

Regulation (EC) No 988/2009 of the European Parliament and of the Council of 16 September 2009 amending Regulation (EC) No 883/2004 on the coordination of social security systems, and determining the content of its Annexes (Text with relevance for the EEA and for Switzerland)

Article 1 **U.K.**

Regulation (EC) No 883/2004 is hereby amended as follows:

1. the following recital shall be inserted after recital (17):
 - (17a) Once the legislation of a Member State becomes applicable to a person under Title II of this Regulation, the conditions for affiliation and entitlement to benefits should be defined by the legislation of the competent Member State while respecting Community law.;
2. the following recital shall be inserted after recital (18):
 - (18a) The principle of single applicable legislation is of great importance and should be enhanced. This should not mean, however, that the grant of a benefit alone, in accordance with this Regulation and comprising the payment of insurance contributions or insurance coverage for the beneficiary, renders the legislation of the Member State, whose institution has granted that benefit, the applicable legislation for that person.;
3. in Article 1, the following point shall be inserted:
 - (va) “Benefits in kind” means:
 - (i) for the purposes of Title III, Chapter 1 (sickness, maternity and equivalent paternity benefits), benefits in kind provided for under the legislation of a Member State which are intended to supply, make available, pay directly or reimburse the cost of medical care and products and services ancillary to that care. This includes long-term care benefits in kind.;
 - (ii) for the purposes of Title III, Chapter 2 (accidents at work and occupational diseases), all benefits in kind relating to accidents at work and occupational diseases as defined in point (i) above and provided for under the Member States' accidents at work and occupational diseases schemes.;
4. Article 3(5) shall be replaced by the following:
5. This Regulation shall not apply to:
 - a social and medical assistance or
 - b benefits in relation to which a Member State assumes the liability for damages to persons and provides for compensation, such as those for victims of war and military action or their consequences; victims of crime, assassination or terrorist acts; victims of damage occasioned by agents of the Member State in the course of their duties; or victims who have suffered a disadvantage for political or religious reasons or for reasons of descent.;
5. Article 14(4) shall be replaced by the following:

Status: Point in time view as at 31/12/2020.

Changes to legislation: There are currently no known outstanding effects for the Regulation (EC) No 988/2009 of the European Parliament and of the Council. (See end of Document for details)

4. Where the legislation of a Member State makes admission to voluntary insurance or optional continued insurance conditional upon residence in that Member State or upon previous activity as an employed or self-employed person, Article 5(b) shall apply only to persons who have been subject, at some earlier stage, to the legislation of that Member State on the basis of an activity as an employed or self-employed person.;
6. in Article 15, the term ‘auxiliary staff’ shall be replaced by ‘contract staff’;
7. Article 18(2) shall be replaced by the following:
 2. The members of the family of a frontier worker shall be entitled to benefits in kind during their stay in the competent Member State.

Where the competent Member State is listed in Annex III however, the members of the family of a frontier worker who reside in the same Member State as the frontier worker shall be entitled to benefits in kind in the competent Member State only under the conditions laid down in Article 19(1).;
8. Article 28(1) shall be replaced by the following:
 1. A frontier worker who has retired because of old-age or invalidity is entitled in the event of sickness to continue to receive benefits in kind in the Member State where he/she last pursued his/her activity as an employed or self-employed person, in so far as this is a continuation of treatment which began in that Member State. “Continuation of treatment” means the continued investigation, diagnosis and treatment of an illness for its entire duration.

The first subparagraph shall apply *mutatis mutandis* to the members of the family of the former frontier worker unless the Member State where the frontier worker last pursued his/her activity is listed in Annex III.;
9. Article 36(1) shall be replaced by the following:
 1. Without prejudice to any more favourable provisions in paragraphs 2 and 2a of this Article, Articles 17, 18(1), 19(1) and 20(1) shall also apply to benefits relating to accidents at work or occupational diseases.;
10. in Article 36, the following paragraph shall be inserted:
 - 2a. The competent institution may not refuse to grant the authorisation provided for in Article 20(1) to an employed or self-employed person who has sustained an accident at work or has contracted an occupational disease and who is entitled to benefits chargeable to that institution, where the treatment appropriate to his/her condition cannot be given in the Member State in which the person resides within a time limit which is medically justifiable, taking into account his/her current state of health and the probable course of his illness.;
11. Article 51(3) shall be replaced by the following:
 3. Where the legislation or specific scheme of a Member State makes the acquisition, retention or recovery of the right to benefits conditional upon the person concerned being insured at the time of the materialisation of the risk, this condition shall be regarded as having been satisfied if that person has been previously insured under the legislation or specific scheme of that Member State and is, at the time of the materialisation of the risk, insured under the legislation of another Member State

