

Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF STRATEGIC COMMUNICATIONS)

Decision Makers Guide

Volume 2 Amendment 40 – June 2018

1. This letter provides details on Amendment 40; 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:

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3. Amendment 40 affects chapter 7, Parts 1, 2 and 6. The changes:
 - incorporate DMG memo 15/17 in Part 1 as well as making various minor amendments
 - make minor amendments to Part 2
 - incorporate DMG memo 15/17 in Part 6 as well as making various minor amendments.
4. 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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Introduction

070000 This part of the Chapter is divided into two main sections

1. general section **and**
2. common terms.

070001 The general section contains guidance on

1. EC (see DMG 070010 - 070300)
2. Agreements (see DMG 070310)
3. Whether EC or RA apply (see DMG 070320 - 070341)
4. Equal Treatment (see DMG 070350 - 070520)
5. NI Appeals (see DMG 070530)
6. Overlap under EC provisions and reciprocal agreements (see DMG 070540 - 070599) **and**
7. Offsets, abatement and earnings (see DMG 070600 - 070629).

070002 The common terms section contains guidance in alphabetical order on terms or subjects that are common to the international volume of the Chapter. In some cases the guidance on several subjects has been linked together to form reasonably sized topic groups. In other cases a larger subject has been set aside in its own topic group.

070003 Detailed guidance on the international aspects of each benefit is given later in the Chapter. The guidance for each benefit contains all the guidance on the international aspect for that benefit. The benefits are in alphabetical order and contain guidance on the following benefits

1. AA
2. BB
3. Dependency increases
4. DLA
5. ESA
6. Family benefits
7. GA
8. IB
9. IS

10. II
11. CA
12. JSA
13. MB
14. RP
15. SDA
16. SPC
17. **WB and**
18. WFP

070004 Any reference to BB, WB or WPA should be read as a reference to BSP as from 6.4.17¹.

1 The Social Security (Reciprocal Agreements) Order 17, Sch 1, para 2&3; Pensions Act 14, part 5

070005 - 070009

3 The Swiss Agreement

The EU regulations relating to the co-ordination of social security apply to Switzerland by virtue of the Swiss Agreement. The new EU co-ordination regs¹ apply to Switzerland from 1.4.12.

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

Greenland

070041 Greenland was in the European Community from 1.4.73 to 31.1.85. Any rights which were

- acquired or
- in the process of being acquired

by European Community nationals other than Danish nationals, who worked in Greenland between 1.4.73 and 31.1.85, are not affected by Greenland leaving the European Community.

070042 DMG 070041 applies equally to rights acquired or in the process of being acquired between these dates by European Community nationals who worked in a European Economic Area country other than Denmark and who reside in Greenland¹.

1 Reg (EEC) 1661/85, Art 2

070043 Although Greenland has left the European Community, certain European Community regulations¹ continue to apply with effect from 20.6.85.

1 Reg (EEC) 1408/71, Art 22(1)(a) & (3); Reg (EEC) 574/72, Art 21 & 23

Example

European Community nationals who are entitled to United Kingdom short term Incapacity Benefit or Maternity Allowance and who

- need medical treatment whilst in Greenland or
- are authorized to go to Greenland to receive treatment

qualify for those benefits as if they were in a European Community country.

Gibraltar

070044 For the purpose of certain European Community regulations¹ Gibraltar is part of the United Kingdom. But the reciprocal Agreement with Gibraltar provides² that, except for Child Benefit, the United Kingdom and Gibraltar are treated as separate countries (see DMG 070331).

1 Reg (EEC) 1408/71; Reg (EEC) 574/72; 2 FA, NI & II (Gibraltar) 74 Order, Sch, para 2

070045 - 070049

070159 Increases of RP for child dependants are family benefits not old age benefits (see DMG 070165).

Survivors' benefits¹

070160 For the UK, from 6.4.17 this means BSP². Before this date, this means BB (apart from bereavement payment) and widows benefits. These are

- WMA³
- WP⁴ (including AP)
- WPA⁵
- Bereavement Allowance⁶
- IDB widows' **and** widowers' benefits⁷.

1 Reg (EEC) 1408/71, Art 4(1)(d); 2 Pensions Act 14 (Commencement No. 10) Order, art 2(1)(b); BSP Regs, reg 1(2); 3 SS CB Act 92, s 37; 4 s 38; 5 s 39A; 6 s 39B; 7 Sch 7, paras 15-17.

Guidance on survivors' benefit under EC Regulations is at DMG 077030.

070161 GA and Child's Special Allowance paid for surviving children¹, are family allowances, not survivors' benefits (see DMG 070166). An increase of WMA for a dependant child is a family allowance not a survivors' benefit.

1 SS CB Act 92, s 56 & 77

Benefits for accidents at work and occupational diseases¹

070162 For the UK this means

1. Dis B
2. REA²
3. CAA³
4. Hospital Treatment Allowance (where there is transitional entitlement)⁴
5. ESDA⁵ **and**

benefits under the Old Cases Act⁶.

Guidance on II benefits under EC Regulations is at DMG 074379.

1 Reg (EEC) 1408/71, Art 4(1)(e); 2 SS CB Act 92, Sch 7, para 11; 3 s 104(1) & (2); 4 Sch 7, para 10(2) & (3); 5 s 105; 6 Sch 8, para 7(1); Workmens Compensation (Supp) Scheme; P B & MD Ben Scheme

Death grants¹

070163 From 6.4.17 death grants are part of BSP. Prior to this date, UK bereavement payment² is classed as a death grant covered by EC provisions.

1 Reg (EEC) 1408/71, Art 1(v), 4(1)(f); 2 SS C&B Act 92, s 36

Unemployment benefits¹

070164 For the UK this means contribution based JSA². Guidance on JSA is at DMG 075330.

1 Reg (EEC) 1408/71, Art 4(1)(g); 2 JS Act 95, s 1(2)(i); Reg (EEC) 1408/71, Annex IIa

Family benefits and family allowances

070165 Family benefits are benefits in cash or kind intended to meet family expenses¹. There are no family benefits in the UK which are administered by DWP.

1 Art 1(u)(i); 2 Case 78/91, Hughes v CAO NI

070166 Family allowances are periodical cash benefits granted exclusively by reference to the number and, where appropriate, the age of members of the family¹. For the UK the only family allowance administered by DWP is CDI of WMA (transitional) or WPA.

