

## **Practice Note on Residence Rights in the EU and EEA**

### **Form E 104 and Comprehensive Sickness Insurance**

*Version 1.0: 11 March 2018*

The purpose of this practice note is to confirm that Form E 104 should be accepted as proof of comprehensive sickness insurance for the purposes of establishing a right of residence or permanent right of residence under Directive 2004/38 on the right of EU citizens and their family members to move and reside freely within the territory of the Member States and the Immigration (European Economic Area) Regulations 2006 and 2016.

As further explained below and regardless of what the Home Office's guidance might state, Form E 104 should be accepted as proof of comprehensive sickness insurance because the document confirms that its holder remained covered by their "home" healthcare system during the specified period of time.

Please note that not all Member States are issuing Form E 104 as proof of past healthcare coverage. The social security institutions of some Member States are issuing Structure Electronic Document S041 while other social security institutions may simply issue a formal letter confirming past coverage. All these methods should be equally acceptable to the Home Office as proof of comprehensive sickness insurance.

#### ***What is Form E 104?***

Form E 104 is a certificate that is issued by a social security institution to confirm past periods of insurance. It may be issued either at the request of an individual who used to be covered by the social security system concerned or following a request received from a social security body of another Member State to enquire about periods of insurance. Form E 104 is entitled "Certificate concerning the aggregation of periods of insurance, employment or residence" (*a specimen is attached as an appendix to this note*).

Form E 104 lists all former periods of affiliation to social security system for sickness and maternity benefits. In other words, Form E 104 confirms when a person was covered by the healthcare system of the country that issued the document.

Form E 104 corresponds to the new Structured Electronic Document S041 (Reply to Request for Periods - Insurance Risk Type: Sickness and Maternity) which has started to be issued under Regulation 883/2004 and is progressively being phased out from 2010.

#### ***What does Form E 104 confirm?***

When Form E 104 has been issued to a person living in the UK, it will mean that this person was covered by the healthcare insurance system of the issuing institution for the period specified in the document.

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Form E 104 confirms that during the specified period of insurance coverage:

- the person named in Form E 104 was covered by the healthcare insurance system of the issuing institution for the period specified in the document (*see Part B sections 5 6 and/or 7*);
- the person named in Form E 104 would have been eligible for a European Health Insurance Card or Form E 111 to be issued by the issuing institution (*Article 25 of Regulation 987/2009 implementing the rules on the coordination of social security [2009] OJ L 284/1 or Article 19a of Regulation 574/72 implementing the rules on the coordination of social security [1972] OJ L 74/1*);
- the person named in Form E 104 would have been entitled to receive healthcare treatment which became necessary on medical grounds during their stay in the UK (*Article 19 of Regulation 883/2004 on the coordination of social security in the EU [2004] OJ L 166/1 or Article 22 of Regulation 1408/71 [1971] OJ L 149/2*); and
- the costs of any healthcare received by the person named in Form E 104 during their period of residence in the UK would have been borne by the issuing institution in accordance with the EU social security regulations (*Article 35 of Regulation 883/2004 or Article 36 of Regulation 1408/71*).

### ***What is the legal basis for the issuance of Form E 104?***

Form E 104 is one of a number of standard forms issued for the purposes of exchanging information between social security institutions.

The EU regulations on social security coordination provide for the establishment of a system for the electronic exchange of information between social security institutions. The system is not yet fully operational.

Article 4 of Regulation 987/2009, foresees an electronic information exchange system in the field of social security under which '*[t]he transmission of data between the institutions or the liaison bodies shall be carried out by electronic means*' and '*[t]he Administrative Commission shall lay down the structure, content, format and detailed arrangements for exchange of documents and structured electronic documents*'.

Pursuant to this provision, the Administrative Commission for the Coordination of Social Security Systems adopted Decision E1 of 12 June 2009 concerning the practical arrangements for the transitional period for the data exchange via electronic means [2010] OJ C 106/9.

Decision E1 provides that the old E Forms issued under Regulations 1408/71 and 574/72 remain valid during the transitional period for the progressive introduction of electronic exchange of information:

*"4. In all cases, during the transitional period, an institution shall accept relevant information on any document issued by another institution, even if it is based on an outdated format, content or structure. In case of doubts concerning the rights of the citizen concerned, the institution shall contact the issuing institution in the spirit of good cooperation."*

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Article 2 of Regulation 574/72 empowered the Administrative Commission for the Coordination of Social Security Systems to draw up printed model forms for the exchange of information between institutions. Article 16 of the same Regulation further provided for the issuance of “a certified statement specifying the periods of insurance completed under the legislation to which he was last subject”.

The model form E 104 was last published by the Administrative Commission for the Coordination of Social Security Systems in its Decision No 202 of 17 March 2005 on model forms necessary for the application of Council Regulations (EEC) No 1408/71 and (EEC) No 574/72 [2006] OJ C 77/1.

The social security institutions of the Member States are under a duty to cooperate by virtue of Article 76(4) of Regulation 883/2004 and Article 84a(1) of Regulation 1408/71, which requires social security institutions to cooperate and places them under a duty of mutual information and cooperation to ensure the correct implementation of the EU rules on the coordination of social security as contained in Regulations 883/2004 and 987/2009 and former Regulations 1408/71 and 574/72.

