

Department of Foreign Affairs & Trade submission to Health Insurance Authority review of the Lifetime Community Rating regulations

1. The Department of Foreign Affairs & Trade administers foreign postings for officials from all Government Departments who are assigned to serve the State for periods abroad. Officials serve the State in a variety of roles and fora abroad, including staffing our network of 80 Embassies and Consulates. Filling these roles is crucial in allowing the Government advance the State's interests; this is particularly the case now given the increasingly challenging European and global environment in which we operate.
2. The Department manages a comprehensive system of supports for officials posted for periods abroad, as well as for eligible dependents. This includes an international health insurance policy which provides health cover for officials/dependents in the relevant locations abroad, as well as for temporary periods spent in Ireland during the course of a posting. The cost of this policy is shared by the officer and the Department, with the officer contributing up to a ceiling of the cost of a mid-range policy in Ireland.
3. As previously outlined in discussions between this Department and the Health Insurance Authority, the introduction of Lifetime Community Rating (LCR) in 2015 has had a serious impact on the operation of this international policy. We are advised that the policy is considered an international product under relevant health insurance legislation, and therefore cannot be viewed as a domestic policy and part of the LCR framework. Consequently, officials/dependents returning from posting are considered to be new entrants to the domestic market and potentially liable for late entry loadings.
4. Officials/dependents who were based abroad on 1 May 2015 can avail of a once-off amnesty which allows them to access the domestic health insurance market without incurring loadings within nine months of their return. Officials/dependents posted since that date face the prospect of incurring late entry loadings upon their return to Ireland as a direct result of being considered absent from the domestic market while serving the State abroad.
5. Even those who are eligible for the once-off amnesty will in turn become liable for loadings on return from subsequent postings abroad. Many in this Department are contractually obliged to serve for periods abroad. A typical rotation would be 2-3 years at home followed by 4-5 years posted abroad. Each period spent abroad will therefore lead to significantly increased loadings on return to HQ¹.
6. We are further advised by our health insurance providers that officials serving abroad (i.e. being out of the country for more than 180 days in one year) cannot retain a valid domestic policy under existing health insurance legislation. As such,

¹ A worked example is provided in Annex I.

under existing legislation, there is no avenue through which officials serving the State abroad can avoid potential late entry loadings.

7. This Department, and other Departments, have a duty of care to staff they assign abroad, as well as to accompanying family members. Over the years, all staff going abroad have been actively encouraged to take out the Department's international health insurance policy. It is in the Exchequer's interest that they are adequately insured. The Department has secured a large up-take of the policy, not least because of the reassurance it had provided to officials/dependents of seamless re-entry into the domestic system on their return. Since the introduction of LCR legislation, this reassurance is no longer available.
8. Its consequence is furthermore at odds with the stated public policy purpose of the LCR legislation, as outlined in the Health Insurance Authority's Consultation Paper, i.e. *"to encourage people to take out private health insurance at a younger age and to maintain cover"*. It is already clear that officials who will spend periods serving abroad are questioning the value of taking out health insurance, when they cannot ensure continuity of cover for LCR purposes and therefore no longer have reassurance on seamless re-entry to the domestic market on return. This is of particular concern to younger officials who may not have had the opportunity to build up sufficient credits. It is also important to emphasise that under existing health insurance legislation officials/dependents serving the State abroad do not have the option of being part of the community rating system, yet potentially face significant late entry loadings for not being so.
9. It is a basic principle that officials should not be disadvantaged directly as a result of undertaking a posting abroad. The imposition of loadings is not only fundamentally unfair to officials who serve the State abroad, often in difficult locations, but it also serves to undermine the viability of the Department's international health insurance policy itself, thereby exposing the Exchequer to significantly increased risk. This Department has also received legal advice that the State would be liable for costs associated with late entry loadings arising directly as a result of serving the State abroad.
10. Officials assigned to serve the State abroad return to Ireland at the end of their posting. Those assigned abroad can be recalled to Ireland at short notice at any point, e.g. for reassignment to other duties as management requirements may dictate. Officials/dependents who face serious health problems abroad and are no longer in a position to continue en poste would, in the vast majority of cases, return to Ireland for treatment. Such officials/dependents potentially now face an open-ended financial penalty on their ability to access health insurance on their return to Ireland, compared to officials who do not undertake assignments abroad on behalf of the State.
11. The impact of LCR on officials/dependents who serve the State abroad is a matter of serious concern to this Department, to other Departments and State Agencies who assign people for periods abroad, and obviously to staff themselves as well as staff

representative associations. The current inequitable anomaly penalises both those contractually obliged to and those willing to serve the State abroad, often in difficult and challenging locations. This is totally unacceptable. It is also a significant disincentive to staff to undertake assignments abroad, at a time when Ireland needs to be fully engaged in promoting and defending its interests.

