

Child element qualifying conditions F1004 - F1070

[General](#) F1004

[New Claim restriction](#) F1005

[Restrictions](#) F1006 - F1007

[Existing awards](#) – transitional protection F1008 - F1014

[Connected awards](#) F1015

[Exceptions](#) F1016

[Multiple births](#) F1017

[Adoptions](#) F1018 - F1019

[Non-parental caring arrangements](#) F1020 - F1021

[Non-consensual conception](#) F1022 - F1029

[Continuation of existing exception – previous UC award](#) F1030 - F1031

[Continuation of an exception from a previous CTC/IS/JSA award](#) F1032

[Order of children](#) F1033 - F1036

[Definitions](#) F1037 - F1069

See ADM [Memo 03/26](#)

General

F1004 The claimant's maximum amount should include an amount for a maximum of two

1. children **or**

2. qualifying young people

for whom the claimant is responsible¹. **But see F1007 - F1008**

F1005

Restrictions

F1006 For the period from 6.4.17 to 31.1.19 the child element was awarded only in respect of the first and second child or qualifying young person in the claimant's household¹.

1 [UC Regs, reg 24A\(1\)\(a\)](#)

F1007 From 1.2.19 all children and qualifying young people born before 6.4.17, for whom the claimant is responsible, are transitionally protected¹ and a child element will be payable.

1 [UC Regs, reg 24A\(3\)](#)

F1008 From 28.11.18, children who are adopted or in non-parental caring arrangements are disregarded when determining the order of children. (see paragraphs F1018 – 1021)¹ A child element is payable for any child or qualifying young person in these arrangements, and any born before 6.4.17 (see paragraph F1007), as well as any other children or qualifying young people who qualify for the exceptions in F1016 et seq.

1. [UC Regs, reg 24A\(za\)](#); [Sch 12, para 3,4](#)

F1009 A child element will not be payable for the third or subsequent child or qualifying young person in the claimant's household born on or after 6.4.17, unless they qualify for an exception¹ (see paragraph F1016).

1 [UC Regs, reg 24A\(1\)\(b\)](#)

F1010 - F1015

Exceptions

F1016 There are 3 categories that fall into the exception specified at paragraph F1008.

1. multiple births (paragraph F1017)

2. non-consensual conception (paragraph F1022 – F1024)

3. continuation of existing exception. (paragraph F1030 – F1031)

Multiple births

F1017 An exception applies where

1. the claimant is a parent (other than an adoptive parent) of the child
2. the child was one of two or more children born as a result of the same pregnancy
3. the claimant is responsible for at least two of the children born as a result of that pregnancy
4. the child is not the first in the order of multiple birth children established under paragraph F1033.¹

1 [UC Regs, Sch 12, para 2](#)

Example:

A couple have three children Tom born 2.8.2015, Jack born 10.5.17 and Jill born 18.6.18. Twins Alex and Luke are born on 20.12.19. The claimant is the parent of and responsible for the twins, they were born as a result of the same pregnancy and the DM decides that Alex is first in the child order of the twins. The claimant is entitled to a child element for Tom (who is transitionally protected as he was born before 6.4.17) and for Jack, as the second child. No child element is paid for Jill (as the third child) or for Alex (Alex is the first twin so is a "subsequent" child) and, under the multiple birth exception criteria, a child element for Luke .

Adoptions

F1018 An exception applies¹ where

1. the child or qualifying young person has been

1.1 adopted **or**

1.2 placed for adoption

with the claimant under legislation².

1 [UC Regs, Sch 12, para 3](#); 2 [Adoption and Children Act 2002, Adoption and Children \(Scotland\) Act 2007](#)

F1019 The exception at paragraph F1018 does not apply where the claimant or, if the claimant is a member of a couple, the other member

1. was immediately prior to the child's adoption, a step parent of the child **or**

2. has at any time been a parent of the child **or**

3. adopted the child under a convention adoption order or an external adoption¹ **or**

4. had already adopted the child under the law of any country or territory outside the British Islands (see paragraph F1038).

1 [Adoption and Children Act 2002, s 144](#) & [Adoption and Children Scotland Act 2007, s 119\(1\)](#)

Non-parental caring arrangements

F1020 An exception applies where the claimant is

1. a friend or family carer of the child **or**

2. responsible for a child who is also a parent of a child¹.

1 [UC Regs, Sch 12, para 4](#)

Example:

Couple have two children Jack aged 10 and Jill aged 15, Jill has a son Alex born on 20.12.17. As the claimant is responsible for Jill (who is the parent of Alex) he is entitled to a child element for Jack and Jill (as they were born before 6.4.17) and also for Alex under the exception criteria.

