Disability Law Service

Offering free, confidential legal advice and representation for disabled people

Can I Take my Benefits Abroad?

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Introduction

Different benefits have different rules and some benefits can be taken to some countries but not others. In this factsheet we examine the benefits most commonly dealt with at the Disability Law Service. Whether or not you will be able to keep receiving your benefit when you go abroad will often depend on two factors. The first is whether your absence is classed as temporary or permanent. The second is the country that you are going to as there are different rules for different countries. First we will examine the issue of Temporary or permanent residence and then we will look at the rules for European Economic Area countries.

We will then finish off with looking at the rules surround benefits for Non-European Economic area countries. If you decide to go abroad and wish to take your benefits abroad then it is best practice to inform the Department for Work and Pensions (DWP) which administrates your benefit so that you can make sure there have been no recent policy or law changes and that they are happy for

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you to receive your benefit abroad. This can save unnecessary difficulties and you will be able to iron out any possible problems before you arrive in your new country and plan with confidence. For details on benefits not mentioned, ring our advice line on **020 7791 9800** or see the 'Migration and Social Security Handbook' published by the Child Poverty Action Group. You can also look at the main DWP document detailing benefits entitlement abroad 'Social Security Abroad (NI38)'

Warning:

Please make sure you contact the DWP before making any decision as the rules change and you do not want to be in another country when the DWP decide to stop your benefits. If you think it may be wrong in its advice then contact our advice line or contact Community Legal Advice, web: www.clsdirect.org.uk or tel: 0845 345 4 345.

Temporary or Permenant Absence

Temporary absence is not defined in law. Guidance comes in case law from the courts and the Social Security Upper Tribunal. Every case has to be looked at

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individually. The three most important factors that will be considered are:

- Your intention when going abroad;
- The length of your absence; **and**
- The reason for your absence.

It is up to you to prove that your absence is temporary, rather than the Benefits Agency having to prove that it is not. The fact that you do not have a return date does not mean that your absence is permanent but having return tickets means it should be viewed as temporary. The longer you are away the more difficult it will be to prove it is temporary. The nature of an absence can change over time. If you extend the length of your stay, the DWP may consider that the length of your stay that was considered as temporary may come to be seen as permanent.

These are the factors that the DWP will take into account when you contact it and it has to make a decision as to whether you are eligible to continue receiving benefit and these are also considerations that the tribunal will take into account if you have to take your issue to a tribunal. If you go abroad for a short stay then you may have problems reapplying for benefits if you stay longer than 26 weeks

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depending upon the benefit as you may fail the residence tests.

European Economic Area Countries

Certain more generous rules apply if you are moving to a country within the European Economic Area (EEA). A list of countries which are included in the EEA are included below. If you are moving to one of these countries then European Community (EC) law will apply. If there is a conflict between EC law and UK social security law, EC law will override UK law.

These more generous rules apply to EEA nationals who have been employed or self-employed, stateless persons, students or refugees. They also apply to family members of those three groups who are dependants.

EEC area countries include:

<u>EU Countries</u>

Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia,

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Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland and the UK (including Gibraltar for this purpose);

EEA Countries

Iceland, Liechtenstein, Norway and all EU member countries.

Statutory Sick Pay (SSP)

As for non-EEA countries.

Incapacity Benefit

Generally short-term Incapacity Benefit can be paid in EEA countries but you need to get DWP agreement before you leave and the reason for this is to obtain medical treatment.

Long term Incapacity Benefit (the rate of IB paid after 52 weeks of incapacity) can be paid in EEA countries. Long term benefit is subject to age limits, i.e. it can be claimed

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up to age of 65 when it becomes short term Incapacity Benefit.

Severe Disability Allowance (SDA)

SDA like Long term IB can be paid in EEA countries.

Disability Living Allowance (DLA)

DLA can be taken abroad for up to 26 weeks if you are going for short temporary vacation. The rules are different if you decide to move abroad. Claimants of the DLA (Care Component) can now continue to claim their benefits in another EEA member state if they formerly lived in UK, the benefit can also be claimed by a family member provided that UK is the competent state. Ways in which UK can be a competent state include if:

- the claimant is in receipt of a pension from UK;
- the claimant is insured in UK for sickness benefits; **or**
- if the claimant is a family member of someone who has insurance cover against sickness and the claimant satisfies the conditions in EC law for export.

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The Mobility Component **cannot** be claimed when in another EEA member state. If you were entitled to AA or DLA before 1 June 1992 they can receive the full benefit without time limit in any EEA country, providing all the conditions of entitlement are satisfied.

