

**No.2 / 2022:**

# Mixed Age Couples

## Making sure they get the right advice



Back in 2019, when the new rules for mixed age couples were introduced, we wrote a Briefing about the application of the new regulations and the impact on mixed age couples.

We updated that Briefing a number of times as some of the initial grey areas became clearer. Although this remains one of the more complicated areas of benefit law.

The aim of this Briefing is to provide further clarification to the rules and to share what we have learnt – to help you ensure mixed age couples get the right advice.

### Key points:

- A 'mixed age couple' is a couple where one member is above and the other below the state pension age (currently their 66th birthday).
- Before 15th May 2019 mixed age couples were able to make new claims for Pension Credit and/or Housing Benefit. However, the rules changed on 15th May 2019 and now both members of a couple need to be state pension age to be able to make new claims for/move onto Pension Credit and/or pension age Housing Benefit (ie under the State Pension Age HB Regulations). Although some mixed age couples are 'protected' from the change in rules.
- Nearly all mixed age couples are significantly better off on Pension Credit and Housing Benefit when compared to Universal Credit (by over £157 a week!), so it is important to know which couples are 'protected', and when they can take advantage of this protection by making an advance claim for pension age Housing Benefit.
- 'Protected' mixed age couples who become responsible for a child can have a Child Addition in Pension Credit (or they can get extra Child Tax Credit if they have an existing award of CTC). There is no need to claim Universal Credit!
- Some new (so unprotected) mixed age couples can remain on working age legacy benefits instead of claiming Universal Credit – they are likely to be better off if they do. But often they are told that their only option is Universal Credit and are worse off as a result.
- If the younger member gets Old Style Contributory ESA, they can ask for their ESA award to be re-assessed to include a top up of Income Related ESA – to take account of their new partner.
- Where a working age couple become a mixed age couple because the older member turns state pension age, but the younger member of the couple has been the main claimant for Income-Related ESA, Income-Based JSA or Income Support, then they can continue to receive these benefits.
- Mixed age couples in receipt of Housing Benefit should be excluded from the Bedroom Tax, however some HB Offices still apply a Bedroom Tax.

# Part 1: Protected Mixed Age Couples

## Who is a 'protected' mixed age couple?

To be a 'protected' mixed age couple, the couple must:

- Have been a couple on 14th May 2019 and have been in the same couple ever since.
- Be currently getting either Pension Credit OR the older member<sup>1</sup> of the couple is the main claimant of Housing Benefit that is being assessed under the State Pension Credit (SPC) Regulations<sup>2</sup>,
- Have been getting either Pension Credit or Housing Benefit (under the SPC Regulations) since 14th May 2019 as a mixed age couple, and
- Not had a period of time when they weren't entitled to either benefit, ie no gaps when neither Pension Credit nor Housing Benefit (under the SPC Regulations) was being paid.

This is because 'savings provisions' in the amending Regulations protect these couples from claiming UC while they remain entitled to either benefit.

[Click here for a useful table and examples.](#)

<sup>1</sup>[Click here for commentary on why some believe it has to be the older member who is the HB claimant.](#)

<sup>2</sup>[Click here about the two sets of Housing Benefit Regulations.](#)

**WARNING:** Not all mixed age couples in receipt of Pension Credit and/or Housing Benefit (under the State Pension Credit Age Regulations) will be 'protected'.

To be able to make a new claim for PC or HB\* they must meet all the four conditions outlined above.

\* unless for 'specified' or 'temporary' accommodation.

## Some 'protected' mixed age couples are wrongly being told to claim Universal Credit

Although there are some situations where a 'protected' mixed age couple will have to make a new claim for Universal Credit this will be quite rare.

We are finding that some 'protected' mixed age couples are being told they have to claim Universal Credit when this is not the case.

We have come across this where the couple are:

- Moving to a new Local Authority area.
- Taking responsibility for a child/young person.

## Moving to a new Local Authority Area

When a 'protected' mixed age couple move to a new Local Authority area they can take any Pension Credit award with them, but their existing HB award will come to an end.

They will be able to make a new claim for Housing Benefit as long as, on the day they make that new claim, they are in receipt of Pension Credit or Housing Benefit (under the SPC Regulations).

For those on Pension Credit this is straight forward – although we have heard couples in this situation being told they have to claim Universal Credit!

**Example:** Solomon (age 71) and Primrose (age 64) have been married for 20 years. They are currently living in a two-bedroom house and are moving to a one-bedroom flat in a different Local Authority area to be closer to their son. They get Pension Credit to top up Solomon's State Pension and have been continuously on Pension Credit since 14<sup>th</sup> May 2019. The HB for their old address will end when they move out of the LA area, but they will be able to make a new claim for HB at their new address as they are a 'protected' mixed age couple in receipt of Pension Credit.

### **What if the couple are not on Pension Credit and are moving to a different LA area?**

Where a mixed age couple are:

- moving to rented accommodation in a different Local Authority area,
- not on Pension Credit, but
- the older member of the couple is getting Housing Benefit (under the SPC Regulations), and
- they have been a couple and have been on either Pension Credit or HB (under the SPC Regulations) continuously since 14<sup>th</sup> May 2019,

then to be able to make a new claim for Housing Benefit\* the older member of the couple will need to make their new HB claim on a day when they are still entitled to HB for their old address.

\* unless for 'specified' or 'temporary' accommodation.

