

PART FOUR

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Sickness and Maternity Benefits – Title iii Chapter One of Regulation 883/2004

1. Introduction: Scope of the Chapter

The majority of claims for sickness and maternity benefits can be dealt with under national legislation. However, in some cases it will be necessary to invoke the EU Regulations. The relevant provisions are set out in Chapter 1 of Title III of Regulation 883/2004 (Articles 18 – 35) and Chapter 1 of Title III of Regulation 987/2009 (Articles 22 to 32).

Under the Regulations there are two categories of benefits: benefits in cash and benefits in kind.

1.1 Benefits in Cash

These benefits are normally intended to replace income which is suspended because of sickness. As a general rule, sickness benefits in cash are paid according to the legislation of the EEA state where the person is insured (the competent State), regardless of which EEA state the person is residing or staying in.

In the case of Ireland the following benefits are classified as sickness and maternity benefits:

- Maternity Benefit
- Health & Safety Benefit
- Adoptive Benefit
- Illness Benefit (formerly Disability Benefit)
- Carer's Benefit
- Treatment Benefit

1.2 Benefits in Kind

These benefits comprise of medical and dental care, medicines and hospitalisation, as well as direct payments intended to reimburse

the costs of these. As a general rule benefits in kind are provided according to the legislation of the EEA state where the person resides or stays as if the person was insured in that state. Where a person or members of his or her family reside or stay in State which is not the competent State the benefits in kind are provided by the State of residence or stay on behalf of the competent institution.

This Chapter will provide guidance on the rules relating to benefits in cash only. For information in relation to the regulations concerning benefits in kind a person should contact the Department of Health and Children (www.dohc.ie) or the Health Service Executive (www.hse.ie).

2 Making a claim

2.1 A person who is resident or staying in a State which is not the competent State should make their claim for sickness benefits in one of two ways;

A) Direct application to the Competent State

B) Application to the appropriate institution in the State of residence/stay.

A person resident or staying in a State which is not the competent State is entitled to make a claim for sickness benefits directly to the competent state, or to competent institutions of the State of residence/stay. The date upon which the fully completed application form with any necessary accompanying information is received is deemed to be the date of claim.

Example – X is a frontier worker, employed in Ireland, whilst residing in Northern Ireland. X becomes ill and is no longer able to work. X gets a certificate from a doctor in his State of residence, i.e. Northern Ireland, stating that he is incapable of work. Ireland is the competent state as X was last employed there. X wishes to claim Illness Benefit. He is entitled to make an application either directly to the competent institution in Ireland (Department of Social Protection), or to the competent institution of the state of residence, i.e. Northern Ireland. He decides to make his application to the State of residence, who will then forward it on immediately to Ireland. The date the Northern Irish authorities received the application is deemed to be the date of application of the claim.

Claim made to DSP where Ireland is not the competent State

Even if Ireland is not the competent state, but the person is resident in Ireland, DSP is obliged to accept the claim and forward it to the competent state.¹ In such circumstances, the institution in the competent State must take the date the claim was received in Ireland as the date on which the claim is made. If necessary, Ireland should arrange a medical examination before forwarding the claim to the competent State or institution.

It should be noted that the forwarding of a certificate of incapacity does not exempt the person from fulfilling the obligations provided for by the applicable legislation, in particular with regard to his employer. Where appropriate the employer and/or the competent

¹ Art 81 of Regulation 883/2004

institution may call upon the employee to participate in activities designed to promote his return to employment².

2.2 Ireland the Competent State and claimant resident in Ireland – Aggregation.

Where a claim for sickness or maternity benefit is received in Ireland, DSP must first determine the applicable legislation in order to establish if Ireland is the competent state. Therefore, if the person was last insured in Ireland, Ireland is the competent state, while if the person was last insured in another EEA State then that state will be competent.

If it is decided that Ireland is the competent state and the claimant is resident in Ireland, then the claim is dealt with in the normal way by reference to the claimant's periods of insurance, earnings, and family circumstances ([Click here for current qualifying conditions](#)). In relation to the latter, the claimant is entitled to receive benefit in respect of family members who are resident in another EEA State, on the same basis as if those family members were resident here.

