

Department for Work and Pensions

DECISION MAKING AND APPEALS

Decision Makers Guide

Volume 13 Amendment 44 – Oct 2019

PLEASE NOTE

THIS WILL BE THE LAST AMENDMENT PACKAGE PROVIDED IN THIS FORMAT. FROM 2020 A “SUMMARY OF CHANGES” DOCUMENT WILL BE PRODUCED THAT WILL COVER ALL THE CHANGES MADE IN A DMG AMENDMENT PACKAGE

1. This letter provides details on Amendment 44; the changes have already been incorporated in to the Intranet and Internet versions of the DMG.
2. PDF amendment packages are also available on the Internet (see link below). These can be printed with the amended pages being reproduced in full. Each page will contain the amendment number in the footer.

<https://www.gov.uk/government/publications/decision-makers-guide-vols-13-and-14-state-pension-credit-staff-guide>

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

3. Amendment 44 affects chapters 77 & 78. The changes:

Chapter 77: incorporate DMG Memo 7/19; updates 77034 conts, 77169 conts, 77030-77052, 77167, 77169 et seq to include references to Mixed Age Couples;

Chapter 78: updated the fuel deduction amounts in DMG 78466. Incorporated DMG memo 14/18 (Child Addition in SPC) at paragraphs DMG 78549 to 78592 and DMG 7/19 (Mixed age couples in SPC) at DMG 78681
Note to DMG 78946 to make clear that if an SPC claimant has a PSIC partner they are not a couple because they are not members of the same household. DMG 78463 has been amended to make clear mooring charges and pitch fees can be met by HB.
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).

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Chapter 77

Conts 77001 – App 2 (2 pages)
77030 – 77099 (2 pages)
77167 – 77175 (1 page)

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Chapter 77

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77030 – 77099 (2 pages)
77167 – 77175 (1 page)

Chapter 78

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

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Conditions of entitlement

Entitlement to State Pension Credit

77030 A claimant is entitled to SPC if they¹

1. are in GB **and**
2. have reached the qualifying age **and**
3. satisfy the conditions to get a GC or SC **and**
4. are not a member of a
 - 4.1 couple where the other member is entitled to SPC
 - 4.2 mixed-age couple (see DMG 77034) **or**
 - 4.3 polygamous marriage (see DMG 77015) where the other party to the marriage or the additional spouse are members of the same household and entitled to SPC **and**
5. have made a valid claim² **and**
6. where relevant, their partner, satisfy the NI provisions (see DMG Chapter 02)³.

1 SPC Act 02, s 1(2) & 4(1) & (1A); SPC Regs, Sch III, para 1(3); 2 SS A Act 92, s 1(1) & (4); 3 s 1(1A)

Being in Great Britain

77031 DMs should follow the guidance on GB and temporary absence from GB (see DMG Chapter 07) when deciding this question.

Qualifying age

77032 Qualifying age¹ means

1. for a woman - pensionable age **or**
2. for a man - the age which would be pensionable age for a woman born on the same date as the man.

Note: See DMG Chapter 74 for guidance on pensionable age.

1 SPC Act 02, s 1(6)

Couple

77033 DMs should follow the guidance at DMG 77012 when deciding if the claimant is a member of a couple.

Mixed-age couple

77034 For the purposes of entitlement to SPC, a mixed-age couple is one where one member has reached the qualifying age and the other has not. This definition includes a polygamous marriage where at least one party to the polygamous marriage has reached the qualifying age and at least one party has not.¹

Note: This definition applies only to new claims to SPC from 15.5.19. Savings provisions have effect as though the exclusion of mixed-age couples from SPC had not come into force. So a member of a mixed-age couple who was entitled to SPC or pension age HB or both on 14.5.19, continues to be so entitled on or after 15.5.19. The savings provisions cease to have effect to a member of a mixed-age couple on or after 15.5.19 when that person is no longer entitled to SPC or pension age HB as part of the same mixed-age couple.

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

77035 - 77040

Guarantee credit

77041 To get a GC a claimant should have¹

1. no income **or**
2. income that does not exceed their AMG.

1 SPC Act 02, s 2(1)

Appropriate minimum guarantee

77042 DMs should follow the guidance at DMG 77153 et seq to work out the AMG.

77043 - 77050

Savings credit

77051 To get a SC a claimant should¹

1. to satisfy the first condition
 - 1.1 have attained pensionable age before 6.4.16 and have attained the age of 65 before, on or after that date **or**
 - 1.2 be a member of a couple, where other member of that couple falls within DMG 77051 1.1 above **and**
2. to satisfy the second condition have

2.1 QI that is more than the SCT **and**

2.2 an income which, after the calculation at DMG 77184 et seq, allows amount A to be greater than amount B.

Note 1: Amounts A and B are explained at DMG 77184 et seq.

Note 2: From 6.12.18² a person must be at least pensionable age³ (see DMG Chapter 75) to be entitled to a SC.

1 SPC Act 02, s 3(1) & (2); 2 Pensions Act 07, s 13(3); 3 SPC Act 02, s 3(1)

Savings credit in polygamous marriages

77052 If the SPC claimant is in a polygamous marriage (see DMG 77020) to get a SC¹

1. the claimant or the other party to the marriage or the additional spouse should be at least age 65 **and**

2. the claimant should have

2.1 QI that is more than the SCT **and**

2.2 an income which, after the calculation at DMG 77184 et seq, allows amount A to be greater than amount B.

Note: From 6.12.18² at least one member of the polygamous marriage must be at least pensionable age³ (see DMG Chapter 75).

1 SPC Act 02, s 3(2); SPC Regs, Sch III, para 1(2); 2 Pensions Act 07, s 13(3); 3 SPC Act 02, s 3(1)

Qualifying income and savings credit threshold

77053 DMs should follow the guidance at DMG 77173 et seq when working out QI and the SCT.

77054 - 77099

Savings credit

General

77167 The SC provides an additional amount for those aged 65 and have reached State Pension age before 6.4.16. In the case of a person who is a member of a mixed age couple SC entitlement is restricted to those where one of the members of the couple was awarded SC before 6.4.16 and has remained entitled to it continuously since that date.

Note 1: a mixed age couple for the purposes of savings credit is where one member of the couple reaches State Pension age before 6.4.16 and the other member of the couple on or after that date¹.

Note 2: There is a different definition of mixed age couple for the purposes of SPC from 15.5.19 (see DMG 77034)²

1 SPC Act 02, s 3ZA(3); 2 WR Act 12 (Commencement No. 31 etc.) Order 2018, art 2(2)

Single claimants

77168 From 6.4.16 a claimant must have attained pensionable age before 6.4.16¹ and have attained the age of 65 before, on or after that date.

1 SPC Act 02, s 3(1)(a)

Example 1

In 2015 Kate is single, aged 63, and in receipt of a small private pension. Kate is entitled to SPC and because she reached State Pension age before 6.4.16 she may also be entitled to receive Savings Credit when she attains the age of 65 in 2017.

Example 2

Kate's twin brother Jason is single, retired and also in receipt of a small private pension. Jason is entitled to SPC but because he has not reached State Pension age before 6.4.16 he will not be entitled to receive Savings Credit when he attains the age of 65 in 2017.

Mixed age couples for savings credit

77169 For a mixed age couple to have entitlement to Savings Credit one of the couple must have

1. been entitled to a Savings Credit immediately before 6.4.16
2. been awarded a Savings Credit with effect from a day before 6.4.16
3. remained entitled to a Savings Credit at all times since 6.4.16¹

1 SPC Act 02, s 3ZA; SPC Regs, reg 7A

Couples that are not mixed age

77170 A couple where both have attained State Pension age before 6.4.16 but are not yet aged 65 may be entitled to receive Savings Credit when the eldest attains the age of 65.

77171 The amount of SC payable is

1. based on a percentage of QI above the SCT **and**
2. subject to a maximum amount **and**
3. reduced if a claimant's income exceeds their AMG.

77172 When considering whether an SC is payable, the starting point for the DM¹ is to decide the

1. appropriate SCT **and**
2. amount of the claimant's QI.

1 SPC Act 02, s 3(2)(a)

Savings credit threshold

77173 There are two rates of SCT that may apply¹. These are

1. a set amount for a claimant who has no partner **and**
2. a higher amount for a claimant who
 - 2.1 has a partner **or**
 - 2.2 is a member of a polygamous marriage².

Note: See Appendix 1 to this Chapter for the rates of SCT.

