

Department for Work and Pensions

DECISION MAKING AND APPEALS

Decision Makers Guide

Volume 2

Amendment 38 – October 2017

1. This letter provides details on Amendment 38; the changes have already been incorporated in to the Intranet and Internet versions of the DMG.
2. PDF amendment packages are also available. These can be printed with the amended pages being reproduced in full. Each page will contain the amendment number in the footer

PDF amendment packages can be found on the **Intranet** at:

<http://intranet/1/lq/acileeds/guidance/decision%20makers%20guide/index.asp>

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Amendment 38 affects Chapter 7, Parts 01, 02 and 06. The changes are;

- In Part 01 – incorporation of DMG memo 32/10 as an appendix
- In Part 02 – Minor amendments
- In Part 06 – incorporation of DMG Memo 18/16

4. The last two amendment packages amending Volume 2 were
Amendment 37 [June 2017]
Amendment 36 [February 2017]
5. **For reference purposes Decision Makers may find it useful to retain deleted pages for a short period after the introduction of this package.**
6. If using a PDF amendment package remove the sheets as stated in the left hand column of the Remove and Insert table below and insert the new sheets as stated in the right hand column (note the record of amendments at the back of the Volume).

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Abbreviations

AA	Attendance Allowance paid under s 64 of the SS (CB) Act 92
"AA"	Attendance Allowance as defined in IS (Gen) Regs, reg 2(1) or JSA, reg 1(3)
ADC	Actual Date of Confinement
ADF	Adviser Discretion Fund
ADI	Adult Dependency Increase
AFIP	Armed Forces Independence Payment
AIP	Assessed Income Period
AMG	Appropriate Minimum Guarantee
AP	Additional Pension
APP	Adoption Pay Period
Art	Article
ASE	Actively seeking employment
AT	Appeal Tribunal
AWT	All Work Test
BA	Bereavement Allowance
BACS	Bankers Automated Clearing System
BB	Bereavement Benefits
BL	Board and Lodging
BP	Basic Pension/Bereavement Premium
BPT	Bereavement Payment
BSP	Bereavement support payments
BTEC	Business and Technology Education Council
BWC	Benefit Week Commencing
BWE	Benefit Week Ending
CA	Carer's Allowance
CAA	Constant Attendance Allowance
Cat	Category
CB	Contributory Benefit
CC	Community Charge
CDI	Child Dependency Increase
CECSC	Council of European Social Charter
CHB	Child Benefit
CHB(LP)	Child Benefit for Lone Parents
CJEU	Court of Justice of the European Union
CMB	Child Maintenance Bonus
CMP	Child Maintenance Premium
CP	Carer Premium
CPen	Civil Penalty
CSM	Child Support Maintenance

CT	Council Tax
CTA	Common Travel Area
CTB	Council Tax Benefit
CTC	Child Tax Credit
CTF	Community Task Force
CTM	Contribution to Maintenance
CWP	Cold Weather Payment
CwP	Community work Placements
DCP	Disabled Child Premium
DCT	Direct Credit Transfer
DH	Department of Health
Dis G	Disablement Gratuity
Dis P	Disablement Pension
DLA	Disability Living Allowance
DM	Decision Maker
DMA	Decision Making and Appeals
DMG	Decision Makers Guide
DO	District Office
DP	Disability premium
DPTC	Disabled Persons Tax Credit
DWA	Disability Working Allowance
DWP	Department for Work and Pensions
EC	European Community
ECHR	European convention for the Protection of Human Rights and Fundamental Freedoms
ECJ	European Court of Justice
ECSMA	European Convention on Social & Medical Assistance
EctHR	European Court of Human Rights
EDP	Enhanced Disability Premium
EEA	European Economic Area
EFC	Earnings factor credits
EFTA	European Free Trade Association
ELDS	Eligible loan deduction scheme
Emp O	Employment Officer
EO	Employment Option of New Deal for young people
EO(E)	Employed Employment Option
EO(S/E)	Self-Employed Employment Option of the New Deal for young people
EPP	Enhanced Pensioner Premium
ERC	Employment Rehabilitation Centre