If the claimant is not entitled to the benefit on the basis of their Irish contributions alone, then account must be taken of periods of insurance completed under the legislation of any other EEA state. These periods of insurance should be treated as if they had been completed under Irish legislation³.

If a claimant has previously worked in another EEA state, s/he should produce a certificate (using the relevant Structured Electronic Document, replacing Form E001) when making their claim to certify the periods of insurance completed under the legislation of that other EEA state. If s/he does not have such a certificate, then the relevant section in DSP should request the information from International Records section, who will in turn request the information from the relevant authorities in the states of previous insurance.

Example:

X is 27 years old and has been working in Ireland for 3 years. X claims Treatment Benefit but does not qualify because only 150 out of the necessary 260 contributions* have been paid. However, before working in Ireland, X had worked for 4 years in Germany, and so had 200 paid contributions on his German record. If X does

² Art 27(4) of Regulation 987/2009

³ Article 6 of Regulation 883/2004

not possess a certificate showing this, Treatment Benefit section should ask International Records (using Form TB15) to contact the German authorities requesting a certificate showing the periods of insurance completed by the claimant in Germany. When Treatment Benefit receive notification from International Records of the claimants German record (on Form EU1) account can be taken of 110 of the German contributions in order to qualify the claimant for Treatment Benefit.

*** correct as at time of writing. For up to date qualifying criteria go to www.welfare.ie**

2.3 Ireland the Competent State and claimant resident or staying in another EEA State

When Ireland is the competent state but the claimant is resident or staying in another EEA state, the claimant will receive benefits in that country and these benefits will be provided by the competent institution (DSP) at its own expense and in accordance with its own legislation⁴. This also applies to members of a claimant's family resident or staying in another Member State.

The procedure for making such a claim is outlined at paragraph 2.1.above.

3. Accompanying Medical certificates

If the legislation of the competent State requires that the insured person presents a medical certificate to certify his/her incapacity for work they should ask the doctor in the state of residence or stay who established their state of health to provide the necessary certificate of incapacity, including the expected duration of the illness. The person should send this certificate to the appropriate institution in the competent state within the time limits laid down in the legislation of the competent Member State⁵. In the case of Ireland a person should make their claim within 7 days of becoming ill.

Medical Examinations where doctors do not issue certificates

Where doctors in the State of residence do not issue certificates of incapacity the institution in that Member State will arrange to have the person medically examined to determine their incapacity for work and forward the necessary certificate to the appropriate institution in the competent State⁶.

It should be noted that any certificate drawn up in another Member State on foot of a medical examination by a doctor has the same legal value as a certificate drawn up in the competent Member State.⁷ The competent institution shall, however, reserve the right to have the insured person examined by a doctor of its choice⁸ but this does not mean that the person can be asked to come to Ireland for such an examination⁹.

⁴ Art 21 (1) of Regulation 883/2004.

⁵ Art 27 (1) and (2) of Regulation 987/2009

⁶ Art 27 (3) of Regulation 987/2009

⁷ Art 27 (8) of Regulation 987/2009

⁸ Art 27 (6) of Regulation 987/2009

⁹ Case 22/86 Rindone [1987] ECR 1339

Ongoing Medical Certification.

A person whose doctor will provide certificates of incapacity should, where appropriate and in accordance with the legislation of the competent State, send these periodically to the competent institution to prove their continued incapacity.

In other circumstances, at the request of the competent institution, the institution of the place of residence is required to carry out any necessary administrative checks or medical examinations of the person concerned in accordance with the legislation applied by this latter institution¹⁰.

4. Notifying Decisions

Where a claim is awarded, payments are made directly to the person in their State of residence. The appropriate institution in the State of residence should be notified of the decision¹¹. (using the appropriate e form or SED)

Where a decision is made to refuse or discontinue payment of cash benefits, in addition to notifying the person concerned, the appropriate institution in the State of residence must also be informed.¹² (using the appropriate e form or SED)

5. Competency in various situations

5.1 Frontier workers

Frontier workers (i.e. those who work in one country but live in another, to which they return at least once a week¹³) who are insured under Irish legislation shall receive sickness and maternity benefits from DSP according to the Irish legislation.

