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Citizens Information Board
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EU Supplement

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

This supplement covers the significant EU developments from June 2009 to August 2009 in the broad areas of social policy, consumer policy and citizens' rights.

There is further information about almost all the issues mentioned on the Europa website: www.europa.eu. In some cases, we give the extended website address. The Official Journal of the EU may be accessed via <http://eur-lex.europa.eu>.

Employment and social policy

Social security for migrant workers

Updated legislation on social security for migrant workers has been agreed by the Council and the European Parliament. It is expected to come into effect in March 2010.

In general, decisions on social security are taken by member states and not by the EU. However, there are EU rules which co-ordinate the social security contributions paid by people who work in different member states. The current rules are set out in Regulation 1408/71. The implementing rules are in Regulation 574/72. These have been extensively amended since they were first introduced in the early 1970s. The basic rules which are expected to apply from May 2010 are contained in Regulation 883/2004. This was agreed in 2004 but its implementing Regulations were only agreed in 2009. The updated implementing regulations are in Regulation 120/2009.

The updated legislation retains the main features of the existing legislation.

Main features of system

The EU rules on co-ordination of social security apply to people who move between member states to work or for short stays including holidays. The system applies to all legislation relating to sickness and maternity benefits, invalidity benefits, old age benefits, survivors' benefits, benefits in respect of accidents at work and occupational diseases, unemployment benefits, family benefits and death grants.

In general, the rules do not apply to means-tested payments as these are not based on social security contributions. Because of the requirement not to discriminate against nationals of other member states, people who move between member states to work may be entitled to some social assistance benefits in the country to which they move but these rules are separate from the rules on co-ordination of social security.

The main features of the co-ordination of social security are that

- Contributions you pay in more than one member state may be added together to allow you to qualify for benefits
- If you qualify for a social security payment, you may be able to have it paid in another member state
- You may be entitled to health benefits while visiting another member state on the same basis as nationals of that state

The basic aim of the EU system is to ensure that you are part of a social security system and that you do not lose your rights, regardless of the member state you decide to work in. In principle, you are insured for social security purposes in the country you work in. You, and in certain circumstances your family, are entitled to the same social security benefits as nationals of the country in which you work. You are required to pay the same level of contributions as host country nationals.

The main practical effects of the system are:

- If you are drawing Jobseeker's Benefit (or its equivalent) in one member state, you may continue to draw benefit from that same country for up to three months after you move to another member state.

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- If you have worked in more than one member state, your social security contributions may be combined to allow you to qualify for a social security pension.
- You can access emergency health services in another member state while you are on holidays. This is now covered by the European Health Insurance Card: www.ehic.ie
- Your family can get family benefits from the country in which you work even if they are living in another country.

New features

When the new Regulations come into effect in 2010, there will be some new features.

If two member states are unable to decide which of them is responsible for your benefits, there is a provision where you can be temporarily affiliated to one state so that you can get sickness insurance benefits and access to treatment.

The new Regulations apply to all EU citizens who are or who have been covered by the social security legislation of one of the member states. They also apply to their family members and their survivors (survivors' benefits is the term used in EU legislation for benefits for widows, widowers and orphans). So, in addition to employees, self-employed persons, civil servants, students and pensioners, this means that "non-active persons" will also be covered by the coordination rules (for example, people who are in a social security system that covers all residents but who do not exercise a paid activity, such as homemakers).

The rules will apply to new benefits such as paternity and pre-retirement benefits.

Payment of Jobseeker's Benefit may continue for six months.

Many of the rules are simplified and member states will be required to increase co-operation in order to ensure that citizens can access their entitlements. The new rules provide for a new information network - the EESSI (Electronic Exchange of Social Security Information) network. This will enable institutions in different countries to provide necessary information to facilitate people availing of their benefits. Paper forms will be discontinued. It is expected that this process will be complete by March 2012.

Information on social security rights is at:

<http://ec.europa.eu/social/main.jsp?catId=26&langId=en>

Guidelines on free movement and residence rights

The Commission has issued guidelines on the free movement and residence rights of EU citizens and their families. These guidelines deal with issues which have proved contentious or, in the EU's view, have not been properly applied in a number of member states. For example, it clarifies when a member of the household can be considered "dependent" and, therefore, entitled to free movement. A family member is "dependent" when material support for that family member is provided by EU citizens or by their spouse/partner.