12. The Consultation Paper poses the question as to whether *“there should be a change in legislation so that an exemption from LCR loadings applies along Australian lines for people moving to/returning to Ireland”*. As noted above, officials/dependents who were based abroad on 1 May 2015 can avail of a once-off amnesty which allows them to access the domestic health insurance market without incurring loadings within nine months of their return.
13. Amending the legislation to remove the once-off nature of this amnesty would resolve the current anomaly. Alternatively, provision could be made to enable officials/dependents avail of the amnesty each time they return to Ireland from serving the State abroad, or to provide credits for periods spent serving the State abroad. Any such amendments would need to recognise the varied lengths which officials can be assigned abroad for, e.g. regular rotations between home and abroad throughout a career, prolonged periods abroad in one go or very short assignments.
14. The Consultation Paper also notes the position of the Defence Forces and their families who are covered by international health insurance plans not eligible for the purposes of LCR when deployed overseas. The Paper asks whether the legislation should be amended in respect of the Defence Forces. As noted above, this is similar to the current anomaly facing officials serving the State abroad whereby their State arranged international health insurance coverage while they are assigned abroad is not recognised for LCR purposes.
15. The Consultation Paper also highlights difficulties arising around the interpretation of “Principal Residence” and “Ordinarily Resident” in the existing health insurance legislation. In this regard, this Department notes that in a number of core areas of public administration and law, the residency status of personnel posted abroad by the State is equivalent to Irish residency:
 - Officials assigned to serve the State abroad continue to be paid in Ireland and continue to pay tax (PAYE) on their Irish salary, regardless of the length of their assignment. This is in line with common practice internationally for officials of diplomatic and consular missions to remain tax resident in their home country. This follows from the exemption in the country of posting from dues and taxes on income as provided for in the Vienna Convention on Diplomatic Relations 1961 and the Vienna Convention on Consular Relations 1963.
 - Similarly, officials assigned to serve the State abroad continue to pay full PRSI/USC contributions on an employed basis, regardless of the duration of

their assignment. For PRSI purposes, therefore, they are regarded as resident in the State for the duration of their posting abroad.

- The Department of Social Protection deems the habitual/ordinary residence conditions to be satisfied in the case of officials serving the State abroad and their family members for the purpose of administering a range of schemes, e.g. Disability Allowance, Carer's Allowance and Child Benefit².
- Under the Electoral Act 1992, a civil servant (and spouse or civil partner) *"who for the time being, because of his/her duties, is serving outside the State... shall...be deemed to be ordinarily resident, in the premises in the State in which, but for the requirements of his duties, the qualified person would be resident"*³.
- Under the Irish Nationality and Citizenship Act 1956, as amended for the purposes of calculating residence in Ireland, *"any period of residence outside of the island of Ireland, during which the applicant's spouse or, as the case may be, civil partner was in the public service, shall be reckoned as a period of residence in the island of Ireland"*⁴. Thus, such a spouse or civil partner is deemed to maintain his/her Irish residence when posted abroad.
- Similarly the same Act allows the conferment of citizenship, without registration, where *"the parent through whom that person derives citizenship was at the time of that person's birth abroad in the public service"*⁵. In other words, Irish officials posted abroad are treated as if they were resident in Ireland for the purposes of conferring citizenship on their children.
- The Department of Education and Skills considers minor and dependent adult children who are in full time post-primary education and who reside with an Irish official outside the EU, to be deemed to be ordinarily resident in Ireland for the purposes of the free fees initiative⁶.
- Irish officials posted abroad are not deemed to be ordinarily resident in the country in which they are posted; their presence in the country is under the framework of the Vienna Convention of 1961 or 1963. Therefore, their place of ordinary residency must remain Ireland.
- International practice regarding the status of officials serving their state abroad is to consider this period as residency in their home state.

² <http://www.welfare.ie/en/Pages/Habitual-Residence-Condition--Guidelines-for-Deciding-Office.aspx>

³ s. 12 <http://www.irishstatutebook.ie/eli/1992/act/23/enacted/en/print#sec12>

⁴ s.15A <http://www.inis.gov.ie/en/INIS/INCA%20Dec2014.pdf/Files/INCA%20Dec2014.pdf>

⁵ s.7 <http://www.inis.gov.ie/en/INIS/INCA%20Dec2014.pdf/Files/INCA%20Dec2014.pdf>

⁶ The Department of Education & Skills confirmed this position following advice it received from Counsel via the Chief State Solicitors Office on whether making an exemption for children of Department of Foreign Affairs & Trade officials posted abroad would be compatible in particular with EU law.

