

# Department for Work and Pensions

DECISION MAKING AND APPEALS

## Decision Makers Guide

### Volume 13 Amendment 41 – Oct 2018

1. This letter provides details on Amendment 41; the changes have already been incorporated in to the Intranet and Internet versions of the DMG.
2. PDF amendment packages are also available. These can be printed with the amended pages being reproduced in full. Each page will contain the amendment number in the footer.

PDF amendment packages can be found on the **Intranet** at:

<http://intranet/1/lq/acileeds/guidance/decision%20makers%20guide/index.asp>

or on the **Internet** at the 'Amdt Packages' tab on the following link:

<http://www.dwp.gov.uk/publications/specialist-guides/decision-makers-guide/>

Note: When printing PDF packages set the print properties to Duplex/Long Edge in order to produce double sided prints.

3. Amendment 41 affects chapters 77 & 78. The changes:
  - to chapter 77 changes to the definition of care home in the SPC regs, updated cross reference to other chapters and to the definition of a young person.
  - chapter 78 removes references to withdrawn memo's and deletes out of date guidance on absence from GB.
4. If using a PDF amendment package remove the sheets as stated in the left hand column of the Remove and Insert table below and insert the new sheets as stated in the right hand column (note the record of amendments at the back of the Volume).

#### Remove

##### Chapter 77

Conts 78001 – 78154 (1 page)  
77001 – 77022 (3 pages)

##### Chapter 78

Conts 78724 – Apdx 8 (1 page)  
78345 – 78356 (1 page)  
78920 – 79939 (1 page)

#### Insert

##### Chapter 77

Conts 78001 – 78154 (1 page)  
77001 – 77022 (3 pages)

##### Chapter 78

Conts 78724 – Apdx 8 (**1 page**)  
78345 – 78356 (1 page)  
78920 – 79939 (1 page)



# Chapter 77 - Conditions of entitlement, membership of the household and normal amount payable

## Contents

### General

#### Introduction

Scope of this chapter .....77001

**Definitions**.....77004

Care home - England .....77005

Care home – Wales and Scotland .....77007

Claimant .....77009

Close relative.....77010

Couple .....77012

Independent hospital.....77013

Partner.....77014

Polygamous marriages .....77015

Spouse .....77016

Young person .....77017

Qualifying young person .....77018

    Approved training .....77023

    Interruptions .....77024

    Reasonable cause .....77027

Determining claims.....77028

### Conditions of entitlement

**Entitlement to State Pension Credit**.....77030

Being in Great Britain .....77031

Qualifying age .....	77032
Couple .....	77033
Guarantee credit .....	77041
Appropriate minimum guarantee.....	77042
Savings credit.....	77051
Savings credit in polygamous marriages .....	77052
Qualifying income and savings credit threshold .....	77053

## **Membership of the household**

<b>Introduction</b> .....	77100
Meaning of household.....	77102

### **General**

Who may be members of the claimant's household .....	77115
Members of a multiple relationship .....	77116
People treated as not being members of the household .....	77117
Exception .....	77122
Care homes, independent hospital .....	77128
Sheltered accommodation .....	77131

## **Normal amount payable**

<b>Calculation of amount payable</b> .....	77140
General.....	77141
Elements of calculation	
Guarantee credit .....	77142
Savings credit.....	77144

### **Guarantee credit**

General.....	77150
Standard minimum guarantee.....	77151
Exceptions.....	77152
Appropriate minimum guarantee.....	77153
Amount payable .....	77154

# Chapter 77 - Conditions of entitlement, membership of the household and normal amount payable

## General

### Introduction

#### Scope of this Chapter

- 77001 SPC is a SS benefit<sup>1</sup> that was introduced on 6.10.03<sup>2</sup>. It is made up of
1. a GC, to ensure a minimum level of income for people who have reached the qualifying age (see DMG 77150) **and**
  2. a SC which, from age 65, provides an additional amount for pensioners who have low or modest savings and income (see DMG 77167).

**Note 1:** See DMG 77032 for guidance on qualifying age.

**Note 2:** From 6.12.18<sup>3</sup> a person must be at least pensionable age<sup>4</sup> (see DMG Chapter 75) to be entitled to a SC.

