

Part 4 - Incapacity Benefit to Industrial Injuries Benefit

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Chapter 07 - Part 4 - Incapacity benefit to industrial injuries benefit

European legislation referred to in Chapter 07 - Part 4

Full title	Abbreviation
Council Regulation (EEC) No. 1408/71	Reg (EEC) 1408/71
Council Regulation (EEC) No. 574/72	Reg (EEC) 574/72

Agreements referred to in Chapter 07 – Part 4

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
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
Ireland	The National Insurance (Republic of Ireland) Order 1960 No. 707	NI & II (Republic of Ireland) Order 60
	National Insurance (Republic of Ireland) Order 1966 No. 270	NI (Rep I) Order 66
Isle of Man	The Social Security (Isle of Man) Order 1977 No. 2150	SS (I of M) Order 77
	The Child Benefit (Isle of Man) Order 1977 No. 593	CHB (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 No. 1003	SS (N Ireland Reciprocal Arrangements) 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 69
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 1997 No. 1778	SS (USA) Order 97
	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 Incapacity Benefit

073780 This section contains guidance on

1. the residence and presence conditions for entitlement to IB (see DMG 073782)
2. the use of insurance paid in other countries to help satisfy the contribution conditions for entitlement to IBST (see DMG 073781)
3. deciding incapacity for work where a person is in another EEA country (see DMG 073800)
4. the disqualification of IB where a person is outside of GB (see DMG 073810)
5. types of invalidity benefit paid under EC provisions (see DMG 074080)
6. the rate of IBLT where a person has been insured in the UK and another EEA country (see DMG 073861 and 074130) or a country with which the UK has a Social Security agreement (see DMG 074190) **and**
7. the use of benefits paid by other countries with which the UK has an agreement to satisfy the qualifying period for entitlement to IBLT (see DMG 074200).

073781 ESA was introduced for new claimants on 27.10.08. ESA(Cont) replaced IB, and ESA(IR) replaced IS on grounds of disability. Guidance on residence and presence conditions for ESA is in Part 2 of Chapter 7 of the DMG. However, that part refers back to this IB guidance when considering entitlement to ESA(Cont) under European law. ESA(Cont) is treated as a sickness benefit during the assessment phase, and thereafter it is treated as an invalidity benefit.

Types of European Community Invalidity Benefit

073782 Where a person has been insured in two or more EEA countries that person may be entitled to invalidity benefit (see DMG 073852) from all the countries where insurance has been paid. This is called pro rata invalidity benefit (see DMG 074130).

A person may also be entitled to pro rata invalidity benefit where that person was insured in both the UK and a country with which the UK has a Social Security agreement.

Residence and presence conditions

073783 A person does not have to satisfy any residence or presence conditions to become entitled to IB, except where the claim is under the youth provisions¹.

¹ I SS CB Act 92 s. 30A(2A)

073784 For IB (Youth provision) a claimant must satisfy prescribed conditions of residence and presence in GB on any day included in the claim¹. Claimants must

1. be ordinarily resident in GB (see DMG 070769) **and**
2. not be subject to immigration control (see DMG 070831) **and**
3. be present in GB (see DMG 070795) **and**
4. have been present in GB for a period of (or periods totalling) not less than 26 weeks in the previous 52 weeks.

1 SS (IB) Regs, 94, reg 16(1)

Treating a day of absence as a day of residence or presence

073785 Claimants to IB (Youth provision) who are absent from GB on any day should, for the purposes of the residence or presence tests in DMG 073783 be treated as being resident or present¹ if on that day they are abroad **only** because they are

1. serving members of the forces (see DMG 078060 - 078185) **or**
2. aircrew or mariners (see DMG 078060 - 078185) **or**
3. in prescribed employment on the continental shelf (see DMG 078060 - 078185) **or**
4. living with a serving member of the forces and are that person's spouse or civil partner, son, daughter, father, father-in-law, mother or mother-in-law.

Note: References to 'in-laws' are to be read as including relationships arising through civil partnerships².

1 reg 16(4); 2 CP Act 04, s 246

073786 - 073789

Contribution conditions

Introduction

073790 To satisfy the contribution conditions for entitlement to IBST a person may rely on

1. EC provisions (see DMG 073781 - 073782) **or**
2. a reciprocal agreement with another country (see DMG 073793).

European Community provisions

073791 Periods of insurance, employment or residence in another EEA country may be used¹ to help satisfy the contribution conditions for entitlement to IBST² if a person is

1. within the scope of EC provisions (see DMG 070020) **and**
2. not entitled by using the UK record alone.

*1 Reg (EEC) 1408/71, Art 18(1); R(S) 13/83; Case 150/82, Coppola v Insurance Officer;
2 SS CB Act 92, Sch 3, para 2(2) & (3)*

073792 The Secretary of State decides whether the contribution conditions are satisfied, including any related questions¹. The decision maker decides

1. the date of claim **and**
2. other related questions².

*1 SS Act 98, s 10A; Scrivner v CAO [1990] 1 CMLR 637;
S of S v Scully [1992] 4 ALL ER 1; 2 SS (C&P) Regs*

Reciprocal agreements

073793 [\[See memo DMG 1/17\]](#) The provisions of reciprocal agreements may also help a person satisfy the contribution conditions for entitlement to IBST. The guidance in DMG 073792 also applies to reciprocal agreements. The various reciprocal agreements with provisions on IB were not extended or amended to include ESA. Thus ESA(Cont) is not covered by any reciprocal agreement.

073794 - 073799

Incapable of work in another European Economic Area country

073800 A person's incapacity for work¹ must be decided in accordance with UK criteria². A person who claims an incapacity benefit in another EEA country must **either**

1. provide a certificate of incapacity for work issued by the doctor providing treatment³ **or**
2. if doctors in that country do not provide certificates, notify the SS institution of that country so that a medical examination can be arranged. The medical report should specify the probable period of incapacity⁴.

Any further medical examinations will be undertaken as if the claimant were insured in that country⁵.

*1 SS CB Act 92, sec 171A-G; 2 R(S) 3/82; R(S) 13/83; Case 150/82, Coppolla v Insurance Officer;
3 Reg (EEC) 574/72, Art 18(1) & 24; 4 Art 18(2), (3) & 24; 5 Art 18(4) & 24*

073801 If there is doubt about a person's incapacity whilst residing in another EEA country, the authorities in that country may be required to examine that person and provide a medical report¹. Where a person has **not** been examined by a doctor chosen by the UK, the decision maker is bound by the **medical** (see DMG 073802) findings made by the institution where the person is **either**

1. resident **or**
2. staying².

1 Art 51 & 72; 2 Case 45/90, Paletta and Others v Brennet AG

073802 Although the decision maker must take into account the **medical** findings of another member state, entitlement to IB is decided by applying UK law.

073803 In some EEA countries incapacity for work is assessed as a percentage. For example, although working, a person's incapacity may be assessed as 45%¹. There is no direct link between another country's assessment of incapacity as a percentage and incapacity for work in UK legislation.

1 R(S) 9/81; R(S) 13/83; Case 150/82, Coppolla v Insurance Officer

Example 1

A person assessed at less than 100% incapacity in another EEA country could be accepted as incapable of work in the UK¹.

Example 2

Another person assessed as 100% incapable in another EEA country may not be accepted as incapable of work for UK purposes².

1 R(S) 11/51; R(S) 7/60; 2 R(S) 9/81

073804 An award or disallowance in another EEA country is not binding on the DM¹.

1 R(S) 3/82

073805 - 073809

Disqualified for being absent from Great Britain

073810 A person is disqualified¹ for receiving IB whilst absent from GB unless the conditions for avoiding disqualification are satisfied.

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

073811 A person is **not** disqualified for being absent from GB if the

1. conditions in DMG 073820 are satisfied¹
2. absence is in another EEA country (see DMG 073860 and 073900)
3. person is in a country with which the UK has a social security agreement which provides for the continued payment of IB (see DMG 073910) **or**
4. person is in Sark².

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

073812 The DM can give a decision in advance of the absence either disqualifying or not disqualifying a person for receiving IB (see DMG 070644).

073813 - 073819

Avoiding disqualification under United Kingdom provisions

Introduction

073820 A person is not disqualified¹ for being absent from GB if

1. the absence is temporary² (see DMG 070853), **and**
2. the Secretary of State has certified (see DMG 073839) that, providing one of the conditions in DMG 073821 is satisfied, the person should not be disqualified³.

1 SS CB Act 92, s 113(1)(a); 2 SS Ben (PA) Regs, reg 2(1); 3 reg 2(1)(a)

073821 To avoid disqualification the person must also satisfy one of the following conditions.

- **Absent for treatment**

The absence is for the specific purpose of being treated for an incapacity which started before the person left GB¹ (see DMG 070651).

- **Personal injury at work**

The absence is for the specific purpose of receiving treatment² for an injury which resulted from an accident during an employed earner's employment³. The accident must have happened after 4.7.48.

- **Incapable for six months before leaving GB**

When the absence started the person was incapable of work, had been continuously incapable of work for the previous six months (see DMG 073834) and has remained continuously incapable since leaving GB⁴.

1 SS Ben (PA) Regs, reg 2(1)(b); 2 reg 2(1)(bb); 3 SS CB Act 92, s 94(1); 4 SS Ben (PA) Regs, reg 2(1)(c)

073822 A person who is **not** incapable of work before leaving GB can only escape disqualification if

1. the incapacity results from a personal injury at work (see DMG 073821), **or**
2. the absence is in another EEA country (see DMG 073823) or a country with which the UK has an Agreement (see DMG 070330 - 070333).

Period for which benefit can be paid

073823 Where all the other conditions are satisfied, and the absence began on or after 8.3.94, payment can continue whilst the claimant is absent from GB for the longest of

1. a maximum of 26 weeks¹ (see DMG 073824), **or**
2. the period that the person is also receiving AA, DLA, PIP or AFIP² (see DMG 073828), **or**
3. the period that the person is temporarily absent from GB, if that person is a member of the family of a serving member of the forces and is living with that serving member³ (see DMG 073829).

1 SS Ben (PA) Regs, reg 2(1) & (5)(c); 2 reg 2 (1A); 3 reg 2 (1B)

Payment limited to 26 weeks

073824 IB can normally continue for a maximum of 26 weeks¹ during an absence from GB. DMG 073827 - 073829 sets out the circumstances when IB can be paid for more than 26 weeks.

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

073825 The period of 26 weeks is calculated from the first day of absence from GB (see DMG 070642). IB is a daily benefit and any change of circumstances takes immediate effect.

073826 A person can receive IB for a **further** 26 weeks during another period of absence from GB if the person returns to GB

1. during, **or**
2. after the end of

the 26 weeks period.

Example

On 1.7.95 a man goes to South Africa for a temporary visit. He is paid IB for the first 26 weeks. He remains in South Africa after 29.12.95 and is disqualified for the rest of the absence. On 1.2.96 he returns to GB and is paid IB. On 21.2.96 he again goes to South Africa stating that he will be absent for about one month. Payment of IB continues during this second temporary absence.

Payment not limited to 26 weeks

Left Great Britain before 8.3.94

073827 A person who is absent from GB can receive benefit for more than 26 weeks if that person

1. was absent from GB on 8.3.94 and not disqualified for receiving benefit¹ under the provisions applying before 8.3.94 **and**
2. has remained continuously absent from GB from 8.3.94².

The conditions for escaping disqualification (see DMG 073820 - 073821) must also be satisfied.

1 SS Ben (PA) Amdt Regs 94, reg 3(2); 2 reg 3(2)(a)

Receiving AA or DLA

073828 A person who is also receiving AA, DLA, PIP or AFIP can be paid IB for longer than 26 weeks during a **temporary** absence from GB if¹

1. the absence is for the specific purpose of being treated (see DMG 070651) for an incapacity which began before the person left GB² **or**
2. the absence is for the specific purpose (see DMG 070651) of receiving treatment for an injury which resulted from an industrial accident (which happened after 6.7.48)³ **or**
3. when the absence started the person was incapable of work, had been continuously incapable of work for the previous six months (see DMG 073834) and has remained continuously incapable since leaving GB⁴.

1 SS Ben (PA) Regs 75, reg 2(1A); 2 reg 2(1A)(a); 3 reg 2(1A)(b); 4 reg 2(1A)(c)

Families of members of the forces

073829 Subject to DMG 073830, IB can be paid for a temporary absence of more than 26 weeks to a person who is¹

1. the spouse or civil partner, son, daughter, step-son, step-daughter, father, father-in-law, step-father, mother, mother-in-law or step-mother² of a serving member of the forces **and**
2. living with that member of the forces³.

Note: References to 'step' relationships and 'in-laws' are to be read as including relationships arising through civil partnerships⁴.

*1 SS Ben (PA) Regs 75, reg 2(1B)(a); 2 reg 2(5)(b); 3 SS (Conts) Regs, reg 1(2) & Sch 3, Part I & II;
4 CP Act 04, s 246*

073830 In addition to DMG 073829 one of the following conditions must also be satisfied

1. the absence must be for the specific purpose of being treated (see DMG 70651) for an incapacity which started before the person left GB **or**
2. the absence is for the specific purpose (see DMG 070651) of receiving treatment for an injury which resulted from an industrial accident (which happened after 6.7.48)¹ **or**
3. on the first day of absence the person had been continuously incapable of work for the past six months and has continued to be incapable of work during the absence².

1 SS Ben (PA) Regs, reg 2(1B)(a)(i) & (ii); 2 reg 2(1B)(a)(iii)

Deciding whether a person is disqualified

073831 The decision awarding IB should be superseded on the ground of a relevant change of circumstances¹ (See DMG Volume 1, - Decision Making & Appeals) if the

1. claimant is absent from GB **and**
2. the award of benefit includes the period of absence **and**
3. disqualification cannot be avoided.

The award should **not** be superseded if disqualification can be avoided (see DMG 073820).

1 SS CS (D&A) Regs, reg 6(2)(a)

Order of deciding

073832 Before deciding whether a person is disqualified, the decision maker should decide whether the person is absent from GB in

1. the EEA **or**
2. a country with which the UK has an agreement which includes provisions allowing disqualification to be avoided (see DMG 073910).

A person entitled to long term IB is not disqualified during an absence in an EEA country¹ (see DMG 073900).

1 Reg (EEC) 1408/71, Art 10(1)

073833 The DM should decide whether a person is disqualified by considering the provisions in the following order.

1. Temporary absence (see DMG 070853). If the absence is not temporary the DM need not consider any other provisions. If an appeal is made against the decision that the absence is not temporary the Secretary of State must decide whether to issue a certificate **before** the FtT hearing. If this is not done the FtT will disqualify because the Secretary of State has not issued a certificate.
2. Secretary of State certificate (see DMG 073839). If the Secretary of State has not issued a certificate the person is disqualified and the DM does not need to consider the following three points.
3. Incapable for six months before leaving GB. If a person has been incapable of work for six months before leaving GB (see DMG 073834 - 073835) it is not necessary to make any further enquiries to see if the following two points are satisfied.
4. Absent for treatment (see DMG 070651)
5. Incapacity from a personal injury at work (see DMG 073836).

Continuously incapable before leaving Great Britain

073834 To satisfy the condition in DMG 073833 the claimant must have

1. been continuously incapable of work¹ for six months before leaving GB **and**
2. remained continuously incapable of work during the absence from GB.

1 SS (IfW) Act 94; R(S) 11/51; R(S) 7/60; R(S) 2/82

073835 A person cannot escape disqualification even though the

1. absence started only a few days before the date on which the person would have been incapable of work for six months **or**
2. situation had **not** been adequately explained by the DWP¹.

