

**EXPORT OF AA, DLA (CARE COMPONENT) AND CA –
CLAIMS FROM OTHER EUROPEAN ECONOMIC AREA
MEMBER STATES OR SWITZERLAND**

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INTRODUCTION

- 1 The European Court of Justice (ECJ) decided on 18 October 2007¹ that AA, DLA (Care Component) and CA had been incorrectly listed as Special Non-Contributory Benefits (SNCBs) in European legislation², and are sickness benefits. The ruling does not affect DLA (Mobility Component) which remains a SNCB, nor does it have any consequences where the claimant moves to another country which is not an EEA member state or Switzerland.

1 ECJ decision Case C-299/05; 2 Reg (EEC) 1408/71, Art 4(2a), Annex IIa, entry Y(d), (e), & (f);

- 2 SNCBs are not generally exportable, whereas sickness benefits may in certain circumstances be paid to claimants elsewhere in the European Economic Area (EEA) or Switzerland.
- 3 Following the ECJ decision, Memo DMG 14/08 was issued. It gave guidance on the effects of the decision for claimants with awards of AA, DLA (Care) or CA moving to another EEA member state or Switzerland on or after 18.10.07, or who had moved before that date but where a decision on continued entitlement was still outstanding.
- 4 This memo now seeks to expand that guidance, and to give guidance on claims to AA, DLA (Care) and CA from persons already living in another EEA member state or Switzerland, whether claiming for the first time or having previously lost entitlement on leaving GB.
- 5 The terms of EC legislation concerning the export of social security benefits¹ were extended to include Switzerland from 1.6.2002². All subsequent references to EEA member states in this Memo should be read as including Switzerland. See DMG 070040 for a complete list of EEA member states (all EC and EFTA countries).

1 Reg (EEC) 1408/71; 2 EU/Swiss Agreement, OJL 114/6 Annex II Art 1

BACKGROUND

- 6 A claimant to AA, DLA or CA must normally satisfy prescribed conditions of residence and presence in GB on any day included in the claim or subsequent award¹, although in certain circumstances a day of temporary absence can be treated as a day of presence in GB (see DMG 070910 et seq).

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

- 7 From 1.6.92, the UK government listed AA, DLA and CA as SNCBs for the purposes of EC 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. See para 43 of this Memo on transitional protection if AA, DLA, or CA was first awarded before 1.6.92.

1 Reg (EEC) 1408/71, Art 4(2a) & 10a & Annex IIa entry Y (d), (e) & (f); 2 R(DLA) 5/99 & R(A) 1/99

- 8 Regulation (EEC) No 1408/71 was subsequently amended, the amendment being adopted by the European Parliament and Council on 13.4.05 and coming into force on 5.5.05¹. The amendment contained an Annex continuing to list as SNCBs the UK benefits AA, DLA and CA².

1 Reg (EEC) 647/05; 2 Reg (EEC) 1408/71 Annex IIa entry Y(d), (e) & (f)

- 9 The European Commission challenged the continued listing of several benefits as SNCBs, including the UK entries of AA, DLA (Care) and CA¹. The Commission argued that they were care benefits and as such were exportable sickness benefits in cash. The European Commission also challenged entries by Finland and Sweden.

1 Reg (EEC) 1408/71 Annex IIa entry Y(d), (e) & (f)

ECJ RULING

- 10 On 18.10.07 the ECJ ruled¹ that, for the purposes of EC law, AA and DLA (Care) and CA are not SNCBs and are sickness benefits². It therefore annulled those parts of the Annex³ that referred to AA, DLA and CA. However, it suspended the effects of the annulment in relation to the mobility component of DLA.

1 ECJ decision Case C-299/05; 2 Reg (EEC) 1408/71, Art 4(1)(a) and Chapter 1 of Title III; 3 Annex IIa;

- 11 Therefore AA, DLA (Care) and CA will be exported to someone who moves to live in another EEA member state, or who makes a claim from another EEA member state, provided the claimant meets the conditions in EC law for export¹ and the claimant or relevant family member meets the domestic law conditions of entitlement to the benefit.

