

**\*PLEASE NOTE THAT THIS MEMO HAS BEEN AMENDED  
AT PARAGRAPHS 6, 12, & 32\***

**EXPORT OF AA, DLA (CARE COMPONENT), AND CA -  
CLAIMANTS MOVING TO OTHER EUROPEAN ECONOMIC AREA  
MEMBER STATES OR SWITZERLAND**

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**INTRODUCTION**

- 1 This memo concerns circumstances in which claimants may continue to be entitled to an award of AA or DLA (Care Component) or CA when they move to live abroad in another European Economic Area state or Switzerland (to be referred to collectively as EEA member states) on or after 18.10.07.
- 2 The memo will also apply to circumstances where a claimant, already in receipt of AA or DLA (Care) or CA, has moved to another EEA member state after 4.5.05 and **either**
  1. has a decision on continued entitlement to AA, DLA (Care), or CA outstanding (i.e. payment has been suspended pending this guidance) **or**

2. has an appeal still outstanding at appeal tribunal level against a decision disallowing AA, DLA (Care), or CA.
- 3 The terms of EC legislation concerning the export of SS benefits<sup>1</sup> were extended to include Switzerland from 1.6.02<sup>2</sup>. 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*

- 4 The guidance follows a decision of the European Court of Justice (ECJ)<sup>1</sup> made on 18.10.07. The Court was asked to consider whether AA, DLA (Care), and CA were incorrectly listed as Special Non Contributory Benefits (SNCBs) in European legislation<sup>2</sup>: the significance being that such benefits are received exclusively in the territory of the member state in which the claimant resides. So SNCBs are not generally exportable<sup>3</sup>. The ECJ decision does not have any consequences where the claimant moves to another country which is not an EEA member state.

*1 ECJ decision Case C-299/05; 2 Reg (EEC) 1408/71, Art 4(2a), Annex IIa, entry Y(d),(e), & (f); 3 Art 10a.*

## **BACKGROUND**

- 5 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 award<sup>1</sup>, 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)*

- 6 Prior to 1.6.92, AA, DLA (both Care and Mobility), and CA were found to be invalidity benefits by the ECJ<sup>1</sup> and as such, entitlement could continue even where a GB recipient went to live in another EC member state<sup>2</sup>. Claimants who have been continuously entitled to AA, DLA or CA since before 1.6.92 were “transitionally protected” and could, in certain circumstances, export their benefit when they took up residence in another EC member state. DMs should note, however, that the transitional protection has never applied to nationals of EFTA countries or Switzerland who leave GB to live in another EEA member state. Nor does the transitional protection apply to nationals of other EEA countries (including GB) if they leave to take up residence in Iceland, Norway, Liechtenstein or Switzerland (see DMG 070935 et seq).

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

- 7 From 1.6.92, the UK government listed AA, DLA, and CA as SNCBs for the purposes of EC law<sup>1</sup>. 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 EC member state<sup>2</sup> (see DMG 070938).

*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 5.5.05<sup>1</sup>. The amendment contained an Annex continuing to list as SNCBs the UK benefits AA, DLA and CA<sup>2</sup>.

*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 CA<sup>1</sup>. 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 Annex IIa entry Y(d), (e) & (f)*

## **ECJ RULING**

- 10 On 18.10.07 the ECJ ruled<sup>1</sup> that, for the purposes of EC law, AA and DLA (Care) and CA are not SNCBs and are sickness benefits<sup>2</sup>. It therefore, annulled those parts of the Annex<sup>3</sup> that referred to AA, DLA, and CA. However, it suspended the effects of the annulment as regards to the mobility component of DLA so that, within a reasonable period, appropriate measures could be taken to include it separately in the Annex<sup>4</sup>.

*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; 4 Annex IIa*

- 11 The effect of the ruling is that, from 5.5.05, AA and DLA (Care) and CA are sickness benefits. As such they will be exported if a claimant moves to live in another EEA member state, or claimed from abroad by someone formerly living in GB, or claimed from abroad by a family member, provided the claimant satisfies the conditions in EC law for export<sup>1</sup>. The Mobility Component of DLA remains a SNCB and is not exportable unless transitionally protected (see paragraphs 6 and 12).