F1021 For the purposes of paragraph F1020 **1.** the term friend or family carer means a person who is responsible for the child, but is not that child's parent or step parent **and**

1. is named in a child arrangements order, under legislation¹, as a person with whom the child is to live **or**

2. is a guardian² or special guardian³ of the child **or**

3. is entitled to a guardian's allowance⁴ in respect of that child **or**

4. in Scotland

4.1 kinship care arrangements are in place, such as a kinship care order⁵ in respect of that child **or**

4.2 is a guardian⁶ of that child **or**

4.3 one or more of the parental responsibilities or parental rights⁷ are vested by a permanence order made in respect of that child under legislation⁸ **or**

5. fell within any of the above (**1.** to **4.**) immediately prior to the child's 16th birthday and has since continued to be responsible for that child⁹ **or**

6. has taken care of the child in circumstances in which it is likely that child would otherwise be looked after by a local authority¹⁰.

Note: in an informal caring arrangement, the friend or family carer should provide evidence from a social worker to support the declaration that the child would otherwise be looked after by a local authority.

1 [Children Act 1989, s 8](#); 2 [s 5](#); 3 [s 14A](#); 4 [C & B Act, s 77](#);

5 [Children and Young People \(Scotland\) Act 2014, s 72\(1\)](#); 6 [Children \(Scotland\) Act 1995, s 7](#); 7 [s 1 or 2](#);

8 [Adoption and Children \(Scotland\) Act 2007, s 80](#); 9 [UC Regs, Sch 12, para 4\(2\)\(g\)](#); 10 [para 4\(2\)\(h\)](#)

Non-consensual conception

F1022 An exception applies where

1. the claimant is the child's parent **and**

2. the DM determines (see paragraph F1024) that

2.1 the child is likely to have been conceived as a result of sexual intercourse to which the parent did not agree by choice or did not have the freedom and capacity to agree by choice **and**

2.2 the parent is not living at the same address as the other party to that sexual intercourse¹.

Note: For **2.2** the DM should accept the claimant's statement confirming that they were not living at the same address as the other party².

1 [UC Regs, Sch 12, para 5\(1\)](#); 2 [para 5\(4\)](#)

F1023 The freedom or capacity to agree by choice, as required at paragraph F1022 **2.** includes, at or around the time the child was conceived, such circumstances in which

1. the parents were personally connected **and**

2. one parent was repeatedly or continuously engaging in behaviour towards the other parent that was controlling or coercive **and**

3. that behaviour had a serious effect on the recipient¹

Note 1: the parents are personally connected if they are in an intimate personal relationship with each other or they were living together and were members of the same family or they were living together and had previously been in an intimate personal relationship with each other².

Note 2: the behaviour will have had a serious effect where it causes fear, on at least two occasions, that violence will be used against the parent or it causes serious alarm or distress which has a substantial

adverse effect on the parent's day to day activities³.

1 [UC Regs, Sch 12, para 5\(2\)](#); 2 [para 5\(5\)](#); 3 [para 5\(6\)](#)

F1024 The DM can only make the determination, as described at paragraph F1022.**2.1**, where

1. the child's parent provides evidence (that evidence will probably take the form of a completed pro forma) from an approved person that shows

1.1 they had contact with that approved person (see paragraph F1037) or another approved person
and

1.2 their circumstances are consistent with those of a person to whom **1.** and **2.1** of paragraph F1022 would apply **or**

2. there has been

2.1 a conviction for an offence of rape under legislation¹ **or**

2.2 a conviction for an offence of controlling or coercive behaviour in an intimate or family relationship under legislation² **or**

2.3 a conviction for any offence under the law of a country outside GB that the DM considers to be comparable to either offence mentioned above **or**

2.4 an award under the Criminal Injuries Compensation Scheme in respect of a relevant criminal injury sustained by the parent

and the DM considers it likely that the offence or injury (**2.1** to **2.4** above)

2.5 was caused by one parent **or**

2.6 diminished the other parents freedom or capacity to agree to the sexual intercourse

which resulted in the conception of the child³.

Note 1: no time limit is placed on when the report needs to be made to the approved person after the actual incident that resulted in the pregnancy, in order to be eligible for the exception.

Note 2: There is no requirement to provide evidence from an approved person where the DM is satisfied that the same evidence had already been provided to HMRC in relation to a CTC exception⁴.