5.2 Frontier Workers who are wholly unemployed

Frontier workers who become wholly unemployed are subject to the legislation of their State of residence¹⁴ and so, where appropriate, shall receive sickness and maternity benefits from the country of residence

5.3 Stay in or transfer of residence to the competent state

¹⁰ Art 27 (5) of Regulation 987/2009

¹¹ Art 27 (7) of Regulation 987/2009

¹² Art 27 (9) of Regulation 987/2009

¹³ Art 1(f) of Regulation 883/2004

¹⁴ Art 11 (3c) of Regulation 883/2004

A person who is entitled to sickness or maternity benefit under Irish legislation, but who is residing in another EEA state, will remain entitled to that benefit if they temporarily return to Ireland, or if they decide to permanently return to Ireland. This is because Ireland is still the competent State, that is, unless the person becomes subject to the legislation of another Member State.

5.4 Stay in or transfer of residence to another EEA state during sickness or maternity

If a person, living in Ireland and subject to Irish legislation, is receiving sickness or maternity benefits from DSP and temporarily stays in, or transfers residence to, another EEA state, the benefit will continue to be paid for as long as the benefit lasts.

5.5 Person in employment or self-employment in more than one State

Persons who are employed or self-employed in more than one State are subject to the legislation of their State of residence if they pursue a substantial part of their activity in that State, or if they are employed by various undertakings or various employers whose registered offices are in different Member States. If they do not pursue a substantial part of their activities in the State of residence they will be insured in the Member State where the undertaking employing them has its registered office. Decisions on the appropriate legislation to apply are made by the institution in the State of residence.¹⁵

People in this situation will have a Portable Document indicating the legislation or competent State applying in their case. Payment of sickness and maternity benefits will be the responsibility of the designated competent State.

5.6 Person travelling abroad for treatment

The Regulations provide that a person can go abroad to another Member State for treatment where this treatment is available in the State of residence but it cannot be provided within a time-limit which is medically justifiable. This must be authorised in advance by the competent institution¹⁶. However, in relation to payment of cash benefits the granting, or otherwise, of such authorisation to travel does not impact on the payment of Illness Benefit etc. As long as Ireland remains competent, the benefit is payable if the person goes to another country.

¹⁵ Art 13 (1) and (2) of Regulation 883/2004.

¹⁶ Art 20 of Regulation 883/2004.

5.7 Rules for Unemployed persons claiming sickness and maternity benefits.

(i) Unemployed persons who go to another EEA state to seek employment.

Under EU legislation, unemployed persons who are receiving unemployment benefit from the competent state can transfer their entitlement to other EEA states for a period¹⁷. While staying in another EEA state, such persons shall receive sickness or maternity benefit from the competent institution, subject to satisfying the qualifying conditions of the legislation of the competent state, for the six month period the person was entitled to unemployment benefit. The benefit will be provided by the competent institution at its own expense and in accordance with the legislation which it administers. During the period the person is receiving the sickness or maternity benefit, entitlement to unemployment benefit shall be withdrawn. However, it should be noted that if the person fails to return to competent State at the end of the job-search period they lose all entitlement to benefits under the legislation of the competent State.¹⁸

Example

X is working in Ireland, becomes unemployed and claims Jobseeker's Benefit. After 4 weeks X decides to seek employment in the UK and transfers his Jobseeker's Benefit. X becomes incapable of work while in the UK, and claims Illness Benefit. Illness Benefit shall be provided by Ireland at its own expense and in accordance with Irish legislation. If X's claim is awarded, he will be paid Illness Benefit in the UK, for the remainder of the period for which s/he is entitled to receive Jobseeker's Benefit from Ireland in the UK. If a person does not return to Ireland on the expiry of the period for which benefits are exported then entitlement to Jobseekers Benefit (and other benefits) ceases¹⁹.

