July 2010

Citizens Information Board
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EU Supplement

Published quarterly with Relate, the journal of developments in social services, policy and legislation in Ireland

EU social security Regulations

Introduction

Two new European Union Regulations on social security for migrant workers came into effect on 1 May 2010. They are Regulations 883/2004 (as amended by Regulation 988/2009) and 987/2009. They replaced Regulations (EEC) 1408/71 and 574/72.

The Regulations are very complex and there are numerous special arrangements for individual countries. Here we give a summary of the main rules in relation to social welfare benefits with emphasis on how the rules apply in Ireland. Further information is available on **europa.eu** and **welfare.ie**. The social security rules also cover entitlement to health services but we do not cover those here.

Main changes

The new Regulations brought into effect some changes to the existing rules and they simplify some of the rules. The main changes are:

- Paper forms are being replaced by electronic exchange of information; in general, electronic forms must have replaced paper forms by 1 May 2012 unless there is a failure to establish the EU-wide database which will underpin the system.
- If you transfer your Jobseeker's Benefit (JB) to another country, the payment is made directly to you instead of through the equivalent of the Department of Social Protection in the other country; the new rules allow for JB to be paid for up to six months (formerly three months) while abroad but this is at the discretion of the member state. Ireland has not opted to exercise this discretion; JB is paid for three months while abroad but this may be extended to six months in exceptional circumstances.
- You may be posted abroad for up to two years and continue to pay social insurance in your home country.
- There are new rules for deciding where you must pay social insurance if you work in more than one country.

There are some other changes which do not affect the Irish system, for example, pre-retirement benefits are brought within the scope of the legislation. There are no such benefits in Ireland.

Application of the Regulations

While they are generally referred to as EU rules, they do apply to the European Economic Area countries as well as the EU member states. This means that they apply in the following countries: Austria, Belgium, Bulgaria, the Czech Republic, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom. Some of the rules also apply in Switzerland.

The rules apply to nationals of the member states and to stateless people and refugees living in the member states who are or have been subject to the social security systems of one or more member state, and also apply to their families and survivors.

The Regulations require member states to provide information about the system and to facilitate users in a user-friendly manner. Member states are required to co-operate with each other in the implementation of the Regulations. There are arrangements for countries to be reimbursed for the costs involved and they may make reciprocal agreements to waive such reimbursements. Ireland has made such arrangements with a number of countries in respect of certain benefits.

Role of EU

The involvement of the EU in social security is limited to ensuring the rights of migrant workers and to ensuring that there is equal treatment between men and women in social security. The EU has no involvement in the setting of the level of social welfare payments or the entitlement to those payments for people who have worked only in Ireland.

The EU rules on social security for migrant workers are designed to try to ensure that people who go to work in another member state do not lose any of their social security rights by doing that. This is done in two main ways:

- Contributions paid in two or more member states may be added together to help you qualify for benefits and
- Some social security benefits are transferable from one country to another

Social insurance and social assistance

These Regulations are about social insurance (or social security) contributions and benefits. They do not, therefore, apply to most means-tested payments. You cannot transfer Jobseeker's Allowance to another EU member state; you may or may not qualify for means-tested payments in that state depending on the conditions that apply.

Special non-contributory cash benefits are benefits which have some of the features of social security and some of social assistance and meet other requirements. These are payable only in the country in which you live. Individual member states have declared which of their benefits are in this category. The Irish benefits which fall into this category are:

- Jobseeker's Allowance
- State Pension (Non-Contributory)
- Widow's and Widower's Pensions (Non-Contributory)
- Disability Allowance
- Mobility Allowance
- Blind Pension

Where social insurance contributions are paid

The rules provide that you pay compulsory social insurance contributions in only one member state at any one time. In general, you must pay social insurance contributions in the country in which you work. However, there are certain circumstances where you may continue to pay in your home country.

Posted abroad by the employer

If you are sent by your employer to work in another member state for up to two years, you are described as being *posted* to the other country. Formerly, you could have been posted for up to a year with the possibility of an extension for a further year. You continue to pay social insurances in your home country. Before you go, you should get the relevant form or electronic document from the Department of Social Protection.

Working in more than one country

There are special rules which apply to people who work in more than one country, for example, international transport workers and sailors. You usually pay social insurance in the member state where you live, provided you do a substantial part of your work there; if you do not, then you come under the rules of the member state where your employer has its registered office.

Frontier workers

You are a *frontier worker* if you live in one country and work in another, for example, you live in Co Cavan and you work in Co Fermanagh or you work in, say, London, and you return to Ireland every weekend. You pay social insurance contributions in the country in which you work. There are special arrangements for you to get social insurance benefits in the country where you live.

Self-employed people

Self-employed people usually pay their social insurance contributions in the country where they live.

Unemployed

If you are unemployed and receiving Jobseeker's Benefit (JB) in Ireland and you want to go to another member state to look for work you should, first of all, tell the Social Welfare Office here of your intention to go so that they can get the paperwork or the electronic records organised. You must have been receiving JB here for at least four weeks before it can be transferred to another member state. It is open to each member state to allow the transfer of benefit before you have been receiving benefit for four weeks – Ireland does not operate this option.

At present, the Social Welfare Office here gives you the relevant form or electronic document. On arrival in the other member state, you should register as unemployed within seven days. You are then subject to the control procedures of that country so you must meet the eligibility requirements that apply to unemployed people there. You get your Irish JB paid directly to you.

The right to receive JB in the other country lasts for a maximum of 13 weeks. (It could be less if there are not 13 weeks of entitlement left; this would arise if you had been receiving JB for say, 45 weeks in Ireland; then you would only have seven weeks entitlement left, so that is all that could be transferred abroad.)