Each case must be examined individually. There is no requirement as to the minimum duration of the dependency or the amount of material support provided, as long as the dependency is genuine and structural in character. Dependent family members are required to present documentary evidence that they are dependent. Other issues addressed include: whether third-country nationals who are members of the family of an EU citizen require entry visas; whether EU citizens can be expelled for engaging in petty crime; how member states can protect themselves against abuse of the rules; and how "sufficient resources" are defined for EU citizens who are required to have them. EU citizens have sufficient resources where the level of their resources is higher than the threshold under which a minimum subsistence benefit is granted in the host member state. Where this criterion is not applicable, the minimum social security pension should be taken into account.

Parental leave

The social partners have signed the revised version of the Framework Agreement on parental leave. This provides for an increase in parental leave from three to four months for each parent. One of the four months may not be transferred between the parents. The agreement also gives parents returning to work after parental leave the opportunity to request a change to their working conditions.

At present, there is an entitlement to 14 weeks' parental leave in Ireland. This leave is not transferable between the parents except where they work for the same employer. There is no formal right to request a change to working conditions.

The Commission will submit a proposal to the Council for implementation of the agreement by a Directive.

<http://ec.europa.eu/social/main.jsp?catId=329&langId=en>

State aid to disadvantaged and disabled workers

The European Commission has issued two guidance papers setting out criteria for the assessment of large amounts of training aid and of aid to disadvantaged and disabled workers. The General Block Exemption Regulation allows member states to grant a large number of aid measures, including training aid and aid for the employment of disabled or disadvantaged workers, without prior notification to the Commission. It sets the notification threshold at €2 million for training aid projects. For employment aid this threshold is set at €5 million per undertaking per year for the employment of disadvantaged workers and at €10 million per undertaking per year for the employment of disabled workers. Amounts above these figures are subject to individual assessment and the guidance papers set out the factors that the Commission takes into account.

http://ec.europa.eu/comm/competition/state_aid/reform/reform.cfm

European Works Councils

The proposed Directive on European Works Councils has been agreed. It updates the 1994 legislation (Directive 94/45/EC). The 1994 Directive applies to companies or groups of

companies employing at least 1,000 employees in the EU and the European Economic Area with at least 150 employees in each of two member states. The new Directive provides that a European Works Council can be created at the request of at least 100 employees from two countries or at the employer's initiative. It will come into effect in 2011.

Consumer Affairs

The Services Directive

The Department of Enterprise, Trade and Employment has issued a consultation document on the implementation of the EU Services Directive (Directive 2006/123/EC) in Ireland. The Directive is due to be brought into law by 28 December 2009.

The Directive covers a wide range of services. It sets out general rules about the right to establish, exercise or receive a service. This requires a number of changes to Irish legislation. The consultation document sets out how it is proposed to implement the Directive in Ireland.

The Directive aims to facilitate service providers in one member state who wish to establish themselves in another. It does not apply in a number of areas including:

- Certain services of general economic interest – broadly speaking, these are the major public utilities such as electricity and gas
- Non-economic services of general interest (public services)
- Financial services, for example, banking, credit, insurance and pensions
- Electronic communications services and networks
- Transport services
- Healthcare services
- Social services relating to social housing, childcare and support for families and people with disabilities which are provided by the state, by providers mandated by the state or by charities

Some of these areas are already covered by EU law.

The Directive requires every member state to simplify the processes for service providers to become established. For example, relevant documents issued in other member states must be recognised. There must be a "National Point of Single Contact" (NPSC) for particular services – effectively a one-stop shop where service providers can deal with all formalities. In Ireland, the NPSC will be in the Department of Enterprise, Trade and Employment and the Minister may designate a body to undertake the functions of a point of single contact in respect of a particular sector or sectors.

Each member state must ensure that all relevant information is available through these contact points.

The Directive also requires member states to facilitate the provision of services by service providers from other member states who are not established in the country in question.

This does not apply to, among other things, postal services, electricity and gas providers or water and waste services. In general, service providers cannot be required to have an office in Ireland or to have a permanent employee or representative in Ireland.