1 Reg (EEC) 1408/71, Art 1(u)(ii)

Government declaration on benefits

070167 Member States must specify¹

1. the legislation and schemes covered by EC provisions²
2. the minimum benefits referred to in Article 50 **and**
3. benefits in Article 77 and 78.

1 Reg (EEC) 1408/71, Art 5; 2 Art 4

070168 The latest UK declarations for Social Security benefits specify

1. Great Britain "Article 4" benefits¹
 - 1.1 Social Security Act 75 of 20.3.75 (excluding s 37 and 37A) and amending legislation
 - 1.2 Parts I and Industrial Injuries of Social Security Pensions Act 75 of 7.8.75 (excluding s 22) and amending legislation
 - 1.3 Industrial Injuries and Diseases (Old Cases) Act 75 of 20.3.75
 - 1.4 Part I of the Social Security and Housing Benefits Act 82 of 28.6.82 and amending legislation and for family benefits specifies
 - 1.5 Child Benefit Act 75 of 7.8.75².

Reciprocal agreements

Agreements with European Economic Area countries

070330 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 prior to 6.4.17	GA	IBST	IBLT	JSA	MB	Dis B	IDB	CHB	AA	BSP from 6.4.17
Austria	X	X	X	X	X	X	X	X	X	X	-	X
Belgium	X	X	X	X	X	X	X	X	X	X	-	X
Cyprus	X	X	X	X	X	X	X	X	X	-	-	X
Denmark	-	X	X	X	X	X	X	X	X	X	X	X
Finland	X	X	-	X	X	X	X	X	X	X	-	X
France	X	X	-	X	X	X	X	X	X	X	-	X
Germany	-	X	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	-	-	X
Italy	X	X	X	X	X	X	X	X	X	-	-	X
Luxembourg	X	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	-	-	X
Norway	X	X	X	X	X	X	X	X	X	X	X	X
Portugal	X	X	X	X	X	X	X	X	X	X	-	X
Spain	X	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 The following table shows the benefits which are covered in the agreements with countries which are not part of the EEA.

	RP	WB prior to 6.4.17	GA	IBST	IBLT	JSA	MB	Dis B	IDB	CHB	AA	DLA	ICA	ESA (C)	BSP from 6.4.17
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	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	-	-	-	-	X
Jamaica	X	X	X	-	X	-	-	X	X	-	-	-	-	X	X
Jersey	X	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	-	-	-	-	X
Philippines	X	X	-	-	-	-	-	X	X	-	-	-	-	-	X
Switzerland	X	X	X	X	X	-	-	X	X	X	-	-	-	-	-
Turkey	X	X	X	X	X	-	X	X	X	-	-	-	-	X	X
USA	X	X	X	X	X	-	-	-	-	-	-	-	-	X	X
Yugoslavia	X	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 ESATransitionalProvisions,HBandCTBt)(ExistingAwards)(No.2)Regulations2010

070334 Following the break-up of Yugoslavia the reciprocal agreement between the UK and Yugoslavia should be treated as separate agreements between the UK and

1. the State Union of Serbia and Montenegro
2. Bosnia-Herzegovina
3. Croatia
4. the former Yugoslav republic of Macedonia **and**
5. Slovenia.

Note: Croatia acceded to the EU on 1.7.13.

1 Immigration Act 1988, s 7

070335 The EC has Association Agreements with

1. Turkey.

070336 The EC also has Cooperation Agreements with

1. Algeria
2. Morocco
3. Switzerland (From 1.6.03)
4. Tunisia.

Benefits not covered

070337 SF payments, ESA, JSA IB, and IS are not covered by any of the agreements.

070338 JSA¹ can be paid whilst a person is absent from GB in either Northern Ireland or the Isle of Man. In the other agreements the JSA provisions only concern the satisfaction of the contribution conditions.

1 SS (RA) Order 95

Australia

070339 Until 28.2.01 the UK had a Reciprocal Agreement with Australia¹. The Agreement enabled permanent residents of the UK to satisfy the contribution test for benefits by treating periods of residence in Australia as periods for which NI contributions were paid. The benefits affected were RP, WB, IB and JSA (cont). In addition for the purposes of CHB and GA, periods of residence in Australia could be treated as periods of residence in UK.

1 SS (Australia) Order 1992

070340 New legislation¹ came into force on 1.3.01 terminating that Agreement which ceased to have any effect on UK legislation. All claims for benefit received after 28.2.01 where the claimant had previously resided in Australia should be assessed on UK contribution records or periods of actual residence in UK only.

1 SS (Australia) Order 2000

Transitional provisions

070341 There are transitional provisions which protect entitlement to benefit for persons assisted by the Agreement on 28.2.01 see Annex 3 for details. Arrangements have also been made to assist in claims for RP and BB which will still be processed by International Pension Centre (IPC).

New Zealand

070342 In the agreement with New Zealand¹ where there are references to the legislation to which the agreement applies, such references shall be altered to include a reference to Part 5 of the Pensions Act 2014².

1 SS (New Zealand) Order 1983; 2 The Social Security (Reciprocal Agreements) Order 17, Sch 3, para 1(a)

070343 Article 11 of the agreement with New Zealand¹ shall be altered so that it applies for the purpose of entitlement to BSP² in the following way

1. a person who is ordinarily resident in New Zealand when their spouse or civil partner dies is to be treated as ordinarily resident in Great Britain at that time
and
2. paragraph (4) is to be disregarded³.

*1 SS (New Zealand) Order 1983; 2 Pensions Act 2014, part 5:
3 The Social Security (Reciprocal Agreements) Order 17, Sch 3, para 1(b)*

070344 - 070349

What the Directive does not cover

Introduction

070410 The Directive does not apply to survivor's benefits, family benefits¹ or maternity benefits². This means that the following UK benefits are not covered

- Survivors benefits
 - WB
 - IDB
- Family benefits
 - CHB
 - GA
 - Child's Special Allowance
 - Family Credit (but see DMG 070413)
- Maternity benefits
 - MB
 - SMP.

1 Directive 79/7/EEC, Art 3(2); 2 Art 4(2)

Income Support

Introduction

070411 For the UK, social assistance may mean IS. Social assistance is only covered by the Directive¹ if it is intended to supplement or replace other benefits covered by the Directive (see DMG 070401).

1 Directive 79/7/EEC, Art 3(1)

070412 IS provides protection against poverty, it does not protect against any of the risks set out in DMG 070400¹. This means that the Directive does not apply to IS.