1 Reg (EEC) 1408/71, Art 4(1)(a) and Chapter 1 of Title III

- 12 In an earlier decision¹ on 8.3.01 (Jauch) concerning an Austrian care benefit, the ECJ first ruled that the fact that certain benefits were listed as SNCBs in European legislation was not conclusive and that the Austrian benefit must be regarded as a sickness benefit. The subsequent ruling in C-299/05 is heavily reliant on the reasoning in this earlier ECJ decision. After careful consideration of case law on SNCBs and care allowances, concluding with the judgement on 18.10.07, (which annulled Regulation 647/2005/EC that was in force from 5.5.05) the Department now accepts that in the "post-Jauch" legal context from 8 March 2001, AA and DLA (Care) and CA,

properly analysed, should be treated not as SNCBs but as sickness benefits. DMs could not, however, have known this until decision C-299/05 was given on 18.10.07, particularly in view of earlier ECJ decisions².

1 ECJ case C-215/99 (Jauch); 2 C-20/96 (Snare)s & C-297/96 (Partridge), R(DLA) 5/99 & R(A) 1/99

- 13 The ruling does not affect DLA (Mobility Component) which remains a SNCB (but see para 43 of this Memo for certain claimants who may have transitional protection).
- 14 DMG Memo 14/08, issued in June 2008, gave advice where claimants left GB on or after 18.10.07 and for certain other limited circumstances. Para 28 of that earlier Memo advised DMs that further guidance would follow regarding claims from abroad and some other groups of claimants. This memo expands that earlier advice and in particular replaces the guidance on competency¹ in that first Memo. It also gives advice on claims to AA, DLA (Care) or CA, and requests for reconsideration of earlier disallowances, from persons living in another EEA member state.

1 Reg (EEC) 1408/71 Art 1(q) and Chapter 1 Title 111

CLAIMS OR RECONSIDERATION REQUESTS FROM ABROAD

- 15 Where the DM receives a claim to, or a request to reconsider an earlier disallowance of, AA, DLA (Care) or CA from someone living in another EEA member state, he should consider
 1. first whether the UK is the competent state, and if so,
 2. whether the past presence test is satisfied at the date that entitlement to benefit can first be established and if so,
 3. whether disability conditions or caring conditions of entitlement are met.

The claimant will not be required to be ordinarily resident or present in GB.

- 16 The DM should consider entitlement in the above order whether they are dealing with
 1. a new claim to the benefit (including claims where an award expires) **or**
 2. a request for reconsideration of an earlier disallowance

COMPETENT STATE

- 17 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 EC law¹. Guidance on when the UK will be the competent state to pay AA, DLA (Care) or CA as a sickness benefit to someone living elsewhere in the EEA is in the Annex attached to this Memo. DMs should note this Memo expands on the guidance in earlier Memo DMG 14/08, and in particular, replaces the earlier guidance on competency.

1 Reg (EEC) 1408/71 Art 1(q) & Chapter 1 Title 111

- 18 Guidance for new claims is at paras 19 to 26. Guidance on reconsideration of previous disallowances is at paras 27 to 42.

NEW CLAIMS

- 19 For claims to AA, DLA (Care) or CA from claimants living in another EEA member state, the DM should first decide whether the UK is the competent state as at the first date that entitlement to benefit could be established in accordance with domestic legislation and decision C-299/05. This will usually be:

1. the day after expiry of a current award in “renewal” claims **or**
2. the date of claim in new claims (or at the end of the qualifying period if later) **or**
3. the date the claim can be considered from for a CA claim.

- 20 If the UK is not the competent state at the appropriate date, the DM cannot make a decision and should refer the claim to the competent state¹.

1 Art 86 & ECJ case C-143/79 (Walsh)

- 21 Where the UK is the competent state at the first date that entitlement to benefit could be established, the claimant will have to satisfy the normal domestic conditions of entitlement at that same date¹, except that the claimant no longer has to be ordinarily resident or present in GB.