1 SPC Act 02, s 3(7); SPC Regs, reg 7(2); 2 reg 7(2); Sch III, para 1(7)

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Chapter 78 - State pension credit: additional amounts and special groups

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Chapter 78 - Additional amounts and special groups

General

Scope of this Chapter

- 78001 This Chapter contains guidance on SPC and the
1. additional amounts that may be awarded for
 - 1.1 the severely disabled (see DMG 78030)
 - 1.2 carers (see DMG 78100)
 - 1.3 former claimants of IS/JSA(IB) (see DMG 78120)
 - 1.4 housing costs (see DMG 78170)
 - 1.5 those responsible for a child or qualifying young person (see DMG 78549)
 2. special rules that apply to
 - 2.1 members of polygamous marriages (see DMG 78600)
 - 2.2 prisoners (see DMG 78650)
 - 2.3 members of religious orders (see DMG 78680)
 - 2.4 people in hospital (see DMG 78700)
 - 2.5 people who are absent from GB (see DMG 78920 and DMG Chapter 07).
- 78002 For guidance on
1. the conditions of entitlement for SPC - see DMG 77030 et seq
 2. how to establish membership of the household - see DMG 77100 et seq
 3. how to calculate the normal amount payable - see DMG 77140 et seq
 4. payment questions, including how to calculate the amount payable for a part week - see DMG Chapter 79
 5. transitional provisions - see DMG Chapter 80
 6. the assessed income period - see DMG Chapter 83
 7. the treatment of capital and deemed weekly income from capital - see DMG Chapter 84
 8. the treatment of income other than earnings - see DMG Chapter 85
 9. the treatment of earnings - see DMG Chapter 86.
- 78003 - 78004

Additional amounts of guarantee credit

General

Categories

78025 There are five types of additional amount¹ that may be applicable when considering the amount of the AMG. These are for

1. the severely disabled
2. carers
3. former claimants of IS/JSA(IB)
4. housing costs.
5. those responsible for a child or qualifying young person

1 SPC Act 02, s 2; SPC Regs, reg 6; Sch I, II & IIIA

Rates of additional amounts

78026 DMs should note that the additional amount for

1. the severely disabled is payable at two rates. The rate depends on whether the claimant or any partner satisfies the qualifying conditions
2. carers is paid at one rate. But there may be more than one such additional amount payable (see DMG 78101)
3. former claimants of IS/JSA(IB) is variable depending on the circumstances of each individual case
4. housing costs is variable depending on the circumstances of each individual case.
5. a child or qualifying young person depends on their date of birth, and an additional amount may be payable depending if the child or qualifying young person is entitled to any amount of DLA/PIP.

Qualifying conditions

78027 Each additional amount has its own qualifying conditions and to be entitled to an additional amount the qualifying conditions may apply to

1. the claimant **or**
2. any partner of the claimant.

78028 - 78029

Additional amount for the severely disabled

General

78030 When considering the amount of the AMG, an additional amount is applicable if the claimant is treated as being severely disabled¹.

1 SPC Act 02, s 2(3)(b), 2(7) & 17(2)(b); SPC Regs, reg 6(4) & Sch 1, para 1

78031 An additional amount for the severely disabled is not payable¹ in the case of

1. prisoners **and**
2. members of religious orders who are fully maintained by their order.

1 SPC Regs, reg 6(2), (3) & (4)

78032 If the claimant is a member of a polygamous marriage, see DMG 78610 for guidance on the rules that apply.

78033 The additional amount for the severely disabled is payable at a lower or higher rate¹. See Appendix 2 to DMG Chapter 77 for details of those rates.

1 SPC Regs, reg 6(5)

Lower rate

Claimants who have no partner

78034 Claimants with no partner are treated as being severely disabled and are entitled to the lower rate of additional amount for the severely disabled if¹

1. they are in receipt of
 - 1.1 "AA" **or**
 - 1.2 the care component of DLA at the highest or middle rate **or**
 - 1.3 the daily living component of PIP **or**
 - 1.4 AFIP **and**
2. there are no persons aged 18 or over
 - 2.1 normally residing with the claimant **or**
 - 2.2 who the claimant normally resides with (see DMG 78065 et seq) **and**
3. no one is entitled to and in receipt of CA, or UC that includes the carer element, in respect of caring for them.

1 SPC Regs, reg 6(5)(a); Sch 1, para 1(1)(a)

Transitional protection

78035 Carers who were aged 65 and over before 28.10.02 can continue to be entitled to CA even though they are no longer providing care¹, for example after the disabled person has died.

1 The Regulatory Reform (Carer's Allowance) Order 2002, S.I. 2002/1457

78036 A claimant will not be disqualified under 78034 **3.**, from the extra amount for the severely disabled where the person in receipt of CA is not providing care but retains payment of the CA as a result of transitional protection.

78037 - 78044

Claimants who have a partner

78045 Claimants who have a partner are treated as being severely disabled and are entitled to the lower rate of additional amount for the severely disabled if¹

1. both partners are in receipt of
 - 1.1 "AA" **or**
 - 1.2 the care component of DLA at the highest or middle rate **or**
 - 1.3 the daily living component of PIP at the standard or enhanced rate **or**
 - 1.4 AFIP **and**
2. there are no persons aged 18 or over
 - 2.1 normally residing with the partners **or**
 - 2.2 who the partners normally reside with (see DMG 78065 et seq) **and**
3. someone is entitled to and in receipt of CA, or UC that includes the carer element, in respect of caring for only one of the partners.

1 SPC Regs, reg 6(5)(a); Sch I, para 1(1)(b)

78046 Claimants who have a partner may not satisfy the conditions in DMG 78045. In such a case the lower rate can still be awarded if¹

1. one of the partners is in receipt of
 - 1.1 "AA" **or**
 - 1.2 the care component of DLA at the highest or middle rate **or**
 - 1.3 the daily living component of PIP at the standard or enhanced rate **or**
 - 1.4 AFIP **and**
2. the other partner is certified as blind or severely sight impaired by a consultant ophthalmologist or treated as blind or severely sight impaired **and**
3. there are no persons aged 18 or over
 - 3.1 normally residing with the partners **or**
 - 3.2 who the partners normally reside with (see DMG 78065 et seq) **and**
4. no-one is entitled to and in receipt of CA, or UC that includes the carer element, in respect of caring for the partner who is receiving "AA" or DLA as in 1.

1 SPC Regs, Sch I, para 1(1)(c)

78047 The lower rate of additional amount for the severely disabled can also be awarded to claimants who have a partner if¹

1. one of the partners is in receipt of
 - 1.1 "AA" **or**
 - 1.2 the care component of DLA at the highest or middle rate **or**
 - 1.3 the daily living component of PIP at the standard or enhanced rate **or**
 - 1.4 AFIP **and**
2. the other partner would be in receipt of
 - 2.1 "AA" **or**
 - 2.2 the care component of DLA at the highest or middle rate **or**
 - 2.3 the daily living component of PIP at the standard or enhanced rate but for being a patient for over 28 days **and**
3. there are no persons aged 18 or over
 - 3.1 normally residing with the partners **or**
 - 3.2 who the partners normally reside with (see DMG 78065 et seq) **and**
4. no-one is entitled to and in receipt of CA, or UC that includes the carer element, in respect of caring for the partner who is receiving "AA" or DLA as in 1..

1 SPC Regs, reg 6(5)(a); Sch I, para 1(1)(b) & (2)(b)

Higher rate

78048 DMs should note that the higher rate of additional amount for the severely disabled does not apply to claimants who have no partner.

78049 Claimants who have a partner are treated as being severely disabled and are entitled to the higher rate if¹

1. both partners are in receipt of
 - 1.1 "AA" **or**
 - 1.2 the care component of DLA at the highest or middle rate **or**
 - 1.3 the daily living component of PIP at the standard or enhanced rate **or**
 - 1.4 AFIP **and**
2. there are no persons aged 18 or over
 - 2.1 normally residing with the partners **or**
 - 2.2 who the partners normally reside with (see DMG 78065 et seq) **and**

3. no one is entitled to and in receipt of CA, or UC that includes the carer element, in respect of caring for either partner.

1 SPC Regs, reg 6(5)(b); Sch I, para 1(1)(b)

78050 DMs should note that DMG 78049 1. is **not** satisfied if either partner is treated as being in receipt of “AA” or DLA or PIP or AFIP as in DMG 78060 2.1. In such a case the lower rate of additional amount should be considered.

1 SPC Regs, reg 6(5)(b)

78051 - 78054

In receipt of “AA”, DLA, CA and UC that includes the carer element

78055 Before awarding an additional amount for the severely disabled, the DM needs to know if

1. the claimant or partner is in receipt of “AA”, DLA, PIP or AFIP **and**
2. anyone is in receipt of CA, or UC that includes the carer element, in respect of caring for the claimant or partner.

Note: Special rules apply to the treatment of “AA”, DLA, PIP, AFIP and CA/UC that includes the carer element when a person is admitted to hospital. See DMG 78060 et seq for guidance.

Example

Heather was in receipt of “AA” and had an award of SPC which included an amount for severe disability. On 10.6.17 she was admitted to a care home. It wasn’t until the 22.11.17 that her “AA” ceased, due to some confusion around appointing someone to act. The additional amount for severe disability was correctly in payment while ever Heather was **in receipt of “AA”**,

“AA”, DLA, PIP and AFIP

78056 DMs should note that a person is in receipt of “AA” or DLA or PIP or AFIP only if it is paid because of that person’s own incapacity or disability.