However, a person may delay the date of leaving GB in order to escape disqualification. This can be done even when the DM has already given an advance decision (see DMG 070644).

1 R(S) 6/81

Personal injury at work

073836 A person can escape disqualification for being absent from GB if incapacity was because of a personal injury caused by an industrial accident but **not** if the incapacity is only because of a PD or injury¹.

1 SS CB Act 92, s 108

073837 If the incapacity started before leaving GB, a person who is receiving treatment outside GB will normally not have to rely on the provision in DMG 073836. This is because that person will escape disqualification under DMG 073833 **4**.

073838 If the person was not incapable of work before leaving GB the DM will need to decide whether

1. there has been an industrial accident which caused personal injury **and**
2. the treatment is specifically for the injury caused by the industrial accident.

Secretary of State certificate

073839 For a person to avoid disqualification for being absent from GB, it must be certified that it is consistent with the proper administration of the Act that disqualification should not apply¹. That certificate will also specify the period for which disqualification will not apply.

1 SS Ben (PA) Regs, reg 2(1)(a)

073840 The DM can only decide that the claimant is not disqualified for the

1. same period as the certificate (up to a maximum of 26 weeks) **or**
2. period of the award, if it is less than 26 weeks.

073841 If a person appeals against the disqualification, the certificate (see DMG 073839) **must** be included in the papers put before the AT. Where a certificate has been refused a statement to that effect should be included.

073842 The AT has no jurisdiction to decide an appeal against the refusal to issue a certificate¹. If a person appeals against refusal to issue a certificate the DM should submit that the AT does not have jurisdiction to decide that aspect of the appeal.

1 R(S) 8/83; CA Bhatia v Birmingham

073843 - 073849

Avoiding disqualification - European Community provisions

Introduction

073850 Under EC provisions there are two kinds of benefit paid because a person is incapable of work

1. sickness benefits **and**
2. invalidity benefits.

Sickness benefits and invalidity benefits are treated differently under EC provisions¹.

1 R(S) 6/81

Sickness benefits

073851 For the UK IBST paid for the first 52 weeks of entitlement is a sickness benefit.

Invalidity benefits

073852 Invalidity benefits means

1. IBLT paid after 52 weeks of incapacity
2. SDA (see DMG 076960) **and**
3. in certain circumstances, AA, DLA, Disability Working Allowance and ICA.

073853 There are no provisions in EC law defining what are sickness and invalidity benefits. As a result, what are sickness or invalidity benefits must be decided by considering the

1. conditions for entitlement to the benefit **and**
2. reason for and length of the incapacity.

IB is a sickness benefit for the first 52 weeks because sickness benefits are paid for short term incapacities. IB becomes an invalidity benefit after 52 weeks of entitlement.

Avoiding disqualification

073854 Guidance on avoiding disqualification under EC provisions is at

1. DMG 073860 for sickness benefits (short term IB) **and**
2. DMG 073900 for invalidity benefits (long term IB).

073855 - 073859

Avoiding disqualification - European Community/Short-term Incapacity Benefit

Introduction

073860 A person who is absent from GB in another EEA country can avoid disqualification¹ by using either UK² or EC provisions. A person can rely on UK provisions alone providing that EC provisions have not been used to obtain the initial entitlement (for example by using insurance, employment or residence in another EEA country to help satisfy the contribution conditions)³.

1 SS CB Act 92, s 113(1)(a); 2 SS Ben (PA) Regs; 3 Reg (EEC) 1408/71, Art 18(1)

073861 A person within the scope of EC provisions¹ who cannot avoid disqualification under UK provisions is entitled to IBST when in another EEA country if that person

1. is habitually resident in another EEA country when the incapacity started (see DMG 073866) **or**
2. is staying in another EEA country and needs emergency medical treatment (see DMG 073869) **or**
3. the person was entitled to IBST before leaving GB and was authorised by the Secretary of State to go to another EEA country to receive treatment (see DMG 073872) **or**
4. was authorised by the Secretary of State to return to the EEA country where that person is habitually resident, or to transfer residence to another EEA country (see DMG 073876).

1 Art 2

073862 A person who has left the UK to reside permanently in another EEA country will generally be entitled to IBST whilst in that country. A person who is staying temporarily in another EEA country (unless authorised to go there for treatment) will be entitled to IBST only if emergency treatment is needed.

Example 1

A UK national goes to live permanently in Spain. Shortly after he falls ill and claims IBST. Because he is habitually resident in Spain he is entitled to IBST (subject to all other conditions being satisfied). He is **not** disqualified for being absent from GB.

Example 2

A woman goes on holiday to Spain. Whilst there she has an accident and receives treatment in a hospital. IBST can be paid but only for the period of the emergency treatment.

073863 If a person cannot avoid disqualification under UK provisions because the absence is **not** for the specific purpose of being treated, it is unlikely that EC treatment provisions (see DMG 073872) will help¹.

1 R(S) 6/81

073864 A person can also avoid disqualification if that person is

1. a frontier worker (see DMG 073880) **or**
2. an unemployed person who becomes incapable of work (see DMG 073881).

Entitled under a reciprocal agreement

073865 A person is not entitled to IBST whilst

1. habitually (see DMG 073866)¹ **or**
2. temporarily (see DMG 073869)²

resident in another EEA country, if entitlement arises only because of the provisions of an agreement between the UK and a non-EEA country.

1 Reg (EEC) 1408/71, Art 1(h); 2 Art 1(i)

Habitually resident in another European Economic Area country

073866 A person who is habitually resident¹ in another EEA country can

1. become **or**
2. remain²

entitled to IBST and benefits in kind.

1 Art 1(h); 2 Art 19(1)(b); Art 19(1)(a)

Incapacity starts in another European Economic Area country

073867 A person is entitled to UK IBST (subject to satisfying the conditions of entitlement) if incapacity starts in another EEA country but the UK has remained the competent country (see DMG 070230)¹.

1 Art 13(2)(f) & Annex VI, Point O, para 20; R(S) 3/92; Case 215/90, Twomey CAO

Example

A woman was working and insured in GB. After leaving work she moved to France but did not do any further work. Shortly after arriving there she fell ill and claimed IBST. The UK is the competent country because her last employment and insurance was in the UK. She will be entitled to IBST if she satisfies the normal conditions of entitlement.

Visits to the United Kingdom

073868 A person who is entitled to UK IBST whilst in another EEA country remains entitled if

1. habitually resident¹ in **or**
2. temporarily staying in² or visiting

the UK.

1 Reg (EEC) 1408/71, Art 21(4); 2 Art 21(1)

Example

A man is living in Germany and entitled to IBST. Although he remains resident in Germany he visits GB for a short period. He remains entitled to IBST during his temporary visit. He would also remain entitled to IBST if he decided to live in GB permanently.

Staying in another European Economic Area country

073869 A person can receive IBST¹ and benefits in kind (see DMG 073886) if

1. **temporarily staying**² in another EEA country **and**
2. that person would, but for the disqualification for being absent from GB³, be entitled to IBST **and**
3. the condition requires emergency medical treatment (see DMG 073871).

1 Art 22(1)(a)(ii); 2 Art 1(i); 3 SS CB Act 92, s 113(1)(a)

073870 As a result, a person who is staying in another EEA country can only receive short term IB if emergency medical treatment is needed. IBST will be paid only for the period of the emergency treatment¹.

1 R(S) 2/94

073871 A person cannot satisfy the third condition in DMG 073869 if the absence is

1. for rest **or**
2. for convalescence **or**
3. to take advantage of a warmer climate¹.

A person can satisfy the condition if during a period of rest or convalescence² that person's health gets worse and requires treatment. There is entitlement to IBST if the incapacity started

1. in GB **or**
2. whilst staying in the other country³.

1 R(S) 4/80; R(S) 6/81; 2 R(S) 1/77; 3 R(S) 1/77; R(S) 2/77; R(S) 1/78; R(S) 4/80

In another country to receive treatment

073872 A person can receive IBST and benefits in kind (see DMG 073886)¹ if that person

1. is authorised by the Secretary of State² to go to another EEA country to receive treatment (see DMG 073875) **and**
2. would be entitled to IBST, but for the disqualification for being absent from GB³.

*1 Reg (EEC) 1408/71, Art 22(1)(c); 2 R(S) 2/94; Reg (EEC) 574/72, Annex 2, Point O;
3 SS CB Act 92, s 113(1)(a)*

073873 The Secretary of State does **not** need to authorise the absence **before** the person leaves GB. However, if the Secretary of State does not at some time authorise the absence, the person will not be entitled to IBST¹.

1 R(S) 6/81

073874 A person cannot satisfy the first condition in DMG 073872 if

1. the absence is only for rest, convalescence or for a holiday¹ **or**
2. the only medication being taken was provided before leaving GB².

1 R(S) 4/74; 2 R(S) 4/74

073875 Although "treatment" under EC provisions is not exactly the same as "treatment" under GB legislation the principles established in relation to GB regulations¹ will generally apply (see DMG 070651). If a person cannot avoid disqualification under UK provisions because the absence is **not** for the specific purpose of being treated, it is unlikely that EC treatment provisions will help² (see DMG 073872).

1 SS Ben (PA) Regs, reg 2(1)(b); R(S) 1/90; 2 R(S) 6/81

Transfer or return to another European Economic Area country

073876 A person can continue to be entitled to IBST, and benefits in kind¹ (see DMG 073886) if

1. authorised by the Secretary of State² return to the EEA country in which that person is habitually resident. This applies to a person who has been staying, but not habitually resident in the UK **or** transfer habitual residence to another EEA country³. This applies to a person who has been habitually resident in the UK but wishes to move and become resident in another EEA country⁴
and
2. that person would, but for the disqualification⁵ for being absent from GB be entitled to IBST.

*1 Reg (EEC) 1408/71, Art 22(1)(b); 2 R(S) 2/94; Reg (EEC) 574/72, Annex 2, Point O;
3 Reg (EEC) 1408/71, Art 1(h) & 22(1)(b); 4 Art 22(1)(b); 5 SS CB Act 92, s 113(1)(a)*

073877 The Secretary of State does **not** need to authorise the absence **before** the person leaves GB. However, if the Secretary of State does not authorise the absence at some time the person will not be entitled to IBST¹.

1 R(S) 6/81

073878 A person is helped by this provision¹ only

1. if entitled to IBST before leaving GB² **and**
2. if they are moving to habitually reside in another EEA country.

1 Reg (EEC) 1408/71, Art 22(1)(b); 2 R(S) 6/81

073879 A person who is staying temporarily in another EEA country (for example, on holiday or in short-term employment)¹ is not helped by this provision.

1 R(S) 6/81

Example

An Italian who has lived in GB for 25 years returned to Italy for a temporary visit for six weeks. He is habitually resident in GB although he intends to return to Italy when he retires. Because he is habitually resident in GB he is not helped by this provision.

Frontier workers

073880 Frontier workers¹ insured under UK legislation are entitled to IBST, subject to satisfying the conditions of entitlement².

1 Reg (EEC) 1408/71, Art 1(b); 2 Art 20

Unemployed person becomes incapable of work

Seeking work in another European Economic Area country

073881 An unemployed person in another EEA country is entitled to benefits in kind¹ (see DMG 073886) and short term Incapacity Benefit (subject to satisfying the normal conditions of entitlement) **instead** of "exported" Unemployment Benefit² (see DMG 075390) if

1. the absence in the other EEA country is to seek employment **and**
2. incapacity for work or the MAP starts there.

1 Reg (EEC) 1408/71, Art 25(1)(a); 2 Art 69(1)

073882 Exported UB is usually paid for three months¹ but the period of IBST and MA may be extended by the Secretary of State if the person is prevented from returning to GB².

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

Seeking work in the United Kingdom

073883 An unemployed person in the UK is entitled to benefits in kind¹ (see DMG 073886) and (subject to satisfying the normal conditions of entitlement) the sickness benefits² from the other EEA country instead of "exportable" UB from that other country if

1. the person is in the UK to seek employment **and**
2. incapacity for work period begins in the UK.

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

073884 The sickness benefits from that other country can be paid for three months¹, the same period as exportable UB. That period may be extended by the relevant authority in the other EEA country if the person is prevented from returning to the other country². A person is not entitled to short term IB for the period of entitlement to sickness benefits from the other country³.

1 Art 69(1)(c); 2 Art 25(4); 3 Art 25(1)

Frontier workers and people habitually resident in the United Kingdom

073885 An unemployed person residing in the UK is entitled to benefits in kind (see DMG 073886), and short term IB¹ as though that person had been subject to UK legislation and liable to pay contributions during the last employment². This applies to people who have remained habitually resident³ in the UK whilst

1. employed as a frontier worker and insured under or subject to another EEA country's legislation⁴ **or**
2. in other employment and insured in another EEA country, but not entitled to UB in that country⁵.

*1 R(S) 4/80; R(S) 6/81; 2 Reg (EEC) 1408/71, Art 25(2); 3 Art 1(h); 4 Art 71(1)(a)(ii);
5 Art 71(1)(b)(ii)*

Benefits in kind

073886 Benefits in kind include hospital treatment or treatment from a doctor. All questions connected with entitlement to benefits in kind are outside the DM's jurisdiction¹.

1 R(S) 4/80; R(S) 6/81

073887 - 073899

Avoiding disqualification - European Community/Long-term Incapacity Benefit

Introduction

073900 A person covered by European Community provisions¹ (070050) who is entitled to long term Incapacity Benefit in the UK, remains entitled whilst

1. habitually resident² **or**
2. temporarily resident **or**
3. staying (for example on holiday)³

in another European Economic Area country⁴.

The benefit is paid at the rate at which it would be payable in the UK⁵.

1 Reg (EEC) 1408/71, Art 2; 2 Art 1(h); 3 Art 1(i); 4 Art 10(1) & Annex VI, Point O, para 12; 5 Art 10(1)

Temporary absence from the European Economic Area

073901 A person who is habitually resident in another European Economic Area country can continue to be paid long term Incapacity Benefit and Severe Disablement Allowance if temporarily outside the European Economic Area. This is because the person is still habitually resident (070710) in another European Economic Area country although outside the European Economic Area.

Example

In 1985 a man entitled to invalidity benefit leaves the UK to live in Germany. He lives there continuously from 1985 until 1995. On 13.4.95 he becomes entitled to long term Incapacity Benefit. In August 1995 he goes to the United States of America for six weeks holiday.

He remains entitled to long term Incapacity Benefit because he is still habitually resident in Germany. He is only temporarily absent from the European Economic Area.

Long term Incapacity Benefit entitlement starts in another European Economic Area country

073902 A person who has been entitled to short term Incapacity Benefit, Sickness Benefit or Statutory Sick Pay for 364 days in the same period of incapacity for work can become entitled to long term Incapacity Benefit whilst habitually or temporarily resident in another European Economic Area country (but see 073903)¹. This means that the person must have been entitled to UK short term Incapacity Benefit whilst in the other European Economic Area country.

1 R(S) 9/81

Subject to United Kingdom legislation and that of another European Economic Area country

073903 A person may be entitled to long term Incapacity Benefit even where there is no entitlement to

1. long term Incapacity Benefit before going to another European Economic Area country **or**
2. long term Incapacity Benefit on the 364th day of the period of incapacity for work whilst resident or staying either in Great Britain or in the other European Economic Area country¹.

1 R(S) 9/81

073904 This applies when the person

1. has paid class 1 or 2 contributions in the UK **and**
2. would be entitled to the invalidity benefit of the other European Economic Area country based upon contributions paid or residence in that country¹.