(ii) Unemployed persons returning to country of residence and entitled to benefit from country of last employment

This provision covers persons who are working outside of the country of residence, who then become unemployed and who

¹⁷ Art 64 of Regulation 883/2004

¹⁸ Art 64 (2) of Regulation 883/2004

¹⁹ Art 64 (2) of Regulation 883/2004

return to the country of residence. If, on return, such a person has become entitled to unemployment benefit from the state of last employment, that state will become competent to pay the unemployment benefit to the person concerned in the country of residence for a period of up to 6 months. In such a case, the person will also be eligible for sickness and maternity benefits from the country of last employment. These benefits shall be provided by the competent institution at its own expense and in accordance with its own legislation. The benefit will continue to be provided for the period during which unemployment benefit was originally awarded

(iii) *Unemployed persons returning to country of without entitlement to benefit from country of last employment*

This provision also covers persons who are working outside of the country of residence, who then become unemployed and who return to the country of residence. The unemployed person does not have an entitlement to an unemployment benefit from the country of last employment. In such a case, the country of residence is competent to provide unemployment benefits²⁰. Such persons will consequently be eligible for sickness and maternity benefits from the country of residence, as if the person had last been insured there. These benefits shall be provided by the country of residence at its own expense and in accordance with its own legislation, and periods completed in other EEA states shall be aggregated if necessary. Payment of unemployment benefit will cease while a sickness or maternity benefit is payable.

6. Calculation of Cash Benefits

(a) Assessing income

EU Regulations provide that where the competent institution of a Member State whose legislation stipulates that the calculation of cash benefits shall be based on average income or on an average contribution basis shall determine such average income or average contribution basis exclusively by reference to the incomes confirmed as having been paid, or contribution bases applied, during the periods completed under the said legislation²¹.

²⁰ Art 65 5(a) of Regulation 883/2004.

²¹ Art 21 of Regulation 883/2004

However, an annex entry²² allows Ireland to, where necessary, calculate cash benefits in a different way. This provides that for the purposes of calculating the prescribed reckonable weekly earnings of an insured person for the grant of sickness or unemployment benefit under Irish legislation, an amount equal to the average weekly wage of employed persons in the relevant prescribed year shall be credited to that insured person in respect of each week of activity as an employed person under the legislation of another Member State during that prescribed year.

Example:

X makes a claim Illness Benefit in 2010. During 2008 (GCY) he worked for 6 months in France, and 6 months in Ireland. In calculating his average earnings for the purpose of determining his personal rate of benefit account should be taken of his actual earnings in Ireland together with the amount credited to him in respect of each week worked in France in that year.

7. Increases for family members

Where the amount of cash benefits varies with the number of members of the family of the person concerned, account must be taken of the members of the family who are resident in the territory of another EEA state as if they were resident in the competent state²³.

Therefore, where Ireland is the competent State for Sickness Benefits and the members of the claimant's family are living in another EEA state, increases in respect of adult and/or children should be determined in accordance with Irish legislation. If the Spouse/Civil Partner is in receipt of a social security payment from another EEA state equivalent to an Irish payment which would disqualify the Spouse/Civil Partner/partner from being a qualified adult, then the qualified adult increase is not payable.

Equally, if the Spouse/Civil Partner/partner of the claimant is assessed with earnings in another EEA state in excess of the limits then the qualified adult increase is not payable. Depending on the level of income half the qualified child increase may be payable.

The claimant should provide to the competent institution a certificate issued by the institution of the place of residence, which states the members of the family resident in that state. The certificate is valid for one year, after which it may be renewed. The

²² Annex XI of Regulation 883/2004

²³ Arts 5 and 21 of Regulation 883/2004

claimant should directly notify the competent institution if there are any changes concerning the persons on the certificate.

National rules providing for disallowance of payment of increase in respect of a qualified adult while absent from the State should not be applied.

