

Part 5 - JSA to Retirement Pension

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Chapter 07 - Part 5 - JSA to Retirement Pension

European legislation referred to in Chapter 07 - Part 5

Full title	Abbreviation
Council Regulation (EEC) No. 1408/71	Reg (EEC) 1408/71
Council Regulation (EEC) No. 574/72	Reg (EEC) 574/72
Council Directive No. 92/85/EEC	Directive 92/85/EEC
Regulation (EC) 883/04	Reg (EC) 883/04
Treaty establishing the European Economic Community	Treaty of Rome

Agreements referred to in Chapter 07 – Part 5

Country description	Full title	Short
Austria	The Social Security (Austria) Order 1981 No. 605	SS (Austria) Order 81
Barbados	The Social Security (Barbados) Order 1992 No. 812	SS (Barbados) Order 92
Bermuda	The National Insurance and Industrial Injuries (Bermuda) Order 1969 No. 1686	NI and II (Bermuda) Order 69
Canada	The Social Security (Canada) Order 1995 No. 2699	SS (Canada) Order 95
Cyprus	The Social Security (Cyprus) Order 1983 No. 1698	SS (Cyprus) Order 83
Finland	The Social Security (Finland) Order 1984 No. 125	SS (Finland) Order 84
Germany	The Family Allowances, National Insurance and Industrial Injuries (Germany) Order 1961 No. 1202	FA, NI & II Order 61
Iceland	The Social Security (Iceland) Order 1985 No. 1202	SS (Iceland) Order 85
Isle of Man	The Social Security (Isle of Man) Order 1977 No. 2150	SS (I of M) Order 77
Israel	The National Insurance and Industrial Injuries (Israel) Order 1957 No. 1879	NI and II (Israel) Order 57
Jamaica	The Social Security (Jamaica) Order 1997 No. 871	SS (Jamaica) Order 97
Jersey and Guernsey	The Social Security (Jersey and Guernsey) Order 1994 No. 2802	SS (Jersey and Guernsey) Order 94
Malta	The Social Security (Malta) Order 1996	SS (Malta) Order 96
Mauritius	The Social Security (Mauritius) Order 1981 No. 1542	SS (Mauritius) Order 81
New Zealand	The Social Security (New Zealand) Order 1983 No. 1894	SS (New Zealand) Order 83
Northern Ireland	The Social Security (Northern Ireland Reciprocal Arrangements) Regulations 1976	SS (N Ireland Reciprocal Arrangements)

Country description	Full title	Short
	No. 1003	Regs
Norway	The Social Security (Norway) Order 1991 No. 767	SS (Norway) Order 91
Philippines	The Social Security (Philippines) Order 1989 No. 2002	SS (Philippines) Order 89
Portugal	The Social Security (Portugal) Order 1979 No. 921	SS (Portugal) Order 79
Spain	The Family Allowances, National Insurance and Industrial Injuries (Spain) Order 1975 No. 415	FA, NI & II (Spain) Order 75
Sweden	The Social Security (Sweden) Order 1988 No. 590	SS (Sweden) Order 88
Switzerland	The Family Allowances, National Insurance and Industrial Injuries (Switzerland) Order 1969 No. 384	FA, NI and II (Switzerland) Order 1969
Turkey	The National Insurance and Industrial Injuries (Turkey) Order 1961 No. 584	NI and II (Turkey) Order 61
United States of America	The Social Security (United States of America) Order 1984 No. 1817	SS (USA) Order 84
Yugoslavia	The Family Allowances, National Insurance and Industrial Injuries (Yugoslavia) Order 1958 No. 1263	FA, NI and II (Yugoslavia) Order 58

Introduction to Jobseeker's Allowance

075330 [\[See Memo DMG 32/10\]](#) This section contains guidance on

1. entitlement to JSA when a person is outside GB (see DMG 075332)
2. the restrictions on entitlement to income based JSA when a person has come from abroad (see DMG 075550)
3. the use of insurance paid in another country to satisfy the contribution conditions for entitlement to contribution based JSA (see DMG 075520) **and**
4. who pays UB (see DMG 075530).

Meaning of UB

075331 In this section the term UB is used when referring to **either**

1. EC provisions relating to UB **or**
2. benefits paid by other EEA countries to unemployed people.

JSA is used when referring to UK unemployment benefit.

Absence from Great Britain

075332 Although it is a condition of entitlement to Jobseeker's Allowance that a person is in GB¹ it can continue to be paid during an absence from GB

1. for four or eight weeks (see DMG 075350 - 075356)
2. of seven days or less where the person is attending a job interview (see DMG 075354)
3. in another EEA country for up to three months (see DMG 075370)
4. in the Isle of Man or Northern Ireland (see DMG 075440) **or**
5. if that person is a mariner or continental shelf worker (see DMG 078060).

1 JS Act 95, s 1(2)(i) & Sch 1, para 11

Contribution conditions

075333 To satisfy the contribution conditions a person can use contributions paid in

1. another EEA country **or**
2. a country with which the UK has an agreement.

Who pays UB

075334 Where a person has been insured in two or more EEA countries it is necessary to decide which country pays UB (see DMG 075530).

075335 - 075349

Temporary absence from Great Britain

Introduction

075350 A person may be entitled to either contribution based Jobseeker's Allowance or income based Jobseeker's Allowance although outside of GB if that person is treated as being in GB. A person can be treated as in GB for

1. four weeks (075351)
2. eight weeks (075353)
3. up to seven days (075354) **or**
4. four weeks if that person is receiving a training allowance (075356) **or**
5. any period abroad in a hospital or similar institution for NHS treatment (see DMG 070661 - 070668).
6. up to 15 days where the absence is for the purpose of taking part in annual continuous training as a member of a territorial or reserve force

Treated as in Great Britain for four weeks

075351 For both contribution based Jobseeker's Allowance and income based Jobseeker's Allowance a person who is temporarily absent from GB is treated as being in GB for four weeks¹ if

1. that person is in Northern Ireland² and continues to satisfy the conditions for entitlement **and**
2. that person was entitled to Jobseeker's Allowance immediately before leaving GB³ **and**
3. the absence is not expected to last more than 52 weeks⁴.

1 Jobseeker's Allowance Regs, reg 50(1); 2 reg 50(2)(a); 3 reg 50(2)(b); 4 reg 50(2)(c)

075352 For income based Jobseeker's Allowance a person who is temporarily absent (070853) from GB is treated as being in GB for four weeks¹ if

1. that person was entitled to Jobseeker's Allowance immediately before leaving GB²
2. the absence is not expected to last more than 52 weeks³
3. that person continues to satisfy or is treated as satisfying the other conditions for entitlement to Jobseeker's Allowance⁴
4. that person is one of a couple both of whom are absent from GB and a premium (see benefit specific guidance) is applicable for the partner⁵.

1 Jobseeker's Allowance Regs, reg 50(1); 2 reg 50(3)(a); 3 reg 50(3)(b); 4 reg 50(3)(c); 5 reg 50(3)(d)

Treated as in Great Britain for eight weeks

075353 For both contribution based Jobseeker's Allowance and income based Jobseeker's Allowance a person is treated as being in GB for eight weeks¹ if

1. that person was entitled to Jobseeker's Allowance immediately before leaving GB²
2. the absence is not expected to last more than 52 weeks³
3. the conditions for entitlement to Jobseeker's Allowance continue to be satisfied⁴ **and**
4. the claimant is accompanying a child or young person of the family for medical treatment (070659) outside GB⁵.

1 Jobseeker's Allowance Regs, reg 50(1)(b); 2 reg 50(5)(a); 3 reg 50(5)(b); 4 reg 50(5)(c); 5 reg 50(5)(d)

Attending a job interview

075354 For both contribution based Jobseeker's Allowance and Jobseeker's Allowance (Income Support) a person is treated as in GB during a temporary absence lasting seven consecutive days¹ or less where

1. the absence is to attend a job interview
2. notice of the absence is given before leaving GB **and**
3. the employment officer is satisfied that the person did attend the interview.

Notice of the proposed absence may be required in writing².

1 Jobseeker's Allowance Regs, reg 50(6); 2 reg 50(6)(c)

075355 Jobseeker's Allowance can only be paid for an absence which lasts seven days or less. If the absence lasts longer than seven days Jobseeker's Allowance **cannot** be paid for any day that the person is absent from GB.

Example 1

A person is absent from GB for five days to attend a job interview. After the interview that person returns to GB. Jobseeker's Allowance can be paid for the whole period of the absence.

Example 2

A person is absent from GB to attend an interview that is scheduled to take place within seven days. The interview is delayed and takes place nine days after the person left GB. Because the person was absent from GB for more than seven consecutive days Jobseeker's Allowance cannot be paid for any of the period that the person was outside GB.

Person receiving a training allowance

075356 A person receiving a training allowance¹ can be paid JSA(IB) for an absence lasting four weeks if that person

1. is entitled to JSA(IB) without² being available for employment having entered into a JSaG or actively seeking work, **and**
2. was entitled to JSA immediately before leaving GB³

1 JSA Regs, reg 50(4)(a); 2 reg 50(4)(b); 3 reg 50(4)(c)

Partner absent from United Kingdom - JSA(IB)

075357 If a claimant's partner (or polygamous partner) is absent from the UK the applicable amount can continue to include that person for

1. the first four weeks of the partner's absence if the absence is temporary¹ (see DMG 070853), **or**
2. the first eight weeks of the partner's absence if the conditions in DMG 075353 would be satisfied if the partner had claimed JSA².

1 JSA Regs, Sch 5, para 10 & 12; 2 Sch 5, para 11 & 13

Calculating four or eight weeks

075358 A person is in GB on

1. the day of leaving GB, **and**
2. the day of returning to GB¹.

As a result the day of leaving and the day of return to GB are excluded when calculating the period of four or eight weeks

1 R(S) 1/66

Example

A person leaves GB on 17.9.97. The four or eight weeks period is calculated from 18.9.97.

075359

Territorials and Reserves – annual training

075360 A person is treated as being in GB during any temporary absence from GB not exceeding 15 days where¹

1. the absence is for the purpose of taking part in annual continuous training as a member of a territorial or reserve force prescribed in specific legislation²
and
2. the person or the person's partner ([see DMG 22021](#)) was entitled to JSA immediately before the absence began.

1 JSA Regs, reg 50 (6D); 2 SS (Conts) Regs 01, Sch 6, Part 1

075361 - 075369

Absent in another European Economic Area country

General

075370 [\[See Memo DMG 32/10\]](#) A person can remain entitled to contribution based Jobseeker's Allowance¹ whilst absent from GB in another EEA country if

1. that person is within the scope of European Community regulations² (is a worker) **and**
2. satisfies **all** the conditions in see DMG 075390³.

1 Reg (EEC) 1408/71, Annex IIa; 2 Art 2; 3 Art 69(1)

075371 Jobseeker's Allowance paid in another EEA country is generally referred to as "exportable" Jobseeker's Allowance. This is because a person remains entitled to UK Jobseeker's Allowance and does not become entitled to unemployment benefit from the other EEA country.

075372 European Community provisions generally provide for free movement around the EEA. However, it is not contrary to the principle of freedom of movement¹ to

1. impose restrictions on the payment of "exportable" unemployment benefit (see DMG 075331)² **and**
2. limit the maximum period of exportable unemployment benefit to three months (see DMG 075375)³.

*1 Treaty of Rome; 2 Case 62/91, Gray v Adjudication Officer;
3 Case 272/90, Jan Van Noorden v Association pour L'Emploi dans
L'Industrie et le Commerce for Ardèche and Drôme*

Absent in more than one European Economic Area country

075373 A person can "export" contribution based Jobseeker's Allowance to more than one EEA country **during the same period of absence** from GB.

Example

A person went to France to look for work and retained entitlement to UK Jobseeker's Allowance. Later that person went to Germany to seek work. That person still remained entitled to UK Jobseeker's Allowance.

Separate absences from Great Britain

075374 [\[See Memo DMG 32/10\]](#) JSA (Cont) can only be "exported" once during one period of unemployment¹.

1 Reg (EEC) 1408/71, Art 69(3)

Example

A man goes to France to seek work and continues to receive JSA. Without getting work he returns to GB and continues to receive JSA. Later he returns again to France to continue seeking work. JSA cannot be paid during the second absence from GB.

Period of "exportable" JSA

075375 If all the conditions for "exporting" are satisfied (see DMG 075390), JSA (Cont) can be paid in another EEA country for the shortest of the following¹

1. for three months from the date the person ceased to be available to the UK employment services
2. until the end of entitlement to JSA (Cont) **or**
3. for seasonal workers (see DMG 075377), until the end of the season for which the person was employed.

1 Art 69(1)(c)

075376 A person is not entitled to JSA (Cont) in another EEA country after the end of the period set out in see DMG 075375¹.

1 JS Act 95, s 1(2)(i)

Seasonal Workers

075377 A seasonal worker is a person who

1. is habitually resident (see DMG 073707) in one country and goes to work in another EEA country
2. does seasonal work in that second country for up to a maximum of eight months **and**
3. stays in that country for the whole period of that work¹.

1 Reg (EEC) 1408/71, Art 1(c)

075378 Seasonal work means¹ work which

1. happens every year **and**
2. which is linked to a particular season of the year.

1 Reg (EEuropean Community) 1408/71, Art 1(c)

Example

A French woman came to Kent to pick hops for the summer season. She was made redundant during the normal period of hop picking and became entitled to contributory Jobseeker's Allowance. She returned to France and kept entitlement to "exportable" Jobseeker's Allowance until the end of the hop producing season¹.

1 Art 69(1)(c)

075379 - 075389

Entitlement to "exportable" Jobseeker's Allowance

075390 [\[See Memo DMG 32/10\]](#) To be entitled to JSA (cont) in another EEA country a person must satisfy all of the following conditions:

1. Wholly unemployed

The claimant must be wholly unemployed (see DMG 075391), before leaving the UK¹. This excludes persons "partially or intermittently unemployed" (see DMG 075392).

2. Entitlement to JSA

Before leaving the UK the claimant must satisfy the conditions for entitlement to JSA².

3. Entitlement to JSA not due to insurance etc outside European Economic Area

Entitlement to JSA is not because of a reciprocal agreement between the UK and a State which is not an EEA country³. Where, a person is entitled because insurance periods in other EEA countries⁴ have been added together, JSA can be exported.

4. Purpose is to seek work

The person has gone to the other EEA country⁵ to look for work (see DMG 075395).

5. "Registration" and availability in United Kingdom for four weeks

The person must have been registered as a person looking for work and have remained available for at least four weeks after becoming unemployed⁶ (see DMG 075401).

6. "Registration" in the European Economic Area countries

The person must register (normally within seven days)⁷, as a person seeking work, with the employment services of each of the EEA countries in which that person is looking for work and be subject to the control procedures there⁸. (see DMG 075406).

1 Council Reg (EEC) 1408/71, Art 69(1); 2 Art 69(1); 3 Annex VI, point O para 7;

4 Art 67(1)-(3), 71(1)(a)(ii) & (b)(ii); 5 Art 69(1); 6 Art 69(1)(a);

7 Case 20/75 d'Amico v Landesversicherungsanstalt Rheinland-Pfalz; R(U) 5/78;

8 Council Reg (EEC) 1408/71, Art 69(1)(b)

Wholly unemployed

- 075391 To be entitled to JSA (Cont) in another EEA country a person must be "wholly unemployed". This means unemployed without **any** employment and does not include people who are "partially and intermittently employed".
- 075392 Partially employed means a person on short-time (not part-time) working. Intermittently unemployed means temporarily laid off.

Entitlement to Jobseeker's Allowance

- 075393 A person must be **entitled** to JSA (Cont) before leaving GB. This includes a person who is only entitled to JSA (IB) before leaving GB but has underlying entitlement to JSA (Cont).
- 075394 When that person leaves GB the award of JSA (IB) should be reviewed and JSA (Cont) awarded. Providing the other conditions are satisfied JSA (Cont) will be paid during the absence in the other EEA country.

Purpose is to seek employment

- 075395 A person must be going to another EEA country to look for work. A person is not entitled to exportable JSA (Cont) if on holiday, visiting a sick relative or accompanying a spouse or civil partner.
- 075396 A claimant who has given up a job to accompany a spouse, or civil partner, or partner, to another EEA country will not normally be able to satisfy this condition. This is because that person already had a job and the purpose in going abroad was not to look for work. This happens most often with wives, husbands, civil partners or partners of serving members of the forces.
- 075397 To be entitled to JSA before leaving GB that person must show that
1. there was just cause for voluntarily leaving the employment (see DMG 075399)
 2. that he or she was available for and actively seeking work (see DMG 075399).

075398 Generally a person who voluntarily left employment to accompany a husband, wife, civil partner or partner on a foreign posting has established "just cause". This is provided that they left the employment no earlier than was necessary in order to arrange personal and family affairs before leaving¹. However, it will be difficult for such a person to establish that they are available for work.

1 R(U) 2/90

075399 To satisfy the just cause provision the person must have left employment only shortly before leaving the UK. Because of the short period involved it is unlikely that the claimant will be able to establish that they were available for and actively seeking work. In any event there will be doubt that they are genuinely seeking work. If that person takes temporary employment then JSA could not be "exported" as there is no entitlement before leaving the UK. Alternatively, if an offer of employment is refused then they were not available for and actively seeking work and there would be no entitlement to JSA¹.

1 R(U) 2/90

075400 A person who was already unemployed for other reasons and takes the opportunity of accompanying a spouse, or civil partner, or partner to seek employment abroad may be accepted as satisfying this condition.

Registration and availability in the United Kingdom

075401 After becoming unemployed a person must have been registered as a person seeking work and have remained available for work for four weeks. Exceptionally a person may be entitled to "exportable" JSA without having been available for four weeks if the Secretary of State authorizes their departure before the end of the four weeks period.

075402 A person is **not** entitled to JSA (Cont) if

1. the four weeks condition is not satisfied **or**
2. the Secretary of State has **not** authorized an earlier departure.

075403 The registration and availability conditions can be satisfied

1. by signing a declaration that they have been available for and actively seeking work
2. by otherwise declaring availability in connection with a claim to JSA **or**

3. by being registered for employment by registering at an Jobcentre Plus office **and**
4. in continuing to satisfy the condition of availability for at least four weeks (or such lesser time as may be authorized by the Secretary of State).

075404 A person may be available for four weeks although JSA is not paid for the whole period¹. For example, because of leaving employment voluntarily or for misconduct.

1 Council Reg (EEC) 1408/71, Art 69(1)(a)

075405 The period of four weeks must occur after the claimant became unemployed, but it does not need to be immediately before the departure. For example, a claimant who has been available for four weeks and then becomes incapable of work will have satisfied the condition if again becoming entitled to JSA a few days before departure.

Registration in another European Economic Area country

075406 A person seeking work in another EEA country **must** register¹ with the employment services of that country. That person is also subject to the control procedures of that country².

*1 R(U) 5/87, Case 20/75 d'Amico Landesversicherungsanstalt Rheinland - Pfalz;
Council Reg (EEC) 1408/71, Art 69(1)(b); 2 Art 69(1)(b)*

075407 If a person registers within seven days of the last date of being available for work in the UK, this condition is satisfied up to the date of registering.

075408 The Secretary of State can extend the period of seven days¹. Where the Secretary of State extends the period for registering, the claimant is **not** disentitled for claiming late² for the period up to the date of registering. That person should normally also be accepted as available for and actively seeking work for that period.

1 Art 69(1)(b); 2 SS A Act 92, sec 1(1)(a)

075409 A person is not entitled to JSA from the first day of absence from GB¹ (see DMG 070702) until the day before registering, if that person

1. does **not** register within seven days (or a longer period allowed by the Secretary of State) **and**
2. does not return to the UK

within seven days (see DMG 075411).

1 R(S) 1/66

075410 A person who does **not** register with the employment service of the other country is not entitled to exportable JSA¹. A person is not entitled to exportable JSA even if the failure to register

1. is because of incorrect information given by the DWP **or**
2. because the authorities in the other country refused to allow the claimant to register².

1 R(U) 5/78; Case 20/75 d'Amico v Landesversicherungsanstalt Rheinland - Pfalz; 2 R(U) 5/78

075411 A person is still entitled to JSA¹ if that person

1. does not find work in the other EEA country **and**
2. returns to the UK within seven days without having registered with the employment services of the other State.

1 CU/13/77, [1978] CMLR 174; CU/251/78, [1979] 1 CMLR 445

075412 - 075419

Award of "exportable" Jobseeker's Allowance

075420 JSA(Cont) can be awarded in advance for three months¹ (the maximum period for which JSA(Cont) can be exported - see DMG 075375).

1 Reg (European Community) 574/72, Art 83(1)

075421 A statement will be issued by Pensions Overseas Directorate to the claimant on request to give to the employment services of the State to which that person is going or directly to the employment services of that State¹. This statement will provide

1. the rate of JSA(Cont) payable
2. the date from which JSA(Cont) can be paid
3. the time limit for registration in the other EEA country
4. the maximum period of entitlement
5. any facts possibly affecting entitlement.

1 Art 83(2); R(U) 5/78

Procedures for exported JSA

075422 The employment services of the EEA country to which the person goes will notify the UK of the date

1. on which the person registered there **and**
2. that payment of JSA(Cont) started¹.

1 Reg (EEuropean Community) 574/72, Art 83(3)

075423 If there is a delay beyond the permitted seven days (or the period for which DWP has authorised an extension) the DM may be asked to consider disqualification for the period from the first day of absence from GB until the day before registering (see DMG 075409).

075424 Exportable JSA(Cont) is paid by the EEA country in which the person is seeking work. That country pays JSA(Cont) in accordance with its own legislation. This includes the method and frequency of payment¹.