1 Case 63/91, Sonia Jackson & 64/91, Patricia Cresswell; R(IS) 10/91

070413 - 070419

The Past Presence Test

- 071715 It is a condition of entitlement to AA, DLA and CA that, in respect of any day of potential entitlement, the claimant must have been present in GB for a specified period in the past (“the past presence test”).
- 071716 [See memo DMG 23/17](#) From 17.3.16 PPT is no longer to be applied to claims submitted by refugees and their family members or to people with Humanitarian Protection status and their families¹. All claimants must satisfy the other conditions of entitlement.

1 [2016] UKUT 149 {AAC}

- 071717 Subject to the rules relating to DLA (Care Component) for those aged 3 and under described in DMG 071718 to 071720 below, the requirement is¹ that in respect of any day for which benefit is claimed, the claimant must have been present in GB for a period of (or periods totalling) 104 weeks in the 156 weeks immediately preceding that day.

Note: The past presence test was changed from a requirement that a claimant be present for 26 weeks out of the previous 52 by amending regulations made in April 2013. See DMG 071721 for details of when this change takes effect.

1 SS (AA) Regs, reg 2(1) (a) (iii); SS (DLA) Regs, reg 2(1) (a) (iii); SS (ICA) Regs, reg 9(1)(c)

Example 1

On 15.4.13, Margaret claimed CA. She reported that she had lived and worked in the USA from 1999 until 21.5.11 when she returned to reside in the UK. The DM calculated that the 156 weeks immediately preceding 15.4.13 ran from 19.4.10 to 14.4.13. The DM calculated that, during that period, Margaret had been present in GB for 99 weeks and 2 days. The DM decided that, as at the first day of entitlement in relation to the claim, Margaret did not satisfy the past presence test. However he decided to treat the claim as being made in advance for a period starting on 18.5.13 (the first day immediately following the completion of 104 weeks residence in the UK). Accordingly, the DM made an award of CA starting from 21.5.13 (the beginning of the 7 days ending on Monday 27.5.12)

Example 2

Howard made a claim for AA on and from 12.6.13. He reported that, during the previous three years, he had resided in GB from May 2010 to 7.9.12 and since 31.1.13. The rest of the time he had lived in Australia. The DM calculated that the 156 weeks immediately preceding 12.6.13 ran from 16.6.10 to 11.6.13 and that during that period Howard had been in GB for a total of 136 weeks and 2 days (116 weeks and 3 days in the first period and then 19 weeks and 6 days from 31.3.13 to 11.6.13). He therefore decided that Howard satisfied the past presence test as at the date of claim.

Terminally Ill

071718 In the case of a claim for AA or DLA from a person who is terminally ill, the past presence test does not apply¹.

1 SS (AA) Regs, reg 2(3); SS (DLA) Regs, reg 2(4)

DLA (Care) - Application of the Past Presence Test to Certain Children

Child aged less than 6 months

071719 The past presence test in relation to any day of potential entitlement to DLA (Care Component) in the case of a claimant who is child under the age of 6 months is that they must have been present in GB for a period of (or periods totalling) 13 weeks¹.

Note: This rule has applied since DLA began in 1992.

1 SS (DLA) Regs, reg 2 (5)

Continuation up to the age of 12 months

071720 Where, immediately before they attain the age of 6 months, a child is entitled to DLA by virtue of having satisfied the past presence test described in DMG 071718, then the past presence test will be that, in respect of any day, that child must have been present in GB for a period of (or periods totalling) 13 weeks¹. This test will continue to apply until that child attains the age of 12 months¹.

Note: This rule has applied since DLA began in 1992.

SS (DLA) Regs, reg 2 (6)

Child aged over 6 months but less than 36 months

071721 Except where, and to the extent that DMG 071719 applies, the past presence test for a child who is aged of 6 months or over but under the age of 36 months is that for any day of potential entitlement the child must have been present in GB for a period of (or periods totalling) 26 weeks in the 156 weeks immediately preceding that day¹.

1 SS (DLA) Regs, reg 2 (7)

Note: This rule was brought in by amending regulations in April 2013.

Periods of absence from GB

Members of the Forces, Aircrew, Mariners, etc.

071725 Claimants who are habitually resident in the CTA but who are absent from GB on any day should, for the purposes of the presence tests (including the past presence test), be treated as being 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, civil partner, son, daughter, step-son, step-daughter, father, father-in-law, step-father, mother, mother-in-law or step-mother.

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

1 SS (AA) Regs, reg 2(2); SS (DLA) Regs, reg 2(2); SS (ICA) Regs, reg 9(3); 2 CP Act 04, s 246

Temporary absences from GB - AA and DLA

Meaning of "temporary absence"

071726 A person is "temporarily absent" from GB if¹, at the beginning of the period of absence, that absence is unlikely to exceed 52 weeks.

1 SS (AA) Regs, reg 2(3C); SS (DLA) Regs, reg 2(3C)

Temporary Absence - Up to 13 weeks

071727 An AA or DLA claimant who is temporarily absent from GB shall be treated as present (including for the purposes of deciding whether the past presence test is satisfied) for a period of up to 13 weeks¹.

Note: The period allowed was reduced from 26 to 13 weeks by an amendment to regs made in April 2013. See DMG 071728 for the dates this change takes effect from.

1 SS (AA) Regs, reg 2(2)(d); SS (DLA) Regs, reg 2(2)(d)

Date 13 week absence rule change takes effect from

071728 The change to the temporary absence rule described in DMG 071727 above takes effect from

1. in the case of a claimant who has an existing award of AA or DLA on 7.4.13, whichever is the earlier of¹
 - 1.1 the day immediately following the day that the current award terminates (i.e. when a fixed period award comes to an end) **and**
 - 1.2 26 weeks after 8.4.13 (i.e. 7.10.13) **or**
2. in any other case, 8.4.13².

1 SS (DLA, AA & CA) (Amend) Regs 13, reg 1(3) & (6); 2 reg 1(2)

Example 1

A two year fixed term award of DLA was made to Vincent, with a first day of entitlement of 6.3.12. Vincent left the UK on 3.3.13 for a temporary visit to relatives abroad. The DM decided that as there was an existing award of DLA on 7.4.13, the new rules would take effect from 7.10.13. However the 26 weeks absence allowed under the old rules would expire on 4.9.13. He therefore set a BF date to check the position closer to that time.

