

## SUMMARY INFORMATION FOR THE IMPLEMENTATION OF THE WITHDRAWAL AGREEMENT

The Ministry of Labour and Social Affairs publishes summary information on the **implementation of the Withdrawal Agreement<sup>1</sup> in the field of residence, employment and social security.**

This information is intended for the General Directorate of the Labour Office, the State Labour Inspection Authority and the Czech Social Security Administration to issue internal binding guidelines for the conduct of their subordinate departments in the case of British citizens who are/were residing in the Czech Republic and Czech citizens who are/were residing in the United Kingdom of Great Britain and Northern Ireland (hereinafter the “United Kingdom” or “UK”) **and to which the Withdrawal Agreement applies.** The information is also intended for the Ministry of Health and the Office of Health Insurance Companies.

### **1. Introduction to the issue**

On 31 January 2020, the UK left the European Union (hereinafter the “EU”) on the basis of conditions agreed in the Withdrawal Agreement, which became effective on 1 February 2020.

The parties to the Withdrawal Agreement are, on the one hand, the EU Member States (hereinafter the “MS”) and, on the other hand, the UK. In the agreement, both parties guarantee the citizens and family members of the other party the preservation of the rights they have enjoyed so far under European Union law. In particular, this agreement guarantees **that persons defined in the personal scope will retain the right of residence, access to the labour market and social security until the end of their life (subject to certain conditions).**

The Withdrawal Agreement distinguishes the period **until the end of the transitional period**, i.e. until 31 December 2020<sup>2</sup>, when both parties to the Withdrawal Agreement fully apply the EU law, and the **period from 1 January 2021**, when there will be no free movement of persons (workers) between the UK and the EU, but the residence and labour rights, as well as social security rights that were established before the end of the transitional period are preserved.

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<sup>1</sup> AGREEMENT ON THE WITHDRAWAL OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND FROM THE EUROPEAN UNION AND THE EUROPEAN ATOMIC ENERGY COMMUNITY

<sup>2</sup> see Article 126 of the WA et seq.

The following interpretation applies only to persons covered by the Withdrawal Agreement. **As a general rule, United Kingdom nationals not covered by the Withdrawal Agreement must be regarded as third-country nationals.**

[Hypertext link to the Withdrawal Agreement.](#)

In the following text, references will be made to the Withdrawal Agreement using the abbreviation WA.

## **2. Preservation of the right of residence under Article 13 of the WA and the issuance of a residence document within the meaning of Article 18 et seq. of the WA.**

Article 13 of the WA gives EU citizens and UK citizens the right to retain the right to reside in the host country.

Article 18(1) of the WA allows a MS and the UK to require citizens of the other party to the WA and their family members residing in its territory who wish to continue to reside there to apply for a new settled status under the WA and to issue a document certifying this status. By contrast, paragraph 4 of this Article allows citizens of both parties to require the host State to issue a certification document, even though that host state does not have the registration obligation for EU citizens (as well as British citizens) in its legal system. The United Kingdom has chosen to follow the path of obligation to apply for a new settled status, while the Czech Republic has decided to choose the path of optional registration. Therefore, at the moment, UK citizens do not have to register at the workplace of the Ministry of the Interior and don't have to have the relevant certification document at their disposal. **Therefore, the absence of the document may not be penalised by the Czech authorities.**

Currently, the Ministry of the Interior issues a **certificate of temporary residence to** British citizens who apply for it, without examining the applicant's status, i.e. whether it is a worker, student, family member, posted worker, inactive person, etc. Anyone who resides in the Czech Republic as of 31 December 2020 and sufficiently proves it (e.g. by an employment contract, lease contract, confirmation of school attendance), will receive a certificate of temporary residence. This certificate will differ from other certificates of temporary residence of EU citizens in that it will clearly identify the entitled person as a person covered by the Withdrawal Agreement (the document will be marked with a red stamp "EU Withdrawal Agreement").