ERA	Employment Retention and Advancement
ESA	Employment and Support Allowance
ESA(Cont)	Employment and Support Allowance (contributory allowance)
ESA(IR)	Employment and Support Allowance (income-related allowance)
ESA(Y)	Employment and Support Allowance for those with limited capability for work in youth
ESDA	Exceptionally Severe Disablement Allowance
ET	Employment Training
ETFO	Environment Task Force Option of New Deal for young people
EU	European Union
EWC	Expected Week of Confinement
EZ	Employment Zone
FamC	Family Credit
FAS	Financial Assistance Scheme
FND	Flexible New Deal
FP	Family Premium
FP(LP)	Family Premium (Lone Parent Rate)
FRIY	Flat Rate Introduction Year
FRM	Flat Rate Maintenance
F/T	Full-Time
FTE	Full-Time Education
FTET	Full-Time Education and Training Option
FtT	First-tier Tribunal
GA	Guardian's Allowance
GB	Great Britain
GC	Guarantee Credit
GCE	General Certificate of Education
GCSE	General Certificate of Secondary Education
GMP	Guaranteed Minimum Pension
GNVQ	General National Vocational Qualification
GP	General Practitioner
GPoW	Genuine Prospect of Work
GRB	Graduated Retirement Benefit
GRC	Gender Recognition Certificate
GRP	Gender Recognition Panel
HA	Health Authority
HB	Housing Benefit
HBS	Housing Benefit Supplement
HCP	Health care professional
HWC	Health and Work Conversation

Hep C	Hepatitis C
HIV	Human Immunodeficiency Virus
HM	Her Majesty
HMF	Her Majesty's Forces
HMRC	Her Majesty's Revenue and Customs
HO	Home Office
HPP	Higher Pensioner Premium
HRP	Home Responsibilities Protection
IA	Industrial Accident
IAP	Intensive Activity Period for those aged 25 and over and under 50
IAP for 50+	Intensive Activity Period for those aged 50 or over
IB	Incapacity Benefit
IBLT	Long-term Incapacity Benefit
IBS	Infected Blood Schemes
IBST	Short-term Incapacity Benefit
IBST(H)	Higher rate of short-term Incapacity Benefit
IBST(L)	Lower rate of short-term Incapacity Benefit
IB(Y)	Incapacity Benefit for those incapacitated in youth
IC	Intermittent Custody
IDB	Industrial Death Benefit
IFM	Immediate Family Member
IfW	Incapacity for Work
II	Industrial Injury(ies)
IIDB	Industrial Injuries Disablement Benefit
Incs	Increments (of Retirement Pension)
IND	Immigration and Nationality Department
IPC	International Pension Centre
IPPIW	Immediate Past Period of Incapacity for Work
IS	Income Support
IT	Industrial Tribunal (now Employment Tribunal)
IVA	Invalidity Allowance
IVB	Invalidity Benefit
IVP	Invalidity Pension
IVS	Invalid Vehicle Scheme
JSA	Jobseeker's Allowance
JSA 18-21 Pilot Scheme	Jobseeker's Allowance 18-21 Work Skills Pilot Scheme
JSA(Cont)	Contribution based JSA
JSAg	Jobseeker's Agreement
JSA(IB)	Income based JSA
JSD	Jobseeker's Direction

