

Law Centre NI - Adviser Practice Guide

Social security co-ordination rules: which country pays your benefit?



At Law Centre NI, we've received lots of enquiries about the social security co-ordination rules between the UK and European countries following the UK's departure from the European Union.

The purpose of this Adviser Practice Guide is to provide social security advisers with guidance about the UK's co-ordination rules with European Economic Area (EEA) countries, how application of the rules determines which state pays a benefit and, if there is a dispute between states, what a claimant can expect while the dispute is resolved.

Social security co-ordination between states is a complex area of law. This Adviser Practice Guide provides a general overview of the rules and how they apply. **For further advice and assistance, contact Law Centre NI's Social Security Hub on (028) 90244401 or benefitsadvice@lawcentreni.org.**

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What are social security co-ordination rules?

Social security co-ordination rules are rules that apply where a claimant makes a benefit claim from the country in which they live, but their contribution in tax and/or national insurance is or was made in another country.

This Guide is concerned with the co-ordination rules that apply between the UK and EEA states. EEA states are the member states of the European Union plus Iceland, Liechtenstein and Norway.

EEA states :

Austria	Finland	Latvia	Portugal
Belgium	France	Liechtenstein	Romania
Bulgaria	Germany	Luxembourg	Slovakia
Croatia	Greece	Lithuania	Slovenia
Cyprus	Hungary	Malta	Spain
Czech Republic	Iceland	Norway	Sweden
Denmark	Ireland	The Netherlands	
Estonia	Italy	Poland	

Although Switzerland is not an EEA state, similar co-ordination rules apply to Swiss nationals.¹

To what type of case do co-ordination rules apply?

In general, co-ordination rules apply where a benefit claimant:

- Has moved between an EEA country and the UK
- Lives in one country (UK or EEA) and works in another or

¹ [The Social Security \(Switzerland\) Order 2021 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uk/2021/1200)

- Lives in one country (UK or EEA) and is the national of another.

Why might social security co-ordination rules benefit a claimant?

Generally, social security co-ordination rules make it easier for EEA nationals to claim benefits in the UK. They do this by allowing claimants to rely on periods of residence, insurance and employment built up in other EEA states.

However, the co-ordination rules can make claiming benefits more complicated for claimants. In some cases, application of the rules means that the UK is not responsible for paying a benefit to a claimant despite their residence in the UK. In these cases, the claimant's benefit claim must be referred to the other state, which is known as the competent state (see page 8 below).

It is important to remember that a claimant may be entitled to a benefit under UK social security legislation without having to rely on co-ordination rules. In some cases, this may be the most straightforward option for the claimant.

Where do I find the social security co-ordination rules that apply in Northern Ireland?

Before the UK left the EU, EU co-ordination rules applied in their entirety in the UK. Now, post Brexit, the co-ordination rules that apply are found in three different sources:

1. The EU co-ordination rules, primarily found in [EC Regulation 883/2004](#) and [EC Regulation 987/2009](#). These rules are referred to as the 'main co-ordination' rules.
2. The [UK-Ireland Convention on Social Security](#) ('the UK-Ireland Convention'), which came into force on 31 December 2020.
3. The [UK-EU Protocol on Social Security Co-ordination](#) ('the UK-EU Protocol'), agreed as part of the Trade and Cooperation Agreement on 30 December 2020.

Exceptionally, cases may be covered by the co-ordination rules that applied before the most recent version of the EU co-ordination rules.² You may see these referred to as ‘the old co-ordination’ rules . **If your client does not seem to come under the rules in 1-3 above, you should seek further advice from Law Centre NI to see if they are covered by the old co-ordination rules.**

How do I work out which rules are relevant to my client’s case?

Which co-ordination rules apply to a claimant’s case, depends on a number of factors. These include, the claimant’s nationality, the country they have moved to or from, the date they (or a member of their family) move to or from the UK and what they have been doing in the UK or another country.

