reg 9*

### *Young person leaves relevant education*

1.79 ChB is usually withdrawn when the child/young person leaves school and starts work, but authorities should note that **any** school leaver continues to be treated as a child under ChB legislation, and therefore should still be treated as a young person for HB purposes, until the terminal date.

### *Terminal dates*

1.80 From 10 April 2006, the terminal full time education end dates are the Monday following

- 31 August
- 30 November
- the last day in February
- 31 May

**Note:** Children in Scotland aged 16 between 1st and 30th September will continue to be entitled to ChB up to the Monday following 31 August in the following year as long as they satisfy the usual conditions.

*CHB(Gen) Regs, Reg 7*

- 1.81 So a summer-term school leaver is still a young person for HB/CTB purposes until the Monday following 31 August, even if they start a full-time job and ChB is withdrawn.
- 1.82 A young person, who on the day they left school or approved training, see *Approved training* later in this part, was entered for one or more examinations in connection with their school studies, is treated as a child up to the terminal date.

### ***Child Benefit extension period***

- 1.83 ChB can continue to be paid for a short time after the terminal date if the young person satisfies prescribed circumstances, see *The prescribed circumstances* below. If this is the case continue to treat the person as a young person.

*SS CB Act 92, sec 142*

### ***The prescribed circumstances***

- 1.84 The prescribed circumstances for a young person under age 18 and not receiving FTE are  
*CHB (Gen) Regs, reg 7D*

- that person is registered for work or training under Work Based Training with  
*Education Act 50, sec 114*
  - ES, or
  - the Ministry of Defence, or
  - in England and Wales, an LEA within the meaning of the relevant legislation, or
  - in Scotland, an education authority within the meaning of legislation, or  
*Education (Scotland) Act 80, sec 135*
  - any corresponding body in another member state, and  
*CHB (Gen) Regs, reg 7D*

- the person is not engaged in remunerative work, and
- the extension period which applies in the case of that person has not expired, and
- immediately before the extension period begins the person responsible for the person under age 18 is entitled to benefit, and
- the person responsible has made a written request for payment of benefit

1.85-1.89

### *The extension period*

1.85 From 10 April 2006, ChB can be continue to be paid for a period of up to 20 weeks from the date the 16/17 year old left education or their training provided that

- the application is made within three months of the date they leave, and
- they register with the Connexions or Careers Service, and
- they are not in remunerative full time work during the 20 week period

#### **Examples**

QYP ceases FTNAE

<b>Training</b>	<b>Terminal date</b>	<b>ChB extension period ends</b>
9 June 2006	31 August 2006	30 October 2006
30 June 2006	31 August 2006	20 November 2006

### *Approved training*

1.86 Regulations made under the Act will extend CHB entitlement to include young people who are on specified unwaged vocational training (approved training) arranged by the Government as well as those in FTNAE.

1.87 Approved training, means, in relation to

- England, arrangements made by the Secretary of State, under the *Employment and Training Act 1973, section 2* for courses known as
  - Entry to Employment
  - Programme Led Pathways
- Wales, arrangements made by the Secretary of State under the *Employment and Training Act 1973, section 2* for courses known as
  - Skillbuild
  - Foundation Modern Apprenticeships
  - Skillbuild Plus
- Scotland, arrangements made by the Secretary of State under the *Employment and Training Act 1973, section 2*, Scottish Enterprise or Highlands and Islands Enterprise under the *Enterprise and New Towns (Scotland) Act 1990, section 2* for courses known as
  - Get Ready For Work
  - Skillseekers
  - Modern Apprenticeships

1.88-1.89

### ***Deciding who the child/young person usually lives with***

- 1.90 It is for the authority to decide on the merits of each case where a child or young person usually lives. In most cases this will be clear. Ignore any temporary absence from home, such as time spent away at school or on holiday.

*HB Reg 20; CTB Reg 10*

- 1.91 **Remember:** A child or young person can be the responsibility of only one person in any one benefit week.

### ***Person continues to be treated as responsible for child or young person***

- 1.92 A person shall be treated as responsible for a child or young person for up to eight weeks after the death of that child or young person, see *Death of a child or young person* earlier in this chapter. If there are no other children or young persons in the claimant's family, the Family Premium for the child or young person will continue for the same period as the personal allowance for the child or young person.