Example 1

Alistair is aged 65 and lives alone. He claims SPC and states that he is in receipt of “AA” due to his poor physical condition. No one gets CA/UC that includes the carer element in respect of looking after him. Alistair is in receipt of “AA” and the DM considers an additional amount for the severely disabled.

Example 2

Ruby lives with her grandson Ben who is aged 14. Ben is disabled and is awarded the care component of DLA at the highest rate. But the DLA is paid to Ruby. Ruby is not in receipt of DLA. The DLA is paid because of Ben’s disability and is only paid to Ruby because of Ben’s age. An additional amount for the severely disabled is not applicable.

CA/UC carer element

78057 An additional amount for the severely disabled may not be applicable if someone is receiving CA or UC that includes the carer element in respect of caring for the claimant or partner¹. But CA/UC that includes the carer element has to actually be in payment before it affects entitlement to this additional amount.

1 SPC Regs, Sch I, para 1(1)

78058 DMs should normally treat an award of CA/UC that includes the carer element as a proper award until the CA/UC that includes the carer element decision is revised, superseded or otherwise changed on appeal. If the claimant says that

1. they are not being cared for by the person getting CA/UC that includes the carer element **or**
2. the award of CA/UC that includes the carer element is in error **or**
3. they know nothing about the CA/UC that includes the carer element award **or**
4. the CA/UC that includes the carer element claim is fraudulent

the DM should ask the CA unit or the office responsible for the UC award to investigate whether the CA award or the carer element of UC is correctly made.

78059 Where the disabled person makes an allegation about the carer's integrity, as described in DMG 78058, the SPC DM can make a decision on the claim or application before the CA/UC that includes the carer element DM has decided whether the award of CA/UC that includes the carer element should be revised or superseded. However, the SPC decision should include a determination which

1. makes an assumption that the carer is properly in receipt of CA/UC that includes the carer element **and**
2. refuses to award the extra amount for severe disability.

Treated as being or not being in receipt of "AA", DLA, CA and UC that includes the carer element

78060 A person shall be treated

1. as being in receipt of "AA", or the care component of DLA at the highest or middle rate, or the daily living component of PIP at the standard or enhanced rate, or AFIP for any period¹
 - 1.1 before an award is made but in respect of which the allowance is awarded **or**
 - 1.2 not covered by an award but in respect of which a payment is made in lieu of an award
2. in the case of a claimant who has a partner, as being in receipt of
 - 2.1 "AA" **or**
 - 2.2 the care component of DLA at the highest or middle rate **or**

2.3 the daily living component of PIP at the standard or enhanced rate if they would be in receipt but for being a patient for over 28 days²

- 3.** as not being in receipt of CA, or UC that includes the carer element, for any period before the date on which the award is first paid³.

1 SPC Regs, Sch I, para 1(2)(a); 2 Sch I, para 1(2)(b); 3 Sch I, para 1(2)(c)

78061 - 78064

People residing with the claimant

78065 An additional amount for the severely disabled may not be applicable if¹ there are people aged 18 or over who

- 1.** normally reside with the claimant and any partner **or**
- 2.** the claimant and any partner normally reside with.

That is, share the accommodation (see DMG 78068). But the presence of certain people can be ignored². See DMG 78077 and 78078 for full details.

1 SPC Regs, Sch I, para 1(1); 2 Sch I, para 2

Meaning of normally resides

78066 A person normally resides where they usually live. Periods of residence or absence that are of an exceptional nature should be disregarded. A person who is temporarily absent from their normal home, continues to normally reside where they usually live and with the people they usually live with.

Example 1

Jack normally lives in his sister's house and is not entitled to an additional amount for the disabled. He goes into respite care for one week every other month. While he is in respite care Jack still normally resides in his sister's house. He does not qualify for an additional amount for the severely disabled.

Example 2

Mary normally lives alone in her own flat. She is entitled to an additional amount for the severely disabled. Her brother Steven comes to stay with her for a week at a time every three months. He does not normally live with Mary. She keeps her entitlement to the additional amount whilst Steven is staying with her.

78067 When considering where a person normally resides the DM should have regard to

- 1.** the total amount of time spent in a place
- 2.** how often time is spent in a place
- 3.** how permanent the stay is thought to be
- 4.** the person's intentions
- 5.** individual circumstances
- 6.** what degree the accommodation is shared

7. the services provided
8. whether the person owns or rents any other accommodation
9. whether the person has any liabilities for services/utilities/tv licence.

Example

Agnes has been awarded the care component of DLA at the middle rate and no one gets CA (or UC that includes the carer element) for caring for her. She owns her own home but for the past two years has slept every night at her son's house. She keeps her clothes and some of her things at her son's house. She goes home for the day two or three days a week, to clean up and do the garden. But she always returns to her son's to sleep. Agnes is responsible for the bills for her home and she and her son still regard Agnes's house as her home. Agnes' house has never been put up for sale.

Agnes normally lives at her son's house because

1. she sleeps at her son's house every night
2. her clothes and some of her things are kept at her son's
3. she only goes back to her own house occasionally and in daylight hours
4. she spends the majority of her time at her son's house.

Agnes is not entitled to an additional amount for the severely disabled. The DM considers whether the value of Agnes' house should be taken into account.

Sharing the accommodation

78068 People should not be regarded as sharing the accommodation if¹

1. the only shared area is a
 - 1.1 bathroom **or**
 - 1.2 lavatory **or**
 - 1.3 communal area **or**
2. they are separately liable to make payments to the landlord for that accommodation.

Note: A person should still be regarded as sharing the kitchen even if they do not enter or use it where items for the persons use are stored there or their meals are prepared there.

1 SPC Regs, Sch I, para 3(1); R(IS) 12/96

78069 A communal area is¹ an area of common access (not a room) including

1. halls
2. passageways
3. stairways

- rooms of common use in sheltered accommodation.

1 SPC Regs, Sch I, para 3(2)

Example

Katja gets “AA” and no one gets CA (or UC that includes the carer element) for caring for her. She lives in a self-contained granny flat attached to her daughter’s house. She has her own bathroom, kitchen, bedroom and living room. Access to the flat is from the hall of her daughter’s house and the front door of the property is shared. Everything else is separate.

The hall is the only shared area and is a communal area. Katja does not share the accommodation and does not normally reside with her daughter.

Note: A person should still be regarded as sharing the kitchen even if they do not enter or use it if items for the person’s use are stored there or their meals are prepared there. A kitchen is not shared if a person needs to pass through it to access to their self-contained flat.

Students

- 78070 In a case where a student lives at a university address during term time and lives at their parents’ home for some weekends and during the holidays, the DM should have regard to the considerations at DMG 78067 before deciding which address is where they normally reside. Whichever address is chosen will remain the student’s normal residence even when they spend time at the other address.

Example

A student still retains a bedroom, furniture and some clothing at their parents’ home, they still get some mail there, are registered with the local dentist and are actually resident for 18 full weeks and most weekends. On this evidence the DM decides that the student normally resides at their parents’ home and are only temporarily absent from it whilst at university.

Alternatively, the DM may decide that because the student has a tenancy agreement for a university address, they have some furniture and clothes there, they live there for 32 weeks of the year and are liable for gas, electricity and a tv licence that they normally reside at the university address and are only temporarily absent from it whilst back living with their parents.

78071

Meaning of liable to make payments

- 78072 “Liable to make payments” refers to legal liability. When considering the question of liability, the DM must consider whether

- the claimant has the contractual capacity to enter into an enforceable contract
and

2. there was an intention to create legal relations.

78073 If the conditions in DMG 78072 are met, the DM must then establish that¹

1. there is an obligation to make payments derived from a recognised source of law (for example contract law) **and**
2. the obligation to make the payments is for the occupation of the premises and not, for example, for food or clothing **and**
3. the power to bring the licence or lease to an end is referable to a breach of the condition to make the payment under the contractual licence or lease and not to some other matter.

1 R(IS) 11/98

78074 Whether a person has separate liability to a landlord should be determined by reference to the arrangements within the group. But DMs should note that the liability has to be to the same landlord. Reference to some other liability of the person to a third party is not relevant.

Example

Tom gets "AA" and no one gets CA (or UC that includes the carer element) for caring for him. He lives in a privately rented house, which he shares with three other people. They all have their own bedroom but share the kitchen and bathroom. Each are liable to pay the landlord rent for their room.

The DM decides that Tom does not normally reside with the other residents of the house. They are all separately liable to make payments to the landlord for their accommodation. Tom is awarded an additional amount for the disabled.

Contractual capacity

78075 In England and Wales, only a minor, or a person of unsound mind, may not have the capacity to incur legal liability. DMs should accept that a claimant has sufficient capacity unless there is very strong evidence to the contrary.

Carer stays overnight

78076 A carer may stay overnight with the person they are looking after. In such a case the DM should consider whether the carer normally resides with that person and should find out

1. whether the carer has a separate address **and**
2. if the carer has a separate address, whether they use it and if so, how often **and**
3. what address the carer uses as a postal address **and**
4. what address the carer is registered at for CT purposes.