Temporary documents issued during the transitional period:

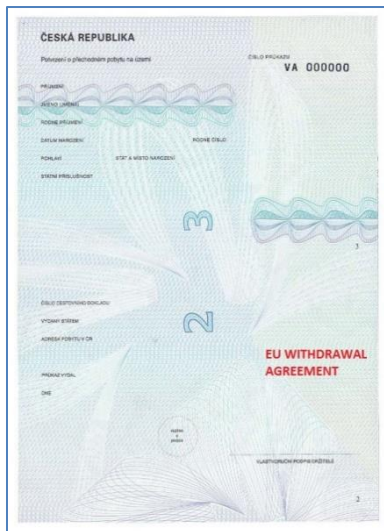


Figure 1: Certificate of temporary residence with the "EU Withdrawal Agreement" entry



Figure 2 residence permit with the "EU Withdrawal Agreement" entry

From 2 August 2021, the Ministry of the Interior will issue documents with biometric data, which will include the note "Art. 50 of the Treaty on European Union" or "RP UK – Article 50 of the Treaty on European Union").

Documents after the mid-2021 (electronic residence permit – eRP – instead of the inscription long-term residence, there will be, for example, the inscription "Article 50 of the Treaty on European Union"):



This means that the following types of temporary absence shall not affect the continuity of stay:

- 1) absence (note: it can be more than one period) not exceeding a total of six months a year;
- 2) absence (note: it may be more than one period) of longer duration due to the performance of compulsory military service (without time limit) or
- 3) absence (note: only one period) for a maximum of twelve months for important reasons, for example due to (note: this is not an exhaustive list):
  - a. pregnancy and childbirth;
  - b. serious diseases;
  - c. studies or training; or
  - d. posting abroad by the employer.

For example, EU citizens who had arrived in the host country four years before the end of the transitional period, had worked there and were sent abroad by their employer eight months before the end of the transitional period (point 3 (d) above) shall preserve their right of residence under Union law on the free movement of EU citizens and are eligible for a new residence status in the host state if they return to the host state before their absence exceeds twelve consecutive months.

It also means that the continuity of the stay may be interrupted by a duly executed decision on the expulsion of the person concerned (the given right of residence was essentially terminated by this duly executed decision on the expulsion of the person concerned). The penalty of imprisonment before the acquisition of the right of permanent residence also means that the period of temporary residence will be recalculated from zero and a new period of five years of continuous legal residence must be obtained.

However, the right of permanent residence shall lapse only as a result of absence from the host State for a period exceeding five consecutive years. **Residence rights under Article 13 apply to only one Member State.** Therefore, it is not possible to apply for residence rights in one MS on the basis of residence rights in another MS.

The WA retains all the rights of UK citizens and their family members arising from it even after the end of the transitional period, until **the end of their lives**, provided that they continue to meet the conditions set out in the Withdrawal Agreement, see Article 39 of the WA.

### **3. Employment of persons authorised to stay in the Czech Republic based on Article 13 of the WA**

**It follows from Article 24 of the WA that it is not possible to require a work permit for any of the persons who will be legally resident in the Czech Republic based on Article 13 of the WA.**

Specifically, the following applies:

- a) UK citizens employed in the Czech Republic before the end of the transitional period may **continue to work** without a work permit and they may also terminate and start another employment relationship with another employer without the need to obtain a work permit. UK citizens with residence status in the Czech Republic based on Article 13 of the WA may change their status; see Article 17 of the WA. A change from one category to another is to be considered a change of status: student, employee, self-employed person, economically inactive person. **Nobody who acquired the rights from the WA and who changes his or her status from 1 January 2021 to an employee will not be obliged to have a work permit.**
- b) **Family members**<sup>3</sup> of a UK citizen regardless of nationality may take up employment from 1 January 2021 by virtue of a right of residence acquired in accordance with Article 13 of the WA. The definition of a family member of a British citizen is given in Article 9(1)(a) and Article 10(1)(e) to (f), paragraphs (2)-(4) of the WA.