**IMPORTANT:** The Regulations state that a 'protected' mixed age couple can make a new claim for HB as long as the older member is currently entitled to HB under the SPC Regs – it does not matter if, by the time that claim is assessed or the date on which that entitlement starts, their previous HB award has ended.

### **What we have learnt is that it's all about timing!**

The timing of the new HB claim is important because rules for 'protected' mixed age couples only work if the new claim for Housing Benefit (or PC) is made on a day when they are receiving either HB (under the SPC Regs) or Pension Credit. If they are not receiving any Pension Credit and their HB award has already ended, then their protection will also have ended (Article 4(2) of the No 31 Commencement Order).

So where a 'protected' mixed age couple not on Pension Credit move Local Authority areas there is a risk that they will lose their protection and have to claim Universal Credit instead.

**Example:** Sue (age 68) and Paul (age 63) have been married for 40 years. They are currently living in a one-bedroom flat and are moving to a one-bedroom bungalow in a different Local Authority area. Sue's pensions are too high for them to qualify for a Pension Credit top up but they do get some HB (under the SPC Regulations) which they have been receiving since Sue retired 5 years ago. They are currently a 'protected' mixed age couple.

The tenancy on their flat ends on Sunday 17<sup>th</sup> July and the tenancy on their bungalow starts on Monday 18<sup>th</sup> July. They are staying with the same landlord and so there is no overlapping liability. This means that their HB entitlement for their old property will end on 17<sup>th</sup> July.

If they wait until they move before making a new claim for HB (ie on or after 18<sup>th</sup> July) to receive the help they need paying the rent for their new property, they will no longer be in receipt of any HB and will therefore no longer be a 'protected' mixed age couple.

If they need help paying their rent they will have no option but to make a claim for Universal Credit – and because UC is less generous – they may find that they are not entitled. So the move may have made them worse off.

## So what can these mixed age couples do?

### (a) Making an advance claim for HB

Housing Benefit (under the SPC Regulations) can be claimed up to 17 weeks in advance. (Reg 64(11)).

But to be classed as an advance claim, it will need to be made more than one week before the week in which the claimant's new HB award would start. The Regulations say that if the claimant will not become entitled to HB in the benefit week after the claim has been submitted – it is an advance claim. But if they will become entitled in the following week, then that claim can be processed straight away, so is not an advance claim.

It does not matter that they are no longer entitled to HB on their old property when their new HB award starts – the Regulations just say that a 'protected' mixed age couple can make a new claim for HB as long as they are entitled to HB on the day they make that claim, there is no reference to when the entitlement must start.

Note that the new HB Office might refuse to accept the advance HB claim and the claimant might need to go all the way to appeal.

See standard letter [MAC3 on the website](#).

**Example:** Glynnis (age 71) and Mary (age 64) are moving home. Mary is working part time and Glynnis gets a State Pension. Their income is too high for them to get any Pension Credit, but they do get a small amount of Housing Benefit (Glynnis is the main claimant). They are a 'protected' mixed age couple because they have been continuously on HB under the SPC age Regulations since 14<sup>th</sup> May 2019.

They are moving to a different Local Authority area to be closer to Mary's work. The tenancy on their old flat (and their HB) will end on Sunday 10<sup>th</sup> April, and the tenancy on their new flat will start on Monday 11<sup>th</sup> April.

Glynnis should make an advance claim for HB in the new LA area for them both - by Sunday 3<sup>rd</sup> April at the latest (if claiming online) or by the Friday 1<sup>st</sup> (if making a claim at the HB office) at the very latest.

If she does, their new HB Office should accept her advance claim, process that award and if they are entitled to HB they will remain a 'protected' mixed age couple.

This means that when Mary finishes work they could make a new claim for Pension Credit (although entitlement will depend on income and savings).

### What if there is a gap between the tenancies?

If there is a gap between the old tenancy ending and the new one starting, the advance claim can still be made – because the rules for 'protected' mixed age couples work if they are receiving HB (under the SPC Regulations) on the day they make their new HB claim. Once that claim is made and accepted it can then be assessed without the need for the mixed age couple to still be a 'protected' couple on the day their HB entitlement actually starts.

So, as soon as they are offered their new tenancy, and whilst they are still living in and getting HB (under the SPC Regulations) for their old tenancy, and more than one week before they would be eligible for HB at their new address, the state pension age member of a 'protected' mixed age couple can make an advance claim for HB to the new LA HB office.

Note though, that if, in the future, they move home again to a different LA area, or their income drops and so they would look to claim Pension Credit, the gap in HB entitlement would mean they would no longer be a 'protected' mixed age couple - as they will no longer have been continuously entitled to HB (or PC) since 14<sup>th</sup> May 2019. So they would not be able to make another new HB claim\* / or make a new claim for Pension Credit.

\*Unless for 'specified' or 'temporary' accommodation.

**Example:** Nadia (age 73) and Mo (age 65) are moving home. Nadia's pension income is too high for them to get any Pension Credit, but they do get a small amount of Housing Benefit (Nadia is the main claimant). They are a 'protected' mixed age couple because they have been continuously on HB under the SPC Regulations since 14<sup>th</sup> May 2019. They are moving into a different Local Authority area to be closer to their daughter.

The tenancy on their old property is ending on 15<sup>th</sup> June. But the tenancy on the new property does not begin until 23<sup>rd</sup> June – so they plan to move in with their daughter just for that week.

If they make their new HB claim in advance – whilst they are still in their old tenancy and getting HB there – they will have made their claim while they were a 'protected' mixed age couple and their new LA HB Office should accept and assess the claim. Once they have moved into their new tenancy, they should be able to get HB.