JSP	Jobseeking Period
LA	Local Authority
LCW	Limited capability for work
LCWA	Limited capability for work assessment
LCWRA	Limited capability for work related activity
LEA	Local Education Authority
LEC	Local Enterprise Council
LEL	Lower Earnings Limit
LETS	Local Exchange Trading System
LPP	Lone Parent Premium
LPRO	Lone Parent run-on
LQPM	Legally Qualified Panel Member
LRP	Liable Relative Payment
LSC	Learning and Skills Council
LT	Linking Term
LTACP	Living Together as Civil Partners
LTAMC	Living Together as Married Couple
LTAHAW	Living Together as Husband And Wife
MA	Maternity Allowance
MAP	Maternity Allowance Period
MB	Maternity Benefit
MG	Maternity Grant
MID	Mortgage Interest Direct
MIRO	Mortgage Interest run-on
MP	Member of Parliament
MPP	Maternity Pay Period
MSC	Maximum Savings Credit
MSP	Member of the Scottish Parliament
NASS	National Asylum Support Service
NCET	National Council for Education and Training
NCIP	Non-Contributory Invalidity Pension
ND	New Deal
NDLP	New Deal for Lone Parents
NDP	New Deal for Partners
NDYP	New Deal for Young People
ND18-24	New Deal for 18-24 year olds
ND25+	New Deal for claimants aged 25 years and over
NHS	National Health Service
NI	National Insurance
NINO	National Insurance Number

NMW	National Minimum Wage
NRP	Non-Resident Parent
NVQ	National Vocational Qualification
OOT	Own Occupation Test
OPB	One Parent Benefit
PA	Personal Adviser
PAYE	Pay As You Earn
PB and MDB	Pneumoconiosis, Byssinosis and Miscellaneous Diseases Benefits scheme
PCA	Personal Capability Assessment
PD	Prescribed Disease
PETA	Personal Expenses Transitional Addition
PFA	Person(s) From Abroad
PIE	Period of Interruption of Employment
PILON	Pay In Lieu Of Notice
PILOR	Pay In Lieu Of Remuneration
PIP	Personal Independence Payment
PIW	Period of Incapacity for Work
PLCW	Period of limited capability for work
PLCWA	Period of limited capability for work assessment
PO	Post Office
POAOB	Payment on Account of Benefit
POA	Power of Attorney
PP	Pensioner Premium
PR	Preserved Right
PSIC	Person Subject to Immigration Control
P/T	Part-Time
PW	Pay-Week
“PW”	Permitted work as defined in ESA Regs, reg 45(4)
PWC	Person With Care
PWHL	Permitted Work Higher Limit
PWHLs	Permitted Work Higher Limit subsequent period
PWK	Permitted Work
PWLL	Permitted Work Lower Limit
PWP	Permitted Work Period
QB	Qualifying Benefit
QBP	Qualifying Benefit or Pension
QD	Qualifying Days
QEF	Qualifying earnings factor
QI	Qualifying Income

QP	Qualifying Period
QRW	Qualifying remunerative work
QW	Qualifying Week
QWfl	Quarterly Work-focused interview
RA	Retirement Allowance
RBD	Reduced Benefit Direction
RCH	Residential Care Home
REA	Reduced Earnings Allowance
Reg(s)	Regulation(s)
Res A	Residential Allowance
RISWR	Redundant Iron and Steel Employees re-adaptation scheme
RMPS	Redundant Mineworkers Payment scheme
RP	Retirement Pension
RQC	Relevant Qualifying Condition
RVU	Relationship Validation Unit
S	Section (of an Act)
S2P	State Second Pension
SAP	Shared Additional Pension
SAYE	Save As You Earn
SB	Sickness Benefit
SC	Savings Credit
Sch	Schedule (as in an Act)
SCT	Savings Credit Threshold
SDA	Severe Disablement Allowance
SDM	Sector Decision Maker
SDP	Severe Disability Premium
S/E	Self-Employed
Sec	Section (of an Act)
SED	Scottish Education Department
SERPS	State Earnings Related Pension Scheme
Sev DP	Severely Disabled Person
SF	Social Fund
SFFP	Social Fund Funeral Payment(s)
SFO	Social Fund Officer
SHA	Special Hardship Allowance
SI	Statutory Instrument
SIR	Standard Interest Rate
SJP	Supervised Jobsearch Pilot Scheme
SMG	Standard Minimum Guarantee
SMP	Statutory Maternity Pay
SP	State Pensions

