ADJUDICATION AND OPERATIONS CIRCULAR

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<td>The Welfare Reform Act 2012 (Commencement No. 31 and Savings and Transitional Provisions (Amendment)) Order 2019 (SI 2019/935)</td>
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Guidance Manual

The information in this circular does affect the content of the HB Guidance Manual. Please annotate this circular number against paragraph 2.20 and paragraphs P2.490 – P2.497 of Chapter A2.

Queries

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Mixed Age Couples: Further guidance

Introduction


Mixed Age Couples: Policy clarification


Existing Housing Benefit claimants: under pension age on 15 May 2019

4. Couples who are under State Pension Age and have an award of Housing Benefit (HB) assessed under the HB regulations 2006 (SI 2006/213), ‘working age HB’, will become a Mixed Age Couple once one member reaches pension age. At this point rather than re-assessing the claim under the HB (persons who have attained the qualifying age for state pension credit) regulations 2006 (SI 2006/214) ‘pension age HB’, the couple should be advised that they need to claim Universal Credit (UC). The relevant provision is Article 6(2)(b) and (3)(a) of SI 2019/37. See Annex A for Additional operation guidance.

5. Where the younger partner is in receipt of Income Support (IS), Jobseeker’s Allowance (income-based) (JSA(IB)), Employment and Support Allowance (income-related) (ESA(IR)), the couple will not be required to claim UC and can continue to receive Working Age HB if they have an existing claim; until there is a relevant change in their circumstances which ends entitlement to those benefits. They will have to claim UC if they need further help with their housing costs.

Existing HB claimants: over pension age on 15 May 2019

6. Mixed Age Couples who are receiving HB assessed under SI 2006/214 on 14 May 2019 remain entitled to HB unless there is a relevant change in circumstances which ends their HB claim. If they are also receiving Pension Credit which remains in payment then they can make a new claim for HB at a later date. The relevant provision is Article 4 of SI 2019/37.
7. If both their Pension Credit claim and their HB claim ends, for example, because they are temporarily absent from home outside Great Britain for more than 4 weeks, then they will have to claim UC.

**Existing single HB Claimants**

8. An existing HB claimant who is single and over pension age but who subsequently forms a new relationship with someone under pension age, will lose their entitlement to HB. The couple should be advised to claim UC. This also applies to an existing claimant who is under pension age and forms a new relationship with someone who is over pension age. The relevant provision is Article 6(2)(a) and (3)(a) of SI 2019/37. See Additional operational guidance at Annex A for more information about when to close the claim.

**Transition to UC payments**

9. A Transition to UC Housing payment is triggered by a claim to UC being made and a Stop notice being sent to the LA causing the HB claim to end. If the HB claim is ended the day before the UC claim, no Transition to UC Housing payment can be awarded. If the HB claim has not closed, then a 2-week Transition to UC Housing payment can be made. See circular HB A2/2018 for further guidance.

10. If a single HB claimant forms a new Mixed Age Couple and the couple claim UC, if they qualify for a Transition to UC Housing payment it will be at the rate in payment before the couple formed. Each claimant will be entitled to a payment if they were both receiving HB before they became a couple. However, where an HB claimant is joining an existing UC claimant’s claim because they are a new Mixed Age Couple, no Transition to UC Housing payment may be awarded.


**The exceptions**

11. SI 2019/935 adds two new exceptions to the Mixed Age Couples policy for claimants who have a Severe Disability Premium (SDP) in their benefit award and an exception for certain Mixed Age Couples which will allow the older member to claim HB as a single person:

**SDP**

12. Circular HB A1/2019 gives details of the HB Gateway for claimants who have a SDP in their HB award.
13. Working Age HB claimants who become a Mixed Age Couple are not required to claim UC if their HB award includes an SDP (where they are on HB only) or they are receiving HB and IS, JSA(IB)) or ESA(IR) which include a SDP. However, they also cannot have their HB entitlement reassessed under the pension age HB regulations. Instead they will remain on their existing benefit. A new article, Article 8(2)(b), is inserted into SI 2019/37 which allows for the older member of a Mixed Age Couple to be treated as not having attained State Pension Age and they will remain on Working Age HB until the award terminates. This means that they will continue to be subject to the Removal of the Spare Room Subsidy (RSRS), where this is applicable.

14. Where they have not been receiving HB but now need help with their housing costs they will also be able to make a new claim if they are receiving IS, JSA(IB) or ESA(IR) which has a SDP in the award.