(Even though they are protected this time – there will be a gap of 1 week when they are on neither HB nor PC. This means that they are no longer a 'protected' mixed age couple and if there is another change in the future, they will not be able to make any further new claims for HB or PC until Mo turns pension age).

If they do not make an advance claim for HB, they will have missed their opportunity, because after their old tenancy ends, they will not be getting Pension Credit or Housing Benefit (under the SPC Regulations) and so will no longer be a 'protected' mixed age couple. Their only option if they need help paying their rent would then be Universal Credit – but because UC is less generous, they may find they are not entitled. The move therefore may have made them worse off.

#### **(b) Overlapping tenancies – if no advance claim made**

If a 'protected' mixed age couple have moved into their new address and then wish to make a new HB claim, they will be able to if their old HB award on their previous property is still running and they are entitled to it. That new claim should be accepted and processed by the HB Office.

The HB on the old address (in a different LA area) runs to the end of the benefit week in which the couple move. It could also run for longer to cover up to 4 weeks of the notice period if there was an overlapping liability and the HB office has accepted that the overlap was unavoidable, and the couple are moving to more suitable accommodation.

So, as long as the older member of the couple make their new HB claim as soon as they move into their new home and their old HB award is still running on that date, their new claim should be accepted by the new LA HB Office as they are still a 'protected' mixed age couple.

Standard letter **HB MAC4 on the website.**

**Example:** Tamara (age 74) and Ben (age 63) are moving home. Tamara's pension is too high for them to get any Pension Credit, but they do get a small amount of Housing Benefit (Tamara is the main claimant). They are a 'protected' mixed age couple because they have been continuously on HB under the SPC age Regulations since 14<sup>th</sup> May 2019.

They are moving into a different Local Authority area. Their new tenancy starts next Monday. The existing tenancy has a notice period that will end in 3 weeks' time.

As long as they move into the new property and remain liable for rent on the old property, and the old HB Office agree to award Housing Benefit for that notice period - due to the unavoidable overlapping liability - then Tamara will be able to make a new claim for HB at their new address whilst they are still getting HB for their old one.

## Becoming responsible for a child

A 'protected' mixed age couple may become responsible for a child or qualifying young person. It is no longer possible for anyone to make a new claim for Child Tax Credit<sup>1</sup> – including 'protected' mixed age couples.

**WARNING: Protected mixed age couples who become responsible for a child might be advised to claim Universal Credit – but they would be a lot better off staying on Pension Credit!**

We are aware that some 'protected' mixed age couples have been told that instead they need to claim Universal Credit (and a 'protected' mixed age couple that were incorrectly told that that couldn't get free school meals whilst on Pension Credit and were advised to claim UC instead).

However, an award of Pension Credit can include a Child Addition (and Disabled Child Addition) (and Pension Credit is a passport to free school meals). The only exception would be if the couple are already receiving Child Tax Credit for another child/ren or Working Tax Credit<sup>1</sup> (then they can stay on Tax Credits which could increase instead – although if affected by the two child limit they may be better off receiving this help in their Pension Credit).

<sup>1</sup>Note whilst no-one can make a new claim for Tax Credits, if they have an existing award of Working Tax Credit they can ask for that award to be reviewed to include Child Tax Credit and vice versa.

### Getting Pension Credit

Where a mixed age couple are already getting Pension Credit and they become responsible for a child or qualifying young person, they can ask for extra to be included in their Pension Credit.

**Example:** Leo and Christine are a mixed age couple. They have been claiming PC & HB since January 2019. They have just taken on responsibility for their grandchildren – aged 10 & 7. They ring the Tax Credit Office, intending to claim Child Tax Credit, but they are told that they should claim Universal Credit instead. So, they follow that advice and claim UC.

The UC claim brings their Pension Credit and HB to an end. They could have got extra Pension Credit instead – but once the PC and HB have been terminated, it is too late, and they are stuck on UC. They are £157 per week worse off than they would have been if they had remained on PC and HB.

### Getting just Housing Benefit

Where a 'protected' mixed age couple are just getting Housing Benefit (under the SPC Regulations), when they become responsible for a child or qualifying young person, they should check to see if they would now be entitled to Pension Credit – which would include a Child Addition for each child or qualifying young person the couple are responsible for.

**Example:** David (74) and Kate (60) are a mixed age couple. Due to the level of David's pension income, they have not been entitled to any Pension Credit, but they do get a bit of Housing Benefit (under the SPC HB Regs). They are taking on responsibility for their 3 grandchildren, aged 14, 12 & 8. As David and Kate are getting HB (under the SPC HB Regs) with David as the main claimant, they are a 'protected' mixed age couple and that means they are able to make a new claim for PC. The PC calculation will include 3 child additions. If they claimed UC instead, their HB would be terminated and they might not be entitled to any UC at all – and as they are no longer a 'protected' mixed age couple they would not be able to make a new HB claim.

If their income is still too high to receive any Pension Credit – then their HB award should increase. The two child limit rules will apply. Their HB award can only include two child allowances. Even if they are responsible for a third+ child they can only be entitled to more than two child allowances if they have a Child Tax Credit award that includes a child element for that child.



## What if the mixed age couple are mis-advised to claim UC but Pension Credit is still in payment?

### IMPORTANT:

Mixed age couples who have been misadvised to claim UC have a window of opportunity to withdraw their UC claim and stay on Pension Credit (and Housing Benefit).