SPC	State Pension Credit
SpTA	Special Transitional Addition
SPW	Supported Permitted Work
SRPS	Shipbuilding Redundancy Payment Scheme
SS	Social Security
SS benefits	Benefits payable under SS(CB) Act 92
SSMG	Sure Start Maternity Grant
SSP	Statutory Sick Pay
STCP	Skills Training Conditionality Pilot
Supp B	Supplementary Benefit
SVQ	Scottish Vocational Qualification
TA	Transitional Addition
TAW	Temporary Allowance for Widow(ers)
TBI	Total Benefit Income
TD	Trade Dispute
TE	Transitional Element
TEC	Training and Enterprise Council
TFEU	Treaty on the Functioning of the European Union
TS	Tribunals Service
TT	Thalidomide Trust
TU	Trade Union
UB	Unemployment Benefit
UC	Universal Credit
UCP	Urgent Case Payment
UEL	Upper Earnings Limit
UK	United Kingdom
US	Unemployability Supplement
UT	Upper Tribunal
VAT	Value Added Tax
VSO	Voluntary Sector Option of New Deal for young people
WA	Widow's Allowance
WB	Widow's Benefit
WBLA	Work Based Learning for Adults
WBLfYP	Work Based Learning for Young People
WBTfA	Work Based Training for Adults
WBTfYP	Work Based Training for Young People
WC	Workmen's Compensation
WC(S)	The Workmen's Compensation (Supplementation) Scheme
WC (Supp)	Workmen's Compensation (supplementation) scheme

WCA	Work capability assessment
WDisP	War Disablement Pension
WFHRA	Work focused health related assessment
Wfl	Work-focused Interview
WFP	Winter Fuel Payment
WFTC	Working Families Tax Credit
WMA	Widowed Mother's Allowance
WMA(C)	WMA payable where late husband entitled to Cat C retirement pension
WP	Widow's Pension
Wp	Work programme
WPA	Widowed Parent's Allowance
WP(C)	Widow's Pension payable where late husband entitled to Cat C retirement Pension
WPT	Widow's Payment
WRAC	Work-related activity component
WRAG	Work-related activity group
WTB	Work and training beneficiary(ies)
WTC	Working Tax Credit
WtWB	Welfare to Work Beneficiary
WWP	War Widow's Pension/War Widower's Pension
YT	Youth Training

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Appendix

Reciprocal agreements

Agreements with European Economic Area countries

070330 [See memo DMG 15/17] The following table shows the benefits which are covered in agreements with EEA countries. There are no reciprocal agreements with provisions for ESA.

	RP	WB	GA	IBST	IBLT	JSA	MB	Dis B	IDB	CHB	AA
Austria	X	X	X	X	X	X	X	X	X	X	-
Belgium	X	X	X	X	X	X	X	X	X	X	-
Cyprus	X	X	X	X	X	X	X	X	X	-	-
Denmark	-	X	X	X	X	X	X	X	X	X	X
Finland	X	X	-	X	X	X	X	X	X	X	-
France	X	X	-	X	X	X	X	X	X	X	-
Germany	-	X	X	X	X	X	X	X	X	X	X
Iceland	X	X	X	X	X	X	-	X	X	-	-
Ireland	X	X	X	X	X	X	X	X	X	-	-
Italy	X	X	X	X	X	X	X	X	X	-	-
Luxembourg	X	X	X	X	X	-	X	X	X	-	-
Malta	X	X	X	X	X	X	-	X	X	-	-
Netherlands	X	X	X	X	X	X	X	X	X	-	-
Norway	X	X	X	X	X	X	X	X	X	X	X
Portugal	X	X	X	X	X	X	X	X	X	X	-
Spain	X	X	X	X	X	X	X	X	X	X	-
Sweden	X	X	X	X	X	X	X	X	X	X	-

070331 There is no agreement with Greece or Liechtenstein. The agreement with Gibraltar¹ provides that, except for CHB, the UK and Gibraltar are treated as separate EEA countries.