People whose presence is ignored

78077 The DM can ignore the presence of¹

1. any person aged under 18² **or**
2. a person who is in receipt of³
 - 2.1 "AA" **or**
 - 2.2 the care component of DLA at the highest or middle rate **or**
 - 2.3 the daily living component of PIP at the standard or enhanced rate **or**
 - 2.4 AFIP **or**
3. a person who is
 - 3.1 certified as blind or severely sight impaired by a consultant ophthalmologist⁴ **or**
 - 3.2 treated as blind or severely sight impaired⁵ (see DMG 78008) **or**
4. a person who⁶
 - 4.1 lives with the claimant in order to care for the claimant or partner **and**
 - 4.2 is engaged by a charitable or voluntary organisation (see DMG 78011) which makes a charge to the claimant or partner for that person's services **or**
5. the partner of a person to whom 4. applies⁷ **or**
6. a person who is a qualifying young person⁸ or a child for CHB purposes⁹.

*1 SPC Regs, Sch I, para 2(1); 2 Sch I, para 1(1)(a)(ii), (b)(ii) & (c)(iii); 3 Sch I, para 2(2)(a);
4 Sch I, para 2(2)(b); 5 Sch I, para 2(2)(c); 6 Sch I, para 2(2)(d); 7 Sch I, para 2(2)(e);
8 reg 4A; 9 Sch I, para 2(2)(f), s 40 2012 Act*

78078 The DM can also ignore the presence of a person who

1. joins the claimant's household for the first time¹
 - 1.1 to care for the claimant or partner **and**
 - 1.2 if, immediately before joining, the claimant or partner satisfied the conditions for an additional amount for the severely disabled **or**
2. is not a close relative (see DMG 77010) of the claimant or partner and who²
 - 2.1 is liable to make payments on a commercial basis to the claimant or partner for their occupation of the dwelling **or**
 - 2.2 the claimant or partner is liable to make payments to on a commercial basis for their occupation of that person's dwelling **or**
 - 2.3 is a member of the household of a person in 2.1 or 2.2 **or**

3. is not a close relative (except where 5. applies) who jointly occupies the claimant's dwelling and who is³
 - 3.1 a co-owner of that dwelling with the claimant or the claimant's partner (whether or not there are other co-owners) **or**
 - 3.2 jointly liable with the claimant or the claimant's partner to make payments to the same landlord for their occupation of the dwelling **or**
4. is the partner of a person to whom 3. applies⁴ **or**
5. is a close relative who satisfies 3. or 4., if⁵ the claimant or partner's co-ownership or joint liability arose
 - 5.1 before 11.4.88 **or**
 - 5.2 if later, on or before the date on which the claimant or partner first occupied the dwelling in question.

Note: 1. only applies for the first twelve weeks following the date on which the person first joins the claimant's household⁶.

*1 SPC Regs, Sch I, para 2(3); 2 Sch I, para 2(5); 3 Sch I, para 2(6);
4 Sch I, para 2(7); 5 Sch I, para 3(3); 6 Sch I, para 2(4)*

Commercial basis

78079 For a liability to be on a commercial basis¹ (see DMG 78078 2.)

1. there should be a legal liability to make the payment **and**
2. the payment should be broadly in line with what a lodger might pay for similar accommodation and facilities.

1 R(IS) 11/98

Shared lives scheme

78080 A registered shared lives carer provides support and accommodation, in their own home, for a disabled claimant. The claimant is able to keep their disability benefits (DLA/PIP) and pays the carer a weekly contribution, the LA also pay the carer a fixed amount. The claimant will have a lodger/licence agreement and as such be eligible to obtain HB. In these circumstances the carers will be ignored as non-dependants (because they are a person who the claimant is liable to make payments on a commercial basis to) and the claimant will be entitled to the EASD.

Note: The claimant will not be entitled to the EASD if there are people other than the carer, carer's family or other shared lives residents in the dwelling who cannot be ignored, for example where the carer's 23-year old son still lives in the same dwelling.

Example

Shirley moves into Fiona and Jason's home under the shared lives scheme, she will live as part of their family having her own bedroom and sharing all the other

household facilities. Shirley is disabled and receives DLA. A support agreement, in the form of a licence, confirms Shirley will pay £395/week and that this payment covers all her meals and all utility costs, she will also get HB. The DM decides that Fiona and Jason are not non-dependants because they are people to whom Shirley is commercially liable to make payments to in respect of her occupation of the dwelling. Shirley is entitled to the EASD.

78081 - 78083

Temporary residence in a care home

Claimants who have no partner

78084 An additional amount for the severely disabled may not be applicable if a claimant who has no partner does not normally live alone¹. Such a claimant will not satisfy the conditions for this additional amount while they are temporarily in a care home (see DMG 77007). This is because their stay is temporary and they continue to normally reside at home.

1 SPC Regs, Sch I, para 1(1)

Example

Nasreen has no partner and lives with her son. The conditions for the award of an additional amount for the disabled are not satisfied. Nasreen goes into a care home temporarily. An additional amount for the severely disabled is not applicable because she continues to normally reside at home with her son.

Claimants who have a partner

78085 When a member of a couple is temporarily in a care home the separation from the partner is also temporary. In such a case the

1. couple remain members of the same household¹ **and**
2. absent partner is treated as still normally residing at home **and**
3. amount of SPC payable to them is unaffected.

1 SPC Regs, reg 5(2)

78086 The SPC and the additional amount for severe disability will have to be reviewed where the person is in temporary residential care beyond 28 days and the payability of DLA ceases.

Example

Malcolm and Wendy are married and live together in the same household. Both Malcolm and Wendy get DLA and CA, or UC that includes the carer element is not in payment. There are no non-dependants. Higher rate EASD is in payment. Malcolm goes into temporary residential care for 6 weeks.

They are assessed as a couple and the higher rate EASD continues in payment however after 4 weeks Malcolm's DLA payments cease and the EASD is withdrawn

Note: The lower rate EASD is not appropriate as there is no facility to treat DLA as in payment for these periods of respite care.

Permanent residence in a care home

78087 Claimants who are permanently in a care home are normally resident in that care home. Other residents of the home do not normally reside with the claimant, as they are separately liable to make payments to a landlord.

Claimants who have no partner (including self- funders)

78088 An additional amount for the severely disabled is applicable to a person who is permanently in a care home if all the conditions are satisfied¹.

Note: This will normally be self- funding claimants, but DMs should be aware that it will also include residents where the payment of "AA" or DLA/PIP continues for the first four weeks after admission.

1 SPC Regs, reg 5(1)(b) & Sch I, para 1(1)(a)

Example

Shafaq has no partner and lives at home with his sisters. He is in receipt of the care component of DLA at the middle rate and no one receives CA, or UC that includes the carer element, for caring for him. The conditions for the award of an additional amount for the disabled are not satisfied. Shafaq goes into a care home on a permanent basis. The DM decides that Shafaq is entitled to an additional amount for the disabled at the lower rate from the date that he moves into the care home. This is because

1. he is in receipt of the care component of DLA at the middle rate **and**
2. the other residents of the home do not normally reside with him **and**
3. no one is in receipt of CA, or UC that includes the carer element, for caring for him.

Entitlement to the additional amount continues as long as all of the above are satisfied.

Claimants who have a partner

78089 A member of a couple who is permanently in a care home is no longer a member of the same household as their partner. In such a case each person may claim SPC as a claimant who has no partner.

78090 - 78099

Additional amount for carers

General

78100 When considering the amount of the AMG, an additional amount for carers may be applicable¹. But the additional amount is not payable² in the case of

1. prisoners **and**
2. members of religious orders who are fully maintained by their order.

1 SPC Act 02, s 2(3)(b) & (8); SPC Regs, reg 6(6)(a) & Sch I, para 4(1); 2 reg 6(2), (3) & (6)

78101 The additional amount for carers is paid at one rate, and in the case of partners, that amount is applicable for each partner who satisfies the qualifying conditions¹. See Appendix 2 to DMG Chapter 77 for details of the rate.

1 SPC Regs, reg 6(8)

78102 - 78104

Qualifying conditions

78105 An additional amount for carers may be awarded for each claimant¹ or, in the case of partners, each partner² who is

1. entitled to CA³ **or**
2. treated as still satisfying the qualifying conditions for the award of the additional amount⁴ (see DMG 78107).

Note: A person may be entitled to CA even if it is not payable (for example because of the overlapping benefit provisions).

*1 SPC Act 02, s 2(8)(a); SPC Regs, reg 6(8); 2 SPC Act 02, s 2(8)(b); SPC Regs, reg 6(8);
3 Sch I, para 4(2); 4 Sch I, para 4(3)*

Example

Maurice lives with his wife Louise and they are both entitled to CA. They each satisfy the conditions for the award of an additional amount for carers. The couple do not qualify for any other additional amounts. At the time of Maurice's claim the SMG is £160.95 and the rate of the additional amount for carers is £25.55. Their AMG is £212.05 (£160.95 + £25.55 + £25.55).