1 Art 19, 22 & 28

- 22 The claimant will not have to satisfy the past presence test¹ on an ongoing basis as required for claimants in GB. This domestic test is modified for those relying on EC law rights to export benefit. A claimant living in another EEA member state will have to

satisfy this past presence test on a one-off basis at the first date from which entitlement to benefit could 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 renewal date **or**
3. the date the claim can be considered from for a CA claim

1 SS (AA) Regs 91, reg 2(1)(a)(iii); SS (DLA) Regs 91, reg 2(1)(a)(iii); SS (ICA) Regs, reg 9(1)(c)

23 The following groups will be treated as satisfying the past presence test, on this limited one-off basis, through the UK insurance of the worker:

1. frontier workers and members of their family (see para 16 of the attached annex)
2. posted workers and members of their family (see para15 of the attached annex)
3. a family member of someone living and working in GB.

24 Those claiming under the special rules for the terminally ill do not have to satisfy the past presence test in domestic legislation.

25 If the claimant does not satisfy the past presence test at the appropriate date the DM should disallow the claim.

26 Where the UK is the competent state, and the claimant satisfies the past presence test on the one-off basis as at the relevant date, the DM should then go on to consider the particular disability or care conditions relevant to the claim. However, the Mobility Component of DLA remains a SNCB and is not exportable.

RECONSIDERATION OF OLD DISALLOWANCES

27 Where the claimant had an award of AA, DLA (Care) or CA which was disallowed before 18.10.07 when he left GB to live in another EEA member state, the claimant might, in the light of C-299/05;

1. request reconsideration of this earlier disallowance **and/or**
2. make a new claim

In either case, the DM must consider whether there are grounds to revise or supersede the earlier decision ending the award. However, the DM can never revise or supersede a Tribunal decision for error of law.

28 Where an old award was disallowed before 8.3.2001, the date of the decision in Jauch¹, the decision was and remains correct in line with earlier decisions of the Courts². The DM should:

1. record and notify that the decision cannot be revised, **and**
2. make a decision refusing to supersede the old disallowance **and**
3. treat the request for reconsideration as a new claim.

1 ECJ decision C-215/99; 2 R(DLA) 5/99 & R(A) 1/99

29 Similarly, where the claimant requests reconsideration of an award that was disallowed :

1. before 1.6.2002 when the claimant moved to live in Switzerland **or**
2. before 1.5.2004 when the claimant moved to an A8 country or Malta or Cyprus (see DMG 070040) **or**
3. before 1.1.2007 when the claimant moved to Bulgaria or Romania

the DM will record and notify that the decision cannot be revised (see DMG 03019 et seq), make a decision refusing to supersede, and treat the reconsideration as a new claim. But see paras 39 to 42 below regarding some reconsiderations in these circumstances.

30 It follows that, apart from the exceptions listed at para 29 above, any decision made on or after 8.3.01 which ended an award of AA or DLA (Care) or CA when the claimant moved to another EEA member state was wrong if the UK was the competent state for a sickness benefit (see the Annex to this memo regarding competency). However, a DM could not have been aware of the true position in law until the ECJ decision in C-299/05 on 18.10.2007.

31 There are no grounds to revise a disallowance decision which was made before 18.10.07 in light of decision C-299/05. It cannot be revised for official error¹ because the definition of official error² precludes any decision which is only shown to be in error of law by virtue of a subsequent decision of the court.

1 SS CS (D&A) Regs, reg 3(5)(a); 2 reg 1(3)

32 If the UK was not the competent state at the date when the claimant left GB, the DM should record and notify that the decision cannot be revised, and make a decision refusing to supersede, and treat the request as a new claim. But see paras 39 to 42 below regarding some reconsiderations in these circumstances.

33 If the DM finds that the UK was the competent state when the claimant left GB on or after 8.3.01 then the disallowance decision could be superseded for error of law¹, but any such supersession can only be effective from the date of request for reconsideration². Thus in these circumstances, the date of request for reconsideration is the first date from which entitlement to benefit could be established in light of the ECJ decision in C-299/05.

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

34 However, the DM will then have to consider whether the UK is still the competent state as at the date of request for reconsideration (being the first date from which any supersession could have effect). If so, the claimant will also have to satisfy the domestic conditions of entitlement for benefit (see para 36 below).

35 If the UK is not the competent state at this first date of potential entitlement, the DM should record and notify that the decision cannot be revised, make a decision refusing to supersede, treat the request as a new claim and refer it to the competent state for their consideration¹. But see paras 39 to 42 below regarding some reconsiderations in these circumstances.