As long as Pension Credit is still in payment and their UC claim has not yet been assessed, they can withdraw their UC claim and their Pension Credit award should continue.

Although their Housing Benefit claim will have been brought to an end when they claimed UC, being a 'protected' mixed age couple on Pension Credit will allow them to make a new claim (and get it backdated).

We have heard of several cases of 'protected' mixed age couples, on Pension Credit, who have tried to claim HB but have been incorrectly told that they had to claim UC instead.

If they have already made a claim for UC, but their Pension Credit is still in payment, some couples might be able to withdraw their UC claim and remain on Pension Credit instead, but it all depends on what has happened already...

Regulations (Reg 8 of the UC Transitional Provisions Regs 2014 and Article 4 of the Welfare Reform Act 2012 Commencement Order No. 9) state that when a single person or member of a couple receiving legacy working age benefits (HB, Tax Credits, IS, ESA, JSA) make a claim for UC, their legacy benefits will normally terminate / are abolished – even if they turn out not to be entitled to UC because, for example, their income is too high. Merely by claiming UC they bring about the end of their legacy benefit award (after a two-week run-on where applicable). But these Regulations make no reference to Pension Credit.

So, Pension Credit is different – they are only excluded from Pension Credit once they become entitled to UC.

### What the Regulations say

Reg 5 of the UC Transitional Provisions Regs 2014 says (our emphasis)-

*Exclusion of entitlement to certain benefits*

5.—(1) *Except as provided in paragraph (2), a claimant is not entitled to—*

*(a) income support;*

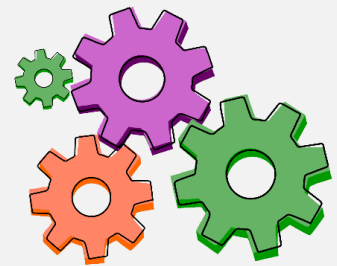
*(b) housing benefit\*;*

*(c) a tax credit; or*

*(d) state pension credit,*

*in respect of any period when the claimant is **entitled to universal credit***

*(\*unless for Housing Benefit for 'specified' or 'temporary accommodation'.)*



So, the argument is, just claiming UC has no immediate effect on Pension Credit; Pension Credit will only terminate if the claimant is actually awarded UC at the end of the first Monthly Assessment Period.

This means that 'protected' mixed age couples who have been on Pension Credit and have been misadvised to claim UC could have a window of opportunity during which they can change their minds and withdraw their UC claim. And their continuing entitlement to Pension Credit will also enable the older member to reclaim HB which has terminated as a result of the UC claim.

We consider the various situations on the following page.

**Withdrawn their UC claim?**

If they have withdrawn their UC claim before the end of their first Monthly Assessment Period, we think their Pension Credit should not be affected. They will not have been entitled to any UC, so they should not be excluded from entitlement to Pension Credit (ie Reg 5 of the UC Transitional Provisions Regs 2014 does not apply).

As they are a 'protected' mixed age couple, the older member would be able to make a new claim for HB and this could be automatically backdated up to three months.

**Not entitled to any UC?**

If they have reached the end of their first UC Monthly Assessment Period, but their income is too high for them to be entitled to any UC, and their Pension Credit is still in payment, then we think they could argue that they are still a 'protected' mixed age couple who can stay on Pension Credit and are allowed to make a new claim for HB.

They were not 'entitled to' any UC, so they should not be excluded from entitlement to PC (ie Reg 5 of the UC Transitional Provisions Regs 2014 does not apply).

If the HB Office refuses to accept a new claim for HB in these circumstances, the claimant will probably need to go to appeal – but if the mixed age couple were not entitled to any UC anyway, they have nothing to lose.

**Already received an award of UC?**

If the mixed age couple have already been awarded some UC, they then have an entitlement to UC and have become UC claimants. This means that they will have lost their protection. They are now excluded from Pension Credit by Regulation 5 of the UC Transitional Provisions Regs 2014.

If they are worse off and were advised to claim UC / told UC was their only option then they might also want to complain to the office that mis-advised them and request compensation for their financial losses (the difference between the UC they've been awarded and the Pension Credit and/or Housing Benefit they could have received).

**What if their Pension Credit has terminated?**

If they have made a claim for UC and their Pension Credit is no longer in payment (due to their claim for UC) – it could be more difficult. Without either Pension Credit or Housing Benefit (under the SPC rules) the mixed age couple are not protected.

It is worth checking if they are likely to be awarded some UC. If so, they might be better off sticking with UC. But if they are still in their first Monthly Assessment Period and their UC award is going to be very small, they could withdraw their UC claim. Or, they might have reached the end of their first Monthly Assessment Period and found that they were not entitled to any UC. In these circumstances it could be worth them challenging the decision to terminate their Pension Credit (on the grounds that they were never entitled to UC - as per Reg 5 of the TP Regs). If they get the Pension Credit reinstated, they can then claim HB.

**Does this work if the mixed age couple are still receiving Housing Benefit (under the SPC Regulations) and want to claim Pension Credit?**

We don't think so...

As soon as a claim for UC is made (as long as the basic conditions are met, e.g. age, savings, not a couple with no recourse to public funds etc) then any existing award of HB is terminated (Reg 8 of the UC Transitional Provisions Regs 2014). So without either a HB or Pension Credit entitlement they would not be a 'protected' mixed age couple.



## **Part 2A – Becoming a new Mixed Age Couple when older partner reaches state pension age**

When a working age couple become a mixed age couple, because the older member of the couple turns state pension age, what happens to their existing legacy benefits depends on what they are claiming and who is the main claimant ie whose name the claim is in.

