

PART SEVEN

INVALIDITY, OLD AGE AND SURVIVORS' BENEFITS – Chapters 4 and 5 of Regulation 883/04

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1. INTRODUCTION: SCOPE OF THIS CHAPTER

1.1 THE BENEFITS COVERED BY THIS CHAPTER

Once it has been determined that a person is within the territorial, personal and material scope of Regulation 883/04 (see Guideline entitled "The Scope of Regulation 883/04"), it is necessary to examine the rules in Regulation 883/04 and Regulation 987/09 ("the Regulations") relating to the type of benefit that the claimant seeks.

In *this* chapter, the rules for the following types of benefits are examined.

- invalidity benefits;
- old age benefits and
- survivor's benefits (i.e. death pensions).

The relevant provisions are set out in Chapters 4 and 5 of Title III of Regulation 883/04 (Articles 44 – 60) and Chapter IV of Title III of Regulation 987/09 (Articles 43 – 53).

All of these benefits have one thing in common: they are *long term* benefits. The Irish benefits affected by the rules in this chapter are given in the table:

Type	Irish benefit
Invalidity	Invalidity Pension
Old age	State Pension (Contributory) (formerly Old Age (Contributory) Pension) State Pension (Transition) (formerly Retirement Pension)
Survivors	Widow's/Widower's/Surviving Civil Partner's (Contributory) Pension

Also, in this chapter we examine the rules on dependants' allowances in respect of the above benefits as well as orphan's benefits.

1.2 PERSONS COVERED BY THE RULES IN THIS CHAPTER

Regulation 883/04 protects the social security rights of persons who move around the EEA. However, in order to be covered, a claimant has to have been insured against the same risk in at least two EEA States. So:

- if a claimant is seeking an Invalidity Pension in *Ireland*, in order to be covered by Regulation 883/04, the claimant must have been insured for invalidity in one or more other EEA States;
- if a claimant is seeking an Old-Age (Contributory) Pension or a State Pension (Transition), formerly Retirement Pension, in *Ireland*, in order to be covered by Regulation 883/04, the claimant must have been insured for old-age in one or more other EEA States;
- if he/she is seeking a Survivor's Pension, in order to be covered by Regulation 883/04, the claimant or the claimant's Spouse/Civil Partner must have been insured so as to protect the claimant against the risk of death in another EEA State.

Examples:

eg. 1 B was employed in Germany. He then moved to Ireland where he was employed. He suffers incapacity for work while in Ireland. However, he has not made sufficient contributions in Ireland to claim Invalidity Benefit under Irish law. Nor had he made enough contributions in Germany under German law. B is covered by Regulation 883/04 since he was insured for invalidity in Ireland and in Germany. It is irrelevant that he has not made sufficient contributions to benefit under German or Irish law. Under special EU rules discussed in this chapter, he may qualify for an Invalidity Pension in Ireland.

e.g.2 A was self-employed in Ireland. He then moved to Germany where he was employed. He suffers incapacity for work while in Germany. However, he has not made sufficient contributions in Germany to claim German Invalidity Benefit. A is not covered by Regulation 883/04 since the self-employed are not insured for Invalidity Pension in Ireland. He therefore has not been insured for invalidity in two or more EEA States.

2. INVALIDITY BENEFITS: THE DISTINCTION BETWEEN TYPE A AND TYPE B

2.1 THE BASIC DISTINCTION BETWEEN TYPE A AND TYPE B BENEFITS

There are two basic types of long term benefit paid by EEA States. We call these two types of benefits Type A and Type B.

- *Type A benefits:* with Type A benefits the amount of the benefit is independent of the duration of the periods of insurance. Typically, with Type A benefits the person must be insured at the time that the risk insured against materialises. Ireland operates a Type A benefit system.
- *Type B benefits:* with Type B benefits there is a relationship between the duration of period of insurance completed by the insured person and the amount of the benefit. Typically, with Type B benefits it is not necessary that the person be insured at the time that the risk insured against materialises. Instead, the periods of insurance are “stored” and the person can claim the benefit at a later date when the risk materialises.

So, for example,

e.g.1 A person works for a number of years and is insured for that time against invalidity. However, the amount of the benefit to which he would be entitled if he fell ill does not depend on the number of years worked. The benefit is therefore a Type A benefit.

e.g.2 A person works for a number of years, makes social security contributions and is insured against invalidity. With each year that passes, the amount of the benefit to which he would be entitled if he fell ill increases. The benefit is therefore a Type B benefit.

Frequently, in order to be eligible for a Type A benefit, a person must have paid a minimum amount of contributions. This does not mean that the benefit is a Type B benefit.

e.g.3 In order to be eligible for Irish Invalidity Pension a person must have paid 260 weeks PRSI and have 48 weeks* paid or credited in the last complete tax year. However, the benefit is still a Type A benefit since, once these eligibility conditions are satisfied, the amount of benefit payable is fixed and does not vary according to the number of years of work or length of insurance or amount of contributions accumulated - * Figures correct as at date of print

2.2 IS A BENEFIT TYPE A OR TYPE B?

The distinction between Type A and Type B benefits is only important in the context of *invalidity pensions*.

Invalidity pensions in Ireland are Type A. The majority of Member States have Type B schemes. Annex VI of Regulation 883/04 lists all the invalidity benefits in all EEA States that are Type A. *If a benefit is not listed in this Annex, then it is Type B.*

This table outlines the countries that have Type A and Type B schemes.

Countries with Type A schemes	Countries with Type B schemes
Finland (only for national pensions for people born disabled or who become disabled at an early age)	Austria
Greece (in the agricultural scheme only)	Belgium
Ireland	Cyprus
Sweden (Income related sickness benefit and activity compensation only)	Czech Republic
United Kingdom	Denmark
	Estonia
	Finland (except for national pensions for people born disabled or who become disabled at an early age)
	France
	Germany
	Greece (other than the agricultural insurance scheme)
	Hungary
	Iceland
	Italy
	Latvia

	Liechtenstein
	Lithuania
	Luxembourg
	Malta
	Netherlands
	Norway
	Poland
	Portugal
	Spain
	Sweden except for income related sickness benefit and activity compensation
	Switzerland
	Slovakia
	Slovenia

Please note that a number of Member States that previously operated Type A schemes under the previous legislation (i.e. EC Regulations 1408/71 and 574/72) now have a Type B system. These are Belgium, France, Netherlands, Spain, Estonia, and Latvia.

3. INVALIDITY BENEFITS: TYPE A ONLY PROCEDURE

3.1 WHICH PROCEDURE?

There are two distinct procedures for handling the claims for invalidity pension of an employed or self-employed person* who has worked in two or more EEA States. For convenience we call these:

- The Type A only procedure and
- The Type B procedure.

Rule when Type A only procedure applies

If an employed or self-employed person:

- has been subject to the legislation of two or more EEA States;
and
- has completed periods of insurance under the invalidity benefit legislation of those EEA States;
and
- the invalidity benefit legislation of all those EEA States is Type A only

then the Type A only procedure, as outlined in this Part, applies.¹

All social security legislation listed in Annex VI to Regulation 883/04 is Type A. All other legislation is Type B.

In practice, the Type A only procedure applies to most of the cases dealt with by the Department of Social Protection (DSP). This is because UK Invalidity Benefit is also Type A and most of the cases dealt with concern persons who have been insured at various times for Invalidity Benefit in Ireland and the UK only. However, since the accession of the new Member States in 2004, a growing number of cases dealt with in Ireland involve the Type B procedure.

Rule when Type B procedure applies

If an employed or self-employed person:

- has been subject to the Invalidity Benefit legislation of two or more EEA States;
and
- the legislation of at least one of those EEA States is Type B;

then the Type B procedure applies.²

If a benefit is not listed in Annex VI of Regulation 883/04, it should be treated as Type B.

However, there is one *exception* to the above rule. In very limited circumstances, a person who has been subject to both Type A and Type B Invalidity Benefit legislation must be dealt with under the Type

¹ See Article 44 of Regulation 883/04.

* NOTE In Ireland Self-employed contributions (Class S) do not qualify a person for Invalidity Benefit

² See Article 46(1) of Regulation 883/04.

A only procedure. This exception is detailed in *subsection 3.4 of this chapter* below.

3.2 TYPE A ONLY PROCEDURE: WHERE TO APPLY?

An employed or self-employed person to whom the Type A only procedure applies may submit a claim to either:³

- the institution of the EEA State whose legislation was applicable when the incapacity occurred which was followed by invalidity (“competent institution”); *or*
- the institution of his/her place of residence.⁴

If an application is made to the institution of residence, then the institution of residence must forward the claim to the institution of the EEA State to which the person was last subject.

NOTE – under Type A procedure a person shall be entitled to benefits by way of a single payment made by one institution only, the Member State whose legislation was applicable when incapacity for work occurred⁵.

The institution of residence must also indicate the date on which the claim was submitted to it. The competent institution which is known as the “contact institution”⁶ must then treat that date as if it were the date that it received the claim. However, where sickness insurance cash benefits were granted, the date on which such cash benefits ceased to be granted, must, where appropriate, be regarded as the date of submission of the pension claim.⁷

e.g.1 A is employed in the UK. He becomes incapacitated in the UK. He then moves to Ireland and takes up employment here. He also becomes resident in Ireland. The incapacity develops into invalidity while he is in Ireland. The UK is the competent institution since the incapacity which was followed by invalidity

³ See Article 45(A)(1) of Regulation 987/09.

⁴ Residence means habitual residence - see the definition of residence in subsection 3 of Guideline Note entitled “An Introduction to Regulation 883/04”.

⁵ Article 44(2) of Regulation 883/04

⁶ See Article 47 A)(1) of the Regulation 987/09 (Also see section 4.3 of this chapter for more details on the contact institution

⁷ See Article 45(A) (2) of Regulation 987/09.

occurred there. It is irrelevant that the invalidity did not occur in the UK. Ireland is the institution of residence. A may apply for Invalidity Benefit in either the UK or Ireland. If A applies in Ireland to the DSP, the DSP must forward it to the relevant UK institution. The Dutch institution must then treat the date that DSP received the application as if it were the date that it received the application.

e.g.2 B was employed in Ireland. He became incapacitated in Ireland. He then moved to the UK and became resident there. He was given sickness benefits in the UK until 1 February 2011. Due to the incapacity, he became an invalid. He applied to the UK institution on 1 January 2011 for invalidity benefit. Ireland is the competent institution. The UK institution must therefore forward the claim to the DSP. The Irish authorities must treat the claim as being made from 1 February 2011, since B received Sickness Benefit until that date. This means that Ireland will not have to pay Irish Invalidity Benefit in the period prior to 1 February 2011.

As explained above, most of the cases dealt with by the DSP concern persons who have been subject to Irish and UK Type A Invalidity Benefit legislation. The Irish and UK competent institutions have therefore developed their own administrative practices. In particular, if a person is resident in Ireland but was last insurably employed in the UK, the DSP encourages the applicant to apply directly to competent institution, the UK Department for Work and Pensions. In practice, therefore, the DSP rarely has to forward all information regarding the application to the competent institution. Indeed, where Ireland is merely the EEA State of residence, the DSP also encourages applicants from other EEA States to apply directly to the competent institution.

3.3 TYPE A ONLY PROCEDURE: ROLE OF THE COMPETENT INSTITUTION STEP BY STEP

If the DSP is the competent institution, the following procedure should be followed:

Step 1. Determine eligibility under Irish law

The DSP must first investigate whether, in accordance with Irish Invalidation Pension legislation, the person concerned satisfies the conditions for an Invalidation Pension.⁸

The Invalidation Pension Section of the DSP in Longford investigates whether a person is entitled to an invalidity pension.

If the claimant is not resident in Ireland, the relevant section of the DSP (in Longford) will ask the Medical Review and Assessment Section of the DSP to request the institution of the EEA State where the person is resident or staying to arrange a medical examination.