**Example 1: ESA(IR) and HB in payment**

Flo is entitled to ESA(IR) and HB for herself and her partner George. Her ESA(IR) award includes the couple rate SDP. Flo reaches pensionable age, and entitlement to ESA(IR) and HB 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 HB under SI 2006/214 (pension age HB). Flo and George are also prevented from claiming UC due to the SDP entitlement. George does not have limited capability for work, so cannot claim ESA(IR) 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 ESA(IR) and HB.

**Example 2: HB only**

Jack and his partner Mary live in social rented accommodation and they are entitled to HB which is subject to the RSRS. Their HB award includes the couple rate of SDP. Jack reaches pension age but as Mary is under pension age they cannot be reassessed under the pension age HB regulations and because their HB award includes SDP entitlement they also cannot claim UC. 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 HB paid under the Working Age HB regulations. The RSRS will continue to apply to their HB award.

**Special rules for certain Mixed Age Couples**

15. In certain circumstances, under UC rules the younger partner in a Mixed Age Couple will be ineligible for UC where they are:

- under 18 (the normal minimum age for UC)
- does not satisfy the habitual residence test
• is a person subject to immigration control
• is a prisoner (including detention in hospital serving a sentence of imprisonment)
• is absent from Great Britain for more than the period allowed for a temporary absence (normally 1 month)

16. As the older partner is over pension age they can’t claim UC and would also be unable to make a claim for pension age HB because they would still be treated as a couple under HB regulations. However, amendments made by SI 2019/935 to Article 7(2) of SI 2019/37 will allow the older partner to be treated as a single person, when under normal pension age HB regulations they would still be treated as a part of a couple.

17. The older partner can claim pension age HB and Pension Credit as a single claimant until the reason they are unable to claim UC as a couple no longer applies.

**Example 1: Younger partner is temporarily absent from home**

One member of the Mixed Age Couple is temporarily absent from the home and the temporary absence has lasted, or is expected to last, 6 months or more.

As soon as it is clear that the absence will be for more than 6 months, UC will end their couple claim.

Under pension age HB regulations, a couple would normally be treated as separate claimants only when the temporary absence had lasted (or was expected to last) for 52 weeks.

In this example, the older partner can claim pension age HB as a single claimant until either:

• the absent partner returns to the household - they will then need to claim UC as a couple, or
• the younger partner reaches State Pension Age - when they can claim HB as a couple

**Example 2: younger partner not eligible for UC**

The younger partner is not eligible to claim UC as part of a joint-claim couple because either:

• they are under 18, and not exempt from the UC minimum age rule due to disability or being responsible for a child, or
• they do not satisfy the habitual residence test.
In this scenario the older partner will:

- not be able to claim UC as a single person, and
- be able to claim pension age HB as a single person until their partner reaches 18, or satisfies the habitual residence test.
**Additional operational guidance**

From 15 May 2019, where a Mixed Age Couple is in receipt of Working Age HB they will no longer be able to continue to receive HB and should be signposted to UC.

There are 8 different scenarios addressed in this guidance:

- Mixed Age Couple in receipt of HB and other legacy benefit - older member of the couple is lead claimant on other legacy benefit
- Mixed Age Couple in receipt of HB and other legacy benefit - younger member of the couple is lead claimant
- Existing Mixed Age Couple tries to make a new claim to HB on or after 15 May 2019
- Mixed Age Couple in receipt of HB and other legacy benefit including SDP, older member of the couple is lead claimant
- Mixed Age Couple in receipt of HB only
- Mixed Age Couple in receipt of HB with SDP
- Mixed Age Couple – younger member is temporarily absent
- Mixed Age Couple where younger member is ineligible to claim

**Mixed Age Couple in receipt of HB and other legacy benefit - older member of the couple is lead claimant on other legacy benefit**

Where a Working Age couple are in receipt of a Department for Work and Pensions (DWP) legacy benefit (IS, JSA(IB) or ESA(IR) and Working Age HB and the older member of the couple is the lead claimant for the DWP legacy benefit and is approaching State Pension age, DWP will contact the claimant to advise them that, as they will be part of a Mixed Age Couple, they will need to make a claim to UC once State Pension age is reached.

The Mixed Age Couple will then make a claim to UC. This will prompt an HB stop notification to be issued from UC and sent to the local authority (LA) where the HB interest is set in the Customer Information System (CIS). On receipt of the HB stop notification the LA should consider whether the transition to UC Housing payment will be made. The LA close down the HB claim and complete and return the MGP1 back to the UC service centre. The LA will also receive an ATLAS (Automated Transfer to LA Systems) notification when the legacy benefits are closed down.

