

**MIXED AGE COUPLES: CHANGES TO ENTITLEMENT
CONDITIONS FROM 15.5.19**

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INTRODUCTION

- 1 This memo gives guidance on changes to the categories of person who are excluded from entitlement to 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)¹. These provisions come into operation on 15.5.19². This memo should be read in conjunction with DMG Memo Vol 1/117; 4/145; 8/93 & 13/75 as it provides additional guidance on The Welfare Reform (Northern Ireland) Order 2015 (Commencement No.13 and Savings and Transitional Provisions (Amendment)) Order 2019³. These provisions also come into operation on 15.5.19 in line with SR. 2019 No.4⁴. This memo can be accessed on the following link –

THE CHANGES

- 2 From 15.5.19, mixed age couples (where one party of the couple is over Pension Credit qualifying age and the other under that age) will no longer be able to choose whether they claim Universal Credit or Pension Credit or pension age Housing Benefit. Both parties of a couple will have to reach the Pension Credit qualifying age before they can be entitled to Pension Credit and/or pension age Housing Benefit. These changes are subject to certain saving provisions as detailed in paragraphs 5-8 below.
- 3 The definition of mixed aged couples includes a polygamous marriage where at least one party to the polygamous marriage has reached the Pension Credit qualifying age and at least one party has not¹.

1 WR (NI) Order 15 (Comm No. 13 etc.) Order 2019, art 2(2)(b)

- 4 For the purposes of these changes
 1. the period for which an individual is entitled to 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 pension age Housing Benefit as part of a 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 marriage¹.

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

SAVINGS PROVISIONS

- 5 Savings provisions have effect as though the exclusion of mixed age couples from State Pension Credit had not come into force so that a member of a mixed age couple who was entitled to
 1. pension age Housing Benefit
 2. State Pension Credit
 3. bothon 14.5.19, continues to be so entitled on or after 15.5.19¹.

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

- 6 These savings will cease to have effect in relation to the member of the mixed age couple on any day 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 couple¹.

1 WR (NI) Order 15 (Comm 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 aged couples¹.

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

Example 1 - No longer entitled to either 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. In March 2019 the partner starts a temporary job. Their total income takes them off both Pension Credit and pension age Housing Benefit. When the partner's job ends they reapply for both benefits in August 2019. However, as they have not been continuously entitled to either benefit since 14.5.19, they are not able to re-qualify and would need to make a claim for Universal Credit.

Example 2 - 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 in 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 as the partner is still under pensionable age the claimant ceases to be entitled to State Pension Credit and pension age Housing Benefit. This is because the exemption from the new rule excluding mixed age couples from entitlement to Pension Credit and 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. Therefore, they have to make a claim for Universal Credit.

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 pension age Housing Benefit and State Pension Credit 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. The couple must claim Universal Credit.

TRANSITIONAL PROVISIONS: POLYGAMOUS MARRIAGES

- 9 Where parties to a polygamous marriage 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
1. applying the Universal Credit legislation relating to the treatment of polygamous marriage¹ so that
 - 1.1 the two parties to the earliest marriage are treated as a couple **and**
 - 1.2 any additional party is treated as a single claimant **and**
 2. separately assessing the entitlement of
 - 2.1 the couple in paragraph 9 1.1 above **and**
 - 2.2 any additional party in paragraph 9 1.2 above.

1 UC Regs (NI) 16, reg 3(3); WR (NI) Order 15 (Comm No. 13 etc.) Order 2019, art 7(2)(b)

- 10 Where
1. both parties to the couple in paragraph 9 1.1 above have reached the qualifying age, either of them may claim or remain entitled to State Pension Credit or pension age Housing Benefit **or**
 2. one of the parties to the couple in paragraph 9 1.1 above has reached the qualifying age but the other has not, the couple may not claim State Pension Credit or pension age Housing Benefit¹.

Note: Where 10 2. applies 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 an income-based Jobseeker's Allowance joint claim, the younger person assumes sole responsibility for the claim. Otherwise they may claim Universal Credit instead.

1 WR (NI) Order 15 (Comm No. 13 etc.) Order 2019, art 7(3)(a)

- 11 Any additional party as in paragraph 9 1.2 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 person¹.

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 Credit¹.

1 WR (NI) Order 15 (Comm No. 13 etc.) Order 2019, art 7(3)(b)

- 12 All other conditions relating to the assessment of entitlement for State Pension Credit and pension age Housing Benefit will continue to apply to
1. the parties treated as a couple, as if they are a couple **and**
 2. any additional party treated as a single claimant, as if they are a single claimant¹.

