

Chapter 11 - Living together as a married couple

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Chapter 11 - Living together as a married couple

Introduction

11001 The general principle in SS legislation is that couples, be they married or unmarried, should be treated in a similar way. The guidance in this Chapter is to help DMs determine whether two people who live together but are not

1. married to each other **or**
2. a civil partner of each other

are LTAMC.

11002 “Couple” means¹

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 LTAMC.

1 SS CB Act 92, s 137; IS (Gen) Regs, reg 2(1); SS (C&P) Regs, reg 2; SFCWP (Gen) Regs, reg 1(2); SFMFE (Gen) Regs, reg 3(1); SS (IW) (Gen) Regs, reg 2(1); JSA Regs, reg 1(3); SS (CMB) Regs, reg 1(2); SS CS (D&A) Regs, reg 1(3); SFWFP Regs, reg 1(2); SPC Regs, reg 1(2); ESA Regs, reg 2(1)

11003 From 5.12.05, same sex couples could form a civil partnership by registering as civil partners of each other¹. From 29.3.14, in England and Wales, same sex couples could get married².

1 CP Act 04; 2 Marr (SSC) Act 13

11004 From 10.12.14, in and England Wales, a civil partnership may be converted into a marriage¹. When this happens, the marriage is treated as subsisting from the date the civil partnership was formed². From 16.12.14, in Scotland, a civil partnership may be converted into a marriage³. Couples in Scotland also have the option to have a marriage ceremony. In either case, the marriage is treated as subsisting from the date the civil partnership was formed⁴.

1 Marr (SSC) Act 13, s 9; Marriage of Same Sex Couples (Conversion of Civil Partnership) Regulations 2014; 2 Marr (SSC) Act 13, s 9(6); 3 Marr & CP (Scot) Act 14; 4 Marr & CP (Scot) Act 14 (Commencement No. 3 Saving, Transitional Provisions and Revocation) Order 2014, art 3

DM’s consideration

11005 To decide whether the guidance in this chapter is relevant to the case before them, DMs must first consider the following

1. is the benefit one that is affected (See DMG 11021);

2. are the persons concerned members of the same household (See DMG 11051 et seq);
3. would a relationship between the persons concerned be illegal, prohibited, forbidden or a multiple relationship (See DMG 11081 et seq).

11006 If

1. the answer to DMG 11005 1. is 'no' **or**
2. the answer to DMG 11005 2. is 'no' **or**
3. the answer to DMG 11005 3. is 'yes'

then two people cannot be treated as LTAMC.

11007 - 11020

Benefits affected

11021 The benefits affected are

1. IS¹
2. WP² (but RP paid to a widow based on her late husband's contribution record is not affected by the LTAMC rules)
3. WMA³
4. BPT⁴
5. WPA⁵
6. BA⁶
7. JSA(IB)⁷
8. SPC⁸
9. ESA(IR)⁹.

In making decisions DMs need to be aware of the effect on HB and CTB.

Note: ADM Chapter E4 contains guidance on LTAMC for UC.

1 SS CB Act 92, s 124(1); 2 s 38(3); 3 s 37(4)(b); 4 s 36(2); 5 s 39A; 6 s 39B; 7 JS Act 95, s 3(1);

8 SPC Act 2002, s 5; 9 WR Act 07, Sch 1, para. 6(1)

11022 - 11050

Members of the same household

General

- 11051 Two people who are neither married to each other nor a civil partner of each other **must** be members of the same household if they are to be treated as LTAMC and thus a couple.
- 11052 Household is not defined in legislation. It should be given its normal everyday meaning. It is a domestic establishment containing the essentials of home life. Household and home are not the same¹. Household may refer to people held together by a particular kind of tie, even if temporarily separated².

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

Two people living in one dwelling

- 11053 To be members of the same household means that
1. they live in the same house, flat, apartment, caravan or other dwelling place and neither normally lives in another household **and**
 2. they both live there regularly, apart from absences necessary for employment, to visit relatives, etc.
- 11054 However, examples of two people living in one dwelling but not necessarily living together in the same household include
1. lodgers or students who necessarily share a single gas/electricity supply etc and who may have an arrangement to share costs for items such as food and cleaning materials **or**
 2. two people who are married to each other or who are civil partners of each other who separate but refuse to leave the home.