*HB Reg 20; CTB Reg 10*

### ***Doubt about who the child/young person lives with***

- 1.93 If there is doubt about who a child/young person lives with for the majority of the time, or if an equal amount of time is spent in different households, consider if the claimant or their partner receives ChB for the child/young person.

### ***Claimant or partner receives/has claimed ChB for the child/young person***

- 1.94 Treat the child/young person as a member of the claimant's family if the claimant or their partner

- receives ChB for the child/young person, or
- has claimed ChB for the child/young person

*HB Reg 20; CTB Reg 10*

### ***More than one person has claimed ChB for the child/young person***

- 1.95 If more than one person has claimed ChB, treat the child/young person as living with the person determined by the LA as having primary responsibility for them. You should bear in mind the need to reconsider any decision in the light of any subsequent award of ChB.

1.96-1.120

*No one has claimed ChB for the child/young person*

1.96 If no one has claimed ChB for the child/young person, the LA must determine the person who has primary responsibility for them.

*Claimant or partner has adopted/custody of a child*

1.97 Treat a child as a member of the claimant's family if

- the claimant and/or their partner has
  - legally adopted the child, or
  - legal custody of the child, **and**
- the child usually lives with the claimant, see *Deciding who the child/young person usually lives with* earlier in this chapter

*HB Reg 21; CTB Reg 11*

1.98-1.109

*Child/young person awaiting adoption*

1.110 Do **not** treat as a member of the claimant's family any child/young person

*HB Reg 21; CTB Reg 11*

- boarded out before adoption, or
- placed for adoption

1.111 Such a child/young person may be considered for an award from the Social Fund.

1.112-1.119

*Child/young person in LA care*

1.120 Do not treat a child/young person in LA care who is not living with the claimant as a member of the claimant's family. If the child/young person returns to live in the claimant's home, but is still under the LA's supervision, treat them as part of the claimant's family, see *Child/young person who does not usually live with claimant returns for short period* later in this chapter.

*HB Reg 21; CTB Reg 11*

### *Children (Leaving Care) Act - England and Wales*

- 1.121 As a result of the Children (Leaving Care) Act 2000, introduced in England and Wales in October 2001, a child ceases to be a relevant care leaver if they have, for a period of at least six months, been in a family placement. The placement must be with a
- parent or person with parental responsibility, or
  - person who had a residence order in respect of the child **before** they went into care
- 1.122 If a family placement breaks down before the child reaches 18 years of age, the child becomes a relevant care leaver again. In Wales, this only came into effect from 1 August 2001.

### *Children (Leaving Care) Act - Scotland*

- 1.123 From 1 April 2004, relevant care leavers in Scotland who fall under the Scottish equivalent of the provisions in the Children Leaving Care Act 2000 will be known as compulsorily supported persons. They will be fully supported by their responsible LA, who will provide them with maintenance and accommodation until they reach the age of 18.
- 1.124 Care leavers in these circumstances who are living at home will not generally receive regular financial support from LAs, apart from some exceptions.
- 1.125 Care leavers, defined below, will
- lose their potential entitlement to
    - HB
    - IS, JSA(IB) or ESA(IR) unless they are lone parents, or sick, or disabled persons
  - retain potential entitlement to other social security benefits, including contribution-based JSA
- 1.126 Care leavers in Scotland will be financially supported by LAs and not eligible for HB if they
- are aged less than 18 years of age and at the time they left school or at any subsequent time since, were looked after by an LA
  - since reaching the age of 14, have been looked after and accommodated for a period or periods totalling 13 weeks or more
  - ceased to be looked after by an LA on or after 1 April 2004, and
  - are
    - not living with their family, or
    - are living with their family and receiving regular financial assistance from an LA

**Note:** The 13-week care period can be made up of a single period or two or more periods that have been aggregated. In calculating the 13-week period above, do not take account of any pre-planned series of short-term placements of four weeks or less when the person returns to their family at the end of each placement.

1.127-1.150

1.127 Before 1 April 2004, in Scotland, any

- relevant care leaver who leaves England and Wales and moves to Scotland, other than as part of a move planned by their responsible LA, will be entitled to HB, IS or JSA(IB)
- 16/17 year old child leaving care in Scotland will retain their potential entitlement to HB, IS or JSA(IB) whether they are in Scotland, England or Wales

1.128-1.129

### *Foster children*

1.130 Do not treat a child/young person living with a claimant under a formal fostering arrangement as a member of the claimant's family.