Treated as being entitled to CA

78106 A person shall be treated as being entitled to CA for any period¹

1. covered by an award
2. in respect of which a payment is made in lieu of an award.

1 SPC Regs, Sch I, para 5

CA - treated as satisfying the qualifying conditions – run on

78107 Where an additional amount for carers has been awarded but the person in respect of

1. whose care the CA has been awarded dies **or**
2. whom the additional amount was awarded ceases to be entitled or treated as entitled to CA

the qualifying conditions shall be satisfied or treated as satisfied for a period of eight weeks¹ from the relevant date.

1 SPC Regs, Sch I, para 4(3)

78108 At the end of the eight week period, the normal change of circumstances rules apply to determine the date the additional amount is withdrawn from.

Note: In certain specified cases CA can continue indefinitely after the person in respect of whose care the CA has been awarded dies. See DMG 78112 and Chapter 04 for detailed guidance on those rules.

The relevant date

78109 The relevant date is, where

1. the person in respect of whose care the CA has been awarded dies¹,
 - 1.1 the Sunday following the death of the person **or**
 - 1.2 the date of death, if the death occurred on a Sunday
2. head 1. does not apply, the date on which the person who has been entitled to CA ceases to be entitled to it².

1 SPC Regs, Sch I, para 4(4)(a); 2 Sch I, para 4(4)(b)

Example

Padraig is entitled to CA and his AMG includes an additional amount for carers. The person he is caring for dies on Friday 21.11.03. The relevant date is 23.11.03. The qualifying conditions are satisfied for the period 23.11.03 to 17.1.04. The normal change of circumstances rules then apply and the additional amount for carers is withdrawn.

UC carer element - treated as satisfying the qualifying conditions – run on

78110 Where an additional amount for carers has been awarded but the person in respect of whose care the UC carer element has been awarded dies, the qualifying conditions shall be satisfied or treated as satisfied for the assessment period in which the death occurred and the following two assessment periods.¹

1 UC Regs, reg 37)

Example

Alison's award of UC includes a carer element in respect of the care she provides to her mother. Alison's assessment period runs from the 10th of the month. On 23.6.19 Alison's mother dies. She continues to receive the carer element in her UC award up to and including 9.9.19.

New claims

- 78111 Where a new claim for SPC is made and entitlement to CA had ended within 8 weeks or less before the date of the SPC claim, or entitlement to UC carer element within the two assessment periods following the death of the person being cared for, in these circumstances there is no entitlement to the extra amount for carers. The run on can only apply if this element was already included in the award.

Transitional protection

- 78112 Carers who were aged 65 and over before 28.10.02 can continue to be entitled to CA even though they are no longer providing care¹, for example after the disabled person has died. Where this protection applies and CA is retained the carer can continue to receive the additional amount for carers.

1 The Regulatory Reform (Carer's Allowance) Order 2002, S.I. 2002/1457, art 4

Example 1

Ralph, aged 72, is entitled to SPC for himself and his partner Kath. Kath is aged 69 and has been entitled to CA in respect of the care she provides her mother since May 1994. Ralph's SPC includes an additional amount for carers. Kath's mother dies on 22.8.04 but Kath retains her entitlement to CA (beyond the eight week run on period). Ralph continues to be entitled to the additional amount for carers in the calculation of his SPC.

78113 - 78119

Additional amount for housing costs

Introduction

78170 **[See ADM Memo 8/18]** When considering the amount of the AMG, an additional amount for housing costs may be applicable¹. For the definition of housing costs, and the changes introduced from 6.4.18, see DMG 78195. But this additional amount is not normally payable² in the case of

1. prisoners **and**
2. members of religious orders who are fully maintained by their order.

1 SPC Act 02, s 2(3)(b); SPC Regs, reg 6(6)(c) & Sch II; 2 reg 6(2), (3) & (6)

78171 The exception to this general rule is where a person is a remand prisoner. In such a case an additional amount for housing costs may continue for up to 52 weeks. For further information on remand prisoners see the guidance at DMG 78650 et seq.

78172 DMs should note that the additional amount for housing costs is variable depending on the circumstances of each individual case.

Basic qualifying conditions

78173 Claimants are entitled to an additional amount for housing costs if¹

1. the claimant or partner is
 - 1.1 liable for those costs (see DMG 78215) **and**
 - 1.2 responsible for those costs (see DMG 78313) **and**
 - 1.3 treated as living in the home that those costs are for (see DMG 78220 et seq) **and**
2. those costs are allowable (see DMG 78270 et seq).

1 SPC Regs, Sch II, para 1(1)

Claimants without housing costs

78174 If a claimant is provided with free accommodation, for example under a charitable arrangement, there is no

1. liability or responsibility for housing costs **and**
2. entitlement to an additional amount for housing costs.

Rounding of fractions

78175 Where any calculation relating to housing costs results in a fraction of a penny, it should be rounded up to the next whole penny¹.

1 SPC Regs, Sch II, para 15

Former claimants of IS/JSA(IB)

- 78176 The rules on housing costs in IS and JSA(IB) were changed in 1995. Savings provisions protected existing claimants so that their benefit income did not reduce because of the new rules (see DMG 23684 et seq).
- 78177 But in SPC the level of a claimant's benefit income can only be protected if the claimant is entitled to a transitional amount (see DMG 78120).
- 78178 Where a claimant
1. transfers from IS or JSA(IB) to SPC **and**
 2. has transitional protection for housing costs in their IS or JSA(IB) claim
- the additional amount for housing costs should be calculated under the rules that apply in SPC.
- 78179 If the claimant is
1. entitled to a transitional amount, any difference in the amount awarded for housing costs will be taken into account in the calculation of the transitional amount (see DMG 78120)
 2. not entitled to a transitional amount, the claimant will lose the transitional protection previously received on the IS or JSA(IB) claim.

78180 - 78184

Steps to follow when deciding housing costs

- 78210 When deciding whether an additional amount for housing costs is applicable and if so, what that amount should be, the DM should determine
1. if the claimant or partner is liable for the housing costs (see DMG 78215)
 2. if the amount spent is on the dwelling occupied as the home (see DMG 78188 and 78220)
 3. if the housing costs cannot be met (see DMG 78270)
 4. how to apportion the housing costs if the dwelling is used for domestic and business use (see DMG 78310)
 5. if there are any eligible housing costs that can be allowed (see DMG 78438 et seq)
 6. if a deduction for a non-dependant is necessary (see DMG 78500).

78211 - 78214

Housing costs not met

78270 An additional amount for housing costs should not be allowed for

1. HB expenditure¹ **or**
2. claimants in a care home, unless their absence from the dwelling normally occupied as their home is temporary² (see DMG 78240 et seq).

1 SPC Regs, Sch II, para 5(1)(a); 2 Sch II, para 5(1)(b);

78271 HB expenditure means¹ any element for which HB may be payable².

Note: HB may be payable for such periodical payments as rent, service charges, mooring charges and for the site on which a caravan or mobile home stands (see DMG 78463).

1 SPC Regs, Sch II, para 5(1)(a); 2 HB Regs, reg 12(1)

78272 - 78309

Long tenancies

78456 Rents, and ground rents should be allowed where payments are connected to long tenancies¹.

1 SPC Regs, Sch II, para 13(1)(a)

Service charges

78457 **[See Memo DMG SPC 53]** Service charges should be allowed where they are¹

1. not eligible to be met by HB² **and**
2. payable as a condition of occupancy **and**
3. for
 - 3.1 the home **or**
 - 3.2 the building in which the home is situated **or**
 - 3.3 common areas for a group of homes³ **and**
4. for services provided by a landlord or the agents of a landlord.

1 SPC Regs, Sch II, para 13(1)(b); 2 para 5: R(IS) 4/92; 3 R(IS) 4/91

Note 1: Guidance on the amount of benefit allowed as a housing cost service charge for leasehold residents where their accommodation is modernised under the Decent Homes initiative is at Appendix 5.

Rent charges

78458 Rent charges, including chief rents, should be allowed as eligible housing costs¹.

1 SPC Regs, Sch II, para 13(1)(c)

Co-ownership schemes

78459 Payments under co-ownership schemes should be allowed as eligible housing costs¹. Payments made under any other type of shared ownership scheme should be considered in the normal way but only in respect of the portion of the property owned.

1 SPC Regs, Sch II, para 13(1)(d)

Example

Helen rents her home through a housing association who let the property to Helen under a co-ownership scheme. If she leaves the scheme, Helen will receive a percentage of the value of the property. Helen has to make payments under the co-ownership scheme for rent, ground rent and service charges.

The payments under the co-ownership scheme are allowed as eligible housing costs.

Crown tenants

78460 Payments under or relating to the tenancy or licence of the Crown tenants should be allowed as eligible housing costs¹.