1 Reg EEC 1408/71 Art 86 & ECJ case C-143/79 (Walsh)

36 The domestic conditions on residence and presence are modified for those relying on EC law rights to export AA, DLA (Care) or CA. A claimant living in another EEA member state does not have to be resident or present in GB, but will have to satisfy the past presence test on a one-off basis on the first date from which entitlement to benefit could be established in accordance with decision C-299/05. Because any supersession for error of law¹ could only be effective from the date of the request for reconsideration², 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 this first date from which entitlement to benefit could be established.

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

37 Thus if the original decision disallowing benefit was made after 8.3.01, and was wrong in consequence of C-299/05, and at the date of request for reconsideration:

1. the UK is still the competent state **and**

2. the past presence test is met **and**
3. the other domestic conditions of entitlement are met **and**
4. the original period of the award has not expired

the DM will supersede to re-instate the award, but only from the date of request for reconsideration (and not, of course, any mobility component of DLA which remains a SNCB).

- 38 Where any of the conditions of entitlement are not met the DM should record and notify that the decision cannot be revised, and make a decision refusing to supersede. But see below for further guidance on supersession that may apply to some cases.

SUPERSESSION DISALLOWANCES WITH BACKDATED EFFECT

- 39 Whilst considering requests for reconsideration in light of C-299/05, the DM may first need to change the original disallowance in light of a Commissioner's decision¹ on 6.9.2004 which identified an unintentional anomaly in legislation. The Commissioner held that in superseding to reduce or end an award of a disability benefit on grounds of a relevant change of circumstances, but which change did not concern the disability conditions, the superseding decision could only be effective from the date of the superseding decision. Both AA and DLA are disability benefits: but CA is not². This gap in legislation was closed by the introduction of amending legislation from 10.4.06³.

1 CIB 763/04; 2 SS CS (D&A) Regs, reg 7A; 3 reg 7(2)(c)(iv) & (v)

- 40 The effect of this decision is that a supersession decision made between 6.9.04 and 9.4.06, ending an award of AA or DLA (both care and mobility) when a claimant left GB, could only take effect from the date the decision was made. However, decisions made before 6.9.04 are treated as being correct in law¹, and decisions on or after 10.4.06 were in accordance with the law as amended from that date. DMs should, however, remember that they are unable to revise or supersede a Tribunal decision for error of law.

1 SS Act 98, s 27(3)

- 41 Where a backdated disallowance was made in this limited period (6.9.04 to 9.4.06) the DM will first revise for official error to correct the date of disallowance to the date of the superseding decision that ended benefit entitlement rather than the date the claimant left GB.

- 42 Having done this, the DM will then consider the subsequent period, from and including the date of the original disallowance, in light of C-299/05. As discussed from paras 27 onwards, the original superseding decision ending entitlement may have been wrong in law, in light of C-299/05, but the DM could not have known this at the time. Therefore, as discussed in paras 31 to 33, this later period (from the date of the original superseding decision) cannot be revised and any supersession for error of law can only take effect from the date of request for reconsideration.

TRANSITIONAL PROTECTION

- 43 Prior to 1.6.92, AA, DLA (both care and mobility), and CA were found to be invalidity benefits by the ECJ¹. As such, entitlement could continue where a GB recipient went to live in another EC member state². Those claimants who were entitled to transitional protection (see [DMG 070935](#)) and who left GB before 18.10.07 will continue to benefit from transitional protection.

1 R(M) 1/92, Newton v CAO, Case C-356/89; 2 Reg (EEC) 1408/71 Art 10

- 44 However, only awards of DLA Mobility Component can still attract transitional protection, in appropriate circumstances, where a claimant leaves GB on or after that date. From 18.10.07 AA, DLA (Care) and CA can only be exported as sickness benefits, even where the original award pre-dates 1.6.92.

TEMPORARY ABSENCE

- 45 The ECJ decision does not affect the normal considerations when a claimant is temporarily absent from GB, even if the temporary absence is to another EEA member state.
- 46 However, where a claimant has exported an award of AA or DLA (Care) or CA when moving to live in another EEA member state, then any temporary absence from the EEA will be considered in exactly the same way as a temporary absence from GB. See [DMG 070913](#) and [070930](#) et seq.

