

## MIXED AGE COUPLES IN STATE PENSION CREDIT

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### INTRODUCTION

- 1 This memo replaces DMG Memo Vol 1/116 & 13/74 and provides guidance on changes to the categories of person who are excluded from entitlement to State Pension Credit and pension age Housing Benefit under The Welfare Reform (Northern Ireland) Order 2015 (Commencement No.13 and Savings and Transitional Provisions and Commencement No.8 and Transitional and Transitory Provisions (Amendment) Order 2019 (SR. 2019 No.4)<sup>1</sup> and The Welfare Reform (Northern Ireland) Order 2015 (Commencement No 13 and Savings and Transitional Provisions (Amendment) Order 2019. DMG Memo Vol 1/116 & 13/74 should now be cancelled.<sup>2</sup>

<sup>1</sup> WR (NI) Order 15 (Commencement No.13 etc.) Order 2019

<sup>2</sup> WR (NI) Order 15 (Commencement No. 13 etc.) Amendment Order 2019

## THE CHANGES

- 2 From 15.5.19, where a new claim to State Pension Credit or pension age Housing Benefit is made, a claimant is not entitled if they are a member of a couple and the other member has not reached the qualifying age<sup>1</sup> (a mixed-age couple<sup>2</sup>). These changes are subject to certain savings provisions as detailed in paragraphs 5 - 8 below.

**Note 1 :** This is a different definition of mixed-aged couple to that for the purposes of entitlement to the State Pension Credit savings credit which remains as it is (see DMG 77167).

**Note 2 :** Such mixed-age couples may be eligible for Universal Credit instead or if the younger member of the couple was entitled to Income Support, income-related Employment and Support Allowance or income-based Jobseeker's Allowance, they may be able to retain that entitlement with the older member of the couple as partner. Alternatively, the younger member of the couple may assume responsibility for an income-based Jobseeker's Allowance joint claim for both members of the couple. All subject of course to the relevant entitlement conditions being satisfied. But see paragraph 19 below for guidance on transitional provisions where restrictions on Universal Credit claims apply.

*1 SPC Act (NI) 02, sec 1(6) & 4(1A); 2 WR (NI) Order 15 (Commencement No.13 etc.) Order 2019, art 2(2)(a)*

- 3 The definition of mixed-age couples includes a polygamous marriage where at least one party to the polygamous marriage has reached the State Pension Credit qualifying age and at least one party has not<sup>1</sup>.

*1 WR (NI) Order 15 (Commencement No.13 etc.) Order 2019, art 2(2)(b); UC Regs (NI), reg 3(4)*

- 4 For the purposes of these changes

1. the period for which an individual is entitled to State Pension Credit or pension age Housing Benefit is a period beginning with any day that the conditions of entitlement to the benefit are met (including the requirement to make a valid claim), regardless of whether entitlement for payability purposes begins at a later date, until the day before entitlement ends **and**
2. any reference to claiming or entitlement to State Pension Credit or pension age Housing Benefit as part of a mixed age couple is a reference to the claim being made or the person being entitled on the basis that a person is a member of a couple or a member of a polygamous marriage<sup>1</sup>.

*1 WR (NI) Order 15 (Commencement No.13 etc.) Order 2019, art 2(4)*

### Example

The claimant made a claim for State Pension Credit on 14.5.19 as part of a mixed-age couple. He is a Tuesday payday and is paid in arrears meaning that his first benefit week is 15.5.19 to 21.5.19. Although no payment is due before

15.5.19, the conditions of entitlement were met on 14.5.19 and so the claimant is entitled to State Pension Credit as part of a mixed-age couple.

## **SAVINGS**

5 Savings provisions have effect as though the exclusion of mixed-age couples from State Pension Credit has not come into force so that a member of a mixed-age couple who was entitled to

1. State Pension Credit **or**

2. pension age Housing Benefit **or**

3. both

on 14.5.19, continues to be so entitled on or after 15.5.19<sup>1</sup>.

*1 WR (NI) Order 15 (Commencement No.13 etc.) Order 2019, art 4(1)*

6 The savings provisions will cease to have effect to the member of the mixed-age couple on or after 15.5.19 when that person is not entitled to either State Pension Credit or pension age Housing Benefit as part of the same mixed-age couple<sup>1</sup>.

*1 WR (NI) Order 15 (Commencement No.13 etc.) Order 2019, art 4(2)*

7 These savings provisions apply to parties to a polygamous marriage in the same way as other mixed-age couples<sup>1</sup>.

*1 WR (NI) Order 15 (Commencement No.13 etc.) Order 2019, art 7(1)*

### **Example 1 - New claim from a mixed-age couple**

The claimant and partner have been continuously entitled to pension age Housing Benefit since December 2018. The claimant is receiving an adult dependency increase with his State Pension for his wife, which is removed in April 2020. Following the drop in income he makes a new claim for State Pension Credit. As they are still entitled to pension age Housing Benefit on the date their claim is made/treated as made, they are able to make a claim for State Pension Credit.