Common factors associated with the existence of a household

- 11055 The DM must consider all the circumstances of a case in deciding whether two people are members of the same household. In addition to DMG 11053, there are other factors commonly associated with a household which should be explored. These factors have been identified in cases dealing with whether married couples, who claim to be estranged, are still living in the same household, but they may also indicate the existence of a shared household occupied by an unmarried couple. The DM should consider evidence relating to the following when making a finding as to whether a household exists
1. the circumstances in which the two people came to be living in the same house;

2. the arrangements for payment for the accommodation;
3. the arrangements for the storage and cooking of food;
4. the eating arrangements (whether separate or not);
5. the domestic arrangements such as cooking, cleaning, gardening and minor household maintenance;
6. the financial arrangements (who pays which bills? Is there a joint account? whose name is shown on utility bills?);
7. evidence of family life.

Other considerations

11056 The fact that two people, who are not married to each other, are members of the same household does not necessarily mean that they are LTAMC and so a couple. A relationship may resemble LTAMC but consideration of its origins may show it to be something quite different. Additionally, DMs should consider

1. the facts and circumstances that exist while the two people are living together¹
and
2. what their future plans are.

1 R(G) 1/79

Such a relationship may not be classed as LTAMC¹, for example, the need for care or support is the main reason that the two people are living together. It is not only the reason that caused the parties to live together which is important, but the facts and circumstances that apply after they have done so (see DMG 11101 – DMG 11120 for further guidance).

1 R(SB) 35/85

Example

Louise had always lived with her mother, Carol. Andy was the son of Carol's oldest school friend, Maggie and was known to Louise since childhood. Andy had been injured in an accident some years ago and was confined to a wheelchair. Maggie was his carer. Carol went to live abroad and Louise remained in her mother's house alone. When Maggie died, Andy was faced with the need to find another carer. After talking over the situation, Louise agreed to become Andy's carer. As Louise and Andy lived 75 miles away from each other, it was decided that Louise would move into Andy's home which had been specially adapted for his needs. The agreement was that Louise would help Andy with dressing and cook his meals. Andy would pay Louise £100 per week for this but she would not be required to contribute to the cost of the rent. They maintained separate financial arrangements and the LA provided assistance to Andy with cleaning, gardening and household maintenance. Louise would take 3 weeks off during the year to visit her mother, whilst Andy remained at

home. Louise and Andy did not socialise together. The DM decided that Louise and Andy were living in a shared household but were not LTAMC and therefore, not a couple.

Two people owning or renting other accommodation

11057 Even if one or both people own or rent other accommodation, they can still be thought of as members of the same household, particularly where other accommodation is seldom used.

DMs should consider

1. the nature and ownership or tenancy of the accommodation they are living together in **and**
2. the extent to which rooms and facilities are shared **and**
3. the ownership of furniture.

A person cannot be a member of more than one household at the same time. So a person cannot be a member of more than one couple at the same time¹.

1 R(SB) 8/85

11058 - 11080

Illegal relationships, prohibited or forbidden degrees of relationship and multiple relationships

Illegal relationships

- 11081 DMs should not determine that two people are LTAMC if sexual intercourse between them, whether it actually takes place or not, would involve committing a criminal offence such as incest or sexual intercourse with an underage person. For example, DMs should not determine that a man is LTAMC with a 15 year old girl or LTAMC with a man he knows to be his brother.

Prohibited or forbidden degrees of relationship

- 11082 People living together within the prohibited or forbidden degrees of relationship for marriage should be treated as not LTAMC. A list of the prohibited degrees is included at Appendix 1 to this Chapter. This list also applies to civil partnerships.

