

DMG Chapter 07 - Part 06: Severe disablement allowance, SPC, Widow's Benefit, Bereavement Benefit and Winter Fuel Payments

076960 - 078059

Subpages

- European legislation referred to in Chapter 07 - Part 6
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European legislation referred to in Chapter 07 - Part 6

European legislation referred to in Chapter 07 - Part 6

Full title	Abbreviation
Council Regulation (EC) No. 883/04	Reg (EC) 883/04

Agreements referred to in Chapter 07 - Part 6

Country description	Full title	Short
Austria	The Social Security (Austria) Order 1981 No. 605	SS (Austria) Order 81
Barbados	The Social Security (Barbados) Order 1992 No. 812	SS (Barbados) Order 92
Bermuda	The National Insurance and Industrial Injuries (Bermuda) Order 1969 No. 1686	NI and II (Bermuda) Order 69
Cyprus	The Social Security (Cyprus) Order 1983 No. 1698	SS (Cyprus) Order 83
Finland	The Social Security (Finland) Order 1984 No. 125	SS (Finland) Order 84
Germany	The Family Allowances, National Insurance and Industrial Injuries (Germany) Order 1961 No. 1202	FA, NI & II Order 61
Iceland	The Social Security (Iceland) Order 1985 No. 1202	SS (Iceland) Order 85
Ireland	National Insurance (Republic of Ireland) Order 1966 No. 270	NI (Rep I) Order 66
Isle of Man	The Social Security (Isle of Man) Order 1977 No. 2150	SS (I of M) Order 77
Israel	The National Insurance and Industrial Injuries (Israel) Order 1957 No. 1879	NI and II (Israel) Order 57
Jamaica	The Social Security (Jamaica) Order 1997 No. 871	SS (Jamaica) Order 97
Jersey and Guernsey	The Social Security (Jersey and Guernsey) Order 1994 No. 2802	SS (Jersey and Guernsey) Order 94
Malta	The Social Security (Malta) Order 1996	SS (Malta) Order 96

Country description	Full title	Short
Mauritius	The Social Security (Mauritius) Order 1981 No. 1542	SS (Mauritius) Order 81
New Zealand	The Social Security (New Zealand) Order 1983 No. 1894	SS (New Zealand) Order 83
Northern Ireland	The Social Security (Northern Ireland Reciprocal Arrangements) Regulations 1976 No. 1003	SS (N Ireland Reciprocal Arrangements) Regs
Norway	The Social Security (Norway) Order 1991 No. 767	SS (Norway) Order 91
Philippines	The Social Security (Philippines) Order 1989 No. 2002	SS (Philippines) Order 89
Portugal	The Social Security (Portugal) Order 1979 No. 921	SS (Portugal) Order 79
Spain	The Family Allowances, National Insurance and Industrial Injuries (Spain) Order 1975 No. 415	FA, NI & II (Spain) Order 75
Sweden	The Social Security (Sweden) Order 1988 No. 590	SS (Sweden) Order 88
Switzerland	The Family Allowances, National Insurance and Industrial Injuries (Switzerland) Order 1969 No. 384	FA, NI and II (Switzerland) Order 1969
Turkey	The National Insurance and Industrial Injuries (Turkey) Order 1961 No. 584	NI and II (Turkey) Order 61
United States of America	The Social Security (United States of America) Order 1984 No. 1817	SS (USA) Order 84
Yugoslavia	The Family Allowances, National Insurance and Industrial Injuries (Yugoslavia) Order 1958 No. 1263	FA, NI and II (Yugoslavia) Order 58

Severe disablement allowance and SPC 076960 - 077029

Subpages

- Severe Disablement Allowance 076960 - 077000
- SPC - Absence from Great Britain 077001 - 077037

Severe Disablement Allowance 076960 - 077000

076960 Any difficult international issues in relation to SDA should be referred to DMA Leeds for Advice.

1 SS CB Act 92, s 113(1)(a)

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Introduction

077001 SPC can continue to be paid whilst a claimant is temporarily absent from GB¹ if the other conditions of entitlement continue to be satisfied and the absence is no longer than

- 1.** 4 weeks where the absence is not expected to exceed 4 weeks² **or**
- 2.** 8 weeks³ where paragraph 077002 applies **or**
- 3.** 26 weeks⁴ where paragraph 077003 applies.

Note: See DMG 04642 for effective dates for supersession.

¹ SPC Regs, reg 3; 2 reg 3(1)(a); 3 reg 3(1)(b); 4 reg 3(1)(c)

Example 1

Jason notifies the DM that he is going abroad for 3 weeks. The DM decides that he remains entitled for those 3 weeks. He contracts food poisoning and has to extend his stay by a further 2 weeks. As Jason's

period abroad was not expected to exceed 4 weeks the DM decides that he remains entitled for 4 weeks but supersedes and disallows for the 5th week.

Example 2

Nicola notifies the DM that she will be going abroad for 5 weeks. The DM supersedes and disallows from the beginning of the absence. Due to unforeseen circumstances Nicola returns after 3 weeks. However Nicola's award remains disallowed as the absence was expected to last more than 4 weeks.

The 8 week rule

077002 The temporary absence can be up to 8 weeks where

1. the absence is not expected to exceed 8 weeks **and**

2. the absence is in connection with the death of

2.1 the claimant's partner **or**

2.2 a child or qualifying young person who normally lives with the claimant **or**

2.3 a close relative of the claimant, their partner or a child or qualifying young person normally living with the claimant **and**

the Secretary of State considers that it would be unreasonable to expect the claimant to return to GB within the first 4 weeks¹.

1 SPC Regs, reg 3(2)

The 26 week rule

077003 The temporary absence can be up to 26 weeks where the absence is not expected to exceed 26 weeks and is solely in connection with

1. the claimant undergoing¹

1.1 treatment for an illness or physical or mental impairment by, or under the supervision of, a qualified practitioner **or**

1.2 medically approved convalescence or care as a result of treatment for an illness or physical or mental impairment, provided that the claimant had that illness or disability before leaving GB **or**

2. the claimant accompanying their partner, or a child or qualifying young person for whom they are responsible where that partner, child or qualifying young person is undergoing²

2.1 treatment for an illness or physical or mental impairment by or under the supervision of a qualified practitioner **or**

2.2 medically approved convalescence or care as a result of treatment for an illness or physical or mental impairment provided the partner, child or qualifying young person had that illness or disability before leaving GB1.

1 SPC Regs, reg 3(3)(a); 2 reg 3(3)(b)

Example 1

Irina goes abroad for 12 weeks. She does this because the warmer temperature eases her medical condition. The DM disallows from the beginning of the absence as the absence was not related to treatment or convalescence following any treatment.

Example 2

Joseph suffers from severe depression he goes to France for some specific therapy. This lasts for a total of 20 weeks. The trip was solely in connection with a mental impairment and given by a qualified medical practitioner. The DM decides that the claimant is temporarily absent for 20 weeks and remains entitled to SPC throughout.

Example 3

Paul a SPC claimant who travelled to Cyprus on holiday on 1 August 2021 with the intention of staying for 3 weeks. Unfortunately, whilst on holiday he had an accident and needed a hip replacement which meant he could not travel for 8 weeks. As a result, Paul was outside the UK for more than 4 weeks. The accident occurred after Paul had left GB. The DM determined the claimant was not entitled to SPC from when Paul's absence exceeded 4 weeks.

Example 4

Jack and Jill have saved up for their dream holiday in Australia. They leave the UK on 01/05/21 and have a return flight booked for 31/05/21. On arrival in Australia, while entering the airport, the sign above the main building falls from its mounting, breaking Jack's back and leaving him immobile and in a coma. On 02/06/21 Jill informs DWP that they will be unable to leave Australia for at least twenty six weeks as she is needed at his bedside to try to bring him out of the coma, and will then need to help Jack's long medical recuperation before he is able to board a flight home. The DM decides that the disregard of the absence cannot be extended to twenty six weeks because they did not go abroad for the sole purpose of receiving medical treatment for the accident that was to befall them in Australia. Jack and Jill are not entitled to SPC from after 4 weeks until they return to GB.

Qualified practitioner

077004 Qualified practitioner means a person qualified to provide medical treatment physiotherapy or a

form of treatment which is similar to, or related to, either of those forms of treatment¹.

1 SPC Regs, reg 3(4)

Membership of the household

077005 A person is treated as being a member of the claimant's household whilst temporarily absent from GB¹ if the absence is no longer than

- 1.** 4 weeks where the absence is not expected to exceed 4 weeks²**or**
- 2.** 8 weeks³ where paragraph 077006 applies **or**
- 3.** 26 weeks⁴ where paragraph 077007 applies.

1 SPC Regs, reg 5(1)(f); 2 Reg 5(1A)(a); 3 reg 5(1A)(b); 4 reg 5(1A)

The 8 week rule

077006 The temporary absence can be 8 weeks where

- 1.** the absence is not expected to exceed 8 weeks **and**
- 2.** the absence is in connection with the death of
 - 2.1** a child or qualifying young person who normally lives with the person **or**
 - 2.2** a close relative of the person, their partner or a child or qualifying young person normally living with the person **and**
- 3.** the Secretary of State considers that it would be unreasonable to expect the person to return to GB within the first 4 weeks¹.