### **Example 2 - Repeat claim from a mixed-age couple**

The claimant and partner have been continuously entitled to both State Pension Credit and pension age Housing Benefit since November 2018. In June 2019 the partner starts part time work. The partner's earnings, in combination with the couple's other income, take them off State Pension Credit but are not high enough to end entitlement to pension age Housing Benefit.

The part time job ends in January 2020 and the claimant reapplies for State Pension Credit. As they are still entitled to pension age Housing Benefit on the

date their claim is made/treated as made, they are able to make a repeat claim for State Pension Credit.

### **Example 3 - No longer entitled to either State Pension Credit or pension age Housing Benefit as part of the same mixed-age couple**

The claimant and partner have been continuously entitled to State Pension Credit and pension age Housing Benefit since November 2016. The awards do not include the Severe Disability premium. In October 2019 the partner starts a temporary job. Their total income takes them off both State Pension Credit and pension age Housing Benefit. When the partner's job ends they reapply for State Pension Credit and pension age Housing Benefit. However, as they have not been continuously entitled to one or other benefit since 14.5.19, they are not able to re-qualify and would need to make a claim for Universal Credit.

### **Example 4 - Existing mixed-age couples who separate**

The claimant and partner have been continuously entitled to State Pension Credit and pension age Housing Benefit since September 2017. Due to a change of circumstances in June 2019 they are no longer treated as a couple. The claimant's State Pension Credit and pension age Housing Benefit award continues as an award for a single person. The couple subsequently re-form and the partner is still under pensionable age but the claimant ceases to be entitled to State Pension Credit/pension age Housing Benefit. This is because the exemption from the new rule excluding mixed-age couples from entitlement to State Pension Credit/pension age Housing Benefit only applies to claimants who have remained continuously entitled to either benefit since 14.5.19 as part of the same couple.

### **Single pensioners who form a mixed-age couple**

- 8 If a single pensioner forms a couple with a person below the qualifying age on or after 15.5.19, entitlement to State Pension Credit and/or pension age Housing Benefit will end.

### **Example**

The claimant has been in receipt of State Pension Credit and pension age Housing Benefit from November 2018. The claimant forms a couple with a person below the qualifying age on 4.6.19. This is a change of circumstances which ends the claimant's entitlement to State Pension Credit and pension age Housing Benefit.

### **WHAT IS THE EFFECT OF THESE CHANGES ON ADVANCE CLAIMS FOR STATE PENSION CREDIT**

- 9 Existing legislation allows for a claim for State Pension Credit to be made up to 4 months before a person attains the qualifying age (see DMG 02565 et seq)<sup>1</sup>. Decision makers can decide State Pension Credit claims made in advance for

periods starting on or after 15.5.19 based on the changes being made to the excluded groups from 15.5.19.

*1 SS (C&P) Regs (NI), reg 13D(1)*

## **WHAT IS THE EFFECT OF THESE CHANGES ON BACKDATED CLAIMS**

- 10 The normal rules on the 3 month time limit for claiming State Pension Credit<sup>1</sup> will apply (see DMG 02330 et seq). This means that claims made on or before 13.8.19 can be backdated to before the rule change applies, provided the claimant meets the entitlement conditions applicable on the earlier date.

*1 SS (C&P) Regs (NI), reg 19(2) & (3)(i)*

### **Example**

A claim is made by the older partner in a mixed-age couple on 13.8.19. The claimant satisfied the conditions of entitlement that applied on 14.5.19. Therefore the claim has been made in time for 14.5.19 onwards and State Pension Credit for a mixed-age couple can be awarded.

## **TRANSITIONAL PROVISIONS: TREATMENT OF COUPLES AND POLYGAMOUS MARRIAGES**

- 11 Where a member of a mixed-age couple would be prevented from claiming State Pension Credit or pension age Housing Benefit because at least one party is under the qualifying age, their entitlement is to be assessed by applying Universal Credit rules for treatment of couples and polygamous marriages<sup>1</sup>.

**Note :** For cases covered by the savings provisions as described in paragraphs 5 – 7 above, the current rules on the treatment of polygamous marriages and when a couple are treated as a couple for State Pension Credit / Housing benefit purposes will continue to apply.