1 Art 83(3)

075425 The other EEA country will also carry out any checks on entitlement to JSA in accordance with its own procedures. However, that country cannot decide whether a person is entitled to exportable JSA(Cont). If that country finds anything that may affect entitlement to JSA(Cont) the

1. UK will be notified and, if appropriate, payment of JSA suspended **and**
2. DM in the UK will decide whether the conditions for entitlement to JSA are still satisfied¹.

1 Reg (EEuropean Community) 574/72, Art 83(3)

075426 Any requirement to attend at an ES JC is satisfied if the person

1. attends at an equivalent office in the other country **or**
2. complies with the control procedures in the other country.

Unemployment benefit "exported" to the United Kingdom

075427 The UK carries out checks and pays benefit where UB has been exported from another EEA country to the UK. UK DMs **cannot** decide whether there is entitlement to the other country's UB.

075428 Where there is a doubt about continued entitlement the authorities in the other country are informed. If appropriate, payment of UB is suspended.

075429 - 075439

Absence from Great Britain - agreements with other countries

075440 A person can still receive JSA(Cont) whilst absent from GB in

1. the Isle of Man **or**
2. Northern Ireland¹.

1 SS (I of M) Order 77, Sch 1, Art 2; SS (N. Ireland Reciprocal arrangements) Regs 76, Sch 1, Art 2; R(U) 8/81

075441 Agreements between the UK and other countries which include JSA(Cont)¹ (see DMG 070330 and 070333) may (subject to satisfying the qualifying conditions) allow

1. insurance, residence or employment in that country to count towards satisfying the contribution conditions for entitlement to JSA(Cont) **and**
2. employment in another country to be taken into account to satisfy the employment test.

1 SS (RA) Order 1996

075442 In the agreements with the following countries the UB paid by that country is taken into account in deciding the maximum period for which JSA(Cont) can be paid

1. Cyprus¹
2. Guernsey²
3. Isle of Man³
4. Malta⁴
5. New Zealand⁵ **and**
6. Northern Ireland⁶.

1 SS (Cyprus) Order 83, Art 14(2); 2 SS (Jersey & Guernsey) Order 94, Sch, Art 16(3); 3 SS (I of M) Order 77, Sch 1, Art 2(1); 4 SS (Malta) Order 96, Sch, Art 13A; 5 SS (New Zealand) Order 83, Sch, Art 6(3); 6 SS (N.Ireland Reciprocal Arrangements), Regs 76, Sch 1, Art 2(1)

Example

A person who was unemployed and receiving UB in Cyprus moved to GB and became entitled to JSA(Cont). That person had received UB for three months in Cyprus. The maximum period of entitlement to JSA(Cont) is also three months.

075443 - 075519

Contribution conditions

075520 Periods of insurance, employment or residence in

1. another EEA country or
2. a country with which the UK has a social security agreement (070330 and 070333) may be used to help satisfy the contribution conditions for entitlement to Jobseeker's Allowance.

075521 To be helped by insurance in another EEA country the claimant must

1. be within the scope of European Community provisions¹ (070050) **and**
2. not be entitled to contribution based Jobseeker's Allowance by using only their UK contribution record.

1 Reg (EEuropean Community) 1408/71, Art 2

075522 The decision maker should decide

1. the date of claim
2. good cause for delay in claiming **and**
3. other related questions¹.

1 SS (C & P) Regs

075523 - 075529

Who pays UB

Introduction

075530 [\[See Memo DMG 32/10\]](#) Where a person becomes unemployed in an EEA country it is necessary to decide which country will pay unemployment benefit.

General rule

075531 In general unemployment benefit is paid by the country in which the person was last employed¹. That country is known as the "competent state".

1 Case 128/83 Caisse Primaire d'Assurance Maladie de Rouen v Guyot; Case 20/75 d'Amico Landesversicherungsanstalt Rheinland-Pfalz; R(U) 4/84

075532 That person continues to be entitled to unemployment benefit from that country whilst looking for work in another EEA country (see DMG 075390). After three months in the other country that person must return to the competent state to continue being entitled to unemployment benefit (see DMG 075377).

Exception to the general rule

075533 An exception to the general rule (see DMG 075531) applies where a person was residing (see DMG 070794) in a different EEA country to that in which the person was employed or was paying contributions¹. In this situation unemployment benefit can be claimed from either the country in which the person

1. is residing² **or**
2. last worked and paid contributions³.

1 Reg (EEC) 1408/71, Art 71(1) case 454/93 Rijksdienst Voor Arbeidsvoorziening v Joop Th. M. Van Grestel; 2 Reg (EEuropean Community) 1408/71, Art 71(b)(ii); 3 Art 71(b)(i)

Example 1

A person was employed in the UK but was residing in France. If that person registers with the employment services in France that country is responsible for paying unemployment benefit¹.

1 Case 128/83 Caisse Primaire d'Assurance Maladie de Rouen v Guyot

Example 2

A Dutch national was residing and working in Belgium, for the same company that had employed him in Holland. He continued to pay contributions to the Dutch authorities. On becoming unemployed he can choose to claim unemployment benefit from Belgium, the country in which he is residing¹.

1 Reg (EEC) 1408/71, Art 71(1)(b)(ii); case 454/93 Rijksdienst Voor Arbeidsvoorziening v Joop Th. M. Van Grestel

075534 The following are examples¹ of where a person resides in a different country from the one in which that person is working or is paying contributions. In each example unemployment benefit could be paid by the country in which the person is residing.

1. Seasonal workers².
2. Workers employed on board a vessel flying the flag of an EEA country.
3. Workers in international transport, whether rail, road (including international coach and lorry drivers), air, sea or inland waterway.
4. Other workers who work in the territory of several EEA countries, for example company sales representatives.
5. Workers employed by an undertaking straddling a common frontier.
6. Workers employed by diplomatic missions and consular posts.
7. Workers with a special agreement to pay contributions to a country other than where they are employed³.

1 AC decision No 131; 2 Reg (EEC) 1408/71, Art 1(c); 3 Art 17

075535 The exception also applies where a person

1. works for part of the time in one EEA country **and**
2. whilst still working in that country returns to their home in another EEA country.

This is because that person may be habitually resident (see DMG 073707) in the country where their home is although working in another country.

Workers posted abroad

075536 A person is still controlled by ("subject to") UK legislation where an employer posts a person to

1. work for up to twelve months in another EEA country¹ **or**
2. a ship sailing under another flag².

1 Art 14(1)(a); 2 Art 14b(1)

075537 Where the work takes longer than twelve months the Secretary of State can extend the period of twelve months¹.

1 Reg (EEuropean Community) 1408/71, Art 14(1)(b)

075538 A person posted as set out in 075536 is presumed to reside in the "competent state" (075531)¹.

1 AC decision No 131

075539 - 075549

Overlap of exportable Jobseeker's Allowance

075550 Jobseeker's Allowance is not payable under 075533 for the period that a person is entitled to "exportable" unemployment benefit of another EEA country¹.

1 Reg (EEuropean Community) 1408/71, Art 71(1)(b)(ii) & 71(2); R(U) 7/85

Example

A person working in another EEA country and insured there, has remained habitually resident in the UK. That person becomes unemployed and returns to the UK to seek work. That person is entitled to "exportable" unemployment benefit from the other country. That person is potentially entitled to Jobseeker's Allowance but that benefit cannot be paid for the period that "exportable" unemployment benefit is paid.

075551 A person must choose¹ where to register for work and claim unemployment benefit where that person is potentially entitled to unemployment benefit from

1. the state of last employment **and**
2. the state in which the person is habitually resident¹.

1 Case 227/81, Aubin v Assedic & Unedic

075552 - 075559

Maternity Allowance

Introduction

075560 This section gives guidance on

1. taking account of gainful employment outside GB (see DMG 075570)
2. absence from GB (see DMG 075590 - 075670)
3. entitlement under EC provisions (see DMG 075690)
4. overlap under EC provisions (see DMG 075710) **and**
5. the effects of Social Security agreements on entitlement to MA (see DMG 075720 - 075741).

Residence and presence conditions

075561 A woman does **not** have to satisfy any residence or presence conditions for MA.

075562 - 075569

Taking account of gainful employment outside Great Britain

Introduction

075570 In addition to other conditions, a pregnant woman is entitled to Maternity Allowance if she has been engaged in employment as an employed or self employed earner for at least 26 weeks in the 66 weeks immediately before her expected week of confinement (see DMG 075571 - 075573).

075571 In deciding whether a woman satisfies the provision in 075570 gainful employment outside GB can be included if

1. she has been absent from GB (see DMG 070641) **and**
2. has returned to GB **and**
3. was ordinarily resident (see DMG 070769) in GB throughout her absence **and**
4. one of the conditions in see DMG 075572 or 075573 is satisfied.

Treated as in employment

075572 A woman is treated as being employed in any week if

1. she has paid Class 1 contributions to the full extent of her liability¹ or for the first 52 weeks of employment abroad because of a reciprocal agreement with another country (see DMG 070330 - 070333) or EC provisions² and the employment lasted throughout the first 52 weeks after her liability began³ **or**
2. she would have been liable to pay Class 1 contributions but for the application of an agreement with another country⁴ (see DMG 070330 - 070333) which does not allow periods of insurance, employment or residence in the other country to be taken into account **or** which allows periods of insurance, employment or residence in the other country to be included only if an insurance period is completed after return to GB, but in the claimant's case no such period has been completed **and** the employment continued throughout the first 52 weeks after her liability⁵ would have started **or**
3. she would have been liable to pay Class 1 contributions but for EC provisions **and** the employment continued throughout the first 52 weeks after her liability would have started.

1 SS (Conts) Regs, reg 146; 2 Reg (EEC) 1408/71, Title II;

3 SS (Maternity Allowance) (Work Abroad) Regs, reg 2(2);

4 SS (Conts) Regs, reg 146; 5 SS (Maternity Allowance) (Work Abroad) Regs, reg 2(3)

Employment lasted less than 52 weeks

075573 If a woman was not employed for 52 weeks she is treated as being employed in any week in which she was actually employed¹.

1 SS (Maternity Allowance) (Work abroad) Regs, reg 2(6)

075574 - 075589

Disqualified for being absent from Great Britain

Introduction

075590 A woman is disqualified¹ for receiving Maternity Allowance whilst absent from GB unless she satisfies the conditions for avoiding disqualification.

1 SS CB Act 92, sec 113(1)(a)

075591 A woman is not disqualified for being absent from GB¹ if

1. the conditions set out in 075600 are satisfied **or**
2. the absence is in another EEA country (075610) **or**
3. she is in a country with which the UK has an agreement which provides for the continued payment of Maternity Allowance (075615) **or**
4. she is in Sark² (075676).

1 s 113(1)(a); 2 SS Ben (PA) Regs, reg 12(1)

075592 The decision maker can give a decision in advance of the absence either disqualifying, or not disqualifying, a woman for receiving Maternity Allowance (070644).

075593 Unless a woman is incapable of work before leaving GB she can only escape disqualification if

1. the absence is in another EEA country (075610) or a country with which the UK has an agreement (075641) **or**
2. she is or has recently been a member of the armed forces (075600).

075594 - 075599

Avoiding disqualification - Great Britain provisions

Introduction

075600 The MAP increased from 26 weeks to 39 weeks for women with babies due on or after 1.4.07¹.

1 SS CB Act 92, s 35(2)

075601 A woman is not disqualified for receiving MA for up to 26 weeks for being absent from GB if

1. the absence is temporary (see DMG 070853)¹ **and**
2. the Secretary of State has certified that providing one of the conditions in **2.1** or **2.2** is satisfied, the woman should not be disqualified²
 - 2.1** the absence is for the specific purpose of being treated³ for incapacity which began before she left GB (see DMG 075620) **or**
 - 2.2** she had been continuously incapable of work (see DMG 075602) for six months before she left GB, and remains continuously incapable⁴ **or**
3. any absence is within 26 weeks from the date she left the armed forces⁵ (see DMG 078181 - 078185).

*1 SS Ben (PA) Regs, reg 2(1); 2 reg 2(1)(a); 3 reg 2(1)(b); 4 reg 2(1)(c);
5 SS Ben (Members of the Forces) Regs, reg 4(2)*

075602 A woman is not disqualified for receiving MA for being absent from GB if

1. the absence is temporary **and**
2. she is in receipt of AA, DLA, PIP or AFIP and one of the condition in **2.1** or **2.2** is satisfied¹
 - 2.1** the absence is for the specific purpose of being treated for incapacity which began before she left GB **or**
 - 2.2** she had been continuously incapable of work for six months before she left GB, and remains continuously incapable **or**
3. she is a member of the armed forces² (see DMG 078181 - 078185) **or**
4. she is a member of the family of a serving member of the armed forces³ and accompanying them abroad and one of the conditions in **2.1** or **2.2** above is also satisfied⁴.

Avoiding disqualification in these circumstances is not limited to 26 weeks.

*1 SS Ben (PA) Regs, reg 2(1A); 2 SS Ben (Members of the Forces) Regs, reg 4(2);
3 SS Ben (PA) Regs, reg 2(5)(b); 4 reg 2(1B)*

Incapable of work

075603 A woman who is absent from GB during the early stages of pregnancy cannot avoid disqualification unless she is also incapable of work¹.

1 R(G) 5/53; R(S) 1/75

075604 - 075609

Avoiding disqualification - European Community provisions

Introduction

075610 A woman is entitled to MA whilst in another EU country if she is within the scope of EU provisions, the UK is the competent state for the payment of maternity benefits and she is habitually resident or temporarily staying in another EU country¹.

Note Under the old social security coordination rules² there were restrictions on exportability of MA when the claimant was staying temporarily in another EU country. From 10.5.10 these rules ceased to apply.

1 Reg (EC) 883/04, art 21; 2 Reg (EEC) 1408/71, art 22

075611 The old social security co-ordination rules¹ continue to apply to Norway, Switzerland, Iceland and Liechtenstein. Questions relating to the exportability of MA to these countries should be referred to DMA (Leeds) for advice.

1 Reg (EEC) 1408/71

075612 - 075613

Visits to the United Kingdom

075614 A woman who is entitled to UK MA whilst in another EEA country remains entitled if she is

1. habitually resident **or**
2. temporarily staying

in the UK.

Example

A woman is living in Spain and entitled to UK MA. Although she remains resident in Spain she comes to GB to visit her friends for a week. She remains entitled to MA during her visit. She would also remain entitled if she decided to live in GB permanently.

075615 - 075639

Avoiding disqualification - reciprocal agreements

Introduction

075640 A woman who is absent from GB in a country with which the UK has an agreement may

1. become entitled to MA **or**
2. continue to be paid ("export") MA.

075641 A woman can avoid disqualification under the reciprocal agreements with the following non-EEA countries

- Barbados (see DMG 075650)
- Cyprus (see DMG 075654)
- Isle of Man (see DMG 075659)
- Jersey and Guernsey (see DMG 075670)
- Northern Ireland (see DMG 075677)
- Switzerland (see DMG 075678)
- Turkey (see DMG 075679) **and**
- Yugoslavia (see DMG 070334 and DMG 075680).

075642 Detailed guidance on the effect of the above agreements is at DMG 075650 - 075652.

075643 - 075649

Barbados, Cyprus and Isle of Man

Barbados

075650 A woman can claim Maternity Allowance as though she was still in the UK¹ if she is

1. employed in Barbados **and**
2. subject to UK legislation.

1 SS (Barbados) Order 92, Sch, Art 12(1)

075651 A woman who is in Barbados temporarily and not subject to UK legislation (070230) can claim Maternity Allowance as though she was still in the UK¹ if

1. her condition needs immediate treatment² (075616 - 075618) **and**
2. a claim is made **and**
3. medical evidence is submitted to the UK within six days of the start of her incapacity, or any longer period that the Secretary of State may allow.

1 Sch, Art 12(2)(a); 2 R(S) 1/77; R(S) 4/80; R(S) 6/81

Export of Maternity Allowance

075652 A woman who is entitled to Maternity Allowance in the UK remains entitled whilst in Barbados if she is authorized by the Secretary of State to

1. transfer her residence to Barbados **or**
2. return to a place of residence in Barbados¹ **or**
3. go to Barbados for treatment² (070651).

1 SS (Barbados) Order 92, Sch, Art 12(2)(b); 2 Art 12(2)(c)

075653 The Secretary of State can only refuse to authorize under 075652 if the move to Barbados would

1. damage the woman's health **or**
2. prevent her receiving proper medical treatment¹.

1 Sch, Art 12(2)

Cyprus

Becoming entitled to Maternity Allowance

075654 A woman is entitled to Maternity Allowance as though she was still in the UK¹ if she is

1. employed in Cyprus **or**
2. employed in one of the sovereign base areas (075658) **and**
3. subject to UK legislation².

1 SS (Cyprus) Order 83, Sch, Art 12(2); 2 Art 12(3)

075655 A woman who is in Cyprus or one of the sovereign base areas temporarily can claim Maternity Allowance as though she was still in the UK¹ if

1. her condition needs immediate treatment² (075616 - 075618) **and**
2. a claim is made **and**
3. medical evidence is submitted to the UK within six days of the start of her incapacity, or any longer period that the Secretary of State may allow.

1 Sch, Art 12(4)(a); 2 R(S) 1/77; R(S) 4/80; R(S) 6/81

Export of Maternity Allowance

075656 A woman who is entitled to Maternity Allowance in the UK remains entitled whilst in Cyprus or in one of the sovereign base areas if she is authorized by the Secretary of State to

1. transfer her residence to Cyprus or one of the sovereign base areas¹
2. return to a place of residence in Cyprus or one of the sovereign base areas²
or
3. go to Cyprus or one of the sovereign base areas for treatment³ (070651).

1 SS (Cyprus) Order 83, Sch, Art 12(4)(b); 2 Sch, Art 12 (4)(b) 3 Sch, Art 12(4)(c)

075657 The Secretary of State can only refuse to authorize under 075656 if the move to Cyprus or one of the sovereign base areas would

1. damage the woman's health **or**
2. prevent her receiving proper medical treatment¹.

1 Sch, Art 12(4)

Sovereign base areas

075658 The sovereign base areas¹ are

1. Akrotiri **and**
2. Dhekelia.

1 SS (Cyprus) Order 83, Sch, Art 1(1)

Isle of Man

075659 A woman who is absent from GB in the Isle of Man is treated as still in GB.
Therefore she is not disqualified for being absent from GB¹.

1 SS (I of M) Order 77, Sch 1, Art 2(1)

075660 - 075669

Jersey and Guernsey, Northern Ireland, Switzerland, Turkey and Yugoslavia

Jersey and Guernsey

075670 The Agreement applies to the following islands

1. Jersey **and**
2. Guernsey (which also includes Alderney, Herm and Jethou)¹.

1 SS (Jersey and Guernsey) Order 94, Sch, Art 1(1)

Becoming entitled to Maternity Allowance

075671 A woman can claim Maternity Allowance as though she was still in the UK¹ if she is

1. employed in Jersey or Guernsey (075670) **and**
2. subject to UK legislation.

1 Sch, Art 13(2)

075672 A woman who is in Jersey or Guernsey temporarily can claim Maternity Allowance as though she was still in the UK¹ if

1. her condition needs immediate treatment² (075616 - 075618) **and**
2. a claim is made **and**
3. medical evidence is submitted to the UK within six days of the start of her incapacity, or any longer period that the Secretary of State may allow.

1 Sch, Art 13(3)(a); 2 R(S) 1/77; R(S) 4/80; R(S) 6/81

075673 A woman who is resident in Jersey or Guernsey is entitled to Maternity Allowance if¹ she

1. is not entitled to Maternity Allowance from Jersey or Guernsey **and**
2. would be entitled to Maternity Allowance in the UK **and**
3. has not paid or been credited with contributions in Jersey or Guernsey since last arriving there.

1 SS (Jersey and Guernsey) Order 94, Sch, Art 13(6)

Export of Maternity Allowance

075674 A woman who is entitled to Maternity Allowance in the UK remains entitled whilst in Jersey or Guernsey if she is authorized by the Secretary of State to

1. transfer her residence to Jersey or Guernsey¹
2. return to a place of residence in Jersey or Guernsey² **or**
3. go to Jersey or Guernsey for treatment³.

1 SS (Jersey and Guernsey) Order 94, Sch, Art 13(3)(b); 2 Sch, Art 13(3)(b); 3 Sch, Art 13(3)(c)

075675 The Secretary of State can only refuse to authorize under options one or two in 075674 if the move to Jersey or Guernsey would

1. damage the woman's health **or**
2. prevent her receiving proper medical treatment¹.

1 Sch, Art 13(3)

Sark

075676 Although not covered in the Agreement, a woman who is absent from GB in Sark is not disqualified for receiving Maternity Allowance¹.

1 SS Ben (PA) Regs, reg 12(1)(a)

Northern Ireland

075677 A woman who is absent from GB in Northern Ireland is treated as still being in GB¹. Therefore she is not disqualified for being absent from GB².

1 SS (N. Ireland Reciprocal Agreements) Regs 76, Sch 1, para 2(1); 2 SS CB Act 92, sec 113(1)(a)

Switzerland

075678 A woman can claim Maternity Allowance as though she was still in the UK¹ if she is

1. employed in Switzerland **and**
2. subject to UK legislation.

1 FA, NI & II (Switzerland) Order 69, Sch 1, Art 9(2)(a)

Turkey

075679 A woman is treated as being in GB¹ if she

1. or her husband or civil partner, is insured in GB **and**
2. is in, or confined in Turkey.

Note: It is only the claimant's insurance periods that are taken into account for MA purposes.

1 NI & II (Turkey) Order 61, Sch, Art 11

Yugoslavia

075680 A woman is treated as being in GB¹ if she

1. or her husband or civil partner, is insured in GB **and**
2. is in, or confined in Yugoslavia (see DMG 074064).