The institution of that EEA State will then arrange a medical examination. DSP has the right to have the claimant examined by a doctor of its own choice.⁹ However, Member States shall take into consideration documents, medical reports and administrative information collected by the institution of any other Member State as if they had been drawn up in its own Member State.

The institution of residence or stay must supply a comprehensive medical report electronically (replacing Form E213) to the DSP. This Electronic Form will provide full details of the claimant's medical situation and enables the DSP Medical Assessor to decide whether the person is sufficiently incapacitated to qualify for an Invalidation Pension.

As already explained, special administrative procedures have evolved between Ireland and the UK. Where the person to be examined is resident or staying in the UK, the Medical Review and Assessment Section of the DSP will, on the instruction of the Invalidation Pensions Section of the DSP, request the International Pension Centre of the UK Department for Work and Pensions to arrange a medical examination of the person concerned. The International Pension Centre will respond using the correct form.

What to do now: If, having applied *Step 1*, the claimant is:

- eligible for an Irish Invalidation pension, proceed to *Step 5*;
- ineligible for an Irish Invalidation pension, proceed to *Step 2*.

⁸ See Article 5 (b) of 883/04 and Article 44 of 883/04???

⁹ See Article 49 (2) of Regulation 987/09

Step 2. If necessary, aggregate periods of insurance in other EEA States where person insured for invalidity

If a person is not eligible for Irish Invalidity Pension on the basis of his/her Irish periods of insurance alone, then account must be taken of periods of insurance completed under the legislation of any other EEA State, whether under a general scheme or under a special scheme and whether as an employed person or as a self-employed person.¹⁰

e.g.1 Z becomes incapable of work in Ireland. This incapacity for work is followed by invalidity. Z claims an Irish Invalidity Pension. To qualify for an Irish Invalidity Pension, it is necessary to have 260 weeks of PRSI contributions paid. She has only 130 weeks of PRSI contributions. However, before she came to Ireland, she worked in the UK where she was insured against invalidity and had paid contributions for 200 weeks. The DSP is the competent institution and must investigate whether Z is eligible for an Irish Invalidity Pension. Z's periods of insurance in the UK and in Ireland should be aggregated (i.e. added together). These amount to 330 weeks. Z has therefore satisfied the Irish 260 weeks PRSI requirement.

If the legislation of an EEA State treats periods of residence as being equivalent to periods of insurance, then periods of residence should be aggregated.

e.g.2 Y becomes incapable of work in Ireland. This incapacity for work is followed by invalidity. She claims an Irish Invalidity Pension. However, to qualify for an Irish Invalidity Pension, it is necessary to have 260 weeks PRSI contributions paid. She has only 130 weeks PRSI contributions paid. However, before she came to Ireland, she was resident in another EEA State for 160 weeks. Invalidity benefit in that EEA State is Type A and a person is eligible for benefit once he has been resident for a fixed number of weeks. The DSP is the competent institution and must investigate whether Y is eligible for an Irish Invalidity Pension. The DSP should aggregate Y's period of insurance in Ireland and her period of residence in the other EEA State. These amount to 290 weeks. Y has therefore satisfied the Irish 260 weeks PRSI requirement.

¹⁰ See Article 6 of Regulation 883/04

Irish law requires that a claimant must be have 48 weeks PRSI contributions in the last complete tax year before the date of the claim. In order to satisfy this requirement, periods of insurance may be taken into account in other EEA States.¹¹

e.g.3 X pays contributions in the UK for three years. He then moves to Ireland where he takes up work and pays contributions for 26 weeks. Any periods of insurance in the UK during the last complete tax year before the date of the claim may be aggregated so that X will meet the 48 weeks contribution requirement.

e.g.4 W pays contributions in the UK for three years. He then tours the world for two years and pays no contributions in any EEA State during this time. He then moves to Ireland and works in Ireland for six months. W has only 26 weeks' contributions paid in Ireland. None of his contributions in the UK can be aggregated since they were not completed during the last complete tax year before the date of the claim. W is therefore ineligible for Irish Invalidity Pension.

In order to obtain a record of the periods of insurance completed by a person under the legislation of any concerned EEA State, the competent institution should request from the relevant institution a certified statement of the periods of insurance completed by him under the legislation administered by that institution.¹² The information is then supplied on the prescribed electronic form by the institution of that EEA State.

When information on periods of insurance in other EEA States is sought, the Invalidity Pensions Section of the DSP requests this information via the Long Term Value Stream Section, Waterford (formerly EU Records Section) of the DSP which, in turn, contacts the institutions of the relevant EEA States using the relevant SED (replacing old Form E001). The institutions of the concerned EEA States respond using SED P5000 (replacing the old Form E205).

**** SED P5000 Form (replacing old E205)** - The function of this form is to provide a record of insurance periods completed in a Member State.

¹¹ See Article 12 of Regulation 987/09.

¹² See Article 47 of Regulation 987/09.

What to do now: If having applied *Step 2*, the claimant is:

- eligible for Irish Invalidity Pension, proceed to *Step 5*;
- still ineligible, because he does not have enough contributions, proceed to *Step 4*. The claimant will not receive an Irish Invalidity Pension.
- Still ineligible for any other reason, proceed to *Step 3*.

Step 3. If necessary, aggregate periods of incapacity in other EEA States or periods of benefit received in other EEA States in respect of the incapacity

Irish Invalidity Pension is payable to persons who are permanently incapable of work. One way that a claimant can satisfy this requirement is to show that he has been incapable of work for at least twelve months. This, in turn, will be assumed if the person in question has received Illness (formerly Disability) Benefit for twelve months.¹³ However, this requirement may be satisfied if a person has not been claiming Illness (formerly disability) Benefit but can still show that he has been incapacitated for 12 months.

A person is entitled to have any periods of incapacity or periods of receipt of sickness benefits in respect of that incapacity in other EEA States taken into account when assessing his/her eligibility for Irish invalidity pension.

As regards periods of receipt of sickness benefits, account should be taken of:

- (i) any periods in respect of that incapacity for work for which the claimant has received cash sickness benefits under the legislation of another EEA State or, in lieu of receiving such benefits, continued to receive a wage or salary; *and*
- (ii) any periods in respect of that incapacity for work for which the claimant has received invalidity, survivor's or old-age benefits, granted in respect of invalidity under the legislation of another EEA State;

¹³ See Section 118 of the Social Welfare Consolidation Act 2005 and SI No 417 of 1994 at Regulation 52.

as if it were a period during which he was incapable of work and paid Illness Benefit under Irish legislation.¹⁴ However, Irish Invalidity Pension need not be paid before:¹⁵

- the day after the last day of payment of cash sickness benefits by that other EEA State referred to in (i) above, *or*
- the day that the right to benefits granted in respect of invalidity in that other EEA State referred to in (ii) above was acquired¹⁶.

An entry in Annex XI of Regulation 883/04¹⁷ clarifies that for the purpose of the above provision account shall only be taken of such periods completed in another EEA State where the employed or self-employed person was incapable of work within the meaning of Irish legislation.

What to do now: If having applied *Step 3*, the claimant is:

- eligible for Irish Invalidity Benefit, proceed to *Step 5*;
- ineligible for Irish Invalidity Benefit, proceed to *Step 4*. The claimant will not receive an Irish Invalidity Pension.

Step 4. If still not eligible, forward file to institution of EEA State where claimant may be eligible

If the competent institution, having taken account of:

- periods of insurance or residence abroad, as required by *Step 2* above *and*
- periods of incapacity abroad, as required by *Step 3* above

finds that the person is not eligible for Irish Invalidity Benefit, then the claimant is entitled to be assessed for any benefits for which s/he may be eligible under the legislation of the EEA State(s)¹⁸ where s/he was

¹⁴ Derives from Article 5 of Regulation 883/04 – was stipulated in Art 40(3) of Reg 1408/71 which has been replaced by more general Article 5 in 883/04.

¹⁵ Derives from Article 5 of Regulation 883/04.

¹⁶ See Article 45 of Regulation 883/04

¹⁷ See Annex XI of Regulation 883/04 Entry No. 2 under “Ireland”.

¹⁸ If he was previously employed or self-employed in two or more EEA States, the file should be sent to the EEA State where he was employed or self-employed before Ireland. If that EEA State determines

previously insured for invalidity.¹⁹ The DSP should forward the file to the institution of the EEA State(s) concerned who in turn are also obliged to aggregate all contributions and periods of incapacity as outlined in *Steps 2 and 3* above.

The procedure for transferring a claim is set out in Section E below.

e.g.1 A was employed in the UK for 78 weeks during which time he paid contributions. He then moved to Ireland and took up employment there immediately. However, after 28 weeks in Ireland he became incapacitated. This was followed by invalidity. The DSP is the competent institution and is therefore obliged to investigate whether A is entitled to an Irish Invalidity Pension. The DSP aggregates the period of insurance paid in Ireland and in the UK. It amounts to only 108 weeks, less than the 260 weeks required to qualify for an Irish Invalidity Pension. The DSP therefore transfers the file to the UK institution, the UK Department for Work and Pensions. The UK Department for Work and Pensions is then obliged to investigate whether A is eligible for UK Invalidity Benefit, known as Long Term Incapacity Benefit.

Do not proceed to any further steps.

Step 5. Award Irish Invalidity Pension

The claimant:

- must be paid an Irish Invalidity Pension;²⁰
- cannot claim invalidity benefit from any other EEA State institution (even if that institution provides higher benefits);²¹
- should be notified that he was awarded an invalidity pension just like an ordinary Irish claimant would be.

3.4 EXCEPTION TO RULE ON WHEN TYPE A ONLY PROCEDURE APPLIES

that he is not eligible for benefit, it must, in turn, send the file to the EEA State where he was employed or self-employed beforehand.

¹⁹ See Articles (5) and 44 (2) of Regulation 883/04. Of course, the person must have been last insured under a Type A Scheme. Otherwise the Type A only procedure would not apply.

²⁰ See Article 44(2) of Regulation 883/04 ??.

²¹ See Article 44(2) of Regulation 883/04.

In subsection 3.1 above, it was stated that the Type A only procedure applies to persons who have only been subject to Type A invalidity legislation only. However, it was also stated that there was an *exception* to this rule.

Exception to rule on when Type A only procedure applies If an employed or self-employed person has completed periods of insurance under Type A and Type B invalidity benefit legislation, the Type A only procedure will apply if:²²

- (i) he suffers incapacity for work leading to invalidity while subject to Type A invalidity benefit legislation of an EEA State;
and
- (ii) he satisfies the conditions of the Type A invalidity legislation of that EEA State or of the Type A invalidity legislation of any other EEA State. Where appropriate, account should be taken of the rules for aggregation of periods of insurance²³ described in *Step 2 of the Type A only procedure*. However, periods of insurance or residence subject to Type B legislation cannot be aggregated;
and
- (iii) he does not make any claim for old-age benefits in any EEA State. .²⁴

For example:

e.g.1 X is employed in Germany where he made contributions for invalidity under a Type B scheme, but not for long enough to acquire German Invalidity Benefit under German legislation alone. X then moves to the UK where he is employed for 78 weeks, during which time he makes contributions for UK Invalidity Benefit, a Type A benefit. X then moves to Ireland where he is employed for 28 weeks, during which time he makes contributions for Irish Invalidity Benefit, again a Type A benefit.

²² See Article 46(2) of Regulation 883/04.

²³ Residence may also be taken into account, but this is not relevant in Ireland.

²⁴ See Articles 46(2) of Regulation 883/04. In general, if a person expressly asks for the postponement of the award of old-age benefits, then he is treated as if he had not made any claim for old-age benefits

X suffers incapacity leading to invalidity while in Ireland. He is not entitled to old age benefits in any EEA State.