1 Reg (EEC) 1408/71, Art 37 & 40

073905 - 073909

Avoiding disqualification - reciprocal agreements

Introduction

073910 A person who is absent from GB in a country with which the UK has an agreement may

1. become entitled to IB if the incapacity starts in that other country **or**
2. continue to be paid IB.

073911 IB replaced both SB and IVB from 13.4.95. From that date in any existing agreement

1. SB means IBST paid for the first 52 weeks of incapacity **and**
2. IB means IBST(L) paid after 52 weeks of incapacity¹.

1 SS (Reciprocal Agreements) Order 95, Sch 1 & 2

073912 Guidance on avoiding disqualification under reciprocal agreements is at

1. 073920, for agreements with EEA countries **and**
2. 073993, for agreements with non-EEA countries.

The various reciprocal agreements with provisions on IB were not extended or amended to include ESA. Thus ESA(Cont) is not covered by any reciprocal agreement.

Not covered by European Community provisions

073913 The reciprocal agreement between the UK and another EEA country only applies where a person is not within the scope of EC provisions (see DMG 070050 and DMG 070320).

073914 - 073919

Avoiding disqualification - Austria and Finland

Austria

Entitled to Incapacity Benefit in Austria

073920 A person is entitled to both short term Incapacity Benefit and long term Incapacity Benefit whilst absent from Great Britain in Austria if that person would be entitled in the UK¹. This includes a person who

1. is entitled to Incapacity Benefit (short term or long term) before leaving Great Britain or
2. becomes incapable of work in Austria. However if the person had completed an insurance period in Austria since last arriving there the claim would be for Austrian sickness benefit².

1 SS (Austria) Order 81, Sch, Art 4; 2 Sch, Art 11(1) & (2)

Finland

Becoming entitled to short term Incapacity Benefit

073921 A person who would be entitled to short term Incapacity Benefit in the UK is entitled in Finland if¹

1. the person's condition needs immediate treatment² (073870) during a stay in Finland **and**
2. within three days of the start of the incapacity, or such longer period as the DM may allow, a medical statement issued by the person's doctor is submitted to the Secretary of State (or the Finnish Ministry of Social Affairs).

1 SS (Finland) Order 84, Sch, Art 11(2)(a); 2 R(S) 1/77; R(S) 4/80; R(S) 6/81

Entitlement to Incapacity Benefit

073922 A person who is absent from the UK in Finland is entitled to short term Incapacity Benefit or long term Incapacity Benefit for a maximum of five years if that person

- is entitled to short term Incapacity Benefit under the Agreement¹ (073921 and 073923) **or**
- would be entitled to long term Incapacity Benefit if in the UK **and**
- is not entitled to a Finnish national pension².

The rate payable is reduced by the amount of incapacity benefit (except sickness benefit) payable under Finnish legislation.

1 SS (Finland) Order 84, Sch, Art 11(2); 2 Sch, Art 13

Export of short term Incapacity Benefit

073923 A person entitled to short term Incapacity Benefit in the UK will remain entitled to that benefit in Finland if the Secretary of State has authorised the person to

1. transfer residence to Finland **or**
2. return to a place of residence in Finland¹ **or**
3. go to Finland to receive treatment².

1 Sch, Art 11(2)(b); 2 Sch, Art 11(2)(c)

073924 The Secretary of State can only refuse to authorise under the first and second options in 073923 if¹ the move to Finland would

1. damage that person's health **or**
2. prevent proper medical treatment.

1 Sch, Art 11(2)(c)

Entitled to sickness benefit from both countries

073925 A person who would be entitled to both UK short term Incapacity Benefit and Finnish sickness benefit for the same period, will only receive the benefit from the country in which the person was last insured¹.

1 Sch, Art 11(3)

073926 - 073929

Avoiding disqualification - Germany and Iceland

Germany

Export of Incapacity Benefit

073930 A person who is entitled to short term Incapacity Benefit or long term Incapacity Benefit in the UK is, at the discretion of the Secretary of State, entitled in Germany¹.

1 FA, NI & II (Germany) Order 61, Sch 1, Art 13

073931 A person is entitled to long term Incapacity Benefit in Germany if¹ that person

1. is an invalid under German legislation but not entitled to German invalidity pension **and**
2. entitled to long term Incapacity Benefit under UK legislation without relying on the Agreement.

1 Sch 1, Art 25(1)

Iceland

Export of long term Incapacity Benefit

073932 A person who is entitled to long term Incapacity Benefit in the UK is entitled in Iceland¹.

1 SS (Iceland) Order 85, Sch, Art 3(1)

Export of short term Incapacity Benefit

073933 Short term Incapacity Benefit is payable to a person in Iceland if that person is liable to pay UK contributions whilst employed in Iceland¹.

1 Sch, Art 9(1)

073934 - 073939

Avoiding disqualification - Irish Republic, Northern Ireland and Norway

Irish Republic

Becoming entitled to Incapacity Benefit

073940 Incapacity Benefit is only payable in the Irish Republic if¹ a person is

1. employed in the Irish Republic **and**
2. liable for British contributions.

1 NI & II (Republic of Ireland) Order 60, Sch 1, Art 6 & 7

Northern Ireland

073941 A person who is absent from Great Britain in Northern Ireland is treated as still in Great Britain¹. Therefore, a person is not disqualified for being absent from Great Britain².

1 SS (NI Reciprocal Arrangement) Regs 76, Sch 1, para 2(1); 2 SS CB Act 92, s 113(1)(a)

Norway

Export of long term Incapacity Benefit

073942 A person is entitled to long term Incapacity Benefit whilst absent from Great Britain in Norway if that person would be entitled in the UK¹.

1 SS (Norway) Order 91, Sch, Art 4

Becoming entitled to short term Incapacity Benefit

073943 A person who is temporarily in Norway and **not** subject to UK legislation (073947) can claim short term Incapacity Benefit as though still in the UK if¹

1. the condition needs immediate treatment² **and**
2. a claim is made and medical evidence submitted within six days of the start of incapacity, or a longer period that the Secretary of State may allow.

1 Sch, Art 12(3); 2 R(S) 1/77; R(S) 4/60; R(S) 6/81

073944 A person employed in Norway can claim short term Incapacity Benefit as though still in the UK if UK legislation still applies¹.

1 SS (Norway) Order 91, Sch, Art 12(2)

Export of short term Incapacity Benefit

073945 A person who is entitled to short term Incapacity Benefit in the UK can remain entitled whilst in Norway if the Secretary of State has authorised the person to¹

1. transfer residence (070794) to Norway **or**
2. return to a place of residence in Norway.

1 Sch, Art 12(3)(b)

Entitled to benefits from both countries

073946 Where a person could be entitled to sickness benefit from Norway and short term Incapacity Benefit from the UK for the same period there is entitlement to only the benefit from the country in which the person was last insured¹.

1 Sch, Art 14

073947 Where a person could be entitled to

1. invalidity pension from Norway and long term Incapacity Benefit from the UK
2. long term Incapacity Benefit from the UK and sickness benefit from Norway
or
3. short term Incapacity Benefit from the UK and invalidity pension from Norway
4. there is only entitlement to the benefit from the country in which incapacity started¹.

1 Sch, Art 16(3)

073948 - 073959

Avoiding disqualification - Portugal, Spain and Sweden

Portugal

Export of IBLT

073960 A person is entitled to IBLT whilst absent from GB in Portugal if that person would be entitled in the UK¹. This includes a person who

- is entitled to IBLT before leaving GB, **or**
- becomes entitled while in Portugal.

1 SS (Portugal) Order 79, Sch, Art 4(1)

Becoming entitled to IBST

073961 A person who is staying in Portugal and **not** subject to UK legislation is entitled to IBST as if in the UK if¹

- the condition needs immediate treatment², **and**
- medical evidence is submitted within three days of the start of the incapacity, or a longer period allowed by the S of S.

1 Sch, Art 11(2); 2 R(S) 1/77; R(S) 4/80; R(S) 6/81

073962 A person employed in Portugal can claim IBST as though still in the UK if UK legislation still applies¹.

1 SS (Portugal) Order 79, Sch, Art 11(4)

Export of IBST

073963 A person who is entitled to IBST in the UK can remain entitled whilst in Portugal if authorised by the Secretary of State to¹

- transfer residence to Portugal², **or**
- return to a place of residence in Portugal³, **or**
- go to Portugal to receive treatment (see DMG 070651)⁴.

1 Sch, Art 11(2); 2 Sch, Art 11(2)(b); 3 Sch, Art 11(2)(b); 4 Sch, Art 11(2)(c)

073964 The Secretary of State can only refuse to authorise under the first and second options in DMG 073963 if the move to Portugal would

1. damage that person's health, **or**
2. prevent proper medical treatment.

Entitled to IBST and Portuguese SB

073965 Where a person could be entitled to SB from Portugal and IBST from the UK, there is entitlement to only the benefit from the country in which the person was last insured¹.

1 SS (Portugal) Order 79, Sch, Art 11(5)

Spain

Becoming entitled to IBST

073966 A person who is staying in Spain is entitled to IBST as if in the UK if¹

- the condition needs immediate treatment², **and**
- medical evidence is submitted within three days of the start of incapacity³.

*1 FA, NI & II (Spain) Order 75, Sch, Art 12(2); 2 R(S) 1/77; R(S) 4/80; R(S) 6/81;
3 FA, NI & II (Spain) Order 75, Sch, Art 12(2)(a)*

Export of IBST

073967 A person who is entitled to IBST in the UK can remain entitled whilst in Spain if authorised by the Secretary of State to¹

- transfer residence to Spain², **or**
- return to a place of residence in Spain³, **or**
- go to Spain to receive treatment⁴ (see DMG 074051).

1 Sch, Art 12(2); 2 Sch, Art 12(2)(b); 3 Sch, Art 12(2)(b); 4 Sch, Art 12(2)(c)

073968 The Secretary of State can only refuse to authorise under the first and second options in DMG 073967 if the move to Spain would

- damage that person's health, **or**
- prevent proper medical treatment.

073969 The Secretary of State cannot refuse to authorise if treatment is not available in the UK¹.

1 FA, NI & II (Spain) Order 75, Art 12(2)

Entitlement to IBLT in Spain

073970 A person who **resides** (see DMG 070794) in Spain can continue to be entitled to IBLT. As a result a person will not be disqualified for being absent from GB if¹ that person

1. is resident in Spain when entitlement to IBLT starts, **or**
2. transfers residence to Spain.

A person who is only temporarily (see DMG 070853) in Spain is not helped by this provision.

1 Sch, Art 4

073971 A claim for IBLT will be decided under UK legislation if it is

1. made within twelve months of the end of the earlier period of UK entitlement, **and**
2. for the same incapacity¹.

1 Sch, Art 20(2)

Sweden

Export of IBLT

073972 A person is entitled to IBLT whilst in or residing (see DMG 070794) in Sweden if that person would be entitled if in the UK¹. This includes a person who

1. is entitled to IBLT before leaving GB, **or**
2. becomes entitled whilst in or residing in Sweden.

1 SS (Sweden) Order 88, Sch, Art 4(1)(a) & (b)

Export of IBST

073973 A person continues to be entitled to IBST during any temporary stay (see DMG 070853) in Sweden¹.

1 SS (Sweden) Order 88, Sch, Art 11(3)

Entitled to IBST and Swedish SB

073974 Where a person would be entitled to SB from Sweden and IBST from the UK for the same period there is entitlement to only the benefit from the country in which the person is present¹.

1 SS (Sweden) Order 88, Sch, Art 11(4)

073975 - 073992

Avoiding disqualification - Barbados

Barbados

Becoming entitled to short term Incapacity Benefit

073993 A person temporarily employed in Barbados can claim short term IB as though still in the UK if UK legislation still applies¹.

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

073994 A person who is in Barbados temporarily and not subject to UK legislation can claim short term IB as though still in the UK if¹

1. the condition needs immediate treatment² **and**
2. a claim is made **and**
3. medical evidence submitted within six days of the start of 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 short term Incapacity Benefit

073995 A person who is entitled to short term IB in the UK can remain entitled whilst in Barbados if authorised by the Secretary of State to

1. transfer residence to Barbados¹ **or**
2. return to a place of residence in Barbados² **or**
3. go to Barbados for treatment³ (see DMG 070651).

1 SS (Barbados) Order 92, Sch, Art 12(2)(b); 2 Sch, Art 12(2)(b); 3 Sch, Art 12(2)(c)

073996 The Secretary of State can only refuse to authorise under the first or second options in DMG 073995 if¹ the move to Barbados would

1. damage that person's health **or**
2. prevent proper medical treatment.

1 Sch, Art 12(2)

Export of long term Incapacity Benefit

073997 A person who is absent from GB in Barbados can continue to receive long term IB if, when leaving GB, the Secretary of State decides¹ that the person was likely to be **permanently incapable** of work².

1 SS (Barbados) Order 92, Sch, Art 1; 2 Sch, Art 5(3)(b)

Becoming entitled to long term Incapacity Benefit in Barbados

073998 A person who has continued to receive short term IB whilst in Barbados can become entitled to long term IB in Barbados if it was decided that the incapacity was likely to be permanent on

1. the date of leaving GB **or**
2. the date that entitlement to short term IB ended¹.

1 SS (Barbados) Order 92, Sch, Art 5(4)

073999 - 074009

Avoiding disqualification - Cyprus, Isle of Man, Israel and Jamaica

Cyprus

Becoming entitled to short term Incapacity Benefit

074010 A person is entitled to short term Incapacity Benefit as though still in the UK¹ if that person is

1. employed in Cyprus or employed in one of the Sovereign Base Areas (074016) **and**
2. subject to UK legislation¹.

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

074011 A person who is temporarily in Cyprus or one of the sovereign base areas (074016) and not subject to UK legislation (074010) can claim short term Incapacity Benefit as though still in the UK if¹

1. their condition needs immediate treatment² (073871) **and**
2. a claim is made **and**
3. medical evidence is submitted within six days of the start of incapacity, or any longer period that the Secretary of State may allow.

1 Sch, Art 12(4)(a); 2 Sch, Art 12(4)(a)

Export of short term Incapacity Benefit

074012 A person entitled to short term Incapacity Benefit in the UK can remain entitled whilst in Cyprus or in one of the sovereign base areas (074016) if authorised by the Secretary of State to

1. transfer residence to Cyprus¹ or one of the sovereign base areas **or**
2. return to a place of residence in Cyprus² or one of the sovereign base areas **or**
3. go to Cyprus or one of the sovereign base areas for treatment³ (070651).

1 Sch, Art 12(4)(b); 2 Sch, Art 12(4)(b); 3 Sch, Art 12(4)(c)

074013 The Secretary of State can only refuse to authorise under the first or second options in 074012 if¹ the move to Cyprus would

1. damage that person's health **or**
2. prevent proper medical treatment.

1 SS (Cyprus) Order 83, Sch, Art 12(4)

Entitled to long term Incapacity Benefit in Cyprus

074014 A person is entitled to long term Incapacity Benefit whilst absent from Great Britain in Cyprus or one of the sovereign base areas if that person would be entitled in the UK¹. This includes a person who

1. is entitled to long term Incapacity Benefit before leaving Great Britain or
2. becomes entitled whilst in Cyprus or one of the sovereign base areas.

1 Sch, Art 4(1)

Long term Incapacity Benefit - insured in both countries

074015 A person who has been insured under the legislation of both Cyprus and the UK will be entitled to only UK short term Incapacity Benefit or long term Incapacity Benefit if UK legislation applied at the date that incapacity started¹.