ANNOTATIONS

The number of this Memo (17/09) should be noted against the following DMG paragraphs:-

070900, 070914, 070927, 070930, 070935, 070938 and Memo DMG 14/08. In particular paras 16 to 26 of this earlier Memo (on competency) should be noted as replaced by the Annex to Memo DMG 17/09.

CONTACTS

If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds, GS36, Quarry House, Leeds. Existing arrangements for such referrals should be followed, as set out in Memo DMG 26/08 - Obtaining legal advice and guidance from DMA Leeds.

DMA Leeds: April 2009

ANNEX - COMPETENCY

- 1 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 EC law¹. However, these rules do not apply when the claimant is a third country national (not a national of any EEA member state), who moves to certain of the EEA member states - see para 19 below.

1 Reg (EEC) 1408/71 Art 1(q) & Chapter 1 Title 111

- 2 The UK will be the competent state (subject to certain exceptions set out below) to pay a sickness benefit for the following groups:
 1. claimants in receipt of a pension from GB (usually receiving a contributory benefit - see para 3 below)
 2. those covered by GB contributions in the relevant income tax years that would enable them to claim ESA (Cont) or short-term incapacity benefit (RITY cover - see para 7 below)
 3. claimants who are family members of those in group 2 (family members - see para 11 below)
 4. certain workers and their family members (see para 14 below).

General guidance on consideration of the competent state is at [DMG 070230](#) et seq.

GROUP 1 - IN RECEIPT OF A PENSION FROM GB

- 3 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) **or**
 4. Unemployability Supplement (paid with II Disablement Benefit) **or**
 5. transitionally protected DLA (Mobility Component).

However, for SDA and transitionally protected DLA (Mob) to be treated as a pension, the claimant must firstly fall within the personal scope of EC legislation. The main group within the personal scope of the regulation is those who are or ever have been employed or self employed persons², who have been subject to the legislation of one or more EEA member state and who are nationals of one or more member state; and members of their families and survivors³. Another group within the personal scope is students⁴.

1 Reg (EEC) 1408/71 Art 28; 2 Art 1(a); 3 Art 2; 4 Art 1(ca)

- 4 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 unemployability supplement paid with a war pension.
- 5 Where the claimant is receiving a pension under GB legislation, then the UK will be the competent state for a sickness benefit until the earliest of
 1. the day entitlement to and receipt of the pension ends **or**
 2. the claimant starts work in another EEA member state as an employed or self-employed person¹ **or**
 3. the claimant is or becomes eligible for a sickness benefit (either in cash or in kind) from the state of residence² **or**
 4. the claimant receives an old age or invalidity benefit or other pension from the state of residence³.

1 Reg (EEC) 1408/71 Art 34(2); 2 Art 28(1); 3 Art 27

- 6 Where the claimant is in receipt of an old-age or invalidity benefit or other pension from both GB and another EEA member state which is not 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)

GROUP 2 - RITY COVER

- 7 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 as at

1. the date of claim for a new claim to benefit (or the first date from which entitlement could be established if different) **or**
2. the renewal date when a claim is on expiry of an old award **or**
3. the date of request for reconsideration of a disallowance where the claimant left GB before 18.10.07 **or**
4. the date the claimant leaves GB when seeking to export a current award.

Guidance on RITY conditions is at parts 41 and 56 of the DMG.

*1 Reg (EEC) 1408/71 Art 1(o), (q), (r) & (s); 2 CS 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*

- 8 The normal RITY conditions will be treated as satisfied if the claimant is in receipt of short term IB, or IB(Y) or ESA (assessment phase) on the relevant date as determined in the above para. The RITY conditions will then continue to be treated as satisfied while the benefit remains in payment.
- 9 Where the normal RITY conditions are met, the UK will continue to be the competent state until the earliest of
 1. the date from which the claimant's NI cover ends (the first day on which the claimant would no longer meet the RITY contribution conditions for title to short-term IB or ESA (Cont) on a new claim)¹ **or**
 2. the claimant begins work in another EEA member state² **or**
 3. the claimant becomes eligible for sickness benefit (either in cash or in kind) from another EEA member state³ **or**
 4. the claimant starts to receive an old-age or invalidity benefit or other pension from another EEA member state⁴.