1 SPC Regs, Sch II, para 13(1)(e)

Reduction for water charges

78461 In England and Wales, payments made by Crown tenants may include an amount for water charges. In such a case, the amount to be allowed as eligible housing costs should be reduced¹

1. where the amount payable for water charges is known, by that amount
2. in any other case, by the amount which would be the likely weekly water charge had the property not been occupied by a Crown tenant.

1 SPC Regs, Sch II, para 13(5)

Tents

78462 Where the dwelling occupied as the home is a tent, housing costs should be allowed for payments in respect of the

1. tent **and**
2. site on which the tent stands¹.

1 SPC Regs, Sch II, para 13(1)(f)

Mooring charges and pitch fees

78463 Where the claimant is liable to pay mooring charges for a houseboat or pitch fees for a caravan or mobile home, those charges and fees will be met by HB¹.

1 HB (Persons who have attained the qualifying age for SPC) Regs, reg 12(1)(f)(g)

78464

Deductions from eligible housing costs

78465 Deductions should be made from eligible housing costs¹ where they include an amount for

1. fuel charges **or**
2. ineligible service charges **or**
3. repairs and improvements.

1 SPC Regs, Sch II, para 13(2)

Deductions for fuel charges

78466 Where any of the charges for eligible housing costs in DMG 78455 include an amount for fuel charges, the following deductions should be made¹

1. a standard fuel deduction for
 - 1.1 heating (other than hot water) £30.30
 - 1.2 hot water £3.50
 - 1.3 lighting £2.40
 - 1.4 cooking £3.50 **or**
2. if the claimant provides evidence that the
 - 2.1 actual amount **or**
 - 2.2 estimated amount

for fuel is different to the standard deductions in 1., the deduction should be varied to the amounts in 2.

1 SPC Regs, Sch II, para 13(2)(a); HB (Gen) Regs, Sch I, para 5(2)

78467 When considering deductions for fuel charges, DMs should note that

1. if the claimant's home is one room, the standard fuel deduction in DMG 78466 1. will be
 - 1.1 half the amount in DMG 78466 1.1 to 1.3 **but**
 - 1.2 the full amount in DMG 78466 1.4 **and**
2. a deduction for heating (other than hot water) under DMG 78466 1.1 should only be made on the amount for heating the claimant's home. Service charges for heating any communal areas are not excluded.

78468 - 78469

Deductions for ineligible service charges

78470 Where any of the charges for eligible housing costs in DMG 78455 include an amount for ineligible service charges, the following deductions should be made¹

1. an amount equal to the amount of the ineligible service charges (see DMG 78471) **or**
2. where the charges in 1. cannot be identified separately from housing costs, a deduction should be made
 - 2.1 that is fairly attributable to the services in question **and**
 - 2.2 having regard to the cost of comparable services, if the exact charge in 1. cannot be identified.

1 SPC Regs, Sch II, para 13(2)(b); HB (Gen) Regs, Sch I, para 1

78471 The ineligible service charges that should be deducted from eligible housing costs¹ are charges for

1. living expenses for
 - 1.1 meals², including the

- 1.1.a preparation of meals **or**
 - 1.1.b provision of unprepared food **or**
- 1.2 laundry³, other than the provision of
 - 1.2.a premises **or**
 - 1.2.b equipment
 to enable people to do their own laundry **or**
- 1.3 leisure items⁴ such as
 - 1.3.a sports facilities (but not a children's play area) **or**
 - 1.3.b television rental subscription and licence fees (except radio relay charges) **or** charges made for the cost of adaptation or conversion of equipment for the conveyance of a television broadcasting service **or**
- 1.4 cleaning of rooms and windows⁵, except cleaning of
 - 1.4.a communal areas **or**
 - 1.4.b the outside of any windows where the claimant or any member of their household is unable to clean them
 where a payment (see DMG 78472) is not made in respect of such cleaning **or**
- 1.5 transport⁶ **or**
- 2. the acquisition of furniture or household equipment and the use of such items where the items will become the property of the claimant under an agreement with the landlord⁷ **or**
- 3. the provision of an emergency alarm system⁸ **or**
- 4. medical expenses⁹, including the cost of treatment or counselling related to
 - 4.1 mental disorder
 - 4.2 mental handicap
 - 4.3 physical disablement **or**
 - 4.4 past or present alcohol or drug dependence **or**
- 5. nursing or personal care¹⁰, including assistance
 - 5.1 at meal times **or**
 - 5.2 with personal appearance or hygiene **or**
- 6. general counselling or any other support services, whoever provides those services¹¹ **or**
- 7. any services not specified in 1. to 6., which are not connected with the provision of adequate accommodation¹².

Insufficient information to determine housing costs

78530 Where, a DM is

1. deciding a claim to SPC **or**
2. determining an issue on SPC housing costs

the AMG should include any housing costs that can be determined immediately on the evidence available¹. Where there is insufficient evidence, SPC can be awarded without any additional amount for housing costs.

1 SS CS (D&A) Regs, reg 13(1)

78531 If there are several housing costs on the claim, the AMG should include only an amount for those that can be determined. The AMG should not include any amount for those housing costs where there is sufficient information to make a decision.

78532 The award may be revised or superseded if further evidence is received after the claim or question has been determined¹. See DMG Chapters 03 and 04 for guidance on revision and supersession.

1 SS CS (D&A) Regs, regs 3 & 6

78533 – 78548

Additional amount for a child or qualifying young person

General

78549 From 1.2.19, when considering a new claim to SPC, the claimant's maximum amount shall include an amount for any child or qualifying young person for whom they are responsible¹. Prior to that date, support for pensioners with such responsibility was provided by tax credits².

1 SPC Regs, reg 6(6)(d) & Sch IIA, para 3; 2 WR Act 12; s.33 & Sch 6, para 6

Claimant with an ongoing award of tax credits

78550 If a claimant has an ongoing award of, or is treated as having an ongoing award of tax credits, that award will continue until they have a change of circumstance that ends their award or they are migrated to SPC as part of the phased process ahead of the abolition of tax credits¹. They cannot be awarded a child addition in SPC if they have an ongoing award, or are treated as having an ongoing award, of tax credits.

1 WR Act 12, s.33

Treated as having an award of tax credits

78551 A person is treated as having a tax credits award¹ at the start of the current tax year even if a decision has not yet been made on a claim for the current tax year. This applies where they've been awarded tax credits for the previous tax year **and**

1. they have not been given a final notice in respect of that previous tax year, **or**
2. a final notice has been given which includes specified dates by which they must provide details of their income and circumstances, **and**
 - 2.1 those dates have not yet passed and no current claim for a tax credit has been made, or treated as made; **or**
 - 2.2 a claim for a tax credits has been made, or treated as made before the date in paragraph 2.1 above, but no decision has been made on that claim; **or**
3. a final notice has been given, no claim for tax credits has been made or treated as made for the current year and no decision has been made in respect of an award for the previous tax year².

1 SPC Regs 2002, reg 6(12); 2 reg 6(13)

When the additional amount ceases

78552 Where an additional amount outlined in DMG 78549 has been awarded, that amount ceases¹ where DMG 78553 or 78553. applies.

1 SPC Regs 2002, reg 6(14);

78553 This paragraph applies where the person was awarded tax credits for the previous tax year which was not terminated and a final notice has been given in accordance with DMG 78551.2 above and the person makes a declaration

1. during the 30 days after tax credits ceases **or**
2. after the 30 day period, but before the 31st January of the following tax year **and** where HMRC accept there was good cause throughout the period for them not doing so by the date specified.¹

1 SPC Regs 2002, reg 6(15)

78554 This paragraph applies where a decision on the claimant's award of tax credits is revised in favour of the claimant following

1. a revision on the grounds of official error; **or**
2. a request to review by the claimant; **or**
3. an appeal; **or**
4. a revision, under any other circumstances, under specified legislation.¹

1 SPC Regs, reg 6(16), TC Act 02

78555 - 78560

Who is the responsible person

78561 The responsible person is

1. the person with whom the child or qualifying young person normally lives¹ **or**
2. where the child or qualifying young person normally lives with two or more persons who are not a couple, the person who has main responsibility².

1 SPC Regs, Sch IIA para 3(1); 2 Sch IIA, para 3(3)

Normally lives

78562 "Normally lives" is not defined in legislation, and should be applied with a focus on the normal pattern of living, rather than the amount of time spent with a particular person, or in a particular place. "Normally lives with" can include both minority and majority carers.

Note: Which person gets CHB is not taken into account when determining where a child or qualifying young person normally lives.

Example 1

Alan and Frances have a daughter, Gail, who lives from Monday to Friday with her grandmother. She spends the majority of weekends and all school holidays with her mother and father. This arrangement has been in place for some time and is Gail's normal pattern of living. She therefore normally lives with her parents **and** normally

lives with her grandmother. The DM will need to determine who has main responsibility for Gail.