With regard to the fact that UK citizens and their family members with residence rights in the Czech Republic will not be obliged to have a residence document according to the WA, it will not be possible to require this document even for employment purposes. Although the Ministry of the Interior strongly recommends that authorised persons have their stay in the Czech Republic certified, it will be necessary to expect that some persons will not obtain the necessary document.

**The burden of proof that a particular person enjoys the right of residence in the Czech Republic on the basis of Article 13 of the WA and is therefore not obliged to have a work permit is on the person concerned.** Proof of the employment contract, proof of study, lease agreement, etc. may serve as credible evidence for institutions such as the Labour Office of the

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<sup>3</sup> **A family member of an EU citizen** is a family member of a citizen of any of the above countries who is:

- a. a spouse, or a registered partner;
- b. a parent in the case of an EU citizen under the age of 21 for whom he or she is actually caring;
- c. a descendant under the age of 21 or such a descendant of an EU spouse's husband; and
- d. a descendant or an ancestor or a descendant or an ancestor of an EU citizen's spouse, if he or she is dependent on for maintenance or other necessary care provided by a European Union citizen or his or her spouse, or if he or she was so dependent immediately before entering the territory in the State of which he or she is a national or in the State in which he was authorised to reside. (The Act on the Residence of Foreigners no longer stipulates the dependency condition).

A foreign national shall be considered a family member of an EU citizen if he or she demonstrates that:

- a. he or she is a relative of a citizen of the European Union not listed above, if
  1. in the State of which he or she is a national or in the State in which he or she was granted residence, he or she lived in the same household before entering the territory of the EU citizen;
  2. he or she is dependent on for maintenance or other necessary care provided by an EU citizen or his or her spouse, or if he or she was so dependent immediately before entering the territory in the State of which he or she is a national or in the State in which he was authorised to reside; or
  3. he or she cannot take care of himself or herself for serious health reasons without the personal care of an EU citizen; or
- b. he or she has a lasting partnership with an EU citizen that is not a marriage and they live together in the same household; in assessing the permanence of the partnership, particular account shall be taken of the nature, strength and intensity of the relationship.

Czech Republic or the State Labour Inspection Office, all valid as of 31 December 2020. The competent institutions should not require the persons concerned to provide specific documentation on the spot, but should allow a reasonable period of time to provide the necessary documents.

Example: A British citizen studying at university in the Czech Republic between 1 January 2019 and 20 March 2021 finds a job in the Czech Republic after completing her studies. This situation is a change of status within the meaning of Article 17 of the WA, so the British citizen in question will not need a work permit. However, the person concerned will not request a document certifying residence rights within the meaning of Article 18 of the WA.

During employment, there will be an inspection by the labour inspectorate. The person concerned will not have any document certifying her residence and work status. The inspectorate should give the person concerned a reasonable period of time to prove the alleged facts, e.g. by sending a certificate that the study period in the Czech Republic had started and was in progress before the end of the transitional period, or the inspectorate should recommend this former student to apply for a temporary stay at the competent workplace of the Ministry of the Interior.

#### **4. Issue of certificates regarding the rights of cross-border workers**

In addition to persons with a right of residence in the Czech Republic, **cross-border workers** also have the right to maintain access to employment<sup>4</sup>; these are persons who started working in the Czech Republic by the end of the transitional period, but without staying here permanently or temporarily. Due to the absence of residence, it will not be possible for the persons concerned to acquire a residence permit in accordance with Article 18 of the WA from the Ministry of the Interior. Nevertheless, these workers have the following rights:

- the right to maintain employment in the Czech Republic after the end of the transitional period without the need to have a work permit;
- the right to maintain the status of a cross-border worker even if they stop working before the end of the transitional period without having to change their place of residence to the country of employment;<sup>5</sup>

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<sup>4</sup>“Cross-border workers” are defined by the WA in Article 10(1)(d) as citizens of the Union or nationals of the United Kingdom who pursue an economic activity in accordance with Article 45 or 49 of the TFEU in one or more States in which they do not reside. The term “cross-border worker” is not interchangeable with the term “frontier worker” within the meaning of Regulation 883/04.