Multiple relationships

- 11083 Where an unmarried person lives with a married couple, that person cannot be LTAMC because a marriage is between two people. Similarly a person who lives with a couple who are civil partners cannot be LTAMC with either of them.
- 11084 The law does not recognize multiple relationships as it does polygamous marriages. Where the term is used in this guide it means a situation where someone has a relationship similar to marriage with more than one person, but is not married to any of them. When considering whether two people are LTAMC their relationship is compared with that of a married couple. Caselaw describes the elements that feature in a marriage (see DMG 11104). One of these is exclusivity i.e. monogamy. Where the claimant has a multiple relationship they cannot be LTAMC with any of the other members of that relationship. Members of a multiple relationship are treated as single claimants or, if appropriate, lone parents.

Example 1

Alan, Bronwyn and Carol live in the same household but are not married to each other. Alan claims JSA(IB) and states that he is in a multiple relationship with both Bronwyn and Carol. He is treated as a single claimant. Bronwyn and Carol are also treated as single.

Example 2

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

Example 3

Andrew, Brian and Christopher live in the same household. Andrew is the civil partner of Brian but in his claim for JSA(IB) states that he is also in a relationship with Christopher. Andrew is treated as a member of a couple with Brian. Christopher is treated as single.

Example 4

Andrew, Brian and Christopher live in the same household. Andrew is married to Brian but in his claim for JSA(IB) states that he is also in a relationship with Christopher. Andrew is treated as a member of a couple with Brian. Christopher is treated as single.

11085 - 11100

Meaning of living together as a married couple

General

11101 The term LTAMC is not defined in legislation. It is for DMs to determine whether the whole relationship of two people who are not married to each other, is comparable to that of a couple who are married to each other¹.

1 R(G) 3/71

11102 If two people are members of the same household and their relationship would not be illegal, prohibited, forbidden or a multiple relationship, DMs should consider the guidance in DMG 11103 to DMG 11120 to determine whether they are LTAMC.

11103 To be treated as LTAMC the relationship has to be the same as that of a married couple. Marriage is where two people join together with the intention of sharing the rest of their lives. There is no single template of what the relationship of a married couple is. It is a stable partnership, not just based on economic dependency but also an emotional relationship of lifetime commitment rather than one of convenience, friendship, companionship or the living together of lovers. If the evidence does not suggest that it is more likely than not that the relationship between two people has the particular emotional quality that characterizes a married couple's partnership, the DM should find that they are not LTAMC.

11104 All factors of their relationship have to be considered. The significance of each factor can only be determined in the context of all of the factors with none being decisive. There is more to the determination than the cold, observable facts. The characteristics of the relationship of husband and wife may include¹

- mutual love
- faithfulness
- public acknowledgement
- sexual relations
- shared surname
- children
- endurance
- stability
- interdependence
- devotion.

1 Fitzpatrick v Sterling Housing Association

11105 Not all of the characteristics in DMG 11104 need be present and a couple may be treated as LTAMC even though the relationship is unsatisfactory or unhappy.

11106 DMs should consider

1. the sexual relationship of the two people¹ **and**
2. the relationship of the two people concerning money² **and**
3. the general relationship of the two people³.

1 R(G) 3/71; R(SB) 17/81; 2 R(G) 3/71; R(SB) 17/81; 3 R(G) 3/71

11107 In considering the points in DMG 11104 and DMG 11106 DMs should be aware that

1. no single point can decide the question of LTAMC¹. It is essential to have as much information as possible on all the points and consider the totality of the evidence²;
2. where they are looking at a past period, the information gathered should relate to the whole period in question;
3. a determination on whether two people are LTAMC must be based on the evidence available;
4. they should obtain further evidence if living together is reported, to determine if two people are LTAMC;
5. they can accept a signed statement or letter from the claimant saying that they are LTAMC, as voluntary evidence of LTAMC;
6. they must obtain further evidence to determine when LTAMC began if a disclosure of LTAMC is given after co-residence has begun and the statement or letter does not cover the whole period of co-residence.