We will look at the different situations.

### **The older member of the couple has been the main claimant of Income-Related ESA, Income Support or Income-Based JSA**

Where a working age couple become a mixed age couple because the older member has turned state pension age, and it is the older member who has been the main claimant for Income-Related ESA, Income Support or Income-Based JSA, then because they have reached state pension age, any Income-Related ESA, Income Support or Income-Based JSA that they have been entitled to would end. As they are now state pension age they cannot continue to receive these benefits.

This would in turn end their passported working age Housing Benefit\* and the Regulations prevent their HB award continuing\* under the SPC Regs.

\*unless they live in 'specified' or 'temporary' accommodation.

They also, as an unprotected mixed age couple, cannot make a new claim for Pension Credit, and so if they need a financial 'top-up' this will have to be from Universal Credit.

This causes a particular issue for ESA claimants...

#### **What if the younger member of the couple also has health problems?**

The working age member would not be able to make a new claim for Income-Related ESA BUT watch out for those that may already be in receipt of 'old style' Contributory ESA ie on a claim that pre-dates Full Service UC coming to their area.

The working age member could request that the ESA Dept review their award of ESA to include an Income-Related top up. This is because they are not making a new claim, just requesting a review of an existing one.

If they are entitled to Income-Related ESA (that will include any pension income the older member has but also a pensioner premium) then they can stay on IR-ESA. Where HB has been in payment this should continue as long as there is no full HB week where neither member is entitled to IR-ESA.

#### **Moving from Income-Related ESA to Universal Credit because the IR-ESA claimant has reached state pension age**

If the couple wait for their award of IR-ESA to end before claiming UC, even if they claim UC the day after their IR-ESA ends, there is nothing in the Regulations that allows any work capability decision to transfer over from their previous IR-ESA award to their new Universal Credit claim. This is because the claim for IR-ESA has been terminated before the claim for UC is made. (Regulation 19 of the Transitional Provision Regulations does not apply as IR-ESA is not in payment on the day the UC claim is made.)

A Universal Credit claimant who is state pension age can request a Work Capability Assessment (although they are often told that they can't due to their age!).

But the request for a Work Capability Assessment would be under a new period of limited capability for work and if they are found to have a LCW (and not a LCWRA), they would not be entitled to the LCW Element in their UC award<sup>1</sup> due to the rules introduced in April 2017, and any LCWRA Element would only be included in their UC award after the 'relevant period' has ended. They would miss out on the LCWRA Element for the first 3 Monthly Assessment Periods – a loss of over £1000!

<sup>1</sup>Although their Limited Capability for Work status would be recognised ie when considering their conditionality and entitlement to a work allowance/childcare costs element.

**TIP: Couples whose IR-ESA is due to end because the older member is turning state pension age, who are going to make a new claim for Universal Credit, should make that claim for UC *before* their IR-ESA terminates. This ensures that the work capability decision transfers across to the UC award.**

**TIP: The DWP sometimes say that a state pension age UC claimant cannot have a Limited Capability for Work and therefore exclude a LCW/LCWRA Element or refuse to refer the claimant for a Work Capability Assessment – this is wrong.**

**If the older member of the couple is the main ESA claimant, what is the best date to claim UC?**

If it is the older member that is the ESA claimant then the most important point, as explained above, is that the couple claim UC before this member reaches state pension age (ie before their 66th birthday) so that the work capability decision is transferred over.

But they could maximise their income in another way too...

Most couples would receive more, overall, if they make their UC claim 2 weeks before the older member turns state pension age. This is due to the 2-week run-on of IR-ESA (and HB).

To get the full 2-week run on of IR-ESA, the couple would need to claim UC at least 2 weeks before the older one reaches Pension Age. The run-on of IR-ESA could be less than 2 weeks – because it can only cover a period when IR-ESA would have continued ie up to the date the claimant turns pension age. So, for example, if they claimed UC 7 days before the older one reaches state pension age, they would only get 7 days' IR-ESA run-on.

For those claimants on HB, the claim for UC would also trigger the 2-week run on of Housing Benefit (Transition to UC Housing Payment). The rules for the run-on of HB are different. The full 2 weeks run-on will be paid whatever date they claim UC (as long as the claim is made before the older one reaches state pension age).

Below is a table showing why most couples will gain more benefits overall if they claim UC 2 weeks before the older one reaches state pension age.

Date of claim	Approx. income during the 4-week period from 2 weeks before turning Pension Age to 2 weeks after
2 weeks before state pension age	4 weeks of UC (including HCE Element & LCW/LCWRA Element) 2 weeks of HB (run on) 2 weeks of IR-ESA (run on) 2 weeks of Pension income
1 day before state pension age	2 weeks of UC (including HCE Element LCW/LCWRA Element) 4 weeks of HB (HB for 2 weeks + 2wk run on) 2 weeks of IR-ESA (up to state pension age) 2 weeks of Pension income

Their IR-ESA and Pension Income are the same for both situations. The difference is having an extra 2 weeks of UC or HB. As UC includes the LCW/LCWRA Element (and HCE) it is likely to be worth a lot more than 2 weeks of HB.

### **What if the claimant was not notified that their IR-ESA was going to end?**

If the IR-ESA claimant does not receive a letter to notify them that their IR-ESA will be terminated when they reach state pension age, or their letter is sent to them after their IR-ESA has already ended, they may be able to take advantage of the UC backdating rules. This could mean they retain their LCWRA (or LCW) status from the start of their UC award.