Note: It is only the claimant's insurance periods that are taken into account for MA purposes.

1 FA, NI & II (Yugoslavia) Order 58, Sch, Art 12

075681 - 075689

Entitlement to Maternity Allowance under European Community provisions

Introduction

075690 The following paragraphs give guidance on

1. claims from unemployed women (075691) **and**
2. the pregnant workers Directive (075698).

Claim from an unemployed woman

Seeking work in another European Economic Area country

075691 An unemployed woman in another EEA country is entitled to Maternity Allowance (subject to satisfying the conditions of entitlement) and benefits in kind¹ **instead** of "exported" Jobseeker's Allowance² (075370) if

1. the absence is to seek work and
2. the Maternity Allowance period starts in the other EEA country.

1 Reg (EEuropean Community) 1408/71, Art 25(1)(a) & (1)(b); 2 Art 69(1)

075692 "Exported" Jobseeker's Allowance is usually paid for three months¹ but the Maternity Allowance period may be extended by the Secretary of State if the woman is prevented from returning to GB².

1 Art 69(1)(c); 2 Art 25(4)

Seeking work in the United Kingdom

075693 An unemployed woman in the UK is entitled to maternity benefits¹ from the other EEA country (subject to satisfying the conditions of entitlement) and benefits in kind² instead of "exportable" unemployment benefit from that country if

1. she is in the UK to seek work **and**
2. the Maternity Allowance period starts in the UK.

1 Art 25(1)(b); 2 Art 25(1)(a)

075694 The maternity benefits from the other EEA country can be paid for three months¹. That period may be extended by the relevant authority in the other EEA country if the woman is prevented from returning to that country².

1 Reg (EEuropean Community) 1408/71, Art 69(1)(c); 2 Art 25(4)

075695 A woman is not entitled to UK Maternity Allowance for the period of entitlement to maternity benefit from the other country¹.

1 Art 25(1)

Frontier workers and women habitually resident in the United Kingdom

075696 An unemployed woman residing in the UK is entitled to Maternity Allowance¹ and benefits in kind as if she had been subject to UK legislation and liable to pay contributions during her last employment².

1 R(S)4/80; R(S)6/81; 2 Reg (EEuropean Community) 1408/71, Art 25(2)

075697 075696 applies to women who have remained habitually resident¹ in the UK whilst

1. employed as a frontier worker and insured under, or subject to, another EEA country's legislation² **or**
2. in another employment and insured in another EEA country, but not entitled to unemployment benefit in that country³.

1 Art 1(h); 2 Art 71(1)(a)(ii); 3 Art 71 (1)(b)(ii)

Pregnant workers Directive

075698 The Directive¹ applies to employed pregnant women. It states that pregnant workers² must be entitled to

1. at least 14 weeks continuous maternity leave³ **and**
2. maternity benefits (Maternity Allowance or Statutory Maternity pay) at least equal to the amount paid for sickness benefits⁴.

Entitlement to maternity benefits may depend on the woman concerned satisfying qualifying conditions. Any employment test however, cannot be for more than 52 weeks before the baby is due⁵.

1 Directive 92/85/EEuropean Community; 2 Art 2(9); 3 Art 8(1); 4 Art 11(3); 5 Art 11(4)

075699 Any provisions made in response to the Directive cannot reduce a woman's existing rights¹.

1 Art 1(3)

075700 The UK has changed the conditions for entitlement to Maternity Allowance and Statutory Maternity pay to satisfy the requirements of the Directive (see benefit specific guidance).

075701 - 075709

Overlap under European Community provisions

075710 EEA countries is only entitled to Maternity Allowance

1. from the EEA country in which she was confined **or**
2. where she was confined outside the EEA, from the EEA country to whose legislation she was last subject¹.

1 Reg (EEuropean Community) 574/72, Art 8(1); Case 143/79, Walsh v Insurance Officer; R (G) 3/83

075711 Where a woman is entitled to claim maternity benefits under the legislation of

1. the UK **and**
2. another EEA country

an award cannot be made until after the confinement. This is because until that time it is not clear under which country's legislation the award will be made.

Note: The exception to this provision is where there are days which do not overlap.

Republic of Ireland

075712 Although a woman is not entitled to Maternity Allowance from the UK and the Republic of Ireland at the same time

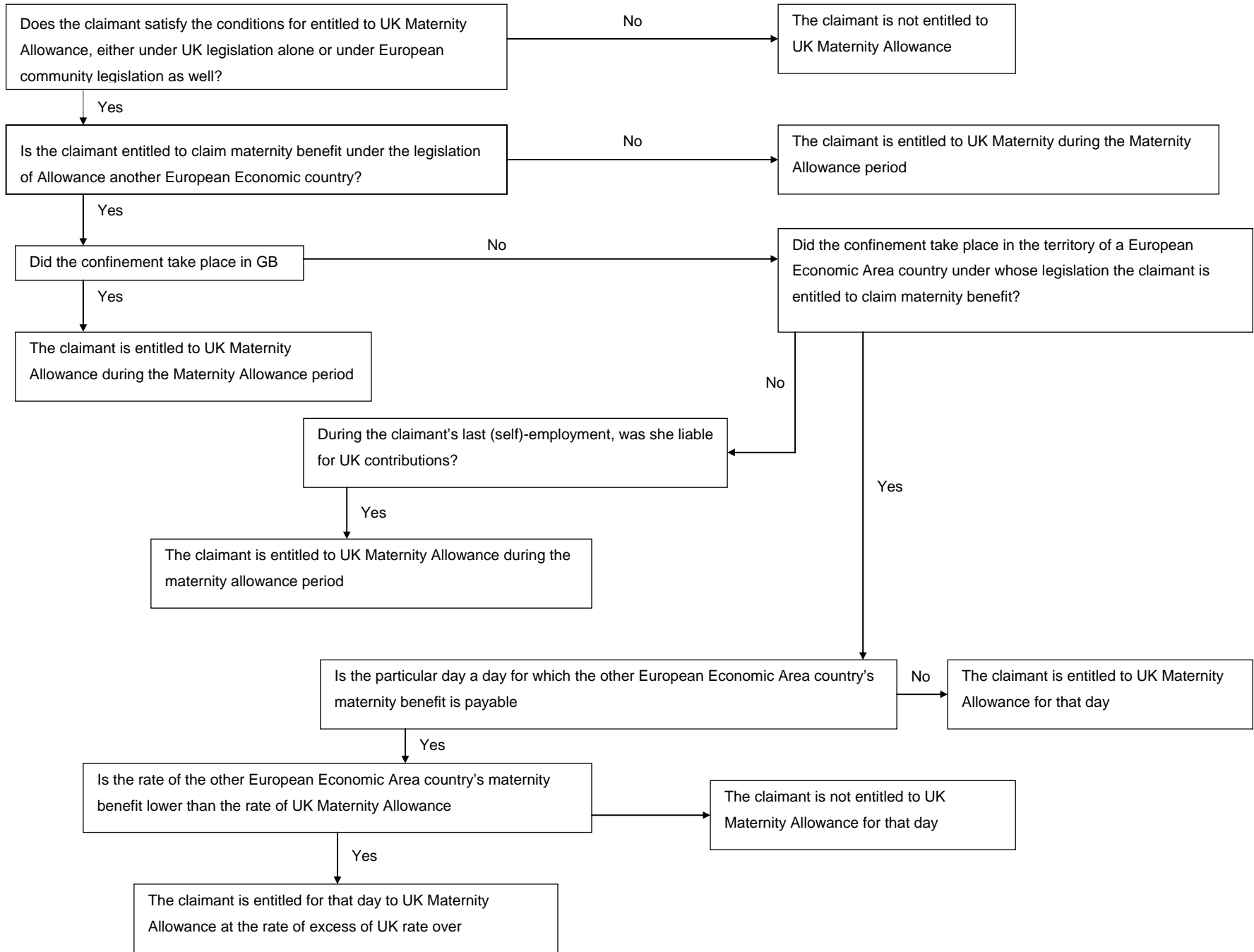
1. European Community provisions do not remove entitlement for periods which do not overlap¹ **and**
2. benefit is only restricted by the rate payable in that country.

1 Case 143/79, Walsh v Insurance Officer

075713 A woman is entitled to a **supplement**, equivalent to the difference in the rate of benefits paid by the UK and the Republic of Ireland, where

1. she is entitled to benefit from only one country **and**
2. the rate of Maternity Allowance in that country is lower than the rate paid in the other country.

075714 The following flow chart summarises the guidance at 075712 - 075713.



Overlap under reciprocal agreements

075720 UK provisions¹ do **not** provide for UK Maternity Allowance to be adjusted where Maternity Allowance is being paid by a country with which the UK has an agreement. However, many agreements provide

- that a woman will be entitled to Maternity Allowance from only one country **or**
- for an adjustment to be made where a woman is entitled to Maternity Allowance from both the UK and the other country.

1 SS (OB) Regs

075721 Detailed guidance on the overlapping of Maternity Allowance under different agreements is at DMG 075730 and DMG 075731.

075722 - 075729

Barbados, Cyprus, Jersey and Guernsey

Barbados

075730 Maternity Allowance is not payable for any period that a woman is entitled to a benefit from Barbados for incapacity for work resulting from

- an industrial accident **or**
- an industrial disease¹.

1 SS (Barbados) Order 92, Sch, Art 25(2)

Cyprus

075731 A woman is entitled to Maternity Allowance only from the country she was in when the Maternity Allowance period began¹ if she is potentially entitled to Maternity Allowance

- from both countries **and**
- for the same confinement **and**
- for the same period.

1 SS (Cyprus) Order 83, Sch, Art 12(6)

075732 A woman is treated as in the UK where at the beginning of the Maternity Allowance period she was

- in a sovereign base area (075658) **and**
- subject to UK legislation¹.

1 Sch, Art 12(6)

Jersey and Guernsey

075733 A woman will be entitled to Maternity Allowance from the country where she last paid, or was credited with, contributions¹ if for the same period she is potentially entitled to Maternity Allowance from

- the UK **and**
- either Jersey or Guernsey.

1 SS (Jersey and Guernsey) Order 94, Sch, Art 13(7)

075734 - 075739

Isle of Man, Northern Ireland and Turkey

Isle of Man and Northern Ireland

075740 A woman cannot be entitled to Maternity Allowance from both GB and

- the Isle of Man¹ **or**
- Northern Ireland².

1 SS (I of M) Order 77, Sch 1, Art 3; 2 SS (N. Ireland Reciprocal Arrangements) Regs 76, Sch 1, para 3

Turkey

075741 Maternity Allowance is paid by the country to which the woman

- was paying contributions at the date of claim **or**
- last paid contributions before the date of claim¹.

1 NI & II (Turkey) Order 61, Art 10(c)

075742 - 075749

Retirement pension

Introduction

075750 [\[See Memo DMG 32/10\]](#) [\[See DMG Memo 6/16\]](#) This part of the chapter gives guidance on

- the residence and presence conditions for entitlement to RP (see DMG 075751)
- absence from GB (see SMG 075751 - 075780)
- entitlement to pro rata RP (see DMG 076040) **and**
- the effects of SS agreements on entitlement to RP (see SDMG 075903).

Residence and Presence

075751 There are no residence and presence conditions for Category A, Category B RP or graduated Retirement Benefit. There are residence conditions for entitlement to Category C or D RP (see DMG 075760).

Absence from Great Britain

075752 A person who is absent from GB

- is **not** disqualified for receiving RP¹ **and**
- may **not** have the rate of RP increased in the annual uprating (see DMG 075760).

1 SS CB Act 92, sec 113(a); SS Ben (PA) Regs, reg 4(1) & 5(1)

Retirement Pension under European Community provisions

075753 European Community provisions refer to old age benefits¹. For the UK this means

- RP of any category²
- Additional Pension³
- Graduated Retirement Benefit⁴
- Increments⁵
- Adult dependency increases of RP⁶ **and**
- Age addition⁷.

1 Reg (EEuropean Community) 1408/71, Art 4(1)(c); 2 SS CB Act 92, sec 43-49 & sec 78;

3 sec 45; 4 NI Act 65, sec 36 & 37; SS (GRB) (No. 2) Regs, Sch 1; 5 SS CB Act 92, sec 55;

6 sec 83-85; 7 sec 79

075754 Although the following are paid over pensionable age they are **not** old age benefits

- Incapacity Benefit
- Jobseeker's Allowance **and**
- child dependency increases (these are family benefits).

075755 - 075759

Residence and presence

Category C and D Retirement Pension

075760 To be entitled to either Category C (see DMG 075761) or Category D (see DMG 075767) RP a person must be

either

1. resident **or**
2. ordinarily resident in GB.

Category C Retirement Pension

075761 A person is entitled to Category C RP if either of the conditions set out in DMG 075762 - 075763 are satisfied.

075762 A person must

1. have been resident in GB (see DMG 070804) for at least ten years in the period 5.7.48-1.11.70¹ **and**
2. **either** have been ordinarily resident in GB (see DMG 070760) on 2.11.70² or be ordinarily resident in GB (see DMG 070769) on the date Category C RP³ was claimed.

1 SS (WB & RP) Regs, reg 9(a); R(P) 1/72; 2 reg 9(b); 3 reg 9(b)

075763 A woman may also be entitled to Category C RP if

1. she is a widow whose husband died before 2.11.70 **or**
2. her marriage ended before 2.11.70 (but not because her husband died).

Husband died before 2.11.70

075764 A widow whose husband died before 2.11.70¹ is entitled if she

1. was resident in GB (see DMG 070804) for at least ten years in the period 5.7.48-1.11.70²
2. was ordinarily resident in GB (see DMG 070769) on 2.11.70 or on the date Category C RP³ was claimed **and**
3. her husband was ordinarily resident in GB (see DMG 070769) when he died.

1 SS (WB & RP) Regs, reg 11(1)(e); 2 reg 11(1)(e)(i); 3 reg 11(1)(e)(ii)

Marriage ended before 2.11.70

075765 A woman whose marriage ended before 2.11.70, but not because her husband died, is entitled to a Category C RP if

1. she was resident in GB (see DMG 070804 for at least ten years in the period 5.7.48-1.11.70¹
2. she was ordinarily resident in GB (see DMG 070769) on 2.11.70 or on the date Category C RP² was claimed
3. her husband was ordinarily resident in GB (see DMG 070769) on the date the marriage ended³ **and**
4. she did not remarry between the date her marriage ended and 2.11.70⁴.

1 SS (WB & RP) Regs, reg 12(2)(a); 2 reg 12(2)(b); 3 reg 12(2)(c); 4 reg 12(2)(d)

075766 Residence in another EEA country may be taken into account.

Category D Retirement Pension

075767 To be entitled to Category D RP a person must have been

1. resident in GB (see DMG 070804) for at least ten years in any continuous period of 20 years¹ which includes the day before reaching age 80² **or** any day on or after 80³ **and**
2. ordinarily resident in GB (see DMG 070769) on reaching age 80⁴ **or** on the date Category D RP was claimed, if later than that person's 80th birthday⁵.

1 Re an Italian Widow [1982] 2 CMLR 128 (CP/90/79); 2 SS (WB & RP) Regs, reg 10(a); 3 reg 10(a); 4 reg 10(b)(i); 5 reg 10(b)(ii)

075768 Residence in another EEA country **may** be taken into account (see DMG 075769).

Entitled to Category C or D Retirement Pension using European Community provisions

Residence in another European Economic Area country

075769 Where a person is within the personal scope of European Community provisions¹, residence in another EEA country can count towards satisfying the ten years residence conditions² where

- either the residence in the other EEA country counts towards entitlement to old age benefit in that country or the person was insured in the other country whilst resident there **and**
- the person has at some time been subject to UK legislation. For example, by being liable to pay class 1 or class 2 contributions.

*1 Reg (EEuropean Community) 1408/71, Art 2; Re an Italian widow [1982] (CP/90/79) 2 CMLR 128;
2 reg 9(a), 10(a) & 11(1)(e)(i)*

075770 Where the conditions set out in 075769 are satisfied

- the residence in the other EEA country is added to the periods of residence in GB **and**
- pro rata Category C or D RP is awarded (075771).

075771 Where residence in another EEA country is used to satisfy the ten years residence the UK pays only the percentage of benefit which is equivalent to the number of years of UK residence used in satisfying the condition.

Example

A person reaches age 80 on 10.10.90. In the twenty years before reaching that age, six were spent in the UK. For the remaining fourteen years the person was resident in France.

To satisfy the ten years test for entitlement to Category D RP it is necessary to take account of four years residence in France and six years in the UK. Therefore, the UK pays 60% of Category D entitlement.

Staying in another European Economic Area country

075772 The provisions which allow a person already entitled to Category C or D RP to **retain** entitlement in another EEA country¹ do not help that person to satisfy the residence conditions for **becoming** entitled² (see DMG 075762 and 075767).

*1 Reg (EEuropean Community) 1408/71, Art 10(1); 2 R(A) 4/75; R(A) 2/78; R(S) 7/81; R(M) 2/84;
Re an Italian Widow [1982] 2 CMLR 128 (CP/90/79)*

075773 - 075779

Not entitled to uprating increases

Introduction

075780 The rate of RP paid to a person absent from GB is increased by the general uprating of the rates of benefit¹ if that person is

1. ordinarily resident in GB **or**
2. in an EEA country and is within the scope of EC provisions² (see DMG 070050) **or**
3. in an EEA country and the agreement with that country still applies to them (see DMG 075820) **or**
4. in a country with which the UK has an agreement which allows the rate to be increased (see DMG 075831) **or**
5. in Sark³.

1 SS Administration Act 92, sec 150; 2 reg 1408/71, Art 2; 3 SS Ben (PA) Regs, reg 12

075781 The rate of RP **cannot** be increased where the person is absent abroad and not ordinarily resident in GB

1. immediately before the date any uprating order takes effect **and**
2. that person is not in **either** an EEA country or is not covered by EC provisions **or** a country with which the UK has an agreement which allows the rate to be increased¹.

1 Carson & Others v UK, Case C 42184/05

075782 The actual rate at which RP is frozen will depend upon whether the person

1. is absent from and not ordinarily resident in GB when becoming entitled to RP **or**
2. is outside GB and stops being ordinarily resident in GB after becoming entitled to RP.

Detailed guidance is at DMG 075840 - 075984.

075783 RP which is not increased by upratings is referred to as being frozen.

075784 **Before 1.10.89** it was a condition of entitlement to RP that a person retired or was deemed retired from regular employment. This condition was abolished where entitlement started on or after 1.10.89. The provisions dealing with the freezing of RP were amended from 1.10.89 to reflect this change. Before 1.10.89 they referred to retirement or retired. From 1.10.89 they refer to entitled to RP.

075785 Guidance on the frozen rate of RP before 1.10.89 is in Annex 1.

075786 - 075789

Rate of Retirement Pension not increased

General rules - absent from Great Britain

075790 The **general** rules for deciding the rate at which RP is frozen where a person is absent from GB are set out in this paragraph. Where a person is not resident in GB on the first day of entitlement to RP the general rules are at DMG 075791 - 075792. Where a person who is already entitled to RP stops being resident in GB the general rules are at DMG 075794.

Not resident in Great Britain on first day of entitlement

Personal benefit - own insurance

075791 Where a person is entitled to RP based on their own insurance the rate of RP is frozen at the rate in force on the first day of entitlement if that person is **not** ordinarily resident in GB.

Benefit on spouse's or civil partner's insurance

075792 Where a person is entitled to RP because of a spouse's or civil partner's contributions, the rate of RP is frozen at the rate payable at the earlier of the spouse's or civil partner's

1. date of entitlement **or**
2. date of death.

Adult dependency increases

075793 The rate of the adult dependency increase should be frozen at the same rate as the personal benefit (see DMG 075791 - 075792).

Pensioner leaves Great Britain

075794 Where a person stops being ordinarily resident in GB the rate is frozen at the rate being paid when residence ended.

Absence from Great Britain

075795 A person is only prevented from receiving the increased rate of benefit whilst absent from and not ordinarily resident in GB¹.

1 SS Ben (PA) Regs, reg 5(1); R(P) 1/78

Visits to Great Britain

075796 If a person whose rate of RP has been frozen **visits** GB

1. whilst in GB that person is entitled to the current rate of RP **and**
2. on again leaving GB the rate of RP reverts to the rate that was paid before the visit to GB¹.

1 R(P) 1/78

075797 A person who returns to GB and becomes **ordinarily resident** here is entitled to RP at the current rate. If that person later leaves GB then the rate of RP is restricted to the rate that person was receiving in GB. It does not revert to the rate paid when last absent from GB¹.

1 R(P) 2/67

Example 1

A person leaves GB to live in Australia in May 1984 and as a result the rate of RP is "frozen" at £34.05 (the full rate of RP set out in the 11/83 uprating). That person visits GB from 1.12.87 to 1.2.88 and again from 1.12.90 to 3.2.91. That person does not become ordinarily resident in GB.

During the visits to GB RP is paid at the following rates

1.12.87-1.2.88 = £39.50 (April 1987 rate)

1.12.90-3.2.91 = £46.90 (April 1990 rate).

On returning to Australia in February 1988 and February 1991 the rate of RP reverted to £34.05.

Example 2

A man left GB to live in South Africa in September 1975.

The rate of RP was frozen at £11.60. On 17.9.90 that person left South Africa intending to live permanently in GB. It was accepted that from that date he was ordinarily resident in GB and the rate of RP was increased to £46.90, the rate current at that time.

However, in January 1995 that person again decided to live permanently in South Africa and the rate of RP was frozen at £57.60, the rate it was being paid at when that person was last ordinarily resident in GB.

075798 An increased rate of benefit **cannot** be paid for a dependant if

- that dependant visits GB **and**
- the person entitled to the increase remains outside of GB (075792).