1 Sch, Art 15(1) & (2)

Sovereign base areas

074016 The sovereign base areas¹ are

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

1 Art 1(1)

Isle of Man

074017 A person who is absent from Great Britain in the Isle of Man is treated as still in Great Britain. Therefore, a person is **not** disqualified for being absent from Great Britain¹.

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

Israel

074018 Incapacity benefit can be paid in Israel if the incapacity is because of an industrial accident or disease¹ (see Benefit Specific Guidance).

1 NI & II (Israel) Order 57, Sch, Art 1(13) & 8(1); SS CB Act 92, sec 102

074019 Incapacity benefit which is **not** paid for an industrial accident or disease can be paid only if the person is not disqualified for being absent from Great Britain (073820)¹.

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

Jamaica

074020 A person who is absent from Great Britain in Jamaica can continue to receive long term Incapacity Benefit if, when leaving Great Britain, the Secretary of State decides¹ that the person was likely to be **permanently incapable** for work².

1 SS (Jamaica) Order 97, Sch, Art 1(1); 2 Sch, Art 13(2)

074021 - 074029

Avoiding disqualification - Jersey and Guernsey, Malta, Switzerland and Turkey

Jersey and Guernsey

Introduction

074030 The following islands are included in the Agreement

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

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

Becoming entitled to short term Incapacity Benefit

074031 A person employed in Jersey or Guernsey can claim short term Incapacity Benefit as though still in the UK if UK legislation still applies¹.

1 Sch, Art 13(2)

074032 A person who is in Jersey and Guernsey temporarily can claim short term Incapacity Benefit as though still in the UK if¹

1. their condition needs immediate treatment² (070651) **and**
2. a claim is made and medical evidence submitted within six days of the start of 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

074033 A person **resident** in Jersey or Guernsey is entitled to short term Incapacity Benefit if that person

1. is not entitled to invalidity benefit from Jersey and Guernsey
2. would be entitled to short term Incapacity Benefit if in the UK **and**
3. has not paid contributions in Jersey or Guernsey since last arriving there¹.

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

Export of short term Incapacity Benefit

074034 A person who is entitled to short term Incapacity Benefit in the UK remains entitled whilst in Jersey or Guernsey if authorised by the Secretary of State to

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

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

074035 The Secretary of State can only refuse to authorise under the first or second options in 074034 if¹ the move to Jersey or Guernsey would

1. damage that person's health **or**
2. prevent proper medical treatment.

1 Sch, Art 13(3)

Export of long term Incapacity Benefit

074036 person is entitled to long term Incapacity Benefit whilst absent from Great Britain in Jersey or Guernsey if that person would be entitled in the UK¹.

1 Sch, Art 5(1)

Sark

074037 Although not covered in the Agreement, a person who is absent from Great Britain in **Sark** is not disqualified for receiving short term Incapacity Benefit or long term Incapacity Benefit¹.

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

Malta

Becoming entitled to short term Incapacity Benefit

074038 A person absent from Great Britain in Malta can become entitled to short term Incapacity Benefit in the circumstances set out in 074039 - 074041.

074039 A person employed in Malta but still subject to UK law can claim short term Incapacity Benefit as though still in the UK¹.

1 SS (Malta) Order 96, Sch, Art 12(2)

074040 A person in Malta can claim IBST as though still in the UK if

1. their condition needs immediate treatment¹ (see DMG 070651); **and**
2. a claim is made and medical evidence submitted within six days of the start of incapacity, or any longer period that the S of S may allow².

1 R(S) 1/77; R(S) 4/80; R(S) 6/81; 2 SS (Malta) Order 96, Sch, Art 12(3)

074041 A person who is not helped by DMG 074039 or 074040 may be entitled to IBST whilst absent from GB in Malta if that person

1. is not entitled to SB from Malta,
2. would be entitled to IBLT if in the UK, **and**
3. has not been insured in Malta since last arriving there¹.

1 Art 12(7)

Export of IBST

074042 A person who is entitled to IBST in the UK can remain entitled whilst in Malta if authorised by the S of S to

1. transfer residence to Malta, **or**¹
2. return to a place of residence in Malta, **or**²
3. go to Malta for treatment³.

1 Sch, Art 12(3)(b); 2 Sch, Art 12(3)(b); 3 Sch, Art 12(3)(c)

074043 The S of S can only refuse to authorise under the first or second options in DMG 074042 if¹ the move to Malta would

1. damage that person's health **or**
2. prevent proper medical treatment.

1 Sch, Art 12(3)

Export of IBLT

074044 A person is entitled to IBLT whilst absent from GB in Malta if that person would be entitled in the UK¹. This includes a person who

1. is entitled to IBLT before leaving GB, **or**
2. becomes entitled whilst in Malta.

1 Sch, Art 4(1)(a)

Entitled to SB from both countries

074045 A person who could be entitled to SB (IBST) from both the UK and Malta is entitled to SB only from the country where they were last insured before incapacity began.

Switzerland

Export of IBST and IBLT

074046 A person who would be entitled to IBST or IBLT if **in** or **resident** in the UK can receive IB whilst in or resident in Switzerland if¹

1. the person satisfies the contribution conditions for entitlement to IBST without relying on the Agreement² **and** is receiving Swiss IVP for an invalidity of at least two thirds³, **or**
2. before leaving the UK the S of S was notified of the intention to reside in Switzerland and it is likely that the person will remain permanently incapable of work⁴, **or**
3. the absence from the UK is temporary (see DMG 070853) and is for the purpose of receiving treatment (see DMG 070651) for an incapacity which began before leaving the UK⁵.

1 FA, NI & II (Switzerland) Order 69, Sch 1, Art 16(2); 2 Sch 1, Art 16(2)(a)(i); 3 Sch 1, Art 16(2)(a)(ii)(aa); 4 Sch 1, Art 16(2)(a)(ii)(bb); 5 Sch 1, Art 16(2)(a)(ii)(cc)

Turkey

Becoming entitled to IBST or IBLT

074047 A person is entitled to IBST and IBLT¹ whilst absent from GB in Turkey if, subject to the approval of the S of S², that person would be entitled if in the UK³. This includes a person who

1. is entitled to IBST or IBLT before leaving GB, **or**
2. becomes entitled whilst in Turkey.

The period of entitlement to IBST or IBLT in Turkey is decided by the Secretary of State.

1 NI & II (Turkey) Order 61, Sch, Art 1(13) & 2(2); 2 Sch, Art 1(5); 3 Sch, Art 12

Entitled to Turkish invalidity pension and United Kingdom Incapacity Benefit

074048 Where a person satisfies the contribution conditions for entitlement to both long term Incapacity Benefit and Turkish invalidity pension that person will be entitled to pro rata Incapacity Benefit¹.

1 Sch, Art 14(2)(3) & (4) & 18

074049 Where a person is receiving pro rata benefits the country that the person is in will top up the rate of benefit with the difference between

1. the combined pro rata rates of benefit **and**
2. the amount the person would have received if the pro rata calculation had not been made¹.

1 Art 19

Export of long term Incapacity Benefit

074050 A person who is not entitled to pro rata benefits from both countries (074048) may be entitled to the benefit from the country that the person is in (074051)¹. That benefit continues to be paid if the person goes to the other country provided that the illness is stated to be chronic before leaving.

1 Sch, Art 20(1)

074051 Pro rata benefit will be paid as soon as the conditions for entitlement to benefit in both countries are satisfied¹.

1 Sch, Art 20(2)

074052 – 074059

Avoiding disqualification - United States of America and Yugoslavia

United States of America

Export of long term Incapacity Benefit

074060 A person is entitled to IBLT whilst they are absent from the UK

1. if they are ordinarily resident in the United States of America (see DMG 070760 - 070765) **and**
2. they would have been entitled to IBLT in the UK¹.

1 SS (USA) Order 84, Sch 1, Art 7(2);

Becoming entitled to long term Incapacity Benefit in the United States of America

074061 From 1.9.97, a person in the United States of America and not entitled to IBST, may be entitled to UK IBLT if that person

1. satisfies the first contribution condition for entitlement to IBST set out in the Agreement¹ using insurance from GB, Northern Ireland and the Isle of Man only², **and**
2. is not liable to pay national insurance contributions under the legislation of GB, Northern Ireland or the Isle of Man **and**
3. satisfies the second contribution condition for entitlement to IBST using insurance from the UK and, if necessary, the United States of America³ **and**
4. is incapable of work and has been incapable of work for the previous 364 days⁴.

1 SS (USA) Order 1997, Art 1(1)(7)(h); 2 Sch 1, Art 14(2); 3 Sch 1 Art 14(2)(a); 4 Sch 1 Art 14(2)(b)

074062 Where the above conditions are satisfied, a person is entitled to ¹

1. UK IBLT at the rate payable in the UK **or**
2. pro rata IBLT if United States disability benefit is being paid.

1 Art 14(3)

Working in the United States of America but paying United Kingdom contributions

074063 When deciding IBLT entitlement for a person in the United States of America

1. a person who remains insured in the UK and satisfies the contribution conditions for IBST is treated as being in the UK **and**
2. each day of incapacity in the United States of America is treated as a day for which IBST was received¹.

1 SS (USA) Order 97, Art 14(16)

Yugoslavia

Introduction

074064 Following the break up of Yugoslavia, the reciprocal agreement between the UK and Yugoslavia should be treated as separate agreements between the UK and

- the State Union of Serbia and Montenegro
- Bosnia - Herzegovina
- Croatia
- the former Yugoslav republic of Macedonia **and**
- Slovenia.

Entitlement to short term Incapacity Benefit

074065 A person insured under UK legislation is entitled to IBST whilst in one of the countries in DMG 074064 if

1. the person would be entitled if in the UK
2. the absence in that state is only **temporary and**
3. the Secretary of State has agreed to the absence¹.

1 FA, NI & II (Yugoslavia) Order 58, Sch, Art 10

074066 This provision applies to a person who is

1. entitled to IBST in the UK before going to one of the states in DMG 074064 **or**
2. insured under UK legislation and becomes entitled to IBST whilst in one of the states in DMG 074064.

074067 A person is treated as being in the UK (074064) for the purposes of claiming short term Incapacity Benefit if that person

1. is employed in one of the States in 074064 **and**
2. remains subject to UK legislation¹.

1 FA NI & II (Yugoslavia) Order 58 Sch, Art 11

Entitlement to long term Incapacity Benefit

074068 A person is entitled to long term Incapacity Benefit whilst in or residing in (074064) one of the Yugoslav states (074064) if that person would be entitled if in the UK¹.

1 Art 25(1)

074069 - 074079

European Community types of invalidity benefit

Introduction

074080 Entitlement to and the rate of invalidity benefit or long term Incapacity Benefit under European Community provisions depends on the legislation to which the claimant has been subject¹. There are two types of legislation, Type A and Type B.

1 Reg (EEC) 1408/71, Art 37 & 40

074081 Type A¹ are those where the rate of invalidity benefit does not depend on the length of insurance². Type B³ are those where the rate of invalidity benefit depends on the length of insurance⁴.

*1 R(S) 1/80; R(S) 13/83; 2 Reg (EEC) 1408/71, Art 37;
3 R(S) 1/80; R(S) 13/83; 4 Reg (EEC) 1408/71, Art 40*

074082 Detailed guidance on entitlement to invalidity benefit where a person has been subject only to Type A legislation is at 074100. Guidance on entitlement to invalidity benefit where a person has been subject to Type B legislation is at 074120.

Type A invalidity benefit

074083 A person is entitled to invalidity benefit from only one European Economic Area country where that person was insured

- only under Type A legislation **or**
- under both Type A and B legislation

but the conditions for entitlement under the Type B legislation are not satisfied.

074084 Under Type A legislation a person is entitled to a fixed rate of invalidity benefit regardless of the length of the insurance record.

Type B invalidity benefit

074085 A person may be entitled to invalidity benefit from two or more European Economic Area countries where that person has been insured under Type B legislation.

074086 Under Type B legislation the rate of invalidity benefit depends upon the person's insurance record.

Countries with Type A invalidity benefit

074087 Type A legislations¹ are

- **Belgium**

Legislation relating to the general invalidity scheme, special schemes for miners and sailors in the Merchant Navy, and insurance against incapacity for work for self employed persons.

- **Finland**

National pensions paid to persons who are born disabled or become disabled at an early age.

- **France**

Employed persons: all legislation on invalidity insurance, except for the legislation concerning the invalidity insurance of the Social Security scheme for miners. Self employed persons: the legislation on invalidity insurance for persons self employed in agriculture.

- **Greece**

Legislation relating to the agricultural insurance scheme.

- **Ireland**

Chapter 10 of Part II of the Social Welfare (Consolidation) Act 1981.

- **Netherlands**

The laws of 18.2.66, on insurance against incapacity for work and 11.12.75, on general insurance against incapacity for work.

- **Spain**

The legislation relating to invalidity insurance under the general scheme and special schemes.

- **United Kingdom**

Invalidity benefit, long term Incapacity Benefit and Severe Disablement Allowance².

1 Reg (EEC) 140/71, Art 37(2) & Annex IV; 2 SS CB Act 92, sec 30A, 30B, 30C, 30D, 30E, 33, 34, 40 & 41; SS CB (N. Ireland) Act 92, sec 30A, 30B, 30C, 30D, 30E, 33, 34, 68 & 69; SS Pens (N. Ireland) Order 75, Art 16-18

Countries with Type B legislation

074088 Type B legislation are¹

- Austria
- Denmark
- Finland (except for 074087)
- France (except for 074087)
- Germany
- Greece (except for 074087)
- Iceland
- Italy
- Liechtenstein
- Luxembourg
- Norway
- Portugal
- Sweden.

1 Reg (EEC) 1408/71, Art 40(1)

People subject to Type A and B legislation

074089 People subject to

- Type A legislation are at 074090 and
- Type B legislation are at 074091.

People subject to Type A legislation

074090 All persons who have been insured as employed or self employed persons in

- Belgium
- Ireland
- Netherlands
- Spain
- UK (Great Britain and Northern Ireland).

All employed persons in **France** (**not** miners) and self employed agricultural workers.

Agricultural workers in **Greece**.

Disabled persons in Finland who are paid a pension.

People subject to Type B legislation

074091 All persons who have been insured as employed or self employed persons in

- Austria
- Denmark
- Finland (see Volume 3, Decision Makers Guide - Subjects Common to all Benefits)
- France (miners and self employed persons, but not self employed agricultural workers)
- Germany
- Greece (see Volume 3, Decision Makers Guide - Subjects Common to all Benefits)
- Iceland
- Italy
- Liechtenstein
- Luxembourg
- Norway
- Portugal
- Sweden.

074092 - 074099

People subject only to Type A legislation

Which legislation applies

Which country decides entitlement

074100 If a person has been subject **only** to Type A legislation, entitlement to benefit is decided by **either**

1. the European Economic Area country whose legislation applied at the date when incapacity followed by invalidity occurred (the "relevant country"¹) **or**
2. if the claimant was not entitled in the "relevant country", another European Economic Area country with Type A legislation² (Volume 3, Decision Makers Guide - Subjects Common to all Benefits).

1 Reg (EEC) 1408/71, Art 39(1); 2 Art 39(3)

Example 1

The Dutch authorities will decide whether there is entitlement to Dutch invalidity benefit if, when incapacity started

- the claimant was employed or self employed in the Netherlands or
- if not currently employed or self employed, was last employed or self employed there.