Where the claimant has not made a claim to UC, the DWP legacy benefit will be closed down when the lead claimant of the DWP legacy benefits reaches State Pension age. For these cases the LA will receive an ATLAS notification to show that the Working Age legacy benefit is closed. The LA should close the Working Age HB claim as they do now. No transition to UC Housing payment will be awarded.
If the claimant contacts the LA they should be advised to make a claim for UC. It will be up to UC to consider if there is good cause for a backdated claim to be accepted in these cases.

Example 1
Patrick and Fiona are a Working Age couple in receipt of working age HB and ESA(IR) continuously since 17 March 2017. As Fiona is the older member of the couple and is the lead claimant on the ESA(IR) claim, DWP will contact her and advise that she needs to make a claim to UC for her future support. The Mixed Age Couple will make a claim to UC. The HB stop notification will be sent to the LA and the transition to UC Housing payment will be made. The HB claim will be closed and the MGP1 returned to the UC service centre.

Mixed Age Couple in receipt of HB and other DWP legacy benefit - younger member of the couple is lead claimant of the legacy benefit

Where a Working Age couple who are in receipt of a DWP legacy benefit and Working Age HB and the older member of the couple is approaching state pension age but the younger member of the couple is the lead claimant on the DWP legacy benefit claim, the Mixed Age Couple will remain on the legacy benefits that they are currently entitled to. The Mixed Age Couple will continue to receive working age HB until the younger member of the Mixed Age Couple reaches State Pension age or is no longer in receipt of the DWP legacy benefit.

Example 2
Lorraine and Neil are a Working Age couple in receipt of Working Age HB and JSA(IB) continuously since 21 April 2018 and Neil reaches State Pension age on 15 May 2019. As Lorraine is the younger member of the couple and is the lead claimant on the JSA(IB) claim, they will continue to receive the JSA(IB) and HB until Lorraine reaches State Pension age or has a change in circumstances.

Existing Mixed Age Couple tries to make a new claim to HB on or after 15 May 2019

Where a Mixed Age Couple tries to make a new claim to HB on or after 15 May 2019, they should be signposted to UC to make a claim for their ongoing housing support.

Mixed Age Couple in receipt of HB and other legacy benefit including SDP, older member of the couple is lead claimant

Where a Working Age couple are in receipt of a DWP legacy benefit and Working Age HB and the older member of the couple is the lead claimant of the DWP legacy benefit and is approaching State Pension age, DWP will check the benefits that the claimant is entitled to and contact the claimant. If the claimant is in receipt of SDP or they have been in receipt of SDP within the month prior to reaching State Pension age, DWP will contact the claimant and advise that they need to make a claim to UC for their future support. The Mixed Age Couple will make a claim to UC. The HB stop notification will be sent to the LA and the transition to UC Housing payment will be made. The HB claim will be closed and the MGP1 returned to the UC service centre.
age, then the Mixed Age Couple will continue to receive the legacy benefits that they are in receipt of; including Working Age HB. These claims will be maintained clerically within DWP so there will be no data sharing for these claimants through ATLAS. If there is a change of circumstances that will impact the HB claim the claimant will be signposted to the LA to report their change. The Mixed Age Couple will remain on legacy benefit whilst they continue to be in receipt of SDP with their legacy benefits.

**Example 3**

Alan and Lucy are a Working Age couple in receipt of Working Age HB and ESA(IR) continuously since 29 October 2018. As Alan is the older member of the Mixed Age Couple and is the lead claimant on the ESA(IR) claim, DWP will contact Alan to inform him that his ESA claim includes SDP and therefore he will remain entitled to ESA after reaching State Pension age.

**Mixed Age Couple in receipt of HB only**

Where a Working Age couple are in receipt of Working Age HB only and the older member of the couple reaches State Pension age becoming a Mixed Age Couple on or after 15 May 2019, the Mixed Age Couple will no longer be able to continue to receive HB and should be signposted to UC.

The LA should ensure that the Mixed Age Couple are notified that their Working Age HB claim will be closed and they should make a new claim to UC. To ensure that the claimant will still receive the transition to UC Housing payment the claimant should be advised to make their claim to UC before they reach State Pension age. This signposting to UC can take place up to 4 weeks prior to a claimant’s birthday so that they will continuously receive help with their housing costs.

When the claim to UC has been made the HB stop notification will be sent to the LA. The LA will need to make the transition to UC Housing payment, close down the HB claim and complete and return the MGP1 to the UC service centre.

