

Personal Independence Payment (daily living) & Employment and Support Allowance (new style) – Competent State for Cash Sickness Benefits of pensioners and their family members

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Introduction

1. The judgment in *SP v Department for Communities*¹ (the Judgment) was made by the Social Security Commissioner in Northern Ireland on 27.9.23 and is a relevant determination². The decision applies from that date forwards.

1 SP v DfC (PIP) [2023] NICom 23; 2 SS (NI) Order 98

2. The purpose of this memo is to
 1. inform decision makers about the Judgment¹ which deals with how to determine competency for cash sickness benefits of pensioners and their family members within scope of the Withdrawal Agreement² who are resident in the United Kingdom and economically inactive
 2. inform decision makers how to address the 'reverse scenario' where the economically inactive pensioner or their economically inactive family member is resident in, and has exported their benefit to, another European Union Member State
 3. instruct decision makers how to proceed with affected cases
 4. instruct decision makers how the first tier tribunal should deal with lookalike cases where a decision maker's decision has already been made and an appeal is received.

1 SP v DfC (PIP) [2023] NICom 23; 2 Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community

Note: References to European Economic Area nationals in this guidance includes Swiss or European Free Trade Association country nationals. Likewise, where European Union Member States are mentioned, this includes Switzerland, Iceland, Liechtenstein and Norway.

3. The Judgment¹ clarifies how to determine the competent state for payment of cash sickness benefits to United Kingdom residents when
 1. an economically inactive claimant receives a pension from a European Union Member State **or**
 2. is the family member of such a person.

1 SP v DfC (PIP) [2023] NICom 23

The Commissioners Judgment

4. The Judgment¹ decided
 1. the competent state for payment of cash sickness benefits to pensioners and their family members is their state of residence² **and**
 2. if the claimant has no entitlement to benefits under the legislation of their state of residence, they could be entitled to benefits under the legislation of the pension paying state if they meet the domestic eligibility criteria of that state³.

¹ *SP v DfC (PIP)* [2023] NICom 23; ² [Regulation \(EC\) No 883/2004 Article 11\(3\)\(e\)](#);

³ [Council Regulation \(EC\) No 1408/71 Article 28](#), [Regulation \(EC\) No 883/2004 Articles 24, 25 and 29](#)

Affected claims

5. Claimants must be
 1. resident in the United Kingdom and claiming a cash sickness benefit **and**
 2. in scope of the Withdrawal Agreement¹, the European Economic Area - European Free Trade Association Separation Agreement² or the Swiss Citizens Rights Agreement³ **and**
 3. an economically inactive adult (who is not employed or self-employed) in the United Kingdom **and**
 4. receiving a pension from one or more European Union Member States, European Economic Area - European Free Trade Association States, Switzerland, or be the family member of such a person.

¹ [Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community](#);

² [UK-EEA EFTA Separation Agreement](#); ³ [Swiss Citizens Rights Agreement](#)

6. Where the conditions of paragraph 5 are met, the United Kingdom is competent for the claimant's cash sickness benefits.
7. The domestic conditions of entitlement for the cash sickness benefit will need to be satisfied.

Example 1

Olivia is a French citizen who lived and worked in the United Kingdom from 2015 to 2021. She has settled status under the European Union Settlement Scheme and continues to reside in the United Kingdom. She has received a retirement pension from France since 2022. She made a claim to Personal Independence Payment on 17.12.25. Olivia is within the personal scope of the Withdrawal Agreement under Article 30(1)(a) as she was subject to the legislation of the United Kingdom on 31.12.20 and continues to be so. In this circumstance the Judgment¹ applies and the competent state for Olivia's cash sickness benefits is determined under Article 11 of Regulation (EC) 883/2004. As she is resident in the United Kingdom, Article 11(3)(e) applies so that the United Kingdom is the competent state.

Example 2

Christoph is a German national and has lived in the United Kingdom since 2015. He is economically inactive and has received a pension from Germany since 2019. He makes a claim to Personal Independence Payment (daily living) in October 2022. This is before the date of the Judgment¹. Under the United Kingdom's position prior to the Judgment¹, as Christoph was in receipt of a German pension which was the result of work and contributions to the German social security system, it was determined that Germany was the competent state for the payment of cash sickness benefits to him. The decision was made that he was not entitled to Personal Independence Payment (daily living). The Judgment¹ does not work to reverse this decision as it was made before the date of the relevant determination - 27.9.23.

1 SP v DfC (PIP) [2023] NICom 23

Reverse scenarios

8. Claimants who are United Kingdom / European Economic Area nationals, resident in a European Union Member State, Switzerland, or a European Free Trade Association country, and who are in scope of the Withdrawal Agreement, the European Economic Area - European Free Trade Association Separation Agreement or the Swiss Citizens Rights Agreement, are said to be in a reverse scenario.