Attendance Allowance (AA)

The rules for Attendance Allowance are the same as for DLA (see above).

Invalid Care Allowance (ICA)

The rules for Invalid Care Allowance are the same as for DLA (see above).

Industrial Injuries Benefits (IIB)

Industrial Injuries Benefits continue to be paid in EEA countries without any time limit as long as you have entitlement before you leave the UK.

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Retirement Pension and Widows' Benefits (RP&WB)

These continue to be paid in EEA counties and you are entitled to the annual increases as if you were in the UK.

Income Support (IS)

As for non-EEA countries.

Housing Benefit/Council Tax Benefit (HB/CTB)

As for non-EEA countries.

Non-European Economic Area Countries (EEA)

The governments of several countries have entered into reciprocal agreements with the UK Government, for the payment of social security benefits. By these agreements the nationals from GB may be able to claim certain benefits, whilst living in the reciprocal agreement country, from that country's government. The scope of the

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agreements varies widely and should always be checked carefully. The following features are common:

a) means-tested benefits are **always** excluded;
b) benefits for unemployed people can **never** be claimed outside the country where contributions were paid;
c) retirement and bereavement benefits are **always** covered in some way.

Please find on the next page a list of the countries with reciprocal agreements and the benefits which are allowed for each country.

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Countries with Reciprocal Agreements

	AA	BB	CA	CB	DLA	IDB	JSA	MB	SP
Barbados		X		X		X		X	X
Bermuda		X				X			X
Bosnia Herzegovina		X		X		X	X	X	X
Canada				X			X		X
Croatia		X		X		X	X	X	X
Guernsey	X	X		X	X	X	X	X	X
Isle of Man	X	X	X	X	X	X	X	X	X
Israel		X		X		X		X	X
Jamaica		X				X			X
Jersey	X	X		X	X	X		X	X
Macedonia		X		X		X	X	X	X
Mauritius		X		X		X			X
New Zealand		X		X			X		X
Philippines		X				X			X
Serbia		X		X		X	X	X	X
Montenegro		X		X		X	X	X	X
Turkey		X				X		X	X
USA		X							X

- AA – Attendance Allowance
- CC – Carers Allowance
- BB – Bereavement Benefits
- CB – Child Benefit
- DLA – Disability Living Allowance
- IDB – Industrial Disablement benefits
- JSA – Jobseekers Allowance
- SP – Sick pay
- MB – Maternity Benefit

Rights to benefits for sickness, disability and children are variable. Further information and leaflets which explain the agreements can be obtained from the DWP.

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Statutory Sick Pay (SSP)

As long as the normal conditions of entitlement are met this benefit can continue to be paid whilst the claimant is abroad. There are no presence or residence requirements for SSP as long as your employer is present or resident and has a place of business in the UK.

Incapacity Benefit (IB)

You can be paid IB for up to 26 weeks of a temporary absence as long as the Secretary of State has certified that payment would be 'consistent with the proper administration of the Act' and:

- You have been incapable of work for at least six months and remain incapable of work while you are abroad;

or

- You are going abroad to be treated for an illness or industrial injury, which began before you left the country. Going abroad to recover from an illness i.e. convalescence does not count.

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If you are receiving DLA or Attendance Allowance your temporary absence can be for longer than 26 weeks and you do not need the Secretary of State's agreement. The other two conditions still apply.

Severe Disability Allowance (SDA)

The rules for SDA are the same as for Incapacity Benefit (see above).

Disability Living Allowance (DLA)

DLA will continue to be paid for the first 26 weeks of a temporary absence. You can be paid for longer if the absence:

- is temporary; **and**
- is for the purpose of being treated for an illness or disability which began before you left the country; **and**
- the Secretary of State agrees it is consistent with the proper administration of the Act to pay for longer.

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If you are abroad for longer than 26 weeks you will have problems re-qualifying for the benefit on your return as you must have been in this country for 26 out of the last 52 weeks to satisfy the residence requirements.

Attendance Allowance (AA)

The rules for Attendance Allowance are the same as for DLA (see above).

Invalid Care Allowance (ICA)

ICA can be paid for the first four weeks of a temporary absence if you go without the person that you are caring for. If you go abroad temporarily to care for that person then it can be paid for as long as their DLA or Attendance Allowance is paid. You will still have to provide 35 hours of care a week while you are abroad.

