Attendance Allowance, Carer's Allowance, Disability Living Allowance (care component) – Competent State for Cash Sickness Benefits of pensioners and their family members

Contents **Paragraphs**

Introduction

1. The judgment in SP v DfC[1] (the Judgment) was made by the Social Security Commissioner in Northern Ireland on 27.9.23 and is a relevant determination[2]. 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 Judgment[1] which deals with how to determine competency for cash sickness benefits of pensioners and their family members within scope of the Withdrawal Agreement[2] 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 Judgment[1] 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 Judgment[1] decided

   1. the competent state for payment of cash sickness benefits to pensioners and their family members is their state of residence[2] **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 state[3].

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 Agreement[1], the European Economic Area European Free Trade Association Separation Agreement[2] or the Swiss Citizens Rights Agreement[3] **and**

   3. an economically inactive adult (who is not employed or self-employed) or a child **and**

   4. receiving a pension from one or more European Union Member States, European Economic Area States or 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 Attendance Allowance 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 Judgment 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 Attendance Allowance in October 2022. This is before the date of the Judgment[1]. Under the United Kingdom's position prior to the Judgment[1], 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 Attendance Allowance. The Judgment[1] 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 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 rights[2]

   3. the export of cash sickness benefits where the claimant becomes habitually resident in a European Union Member State[3].

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 satisfied[1].

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 state[1], unless the individual does not meet the domestic eligibility, in which case, the United Kingdom will remain 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 Attendance Allowance since 2022. Amelia moved to Germany in 2024 and exports her Attendance Allowance under Article 7 of Regulation (EC) 883/2004. 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 Attendance Allowance.

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 factor[1].

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 and has received a pension from the United Kingdom since 2016. She makes a first claim from abroad for Carer's Allowance in October 2026. Rose does not meet the domestic criteria for France's equivalent of Carer's Allowance. 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 and has received a pension from the United Kingdom since 2019. He makes a first claim from abroad for Attendance Allowance in March 2026. Sam notifies the Department that he meets the domestic criteria for the Dutch equivalent of Attendance Allowance. The Netherlands is therefore the competent state to pay Sam's cash sickness benefits.

Note: The Judgment[1] 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 Judgment[1&2] cannot be applied by the decision maker in decisions about a claimant's entitlement before 27.9.23 (but see paragraph 22).

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 Agreement[1], the United Kingdom/Switzerland Convention on Social Security[2] or the Convention on Social Security between Iceland, Norway, Liechtenstein and the United Kingdom[3] are not affected by the Judgment due to Disability Living Allowance, Attendance Allowance and Carer's Allowance 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

Carer's Allowance

16. Where a claim has been made to Carer's Allowance and the claimant receives or starts to receive a pension from a European Union Member State, Carer's Allowance is reduced with no disregards applied[1,2&3].

1 SS A (NI) Act 92; 2 SS (OB) Regs (NI) 79; 3 Regulation (EC) No 883/2004 Article 5

17. Where a claimant makes a claim to Carer's Allowance the competent state for Carer's Allowance can be different to that of the person receiving Attendance Allowance or the care component of Disability Living Allowance[1,2,3 & 4]. This is because they are separate social security benefits.

1 SP v DfC (PIP) [2023] NICom 23; 2 SSWP v AH (CA): [2016] UKUT 148 (AAC);
3 JG v SSWP (CA) : [2019] UKUT 83 (AAC) paras 41-43;
4 Konevod v SSWP [2020] EWCA Civ 809 (30 June 2020) paras 52-54

Action for decision makers

18. All cases with an outstanding initial decision can now be processed in accordance with the Judgment[1] and the restrictions set out within Section 27 of the Social Security Act (Northern Ireland) 1998[2] (see paragraphs 20-21). 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 22-23). 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]

19. 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.

20. 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. However, for Carer's Allowance where specific backdating rules apply, if the claim includes a period where entitlement that is in part before 27.9.23, the United Kingdom is determined to be the competent state from 27.9.23[1].

1 [Article 27 of the Social Security (Northern Ireland) Order 1998]

21. 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 Judgment[1], 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 Attendance Allowance 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 Attendance Allowance (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 Judgment[1].

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

22. 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 on the ground of 'official error'[2] from

2.1 its outset, if the period covered by the decision starts on or after 27.9.23 **or**

2.2 27.9.23, if the period covered by the decision starts before 27.9.23.

1 SS & CS (D&A) Regs (NI) 99, regs 6(2)(b)(i) & 7(6); 2 reg 3(5)(a)

Example

Susanna is a Polish national who has been in receipt of Attendance Allowance 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.

23. 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.

24. 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.

25. Where a decision maker is unsure how a case that is in scope of the Judgment[1] 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

26. A Legal Entitlements and Administrative Practice exercise will be carried out to identify and review all cases affected by the Judgment[1].

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

The decision reached in SP v DFC does not affect existing guidance on situations where a claimant is receiving multiple pensions from two or more countries. This guidance can be found at paragraphs 22 and 23 of **Appendix 3 to DMG Chapter 7, Part 2 - Deciding the competent state to pay cash sickness benefits**. Guidance set out within this memo should be read under the provision that a claimant is only in receipt of a single pension.

Example 1

Sam is a United Kingdom national in receipt of both a United Kingdom and Dutch pension. Sam is currently resident in the Netherlands. The Netherlands is the competent state to pay Sam's Cash Sickness Benefits as the country of residence[1]. Article 23 applies to make the Netherlands competent under both Article 11 and Article 23 of Reg 883/2004. The United Kingdom is not competent under any Articles.

1 Reg (EC) 883/2004, Art 23 (link is external), Art 29(1) (link is external)

Example 2

Sophie is a United Kingdom national in receipt of a United Kingdom and Spanish pension. Sophie currently resides in Portugal. It is established that Sophie completed the longest period of insurance/pension contributions whilst living in Spain. Spain is therefore the competent state to pay Sophie's Cash Sickness Benefits as the claimant receives a pension from two countries (neither of which is the country of residence) and has been subject to the legislation of Spain for the longest period of time[2].

SP v DfC held that Article 29 of Reg 883/2004 is not a rule that automatically removes entitlement under another state's domestic legislation. Instead, it ensures entitlement where none would otherwise exist. As Sophie is not entitled in Portugal, Spain will be the competent state under Article 24.

2 Reg (EC) 883/04, Art 24(2)(b)

Annotations

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

071753, 071761, 071779, 071785, 071790, Appendix 3 to Chapter 7, Part 2

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