Example 2

The UK will decide whether a person is entitled to long term Incapacity Benefit if the claimant is working in France when incapacity started, but has remained insured in the UK.

Entitlement to invalidity benefit in only one country

074101 If the relevant European Economic Area country (074100) decides that there is entitlement to Type A invalidity benefit, there is no entitlement to invalidity benefit under the legislation of any other European Economic Area country¹.

1 Art 39(2)

Example

A UK national entitled to Dutch invalidity benefit, who last worked in the Netherlands and was insured there, is not entitled to long term Incapacity Benefit even though he may be present in and have been insured in the UK.

074102 Exceptionally, a person could become entitled to long term Incapacity Benefit independently from European Community provisions if

1. voluntary UK contributions had been paid and
2. that person was present in the UK or was not disqualified for being absent from Great Britain (073820)¹.

1 SS Ben (PA) Regs, reg 2

Not entitled in relevant country

074103 A person may be entitled to invalidity benefit under any Type A legislation of an European Economic Area country, other than the one whose legislation applied at the date of incapacity (074100) if

1. they have been subject to the country's legislation and
2. they are not entitled to invalidity benefit under the relevant country's legislation¹.

1 Reg (EEC) 1408/71, Art 39(3)

074104 Entitlement to invalidity benefit may arise under the legislation of a single country. If there is possible entitlement under the legislation of more than one country, entitlement to invalidity benefit will be from the country in which the claimant was most recently insured.

Previously entitled to contribution based Jobseeker's Allowance

074105 A person is entitled to long term Incapacity Benefit¹ only, and not that of another country where the

1. last employment or self-employment was in another European Economic Area country with Type A legislation and
2. incapacity follows a period of entitlement to contribution based Jobseeker's Allowance based on either habitual residence in Great Britain during the last employment in another European Economic Area country² or the person having been a frontier worker³.

1 Art 25(2) & 39(5); 2 Art 1(a) & 71(1)(b)(ii); 3 Art 1(b) & 71(a)(ii)

074106 Similarly, a person is **not** entitled to long term Incapacity Benefit if the person is entitled to invalidity benefit in another European Economic Area country, where

- the last employment or self-employment was in the UK and
- when incapacity started that person was entitled to unemployment benefit from another European Economic Area country based on either habitual residence in that country whilst employed in the UK or as a frontier worker.

Entitlement to long term Incapacity Benefit

074107 A person is entitled to long term Incapacity Benefit in any other European Economic Area country if that person

- was insured as an employed or self employed earner in the UK when incapacity started (or if not employed or self employed at that time was last employed or self employed in the UK) **and**
- was previously subject to another Type A legislation (but not any Type B legislation) **and**
- satisfies the condition for entitlement to long term Incapacity Benefit after 364 days of short term Incapacity Benefit (or Statutory Sick Pay).

074108 - 074119

Long-term Incapacity Benefit - Type A and B legislation

Which type of legislation applies

074120 Entitlement to invalidity benefit is decided as if the claimant had been subject to Type A legislation only (074100) if the person

1. has been subject to Type A **and** Type B legislation **and**
2. does **not** satisfy the conditions for entitlement under any Type B legislation.

If the person **does** satisfy the conditions for Type B legislation see 074130.

1 Reg (EEC) 1408/71, Art 40(2)

Incapacity Benefit qualifying period

074121 A person can become entitled to long term Incapacity Benefit after 364 days of incapacity in the same period of incapacity for work¹ by taking account of periods for which the following were paid in another European Economic Area country

1. sickness benefit², including state benefits and the equivalents of Statutory Sick Pay
2. wages or salary paid by an employer in another European Economic Area country in place of sickness benefit³
3. invalidity benefit⁴, but see 074122 **or**
4. contributions, and those contributions, had they been paid in Great Britain, would have satisfied the contribution conditions for entitlement to short term Incapacity Benefit⁵.

1 SS CB Act 92, sec 30A(5); 2 Reg (EEC) 1408/71, Art 40(3)(a)(i); 3 Art 40(3)(a)(i); 4 Art 40(3)(a)(ii); 5 R v. NI Commissioner, ex parte Warry [1977] ECR 2085; R(S) 1/80

074122 Periods for which invalidity benefit have been paid may only be treated as periods of sickness benefit entitlement if the person would be incapable of work in the UK¹. In some European Economic Area countries a person is entitled to invalidity benefit although not incapable of work².

1 Reg (EEC) 1408/71, Annex VI, Point O, para 14; SS CB Act 92, s 171A; R(S) 11/51; R(S) 2/82; R(S) 13/83; 2 R(S) 9/81; R(S) 13/83

074123 Although the periods in 074121 can be taken into account, a person **cannot** be entitled to long term Incapacity Benefit until that person has been

1. entitled to short term Incapacity Benefit for 364 days in the period of incapacity for work¹ **or**
2. incapable of work for 364 days in the period of incapacity for work² **and either** is entitled to invalidity benefit or retirement pensions paid because a person is incapable of work³ in the other European Economic Area country⁴ **or** entitlement to sickness benefit in the other country⁵ has ended.

1 Reg (EEC) 1408/71, Art 40(3)(b); 2 Art 40(3)(b); 3 AC decision No 132;

4 Art 40(3)(b)(i); 5 Art 40(3)(b)(ii)

074124 A person who is not entitled to long term Incapacity Benefit because that person

- has **not** been entitled to short term Incapacity Benefit for 364 days **and**
- is not helped by 074121 points one to three

can still be entitled to long term Incapacity Benefit after 364 days of incapacity (074121 point four) if the contributions paid in the other European Economic Area country would have satisfied the contribution conditions for entitlement to short term Incapacity Benefit.

074125 - 074129

Incapacity Benefit -Type B legislation

Rate of Incapacity Benefit

074130 Where a person has been subject to a Type B legislation the rate of long term Incapacity Benefit is **not** paid at a standard rate. The rate of long term Incapacity Benefit can be calculated in two different ways (074131 and 074133). The higher of the two rates is payable to the claimant¹. Under UK legislation long term Incapacity Benefit is paid at a standard rate. That rate does **not** depend upon the person's contribution record².

1 Reg (EEC) 1408/71, Art 46(3); 2 SS CB Act 92, Sch 4, Part 1, para 2A

Method 1

074131 Long term Incapacity Benefit will be paid at the UK rate if

1. the person is entitled to long term Incapacity Benefit, having been entitled to short term Incapacity Benefit for 364 days or deemed to have been so during entitlement to Statutory Sick Pay¹, without relying on insurance in any other European Economic Area country **and**
2. periods of sickness benefit, wages or salary paid in place of sickness benefit, or invalidity benefit in another European Economic Area country have **not** been taken into account (074131) **and**
3. contributions paid in another European Economic Area country have **not** been used in deciding entitlement to short term Incapacity Benefit (074121).

1 SS (IB) Regs, reg 7

074132 The rate of long term Incapacity Benefit cannot be lower than the rate calculated in Method 2 (074133).

Method 2 - pro rata

074133 The basic pension and any adult dependency increase can be paid at pro rata rate. After calculating the pro rata rates any entitlement to child dependency increase must be added. Child dependency increases are family benefits.

074134 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

Basic pension

074135 The rate of long term Incapacity Benefit 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) before the start of incapacity in all the European Economic Area countries where the claimant has been insured and treat them as periods of insurance completed in the UK¹.

Stage 2 - Theoretical rate of Incapacity Benefit

Calculate the **theoretical** amount of long term Incapacity Benefit which would be payable if all the insurance added together in **Stage 1** had been paid in the UK². This will normally be the standard rate of long term Incapacity Benefit.

Stage 3 - Actual rate of Incapacity Benefit

The purpose of the calculation of the **actual** rate of long term Incapacity Benefit is to decide the amount to be paid by each of the European Economic Area countries where the person has been insured³.

The rate of Incapacity Benefit to be paid by the UK is⁴

*1 Reg (EEC) 1408/71, Art 45(1); 2 Art 46(2)(a); 3 Case 793/79, Menzies;
4 Reg (EEC) 1408/71, Art 46(2)(b)*

Example

A person claims Incapacity Benefit but is not entitled using UK insurance only (074130). Before becoming incapable of work a person was insured in the UK for 52 weeks and was insured in Italy for 208 weeks. The total insurance is 260 weeks.

The claimant is **under** pension age, therefore the **theoretical** rate of UK Incapacity Benefit is the standard rate, £57.60.

The **actual** rate of Incapacity Benefit to be paid by the UK is

That is 1/5 of £57.60 or £11.52.

074136 The pro rata method can only be applied to invalidity benefits. Before 13.4.95 UK invalidity benefit was paid after 28 weeks of incapacity. For the first 52 weeks Incapacity Benefit is a sickness benefit for European Community purposes (See DMG 073851). Incapacity Benefit becomes an invalidity benefit after 52 weeks of incapacity (See DMG 073852). As a result a person can only be entitled to the pro rata rate of Incapacity Benefit after 52 weeks. It does not matter that the 28th week of incapacity is shortly after 13.4.95.

Example

A person becomes incapable of work on 15.10.94 and would have become entitled to pro rata invalidity benefit on 28.4.95. However long term Incapacity Benefit replaces invalidity benefit on 13.4.95. As a result a pro rata rate of benefit will not be paid until 14.10.95 after 52 weeks of incapacity.

074137 Although pro rata long term Incapacity Benefit cannot be paid for the first 52 weeks, a person will still have to show that they are incapable of

1. doing their own work for the first 196 days¹ (where that test applies) **and**
2. all work after 197 days².

1 SS (IfW) Act 94, s 171B; 2 s 171C

Adult dependency increase

074138 Adult dependency increase¹ is paid at the same pro rata rate as the basic pension² (074133).

1 SS CB Act 92, s 83, 84, 85 & 86; 2 Reg (EEC) 1408/71, Art 47(3)

Child dependency increase

074139 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.

Not entitled to invalidity benefit in all European Economic Area countries

074140 A person may not be entitled to invalidity benefit from every European Economic Area country in which insurance has been paid. When this occurs the rate of pro rata Incapacity Benefit 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 invalidity benefit are satisfied **or**
2. using the insurance (or residence) from all the European Economic Area countries where the person has been insured¹.

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

074141 - 074149

Pro rata - not insured for one year

Insured in one country for less than one year

074150 An award of long term Incapacity Benefit need not be made if

1. the period of insurance (or residence) in that country is less than one year (but see 074151) **and**
2. that insurance does not satisfy the conditions for entitlement to long term Incapacity Benefit¹.

1 Reg (EEC) 1408/71, Art 48(1)

074151 Insurance periods of less than a year are included in

1. adding together all periods of insurance (074135 Stage 1) **and**
2. calculating the theoretical amount (074135 Stage 2).

They are **not** included in deciding the pro rata rate of long term Incapacity Benefit (074135 Stage 3)¹.

1 Art 48(2)

Not insured in any country for one year

074152 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 insured¹ if

- that person **has** not been insured for one year in any country **and**
- invalidity benefit would not be awarded in any country.

If the country where the person was last insured is the UK, that person will be entitled to standard rate long term Incapacity Benefit.

1 Art 48(3)

074153 - 074159

Entitled to an old age pension in another European Economic Area country

Introduction

074160 Because European Economic Area countries have different ages for entitlement to old age benefits a person may become entitled to an old age benefit in one European Economic Area country before reaching the minimum age for entitlement in another European Economic Area 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 benefit¹ (long term Incapacity Benefit in the UK).

1 Reg (EEC) 1408/71, Art 43(3)

074161 This may occur where

- the person has been insured under Type A legislation **and** was entitled to invalidity benefit before pension age and that benefit was converted to retirement pension at pension age **and**
- the other European Economic Area country has a lower age for entitlement to old age benefits than the UK (074163 - 074165).

Example

A UK national went to live in France in May 1989. He worked there and paid French insurance. On 1.3.93 he became incapable of work and was awarded a French invalidity pension. On 3.6.93 he reached age 60 and became entitled to French old age pension. This was at a low rate because of the small amount of French insurance he had paid (1989 to 1993). At age 60 he is not entitled to UK Retirement Pension. Instead he will receive pro rata long term Incapacity Benefit from the UK until he is 65.

Rate of pro rata long term Incapacity Benefit

074162 All the insurance up to the date the person became incapable of work should be included in the pro rata calculation.

Long term Incapacity Benefit qualifying period

074163 A person does **not** have to be entitled to short term Incapacity Benefit for 52 weeks in order to become entitled to pro rata long term Incapacity Benefit.

Pension ages in other European Economic Area countries

074164 In the following countries pension age for men is lower than the UK

- Belgium Flexible retirement between 60 and 65 for men.
- Finland Normal retirement age is 65, but early retirement from 60 is possible.
- France Old age pension is payable from age 60.
- Spain Full retirement pension is paid from age 65, but early retirement is possible from age 60.

074165 In **Greece** pension age for both men and women is lower than in UK. Retirement age is 60 for men and 58 for women.

074166 - 074179

Uprating of pro rata Long-term Incapacity Benefit

074180 The pro rata **fraction** is **not** calculated when the rates of benefit are increased¹. However, the rate of long term Incapacity Benefit is increased.

1 Reg (EEC) 1408/71, Art 51(1)

Example

On becoming entitled to UK long term Incapacity Benefit the pro rata fraction was calculated to be 52/260 (074135). This meant that the actual rate of UK long term Incapacity Benefit was £11.52. At the next general uprating of benefit rates in April 1995 the full rate of long term Incapacity Benefit was increased from £57.60 to £58.85. The pro rata fraction remains the same but the actual rate being paid increases from £11.52 to £11.77.

The new calculation of the actual rate of long term Incapacity Benefit is

$$\frac{52 \text{ (UK insurance)}}{260 \text{ (total insurance)}} \times £58.85 \text{ (theoretical amount)}$$

That is, £11.77.

074181 - 074189

Pro rata Invalidity Benefit under reciprocal agreements

074190 A person may be entitled to pro rata long term Incapacity Benefit where that person has been insured in both the UK and one of the following non-European Economic Area countries

- Malta¹
- Switzerland²
- Turkey³
- United States of America⁴.

*1 SS (Malta) Order 96, Sch, Art 13(4) & (5); 2 FA, NI & II (Switzerland) Order 69, Sch 1, Art 12;
3 NI & II (Turkey) Order 61, Sch, Art 18(1); 4 SS (USA) Order 84, Sch 1, Art 14(3)*

Rate of Incapacity Benefit

074191 Although agreements may differ on what contributions are included, the pro rata formula is the same as under European Community provisions (074135). A separate pro rata calculation is needed if the person was insured in more than one of the countries listed in 074190. The higher rate of pro rata Incapacity Benefit would then be paid. The uprating of the rate of Incapacity Benefit is also the same as under European Community provisions (074180).

Adult dependency increases

074192 Adult dependency increase is paid at the same pro rata rate as the basic pension under the agreements with

- Jamaica
- Switzerland
- Turkey **and**
- United States of America.

074193 Under the agreement with Malta adult dependency increases are paid at full rate even though long term Incapacity Benefit may be being paid at pro rata rate¹.

1 SS (Malta) Order 96, Sch, Art 1(1) & 13(5)

Insured for less than six months

074194 No pro rata long term Incapacity Benefit is 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)

Topped up long term Incapacity Benefit

074195 The rate of long term Incapacity Benefit will be topped up by the UK if¹

- a person is entitled to pro rata invalidity benefit from both the UK and Malta **and**
- that person is also entitled to UK long term Incapacity Benefit without using the Agreement **and**
- the total rate of pro rata invalidity benefit paid by the UK and Malta is less than the rate of UK long term Incapacity Benefit which the person would have been entitled to without using the Agreement.