*1 SPC Act 02, s 1(1); 2 SPC Regs, reg 1(1); 3 Pensions Act 07, s 13(3); 4 SPC Act 02, s 3(1)*

- 77002 This Chapter contains basic guidance on SPC and explains
1. the conditions of entitlement for SPC
  2. how to establish membership of the same household
  3. how to calculate the normal amount of SPC payable.

- 77003 For guidance on
1. the additional amounts of GC that may be awarded - see DMG 78025 et seq
  2. the special rules that apply when calculating how much SPC to pay
    - 2.1 to members of polygamous marriages - see DMG 78600 et seq
    - 2.2 to prisoners - see DMG 78650 et seq
    - 2.3 to members of religious orders - see DMG 78680 et seq
    - 2.4 when people are in hospital - see DMG 78700 et seq
    - 2.5 when people are subject to the loss of benefit provisions - see ADM Chapter B2
    - 2.6 when people are absent from GB - see DMG 78920 and Chapter 07

3. payment questions - see DMG Chapter 79
4. transitional provisions - see DMG Chapter 80
5. the AIP - see DMG Chapter 83
6. deemed weekly income from capital and capital - see DMG Chapter 84
7. income other than earnings - see DMG Chapter 85
8. earnings - see DMG Chapter 86.

## Definitions

77004 The following paragraphs explain the meaning of terms used throughout DMG Volumes 13 and 14 for SPC.

### Care home - England

77005 In England, an establishment is a care home<sup>1</sup> if it provides accommodation, together with nursing or personal care, for people who

1. are or have been ill **or**
2. have or have had a mental disorder **or**
3. are disabled or infirm **or**
4. are or have been dependent on alcohol or drugs.

*1 SPC Regs, reg 1(2); Care Standards Act 2000, s 3*

77006 An establishment is not a care home if<sup>1</sup> it is

1. a hospital **or**
2. an independent clinic.

*1 Care Standards Act 2000, s 3(3)*

### Care home – Wales and Scotland

77007 In Wales and Scotland, an establishment is a care home if it is accommodation in which a care home service is provided<sup>1</sup>. That is, a service that provides accommodation, together with nursing, personal care, or personal support for people by reason of their vulnerability or need.

*1 SPC Regs, reg 1(2); Regulation of Care (Scotland) Act 2001, s 2, Regulation and Inspection of Social Care (Wales) Act 2016 s.2*

77008 An establishment is not a care home if<sup>1</sup> it is

1. a hospital **or**
2. a public, independent or grant-aided school **or**
3. an independent hospital **or**
4. a private psychiatric hospital **or**
5. an independent clinic **or**
6. an independent medical agency.

*1 Regulation of Care (Scotland) Act 2001, s 2(3) & (5), Regulation and Inspection of Social Care (Wales) Act 2016 Sch 1*

## Claimant

77009 Claimant means<sup>1</sup> a person who claims SPC.

*1 SPC Act 02, s 17(1)*

## Close relative

77010 A close relative is<sup>1</sup>

1. a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, stepson, stepdaughter, brother, sister, **or**
2. if any of the preceding persons is one member of a couple, the other member of that couple; **and**
3. similar relationships arising through civil partnerships<sup>2</sup>.

*1 SPC Regs, reg 1(2); 2 CP Act 04, s 246*

77011 “Brother” and “sister” includes half-brother and half-sister. A child who is adopted becomes a child of the adoptive parents and the brother or sister of any other child of those parents. The adopted child stops being the child of, or the brother or sister of any children of, the natural parents. Whether an adopted person is a close relative of another person depends on the legal relationship not the blood relationship<sup>1</sup>.

*1 R(SB) 22/87*

## Couple

77012 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 LTAMC.

*1 SPC Act 02, s 17(1)*

**Note 1:** A person under the age of 16 cannot be a member of a couple. This is because a person under 16 is a child and is not able to marry or enter into a civil partnership.



## Independent hospital

77013 An Independent hospital<sup>1</sup> is one which is not a health service hospital.

*1 National Health Service Act 2006, s 275; Care Standards Act 2000, s 2;  
Regulation of Care (Scotland) Act 2001, s 2(5)(a) & (b)*

## Partner

77014 In SPC a member of a couple is referred to as a partner and both members are referred to as partners<sup>1</sup>.

*1 SPC Regs, reg 1(3)*

## Polygamous marriages

77015 A polygamous marriage case is one in which<sup>1</sup>

1. a person (the person in question) is a husband or wife by virtue of a marriage entered into in a country which permits polygamy **and**
2. either party to the marriage has for the time being any spouse additional to the other party **and**
3. the
  - 3.1 person in question **and**
  - 3.2 other party to the marriage **and**
  - 3.3 additional spouseare members of the same household.