One of the situations in which a UC 'backdate' can be allowed (ie the UC claim can be treated as having been made on an earlier date – up to one month before the actual date of claim) is where the claimant was previously on a legacy benefit and they were not notified that the benefit was going to end, before it did end. Regulation 26 of the UC Claims and Payments Regulations. Please see website for more information.

### **The younger member of the couple has been the main claimant of Income-Related ESA, Income Support or Income-Based JSA (or receives Old Style Contributory ESA)**

Where it is the younger member of a couple who is the main claimant of Income-Related ESA, Income Support or Income-Based JSA and the partner turns state pension age, then their award does not automatically end. Obviously, their entitlement will need to be reassessed - their award will need to take into account the older member's new pension income, but the award would also now include a pensioner premium.

If they remain on Income-Related ESA, Income Support or Income-Based JSA, then, even as a mixed age couple, they can remain on an existing award of Housing Benefit under the Working Age Regulations. It does not matter which of them is the main claimant of HB – as long as the younger member's IR-ESA / IS / IB-JSA continues in payment, so can their Working Age HB.

However, we are aware that some couples have had their HB award terminated on aging into being a mixed age couple (and even being told that they have to claim UC to get any help with their rent) ignoring the fact that they can remain on Income-Related ESA, Income Support and Income-Based JSA.

It may be worth the couple notifying the relevant benefit authorities before the older member turns state pension age that they intend to stay on the legacy benefit system to ensure these benefits aren't stopped. And if they are, they should challenge that decision as soon as possible - we have a standard letter that they can use if their HB stops - **Standard Letter HB MAC5 on the website.**

**Example:** Yvonne (age 62) and Angus (age 66) live in a one bedroom flat.

Last week Angus turned state pension age.

Yvonne is claiming Income-Related ESA for them both, and Angus claims Housing Benefit (under the Working Age Regulations) for their flat.

Yvonne's IR-ESA is re-assessed, taking into account Angus' pension income, but it also now includes a Pensioner Premium. Once re-assessed they remain entitled to some IR-ESA.

These means that even though they are now a mixed aged couple Yvonne's IR-ESA and Angus's Working Age HB can continue. They do not have to claim Universal Credit.

**Example:** Chris (age 63) and Simon (age 66) live in a one bedroom flat. Last week Simon turned state pension age. Simon was working full time until a couple of weeks ago. Chris has been on Contributory ESA in the support group for the past 8 years. They do not get any Housing Benefit.

They cannot make a new claim for legacy benefits.

But Chris can ask for his ESA award to be re-calculated. It is an 'Old Style' ESA award, so it can be re-assessed to see if they need an income-related top up. The IR-ESA assessment will take into account Simon's pension income, but will also include a couple allowance, support component, and a pensioner premium.

BUT they cannot make a new claim for HB.

They will need to check which is better for them (if they qualify) – IR-ESA (with the Pensioner Premium) or Universal Credit (with housing costs included).

## Part 2B – Becoming a new Mixed Age Couple – single to couple

### IMPORTANT –

The younger member of the couple can add their new partner onto their existing award of Income-Related ESA, Income Support or Income-Based JSA (or Old-Style Contributory ESA) – even if that new partner is state pension age.

The fact that the new partner is state pension age attracts a pensioner premium – meaning the amount that the couple is deemed to need to live on is the same as it would have been if they could have received Pension Credit instead. This is much higher than Universal Credit (not taking account of any housing costs).

Regulations mean that when a state pension age claimant becomes a couple with a working age partner, they cannot continue to receive any Pension Credit and/or Housing Benefit\* (under the SPC rules) that they were receiving as a single person – any existing claim will end.

\* unless for 'specified' or 'temporary' accommodation.

But when a working age claimant takes on a state pension age partner, any Income-Related ESA, Income Support, Income-Based JSA, Housing Benefit does not end automatically. It will need to be reassessed to take account of their new circumstances.

**WARNING: If two single people are becoming a mixed age couple, it is vital that they seek advice BEFORE they make a claim for Universal Credit. They might be able to stay on working age legacy benefits as a couple instead.**

**If they do make a claim for Universal Credit then they will be caught by the 'lobster pot' effect and will not be able to go back onto the legacy benefit system – meaning they could have missed out on at least £157 per week.**

### Which 'new' mixed age couples don't need to claim Universal Credit?

A 'new' mixed age couple won't need to claim Universal Credit if the working age member is getting Income-Related ESA, Income Support or Income-Based JSA (or Old-Style Contributory ESA).

So, as long as the state pension age partner's income or amount of savings is not too high, they can receive IR-ESA, IS or IB-JSA as a couple.

### What about Housing Benefit?

As a 'new' mixed age couple they would not be able to make a new claim for HB (unless living in 'specified' or 'temporary' accommodation). But any HB that either member has already been receiving could continue as 'working age' HB if they get IR-ESA, IS or IB-JSA.

Mixed age couples are only excluded from moving onto Housing Benefit under the State Pension Credit Age Regulations, therefore they can:

- Continue to receive HB under the Working Age Regulations (where the younger member has been entitled).
- Transfer from HB under the State Pension Age Regulations to the Working Age Regulations (where the older member has been entitled).

So, they should be able to continue on HB as long as:

- one or both of them is / are remaining in the same Local Authority area, (ie they are not each leaving their old home and moving into a new place together in another area), and
- the amount of their combined income / savings allows them to remain on IR-ESA, IS or IB-JSA as a couple.