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

- 12 The ruling does not affect claimants who left GB before 18.10.07 with transitional protection (see paragraph 6 of this memo and DMG 070935 et seq). However, where

a claimant leaves GB on or after 18.10.07, the transitional protection can only apply to the DLA Mobility Component. Awards of AA or CA or the Care Component of DLA cannot attract transitional protection if the claimant leaves GB on or after 18.10.07.

- 13 Whether a claimant can continue to be entitled to AA, DLA (Care) or CA when they leave GB to live in another EEA member state will first depend on whether the person is within the personal scope of relevant EC legislation<sup>1</sup>. The main group within the personal scope of the regulation is those who are or ever have been employed or self-employed<sup>2</sup> persons, who have been subject to the legislation of one or more EEA member states and who are nationals of one or more EEA member states; and members of their families and survivors<sup>3</sup>. Another group within the personal scope is students.

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

- 14 Whether a claimant can continue to be entitled to AA, DLA (Care), or CA when they leave GB to live in another EEA member state will secondly depend on whether GB continues to be the "competent state"<sup>1</sup> for payment of a sickness benefit. The circumstances in which a competent state is required to export a sickness benefit are prescribed in EC law<sup>1</sup>. 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 paragraph 35 below.

*1 Art 1(q); 2 Chapter 1 Title 111*

- 15 Where GB continues to be the competent state for someone living in another EEA member state (see paragraph 16 below) the DM will, of course, have to consider whether the normal domestic conditions of entitlement are met, except that a claimant no longer has to

1. be ordinarily resident in GB **or**
2. be present in GB **or**
3. have been in GB for at least 26 weeks out of the last 52 weeks<sup>1</sup>.

*1 SS (AA) Regs 91, reg 2(1)(a)(i) & (ii); SS (DLA) Regs 91, reg 2(1)(a)(i) & (ii);  
SS (ICA) Regs 76, reg 9(1)(a) & (b)*

## COMPETENT STATE

- 16 GB will be the competent state (subject to certain exceptions set out below) to pay a sickness benefit for the following main groups:
1. claimants in receipt of a pension from GB (receiving a long-term contributory benefit - see paragraph 17 below)
  2. those covered by GB contributions in the relevant income tax years (RITY) that would enable them to claim short-term incapacity benefit or healthcare cover from GB (RITY cover - see paragraph 21 below)
  3. claimants who are family members of those in group 2 (family members - see paragraph 24 below).

General guidance on consideration of the competent state is at DMG 070230 et seq.

### GROUP 1 - IN RECEIPT OF A PENSION FROM Great Britain

- 17 In receipt of a pension under GB legislation<sup>1</sup> 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. long-term IB **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).

*1 Reg (EEC) 1408/71 Art 28*

- 18 The claimant will be treated as in receipt of a pension where he has continuing entitlement to long-term IB but it is not payable because of domestic overlapping benefit rules, such as where a claimant is in receipt of unemployability supplement paid with a war pension.
- 19 Where the claimant is receiving a pension under GB legislation, then GB 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 person<sup>1</sup> which provides the claimant with insurance for a sickness benefit (either in cash or in kind, which includes healthcare) from that state; **or**
3. the claimant is or becomes eligible for a sickness benefit (either in cash or in kind, which includes healthcare) from the state of residence<sup>2</sup> **or**
4. the claimant receives an old age or invalidity benefit from the state of residence<sup>3</sup>.

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

- 20 Where the claimant is in receipt of an old-age or invalidity benefit 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 benefits<sup>1</sup>.

*1 Art 28(2)(b)*

## **GROUP 2 - RITY COVER**

- 21 GB will be the competent state<sup>1</sup> for a sickness benefit where the claimant is insured in GB for sickness benefits i.e. where he satisfies the normal RITY contribution conditions that would give title to short-term IB<sup>2</sup> as at the date the claimant leaves GB to live in another EEA member state. Guidance on RITY conditions is in Chapter 56 of the DMG.

*1 Art 1(o), (q), (r) & (s); 2 C & B Act 92, s 30A(2) & Sch 3 part 1 para 2*

- 22 Where the normal RITY conditions are met, GB 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 on a new claim)<sup>1</sup> **or**
2. the claimant begins work in another EEA member state<sup>2</sup> **or**
3. the claimant becomes eligible for sickness benefit (either in cash or in kind, which includes healthcare) from another EEA member state<sup>3</sup> **or**
4. the claimant starts to receive an old-age or invalidity benefit from another EEA member state<sup>4</sup>.

