

# Myths of Common Law Marriage

## Benefits and Council Tax



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Cohabiting couples in England and Wales are in a fairly similar position to married couples and civil partners, when it comes to claiming benefits and paying council tax. If you and your partner are 'living together as a married couple' (LTAMC), whether in a same- or opposite-sex relationship, you will be assessed for benefits in the same way as married spouses or civil partners would be.

### Benefits and LTAMC

When you apply for for benefits – such as Income Support (IS), Job Seekers' Allowance (JSA), or the new Universal Credit – you will need to notify the Department for Work and Pensions (DWP) that you are in a cohabiting relationship, as this will affect the level of support you are entitled to. You must also notify DWP if you set up house with your partner while in benefit. How it affects your entitlement will depend on the sort of benefit you're applying for or receiving.

### Means-tested benefits

Your status as cohabiting couples is most important in the case of means tested benefits, like income-based JSA, Housing Benefit, and Lone Parent Income Support. For this type of benefit, DWP (or the relevant agency) will calculate your entitlement based on the total income in your household, and this includes your partner's income.



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### Contribution-based benefits

Benefits like the new State Pension and contribution-based JSA are not affected by your cohabiting status, since your entitlement is based on what you have paid in to National Insurance. But your status still matters for some contribution-based benefits. For example, if you are receiving Bereavement Support payments after the death of a spouse or civil partner,

moving in with a new partner will cause those payments to stop.

### Benefits that are not affected

Carer's Allowance, Maternity Allowance, Child Benefit and Guardian Allowance are not affected by cohabitation – but remember that only one parent may claim Child Benefit for any given child.

Personal Independence Payment (PIP), Disability Living Allowance (DLA), and other disability-related benefits entitlements are not affected by cohabitation.

If you are not named on the birth certificate, you are only entitled to statutory paternity pay if you are living with the baby's mother, as a spouse, civil partner, or LTAMC.



## What is LTAMC?

Whether you are living together as a married couple (LTAMC) might not always be clear, since relationships come in all shapes and sizes. There is no definitive definition of what constitutes a LTAMC relationship, and it will be for DWP (or the relevant body) to assess whether yours is such a relationship, if there is any doubt. You will be asked a series of questions

about your relationship, and may be asked for an interview to assess it.

You might be asked about how you share your home, how you arrange your finances, and your plans for the future. Whether you have any children together, and whether you publicly acknowledge a marriage-like relationship will also be relevant.



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### What if I/we disagree with DWP's findings?

If you disagree with DWP's findings regarding the nature of your relationship, you can ask DWP to provide you with a written explanation of their decision, and they must provide you with this within 14 days. If you are not satisfied with the written explanation – or you are simply satisfied, without a written explanation, that their decision is wrong – you have the option of asking the DWP to make a mandatory reconsideration.

If you are unhappy with the result of the mandatory reconsideration, you have the right to take the decision to an independent tribunal for reconsideration.



## What happens if you don't disclose LTAMC?

If you do not tell DWP that you and your partner are LTAMC, you may be asked to repay any overpay, and you might also be required to pay a civil penalty (currently £50).

If it is felt that you have purposely misled DWP about the nature of your relationship, you could face criminal charges. Alternately, you may be offered the opportunity to pay an administrative penalty of up to £2000 to avoid charges under the Social Security Administration Act 1992.

## Council tax

Cohabiting opposite-sex couples are 'jointly and severally liable' for council tax in England and Wales, regardless of whether they are married.

In England, the story is the same for same-sex couples: both of you can be held liable for the full council tax bill.

In Wales, same-sex couples who are not married or in a civil partnership are treated in the same way that housemates would be, for council tax purposes: usually, whichever partner

holds the lease, the leasehold or the freehold on the home will be liable for council tax purposes.

## Defining some terms

**Cohabitation** where an opposite or same sex couple live together but aren't married or in a civil partnership; sometimes called 'common law marriage'.

**Contribution-based benefit** benefits you are entitled to because of your National Insurance contributions.

**Joint and several liability** each of you is liable for the entire amount – either or both of you could be held to account for (in the case of council tax) the entire council tax bill.

**Mandatory Reconsideration** you ask the Department for Work and Pensions to look at a decision again and decide whether to change it or keep it the same.

**Means-tested benefit** a payment available to people who can demonstrate that their income and capital (their 'means') are below specified limits.

## Useful documents

**How to notify DWP of a change in circumstances:** <https://goo.gl/dKxu9i>

**Advice on appealing a DWP decision:** <https://goo.gl/eBjL9o>

**Advicenow survival guide to benefits and living together:** <https://goo.gl/otnVUM>

**Advice on council tax in England:** <https://goo.gl/upUMju>

**Advice on council tax in Wales:** <https://goo.gl/Vb6GWK>