*HB Reg 21; CTB Reg 11*

1.131-1.139

### *Child/young person attending residential or boarding school*

1.140 A child/young person who lives with the claimant except during term-time, and who remains the responsibility of the claimant except for day-to-day matters while they are at residential/boarding school, should be

- regarded as only temporarily absent from home, and
- treated as a member of the claimant's family

1.141-1.149

### *Child/young person who does not usually live with claimant returns for short period*

1.150 A child or young person who returns to live with the claimant for all or part of a benefit week, should be treated as a member of the claimant's family for that period, provided

- the child or young person
  - does not usually live with the claimant, **and**
  - is legally adopted, **or**
  - the claimant or their partner has legal custody of them, see *Claimant or partner has adopted/custody of a child* earlier in this chapter, **and**
- it is reasonable to treat them as living in the claimant's family

*HB Reg 21; CTB Reg 11*

- 1.151 In deciding what is reasonable, take into account
- the reasons for the visit, and
  - how often the child/young person comes to stay
- 1.152 An occasional visit for one or two days would not qualify, but it may be reasonable to count frequent visits, for example every weekend. There may be other examples, each case must be decided on the facts of the particular case.
- 1.153 It is not expected that this power would be used very often. It may be applicable, for instance, when a child in LA care or who is usually fostered elsewhere, returns to their parents for short periods to retain contact with them.

1.154-1.169

## *Deciding who is a non-dependant*

### *Definition of a non-dependant*

- 1.170 A non-dependant is a person who

Reg 3

- resides with the claimant, **and**
- is not a
  - partner
  - dependent child of the claimant and/or their partner, or
  - person covered by any of the circumstances in *People who are not to be treated as non dependants* later in this chapter

1.171-1.179

### *Deciding who usually resides with the claimant*

- 1.180 'Resides with' is defined for HB/CTB purposes as sharing accommodation, unless the only shared accommodation is a bathroom, lavatory or communal area. A communal area is defined as areas of common access, including halls and passageways, and rooms of common use in sheltered accommodation.
- 1.181 This means that identifying who resides with the claimant is an important factor in deciding who, within a particular building, may affect the claimant's benefit. A person who is regarded as residing with the claimant is treated as a non-dependant.

1.182-1.185

1.182 Treat as a non-dependant

- a child who has left school, and who has ceased to be a dependant
- a parent or another adult relative who usually lives with the claimant

*HB Reg 3 & Sch 1 para 8*

- any other adult who usually lives with the claimant, for example a friend, unless they come into any other category, see *People who are not to be treated as non-dependant* later in this chapter

1.183 Non-dependant members of a claimant's household cannot usually receive HB/CTB themselves. They are excluded from benefit because they do not have any formal liability for housing costs.

*HB Reg 3*

1.184 People who are **treated** as if they are not liable to pay housing costs, for example because payments are to a close relative, or not on a commercial basis, are also non-dependants, see *A3 Claimant's who are liable but are treated as if they are not* earlier in this manual.

### ***People who are not to be treated as non-dependants***

1.185 **Do not** treat the following people as a non-dependant for HB/CTB purposes

*HB Reg 3*

- any member of the claimant's family. **Remember:** A young person who has left school but has not reached the ChB terminal date will not become a non-dependant until after the terminal date, even if they start work
- their partner if the claimant is in a civil partnership or living together with their partner as if they are civil partners
- if the claimant is polygamously married, any of their partners or any child or young person who is a member of their household and for whom the claimant or one of the partners is responsible
- a child or young person who is living with the claimant but who is not a member of their household, for example a foster child
- a joint occupier of the accommodation or a sub-tenant of a tenant or a tenant of an owner-occupier. However, if the LA decides, having applied the contrived tenancy criteria as described in *A3 Specific* cases earlier in this manual, that the joint occupier or sub-tenant would not be eligible for HB in their own right, treat them as a non-dependant instead

continued

- (1.185)
- any person, or member of that person's household, who is either making or receiving payments on a commercial basis to or from the claimant or the claimant's partner in respect of their living in the claimant's home. This does not include close relatives or people to whom the contrived tenancy rules apply, but would include, for example boarders, sub-tenants and au pairs, provided you are satisfied that a genuine commercial arrangement exists
  - a person who lives with the claimant in order to care for them or their partner, and who is employed by a charitable or voluntary body (other than a public or local authority) that charges the claimant for the services provided

See *A5 Non-dependant deductions not due* earlier in this manual for people who are not counted as non-dependants for CTB.