<sup>5</sup>Cross-border workers retain their status in the State of employment in cases where:

- a) they are temporarily unable to work due to illness or injury;
- b) they are duly registered as involuntary unemployed after having been employed for more than one year and are duly registered with the competent Labour Office as jobseekers;
- c) they are duly registered as involuntarily unemployed after the end of a fixed-term employment contract of less than one year or after becoming involuntarily unemployed during the first twelve months and

- the right for a change of status within the meaning of Article 17 of the WA after the end of the transitional period; and
- the right for additional acquisition of the right of residence within the meaning of Article 13, if they are able to prove their residence in the Czech Republic to the Ministry of the Interior after the end of the transitional period.

Article 26 of the WA states that the host State may require workers, and at the same time such workers may request, in order to certify the maintenance of their rights under the WA, a certificate which the host country is obliged to issue to them. In the case of issue of certificates in accordance with Article 26, a similar procedure will be applied as in the case of documents issued in accordance with Article 18, i.e. **having the certificate will not be a necessary condition for preserving the rights of cross-border workers.**

The affected cross-border workers can apply for the certificate from the regional branch / branch of the Labour Office of the Czech Republic with territorial competence according to the place where the employment is performed at the end of the transitional period. In order to obtain a certificate certifying the status of a cross-border worker, the person concerned must submit an identity document, a certificate of employment, an employment contract or another document stating that he or she was previously employed in the Czech Republic. The territorially competent branch of the Labour Office of the Czech Republic will issue a certificate on the basis of data kept in the register in accordance with Section 102 of the Employment Act – i.e. in this case, the data on the commencement of employment of EU citizens, which are registered on the basis of the employer’s information obligation in accordance with Section 87 of the Employment Act.

The specific form of the certificate in accordance with Article 26 of the WA shall be determined by the General Directorate of the Labour Office in cooperation with the MoLSA.

## **5. British workers posted from the UK to work in the Czech Republic**

The WA does not regulate the maintenance of posting of workers between the WA parties in accordance with Directive 96/71/EC, or Directive (EU) 2018/957 (hereinafter the “Directive”). Given that the application of EU legislation is fully maintained (with exceptions) until the end of the transitional period, the free movement of services, including the posting of workers, is maintained. Therefore, workers from the UK may be assigned to work in the Czech Republic at any time until the end of the transitional period.

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registered with the competent Labour Office as jobseekers (*in this case, they retain the status of worker for at least six months*); or

- d) they take up professional training (*if they are voluntarily unemployed, the training must relate to their previous employment*).

In accordance with the CJEU case-law (Case C-507/12 Saint Prix), the list of circumstances in which the status of worker may be maintained **is not exhaustive**.



However, from 1 January 2021, the situation changes completely. According to the European Commission's interpretation, persons who derive their rights purely from Article 56 of the TFEU, on the free movement of services, are not covered by the Withdrawal Agreement. This means that the WA does not confer any right on posted workers to remain in the territory of the host State after the end of the transitional period. However, at the same time, Article 38 of the WA allows the host State to opt for a more favourable treatment than that based on the WA. The Czech Republic will use this option and allow workers posted from the UK to the Czech Republic to complete the expected period of posting. Given that from 1 January 2021, there will be no legal title for these workers arising from EU law for staying in the Czech Republic and continuing to perform work, all workers will be issued a work permit across-the-board within the meaning of Section 95 of the Employment Act. With regard to the relatively low number of workers posted from the UK to the Czech Republic, the branches of the Labour Office competent according to the place of work will contact the recipients of services and guide them through the permit-related process.<sup>6</sup> Branches of the Labour Office of the Czech Republic will accept applications for a work permit (in accordance with Section 95 of the Employment Act<sup>7</sup>) for a foreign worker posted from the UK to the Czech Republic, even if such applications are submitted by the end of 31 December 2020.