1 SS (Malta) Order 96, Sch, Art 13(7)

074196 - 074199

Long-term Incapacity Benefit qualifying period - reciprocal agreements

074200 Two agreements with non-EEA countries allow periods of sickness or invalidity benefits paid by another country to be used to satisfy the IBLT qualifying period.

074201

Isle of Man

074202 Periods of sickness benefit paid in the Isle of Man should be included in deciding whether a person has been entitled to IBLT for 364 days¹.

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

Malta

074203 From 1.9.96 a person living in Malta and not entitled to IBST may be entitled to UK IBLT if that person¹

1. is **not** subject to UK legislation **and**
2. satisfies the first contribution condition for entitlement to IBST using insurance from GB, Northern Ireland and the Isle of Man only **and**
3. satisfies the second contribution condition for entitlement to IBST using insurance from GB, Northern Ireland, the Isle of Man, Guernsey and Malta **and**
4. is incapable of work and has been incapable of work for the previous 364 days.

1 SS (Malta) Order 96, Sch, Art 13(2)

074204 Entitlement to UK IBLT starts from the **later** of

1. the 365th day of incapacity **or**
2. the date of entitlement to Maltese invalidity benefit¹.

1 Sch, Art 13(3)071805

074205 Where 074203 applies that person is entitled to long term Incapacity Benefit from the later of the

1. end of the long term Incapacity Benefit qualifying period **or**
2. date of becoming entitled to Maltese invalidity benefit¹.

1 Sch, Art 13(3)

074206 - 074209

Overlap under reciprocal agreements

Introduction

074210 UK provisions¹ do not provide for UK IBST or IBST(L) to be adjusted where SB or IVB is being paid in a country with which the UK has an agreement. However, in the same way as EC provisions (see DMG 070540) many agreements provide

1. that a person will be entitled to IVB from only one country **or**
2. for an adjustment to be made where a person is entitled to SB and IVB from both the UK and the other country.

1 SS (Overlapping Benefits) Regs 79

074211 Detailed guidance on the overlapping of IVB under different agreements is at DMG 074221 - DMG 074252.

Pro rata long term Incapacity Benefit

074212 Pro rata IBST(L) (see DMG 074190) is **not** adjusted because it overlaps with pro rata IBST(L) paid by the other country.

074213 The countries with which the UK has agreed to pay pro rata IBST(L) are listed at DMG 074190.

074214- 074219

Overlap under reciprocal agreements - Barbados - Malta

74220

Barbados

074221 A person who is potentially entitled to

1. IBLT from the UK and invalidity pension from Barbados **or**
2. Invalidity pension or SB from Barbados and either IBST or IBLT

for the same incapacity will only be entitled to the invalidity benefit (see DMG 073911) from the country in which the incapacity began¹.

1 SS (Barbados) Order 92, Sch, Art 14(1)

074222 IB is not payable for any period that a person is entitled to a benefit from Barbados for IfW resulting from

1. an industrial accident **or**
2. an industrial disease¹.

1 Sch, Art 25(2)

Cyprus

074223 A person who could be entitled to SB or invalidity pension from Cyprus and IBST or IBLT from the UK is entitled to benefit only from the country

1. to whose legislation that person was subject when incapacity began¹ **or**
2. whose legislation applied when incapacity began if incapacity began in a sovereign base area.

1 SS (Cyprus) Order 83, Sch, Art 12(5) & 15(2)

Isle of Man

074224 A person cannot be entitled to IB from both GB and the Isle of Man¹.

1 SS (I of M) Order 77, Sch 1, Art 3

Jamaica

Overlap with Jamaican invalidity benefit after 1.4.97

074225 Where a person is entitled to both UK IBLT and Jamaican invalidity benefit for the same incapacity and for the same period, Invalidity Benefit will be paid by the country where the person was when incapacity began¹.

1 SS (Jamaica) Order 97, Art 13(3)

Overlap with Jamaican industrial injury benefit

074226 A person is **not** entitled to

1. UK IBST **or**
2. UK IBLT **or**
3. UK MA

for any period where there is entitlement to benefit (other than a pension) from Jamaica because of IfW which results from an industrial accident or disease¹.

1 Art 24

074227 IBST is not covered by the agreement (see DMG 074020). IBST can be paid in Jamaica if disqualification can be avoided under the provisions (see DMG 073820).

Jersey and Guernsey

Short term Incapacity Benefit

074228 Where a person could be entitled to IBST and SB from Jersey or Guernsey that person will receive benefit from the country in which contributions were last paid or credited¹.

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

Long term Incapacity Benefit

074229 Benefit is only paid by the country where the incapacity began¹.

1 Art 15

Malta

Short term Incapacity Benefit

074230 A person who may be entitled to

1. SB (IBST for the UK) from both countries **or**
2. SSP from GB and SB from Malta

is only entitled to benefit from the country where that person was insured when incapacity started¹.

1 SS (Malta) Order 96, Sch, Art 12(9)

Long term Incapacity Benefit

074231 A person is entitled to an additional amount of IBLT where

1. that person is entitled to IBLT without being helped by the agreement **and**
2. UK IBLT is pro rated because Maltese invalidity benefit (either with or without using the agreement) is being paid **and**
3. the combined total of Maltese invalidity benefit and pro rata IBLT is less than the IBLT which would be paid under domestic law alone¹.

1 Art 13(6) & (7)

074232 Where DMG 074231 applies the UK will pay additional IBLT equal to the difference between

1. entitlement to IBLT without using the agreement **and**
2. the combined total of UK and Maltese invalidity benefit¹.

1 Art 13(7)

074233 - 074239

Overlap under reciprocal agreements - New Zealand - Yugoslavia

New Zealand

074240 Sickness benefit (short term Incapacity Benefit) is paid only by the country where the person is usually resident (see DMG 070794)¹.

1 SS (New Zealand) Order 83, Sch, Art 4(4)

Northern Ireland

074241 A person cannot be entitled to Incapacity Benefit from both GB and Northern Ireland¹.

1 SS (N Ireland Reciprocal Arrangements) Regs 76, Sch 1, para 3

Switzerland

074242 A person can be helped to satisfy the contribution conditions for entitlement to UK short term Incapacity Benefit where that person

- is ordinarily resident in GB **or**
- has become liable to pay contributions under UK legislation¹.

1 FA, NI & II (Switzerland) Order 69, Sch 1, Art 11(4)

074243 Where short term Incapacity Benefit is paid because contributions have been taken into account under DMG 074242, the amount of short term Incapacity Benefit is reduced by the amount of Swiss benefit (other than Swiss invalidity benefit) paid for the same period¹.

1 Sch 1, Art 11(4)

Turkey

074244 There are **no** provisions for overlapping UK short term Incapacity Benefit and Turkish sickness benefit (see DMG 074048).

United States of America

Entitlement to United Kingdom and United States of America invalidity benefit

074245 From 1.9.97 the rate of pro rata long term Incapacity Benefit will be topped up by the UK if¹

1. a person is entitled to pro rata long term Incapacity Benefit from the UK and disability benefit from the United States of America **and**
2. that person is also entitled to UK long term Incapacity Benefit, **without** using the Agreement **and**
3. the total rate of benefit paid by the UK and the United States of America is less than the rate of UK long term Incapacity Benefit which the person would have been entitled to without using the Agreement.

1 SS (USA) Order 97, Art 14(5)

074246 A person is **not** entitled to topped up long term Incapacity Benefit if that person is

1. exporting long term Incapacity Benefit under the Agreement **or**
2. entitled to long term Incapacity Benefit because insurance has been aggregated under the Agreement¹.

1 Art 11(6) & 14(3)(a)

Pro rata long term Incapacity Benefit

074247 A pro rata calculation should not be made where the total insurance in the UK is less than one qualifying year¹.

1 Art 14(15)1

Yugoslavia

Long term Incapacity Benefit

074248 Invalidity benefit is usually (see DMG 074249) paid by the country where the person was insured at the date that incapacity began¹. However, if that person has been in that country for less than one year, invalidity benefit will be paid by the other country².

1 FA, NI & II (Yugoslavia) Order 58, Sch, Art 14(2); 2 Art 14(3)

074249 Where invalidity benefit has been awarded by one country that person is again potentially entitled to invalidity benefit from that same country if the previous entitlement to invalidity benefit was within three years of the present claim¹.

1 Art 14(4)

Short term Incapacity Benefit

074250 A person is subject to the legislation of the country in which that person is employed (see DMG 074251)¹. Sickness benefit is paid by that country.

1 FA, NI & II (Yugoslavia) Order 58 Sch, Art 4(1)

074251 A person may remain subject to the legislation of the country where that person ordinarily resides (see DMG 074252) if

1. that person is working in the other country **and**
2. the employer is based in the country where the person resides¹.

1 Art 4(2)

074252 A person can remain subject to the country of residence for

1. twelve months¹ **or**
2. longer than twelve months, where the Secretary of State agrees².

1 Art 4(2); 2 Art 4(3)

074253 - 074259

Potential entitlement to Sickness Benefit under both UK and Republic of Ireland legislation

074260 A person covered by EC provisions (see DMG 070050) is only entitled to SB from the country to whose legislation that person was subject when incapacity began if that person could be entitled to

1. IBST from GB **and**
2. disability benefit from the Republic of Ireland¹.

1 Reg (EEC) 574/72, Art 8(2)

Example

A person is entitled to IBST where during the last employment (or self-employment) that person was liable for UK contributions.

074261 Although a person is not entitled to sickness benefit from the UK and the Republic of Ireland at the same time

1. EC provisions do not remove entitlement for periods which do **not** overlap¹ **and**
2. benefit is only restricted by the rate payable in that country (see DMG 074262).

1 Case 143/79, Walsh v. Insurance Officer

074262 A person 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. that person is entitled to benefit from only one country **and**
2. the rate of SB in that country is lower than the rate paid in the other country.

074263 A person is entitled to IBST and Irish SB where that person has

1. been liable for Irish insurance under EC legislation¹ **and**
2. paid voluntary UK contributions.

1 Reg (EEC) 1408/71, Title II

074264 – 074339

Income Support - Absence from Great Britain

Introduction

074340 This section contains guidance on the provisions for entitlement to IS when a person is absent from GB.

074341 Although it is a condition of entitlement to IS that a person is in GB¹, it can continue to be paid during an absence from GB for four (see DMG 074343 and 074345) or eight weeks (see DMG 074344 and 074345)², or without specific limit whilst receiving NHS treatment abroad³.

1 SS CB Act 92, s 124(1); 2 IS (Gen) Regs, reg 4; 3 reg 4(3A)

074342 When calculating periods of absence from GB, the day of leaving GB and the day of return to GB are both days on which the person is in GB¹.

1 R(S) 1/66

United Kingdom law

Claimant absent from Great Britain

074343 A claimant who is absent from GB continues to be entitled to IS for the first four weeks of absence if¹

1. the absence is temporary (see DMG 070853) **and**
2. there was title to IS immediately before leaving GB **and**
3. the absence is not expected to last more than 52 weeks² **and**
4. the other conditions of entitlement remain satisfied³ **and**
5. any one of the following is satisfied:
 - 5.1 the claimant is not required to be available for work because they are⁴ a lone parent **or**
 - 5.2 a single person looking after foster children **or**
 - 5.3 a single person responsible for a child prior to adoption **or**
 - 5.4 a person temporarily looking after children **or**
 - 5.5 caring for another person **or**
 - 5.6 disabled worker **or**
 - 5.7 a person in employment living in a residential care home, nursing home or residential accommodation **or**
 - 5.8 a disabled student **or**
 - 5.9 a blind person **or**

- 5.10 pregnant or on parental leave or paternity leave **or**
- 5.11 a refugee **or**
- 5.12 required to attend court **or**
- 5.13 in custody **or**
- 5.14 responsible for a child while their partner is temporarily absent from GB (see benefit specific guidance for more information on all of the foregoing); **or**
- 5.15 a person aged under 25 engaged in training **or**
- 5.16 the claimant is incapable of work (DMG Chapter 13), or treated as incapable of work, or is entitled to SSP, and is abroad solely to receive treatment, by an appropriately qualified person (see DMG 074346) for the condition causing incapacity for work⁵ **or**
- 5.17 the claimant is in Northern Ireland⁶ **or**
- 5.18 the claimant is one of a couple who are both absent from GB and a premium (pensioner premium, higher pensioner premium, DP or SDP) is applicable for the partner⁷ **or**
- 5.19 the claimant is incapable of work (DMG Chapter 13) and has been so for the previous⁸ 364 days **or** 196 days if terminally ill or entitled to
 - 5.19.a the highest rate care component of DLA **or**
 - 5.19.b the daily living component of PIP at the enhanced rate **or**
 - 5.19.c AFIP

Note: In calculating the 364 or 196 days of incapacity any periods not separated by more than 56 days count as one period.

1 IS (Gen) Regs, reg 4(1)(a); 2 reg 4(2)(a); 3 reg 4(2)(b); 4 reg 4(2)(c)(i); 5 reg 4(2)(c)(ii); 6 reg 4(2)(c)(iii); 7 reg 4(2)(c)(iv); 8 reg 4(2)(c)(v)

074344 A claimant who is absent from GB continues to be entitled to IS for the first eight weeks of absence if¹

1. the absence is temporary (see DMG 070853) **and**
2. there was title to IS immediately before leaving GB **and**
3. the absence is not expected to last more than 52 weeks² **and**
4. the other conditions of entitlement remain satisfied³ **and**
5. the claimant is accompanying a child or young person who⁴ is a member of the family (Benefit Specific Guidance) **and** has a disease or bodily or mental disablement (DMG Chapter 13) **and** is receiving treatment outside GB by or under the supervision of an appropriately qualified person (see DMG 074346).

1 IS (Gen) Regs, reg 4(1)(b); 2 reg 4(3)(a); 3 reg 4(3)(b); 4 reg 4(3)(c) and (d)

074345 A claimant who is absent from GB continues to be entitled to IS if

1. the absence is temporary **and**
2. there was title to IS immediately before the absence began **and**
3. the absence is for the claimant to receive pre-arranged treatment at a hospital or other institution outside GB but pursuant to certain parts of the Health Service Act 2006 or the Health Service (Wales) Act, or any equivalent provision in Scotland¹ (see DMG 070661 to 070664).

1 IS (Gen) Regs, reg 4(3A)

Partner absent from United Kingdom

074346 If a claimant's partner (or polygamous partner) is absent from the UK the calculation of the applicable amount can continue to include that person for

1. the first four weeks of the partner's absence if the absence is temporary (see DMG 070853)¹ **or**
2. the first eight weeks of the partner's absence if the absence is² temporary (see DMG 070853) **and** to accompany a child or young person who is a member of the family (Benefit Specific Guidance) **and** has a disease or bodily or mental disablement (DMG Chapter 13) **and** is receiving treatment (see DMG 070659) outside GB by or under the supervision of an appropriately qualified person (see DMG 074347).

1 Sch 7, para 11 & 12; 2 Sch 7, para 11A & 12A

Appropriately qualified person

074347 Appropriately qualified person is a person qualified to provide medical treatment, physiotherapy or a similar or related form of treatment¹.

1 reg 4(4)

European Community law

074348 IS is listed as a special non-contributory benefit for the purposes of EC law¹. Such benefits are only payable in, and at the expense of, the State in which the person is habitually resident. This means that IS is payable under UK law only and EC law does not help².