1 SPC Regs, reg 5(1B)

The 26 week rule

077007 The temporary absence can be up to 26 weeks where the absence is not expected to exceed 26 weeks and is solely in connection with

- 1.** the person undergoing
 - 1.1** treatment for an illness or physical or mental impairment by, or under the supervision of, a qualified practitioner **or**

1.2 medically approved convalescence or care as a result of treatment for an illness or physical or mental impairment, provided that the person had that illness or disability before leaving GB **or**

2. the person accompanying their partner, or a child or qualifying young person for whom they are normally living where that partner, child or qualifying young person is undergoing

2.1 treatment for an illness or physical or mental impairment by or under the supervision of a qualified practitioner **or**

2.2 medically approved convalescence or care as a result of treatment for an illness or physical or mental impairment provided the partner, child or qualifying young person had that illness or disability before leaving GB¹.

1 SPC Regs, reg 5(1C)

Qualifying Young Person

077008 A qualifying young person is a person who has reached the age of 16 but not the age of 20

1. up to, but not including, 1 September that next follows their 16th birthday¹**and**

2. up to, but not including, 1 September that next follows their 19th birthday where they are enrolled on, or accepted for

2.1 approved training **or**

2.2 a course of education

2.2.a which is not advanced education

2.2.b at a school, college or other establishment that is approved by the Secretary of State **and**

2.2.c where they spend on average more than twelve hours a week during term time in receiving tuition doing examinations or practical work or supervised study².

Note: See also ADM E2092 and F1093 for further guidance.

1 SPC Regs, reg 4A(1)(a); 2 SPC Regs, reg 4A(1)(b)

077009 Where the young person is aged 19, he or she must have started the education or training or been enrolled on or accepted for it before reaching that age¹.

1 SPC Regs, reg 4A(2)

077010 The education or training described in 077008.**2.1** and 077008.**2.2** does not include education or training that is provided through a contract of employment¹.

1 SPC Regs, reg 4A(3)

077011 A person shall be treated as undertaking a course of FTE during the period between the end of one course and the start of another where the person is accepted for or enrolled on the latter course.

077012 Where a child or qualifying young person turns 16 or 19 on 31 August the period described at 077008.**1.** and 077008.**2.** will end on that same day.

077013 Any person who falls within 12 above is not a qualifying young person if they are receiving UC, JSA, IS or ESA¹.

Example

Sue and Wendy are 18 year old twins and in education. Wendy has a child and gets UC and is therefore not a qualifying young person. Sue is a qualifying young person.

1 SPC Regs, reg 4A(5)

Approved training

077014 Approved training means training arranged under prescribed legislation¹ and approved by the Secretary of State².

1 Employment and Training Act 1973, s 2(1); Enterprise and New Towns (Scotland) Act 1990, s 2(3);

2 SPC Regs, reg 4A(4); UC Regs, reg 5

Transitional Protection

077015 Any person temporarily absent on 28.7.16 will be subject to the previous regulations until they return to GB¹. All further absences will be subject to the new rules.

1 HB and SPC (Temporary Absence) (Amendment) Regs 2016, reg 5(3)

077016 - 077024

European Community law

077025 SPC is listed as a special non-contributory benefit for the purposes of EC law¹. Such benefits are only payable in, and at the expense of, the State in which the person is habitually resident. This means that SPC is payable in the UK only and EC law does not permit export of this benefit to claimants living abroad.

Reciprocal agreements

077026 SPC is not within the scope of any of the reciprocal agreements between the UK and other countries.

Overseas residents

Meaning of overseas resident

077027 An overseas resident is a person who is not ordinarily resident in

1. GB¹ or
2. any of the Channel Islands where UK law has not been amended as far as is necessary to give effect to the provisions of an agreement².

Note: Persons resident on Sark (including Brecqhou) are not overseas residents. Although Sark is part of the Bailiwick of Guernsey, the agreement³ does not extend to it.

1 Pensions Act 14, s 20(2); 2 SP Regs, reg 21(6); SS A Act 92, s 179; 3 SS (Jersey and Guernsey) Order 94

Entitlement to state pension for an overseas resident

077028 Overseas residents may be entitled to SP at the full, reduced or transitional rate. However, unless paragraph 077029 applies, the rate of SP to which an overseas resident is entitled to is not increased by the general uprating of benefit rates if that person is not ordinarily resident in GB¹. SP which is not increased by upratings is referred to as being frozen.

Note: See [DMG 74101](#) et seq for guidance on SP at the SP rate, [DMG 74151](#) et seq for guidance on SP at the reduced rate and [DMG 74201](#) et seq for guidance on SP at the transitional rate

1 SP Regs, reg 21(1) & (2)

077029 Annual uprating increases are payable

1. under the EU legislation to people residing in an EEA country or Switzerland **and**
2. to people who live in countries with which the UK has reciprocal agreements which allow for uprating.

Modification of amount of increment for an overseas resident

077030 Where there is a modification in respect of overseas residents. This modification means that the rate used is that which would have been payable during the period of deferral **not** the rate that applies at the end of the deferral period when calculating the increase. Therefore, a person is not entitled

to up-rating increases

1. in respect of the period of deferral if the person
 1. was an overseas resident at the time of that increase¹**and**
 2. continued to be an overseas resident until the period of deferral ended²**and**
2. after the period of deferral ended if the person is an overseas resident at the time of that increment³.

1 SP Regs, reg 21(4)(a)(i); 2 reg 21(4)(a)(ii); 3 reg 21(4)(b)

077031 Paragraph 077030 above applies where

1. a person's entitlement to SP has been deferred¹ **and**
2. that person is
 1. entitled to SP **and**
 2. an overseas resident

when that period of deferral ends².

1 SP Regs, reg 21(3)(a); 2 reg 21(3)(b)

077032 Where paragraphs 077030 - 077031 above do **not** apply, a person is not entitled to up-rating increases where, immediately before an up-rating increase, they were

1. entitled to SP¹**and**
2. an overseas resident².

1 SP Regs, reg 21(5)(a); 2 reg 21(5)(b)

077033 The amount of an increment is modified in accordance with paragraph 077034 below applies for any person who has been an overseas resident during any part of the period for which their entitlement to SP has been deferred¹.

Note: See DMG 74512 for guidance on the amount of an Increment.

1 SP Regs, reg 22(1)

077034 Where 077032 above applies for any part of the deferral period during which the person

1. was
 1. an overseas resident **and**
 2. **not** in GB or any of the Channel Islands where UK law has not been amended as far as is necessary to give effect to the provisions of an agreement (see paragraph 7 above)

the calculation of the amount of increment¹ is modified so that the amount of an increment is equal to one-ninth of 1%² of the weekly rate of SP to which the person would have been entitled immediately before the start of the deferral period if the person's entitlement had not been deferred³ or

2. was **not** an overseas resident, the calculation of the amount of Increments⁴ is modified so that the amount of an Inc is equal to one-ninth of 1%⁵ of the weekly rate of SP to which the person would have been entitled immediately before the end of the deferral period if the person's entitlement had not been deferred⁶.

Note 1: The deferral period is the period during which a person's entitlement to SP is deferred⁷.

Note 2: The calculation of an increment is **not** modified where residence is in an EEA country or country where there is a reciprocal agreement.

¹ Pensions Act 14, s 17(4); 2 SP Regs, reg 10; 3 reg 22(2);

⁴ Pensions Act 14, s 17(4); 5 SP Regs, reg 10; 6 reg 22(3); 7 reg 2(4)

Modification of amount of increment where rate changes during deferral

077035 The amount of an Increment is further modified in accordance with paragraphs 077036 - 077037 below where the weekly rate is subject to restrictions on up-rating and a non-uprating change during the deferral period¹.

Note: See DMG 74512 for guidance on the amount of an increment.

¹ Pensions Act 14, s 17(4); SP Regs reg 23 (1) & (2)

077036 Where paragraph 077035 above applies, the amount of the increment is first calculated in accordance with paragraph 077035 above et seq¹. It is then calculated in accordance with DMG 74513 et seq as if the person's weekly rate of SP was

1. the weekly rate in paragraph 077034.**1** for any part of the deferral period during which the person was
 1. an overseas resident **and**
 2. not in GB or any of the Channel Islands where UK law has not been amended as far as is necessary to give effect to the provisions of an agreement²**and**
2. the weekly rate in paragraph 077034.**2** for any part of the deferral period during which the person was **not** an overseas resident³.

Finally, any increase or decrease of the increment in accordance with the latter calculation is added to, or subtracted from, the amount of the increment in accordance with the former calculation⁴.

¹ SP Regs, reg 23(3); 2 reg 23(4)(a); 3 reg 23(4)(b); reg 23(5)

Isle of Man

077037 For RP purposes a person who has paid contributions in GB or the Isle of Man has only one contribution record and that record is transferred if the person moves to live in the other territory. However, that will not apply to SP. Instead, for people who reach pensionable age on or after 6.4.16, SP will only be awarded on the GB NI record. Therefore a person who has been employed in both the UK and the Isle of Man will have to make two claims because there are two different systems; one in the UK and one in the Isle of Man.

Widow's or Bereavement Payment 077030 - 077234

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077030 Any reference to BB, WB or WPA should be read as a reference to BSP as from 6.4.17¹.

¹ The Social Security (Reciprocal Agreements) Order 17, Sch 1, para 2 &3; Pensions Act 14, part 5

077031 This section gives guidance on

- 1.** the residence and presence conditions for entitlement to WB/BB (see DMG 077071)
- 2.** absence from GB (see DMG 077072, 077080 and 077090)
- 3.** entitlement to pro rata WB/BB (see DMG 077150) **and**
- 4.** the effects of Social Security agreements on entitlement to WB/BB (see DMG 077240).