Another important issue is the assessment of the rights and obligations arising from labour-law relationships of the above employees. At the end of the transitional period, the employees concerned will cease to be posted workers within the meaning of the Directive and the labour-law relationship will have to be regarded as a labour-law relationship with a foreign element, where the participant is a third-party national (UK). This means that at the end of the transitional period, the Directive will cease to apply to the WA parties. From the point of view of the Czech Republic, this means that Sections 319 and 319a of the Labour Code will cease to apply. Provisions contained therein were so far imposing the application of Czech legislation, if it was more advantageous for posted workers than the legislation of the United Kingdom with regard to, inter alia, the listed catalogue of working conditions (e.g. maximum working hours and rest periods, remuneration, leave, etc.). The Czech Republic is of the opinion that even with regard to the general private law principle of protection of acquired rights, the **rights of posted workers acquired during the transitional period must be preserved**, i.e. that the standards granted by the Directive must be applied (e.g. comparing standards in terms of profitability).

Any rights acquired by the employee **after the end of the transitional period** must be interpreted primarily from the content of the labour-law relationship between the employee and the employer and in the case of dispute, the relevant conflict rule must be applied (Act No 91/2012, on private international law, as amended). At international level, the Convention on the Law Applicable to Contractual Obligations, open for signature in Rome on 19 June 1980 (1980 Rome Convention), is likely to be relevant in terms of the UK, as Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable

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<sup>6</sup> The above procedure will only apply to cases where the posting started before the end of the transitional period.

<sup>7</sup> Posting a foreign national to the territory of the Czech Republic by a foreign employer on the basis of a contract concluded with a domestic legal or natural person to perform the tasks arising from this contract.

to contractual obligations (Rome I) will be no longer binding to the UK as a third-party State. In accordance with Article 6(1) of the Rome Convention, in the case of employment contracts, an employee may not be deprived of the protection afforded to him or her by the mandatory provisions of the law which would apply under paragraph 2 in the absence of a choice of law applicable. Imperative norms must be understood from the point of view of national law as mandatory norms, i.e. norms from which it is not possible to deviate even by agreement of the contracting parties. From the point of view of the Labour Code, the main explanatory guide for assessing which norms are mandatory norms in Czech labour law is Section 4a of the Labour Code, which lays down rules of contractual freedom in labour-law relationship and also Section 4, which allows supportive application of the Civil Code to labour-law relationships, **but always in accordance with the basic principles of labour-law relationships set out in Section 1a(1) of the Labour Code.** In practice, these are, for example, provisions from which the Labour Code explicitly prohibits deviations, or provisions expressing the lowest or highest limits for the applicable law (the minimax); it also includes regulation of the status of persons, etc. **Provision implementing EU regulations have a special position among these mandatory norms, the list of which is specified in Section 363 of the Labour Code. Deviations from these provisions are allowed only in favour of the employee.** These provisions include Sections 319 and 319a of the Labour Code, which should be relevant for possible retrospective assessment of which regulation was “imperative” at a critical time in the Czech Republic in terms of conflict of regulations.

6. **The group of persons to whom the WA provides protection for claims previously covered by Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (hereinafter the “Regulation 883/2004”).**

The personal scope of social security coordination is specific to Part Two, Title III of the Agreement and it does not necessarily correspond to the personal scope of Title II<sup>8</sup>. In addition, rights under Part Two, Title III (coordination of social security systems) do not necessarily lapse when, for example, the status of residence under Part Two, Title II (rights and obligations) expires<sup>9</sup>.

The application of the coordination rules under Regulation 883/04 resulting from Title III does not in itself confer on persons covered by Title III of the WA the right to move or reside in the State concerned, but only determines the legal consequences for social security in this situation.

**a. Full protection (Article 30):**

Regulation 883/04 continues to be **fully applicable** to persons who **have been and remain in one of the described cross-border situations** involving both the United Kingdom and a

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<sup>8</sup> Article 10 of the WA (Personal scope) indicates the personal scope of Title II of the WA, but expressly states “1. Without prejudice to Title III, this Part shall apply to the following persons:...”. It follows that the personal scope of Part III. is independent of Part II.