Example 2

Alan's 14 year old son Eric has recently left LA care. He spends Monday to Thursday nights with his mother, Frances, and Friday to Sunday nights with his grandparents, Arthur and Janice. Eric normally lives with Frances for part of each week and normally lives with Arthur and Janice for the balance of each week. The DM will need to determine who has main responsibility for Eric.

Main responsibility

78563 Where a child or qualifying young person normally lives with two or more persons who are not a couple, the deciding factor will be the person who has main responsibility. Who has that main responsibility¹ should be decided between the persons with whom the child or qualifying young person normally lives.

1 SPC Regs, Sch IIA, para 3(3)

78564 If

1. joint agreement cannot be reached as to which person has main responsibility
or
2. in the opinion of the DM the choice of person with main responsibility does not reflect the actual arrangements

the DM may determine which person has main responsibility.¹

1 SPC Regs, Sch IIA, para 3(4)

Who has main responsibility

78565 If the DM is required to determine who has main responsibility they should note that main responsibility is not defined in regulations and should be given the meaning of the person who is normally answerable for, or called to account for the child or qualifying young person. In determining who has the main responsibility for a child or qualifying young person consideration should be given to:

1. Who makes day to day decisions about the child's welfare including, for example, arranging and taking them to visits to the doctor or dentist or enrolling and taking the child to and from school?
2. Who provides the child with clothing, shoes, toiletries and other items needed for daily use?
3. Who is the main contact for the child's school, doctor and dentist?
4. Who cares for the child when the child is ill?

This list should not be considered exhaustive.

Example

Toby, 8, has always lived with his single mother at his Grandparents' home. A year ago his mother, Steph, received a promotion at work which involves considerable travelling and prolonged absences. His grandparents, Neil and Hannah, are in receipt of SPC and claim an additional amount for Toby. The DM determines that Toby can be said to normally live with his mother and his grandparents. However, for around 60% of the time over the previous year, Neil and Hannah have been in sole charge of Toby in his mother's absence, have taken Toby to school every day, organised his after school and weekend activities, taken him to doctors and dentists appointments and cared for him when he is ill. That pattern is likely to continue and the DM determines they have main responsibility for Toby.

78566 A person cannot be responsible for a qualifying young person with whom they live as part of a couple¹.

1 SPC Regs, Sch IIA, para 3(2)

78567 A claimant is not to be treated as responsible for a child or qualifying young person during any period that child or qualifying young person is

1. in prison¹ or
2. except in certain cases, looked after by a local authority².

1 SPC Regs, Sch IIA, para 5; 2 para 4

78568 - 78572

Looked after by an LA

78573 A looked after child is one who is in the care of the LA or provided with accommodation by the LA in exercise of its social services functions¹. The child may be placed with a foster parent, another family member, their parent or a person who has parental responsibility. In Scotland, it includes a child who is subject to relevant court orders regarding their supervision and care by the LA.

1 Children Act 89 s 22; Children (Scotland) Act 95 s 17(6); Social Services and Wellbeing (Wales) Act 2014, s 74

78574 Where a child or qualifying young person is in LA care for a planned short break or series of breaks to provide respite for the person who normally cares for them, or where they are placed with or continue to live with a person with parental responsibility, the child addition will still be payable.¹

1 SPC Regs, Sch IIA, para 4(3)

Prisoners

78575 A claimant is not to be treated as responsible for a child or qualifying young person during any period the child or qualifying young person is a prisoner¹. (see [DMG 78651](#) et seq for meaning of prisoner)

1 SPC Regs, Sch IIA, para 5

Child or qualifying young person temporarily absent

Temporary absence in GB

78576 A claimant is not to be treated as responsible for a child or qualifying young person in GB where they are absent and living away from the responsible person if that absence is likely to exceed 52 weeks, unless there are exceptional circumstances and the absence is unlikely to be substantially more than 52 weeks.¹

1 SPC Regs, Sch IIA, para 6

Temporarily absent from GB

78577 Do not treat the claimant as responsible for a child or qualifying young person where that child or qualifying young person is

1. absent **or**
2. expected to be absent

from GB for more than 4 weeks.¹

1 SPC Regs, Sch IIA, para 7(1)(a)

78578 The absence period in DMG 78577 above can be extended by up to a further 4 weeks¹ if the temporary absence is in connection with the death of

1. the claimant's partner, **or**
2. a child or qualifying young person normally living with the claimant, **or**
3. a close relative of
 - 3.1 the claimant, **or**
 - 3.2 the claimant's partner, **or**
 - 3.3 a child or qualifying young person normally living with the claimant

and the Secretary of State considers that it would be unreasonable to expect the child or qualifying young person to return to GB within 4 weeks.

1 SPC Regs, Sch IIA, para 7(1)(b) & 7(2)

78579 The absence period can be for a duration of up to 26 weeks¹ where that absence is solely in connection with the child or qualifying young person undergoing

1. treatment for an illness or physical or mental impairment by, or under the supervision of, a qualified practitioner **or**
2. medically approved convalescence or care as a result of treatment` for an illness or physical or mental impairment, where the person had that illness or disability before leaving GB, **or**

3. the child or qualifying young person accompanying the claimant or the claimant's partner for convalescence or care as set out above.

1 SPC Regs, Sch IIA para 7(1)(c) & 7(3)

Note: "medically approved" means certified by a registered medical practitioner and "qualified practitioner" means a person qualified to provide medical treatment or physiotherapy or a form of treatment which is similar to, or related to, either of these forms of treatment.¹

1 SPC Regs, Sch IIA, para 7(4)

78580 - 78585

Death of child or qualifying young person

78586 Where a claimant's award of SPC includes an amount for a child or qualifying young person for whom they are responsible and that child or qualifying young person dies¹, they will continue to be treated as responsible for that child or qualifying young person

1. for a period of 8 weeks from the day the child or qualifying young person dies
or
2. in the case of a qualifying young person the earlier of
 - 2.1 8 weeks **or**
 - 2.2 the day of what would have been their 20th birthday,

1 SPC Regs, Sch IIA, para 8

Rates of child addition

78587 The rate of the child addition for each child or qualifying young person is £53.34¹ per week. Where the eldest child or qualifying young person for whom the claimant is responsible was born before 6.4.17, that amount is £63.84 per week in respect of that child²

1 SPC Regs, Sch IIA, para 9(1)(a); 2 para 10

Additional amount for a disabled child

78588 An additional amount of £29.02 per week will be payable where the child or qualifying young person is

1. entitled to DLA **or**
2. entitled to PIP¹.

1 SPC Regs, Sch IIA, para 9(1)(b)(i) & 9(2)

78589 Where the child or qualifying young person is

1. entitled to the care component of DLA at the highest rate **or**
2. entitled to the daily living component of PIP at the enhanced rate **or**

3. certified as severely sight impaired or blind by a consultant ophthalmologist
the weekly additional amount will be £90.23¹.

1 SPC Regs, Sch IIA, para (9)(1)(b)(ii) &(9)(3)

Definitions

Child

78590 Child means¹ a person under the age of 16.

Note: There is no need for the child to be receiving education for this definition to apply.

1 SPC Regs, Sch IIA, para 2

Parental responsibility

78591 In England and Wales, parental responsibility means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property. In Scotland, parental responsibility means having any or all of the legal responsibilities or rights described in sections 1 or 2 of the Children (Scotland) Act 1995.¹

1 Children Act 1989, s 3; Children (Scotland) Act 1995, s 1 or 2

Qualifying young person

78592 A qualifying young person¹ is a person who has reached the age of 16 but not the age of 20 and who is

1. aged 16 years, but only for the period up to, but not including, the 1st September that next follows their 16th birthday
2. aged up to 19 years, but only for the period up to, but not including, the 1st September that next follows their 19th birthday where they are enrolled on, or accepted for

2.1 approved training² or

2.2 a course of education

2.2.a which is not advanced education, **and**

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

this must not include meal breaks or unsupervised study, including homework, whether done on or off the premises of the educational establishment³.

Note 1: Where the young person at **2.** above is aged 19, they must have started the course of education or training, or been accepted or enrolled on it before reaching that age.

Note 2: The education or training described in **2.1** and **2.2** does not include education or training that is provided through a contract of employment⁴

1 SPC Regs Sch IIA, para 2; 2 reg 4A(4); 3 reg 4A (1); 4 reg 4A(3)

78593 - 78599

Special groups

Polygamous marriages

Introduction

78600 The following guidance explains the special rules that apply to members of polygamous marriages¹. But these rules only apply to polygamous marriages. They do not apply to multiple relationships (see DMG 77116). DMs should obtain evidence of the marriage if a claimant declares more than one spouse.

1 SPC Act 02, s 12; SPC Regs, Sch III, para 1

General

Claims

78601 A claim for SPC may be made by a husband or wife of a polygamous marriage, if

1. the claimant **and**
2. the other party to the marriage **and**
3. any additional spouse (whether of the claimant's or of a spouse of the claimant's)

are all members of the same household¹ and are not a mixed age couple² (see DMG 77034).