X's claim should be dealt with by the DSP under the Type A only procedure since:

- (i) he suffers incapacity for work leading to invalidity while subject to Irish invalidity benefit legislation, which is Type A;
- and*
- (ii) he satisfies the conditions for benefit under UK legislation, which is Type A. This requires some explanation. When aggregation of periods of insurance is made according to *Step 2 of the Type A only procedure* (taking no account of periods of insurance under German Type B legislation) it transpires that he is not eligible for Irish Invalidity Pension. This is because Irish law requires that he have 260 weeks contributions. But X has only 106 weeks aggregated contributions (28 + 78 weeks). However, applying the rules described in *Step 4 of the Type A only procedure*, the file could potentially be passed to the UK. And under UK invalidity legislation, he is entitled to benefit since UK law only requires 104 weeks contributions. Once the aggregation rule in *Step 2 of the Type A only procedure* is applied, it is clear that X has enough contributions to satisfy this requirement;
- and*
- (iii) he does not meet the conditions for eligibility for the German (Type B) Invalidity Benefit;
- and*
- (iv) he does not make any claim for Old-Age Benefits.

3.5 PROCEDURE FOR TRANSFERRING A CLAIM TO OTHER INSTITUTIONS

The liaison forms used for the purpose of transferring a claim to the institution(s) of the other EEA(s) are:

SED P2200 (formerly Form E204): This form is used to prompt the investigation of a claim to Invalidity Pension. It is used to send details of the domestic claim to Invalidity benefit to all other EEA states involved.

When issuing P2200 (Form E204) it is necessary to indicate that which SED Forms (e.g. P5000, P6000 etc) (replacing Form E205, E206 and E210) are required from the other EEA States.

SED P5000 (Form E205): An Irish P5000 must be completed each time a claim to Invalidity Pension is being transferred to another EEA State. A SED Form P5000 must be completed and sent to each Member State involved.

Where a claim is being transferred to more than one EEA State it is the responsibility of DSP to ask each Member State for a copy of their P5000. On receipt of these P5000s it is the responsibility of DSP to send a copy of all P5000s to every other EEA State involved.

SED P4000 (Form E207): The function of P4000 is to supply the institutions of the EEA States with information concerning insurance history in the other State. This form should normally be sent at the same time as the P4000.

Medical report on the relevant SED (formerly Form E213): The function of the medical report SED is to provide other EEA States with a detailed medical report on the claimant's incapacity. This Medical Report should be completed and sent with P003 (replacing E204) etc.

The transfer of the claim should not be delayed while awaiting completion of the Medical Report

When sending relevant SED Forms and it is not possible to send a medical report at the same time, copies of any medical evidence already held to support the claimant's incapacity for work should be forwarded to the relevant institution(s).

Copies of all documentation sent to the other EEA State(s) should be kept on file to await the decision(s) of the State(s) involved.

4. INVALIDITY BENEFITS: TYPE B PROCEDURE

4.1 WHEN DOES THE TYPE B PROCEDURE APPLY?

**Rule when
Type B
procedure
applies**

If an employed or self-employed person:

- has been subject to the invalidity benefit legislation of two or more EEA States;
and
- the legislation of at least one of those EEA States is Type B;

then the Type B procedure applies.²⁵

This rule was already stated in *subsection 3.1* above. There is one *exception* to this rule. See *subsection 3.4* above.

4.2 TYPE B PROCEDURE: WHERE TO APPLY? HOW TO APPLY?

**General
rule**

Under the Type B procedure, an application for invalidity benefit should be made to the institution of the place of residence, or to the institution of the last Member State whose legislation was applicable.²⁶

The claim must be accompanied by the required supporting documents as provided for by the institution of to which the claim has been made.²⁷

If the employed or self-employed person has not been subject to the legislation of the State of Residence, the institution of the place of residence must forward the claim to the institution of the EEA State to whose legislation he was last subject. The institution of residence must also indicate the date upon which the claim was submitted to it. That date must be treated as the date upon which the claim was submitted to the latter institution.

²⁵ See Article 46(1) of Regulation 883/04.

²⁶ See Article 45(B)(4) of the Regulation 987/09

²⁷ See Article 46(1) of Regulation 987/09.

The claimant must indicate, so far as possible, the institution or institutions administering insurance in respect of invalidity of any EEA State with which s/he was insured *or* in the case of an employed person, the employer(s) for whom s/he worked (e.g. by producing employment certificates),²⁸

In *Ireland*, all applications are dealt with by the Invalidity Pensions Section of the DSP. If the application is to be redirected to another EEA State, this will be done via the Long Term Value Stream section, Waterford (formerly EU Records Section) of the DSP.

4.3 TYPE B PROCEDURE: WHO INVESTIGATES?

The institution to which the claim for benefits is submitted (the “contact institution”) shall investigate the claim for benefits under its own legislation. If under the rules in 4.2 above, the institution to which the claim is sent must forward it to another institution, then that other institution is deemed the “contact institution”, and must investigate the claim.²⁹

The contact institution shall promote the exchange of data, the communication of any decisions it makes, and enable the operations necessary for the investigation of the claim by the institutions concerned. It shall also supply the claimant, upon request, with any information relevant to the Community aspects of the investigation, and keep him/her informed of its progress.

In *Ireland*, the contact institution is the DSP. Investigations regarding invalidity benefit claims are carried out by the Invalidity Pensions Section in Longford.

Under the Type B procedure, all other EEA States where the claimant is insured must be notified. The institutions of all these EEA States will be obliged to calculate the claimant’s entitlements under the rules set out below. This means that the claimant may receive benefits from several different EEA States at the same time.³⁰

²⁸ See Article 46(1) of Regulation 987/09.

²⁹ See Article 47 A) (1) of Regulation 987/09.

³⁰ See Article 47 C) (6) of Regulation 987/09.

4.4 TYPE B PROCEDURE: ROLE OF THE CONTACT INSTITUTION STEP BY STEP

If the DSP is the contact institution, then it should follow the procedure set out below.

Step 1. Assess claim under national legislation and make provisional award if eligible under national law. If necessary, arrange overseas medical examination in another EEA State. Notify all EEA institutions concerned.

(a) Assess claim under national legislation and make provisional award if eligible under national law

The DSP must firstly determine the claimant's entitlement to invalidity pension under Irish law alone. If the claimant qualifies s/he should be paid that benefit immediately on a *provisional* basis.³¹ The DSP must inform the claimant of the provisional award immediately and draw his/her attention to the fact that the award is provisional only and any right of appeal is subject to Irish legislation.³²

(b) If necessary, arrange medical examination in another EEA State

If the claimant is not resident in Ireland, the Invalidity Pension Section of the DSP in Longford will instruct the Medical Review and Assessment Section of the DSP to request the institution of the EEA State where the person is resident or staying to arrange a medical examination. The request is sent by the DSP using SED P8000 (replacing E001).

A medical report using the appropriate SED, which replaces Form E 213, is used for the purpose of providing a comprehensive medical report on the person's incapacity.

The institution of that EEA State will then arrange a medical examination. However, the DSP has the right to have the claimant examined by a doctor of its own choice should it so wish.³³

³¹ See Article 50(1) of Regulation 987/09.

³² See Article 50(3) of Regulation 987/09.

³³ See Article 49(2) of Regulation 987/09.

The institution of residence or stay must then return a medical report (formerly used E213) to the DSP. This Form will provide full details of the claimant's medical situation and enables the Medical Assessor of the DSP to decide whether the person is sufficiently incapacitated to qualify for an invalidity pension.

Note - DSP shall take into consideration documents, medical reports and administrative information collected by the institution of any other Member State as if they had been drawn up in Ireland³⁴.

As already explained, special administrative procedures have evolved between Ireland and the UK. Where the person to be examined is resident or staying in the UK, the Medical Review and Assessment Section of the DSP will, on the instructions of the Invalidity Pensions Section, request the UK Department for Work and Pensions, International Pension Centre, to arrange a medical examination of the person concerned. The UK International Pension Centre will then respond using an internal Departmental form (instead of the formerly used Form E213)

(c) Determine and notify all concerned EEA States

The DSP should notify the institutions of the EEA States to whose invalidity benefit legislation the claimant has been subject. We refer to these States as "*concerned EEA States*" and to their institutions as "*concerned institutions*."

The institutions should be notified without delay using the relevant SED, formerly **Form E201**. The DSP should set out on SED P2200 (Form E204) the periods of insurance (i.e. number of weeks of contributions) completed by the employed or self-employed person in Ireland.³⁵

The institution of each notified EEA State should respond using SED P5000 (Form E205). Details that it should supply on this Form include details of the periods of insurance completed under the legislation that it administers, and the amount of benefits due to the client. This information should be supplied without delay.

³⁴ See Article 49(2) of regulation 987/09

³⁵ See Article 47(4) of Regulation 987/09.

If the claimant is not entitled to a provisional Irish Invalidity Pension, but it appears from a SED P5000 (Form E205) that he is entitled to invalidity benefit in

- one other EEA State under that State's law alone (i.e. without aggregating or applying the other rules outlined in the *Steps* below), then the DSP should inform the institution of that EEA State of its obligation to pay the benefit provisionally.³⁶
- in more than one other EEA State, then each institution for which the claimant was eligible for benefit under its law must pay the benefit. The DSP, as contact institution, should inform those EEA States of their obligation to pay.³⁷

Notwithstanding Article 7 of 987/09, any institution which establishes, while investigating a claim for benefits, that the claimant is entitled to an independent benefit under the applicable legislation, in accordance with Article 52(1)(a) of Regulation 883/04 shall pay that benefit without delay. That payment shall be considered provisional if the amount might be affected by the result of the claim investigation procedure.

The institution of that EEA State must inform the claimant immediately and draw his/her attention to the fact that the award is provisional only and draw attention to any right of appeal permissible under its national legislation.³⁸

What to do now: If the claimant is:

- eligible for Irish Invalidity Pension, proceed to *Step 4*;
- ineligible for Irish Invalidity Pension, proceed to *Step 2*.

Step 2. If necessary, aggregate periods of insurance in other EEA States where person is insured for invalidity

If a person is not eligible for invalidity pension on the basis of his/her Irish periods of insurance alone (i.e. the period of his/her contributions), then account must be taken of periods of insurance completed under the legislation of any other EEA State, whether under

³⁶ See Article 48(1) of Regulation 987/09.

³⁷ See Article 48(1) of Regulation 987/09.

³⁸ See Article 50 of Regulation 987/09.

a general scheme or under a special scheme and whether as an employed person or as a self-employed person.³⁹

e.g.1 Z becomes incapable of work in Ireland. This is followed by invalidity. Z claims an Irish Invalidity Pension. However, to qualify for an Irish Invalidity Pension, it is necessary to have 260 weeks PRSI paid. She has only 130 weeks PRSI paid. However, previously she worked in Germany where she was insured against invalidity and had paid contributions for 200 weeks. The DSP is the contact institution and must investigate whether Z is eligible for an Irish Invalidity Pension. Z's periods of insurance under German legislation and her contributions in Ireland should be aggregated. These amount to 330 weeks. Z has therefore satisfied the Irish 260 weeks PRSI requirement.

If the legislation of an EEA State treats periods of residence as being equivalent to periods of insurance, then periods of residence should be aggregated.

e.g.2 Y becomes incapable of work. This incapacity for work is followed by invalidity. She claims an Irish Invalidity Pension. However, to qualify for an Irish Invalidity Pension, it is necessary to have 260 weeks PRSI contributions paid. She has only 130 weeks PRSI contributions paid. However, before she came to Ireland, she was resident in another EEA State for 160 weeks. Under the law of that EEA State, a person is eligible for benefit once he has been resident for a fixed number of weeks. The DSP is the competent institution and must investigate whether Y is eligible for an Irish Invalidity Pension. The DSP should aggregate Y's period of insurance in Ireland and her period of residence in the other EEA State. These amount to 290 weeks. Y has therefore satisfied the Irish 260 weeks PRSI requirement.

Irish law requires that a claimant must have paid or been credited for 48 weeks contributions in the last complete tax year before the date of the claim. In order to satisfy this requirement, periods of insurance may be taken into account in other EEA States.⁴⁰

e.g.3 X pays contributions in the France for three years. He then moves to Ireland where he takes up work and pays contributions for 26 weeks. Any periods of insurance in the France during the

³⁹ See Article 6 and 51 of Regulation 883/04.