<sup>9</sup> For example, if a Czech citizen who lived and worked in the UK moves to the Czech Republic in 2022, he or she will still enjoy the protection of at least Article 32 of the WA regarding pension rights.

Member State at the end of the transitional period (**without interruption** – see below for an explanation of the term). Full applicability means the application of Regulation 883/04 as a whole, including procedural rules for cooperation between institutions, provisions on cost transfer, etc. In the situations covered, it is necessary to proceed as if the UK is still a Member State.

The following person are covered:

- citizens of the UK and EU Member States (Article 30 of the WA)
- nationals of EEA Member States and Switzerland (Article 33 of the WA)
- stateless persons and refugees (Article 30(1)(f))
- third-country nationals formerly covered by Regulation 859/03 (Article 30(1)(g))
- family members and survivors of the above persons (the scope of the term family member is governed by Regulation 883/04).

**A cross-border situation at the end of the transitional period means the following:**

- Within the meaning of Regulation 883/04 (Title II), a person is subject to MS/UK legislation (an EU citizen is subject to UK legislation and a UK citizen is subject to EU legislation)
  - o A UK citizen working in the Czech Republic / a Czech citizen working in the UK
  - o A Czech citizen, recipient of a Czech pension with habitual residence in the UK (subject to UK legal regulations on the basis of Article 11(3)(e) of Regulation 883/2004; as regards sickness benefits, the Czech Republic is competent under Articles 24 and 29 of the same Regulation) and vice versa (a British citizen, recipient of a British pension with habitual residence in the Czech Republic is subject to Czech legal regulations on the basis of Article 11(3)(e) of Regulation 883/2004; as regards sickness benefits, the UK is competent under Articles 24 and 29 of the same Regulation).
  - o A Czech citizen working in the UK begins to receive maternity benefits provided by the UK when she temporarily returns to the Czech Republic and gives birth there before 31 December 20 (based on Article 11(2) and (3)(a) of Regulation 883/2004, she is subject to UK legislation); i.e. after the end of maternity leave, she may return to work in the UK and should continue to be subject to Article 30(1) of the WA.
- A person resides in a MS / the UK and is subject to the regulations of the other party (a citizen of a MS in the UK and vice versa)
  - o Czech citizen living in the UK subject to Czech legislation. (e.g. a Czech national who has his or her habitual residence in the UK with his or her family, works in the Czech Republic and returns to the UK twice a month (based on Article 1(3)(a) of Regulation 883/2004, he or she is subject to Czech legislation)
  - o A British citizen living in the Czech Republic subject to UK legislation (e.g. a UK national who has his or her habitual residence in the Czech Republic with his or her whole family, works in the UK and returns to the Czech Republic twice a month (based on to Article 11(3)(a) of Regulation 883/2004, he is subject to UK legislation).

- The person works in a MS / the UK and is subject to the regulations of the other party (MS citizen working in UK insured in MS and vice versa)
  - o Citizen of the Czech Republic performing activities in the Czech Republic and the UK simultaneously, subject to the regulations of the Czech Republic.
  - o A Czech citizen who has been posted to the UK within the meaning of Article 12 of Regulation 883/04 and his or her posting will end after the end of the transitional period (subject to Czech legislation on the basis of Article 12 of Regulation 883/2004)
- A situation other than the above, where a person, on the basis of EU law, has exercised the right of residence in the UK / a MS and continues to reside in that State, or retains the right of residence or the right to pursue employment in the State concerned (Article 30(3) referring to Article 10 of the WA – regarding the demonstration of this status, see points 2 and 3 above)
  - o A citizen of the Czech Republic who studies in the UK in 2020 (does not have residence in the UK), if he or she acquires the right of residence in the UK within the meaning of the WA, will be subject to full coordination within the meaning of Article 30. Children of a Czech citizen who has the right of residence in the UK on the basis of the WA, born after 31 December 2020, are covered by full protection.
  - o A citizen of the UK who had residence rights in the Czech Republic at the end of the transitional period and retains them within the meaning of Article 13 or 11 and 12 of the WA (for explanation see the residential part above).