075799 An increased rate of benefit **can** be paid for a dependant if

- the **claimant** visits GB **and**
- the dependant remains outside of GB.

Visits to an agreement country

075800 If a person whose rate of RP has been frozen **visits** a country with which the UK has an agreement allowing the rate of RP to be increased (075822 and 075831) then

- whilst in that country that person is entitled to the current rate of RP, providing the conditions for "unfreezing" the benefit are satisfied **and**
- on again leaving that country the rate of RP reverts to the rate that was paid before the visit.

Example 1

A person leaves GB to live in Canada in November 1990 and as a result the rate of RP is "frozen" at £46.90, the full rate of RP at that time. That person visits Jamaica (075831) from 16.6.93 to 1.9.93.

During that visit RP is increased to £56.10 a week, the rate set out in the 4/93 uprating. It reverts to £46.90 when the person returns to Canada.

Example 2

A person leaves GB to live in Canada in November 1990 and as a result the rate of RP is "frozen" at £46.90, the full rate of RP at that time. That person visits the United States of America (075831) from 1.8.94 to 30.9.94.

During the visit the rate of RP is **not** increased. To avoid "freezing" whilst in the United States of America a person must be ordinarily resident.

- 075801 A person who becomes **ordinarily resident** in a country with which the UK has an agreement is entitled to RP at the current rate. If the person later stops being ordinarily resident in that country then the rate of RP is restricted to the rate that was paid in that country.

Example

A man leaves GB to live in Egypt in March 1986. The rate of RP was frozen at £38.30. On 17.1.90 he left Egypt to live permanently in Malta (075831). From that date it was accepted that he was ordinarily resident in GB and the rate of RP was increased to £43.60, the rate current at that time. However, in January 1995 he again changes his mind and returns to live in Egypt. The rate of RP is frozen at £57.60, the rate being paid when he was residing in Malta.

Decision maker's decision

- 075802 The Secretary of State decides whether the rate of benefit can be increased because of the general uprating¹ the decision maker decides whether a person is ordinarily resident in GB immediately before the date of the general uprating².

1 SS A Act 92, sec 155(3); 2 sec 173(6)(b); R(P) 2/67

- 075803 Although the decision maker does not decide whether the rate of benefit will be increased, the effect of that decision needs to be taken into account when awarding RP either on review or following a new claim.

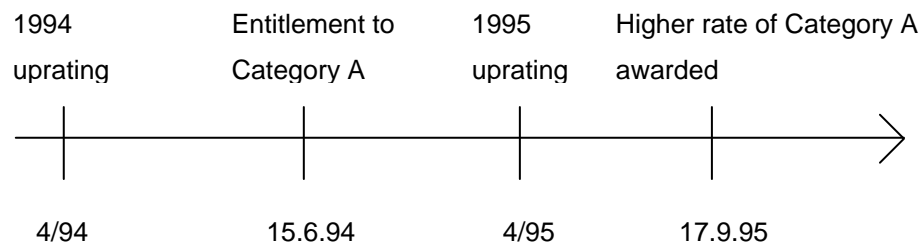
Reconsideration - frozen rates

075804 The rate of RP is still restricted to the same uprating¹ where

- the rate of the same category of RP is reconsidered² **and**
- an increased rate of RP is awarded from a date later than RP was originally awarded from.

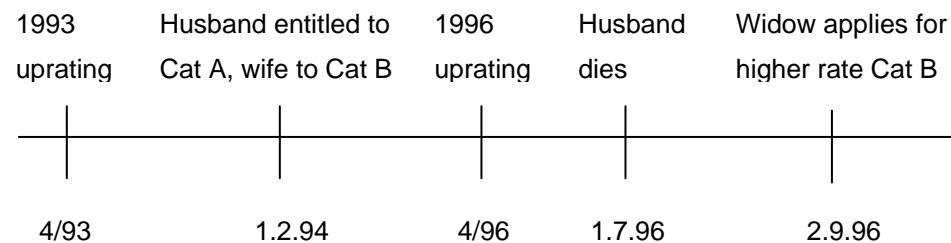
1 SS Ben (PA) Regs, reg 5(3)(a), (b) & (c); 2 SS Act 98, sec 10

Example 1 - increased rate of Category A awarded



A person becomes entitled to reduced rate Category A RP on 15.6.94. The rate of benefit is restricted to the 4/94 uprating. On 17.9.95 that person pays further contributions to improve the rate of RP. The decision maker reconsiders and awards a higher rate of RP. The higher rate of RP is still restricted to the 4/94 uprating.

Example 2 - higher rate of Category B awarded



A married woman is entitled to Category B RP on 1.2.94 when her husband becomes entitled to Category A RP. The rate of Category B is restricted to the 4/93 uprating. He dies on 1.7.96 and she becomes entitled to the higher rate of Category B RP. Her Category B entitlement as a widow is restricted to the 4/93 uprating.

Late application for reconsideration

075805 The rate of RP is still restricted to the same rate as the original award where

- a late application for reconsideration is made **and**

- the effect of that reconsideration is restricted.

In another European Economic Area country

075806 A person within the scope of EC provisions and entitled to UK RP remains entitled whilst absent from GB in another EEA country¹. This includes both

- temporary absences (for example, holidays) **and**
- permanent absences².

1 Reg (EEC) 1408/71, Art 10(1); 2 Art 1(i) & annex VI, point O, para 12; Art 1(h)

075807 Whilst in the other EEA country the rate of RP is increased by uprating orders.

075808 - 075819

Agreements with European Economic Area countries

Introduction

075820 [\[See Memo DMG 32/10\]](#) European Community provisions replace agreements between EEA countries (070320)

- for any person within their personal scope **and**
- where the right to benefit was acquired on or after European Community provisions applied.

075821 For RP a national of an EEA country will generally be covered by European Community provisions. Agreements between EEA countries may still apply to non-EEA nationals.

Agreements which allow uprating

075822 The rate of RP paid to a non-EEA national in one of the following countries can be increased because of the general uprating of benefit rates

- Austria¹
- Finland²
- Germany³
- Iceland⁴
- Irish Republic⁵
- Norway⁶
- Portugal⁷
- Spain⁸ **and**
- Sweden⁹.

*1 SS (Austria) Order 81, Sch, Art 4(1); 2 SS (Finland) Order 84, Sch 1, Art 4(1);
3 FA, NI & II (Germany) Order 61, Sch 1, Art 3(2); 4 SS (Iceland) Order 85, Sch, Art 3(1);
5 NI (R o I) Order 66, Sch 1, Art 3; 6 SS (Norway) Order 91, Sch, Art 4(1);
7 SS (Portugal) Order 79, Sch, Art 4(1); 8 FA, NI & II (Spain) Order 75, Sch, Art 4;
9 SS (Sweden) Order 88, Sch, Art 4(1)*

075823 - 075829

Agreements with non-European Economic Area countries

Frozen rate countries

075830 RP can continue to be paid in Australia, Canada and New Zealand¹ but only at the rate paid at the later of²

- the date the person was last ordinarily resident in the UK **or**
- the date the person first became entitled to RP¹.

1 SS (New Zealand) Order 83, Sch, Art 17; 2 SS Ben (PA) Regs, reg 5

Non-frozen rate countries

075831 RP, including increases because of the general uprating of the rate of benefit, can be paid in the following countries

- Barbados¹ (075832)
- Bermuda² (075832)
- Cyprus³
- Isle of Man⁴
- Israel⁵
- Jamaica⁶ (075832)
- Jersey and Guernsey⁷
- Malta⁸
- Mauritius⁹ (075832)
- Philippines¹⁰ (075832)
- Sark¹¹

- Switzerland¹²
- Turkey¹³
- United States of America¹⁴ (075832)
- Yugoslavia¹⁵ (070334).

*1 SS (Barbados) Order 92, Sch, Art 5(1) & (2); 2 NI & II (Bermuda) Order 69, Sch, Art 9(3);
3 SS (Cyprus) Order 83, Sch, Art 4(1); 4 SS (I of M) Order 77, Sch 1, Art 2(1);
5 NI & II (Israel) Order 57, Sch, Art 8(3); 6 SS (Jamaica) Order 97, Sch, Art 5(2);
7 SS (Jersey & Guernsey) Order 94, Sch, Art 5(1); 8 SS (Malta) Order 96, Sch, Art 4(1)(a);
9 SS (Mauritius) Order 81, Sch 1, Art 4(2); 10 SS (Philippines) Order 89, Sch, Art 4(2);
11 SS Ben (PA) Regs, reg 12; 12 FA, NI & II (Switzerland) Order 69, Sch 1, Art 16(2);
13 NI & II (Turkey) Order 61, Sch, Art 17; 14 SS (USA) Order 84, Sch 1, Art 7(3);
15 FA, NI & II (Yugoslavia) Order 58, Sch, Art 25*

Partially unfrozen Retirement Pension

075832 The rate of RP is only **partially unfrozen** where the person

- is resident in Barbados, Bermuda, Jamaica, Mauritius, Philippines, or the United States of America **and**
- entitlement to RP started before the agreement with that country came into force (075834).

075833 This means that

- the increases set out in the orders made after the agreement with that country came into force can be paid to pensioners living in that country
- no arrears can be paid of the previously frozen RP for the period when the rate was restricted (fully frozen).

Example

A person entitled to RP left GB to live in Barbados on 31.5.86. The rate of RP was not increased for the uprating between 1987 and 1991.

On 1.4.92 the Agreement with Barbados came into force. The next uprating of the rate of RP (6.4.92) was added to the RP already being paid at the 1986 rate.

No arrears are paid for increases of RP not paid between 1987 and 1991¹.

1 SS (Barbados) Order 92, Sch, Art 5(2)

075834 The agreements set out in 075832 came into force on the following dates

- Barbados - 1.4.92
- Bermuda - 1.11.69
- Jamaica - 1.10.72¹
- Mauritius - 1.11.81
- Philippines - 1.12.89
- United States
of America - 1.1.88.

1 SS (Jamaica) Order 97, Sch, Art 5(2)

Isle of Man

075835 The effect of the agreement with the Isle of Man is that a person in the Isle of Man is treated as in GB¹. So the rate of RP in the Isle of Man can be increased by general upratings.

1 SS (I of M) Order 77, Sch 1, Art 2(1)

European Community association and cooperation agreements

075836 The European Community has association and cooperation agreements with a number of countries (070335). None of these agreements allow the uprating of the rate of benefits paid to a person who is absent from GB in one of those countries.

075837 - 075839

Frozen rates - detailed effects on benefit rates

075840 This part gives guidance on the date at which RP is frozen.

Category A RP

- personal (see DMG 075850)
- substituted (see DMG 075860)
- "topped-up" (see DMG 075880)
- "topped-up" additional pension (see DMG 075900).

Graduated Retirement Benefit (see DMG 075910)

Category B RP

- personal - entitled **before** 6.8.94 (see DMG 075930)
- personal - entitled **after** 6.8.94 (see DMG 075940)
- widows/widowers and surviving civil partners (see DMG 075950).

Increments

- personal (see DMG 075970)
- inherited (see DMG 075990).

Dependency increases (see DMG 076020)

075841 - 075849

Category A Retirement Pension on own insurance only

Person outside Great Britain at date of award

075850 Category A RP is paid at the rate in force on the first date of **entitlement**¹.

1 SS Ben (PA) Regs, reg 5(3)(c)

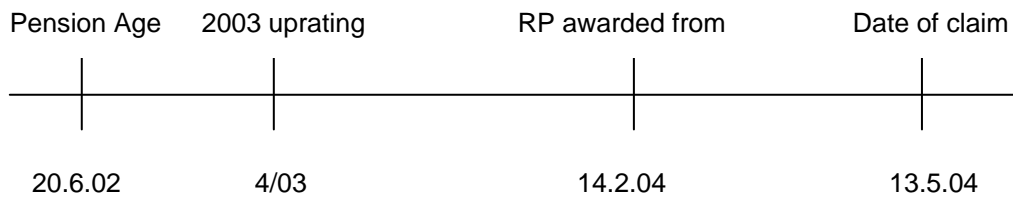
075851 The date of entitlement is

1. the date that benefit is awarded from, after any disentitlement because of late claim¹ **and**
2. the intended date of entitlement in advance claims².

1 SSA Act 92, sec 1(1); 2 SS (C&P) Regs, reg 15

Example 1

Late Claim

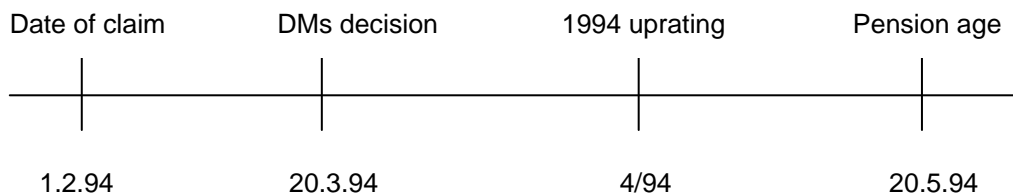


Although RP was claimed **from** 20.6.02, the earliest date of entitlement is 14.2.04. Therefore, RP is "frozen" at the rate set out in the 4/03 uprating order.

Note: the time limit for claiming RP changed again from July 2005.

Example 2

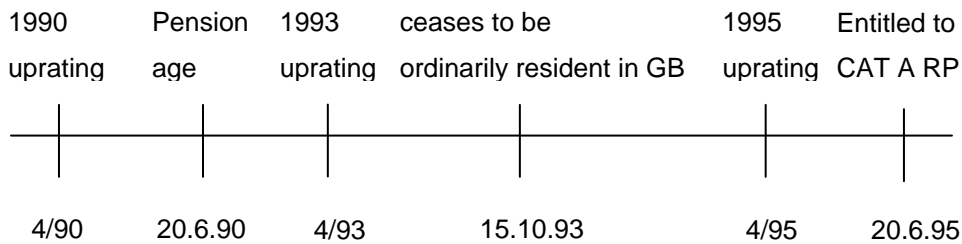
Advance Award



RP is awarded at the rate set out in the 4/94 uprating. Although the decision maker's decision was made on 20.3.94, the first date of entitlement is 20.5.94, after the 1994 uprating took effect.

Example 3

Deferred entitlement

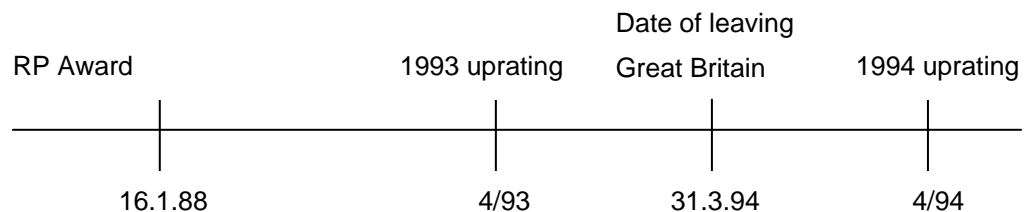


A person reaches pension age on 20.6.90 but defers entitlement until 20.6.95. That person stops being ordinarily resident in GB on 15.10.93. RP is awarded at the rate set out in the 1995 uprating, the uprating before the first date of entitlement.

Pensioner leaves Great Britain

075852 Category A RP is paid at the rate set out in the last uprating before the person left GB.

Example



RP will continue to be paid at the 4/93 rate, the last uprating before leaving GB.

Previously entitled to Category B RP

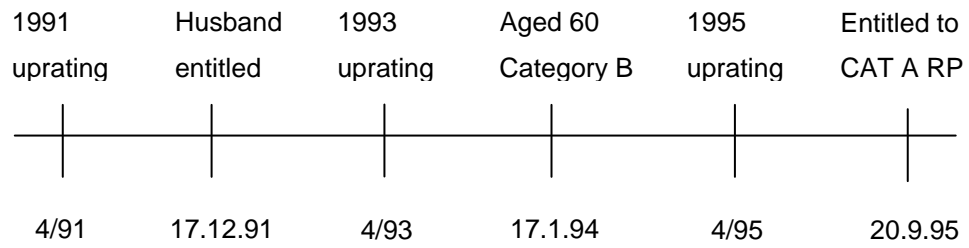
075853 Unusually a person may become entitled to Category A RP having been entitled to Category B from an earlier date. This happens where

1. a person pays contributions to qualify for a personal Category A **or**
2. a widow, widower, or surviving civil partner entitled to Category B RP later becomes entitled to Category A RP.

075854 Where this happens the rate of Category A RP is restricted to the rate at the date of entitlement to Category B RP¹. This may not be the same as the date to which the Category B RP is restricted.

¹ *SS Ben (PA) Regs, reg 5(3)(c)*

Example



A married woman becomes entitled to Category B on 17.1.94. This is restricted to the 4/91 uprating. On 20.9.95 she pays extra contributions and becomes entitled to personal Category A RP. This is awarded from 20.9.95. The Category A RP is restricted to the 4/93 uprating, the uprating before she became entitled to Category B RP.

075855 - 075859

Substituted Category A Retirement Pension

Introduction

075860 The date at which the rate of substituted Category A RP¹ is frozen depends on whether

1. the person was previously entitled to Category A RP (see DMG 075862) or Category B RP (see DMG 075864)
2. the former spouse or former civil partner has died or was entitled to Category A RP (see DMG 075861)
3. a widow, widower or surviving civil partner **is** receiving Bereavement Benefit before pension age (see DMG 075865)
4. a widow, widower or surviving civil partner **is not** receiving Bereavement Benefit before pension age (see DMG 075866) **and**
5. the former spouse or former civil partner is ordinarily resident in GB (see DMG 075869).

1 SS (WB & Retirement Pension) Regs, reg 8

Former spouse or former civil partner not died or not entitled to Category A RP

075861 The rate of substituted Category A RP is restricted to the rate in force at the first day of entitlement where on that day the former spouse or former civil partner

1. has not died or become entitled to Category A RP **or**
2. has become entitled to Category A RP but was then and has continued to be ordinarily resident in GB.

Previously entitled to Category A RP

075862 A person who is entitled to reduced rate Category A RP may become entitled to a higher rate of substituted Category A RP if that person is

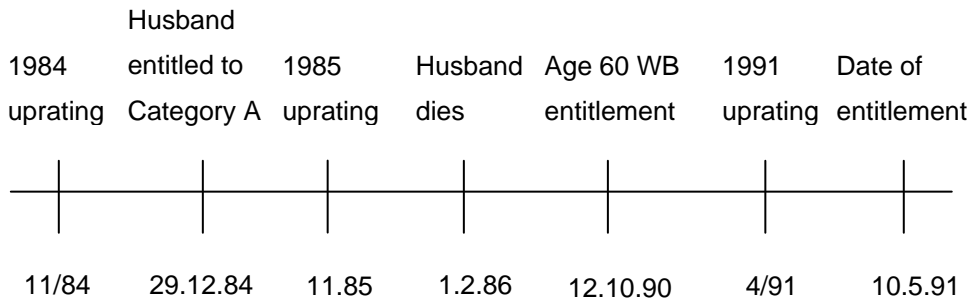
1. a surviving spouse or civil partner who was widowed or left as a surviving civil partner before reaching pension age and who did not remarry or form a civil partnership before that date
2. a man widowed after pension age providing his wife is under 60 when she died **or**
3. a civil partner who is over pension age when his/her civil partner dies, providing the deceased civil partner was under pension age at the date of death **or**

4. divorced or civil partnership dissolved after reaching pension age.

075863 The rate of substituted Category A RP is restricted to the earlier of the date

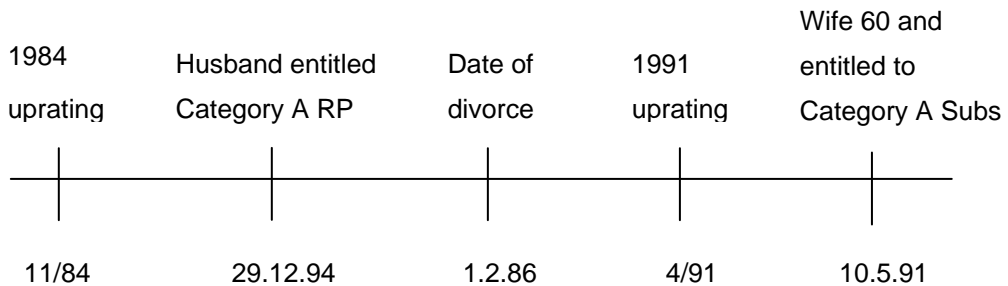
1. the former spouse or former civil partner became entitled to Category A RP if at the date of entitlement he or she was not ordinarily resident in GB
2. the former spouse or former civil partner stopped being ordinarily resident in GB, if he or she was ordinarily resident in GB at the date of entitlement
3. the former spouse or former civil partner died
4. of entitlement to Category B RP (see DMG 075920) **or**
5. of entitlement to personal Category A RP on that person's own insurance.

Example 1 - widow



Her husband became entitled to Category A on 29.12.84. He died on 1.2.86. She was 60 on 12.10.90 and became entitled to Category A RP on 10.5.91. Category A RP on her own record is restricted to the 4/91 uprating. Category A RP using substitution is restricted to the 1984 uprating, the uprating before he became entitled to Category A RP (see example 2 and DMG 075865).

Example 2 - divorced person



Her husband became entitled to Category A on 29.12.84. They were divorced on 1.2.86 and she reached age 60 on 10.5.91. Category A RP on her own record is restricted to the 4/91 uprating - Category A RP using substitution is restricted to the 11/84 uprating, the uprating before he became entitled to Category A RP.

Example 3 - restricted to the date ordinary residence ended



Her husband became entitled to Category A RP on 19.11.88. On 11.4.89 they were divorced and he ceased to be ordinarily resident in GB on 1.5.90. She became entitled to Category A RP on 22.8.91. Category A on her own record is restricted to the 4/91 uprating. Category A RP using substitution is restricted to the 1990 uprating, the uprating before he ceased to be ordinarily resident in GB.