1 FA, NI & II (Gibraltar) Order 74, Sch, para 2

070332 Although Northern Ireland is part of the UK, there is an agreement between GB and Northern Ireland. This is because benefits in Northern Ireland and GB are separate¹ and administered under different SS legislation.

1 R(S) 5/85

Agreements with other countries

070333 [See memo DMG 15/17] The following table shows the benefits which are covered in the agreements with countries which are not part of the EEA.

	RP	WB	GA	IBST	IBLT	JSA	MB	Dis B	IDB	CHB	AA	DLA	ICA	ESA (C)
Barbados	X	X	X	X	X	-	X	X	X	X	-	-	-	X
Bermuda	X	X	-	-	-	-	-	X	X	-	-	-	-	-
Canada	X	-	-	-	-	X	-	-	-	X	-	-	-	-
Guernsey	X	X	X	X	X	X	X	X	X	X	X	X	-	X
Isle of Man	X	X	X	X	X	X	X	X	X	X	X	X	X	-
Israel	X	X	X	X	X	-	X	X	X	X	-	-	-	-
Jamaica	X	X	X	-	X	-	-	X	X	-	-	-	-	X
Jersey	X	X	X	X	X	-	X	X	X	X	X	X	-	X
Mauritius	X	X	X	-	-	-	-	X	X	X	-	-	-	-
New Zealand	X	X	X	X	-	X	-	-	-	X	-	-	-	-
Philippines	X	X	-	-	-	-	-	X	X	-	-	-	-	-
Switzerland	X	X	X	X	X	-	-	X	X	X	-	-	-	-
Turkey	X	X	X	X	X	-	X	X	X	-	-	-	-	X
USA	X	X	X	X	X	-	-	-	-	-	-	-	-	X
Yugoslavia	X	X	-	X	X	X	X	X	X	X	-	-	-	X

NOTE: For ESA(C) this is only relevant where IB was converted to ESA and the claimant is transitionally protected¹.

1. ESA Transitional Provisions, HB and CTBt) (Existing Awards) (No. 2) Regulations 2010

APPENDIX

EU LEGISLATION - REGULATION (EC) 883/04

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INTRODUCTION

1. This appendix gives guidance on the key changes introduced by EU legislation, Regulation (EC) 883/04 as amended by Regulation (EC) 988/2009 and implemented by Regulation (EC) 987/2009, which came into force from 1.5.2010¹.

1 Implementing Reg (EC) 987/2009

BACKGROUND

2. For many years there have been Community provisions on the coordination of the different social security schemes within the EU. They have been updated and extended many times to try to ensure that those moving within the EEA are not disadvantaged as a result of exercising their rights of free movement. Earlier legislation¹ is now replaced by Council Regulation (EC) 883/04 from 1.5.10.

1 Reg (EEC) 1408/71 and Reg (EEC) 574/72

3. The new regulations¹ generally consolidate earlier legislation and re-enforce the basic principles of one applicable legislation, equal treatment, aggregation of periods of insurance, and export of benefits. There are, however, some changes and new measures; and administrative processes are improved to speed up the exchange of information between EEA Member States.

1 Reg (EC) 883/04 & 987/09

4. EU Regulations apply to the whole of the EEA and Switzerland. The EEA includes the EC countries and the three non EU countries (see DMG para 070040). The terms of EU legislation concerning coordination of Social Security systems were extended to include Switzerland from 1.6.02¹.

1 EU/Swiss Agreement, OJL 114/6 Annex II Art 1

CHANGES

Persons Covered

5. The scope of the Regulation has been extended to include non-economically active persons¹.

1 Reg (EC) 883/04, Art 2

Equal Treatment

6. New provisions specify more precisely equal treatment of benefits, income, facts or events in another Member State¹.

1 Art 5

Matters Covered

7. The material scope of the Regulation is extended to include paternity benefits and statutory pre-retirement benefits¹.