*1 WR (NI) Order 15 (Commencement No.13 etc.) Order 2019, art 7(2)(b)(ii); UC Regs (NI), reg 3(4)*

- 12 Where the qualifying age for State Pension Credit has been reached by
1. both of the parties in a polygamous marriage who are to be treated as a couple one of them may claim or remain entitled to State Pension Credit as part of that couple and one of them may claim or remain entitled to pension-age Housing Benefit as part of that couple<sup>1</sup> **or**
  2. a party who is to be treated as a single person by virtue of
    - 2.1 not being treated as part of a couple in a polygamous marriage as in 1. above **or**
    - 2.2 being a member of a couple who may make a claim as a single person due to the other member of the couple being in the following categories

- 2.2.a** under 18 (ADM E2017)
- 2.2.b** not in NI (ADM E2017)
- 2.2.c** a prisoner (ADM E2021)
- 2.2.d** member of a religious order (ADM E2021)
- 2.2.e** Person subject to Immigration Control (ADM E2022) **or**

- 2.3** being a member of a couple where the other member is temporarily absent from the claimant's household and that absence is expected to exceed or does exceed 6 months

they may claim or remain entitled to State Pension Credit or pension-age Housing Benefit as a single person<sup>2</sup>.

**Note :** Where only one member of the mixed-age couple has reached the qualifying age, the mixed-age couple may either remain on Income Support / income-based Jobseeker's Allowance / income-related Employment and Support Allowance where the younger person is the claimant, or where they are part of a income-based Jobseeker's Allowance joint-claim, the younger person assumes sole responsibility for the claim. Otherwise they may claim Universal Credit instead, subject to the transitional provision detailed in paragraphs 15 – 23 below.

<sup>1</sup> WR (NI) Order 15 (Commencement No.13 etc.) Order 2019, art 7(3)(a); <sup>2</sup> art 7(3)(b)

### **Example**

Andy and Gemma are a mixed-age couple claiming Universal Credit. On 1.9.19, Gemma moves into their daughter's home to help care for their grandchild while her daughter recovers from an operation. When it becomes clear she will be absent from her normal home for more than 6 months, they cease to be treated as a couple for Universal Credit. As Andy is over State Pension age, he cannot remain on Universal Credit as a single claimant but can claim State Pension Credit and Housing Benefit as a single person until Gemma returns home.

- 13. For the purposes of paragraph 12 above
  - 1. Universal Credit provisions allow for 2 of the parties to a polygamous marriage to be treated as a couple and the remaining parties to be treated as a single person **and**
  - 2. all other conditions relating to the assessment of entitlement to State Pension Credit and pension-age Housing Benefit will continue to apply so that claims and awards may be made to claimants who are part of a couple or who are single.

<sup>1</sup> WR (NI) Order 15 (Commencement No. 13 etc.) Order 2019, art 7(3)(a)

14. Any additional party as in paragraph 12 **2.1** above who has reached the qualifying age may claim or remain entitled to State Pension Credit and/or pension age Housing Benefit as a single person<sup>1</sup>.

**Note :** If they have not reached the qualifying age and they were entitled to Income Support, income-related Employment and Support Allowance or income-based Jobseeker's Allowance, they may be able to retain that entitlement, otherwise they will have to claim Universal Credit<sup>1</sup>.

<sup>1</sup> WR (NI) Order 15 (Commencement No. 13 etc.) Order 2019, art 7(3)(b)

### **Example**

Ravi, Imina and Kara are a polygamous unit, who make a claim for State Pension Credit on a date after 15.5.19. Ravi and Imina's marriage was the earliest and, as they are both over the qualifying age, they are able to make a claim for State Pension Credit and pension age Housing Benefit as a couple. However, as Kara has not reached the qualifying age, she has to make a claim for Universal Credit as a single claimant. Once Kara reaches the qualifying age, Ravi, Imina and Kara will be entitled to State Pension Credit as a polygamous unit (subject to the Severe Disability Premium Gateway – see paragraphs 15-23 below).

### **TRANSITIONAL PROVISIONS: RESTRICTIONS ON CLAIMS FOR UNIVERSAL CREDIT**

15. Note 2 to paragraph 2 above states that mixed-age couples may be entitled to Universal Credit instead of State Pension Credit. However, these claimants may be restricted from claiming Universal Credit<sup>1</sup> – see paragraph 16 for details. The conditions of entitlement to Income Support, old style Jobseeker's Allowance, old style Employment and Support Allowance and Housing Benefit are amended to allow them to claim those benefits instead<sup>2</sup> – see paragraph 18 for details.

<sup>1</sup> UC (TP) Regs (NI) 16, reg 2A & 2B;

<sup>2</sup> WR (NI) Order 15 (Commencement No. 13 etc.) Order, art 8

16. Claims for Universal Credit may not be made where
1. the Department has determined that claims for Universal Credit may not be made in any area or category of case<sup>1</sup> (see M1006) **or**
  2. a single claimant, or joint claimants either of whom<sup>2</sup>,
    - 2.1 is, or within the past month has been, entitled to an award of an existing benefit which includes the Severe Disability Premium **and**
    - 2.2 in a case where the award ended during that month, continues to satisfy the Severe Disability Premium conditions (see Memo ADM 2/19 for further details) **or**
  3. the claimant is a frontier worker<sup>3</sup> (see Memo ADM 4/19 for further details).

