



From the Parliamentary
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for Work and Pensions

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Dr Caroline

Thank you for your letter of 27 November on behalf of constituents who are concerned about the exportability of Disability Living Allowance.

It may be helpful if I clarify a few points about the exportability of disability benefits. The European Court of Justice ruled that the UK's disability benefits, including Disability Living Allowance Care component, should be classified as "sickness benefits" and exported under the relevant articles of Regulation 1408/71.

The judgment in case c-299/05 did not state that customers who lost their benefits when they left the UK to live in another Member state should have these benefits restored to them. Indeed, this could be contrary to European law.

Some customers who left the UK may have worked in their new country of residence. Once this happens, even if they have now stopped work they are no longer the responsibility of the UK for sickness benefits. Although under domestic law a person in work may claim the UK disability benefits, under European law, that worker must claim their sickness benefit from their state of residence.

This is why a claim relating to an allowance that could have been paid before the date of judgement in 2007 can be dependent on a customer's situation in 2008 or 2009.

If not working, a person needs to be in receipt of a State Pension or a long-term benefit, like Incapacity Benefit, or have paid recent National Insurance Contributions before payment of a disability benefit can be made. Again this is not a requirement for payment under domestic law. Full details of the eligibility criteria are available on the website: www.direct.gov.uk/claimingbenefits.

Other conditions of entitlement continue to apply, including the disability conditions and the 'past presence' test. Domestic legislation requires a customer to have been present in the UK Kingdom for twenty six weeks out of the previous fifty two weeks on each day of the award of benefit.

For export cases, we have modified this requirement and we apply the test once only, either on the date of export, or on a date on which entitlement can be established. On that date we require the customer to have been present in the UK for not less than 26 weeks out of the last 52 weeks. As a result, we have been able to continue to pay over 1700 people who have moved to another European country since the judgment. We consider that this "past presence" test is a necessary condition for entitlement to a potentially long-term, non-contributory benefit as it establishes a recent link to the UK.

People whose benefits ceased when they left the UK prior to the judgment in most cases need to make a fresh claim as their claims were stopped under the law that applied at that time. UK domestic law gives customers the right to appeal decisions within time limits laid down in the Social Security and Child Support (Decisions and Appeals) Regulations 1999. The time limit is one month with discretion to extend that time limit by a further twelve months – thirteen months in total.

We have submitted a small number of cases which share common issues (lead cases) for appeal tribunal hearings. We have asked the Tribunals Service to suspend similar cases until these lead cases have been decided as these decisions may have a bearing on the outcome of the other appeals. It is expected that the Tribunal Service will hear the lead cases early next year.

As you are aware the European Commission has written to the UK about our interpretation of the judgement and we replied to the Commission on 4 December.

I hope that this reply is helpful to your constituents.

Yours sincerely
Jonathan Shaw

JONATHAN SHAW MP

Minister for Disabled People and Minister for the South East