*1 Annex VI para 19(c); 2 Art 13(2)(a); 3 Art 19; 4 Art 27*

- 23 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 paragraphs 17 to 20 above, GB will remain the competent state for a sickness benefit albeit under different legal authority<sup>1</sup>.

*1 Arts 19 & 28*

### **GROUP 3 - FAMILY MEMBERS**

- 24 Where the claimant does not personally satisfy the conditions specified in EC law (as summarized above in groups 1 or 2), GB 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).
- 25 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 dependant on such a person<sup>1</sup>. 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)*

- 26 However, GB will not be the competent state for the claimant (as a family member):
1. if they are a family member of a person in receipt of a pension from GB (see paragraph 17 above for a definition of a pension from GB) even if that person also has RITY cover **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 on a new claim)<sup>1</sup> **or**
  3. if the claimant or person with RITY cover starts work in another EEA member state<sup>2</sup> **or**
  4. if the claimant or person with RITY cover is entitled to a sickness benefit (either in cash or in kind, which includes healthcare) from another EEA member state<sup>3</sup> **or**
  5. if the claimant or person with RITY cover starts to receive an old-age or invalidity benefit from another EEA member state<sup>4</sup>.

*1 Annex VI para 19(c); 2 Art 13(2)(a); 3 Art 19(2); 4 Arts 27 & 28*

## **DURATION OF EXPORT OF AA, DLA (CARE) AND CA**

- 27 Where GB is no longer the competent state, awards of AA, DLA (Care), and CA will cease immediately. Where GB is and remains the competent state, payments of AA, DLA (Care) and CA will continue for the duration of the award. The DM will, of course, have to be satisfied that the normal domestic conditions of entitlement continue to be satisfied, other than the “residence and presence in GB” conditions.

## **EFFECTS OF THE ECJ DECISION**

- 28 The Department is not yet able to give guidance or make a decision regarding the implementation of the ECJ decision in relation to new claims from people living in another EEA member state, or requests for reconsideration/claims from those who had their awards terminated before 18.10.07 when they moved to another EEA member state. Further consideration is also taking place in relation to other groups of claimants who may be able to export benefit; such as those who work in GB but reside in another EEA member state, and those in receipt of short-term IB or IB(Y). A further memo will be issued with guidance on these issues.
- 29 Until such time as these issues are resolved, the Department can only give advice in relation to the main groups of claimants already in receipt of AA or DLA (Care) or CA and who:
1. move from GB to live in another EEA member state on or after 18.10.07, the date of the ECJ decision<sup>1</sup> **or**
  2. moved from GB to live in another EEA member state before that date but have a decision on continued entitlement outstanding (i.e. where payment of AA or DLA (care) or CA has been suspended pending the availability of this guidance) **or**
  3. left GB after 5.5.05 to live in another EEA member state and has an in-time appeal still outstanding before the Tribunal Service against termination of an award of AA or DLA (Care) or CA for that reason.

*1 ECJ decision Case C-299/05*

- 30 Any claims from persons living in another EEA member state, or requests to reconsider a decision made before 18.10.07 terminating an award of AA or DLA (Care) or CA, should be retained until further guidance can be issued.
- 31 If a claimant in receipt of AA, DLA (Care and/or Mobility Component), or CA leaves GB to live in another EEA member state there has been a change of circumstances

(i.e. a permanent move to another EEA member state). Where the claimant left on or after 18.10.07, or before that date if a decision on continued entitlement is still outstanding, the DM will **either**

1. supersede the decision to
  - 1.1 terminate the award **or**
  - 1.2 remove part of the award **or**
  - 1.3 change the duration of the award **or**
2. give a decision not to supersede where the award is not changed.

The normal effective date rules will apply<sup>1</sup>. See DMG Chapter 04 for further guidance.