Previously entitled to Category B RP

075864 The rate of substituted Category A RP is restricted to the rate in force at the date of entitlement to **Category B** RP where at the date of divorce

1. a claimant is receiving Category B RP on her spouse's or civil partner's contributions **and**
2. the claimant is **not** ordinarily resident in GB¹.

1 SS Ben (PA) Regs, reg 5(3)(c)

Entitled to WB/BB

075865 Where a widow, widower or surviving civil partner was entitled to Bereavement/Widow's Benefit, or would have been but for disqualification¹, (see DMG 075867 - 075868) immediately before pension age, the rate of substituted Category A RP² is restricted to the **earliest** rate before the deceased spouse or civil partner

1. became entitled to Category A RP (if he/she was not then ordinarily resident³ in GB) **or**
2. died⁴.

(See examples at DMG 075863 and DMG 075867).

This is the same as the restrictions for Bereavement Benefit (see DMG 077130).

1 reg 5(5)(a); 2 reg 5(5)(b); 3 reg 5(5)(i); 4 reg 5(5)(ii)

Widow, widower or surviving civil partner not entitled to WB/BB

075866 The rate of substituted Category A RP is restricted in the same way as personal Category A RP (see DMG 075850) where the widow, widower or surviving civil partner is not entitled to Widow's/Bereavement Benefit before pension age.

075867 A widow, widower or surviving civil partner is entitled to Widow's/Bereavement Benefit if the only reason he/she is not receiving Widow's/Bereavement Benefit is because he/she is disqualified (see benefit specific guidance). Disqualified also means not entitled because of a delay in claiming (see DMG 075868).

Example

Husband died.	Widow aged	1 st date of entitlement	Date of claim
Widow aged 56	aged 60		
2.11.89	20.10.93	19.6.95	19.6.96

A woman is aged 56 when her husband dies. Although she would be entitled to Widow's Benefit she does not claim RP and Widow's Benefit until 19.6.96. The first date of entitlement is 19.6.95. However, she is treated as being entitled to Widow's Benefit before pension age because the only reason that she was not receiving Widow's Benefit was her delay in claiming.

075868 The provisions¹ for restricting the rate of Widow's Benefit were made when the penalty for late claim was disqualification² not disentitlement. Therefore, the reference to disqualification also includes disentitlement for late claim.

1 SS Ben (PA) Regs, reg 5(5); 2 SS Act 75, sec 82(1)

Ordinarily resident in Great Britain at date of entitlement

075869 The rate of substituted Category A RP is restricted to the uprating before the person stopped being ordinarily resident in GB if the person was ordinarily resident in GB at the date of entitlement to RP (but not Graduated Retirement Benefit, see DMG 075863).

075870 - 075879

Topped up Category A Retirement Pension

General

075880 A person is entitled to a composite Category A RP ("topped up")¹ where, but for the provisions preventing dual entitlement² that person is entitled to both

1. Category A RP **and**
2. Category B RP.

1 SS CB Act 92, s 52(1) & 53(1); 2 s 43(1)

075881 The restrictions on the rate of RP because the person is **not** ordinarily resident in GB apply to restrict

1. the maximum amount of RP which can be used to top up Category A entitlement (see DMG 075882 - 075883) **and**
2. the total rate of topped up Category A RP (see DMG 075887).

Amount of "top-up"

Survivors

075882 Where the surviving spouse or civil partner is not entitled to full rate Category A RP the rate of that benefit can be increased by the **lower** of the amount

1. that the person's Category A entitlement is below the full rate of Category A RP **or**
2. of basic Category B RP¹.

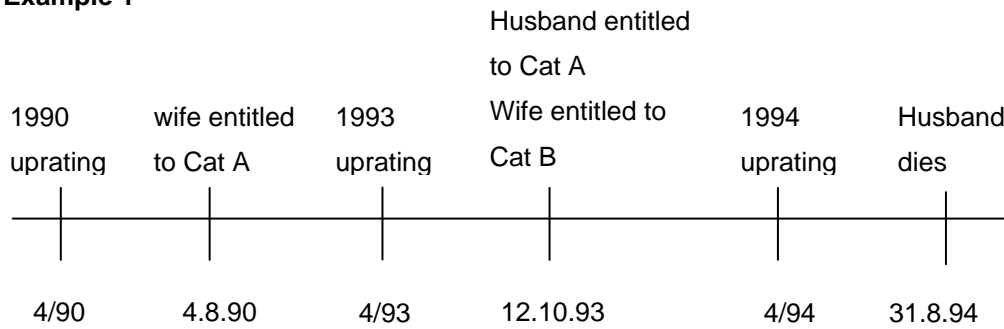
1 s 52(2)

075883 Where the surviving spouse or civil partner is absent abroad and not ordinarily resident in GB the amount of top up is restricted to the rate in force at the **later** of

1. the date on which the surviving spouse or civil partner first became entitled to Category A RP **or**
2. the date on which he or she was last ordinarily resident in GB¹.

1 SS Ben (PA) Regs, reg 4(3)

Example 1



A married woman becomes entitled to personal Category A RP on 4.8.90. This is restricted to the rates in the 4/90 uprating. Her husband is entitled to Category A RP from 12.10.93 and she is entitled to Category B RP from the same date. Her husband dies on 31.8.94.

She is entitled to topped up Category A RP. This is made up of

- Category A at the 4/90 rate
- Category B topping up at the 4/93 rate.

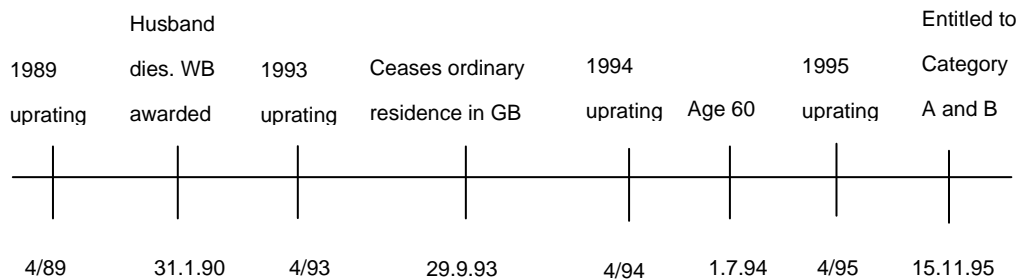
But the total topped up Category A **cannot** exceed the standard rate of **Category A RP** in the 4/90 uprating.

She is also entitled to topped up Category A RP as a married woman from 12.10.93. That topped up Category A RP is also made up of

- Category A at the 4/90 rate
- Category B topping up at the 4/93 rate.

The total rate of RP **cannot** exceed the standard rate of Category B in 4/90 uprating (see DMG 075886).

Example 2



A widow becomes entitled to Category A and B RP on 15.11.95. The personal Category A is restricted to the 4/95 uprating, the uprating before she became entitled to Category A RP. The rate of Category B is restricted to the same uprating as the widows benefit, 4/93, the uprating before she ceased to be ordinarily resident in GB. The "topped-up" rate of Category A RP is made up of

- Category A at the 4/95 rate
- Category B topping up at the 4/93 rate.

But the total topped up Category A cannot exceed the standard rate of Category A RP set out in the 4/95 uprating.

Married women

075884 Category A RP paid to a married woman can be topped up where

1. she is not entitled to full rate Category A RP **and**
2. her rate of Category A is **less** than the standard rate of married women's Category B¹.

Note: This provision will also apply to married men² and some civil partners³ from 6.4.2010. (See DMG Chapter 75).

1 SS CB Act 92, Sch 4, part 1, para 5; 2 Sch 4, para 3(2); 3 CP Act Sch 24, para 25(6)

075885 The rate of Category A is increased by the lower of the amount

1. that her Category A RP is below the standard rate of Category B RP **or**
2. of her basic Category B RP¹.

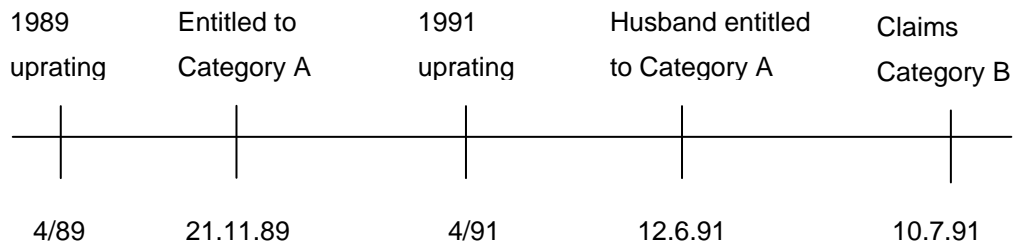
1 SS CB Act 92 s 51A

075886 Where the married woman is absent abroad and not ordinarily resident in GB the amount of the top up is restricted to the rate in force at the **later** of

1. the date on which she first became entitled to Category A RP **or**
2. the date on which she was last ordinarily resident in GB¹.

1 SS Ben (PA) Regs, reg 4(3)

Example



The topped up Category A RP is made up of

1. Category A at the 4/89 rate **and**
2. topping up Category B at the 4/91 rate.

But the total topped up Category A cannot exceed the standard rate of **Category B** in the 4/89 uprating.

Total rate of topped up Category A RP

075887 The total Category A RP cannot exceed the standard rate of RP at the **later** of

1. the claimant's date of entitlement to Category A RP **or**
2. the date on which the claimant ceased to be ordinarily resident in GB.

Entitled to Category B at an earlier date

075888 Where unusually a married woman is entitled to Category B RP **before** Category A RP

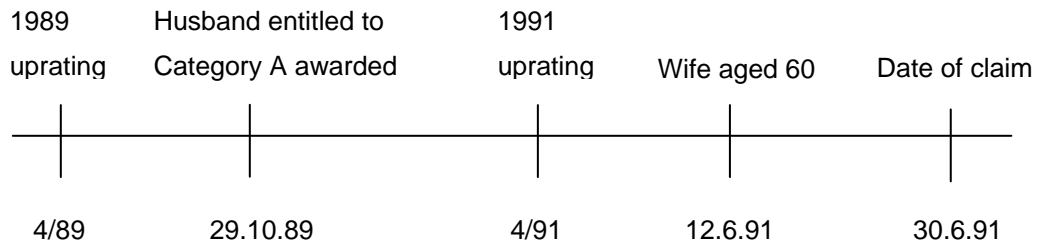
1. the **total** of topped up Category A cannot be more than the standard rate in force when she becomes entitled to Category A RP **and**
2. the top up is restricted to the rate in force when her husband became entitled to Category A RP.

Entitled to Category A and Category B RP at same date

075889 Where a surviving spouse, or surviving civil partner, or married woman is entitled to both Category A and Category B RP from the same date the

1. total rate of topped up Category A RP is restricted to the standard rate in force at the date of entitlement **and**
2. the Category B top-up is restricted to the rate in force when the spouse or civil partner became entitled to Category A RP (which may be an earlier date).

Example



A married woman reaches age 60 on 29.6.91. She is entitled to both personal Category A RP and married woman's Category B from that date.

She is entitled to topped up Category A RP. This is made up of

- personal Category A at the 4/91 rate (the uprating before she became entitled to personal Category A)
- Category B topping up at the 4/89 rate (the uprating before her husband became entitled to Category A RP).

The total topped-up Category A **cannot** exceed the standard Category B RP in the 4/91 uprating.

075890 - 075899

Topped up additional pension

General

- 075900 Where the surviving spouse or civil partner is not entitled to the maximum rate of additional pension¹ the rate of additional pension can be increased by the **lower** of
1. the amount by which it falls short of the maximum, **or**
 2. the additional pension included in the Category B RP².

1 SS (Maternity AllowanceP) Regs, reg 2; 2 SS CB Act 92, s 52(3)

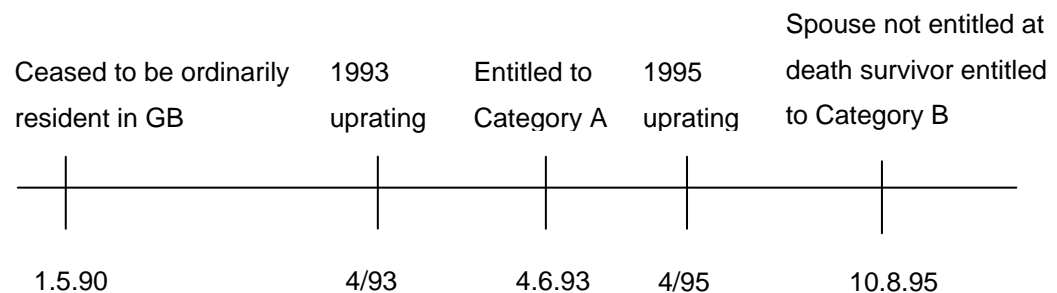
Survivor over pension age

- 075901 The rate of additional pension is restricted as set out in DMG 075883 where at the date of the spouse's or civil partner's death the surviving spouse or civil partner was
1. over pension age **and**
 2. **not** ordinarily resident in GB.

- 075902 Where DMG 075900 applies the topping up additional pension cannot be more than the amount needed to increase the rate of additional pension to the maximum rate of additional pension at the **later** of
1. the date the surviving spouse or civil partner was last ordinarily resident in GB **or**
 2. 6.4.79¹.

1 SS Ben (PA) Regs, reg 4(4)

Example



Composite additional pension is made up of Category A additional pension at the 1993 rate plus Category B additional pension at the 1995 rate but cannot exceed the maximum prescribed amount in force on 1.5.90.

Woman widowed under age 60

075903 The restriction on the topping up of additional pension in DMG 075902 does **not** apply where a woman is widowed under age 60.

The topped up additional pension is restricted to the maximum at the date of her entitlement to Category A RP.

075904 - 075909

Graduated Retirement Benefit

Own Graduated Retirement Benefit

075910 GRB¹ payable on a person's own insurance is restricted to the rate in force at the **later** of

1. the date of entitlement to RP **or**
2. the date on which the person ceased to be ordinarily resident in GB².

1 NI Act 65, s 36(1); SS (GRB) (No.2) Regs, Sch 1; 2 SS Ben (PA) Regs, reg 5(3)(a), (b) & (c)

075911 This applies where GRB is paid

1. with RP of any category **or**
2. on its own.

075912 The rate of GRB still remains frozen to the date of original entitlement to RP where

1. a person previously entitled to Category A RP later becomes entitled to Category B RP and
2. a married woman entitled to Category B and GRB later becomes entitled to Category B RP as a widow. (This will apply equally to widowers or surviving civil partners from 6.4.2010).

Example

A woman who is not ordinarily resident in GB reaches age 60 on 19.6.93 and becomes entitled to GRB on its own. The rate of GRB is frozen to the April 1993 uprating. On 17.1.95 her husband reaches age 65 and she becomes entitled to Category B RP as a married woman. Her own GRB remains frozen at the April 1993 uprating.

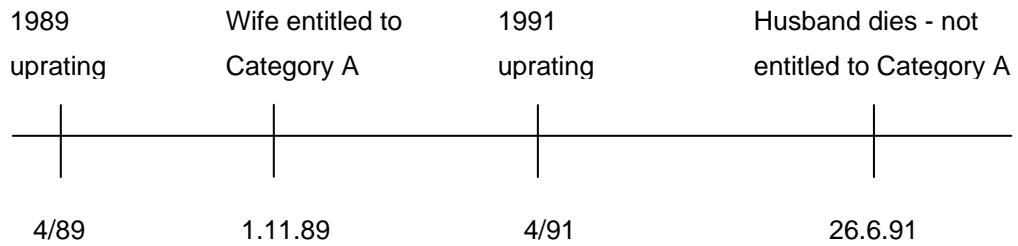
Inherited Graduated Retirement Benefit

Entitled from date of death

075913 The surviving spouse or civil partner is entitled to (inherits) $\frac{1}{2}$ the GRB that the late spouse or late civil partner was or would have been entitled to at the date of death¹.

1 SS (GRB) (No. 2) Regs, Sch 1, s 37(1)

Example



A woman is entitled to personal Category A RP from 1.11.89. On 29.6.91 her husband, who is under 65, dies. She is entitled to $\frac{1}{2}$ his GRB restricted to the 4/91 uprating.

Entitled later than date of death

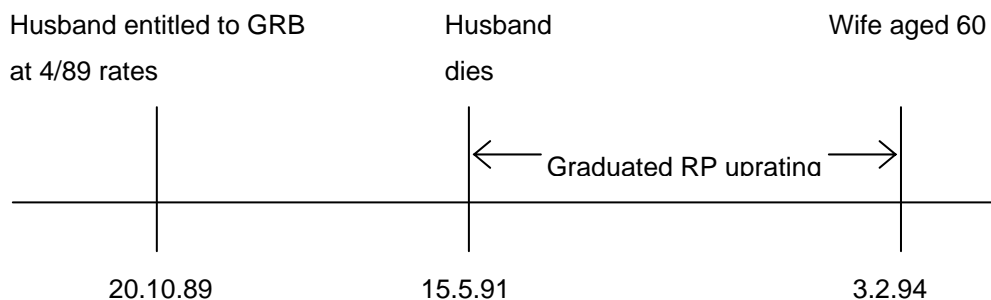
075914 Where the surviving spouse or surviving civil partner becomes entitled to inherited GRB from a date later than the late spouse's or late civil partner's date of death

1. the amount of GRB that the deceased was, or would have been entitled to, is increased by any uprating between the date of death and the date of entitlement to GRB **and**
2. the survivor is entitled to $\frac{1}{2}$ that amount¹.

1 SS (GRB) (No.2) Regs, s 37(2)

Example 1

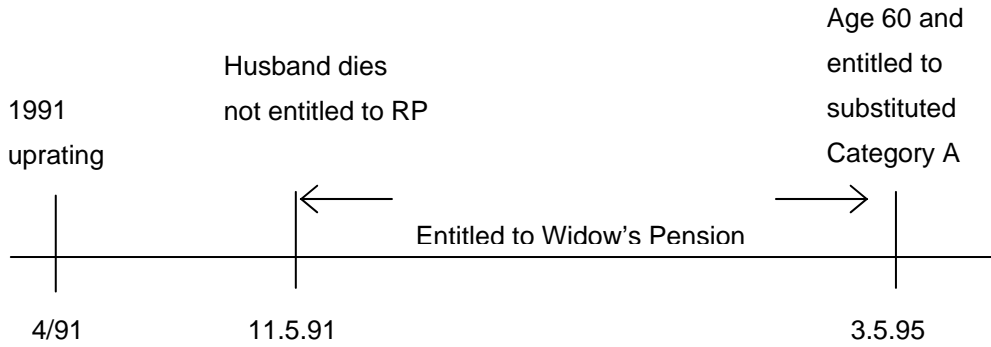
Wife not aged 60 when husband died



A man reached age 65 on 20.10.89 and became entitled to Category A RP and GRB at the 4/89 rates. He died on 15.5.91. On 3.2.94 his wife reached age 60. The amount of GRB is increased by the upratings between 15.5.91 and 3.2.94 and she is then entitled to $\frac{1}{2}$ that amount plus any GRB on her own contributions.

Example 2

Entitled to Widows Pension before age 60



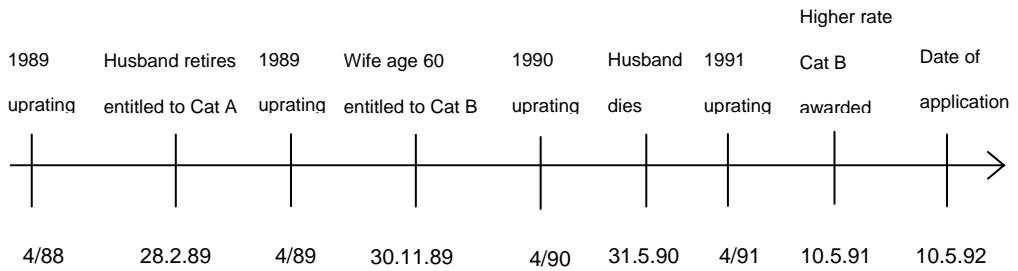
Her husband is not entitled to RP when he died on 11.5.91. The widow receives Widow's Pension from 11.5.91 until she is 60 on 3.5.95. She is then entitled to substituted Category A RP.

The husband's graduated Retirement Benefit is calculated at the rate paid under the 4/91 uprating. That amount is increased by the upratings from 4/92 to 4/95 and the widow is then entitled to ½ that amount.

Her entitlement to graduated Retirement Benefit is then restricted to the 4/95 uprating.

Example 3

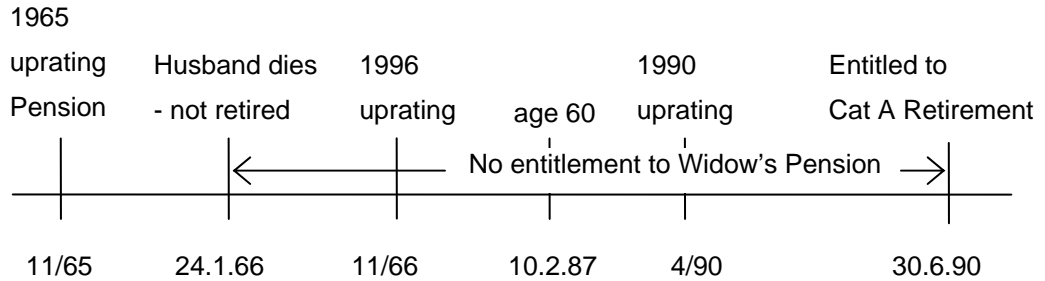
Wife entitled to Category B Retirement Pension before husband died



A woman is entitled to Category B RP as a married woman from 30.11.89. On 31.5.90 her husband dies and, due to a late claim, she is awarded higher rate Category B from 10.5.91. The amount of graduated Retirement Benefit is increased by the upratings between 31.5.90 and 10.5.91 and she is then entitled to ½ that amount.