1.186-1.199

## ***Boarders, tenants and sub-tenants***

### ***Boarders***

- 1.200 Boarders are
- people who are liable to pay the claimant for their accommodation and the payment includes an amount for cooked or prepared meals. This means there is a commercial arrangement between the claimant and the person concerned
  - entitled to claim HB in their own right. They can only claim for the rent element of their payments. They cannot claim CTB
- 1.201 **Remember:** A grown-up child who simply contributes to the living expenses of the household should not be regarded as a boarder.
- 1.202 Take income from a boarder into account when assessing the claimant's resources, see *BW2* or *BP2 Income from a boarder* earlier in this manual.

### ***Tenants and sub-tenants***

- 1.203 A tenant or sub-tenant is a person who is contractually liable to pay the claimant for the right to occupy part of the claimant's home, but who is not a
- member of the claimant's family
  - non-dependant
  - boarder, or
  - joint tenant/owner

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1.204-1.999

- 1.204 A tenant is someone who pays rent to the owner of the property. A sub-tenant is someone who pays rent to a tenant. These terms are used to refer to anyone living with the claimant who is not a non-dependant, whether or not a formal sub-tenancy or tenancy exists. See *People who are not to be treated as a non-dependant* earlier in this chapter.
- 1.205 Income from a tenant or sub-tenant is taken into account when assessing the claimant's resources, see *BW2* or *BP2 Income from sub-tenants* earlier in this manual.
- 1.206 Tenants and sub-tenants are eligible for HB in their own right unless the LA decides that the tenancy has been contrived to take advantage of the HB Scheme, see *A3 Specific cases* earlier in this manual.

1.207-1.999

## *Living together as husband and wife or as civil partners – decisions relating to unmarried couples*

- A1.00 This annex gives guidance on making the decision that two individuals share the same household and should be treated as a couple because they are living together as husband and wife or as civil partners (LTAHAW/CP).
- A1.01 It is important to remember that the living together rule does not involve any question of moral judgement nor is it intended to penalise anybody. Its purpose is simply to treat unmarried couples in the same way as married couples and same sex couples who do not form civil partnership in the same way as those who are civil partners.
- A1.02 There is no single factor on which the LTAHAW/CP decision can be based. It has to be made on the relationship of the couple as a whole. When deciding whether two people are LTAHAW/CP, use your knowledge and experience to apply legislation, including case law, to make a fair and reasoned decision based on the evidence of the individual circumstances of a case. The following 'admirable signposts' as outlined in a Social Security Commissioner's decision, must also be taken into account
- existence of a shared household
  - stability of the relationship
  - financial arrangements
  - responsibility for children
  - sexual relationship
  - public recognition of the relationship
- A1.03 In addition, it is important to consider the
- changing nature of modern-day relationships
  - whole picture of the customer's relationship with the other person
- A1.04 People may share accommodation for a number of reasons, for example
- for economic reasons, because of the high and rising cost of accommodation
  - following the breakdown of a relationship
  - continuing an earlier arrangement, for example ex-students continuing to share accommodation after their course has ended
  - for companionship
  - as carers
  - for safety and security reasons

This list is not exhaustive.

### ***Identifying a potential LTAHAW/CP situation***

- A1.05 Potential LTAHAW/CP may be identified
- on a new claim when there is another person aged 16 or over living in the same household as the customer, who is not their partner or a member of their immediate family
  - when the customer reports a change of circumstances. If the customer begins sharing accommodation with another person aged 16 or over who is not a member of their immediate family, LTAHAW/CP should be considered

### ***When LTAHAW/CP is not considered***

- A1.06 Potential LTAHAW/CP cannot be considered if the
- only other people in the household are married to each other, civil partners of each other, or living together as if they are married or civil partners
  - customer is within a prohibited degree of relationship for marriage or civil partnership with the other person, see *Prohibited Degrees* later in this Annex

### ***Gathering LTAHAW/CP information***

- A1.07 LTAHAW/CP information gathering should take place as early as possible in the new claim or change of circumstances process, starting with asking a series of filter questions.
- A1.08 Asking these questions enables the filtering out of cases when it is unlikely a LTAHAW/CP situation exists, to concentrate LTAHAW/CP interviews on cases when there is a likelihood that a customer is LTAHAW/CP with someone who lives at the same address.
- A1.09 Filtering out a case means it will not be referred for a LTAHAW/CP intervention.