Export cases

9. Legislation allows for
 1. acquired rights to continue to be paid when the only change to a claimant's circumstances is the Member State of residence^{1&3}
 2. benefits claimed in the United Kingdom to be treated like acquired rights²
 3. the export of cash sickness benefits where the claimant becomes habitually resident in a European Union Member State³.

¹ [\[2019\] UKUT 85 \(AAC\); \[2019\] AACR 22](#); ² [\[2017\] AACR 40, C-430/15](#); ³ [Regulation \(EC\) No 883/2004, Article 7](#)

10. Where a claimant, or their family member, has exported a cash sickness benefit from the United Kingdom to a European Union Member State and

1. is economically inactive **and**
2. starts to receive a pension from the United Kingdom

the cash sickness benefit award continues for so long as the conditions of entitlement are satisfied¹.

¹ [KR v Secretary of State for Work and Pensions \(DLA\) : \[2019\] UKUT 85 \(AAC\); \[2019\] AACR 22](#)

11. Where a claimant, or their family member, has exported a cash sickness benefit from the United Kingdom to a European Union Member State and

1. is economically inactive **and**

2. starts to receive a pension from any European Union Member State

the European Union Member State of residence becomes the competent state¹, unless the individual does not meet the domestic eligibility, in which case, the United Kingdom will become the competent state.

¹ [Regulation \(EC\) No 883/2004 Article 11\(3\)\(e\)](#)

Example

Amelia is a European Economic Area national who has been in receipt of Personal Independence Payment since 2022. Amelia moved to Germany in 2024 and exports her Personal Independence Payment under Article 7 of Regulation (EC) 883/2004 of the European Parliament and of the Council. She is economically inactive and starts to receive a pension from Germany in 2025 and notifies the United Kingdom of a change of circumstances. From the date that Amelia started to receive their German pension the United Kingdom will no longer be the competent state to pay the claimant's cash sickness benefits, unless Amelia does not meet the German domestic eligibility criteria for the German equivalent of Personal Independence Payment.

First claim from abroad cases

12. Where an individual has permanently relocated to a European Union Member State, Switzerland or a European Economic Area - European Free Trade Association country, the country of residence is the competent state for new claims, where residency is the determining factor¹.

¹ [JG v Secretary of State for Work and Pensions \[2019\] UKUT 83 \(AAC\)](#), [GK v Secretary of State for Work and Pensions \[2019\] UKUT 87 \(AAC\)](#), [Secretary of State for Work and Pensions v TG \[2019\] UKUT 86 \(AAC\)](#)

13. However, where a claimant residing in a European Union Member State
 1. receives a pension from the United Kingdom or a European Union Member State, or is the family member of someone who receives a pension from the United Kingdom or a European Union Member State **and**
 2. there is not an equivalent cash sickness benefit **or**
 3. the claimant does not satisfy the conditions of entitlement in their state of residence

the United Kingdom will become the competent state^{1&2}.

1 SP v DfC (PIP) [2023] NICom 23; 2 [Regulation \(EC\) No 883/2004 Articles 24,25,29](#)

Example 1

Rose is a United Kingdom national who moved to France in 2019 with her partner. She is economically inactive. Her partner is retired and in receipt of a pension from the United Kingdom. She makes a first claim from abroad for Personal Independence Payment (daily living) in October 2026. Rose does not meet the domestic criteria for France's equivalent of Personal Independence Payment. The United Kingdom is therefore the competent state to pay Rose's cash sickness benefits.

Example 2

Sam is a United Kingdom national who moved to the Netherlands in 2021 with his European Economic Area national partner. Sam is in scope of the Withdrawal Agreement through his partner. He is economically inactive. His partner is retired and has received a pension from the United Kingdom since 2019. He makes a first claim from abroad for Personal Independence Payment (daily living) in March 2026. Sam notifies the Department that he meets the domestic criteria for the Dutch equivalent of Personal Independence Payment.

The Netherlands is therefore the competent state to pay Sam's cash sickness benefits.

Note: The Judgment¹ does not replace or alter the existing guidance where a cash sickness benefit has been refused by a European Union Member State because it is believed that the United Kingdom is the competent state such that there is a difference of view.

¹ *SP v DfC (PIP) [2023] NICom 23*

Cases not in scope

14. The Judgment¹ cannot be applied to decisions made on or after 27.9.23, about a claimant's entitlement before 27.9.23² (but see paragraph 20).

¹ *SP v DfC (PIP) [2023] NICom 23*;

² [Article 27 of the Social Security \(Northern Ireland\) Order 1998](#)

15. Cases falling under the Trade and Cooperation Agreement¹, the United Kingdom/Switzerland Convention on Social Security² or the Convention on Social Security between Iceland, Norway, Liechtenstein and the United Kingdom³ are not affected by the Judgment due to Personal Independence Payment and Employment and Support Allowance (new style) not being in scope of those agreements.