1 Reg (EC) 883/04, Art 3

Applicable Legislation

8. Non-economically active persons will be subject to the legislation of the Member State of residence¹ where the legislation of another Member State is not otherwise applicable, and without prejudice to specific provisions of the Regulation dealing with entitlement to benefits.

1 Art 11(3)(e)

9. A person working for an employer in one Member State, but who is posted by that employer to work in another Member State, will continue to be subject to the legislation of the first Member State provided that period of such work is not expected to exceed 24 months¹ and that he is not sent to replace another person. The maximum period under previous legislation was normally 12 months².

Art 12(1); 2 Reg (EEC) 1408/71, Art 14(1)(a)

10. Likewise, someone who normally pursues an activity as a self-employed worker in a Member State but who goes to pursue a similar activity in another Member State shall continue to be subject to the legislation of the first Member State provided the anticipated duration of such activity does not exceed 24 months¹.

1 Reg (EC) 883/04, Art 12(2)

11. A person who normally works as an employed or self employed person in two or more Member States shall normally be subject to the legislation of the Member State of residence if he pursues a substantial part of his activities in that Member State¹.

1 Art 13

Transitional Provisions

12. There may be cases where, as a result of the new regulation¹, a person receiving benefit as at 1.5.10, would be subject to the legislation of a different Member State to that determined under Regulation (EEC) 1408/71. In such circumstances, the legislation determined under Regulation (EEC) 1408/71 shall continue to apply for up to ten years, provided that the relevant situation remains unchanged². However, the person concerned may request that he be subject to the legislation of the Member State applicable under Regulation (EC) 883/04. If such a request is submitted to the competent state under the new Regulation within three months of 1.5.10, they will assume competency from 1.5.10. If the request is made after that time limit, the change of applicable legislation will take place on the first day of the following month.

1 Reg (EC) 883/04; 2 Art 87(8)

Accidents at Work and Occupational Diseases

13. Where a person who has contracted an occupational disease has been in prescribed occupations in two or more Member States, the benefits shall be provided exclusively under the legislation of the last of those member states¹. There is no longer any exception to this rule for pneumoconiosis.

1 Art 38

Unemployment Benefits

14. The new Regulation extends the special rules on aggregation in relation to JSA (Cont). Member States will take into account all periods of unemployment insurance, including self-employed insurance, completed under the legislation of another Member State provided such periods of self-employed insurance are eligible under the legislation of that other Member State¹.

1 Art 61

15. The new Regulation also allows a competent state to extend, to six months, the period for which entitlement to an unemployment benefit can continue whilst a person is seeking work in another Member State¹. The UK will not be extending this period, which remains at three months.

1 Art 64(1)(c)

16. Whereas under previous legislation the export provisions could only be invoked once between two periods of employment¹, there is now no limit on the number of times the export provisions can be used², though still subject to the overall maximum of 3 (or 6) months. The Member State to which the jobseeker has gone will no longer be responsible for making payment of an unemployment benefit: it will be made directly by the competent Member State at its own expense³. Unemployed persons who, during their last activity as an employed or self-employed person, resided in a Member State other than the competent Member State, are now allowed to make themselves available for employment in the member State where they were last employed as well as in the competent Member State⁴.

1 Reg (EEC) 1408/71 Art 69; 2 Reg (EC) 883/04, Art 64; 3 Art 64(1)(d); 4 Art 65(2)

17. JSA (IB) however, remains listed as an SNCB in Regulation (EC) 883/04¹, and claimants can only retain entitlement to JSA (IB) under domestic legislation during temporary absences abroad (see DMG paras 075350 et seq).

1 Reg. (EC) 883/04, Art 70 and Annex X

Sickness benefits (which includes AA, DLA (Care) and CA)

18. In relation to the UK, sickness benefits include ESA(Cont) in the assessment phase, AA, DLA (Care), and CA. The Mobility Component of DLA remains listed as an SNCB¹. New rules are introduced to prevent overlapping of long term care sickness benefits in cash and in kind² where both benefits are provided by the same Member State (whether directly or by reimbursing the State of residence for a benefit in kind).