Consumer protection

Recipients of services provided by service providers in other member states are also entitled to a range of information under the Directive. This includes information about redress mechanisms in the other member state. Recipients must get help from their own member state to access this information. The intention is that the Department of Enterprise, Trade and Employment will designate certain bodies to provide this information. It is not envisaged that they will be fully in operation when the Directive comes into effect but that they will build up the information over time.

Service providers will be obliged to provide information on their dispute resolution mechanisms and will be obliged to deal with complaints quickly. There are various requirements for co-operation between the relevant authorities in the member states in helping consumers to enforce their rights. There must be a designated authority in each member state to ensure this administrative co-operation.

Further information is available at: www.entemp.ie

Financial services

The Council has agreed a number of Regulations and Directives dealing with the financial services sector. These include:

Regulation on credit rating agencies

At present, credit rating agencies are subject to EU legislation only to a limited extent (mainly concerned with insider dealing and market manipulation). They are not regulated in most member states. The Regulation provides for a legally-binding registration and surveillance system.

Directive on capital requirements for banks

The Directive is aimed at strengthening the rules on capital requirements for banks. It provides for better supervision of cross-border banking groups.

http://ec.europa.eu/internal_market/bank/regcapital/index_en.htm

The Citizens Information Board is the statutory body which supports the provision of information, advice and advocacy on a broad range of public and social services. It provides the Citizens Information website and supports the voluntary network of Citizens Information Centres, the Citizens Information Phone Service and the Money Advice and Budgeting Service (MABS).

Head Office

Ground Floor t + 353 1 605 9000
George's Quay House f + 353 1 605 9099
43 Townsend Street e info@ciboard.ie
Dublin 2 w www.citizensinformationboard.ie

Regulation on cross-border payments

This Regulation aims to achieve a single market for payment services in euro – that is, there would be no distinction between cross-border payments and payments made on a national basis. It updates and replaces Regulation 2560/2001 on cross-border payments, which applies to credit transfers, cash withdrawals and electronic payments, including card payments, made in euro up to €50,000.

Restructuring aid to banks

The Commission has issued a Communication explaining its approach to assessing restructuring aid given by member states to banks. The approach is based on three principles:

- The banks that receive aid must be made viable in the long term without further state support,
- The aided banks and their owners must carry a fair burden of the restructuring costs and
- Measures must be taken to limit distortions of competition in the single market.

The specific guidelines for the application of these principles during the financial crisis are to apply until the end of 2010. At that stage, it is hoped that the normal rules of state aid to enterprises will apply.

http://ec.europa.eu/competition/state_aid/legislation/specific_rules.html

Air passenger rights

The European Court of Justice has ruled (in Case C-204/08) that passengers on an internal EU flight may bring their claims for flat-rate compensation in the event of cancellation before the court of the place of departure or arrival of the aircraft.

Neither the location of the head office of the company operating the flight nor the place where the air transport contract was entered into is conclusive with regard to the choice of the court having jurisdiction.

The Regulation on compensation and assistance to air passengers (Regulation (EC) No 261/2004) provides, in the event of cancellation of a flight, that passengers may receive flat-rate compensation of between €250 and €600.

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-204/08>

European Consumer Centres Network

The European Consumer Centres Network (ECC-Net) dealt with over 62,000 consumers who needed help or advice in 2008. The major area of concern was transport, specifically air transport. The network has published its annual report for 2008.

http://ec.europa.eu/consumers/redress_cons/index_en.htm

Justice and Home Affairs

Family law

The European Court of Justice has ruled (in Case C-168/08) that spouses holding the same dual nationality in the EU may choose to institute divorce proceedings before the courts of either of the two member states concerned.

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-168/08>

Interpretation and translation in criminal proceedings

The Council has agreed the proposed Council Framework Decision which aims to set common minimum standards for interpretation and translation in criminal proceedings throughout the EU. The aim of the proposal is to ensure that if suspects do not understand and speak the language used, they are entitled to interpretation from the moment they are informed that they are suspected and until the proceedings are over, including any appeal. Suspects would also be entitled to have any essential documents of the proceedings translated, so they can fully understand the case against them.

In 2004, the Commission proposed minimum rules on procedural rights for defendants in criminal proceedings across the EU. This was not agreed by the member states. The new Directive deals only with interpretation and translation. It is expected to come into effect within two years.

Citizens Information

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