1 R(G) 1/71; 2 [2017] AACR 10

Sexual Orientation and Sexual Relationship

11108 A sexual relationship, and sexual orientation, are factors to consider in determining whether two people are LTAMC, but they are not determinative of LTAMC. Evidence of a sexual relationship, or sexual orientation, does not, on its own, mean that two people should, or should not, be thought of as LTAMC. Similarly two people may be LTAMC¹ without having a sexual relationship, or if they have different sexual orientation². However, if two people have **never** had a sexual relationship, that is often strong evidence that they are not LTAMC.

1 R(G) 2/72; R(G) 3/81; R(SB) 17/81; 2 [2017] AACR 10

The relationship of two people concerning money

11109 In most marriages it would be reasonable to expect financial support of one partner by the other, or the sharing of household costs. DMs should consider the following questions

1. Is one person supported by the other?
2. How is the household income shared or used?

3. Are their resources pooled in a common fund? Is this all their income or only the money, for example, shopping or bills?
4. Is one person bearing the major share of the household expenses, for example mortgage, rent, gas, electricity? Whose name is on the bills?
5. Is there a joint purchase of the property or other mortgage arrangements?
6. Have these financial arrangements always been the same or have they changed? If so how and when?
7. If there are no financial arrangements why not?

If any of the above applies over the long term, it could be an indication of LTAMC. However, two people may be LTAMC even if they keep their finances completely separate. The relationship of two people concerning money has to be looked at in the context of the whole relationship.

- 11110 DMs should find out about payments made for accommodation or board and lodging arrangements. For example, a person may claim to be a lodger but the amount paid may be unrealistic¹. A person who pays less than would be expected under a true commercial board and lodge arrangement should not be regarded as a lodger. Such an arrangement is more like that of a married couple.

1 R(G) 3/71

General relationship

- 11111 The DM should consider why the two people became members of the same household (see DMG 11055), how they share their lives now and their future plans. The stability of the relationship, children and public acknowledgement can help to indicate what their general relationship is particularly in respect of how they share their lives now. Other evidence may include the existence of a degree of mutual interdependence, of the sharing of lives, of caring and love and of commitment and support. Other important factors include a readiness to support each other emotionally and financially, to care for and look after each other in times of need and to provide a companionship in which mutual interests and activities are shared and enjoyed together.

Stability

- 11112 Because marriage is entered into as a stable relationship, DMs should consider the stability of the relationship when determining whether two people are LTAMC.
- 11113 Important signs of the relationship's stability include
1. the way in which two people spend their time together **and**
 2. the way that this has changed while they have been together.

11114 A couple usually do certain activities together or for one another, such as those listed below. DMs could consider two people as LTAMC, if they do these activities together or for one another, however it may not be conclusive.

1. providing meals and shopping;
2. cleaning and laundry;
3. caring for the members of the household during sickness;
4. decorating;
5. gardening;
6. caring for children.

This list is not complete. DMs should also consider the way in which two people spend their leisure time and whether they take their holidays together.

11115 A statement from the two people that they want to marry or register as civil partners can be regarded as proof of a stable relationship. Two people may be LTAMC¹ when they have no intention to marry.

1 R(SB) 17/81

11116 It is for DMs to determine at what point a relationship should be regarded as LTAMC. The length of time two people have been together is not proof of the stability of a relationship. There is no specified time limit in determining the stability of the relationship and DMs should consider the following questions

1. is there strong evidence that they have been LTAMC from the time they began living together, that would enable DMs to determine that LTAMC existed from the outset?
2. are they living together as a temporary arrangement without commitment on either side? If so, DMs might determine they are not LTAMC
3. to what extent do they both take responsibility for the activities listed at DMG 11114? Where there is doubt about the stability, DMs might determine two people were not LTAMC.

11117 DMs should not assume a stable relationship exists just because two people have been LTAMC on a previous occasion.

Children

11118 When two people are caring for a child they have had together, there is strong evidence that they are LTAMC. DMs can also consider

1. a man acting as father to a woman's children **or**
2. the woman acting as mother to the man's children **or**
3. one of two people of the same sex caring for the other person's children **or**

4. two people of the same sex caring for a child(ren) under a court order that gives them parental responsibility

as evidence that they are LTAMC.