### **Interpretation of the term “without interruption”**

**Full protection** is provided to the persons concerned **for as long as the cross-border situation lasts without interruption**. The concept of “interruption” must be interpreted rather narrowly, always taking into account the purpose of this provision.

The following shall **NOT be considered** an “interruption” within the above meaning:

- o a change in the person’s category (a student becomes an employee, a family member becomes independent, etc.);
- o a transition between the situations listed in Article 30 (a posted worker finds employment in the State to which he or she was posted);
- o a short period of time between situations (1 month break between two employment contracts).

### **b. Partial protection (Article 32 of the WA)**

If a person does not meet the qualification conditions for full protection, it is necessary to examine whether he or she may be included in one of the groups with specific protection:

- **Persons for whom it is necessary to use the aggregation of insurance periods to determine entitlements (Article 32(1)(a))**

In relation to persons who do not meet / no longer meet the conditions for full protection in accordance with point (a) above, who were previously covered by UK legislation (and vice versa, UK citizens who were previously covered by MS legislation), the provisions of Regulation 883/04 on the aggregation of insurance periods remain applicable, including the rights and obligations arising from these periods. It is explicitly stated that not only the periods acquired until the end of the transitional period will be added up, but also the periods acquired after the end of the transitional period (future periods) for persons affected by this provision.

Regulation 883/04 is not applicable in this case as a whole, but only some of its provisions apply, which are not exhaustively specified with regard to the aggregation of periods. In order to achieve a guaranteed scope of protection of the persons covered, it is necessary to assume that all provisions related to the aggregation will be applied, i.e. including the rules on the submission of applications and cooperation between institutions in the field of aggregation. If the aggregation of periods for pensions is carried out, then the reference to related rights and obligations also includes rules on determining the State responsible for reimbursement of health care costs or family benefits for pension beneficiaries and their families.

The potential aggregation concerns both the periods acquired in a MS and the UK during the UK's membership in the EU, and the periods acquired by the same person subsequently (future periods in accordance with the last sentence of Article 32(1)).

The reference to the use of aggregation of insurance periods must be interpreted in the broadest sense, i.e. the protection also applies to persons who receive / have received in the past the right to a "solo" benefit from a MS. It follows from the above that protection applies not only to those citizens who subsequently receive partial pensions, but also to those who receive solo pensions. **This protection is not limited in time.**

- **Recipients of benefits assessed on the basis of the WA (Article 32(2))**

Persons for whom benefits are assessed on the basis of aggregation of periods in the above meaning have corresponding entitlements in the field of sickness benefits. The WA provides for the full application of Chapter 1 of Title III of Regulation 883/04 as regards sickness benefits. The concept of sickness benefit in this context includes both benefits in kind (health care) and cash benefits, including long-term attendance benefits, which are included in the scope of competence of Regulation 883/04 on the basis of case-law. This means the State responsible for reimbursing the costs of health care is designated in accordance with Chapter 1 Title III of Regulation 883/04 for a pensioner with several partial pensions. This State is then also responsible for the possible provision of long-term attendance benefits.

- **Recipients of family benefits and their entitlement to health care (Article 32(1)(d) and Article 32(1)(e)).**

Article 32 also explicitly addresses claims for family benefits and coverage of health care costs for family members who are themselves in a cross-border situation, but the person from whom they derive their claims is not (wage earner – Czech citizen – lives and works in the Czech Republic, family members live in the UK). Family members in this capacity are not protected by Article 30 of the WA, therefore they are granted specific protection under Article 32.

### **Family benefits (Article 32(1)(d))**

In accordance with Article 32, family members will continue to be provided with family benefits under Regulation 883/04 from both the primarily and secondarily competent State, even if the order of priority is subsequently changed.