If the working age claimant is in receipt of HB from the LA that they will be living together as a couple, then to minimise the risk of any problems, we think it would be preferable for the working age member of the couple to retain their HB award wherever possible. They should report the change to the HB Office who should add on their new partner to the claim.

Often an HB Office will end an award of HB for a working age claimant on IR-ESA, IS or IB-JSA because they have become a mixed age couple. They can use our standard letter to challenge that decision - [Standard letter HB MAC 6 on the website](#).

If it is only the state pension age member of the couple who has been on HB as a single claimant (under the State Pension Credit Age HB regulations) then they can report the fact that they have become a couple and have been included on their partner's IR-ESA, IS or IB-JSA award, and their HB could continue as 'working age' HB. There is nothing in the Regs that ends HB under the State Pension Age Regs on becoming a mixed age couple. There would need to be no gaps in HB, so it would be important for them to report the change in circumstances to the IR-ESA, IS or IB-JSA and the HB Office as soon as they move in together.

Often an HB Office will end an award of HB for a state pension age claimant who has become the partner on an award of IR-ESA, IS or IB-JSA. They can use our standard letter to challenge that decision: [Standard letter HB MAC 7 on the website](#).

Note that if they live in 'specified' or 'temporary' accommodation they would need to claim HB anyway.

**Example:** Lincoln (59) gets Income-Related ESA. He is moving from his parents' home to live with his new partner Mike (71).

Mike gets Pension Credit and Housing Benefit for his Housing Association 2-bed rented house.

Mike's Pension Credit will end because he and his new partner will be a mixed age couple. But they don't need to claim Universal Credit.

Lincoln can add Mike onto his IR-ESA claim as his partner. The ESA will then include the pensioner premium.

Mike's HB can continue. It will now fall under the working age HB rules – because as a couple they are on IR-ESA. They should not be affected by the Bedroom Tax.

**Example:** Tammy (age 62) and Paul (age 70) are moving in together. Tammy gets Income-Related ESA and Housing Benefit for her flat. Paul gets Pension Credit and Housing Benefit for his flat.

They are both moving into a new Housing Association property together - in a different local authority area to where each of them currently lives.

Paul's Pension Credit will stop because he is moving in with a working age partner and they will be a mixed age couple.

Sammy can add Paul onto her claim for Income-Related ESA.

Their HB awards will end (because they are moving to a new LA area).

They will not be able to make a new claim for Housing Benefit (unless they are moving to 'specified' or 'temporary' accommodation).

So, they will need to check which is the better option for them: IR-ESA with the pensioner premium included or Universal Credit which can include help with housing costs (but if they are deemed to have a spare bedroom, they will be affected by the Bedroom Tax).

## What about Child Tax Credit?

If one (or both) of them has been receiving Child Tax Credit as a single claimant, their CTC will terminate on becoming a couple.

They will need to check which is more beneficial: Universal Credit (which will include the Child Element) or HB & IR-ESA, Income Support or Income-Based JSA (which will include the pensioner premium).

**Example:** Jeremy is 67. He gets a small State Pension, Pension Credit and Housing Benefit. He has decided to move in with his new partner, Ruby, who is 51 and has a 15 year old son. Ruby claims Income-Related ESA, CTC and HB.

When Jeremy moves in with Ruby, his Pension Credit and HB (under the State Pension Credit age HB Regs) will terminate (because he has become a member of a mixed age couple). Ruby's CTC award will end too – because she has taken on a partner. The only benefit they could make a new claim for would be UC. However, they might be better off if they stick with Ruby's IR-ESA and her working age HB – she could add Jeremy on as her partner. The IR-ESA would include a pensioner premium – and they might be better off on IR-ESA and HB with no CTC, compared with UC.

## What if the new working age partner is already on Universal Credit?

Where the working age member is already on Universal Credit, then they will have no choice but to claim Universal Credit as a couple.

Their joint UC award will be assessed to take account of what they are deemed to need to live on as a couple, and help towards rent and their combined income & savings.

Since 25 November 2020, the [regulations](#) have allowed for an overlap of Pension Credit and/or Housing Benefit and Universal Credit in these situations. The Pension Credit / HB will end as soon as they become a mixed age couple. But the UC award will assess them as a couple for the whole of the monthly assessment period during which they start to live together – ie. from a date before they had started to live together. Neither the Pension Credit nor the Housing Benefit will be taken into account as income when the UC is calculated.

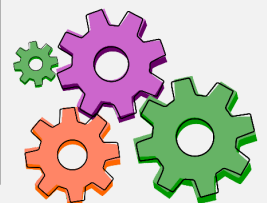
**Example:** Emanuelle (age 68) and Mark (age 63) have decided to move in together - Emanuelle moves in with Mark on 15th December.

Mark has been claiming Universal Credit - his Monthly Assessment Periods run from 5th of the month. Emanuelle's Pension Credit and Housing Benefit will stop when they move in together. She will need to claim UC and request a partner code to join Mark's claim. The joint UC award will be assessed as a couple claim from the beginning of the Monthly Assessment Period - ie 5th December - but the Pension Credit and Housing Benefit paid up to when they became a couple are disregarded as income for the UC assessment.

\*NOTE: Where a single state pension age claimant's HB has ended because they have become a couple with a working age person, and then the couple go on to claim UC, they will not be entitled to the HB 2 week run-on. This is because the HB ended because of forming a couple and not because of the claim for UC.