1 Reg (EEC) No. 1408/71, Art 10a; 2 CIS/863/94

Reciprocal agreements

074349 IS is not within the scope of any of the reciprocal agreements between the UK and other countries.

074350 - 074359

Industrial injuries benefits

Introduction

074360 This section contains guidance on residence and presence for Industrial Injuries benefits. Industrial Injuries benefits are

- Disablement Benefit
- Reduced Earnings Allowance
- Retirement Allowance
- Industrial Death Benefit.

See Benefit Specific Guidance for guidance on Workmen's Compensation (Supplementation) Scheme and Pneumoconiosis, Byssinosis and Miscellaneous Diseases Benefit Scheme.

074361 The guidance covers

- claims to benefit, including UK law (074370 - 074378) **and** European Community law (074379 - 074392) **and** reciprocal agreements **and** claims from outside Great Britain (074430 - 074431) **and**
- export of benefit to other countries, including Great Britain law (074440 - 074449) **and** European Community law (074450 - 074454) **and** reciprocal agreements (074460).

074362 If a claimant does not satisfy the conditions in Great Britain law, the decision maker should consider whether the claimant is helped by European Community law and, if not, by any reciprocal agreements.

074363 070000 - 070873 gives guidance on general principles and the common terms used.

074364 - 074369

Industrial Injuries benefits - claims

Conditions in United Kingdom law - General

074370 A claimant does not have to satisfy residence conditions to claim Industrial Injuries benefits in Great Britain. However, benefit may not be payable if the employed earner had an industrial accident or contracted a prescribed disease whilst outside Great Britain¹ or if the claimant is absent from Great Britain (070702).

1 SS CB Act 92, s 94(5); SS (II) (PD) Regs, reg 14

Prescribed Disease contracted or accident happened outside Great Britain before 30.11.64

074371 Industrial Injuries benefit is payable in Great Britain if an employed earner had an accident or contracted a prescribed disease outside Great Britain before 30.11.64¹ only if

1. the person concerned is an airman or mariner (078060 - 078185) **or**
2. the accident happened in the course of employment in Sark or whilst going between Great Britain and Sark. Providing the employment was employed earners employment, the accident is treated as if it happened in Great Britain².

1 SS CB Act 92, s 94(5); 2 SS Ben (PA) Regs, reg 12(2)

Prescribed Disease contracted or accident happened outside Great Britain on or after 30.11.64 but before 1.10.86

074372 Industrial Injuries benefit is payable in Great Britain if a person had an accident or contracted a prescribed disease outside Great Britain between 30.11.64 and 30.9.86 if

1. the person concerned is an airman or mariner¹ (078060 - 078185) **or**
2. the accident happened in the course of employment in Sark or whilst going between Great Britain and Sark. Providing the employment was employed earner's employment, the accident is treated as if it happened in Great Britain² **or**
3. the accident happened in another European Economic Area country other than the UK (070870)³ **or**

4. the accident or prescribed disease was in connection with prescribed employment (074373) and happened, or was contracted in a prescribed area (074374) whilst travelling between prescribed areas (074374), whilst travelling between a prescribed area and a designated area (074375), **or** whilst travelling between Norway or an European Economic Area country and a prescribed area⁴.

*1 SS (II) (Airman's Ben) Regs and SS II (Mariner's Ben) Regs; 2 SS Ben (PA) Regs, reg 12;
3 reg 10C(2); 4 reg 10C*

Prescribed employment

074373 Prescribed employment means any employment in any designated area (074375) or prescribed area (074374) in connection with oil, gas or other natural resources¹.

1 reg 11(1)

Prescribed area

074374 Prescribed area means

1. any area in which Norway or a European Economic Area country (other than the UK) have a right to explore the seabed for natural resources being an area outside the territorial seas of Norway or the European Economic Area country¹ **and**
2. any other area specified under the Oil and Gas (Enterprise) Act 1982.

1 reg 11(1)

Designated area

074375 Designated area means any area in which the UK has a right to explore the seabed for natural resources¹.

1 reg 11(1)

074376 If the circumstances in option four of 074372 are satisfied, the employment is treated as employed earners employment if

1. the person concerned is ordinarily resident in Great Britain, and was resident in Great Britain immediately before starting the prescribed employment **and**
2. the employer has a place of business in Great Britain¹.

1 reg 10C(2A)

Prescribed Disease contracted or accident happened on or after 1.10.86

074377 Industrial Injuries benefit is payable on return to Great Britain if a person outside Great Britain has an accident arising out of, and in the course of, employment or contracts a prescribed disease due to the nature of the employment on or after 1.10.86 and

- Class 1 contributions are payable during the absence from Great Britain **or**
- the person is paying Class 2 contributions as a volunteer development worker during the absence.

074378 A person who satisfies the conditions in 074377, as well as the other conditions for Industrial Injuries benefits (see Benefit Specific Guidance), will have underlying entitlement to benefit whilst outside Great Britain but the benefit only becomes payable from the date of return to Great Britain (but see also 074379)¹.

1 SS Ben (PA) Regs, reg 10C(5)

Conditions in European Community law - General

074379 If the claimant does not satisfy the conditions in UK law, the decision maker should consider whether the claim can be helped by European Community law.

074380 To rely on European Community law a claimant must

- be a European Economic Area national (070080) **and**
- come within the personal scope (070050) of European Community law.

Accident outside Great Britain

074381 If a claimant who is subject to UK legislation has an accident which occurs while travelling in another European Economic Area country, the accident is deemed to have occurred in the UK¹. Consequently, entitlement will arise as if the accident had taken place in the UK.

1 Reg (EEC) No 1408/71, Art 56; R(1) 7/85, App; Re a car accident in West Berlin [1979] 2 CMLR 42

074382 If a claimant who

- is subject to UK legislation **and**
- has an accident which occurs whilst travelling in the course of employment between European Economic Area countries.

entitlement to benefit will be determined as if the accident has occurred within the territory of the UK.

074383 This provision applies to persons travelling

- on a ship or aircraft between the UK and another European Economic Area country or between two European Economic Area countries other than the UK for example, between Italy and Greece **and**
- overland from the territory of one European Economic Area country to another throughout the territory of a non European Economic Area country for example, from Germany to Italy through Switzerland (but see 074384).

074384 However, if an accident occurs in the circumstances described in the second point in 074383 the decision maker should check whether there is any provision in a reciprocal agreement (070330 and 070333) between the UK and the State where the accident happened.

Industrial diseases - prescribed employment in more than one European Economic Area country

074385 [\[See Memo DMG 32/10\]](#) A person

- who has contracted a prescribed disease **other than** pneumoconiosis, or who has died as a result of a prescribed disease **and**
- who had been employed in a prescribed employment in Great Britain **and** in one or more other European Economic Area country, in employment which is equivalent to prescribed employment in Great Britain

will (or for Industrial Death Benefit his survivors will) be entitled to Industrial Injuries benefits only under the legislation of one of the countries of employment. This will normally be the country in which that person was last employed¹. But, where there is no entitlement under the last country's scheme, entitlement arises in the country of the next most recent employment². This applies even if the disease was not diagnosed in that country³.

1 Reg (EEC) 1408/71, Art 57(1); 2 Reg (EEC) 574/72, Art 67(3); 3 Reg (EEC) 1408/71, Art 57(2)

Claimant worked in Great Britain and other European Economic Area countries - last worked in Great Britain

074386 A claimant who

- has been in prescribed employment in Great Britain and the equivalent of prescribed employment in one or more other European Economic Area countries **and** before the onset of the disease, was in prescribed employment in Great Britain and that prescribed employment was after the employment in the other countries **and** satisfies the conditions in UK legislation for entitlement to Industrial Injuries benefits is entitled to UK Industrial Injuries benefits at the UK rate of payment.

Example

A claimant worked as a welder in the shipbuilding industry in France from 1955 to 1967 and from 1972 to 1979. She also did the same type of work in the shipbuilding industry in Great Britain from 1967 to 1972 and again from 1979 to November 1989 when she ceased work permanently and returned to France. In 1996 she claimed Industrial Injuries benefit in France on the basis that she was suffering from occupational deafness because of the use of pneumatic percussive tools. As her last period of prescribed employment before the onset of the deafness was in Great Britain and she satisfies the conditions in UK legislation for Industrial Injuries benefit¹, she is entitled to UK Industrial Injuries benefit even though she is living in France.

1 SS (II) (PD) Regs, reg 6(2)(C) and 25 and Sch 1 para A-10

Claimant worked in Great Britain and other European Economic Area countries - last worked in country other than Great Britain

074387 A claimant who

- has been in prescribed employment in Great Britain and the equivalent of prescribed employment in one or more other European Economic Area countries **and**
- before the onset of the disease, was in the equivalent of prescribed employment in a European Economic Area country other than Great Britain and that prescribed employment was after the employment in Great Britain

is not entitled to UK Industrial Injuries benefit, even though all the other conditions of entitlement may be satisfied. This is because before the onset of the disease the last period of employment, equivalent to prescribed employment, was in another European Economic Area country. If, exceptionally, there is no entitlement under the other country's scheme, entitlement would arise under UK legislation.

Example

A claimant worked as a metal worker in the shipbuilding industry in Great Britain from 1955 to 1967 and from 1972 to 1979. He also did the same type of work in the shipbuilding industry in West Germany from 1967 to 1972 and again from 1979 to November 1989 when he ceased work permanently and returned to Great Britain. In 1992 he claimed UK Industrial Injuries benefit on the basis that he was suffering from occupational deafness because of the use of pneumatic percussive tools. As his last period of prescribed employment before the onset of the deafness was in Germany, he is not entitled to UK Industrial Injuries benefit even though he may satisfy all the other conditions of entitlement¹.

If a claimant who was in the same circumstances as in the example did not satisfy the conditions in German legislation for Industrial Injuries benefits then entitlement to UK Industrial Injuries benefits would have to be considered.

1 SS (II) (PD) Regs, reg 6(2)(C) and 25; Sch 1, para A.10

074388 A claim from a person, or survivor of a person, who last worked in another European Economic Area country (074386) should be sent to the appropriate authorities in that country. If there is no entitlement to that country's benefit, the claim will be returned to Great Britain with confirmation that there is no entitlement. The decision maker should then decide whether the claimant satisfies the conditions to UK Industrial Injuries benefits¹.

1 Reg (EEC) 574/72, Art 67

Pneumoconiosis

074389 [\[See Memo DMG 32/10\]](#) A person who

- has contracted pneumoconiosis, or who has died as a result **and**
- had been employed in a prescribed employment in Great Britain and employed in one or more other European Economic Area countries in employment which is equivalent to prescribed employment in Great Britain

will (or for Industrial Death Benefit his survivors will) be entitled to Industrial Injuries benefits only under the legislation of the last country of employment¹. This applies even if the disease was not diagnosed in that country².

1 Reg (EEC) No 1408/71, Art 57(1); 2 Reg (EEC) No 574/72, Art 57(5)

074390 Although the award of benefit is made by the last country of employment, the actual cost of any Industrial Injuries benefit is split between the countries involved.

Aggravation - Claimant worked only in the European Economic Area country of award

074391 If a claimant's condition is aggravated

1. because of continued employment in prescribed employment in an European Economic Area country **and**
2. the claimant is receiving Industrial Injuries benefits from that same European Economic Area country

that country will be responsible for any increase in Industrial Injuries benefits because of the aggravation¹.

1 Reg (EEC) 1408/71, Art 60(1)(a)

Example

A man who has worked in prescribed employment in both Italy and GB is awarded UK Industrial Injuries benefits because his last period of employment was in GB (see DMG 074385). He goes back to work in prescribed employment in GB and, as a result, his condition deteriorates and his disablement increases. The rate of his United Kingdom Industrial Injuries benefit will therefore increase.

Aggravation - Claimant worked in an European Economic Area country other than the country of award

074392 The country in which the claimant has been working will be responsible for paying a supplement (see DMG 070822) if

1. a claimant's condition is aggravated because of continued employment in prescribed employment in a European Economic Area country **and**
2. the claimant is receiving Industrial Injuries benefits from a different European Economic Area country.

The supplement will be the difference between the amount which would have been payable under that country's legislation before the aggravation and the amount payable after the aggravation¹.

1 Reg (EEC) 1408/71, Art 60(1)(a)

Example

A woman who has worked in prescribed employment in both France and GB is awarded French Industrial Injuries benefits because her last period of employment was in France (see DMG 074382). She goes back to work in prescribed employment in GB and, as a result, her condition deteriorates and her disablement increases.

GB will be responsible for paying a supplement which will be the difference between the amount that would have been payable under UK legislation before the aggravation and the amount payable under UK legislation after the aggravation.

Provisions in reciprocal agreements

General

074393 If a claimant does not satisfy UK law and is not helped by EC law, the DM should consider whether the claim is helped by any reciprocal agreements with other countries. DMG 070330 and DMG 070333 give guidance on reciprocal agreements. But a person within the personal scope (see DMG 070050 of the EC provisions cannot generally rely on a reciprocal agreement with another EEA country for benefit entitlement¹ (see DMG 070320). The following table shows the agreement with countries that are not part of the EEA.

1 Case 82/72, Walder; Case 475/93, Thévenon

	Disablement Benefit	Industrial Death Benefit
Barbados	x	x
Bermuda	x	x
Canada	x	x
Cyprus	x	x
Guernsey	x	x
Isle of Man	x	x
Israel	x	x
Jamaica	x	x
Jersey	x	x
Malta	x	x
Mauritius	x	x
New Zealand	-	-
Philippines	x	x
Switzerland	x	x
Turkey	x	x
United States of America	-	-
Yugoslavia	x	x

Note: Following the break up of Yugoslavia the reciprocal agreement between the UK and Yugoslavia should be treated as separate agreements between the UK and

- the State Union of Serbia and Montenegro
- Bosnia-Herzegovina
- Croatia
- the former Yugoslav republic of Macedonia **and**
- Slovenia.

074394 The provisions of the agreements enable accidents that have occurred, or industrial diseases which have been contracted in, another country to be treated as happening in the UK if the person continues to be liable for UK Class 1 National Insurance contributions whilst in the other country. But the extent to which reciprocity exists varies according to the particular agreement. The **main** provisions are given in the following paragraphs.

Barbados

074395 A person who has an industrial accident or contracts an industrial disease when in the territory of Barbados will be treated as if the accident occurred or the disease had been contracted in the UK if

1. the accident occurs whilst the person is employed in the territory of Barbados **and**
2. the person is liable for UK National Insurance contributions¹.

1 SS (Barbados) Order 92, Sch, Art 23

074396 The provision in DMG 074395 also applies where a person is travelling between the UK and Barbados in the course of their employment. The accident will be treated as if it had occurred in the territory of the country whose legislation applied at the time the accident occurred¹.

1 Sch, Art 23(2)

Bermuda

074397 A person who has an industrial accident or contracts an industrial disease whilst in the territory of Bermuda will normally be treated as if the accident occurred or the disease had been contracted in the UK if

1. the accident occurs whilst the person is employed in the territory of Bermuda **and**
2. the person is liable for UK national insurance contributions¹.

1 NI and II (Bermuda) Order 69, Sch, Art 14

074398 The provision in DMG 074397 also applies where a person is travelling between the UK and Bermuda in the course of their employment. The accident shall be treated as if it had happened in the territory of the country whose legislation was expected to apply when the person arrived¹.