077032 BBs were introduced by the Welfare Reform and Pensions Act 1999, and replaced widow's benefit where the late spouse died on or after 9.4.01.

077033 Prior to this date there were no provisions for payment of widower's benefits.

077034 Following the introduction of the Civil Partnership Act, surviving civil partners could have title to BBs where the late civil partner died on or after 5.12.05.

077035 Detailed guidance on the general conditions of entitlement to WBs and BBs is at DMG Volume 10, Chapters 58 and 63.

077036 The remainder of this chapter concentrates mainly on BBs (although some of the examples refer to WBs), but apply equally to claims to WBs where the husband died before 9.4.01.

077037 - 077070

Residence and presence

077071 There are no residence and presence conditions for WB/BB. However a claimant can be disqualified from receiving WB/BB when they are absent from GB.

Absence from Britain

077072 A surviving spouse or surviving civil partner who is absent from GB

- 1.** is **not** disqualified for receiving WB/BB¹ (apart from Widow's/Bereavement Payment)
- 2.** may be disqualified for receiving WPT/BPT (see DMG 077080) **and**
- 3.** may not have the rate of WB/BB increased in the general uprating of benefit rates.

1 SS Ben (PA) Regs, reg 4(1) & 5(1)

Widow's/Bereavement Benefit under European Community provisions

077073 EC provisions refer to survivor's benefits¹. For the UK this means

- 1.** WP²/BPt
- 2.** WMA³/WPA⁴**and**
- 3.** WP⁵/Bereavement Allowance⁶.

1 Reg (EC) 883/04, Art 3(1)(ee); 2 SS CB Act 92, s 36; 3 SS CB Act 92, s 37(1); 4 s 39A; 5 s 38; 6 s 39B

077074 The following are not survivor's benefits

- 1.** long term Incapacity Benefit for widows, widowers and surviving civil partners¹. These are invalidity benefits (see DMG 073852)
- 2.** Child Dependency Increases of WPA². These are family benefits (see DMG 070165) **and**
- 3.** Category B RP for widows. This is an old age pension (see DMG 075753).

1 SS CB Act 92, s 40 & 41; 2 s 80(5)

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077080 A surviving spouse or surviving civil partner who is absent from GB, other than in Sark, is not disqualified¹ for receiving BPT if when the spouse or civil partner died

- 1.** the surviving spouse or surviving civil partner was in GB **or**
- 2.** the deceased was in GB².

1 SS CB Act 92, s 113(1); 2 SS Ben (PA) Regs, reg 4(2A)

077081 Where both the surviving spouse or surviving civil partner and the deceased were absent from GB at date of death, the surviving spouse or surviving civil partner is not disqualified for being absent from GB if

- 1.** the deceased satisfied the contribution conditions for WPA or Bereavement Allowance **either** for a basic pension of at least the minimum rate or for Additional Pension only **or**
- 2.** the surviving spouse or surviving civil partner returns to GB within four weeks of the spouse or civil partner's death **or**
- 3.** he/she is in another EEA country (see DMG 077082) **or**
- 4.** he/she is in a country with which the UK has an Agreement (see DMG 077083).

Example 1

A man and his wife are involved in a road accident whilst on holiday in India. The husband is killed but the wife is not badly injured and spends only five days in hospital. The contribution condition for BPT is satisfied but those for WPA and Bereavement Allowance are not satisfied. After arrangements are made to fly her husband's body home the widow arrives back in GB three weeks after her husband's death. She would not be disqualified for receiving BPT.

Example 2

The widow in Example 1 is more seriously injured and has to remain longer in hospital in India. She does not return to GB until five weeks after her husband's death. She will be disqualified for receiving BPT if

her late husband did not satisfy the contribution conditions for WPA and Bereavement Allowance.

European Community

077082 A surviving spouse or surviving civil partner is **not** disqualified for receiving BPT if he/she is absent from GB in another EEA country¹.

1 Reg (EC) 883/04 Art 7

Reciprocal agreements

077083 A surviving spouse or surviving civil partner is **not** disqualified for receiving BPT if he/she is absent from GB in one of the following non-EEA countries¹

• Barbados²

• Bermuda³

• Cyprus⁴

• Isle of Man⁵

• Israel⁶

• Jamaica⁷

• Jersey and Guernsey⁸

• Malta⁹

• Mauritius¹⁰

• Philippines¹¹

• Switzerland¹²

• Turkey¹³

• United States of America¹⁴

• Yugoslavia (See DMG 070334)¹⁵.

1 SS (RA) Order; 2 SS (Barbados) Order 92, Sch, Art 5(1); 3 NI & II (Bermuda) Order 69, Sch, Art 9(2);

4 SS (Cyprus) Order 83, Sch, Art 4(1); 5 SS (I of M) Order 77, Sch 1, Art 2(1);

6 NI & II (Israel) Order 57, Sch, Art 8(1); 7 SS (Jamaica) Order 97, Sch, Art 5(1);
8 SS (Jersey & Guernsey) Order 94, Sch, Art 5(1); 9 SS (Malta) Order 96, Sch, Art 25;
10 SS (Mauritius) Order 81, Sch 1, Art 4(1); 11 SS (Philippines) Order 89, Sch, Art 4(1);
12 FA, NI & II (Switzerland) Order 69, Sch 1, Art 16(2); 13 NI & II (Turkey) Order 61, Sch, Art 17 & 21;
14 SS (USA) Order 84, Sch 1, Art 7(2); 15 FA, NI & II (Yugoslavia) Order 58, Sch, Art 25(1)

077084 - 077089

Not entitled to uprating increases 077090 - 077099

Introduction

077090 The rate of WB/BB paid to a surviving spouse or surviving civil partner who is absent from GB is increased by the general uprating of the rates of benefit¹ if the surviving spouse or surviving civil partner

- 1.** remains ordinarily resident in GB **or**
- 2.** is in an EEA country and is within the scope of EU provisions² (see DMG 070050) **or**
- 3.** is in an EEA country and the agreement with that country still applies to him/her (see DMG 070320) **or**
- 4.** is in a country with which the UK has an agreement which allows the rate to be increased (see DMG 077112) **or**
- 5.** is in Sark³.

1 SS A Act 92, s 150; 2 Reg (EC) 883/04, Art 2; 3 SS Ben (PA) Regs, reg 12

077091 The rate of BB **cannot** be increased where the surviving spouse or surviving civil partner is absent abroad and not ordinarily resident in GB

- 1.** immediately before the date any uprating order takes effect **and**
- 2.** he/she is not in a EEA country or is not covered by EU provisions or a country with which the UK has an agreement which allows the rate to be increased **and**
- 3.** the deceased spouse or deceased civil partner became entitled to Category A RP or died before the date on which the Uprating Order takes effect¹.

1 SS Ben (PA) Regs, reg 5(3)(d)

Example 1

The claimant and her husband are ordinarily resident in Hong Kong. Her husband dies on 1.7.04. The claimant continues to be ordinarily resident in Hong Kong. Bereavement Allowance is awarded from 2.7.04 for 52 weeks, restricted to the rate in force at April 2004, the last uprating before widowhood.

Example 2

A husband and wife are separated, the husband being ordinarily resident in Zimbabwe and his wife in GB. The husband dies in Zimbabwe on 1.3.88. WB is awarded to widow in GB from 1.3.88. The widow

continues to be ordinarily resident in GB until 20.3.90, but then becomes ordinarily resident in South Africa. She is not disqualified for receipt of 1988 and 1989 uprating increases but disqualified for receipt of 1990, 1991 and subsequent uprating increases.

077092 BB which is not increased by upratings is referred to as being "frozen". (See DMG 077130 - 077138).

077093 Guidance on the frozen rate of WB before 1.10.89 is in Annex 2.

077094 - 077099

Rate of Widow's or Bereavement Benefit not increased 077100 - 077109

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[In another European Economic Area country](#) 077105 - 077109

Absence from Great Britain

077100 A surviving spouse or surviving civil partner is only prevented from receiving the increased rate of benefit whilst he/she is absent from and not ordinarily resident in GB¹.

1 SS Ben (PA) Regs, reg 5(1); R(P) 1/78

Visits to Great Britain

077101 If a surviving spouse or surviving civil partner whose rate of BB has been frozen **visits** GB then whilst in GB he/she will be entitled to the current rate of BB **and** when he/she again leaves GB the rate of BB will revert to the rate that was paid before the visit to GB¹.

1 R(P) 1/78

077102 A surviving spouse or surviving civil partner who returns to GB and becomes ordinarily resident here is entitled to BB at the current rate. If later he/she leaves GB again then the rate of BB is restricted to the last rate received in GB. It does **not** revert to that paid when he/she was last absent from GB¹.

1 SS Ben (PA) Regs, reg 5(3); R(P) 2/67

DM's decision

077103 When the rate of benefit can be increased because of the general uprating¹, the DM decides whether a surviving spouse or surviving civil partner is ordinarily resident in GB immediately before the date of the general uprating².

1 SS A Act 92, s 155(3); 2 s 173(6)(b); R(P) 2/67

077104 Although the DM does not decide whether the rate of benefit will be increased, the effect of that decision needs to be taken into account when awarding BB either on review or following a new claim.

In another European Economic Area country

077105 A surviving spouse or surviving civil partner within the scope of EC provisions and entitled to UK BB remains entitled whilst absent from GB in another EEA country¹. This includes both

- 1.** temporary absences (for example, holidays) **and**
- 2.** permanent absences.