The UK authorities are therefore under a duty to cooperate with the national authorities of the other EU Member States and the purpose of Form E 104 is thus to facilitate this cooperation.

### ***What is the legal value of Form E 104?***

The EU Court of Justice has consistently held that documents issued under the EU social security rules are binding on the authorities of the other Member States (Case C-178/97 *Banks* [2000] EU:C:2000:169; C-2/05 *Herbosch Kiere* [2006] EU:C:2006:69; Joined Cases C-72/14 and C-197/14 *X* EU:C:2015:564; Case C-620/15 *A-Rosa Flussschiff* [2017] EU:C:2017:309).

This case law has now been codified by Article 5 of Regulation 987/2009, which provides that documents issued by the relevant authorities in a Member State must be accepted in other Member States:

*“1. Documents issued by the institution of a Member State and showing the position of a person for the purposes of the application of the basic Regulation [883/2004] and of the implementing Regulation [987/2009], and supporting evidence on the basis of which the documents have been issued, shall be accepted by the institutions of the other Member States for as long as they have not been withdrawn or declared to be invalid by the Member State in which they were issued.”*

The UK authorities are therefore under a duty to accept Form E104 as proof that the named person was covered by the healthcare insurance system of the issuing institution for the period specified in the document.

The Court of Justice has also held that where there is doubt about the validity of Form E 104 or the accuracy of the facts contained in the document, the UK authorities are under a duty to contact the issuing institution in order to obtain the necessary clarification and, where appropriate, the withdrawal of that document (Case C-202/97 *Fitzwilliam Executive Search* [2000] EU:C:2000:75; Case C-178/97 *Banks* [2000] EU:C:2000:169; Case C-620/15 *A-Rosa Flussschiff* [2017] EU:C:2017:309; Case

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C-359/16 *Altun* [2018] EU:C:2018:63). This case law has been codified by Article 5(2) of Regulation 987/2009.

### ***Does it matter that the Home Office's guidance on what constitutes comprehensive sickness insurance does not refer to Form E 104?***

No. The absence of a reference to Form E 104 in the Home Office's guidance<sup>1</sup> does not limit the ability of persons to prove that they held comprehensive sickness insurance because they continued to be covered by their "home" country's healthcare system during their period of residence in the UK.

What constitutes comprehensive sickness insurance is not specified by Directive 2004/38 [2004] OJ L 158/77 nor is this specified in the Immigration (European Economic Area) Regulations 2006 (SI 1002) and 2016 (SI 1052).

The EU Court of Justice has indicated that, when assessing what constitutes comprehensive sickness insurance for the purposes of the EU residence rules, Member States must take a proportionate approach (Case C-413/90 *Baumbast & R* [2002] EU:C:2002:493).

Furthermore, in view of the absence of any provision in Directive 2004/38 which specifies what constitutes comprehensive sickness insurance, Member States are not entitled to place limits on the means of proving that a person holds comprehensive sickness insurance (Case C-424/98 *Commission v Italy* [2000] EU:C:2000:287).

Moreover, when there is an inconsistency between a binding provision of EU law and national administrative guidelines, it is the duty of the national administrative authorities to refrain from applying conflicting provisions of national law and uphold the supremacy of EU law (Case 103/88 *Fratelli Costanzo* [1989] EU:C:1989:256).

As a result, the absence of a reference to Form E 104 in the Home Office's guidance cannot limit the ability of persons to use this document to prove that they held comprehensive sickness insurance during their period of residence in the UK.

### ***What happens if the Home Office refuses to accept Form E 104 as proof comprehensive sickness insurance?***

In the event that the Home Office refuses to approve an application for residence documentation supported by Form E 104, the applicant would have a right to challenge that decision by way of an appeal or judicial review proceedings as the case may be.<sup>2</sup>

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<sup>1</sup> Home Office guidance 'European Economic Area nationals: qualified persons' <<https://www.gov.uk/government/publications/european-economic-area-nationals-qualified-persons>>

<sup>2</sup> For further information, please visit the government's webpage 'Appeal against a visa or immigration decision' <<https://www.gov.uk/immigration-asylum-tribunal>>

CERTIFICATE CONCERNING THE AGGREGATION OF PERIODS OF INSURANCE, EMPLOYMENT OR RESIDENCE

Sickness – maternity – death (grant) – invalidity

Regulation (EEC) No 1408/71: Article 9(2); Article 18(1); Article 38(1); Article 64  
Regulation (EEC) No 574/72: Article 6(2); Article 16; Article 39(1) and (2); Article 79

The competent institution should complete Part A of the form and send two copies to the institution of the Member State to whose legislation the person concerned was last subject. The latter institution should complete Part B and return the form to the institution from which it received the form. If the form is drawn up at the request of the person concerned, the institution issuing the form should complete parts A.2 and B and give or send the form to the person concerned.

Please complete this form in block letters, writing on the dotted lines only. It consists of three pages, none of which may be left out.

Part A

1. Institution to which the form is addressed

1.1 Name: .....

1.2 Identification number of the institution: .....

1.3 Address: .....

.....