⁴⁰ See Article 12 of Regulation 987/09.

last complete tax year before the date of the claim may be aggregated so that X will meet the 48 week requirement.

e.g.4 W pays contributions in the France for three years. He then tours the world for two years and pays no contributions in any EEA State during this time. He then moves to Ireland and works in Ireland for six months. W has only 26 weeks' contributions paid in Ireland. None of his contributions in the France can be aggregated since they were not completed during the last complete tax year before the date of the claim. W is therefore ineligible for Irish invalidity pension.

Information on the periods of insurance completed under the legislation of other concerned EEA States is provided by the institutions of those States on SED Form P5000 (E205).

What to do now: If the claimant is:

- now eligible for an Irish Invalidity Pension, proceed to *Step 4*;
- still ineligible for an Irish Invalidity Pension, proceed to *Step 3*.

Step 3. If necessary, aggregate periods of benefit received in other EEA States in respect of the incapacity

Irish Invalidity Pension is payable to persons who are permanently incapable of work. One way that a claimant can satisfy this requirement is to show that he has been incapable of work for at least twelve months. This, in turn, will be assumed if the person in question has received Illness Benefit, formerly Disability Benefit, for twelve months.⁴¹ However, this requirement may be satisfied if a person has not been claiming Illness Benefit but can still show that he has been incapacitated for 12 months.

A person is entitled to have any periods of incapacity or periods in receipt of benefits in respect of that incapacity in other EEA States taken into account when assessing his/her eligibility for Irish Invalidity Pension.

⁴¹ See s.118 of the Social Welfare Consolidation Act 2005 and SI No 417 of 1994 at Regulation 52.

In particular, as regards periods for receipt of sickness benefits, account should be taken of:

- (i) any periods in respect of that incapacity for work, within the meaning of Irish legislation,⁴² for which the claimant has received cash sickness benefits under the legislation of another EEA State or, instead of receiving such benefits, continued to receive a wage or salary; *and*
- (ii) any periods in respect of that incapacity for work for which the claimant has received invalidity, survivor's or old-age benefits, granted in respect of invalidity under the legislation of another EEA State;

as if it were a period during which he was incapable of work and paid Illness Benefit under Irish legislation.⁴³ However, attention must be paid to prevent overlapping of benefits⁴⁴. In practice Irish Invalidity Pension must not be paid before

- the day after the last day of payment of cash sickness benefits in that other EEA State referred to in (i) above⁴⁵, *or*
- the day that the right to benefits granted in respect of invalidity in that other EEA State referred to in (ii) above was acquired⁴⁶.

An entry in Annex XI of Regulation 883/04⁴⁷ clarifies that for the purpose of the above provision account shall only be taken of such periods completed in another EEA State where the employed or self-employed person was incapable of work within the meaning of Irish legislation.

e.g.1 Y becomes incapable of work in Ireland. She draws Irish Illness Benefit for six months. She then moves to Germany. She draws German sickness benefits for a further six months. The DSP is the contact institution and must assess whether Y is eligible for an Irish Invalidity Pension. The period for which Y receives sickness benefits in Germany should be aggregated with the period for which she receives Illness Benefit in Ireland so that she satisfies the Irish 12 month requirement.

⁴² See Annex XI(2) to Regulation 883/04.

⁴³ See Article 5 of Regulation 883/04.

⁴⁴ See Article 45 of Regulation 987/09

⁴⁵ See Article 45 of Regulation 987/09

⁴⁶ See Article 5 of Regulation 883/04

⁴⁷ See Annex XI of Regulation 883/04, Ireland Entry No. 2.

What to do now: If:

- the claimant is still ineligible for Irish Invalidity Pension, proceed to *Step 7*. The claimant will not be awarded an Irish Invalidity Pension.
- the claimant is now eligible for Irish Invalidity Pension, proceed to *Step 4*.

Step 4. Determine if the Type A only procedure applies as an exception

In certain circumstances a person who was subject to Type A invalidity legislation when he became incapacitated may be treated under the Type A only procedure, even though he has also been subject to Type B legislation⁴⁸. See *Part 3.4 above* to determine whether this exception applies.

As soon as the DSP has the necessary information on the SED Forms P5000 (E205), it should verify whether this exception applies and inform the other EEA State institutions concerned accordingly.⁴⁹

What to do now: If the Type A only procedure does *not* apply, and the claimant:

- has been eligible for an Irish Invalidity Pension under Irish law alone (i.e. since *Step 1*), proceed to *Step 6* below;
- is only eligible for Irish Invalidity Pension because of the rules of aggregation in *Steps 2 and/or 3* above, proceed to *Step 5* below;

If the Type A only procedure applies the *competent institution* should be informed, if:

- the claimant has been eligible for an Irish Invalidity Pension under Irish law alone (i.e. since *Step 1* of the Type B procedure), the competent institution should start at *Step 5* of the Type A only procedure and

⁴⁸ See Article 46(2) of Regulation 883/04

⁴⁹ See Article 48 of Regulation 987/09.

- award an invalidity pension;
- the claimant has not been eligible for an Irish Invalidity Pension under Irish law alone (i.e. it was necessary to apply the aggregation rules in *Steps 2 and 3*), the competent institution should start at *Step 1* of the Type A only procedure.

Step 5. Exception where insured for less than a year

If the claimant has been insured in Ireland for less than one year:

- the DSP is not obliged to award any invalidity pension;⁵⁰
- the DSP must inform the other EEA States concerned that it is applying the exception for persons insured or resident for less than one year.⁵¹

However, if this exception would relieve all concerned EEA States of their obligation to pay benefit, then benefit must be paid by the last of the EEA States whose conditions are satisfied once all periods of insurance are aggregated, following the rules outlined in *Step 2*.⁵² The DSP should notify this institution.⁵³

e.g.1 Y was insured in France for less than a year. She then moved to Italy where she was also insured for less than a year. Finally, she came to Ireland where again she was insured for less than a year. The application of the one year exception would deprive the claimant of any entitlement. The one year exception therefore may not be applied. When rules of aggregation are applied suppose that Y is eligible for benefit in Italy and in France but not in Ireland. Italy would be obliged to pay the pension since Italy is the last EEA State whose legislation Y satisfies once periods of insurance have been aggregated.

What to do now: If:

- this exception applies and the DSP does not have to pay any benefit, proceed to *Step 7*. *The claimant will receive no Irish benefit from the DSP;*

⁵⁰ See Article 57 of Regulation 883/04.

⁵¹ See Article 48 of Regulation 987/09.

⁵² See Article 57(3) of Regulation 883/04.

⁵³ See Article 48 of Regulation 987/09.

- This exception does not apply, proceed to *Step 6*.

Step 6. Calculate the amount of the benefit

Once it has been determined that a person is eligible for benefit, following the relevant Steps above, the amount payable must be calculated.

Rule for amount to be awarded

If the claimant is eligible for benefit:

- Only once the aggregation rules of *Step 2* and/or *Step 3* have been applied, then the amount due is the pro-rata amount;
- Under Irish law alone (i.e. his/her eligibility is established under *Step 1* above and without having to apply the aggregation rules in *Step 2* and/or *Step 3*), then the amount due is:
 - the pro-rata amount *or*
 - the national amount (i.e. the amount normally awarded under Irish legislation)

whichever is the higher.

This is explained below:

(a) *The pro-rata amount for Irish Invalidity Benefit legislation*

Calculation of the pro-rata amount

The pro-rata amount is calculated according to the following formula:⁵⁴

$$\frac{\text{Irish period of insurance}}{\text{(Irish + other EEA periods of insurance)}} \times \text{Irish personal rate}$$

However, if any of the other EEA States avails of one year exception in *Step 5*, then the period of insurance in

⁵⁴ See Article 52(b) of Regulation 883/04.

that EEA State is not included in "other EEA periods of insurance"⁵⁵

The formula for the pro-rata calculation can be broken down into a number of steps:

1. Establish periods of insurance under Irish legislation (Irish contributions).
2. Establish total periods of insurance completed in all EEA States (Irish + EEA contributions).
3. Divide the result in 1 by the result in 2.
4. Multiply the result in 3 by the current personal rate of Irish Invalidity Pension.
5. Round up to the nearest partial rate in payment at the time of calculation.

e.g.1 A formerly worked in Germany, where he was subject to Type B invalidity benefit legislation. He now works in Ireland where he becomes incapacitated leading to invalidity. He applies for an Irish invalidity pension. He has total Irish contributions of 600 weeks and total German contributions of 300 weeks. For the purpose of this exercise let us assume that the single rate for invalidity pension in Ireland is €171.30. The Irish portion of payment is as follows:

- 1 1. Irish contributions = 600 weeks
2. The total periods of insurance completed in all EEA States gives $600 + 300 = 900$
3. Dividing the result in 1 by the result in 2 gives $600/900 = 2/3$
4. Multiplying the result in 3 by €171.30 = €114.20
5. Rounding off gives €114.20

e.g.2 B formerly worked in Germany, where he was subject to Type B invalidity benefit legislation. He then worked in Italy where he was also subject to Type B invalidity benefit legislation. He now works in Ireland and applies for an Irish Invalidity Pension. He has total Irish contributions of 600 weeks, total German contributions of 300 weeks and total Italian contributions of 50 weeks. The single rate for invalidity pension in Ireland is €171.30.

⁵⁵ See Article 57 of Regulation 883/04.

The Italian institution gives notice that it will not be awarding any benefit because:

- the period of insurance under Italian law is less than one year; *and*
- under Italian law, the period of insurance is insufficient to provide a benefit

so that, the Italian institution can avail of the one year exception in *Step 5*.⁵⁶

The pro-rata rate is calculated as follows:

1. Irish contributions = 600 weeks
2. (Irish and other EEA periods of insurance) is 600 (the German contributions) and 300 (the Irish contributions), giving a total of 900. No account is taken of the Italian periods since Italy was able to avail of the one year exception.
3. Dividing the result in 1 by the result in 2 gives $600/900 = 2/3$
4. Multiplying the result in 3 by €171.30 = €114.20
5. Rounding off gives €114.20

The Irish pro-rata amount is therefore €114.20.

(b) calculate the national amount

If the claimant is eligible for benefit without having to apply the aggregation rules in *Step 2* and/or *Step 3*, then the claimant is entitled to:

- the pro-rata amount *or*
- the national amount (i.e. the amount awarded under Irish Invalidity Benefit legislation),

whichever is the higher.

e.g.3 In *e.g.1* above, A had 300 weeks of Irish contributions. Thus, he was entitled to an Irish Invalidity Pension without aggregating under *Step 2*. Suppose that, additionally, he had drawn Irish Illness Benefit for 12 months. In that case, there is no need for

⁵⁶ See Article 57 of Regulation 883/04.

aggregation under *Step 3* either. A is therefore entitled to the pro-rata amount or the national amount (i.e. the normal amount awarded under Irish invalidity benefit legislation). The pro rata amount is €114.20. The national amount is €171.30. A must therefore be awarded €171.30.

What to do now: Proceed to *Step 7*.

Step 7. Collect decisions of all other EEA States under which claimant insured

At the same time, all other EEA States under which the person has been insured will calculate the entitlements of the claimant. Each such EEA State must notify the claimant and the contact (investigating) institution of their decisions, specifying the grounds, possible remedies and time-limits for appeal provided for by the legislation in question. SED Form P6000, which replaces **Form E210**, is used for this purpose.

When all these decisions have been received by the contact/investigating institution (DSP), it shall send the claimant and the other institutions concerned a summary of those decisions. This summary shall be sent to the claimant in the language of the institution or, if requested, in his/her own language. **SED P7000 (Form E 211)** is used for this purpose. Periods allowed for review only commence on the date of receipt of the summarised statement by the claimant.⁵⁷

Where it appears to the claimant following receipt of the summary that his rights may have been adversely affected by the interaction of decisions taken by two or more institutions, the claimant shall have the right to a review of the decisions by the institutions concerned within the time limits laid down by the respective national legislation. The time limits shall commence on the date of receipt of the summary. The claimant shall be notified of the result of the review in writing.