Example:

X is working in Ireland when she suffers an accident and is unable to continue working. She applies for Illness Benefit under Irish legislation. X states on her application form that she has 3 dependent children who are living with their father, the Civil Partner of X in Spain. X's Civil Partner is not working in Spain, as the income of X was supporting the entire family. Therefore, when the amount of benefit is being calculated, X should be paid the qualified child and qualified adult dependent allowances she would be entitled to if the members of the family were resident in Ireland. This will continue even if X decides to move back to the state of residence to remain with her family.

If X states on the application form that her Civil Partner is working in Spain, X should be asked to provide a certified statement of her Civil Partner's earnings. The certificate should be issued by the competent institution in Spain.

Example:

X is working in Ireland when he becomes ill. He claims Illness Benefit under Irish legislation. He is living in Northern Ireland. His Civil partner is over 60 and receives a retirement pension from the UK authorities. X informs DSP of his Civil Partner's pension which amounts to the equivalent of €75 per week. If the Civil Partner of X were not receiving the UK state pension Mr X would be entitled to the full qualified adult increase on his claim. As the Civil Partner of X is in receipt of €75 from the UK then he is entitled to receive the full Qualified Adult Increase minus €75 .

8. Right to sickness or maternity benefits in country of residence where pension payable under legislation of two or more states

Cash benefits shall be paid to a person receiving a pension or pensions under the legislation of one or more Member States by the competent institution of the Member State in which is situated the competent institution responsible for the cost of benefits in kind (health) provided to the pensioner in his Member State of residence²⁴.

²⁴ Art 29 of Regulation 883/2004

Liability for benefits in kind is determined as follows;

Entitlement in State of Residence

A person who receives a pension or pensions under the legislation of two or more Member States, of which one is the Member State of residence, and who is entitled to benefits in kind under the legislation of that Member State, shall, with the members of his family, receive such benefits in kind from and at the expense of the institution of the place of residence, as though he were a pensioner whose pension was payable solely under the legislation of that Member State²⁵.

No entitlement in State of residence

A person who receives a pension or pensions under the legislation of one or more Member States and who is not entitled to benefits in kind under the legislation of the Member State of residence shall nevertheless receive such benefits for himself and the members of his family, insofar as he would be entitled thereto under the legislation of the Member State of at least one of the Member States competent in respect of his pensions, if he resided in that Member State. The benefits in kind are provided by the State which pays his pension or, if he receives more than one pension, the State to whose social insurance system he was attached for the longest period.²⁶

9. Pensioners or members of the family pursuing a profession or trade activity

The special provisions dealing with pensioners outlined above do not apply to a pensioner or his family if their entitlement arises as a result their pursuing a professional or trade activity. In such circumstances, the pensioner and/or their family should be treated as employed/self employed persons.

10. Overlapping entitlements to sickness or maternity benefits in two or more EEA states

Situations may arise where a person would be entitled to sickness or maternity benefits in two or more EEA states simultaneously. To prevent such an overlapping of benefits, the following rules apply:

11. Maternity benefits

²⁵ Art 23 of regulation 883/2004

²⁶ Art 24 of Regulation 883/2004

Where an employed or self-employed person would be entitled to claim maternity benefit under the legislation of two or more EEA states, then that benefit is to be granted only under the legislation of the state where the confinement took place. Where the confinement took place outside the EEA, then that benefit is payable only under the legislation of the state to which the employed or self-employed person was last subject.

Example 1:

X is entitled to maternity benefit under both Irish and UK legislation. X is working in the UK, but is visiting Ireland for a few days when the confinement takes place. Maternity benefit is to be granted under Irish legislation.

Example 2:

Z is entitled to maternity benefit under both Irish legislation and German legislation. The confinement occurs while Z is in the United States. If Ireland was the country of last employment, Z is entitled to maternity benefit under Irish legislation

12 Sickness benefits under the legislation of Ireland and the UK

The Regulations allow for special overlapping rules in cases where an insured person has worked in Ireland and the UK, and would be entitled to claim sickness benefit under both systems. Where a person would be entitled to claim sickness benefit under the legislation of both Ireland and the UK for the same period of incapacity of work, then those benefits are to be granted solely under the legislation of the state to which the person was last subject.