In general, the rules apply as follows:

- The main co-ordination rules continue to apply as if the UK remained in the EEA, for EEA nationals and British nationals who are covered by protections provided by the [Withdrawal Agreement](#). Claimants will be covered by the Withdrawal Agreement if on (or in some circumstances before) 31 December 2020, they were an EEA national living in the UK, or a British citizen living in an EEA country, or a member of the family of either.
- The UK-Ireland Convention applies to cases which involve the UK and Ireland. This may be because the claimant (or a member of the claimant’s family) is an Irish or British citizen or a refugee, and lives in either the UK or Ireland and has been subject to the legislation of the UK or Ireland. The UK-Ireland Convention provides broadly the same coverage as the main coordination rules.
- The UK-EU Protocol applies where a claimant has moved between the UK and EU since 31 December 2020 and is therefore not covered by the

² EEC Regulation 1408/71 and Regulation 574/72.

Withdrawal Agreement. The UK-EU Protocol provides limited social security co-ordination.

What if my client's case is covered by more than one set of rules?

If a claimant is covered by more than one set of co-ordination rules, including the main co-ordination rules, generally the main co-ordination rules apply. However, if they are covered by the UK-Ireland Convention and another set of rules, they can rely on whichever is most generous to them.

What do the co-ordination rules say?

The three sets of co-ordination rules say different things. However, there are a number of principles, which are common to all the rules. They are:

The single state principle:

This means that in general a person can only pay contributions to and claim a particular type of benefit from one state at a time. This state is known as the 'competent state' (see page 8 below).

Equal treatment of people:

A state cannot discriminate against claimants in relation to their access to benefits or the rate which they are awarded.

Equal treatment of benefits, income, facts or events:

States must recognise an award of benefit by another state. States must also mutually recognise facts or events that have a legal consequence. For example, a diagnosis of an occupational disease in one state, should be recognised in another.

Aggregation:

Periods of residence, insurance and employment in a state can be used towards entitlement to benefit in another state.

Exportability of certain benefits:

This means that you can continue to be paid certain benefits if you move between states. The rules for exporting vary according to the benefit concerned. Exportable benefits include old age benefits, survivor benefits, pensions for work related or occupational disease and death grants. Family benefits and invalidity benefits are also exportable, except under the UK-EU Protocol.

Administrative co-operation:

States must co-operate with one another in the administration of social security co-ordination rules.

Do the co-ordination rules apply to all types of benefit?

No, not all benefits are covered by the co-ordination rules. The extent to which benefits are covered varies between the three sets of rules.

Benefits covered by **all** the principles of the main co-ordination rules and UK-Ireland Convention:

The following benefits are covered by all the principles of the main co-ordination rules and the UK-Ireland Convention. Note that this is not an exhaustive list.

Attendance Allowance	Bereavement benefits
Carer's Allowance	Maternity Allowance
DLA Care Component	State pension
PIP Daily Living Component	Contribution based JSA
Child Tax Credit	Contribution based ESA
Child Benefit	Industrial Injuries benefits

Benefits covered by **some** of the principles of the main co-ordination and UK-Ireland Convention rules:

The main co-ordination rules define Income Related ESA, Income Based JSA, Pension Credit and DLA and PIP Mobility Components as 'special non-contributory' benefits. Not all the principles of co-ordination apply to special non-contributory benefits. For example, these benefits can only be paid by the state in which the claimant is resident and cannot be 'exported' to another country.

The UK-Ireland Convention defines Income Related ESA, Income Based JSA and Pension Credit as 'social assistance'. The only principle of the UK-Ireland Convention that applies to social assistance is the recovery of overpayments.

Benefits excluded from all the co-ordination rules:

Universal Credit is not covered by any of the co-ordination rules.

Benefits excluded by the UK-EU Protocol:

The UK-EU Protocol provides limited social security co-ordination. It specifically excludes a number of benefits, including:

- Family benefits, such as Child Benefit and Child Tax Credit.
- Long term care benefits, such as Attendance Allowance, DLA Care Component, PIP Daily Living Component and Carer's Allowance.
- Special non-contributory benefits, such as Income Based JSA, Income Related ESA, Pension Credit and mobility components of DLA and PIP.
- Social and medical assistance, including Universal Credit.
- Winter fuel or cold weather payments.

What is meant by the 'competent state'?

The 'competent state' is the state responsible for paying a benefit and to which the claimant is liable to pay national insurance contributions.

How is the competent state worked out?

