

## Annex 3

### Transitional provisions following the termination of the Australia/UK Reciprocal Agreement

- 1 Any person who was previously assisted by the Agreement and as a result was in receipt of, or entitled to, a relevant benefit on 28.2.01, or any person who had made a claim on or before 28.2.01 so as to be later entitled to a relevant benefit on or before that date will continue to be entitled to that particular benefit under the transitional provisions so long as that particular claim subsists. A person cannot rely on the transitional provisions in relation to another claim for benefit made after 28.2.01<sup>1</sup>.

*1 SS (Australia) Order 00, Art 2(2)*

- 2 Claims from persons entitled to transitional protection are affected in the following manner for each specific benefit.

#### Child Benefit

- 3 A person who has become permanently resident in GB can count periods of residence in Australia as periods of residence in GB<sup>1</sup>. But this provision does **not** help a person to satisfy the **presence** tests for entitlement to CHB<sup>2</sup>.

*1 SS (Australia) Order 92, Sch 1, Art 10(1); 2 SS CB Act 92, s 146*

#### Dependency increases

- 4 An ADI is payable if the claimant and spouse, or person caring for the child, reside in Australia and the claimant remains entitled to personal benefit because of the Agreement and all other conditions for entitlement to ADI are satisfied.
- 5 Where a child is in Australia the claimant will be entitled to a CDI paid with benefits other than RP or WMA if he is entitled to a personal benefit paid under the Agreement and there would be entitlement to a CDI if the child were in UK.

#### Guardians Allowance

- 6 Where a person who is permanently resident in UK claims GA for a child who is also permanently here, the Agreement allows
1. weeks in Australia by either of the child's parents to be treated as weeks in UK
  2. a parent born in Australia to be treated as if born in UK.

*1 SS (Australia) Order 92, Sch 1, Art 11*

## Incapacity Benefit

- 7 A person can only continue to be paid IB whilst in Australia if disqualification does not apply because
1. the absence is temporary<sup>1</sup> (see DMG 070853) **and**
  2. the Secretary of State has certified (see DMG 071439) that, providing one of the conditions in DMG 071421 is satisfied, the person should not be disqualified<sup>2</sup>.
- 1 SS Ben (PA) Regs, reg 2(1); 2 reg 2(1)(a)*
- 8 A person is treated as satisfying the contribution conditions for entitlement to UK IBST if that person was
1. in receipt of one of Australian SB, IVB, sheltered employment allowance, or rehabilitation allowance; when last in that country **and**
  2. was incapable of work on arrival in UK and is permanently resident in UK.
- 9 For the purpose of satisfying the long term IB qualifying period, periods of **entitlement** to Australian SB or IVB should be included in the calculation of the 364 days of entitlement to short term incapacity benefit.

## Overlapping benefit

- 10 The rate of UK IBST or IBLT is **not** reduced where entitlement **does not** rely on any provisions of the UK-Australia agreement<sup>1</sup>. Where entitlement to IB **does** depend on the agreement the rate of IB is reduced by the rate of Australian benefit<sup>2</sup>.
- 1 Art 13(9); 2 Art 13(10)*
- 11 Where a person is entitled to RP or WB under the Australia agreement, the rate of the UK Pension is reduced by the amount of Australian Pension<sup>1</sup>.
- 1 Art 3(6)*
- 12 A person who is entitled to RP, or WB because residence in Australia has been taken into account under the agreement remains entitled whilst permanently resident in the UK<sup>1</sup>.
- 1 Art 3(1), (5) & 23*

## End of entitlement to increased RP or WB

- 13 Entitlement to the **increased** rate of RP or WB ends where
1. a person is entitled to RP or WB because of the agreement **and**
  2. that person is no longer permanently resident in the UK<sup>2</sup>.

That person remains entitled to any RP or WB based only on their UK record<sup>3</sup>.

*1 Reg EC/1408/71, annex VI, s 0, para. 7, 2 Art 3(5) & 20, 3 R(P) 2/08*

### **Example**

A person moves from Australia to the UK. By using Australian residence entitlement is increased from 60% based on UK insurance alone to 75%. That person later leaves the UK to live permanently in Spain. As a result the rate of RP is reduced to 60%.

- 14 If the pensioner subsequently returns to reside permanently in the UK entitlement to RP or WB will again be increased by the transitional arrangements.

### **Permanently and ordinarily resident**

- 15 The DM decides whether a person is resident in the UK.

- 16 Under the **Australia** agreement a person is treated as permanently resident in the UK if<sup>1</sup>

1. the person is **ordinarily resident and**
2. it has been decided that the person intends to reside permanently in the UK.

*1 Art 1(1) & 20*