2. Insured person

2.1 Surname(s)<sup>(2)</sup>: .....

2.2 Forename(s)<sup>(3)</sup>: ..... Date of birth: .....

2.3 Previous name(s): .....

2.4 Personal identification number: .....

2.5 From the date stated at 3.1, the insured person has been pursuing an occupation as:  
 an employed person  a self-employed person in<sup>(4)</sup> .....

2.6  Name of last employer  
 Last occupation as a self-employed person  
.....

Address: .....

2.7  Previous employers:  
(name and address) .....

Previous occupations as a self-employed person:  
.....

3. In order to act on a claim submitted by the insured person mentioned above, please indicate the periods of insurance, employment or residence completed by him

3.1 from .....

3.2 under the legislation of your country, for the following risk:

- sickness and maternity<sup>(5)</sup>  death (grant)  invalidity<sup>(6)</sup>

4. Competent institution

4.1 Name: .....

4.2 Identification number of the institution: .....

4.3 Address: .....

4.4 Stamp

4.5 Date: .....

4.6 Signature: .....

Part B

5. The person indicated in box 2

5.1  has been insured for the risk of sickness-maternity since the date stated at 3.1 (7)

5.2  has completed since .....

6. the following periods of insurance or employment for the following benefits:  (5)

6.1 from ..... to ..... (8) for (9) the risk of .....  (10)

6.2 from ..... to ..... (8) for (9) the risk of .....  (10)

6.3 from ..... to ..... (8) for (9) the risk of .....  (10)

6.4 from ..... to ..... (8) for (9) the risk of .....  (10)

6.5 from ..... to ..... (8) for (9) the risk of .....  (10)

6.6 from ..... to ..... (8) for (9) the risk of .....  (10)

6.7 from ..... to ..... (8) for (9) the risk of .....  (10)

6.8 from ..... to ..... (8) for (9) the risk of .....  (10)

6.9 from ..... to ..... (8) for (9) the risk of .....  (10)

6.10 from ..... to ..... (8) for (9) the risk of .....  (10)

7. the following periods of residence:

7.1 from ..... to ..... (8) for (9) the risk of .....  (10)

7.2 from ..... to ..... (8) for (9) the risk of .....  (10)

7.3 from ..... to ..... (8) for (9) the risk of .....  (10)

7.4 from ..... to ..... (8) for (9) the risk of .....  (10)

7.5 from ..... to ..... (8) for (9) the risk of .....  (10)

7.6 from ..... to ..... (8) for (9) the risk of .....  (10)

7.7 from ..... to ..... (8) for (9) the risk of .....  (10)

7.8 from ..... to ..... (8) for (9) the risk of .....  (10)

7.9 from ..... to ..... (8) for (9) the risk of .....  (10)

7.10 from ..... to ..... (8) for (9) the risk of .....  (10)

8. Institution completing part B

8.1 Name: .....

8.2 Identification number of the institution: .....

8.3 Address: .....

8.4 Stamp

8.5 Date: .....

8.6 Signature: .....

## NOTES

- (<sup>1</sup>) Symbol of the country to which the institution which first completes the form belongs: BE = Belgium; CZ = Czech Republic; DK = Denmark; DE = Germany; EE = Estonia; GR = Greece; ES = Spain; FR = France; IE = Ireland; IT = Italy; CY = Cyprus; LV = Latvia; LT = Lithuania; LU = Luxembourg; HU = Hungary; MT = Malta; NL = Netherlands; AT = Austria; PL = Poland; PT = Portugal; SI = Slovenia; SK = Slovakia; FI = Finland; SE = Sweden; UK = United Kingdom; IS = Iceland; LI = Liechtenstein; NO = Norway; CH = Switzerland.
- (<sup>2</sup>) Indicate the surnames in the order of civil status.
- (<sup>3</sup>) Indicate the forenames in the order of civil status
- (<sup>4</sup>) Indicate the State.
- (<sup>5</sup>) Only if the form is addressed to a Belgian, French, Greek, Liechtenstein or Swiss institution, indicate the risk covered by using the following codes: N = benefits in kind, E = benefits in cash.
- (<sup>6</sup>) For the purposes of French and Latvian institutions.
- (<sup>7</sup>) Complete only if the competent institution is a Belgian institution.
- (<sup>8</sup>) If the certificate is intended for a Belgian, Czech, Greek, Latvian, Lithuanian, Polish or Liechtenstein institution, indicate whether the periods of activity were as an employed person or as a self-employed person by using the following code: D = employed person; I = self-employed person.
- If the certificate is intended for a German, Lithuanian, Luxembourgish or Polish institution, indicate the insurance periods in section 7 using the following codes: P = compulsory insurance; F = voluntary insurance.
- (<sup>9</sup>) Indicate the risk covered by using the following code:  
A = sickness and maternity; B = death (grant); O = invalidity.
- (<sup>10</sup>) If the competent institution is a Cypriot, German, Irish, Hungarian, Austrian or UK institution, put a cross in this box if the period of insurance or the period of residence corresponds to a period of actual employment and indicate the type of employment or self-employment.