1 Reg (EC) 883/04, Art 7;

077106 Whilst in the other EEA country the rate of BB **is** increased by uprating orders.

077107 - 077109

Agreements with European Economic Area countries 077110 - 077119

[Introduction](#) 077110 - 077111

[Agreements which allow uprating](#) 077112 - 077119

Introduction

077110 EU provisions replace agreements between EEA countries (see DMG 070320)

- 1.** for any person within their personal scope **and**
- 2.** where the right to benefit was acquired on or after EU provisions applied.

077111 For BB a national of a EEA country will generally be covered by EU provisions. Agreements between EEA countries may still apply to non EEA nationals.

Agreements which allow uprating

077112 The rate of BB paid to a non EEA national in one of the following countries can be increased because of the general uprating of benefit rates

- 1.** Austria¹
- 2.** Finland²
- 3.** Germany³
- 4.** Iceland⁴
- 5.** Irish Republic⁵
- 6.** Norway⁶
- 7.** Portugal⁷
- 8.** Spain⁸**and**
- 9.** Sweden⁹.

1 SS (Austria) Order 81, Sch, Art 4(1); 2 SS (Finland) Order 84, Sch, Art 4(1);
3 FA, NI & II (Germany) Order 61, Sch 1, Art 3(2); 4 SS (Iceland) Order 85, Sch, Art 3(1);
5 NI (ROI) Order 66, Sch 1, Art 3(3); 6 SS (Norway) Order 91, Sch, Art 4(1);
7 SS (Portugal) Order 79, Sch, Art 4(1); 8 FA, NI & II (Spain) Order 75, Sch, Art 4;
9 SS (Sweden) Order 88, Sch, Art 4(1)

077113 - 077119

Agreements with non-European Economic Area countries 077120 - 077129

[Frozen rate countries](#) 077120

[Non-frozen rate countries](#) 077121

[Partially unfrozen Widow's Benefit](#) 077122

[Isle of Man](#) 077123

[European Community association and cooperation agreements](#) 077124 - 077129

Frozen rate countries

077120 BB can continue to be paid in Australia, Canada and New Zealand¹ but only at the rate paid at the later of²

- 1.** the date the person was last ordinarily resident in the UK **or**
- 2.** the date the person first became entitled to BB.

1 SS (New Zealand) Order 83, Sch, Art 17; 2 SS Ben (PA) Regs, reg 5

Non-frozen rate countries

077121 BB, including increases because of the general uprating of the rate of benefit, can be paid in the following countries

1. Barbados (see DMG 077122)¹

2. Bermuda (see DMG 077122)²

3. Cyprus³

4. Isle of Man⁴

5. Israel⁵

6. Jamaica (see DMG 077122)⁶

7. Jersey and Guernsey⁷

8. Malta⁸

9. Mauritius (see DMG 077122)⁹

10. Philippines (see DMG 077122)¹⁰

11. Sark¹¹

12. Switzerland¹²

13. Turkey¹³

14. United States of America (see DMG 077122)¹⁴

15. Yugoslavia (see DMG 070334)¹⁵.

1 SS (Barbados) Order 92, Sch, Art 5(1) & (2); 2 NI & II (Bermuda) Order 69, Sch, Art 9(3);
3 SS (Cyprus) Order 83, Sch, Art 4(1); 4 SS (I of M) Order 77, Sch 1, Art 2(1);
5 NI & II (Israel) Order 57, Sch, Art 8(3); 6 SS (Jamaica) Order 97, Sch, Art 5(2);
7 SS (Jersey & Guernsey) Order 94, Sch, Art 5(1); 8 SS (Malta) Order 96, Sch, Art 4(1)(a);
9 SS (Mauritius) Order 81, Sch 1, Art 4(2); 10 SS (Philippines) Order 89, Sch, Art 4(2);
11 SS Ben (PA) Regs, reg 12; 12 FA, NI & II (Switzerland) Order 69, Sch 1, Art 16(2);
13 NI & II (Turkey) Order 61, Sch, Art 17 & 21; 14 SS (USA) Order 84, Sch 1, Art 7(3);
15 FA, NI & II (Yugoslavia) Order 58, Sch, Art 25

Partially unfrozen Widow's Benefit

077122 The rate of WB is only **partially unfrozen** where the person

1. is resident in Barbados, Bermuda, Jamaica, Mauritius, Philippines or the United States of America **and**

2. entitlement to WB started before the agreement with that country came into force.

Guidance is at DMG 075832.

Isle of Man

077123 The effect of the agreement with the Isle of Man is that a person in the Isle of Man is treated as in GB¹. So the rate of BB paid to a surviving spouse or surviving civil partner in the Isle of Man can be increased by the general uprating.

1 SS (I of M) Order 77, Sch 1, Art 2(1)

European Community association and cooperation agreements

077124 The EC has association and cooperation agreements with a number of countries (see DMG 070335). None of these agreements allow the uprating of the rate of benefits paid to a person who is absent from GB in one of those countries.

077125 - 177129

Not entitled to uprating increases - effects 077130 - 077149

Spouse or civil partner entitled to RP when he/she died 077131

Initial BB 077132 - 077134

Succeeding benefit 077135 - 077136

Additional pension 077137

Dependency increases 077138 - 077149

077130 This part gives guidance on the date to which the rate of benefit should be linked for

- 1.** initial entitlement to BB (see DMG 077132)
- 2.** succeeding entitlement to BB (see DMG 077135)
- 3.** Additional Pension (see DMG 077137) **and**
- 4.** dependency increases (see DMG 077138).

Spouse or civil partner entitled to RP when he/she died

077131 As a general rule the rate of BB is linked to the date the deceased spouse or deceased civil partner became **entitled** to RP where

- 1.** he/she was entitled to Category A RP when he/she died **and**
- 2.** entitlement to WB/BB starts on or after 1.10.89.

Initial BB

077132 Where the surviving spouse or surviving civil partner is **not** ordinarily resident in GB, BB is restricted to the rate payable under the Uprating Order before the **earliest** of **either**

- 1.** the date on which the deceased became entitled to Category A RP if the surviving spouse or surviving civil partner was then not ordinarily resident in GB **or**
- 2.** the date of death if the surviving spouse or surviving civil partner was not then ordinarily resident in GB.

Example

1995 uprating	Husband entitled to Category A	1996 uprating	Husband dies	Date of Claim
4/95	31.12.95	4/96	14.6.96	15.8.96

WB is restricted to the 1995 uprating, the uprating before the husband became entitled to Category A RP.

077133 The rate of BB is restricted to the uprating before a surviving spouse or surviving civil partner ceased to be ordinarily resident in GB, where he/she was ordinarily resident in GB on the earlier of the two dates set out in DMG 077132¹.

1 SS Ben (PA) Regs, reg 5(3)(d)

077134 In deciding the rate of BB to be paid in DMG 077132 and DMG 077133 it does not matter

1. whether the deceased was ordinarily resident in GB **either** when he/she died or when he/she became entitled to RP **or**
2. that the surviving spouse or surviving civil partner is only entitled to BB from a later date because of a delay in claiming.

1992 uprating	Husband entitled to Category A	1993 uprating	Husband dies	1 st date of entitlement to WB	Date of Claim
4/92	31.12.92	4/93	14.6.936	21.6.95	21.6.96

Example

WB is restricted to the 1992 uprating, the uprating before her husband died. She is entitled to WB at the 4/92 rate from 21.6.95.

Succeeding benefit

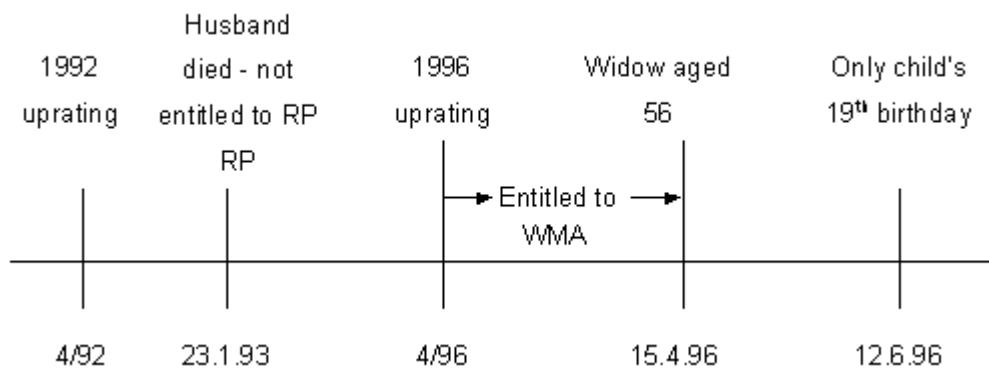
077135 Where one type of BB is succeeded by another, for example WMA by WP, the succeeding benefit is restricted to the same Uprating Order which applied to the original benefit.