Public acknowledgement

11119 If two people have presented themselves openly and unequivocally to others as spouses, this is an indication that they are LTAMC. Examples of where such representation could be made are

1. on the electoral register;
2. in claiming benefits;
3. in obtaining accommodation;
4. if their friends and neighbours accept them as a married couple or civil partners and that the relationship is one of permanent intent;
5. if one person has assumed the other person's surname.

Future plans

11120 Marriage or civil partnership is where two people join together with the intention of sharing the rest of their lives. When considering whether two people are LTAMC their plans for the future can provide important evidence. For example, two friends sharing accommodation will rarely have the intention to share accommodation for the rest of their lives but two people who are LTAMC would be expected to have the intention of sharing their lives together in the long term.

11121 - 11150

Looking again at living together determinations

Temporary absence of one party

11151 A couple should not automatically be regarded as having stopped LTAMC just because of the temporary absence of one of the parties. When DMs determine whether LTAMC¹ continues during a temporary absence, the reason for the absence is an important factor. Absences for the following reasons would not normally mean that the couple have stopped LTAMC

1. work;
2. a period as a hospital in-patient;
3. holiday;
4. a visit to a relative(s);
5. higher education².

1 R(G) 11/59; R(SB) 19/85; 2 R(SB) 30/83

Living together ceases

11152 LTAMC stops when there is a permanent separation of the couple. DMs should accept evidence that one of a couple has left permanently, unless there are reasons for doubt. In which case, more evidence will be needed.

11153 - 11180

Effects on benefits

WMA, WP and WPA

11181 WMA, WP and WPA are not payable if the person receiving the benefit is LTAMC¹.

1 SS CB Act 92, s 37(4), s 38(3), s 39A(5)

BPT and BA

11182 A BPT and BA cannot be paid if at the time of the spouse or civil partner's death the surviving spouse or civil partner was LTAMC¹.

1 SS CB Act 92, s 36(2); s 39B(5)

IS, JSA(IB), SPC and ESA(IR)

11183 A claim for IS, JSA(IB), SPC or ESA(IR) from a couple LTAMC

1. should be made by whichever partner the couple agree shall claim or, if they cannot decide, the Secretary of State will decide for them¹
2. will treat the income and capital of the couple as those of the claimant², **and** benefit is paid to the claimant for both members of the couple.

*1 SS (C&P) Regs, regs 4(3), (3B)(a), 4D(7) & 4(i);
2 SS CB Act 92, s 136(1); JS Act 95, s 13(2); SPC Act 02, s 5; WR Act 07, Sch 1, para 6(2)*

Change in determination

11184 A decision awarding benefit to a single person should be revised or superseded if it is later determined that they were, or are now, LTAMC (see DMG Chapter 03 for further guidance on revision and DMG Chapter 04 for further guidance on supersession).

Decision already given on another benefit

11185 Where it is known that a decision incorporating a determination on LTAMC may have been made on a claim for another benefit DMs should obtain the papers on that earlier claim, before giving a determination.

11186 DMs should consider

1. the facts of the current claim **and**
2. the points at DMG 11104 and DMG 11106

before determining whether two people are LTAMC.

11187 DMs should do this

1. even though a different determination may be made on the same set of facts as those in an earlier claim **and**
2. to ensure that the circumstances in which the determination is made show the burden of proof.

There would have to be a good reason for a DM to reach a different determination on LTAMC, based on the same facts. If the DM reaches a different determination it may be necessary to consider revision or supersession of the outcome decision on the other benefit.

11188 - 11999

Appendix 1

Prohibited or forbidden degrees for marriage/civil partnership (see DMG 11082)

A person cannot marry (or form a civil partnership with) their

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 marriage/civil partnership is absolute.

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

"Child of the family" in relation to another person, means a person who

1. has lived in the same household as that other person **and**
2. has been treated by that other person as a child of their family.

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