Example 2

Margaret has an indefinite award of AA which started in 2005. She left the UK on 25.4.13 for a temporary visit to the USA. The DM decided that, as Margaret had an existing award of AA on 7.4.13, the new rules would apply in her case from 7.10.13. If Margaret's absence continued unbroken until 7.10.13, by that date she would have been absent for 23 weeks and 4 days. Under the new rules only 13 weeks absence starting with the first day of absence is allowable. Accordingly the DM set a BF date to check the position at a time close to 7.10.13.

Example 3

Bill claimed DLA on 15.4.13 and an award was made from 18.4.13. On 5.5.13, Bill left for an extended holiday in Spain. The DM decided that, as there was no award of DLA on 7.4.13, the new rules applied from 8.4.13. The DM therefore decided that Bill could be treated as present in GB for up to and including 4.8.13 (i.e. 13 weeks starting on 6.5.13) and set a BF date accordingly.

Absence to receive medical treatment

Introduction

071729 The rules relating to absences from GB for medical treatment were changed by amending regs that were made in April 2013. However there are savings provisions under which the old rules may continue to apply for some time. The following guidance therefore sets out the old rules, the new rules and gives details of the savings provisions.

Export of benefit to another EEA Member State from 21.7.11

Introduction

071750 On 21.7.11, the CJEU made a decision¹ which affects the way EU law applies in relation to the export of AA, CA and DLA (Care Component). The guidance below therefore sets out the EU law position as it applies from 21.7.11. The guidance about how the law was applied from 8.3.01/18.10.07 up to 20.10.07 in the light of the CJEU's decision² dated 18.10.07 that AA, CA and DLA (Care Component) are sickness benefits can be found in Appendix 1 to this Part of Chapter 07. There was also a law change to regularise the position with regard to new claims/requests for reconsideration made in the light of the CJEU's decision² that AA, CA and DLA (Care Component) are sickness benefits. Details can be found at Appendix 2.

1 Case C-503/09 LS v Secretary of State for Work and Pensions; 2 ECJ Judgement Case C-299/05

EU Law - Background

071751 There are two current sets of EU regulations relating to the co-ordination of Social Security benefits across the Member States. These are

1. Regulation (EC) No. 883/2004 which sets out the main rules, and
2. Regulation (EC) No. 987/2009 which deals with the administrative procedures to be followed in implementing the main rules.

Note: For the EU Member States, these regulations replaced earlier regulations¹ with effect from 1.5.10. They applied to Switzerland from 1.4.12 and to Norway, Iceland and Liechtenstein from 1.6.12. The old regulations¹ continue to apply in certain transitional cases. DMs are advised to seek guidance from DMA (Leeds) where issues relating to the old regulations apply. See also DMG 071756 to 071758 below concerning third country nationals.

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

What types of benefit are AA, DLA & CA?

071752 The EU Social Security Co-ordination Regs set out different rules depending upon the branch of social security involved (e.g. "sickness benefits", "old-age benefits", "family benefits"). On 18.10.07 the Court of Justice of the European Union (the CJEU) held¹ that the care component of DLA was a sickness benefit. However, on 5.5.11 the CJEU confirmed that the mobility component of DLA was a Special Non-Contributory Benefit (SNCB). DLA (Mobility Component) cannot, therefore, be paid to a person residing abroad. For the purposes of the EU regulations concerning the co-ordination of social security benefits AA, DLA (Care only) and CA are sickness benefits in cash for long term care.

1 ECJ Judgement Case C 299/05;

2 Bartlett, Gonzales Ramos and Taylor v Secretary of State for Work and Pensions Case C-537/09,

Exportability - General Rules for AA, DLA (Care) or CA

071753 A claimant with an award of AA, DLA (**Care only**) or CA, who leaves GB and resides in an EEA State will continue to be entitled to that award where¹

1. the person is within the personal scope of relevant EU legislation **and**
2. the UK continues to be the competent state for payment of a sickness benefit **and**
3. the person can demonstrate that they have a genuine and sufficient link to the UK's social security system **and**
4. the normal domestic conditions of entitlement are met except that the claimant no longer has to
 - 4.1. be habitually resident in the CTA **or**
 - 4.2. be present in GB **or**
 - 4.3. meet the past presence test.

1 SS (AA) Regs, reg 2B; SS (DLA) Regs, reg 2B; SS (ICA) Regs, reg 9B

Personal scope of EU legislation

071754 With effect from 1.5.10, a person is within the scope of the EU regulations relating to the co-ordination of social security systems if that person¹

1. is
 - 1.1 a national of a Member State, **or**
 - 1.2 a stateless person or refugee residing in a Member Statewho is or has been subject to the legislation of one or more Member States **or**
2. is a member of the family or a survivor of a person falling within 071752 1..

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

071755 Also within the personal scope of EU provisions¹ are survivors of persons who have been subject to the legislation of one or more Member States (regardless of the nationality of such persons), provided the survivor is

1. a national of a Member State, **or**
2. a stateless person or refugee residing in one of the Member States.

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

Meaning of “frontier worker”

071778 Frontier worker¹ means an employed or self-employed person who works in GB but lives in another EEA member state where he returns daily, or at least once a week.

1 Reg (EC) 883/04 Art 1(f)

UK competency ceases

071779 The UK will automatically cease to be the competent state to pay a sickness benefit where either the claimant or the family member on whom the claimant relies to satisfy EU law

1. starts work in another EEA Member State as an employed or self-employed person¹ (other than as a UK posted worker of course) or
2. is or becomes eligible for a sickness benefit from the state of residence² or
3. receives an old age or invalidity benefit or other pension from the state of residence³.

Note: The UK may be the competent state for the payment of sickness benefits to a claimant because that claimant derives rights from a family member. However, if one of the events described in DMG 071779.1 to 3 happens to one family member, the DM must consider whether competency continues on account of rights derived from another family member.

Example

Lucy is a disabled person, aged 25. She lives with and is dependent upon her parents, Patricia and Dan. The family resides permanently in Spain and DLA (Care Component) has been awarded to Lucy on the basis that Patricia was receiving a UK RP. The DM discovered that Dan had started work in Spain, and decided that from the date his work commenced, Spain became the competent state for payment of sickness benefits to Lucy.