1 [Sexual Offences Act 2003, s 1](#) & [Sexual Offences \(Scotland\) Act 2009, s 1](#);

2 [Serious Crime Act 2015, s 76](#); 3 [UC Regs, Sch 12, para 5\(3\)](#); 4 [UC \(TP\) Regs, reg 42\(2\)](#)

Continuation of existing exception – previous UC award

F1030 An exception applies¹ where none of the exceptions listed at **1.** to **4.** of paragraph F1016 are triggered and the claimant

1. is the child's step parent **and**

2. had previously been entitled to UC as a member of a joint claim couple with the child's parent where that child fell under one of the multiple birth, adoption or non-consensual conception exceptions **and**

3. since the previous award ended each subsequent UC award was as a consequence of

3.1 the previous award having ended when the claimant ceased to be a member of a couple **or**

3.2 the previous award ending when they became a member of a couple with another claimant **or**

3.3 any other circumstances which result in retaining assessment periods for that award that begin on the same day of each month² as the assessment period for a previous award.

[1 UC Regs, Sch 12, para 6](#); [2 UC Regs, reg 21](#)

F1031 Where in the previous award mentioned at F1030.**2** a multiple birth exception applied

1. the step parent was also responsible for one or more children or qualifying young persons born as a result of the same pregnancy as the child **and**

2. the child was not the first in the order established under paragraph F1033¹.

[1 UC Regs, Sch 12, para 6\(e\)](#)

Continuation of an exception from a previous CTC/IS/JSA award

F1032 The claimant is treated as satisfying¹ the exception described at paragraph F1030 where the claimant

1. is the step-parent of a child or qualifying young person **and**

2. within the 6 months immediately preceding the first day on which the claimant became entitled to UC they had an award of CTC, IS or JSA in which an exception corresponding with the UC exceptions of

2.1 multiple birth

2.2 adoption

2.3 non-consensual conception

2.4 continuation of an existing exception applied.

Note: Where it is **2.4** (the continuation exception equivalent) that is considered, the claimant should be treated as satisfying the test of paragraph F1030.2 despite the previous award not being an award of UC.

1 [UC \(TP\) Regs, reg 41\(1\)](#)

Order of children

F1033 The order of children or qualifying young persons in the claimant's household is established by reference to the date of birth of each child or qualifying young person for whom the claimant is responsible, taking the earliest date first.¹

1 [UC Regs, reg 24B\(1\)](#)

F1034 Any child or qualifying young person to whom F1020 and F1030 applies is to be disregarded when determining the order of children.¹

1 [UC Regs, reg 24B\(2A\)](#)

Example:

Kevin and Penny already have three children, Tom born 12.2.15, Samuel born 15.5.17 and Mary born 20.6.18, when they adopt Harry who was born on 10.10.14. For the purposes of the two child limit a child element is payable for Tom, who is transitionally protected as he was born before 6.4.17 and for Samuel, as the second child but not for Mary, as she is the third child in the household. A child element is also payable for Harry, who is disregarded in the order of children as he is adopted.

F1035 The order of the children or qualifying young persons in the claimant's household should be determined by the DM to ensure the greatest number of children qualify for the child element.¹

1 [UC Regs, reg 24B\(2\)](#)

F1036

Definitions

Approved person

F1037 An approved person is a person of a description specified on an approved list.

Note: the approved list will be of professionals who are trained to deal with such sensitive situations and

with whom it would be beneficial for the claimant to engage in order to obtain relevant guidance and support.

British Islands

F1038 The British Islands means the UK, the Channel Islands and the Isle of Man.

Criminal Injuries Compensation Scheme

F1039 Criminal injuries compensation scheme has the meaning specified in legislation¹.

1 [Criminal Injuries Compensation Act 1995](#)

Members of the same family

F1040 Parents are members of the same family where

1. they are, or have been married to or civil partners of each other
2. they are relatives as specified in legislation¹
3. they have agreed to marry each other
4. they have entered into a civil partnership agreement under specified legislation²
5. they are both parents of the same child
6. they have, or have had, parental responsibility³ for the same child.

1 [Family Law Act 1996, s 63\(1\)](#); 2 [Civil Partnership Act 2004, s 73](#); 3 [UC Regs, reg 4A\(2\)](#)

Relevant criminal injury

F1041 Relevant criminal injury means

1. a sexual offence (including a pregnancy sustained as a direct result of being the victim of a sexual offence)
2. physical abuse of an adult, including domestic abuse
3. mental injury

as described in the tariff of injuries in the Criminal Injuries Compensation Scheme.

Step-parent

F1042 In relation to a child or qualifying young person a step-parent is a person who is not the child's parent but

1. is a member of a couple, the other member of which is a parent of the child, where both are responsible for that child **or**

2. was previously a member of a couple, the other member of which was a parent of the child, where immediately prior to ceasing to be a member of that couple the person was, and has since continued to be, responsible for that child¹.

1 [UC Regs, reg 2](#)

F1043 – F1055

Who is the responsible person?