**Example 4**

Glen and Caroline are a Working Age couple who have been in receipt of Working Age HB only continuously since 17 March 2017. Glen reaches State Pension age on 6 July 2019. The LA will inform the claimant that their HB claim will close as they are now a Mixed Age Couple. If the Mixed Age Couple require continued assistance they should be signposted to make a new claim to UC. If the HB claim has not yet closed before the UC claim is made, then a 2-week Transition to UC Housing payment can be made.

Where there is no claim to UC, the LA will close down the HB claim when the older member of the couple reaches State Pension age.
Mixed Age Couple in receipt of HB with SDP

Where a Working Age couple are in receipt of Working Age HB only and SDP and the older member of the couple reaches State Pension age becoming a Mixed Age Couple on or after 15 May 2019, the Mixed Age Couple will continue to receive Working Age HB.

The LA should signpost the claimant to the DWP Working Age SDP team if they need additional benefit support as they are ineligible to claim UC.

Where the claimant has already reached State Pension age and has moved from another LA area and makes a claim to HB only, the LA should check with the claimant as to whether SDP was awarded as part of their previous HB claim.

If there is a change in the claimant’s circumstances that is reported to the Working Age SDP team, they should signpost the claimant to report any changes to the LA where HB is in payment.

If the LA has any concerns or queries regarding the SDP they should contact the Working Age SDP team at

clydebankbenefitcentre.dwpmacsdpclydebank@dwp.gsi.gov.uk

Mixed Age Couple with special circumstances

There are certain special circumstances where under UC rules the younger member of the Mixed Age Couple will no longer be able to continue with their claim, see paragraph 15 of the main circular.

Mixed Age Couple - younger member is temporarily absent

Where the younger member of a Mixed Age Couple is temporarily absent from the home due to being in prison, if the period is due to be less than 6 months the UC claim will continue.

Where the period of imprisonment is deemed to be 6 months or longer then the couple’s claim will be closed in UC and the claimants will have to make a single claim. As the older member of the Mixed Age Couple will be over State Pension age they will not be able to make a single claim for UC. Due to the changes to the regulations, this will allow the older member of the Mixed Age Couple to be treated as a single person and no longer as part of a couple.

When the younger member of the Mixed Age Couple is released from prison, the Mixed Age Couple should be signposted to make a new claim to UC by the Pension Service. Once the UC claim has been made this will prompt a HB stop notification to be issued from UC and sent to the LA where the HB interest is set in CIS. On receipt of the HB stop notification the LA should consider whether the transition to UC Housing payment will be made to the claimant. The LA should then close down the
HB claim and complete and return the MGP1 back to the UC service centre. The LA will also receive an ATLAS notification when the legacy benefits are closed down.

Where the older member of the Mixed Age Couple is in receipt of pension age HB only, the LA should signpost the claimant to UC once their partner has been released from prison.

**Example 5**
Rob and Amanda are part of a Mixed Age Couple who are currently in receipt of UC. Rob has been sentenced to 12 months in prison so the couple’s claim to UC will be closed. As Amanda is over State Pension age, she will need to make a single claim to pension age HB. Once Rob is released from prison and the Mixed Age Couple make a new claim to UC and the pension age HB claim will be closed.

**Mixed Age Couple where younger member is ineligible to claim**

Where a newly formed Mixed Age Couple need help with their housing costs and the younger member of the Mixed Age Couple is either under 18 years of age or does not satisfy the habitual residence test, they will not be able to claim UC. The older member of the Mixed Age Couple will have to make a single claim to pension age HB until their partner reaches 18 or satisfies habitual residence test rules.

When the younger member of the Mixed Age Couple is eligible to claim UC, the Mixed Age Couple should be signposted to make a new claim to UC by the Pension Service. Once the UC claim has been made this will prompt a HB stop notification to be issued from UC and sent to the LA where the HB interest is set in CIS. On receipt of the HB stop notification the LA should consider whether the transition to UC Housing payment will be made to the claimant. The LA should then close down the HB claim and complete and return the MGP1 back to the UC service centre. The LA will also receive an ATLAS notification when the legacy benefits are closed down.

Where the older member of the Mixed Age Couple is in receipt of pension age HB only, the LA should signpost the claimant to UC once their partner is eligible to claim UC.

**Example 6**
Raf and Helen are part of a newly formed Mixed Age Couple. They need help with their housing costs and are not eligible to claim UC as Raf is only 17 years old. Helen makes a new claim for pension age HB as a single person. On RAF’s 18th birthday the Mixed Age Couple are signposted to UC to make a claim. The UC claim is made and the HB stop notification is issued to the LA and the transition to UC Housing payment will be made. The HB claim will be closed and the MGP1 returned to the UC service centre.