4.5 TYPE B PROCEDURE: THE ROLE OF OTHER CONCERNED INSTITUTIONS

⁵⁷ See Article 48 of Regulation 987/09.

If a person has been insured in Ireland, but the institution of another EEA State is the contact institution, then the DSP's involvement will be more limited:

4.5.1. Respond to SEDP2200 (replacing Form E204) with SED Form P5000(E205). Determine eligibility for Irish Invalidity Pension and calculate amount payable.

First, the DSP will receive notification from the contact institution. The DSP should respond using SED P5000. Details that it should supply on this Form include: details of the periods of insurance completed under the legislation that it administers. This information should be supplied without delay.⁵⁸

If the DSP wishes to avail of the one year exemption discussed in *Step 5* of the Type B procedure above, this should be indicated also on SED **P5000**.

The DSP should also indicate on this form its decision on whether the claimant is entitled to a benefit under Irish legislation alone. SED **P6000** is used for this purpose.

It may also be necessary to arrange for a medical examination of the claimant. The procedure for this is described in *Step 1(b)* of the *Type B procedure* above.

4.5.2. If instructed to pay provisional benefit

If the claimant is not entitled to a provisional invalidity pension under the law of the contact/investigating institution; *and*

- the claimant is entitled under Irish Invalidity Pension legislation (without aggregating) to benefit, then DSP must pay the benefit provisionally to the claimant ;⁵⁹
- or*
- the claimant is entitled under Irish Invalidity Pension legislation *and* under the legislation of another EEA State (without

⁵⁸ See Articles 45(7) of Regulation 987/09.

⁵⁹ See Article 47(1) of Regulation 987/09.

aggregating), then both institutions are obliged to pay Invalidation Pension provisionally.⁶⁰

The institutions must inform the claimant of the provisional award immediately and draw his/her attention to the fact that the award is provisional only and is not open to appeal.⁶¹

4.5.3. If informed that the Type A only procedure applies

In *subsection 3.4 above* it was explained that the Type A only procedure can apply in exceptional circumstances even though the claimant has been subject to a Type B scheme.

The contact institution will inform the DSP if this exception applies. If it does, DSP will not have to award any pension to the claimant unless the DSP happens to be the competent institution.

If the DSP is the competent institution, then if:

- the claimant has been eligible for an Irish invalidity pension under Irish law alone (i.e. since *Step 1* of the Type B procedure), the competent institution should start at *Step 5* of the Type A only procedure and award an invalidity pension;
- the claimant has not been eligible for an Irish Invalidation Pension under Irish law alone (i.e. it was necessary to apply the aggregation rules in *Steps 2 and 3* of the Type B procedure), the competent institution should start at *Step 1* of the Type A only procedure.

4.5.4. If informed that another EEA State is availing of the one year exception

If any of the other concerned EEA State institutions is availing of the one year exception explained in *Step 5* of the Type B procedure above DSP will be informed by the contact institution and the other concerned State institution.

4.5.5. Calculate the amount of benefit payable as soon as possible

⁶⁰ See Article 50 of Regulation 987/09.

⁶¹ See Article 50 of Regulation 987/09.

The amount of benefit payable by the DSP should be calculated according to the rules in:

- if necessary, *Step 2* of the Type B procedure above (aggregation of periods of insurance) using information supplied by the contact institution regarding periods of insurance under SED P2200 (Form E204);
- if necessary, *Step 3* of the Type B procedure above (aggregation of periods of benefit);
- *Step 6* of the Type B procedure (calculation of the amount).

The DSP should then send its decision on the amount payable to the contact institution using the appropriate SED Form P6000, replacing E210.

4.6. RECALCULATION OF BENEFITS

From time to time, a person who was not eligible for a benefit in a particular EEA State may become eligible. Equally, a person who was eligible for invalidity benefit may subsequently become ineligible.

In either case, the entitlements of the person must be recalculated in each EEA State. The institution which has recalculated, withdrawn or suspended the benefit must immediately:

- notify the person concerned and specify the reasons and time limits for appeal. The period for appeal will only start once the decision has been received by the person concerned;
and
- notify each of the institutions on which the person concerned has a claim, if necessary through the contact institution.

The entitlements of the person are then recalculated by each institution. In the case of the contact institution, the procedures outlined in 4.4 above must be followed.⁶² In the case of other concerned EEA institutions, the procedures outlined in 4.5 must be followed.

Where a person receiving invalidity benefits becomes eligible for benefit in another EEA State, until the recalculations are made, those

⁶² See Articles 50 of Regulation 883/04. See also Article 51 of Regulation 987/09.

institutions responsible for paying benefit must continue to do so, so long as the person continues to be eligible under the legislation of that EEA State.⁶³

⁶³ See Article 48 of Regulation 883/04.

5. INVALIDITY BENEFITS: COMMON PROVISIONS

5.1 INTRODUCTION

There are certain requirements which apply regardless of whether the benefit in question is dealt with under the Type A only or Type B procedure.

5.2 SUSPENSION AND WITHDRAWAL

If the provision of benefits is to be resumed after suspension, this will be the responsibility of the institution or institutions which were responsible for the payment of the benefits at the time of their suspension.⁶⁴

If benefits are withdrawn but the condition of the person warrants the granting of further benefits, they shall be granted according to the rules outlined in *subsections 3 and 4 above, as appropriate*.⁶⁵

5.3 RECALCULATION OF INVALIDITY BENEFITS

Where a person is in receipt of invalidity benefit but then:

- reaches pensionable age in *Ireland*, s/he may be awarded an Irish State Pension (Transition) upon application, at age 65, or automatically be awarded a State Pension (Contributory) at age 66 as appropriate. His/her entitlement to these benefits must be calculated in accordance with the rules outlined in *subsection 6* below.⁶⁶ Irish legislation ensures a person cannot be in a worse position as a result of this recalculation⁶⁷.
- reaches pensionable age in another EEA State without having reached pensionable age in *Ireland*, s/he will continue to receive invalidity pension until s/he reaches pensionable age in *Ireland*.⁶⁸ However, if the invalidity pension was awarded under the Type A

⁶⁴ Article 51(1) of Regulation 987/09.

⁶⁵ Article 51(2) of Regulation 987/09.

⁶⁶ Article 48 (1) of Regulation 883/04.

⁶⁷ Section 113A of the Social Welfare Consolidation Act 2005

⁶⁸ Article 48(2) of Regulation 883/04.

only procedure, then it must be recalculated according to the Type B procedure, as of the date that he reached pensionable age in that other EEA State.⁶⁹

- is awarded an invalidity pension under the Type A only procedure but subsequently becomes eligible for a Type B invalidity pension in another EEA State, his/her benefit must be recalculated in accordance with the Type B procedure.⁷⁰

PENSIONABLE AGES IN THE EEA STATES

In Ireland, the pensionable age is 65 for both men and women. The pensionable ages in other EEA States are set out in the Table.

<i>EEA State</i>	<i>Male pensionable age</i>	<i>Female pensionable age</i>
Austria	65	60
Belgium	65	65
Bulgaria	63	60
Denmark	65	65
Finland	65	65
France	60	60
Germany	67	67
Greece	65	60 if insured pre 1/1/93 65 if insured since 1/1/93
Iceland	67	67
Czech Republic	62	From 58yrs 8 mths 62 depending on number of children raised.
Estonia	63	61* (Increased to 63 in 2016)
Cyprus	65	63
Latvia	62	62
Lithuania	62yrs 6 months	60
Hungary	62	62
Malta	61	60
Poland	65	60
Romania	63yrs 4 months 65 after 2014	58yrs 4 months 60 after 2014
Slovenia	63.	61

⁶⁹ Article 48(3) of Regulation 883/04.

⁷⁰ Article 48(4) of Regulation 883/04.

Italy	65	60
Slovakia	62	62
Liechtenstein	64	64
Luxembourg	65	65
Norway	67	67
Portugal	65	65
Spain	65	65
Sweden	65	65
Netherlands	65	65
UK	65	60 rising to 65 by 2010-2020

Source: MISSOC database -

http://ec.europa.eu/employment_social/missoc/db/public/compareTables.do;jsessionid=GQXnLwvgsNGPgrNgvnyfnLvmFbwyrQvPbhTX5R2SXNGJVR7KHBJB!1441876948

6. OLD-AGE AND SURVIVOR'S BENEFITS

6.1 INTRODUCTION

The rules for old-age and survivor's benefit are like the rules under the Type B procedure for invalidity pensions.

As explained above, the relevant Irish old-age benefits are State Pension (Transition) and State Pension (Contributory). The relevant Irish Survivor's Benefit is Widow's/Widower's /Surviving Civil Partners (Contributory) Pension.

6.2 WHERE TO APPLY? HOW TO APPLY?

General rule

An application for old age/survivor's benefit shall be made to the institution of the place of residence, or to the institution of the last Member State whose legislation was applicable.⁷¹

The claim must be accompanied by the required supporting documents and be made on the form provided for by the institution of the place of residence.⁷²

If the employed or self-employed person submits his claim to the State of residence, but has not been subject to the legislation of that State, the institution of the place of residence must forward the claim to the institution of the EEA State to whose legislation the employed or self-employed person was last subject.

The date of submission of the claim shall apply in all the institutions concerned.⁷³ If, when requested to do so, the claimant fails to provide information to support his claim, such as the fact that he has been employed or resided in other Member States, the legislation does allow for treating the date on which he completes his initial claim (i.e. finally provides the full details of employment/insurance) or submits a new claim for the missing periods of employment/residence, to be treated as the date of submission of the claim to the institution applying the legislation. This is subject to more favourable provisions of national legislation.⁷⁴

Eg.1 Q is living and working in Ireland, where he has worked for 5 years. He reaches pensionable age and makes a claim for State Pension (Contributory) from Ireland. Q previously worked in the UK for 10 years and France for 20 years. He provides all relevant details of these periods. DSP forwards all relevant documents relating to the person to both the UK & France, who will then examine any potential entitlement to old age benefits under their legislation. The date on which Q submitted his claim to DSP is deemed to be the date of submission in both France & the UK.

E.g. 2 Same as in the example above, except this time Q, when making his claim to Ireland, does not mention the period he worked in the UK. DSP notice a gap in his record & request further information from him regarding this period. Q does not reply for 2 months. When he does

⁷¹ See Article 45(4) of Regulation 987/09.

⁷² See Article 46(1) of Regulation 987/09.

⁷³ See Articles 45(4) and (5) of Regulation 987/09.

⁷⁴ See Article 45(6) of regulation 987/09

provide the information, it is the date that he supplies this information that is taken as the date of submission for his claim. Ireland, the UK & France must decide his claim from this date.

All claims must be accompanied by the required supporting documents supplied by the claimant relating to periods of insurance (institutions, identification numbers), employment (employers) or self-employment (nature & place of activity) and residence (addresses) which may have been completed under other legislations, as well as length of those periods⁷⁵. The claim should be made to the EEA State to whose legislation s/he was last subject, or to the institution of the place of residence which shall forward the claim to the relevant institution.

In *Ireland*, all applications are dealt with by the Social Welfare Services of the DSP in Sligo. If the claim is proper to another EEA State, the Social Welfare Services will forward the claim directly to the institution(s) of the EEA State concerned. If the claims are proper to Ireland and to another EEA State, the Social Welfare Services processes the claim and also forwards the claim to the appropriate EEA institution. If the claim is not proper to Ireland, the claim is forwarded to the appropriate EEA State.

SED P2000 (which replaces Form E202) (old-age pension) and **SED P2100** which replaces **Form E203** (Survivor's Pension) are the relevant forms to use when informing other institutions of a claim that has been made by a customer who has previously been insured in other EEA State(s).