F1056 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 [UC Regs, reg 4\(2\)](#); 2 [reg 4\(4\)](#)

F1057 – F1059

Normally lives

F1060 “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, and “normally lives with” can include both minority and majority carers

Note: which person gets CHB is not taken into account.

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 Gails 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 father Alan and step mother Barbara. Eric normally lives with Frances for part of each week and normally lives with Alan for the balance of each week.

Example 3

Marcus and Leanne are separated and share the care of their twins girls April and Amber. April lives with Marcus on weekdays, as he lives closer to her school, but spends weekends and part of the school holidays with her mother and sister. She is registered with her school as living at Marcus's address. Amber is disabled and Leanne cares for her at home full time. Amber has been awarded Disability Living Allowance. Marcus works full time and has not claimed any benefits. Leanne makes a new claim to Universal Credit for herself, April and Amber.

The DM decides April normally lives with Marcus, and also normally lives with Leanne. Leanne is awarded the child element and the disabled child addition for Amber but the DM will need to determine who has main responsibility for April.

F1061 – F1062

Main responsibility

F1063 Where the 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 [UC Regs, reg 4\(4\)](#)

F1064 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 responsibility¹.

1 [UC Regs, reg 4\(5\)](#)

Who can have main responsibility?

F1065 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 young person. In determining who has the main responsibility for a child or 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 1

Alan lives with his partner Barbara, his daughter Caroline aged 15 and Caroline's 1 year old daughter, Danielle. Alan and Barbara support Caroline to care for Danielle. Caroline has returned to school and does not receive any support from Danielle's father. Danielle has a long term health condition. As Caroline is 15, Alan has registered Danielle with the GP and is also the main contact for the hospital where Danielle has regular appointments. Caroline usually takes Danielle to appointments accompanied by Alan. When Danielle is ill, Alan and Barbara take care of her so Caroline can attend school and complete her coursework. Alan becomes unemployed and claims Universal Credit for Barbara, Caroline and Danielle.

As Danielle lives with both Caroline and Alan equally they need to nominate which of them has main responsibility; they cannot decide. The decision falls to the DM who decides that Alan has main responsibility for her as he provides food, clothing, toiletries and all other items needed for her welfare and maintenance. He also is the main contact for the GP and hospital although Caroline also attends the appointments. The DM also takes Caroline's age into account as, at 15, she is below the minimum age needed to make her own claim to Universal Credit and Alan is still responsible for her.

Note: When Caroline becomes 16 the family may agree that she should now have main responsibility for Danielle and Caroline can claim Universal Credit as a lone parent. Danielle and Caroline would be removed from Alan's claim.

Example 2

Philip and Susan are divorced and have a son, Michael, who is 12 years old. Michael spends alternate weeks living with Philip or Susan throughout the year. Philip and Susan both pay equal fixed sums into a joint account each month which is used to buy clothing, shoes and other items Michael needs as well as paying for any school related expenses. Philip works part time and Susan is unemployed. Philip and Susan each claim Universal Credit with their new partners. Both want to add Michael to their claim and cannot agree on which of them should receive the child element.

The DM decides that Michael normally lives with both of his parents and that they both contribute equally to his day to day needs. However, the DM discovers that Susan makes appointments and takes Michael to the GP and to dentist appointments even if it is a week in which Michael is staying with Philip. Philip and Susan jointly decide which school to enrol Michael in but Susan is the primary contact and always attends parent's evenings. Susan also shops for items that Michael needs. The DM decides that Susan has main responsibility and awards the child element to her.

Who is not the responsible person?

F1069 A person cannot be responsible for a qualifying young person with whom they live as part of a couple¹.

1 [UC Regs, reg 4\(3\)](#)

Example

Jane is aged 17 living as a couple with Tom aged 20. Jane is still in education and meets the criteria to be a qualifying young person therefore Tom cannot be responsible for her.

F1070 A child or qualifying young person is not treated as being the responsibility of any person when the child or young person is

- 1.** being looked after by a LA¹ (other than in the circumstances described at F1073) **or**
- 2.** being held in custody pending trial or sentencing **or**
- 3.** in custody serving a sentence imposed by a court **or**
- 4.** on temporary leave from prison under specified legislation².

1 [UC Regs, reg 2\(1\)](#); 2 [UC Regs, reg 4\(6\)](#)

Example

Jason (a qualifying young person) and part of his parents UC benefit unit is sent to prison for 4 months. Although Jason will be absent for less than 6 months his parents are no longer treated as responsible for him and the child element is removed from the first day of the assessment period in which he became a prisoner.

Note: as Jason's imprisonment is for a period of less than 6 months his parents can retain their renter's bedroom allocation.