A1.10 Before asking the following questions, if more than one person shares accommodation with the customer, identify which members of the household cannot be considered to be LTAHAW/CP with the customer as you do not need the following information about them. The questions are

Q1 What is the relationship between you and this person?

Q2 What date did you start sharing this accommodation with this person?

Q3 Why did you start sharing the accommodation with this person?

Q4 How long do you expect this to continue?

Q4a Why do you think this?

Q5 About your accommodation

Q5a What sort of accommodation do you live in?

Q5b How many rooms are there in your accommodation?

Q5c Which of these rooms do you share?

**Note:** Each question is explained below, with details of what information needs to be gathered. You may already have some of this information through the normal HB/CTB claims process.

**Q1 What is the relationship between you and this person?**

The exact relationship between the customer and the person they share accommodation with is required. This may be a family relationship or flat/housemate, landlord/tenant, etc.

**Q2 What date did you start sharing this accommodation with this person?**

How long ago did the customer begin sharing the accommodation with the other person? If the customer does not know an exact date, approximate months or years will be sufficient.

The date they began sharing is important because it can indicate the stability of the arrangement. Has it started recently? Has it been ongoing for some time? Have they shared accommodation before?

**Q3 Why did you start sharing accommodation with this person?**

It is important to capture the reasons the customer started sharing. If they are a boarder/tenant or landlord of the person it is important you establish if there is a formal arrangement in place.

Do they share accommodation with a friend for financial convenience? Is there a formal landlord/tenant relationship, etc? This is a major factor when considering if the customer and the other person are LTAHAW/CP.

### Annex A

#### (A1.10) Q4 How long do you expect this to continue?

The customer may not know an exact duration or date. Answers may include 'forever' or 'indefinitely'. If the customer does not know how long, ask if either person has plans to find alternative accommodation.

This helps to determine the stability of the relationship and to identify any long-term plans. Long-term plans will indicate a stable relationship with a level of commitment whilst a short-term arrangement may indicate they are not LTAHAW/CP.

#### Q4a Why do you think this?

It may be that the customer or the person who lives with them has plans to move out or end the arrangement. If this so, note these plans. If the customer says they plan to live together forever or indefinitely, ask why they think this.

The response to this question could provide information that clearly shows the situation is temporary and removes any doubt. It also gives further indication about the stability of the relationship and the reasons they stay together.

#### Q5 About your accommodation

##### Q5a What sort of accommodation do you live in?

##### Q5b How many rooms are there in your accommodation?

##### Q5c Which of these rooms do you share?

This set of questions tells us about the type/size of the property, how many rooms it has and which rooms are shared. The accommodation could be separated into distinct areas that are used independently. This could indicate that the relationship is **not** LTAHAW/CP.

### *Further action*

- A1.11 Taking account of the customer's responses to these questions and any other information available, filter out cases when
- a LTAHAW/CP situation is **unlikely**
  - there is **little likelihood** of collecting any further evidence during a LTAHAW/CP intervention
- A1.12 If there is still doubt that the customer may be LTAHAW/CP, pass the case for a LTAHAW/CP interview as usual.

## *Prohibited Degrees*

A1.13	<b>A man cannot marry his</b>	<b>A woman cannot marry her</b>
1	mother	1 father
2	adoptive mother	2 adopted father
3	former adoptive mother	3 former adoptive father
4	daughter	4 son
5	adoptive daughter	5 adoptive son
6	former adoptive daughter	6 former adoptive son
7	grandmother	7 grandfather
8	granddaughter	8 grandson
9	sister	9 brother
10	aunt	10 uncle
11	niece	11 nephew
12	stepdaughter	12 stepson
13	stepmother	13 stepfather
14	stepgrandmother	14 stepgrandfather
15	stepgranddaughter	15 stepgrandson
16	mother-in-law	16 father-in-law
17	daughter-in-law	17 son-in-law

For the people listed in **1 - 11**, the bar to marriage is absolute.