When your JB runs out

If you are still in the other member state when the 13 weeks JB runs out, you can apply for whatever means-tested payment is available to people in that state. You may not qualify because some countries also have conditions requiring people to have worked at some time in that country or to be habitually resident in order to get their equivalent of Jobseeker's Allowance.

Technically, you could be asked to leave the other member state at that point because unemployed people who have never worked in a member state do not yet have a right of residence there.

If you pay one social insurance contribution in the other member state then you would be eligible for their JB. Your Irish contributions would be added to the contributions paid in the other member state in order to help qualify for benefit. The member state in which the last contribution was paid is responsible for paying your benefit. It would help if you had the relevant form or electronic document because this shows your contributions in Ireland. This can be got from the Department of Social Protection – preferably before leaving Ireland.

If you return to Ireland within 13 weeks, you may continue to receive any remaining JB to which you are entitled. If you do not return within 13 weeks, you lose any remaining entitlement.

EU nationals coming to Ireland

The procedure is the same for nationals of the other member states who come to Ireland but some may have the option of transferring their JB for up to six months.

Illness, disability and maternity

Again, social insurance paid in two or more member states can be combined in order to qualify for Illness Benefit and Maternity Benefit. You should apply for benefit to the authorities in the country in which you become ill, even if you do not live there, and the payment is made by the country in which you were paying insurance when you became eligible.

There are other circumstances in which Illness Benefit may be payable to you while you are in another member state:

- If you become ill while receiving Irish Jobseeker's Benefit in another country
- If you go to another country in order to get treatment for the illness and this is approved by the Department of Social Protection
- If you are ordinarily resident in another country and return to that country after becoming eligible for Illness Benefit
- If you leave Ireland to take up residence in another country and you get prior approval for the continuation of benefit

Invalidity Pension

In a number of member states the amount of Invalidity Pension payable is not linked to the length of insurance – this is known in the EU Regulations as *Type A legislation* and is the kind that applies in Ireland, the UK and to certain schemes in Finland, Greece and Sweden. If you have paid insurance in one or more of these countries and then become eligible for Invalidity Pension, it is payable by one country only – the country in which you were paying insurance when the invalidity arose. In effect it is similar to the award of Illness Benefit. *Type B legislation* applies where the amount of Invalidity Pension is linked to the length of insurance. If you become entitled to Invalidity Pension in a member state with Type B legislation and have paid insurance in other member states, then the pension is payable on a proportional basis, that is, in the same way as the State Pension (see below).

Pensions

For long-term benefits, your contributions are combined in order to help you to qualify but the responsibility for paying the pension is generally divided between all the countries in which the contributions have been paid. These rules apply to the following Irish pensions: State Pension (Contributory), State Pension (Transition) and Widow's and Widower's Contributory Pensions.

If you have paid social insurance contributions in two or more member states, you should apply for a pension to the member state in which you now live or in which you have paid the last social insurance contribution if you haven't paid any in the state where you live. The authorities in the state in which the application is made then calculate with the other states exactly what is due from each of them.

Each state looks at the situation in two ways and then grants you whichever is most beneficial:

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(a) It checks if you can qualify for a pension on the basis of contributions paid in that state only
(b) It then looks at the contributions in all member states and checks what pension you would get if all of those contributions had been in that state only; they then calculate what proportion is applicable to them
(c) You then get the higher of (a) and (b)

Take the example of a woman who has worked for 20 years in the UK and the last 16 years in Ireland. She is now approaching 66 and is looking for a State Pension (Contributory). Her last 16 years in Ireland entitle her to a full State Pension (Contributory) from Ireland so there is no need to take her UK contributions into account for that. (This may change when the total contributions approach to pension entitlement is introduced from 2020 – see *Relate*, May 2010.)

(a) The UK authorities have already calculated her pension based on her UK contributions on their own. This is because her UK contributions entitle her to some UK pension, but not the full pension, and she has been getting this since the age of 60. Her Irish contributions were not taken into account when she was aged 60 as there is no entitlement to an Irish pension at that age.

(b) They now do the alternative calculation; they combine the contributions paid in the two states, that is, 36 years in total, calculate what she would be entitled to if they were all paid in the UK and then calculate the proportion payable by the UK, that is 20/36 of that.

The UK authorities then pay her the higher of the two calculations and she receives this in addition to her Irish pension.

If you have insurance contributions (and enough of them) in more than one state then you usually get a pension from each state. However, if you have less than one year's contributions in one state, that state does not have to pay you. The contributions are taken into account by the other state. So, if you had worked for 10 months in Ireland and then spent the rest of your working life in the UK, you would not get an Irish pension but your Irish contributions would be taken into account when your entitlement to a UK pension was being assessed.

Family allowances

The EU rules provide that family allowances must be paid by the member state where you are employed even though your family is living in another state. So, an Irishman working in, say, Germany, whose family is still in Ireland should get German family allowances. If his wife is paying social insurance herself in Ireland she may claim Child Benefit here; if the German rate is higher, then her husband could claim the difference between the German rate and the Irish rate.

If you are unemployed or sick, the country which is paying the sickness or unemployment benefit must also pay the family allowance regardless of where you and the family are living at the time.

Increases for dependants

If you are getting any of the short-term benefits, the country which pays the basic benefit also pays the increases for qualified adults and children even if they are not living in that country. This is the case unless another person is getting similar allowances in the country where the qualified adults and children live.

If you are receiving a pension from two or more countries, the increase for a qualified adult is apportioned in the same way as the basic pension. Increases for children are paid by the country in which the children are living provided some part of your pension is coming from that country.

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