

1. The Department of Justice and Equality has officers undertaking roles in a range of locations abroad including Visa Offices in Beijing, Moscow, New Delhi, Abuja, Abu Dhabi, Ankara and London as well as officers assigned to posts in Brussels, Strasbourg and Washington. These officers serve the State in roles abroad which are essential to the business of this Department and the State and filling these roles is crucial in allowing the Government advance the State's interests.
2. The Department Foreign Affairs & Trade (DFAT) administers foreign postings for our officials who are assigned to serve the State for periods abroad. DFAT manages a comprehensive system of supports for officials posted for the period abroad, as well as eligible dependents. This includes an international health insurance policy which provides health cover for officials/ dependents in the relevant locations abroad and for temporary periods spent in Ireland during the course of a posting. The cost of this policy is shared by the officer and this Department, with the officer contributing up to a ceiling of the cost of a mid-range policy in Ireland.
3. Following discussions with the DFAT and the Department of Health this Department is concerned with the impact that the introduction of Lifetime Community Rating (LCR) in 2015 has had on the operation of the international health insurance policy that covers our officers who are assigned to posts abroad. In this regard 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. We understand that DFAT is also making a submission for the review and has provided detailed information on the specific impacts and the issues arising. However, given that these matters directly effect officers of this Department and by extension the work of this Department we want to represent in the strongest possible terms our view that as currently structured these provisions are fundamentally unfair and disadvantageous to officers who serve the State abroad.
5. This Department is of the view that our officers cannot and should not be disadvantaged directly as a result of undertaking a posting abroad. Furthermore, it may be noted that officials of the Department of Justice and Equality are not employed with the expectation or requirement that they take up posing abroad. In this regard we rely on our officers to voluntarily undertake these positions, many of which are in difficult locations. It is the view of this Department that the prospect of officers and dependents facing a levy for periods undertaken in positions abroad in the service of the State, would discourage officers from putting themselves forward or indeed undertaking these posts in future. In turn we are concerned that we could very quickly find that we are unable to fill critical posts abroad – the result of which being an inability to meet and deliver on the needs and interests of this Department and the State.

6. This Department would also emphasise that given the age demographic of this Department the levy to be imposed would directly effect officers and their dependents and as above would potentially deter such officers from undertaking these posts. While we would acknowledge that officers will consider a wide range of factors before undertaking a post abroad this Department has noted that it is becoming increasingly difficult to fill these posts and that as currently structured the issues arising in the context of the LCR will only serve to deter these officers from undertaking these posts.
7. We also have a duty of care to staff that are assigned abroad, as well as to accompanying family members. All staff taking up assignments abroad are actively encouraged to take out the international health insurance policy administered by DFAT and we would contend that it is in the Exchequer's interest that they are adequately insured. Officers of this Department who take up posts abroad have on the whole taken up 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. In Given current arrangements the imposition of loadings is not only fundamentally unfair to officials who serve the State abroad, often in difficult locations, it also serves to undermine the viability of the international health insurance policy itself, thereby exposing the Exchequer to significantly increased risk.
8. The impact of LCR on officials/dependents who serve the State abroad is a matter of serious concern to this Department and to staff themselves as well as staff representative associations.
9. 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.
10. The current inequitable anomaly penalises officers of this Department who are willing to serve the State abroad, often in difficult and challenging locations. This is totally unacceptable. As outlined above it is also a significant dis-incentive to staff to undertake assignments abroad, at a time when Ireland needs to be fully engaged in promoting and defending its interests.
11. 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"*. Amending the legislation to remove the current 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.

12. The Consultation Paper also notes 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.
13. The Consultation Paper highlights difficulties arising around the interpretation of “Principal Residence” and “Ordinarily Resident” in the existing health insurance legislation. As the Department of Foreign Affairs and Trade have also highlighted there are already a number of core areas of public administration and law, for which the residency status of personnel posted abroad by the State is regarded as being 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 assigned to serve 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 Benefit¹.
 - Under section 12 (2) 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”*

¹ <http://www.welfare.ie/en/Pages/Habitual-Residence-Condition--Guidelines-for-Deciding-Offic.aspx>

- Under section 15 of 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”*. Thus, such a spouse or civil partner is deemed to maintain his/her Irish residence when posted abroad.
 - Similarly under section 7 of 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”*. 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 initiative.
 - 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.
14. 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.
15. 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.
16. 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 potential late entry loadings when they seek to take out a domestic health insurance policy on their return to Ireland.

17. The effect of LCR legislation on the international health insurance policy operated by the Department of Foreign Affairs & Trade on behalf of this Department 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.
18. The Department of Justice and Equality believes that a legislative solution is required to address the problems identified. Providing credits to officials/dependents for periods spent serving the State abroad, or exemptions on their return to Ireland, would resolve the current anomaly. Furthermore, it is this 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.
19. The Department of the Justice and Equality trust that we have clearly articulated the issues and anomalies that the current structure poses and expect that the Health Insurance Authority will give this matter it's full consideration as part of it's review. We also look forward to having the opportunity to discuss these issues with the Health Insurance Authority and if any clarification is needed on any of the above we will be only to happy to provide.

3 March 2017