

Significant Changes to EU Social Security Regulation – Impact for Employers

Human Resource Services contacts

Francis Farrell

Tel: +353 (0)1 792 6677
francis.farrell@ie.pwc.com

Ken O'Brien

Tel: +353 (0)1 792 6818
ken.obrien@ie.pwc.com

Please also feel free to liaise with your usual PwC contact



Overview

The social security contribution position of internationally mobile workers within the 27 countries of the European Union (EU), together comprising the European Economic Area (EEA), and Switzerland is currently determined by EC Regulation 1408/71. In addition, this regulation determines eligibility to State benefits entitlement for such individuals and their families.

EC Regulation 1408/71 is to be replaced in respect of all internationally mobile workers within the EU who fall within the scope of the new Regulation. However, Regulation 1408/71 will initially continue to apply to the EEA countries of Iceland, Lichenstein and Norway as well as Switzerland until the new Regulation is adopted by these countries.

It is expected that the replacement Regulation 883/2004 (hereafter, 'the new Regulation') should enter into force from 01 March 2010.

The main purpose of the new Regulation is to modernise, simplify and clarify existing rules. The new Regulation also

makes a number of changes to the way an internationally mobile worker's social security contribution position within the EU will be determined. There are also new requirements which must be met in order to remain insured in a country for social security purposes where an individual works simultaneously in two or more EU countries.

In addition a new electronic administrative process which will ultimately replace the existing system of E101 certificates system is being introduced.

Background & Timescale

The New Regulation was due to be adopted by the European Council of Ministers on 08 June 2009, this has however now been delayed. The formal publication of the adopted Regulation and its implementing Regulation is expected in September 2009. If published to this timetable, the new Regulation will enter into force from 01 March 2010.

The EEA countries of Iceland, Lichenstein, Norway, and Switzerland will not automatically adopt the new Regulation.

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Therefore different considerations may apply in relation to mobile workers to or from these countries.

The technical and administrative changes outlined below are some of the planned changes that are due to become effective from date of entry into force of the new Regulation. However, as much of the legislation is currently in draft form, these are subject to change prior to publication of the final legislation. Furthermore, new developments will come to light in the period prior to entry into force of the new Regulation. We therefore recommend seeking specific advice in relevant cases.

Technical Changes

- **Third Country Nationals:**
The new Regulation, as currently drafted, do not apply to non-EEA (so called “third country”) nationals working cross-border within the EU. There is a European Commission proposal currently under discussion to address this issue, however in the interim the current arrangements will continue to apply to such individuals.
- **Posted Workers:**
Individuals posted to another EU member state for a period not exceeding 24 months shall continue to remain insured in their home social security scheme provided they are not replacing another worker. Currently this only applies for period up to 12 months.
- **Posted Worker Extended Period:**
As is the case currently, it is expected that posted workers may remain insured in their home country social security scheme for up to 5 years (depending on the practice of the countries involved) under a special exception. This is provided that both the home and host authorities can agree.
- **Multi-State Workers:**
They are insured in the social security scheme of the member state in which they are regarded as habitually resident under Regulation 1408/71, where they perform regular employment duties there. The new Regulation introduces a requirement for *substantial* employment duties in the home country if this position is to be maintained. Substantial is defined as being no less than 25% of time and/or remuneration, or turnover.
- **Unity of Applicable Legislation:**
The new Regulation also seeks to strengthen this principle. In other

words there should be no exceptions that would allow an individual to be insured in more than one member state at the same time. In particular, this change may affect individuals who are simultaneously employed in one EU member state and self-employed in another EU member state.

- **Cross Border Enforcement:**
EU member states will have the power for the first time to enforce social security liabilities and debts against individuals and employers in other EU member states.

Administrative Changes

The changes include:

- **Transitional Arrangements:**
Employees currently engaged on cross-border assignments will continue to be subject to the processes specified under the existing Regulation 1408/71 for a transitional period. Parallel compliance and tracking systems may be required during the transitional phase.
- **Clearance Procedures:**
E101 certificates will not be issued under the new Regulation. These will eventually be replaced by an electronic system of “attestations”. A provisional system of paper attestations will be in place until such a time that the electronic system is introduced.

Effects of Changes

These changes may at first sign appear to have little serious effect on employers. They do however potentially have some wide-ranging implications which require consideration.

For example, currently an Irish individual employed by say a UK company, who works four days a week in the UK and works from home one day a week in Ireland would normally be subject to Irish PRSI and be exempt from UK National Insurance.

Under the new Regulation, this individual would fail the substantial duties test in Ireland and as such would become liable to UK National Insurance and exempt from Irish PRSI.

In such circumstances, if the individual had claimed Irish Child Benefit for children living in Ireland, they would be obliged to cease their Irish claim, and resubmit a claim for Child Benefit in the UK.

Ultimately, the individual would have no financial loss; however the administrative process involved in achieving such a position is complex and lengthy.

Moving from the Irish PRSI system to the UK NIC system could also potentially lead to a significant administrative issues and potential financial loss in relation claims for Unemployment Benefits and State Pensions.

Financial losses could also be significant should individuals be forced to move to a high cost social security system.

The Bottom Line

The new Regulation will provide both challenges and opportunities. Employers with cross-border employee populations should consider:

- How will the changes to social security contribution positions impact international assignment structures and how can international assignments be designed to benefit from reduced social security liabilities?
- How the changes will impact the current and future international assignee populations in terms of contributions and benefits?
- Whether any modifications to employer compliance and tracking procedures are required.

Our Services

Please contact your usual PwC advisor or any of our specialist Employment Tax & Social Security team listed above for assistance with:

- International Social Security advice and planning;
- Assistance with E101 applications and related advice;
- A review of employee benefit entitlements;
- PAYE/PRSI process and risk management reviews.

Our services are designed to assist employers to minimise risk, to spotlight process improvements and cost control opportunities, to negotiate potentially hazardous settlements and to protect solid “good corporate citizen” reputations.