1 Reg (EC) 883/04 Art 11(3)(a) & 31; 2 Reg (EC) Art 21 & 29; 3 Reg (EC) Art 23, 24. & 29

071780 The UK will also cease to be the competent state to pay a sickness benefit where the claimant or the family member on whom the claimant relies to satisfy EU law

1. no longer has NI cover (the first day on which the claimant would no longer meet contribution conditions for title to IB(ST) or ESA(Cont) on a new claim) or
2. is no longer entitled to and receiving a pension from GB or
3. finishes the work from which rights were acquired¹
4. is no longer entitled to and receiving JSA(CB), IBST, ESA(Cont) in the assessment phase, or MA

provided that the claimant, or the family member on whom the claimant relies to satisfy EU law, do not then fall within another category of person for whom the UK is the

competent state (for instance the claimant becomes entitled to a pension from GB before NI cover for IB(ST) or ESA(Cont) ends).

1 Reg (EC) 883/04 Art 11(3)(e)

Genuine and Sufficient Link

071781 Once the DM is satisfied that the claimant is within the personal scope of the EU co-ordination regs and that the UK is the competent state for the payment of cash sickness benefits, in deciding whether AA, CA or DLA (Care) can be exported, DMs must determine whether the claimant has a genuine and sufficient link to the UK's social security system. Guidance on how to make this determination and the factors to be taken into account is given at DMG 071786 et seq below.

NB The past presence test does not apply.

071782 If the claimant does not have a genuine and sufficient link, then entitlement to DLA (Care), AA or CA ceases when the claimant leaves the UK.

071783 - 071784

Mauritius

071895 The agreement allows

1. where a claimant is entitled to RP only under the UK scheme, CDI to be paid by the UK **or**
2. where a claimant is entitled to RP only under the Mauritius scheme, an increase for a child to be paid by Mauritius **or**
3. where a claimant is entitled to RP under both the UK and Mauritius schemes, an increase for a child to be paid by the country in which the claimant is habitually resident **and**
4. if a child is in Mauritius, entitlement to CDI to continue if the claimant is entitled to a UK personal benefit covered by the agreement **and** there would be entitlement to CDI if the child had been in the UK **and** the claimant is residing with, or would be residing with if not temporarily absent from, the child and is responsible for the child¹.

1 SS (Mauritius) Order 81, Sch 1, Art 4(3) & 15

New Zealand

071896 If a child is in New Zealand, the claimant will be entitled to CDI if

1. the claimant is entitled to a UK personal benefit covered by the agreement **and**
2. there would be entitlement to CDI if the child had been in the UK **and**
3. the child is **not** usually resident in New Zealand **or** the eldest, elder or only child in a WMA claim¹.

1 SS (New Zealand) Order 83, Sch, Art 3

Northern Ireland

071897 The agreement allows periods of presence in Northern Ireland to be treated as periods of presence in the UK. This means that a claimant who is entitled to a UK personal benefit will continue to be entitled to CDI during any absences, or the child's absences, in Northern Ireland¹.

1 SS (N. Ireland Reciprocal Arrangements) Regs, Sch, Art 2

Philippines

071898 The agreement allows

1. where a claimant is entitled to RP only under the UK scheme, CDI to be paid by the UK **or**
2. where a claimant is entitled to RP only under the Philippines scheme, an increase for a child to be paid by the Philippines **or**
3. where a claimant is entitled to RP under both the UK and Philippines schemes, an increase for a child to be paid by the country in which the claimant is habitually resident **and**
4. if a child is in the Philippines, entitlement to CDI to continue if the claimant is entitled to a UK personal benefit covered by the agreement **and** there would be entitlement to CDI if the child had been in the UK¹.

1 SS (Philippines) Order 89, Sch, Art 4(3) & 14

Switzerland

071899 A claimant who is entitled to a UK personal benefit will continue to be entitled to CDI if the child is absent in Switzerland¹.

1 FA, NI and II (Switzerland) Order 69, Sch 1, Art 16(3)

Turkey

071900 If a child is in Turkey, the claimant will be entitled to CDI if

1. the claimant is entitled to a UK personal benefit covered by the agreement **and**
2. there would be entitlement to CDI if the child had been in the UK¹.

1 NI and II (Turkey) Order, 61, Sch, Art 28(1)

United States of America

071901 If a child is in the United States of America, the claimant will be entitled to CDI if

1. the claimant is entitled to a UK personal benefit covered by the agreement **and**
2. there would be entitlement to CDI if the child had been in the UK¹.

1 SS (USA) Order 84, Sch 1, Art 7(4)

Employment and Support Allowance - Residence and Presence Conditions

Introduction

071910 ESA was introduced for new claimants on 27.10.08. ESA(Cont) replaced IB, and ESA(IR) replaced IS on grounds of disability.

071911 It is a condition of entitlement to ESA that the claimant is in GB¹. However

- in relation to ESA(Cont), this condition must be read subject to EC law
- there are further residence and presence conditions for entitlement to ESA (Cont) relating to youth²
- a claimant must also be habitually resident in GB for ESA(IR)³
- there are also provisions to allow continued entitlement to ESA (both Cont and IR) for certain temporary absences from GB.

1 WR Act 07, s 1(3)(d); 2 Sch 1 Part 1 para 4(1)(c); 3 ESA Regs, reg 70

ESA(Cont) - EC Provisions

071912 [\[See Memo DMG 32/10\]](#) It is a condition of entitlement to ESA that a claimant is in GB¹. The claimant must be physically present in GB on the day or period in question. A claimant is disqualified for receiving ESA(Cont) and ESA(IR) for any period absent from GB² unless entitlement continues during a period of temporary absence³. When considering entitlement to ESA(Cont), however, this condition must be read in conjunction with European law⁴ if the claimant is in another EEA member state or Switzerland. The EEA includes all EC countries and the 3 EFTA countries (see DMG 070040).

1 WR Act 07, s 1(3)(d); 2 s 18(4)(a); 3 ESA Regs, reg 151(2); 4 Reg (EC) 883/04

071913 In order to benefit from EC Regulations, the claimant must normally be an EEA National; but see DMG 070080 et seq. Detailed guidance on how a claimant, first claiming from another EEA state or on moving to another EEA state, might benefit from EC Regulations is in Part 4 of Chapter 7 of the DMG. The guidance therein relates to IB, but this will equally apply to claims to ESA(Cont).

071914 EC Regulations differentiate between sickness benefits¹ and invalidity benefits². For ESA(Cont) the assessment phase is treated as a sickness benefit, and thereafter it is treated as an invalidity benefit.