1 Annex X; 2 Art 34

19. The new Regulation also provides that, where a person is receiving a pension under the legislation of a Member State other than the Member State of residence, the competent state awarding the pension will also be the competent institution to pay a sickness benefit to that pensioner or members of his family¹ unless and until the

Member State of residence (or some other Member State) becomes competent².

Member of the family means spouse or civil partner, children under 18, and dependant children over that age³.

1 Arts 21, 24, 25 & 29; 2 Art 11; 3 Art 1(i)

20. As part of the drive for improved cooperation between Member States¹, the DM should make and notify the claimant of any decision on competency for claims to benefits taken in the UK but where the UK is not the competent institution, unless it is clear that the claim was sent to the UK by mistake. The disallowance decision will include a determination that the UK is not the competent state for a claim to that benefit, and give the normal mandatory reconsideration rights.

1 Reg (EC) 987/09 Recital 2

Old-Age and Survivors' Benefits

21. The regulations on aggregating periods of insurance and various pro-rata calculations¹ are generally unchanged.

1 Chapter 5 of Reg (EC) 883/04

22. There is no longer a requirement to automatically recalculate entitlement where conditions required by the legislation of another Member State to which a claimant has been subject are no longer satisfied¹.

1 Chapter 5 of Reg. (EC) 883/04, Art 50(2)

Invalidity Benefits

23. Regulations on Invalidity Benefits are in Chapter 4 of Regulation (EEC) 883/04. The relevant UK benefits are ESA(Cont) in the main phase, IB(LT) and SDA. These benefits remain type A benefits, where the rate of benefit does not depend on the length of insurance¹.

1 Art 44(1)

24. There are no substantive changes in the operation of the coordinating Regulations when compared to the previous legislation¹, although this is sometimes achieved by special provisions for the application of the legislation of individual Member States².

1 Reg (EEC) 1408/71; 2 UK entries in Annex XI of Reg (EC) 883/04

25. DMs are reminded that the coordination Regulations do not cover ESA(IR) which remains an SNCB. There is provision under domestic legislation¹ for continued entitlement to ESA(IR) during temporary periods of absence abroad (see DMG 071940 et seq).

1 ESA Regs, regs 152, 153, 154 & 155

TABLE OF EQUIVALENCES, LISTING THE VARIOUS ARTICLES IN REGULATION (EC) 1408/71, AND THE CORRESPONDING ARTICLES IN REGULATION (EC) 883/2004.

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Workers posted abroad

071764 Where persons whose employer normally carries out its activities in the UK are posted by that employer to another EEA state, the legislation of the UK will continue to apply provided¹

1. they are not sent to replace another person **and**
2. the posting is not expected to last more than 24 months¹.

1 Reg (EC) 883/04, art 12(1)

Competent state for the payment of cash sickness benefits

071765 The circumstances in which a state is required to export or award a sickness benefit to a claimant living in another EEA Member State are prescribed in EU law¹. However, for third country nationals, these rules only apply when the claimant moves to certain of the EEA Member States (see DMG 071757-8 above).

Note 1: With effect from 31.10.11 the Act² was amended so as to confirm that, under GB law, EEA citizens who have moved within the EEA are only entitled to AA, CA, or DLA (Care Component) where the UK is the competent state for the payment of sickness benefits in cash under EU law³.

Note 2: See appendices 3 and 4 for further guidance on competency.

1 Reg (EEC) 1408/71 Art 1(q) & Chapter 1 Title 111 & Reg (EC) 883/04 Title III Chapter 1;

2 SSCB Act s 65(7), s 70(4A) & s 72(7B);

3 Reg (EEC) 1408/71, Chapter 1 of Title III & Reg (EC) 883/04, Chapter 1 of Title III

071766 There are two main rules for deciding competency for sickness benefits in cash depending upon whether the claimant is an “insured person” or a person receiving a pension.