¹ [UK/EU and EAEC: Trade and Cooperation Agreement \[TS No.8/2021\] - GOV.UK](#);

² [The Social Security \(Switzerland\) Order 2021](#);

³ [The Social Security \(Iceland\) \(Liechtenstein\) \(Norway\) Order 2023](#)

Action for decision makers

16. All cases with an outstanding initial decision can now be processed in accordance with the Judgment¹ and the restrictions set out within Article 27 of the Social Security (Northern Ireland) Order 1998² (see paragraphs 18-19). Cases where there has been a change of circumstances, effective from before 27.9.23, or a request for reconsideration made on a decision that predates

27.9.23, yet to be dealt with, can now also be processed (see paragraphs 20-21). Please also see specific Operational Instructions.

1 SP v DfC (PIP) [2023] NICom 23; 2 [Article 27 of the Social Security \(Northern Ireland\) Order 1998](#)

17. Where the date of claim is before 27.9.23, but the initial decision is not being made until after this date, and a European Union Member State pension is in payment, the United Kingdom is determined to be the competent state from 27.9.23.
18. Where the date of claim is on or after 27.9.23, and a European Union Member State pension is in payment, the United Kingdom is determined to be the competent state from the date of claim.
19. Where a claim was determined before 27.9.23 on the basis that the United Kingdom was the competent state because no European Union Member State pension was in payment, and it is later identified post 27.9.23 that, under the Department's position prior to the Judgment¹, the United Kingdom would not have been regarded as the competent state (either from the date of claim or from a subsequent date), decision makers should not revise or supersede the original decision. There are no grounds to revise or supersede the original decision as it is consistent with the new case law.

1 SP v DfC (PIP) [2023] NICom 23

Example

Sebastian made a claim for Personal Independence Payment in March 2022. The United Kingdom was determined to be the competent state to pay his cash sickness benefits at the time, and a decision was made to award Personal Independence Payment (the original decision). The decision maker later found (after the date of the relevant determination on 27.9.23) that the claimant had been in receipt of a pension from a European Union Member State since 2021. No revision of the original decision is required, as to do so would be inconsistent with the Judgment¹.

1 SP v DfC (PIP) [2023] NICom 23

20. Where a claim was determined, revised or superseded

1. **prior** to 27.9.23, on the basis that there was a European Union Member State pension in payment, and the claimant requests a reconsideration of that decision, the decision maker can supersede the applicable decision from 27.9.23 on the ground of 'error of law'¹ **or**
2. **on or after** 27.9.23, on the basis that there was a European Union Member State pension in payment, and the claimant requests a reconsideration of that decision, the decision maker can revise the applicable decision from its outset on the ground of 'official error'².

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 24(a) & 35(5); 2 reg 9(a)

Example

Susanna is a Polish national who has been in receipt of Personal Independence Payment since 2020. The United Kingdom was determined to be the competent state to pay Susanna's cash sickness benefits at the time. However, in 2022 the decision maker determined the United Kingdom was not the competent state as the claimant receives a pension from a European Union Member State and had done so from the beginning of the claim. The decision maker revised the original decision as the United Kingdom is not the competent state. Susanna made an application for the decision to be reconsidered following the SP Judgment. The decision maker can supersede the original decision, as revised, on the ground of 'error of law'. The supersession is effective 27.9.23.

21. For appeals where the decision under appeal is before 27.9.23 (see para 1), decision makers should add the following to their submission:

The Department accepts the decision of the Commissioner in the case of *SP v DFC (PIP) [2023] NICom 23* made on 27.9.23. We request that the judgment be taken into account when considering the issue of competency in the instant case.

22. Decision makers should be aware that the decision of the Commissioner in *SP v DFC* was supported in the judgement of the Upper Tribunal in the case of *SE v SSWP [2024] UKUT 405 (AAC)*. However, this decision is effective from the later date of 5.12.24 in Great Britain, but decision makers in Northern Ireland should continue to determine cases in accordance with the guidance above from the earlier date of 27.9.23.

23. Where a decision maker is unsure how a case that is in scope of the Judgment¹ should be treated, the details of the case should be referred to Decision Making Services through the normal specific case guidance referral route.

1 SP v DfC (PIP) [2023] NICom 23

24. A Legal Entitlements and Administrative Practice exercise will be carried out to identify and review all cases affected by the Judgment¹.

1 SP v DfC (PIP) [2023] NICom 23

Annotations

The number of this memo should be annotated against the following ADM paragraphs:

C2110

C2123

C2126

C2128

Contacts

If you have any queries about this memo, please contact:

Decision Making Services

Section 5

Causeway Exchange

Level 3

1-7 Bedford Street

Belfast

BT2 7EG

DECISION MAKING SERVICES

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