1 Title III Chapter 1; 2 Chapter 2

071915 In particular, EC provisions may assist the claimant

- satisfy the contribution conditions - see DMG 073791
- first claiming ESA in another EEA state - see DMG 073800 and 073867
- avoid disqualification if in another EEA state in the assessment phase - see DMG 073860
- avoid disqualification if in another EEA state after the assessment phase - see DMG 073900.

ESA - Reciprocal Agreements

071916 The UK has some 30 reciprocal SS agreements that include provisions on IB. These agreements were not extended or amended to include ESA. Thus ESA(Cont) is not covered by any reciprocal agreement (but see Part 4 of Chapter 7 of the DMG for those moving within the EC).

071917 However, those claimants who continue to be entitled to IB after 26.10.08 are still covered by the reciprocal agreements with other countries (see DMG 070330 and 070333).

ESA(Cont) - relating to youth

071918 For ESA (Youth provisions) a claimant must satisfy prescribed conditions of residence and presence in GB on any day included in the claim¹ (but see DMG 071919). Claimants must

1. be habitually resident in GB² (see DMG 070769) **and**
2. not be subject to immigration control³ (see DMG 070831 - 070836) **and**
3. be present in GB⁴ **and**
4. have been present in GB for a period of (or periods totalling) not less than 26 weeks in the previous 52 weeks⁵.

1 WR Act 07 Sch 1 para 4(1)(c); 2 ESA Regs, reg 11(1)(a); 3 reg 11(1)(b) & reg 11(3); 4 reg 11(1)(c); 5 reg 11(1)(d)

071919 A person is to be treated as having satisfied the conditions in DMG 071918.1, 3, and 4. throughout a PLCW (see DMG 41024.7 for the definition of PLCW) where those conditions are satisfied on the first day of that period.

071920 Claimants to ESA(Cont) relating to youth, who are absent from GB on any day should, for the purposes of the residence and presence tests, be treated as resident or present in GB if on that day they are

1. in prescribed employment on the continental shelf¹ (see DMG 078060 - 078185) **or**
2. aircraft workers or mariners² (see DMG 078060 - 078185) **or**

10. Claimants who satisfy all the conditions in DMG 071741 are transitionally protected to export awards of AA or CA or DLA (both components) where they left GB before 18.10.07 (but see paragraph 13 below).
11. However, only awards of DLA Mobility Component can still attract transitional protection if a claimant moves to another EEA Member State on or after that date. From 18.10.07, awards of AA, CA and DLA (Care Component) can only be exported as sickness benefits, even where the original award pre-dates 1.6.92.
12. A full list of EEA Member States is at DMG 070040, with details of when they first joined the EU. Transitional protection for AA, DLA, and CA has never applied to nationals of the EFTA countries (Iceland, Norway and Liechtenstein) or Switzerland. Additionally, the following countries were not EEA Member States as at 1.6.92:-

Austria, Bulgaria, Cyprus, Czech Republic, Estonia, Finland, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia, and Sweden.
13. Persons who were entitled to AA, CA, DLA (Care Component) or DLA (Mobility Component) since before 1.6.92 who moves (before 18.10.07) to one of the countries listed in paragraph 12 can benefit from transitional protection and so will be able to export these benefits but only from the date that country joined the EU.

Example

Grace is a UK national who became entitled to DLA (Mobility Component) from 1.4.92. In April 2002 she moved to live in Hungary. The DM decided that, as, at that time, Hungary was not a member of the EU, the DLA (Mobility Component) could not be exported as a transitionally protected "invalidity benefit". However, having checked that the conditions of entitlement had been satisfied continuously since 1.4.92, the DM decided that Grace could benefit from transitional protection from the date Hungary joined the EU (i.e. from 1.5.04).

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Entitlement began on or after 1.6.92

15. From 1.6.92, AA, DLA, and CA were listed as SNCBs for the purposes of EU law¹. Such benefits are payable only in, and at the expense of, the country of habitual residence. A person who became entitled to AA, DLA, or CA on or after 1.6.92 could not export their benefit when moving permanently to live in another EEA Member State², nor could someone claim an SNCB when living in another EEA Member State. However, from 8.3.01, AA, DLA (Care) and CA are sickness benefits in EU law.

1 Reg (EEC) 1408/71, Art 4(2a) & 10(a) & Annex IIa; 2 ECJ cases C-20/96 & C-297/96, R(DLA) 5/99 & R(A) 1/99

Export of benefit to another EEA Member State from 8.3.01

16. A claimant with an award of AA, DLA (**Care only**) or CA, who leaves GB to live in another EEA Member State on or after 8.3.01 will continue to be entitled to that award where
1. the person is within the personal scope of relevant EU legislation **and**
 2. the UK continues to be the competent state for payment of a sickness benefit **and**
 3. the normal domestic conditions of entitlement are met except that the claimant no longer has to
 - 3.1 be habitually resident in GB or
 - 3.2 be present in GB or
 - 3.3 meet the past presence test on an ongoing basis.
17. Where a decision on export of AA, DLA (Care) or CA was made on or after 8.3.01 and before 18.10.07, and that decision is subsequently shown to be in error of law in light of ECJ judgement C299/05, that decision can be superseded¹ with effect from the date of request for supersession². Where, in similar circumstances, the DM is unable to supersede the incorrect disallowance (for instance where the original disallowance was confirmed by a FtT) a claim to AA, DLA (Care) or CA can be treated as made on the date of request for supersession or reinstatement. Provided the conditions in paragraph 16 above are met, the claimant will have satisfied the past presence test when they left GB and the claimant is not then required to further satisfy this condition at the date of request for re-instatement. The Mobility Component of DLA remains an SNCB which cannot be exported unless the claimant has transitional protection (see paragraphs 9 to 13 above).

1 SS & CB (D&A) Regs, reg 6(2)(b)(i); 2 SS Act 98, s 10(5)

Personal scope of EU legislation

18. The main group within the personal scope of Reg (EEC) 1408/71 is those who are or have been employed or self-employed persons, who have been subject to the legislation of one or more EEA Member States and who are nationals of an EEA Member State, or stateless persons or refugees; and members of their family and survivors¹. From the introduction of Reg (EC) 883/04 on 1.5.10, all nationals of a Member State, stateless persons and refugees residing in a Member State who have been subject to the legislation of one or more Member States, and members of their family and their survivors, are within the personal scope².