075915 Once awarded the inherited graduated Retirement Benefit is restricted to the rate in force at the date of entitlement.

Example



A man dies on 24.1.66 but his widow does not become entitled to Category A RP until 30.6.90. His graduated Retirement Benefit is calculated using the rates in force at his date of death, 11/65. This is increased by all the upratings between 1978 (graduated Retirement Benefit was not uprated before November 1978) and 1990. The widow is entitled to ½ of that amount. Her entitlement to graduated Retirement Benefit is then restricted to the 1990 uprating.

075916 - 075919

Category B Retirement Pension - frozen rates

General

075920 The rate of Category B RP paid to a married woman, or a married man, or a civil partner is generally restricted to the rate in force when the spouse or civil partner became entitled to Category A RP. **Before** 6.8.94 the rate of Category B RP was linked to the date of marriage (see DMG 075930). **After** 6.8.94 the rate of Category B RP is linked to the date of the spouse's or civil partner's entitlement to Category A RP (see DMG 075940)¹.

1 SS Ben (PA) Regs, reg 5(3)(aa)

075921 From 6.4.10 a claimant may be entitled to Category B RP based on the spouse's or civil partner's contributions even though the spouse or civil partner has deferred claiming their own Category A RP (see DMG 075944)¹.

1 SS CB Act 92, s 48A & Pensions Act 07, s 2

075922 Note that there is no entitlement to a Category B RP for

1. a married man whose wife was born before 6.4.50¹
2. a civil partner whose civil partner was born before 6.4.50².

1 Pensions Act 1995 Sch 4 para 3(2); 2 Civil Partnership Act 2004 Sch 24, para 25(6)

075923 - 075929

Frozen rate of Category B Retirement Pension - entitled before 6.8.94

General

075930 The guidance in DMG 075930 onwards applies where a married woman is entitled to Category B RP before 6.8.94.

Married before he became entitled to Category A Retirement Pension

075931 Where a husband and wife are not ordinarily resident in GB and were **married before** he became entitled to Category A RP, the Category B RP to be awarded to her is restricted to the rate in force at the **later** of

1. the date on which her husband became entitled to Category A RP (see DMG 075932, **Example 2**)
2. the date on which he ceased to be ordinarily resident in GB **or**
3. the date on which she ceased to be ordinarily resident in GB¹ (see DMG 075932).

1 SS Ben (PA) Regs, reg 5(3)(a) & (c)

075932 The rate of Category B is still restricted to the dates set out in this paragraph where she

1. is also entitled to Category A RP¹ **or**
2. becomes entitled to Category B RP on the same or a later date than he became entitled to Category A RP².

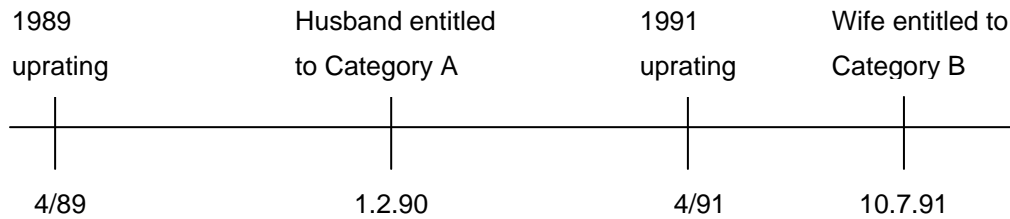
1 reg 5(7); 2 reg 5(3)(a) or (c)

Example 1 - Already entitled to Category A Retirement Pension



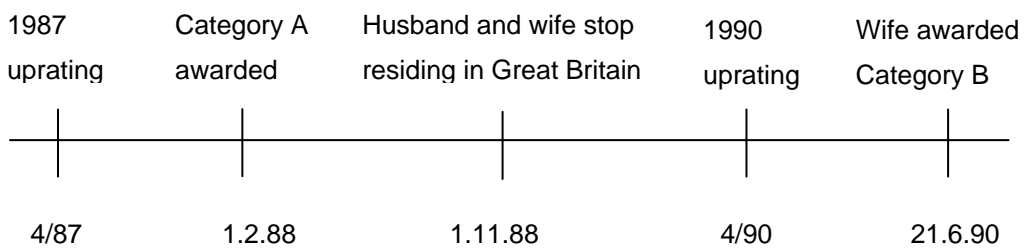
Category B is paid at the rate set out at 4/93; the uprating before he became entitled to Category A RP.

Example 2 - Not entitled to Category A Retirement Pension



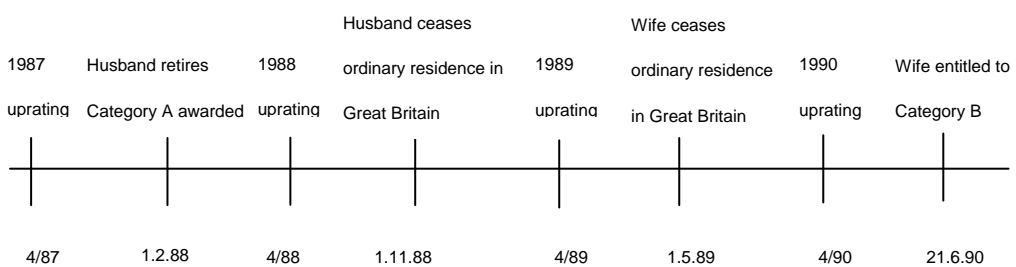
Category B RP is restricted to the 1989 uprating, the uprating before he became entitled to Category A RP.

Example 3 - Husband and wife stop residing in Great Britain on same day



A man retires and is entitled to Category A RP from 1.2.88. Both of them stop residing in GB on 1.11.88. She is entitled to Category B from 21.6.90. The rate of Category B is restricted to the 4/88 uprating, the uprating before they both stopped residing in GB.

Example 4 - Husband entitled to Category A Retirement Pension. Both no longer ordinarily resident in Great Britain



A man retires and is entitled to Category A RP from 1.2.88. He stops residing in GB on 1.11.88. His wife stops residing in GB on 1.5.89. She claims Category B RP from 21.6.90. The rate of Category B is restricted to the 4/89 uprating, the uprating before she stopped being ordinarily resident in GB.

Married after he has become entitled to Retirement Pension

075933 Where a husband and wife are not ordinarily resident in GB and **marry after** the date of his entitlement to Category A RP, Category B RP is restricted to the rate at the **later** of

1. the date of their marriage
2. the date on which he ceased to be ordinarily resident in GB **or**
3. the date on which she ceased to be ordinarily resident in GB¹.

This only applies if she was not entitled to Category A before their marriage.

1 SS Ben (PA) Regs, reg 5(3)(a) & (c)

Example

1991	His entitlement to	1993	Date of	Category B
uprating	Category A	uprating	marriage	claim
4/91	17.9.91	4/93	1.11.93	14.11.93

Her Category B entitlement is paid at the rates set out in 4/93.

She is entitled to Category A before marriage

075934 If both husband and wife are entitled to Category A RP **before** the date of their marriage, Category B is restricted to the rate set out at the **later** of

1. the date he is entitled to Category A RP, if she is entitled to Category A RP from an earlier date than her husband
2. the date of her entitlement to Category A RP, if she is entitled to Category A from the same or a later date than her husband
3. the date on which he ceased to be ordinarily resident in GB **or**
4. the date on which she ceased to be ordinarily resident in GB¹.

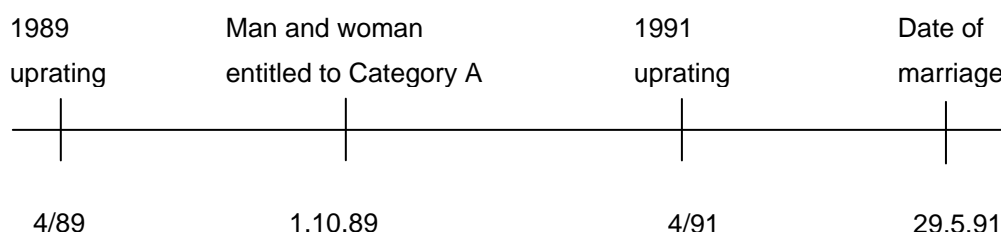
1 reg 5(3)(c) & (7)

Example 1 - Entitlement to Category A before husband

1987	Woman retires	1989	Man entitled to	1990	Date of
uprating	Category A	uprating	Category A	uprating	marriage
4/87	29.1.88	4/89	1.11.89	4/90	22.6.90

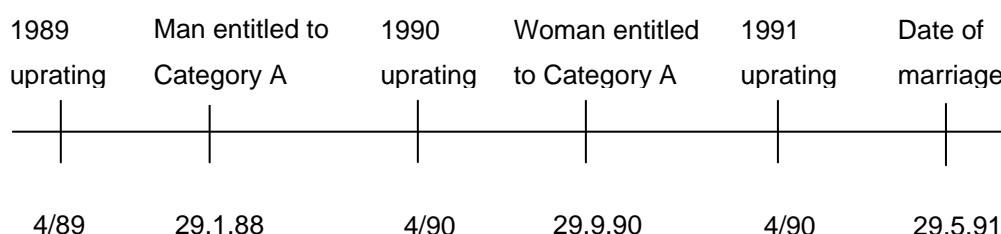
Category B is restricted to the 1989 uprating, the uprating before he became entitled to Category A RP (1.).

Example 2 - Both entitled to Category A Retirement Pension on the same date



Category B is restricted to the 1989 uprating, the uprating before both husband and wife became entitled to Category A RP (2.).

Example 3 - Husband entitled to Category A Retirement Pension before wife



Category B is restricted to the 1990 uprating, the uprating before she became entitled to Category A RP (3.).

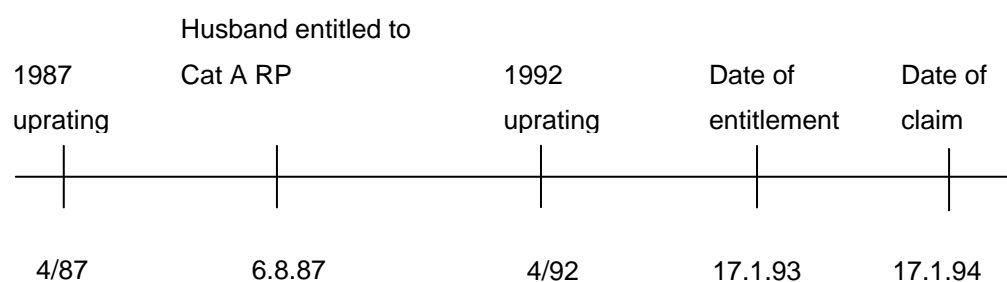
Husband ordinarily resident in Great Britain

075935 The rate of Category B is restricted to the rate in force at the date she becomes entitled where

- her husband **is** ordinarily resident in GB **and**
- she is **not** ordinarily resident in GB¹.

1 SS Ben (PA) Regs, reg 5(3)(c)

Example



Category B is restricted to the 4/92 uprating, the uprating before she became entitled to Category B RP.

075936 - 075939

Frozen rate of Category B Retirement Pension - entitled after 6.8.94

General

075940 The guidance in DMG 075941 applies where a married woman, married man or civil partner is entitled to Category B RP **on or after** 6.8.94, and the spouse or civil partner is entitled to Category A RP. See DMG 075944 where the claimant is entitled to Category B RP but their spouse or civil partner has deferred claiming Category A RP.

075941 Except for DMG 075942, where the husband and wife, or both civil partners are not ordinarily resident in GB the rate of Category B is restricted to the **later** of

1. the date the spouse or civil partner became entitled to Category A RP
2. the date on which the spouse or civil partner ceased to be ordinarily resident in GB **or**
3. the date the claimant ceased to be ordinarily resident in GB¹.

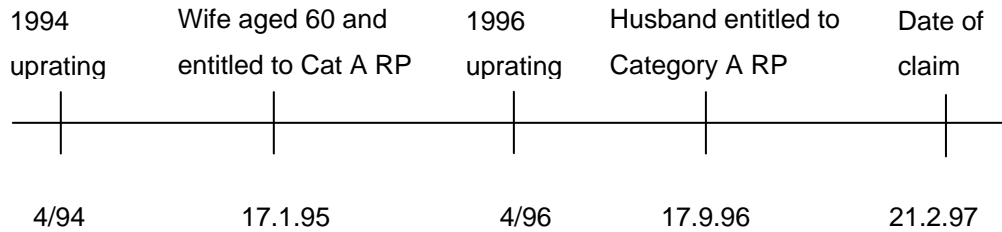
1 SS Ben (PA) Regs, reg 5(3)(aa)

Husband and wife, or both civil partners, entitled to Category A before marriage or forming a civil partnership

075942 If both husband and wife, or both civil partners, are entitled to Category A RP **before** the date of their marriage or forming a civil partnership, Category B is restricted to the rate set out at the **later** of

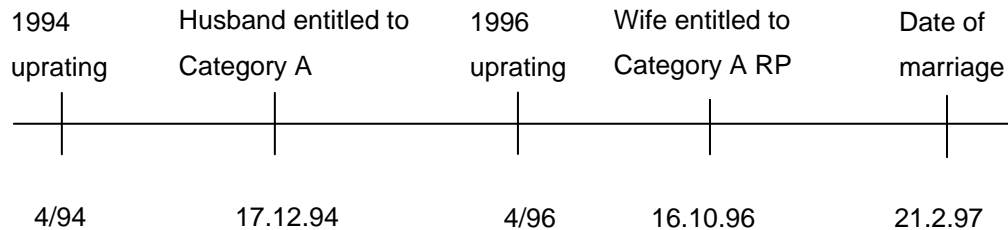
1. the date the spouse or civil partner is entitled to Category A RP, if the claimant is entitled to Category A RP from an earlier date than the spouse or civil partner
2. the date of the claimant's entitlement to Category A RP, if the claimant is entitled to Category A from the same or a later date than the spouse or civil partner
3. the date on which the spouse or civil partner ceased to be ordinarily resident in GB **or**
4. the date on which the claimant ceased to be ordinarily resident in GB.

Example 1 - Wife entitled to Category A before husband



A woman reached age 60 on 17.1.95 and became entitled to a low percentage Category A RP. On 17.9.96 her future husband becomes entitled to Category A RP. They marry on 21.2.97 and she becomes entitled to Category B RP. The rate of Category B is restricted to the 4/96 uprating, the uprating before **he** became entitled to Category A RP (1.).

Example 2 - Wife entitled to Category A after husband



A man became entitled to Category A RP on 17.12.94. A woman becomes entitled to Category A RP on 16.10.96. They marry on 21.2.97 and she becomes entitled to Category B RP. The rate of Category B is restricted to the 4/96 uprating, the uprating before **she** became entitled to Category A RP (2.).

Spouse or civil partner ordinarily resident in Great Britain

075943 The rate of Category B is restricted to the rate in force at the date the claimant becomes entitled where

1. the spouse or civil partner **is** ordinarily resident in GB **and**
2. the claimant is **not** ordinarily resident in GB.

(See example at DMG 075935).

Spouse or civil partner has deferred claiming Category A RP

075944 Where the claimant is entitled to a Category B RP and the contributing spouse or civil partner has not claimed a Category A RP, the claimant's Category B RP is frozen at the rate set out immediately before which the claimant or the contributing spouse or civil partner was ordinarily resident in GB, whichever is the later¹.

1 SS Ben (PA) Regs, reg 5(3)(ba)

075945 However, if the claimant was already entitled to a reduced rate Category A RP, any Category B RP is restricted to the rate set out at the **later** of

1. the date of the claimant's entitlement Category A RP **or**
2. the date on which the claimant ceased to be ordinarily resident in GB¹

1 SS Ben (PA) Regs, reg 4(3)

075946 Where a claimant leaves GB after the award of Category B RP, and the spouse or civil partner has not claimed Category A RP, the rate of Category B RP will be frozen at the rate immediately before the claimant or the spouse or civil partner was ordinarily resident in GB, whichever is the later¹.

11 SS Ben (PA) Regs, reg 5(3)(ba)

075947 - 075949

Frozen rates - Category B Retirement Pension widows/widowers/surviving civil partners

Introduction

075950 A **widow** is entitled to Category B RP where her husband died

1. before pension age¹ **or**
2. after pension age².

1 SS CB Act 92, s 49(4); 2 s 49(5)

075951 A widower or surviving civil partner is entitled to Category B RP where

1. both the claimant and the deceased spouse or civil partner were over pension age at the date of death **or**
2. the claimant was entitled to BB immediately before attaining pension age (see DMG Chapter 75) **or**
3. the claimant was entitled to a BB at any time before reaching pension age¹ (see DMG Chapter 75).

1 s 51(1)

075952 The restriction on the rate of Category B RP to widows or widowers or surviving civil partner depends upon whether the claimant was

1. **under** pension age at the date of death (see DMG 075953)
2. over pension age at the date of death (see DMG 075955) **or**
3. entitled to RP before their spouse or civil partner died (see DMG 075957 - 075963).

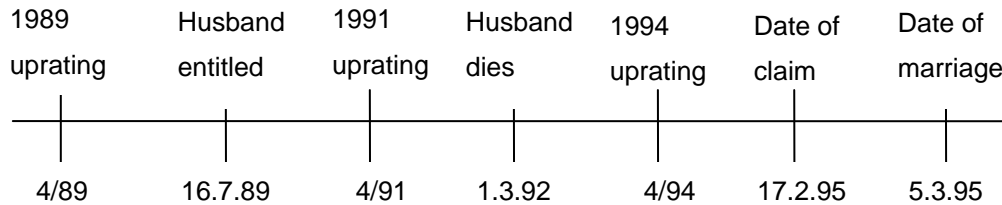
Woman widowed under pension age

075953 The rate of Category B is restricted to the same uprating as her WB/BB where she was entitled (or treated as entitled) to WB/BB immediately before age 60 (see DMG 077132). The rate of WB/BB is restricted to the **earlier** of

1. the date her husband died
2. the date he became entitled to Category A RP¹ **or**
3. if she was ordinarily resident in GB on the earlier of those dates, the date she stopped being ordinarily resident in GB.

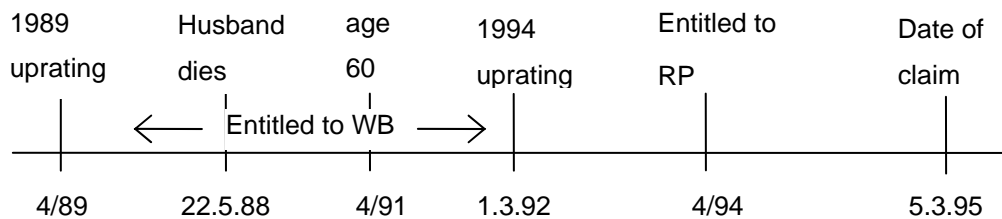
1 SS Ben (PA) Regs, reg 5(3)(d)

Example 1 - Restricted to husband's date of entitlement



Category B RP is restricted to the 1989 uprating, the uprating before her husband became entitled to RP.

Example 2 - Restricted to uprating before husband dies



Category B is restricted to the 1998 uprating, the uprating before her husband died.

075954 Once awarded the Category B RP remains frozen¹ whilst she continues to reside outside GB.

1 s s Ben (PA) Regs, s 5(3)(b)

Over pension age when spouse or civil partner died

Not entitled to RP when spouse or civil partner died

075955 Except where DMG 075956 applies, where a man or woman, not previously entitled to RP, is over pension age when their spouse or civil partner dies, the rate of Category B is restricted to the later of

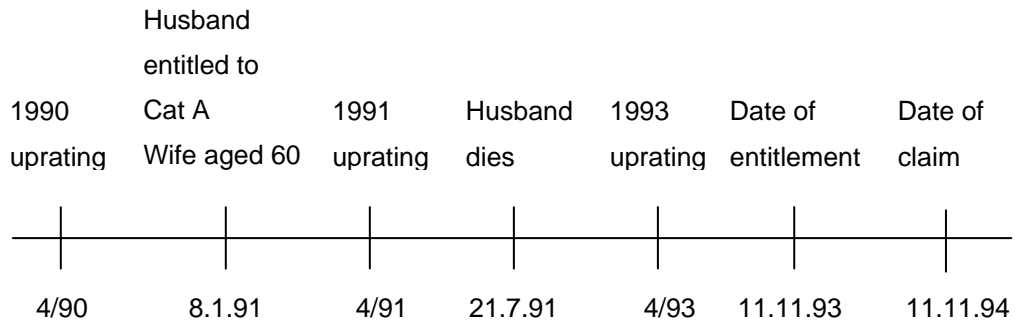
1. the date he or she was last ordinarily resident in GB or
2. the date their spouse or civil partner died¹.

1 s 5(3)(b)

075956 Where the only reason that a woman is not entitled to Category B is because no claim has been made, the rate of Category B is restricted to the **later** of

1. the date she ceased to be ordinarily resident in GB **or**
2. the date to which her Category B RP as a married woman would have been restricted.

Example



Widows Category B RP is restricted to the 4/90 uprating.

Already entitled to RP

075957 Where a widower or surviving civil partner is entitled to Category A RP **before** becoming entitled to Category B RP the rate of Category B depends upon whether his wife or civil partner

1. was entitled to Category A before the claimant became entitled to Category A RP (see DMG 075958) **or**
2. was not entitled to Category A RP before the claimant became entitled to Category A RP (see DMG 075959).

075958 Where the wife or former civil partner was entitled to Category A RP before the claimant became entitled to Category A RP, the rate of Category B is restricted to the **later** of

1. the date the claimant ceased to be permanently resident in GB or
2. the date the claimant became entitled to Category A RP¹.