Insured persons

071767 In relation to sickness benefits, “insured person” means¹ any person who satisfies the conditions of entitlement for a sickness benefit.

1 Reg (EC) 883/04, Art 1(e)

071768 An “insured person” (and members of that person’s family - see DMG 071759) who is residing or staying in a Member State (A) other than the Member State (B) in which they are insured, is entitled to sickness benefits in cash from Member State B¹.

1 Reg (EC) 883/04, Art 21

071769 The following persons should be regarded as persons insured in the UK for cash sickness benefits -

1. those covered by GB contributions in the relevant income tax years that would enable them to claim ESA(Cont) (RITY cover) **provided** they have not been

insured for sickness benefits in an EEA State other than the UK since they worked and paid NI contributions in respect of that work in the UK

2. posted workers (see DMG 071777) and frontier workers (see DMG 071778) who work in GB **and**
3. claimants who are in receipt of JSA(CB), IBST, ESA(Cont) in the assessment phase, and MA,
4. workers who are currently living and working in the UK and their family members.

Note: DMs are reminded of the need to consider which EEA State's legislation applies (see DMG 071761 to 071763). In general, where a person is living and working in an EEA State other than the UK, it is the legislation of that EEA State which will apply.

Pensioners

071770 A person (and any member of that pensioner's family) receiving a pension under the legislation of one or more Member States is to be paid cash sickness benefits by the Member State responsible for the cost of sickness benefits in kind¹.

1 Reg (EC) 883/04, Art 29

071771 In receipt of a **pension** (under GB legislation) means entitled to and actually in receipt of

1. state RP of any category **or**
2. main phase ESA(Cont), long-term IB, SDA, **or**
3. a bereavement benefit, including widows' benefit and Industrial Injuries Death Benefit (but not a bereavement payment which is not a pension but a Death Grant) **or**
4. a pension for Industrial Injuries Disablement Benefit (including REA and RA).
5. Transitionally protected DLA (Mobility Component)

Note: This definition of "pension" derives from the EU co-ordination regulations.

Meaning of sickness "benefits in kind"

071772 For the purposes of the EU rules about sickness and maternity benefits "benefits in kind" means¹ benefits in kind provided for under the legislation of a Member State which are intended to

1. supply
2. make available

The Past Presence Test and EU law

Introduction

071795 The past presence test continues to have application in respect of some claims for AA, CA, and DLA (Care Component) by “incomers” (see DMG 071791) and in the case of DLA (Mobility Component) see DMG 071803).

Certain employed and self-employed persons

071796 The following persons who are EEA or Swiss nationals are treated as satisfying the past presence test and DMs do not have to consider whether they have a genuine and sufficient link to the UK’s social security system.

1. Current workers (and their family members), whether employed or self-employed, who pay UK national insurance contributions. This includes posted workers (see DMG 071797) and frontier workers (see DMG 071778) **or**
2. People who (and their family members), although not currently employed, are receiving ESA(Cont) or new style ESA in the assessment phase or JSA(CB), new style JSA or MA, or those who continue to be insured for ESA(Cont)/new style ESA after they cease work.

Aggregation and the past presence test - AA, CA & DLA (Care)

071797 Some periods of insurance in another Member State may qualify to be aggregated with residence in the UK when considering whether the past presence test is met. The past presence test does not apply to claims to AA or DLA from the terminally ill (see DMG 071717).

071798 Certain workers and their family members are deemed to satisfy the past presence test for claims to AA, DLA or CA (see DMG 071798). Where deeming is not appropriate, any periods recognised as insurance whether from residence, employment or self employment in another Member State, can be aggregated with presence in the UK in order to satisfy the past presence test¹ provided the claimant is within the scope of EU law (see DMG 071754).

1 Reg (EC) 883/04 Art 6 & Annex XI entry 2.

Note: See DMG 071805 for the effect of aggregation on the past presence test in the case of DLA (Mob).

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