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

*1 SPC Act 02, s 12(1)*

## Spouse

77016 Spouse should be given its normal everyday meaning. That is a person to whom another person is married.

## Young person

77017 Young person

1. means<sup>1</sup> a person who is a
  - 1.1 child **or**
  - 1.2 qualifying young person **but**

2. does not include a person who<sup>2</sup>
  - 2.1 is entitled to JSA(IB) or IS **or**
  - 2.2 would be entitled to JSA(IB) or IS, if another member of the family were not entitled to the same benefit<sup>3</sup>.

*1 JSA Regs, reg 76; IS (Gen) Regs, reg 14; 2 JSA Regs, reg 76(2); IS (Gen) Regs, reg 14(2);  
3 SS A Act 92, s 1(1)*

## Qualifying young person

77018 A qualifying young person is a person who has reached the age of 16 but not the age of 20

1. up to, but not including, 1 September that next follows their 16th birthday<sup>1</sup>  
**and**
2. up to, but not including, 1 September that next follows their 19th birthday where they are enrolled on, or accepted for
  - 2.1 approved training **or**
  - 2.2 a course of education
    - 2.2.a which is not advanced education
    - 2.2.b at a school, college or other establishment that is approved by the Secretary of State **and**
    - 2.2.c where they spend on average more than twelve hours a week during term time in receiving tuition, taking examinations or practical work or supervised study<sup>2</sup>.

*1 SPC Regs, reg 4A(1)(a); 2 SPC Regs, reg 4A(1)(b)*

77019 Where the young person is aged 19, he or she must have started the education or training or been enrolled on or accepted for it before reaching that age<sup>1</sup>.

*1 SPC Regs, reg 4A(2)*

77020 A person shall be treated as undertaking a course of FTE during the period between the end of one course and the start of another where the person is accepted for or enrolled on the latter course.

77021 Where a child or qualifying young person turns 16 or 19 on 31 August the period described at DMG 77018.1. and 2. will end on that same day.

77022 Any person who falls within DMG 77018 above is not a qualifying young person if they are receiving UC, JSA, IS or ESA<sup>1</sup>.

Burden of proof .....	78724
Medical or other treatment .....	78725
Hospital or similar institution	
Hospital .....	78731
Similar institution .....	78734
Examples of hospitals or similar institutions .....	78736
Meaning of in-patient.....	78738
Prescribed legislation .....	78746
England and Wales .....	78747
Scotland .....	78748
Services provided under National Health Service legislation .....	78749
Imprisonment.....	78750
<b>Community care arrangements</b>	
Arrangements by Health Authorities and Health Boards .....	78755
Points to consider.....	78757
Existing cases – revision or supersession .....	78763
Local authority placements .....	78764
<b>Periods of free in-patient treatment</b>	
Introduction.....	78770
Period of free in-patient treatment.....	78771
Temporary absences from hospital .....	78773
Transfer between hospitals.....	78774
Revision of award on admission to hospital	
Deciding the date of change .....	78781
<b>Guarantee credit for people in hospital</b>	
In hospital more than four weeks .....	78805
Additional amount for the severely disabled .....	78806
Additional amount for carers .....	78808
In hospital 52 weeks or more .....	78825
Claimant who has no partner .....	78826
Claimant who has a partner .....	78827
Polygamous marriages .....	78828

**Savings credit for people in hospital**

General.....78840

In hospital four weeks or more.....78841

    Additional amount for the severely disabled.....78842

    Additional amount for carers.....78855

    Disabled person in hospital.....78857

    Carer in hospital.....78858

In hospital 52 weeks or more

    Claimant who has no partner.....78862

    Couples and members of a polygamous marriage.....78863

**Others**

**Absence from Great Britain**

Introduction.....78920

**People subject to immigration control**

General.....78940

    Meaning of person subject to immigration control.....78941

    Exceptions.....78942

    Sponsored immigrants.....78943

    Partner is a person subject to immigration control.....78946

Asylum seekers.....78955

    Retrospective payments.....78958

Types of mortgage and loan arrangements..... **Appendix 1**

Housing costs - amount of the standard interest rate..... **Appendix 2**

Housing costs - unsafe structural defects..... **Appendix 3**

Housing costs - amount of non-dependant deductions..... **Appendix 4**

Housing costs - meaning of remunerative work..... **Appendix 5**

Examples of calculations for special groups..... **Appendix 6**

Hospital cases – rates of reduction and examples of calculations .... **Appendix 7**

Housing costs – leasehold major works..... **Appendix 8**

## Maximum amount of loans

78345 With the exception of those cases where DMG 78356 applies, the maximum amount of loans that housing costs can be calculated on is £100,000<sup>1</sup>.