Generally, the competent state is the state in which the claimant is:

- Employed or self-employed. Note that the claimant's earnings do not need to exceed the threshold for national insurance contribution in order for them to be considered employed or self-employed
- A civil servant
- Resident while receiving an unemployment benefit under specific provisions
or
- A conscripted member of the armed forces or doing compulsory civilian service.

If the claimant does not come under any of the above categories, the competent state is the state in which they habitually reside.

What if a claimant is working in more than one state?

In this case, the competent state is the state in which the claimant resides, as long as they pursue a substantial part of their working activity there.

Are there any exceptions to how the competent state is worked out?

Yes, there are exceptions to the general rules for working out the competent state.

Special non-contributory benefits – such as Income Related ESA and Income Based JSA - as these benefits cannot be exported, the competent state is always the state of residence.

Cash sickness benefits – such as DLA Care Component, PIP Daily Living Component, Attendance Allowance and Carer's Allowance – the competent state is worked out differently if:

- A claimant receives a pension from another state. 'Pension' relates to more than just an old age pension and includes the receipt of Contributory ESA (support group) and Incapacity Benefit.
- A claimant derives their rights from a family member working or self-employed in another state (see [AH v. Secretary of State for Work and Pensions \[2020\] UKUT 53 \(AAC\)](#) and case study below).

What if my client applies for a benefit and is told that the UK is not the competent state?

If the UK decides it is not the competent state to pay your client, it must pass the claim to the state it considers competent without delay. This requirement is common to all three sets of co-ordination rules. The date on which your client submitted their claim to the UK, should be treated as the date of claim by the competent state.

What if the state to which the UK passes the claim disputes that it is the competent state?

The co-ordination rules are designed to prevent claimants being left in a situation where each state refuses to accept responsibility for their claim.

If two or more states take a different view on which is competent to pay a benefit, the claimant is entitled to provisional payments from their state of residence while the issue is resolved.³ Again, this is a common provision to all three sets of co-ordination rules.

In order to receive provisional payments, the claimant must meet all the other eligibility criteria for the benefit.

There does not need to be a comparable benefit in the other state for the claimant to receive provisional payments.

³ Reg (EC) 987/09, article 6(2), UK-Ireland Convention, article 63(2) and UK-EU Protocol, Annex SSC-7 : Implementing Part.

What happens if the states are unable to resolve their dispute?

If the states are unable to resolve their dispute, the claimant's case should be referred for consideration by an independent body. Under the main co-ordination rules, this will be the EU Administrative Commission. Referral should be no earlier than one month after the date on which the difference in view arises.

What is meant by a 'difference of views'?

This issue was considered in the case of [Secretary of State for Work and Pensions v. Fileccia \[2017\] EWCA Civ 1907](#). Aspin LJ decided that there is no need for a formal dispute between states in order for there to be a 'difference of view'.

The term 'difference in view' is broad enough to cover a variety of circumstances, ranging from conflicting formal written decisions to the expression of different views by the state or its authorised representative.

It is necessary, however, to have evidence of the existence of the 'difference in views'. Evidence can be written or oral.

Case study

Many of the enquiries received by Law Centre NI concerning co-ordination rules relate to cases where the Department for Communities has decided that the UK is not the competent state.

The following case study outlines how the Department should approach such cases:

Lucia is a child who lives with her family in Strabane. Lucia's father is British. He works in Letterkenny. Lucia and her mother are Spanish nationals. They have lived in Northern Ireland for 7 years. The family claimed DLA for Lucia as she suffers from spina bifida. The Department for Communities refused her claim, citing that the UK is not the competent state. The Department decided that the Republic of Ireland, as the state in which Lucia's father is employed, is the competent state. As Lucia's case comes within the co-ordination rules, the UK must forward her claim to the Republic of Ireland without delay. If there is a difference in view between the UK and the Republic of Ireland as to which is the competent state, provided that the UK considers Lucia to be otherwise entitled to DLA, it must make provisional payments until the dispute is resolved. If the UK and Republic of Ireland are unable to resolve their dispute within a month, Lucia's case should be referred to the EU Administration Committee.

For further advice or assistance on any of the issues covered in this Adviser Practice Guide, please contact Law Centre NI's Social Security Hub on (028) 90244401 or benefitsadvice@lawcentreni.org.

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