### IMPORTANT

Where a state pension age UC claimant is getting daily living PIP/ADP or Attendance Allowance then they can be treated as having either LCW (if standard rate DL PIP/ADP or low rate AA) or LCWRA (if enhanced rate DL PIP/ADP or high rate AA).



## Part 3 – Bedroom Tax

### Mixed age couples and the Bedroom Tax

Mixed age couples who live in social housing and have a 'spare' bedroom(s) should not be affected by the bedroom tax if they get HB. That applies with both working age and state pension age HB.

The State Pension Age HB Regulations do not mention the bedroom tax.

In the Working Age HB Regulations, Regulation A13 states:

*"When a maximum rent (social sector) is to be determined*

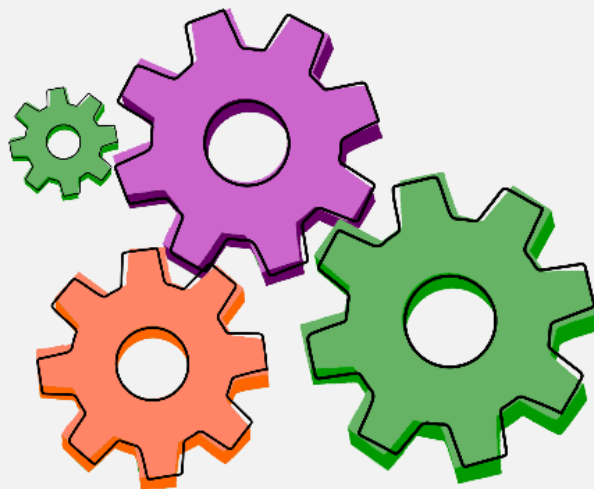
*A13. —(1) Subject to paragraph (2), the relevant authority must determine a maximum rent (social sector) in accordance with regulation B13 .....*

*(2) This regulation does not apply—*

*.....(d) where the claimant or the claimant's partner has attained the qualifying age for state pension credit, or where both have attained that age; "*

Use **standard letter BT5 on the website** to appeal a decision by a HB Office that a mixed age couple should have a Bedroom Tax deduction.

In contrast, the normal bedroom tax rules apply to mixed age couples on Universal Credit.



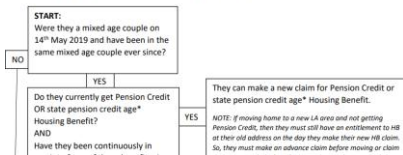


## Useful Resources

### Flowchart

**Mixed age couples: Can they make a new claim for Pension Credit and/or state pension credit age Housing Benefit?**

NOTE: Assumes they are living in rented accommodation (not classed as 'specified' or 'temporary' accommodation) and that they have no dependent children.



Available on the Housing Systems website – [click here](#)

### Standard Letters

HB MAC3: Request to accept advance claim for HB by mixed age couple – moving to new LA, not in receipt of Pension Credit but currently on pension credit age HB

(NOTE – the pension age member of the couple should make the new HB claim AND the claim should be made more than one week before the new HB entitlement would start)

Date:

Housing Benefit Office

Dear Sir / Madam,

Re: Housing Benefit claim

Name:

Address:

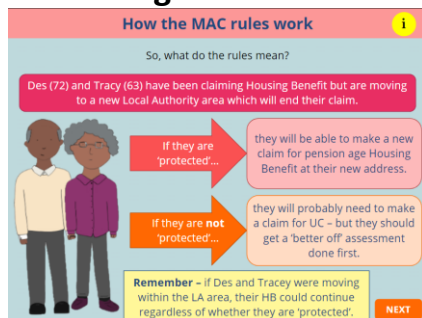
Claim Ref:

I am making an advance claim for Housing Benefit for myself and my working age partner. I am writing to request that you accept my advance claim as I believe that we are a 'protected' mixed age couple.

We are moving from (old address and LA area) into our new tenancy (address) on (date).

Available on the Housing Systems website – [click here](#)

### E-Learning



Find out more about the rules for Mixed Age Couples by completing one of our E-Learning courses.

If you are one of our E-Learning subscribers you'll have access to all our E-Learning courses either on the Housing Systems website or your own LMS.

Alternatively, all our E-Learning courses are available to be purchased on an individual basis.

[Click here](#) for more details.

### Online Workshops



Join us for a Mixed Age Couple Masterclass – just £99+vat per delegate. [Click here](#) for details.

Or book an in-house session - essential for Lettings teams and those advising UC claimants –from just £995+vat  
Interested? Email us: [training@ucnotes.co.uk](mailto:training@ucnotes.co.uk)

### Regulations

The amending Regulations that bring in these new rules are:

The Welfare Reform Act 2012 (Commencement No 31 and Savings and Transitional Provisions and Commencement No. 21 and 23 Transitional and Transitory provisions (Amendment)) Order 2019 – [click here](#).

The Welfare Reform Act 2012 (Commencement No. 31 and Savings and Transitional Provisions (Amendment)) Order 2019 – [click here](#)

### Guidance

[HB Circular A3/2019](#) provides guidance on the rules that apply to mixed age couples from 15th May 2019 from a Housing Benefit perspective.

[HB Circular A9/2019](#) provided additional guidance that included mixed age couples caught by the SDP gateway (the SDP gateway has been abolished).

Pension Credit guidance <https://www.gov.uk/government/publications/pension-credit-technical-guidance/a-detailed-guide-to-pension-credit-for-advisers-and-others#who-is-eligible-for-pension-credit>