Note: Once all parties to the polygamous marriage reach the qualifying age, their entitlement to State Pension Credit is assessed as a polygamous unit in the usual way.

1 WR (NI) Order 15 (Comm No. 13 etc.) Order 2019, art 7(2)(b)

Example

Ravi, Imina and Kara are a polygamous unit, who make a claim for pension age Housing Benefit on a date after 15.5.19. Ravi and Imina marriage was the earliest and, as they are both over qualifying age, they are able to make a claim for pension age Housing Benefit and Pension Credit as a couple. However, as Kara has not reached qualifying age, she has to make a claim for Universal Credit as a single claimant.

TRANSITIONAL PROVISIONS: RESTRICTIONS ON CLAIMS FOR UNIVERSAL CREDIT AND CHANGES TO CONDITIONS OF ENTITLEMENT FOR INCOME SUPPORT, JOBSEEKER'S ALLOWANCE, EMPLOYMENT AND SUPPORT ALLOWANCE AND HOUSING BENEFIT

- 13 Working Age Housing Benefit claimants who become a Mixed Age Couple are not required to claim Universal Credit if their Housing Benefit award includes an element of Severe Disability Premium (where they are on Housing Benefit only) or they are receiving Housing Benefit and Income Support, income-based Jobseeker's Allowance or income-related Employment and Support Allowance which includes an element of Severe Disability Premium¹. This is known as the 'Gateway.'

1 WR (NI) Order 15 (Comm No. 13 etc.) Order 2019, art 8(2)(a)

- 14 In addition, such claimants cannot have their Housing Benefit entitlement reassessed under the pension age Housing Benefit regulations. Instead they will remain on their existing benefit. In these circumstances, the older member of a Mixed Age Couple will be treated as not having attained State Pension Age and they will remain on Working Age Housing Benefit until the award terminates. This means that they will continue to be subject to the rules relating to the Spare Room Subsidy where this is applicable¹.

1 WR (NI) Order 15 (Comm No. 13 etc.) Order 2019, art 8(2)(b); HB Regs (NI) 06, reg 5

- 15 Where these claimants have not been receiving Housing Benefit but now need help with their housing costs they will also be able to make a new claim if they

are receiving Income Support, income-based Jobseeker's Allowance or income-related Employment and Support Allowance which has an element of Severe Disability Premium included in the award of those benefits.

Example 1

Flo is entitled to income-related Employment and Support Allowance and Housing Benefit for herself and her partner George. Her income-related Employment and Support Allowance award includes the couple 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 she is now over pension age. As George is under pension age, the couple cannot be entitled to Pension Credit or pension age Housing Benefit. 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 Pension Credit, so remains entitled to income-related Employment and Support Allowance and Housing Benefit.

Example 2

Jack and his partner Mary live in social rented accommodation and they are entitled to Housing Benefit which is subject to the rules relating to the Spare Room Subsidy. Their Housing Benefit award includes the couple rate of Severe Disability Premium entitlement.

Jack reaches pension age but as Mary is under pension age they cannot be reassessed under the pension age Housing Benefit regulations and, because their Housing Benefit award includes Severe Disability Premium entitlement, they also cannot claim Universal Credit.

So they can continue to receive help with their rent, Jack is treated as not having reached pension age and they continue to receive their Housing Benefit paid under the working age Housing Benefit regulations. The rules relating to the Spare Room Subsidy will continue to apply to their Housing Benefit award.

WHAT IS THE EFFECT OF THESE CHANGES ON ADVANCE CLAIMS FOR PENSION AGE HOUSING BENEFIT

- 16 Existing legislation allows for a claim for Housing Benefit to be made up to 17 weeks before a person attains the qualifying age¹. Decision makers can decide Housing Benefit claims made in advance for periods starting on or after 15.5.19 based on the changes being made to regulations for Mixed Age Couples from 15.5.19.

¹ HB (SPC) Regs (NI), reg 62(11)

WHAT IS THE EFFECT OF THESE CHANGES ON BACKDATED CLAIMS

- 17 The normal rules on the 3 month time limit for claiming pension age Housing Benefit¹ will apply. 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 HB (SPC) Regs (NI), reg 62(1)

Example

A claim is made by the pension age 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 pension age Housing Benefit for a mixed age couple can be awarded.

CONTACTS

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