077136 This is the case whether or not there was title to the succeeding benefit at the date of widowhood.

Example 1

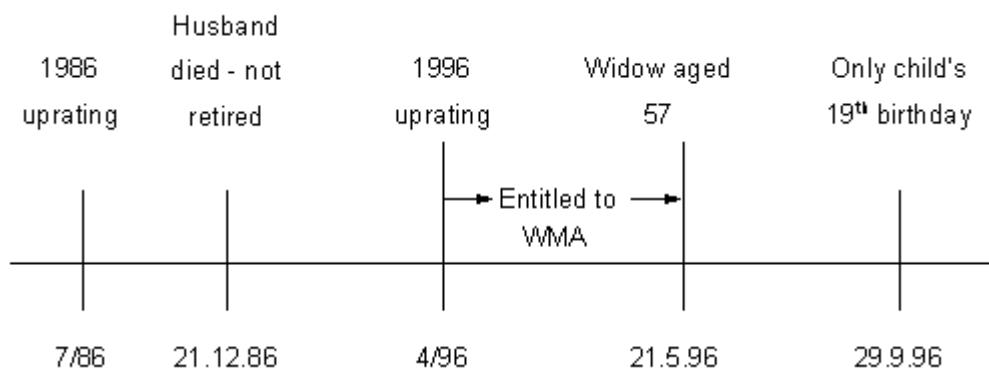
A woman widowed over age 45 was potentially entitled to WP at that date although not able to receive it until WMA ceases. A woman widowed aged 44 was not entitled to WP at that date but may become entitled if she is over that age when WMA ceases. In both cases the WP is restricted to the same uprating order as the WMA.

Example 2

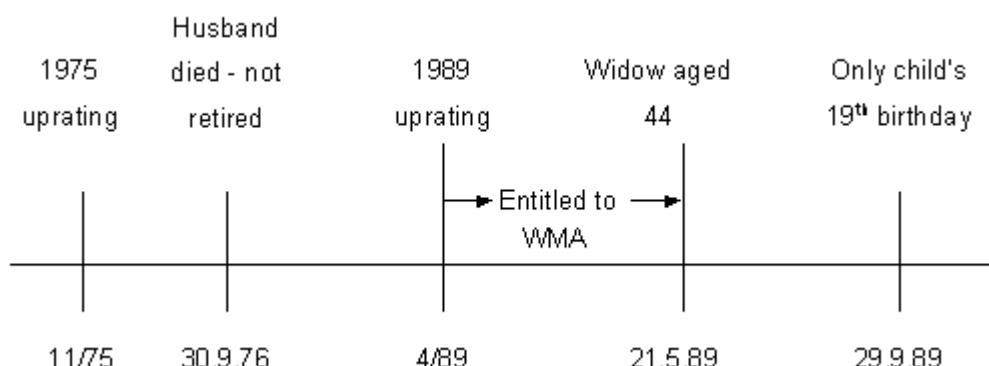


WP from 18.6.96 is restricted to the 1992 uprating.

Example 3



Because the widow was over 45 when her husband died she is entitled to WP from 1.10.96. This is restricted to the 1986 uprating.



Example 4

Because she was widowed before 11.4.88 she is entitled to age-related WP from 3.10.89 at the rate appropriate to age 44. This is restricted to the 1975 uprating.

Additional pension

077137 Any Additional Pension derived from the deceased spouse or deceased civil partner's earnings which is paid with WPA or Bereavement Allowance

- 1.** is restricted to the rate payable under the same Uprating Order as the WPA or Bereavement Allowance **and**
- 2.** is not restricted to the Uprating Order which applied to the deceased's Additional Pension.

Husband ceases to be ordinarily resident in GB	1994 uprating	Husband entitled to Category A	1995 uprating	Wife ceases ordinary residence in GB	1996 uprating	Husband dies	Widow claims Widows Benefit
11.11.93	4.94	11.11.94	4.95	1.1.96	4.96	12.6.96	4.7.96

Example

Husband's Additional Pension is restricted to the 1994 uprating.

Widow's Additional Pension is restricted to the 1995 uprating.

Dependency increases

077138 Any dependency increase is restricted to the same uprating as the personal benefit even though entitlement to the dependency increase may not have arisen until a later date.

1994 uprating	Husband dies widow pregnant	1995 uprating	Child born	1996 uprating	Entitlement to Child Dependency Increase	Child Dependency Increase
4.94	31.3.95	4.95	15.9.95	4.96	1.5.96	4.7.96

Example

WB and CDI restricted to the 1994 uprating.

077139 - 077149

Pro rata Bereavement Benefit 077150 - 077159

077150 A surviving spouse or surviving civil partner may be entitled to pro rata BB where

- 1.** either he/she is not entitled to BB under UK legislation alone or the rate of pro rata BB is higher than the rate paid under UK legislation alone **and**
- 2.** the deceased spouse or deceased civil partner was insured in the UK and another EEA country (see DMG 077161) **or** a country with which the UK has an agreement (see DMG 077220).

077151 - 077159

Pro rata Widow's/Bereavement Benefit under EU provisions 077160 - 077169

077160 A surviving spouse or surviving civil partner may be entitled to pro rata BB where

- 1.** he/she is within, or the deceased was within the personal scope of EU provisions¹ (see DMG 070050) **or**
- 2.** the deceased spouse or deceased civil partner has paid UK contributions and **either** the deceased has paid contributions, which count for survivor's benefit, in another EEA country or the deceased has been resident in another EEA country and that residence counts for survivor's benefit purposes.

1 Reg (EC) 883/04; Art 2

077161 A surviving spouse or surviving civil partner's entitlement to BB may consist of

- 1.** basic benefit (BPT, WPA or Bereavement Allowance)
- 2. AP and**
- 3. CDI.**

077162 The basic benefit can be paid at pro rata rate. To that must be added any entitlement to

- 1. AP and**
- 2. CDI.**

For the purposes of EU law CDI are family benefits (see DMG 070165).

077163 Although theoretically AP can be paid at pro rata rate, in practice pro rata AP is never paid.

1 Annex VIII

077164 When the record of UK contributions **and** the insurance record in other EEA countries has been obtained, the DM decides what insurance should be included in the pro rata rate of benefit.

077165 - 077169

Rate of Bereavement Benefit 077170 - 077189

[Method 1](#) 077172 -

[Method 2 - pro rata](#) 077173 - 077174

[Child Dependency Increase paid with Widowed Mother's Allowance](#) 077175

[Minimum age for Widow's Pension/Bereavement Allowance entitlement](#) 077176 - 077189

077170 The rate of BB paid to a surviving spouse or surviving civil partner who satisfies the conditions in DMG 077150 can be paid in two different ways. The higher of the two rates is payable¹.

1 Reg (EC) 883/04, Art 52(3)

077171 The calculation set out in method 2 (see DMG 077173) does not have to be made where the rate of BB using that method is **equal to** or **lower** than the rate of BB under method 1 (see DMG 077172)¹.

1 Reg (EC) 883/04 Art 52(4) UK

Method 1

077172 The DM should calculate the basic component of BB to which, if any, the claimant would be entitled under UK legislation alone, disregarding any insurance or residence which the deceased completed under the legislation of any other EEA country¹. This is the rate of BB to be awarded unless the rate calculated under DMG 077164 is higher².

1 SS CB Act 92, sec 37 & 38; sec 39(1) & (2); SS (Widow's Benefit & Retirement Pension) Regs, reg 6;
Reg ((EC) 883/04, Art 52(1)(a); 2 52(3)

Method 2 - pro rata

077173 The rate of BB is calculated in three stages.

Stage 1 - Addition

Add together all the periods of insurance (or residence, if entitlement in that country depends on periods of residence) in all the EEA countries where the deceased was insured and treat them as periods of insurance completed in the UK¹.

Stage 2 - Theoretical rate of Bereavement Benefit

Calculate the theoretical amount of BB which would be payable if all the insurance added together in Stage 1 had been paid in the UK². The theoretical rate of BB will be reduced if the surviving spouse or surviving civil partner became entitled to Bereavement Allowance between the ages of 45 and 55 (see Benefit Specific Guidance)³.

Stage 3 - Actual rate of Bereavement Benefit

The purpose of the calculation of the **actual** rate of BB is to decide the amount to be paid by each of the EEA countries where the late husband or late civil partner was insured⁴.

The rate of BB to be paid by the UK is⁵

$$\frac{\text{Periods of UK insurance}}{\text{total insurance}} \times \text{theoretical rate}$$

¹ Reg (EU) 883/04, Art 6; Art 51(3); 2 Art Art 52(1)(b)(I); 3 SS CB Act 92, sec 38(1) & 39(4);

⁴ Case 793/79, Menzies; 5 Reg (EU) 883/04 Art 52(1)(b); R(S) 3/85

Example

The widow's husband was insured in the UK for 1150 weeks and in Germany for 500 weeks. The total insurance is 1650 weeks.

If all that insurance had been paid in the UK the widow would be entitled to WP at 75% of the standard rate. At April 2013 figures this is £105.95.

The actual rate of WB to be paid by the UK is

1150 (UK insurance) x £105.95 (theoretical amount)

1650 (total insurance)

That is £73.84.

077174 The pro rata rate of WB can be paid even though that rate is less than 25% of the UK standard rate¹.

¹ SS (Widow's Benefit & Retirement Pension) Regs, reg 6(1)

Child Dependency Increase paid with Widowed Mother's Allowance

077175 CDI paid with WPA is a family benefit and entitlement is decided separately from the personal BB.

Minimum age for Widow's Pension/Bereavement Allowance entitlement

077176 The minimum age for entitlement to UK Bereavement Allowance is 45¹. A surviving spouse or surviving civil partner below that age is still not entitled to Bereavement Allowance even though the deceased was insured in another EEA country.

1 SS CB Act 92, s 39B

077177 - 077189

Pro rata insurance 077190 - 077194

Insured in one country for less than one year 077190 - 077191

Not insured in any country for one year 077192 - 077194

Insured in one country for less than one year

077190 An award of pro rata BB n

eed not be made if

- 1.** the period of insurance (or residence) in that country is less than one year (but see DMG 077191) **and**
- 2.** that insurance does not satisfy the conditions for entitlement to BB¹.