**Note:** Under a temporary package of measures to support home owners who made new claims from 5.1.09 the £100,000 maximum was increased to £200,000.

*1 SPC Regs, Sch II, para 8(1) & (2)*

## Liable for two homes

78346 A person may be treated as occupying two dwellings as their home (see DMG 78231 to 78233). In such a case the maximum amount applies separately to each dwelling<sup>1</sup>.

*1 SPC Regs, Sch II, para 8(3)*

## Composite hereditaments

78347 Where the claimant's home is a composite hereditament (see DMG 78310), the amount of the loan on which housing costs are calculated will be the lower of<sup>1</sup>

1. the amount obtained by using the formula  $P \times Q$  where
  - P is the fraction used to calculate the eligible portion of the housing costs as in DMG 78312 **and**
  - Q is the amount of the whole loan which is outstanding **or**
2. £100,000 (if appropriate £200,000).

*1 SPC Regs, Sch II, para 6 & 8(4)*

## Shared responsibility for housing costs

78348 Where more than one person has responsibility for a loan, the DM should

1. work out the eligible part of the loan (see DMG 78313) **and**
2. apply the fraction of the housing costs for which the claimant is responsible to the eligible part of the loan

to give the amount that can be allowed<sup>1</sup>.

*1 SPC Regs, Sch II, para 6(5) & 8(4)*

### Example

Rhys shares his home with his two sisters. They are jointly liable for a loan of £180,000 used to buy the home and two home improvement loans of £45,000 and £15,000. Rhys' sisters have each taken responsibility for  $\frac{1}{4}$  of the loan used to buy

the home and Rhys is responsible for the other ½. Each of the three have taken responsibility for 1/3 of the two home improvement loans.

The eligible part of each loan for Rhys is

1.	Loan to buy the home	$£180,000 \times \frac{1}{2} =$	£90,000
2.	Home improvement loan	$£45,000 \times \frac{1}{3} =$	£15,000
3.	Home improvement loan	$£15,000 \times \frac{1}{3} =$	£5,000
	Total		£110,000

The total amount of the loans for which Rhys is responsible is restricted to £100,000 (old case) by apportionment as follows

Loan 1	$\frac{£100,000 \times £90,000}{£110,000}$	=	£81,818.18
Loan 2	$\frac{£100,000 \times £15,000}{£110,000}$	=	£13,636.36
Loan 3	$\frac{£100,000 \times £5,000}{£110,000}$	=	£4,545.46

78349 - 78354

## Part of loan used for eligible purposes

78355 A loan may have been used for both eligible and ineligible purposes. In such a case, the amount of the loan on which housing costs should be calculated is the lower of<sup>1</sup>

1. the outstanding amount of the eligible part of the loan **or**
2. £100,000 or £200,000, whichever is appropriate.

*1 SPC Regs, Sch II, para 8(5)*

## Loans to adapt a dwelling for the needs of a disabled person

78356 Loans may be used in full, or in part, to adapt a home for the special needs of a disabled person. The outstanding amount of such loans is exempt from the maximum amount limit<sup>1</sup>.

*1 SPC Regs, Sch II, para 8(6)*

### Example

Russell has two loans

Loan 1 - £160,000 for acquiring an interest in the home. The limit is applied to this loan and only £100,000 is allowed.

# Others

## Absence from Great Britain

### Introduction

78920 It is a condition of entitlement to SPC that a person is in GB<sup>1</sup>. But entitlement can sometimes continue during an absence from GB<sup>2</sup>. Guidance on entitlement to SPC when a person is absent from GB is given in DMG Chapter 07.

*1 SPC Act 02, s 1(2)(a) & (5)(a); SPC Regs, reg 2 & 4; 2 SPC Act, s 1(5)(b); SPC Regs, reg 3*

78921 - 78939