**Note :** Currently there are no restrictions on claims for the purposes of sub-paragraph 1..

*1 UC (TP) Regs (NI) 16, reg 2A; 2 reg 2B; 3 WR (NI) Order 15 (Commencement No. 14 etc.) Order, art 1(2)*

17. Decision Makers should note that references to “entitlement to an existing benefit which includes the Severe Disability premium”, in relation to Housing Benefit, are where the claimant’s applicable amount includes the Severe Disability Premium for the purposes of entitlement to Housing Benefit<sup>1</sup>.

*1 SS C&B Act (NI) 92, sec 129*

### **Changes to conditions of entitlement for Income Support, Jobseeker’s Allowance, Employment and Support Allowance and Housing Benefit**

18. A condition of entitlement to income-based Jobseeker’s Allowance and income-related Employment and Support Allowance is that the claimant has not reached pensionable age<sup>1</sup>. For Income Support and Housing Benefit, a condition is that the claimant has not reached the qualifying age for State Pension Credit<sup>2</sup>.

*1 JS (NI) Order, art 2(2); WR (NI) Order 07, art 1(3); 2 SS (C&B) (NI) Act 92, s 123(1)(aa); HB Regs (NI), reg 5; HB (SPC) (NI) Regs, reg 5*

19. Where a mixed-age couple is

1. excluded from entitlement to State Pension Credit **and**
2. restricted from claiming Universal Credit

the member of the mixed-age couple who has attained the qualifying age for State Pension Credit is treated as satisfying the age-related condition of entitlement for the benefits in paragraph 18 for the purposes of an award of those benefits to that member of the couple<sup>1</sup>. This allows new claims for the benefits in paragraph 18 above to be made and awards to continue.

*1 WR (NI) Order 15 (Commencement No. 13 etc.) Order, art 8(2)*

### **Example**

Flo has Limited Capability for Work-Related Activity and is entitled to income-related Employment and Support Allowance and Housing Benefit for herself and her partner George. Her Employment and Support Allowance award includes the higher rate Severe Disability Premium. Flo reaches pensionable age, and entitlement to income-related Employment and Support Allowance and Housing Benefit would normally terminate as she does not satisfy the age-related conditions of entitlement. As George is under pensionable age, the couple cannot be entitled to State Pension Credit. Flo and George are also prevented from claiming Universal Credit due to the Severe Disability Premium entitlement. George does not have Limited Capability for Work, so cannot claim income-related Employment and Support Allowance instead of Flo. Flo is treated as satisfying the age-related conditions of entitlement, and as not having



reached the qualifying age for State Pension Credit, so remains entitled to income-related Employment and Support Allowance and Housing Benefit.

20. Where an award of benefit is made as in paragraph 19, the claimant is treated as satisfying the age-related condition of entitlement until the award of benefit ends. This applies even if the restrictions on claiming Universal Credit in paragraph 16 are removed during the period of the award<sup>1</sup>.

*1 WR (NI) Order 15 (Commencement No. 13 etc.) Order, art 8(3)*

21. Once the younger member of the couple reaches the qualifying age for State Pension Credit, they cease to be a mixed-age couple. The award of benefit made as in paragraph 19 above ends, and the couple are eligible to claim State Pension Credit and pension age Housing Benefit.

### **Income Support pensioner premiums**

22. Normally a pensioner premium is payable in respect of an Income Support claimant's partner who is aged not less than the qualifying age for State Pension Credit, and who

1. for the Pensioner Premium is aged less than 75<sup>1</sup> **or**
2. for the Enhanced Pensioner Premium is aged less than 80<sup>2</sup> **or**
3. for the Higher Pensioner Premium is either<sup>3</sup>
  - 3.1 aged not less than 80 **or**
  - 3.2 aged less than 80, and satisfies the conditions in DMG 23110 **2.** or **3..**

**Note :** See DMG Chapter 23 for detailed guidance on the pensioner premiums.

*1 IS (Gen) Regs (NI), Sch 2 para 9; 2 para 9A; 3 para 10 & 12(1)*

23. Where an award of Income Support is made to a claimant who is over the qualifying age for State Pension Credit, but is treated as meeting the age-related condition as in paragraph 18, the conditions for the award of the pensioner premiums are treated as if it is the claimant rather than the partner who must meet the conditions in paragraph 22 above.

### **ANNOTATIONS**

Please annotate the number of this memo (DMG Memo Vol 1/117, 4/145 , 8/93 & 13/75) against the following DMG paragraphs: 02560 et seq, 20003, 20022, 23091, 23110, 41012, 77002, 77012, 77015, 77030, 77032, 77033, 77052 and 78600.

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