1 Reg (EC) 8823/04 Art 57(1)

077191 Insurance periods of less than a year are included in

- 1.** adding together all periods of insurance **and**
- 2.** calculating the theoretical amount.

They are not included in deciding the pro rata rate of BB¹.

1 Reg (EC) 883/04, Art 57(1)

Not insured in any country for one year

077192 The total insurance of a person from all the countries in which that person has been insured is treated as being completed in the country in which the person was last insured if¹

- 1.** that person has not been insured for one year in any country **and**
- 2.** BB would not be awarded in any country.

If the country where the person was last insured is the UK, that person will be entitled to BB if the total insurance is sufficient to satisfy the conditions of entitlement in the UK.

1 Reg (EC) 883/04, Art 57(3)

077193 - 077194

Uprating of pro rata Bereavement Benefit 077195 - 077199

077195 The pro rata fraction is not recalculated when the rates of benefit are increased¹. But the rate of BB is increased.

1 Reg (EC) 883/04, Art 59(2)

Example

On becoming entitled to UK WB the pro rata fraction was 1150/1650 (see DMG 077173). This meant that the actual rate of UK WB was £30.11. At the general uprating of benefit in April 1995 rates the full rate of WB was increased from £57.60 to £58.85.

The pro rata fraction remains the same but the actual rate being paid increases from £30.11 to £30.76.

The new calculation of the actual rate of WB is

$\frac{1150}{1650} \text{ (UK insurance)} \times \text{£44.14 (theoretical amount)}$

1650

that is £30.76.

077196 - 077199

Not entitled to Bereavement Benefit in all European Economic Area countries 077200 - 077204

077200 A surviving spouse or surviving civil partner may **not** be entitled at the same time to BB from every EEA country in which the deceased was insured. For example, each of those countries may have different minimum ages at which a surviving spouse or surviving civil partner can become entitled to BB (in the UK the minimum age for Bereavement Allowance is 45).

077201 The rate of pro rata BB is calculated by deciding which of the following are better for the claimant

1. using the insurance (or residence) only from more countries where the conditions for entitlement to RP are satisfied **or**

2. using the insurance (or residence) from all the EEA countries where the person has been insured¹.

1 Reg (EC) 883/04, Art 57(3)

077202 - 077204

Pro rata Bereavement Benefit under reciprocal agreements 077205 - 077219

Agreements with European Economic Area countries 077206 - 077207

Entitled to WB/BB without using agreement 077208 - 077209

Choosing not to use the agreement 077210 - 077211

Rate of BB 077212

Dependency increases 077213 - 077214

Insured for less than one year 077215 - 077216

Insured for less than six months 077217 - 077219

077205 A surviving spouse or surviving civil partner may be entitled to pro rata BB where the deceased was insured in both the UK and one of the following non EEA countries

1. Barbados¹

2. Bermuda²

3. Cyprus³

4. Israel⁴

5. Jamaica⁵

6. Jersey and Guernsey⁶

7. Malta⁷

8. Mauritius⁸

9. Philippines⁹

10. Switzerland¹⁰

11. Turkey¹¹

12. United States of America¹²

13. Yugoslavia¹³ (see DMG 070334).

1 SS (Barbados) Order 92, Sch, Art 16 & 22; 2 NI & II (Bermuda) Order 69, Sch, Art 11(1)(b) & (12);

3 SS (Cyprus) Order 83, Sch, Art 17(2) & (19); 4 NI & II (Israel) Order 57, Sch, Art 12(2) & 14(1);

5 SS (Jamaica) Order 97, Sch, Art 15 & 21; 6 SS (Jersey & Guernsey) Order 94, Sch, Art 18(2) & 23(1);

7 SS (Malta) Order 96, Sch, Art 25; 8 SS (Mauritius) Order 81, Sch 1, Art 12(2) & (16);

9 SS (Philippines) Order 89, Sch, Art 12(2) & 15(1); 10 FA, NI & II (Switzerland) Order 69, Sch 1, Art 12(1);

11 NI & II (Turkey) Order 61, Sch, Art 14(3) & 21; 12 SS (USA) Order 84, Sch 1, Art 12(2) & 12;

13 FA, NI & II (Yugoslavia) Order 58, Art 19(3) & 22

Agreements with European Economic Area countries

077206 A surviving spouse or surviving civil partner may be entitled to pro rata BB where the deceased

1. is not within the scope of EC provisions or acquired a right to benefit before EC provisions applied (see DMG 070320) **and**

2. was insured in both the UK and one of the countries listed in DMG 077207.

077207 Pro rata BB can be paid under the agreements with the following EEA countries

1. Austria¹

2. Finland²

3. Germany³

4. Iceland⁴

5. Norway⁵

6. Portugal⁶

7. Spain⁷and****

8. Sweden⁸.

1 SS (Austria) Order 81, Sch, Art 17(1) & 22(1); 2 SS (Finland) Order 84, Art 16(2) & 18;

3 FA, NI & II (Germany) Order 61, Sch 1, Art 20(3) & 26(1);
4 SS (Iceland) Order 85, Sch, Art 16 & 18; 5 SS (Norway) Order 91, Sch, Art 18 & 20(1);
6 SS (Portugal) Order 79, Sch, Art 16 & 19; 7 FA, NI & II (Spain) Order 75, Sch 16 & 19;
8 SS (Sweden) Order 88, Sch, Art 15 & 16

Entitled to WB/BB without using agreement

077208 A surviving spouse or surviving civil partner is **not** entitled to UK pro rata BB under the agreements with the countries set out in DMG 077209 if he/she is entitled to BB from the UK without using the agreement.

077209 DMG 077208 applies to the agreements with

1. Austria¹

2. Barbados²

3. Bermuda³

4. Cyprus⁴

5. Finland⁵

6. Iceland⁶

7. Israel⁷

8. Jamaica⁸

9. Jersey and Guernsey⁹

10. Malta¹⁰

11. Mauritius¹¹

12. Norway¹²

13. Philippines¹³

14. Portugal¹⁴

15. Sweden¹⁵

16. Switzerland¹⁶**and**

17. United States of America¹⁷.

1 SS (Austria) Order 81, Sch, Art 16; 2 SS (Barbados) Order 92, Sch, Art 15(1);
3 NI & II (Bermuda) Order 69, Sch, Art 11(5); 4 SS (Cyprus) Order 83, Sch, Art 16(1);
5 SS (Finland) Order 84, Sch, Art 15; 6 SS (Iceland) Order 85, Sch, Art 15;
7 NI & II (Israel) Order 57, Sch, Art 11(1); 8 SS (Jamaica) Order 97, Sch, Art 14(1);
9 SS (Jersey & Guernsey) Order 94, Sch, Art 17(1); 10 SS (Malta) Order 96, Sch, Art 18;
11 SS (Mauritius) Order 81, Sch 1, Art 11(1); 12 SS (Norway) Order 81, Sch, Art 17;
13 SS (Philippines) Order 89, Sch, Art 11(1); 14 SS (Portugal) Order 79, Sch, Art 16;
15 SS (Sweden) Order 88, Sch, Art 14; 16 FA & NI (Switzerland) Order 69, Sch 1, Art 12(3)(c);
17 SS (USA) Order 84, Sch 1, Art 10(1)

Choosing not to use the agreement

077210 A person can choose **not** to use the provisions of the agreements between the UK and Turkey¹ or Yugoslavia² (see DMG 070334) in establishing entitlement to BB.

1 NI & II (Turkey) Order 61, Sch, Art 16; 2 FA, NI & II (Yugoslavia) Order 58, Sch, Art 21

077211 A person who decides not to use the provisions of the agreement will **not** be entitled to pro rata BB.

Rate of BB

077212 The pro rata rate of BB is calculated in the same way as under EC provisions (see DMG 077170 - 077172). A separate pro rata calculation is needed if the deceased was insured in more than one of the countries listed in DMG 077205. The higher rate of pro rata BB is paid.

Dependency increases

077213 The rate of CDI is also paid at pro rata rate where the basic benefit is paid at pro rata rate under the agreements with

1. Barbados

2. Bermuda

3. Cyprus

4. Israel

5. Jamaica

6. Jersey

7. Malta

8. Switzerland

9. Turkey and

10. Yugoslavia (see DMG 070334).

077214 CDI is **not** paid at pro rata rate under the agreements with

1. Mauritius¹

2. Philippines²and

3. United States of America³.

Under these agreements the **full rate** of any CDI to which the person is entitled is added to the pro rata rate of basic pension.

1 SS (Mauritius) Order 81, Sch 1, Art 12(5) & 16(1); 2 SS (Philippines) Order 89, Sch, Art 12(4)(d) & 15(1);

3 SS (USA) Order 84, Sch 1, Art 11(6) & 12

Insured for less than one year

077215 If the deceased spouse or deceased civil partner was insured for less than one year in the UK that insurance is treated as paid to the other country. This applies to the agreements with the following countries

1. Barbados¹

2. Cyprus²

3. Jamaica³

4. Jersey and Guernsey⁴

5. Malta⁵

6. Mauritius⁶ and

7. Philippines⁷.

1 SS (Barbados) Order 92, Sch, Art 16(3); 2 SS (Cyprus) Order 83, Sch, Art 17(3);

3 SS (Jamaica) Order 97, Sch, Art 15(3); 4 SS (Jersey & Guernsey) Order 94, Sch, Art 18(3);

5 SS (Malta) Order 96, Sch, Art 15; 6 SS (Mauritius) Order 81, Sch 1, Art 12(3);

077216 In the agreements with Barbados and Cyprus, insurance is transferred between GB and Jersey or Guernsey. If there is still no entitlement to RP the insurance is transferred to the other country.