In all of the above cases:

- the contact institution shall, without delay, send claims for benefits and all the documents relevant and available, to all the institutions in question, so that insofar as possible they can all start the investigation of the claim concurrently.
- if the claimant asks for postponement of the award of any old age benefits in any EEA States to which he would otherwise be entitled, he must specify the EEA States under whose legislation he is claiming benefits. In order to enable the claimant to exercise that right, the institutions concerned shall, upon the request of the claimant, notify him of all the information available to them so that he can assess the consequences of postponement⁷⁶

⁷⁵ See Article 46(1) of regulation 987/09.

⁷⁶ See Article 46(2) of Regulation 987/09.

- Should the claimant withdraw a claim for benefits provided under the legislation of a particular Member State, that withdrawal shall not be considered as a concurrent withdrawal of claim for benefits under the legislation of other Member States.⁷⁷

6.3 WHO INVESTIGATES?

All relevant institutions will investigate a claim for old age benefits. The institution to which the claim is submitted or forwarded shall be known as the "contact institution". The institution of the place of residence shall not be referred to as the contact institution if the person concerned has not, at any time, been subject to its legislation.

The contact institution shall investigate the claim itself, and shall also, without delay, send the claim for benefits, as well as all relevant documents available, to all the institutions in question so that they can all start the investigation of the claim concurrently.⁷⁸ The contact institution must notify the other institutions of periods of insurance or residence the claimant has been subject to its legislation. It shall also indicate which documents shall be submitted at a later date and supplement the claim as soon as possible.⁷⁹

In *Ireland*, the contact institution is the DSP. Investigations regarding State Pensions/survivor's benefit claims are carried out by the Social Welfare Services in Sligo.

All other EEA States where the claimant or, in the case of survivor's benefits, his/her Spouse/Civil Partner has been insured shall notify the contact institution and the other relevant institutions as soon as possible of the periods of insurance or residence to which the claimant has been subject to their legislation.⁸⁰ They must calculate the claimant's entitlements under the rules set out below. This means that the claimant may receive benefits from several different EEA States at the same time.⁸¹

However, if a claimant for old age benefits expressly asks for the postponement of the award of old age benefits to which s/he would be entitled in a particular EEA State, then no account can be taken of

⁷⁷ See Article 46(3) of regulation 987/09.

⁷⁸ See Article 47(4) of Regulation 987/09.

⁷⁹ See Article 47(4) of Regulation 987/09

⁸⁰ See Article 47(5) of regulation 987/09

⁸¹ See Article 47(6) of Regulation 987/09.

*these periods of insurance when calculating payments due under the legislation of other states if to do so would result in receipt of a lower benefit.*⁸²

6.4 ROLE OF THE CONTACT INSTITUTION STEP BY STEP

In addition to investigating a claim under its own legislation, the institution deemed to be the “contact institution” is also responsible for forwarding claims and information to other Member States, to communicate decisions, and keeping the claimant informed, upon request, of any relevant information relating to his/her various claims

Where DSP is investigating the claim, then it should follow the procedure set out below.

Step 1. Assess claim under national legislation and make provisional award if eligible under national law. Notify all EEA institutions concerned.

(a) Assess claim under national legislation and make provisional award if eligible under national law

The DSP must firstly determine the claimant’s entitlement to Irish State Pension or survivor’s benefits under Irish law alone..⁸³ If, the claimant qualifies under national legislation, s/he should be paid that benefit immediately on a *provisional* basis.⁸⁴ The DSP must inform the claimant of the provisional award immediately and draw his/her attention to the fact that the award is provisional only.⁸⁵

[However, in practice, if a person is eligible under Irish law for a pension, the award is not made provisionally. Instead, a normal award is made and the claimant is made aware of his/her right to appeal in the normal manner.]

(b) Determine and notify all concerned EEA States

⁸² See Article 50 of Regulation 883/04.

⁸³ See Article 47(1) of Regulation 987/09.

⁸⁴ See Article 50 of Regulation 987/09

⁸⁵ See Article 50(3) of Regulation 987/09.

The DSP should notify the institutions of the EEA States to whose old age/retirement/survivors benefit legislation the claimant has been subject. We refer to these States as “*concerned EEA States*” and to their institutions as “*concerned institutions*.”

The institutions should be notified without delay using:

- **SED P2000 (which replaces Form E202)** in the case of old age benefits;
- **SED P2100 (which replaces Form E203)** in the case of survivor’s benefits;
- **SED P5000 (replacing Form E205)** in all cases
- **SED P4000 (replacing Form E207)** in all cases

In particular, the DSP should set out the periods of insurance completed by the employed or self-employed person in Ireland on SED P5000 (replacing **Form E205**).⁸⁶

Each State shall notify the contact institution and the other relevant institutions as soon as possible of the periods of insurance or residence subject to their legislation⁸⁷. Each of the institutions shall calculate the amount of benefits due, if any, to the claimant, and shall notify the contact institution (DSP in this case) and the other institutions of their decision, of the amount of benefit due, and of any other relevant information required.⁸⁸

Each institution shall notify the claimant of the decision it has taken in accordance with the applicable legislation. Each decision shall specify the remedies and periods allowed for appeals. Once the contact institution has been notified of all the decisions taken by each institution, it shall send the claimant and the other institutions a summary of those decisions, using the relevant SED P7000⁸⁹

Any institution which establishes that the claimant is entitled to a payment under its domestic legislation shall pay the claimant, specifically drawing attention to the provisional nature of the payment, and any rights to appeal in accordance with its legislation.⁹⁰

⁸⁶ See Article 47(1) and 47(4) of Regulation 987/09.

⁸⁷ See Article 47(5) of Regulation 987/09

⁸⁸ See Article 47(6) of Regulation 987/09

⁸⁹ See Article 48 of Regulation 987/09

⁹⁰ See Article 50 of Regulation 987/09

What to do now: If the claimant is:

- eligible for State Pension/Survivor's Benefit, proceed to *Step 3*;
- ineligible for Irish State Pension/Survivor's Benefit, proceed to *Step 2*.

Step 2. If necessary, aggregate periods of insurance in other EEA States where person is insured for old age/survivor's benefit

If a person is not eligible for State Pension/survivor's pension on the basis of his/her Irish periods of insurance alone, then account must be taken of periods of insurance completed under the legislation of any other EEA State, whether under a general scheme or under a special scheme and whether as an employed person or as a self-employed person.⁹¹

e.g.1 Z is in Ireland when her spouse/Civil Partner dies. Z claims an Irish Widow's/Surviving Civil Partner's Contributory Pension. However, to qualify, it is necessary to have 156 weeks' PRSI paid. She has only 130 weeks PRSI paid. However, previously she worked in Germany where she was insured against the death of her spouse/Civil Partner, and had paid contributions for 200 weeks. The DSP must investigate whether Z is eligible for an Irish Widow's/Surviving Civil Partner's (Contributory) Pension. Z's periods of insurance under German legislation and her contributions in Ireland should be aggregated. These amount to 330 weeks. Z has therefore satisfied the Irish 156 weeks PRSI paid requirement.

If the legislation of an EEA State treats periods of residence as being equivalent to periods of insurance, then periods of residence should be aggregated.

e.g.2 Y is in Ireland when her Spouse/Civil Partner dies. She claims an Irish Widow's/Surviving Civil Partner's (Contributory) Pension. However, to qualify, it is necessary to have 156 weeks' PRSI contributions paid. She has only 130 weeks PRSI contributions paid. However, before she came to Ireland, she was resident in another EEA State for 100 weeks. Under the law of that EEA

⁹¹ See Article 6 of Regulation 883/04 & Article 51 of Regulation 883/04.

State, a person is eligible for benefit once he has been resident for a fixed number of weeks. The DSP must investigate whether Y is eligible for an Irish Widow's/Surviving Civil Partner's (Contributory) Pension. The DSP should aggregate Y's period of insurance in Ireland and her period of residence in the other EEA State. These amount to 230 weeks. Y has therefore satisfied the Irish 156 weeks PRSI paid requirement.

Irish law imposes certain additional requirements for eligibility for pensions. For example, to be eligible for State Pension (Transition), a claimant must:

- have commenced paying contributions before reaching 55;
- have paid at least 260 full rate employment contributions (520 from May 2012)
- have a yearly average of at least 48 full rate contributions paid and/or credited from 1979 or a yearly average of at least 24 full rate contributions paid and/or credited from 1953.

In assessing whether requirements such as these have been satisfied, periods of insurance in other EEA States should also be taken into account.

Information on the periods of insurance completed under the legislation of other concerned EEA States is provided by the institutions of those States on SED P5000 (Formerly Form E205).

What to do now: If the claimant is:

- now eligible for Irish State Pension/Survivor's Benefit, proceed to *Step 3*;
- still ineligible for Irish State Pension/Survivor's Benefit, proceed to *Step 5*; *the claimant will receive no Irish benefit from the DSP.*

Step 3. Exception where insured for less than a year

If the claimant has been insured in Ireland for less than one year:

- the DSP is not obliged to award any State Pension/Survivor's Benefit;⁹²

⁹² See Article 57(1) of Regulation 883/04.

- the DSP must inform the other EEA States concerned that it is applying the exception for persons insured for less than one year.⁹³

(For reference : Under Irish Legislation periods of residence are not deemed to be periods of insurance).

However, if this exception would relieve all concerned EEA States of their obligation to pay benefit, then benefit must be paid by the last of the EEA States in which the claimant was insured and whose conditions are satisfied once all periods of insurance are aggregated, following the rules outlined in *Step 2*.⁹⁴ The contact institution and all other institutions should be notified of this decision.⁹⁵

e.g.1 Y was insured in France for less than a year. She then moved to Italy where she was also insured for less than a year. Finally, she came to Ireland where again she was insured for less than a year. The application of the one year exception would deprive the claimant of any entitlement. The one year exception therefore may not be applied. When rules of aggregation are applied suppose that Y is eligible for benefit in Italy and in France but not in Ireland. Italy would be obliged to pay the pension since Italy is the last EEA State in which Y was whose legislation Y satisfies once periods of insurance have been aggregated.

What to do now: If:

- this exception applies and the DSP does not have to pay any benefit, proceed to *Step 5*. *The claimant will receive no Irish benefit from the DSP;*
- this exception does not apply, proceed to *Step 4*.

Step 4. Calculate the amount of the benefit

⁹³ See Article 47(7) of Regulation 987/09.

⁹⁴ See Article 57(3) of Regulation 883/04.

⁹⁵ See Article 47(7) of Regulation 987/09.

Once it has been determined that a person is eligible for benefit, following the relevant *Steps* above, the amount payable must be calculated.

Rule for amount to be awarded

If the claimant is eligible for benefit:

- only once the aggregation rule of *Step 2* has been applied, then the amount due is the pro-rata amount;⁹⁶
- under Irish law alone (i.e. his/her eligibility is established under *Step 1* above and without having to apply the aggregation rules in *Step 2*), then the amount due is the national amount (i.e. the amount normally awarded under Irish legislation).⁹⁷

This is explained below:

(a) *The pro-rata amount for Irish State Pension/Survivor's Benefit legislation*

Calculation of the pro-rata amount

First, calculate the theoretical amount:

The theoretical amount is the rate of Irish pension corresponding to the yearly average given by:

$$\frac{\text{Irish + other EEA periods of insurance}^1}{\text{Number of years in the test period}^2}$$

¹ All other EEA periods of insurance should be calculated here, including periods of insurance in EEA States of less than 12 months.

² The number of years in the test period is from 1953 (1936 in the case of Widower(s)/Surviving Civil Partner's Contributory Pension) (or the time of entry into insurable employment, if later) up to the applicant's:

- 65th birthday in the case of a State Pension (Transition) or
- 66th birthday in the case of an State Pension

⁹⁶ See Article 52(2) of Regulation 883/04.

⁹⁷ See Article 52(1) of Regulation 883/04 and Annex VIII.

