



EUROPEAN COMMISSION

Employment, Social Affairs and Inclusion DG

Employment and Social Legislation, Social Dialogue

Free Movement of Workers Coordination of Social Security Schemes

Brussels,

EMPL/E/3 EC/dv (2011)

Please mention the Ares reference located at the top-right corner

Mr David Burrage

British Expatriates Association

david@ukgovabusesexpats.co.uk

Dear Mr Burrage,

Thank you for your email of 26 February 2011 on reinstatements and revision of decisions for withdrawal of Disability Living Allowance (DLA), Attendance Allowance (AA) and Carer's Allowance (CA) as well as on the application of the jurisprudence of the Court of Justice of the European Union (CJ).

We already exchanged a number of correspondences on these issues and we illustrated in particular the *Larsy*, *Duchon* and *Kühne & Heitz NV* cases of the CJ which are relevant for these issues.

We will look again into your query in light of the further information provided and therefore please do forward us a copy of the submission by the Secretary of State to oppose reinstatement of DLA that you mention in your last email.

As regards the infringement procedure against the UK for the "past presence test" condition for entitlements to DLA, AA and CA, last March UK authorities informed the Commission that they had decided to regard some of the EU citizens concerned as meeting the past presence test and therefore as entitled to these UK benefits. However, the Commission sent a reasoned opinion on 28 June 2010 concerning those persons not covered by that UK decision. Please find enclosed the relative press release.

In the meantime, a preliminary ruling addressing, among other issues, the UK past presence test has been registered at the Court¹. The case is currently pending and the Commission looks forward to a solution being found for the other disabled persons concerned.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Jackie MORIN', with a vertical line extending downwards from the end of the signature.

Jackie MORIN
Head of Unit

Annex: press release IP/10/799

¹ Case C-503/09: Reference for a preliminary ruling from Upper Tribunal (Administrative Appeals Chamber) (United Kingdom) made on 4 December 2009 - Lucy Stewart v Secretary of State for Work and Pensions, OJ C 37 of 13.02.2010, p.23.

Brussels, 24 June 2010

Social security: EU takes action to guarantee care benefits for Britons abroad

The European Commission has sent a formal request to the United Kingdom to pay care benefits to Britons – often pensioners – residing abroad in accordance with its obligations under EU law. Under EU rules, Disability Living Allowance, Attendance Allowance and Carer's Allowance are considered 'sickness cash benefits', which UK citizens resident in another EU country are also entitled to receive. The UK authorities now have two months to respond to the request, which takes the form of a 'reasoned opinion' under EU infringement procedures. In the absence of a satisfactory response from the UK authorities, the Commission may refer the matter to the EU's Court of Justice.

The right to live and work in any other European country is a fundamental right of the EU. As part of this, the EU guarantees people the right to social security coverage if they move elsewhere in Europe.

In the UK system, Disability Living Allowance, Attendance Allowance and Career's Allowance are benefits which provide protection for people in need of personal care and people who look after them. Under EU rules on coordination of social security, UK citizens are entitled to receive these benefits when they are resident in another EU country.

However, in some cases, and contrary to the principle of free movement, the UK applies conditions on residence for the three benefits. In particular, among other requirements, the benefits can be conditional on the claimant having spent 26 of the previous 52 weeks in the UK (past presence test). This effectively contravenes the provisions of the EU system for coordinating social security benefits and infringes the rights of citizens living in another EU country.

Background

The Court of Justice of the European Union has ruled (in case C-299/05 on 18 October 2007) that Disability Living Allowance, Attendance Allowance and Career's Allowance count as sickness cash benefits. They are therefore exportable according to EU provisions on coordination of social security (EU Regulation 1408/71 and Regulation 883/04).

Further information

Your social security rights in the EU

<http://ec.europa.eu/social/main.jsp?catId=26&langId=en>