Insured for less than six months

077217 Contributions and credits paid to the UK by the deceased spouse or deceased civil partner are treated as being paid to **Yugoslavia** where he was insured

1. in both the UK and Yugoslavia and

2. for less than six months in the UK¹.

1 FA, NI & II (Yugoslavia) Order 58, Sch, Art 19(4)

077218 Pro rata BB is not paid by the UK where

1. the deceased was insured in both the UK and Turkey and

2. paid less than six months contributions in the UK¹.

1 NI & II (Turkey) Order 61, Sch, Art 14(4)

077219

New Zealand 077220 - 077229

[Entitlement to WB/BB](#) 077220

[End of entitlement to increased BB](#) 077221

[Permanently and ordinarily resident](#) 077222 - 07729

Entitlement to WB/BB

077220 A person who is entitled to BB because residence in New Zealand has been taken into account under these agreements remains entitled whilst permanently resident (see DMG 077222) in the UK or in the EEA or Switzerland¹.

1 SS (New Zealand) Order 83, Sch, Art 11

End of entitlement to increased BB

077221 Entitlement to the **increased** rate of BB ends where

- 1.** a person is entitled to BB because of the Agreement **and**
- 2.** that person is no longer permanently resident (see DMG 077222) in the UK¹.

The surviving spouse or surviving civil partner remains entitled to BB based on the UK record.

1 SS (New Zealand) Order 83, Sch, Art 1(1) & 11(4)

Permanently and ordinarily resident

077222 The DM decides whether a person is resident in the UK.

077223 Under the New Zealand Agreement a person is permanently resident in the UK if

- 1.** that person is **ordinarily resident** (see DMG 070769) in the UK¹**and**
- 2.** the absence from the UK is only temporary (see DMG 070853)².

1 SS (New Zealand) Order 83, Sch 1, Art 1(1)(5); 2 Art 11(4)

077224 - 077229

Overlap under reciprocal agreements 077230 - 077234

[Introduction](#) 077230 - 077233

[Northern Ireland](#) 077234

Introduction

077230 UK provisions do **not** provide for UK BB to be adjusted where BB is also being paid by a country with which the UK has an agreement.

077231 BB paid on a pro rata basis is **not** adjusted because it overlaps with pro rata BB paid by the other country. Each country will pay either

- 1.** pro rata BB **or**
- 2.** if higher, the rate payable under its own legislation.

077232 The countries with which the UK has agreed to pay pro rata BB are listed at DMG 077205. Pro rata BB is **not** paid under the agreement with New Zealand.

077233

Northern Ireland

077234 BB is paid only by the territory where the person is residing. A person who has paid contributions in GB or Northern Ireland has only one contribution record. That record is transferred if the person moves to live in another territory¹.

1 SS (I of M) Order 77, Sch 1, Art 3 & 4; SS (N Ireland Reciprocal Arrangements) Regs 76, Sch 1, Art 4 & 5

Winter Fuel Payments 077235

077235 A SF WFP is a single annual payment based on an individual's circumstances during a specified qualifying week.

Subpages

- Entitlement 077236 - 077244
- WFPs and EU Law 077245
- The Residence Requirement 077246 - 077248
- Claims for winters of 97-98, 98-99 & 99-00 077249
- Backdated claims for 2000-2001 to 2011-2012 077250 - 078059

Entitlement 077236 - 077244

077236 Subject to certain exceptions¹, a person is normally entitled to a SF WFP where he or she

- 1.** has attained the qualifying age for SPC (see DMG 77032) during or before the qualifying week **and**
- 2.** satisfies the residence requirement² described in DMG 073246 for at least one day in the qualifying week³.

1 SFWFP Regs 2000, reg 3; 2 reg 2(1)(a); 3 reg 2(1)

077237 The qualifying week in any year is the week beginning on the third Monday in September of that year¹.

1 SFWFP Regs 2000, reg 1(2)

077238 Detailed guidance on WFPs is at DMG Chapter 39, and DMs should refer to DMG 070769 for the meaning of ordinary residence.

Reciprocal agreements

077239 WFPs are not covered in the provisions of any reciprocal agreements with other countries, including those with the Crown Dependencies (Jersey, Guernsey and the Isle of Man).

077240 - 077244

WFPs and EU Law 077245

077245 On 21.7.11, the CJEU made a decision in the case of Stewart (“the Stewart judgment”)1 which changed the way the relevant EU regs applied in the case of WFPs. With effect from 16.9.13, the SFWFP regs were amended to incorporate this EU case law.

Note: Guidance on the position prior to 16.9.13 is given in Appendix 1 to this Part of DMG Chapter 07.

1 Stewart v Secretary of State for Work and Pensions, Case C-503/09

The Residence Requirement 077246 - 077248

Deciding whether there is a genuine and sufficient link 077248

077246 To be entitled to a WFP, a person must, in or before the qualifying week, have attained the qualifying age for WFP **and** must be

1 ordinarily resident in GB **or**

2 habitually resident in

2.1 Austria **or**

2.2 Belgium **or**

2.3 Bulgaria **or**

2.4 Croatia **or**

2.5 Czech Republic **or**

2.6 Denmark **or**

2.7 Estonia **or**

2.8 Finland **or**

2.9 Germany **or**

2.10 Hungary **or**

2.11 Iceland **or**

2.12 Ireland **or**

2.13 Italy **or**

2.14 Latvia **or**

2.15 Liechtenstein **or**

2.16 Lithuania **or**

2.17 Luxembourg or

2.18 The Netherlands or

2.19 Norway or

2.20 Poland or

2.21 Romania or

2.22 Slovakia or

2.23 Slovenia or

2.24 Sweden or

2.25 Switzerland.

1 SFWFP Regs, reg 2(1)(a)(ii), Sch

Example 1

Fatou, who has worked all her life in GB and has reached SPC age, moves in August 2015 to live permanently in Italy. In October 2015 she claims WFP for winter 2015/16. The DM considers she satisfies the conditions of entitlement in the qualifying week and pays her WFP.

Example 2

Michael is habitually resident in Spain and has claimed and been entitled to WFP in the past. He makes a claim for WFP for winter 2015/16. The DM decides that Michael is not entitled to WFP as Spain is not included in the list of qualifying countries.

077247 A person will **not qualify** for a WFP where they are habitually resident in an EEA state listed in DMG 077246 **unless**¹

1. the EU regulations on the co-ordination of social security² apply to them **and**

2. they have a genuine and sufficient link to the UK(see DMG 077248 for guidance on this).

Note: The “old” EU regulations on the co-ordination of social security (Council Regulation (EEC) 1408/71) continue to apply in certain transitional cases.

1 SFWFP Regs, reg 2(4); 2 Reg (EEC) 1408/71 & Reg (EC) 883/04

Deciding whether there is a genuine and sufficient link

077248 DMs will need to make a balanced judgement based on all the facts of the case. With regard to WFPs the following will be relevant factors

1. Personal factors: for example whether the claimant is receiving a UK benefit, for example RP

Note: where the claimant has a spouse's or survivor's pension that will be a relevant factor but is not sufficient in itself where the claimant has never lived in the UK or been a UK worker

2. Periods of residence or work in the UK, for example

2.1 Where the claimant has spent a significant part of their life in the UK

2.2 Where the claimant has worked and paid UK NI contributions as a result of that work

3. Family factors for example where the claimant is the spouse or civil partner of a person with a genuine and sufficient link with the UK that will be a relevant but not conclusive factor in deciding whether the claimant has a genuine and sufficient link.

Note: this is not a checklist. DMs will need to decide how much weight is to be given to each relevant factor in coming to an overall determination of whether there is a genuine and sufficient link to the UK (see DMG Chapter 01 for more guidance on the principles of decision-making).

Example 1

Margaret claimed a Winter Fuel payment for the winter of 2013/2014 in December 2013. She was born in the UK on 15.8.50 but moved with her family to Belgium in 1965 and has never worked or paid NI contributions in the UK. She does not receive any UK benefit, and her parents are both dead. The DM decided that Margaret had not shown a sufficient link to the UK and decided that there was no entitlement to a WFP because the residence requirement (as set out in DMG 077246 to 077248) was not satisfied

Example 2

John claimed a Winter Fuel payment for the winter of 2013/14 in November 2013. He was born in the UK on 25.7.49. Having worked and paid UK Class 1 contributions for 38 years, John retired to Italy in August 2010. The DM decided that John had a genuine and sufficient link to the UK, that he satisfied the residence requirement and was entitled to a WFP for the winter of 2013/14.

Claims for winters of 97-98, 98-99 & 99-00 077249

077249 No payment of a WFP can be made for the winters of 1997 to 1998; 1998 to 1999; and 1999 to 2000 unless a claim for it is made on or before 31.3.14¹.

1 SFWFP Regs, reg 3(3)

Backdated claims for 2000-2001 to 2011-2012 077250 - 078059

077250 If, a claimant requests that a claim be backdated, the normal time bar rule in the WFP regs will apply¹. This requires that a claim must be received by 30 March for the previous winter.

Note: the final date for claiming has been changed to “on or before 31st March”² with effect from March 2013.

