

THE PAST PRESENCE TEST AND REFUGEES

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INTRODUCTION

- 1 The following guidance replaces that in DMG memo 15/16 and should be followed immediately.
- 2 DMs should now make a decision on any cases that were stayed in line with DMG Memo 15/16. Where the DM has asked the FtT to stay cases the DM should inform the FtT to lift that stay.

THE UT DECISION

- 3 In a decision dated 17.3.16 the UT decided that the decision of the FtT made on 31.10.14 was made in error of law. The UT considered whether the application of the PPT to refugees and their family members in relation to DLA amounts to unlawful discrimination under European legislation¹ or Article 14 of the ECHR. The UT held that the PPT is unlawfully discriminatory on both bases and should be disapplied. The UT decided that it was therefore appropriate to disapply the relevant DLA provisions². in respect of both the Claimants. The UT's decision will not be appealed.

1 Qualification Directive, Art 23(2), Art (28)(1); 2 DLAReg, reg 2(1)(a)(iii)

WHAT THIS MEANS

- 4 The PPT is no longer to be applied to claims for DLA, AA or CA submitted by refugees and their family members or to people with Humanitarian Protection status and their families.
- 5 All claimants must satisfy the other conditions of entitlement to be awarded AA, CA or DLA.

DECISION MAKING

- 6 Below is a list which sets out the date from which payment should be made in a range of scenarios. References to date of entitlement relies on a claim having been made.
- 7 Cases which SSWP stockpiled¹ before 17.3.16; if deemed entitled to award, should be paid back to date of entitlement. Cases that were stockpiled after 17.3.16 should be paid from 17.3.16, if date of claim and date of entitlement are before 17.3.16 or date of entitlement if that is later than 17.3.16.

1 SS Act 98, s 25(2) & (3)(a)

- 8 Cases which SSWP directs FTT or UT to refer back to him¹; if deemed entitled to award, should be paid back to date of entitlement.

1 SS Act 98, s 26(2) & (3)

- 9 In cases where a claimant applies for supersession then the effective date of the supersession will be the date of the relevant determination¹.

1 SS CA(D&A) Regs, reg 7(6)

- 10 If a claimant has applied for a mandatory reconsideration and the DM cannot revise the award then the application for revision can be treated as an application for supersession¹. The DM can supersede the award as appropriate.

1 SS CA (D&A) Regs, reg 6(5)

ANNOTATIONS

Please annotate the number of this memo (20/16) against the following DMG paragraphs:

04290 and 071715

CONTACTS

If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds, 1S25, Quarry House, Leeds. Existing arrangements for such referrals should be followed, as set out in [Memo DMG 03/13](#) - Obtaining legal advice and guidance on the Law.

DMA Leeds: September 2016

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