1 Reg (EEC) 1408/71, Art 1 & 2; 2 Reg (EC) 883/04 Art 1 & 2

Residence and presence conditions

19. Those relying on EU law rights to export an award of AA or DLA (Care) or CA are not required to be habitually resident or present in GB. However they are required to satisfy the past presence test¹ on a one-off basis on the first date from which entitlement to benefit whilst abroad can be established for a particular claim to that benefit.

1 SS (AA) Regs, reg 2(1)(a)(iii); SS (DLA) Regs, reg 2(1)(a)(iii); and SS (ICA) Regs reg 9(1)(c)

Competent state

20. The circumstances in which a competent 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 paragraph 34 below.

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

21. The UK will be the competent state (subject to certain exceptions set out below) to pay a sickness benefit for the following groups:

- claimants in receipt of a pension from GB (usually receiving a contributory benefit) and family members of such a person¹ if no other Member State is paying a pension and is
- competent for sickness
- those covered by GB contributions in the relevant income tax years that would enable them to claim ESA(Cont) (RITY cover) and family members of someone with RITY cover²
- certain workers and their family members
- claimants who retain worker status whilst in receipt of JSA(CB), IBST, ESA(Cont) in the assessment phase, and MA, and their family members.

1 Reg (EEC) 1408/71 Art 28 & Reg (EC) 883/04 Arts 24 & 29;

2 Reg (EEC) 1408/71 Art 1(o), (q), (r), & (s), & Reg (EC) 883/04 Art 1(c)(q), (s), (t) & (u)

Claimant in receipt of a pension from GB (and family members)

22. In receipt of a pension under GB legislation¹ means entitled to and actually in receipt of

1. state RP of any category (except Category D only awards with no contributory element) 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) or
5. transitionally protected DLA (Mobility Component).

23. However, for SDA and transitionally protected DLA (Mob) to be treated as a pension, the claimant must firstly fall within the personal scope of EU legislation (see paragraph 16 above).

1 Reg (EEC) 1408/71 Art 28; & Reg (EC) 883/04 Arts 24 & 29

24. The claimant will be treated as in receipt of a pension where he has continuing entitlement to a pension but it is not payable because of domestic overlapping benefit rules, such as where long term IB is not payable to a claimant in receipt of unemployment supplement paid with a war pension.

25. Where the claimant receives an old-age or invalidity benefit or other pension from the EEA Member State of residence and from another EEA Member State, the state of residence will be the competent state for sickness benefits. If the claimant receives a pension from 2 EEA Member States, but neither is the state of residence, the competent state will be the one whose legislation the claimant was subject to for the longest period of time. If exceptionally, these are equal periods, the state whose legislation the claimant was last subject to will be the competent state for payment of sickness benefits¹.

1 Reg (EEC) 1408/71 Art 28(2)(b) & Reg (EC) 883/04 Art 25

26. Where a claimant does not personally satisfy the conditions specified in EU law, the UK may still be the competent state to pay a sickness benefit if the claimant is a family member (DMG 071732) of someone receiving a GB pension, but only from 1.5.2010 when new EC Regulations¹ were introduced.

1 Reg (EC) 883/04 Art 29(1) & (2)

Person with RITY Cover and family members

27. The UK will be the competent state¹ for a sickness benefit where the claimant is insured in GB for sickness benefits i.e. where he satisfies the normal relevant income tax year (RITY) contribution conditions that would give title to short-term IB² or ESA (Cont)³. Guidance on RITY conditions is at parts 41 and 56 of the DMG.

*1 Reg(EEC) 1408/71 Art 1(o), (q), (r) & (s) & Reg(EC) 883/04 Art 1(c), (q), (s), (t), & (u);
2 C&B Act 92, s 30A(2) & Sch 3, part 1, para 2; 3 WR Act 07, s 1(2)(a) & Sch 1, Part 1, paras 1 & 2*

28. Where the claimant does not personally satisfy the conditions specified in EU law, the UK may still be the competent state to pay a sickness benefit if the claimant is a family member of someone who has insurance cover against sickness (has RITY cover).

3. the date the claim can be considered from for a CA claim.
38. Where the UK is the competent state at that date, the claimant will have to satisfy the normal domestic conditions of entitlement at that same date, except that the claimant no longer has to be habitually resident or present in GB.
39. The claimant will not have to satisfy the past presence test on an ongoing basis as required for claimants in GB. This domestic test is modified for those relying on EU law rights. A claimant living in another EEA Member State will have to satisfy the past presence test on a one-off basis at the first date from which entitlement to benefit can be established. The claimant is required to have been present in GB for a period of, or periods amounting to, at least 26 weeks in the 52 weeks immediately preceding
 1. the date of claim (or the end of the qualifying period if later) or
 2. the day after expiry of a current award in renewal claims (but see paragraph 40 below) or
 3. the date the claim can be considered from for a CA claim.
40. However, in renewal claims the DM may treat the claim as a request for reconsideration of the previous award and consider if the period of the previous award should be extended (whether at the same or a different rate). Where the supersession¹ extends the period of the previous award, the past presence test will already have been met during the currency of the award (as amended on supersession).

1 SS Act 98, s 10, & SS CS (D&A) Regs, reg 7

41. Those claiming under the special rules for the terminally ill do not have to satisfy the past presence test in domestic legislation. The following groups are treated as satisfying the past presence test, on this limited one-off basis, through the UK insurance of a worker:
 1. frontier workers and members of their family
 2. posted workers and members of their family
 3. a family member of someone living and working in GB
 4. a person treated as a worker (and their family members) who, although not currently working, is receiving JSA(CB), ESA(Cont) in the assessment phase, or MA, or those who continue to be insured for ESA(Cont) after they cease work.
42. The Mobility Component of DLA, as a SNCB¹, cannot be claimed from abroad; but see paragraph 9 above regarding certain claimants with transitional protection.

1 Reg (EEC) 1408/71 Art 4(2a), Art 10a, & Annex IIA, & Reg (EC) 883/04 Art 3(3) & Art 70 & Annex X & CJEU Judgement case C-537/09.

Appendix 3

Deciding the competent state to pay cash sickness benefits

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Introduction

- 1 This appendix expands the guidance in DMG chapter 7 for deciding the competent State to pay cash sickness benefits. It also incorporates Regulation (EC) 883/2004.

General rule

- 2 In general, a person is only subject to the legislation of one EU Member State¹.

