



## EUROPEAN COMMISSION

Employment, Social Affairs and Equal Opportunities DG

Social Protection and Integration

Coordination of Social Security Schemes, Free Movement of Workers

Brussels, 26.01.2010\* 01175  
EMPL/E/3 EC/ns D(2010) 1449

Mr David Burrage  
British Expatriates Association  
david@ukgovabusesexpats.co.uk

Dear Mr Burrage,

Thank you for your email of 1 December 2009 concerning the entitlement to Disability Living Allowance, Attendance Allowance and Carer's Allowance under the UK social security system.

I apologise for the late reply which is due to the large amount of correspondence that we are receiving in relation to this issue.

In your letter, you address the issue of reinstatement of the Disability Living Allowance, Attendance Allowance and Carer's Allowance to claimants and of the application of the jurisprudence of the European Court of Justice. You also inform us about national jurisprudence explaining that a UK judge has referred the matter to the European Court of Justice. Finally, you ask us to keep you informed of the developments of the infringement case open by the Commission against the UK for the "past presence test" requirement for the granting of these benefits.

As regards this latter point, I would like to inform you that we are aware of the difficult situation of a great number of people in need of care and I can assure you that the Commission is doing its utmost to protect the rights of EU citizens stemming from Community law on coordination of social security systems linked to this issue.

You could find more information about the launch of this infringement procedure in our website under the news section of 23 November 2009 at:

<http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=643&furtherNews=yes>

At the moment we write you, Commission services have received the reply of the UK authorities and will analyse it. However, please be informed that the purpose of this action is to ensure the proper functioning of Community law in the field of social security. Indeed the aim is not to intervene in, and to correct an individual case, which must be done by the individual concerned himself and by the legal means provided for under national law.

In particular as regards the reinstatements of the payment of the above mentioned benefits and the application of the jurisprudence of the European Court of Justice I would like to stress the following. Liability for loss and damage caused to individuals as a result of breaches of Community law attributable to a national public authority constitutes a principle, inherent in the system of the EC Treaty, which gives rise to obligations on the part of the Member States (e.g. C-118/00 *Larsy*). This means that it is for each Member State to ensure that individuals obtain reparation for loss and damage caused to them by non-compliance with Community law.

Therefore, if your rights under community law or the rights under community law of the people you represent in your association were not respected, we recommend that all of you appeal for any possible compensation and damage. In this context, it must be remembered that it is for the national court to apply Community law in full and to protect the rights that it confers on individuals, if necessary by not applying a provision where its application, in the circumstances of the case before it, would lead to a result contrary to Community law (eg. Case C-290/00 *Duchon*).

Yours sincerely,

A handwritten signature in black ink, consisting of a vertical line with a small loop at the top and a long, thin tail extending downwards.

Jackie MORIN  
Head of Unit