1 NI and II (Bermuda) Order 69, Sch, Art 14(2)

Canada

074399 A person who has an industrial accident or contracts an industrial disease whilst in the territory of Canada will normally be treated as if the accident occurred or the disease had been contracted in the UK if

1. the accident occurs whilst the person is employed in the territory of Canada
and
2. the person is liable for UK National Insurance contributions¹.

But benefit will not become payable until the person returns to the UK.

1 SS (Contributions and Industrial Injuries) (Canada) Order 1998, Sch, Art 9

Cyprus

074400 A person who has an industrial accident or contracts an industrial disease whilst in the territory of Cyprus, including the sovereign base areas, will be treated as if the accident occurred or the disease had been contracted in the UK if

1. the accident occurs when the person is employed in the territory of Cyprus
and
2. the person is liable for UK National Insurance contributions¹.

1 SS (Cyprus) Order 83, Sch, Art 20(1)

074401 The provision in DMG 074400 also applies where a person is travelling between the UK and Cyprus in the course of their employment. The accident will be treated as if it had occurred in the territory of the country whose legislation applied at the time the accident occurred¹.

1 SS (Cyprus) Order 83 Sch, Art 20(2)

Guernsey

074402 A person who has an industrial accident or contracts an industrial disease when in the territory of Guernsey will be treated as if the accident occurred or the disease had been contracted in the UK if

1. the accident happens when the person is employed in the territory of Guernsey **and**
2. the person is liable for UK National Insurance contributions¹.

Guernsey is defined² as including the islands of Alderney, Herm, and Jethou.

1 SS (Jersey and Guernsey) Order 94, Sch, Art 24: 2 Art 1(1)

074403 The provision in 074402 also applies where a person is travelling between the UK and Guernsey in the course of their employment. The accident will be treated as if it had occurred in the territory of the country whose legislation was expected to apply whilst employed in that country¹. Those Channel Islands that are not included in the agreement (Sark, Lihou, and Brecqhou) have the same cover for II purposes, but from domestic legislation².

1 Sch, Art 24(2); 2 SS Ben (PA) Regs, reg 12(2)

Isle of Man

074404 Any industrial accident or any prescribed disease occurring or developing in the Isle of Man shall be treated as having the same effect as if it had happened in the UK¹.

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

074405 Where a person has an accident when travelling between the UK and the Isle of Man in the course of employed earner's employment

- a claim for benefit can be made in either territory **and**
- the accident is treated as if it had happened in the territory where the claim is made **and**
- the employed earner's absence from either territory will be disregarded for the purpose of entitlement to benefit¹.

1 Sch 1, para 2(2)

Israel

074406 A person who has an industrial accident or contracts an industrial disease when in the territory of Israel will be treated as if the accident happened or the disease had been contracted in the UK if

- the accident happens when the person is employed in the territory of Israel **and**
- the person is liable for UK National Insurance contributions¹.

1 NI and II (Israel) Order 57, Sch, Art 6 and 15

Jamaica

074407 A person who has an industrial accident or contracts an industrial disease when in the territory of Jamaica will be treated as if the accident happened or the disease had been contracted in the UK if

- the accident happens when the person is employed in the territory of Jamaica **and**
- the person is liable for UK National Insurance contributions¹.

1 SS (Jamaica) Order 97, Sch 1, Art 22

074408 The provision in 074407 also applies where a person is travelling between the UK and Jamaica in the course of their employment. The accident will be treated as if it had occurred in the territory of the country whose legislation was expected to apply whilst employed in that country¹.

1 SS (Jamaica) Order 97 Sch 1, Art 22(2)

Jersey

074409 A person who has an industrial accident or contracts an industrial disease whilst in the territory of Jersey will be treated as if the accident happened or the disease had been contracted in the UK if

- the accident happens when the person is employed in the territory of Jersey
and
- the person is liable for UK National Insurance contributions¹.

1 SS (Jersey and Guernsey) Order 94, Sch, Art 24

074410 The provision in 074409 also applies where a person is travelling between the UK and Jersey in the course of their employment. The accident will be treated as if it had occurred in the territory of the country whose legislation was expected to apply whilst employed in that country¹. Alderney, Herm, and Jethou are also covered by the Agreement². The same II cover is extended to people in, or travelling to or from, the other Channel Islands (Sark, Lihou, and Brecqhou), but through domestic legislation³.

1 SS (Jersey and Guernsey) Order 9, 4 Sch, Art 24(2); 2 Art 1(1); 3 SS Ben (PA) Regs, re 12(2)

Malta

074411 A person who has an industrial accident or contracts an industrial disease when in the territory of Malta will be treated as if the accident happened or the disease had been contracted in the UK if

1. the accident happens when the person is employed in the territory of Malta
and
2. the person is liable for UK National Insurance contributions¹.

1 SS (Malta) Order 96, Sch, Art 26(1)

074412 The provision in 074411 also applies where a person is travelling between the UK and Malta in the course of their employment. The accident will be treated as if it had occurred in the territory of the country whose legislation applied at the time the accident occurred¹.

1 SS (Malta) Order 96, Sch, Art 26(2)

Mauritius

074413 A person who has an industrial accident or contracts an industrial disease when in the territory of Mauritius will be treated as if the accident happened or the disease had been contracted in the UK if

1. the accident happens whilst the person is employed in the territory of Mauritius **and**
2. the person is liable for UK National Insurance contributions.

But benefit will not become payable until the person returns to the UK¹.

1 SS (Mauritius) Order 81, Sch, Art 17

074414 The provision in 074413 also applies where a person is travelling between the UK and Mauritius in the course of their employment. The accident will be treated as if it had occurred in the territory of the country whose legislation applied at the time the accident occurred. But benefit will not become payable until the person returns to the UK¹.

1 Sch 1, Art 17(2)

Philippines

074415 A person who has an industrial accident or contracts an industrial disease when in the territory of the Philippines will be treated as if the accident happened or the disease had been contracted in the UK if

1. the accident happens when the person is employed in the territory of the Philippines **and**
2. the person is liable for UK National Insurance contributions¹.

1 SS (Philippines) Order 89, Sch, Art 16

Switzerland

074416 A person who has an industrial accident or contracts an industrial disease when in the territory of the Switzerland will be treated as if the accident happened or the disease had been contracted in the UK if

1. the accident happens when the person is employed in the territory of the Switzerland **and**
2. the person is liable for UK National Insurance contributions¹.

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

074417 The accident will also be treated as happening in the UK if the person

1. is travelling between either the UK or Switzerland in the course of employment¹
2. is expected to pay UK contributions.

1 Sch, Art 9(3)

Turkey

074418 A person who has an industrial accident or contracts an industrial disease when in the territory of Turkey will be treated as if the accident happened or the disease had been contracted in the UK if

1. the accident happens when the person is employed in the territory of Turkey
and
2. the person is liable for UK National Insurance contributions¹.

1 NI and II (Turkey) Order 61, Sch, Art 7

Yugoslavia

074419 A person has an industrial accident or contracts an industrial disease when in the territory of Yugoslavia (074394) will be treated as if the accident happened or the disease had been contracted in the UK if

1. the accident happens when the person is employed in the territory of Yugoslavia **and**
2. the person is liable for UK National Insurance contributions¹.

1 FA, NI and II (Yugoslavia) Order 58, Sch, Art 15

074420 - 074429

Industrial Injuries benefit - claims from outside Great Britain

Renewal claim

074430 A claimant who is resident in another European Economic Area country and who has exported benefit (070696) may make a renewal claim from outside Great Britain.

074431 Entitlement will continue if all conditions for entitlement are still satisfied.

New claim

074432 A person who has not exported a benefit (070696) can acquire the right to an Industrial Injuries benefit for the first time when residing in another country (074370 - 074394).

074433 - 074439

Industrial Injuries benefits - export to other countries

074440 A claimant may remain entitled to IISB whilst absent from GB. However, GB law does not always allow claimants who go to live permanently in another country to export their benefit. See DMG 074450 - 074454 if a claimant goes to live permanently in another EEA country.

Export and United Kingdom law

Dis B

074441 A person is not disqualified from receiving Dis B whilst absent from GB¹.

1 SS CB Act 92, s 113(1); SS Ben (PA) Regs, reg 9(3)

REA

074442 A person is disqualified from receiving REA whilst permanently absent from GB¹ (see DMG 074443) other than in Sark².

1 SS CB Act 92, s 113(1); 2 SS Ben (PA) Regs, reg 12(1)

074443 A person will not be disqualified from receiving REA if

1. the absence is **temporary**¹ (070853), **and**
2. the day of absence is within three months from the date on which the absence began (see DMG 070642) **or** later than three months from the date on which the absence began and is within a period that the Secretary of State has allowed after having regard to the purpose of the absence and any other relevant factors², **and**
3. no part of the absence is for the purpose of, or in connection with, any employment, trade or business (see DMG 074444)³, **and**
4. the claim for all or part of the absence was made before the absence began⁴ (see DMG 074445 - 074447), **and**
5. the period covered by the award includes the day the absence from GB began **or** follows without a break, a period covered by an award which includes the day the absence from GB commenced⁵ (see DMG 074445 - 074447).

1 reg 9(5); 2 reg 9(5); 3 reg 9(5)(a); 4 reg 9(5)(b); 5 reg 9(5)(c)

074444 To satisfy the conditions in point three of DMG 074443 claimants must not during any of the absence from GB¹

1. engage in any activity connected with their employment or, if self employed, their business **or**
2. use the absence for the purpose of trade.

The absence must be for a purpose such as medical treatment, convalescence, holidays or visiting friends or relatives.

1 SS Ben (PA) Regs, reg 9(5)(a)

Example

A claimant who goes on holiday to Australia for four weeks would satisfy the conditions in point three of DMG 074443. But if during that holiday the claimant purchases wine for sale commercially in the UK the conditions in point three of DMG 074443 would not be satisfied.

074445 To avoid disqualification

1. the award should be current at the time the absence from GB began¹, **and**
2. the claim for that award needs to have been made before the claimant left GB² even if the award is made after the claimant leaves GB.

Disqualification cannot be avoided if the claim is not made until after the claimant's departure from GB, even if it is made following the claimant's return.

1 reg 9(5)(c); 2 reg 9(5)(b)

074446 The claimant may continue to avoid disqualification for any subsequent period within the three months or longer, (see DMG 074443) if the period of the award

1. expires during the claimant's temporary absence from GB, **and**
2. the claimant was not disqualified for receiving benefit during the early part of that period of absence.

074447 The conditions in DMG 074446 apply even if

1. the claim for that subsequent period is made whilst the claimant is absent from GB **and**
2. there is no break in entitlement between the end of the expiry of the previous award and the date of entitlement of the subsequent award¹.

1 reg 9(5)(c)

Industrial Death Benefit

074448 A person is not disqualified from receiving IDB¹ whilst absent from GB². Therefore, a widow receiving IDB under residual provisions³ will continue to receive benefit including any uprating increases, during any absence from outside GB.

1 SS CB Act 92, s 113(1); 2 SS Ben (PA) Regs, reg 9(6); 3 SS Act 86, Sch 3, para 11

Retirement Allowance

074449 A person is not disqualified for receiving RA whilst absent from GB¹.

1 SS Ben (PA) Regs, reg 9(7)

Export and European Community law

General

074450 Under EC law, benefit for an accident at work or an occupational disease cannot be withdrawn solely because a recipient goes to live in another EEA country¹. Cash benefits are industrial injuries benefits in accordance with UK legislation².

1 Reg (EEC) No. 1408/71, Art 10(1) and Annex VI, s Y, point 12; 2 Article 55(1)(ii)

Claimant in another European Economic Area country

074451 Claimants can export their benefit whilst staying in another EEA country if they are employed persons (including persons who were in employed earner's employment when the accident was sustained or occupational disease contracted) if they satisfy all the other conditions of entitlement for industrial injuries benefits and

1. are EEA nationals (see DMG 070080) **and**
2. come within the personal scope (see DMG 070050) of EC law¹ **and**
3. sustained an accident arising out of, and in the course of their employment being employed earner's employment² **or** contracted a PD due to their employment, being employed earner's employment³ **and**
4. are staying in (i.e. temporarily visiting) another EEA country, for example, on holiday⁴, whether or not receiving medical treatment there⁵ **or**
5. having become entitled to a UK benefit are authorized by the Secretary of State⁶ (see DMG 070810 and DMG 074452) either to return to the EEA country of habitual residence (see DMG 070710) or to transfer habitual residence from the UK to another EEA country⁷ **or**

6. are authorised by the DWP⁸ to go to another EEA country to receive treatment appropriate to the condition⁹ resulting from the industrial accident or the PD

is entitled to cash benefits that is, industrial injuries benefits, under UK legislation¹⁰.

1 Reg (EEC) No. 1408/71, Art 2; 2 SS CB Act 92, sec 94(1); 3 sec 108(1); 4 Reg (EEC) 1408/71, Art 55(1)(a); 5 Art 1(i); R(I) 1/75; 6 Reg (EEC) No 574/72, Annex 2 and R(S) 4/74; 7 Reg (EEC) 1408/71, Art 1(h); Art 55(1)(b); 8 Reg (EEC) 574/72, Annex 2 and R(S) 4/74; 9 Reg (EEC) 1408/71, Art 55(1)(c); 10 SS CB Act 92, sec 94-110, Sch 7, para 9-20; Reg (EEC) No 1408/71, Art 55(1)(ii); R(I) 1/75

Authorisation by the Secretary of State

074452 The Secretary of State cannot refuse authorisation to

1. take up residence in another EEA country unless it would prejudice the claimant's state of health or the medical treatment being received in GB **or**
2. go to another EEA country to receive the appropriate treatment there if that treatment is not available in the UK¹.

1 Reg (EEC) 1408/71, Art 55(2)

074453 If the conditions in DMG 074452 are satisfied, entitlement to benefit will continue despite the person's absence from GB.

Example

A person who is habitually resident in France comes to the UK to work. During the period of employed earner's employment the person sustains an accident for which an industrial injuries benefit becomes payable. Due to the resulting condition the person decides to return to live with family in France. The Secretary of State authorises the person to return to the EEA country of habitual residence, that is, France. Entitlement to benefit continues and is payable by France on behalf of the UK.

074454 To export benefit under DMG 074451 **5.** and **6.**, the DM needs authorisation from the Secretary of State before the claimant is exempt from any disqualification¹.

1 Art 55(1)(b) and (c)

074455 - 074459

Export and reciprocal agreements

General

074460 Benefit will **normally** remain payable when the claimant is absent from the UK if

1. the person resides in a country covered by one of the reciprocal agreements¹ (see DMG 074395) **and**
2. all other general conditions for entitlement to the benefit are satisfied.

*1 SS (Barbados) Order 92, Sch, Art 5; NI and II (Bermuda) Order 69, Sch, Art 10;
SS (Cyprus) Order 83, Sch, Art 4; SS (Jersey and Guernsey) Order 94, Sch, Art 5(1);
SS (I of M) Order 77, Sch 1, para 2(1); NI and II (Israel) Order 57, Sch, Art 8;
SS (Jamaica) Order 97, Sch 1, Art 5; SS (Malta) Order 96, Sch, Art 4(1)(a);
SS (Mauritius) Order 81, Sch 1, Art 4; SS (Philippines) Order 89, Sch, Art 4;
FA, NI and II (Switzerland) Order 69, Sch 1, Art 16; NI and II (Turkey) Order 61, Sch, Art 22;
FA, NI and II (Yugoslavia) Order 58, Sch, Art 25*

074461 But some agreements limit the extent to which benefits can be exported. For example, Reduced Earnings Allowance payable under UK legislation cannot be exported to Jamaica¹.

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

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