1 SS Ben (PA) Regs, reg 5(3)(c)

075959 Where the wife or civil partner was not entitled to Category A RP before the claimant became entitled to Category A, the rate of Category B is restricted to the **earlier** of

1. the date his wife or civil partner became entitled to Category A RP¹
2. the date the wife or civil partner died².

If the claimant is ordinarily resident in GB on these dates, the rate of Category B is frozen at the date he/she ceases to be ordinarily resident in GB.

1 reg 5(7); 2 reg 5(3)(b)

Already entitled to Category A or B RP

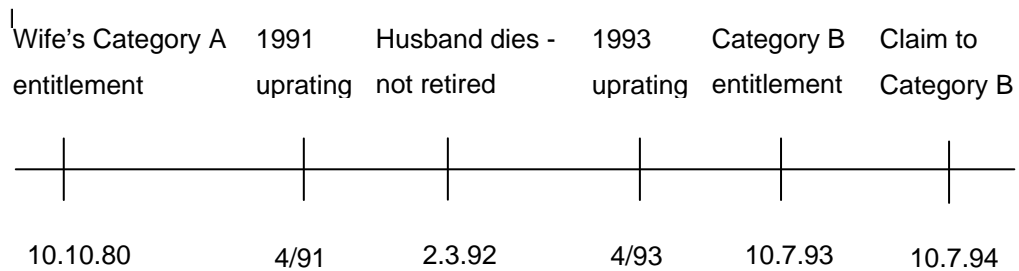
075960 Where a woman is widowed **after** pension age the restriction on the rate of Category B RP depends upon whether she was already entitled to

1. personal Category A RP (see DMG 075961) **or**
2. Category B RP as a married woman (see DMG 075962).

075961 Where a widow, widower or surviving civil partner was entitled to **Category A** RP and the spouse or civil partner was **not** entitled to RP, the rate of RP is restricted to the **later** of

1. the date the spouse or civil partner died or
2. the date on which the claimant ceased to be ordinarily resident in GB¹.

1 reg 5(3)(b) & (7)



Widow's Category B is restricted to 1991 uprating.

075962 Where a woman was entitled to married woman's **Category B** RP (see DMG 075963) when her husband died, the rate of Category B is restricted to the **later** of

1. the uprating that her married woman's Category B was restricted to or
2. the date on which she ceased to be ordinarily resident in GB¹.

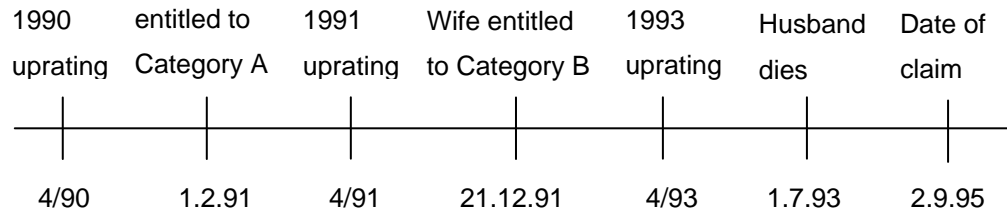
1 SS Ben (PA) Regs, reg 5(3)(b) & (7)

075963 The restriction in DMG 075962 applies

1. whether or not she was entitled to Category A RP before her husband died
2. where she was entitled to Category B RP but it was not being paid because she was receiving Category A RP **and**
3. where she was not entitled to Category B RP but would have been entitled had a claim been made¹.

1 reg 5(3)(a)

Example



Widow's Category B RP is restricted to the 4/90 uprating, the uprating before her husband became entitled to Category A RP.

Remarriage or formation of a civil partnership

075964 When a widow, widower or surviving civil partner, marries or forms a civil partnership the Category B RP in payment can no longer be restricted under the provision applying to surviving spouses or surviving civil partners¹, but is then subject to the general disqualification for the receipt of uprating increases² and therefore continues at the rate originally awarded.

1 SS Ben (PA) Regs, reg 5(3)(b); 2 reg 5(3)(c)

075965 - 075969

Category A increments - frozen rates

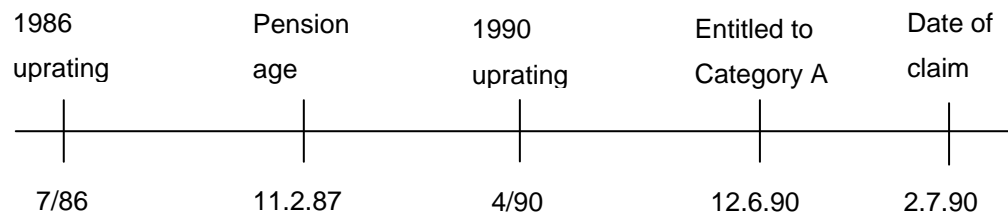
Category A RP

075970 Increments earned for deferred entitlement are restricted to the rate in force at the **later** of

1. the date on which entitlement to Category A RP starts **or**
2. the date on which ordinary residence in GB ends¹.

1 SS Ben (PA) Regs, reg 5(3)(c)

Example



Increments restricted to the 4/90 uprating, the uprating before entitlement to Category A RP (see DMG 075973).

075971 This applies to

1. Category A RP on own contributions alone (see DMG 075851 **Example 3.**)
2. Category A RP substituting the contributions of a dead or former spouse or civil partner¹ **and**
3. composite Category A RP entitlement as a widow, widower, surviving civil partner² or married woman³.

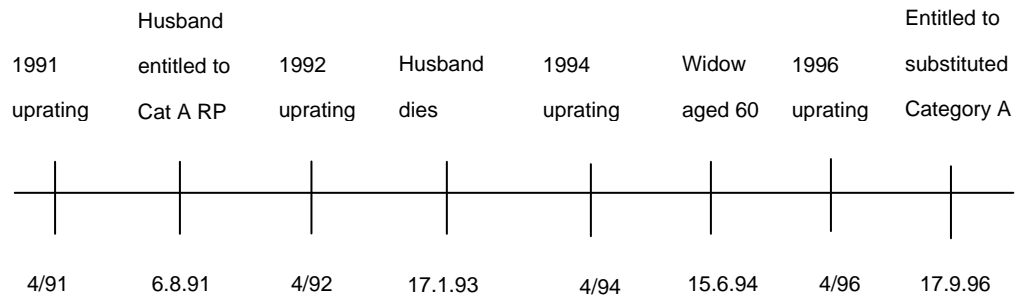
1 SS (WB & Retirement Pension) Regs, reg 8; 2 SS CB Act 92, s 52; 3 s 51(A)

Substituted Category A RP

075972 Increments may be restricted to a different uprating to the substituted Category A basic pension where a claimant is **not** ordinarily resident in GB and was previously entitled to

1. married woman's Category B RP (see DMG 075864) **or**
2. widow's/bereavement benefit (see DMG 075865).

Example



A married couple are both ordinarily resident outside of GB. He becomes entitled to Category A RP on 6.8.91, restricted to the 4/91 uprating. His widow is not entitled to Widow's Benefit. The widow is 60 on 15.6.94 but defers her entitlement and does not become entitled to Category A RP until 17.9.96, she is then entitled to

1. substituted Category A basic pension restricted to the rate set out in the 4/91 uprating, the uprating before he became entitled to Category A RP (see DMG 075865) **and**
2. increments for deferring entitlement to substituted Category A RP restricted to the rates in the 4/96 uprating.

Change in Category A entitlement

075973 A change in Category A entitlement, for example from personal Category A RP to substituted Category A, does not affect entitlement to increments. Increments remain restricted to the **later** of the date

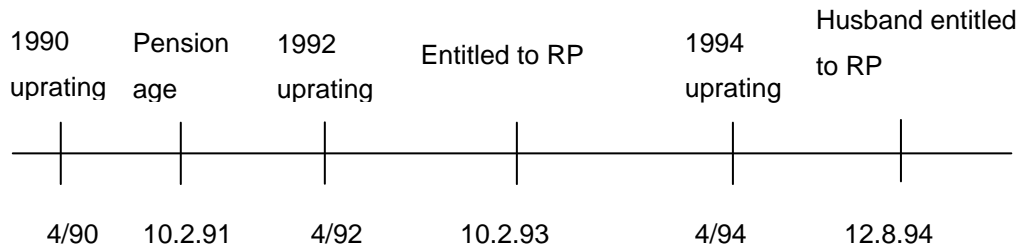
1. entitlement to Category A first arose **or**
2. ordinary residence in GB ended.

Increments on spouse's or civil partner's insurance

075974 Increments earned on the part of the composite Category A RP based on the spouse's or civil partner's insurance are not payable until he/she becomes entitled to Category A RP. Those increments are still restricted to the later of the date that the claimant

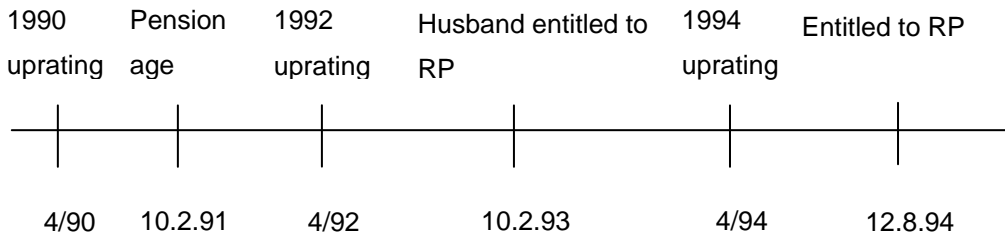
1. became entitled to Category A RP **or**
2. ceased to be ordinarily resident in GB.

Example 1 - Entitled to RP before husband



Increments on both Category A RP on her own record and the Category B element making up composite Category A RP are restricted to the 1992 uprating although the latter is not payable before 12.8.94.

Example 2 - Entitled to RP after husband



Increments on both Category A RP on own record and Category B element making up composite Category A RP restricted to the 1994 uprating.

075975 - 075979

Category B increments for married women - frozen rates

075980 A married woman who defers entitlement to Category B RP earns increments to that pension to the later of

1. the date her husband becomes entitled to Category A RP or, if earlier, reaches age 70 **or**
2. the date she becomes entitled to Category A RP or, if earlier, reaches age 65¹.

Note: that this can apply equally to married men and civil partners from 6.4.2010.

1 SS CB Act 92, Sch 5, para 8(1)

075981 Increments on Category B are restricted to the same uprating as personal Category B. That is the later of

1. the date of her husband's entitlement to Category A RP
2. the date he ceased to be ordinarily resident in GB **or**
3. the date she ceased to be ordinarily resident in GB¹.

1 SS Ben (PA) Regs, reg 5(3)(a)

Example



Increments are earned from 30.9.86 to 7.5.91 but are restricted to the 1990 uprating.

Category B RP - divorced after pension age

075982 A woman whose marriage ends after pension age is still entitled to Category B increments earned during the period of the marriage. These increments are payable with her Category A RP and are restricted to the rate in force at the **later** date

1. she ceases to be ordinarily resident in GB **or**
2. of the decree absolute or annulment or of entitlement to Category A RP¹.

1 reg 5(3)(c)

Category B RP - widow, widower, or surviving civil partner

075983 Category B increments earned by a widow, widower, or surviving civil partner on the contributions of a deceased spouse or civil partner, are restricted to the rate in force at the later of

1. the date of death **or**
2. the date the claimant ceased to be ordinarily resident in GB¹.

1 SS Ben (PA) Regs, reg 5(3)(b)

075984 Increments can only be earned where the claimant

1. is not receiving Widow's/Bereavement Benefit **or**
2. elects to be treated as not entitled to RP.

Example



Increments are restricted to the 1992 uprating, the uprating before the date of widowhood.

075985 - 075989

Inherited increments

Introduction

075990 The surviving spouse or civil partner is entitled to (inherits) the increments the late spouse or late civil partner

1. was receiving at the date of death **or**
2. would have been entitled to at the date of death¹.

1 SS CB Act 92, Sch 5, para 4(1) & (2)

075991 The rate of increments depends upon whether the

1. deceased spouse or civil partner was entitled to Category A RP at the date of death
2. inherited increments are added to Category A or Category B RP **and**
3. surviving spouse or civil partner defers entitlement to RP.

075992 DMG 075993 - 075994 gives guidance on the restrictions (freezing) of the rate of inherited increments.

Deceased spouse or deceased civil partner not entitled to Category A RP at date of death

075993 The surviving spouse or civil partner inherits the increments that the deceased spouse or civil partner would have been entitled to at the date of death¹.

1 Sch 5, para 2(5)

Deceased spouse or civil partner entitled to Category A RP at the date of death

075994 The surviving spouse or civil partner inherits the increments that the deceased spouse or civil partner was entitled to at the date of death¹. These are paid to the survivor at the same rate (including freezing) that they were paid to the deceased.

1 Sch 5, para 2(5)

075995 - 075999

Surviving spouse or civil partner defers entitlement

076000 If, after becoming entitled to inherited increments, the surviving spouse or civil partner defers entitlement, the rate of inherited increments is calculated as set out at

1. DMG 076001 for Category A RP **and**
2. DMG 076002 for Category B RP.

Category A RP

076001 If the inherited increments are paid with Category A RP they are increased by the upratings between

1. the date of death **and**
2. the date the surviving spouse or civil partner becomes entitled to RP¹.

1 SS Ben (PA) Regs, reg 5(3)(c)

Category B RP

076002 If the inherited increments are paid with Category B RP they are paid at the later of

1. the rate inherited at the date of death **or**
2. the rate which would have been payable on the date the surviving spouse or civil partner ceased to be ordinarily resident in GB¹.

1 reg 5(3)(b)

076003 - 076009

Surviving spouse or civil partner not entitled to Retirement Pension at date of death

076010 If the surviving spouse or civil partner was not entitled to RP at the date of the spouse's or civil partner's death, the rate of inherited increments paid at age 65 or 60 is calculated as in DMG 076001 and DMG 076002.

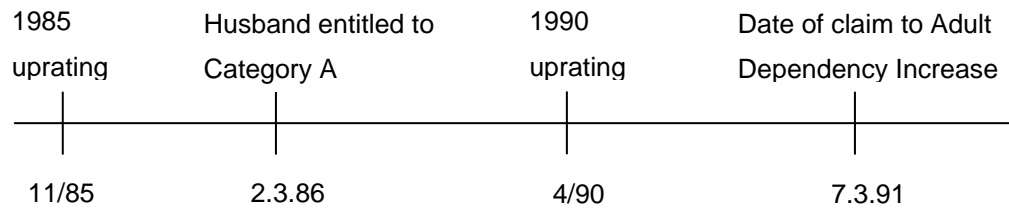
076011 - 076019

Dependency increases

General

076020 The rate of Adult Dependency Increases and CDIs are restricted to the same uprating as the personal entitlement of RP that they are paid with. It does not matter that entitlement to the increase started at a later date than the entitlement to the personal benefit.

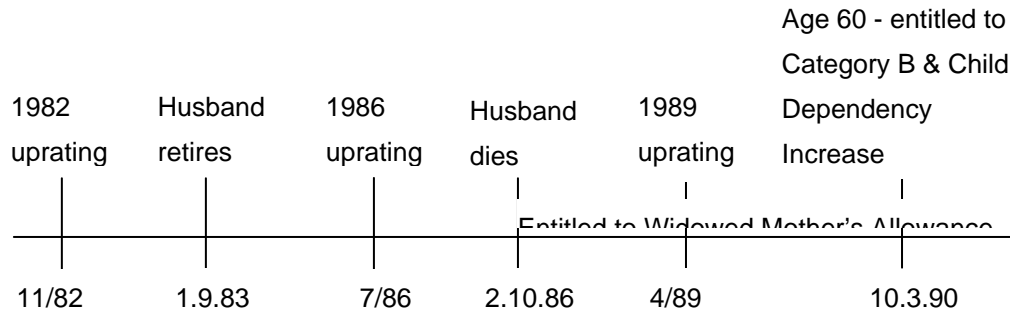
Example 1 - Adult Dependency Increase



A man becomes entitled to Category A RP on 2.3.86. The rate of that benefit is restricted to the 11/85 uprating. On 7.3.91 he claims an Adult Dependency Increase for his wife, which is awarded from that date.

Adult Dependency Increase restricted to the 1985 uprating.

Example 2 - Child Dependency Increase



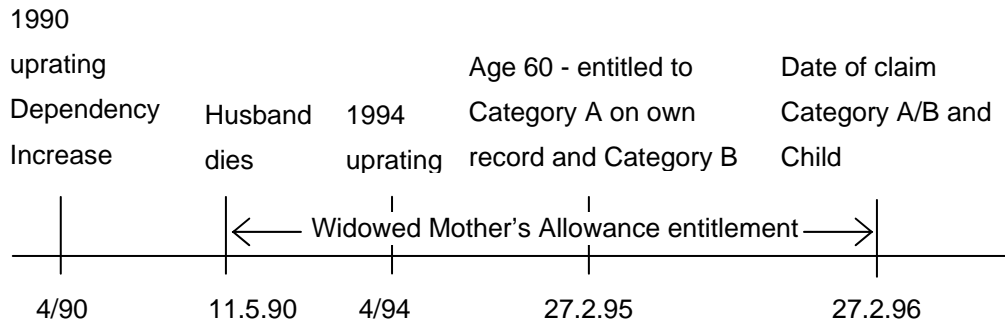
A man retires and becomes entitled to RP on 1.9.83. The rate of his Category A RP is restricted to the 11/82 uprating. On 2.10.86 he dies and his widow becomes entitled to Widowed Mother's Allowance. She reaches age 60 on 10.3.90 and on that date claims Category B RP and CDI.

The Category B RP is restricted to the same uprating as her husbands Category A RP, 11/82 (075850). The CDI is also restricted to the 11/82 uprating.

Composite Category A RP

076021 Where the personal rate of composite Category A RP is restricted to more than one uprating order (see DMG 075880), the dependency increase is restricted to the same uprating order as that part of the Category A based on the claimant's own contributions.

Example



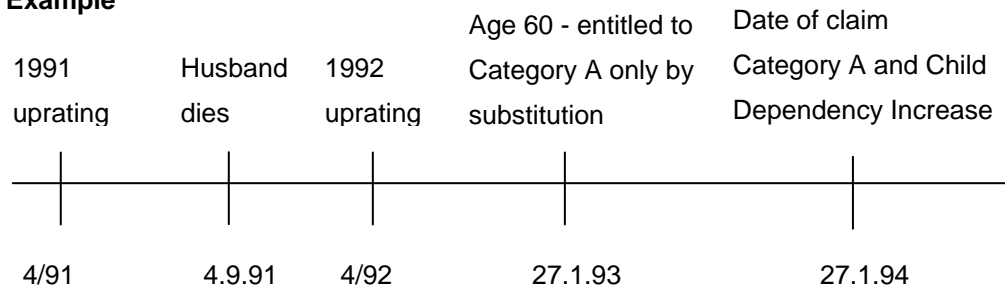
A woman reaches age 60 on 27.2.95 and is entitled to both Category A on her contributions and Category B RP. The CDI is restricted to the same uprating as the Category A part of her entitlement, the 4/94 uprating.

Entitled to personal and substituted Category A RP

076022 The dependency increase is restricted to the same uprating order as the personal benefit which is actually paid where there is possible entitlement to Category A

1. on a person's own contributions **and**
2. by substituting the contributions of a former spouse or former civil partner.

Example



A woman reaches age 60 on 27.1.93 and claims RP and CDI. She has entitlement to Category A RP on her own contributions and also to substituted Category A. Because the substituted Category A is at a higher rate that is the benefit she is awarded. That award is restricted to 4/91 uprating. The CDI is restricted to the same uprating, 4/91.

Visits to Great Britain

076023 The rate of the ADI or CDI is **not** increased where

1. the dependant **visits** or becomes ordinarily resident in GB **and**
2. the person entitled to the increase remains absent from and ordinarily resident outside of GB.

076024 For an increased rate of ADI or CDI to be paid the person entitled to the increase must visit (see DMG 075796) or become ordinarily resident in GB or a country with which the UK has an agreement allowing the rate of RP to be increased (see DMG 075831).

Example

A man and his wife leave GB permanently on 6.8.87. He was entitled to Category A RP and an increase for his wife who is under pension age. The rate of personal Category A and the ADI are both frozen at the 4/87 uprating. From 17.12.90 to 17.1.91 she visits GB but he remains outside of GB. The rate of ADI remains frozen to the 4/87 uprating.

From 21.2.94 to 26.3.94 both of them visit GB. During that visit (see DMG 075796) the rate of personal RP and the ADI are increased to the amounts set out in the 4/93 uprating.

Dependent wife becomes entitled to Category B RP

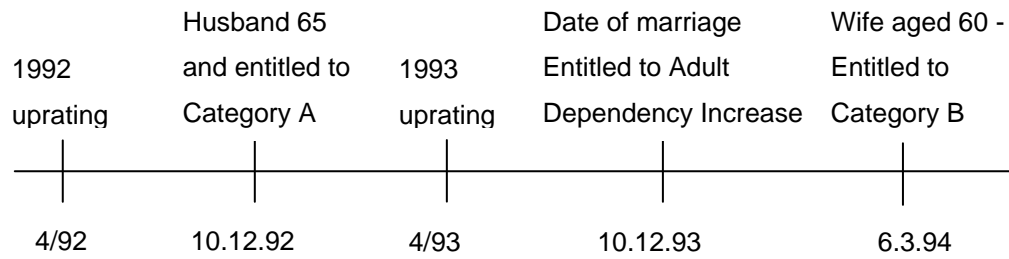
076025 The rate of Category B will normally be restricted to the same uprating as the ADI being paid for her.

076026 The rate of Category B RP will **not** be restricted to the same uprating as the ADI where

1. she is entitled to Category B RP **before 6.8.94 and**
2. her date of marriage is after her husband became entitled to Category A RP.