16. Taking all of these considerations into account, the approach of the State, both in law and in practice, has been consistently to regard public officials serving the State abroad as ordinarily resident in Ireland. On an administrative and legislative basis, officials posted for periods abroad are a distinct and clearly identifiable group who have consistently been deemed to meet the requirement of residency in the State in a variety of contexts.
17. The introduction of LCR in 2015 created an untenable anomaly whereby officials who serve the State abroad, and their accompanying family members, are placed at a disadvantage relative to other public servants. They continue to pay tax and all related charges fully on their Irish-based salaries; they are considered resident in Ireland by the State in a range of fundamental areas; and they are not deemed to be ordinarily resident in the country in which they are posted.
18. However, as the legislation currently stands, when they are assigned for a period abroad by the State they cannot avoid breaking their domestic health insurance cover, even where they contribute to a State organised health insurance policy that provides coverage in Ireland, as well as their posted location. As a result they face potentially significant late entry loadings when they seek to take out a domestic health insurance policy on their return to Ireland.
19. The effect of LCR legislation on the international health insurance policy operated by the Department of Foreign Affairs & Trade on behalf of all Government Departments is both contradictory to the basic aim of the legislation itself (to encourage younger people into the market and penalise late entry) and to the way in which the State has consistently viewed the residency status of officials serving the State abroad.
20. The Department is strongly of the view that a legislative solution is required to address the problems identified. For example, removing the once-off nature of the amnesty for officials/dependents on their return to Ireland, or providing credits for periods spent serving the State abroad, would resolve the current anomaly. Furthermore, it is the Department's view that existing health insurance legislation should be amended to clearly provide for officials and eligible family members who are assigned to serve the State for a period abroad to be deemed ordinarily resident in Ireland for that period.
21. The Department looks forward to having the opportunity to discuss these issues with the Health Insurance Authority as part of its review.

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Annex I - Worked example

Notional health insurance history for diplomatic officer joining DFAT at 25

Age - from	Age - to	No. of years	Location	Health Insurance	Result
25	27	2	Ireland	Domestic	2 years credit for LCR
27	31	4	Abroad	VHI Inter	4 years out of domestic market
31	33	2	Ireland	Domestic	2 years credit for LCR
33	37	4	Abroad	VHI Inter	4 years out of domestic market
37	39	2	Ireland	Domestic	2 years credit for LCR
39	43	4	Abroad	VHI Inter	4 years out of domestic market
43	46	3	Ireland	Domestic	3 years credit for LCR
46	51	5	Abroad	VHI Inter	5 years out of domestic market
51	54	3	Ireland	Domestic	3 years credit for LCR
54	58	4	Abroad	VHI Inter	4 years out of domestic market
58	61	3	Ireland	Domestic	3 years credit for LCR
61	65	4	Abroad	VHI Inter	4 years out of domestic market
65	78	13	Ireland	Domestic	n/a - now retired (male officer)
65	83	18	Ireland	Domestic	n/a - now retired (female officer)

**Domestic insurance will be taken out at ages 25, 31, 37, 43, 51, 58 and 65 (on retirement)
LCR loadings are calculated as follows:**

Age	Liable for LCR?	Credits for previous domestic insurance	Calculation of age for LCR purposes	Net age for LCR purposes	No. of years loading to be applied	% loading to be applied (2% x no. of years)	Annual loading	Calculation of total loading incurred during this period in IRL	Total amount in € (male officer)	Total amount in € (female officer)
25	No	n/a	n/a							
31	No	n/a	n/a							
37	Yes	4 years	37-4	33	0		none - aged under 35			
43	Yes	6 years	43-6	37	3	6	$\text{€}1,350 \times 6\% = \text{€}81$	$\text{€}81 \times 3 \text{ years}$	243	243
51	Yes	9 years	51-9	42	8	16	$\text{€}1,350 \times 16\% = \text{€}216$	$\text{€}216 \times 3 \text{ years}$	648	648
58	Yes	12 years	58-12	46	12	24	$\text{€}1,350 \times 24\% = \text{€}324$	$\text{€}324 \times 3 \text{ years}$	972	972
65	Yes	15 years	65-15	50	16	32	$\text{€}1,350 \times 32\% = \text{€}432$	$\text{€}432 \times 13 \text{ years (man) or } 18 \text{ years (woman)}$	5,616	7,776
								Totals	7,479	9,639

Summary		
Estimated total LCR loadings incurred by officer joining D/FAT at age 25	Male	Female
	€7,479	€9,639

Note: Where officer accompanied by spouse/partner, similar costs likely to be incurred