For the people listed in **12 - 15**, they can marry if both are aged 21 or over at the time of the marriage and the younger person was never a child in the older person's family up to the age of 18.

A man can marry his mother-in-law if they are both aged 21 or over and the man's wife and the mother-in-law's husband are both dead.

A woman can marry her father-in-law if they are both aged 21 or over and the woman's husband and the father-in-law's wife are both dead.

A man can marry his daughter-in-law if they are both aged 21 or over and the man's wife and his son are both dead.

A woman can marry her son-in-law if they are both aged 21 or over and the woman's husband and her daughter are both dead.

When considering the above relationships remember a sister includes a half sister and brother includes half brother.

The daughter of a half brother or half sister is regarded as a niece as well as the daughter of a full brother or sister. And the half sister of a mother or father is regarded as an aunt as well as the full sister of a mother or father.

The son of a half brother or half sister is regarded as a nephew as well as the son of a full brother or sister. And the half brother of a mother or father is regarded as an uncle as well as the full brother of a mother or father.

### Annex A

A1.14 **Two people are not eligible to register as civil partners** if one falls within the list below in relation to each other

- 1 adoptive child
- 2 adoptive parent
- 3 child
- 4 former adoptive child
- 5 former adoptive parent
- 6 grandparent
- 7 grandchild
- 8 parent
- 9 parent's sibling
- 10 sibling
- 11 sibling's child
- 12 child of former civil partner
- 13 child of former spouse
- 14 former civil partner of grandparent
- 15 former civil partner of parent
- 16 former spouse of grandparent
- 17 former spouse of parent
- 18 grandchild of former civil partner
- 19 grandchild of former spouse

In the above list, 'sibling' means a brother, sister, half-brother or half-sister.

For the people mentioned in 1 - 11, the bar to registering as civil partners of each other is absolute.

For the people mentioned in 12 - 19, they can register as civil partners of each other if both parties are aged 21 or over at the time of the registration and the younger person was never a child in the older person's family up to the age of 18.

A person can register as the civil partner of

- their child's former civil partner if they are both aged 21 or over and the child and the child's other parent are both dead
- the former spouse of their child if they are both aged 21 or over and the child and the child's other parent are both dead
- a parent of their former civil partner if they are both aged 21 or over and the former civil partner and the former civil partner's other parent are both dead
- a parent of their former spouse if they are both aged 21 or over and the former spouse and the former spouse's other parent are both dead

### *The LTAHAW/CP interview*

- A1.15 The LTAHAW/CP interview builds a picture of the history, current situation and future plans, which is used to decide if the relationship is like that of a couple. Questions about the relationship between the two people who share accommodation should cover
- background
  - accommodation
  - financial arrangements
  - household arrangements
  - leisure time
  - shared responsibility for children
  - future plans
  - additional information
- A1.16 The aim is to establish the motives, circumstances and history behind the sharing of accommodation. Are the reasons similar to those of people LTAHAW/CP or are there other reasons? Try to establish the stability of the relationship, and if there have been any changes in the relationship, record these and the date(s) of change. An important factor is the initial motivation for living together.
- A1.17 During the interview, carefully consider the permanency of their arrangements, for example have they stayed together following a change of address? What is their perception of the likelihood of this arrangement continuing?
- A1.18 You may want to ask questions such as
- have they lived continuously in the same accommodation? If not, why did they live apart and when?
  - how did they meet?
  - has the relationship changed over time?
  - what arrangements have been made in case things do not work out?
  - why did they leave their previous address, and could they have gone elsewhere?
  - do they have friends/family in the area?
  - if one has moved in to be a carer, what caring duties are carried out?
  - is there an employer/employee relationship?

continued

### Annex A

- (A1.18)
- have they shared accommodation here/at any other address before, and if so
    - where and when?
    - what were the reasons for joining/leaving the accommodation?
  - does either of them own or rent another property? If so, what steps have they taken to give up the tenancy or sell the property?
  - if either of them has another address they regard as home, where is it and why don't live there?

### *Accommodation*

A1.19 The aim is to establish how the accommodation is used. The accommodation could be separated into distinct areas which are used independently, which may indicate the relationship is **not** LTAHAW/CP. If the areas are shared, consider factors, which may indicate a LTAHAW/CP relationship.

