

Passport to Equality: Same-Sex Couples' Eligibility (CLS Support Contracting Email Bulletin no. 64)

1 Introduction

- 1.1 At the time of writing CLS Support Contracting Briefing no. 9, "Eligibility: Principles and Practice", same-sex partners were not treated as being a couple for the purpose of welfare benefits. This has changed from 5th December 2005, with the implementation of the Civil Partnership Act 2004. This email bulletin therefore updates that briefing.
- 1.2 This bulletin has been checked and agreed for accuracy by the Legal Services Commission (LSC). The LSC has also produced guidance on this issue entitled [Assessment Guidance For Controlled Work Re: Implementation Of Civil Partnership Act 2004.](#)
- 1.3 The recent changes in how the welfare benefits system treats same-sex couples makes assessing their eligibility for LSC funding more straightforward. The LSC's rules on eligibility for Legal Help, Help at Court and Controlled legal Representation have not changed. The LSC already treated same-sex partners as a couple. When assessing the eligibility of someone living with a same-sex partner, their partner's means have to be aggregated and a dependant's allowance made in respect of the partner.

2 What's changed?

- 2.1 Before 5th December, assessing the eligibility of a member of same-sex couple was not always straightforward. This was because for the purposes of assessing eligibility for LSC funding same-sex partners were treated as a couple, but same-sex relationships were not recognized for welfare benefit claims. This anomaly could cause difficulties assessing eligibility when one partner in a same-sex couple was receiving a passporting benefit.
- 2.2 From 5th December, "couples who are civil partners, or those living together as if they are civil partners" will be added to the definition of a 'couple' in benefits law. All couples that live together will be treated the same for benefits purposes. This will include all same-sex couples, regardless of whether or not they have formed a civil partnership.

3 "Passporting" from 5th December

- 3.1 As a result of these changes, same-sex partners will be treated as a couple when claiming means tested benefits, including the "passporting benefits" i.e.
 - Income Support;
 - Income-based Job Seekers' Allowance (JSA);
 - Guarantee State Pension Credit.

- 3.2 Clients who receive one of these passporting benefits (directly or indirectly) are automatically eligible on both income and capital grounds, so automatically qualify for assistance.
- 3.3 A client is receiving one of these benefits “directly” if it is being paid to them, i.e. the client is the claimant. They are receiving a benefit “indirectly” if they are included as a dependant on their partner’s current claim (i.e. the claimant receives money for the client’s upkeep). Thus if the client’s partner’s means are included in the assessment and their partner receives one of these benefits, the client will be passported.
- 3.4 Once you have established that the client is directly or indirectly receiving a passporting benefit, it is not necessary to obtain any further information about their means. The relevant box on the application form (at part B of the CW1) must be ticked and the appropriate written evidence obtained.
- 3.5 Only the benefits in the list above passport a client automatically to eligibility. If a client is receiving a different benefit, for example Tax Credits or Contribution-based JSA, their eligibility will need to be assessed in the usual way.

4 Further information and guidance

- 4.1 The CLS Support briefing, “Eligibility: Principles and Practice” provides further details of all aspects of calculating eligibility, including passporting and aggregation of partners’ means.
- 4.2 If you require guidance on any of the eligibility issues covered in this email bulletin, or have any other eligibility queries, please contact the CLS Support consultancy service on **0870 7700 447 Monday to Friday 1pm–4pm** or email cls.support@asauk.org.uk any time.
- 4.3 For further information on welfare benefits for same-sex couples, see the information on Advice Now’s web page [For the benefit of same-sex couples?](#)