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for the same risk or, failing that, if a benefit is due under the legislation of another Member State for the same risk. The latter condition shall, however, be deemed to be fulfilled in the cases referred to in Article 57.;

12. Article 52(4) shall be replaced by the following:

4. Where the calculation pursuant to paragraph 1(a) in one Member State invariably results in the independent benefit being equal to or higher than the pro rata benefit, calculated in accordance with paragraph 1(b), the competent institution shall waive the pro rata calculation, provided that:

- (i) such a situation is set out in Part 1 of Annex VIII;
- (ii) no legislation containing rules against overlapping, as referred to in Articles 54 and 55, is applicable unless the conditions laid down in Article 55(2) are fulfilled; and
- (iii) Article 57 is not applicable in relation to periods completed under the legislation of another Member State in the specific circumstances of the case.;

13. the following paragraph shall be added to Article 52:

5. Notwithstanding the provisions of paragraphs 1, 2 and 3, the pro rata calculation shall not apply to schemes providing benefits in respect of which periods of time are of no relevance to the calculation, subject to such schemes being listed in part 2 of Annex VIII. In such cases, the person concerned shall be entitled to the benefit calculated in accordance with the legislation of the Member State concerned.;

14. in Article 56(1)(c), the words ‘where necessary’ shall be inserted before ‘in accordance with the procedures laid down in Annex XI’;

15. in Article 56(1), the following point shall be added:

- (d) In the event that point(c) is not applicable because the legislation of a Member State provides for the benefit to be calculated on the basis of elements other than periods of insurance or residence which are not linked to time, the competent institution shall take into account, in respect of each period of insurance or residence completed under the legislation of any other Member State, the amount of the capital accrued, the capital which is considered as having been accrued or any other element for the calculation under the legislation it administers divided by the corresponding units of periods in the pension scheme concerned.;

16. in Article 57, the following paragraph shall be added:

4. This Article shall not apply to schemes listed in Part 2 of Annex VIII.;

17. in Article 62(3), the term ‘frontier workers’ shall be replaced by ‘unemployed persons’;

18. the following Article shall be inserted:

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Article 68a

Provision of benefits

In the event that family benefits are not used by the person to whom they should be provided for the maintenance of the members of the family, the competent institution shall discharge its legal obligations by providing those benefits to the natural or legal person in fact maintaining the members of the family, at the request and through the agency of the institution in their Member State of residence or of the designated institution or body appointed for that purpose by the competent authority of their Member State of residence.;

19. Article 87 shall be amended as follows:

(a) paragraph 8 shall be replaced by the following:

8. If, as a result of this Regulation, a person is subject to the legislation of a Member State other than that determined in accordance with Title II of Regulation (EEC) No 1408/71, that legislation shall continue to apply while the relevant situation remains unchanged and in any case for no longer than 10 years from the date of application of this Regulation unless the person concerned requests that he/she be subject to the legislation applicable under this Regulation. The request shall be submitted within 3 months after the date of application of this Regulation to the competent institution of the Member State whose legislation is applicable under this Regulation if the person concerned is to be subject to the legislation of that Member State as of the date of application of this Regulation. If the request is made after the time limit indicated, the change of applicable legislation shall take place on the first day of the following month.;

(b) the following paragraphs shall be inserted:

10a. The entries in Annex III corresponding to Estonia, Spain, Italy, Lithuania, Hungary and the Netherlands shall cease to have effect 4 years after the date of application of this Regulation.

10b. The list contained in Annex III shall be reviewed no later than 31 October 2014 on the basis of a report by the Administrative Commission. That report shall include an impact assessment of the significance, frequency, scale and costs, both in absolute and in relative terms, of the application of the provisions of Annex III. That report shall also include the possible effects of repealing those provisions for those Member States which continue to be listed in that Annex after the date referred to in paragraph 10a. In the light of that report, the Commission shall decide whether to submit a proposal concerning a review of the list, with the aim in principle of repealing the list unless the report of the Administrative Commission provides compelling reasons not to do so.;

20. the Annexes shall be amended in accordance with the Annex to this Regulation.

Article 2 **U.K.**

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Union*.

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It shall apply from the date of entry into force of the implementing Regulation referred to in Article 89 of Regulation (EC) No 883/2004.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 16 September 2009.

For the European Parliament

The President

J. BUZEK

For the Council

The President

C. MALMSTRÖM

Status:

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Changes to legislation:

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