Note: this can apply equally to married men and civil partners from 6.4.2010.

Example



The husband's Category A RP and the Adult Dependency Increase are restricted to the 4/92 uprating. Her Category B RP is restricted to the uprating before their date of marriage, 4/93 (see DMG 075933).

076027 - 076029

Age addition

Absence from Great Britain

076030 A person who is absent from GB is **not** disqualified for receiving age addition¹ if in Sark² or if **one** of the following conditions is satisfied (see DMG 076031 - DMG 076035).

1 SS CB Act 92, s 79; 2 SS Ben (PA) Regs, reg 12(1)

Is ordinarily resident in Great Britain

076031 A person who is ordinarily resident (see DMG 070769) in GB is **not** disqualified for receiving age addition¹.

1 reg 8(1)(a)

Was ordinarily resident in Great Britain

076032 A person is not disqualified for being absent from GB if that person **was**

1. ordinarily resident in GB **and**
2. entitled to age addition before ceasing to be ordinarily resident in GB¹.

1 reg 8(1)(b)

Residence stopped before 20.9.71

076033 A person is not disqualified for being absent from GB if

1. that person stopped being ordinarily resident in GB before 20.9.71
2. that person is entitled to RP of any category **and**
3. the rate of that RP is **not** frozen because that person is in a country with which the UK has an agreement which allows the rate of RP to be increased¹ (see DMG 075831).

1 reg 8(1)(c)

Residence stopped on or after 20.9.71

076034 A person is not disqualified for being absent from GB if

1. that person stopped being ordinarily resident in GB **on or after** 20.9.71
2. that person is entitled to RP of any category **and**
3. if ordinary residence had ended before 20.9.71, the rate of RP would **not** have been frozen because that person was in a country with which the UK has an agreement which allows the rate of RP to be increased¹ (see DMG 075831).

1 SS Ben (PA) Regs, reg 8(1)(d)

Social Security agreements

076035 A person can only escape disqualification in DMG 076033 and 076034 if a Social Security agreement was in force before 20.9.71 and provided for unfreezing at the relevant date.

Insured in another country

076036 Age addition is treated as an increase of RP where RP entitlement is calculated by using insurance in another EEA country or a country with which the UK has an agreement and therefore should be pro rated.

076037 - 076039

Pro rata Retirement Pension

Introduction

076040 A person may be entitled to pro rata Category A and Category B RP where that person is not entitled to RP under GB legislation alone or the rate of pro rata RP is higher than the rate paid under GB legislation alone **and**

- that person was insured in the UK **and either** another EEA country (070040) **or** a country with which the UK has an agreement (076120).

076041 - 076049

Pro rata Retirement Pension under European Community provisions

General

076050 [\[See Memo DMG 32/10\]](#) A person may be entitled to pro rata Category A or Category B¹ RP where

1. that person is within the personal scope of EC provisions² (see DMG 070050)
or
2. that person's spouse or civil partner is within the personal scope of EC provisions **and**
3. UK contributions have been paid **and**
 - 3.1 contributions, which count for RP, have been paid in another EEA country **or**
 - 3.2 has been resident in another EEA country and that residence counts for benefit purposes.

1 Council Reg (EEC) 1408/71, Annex VI, Point O, para 2; 2 Art 2(1)

076051 Where residence in another EEA country is used for a person to become entitled to Category C or D RP, those benefits may also be paid at a pro rata rate (see DMG 075770 - 075771).

076052 A person's entitlement to RP may consist of

1. basic pension (Category A or B) (see DMG 076060)
2. additional pension (see DMG 076064)
3. graduated Retirement Benefit (see DMG 076065)
4. Adult Dependency Increase (see DMG 076066) **and**
5. Child Dependency Increase (see DMG 076067).

076053 The basic pension and any ADI can be paid at pro rata rate. After calculating the pro rata rates any entitlement to

1. additional pension
2. graduated Retirement Benefit **and**
3. Child Dependency Increase

must be added.

Note: CDIs are family benefits (see DMG 070165).

076054 Although theoretically additional pension can be paid at pro rata rate, in practice pro rata additional pension is never paid¹.

1 Annex VI, O, para 15

076055 - 076059

Rate of Retirement Pension

Basic pension

076060 The rate of RP paid to a person who satisfies the conditions in 076050 can be paid in two different ways (076062 - 076063). The higher of the two rates is payable¹.

1 Reg (EEuropean Community) 1408/71, Art 46(3)

076061 The calculation set out in method 2 (076063) does not have to be made where the rate of RP using that method is **equal to** or **lower** than the rate of RP under method 1 (076064)¹. This applies to all RP claims except where a person has been insured, employed or resident in the UK and another EEA country in any one year since 6.4.75².

1 Art 46(1)(b); 2 Annex IV, C, Point O

Method 1

076062 The decision maker should first calculate the basic component of RP to which, if any, the claimant would be entitled under UK legislation alone. Disregard any insurance or residence completed under the legislation of any other EEA country. This is the rate of RP to be awarded unless the rate calculated under 076063 is higher.

Method 2 - pro rata

076063 The rate of RP is calculated in three stages.

Stage 1 - Addition

Add together all the periods of insurance (or residence, if entitlement in that country depends on periods of residence) in all the EEA countries where the person was insured and treat them as periods of insurance completed in the UK¹.

Stage 2 - Theoretical rate of Retirement Pension

Calculate the theoretical amount of RP which would be payable if all the insurance added together in Stage 1 had been paid in the UK². The theoretical rate of RP must be at least 25% of the standard rate. If not no further calculation is necessary.

Stage 3 - Actual rate of Retirement Pension

The purpose of the calculation of the actual rate of RP is to decide the amount to be paid by each of the EEA countries where the person was insured³.

The rate of RP to be paid by the UK is⁴

Periods of UK insurance x theoretical rate

Total insurance

Example

A man was insured in Germany for 1450 weeks and in the UK for 200 weeks. The total insurance is 1650 weeks.

If all that insurance had been paid in the UK, he would be entitled to RP at 75% of the standard rate. At April 1994 figures this is £43.20.

The actual rate to be paid by the UK is

200 (UK insurance) x £43.20 (theoretical amount)

1650 (total insurance)

That is £5.24.

*1 Reg (EEuropean Community) 1408/71, Art 45(1); 2 Art 46(2)(a); 3 Case 793/79 Meuzies;
4 Reg (EEuropean Community) 1408/71, Art 46(2); R(S) 3/85*

076064 The pro rata rate of RP can be paid even though that rate is less than 25% of the UK standard rate¹.

1 SS (WB & Retirement Pension) Regs, reg 6(1)

Graduated Retirement Benefit

076065 Graduated Retirement Benefit is **not** included in the pro rata calculation. Any entitlement to graduated Retirement Benefit is added to the pro rata RP entitlement¹.

1 NI Act 65, sec 36-37; SS (GRB) (No 2) Regs 78, Sch 1; Reg (EEuropean Community) 1408/71, Annex VI, Point O, para 8

Adult Dependency Increase

076066 Adult Dependency Increase¹ is paid at the same pro rata rate as the basic pension² (076063).

1 SS CB Act 92, sec 83-86; 2 Reg (EEuropean Community) 1408/71, Art 47(3)

Child dependency increase

076067 A Child Dependency Increase is a family benefit (070165). It is **not** paid at pro rata rate. If a person satisfies the conditions for entitlement to a Child Dependency Increase that entitlement is at full rate.

076068 - 076079

Pro rata - insurance

Different pension ages in European Economic Area countries

- 076080 Because EEA countries have different ages for entitlement to old age benefits a person may become entitled to an old age benefit in one EEA country before reaching the minimum age for entitlement in another EEA country where insurance has been paid. In this situation a person who was incapable of work before pension age may be entitled to pro rata invalidity benefits (long term Incapacity Benefit in the UK). See 075610 This may occur where the other EEA country has a lower age for entitlement to old age benefits than the UK.
- 076081 A list of the countries with lower ages than the UK for entitlement to old age benefits is set out at 074164.

Insured in one country for less than one year

- 076082 [\[See Memo DMG 32/10\]](#) An award of pro rata RP need not be made if
1. the period of insurance (or residence) in that country is less than one year (but see 076083) **and**
 2. that insurance does not satisfy the conditions for entitlement to RP¹.
- 1 Reg (EEuropean Community) 1408/71, Art 48(1)*
- 076083 Insurance periods of less than a year (076084) are included in
1. adding together all periods of insurance (076063 Stage 1) **and**
 2. calculating the theoretical amount¹ (076063 Stage 2).
- They are not included in deciding the pro rata rate of RP (076063 Stage 3).

1 Art 48(2)

Not insured in any country for one year

076084 The total insurance of a person from all the countries in which that person has been insured is treated as being completed in the country in which the person was last insured if

1. that person has not been insured for one year in any country **and**
2. RP would not be awarded in any country¹.

1 Reg (EEuropean Community) 1408/71, Art 48(3)

076085 That person is entitled to UK RP if

1. they were last insured in the UK **and**
2. the total insurance (076063 Stage 2) satisfies the contribution conditions for entitlement to UK RP.

076086 - 076099

Up-rating of pro rata

076100 The pro rata fraction is not recalculated when the rates of benefit are increased¹.
But the rate of RP is increased.

1 Reg (EEuropean Community) 1408/71, Art 51(1)

Example

On becoming entitled to UK RP the pro rata fraction was calculated to be 200/1650 (076063 Stage 2). This meant that the actual rate of UK RP was £5.24. At the next general up-rating of benefit rates in April 1995 the full rate of RP was increased from £57.60 to £58.85. Based on entitlement to RP at 75% of the standard rate, the **theoretical** amount increases to £44.14. The pro rata fraction remains the same but the **actual** rate being paid increases from £5.24 to £5.35.

The new calculation of the actual rate of RP is

200 (UK insurance) x £44.14 (theoretical amount)
1650 (total insurance)

That is £5.35.

076101 - 076109

Not entitled to Retirement Pension in all European Economic Area countries

076110 A person may not be entitled to RP from every EEA country in which insurance has been paid. For example, EEA countries have different ages at which a person becomes entitled to old age benefits. See DMG 074160 where the person is incapable before age 65.

076111 The rate of pro rata RP is calculated by deciding which of the following are better for the claimant

1. using the insurance (or residence) only from those countries where the conditions for entitlement to RP are satisfied **or**
2. using the insurance (or residence) from all the EEA countries where the person has been insured¹.

1 Reg (EEC) 1408/71, Art 49(1)

Example

A person has been insured for 15 years in the UK, 10 years in Germany and 5 years in Denmark. The pension age in the UK and Germany is 65 but in Denmark it is 67. If the residence in Denmark was ignored the pro rata fraction would be 15/25. If it is included the pro rata fraction is 15/30. The claimant is better off if Danish residence is excluded, therefore the pro rata fraction is 15/25.

076112 - 076119

Pro rata Retirement Pension under reciprocal agreements

Agreements with non-European Economic Area countries

076120 A person may be entitled to pro rata RP where that person has been insured in both the UK and one of the following non-EEA countries

- Barbados¹
- Bermuda²
- Cyprus³
- Israel⁴
- Jamaica⁵
- Jersey and Guernsey⁶
- Malta⁷
- Mauritius⁸
- Philippines⁹
- Switzerland¹⁰
- Turkey¹¹
- United States of America¹²
- Yugoslavia¹³ (070334).

1 SS (Barbados) Order 92, Sch, Art 16; 2 NI & II (Bermuda) Order 69, Sch, Art 11(1)(b);

3 SS (Cyprus) Order 83, Sch, Art 17(2); 4 NI & II (Israel) Order 57, Sch, Art 12(2);

5 SS (Jamaica) Order 97, Sch, Art 15; 6 SS (Jersey & Guernsey) Order 94, Sch, Art 18(2);

7 SS (Malta) Order 96, Sch, Art 19; 8 SS (Mauritius) Order 81, Sch 1, Art 12(2);

9 SS (Philippines) Order 89, Sch, Art 12(2); 10 FA, NI & II (Switzerland) Order 69, Sch 1, Art 12(1);

11 NI & II (Turkey) Order 61, Sch, Art 14(3); 12 SS (USA) Order 84, Sch 1, Art 11(2);

13 FA, NI & II (Yugoslavia) Order 58, Sch, Art 19(3)

Agreements with European Economic Area countries

076121 A person may be entitled to pro rata RP where that person

- is not within the scope of European Community provisions or acquired a right to benefit before European Community provisions applied (070200) **and**
- has been insured in both the UK and one of the EEA countries listed in 076122.

076122 Pro rata RP can be paid under the agreements with the following EEA countries

- Austria¹
- Finland²
- Germany³
- Iceland⁴
- Norway⁵
- Portugal⁶
- Spain⁷ **and**
- Sweden⁸.

*1 SS (Austria) Order 81, Sch, Art 17(1); 2 SS (Finland) Order 84, Sch 1, Art 16(2);
3 FA, NI & II (Germany) Order 61, Sch 1, Art 20(3); 4 SS (Iceland) Order 85, Sch, Art 16;
5 SS (Norway) Order 81, Sch, Art 18; 6 SS (Portugal) Order 79, Sch, Art 16;
7 FA, NI & II (Spain) Order 75, Sch, Art 16; 8 SS (Sweden) Order 88, Sch, Art 15*

Entitled to Retirement Pension without using agreement

076123 A person is **not** entitled to UK pro rata RP under the agreements with the countries set out in 076124 if that person is entitled to RP from the UK without using the agreement. A married woman's RP on her husband's insurance is not included when considering whether a person is entitled to UK RP. This applies to all of the countries listed at 076124 except Bermuda, Jamaica, Portugal and Switzerland.

076124 076123 applies to the agreements with

- Austria¹
- Barbados²
- Bermuda³
- Cyprus⁴
- Finland⁵
- Iceland⁶
- Israel⁷
- Jamaica⁸
- Jersey and Guernsey⁹
- Malta¹⁰
- Mauritius¹¹
- Norway¹²
- Philippines¹³
- Portugal¹⁴
- Sweden¹⁵
- Switzerland¹⁶ **and**
- United States of America¹⁷.

*1 SS (Austria) Order 81, Sch, Art 16; 2 SS (Barbados) Order 92, Sch, Art 15(1);
3 NI & II (Bermuda) Order 69, Sch, Art 11(5); 4 SS (Cyprus) Order 83, Sch, Art 16(1);
5 SS (Finland) Order 84, Sch 1, Art 15; 6 SS (Iceland) Order 85, Sch, Art 15;
7 NI & II (Israel) Order 57, Sch, Art 11(1); 8 SS (Jamaica) Order 97, Sch, Art 14(1);
9 SS (Jersey & Guernsey) Order 94, Sch, Art 17(1); 10 SS (Malta) Order 96, Sch, Art 18;
11 SS (Mauritius) Order 81, Sch 1, Art 11(1); 12 SS (Norway) Order 81, Sch, Art 17;
13 SS (Philippines) Order 89, Sch, Art 11(1); 14 SS (Portugal) Order 79, Sch, Art 16;
15 SS (Sweden) Order 88, Sch, Art 14; 16 FA, NI & II (Switzerland) Order 69, Sch 1, Art 12(3)(c);
17 SS (USA) Order 84, Sch 1, Art 10(1)*

Choosing not to use an agreement

076125 A person can choose **not** to use the provisions of the agreements between the UK and Turkey¹ or Yugoslavia² (070334) in establishing entitlement to RP.

1 NI & II (Turkey) Order 61, Sch, Art 16; 2 FA, NI & II (Yugoslavia) Order 58, Sch, Art 21

076126 A person who decides not to use the provisions of the agreement will not be entitled to pro rata RP.

Rate of Retirement Pension

076127 Although agreements may differ on what contributions are included, the pro rata formula is the same as under European Community provisions (076063). A separate pro rata calculation is needed if the person was insured in more than one of the countries listed in 076128. The higher pro rata rate of RP would then be paid. The uprating of the rate of RP is also the same as under European Community provisions (076100).

Graduated Retirement Benefit

076128 Graduated Retirement Benefit **is** included in the pro rata calculation in the agreements with

- Turkey **and**
- Yugoslavia (070334).

076129 Except for the agreements in 076128 graduated Retirement Benefit is **not** included in the pro rata calculation. Any entitlement to graduated Retirement Benefit is added to the pro rata RP entitlement.

Adult Dependency Increases

076130 Adult Dependency Increase is paid at the same pro rata rate as the basic pension (076063).

Child Dependency Increases

076131 The rate of Child Dependency Increase is also paid at pro rata rate where the basic pension is paid at pro rata rate under the agreements with

- Barbados
- Bermuda
- Cyprus
- Israel
- Jamaica
- Jersey/Guernsey
- Malta
- Switzerland
- Turkey **and**
- Yugoslavia (070334).

Example

A person is entitled to pro rata RP under the Agreement with Bermuda. That person is also entitled to graduated Retirement Benefit, an Adult Dependency Increase and Child Dependency Increase. RP entitlement is made up of

- pro rata basic RP
- graduated Retirement Benefit at **full** rate of entitlement
- pro rata Adult Dependency Increase
- pro rata Child Dependency Increase.

076132 Child Dependency Increase is **not** paid at pro rata rate under the agreements with

- Mauritius¹
- Philippines² **and**
- United States of America³

under these agreements the **full rate** of any Child Dependency Increase to which the person is entitled is added to the pro rata rate of basic pension.

*1 SS (Mauritius) Order 81, Sch 1, Art 12(5)(e); 2 SS (Philippines) Order 89, Sch, Art 12(4)(d);
3 SS (USA) Order 84, Sch 1, Art 11(6)*

Insured for less than one year

076133 If the person was insured for less than one year in the UK that insurance is treated as paid to the other country (076134). This applies to the agreements with the following countries

- Barbados¹
- Cyprus²
- Jamaica³
- Jersey and Guernsey⁴
- Malta⁵
- Mauritius⁶ **and**
- Philippines⁷.

*1 SS (Barbados) Order 92, Sch, Art 16(3); 2 SS (Cyprus) Order 83, Sch, Art 17(3);
3 SS (Jamaica) Order 97, Sch, Art 15(3); 4 SS (Jersey & Guernsey) Order 94, Sch, Art 18(3);
5 SS (Malta) Order 96, Sch, Art 15; 6 SS (Mauritius) Order 81, Sch 1, Art 12(3);
7 SS (Philippines) Order 89, Sch, Art 12(3)*

076134 In the agreements with Barbados and Cyprus insurance is transferred between GB and Jersey or Guernsey. If there is still no entitlement to RP the insurance is transferred to the other country.

Insured for less than six months

076135 Contributions and credits paid to the UK are treated as being paid to **Yugoslavia** where the person was insured

- in both the UK and Yugoslavia **and**
- for less than six months in the UK¹.

1 FA, NI & II (Yugoslavia) Order 58, Sch, Art 19(4)

076136 Pro rata RP is not paid by the UK where

- the person was insured in both the UK and **Turkey and**
- paid less than six months contributions in the UK¹.

1 NI & II (Turkey) Order 61, Sch, Art 14(4)

076137 - 076139

Canada and New Zealand

Entitlement to RP

076140 A person who is entitled to RP because residence in Canada or New Zealand has been taken into account under these agreements remains entitled whilst permanently resident (see DMG 076142) in the UK¹.

1 SS (Canada) Order 95, Sch 1, Art 11; SS (New Zealand) Order 83, Sch, Art 1(1) & 9(6)

End of entitlement to increased RP

076141 Entitlement to the **increased** rate of RP ends where

1. a person is entitled to RP because of the agreement, **and**
2. that person is no longer permanently resident (see DMG 076142) in the UK (see DMG 070870)¹.

That person remains entitled to any RP based only on their UK record.

1 SS (Canada) Order 95, Sch 1, Art 11; SS (New Zealand) Order 83, Sch, Art 1(1) & 11(4)

Example

A person moves from Canada to the UK. By using Canadian residence entitlement is increased from 60% based on UK insurance alone to 75%. That person later leaves the UK to live permanently in Spain. As a result the rate of RP is reduced to 60%.

Permanently and ordinarily resident

076142 The DM decides whether a person is resident in the UK.

076143

076144 Under the Canada and New Zealand agreements a person is permanently resident in the UK if¹

1. that person is ordinarily resident (see DMG 070769) in the UK **and**
2. the absence from the UK is only temporary² (see DMG 070853).

1 SS (Canada) Order 95, Sch 1, Art 11; SS (New Zealand) Order 83, Sch, Art 1(1)(s); 2 Art 11(4)

In another European Economic Area country

076145 Entitlement to the increased rate of RP based on residence in Canada or New Zealand ends even though the person is resident in another EEA country¹.

1 Reg (EEC) 1408/71, Annex VI, S O, para 7; R(P) 3/96

076146 - 076149

Overlap under reciprocal agreements

Introduction

076150 UK provisions do **not** provide for UK RP to be adjusted where RP is also being paid by a country with which the UK has an agreement.

076151 RP paid on a pro rata basis is **not** adjusted because it overlaps with pro rata RP paid by the other country. Each country will pay

1. pro rata RP **or**
2. if higher, the rate payable under its own legislation.

076152 The countries with which the UK has agreed to pay pro rata RP are listed at DMG 076120. Pro rata RP is **not** paid under the agreements with

1. Canada **and**
2. New Zealand.

076153

Isle of Man and Northern Ireland

076154 RP is paid only by the territory where the person is residing. A person who has paid contributions in GB, Isle of Man or Northern Ireland has only one contribution record. That record is transferred if the person moves to live in another territory¹.

1 SS (I of M) Order 77, Sch 1, Art 3 & 4; SS (N Ireland reciprocal arrangements) Regs 76, Sch 1, Art 4 & 5

076155 - 076959

The content of the examples in this document (including use of imagery) is for illustrative purposes only