- (contributory)
- in the case of Widower(s) /Surviving Civil Partner's Contributory Pension, the last complete tax year prior to the date of death of spouse/Civil Partner or the last complete tax year prior to age 66 (whichever is earlier) in the case of applicant or deceased spouse/Civil Partner

Second, calculate the pro-rata amount:

The pro-rata amount is calculated according to the following formula:⁹⁸

$$\frac{\text{Irish period of insurance}}{\text{amount}} \times \text{theoretical amount} \\ (\text{Irish}) + (\text{other EEA periods of insurance}^3)$$

³ If any of the other EEA States avail of one year exception in *Step 3*, then the period of insurance in that EEA State is not included in "other EEA periods of insurance"⁹⁹

This amount is then rounded up to the nearest partial rate in payment at the time of entitlement.

(b) calculate the national amount

The national amount is the amount to which a claimant is entitled under Irish law alone, without applying any of the rules of Regulation 883/04 (e.g. without applying the aggregation or pro rata rules)..

What to do now: Proceed to *Step 5*.

⁹⁸ See Article 52(2) of Regulation 883/04.

⁹⁹ See Article 57 of Regulation 883/04.

Step 5. Collect decisions of all other EEA States under which claimant insured and notify claimant

At the same time, all other EEA States under which the person has been insured will calculate the entitlements of the claimant. Each such EEA State must notify the contact institution, specifying the grounds and time-limits for appeal provided for by the legislation in question. SED P6000 (formerly Form E210) is used for this purpose. When all these decisions have been received by the contact institution, the institution shall communicate them to the claimant, by means of a summarised statement to which the decisions must be appended. SED P7000 (formerly Form E 211) is used for this purpose. If requested this information must be conveyed in the claimants own language. Periods allowed for appeal only commence on the date of receipt of the summarised statement by the claimant.¹⁰⁰

When the contact institution sends out the decisions to the claimant, it shall also forward a copy of all decisions to each one of the institutions concerned using SED P6000 (formerly Form E210).¹⁰¹

6.5 THE ROLE OF OTHER CONCERNED INSTITUTIONS

If a person has been insured in Ireland, but the institution of another EEA State is the contact institution, then the DSP's involvement will be more limited:

1. Respond to SED P2000/P2100 (which replace Forms E202/E203) with SED P5000(Form E205). Determine eligibility for Irish State Pension/survivor's benefit and calculate amount payable.

First, the DSP will receive SED P2000 (Form E202) (old age) or SED P2100 (Form E203) (survivor's) from the contact institution. The DSP should respond using SED P5000 (Form E205). Details that it should supply on this Form include: details of the periods of insurance completed under the legislation that it administers. This information should be supplied without delay.¹⁰²

¹⁰⁰ See Article 48(2) of Regulation 987/09.

¹⁰¹ See Article 48(1) of Regulation 987/09.

¹⁰² See Articles 47(5) and (6) of Regulation 987/09.

If the DSP wishes to avail of the one year exemption discussed in *Step 3* above, this should be indicated also on SED P5000 (Form E205). SED 6000 (Form E210) may also issue in this case.

The DSP should also indicate as soon as possible if the claimant is entitled to a benefit under Irish legislation alone using SED 6000 (Form E210).

2. If payment of provisional benefit is due

If:

- it becomes apparent, upon investigation, that the claimant is entitled under Irish State Pension/Survivor's Benefit legislation (without aggregating under *Step 2* above) to benefit, then DSP must provisionally pay benefit to the claimant. ;¹⁰³
or
the claimant is entitled under Irish State Pension/Survivor's Benefit legislation *and* under the legislation of another EEA State (without aggregating), then DSP must make an advance payment of Irish State Pension/survivor's benefit. Again this will be a provisional payment.¹⁰⁴

The DSP must inform the claimant of the provisional award immediately and draw his/her attention to the fact that the award is provisional only and is open to any rights of appeal in accordance with Irish legislation.¹⁰⁵

3. If informed that another EEA State is availing of the one year exception

If any of the other concerned EEA State institutions is availing of the one year exception explained in *Step 3* above, they will inform both the contact institution and any other concerned States (i.e. DSP will be informed in this case).

¹⁰³ See Article 50(1) of Regulation 987/09.

¹⁰⁴ See Article 50(2) of Regulation 987/09.

¹⁰⁵ See Article 50(3) of Regulation 987/09.

4. Calculate the amount of benefit payable as soon as possible

The amount of benefit payable by the DSP should be calculated according to the rules in:

- if necessary, *Step 2* above (aggregation of periods of insurance) using information supplied by the contact institution regarding periods of insurance under SED Form E205;
- *Step 4* of the Type B procedure (calculation of the amount).

The DSP should then send its decision on the amount payable to the contact institution and to the claimant using SED 6000 (Form E210).

6.6 RECALCULATION OF BENEFITS

Where:

- a person who was not eligible for a benefit in a particular EEA State becomes eligible; *or*
- a person who was eligible for a benefit subsequently becomes ineligible; *or*
- a person who has expressly asked for the postponement of the award of old-age benefits subsequently claims them,

the entitlements of the person must be recalculated in each EEA State.

The institution which has recalculated, withdrawn or suspended the benefit must immediately:

- notify the person concerned and specify the reasons and time limits for appeal. The period for appeal will only start once the decision has been received by the person concerned;
and
- notify each of the institutions on which the person concerned has a claim, if necessary through the contact institution.

The entitlements of the person are then recalculated by each institution. In the case of the contact institution, the procedures

outlined in Step 4 of the Type B procedure above must be followed.¹⁰⁶ In the case of other concerned EEA institutions, the procedures outlined in step 5 above must be followed.

Where a person receiving State Pension/survivor's benefit becomes eligible for benefit in another EEA State, until the recalculations are made, those institutions responsible for paying benefit shall continue to do so, so long as the person continues to be eligible under the legislation of that State.¹⁰⁷

¹⁰⁶ See Articles 50(2) and 50(3) of Regulation 883/04. See also Article 51 of Regulation 987/09.

¹⁰⁷ See Article 48(3) of Regulation 987/09.

7. INVALIDITY, OLD AGE AND SURVIVOR'S BENEFITS: CHECKS AND EXAMINATIONS

Where a person is staying or residing in an EEA State other than the EEA State responsible for paying his/her benefit ("the paying EEA State"), the institution of the paying EEA State may request that certain administrative checks and medical examinations be carried out to ensure that the benefit recipient is in fact entitled to the benefit s/he claims.¹⁰⁸

Such checks and examinations are most often made in the case of:

- invalidity benefits;
- old age benefits awarded in the event of unfitness to work;
- old age benefits awarded to elderly unemployed persons;
- old age benefits awarded in the event of cessation of a professional or trade activity;
- survivor's benefits;
- benefits awarded on condition that the means of the recipient do not exceed a prescribed limit.

So, for example, the DSP might want to make checks to ensure that:

- a recipient of an invalidity pension is actually incapable of work;
- the recipient of a State Pension (Transition), formerly Retirement Pension is, in fact, retired.

Such checks are organised in accordance with the legislation of the EEA State in which the person is staying or residing. The institution of the place of stay or residence must send the results of the checks/examinations in a report to the institution of the EEA State of payment.¹⁰⁹ The results of these checks are binding on the paying institution. However, the institution of the paying EEA State is entitled to have the recipient examined by a doctor of its own choice. They can only request that the recipient return to the Member State of payment if the recipient is able to make the journey without prejudice to their health. Travel and accommodation costs must be met by the competent state.

¹⁰⁸ Article 87(1) of Regulation 987/09.

¹⁰⁹ Article 87(2) of Regulation 987/09.

The competent institutions of two or more Member States may agree specific provisions and procedures to improve fully or partly the labour-market readiness of claimants and recipients and their participation in any schemes or programmes available in the Member State of stay or residence for that purpose¹¹⁰.

As an exception to the principle of "free of charge" mutual administrative co-operation in Article 76(2) of Regulation 883/04, the amount of expenses of the medical checks etc shall be refunded to the institution which was requested to carry them out.

¹¹⁰ Article 87(4) of regulation 987/09

8. INVALIDITY, OLD AGE AND SURVIVOR'S* BENEFITS: ALLOWANCES FOR DEPENDANTS

* NOTE – Adult Dependants Allowance is NOT payable with Irish Survivors Benefits. Child Dependant Allowance MAY be.

8.1 ADULT DEPENDANTS OF PENSIONERS

The rules of *subsections 3 – 7* above also apply to allowances for adult dependants included in invalidity and old age benefits.¹¹¹

When the DSP is applying the rules of *subsections 3 - 7*, it should take account of adult dependants who are residing in another EEA State as if they were residing in Ireland. Any requirement of Irish law that the dependant should live under the same roof as the claimant may not be applied so long as the adult dependants can prove that they are mainly dependent on the claimant by producing documents proving the regular transmission of part of the claimant's earnings.

e.g.1 X is entitled to an invalidity pension from Germany and from Ireland following the rules of the Type B procedure. X is resident in Ireland. He has a spouse/Civil Partner who is mainly dependent on X and who is resident in Spain.

The dependant allowances payable to X in respect of his spouse/Civil Partner are therefore determined at the same time as determining the invalidity pension payable to X, as if the dependant allowance were an integral part of the invalidity pension payable to X. The fact that X's spouse/Civil Partner is resident in Spain is irrelevant so long as X can prove that his spouse/Civil Partner is dependent on him.

In order to receive adult dependant allowances, the claimant for invalidity or State Pension benefit should submit a certified statement relating to those adult dependants who are resident outside Ireland.

This certified statement is issued by the sickness insurance institution of the EEA State of residence of the adult dependants or by any other institution designated by that EEA State. This certified statement is valid for 12 months from its date of issue though it may be renewed. The adult dependent must immediately notify the institution of the EEA

¹¹¹ See Article 5 and Article 44 of Regulation 883/04.

State of residence of any occurrence necessitating an amendment to the certified statement.

As mentioned in Part Two, "An Introduction to Regulation 883/04" subsection 2.7.2, Ireland has national overlapping rules that are relevant to the calculation of adult dependant's allowances. Where:

- a person is entitled to an Irish old-age contributory pension with an increase for an adult dependant and
- the adult dependant is also entitled to a personal benefit based entirely on insurance paid in another EEA State, then the Irish adult dependant allowance may be adjusted because of this personal benefit.

8.2 CHILD DEPENDANTS OF PENSIONERS: WHICH EEA STATE MUST PAY?

Unlike adult dependants, allowances for child dependants for invalidity, old age, retirement, or survivors are *not* subject to the rules outlined in *subsections 3 - 7 above*. Allowances for child dependants are subject to the rules set out below. These rules also cover child benefit for persons receiving invalidity, old-age (contributory), retirement or survivor's pensions.¹¹²

Benefits payable for child dependants of pensioners are granted in accordance with the legislation of one EEA State only, although there is nothing to prevent other EEA States awarding supplements for dependants if they so choose.

Rule for determining legislation applicable for child dependants of pensioners

If the pensioner draws his/her pension under the legislation of:

- **one EEA State only**, then that EEA State is also responsible for payment of the child dependant allowance to the pensioner¹¹³;
- **more than one EEA State**, the child dependant allowance is payable by priority as follows ¹¹⁴;

¹¹² See Article 67 of Regulation 883/04.

¹¹³ See Article 67 of Regulation 883/04

¹¹⁴ See Article 68 of regulation 883/04

- more than one State on different bases the order of priority is

- 1) rights arising from employment or self employment,
- 2) rights deriving from the payment of a pension
- 3) benefits based on residence.

- more than one Member State for the same reason, where rights arise as a result of payment of a pension; the place of residence of the children, provided that a pension is payable under its legislation and, additionally, where appropriate, the longest period of insurance or residence under the conflicting legislations.

E.g. 1 – Mr B worked all his life in Ireland. Upon retirement he is entitled to receive an old age pension (State Pension Contributory) from Ireland. He then moves to the UK. Mr B has a son aged 10 who lives with him in the UK. The sons' mother is dead. As Mr B receives his pension from one state only, that state, namely Ireland, will also be responsible for payment of child dependant allowances to Mr B.