1 SPC Act 02, s 12(1); SPC Regs, Sch III, para 1(1) & (11); 21 WR Act 12 (Commencement No. 31 etc.) Order 2018, art 2(2)

Entitlement

78602 A claimant

1. is not entitled to SPC if
 - 1.1 they are a member of a mixed age couple (see DMG 77034)¹ **or**
 - 1.2 the other party to the marriage **or**
 - 1.3 any additional spouseis entitled to SPC² (see DMG 77030)
2. who is entitled to SPC may be entitled³ to a
 - 2.1 GC (see DMG 78608 et seq) **or**
 - 2.2 SC (see DMG 78623 et seq) **or**
 - 2.3 both.

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

2 SPC Act 02, s 4(1) & 12(2)(a) & (3); SPC Regs, Sch III, para 1(3); 3 SPC Act 02, s 1(3)

Income and capital

78603 The income and capital of the other party to the marriage and any additional spouse should be treated as income and capital of the claimant¹ (see DMG Chapter 85).

1 SPC Act 02, s 5 & 12(2)(d); SPC Regs, Sch III, para 1(4) & (11)

78604 - 78607

Guarantee credit

78608 The following guidance explains the special rules that apply when calculating the GC in polygamous marriage cases. It should be read in conjunction with DMG 77150 et seq which gives guidance on the general rules that apply.

Standard minimum guarantee

78609 In a polygamous marriage case, the SMG is made up of¹

1. a set amount for the claimant and any one spouse of the claimant's **and**
2. an extra amount for each additional spouse (whether of the claimant or that spouse).

See Appendix 2 to Chapter 77 for the rates of SMG.

1 SPC Act 02, s 12(2)(b) & (c); SPC Regs, reg 6(1); Sch III, para 1(5) & (11)

Example 1

Sanjay is a member of a polygamous marriage and is married to Gita and Bina. At the time of his SPC claim the set amount of SMG for Sanjay and his elder wife Gita is £155.80. The extra amount for Bina is £53.70. The total SMG for Sanjay is £209.50 [£155.80 + £53.70].

Example 2

Nisha is a member of a polygamous marriage. Her husband Ishaq has another wife Sunetra and all three live together as members of the same household. Nisha claims SPC and at the time of her claim the set amount for her and Ishaq is £155.80. Sunetra is an additional spouse of Ishaq's and the extra amount for her is £53.70. The total SMG for Nisha is £209.50 [£155.80 + £53.70].

Additional amount for the severely disabled

78610 The additional amount for the severely disabled is payable at a lower or higher rate¹. See Appendix 2 to Chapter 77 for details of those rates.

1 SPC Regs, reg 6(5)

Lower rate

78611 Claimants who are members of a polygamous marriage are entitled to the lower rate of additional amount for the severely disabled if¹

1. both partners and each additional spouse (whether of the claimant's or of a spouse of the claimant's) are in receipt of
 - 1.1 "AA" **or**
 - 1.2 the care component of DLA at the highest or middle rate **or**
 - 1.3 the daily living component of PIP at the standard or enhanced rate **or**
 - 1.4 AFIP **and**
2. there are no other persons aged 18 or over
 - 2.1 normally residing with the partners and any additional spouse **or**
 - 2.2 who the partners and any additional spouse normally reside with (see DMG 78065 et seq) **and**
3. someone is entitled to and in receipt of CA or UC that includes the CE, in respect of caring for only one of the members of the polygamous marriage.

1 SPC Regs, reg 6(5)(a); Sch I, para 1(1)(b); Sch III, para 1(9) & (11)

78612 Claimants may not satisfy the conditions in DMG 78611. In such a case the lower rate can still be awarded if¹

1. at least one member of the polygamous marriage is in receipt of
 - 1.1 "AA" **or**
 - 1.2 the care component of DLA at the highest or middle rate **or**
 - 1.2 the daily living component of PIP at the standard or enhanced rate **or**
 - 1.3 AFIP **and**
2. at least one member of the polygamous marriage is blind or treated as blind and **not** in receipt of
 - 2.1 "AA" **or**
 - 2.2 the care component of DLA at the highest or middle rate **or**
 - 2.3 the daily living component of PIP at the standard or enhanced rate **and**
3. all members of the marriage (that is both partners and each additional spouse) fall within either **1.** or **2. and**

4. there are no other persons aged 18 or over
 - 4.1 normally residing with the partners and any additional spouse **or**
 - 4.2 who the partners and any additional spouse normally reside with (see DMG 78065 et seq) **and**
5. either
 - 5.1 no-one is entitled to and in receipt of CA or UC that includes the CE, in respect of caring for any person who is receiving "AA" or DLA or PIP or AFIP as in 1. **or**
 - 5.2 someone is entitled to and in receipt of CA or UC that includes the CE, in respect of caring for one or more, but not all, the persons receiving "AA" or DLA or PIP or AFIP as in 1..

1 SPC Regs, reg 6(5)(a); Sch I, para 1(1)(c); Sch III, para 1(10)

78613 The lower rate of additional amount for the severely disabled can also be awarded to claimants who are members of a polygamous marriage if¹

1. one of the members of the marriage is in receipt of
 - 1.1 "AA" **or**
 - 1.2 the care component of DLA at the highest or middle rate **or**
 - 1.3 the daily living component of PIP at the standard or enhanced rate **or**
 - 1.4 AFIP **and**
2. the other members would be in receipt of
 - 2.1 "AA" **or**
 - 2.2 the care component of DLA at the highest or middle rate **or**
 - 2.3 the daily living component of PIP at the standard or enhanced rate **or**
 - 2.4 AFIP

but for being a patient for over 28 days **and**
3. there are no other persons aged 18 or over
 - 3.1 normally residing with the partners and additional spouse **or**
 - 3.2 who the partners and additional spouse normally reside with (see DMG 78065 et seq) **and**
4. no-one is entitled to and in receipt of CA or UC that includes the CE, in respect of caring for the person who is receiving "AA" or DLA or PIP or AFIP as in 1..

1 SPC Regs, reg 6(5)(a); Sch I, para 1(1)(b) & (2)(b); Sch III, para 1(9)

People subject to immigration control

General

78940 PSICs are normally excluded from SS benefits¹. There are exceptions to this rule for certain categories of people².

1 I & A Act 99, s 115(1); 2 SS (I&A) Cql Amdts Regs

Meaning of person subject to immigration control

78941 PSICs means¹ a person who is not a national of the EEA who

1. requires leave to enter or remain in the UK but does not have it **or**
2. has leave subject to the condition that they have no recourse to public funds **or**
3. is a sponsored immigrant **or**
4. has had limited leave extended only because they have appealed a decision to vary, or refuse to vary that leave.

1 I & A Act 99, s 115(9)

Exceptions

78942 The exceptions where SPC can be awarded in full (subject to the normal rules of entitlement) are when the claimant

1. is a sponsored immigrant who has been in the UK for five years or more¹ **or**
2. is a sponsored immigrant and the sponsor has died¹ **or**
3. has limited leave and is temporarily without funds¹ **or**
4. is an asylum seeker who has transitional protection under the 3.4.00 rules² **or**
5. is a national of a country which has ratified the
 - 5.1 European Convention on Social and Medical Assistance **or**
 - 5.2 Council of Europe Social Charter (see Appendix 4 to DMG Chapter 24)

and is lawfully present in the UK¹.

“Lawfully present” in this context means that the person should have some form of leave to enter or remain in the UK. Asylum seekers, or people with temporary admission in other circumstances, would not be regarded as being lawfully present for this purpose.

1 SS (I&A) Cql Amdts Regs, reg 2(1); 2 reg 2(7)

Sponsored immigrants

78943 PSIC's are entitled to SPC if they

1. have leave to enter or remain in the UK as a sponsored immigrant **and**
2. have not been resident in the UK for a period of at least five years **and**
3. the sponsor has died.

If there is more than one sponsor they must all have died before SPC can be awarded.

Example 1

A man enters the UK in December 1999 with indefinite leave under a written sponsorship agreement signed in November 1999. In January 2004 the sponsor dies and he claims SPC. He is a PSIC with entitlement to SPC.

Example 2

A woman enters the UK in May 2001 with indefinite leave under a written sponsorship agreement signed by her two sons in April 2001. She lives with her elder son who dies in May 2004 and she claims SPC. But her other sponsor, her younger son, is still alive. The claimant is a PSIC with no entitlement to SPC.

Note: Where the claimant has been resident in the UK for five years, SPC can be awarded in full¹.

1 SS (I&A) Cpl Amdts Regs, reg 2 (1), Sch, para 3

78944 - 78945

Partner is a person subject to immigration control

78946 A partner that is a PSIC is not a member of the claimant's household¹ although their presence in the dwelling may be counted as a person residing with the claimant for severe disability purposes².

Note: If they are not members of the same household, they are not a couple (see DMG 77012)³

1 SPC Regs, reg 5(1)(h); 2 Sch I, para 1(1)(a); 3 SPC Act 02, s 17(1)

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