1 Reg (EC) 883/04, Art 11(1)

- 3 A person will not be entitled to AA¹, CA², or DLA care component³ or unless the UK is the competent State for payment of cash sickness benefits to that person.

1 SS CB Act 92, s 65(7); 2 s 70(4A); 3 s 72(7B)

- 4 Special Non-Contributory Cash Benefits can only be paid to people by and in their Member State of residence. In the UK

1. SPC and
2. JSA (IB) and
3. DLA mobility component and
4. ESA (IR)

are Special Non-Contributory Cash Benefits¹.

1 REG (EC) 883/2004, Annex X

Additional voluntary insurance

- 5 Although a person is subject to compulsory insurance in one EU Member State, that person may voluntarily decide to join the optional insurance scheme in another EU Member State for the purposes of entitlement to

1. invalidity benefit and
2. retirement pension and
3. widow's benefits¹.

1 Reg (EC) 883/04, Art 14(3)

Deciding whose legislation applies

General rules

- 6 The general rules are¹ that

1. a person pursuing activity as an employed or self-employed person in an EEA Member State is subject to the legislation of that Member State

2. a civil servant is subject to the legislation of the Member State to which the administration employing him is subject
3. a person receiving unemployment benefits in accordance with a specific provision in the EU co-ordination Regulations² from the Member State of residence is subject to the legislation of that Member State
4. a person called up or recalled for military or civilian service by a Member State, is subject to the legislation of that Member State
5. any other person to whom sub-paragraphs 1. – 4. do not apply is subject to the legislation of the Member State of residence.

Note: The rule in sub-paragraph 5. operates subject to any other rules in the EU co-ordination regs which may guarantee a person benefits under the legislation of one or more Member States.

1 Reg (EC) 883/04, Art 11(3); 2 Art 65

- 7 Except in relation to the benefits listed at paragraph 9, for the purposes of paragraph 6, a person receiving cash sickness benefits because of, or as a consequence of, their activity as an employed or self-employed person shall be considered to be pursuing that activity¹.

1 Reg (EC) 883/04, Art 11(2)

- 8 The benefits to which the rule detailed in paragraph 7 do not apply are¹

1. invalidity benefits or
2. old age or survivors' pensions or
3. pensions in respect of accidents at work or occupational diseases or
4. sickness benefits in cash which are for treatment for an unlimited period.

1 Reg (EC) 883/04, Art 11(2)

Meaning of “legislation”

- 9 In paragraph 6 “legislation” means¹ the laws, regulations, statutory provisions and all other implementing measures relating to the branches of social security listed in the co-ordinating regs.

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

Meaning of “competent Member State”

- 10 The “competent Member State” means¹ the Member State in which the competent institution is situated.

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

Meaning of “competent institution”

- 11 The “competent institution” means¹ the institution
1. with which the person concerned is insured at the time of the application for benefit or
 2. from which the person concerned is or would be entitled to benefits if he or a member of his family resided in the Member State in which the institution is situated or
 3. designated by the competent authority of the Member State concerned.

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

Meaning of “competent authority”

- 12 “Competent authority” means¹ the Minister or other equivalent authority responsible for social security schemes throughout (or in any part of) the member state in question.

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

Posted to another EEA country

- 13 An employed person who is posted by their employer to another EEA State remains subject to the legislation of the Member State where the employer is based and where that person normally works, provided
1. the work is not expected to last more than twenty-four months, **and**
 2. that person has not been sent to replace somebody who has completed a posting¹.

1 Reg (EC) 883/04, Art 12

Working in more than one Member State

- 14 Persons who normally pursue activity as an employed person in two or more Member States will be subject to the legislation of¹
1. the Member State of residence if they
 - 1.1 pursue a substantial part of their activity in that Member State or
 - 1.2 are employed by two or more employers, at least two of which have registered offices or places of business in Member States different to that of the Member State of residence or
 2. the Member State in which the employer’s registered office or place of business is situated, if the person does not pursue a substantial part of his work in the Member State of residence, and either

Appendix 4

Action to take once competency has been decided

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Introduction

- 1 This appendix expands the guidance for DMs on the approach to take to cases where a decision on competency has been reached.

The DM decides that the UK is the competent state for the payment of cash sickness benefits (DMG 071752)

- 2 Where the DM decides that the UK is the competent state to pay cash sickness benefits to a person, the DM should then go on to consider whether the relevant domestic conditions of entitlement are met.

The DM decides that the UK is not the competent state for the payment of cash sickness benefits

Scenario one: Where there is no acceptable evidence of a dispute regarding competence between member states

- 3 Where the DM decides that the UK is not the competent state they should
 1. refuse the claim and
 2. immediately forward the claim to the member state the DM considers is competent¹

1 Art 81 Reg (EC) 883/04; [2015] AACR 26

Scenario Two: Difference of opinion between member states as to competence

- 4 Where there is a difference of opinion between the UK and one or more other Member States as to the identification of the State competent to provide cash benefits to a person, then either the
1. state where the claimant resides or
 2. member state where the claim was first made (if the claimant does not reside in any of the member states concerned in the dispute)

will provide cash benefits to that person on a provisional basis, provided that person meets the relevant domestic eligibility criteria¹.

1 Reg (EC) 987/09 Art 6(2)

Note: Competency is not contingent on the other member state having a similar benefit to the one applied for by the claimant. Therefore the position regarding competence will not be altered if the other member state does not have a similar benefit to the one applied for by the claimant. Further, payment on a provisional basis will not need to be made in these circumstances.

- 5 Should a dispute regarding competence arise between the UK and another member state the DM should not await
1. an appeal or
 2. the outcome of an appeal
- before making provisional payments¹.

1 [2015] AACR 26

Resolving the dispute

- 6 Where no agreement can be reached between the member states as to who is competent the DM should refer the matter to DMA Leeds. DMA Leeds will liaise with policy and legal services to decide whether to refer to the Administrative Commission¹.

1 Reg (EC) 987/09 Art 6(3)

- 7 The Administrative Commission will try to reconcile the dispute within 6 months¹.

1 Reg (EC) 987/09 Art 6(3)

- 8 Where the UK has paid benefit on a provisional basis and the Administrative Commission decides another member state is competent that member state will reimburse the UK benefits paid¹.

1 Reg (EC) 987/09; Art 73

The content of the examples in this document (including use of imagery) is for illustrative purposes only