E.g. 2 - X worked in Germany for 10 years, then in Ireland for 20 years. He becomes ill, then this turns to incapacity He is entitled to an Invalidity Pension from both Ireland and Germany under the Type B procedure. He has a child who is mainly dependent upon X, and who is resident in Ireland. His entitlement to child dependents allowance is based on his invalidity pension. Article 68 1. (b)(ii) of 883/04 covers situations where child dependent allowances (a form of child benefit) is available to pensioners. It stipulates that it is the place of residence of the children, provided that a pension is payable under that countries legislation that gets priority. Therefore, as X's child lives in Ireland, and he receives a portion of his invalidity pension from Ireland, then Ireland is the competent state by priority, and must pay the relevant supplement to X. A supplement may be payable by Germany, should its rates be higher.

However, if the pensioner does not meet the conditions for an allowance under the legislation of that EEA State, then the child dependent allowance is payable to the pensioner by the EEA State to which he has been subject for the longest period of time. If he does not meet the conditions of that EEA State's legislation, then he will be entitled to an allowance from the EEA State whose legislation was applicable for the second longest period of time, and so on.

If the length spent under the legislation of several EEA States is equal, child dependant's allowance will be paid according to the legislation of the EEA State to which the pensioner was last subject.¹¹⁵

As stipulated above, it is important to note that if the pensioner is entitled under the national law of any other EEA State to a higher amount of child dependent allowance, applying national rules for determining entitlement only, the pensioner will be entitled to:¹¹⁶

- be paid by the competent EEA State its child dependant's allowance *and*
- be paid by the other EEA State the difference between its higher allowance and the lower allowance from the competent (i.e. paying) EEA State.

See further *Administrative Commission Decision F1*, concerning the interpretation of Article 68 of Regulation (EC) No 883/2004 relating to priority rules in the event of overlapping of family benefits [C 106, 24.4.2010, p. 11](#) However, once the right to benefit under the competent EEA State has been exhausted, there will be no right to any benefit under the law of the other EEA State. Allowances for children exhaust at 18 in Ireland. However, in other EU States they may exhaust at a later age if the child is in full time education. Suppose that, following the rules above, a pensioner is entitled to an allowance in respect of a 17 year old child from Ireland. If the pensioner is entitled under the law of another Member State to a higher allowance for the child, then that State will have to pay the difference, if any, between the Irish allowance and their own higher allowance. But once the child reaches 18, the pensioner will not

¹¹⁵ See Article 68 and 69 of Regulation 883/04.

¹¹⁶ See Administrative Commission Decision No. 150.

be entitled to an allowance in Ireland. He will also lose any entitlement in the other EU State, even if he is in full time education.

Once the EEA State that is obliged to pay the child dependant's allowance has been selected in accordance with the above rules, the EEA State in question cannot refuse benefit on the grounds that the pensioner or the children are not residing in that EEA State.

e.g.1 X is entitled to an invalidity pension from Germany and from Ireland following the rules of the Type B procedure. X is resident in Ireland. He has one son aged 15 who is mainly dependent on X and who is resident in Germany.

X draws a pension from more than one EEA State. However, he is resident in Ireland. He can therefore only demand payment of an allowance in respect of the child dependant under Irish law. However, Germany is free to pay a child dependant allowance if it so chooses. The fact that the 15 year old is resident in Germany does not affect the DSP's obligation to pay.

8.3 CHILD DEPENDANTS ALLOWANCES: WHO IS ELIGIBLE TO RECEIVE THEM?

A person can only claim child dependant's allowance with their invalidity, old age or survivor's benefit if they are entitled to that invalidity, old age or survivor's benefit. In order to determine whether a person is entitled to these benefits, the rules in *subsections 3 - 7* above should be applied, as appropriate.¹¹⁷

(D) ORPHANS BENEFITS: WHICH EEA STATE MUST PAY?

Regulation 883/04 lays down special rules for orphans' benefits. These are:

- family allowances, supplementary and special allowances in respect of orphans and
- orphans' pensions.

¹¹⁷ See Article 68 and 69 of Regulation 883/04.

In *Ireland*, the relevant benefits are Guardian's Payment, formerly Orphan's (Contributory) Allowance, Child Benefit and increases of Widow's/Widowers/Surviving Civil Partner's Contributory Pension in respect of qualified children.

Allowances for orphans are *not* subject to the rules outlined in *subsections 3 - 7 above*.

Rule for determining legislation applicable for orphan's benefits

The orphan of a deceased employed or self-employed person who was:¹¹⁸

- subject to the legislation of one EEA State only, is entitled to claim benefit from the institution of that EEA State;
- subject to the legislation of more than one EEA State, is entitled to claim orphans' benefits from the EEA State of the orphan's residence and according to the legislation of that EEA State.

However, if the orphan does not meet the conditions for an orphan's benefit under the legislation of that EEA State, then a benefit is payable to the orphan by the EEA State to which the deceased has been subject for the longest period of time. If he does not meet the conditions of that EEA State's legislation, then he will be entitled to a benefit from the EEA State whose legislation was applicable to the deceased for the second longest period of time, and so on.

If the length spent under the legislation of several EEA States is equal, orphan's benefit will be paid according to the legislation of the EEA State to which the deceased was last subject.¹¹⁹

However, the legislation applicable under 8.2 above for the child dependants of a pensioner will continue to remain applicable after the death of the pensioner in respect of the orphans' benefits.¹²⁰

¹¹⁸ See Article 67, 68 and 69 of Regulation 883/04.

¹¹⁹ See Article 68 and 69 of Regulation 883/04.

¹²⁰ See Article 67, 68 and 69 of Regulation 883/04.

There is an important *exception* to the above rules: if the orphan is entitled under the law of any other EEA State to a higher amount of orphan's benefit, the orphan will be entitled to:¹²¹

- be paid by the competent EEA State its orphan's benefit *and*
- be paid by the other EEA State the difference between its higher benefit and the lower orphan's benefit from the competent EEA State.

See further *Administrative Commission Decision No. 150*. However, once the right to benefit under the competent EEA State has been exhausted, there will be no right to any benefit under the law of the other EEA State. Once the EEA State that is obliged to pay orphan's benefits has been selected in accordance with the above rules, the EEA State in question cannot refuse benefit on the grounds that the pensioner or the children are not residing in that EEA State.

8.5 ORPHANS' BENEFITS: WHO IS ENTITLED TO RECEIVE THEM?

In *Ireland* a person can only claim orphan's benefits if a parent or step parent has 26 weeks PRSI paid. However, the paying EEA State must aggregate periods of insurance spent in other EEA States.¹²²

8.6 CHILD DEPENDENCY ALLOWANCES, ORPHANS' BENEFITS: WHERE TO APPLY?

In general, the claimant for child dependency allowance or orphan's benefit must submit his/her claim to institution of his/her place of residence, in accordance with the procedures laid down by that EEA State.

However, if the claimant does not reside in the competent EEA State, as determined by the rules in 8.2 and 8.4 above, he may submit a claim to either the competent institution of that EEA State or to the institution of the place of residence;

¹²¹ See Administrative Commission Decision No. 150.

¹²² See Article 68 and 69 of Regulation 883/04.

The institution of residence will then forward the application to the competent institution.

Under Article 68 (3) where a person submits a claim for family benefits to a Member State under whose legislation they are entitled to claim, even though that State is not competent by priority right, the date on which the application was first made shall be considered as the date on which it was submitted to the competent authority by priority.

An authority receiving such an application must, without delay, forward the application to the competent authority, inform the person concerned and, without prejudice to the provisions of the Implementing Regulation concerning provisional awards, pay, if necessary a differential supplement.

The competent authority should treat the claim as if it were submitted directly to it and the date on which the application was submitted to the first authority shall be taken as the date the claim was made.

Similarly, under Article 81 any claim, declaration or appeal which should have been submitted in accordance with the legislation of one Member State within a specified period shall be admissible if it is submitted within the same period to a corresponding institution in another Member State. The authority receiving such documents shall forward them to an institution in the appropriate Member State without delay

9. Correlation Table for invalidity, old age and survivors benefits

BUSINESS FLOW NUMBER + NAME	SEDs NUMBER + NAME	ARTICLE IN 883/04	ARTICLE IN 987/09	EQUIV - ALENT E-FORM	DESCRIPTION OF BUSINESS FLOW (meaning + purpose)
BF P001 - Pension claim - Old age	P2000 - Pension claim - Old Age	50(1)	45(4), 46(1), 47(4)	E202	Contact Institution provides other institutions with necessary information, to enable them acting upon a claim for an old age pension

	P4000 - Report on Insurance History	6	12(1), 46(1)	E207	Contact Institution provides other institutions with necessary information about former activities of the person concerned, to enable them clarifying the insurance history
	P5000 - Insurance Periods	6	12(1), 47(4-5)	E205	Competent Institutions provide other institutions including the contact institution with information about the insurance periods according to his national legislation, to enable them applying Art. 6 BR
	P3000 - Rest of the Pension Claim - Old Age	-	47(4)	-	Contact Institution provides other institutions with further information, which was not available for the first flow P2000
BF P002 - Pension Claim Survivors	P2100 - Pension Claim - Survivors	50(1)	45(4), 46(1), 47(4)	E203	Contact Institution provides other institutions with necessary information, to enable them acting upon a claim for a survivors pension
	P4000 - Report on Insurance History	6	12(1), 46(1)	E207	Contact Institution provides other institutions with necessary information about former activities of the person concerned to enable them clarifying the insurance history

	P5000 - Insurance Periods	6	12(1), 47(4-5)	E205	Competent Institutions provide other institutions including the contact institution with information about the insurance periods according to his national legislation, to enable them applying Art. 6 BR
	P3100 - Rest of the Pension Claim - Survivors	-	47(4)	-	Contact Institution provides other institutions with further information, which was not available for the first flow P2100
BF P003 - Pension Claim - Invalidity	P2200 - Pension Claim - Invalidity	50(1)	45(4), 46(1), 47(4)	E204	Contact Institution provides other institutions with necessary information, to enable them acting upon a claim for a invalidity pension
	P4000 - Report on Insurance History	6	12(1), 46(1)	E207	Contact Institution provides other institutions with necessary information about former activities of the person concerned, to enable them clarifying the insurance history
	P5000 - Insurance Periods	6	12(1), 47(4-5)	-	Competent Institutions provide other institutions including the contact institution with information about the insurance periods according to his national legislation, to enable them applying Art. 6 BR
	P3200 - Rest of the Pension Claim - Invalidity	-	47(4)	-	Contact Institution provides other institutions with further information, which was not available for the first

					flow P2200
BF P004 - Child Raising Periods	P1000 - Child Raising Periods	-	44	-	Institutions concerned provide other institutions with information about children of the person concerned, the child raising periods which were recognised for these children and the activities of the person concerned during these periods, to enable them applying Art. 44 of 987/09
BF P005 - Pension decision	P6000 - Pension Decision	50(1)	47(6)	E210	Institutions concerned provide other institutions concerned with information about their pension decision
BF P006 - Summary Note	P7000 - Summary Note	-	48	E211	Contact institution provides claimant and all institutions concerned with information about all pension decisions of the institutions concerned, to enable him exercising his right for review
BF P007 - Pension Request More Info	P8000 - Request Additional Information	-	47(4)	-	In the case, that an institutions needs additional information concerning a pension claim, which is not covered by P3000/P3100/P3200, this SED has to be used
	P9000 - Reply to Request for Additional Information	-	47(4)		Reply to the request, which was sent with P8000

BF P008 - Pension withdrawal	P10000 - Pension Withdrawal	-	46(3)		the competent institution provides the other institutions concerned with the information, that the claimant withdraws his pension claim,
BF - P009 Notification of award of supplement	P13000 - Request Info Amounts	58	-	-	the institution, whose legislation knows minimum benefits, asks for the amounts of the pensions, paid by the other institutions concerned, to check, whether a supplement has to be granted.
	P12000 - Pension Amount	58	-	-	the institution concerned provides the other institutions concerned with the information about the amount of a pension, to enable them applying Art. 58 BR
	P11000 - Award of Pension Supplement	58	-	-	the competent institution provides the other institutions concerned with the information about the award of a pension supplement