A1.20 You may want to ask questions such as

- who owns the accommodation?
- how did you find this accommodation?
- if there is no formal agreement in place, why not?
- where do you watch television, listen to music?
- what arrangements do you have for storing food, clothing, toiletries, personal belongings?
- who owns the furniture?
- has anything been bought jointly for the accommodation?

### *Financial arrangements*

A1.21 The aim is to establish the degree of financial dependency between the customer and the other person in the accommodation, and whether they are prepared to support each other on a long-term basis. People LTAHAW/CP may be more likely to be financially dependent on each other and have long-term financial commitments together, such as mortgages or other loans.

A1.22 You may want to ask questions such as

- what arrangements have you made for paying for accommodation and household bills?
- how is the household income shared or used?

continued

- (A1.22)
- do you pool your money? If so, is this all your income or only the money for a specific purpose such as shopping or bills?
  - do you have any joint bank accounts, credit accounts or loans? If so, what are they used for?
  - would one of you provide long-term financial support to the other if they had no income?
  - if there are no financial arrangements, why not?
  - have the financial arrangements always been the same or have they changed? If so, how and when?
  - how much does each person contribute to the bills, eg rent, fuel?
  - whose name is on the bills, eg utility bills?
  - do you expect the financial arrangements to change, and if so, how?

### *Household arrangements*

A1.23 The way household tasks are divided varies between relationships. Evidence of LTAHAW/CP may be found in the way these tasks are carried out, for example if they are done in a supportive manner or if there is shared responsibility for property maintenance (a possible indication of a stable, long-term relationship). The aim is to establish how household tasks are shared, but avoid obtaining a list of tasks.

A1.24 You may want to ask questions such as

- who maintains the property?
- how is housework divided up?
- who is responsible for shopping?
- who prepares meals? Do you eat together?
- who cleans any shared rooms?
- who does the laundry?
- who pays for household repairs?

### *Leisure time*

A1.25 The aim is to gather information about the way leisure time is shared and to establish whether the customer and the other person present themselves as a couple. This will provide further information to establish whether the relationship is equivalent to LTAHAW/CP.

### Annex A

- A1.26 You may want to ask questions such as
- how do you spend your time at home when you are both there?
  - do you go out together, just the two of you or as part of a group?
  - do you think friends, relatives and neighbours think of you as a couple?
  - do you watch television/videos/DVDs together?
  - do you go to each other's family celebrations?
  - do you entertain friends jointly?
  - do you have shared interests or hobbies?
  - are holidays taken together?
  - how have you shared leisure time in the past?

### *Dependent children*

- A1.27 If there are dependent children, the aim is to establish who are the children's parents and the extent to which the customer and the other person take parental responsibility for them.
- A1.28 Depending on the circumstances, your discussion might include
- do you take part in joint activities with the children?
  - does the other person take the children to and from school?
  - does the other person look after the children?

### *Future plans*

- A1.29 The aim is to establish whether the arrangement is temporary or permanent. Future plans will indicate the stability of the relationship. Do the plans show a level of stability and commitment like those of people LTAHAW/CP, and/or is this likely to develop?
- A1.30 You may want to ask questions such as
- what are your plans in the short, medium and long term?
  - if the arrangement is
    - temporary, what are you doing to find alternative accommodation?
    - longer term, why?
  - do you intend living in separate accommodation in the near future?
  - do you have any shared plans, such as marriage, civil partnership, or buying property together?

### *Additional information*

- A1.31 Include anything else the customer wants to add to their statement. Depending on the circumstances you may want to ask why they think they are not a couple.

### *After the interview*

- A1.32 After the interview, pass the customer statement and all relevant documents to the relevant person for a LTAHAW/CP decision.

### *LTAHAW/CP fraud cases*

- A1.33 It is an offence to make a false statement disguising the presence of a partner in the household. Social security legislation treats an unmarried couple who are LTAHAW/CP in the same way as a married couple or civil partnership couple.
- A1.34 A LTAHAW/CP case is considered fraudulent when the claimant makes no declaration, in any benefit claims, that they have a partner. If you can subsequently establish that a partner does live in the household, then a weekly benefit saving may be claimed.
- A1.35 A case is **not** considered fraudulent if they both state that they live in the same household but deny they live together. In these circumstances you do not have to establish that they are in the same household as this has already been admitted.
- A1.36 What has to be established is the circumstances under which they live. This is not considered fraud work and would not qualify for a weekly benefit saving.