*1 SS CS (D&A) Regs, reg 7(2)*

- 32 The DM should first check whether the claimant has transitional protection (see paragraphs 6 and 12 above and DMG 070935). If not, the claimant will only be able to export an award of AA or DLA (Care) or CA if GB is the competent state for the payment of sickness benefits - see paragraphs 16 to 26 above. However, even where GB remains the competent state for an award of DLA (Care), the DM must terminate any award of DLA Mobility Component. The Mobility Component of DLA remains a SNCB and is not therefore exportable unless the transitional protection for awards prior to 1.6.92 applies.
- 33 Where GB is the competent state for payment of sickness benefits, the claimant will still, of course, have to continue to satisfy the normal domestic conditions of entitlement to the benefit, except that a person no longer has **to**
1. be ordinarily resident in GB
  2. be present in GB
  3. have been in GB, Northern Ireland, the Isle of man, Jersey, or Guernsey for at least 26 weeks out of the last 52 weeks.

### **Example 1**

A single claimant, in receipt of AA and RP, moves to Portugal on 1.12.07. He has no title to any benefits from another EEA member state and is not intending to work in Portugal. There has been a change of circumstances, that being that the claimant has moved to another EEA member state. The DM makes a determination that GB is the

competent state for payment of sickness benefit and the award can be exported; and notifies the claimant that the awarding decision is not superseded.

### **Example 2**

A claimant in receipt of an indefinite award of DLA (both Care and Mobility) moves to France on 1.2.08. He is also in receipt of long-term IB. The claimant does not intend to work in France or any other EEA member state, and is not receiving or entitled to a sickness benefit (either in cash or in kind, which includes healthcare) or any other benefit from France or another EEA member state. The DM supersedes the DLA award to remove the Mobility Component but also to confirm the continuing award of the Care Component because GB is the competent state. The decision is effective from the first pay-day on or after 1.2.08.

### **Example 3**

A single claimant, aged 55, is in receipt of an indefinite award of DLA (Care only) and leaves to live in Italy on 1.2.08. He is not in receipt of any pension, is not intending to work, and is not entitled to a sickness benefit (either in cash or kind, which includes healthcare) from Italy or any other EEA member state. The claimant satisfies the normal contribution conditions for entitlement to short-term IB at the date of departure, 1.2.08. He satisfies the first contribution condition in year 04/05, and received credits for each week in years 05/06 and 06/07 because he was unemployed. However, he will no longer satisfy the contribution conditions, which would give title to short-term IB, when the benefit year changes on 4.1.09. The DM supersedes to terminate the award of DLA (Care) from the first pay-day after RITY cover ends, 7.1.09.

### **Example 4**

The DLA claimant and her partner move to Spain on 1.3.08. She is in receipt of DLA (Care only) and her partner receives CA as her carer. They are not married. The claimant is not in receipt of a pension and is not covered by RITYs (she does not satisfy the normal contribution conditions to give title to short-term IB at the date of leaving GB). Her partner is covered by RITYs, but this does not assist the claimant because he does not satisfy the definition of a family member because they are not married (see paragraph 25). The DM supersedes the award of DLA (Care Component) because GB is not the competent state for payment of sickness benefits to the claimant, and terminates the award of DLA from 5.3.08. A DM also supersedes to end the award of CA to the partner from 10.3.08 because the disabled person is no longer entitled to a qualifying benefit.

## APPEAL OUTSTANDING

- 34 Where a claimant had an award of AA or DLA (Care) or CA and left GB to live in another EEA member state on or after 5.5.05 **and**
1. the award was terminated on or after 5.5.05 **and**
  2. the claimant made an in-time appeal against that decision<sup>1</sup> **and**
  3. that appeal is still outstanding (i.e. the appeal tribunal has not yet made a final decision) **and**
  4. GB is the competent state for the payment of sickness benefits

then the DM can revise the decision under appeal<sup>2</sup> and the appeal will lapse (see DMG 06160).

*1 SS CS (D&A) Regs, reg 31 & 32; 2 reg 3(4A)*

## THIRD COUNTRY NATIONALS

- 35 An amendment to EC regulations<sup>1</sup> extended the provisions of Reg (EEC) 1408/71 to third country nationals from 1.6.03 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*

- 36 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 (GB is the competent state for payment of a sickness benefit) except where he leaves GB to live in Denmark, Iceland, Norway, Liechtenstein, or Switzerland.

## **TEMPORARY ABSENCE**

- 37 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.
- 38 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 (DMG 14/08) should be noted against the following DMG paragraphs:-

070900, 070910, 070914, 070927, 070930, 070935, 070938

## **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 18/07 - Obtaining legal advice and guidance from DMA Leeds.

**DMA Leeds: June 2008**