

ACTION TO TAKE ONCE COMPETENCY HAS BEEN DECIDED

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INTRODUCTION

- 1 This memo expands the guidance for DMs on the approach to take to cases where a decision on competency has been reached.

THE DM DECIDES THAT THE UK IS THE COMPETENT STATE FOR THE PAYMENT OF CASH SICKNESS BENEFITS

- 2 Where the DM decides that the UK is the competent state to pay cash sickness benefits to a person, the DM should then go on to consider whether the relevant domestic conditions of entitlement are met.

THE DM DECIDES THAT THE UK IS NOT THE COMPETENT STATE FOR THE PAYMENT OF CASH SICKNESS BENEFITS

Scenario one: Where there is no acceptable evidence of a dispute regarding competence between member states

- 3 Where the DM decides that the UK is not the competent state they should:
1. refuse the claim **and**
 2. immediately forward the claim to the member state the DM considers is competent¹

1 Art 81 Reg (EC) 883/04; [2015] AACR 26

Scenario Two: Difference of opinion between member states as to competence

- 4 Where there is a difference of opinion between the UK and one or more other Member States as to the identification of the State competent to provide cash benefits to a person, then either the
1. state where the claimant resides **or**
 2. member state where the claim was first made (if the claimant does not reside in any of the member states concerned in the dispute)

will provide cash benefits to that person on a provisional basis, provided that person meets the relevant domestic eligibility criteria¹.

1 Reg (EC) 987/09 Art 6(2)

Note: Competency is not contingent on the other member state having a similar benefit to the one applied for by the claimant. Therefore the position regarding competence will not be altered if the other member state does not have a similar benefit to the one applied for by the claimant. Further, payment on a provisional basis will not need to be made in these circumstances.

- 5 Should a dispute regarding competence arise between the UK and another member state the DM should not await
1. an appeal **or**
 2. the outcome of an appeal
- before making provisional payments¹.

Resolving the dispute

- 6 Where no agreement can be reached between the member states as to who is competent the DM should refer the matter to DMA Leeds. DMA Leeds will liaise with policy and legal services to decide whether to refer to the Administrative Commission¹.

1 Reg (EC) 987/09 Art 6(3)

- 7 The Administrative Commission will try to reconcile the dispute within 6 months¹.

1 Reg (EC) 987/09 Art 6(3)

- 8 Where the UK has paid benefit on a provisional basis and the Administrative Commission decides another member state is competent that member state will reimburse the UK benefits paid¹.

1 Reg (EC) 987/09 ; Art 73

ANNOTATIONS

Please annotate the number of this memo (27/15) against the following DMG paragraphs: [071700](#) and [071765](#)

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: November 2015

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