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Industrial Injuries Benefits (IIB)

- **Basic Disablement Benefit** and **Retirement Allowance** are payable while you are abroad no matter how long you are away. A claimant does not have to satisfy any residence conditions to claim the benefit. However, it may not be payable if the accident occurred or the prescribed disease was contracted outside Great Britain or the EEA. If a person sustains an industrial accident or contracts a prescribed disease outside Great Britain or the EEA but, during his absence, he has paid Class 1 contributions (or Class 2 as a volunteer development worker), the benefit can be claimed on returning to Great Britain.

  A claimant who sustains an industrial accident or contracts a prescribed disease in a country with a reciprocal agreement may qualify under the terms of that agreement.

- **Constant Attendance Allowance** and **Exceptionally Severe Disablement Allowance** can be paid for the first six months of a temporary

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absence. This period may be extended by the Secretary of State.

- **Reduced Earnings Allowance (REA)** is paid for the first three months of a temporary absence as long as you are entitled and have claimed before you go and your absence abroad is not for work purposes. This period may be extended by the Secretary of State.

Retirement Pensions and Widows' and Bereavement Benefits (RP&WB)

These are payable while you are abroad no matter how long you are away. If you are living permanently abroad you will not receive your annual uprating unless the country you are living in has a reciprocal agreement with Britain covering the payment of increases. If you were abroad at the time of your spouse's death you might be disqualified from a bereavement benefit unless:

- You were in the country at the time of death; **or**
- You returned within 4 weeks of their death; **or**
- Their National Insurance Contribution record is sufficient to satisfy the contribution condition of a

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widowed parent's allowance or bereavement allowance.

Income Support (IS)

To qualify for any such benefit, the person must be, or must be treated as being, habitually resident in the Common Travel Area. To be treated as habitually resident the claimant must have a legal right to reside in the UK under either domestic or EC law. Once you have established your right to receive Income Support, it is possible to claim during temporary absences abroad. You must be entitled to IS before you go and your absence must be temporary and you must expect it to be for less than one year and you must continue to fulfil the other criteria for IS, e.g. be incapable of work or a single parent.

a) **Income support for four weeks** – You will be entitled to receive IS for up to four weeks if you are entitled to Income Support but do not fit into one of the following groups.
   - You are in education
   - You are incapable of work
   - You are involved in a trade dispute

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- You are appealing against a decision that you are not incapable or work
- You are receiving urgent cases payments of IS.

If you do fit into one of these groups one of the following conditions **must** also apply:

- You go to Northern Ireland. After four weeks you must claim IS from the Northern Ireland Benefits Agency.
- You have a partner who qualifies for a pensioner, enhanced pensioner, higher pensioner, disability or severe disability premium, and you are both abroad.
- You have been continually incapable of work for 364 days.
- You have been continually incapable of work for 28 weeks and either you are terminally ill or receiving the highest rate care component of DLA.
- You are incapable of work and going abroad specifically for treatment by a qualified person and the Benefits Agency agrees that this rule applies to you.

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(Periods of incapacity separated by less than eight weeks can be added together to make the 364 days or 28 weeks which means two or more periods of incapacity are treated as continuous if the break between them is not more than 56 days each time.)

b) **Income support for eight weeks** – You will be entitled to IS for eight weeks if you are taking a child abroad specifically for medical treatment from an appropriately qualified person. The child must count as a family member.

Partner abroad

If you claim IS and you are in the UK while your partner is abroad, the IS will include benefits for your partner for the first four weeks (or eight weeks if they meet the conditions for the eight week rule). After this benefits will reduce. Your partner's income and capital will effect your IS entitlement unless you do not intend to resume living together or the absence is likely to exceed 52 weeks.

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Housing Benefit/Council Tax Benefit (HB/CTB)

You will be entitled to Housing Benefit and Council Tax Benefit for up to 13 weeks if:

- Your absence is temporary;
- Is unlikely to exceed 13 weeks;
- You do not sub-let your home; **and**
- You intend to return to it.

This may be extended to 52 weeks if:

- You or your child of your partner is abroad to receive approved medical approved treatment;
- You are caring for someone who is sick in the UK or abroad and the care you are providing is medically approved;
- You are caring for a child whose parents or guardian is temporarily absent because of medical treatment;
- You are a student eligible for HB;
- You left your home because of violence and you are not entitled to HB for your new accommodation;
- You are undertaking a Government approved training course.

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If you have been in receipt of Income Support and your Income Support stops you will need to reapply for Housing Benefit/Council Tax Benefit. If you have another home abroad which you and members of your family (members of your household) occupy, then your absence form the UK could effect your entitlement for HB if your absences are long enough and regular to mean that your main home is not in the UK. For armed forces personnel and their family members, special and more favourable rules often apply. Contact us for details.

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For further advice on these matters please contact:

Disability Law Service

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