1 SFWFP Regs, reg 3(1)(b); 2 Social Security (Miscellaneous Amendments) Regs 2012, reg 18

Example

After a 38 year working life in the UK, Bill retired and moved permanently to Portugal in June 2008. In February 2012, he claimed a WFP for the winter of 2011/2012. He stated that he wished also to make a claim for the winter of 2010/2011 saying that he had attained the age of 60 on 25.4.2009. The DM decided that Bill was not entitled to a WFP for 2010/11 because he had not made a claim for it before 31st March 2011 and therefore did not satisfy the conditions in the regs¹.

1 SFWFP Regs, reg 3(1)(b)

077251 - 078059

Appendix 1 WFPs – pre 21.7.11 Guidance

Introduction

1. The domestic law requirement that the claimant must be ordinarily resident in GB in the qualifying week is subject to the effect of EU law where this is applicable.
2. On 21.7.11, the CJEU made a decision in the case of Stewart (“the Stewart judgment”) which changed the way the relevant EU regs applied in the case of WFPs. Prior to the Stewart judgment, the Department’s position was that a person residing in another EU state, Iceland, Liechtenstein or Norway (“the EEA states”) or Switzerland who had qualified for a WFP before ceasing to be ordinarily resident in GB could continue to receive WFPs. However entitlement could not be acquired for the first time by an EEA national who was not ordinarily resident in GB.
3. This Appendix gives guidance on the legal position from 21.7.11 (the date of the Stewart judgment) up until the law change that took effect from 16.9.13. DMs who are uncertain what law applies to a particular case should seek guidance from DMA (Leeds) in the manner described in Memo DMG 4/19.

First claim from a person residing in the EEA

4. Where the claimant comes within the personal scope of the EU regulations relating to the co-ordination of social security systems (“the EU co-ordination regs”)¹, the ordinary residence test is not to be applied. However claimants will have to demonstrate a “genuine and sufficient link” to the UK’s social security system.

1 Reg (EEC) 1408/71 & Reg (EC) 883/04

Deciding whether there is a “genuine and sufficient link”

5. DMs will need to make a balanced judgement based on all the facts of the case. With regard to WFPs the following will be relevant factors

1. Personal factors: for example whether the claimant is receiving a UK benefit, for example RP

Note: where the claimant has a spouse’s or survivor’s pension, that will be a relevant factor but is not sufficient in itself where the claimant has never lived in the UK or been a UK worker

2. Periods of residence or work in the UK, for example

2.1 Where the claimant has spent a significant part of their life in the UK

2.2 Where the claimant has worked and paid UK NI contributions as a result of that work

3. Family factors for example where the claimant is the spouse or civil partner of a person with a genuine and sufficient link with the UK that will be a relevant but not conclusive factor in deciding whether the claimant has a genuine and sufficient link.

Note: this is not a checklist. DMs will need to decide how much weight is to be given to each relevant factor in coming to an overall determination of whether there is a genuine and sufficient link to the UK's social security system (see DMG Chapter 01 for more guidance on the principles of decision-making).

Example 1

Margaret claimed a Winter Fuel payment for the winter of 2011/2012 in December 2011. She was born in the UK on 15.8.50 but moved with her family to Spain in 1965 and has never worked or paid NI contributions in the UK. She does not receive any UK benefit, and her parents are both dead. The DM decided that Margaret had not shown a sufficient link to the social security system of the UK and decided that there was no entitlement to a WFP.

Example 2

John claimed a Winter Fuel payment for the winter of 2011/12 in November 2011. He was born in the UK on 25.7.49. Having worked and paid UK Class 1 contributions for 38 years, John retired to Italy in August 2010. The DM decided that John had a genuine and sufficient link to the social security system of the UK and so awarded a WFP.

Persons awarded a WFP while ordinarily resident in GB

6. Where a person has received a WFP while ordinarily resident in the UK and then moves to an EEA country or Switzerland, DMs will have to decide whether the claimant has a genuine and sufficient link to the UK's social security system.

Example 1

Patricia was born on 18.10.40. Since 2000 she has been entitled to a full, category A RP. WFPs were awarded each winter from 2001/2002 until 2011/2012. In January 2012, Patricia moved to live permanently in Greece and, in December 2012, she claimed a WFP for the winter of 2012/2013. The DM decided that Patricia had a genuine and sufficient link to the UK and made an award.

Example 2

Oscar was born in Sweden in 1938. In January 2009 he came to live permanently in the UK with his Swedish son and daughter, although he was not dependent on them.

The DM accepted that Oscar was ordinarily resident in GB and that he had attained the qualifying age by the qualifying week and awarded WFPs for 2009/2010 and 2011/2012. In March 2012, Oscar decided to return to Sweden for the rest of his life. In January 2013, he claimed a WFP. The DM decided that,

although Oscar had some links with the UK, he did not have a genuine and sufficient link to the UK's social security system. He therefore decided that Oscar was not entitled to a WFP for the winter of 2012/2013.

Old Cases

Backdated claims for 2000/2001 to 2011/2012

7. If, a claimant requests that a claim be backdated, the normal time bar rule in the WFP regs will apply¹. This requires that a claim must be received by 30 March for the previous winter.

Note: the final date for claiming has been changed to "on or before 31st March"² with effect from March 2013.

1 SFWFP Regs, reg 3(1)(b); 2 Social Security (Miscellaneous Amendments) Regs 2012, reg 18

Example

After a 38 year working life in the UK, Bill retired and moved permanently to Portugal in June 2008. In February 2012, he claimed a WFP for the winter of 2011/2012. He stated that he wished also to make a claim for the winter of 2010/2011 saying that he had attained the age of 60 on 25.4.2009. The DM decided that Bill was not entitled to a WFP for 2010/11 because he had not made a claim for it before 31st March 2011 and therefore did not satisfy the conditions in the regs¹.

1 SFWFP Regs, reg 3(1)(b)

New Claims for 97/98, 98/99 and 99/00

8. Time limits as now set out in the WFP regs do not apply to the first three years of the scheme. The CJEU's decision means that claims for the winters of 97/98, 98/99 and 99/2000 should be paid provided the claimant

1. came within the scope of the EU co-ordination regulations¹**and**

2. (at the relevant time) had a genuine and sufficient link to the UK's social security system **and**

3. satisfied the other conditions of entitlement which applied at the time

They do not have to have acquired entitlement in GB first.

Note: The law changed on 16.8.13 with the effect that no payment of a WFP can be made unless a claim is made for it before 31.3.14

Reconsideration of old disallowances

9. Claimants may apply for a disallowance for a previous winter to be reconsidered in the light of the Stewart judgment (or simply because they consider it was wrong in law). The following paragraphs set out how DMs should deal with these requests.

Decisions made on or after 21.7.11

10. If the claimant asks for a disallowance decision made on or after 21.7.11 to be reconsidered in the light of the Stewart judgment, then, provided the DM is satisfied that

- 1.** the claimant was within the personal scope of the EU regs¹**and**
- 2.** the claimant had a genuine and sufficient link to the UK's social security system **and**
- 3.** the other conditions of entitlement were satisfied,

the disallowance should be revised on the grounds of official error² and an award made. In these circumstances, if an appeal is pending, that appeal can be lapsed³.

¹ Reg (EEC) 1408/71 or Reg (EC) 883/04; 2 SS CS (D&A) Regs, reg 3(5)(a); 3 SS Act 98, s 9(5)

Decisions made before 21.7.11

11. In these cases revision on the grounds of official error is not available because the definition of "official error"¹ specifically excludes an error of law found to have been such by a subsequent decision of a court (which includes the CJEU). So, unless, exceptionally, some other ground of revision is available, the DM will have no grounds to revise the disallowance.

¹ 1 SS CS (D&A) Regs, reg 1(3)

12. The DM should then go on to treat the claimant's request for reconsideration as also being an application for supersession. However he should decide not to supersede. This is because, although an error in law is a ground for supersession¹, the effective date is the date of the application² and so any possible supersession can have no effect on the disallowance.

¹ 1 SS CS (D&A) Regs, reg 6(2)(b); 2 SS Act 98, s 10(5)

13. The DM should notify the claimant that he has decided not to revise or supersede the disallowance because there are no grounds in law for doing either.

Rights of Appeal

14. There is no right of appeal against a decision not to revise and only a decision not to revise in response to an in time application for an "any grounds" revision extends the

time limits for appealing¹. There is however a right of appeal against the decision not to supersede². Accordingly the process described in paragraphs 11 and 12 above will produce an appealable decision – normally a decision not to supersede.

Note: see paragraph 15 below for what to do if an appeal is pending.

1 TP (FtT) (SEC) Rules, rule 23(2) & Sch 1, subpara (c) of the first entry; 2 SS Act 98, s 12(1)

Appeals to the FtT

15. Where an appeal has already been admitted by a FtT because it was made within the time limits for appeals then

- 1.** where the disallowance under appeal was made after 21.7.11, the DM can revise on the grounds of official error and lapse the appeal
- 2.** where the disallowance under appeal was made before 21.7.11, the DM will need to allow the appeal to go forward for a decision by the FtT. In these cases there is no point in going through the process relating to requests for reconsideration because this will not have any effect on the decision the FtT can make.

FtT Decisions Already Made

16. The DM has no power to revise or supersede decisions of the FtT on the grounds of error of law. The only remedy for the claimant in such a case will be for them to apply for permission to appeal to the UT. Such an application may well be late in which case the claimant will need to apply for an extension of time for the application for permission.

The content of the examples in this document (including use of imagery) is for illustrative purposes only