1 Reg (EEC) 1408/71 Annex VI para 19(c); 2 Art 13(2)(a); 3 Art 19; 4 Art 27

- 10 If the claimant starts to receive a pension under GB legislation either whilst still having RITY cover, or when that cover ceases, then in accordance with paras 3 to 6 above, GB will remain the competent state for a sickness benefit albeit under different legal authority¹.

1 Reg (EEC) 1408/71 Arts 19 & 28

GROUP 3 - FAMILY MEMBERS OF SOMEONE WITH RITY COVER

- 11 Where the claimant does not personally satisfy the conditions specified in EC law (as summarised above in groups 1 or 2), 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 - see group 2 above). The principle person, on whom the claimant seeks to rely for RITY cover, will also be treated as satisfying the RITY conditions if and while that person is in receipt of short term IB, or IB(Y) or ESA (Cont) during the assessment phase.
- 12 In this context family member means the spouse or civil partner of someone with RITY cover, and the children of such a person who are either minors or dependent on such a person¹. In some circumstances a parent includes a foster parent of either a child or dependant adult.

1 Reg (EEC) 1408/71 Art 1(f)(ii)

- 13 However, the UK will not be the competent state for the claimant (as a family member):
1. from the day the person with RITY cover reaches UK state pension age **or**
 2. from the first day on which RITY cover ends (the first day on which the person would no longer meet the RITY contribution conditions for title to short-term IB or ESA (Cont) on a new claim)¹ **or**
 3. if the claimant or person with RITY cover starts work in another EEA member state² **or**
 4. if the claimant or person with RITY cover is entitled to a sickness benefit (either in cash or in kind) from another EEA member state³ **or**
 5. if the claimant or person with RITY cover starts to receive an old-age or invalidity benefit or other pension from another EEA member state⁴.

1 Reg (EEC) 1408/71 Annex VI para 19(c); 2 Art 13(2)(a); 3 Art 19(2); 4 Arts 27 & 28

GROUP 4 - CERTAIN WORKERS AND THEIR FAMILY MEMBERS

- 14 The UK will be the competent state for a sickness benefit for
1. posted workers and their family members
 2. frontier workers who work in GB, and their family members

3. family members of workers living and working in GB

- 15 A posted worker¹ is an employed or self employed person normally working in GB but posted temporarily to work in the territory of another EEA member state, usually for less than 12 months (see DMG 070236).

1 Reg (EEC) 1408/71, Art 14(1) and 14a

- 16 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 Art 1(b)

- 17 Family member means the spouse or civil partner of the worker and the children of such a person who are either minors or dependent on the worker¹.

1 Art 1(f)(ii)

- 18 However, the UK will not be the competent state for a claimant living in another EEA member state if:

1. the claimant (other than an actual posted worker) starts work in another EEA member state¹ **or**
2. the claimant starts to receive a sickness benefit (either in cash or in kind) from another EEA member state² **or**
3. the claimant starts to receive an old-age or invalidity benefit or other pension from another EEA member state³ **or**
4. the work from which rights were acquired finishes (but the UK may remain the competent state if some other criteria for competency is met, such as RITY cover).

1 Art 34(2); 2 Art 28(1); 3 Art 27

THIRD COUNTRY NATIONALS

- 19 An amendment to EC Regulations¹ extended the provisions of Reg (EEC) 1408/71 to third country nationals from 1.6.2003 provided those nationals were legally resident in the territory of a member state. However the following states have not “signed up” to extend the terms of Reg (EEC) 1408/71 to third country nationals:

1. Denmark

2. Iceland
3. Norway
4. Liechtenstein
5. Switzerland.

1 Reg (EEC) 859/2003

- 20 Therefore a third country national will be able to export an award of AA or DLA (Care) or CA if he satisfies the same conditions that apply to an EEA national (and the UK is the competent state for payment of a sickness benefit) except where he leaves GB to live in Denmark, Iceland, Norway, Liechtenstein, or Switzerland.