Example: A UK national who at the end of the transitional period works and has his habitual residence in the UK, while his economically inactive Czech spouse has his or her habitual residence in the Czech Republic together with their children (as Article 30(1) of the Agreement does not apply, Article 32(1)(d) of the Agreement shall be used):

- in accordance with Article 68 (1)(a) of Regulation No 883/2004, the primary competence is with UK, which will continue to pay benefits to children with habitual residence abroad, provided that the conditions of the Regulation and UK legislation are met;
- if the Czech spouse starts working in the Czech Republic in 2024, based on Article 68(1)(b) of Regulation No 883/2004, given that the children have their habitual residence in the Czech Republic, the Czech Republic will become the primarily competent state and the UK will become the secondarily competent state and will start paying only the compensatory supplement if necessary;
- if the spouse becomes inactive again, the competence will be transferred accordingly between the Czech Republic and the Charles University;
- if the spouse and children follow the UK national to the UK under the rules in force at that time, Article 32(1)(d) of the Agreement shall cease to apply to them; any future change (family or only the spouse and children will return to the Czech Republic) will be considered a future movement, and therefore no rights under the agreement will be maintained.

### **Other derived entitlements to benefits (Article 32(1)(e))**

For the family members described above, who are themselves in a cross-border situation, unlike the person from whom they derive their entitlements (his or her situation is limited to 1 state only), only those derived entitlements are retained (typically to cover healthcare costs) that exist / existed at the end of the transitional period.

Example: At the end of the transitional period, a Slovak citizen works and has his usual residence in the Czech Republic. His British wife has their habitual residence in the UK with their children, where he works:

- the wife will have an independent right to sickness benefits in kind in the UK and the children have derived rights of family members in the UK in accordance with Article 32 of Regulation 883/2004;
- in 2023 the wife will cease to be active and she and the children will have derived rights of family members from the Czech Republic;
- in 2024, the couple will have a child who will not have WA-derived family rights.

### **- Persons in planned treatment (Article 32(1)(b))**

The rules of Regulation 883/04 on the provision of requested health care and its reimbursement shall apply even after 31 December 2020 for the care of persons who have applied for authorisation to receive care in another state before that date, for the entire period of treatment. This means that persons who apply to their institution for consent to treatment in the UK by the end of 2020 (and vice versa) and, if they are subsequently granted the consent, may still benefit from the provisions of Regulation 883/04 and the reimbursement mechanism set out therein.

However, Article 32(1)(b) of the WA does not confer any rights of residence within the meaning of Directive 2004/38/EC on patients and accompanying persons during their stay in the State of treatment. They are not subject to Articles 18 or 19 of the WA.

- **Persons with temporary residence – essential health care (Article 32 (1)(c))**

The rules of Regulation 883/04 on the provision of necessary health care in the state of residence and its reimbursement shall apply even after 31 December 2020 to persons who were temporarily in a MS or the UK on this date, until the planned end of the stay. This means that a UK citizen temporarily residing in the Czech Republic at the turn of the year 2020/2021 may draw care using the EHIC until the end of their planned stay. The reimbursement mechanism in accordance with Regulation 883/04 will subsequently be used to reimburse the care provided by the UK. This provision applies only to persons not covered by Article 30 of the WA.

Example: A UK national who works and has his or her habitual residence in the UK is travelling to Poland, Slovakia and the Czech Republic at the end of December 2020. He or she is in Poland on 30 December 2020 and intends to travel to the Czech Republic on 10 January 2021. The following applies to this person:

- he or she is insured on the basis of a European Health Insurance Card for the entire period of his or her stay in Poland until he or she leaves this country for the Czech Republic on 10 January;
- during his or her stay in the Czech Republic, he or she can no longer use the European Health Insurance Card, as any movement to another EU Member State after the end of the transitional period (in this case to the Czech Republic) is considered a future movement outside the scope of the WA.

**c. Cooperation of institutions**

The UK will exchange data through EESSI (Article 34(2) of the WA).

The provisions of Regulation 883/04 and Regulation 987/09 on reimbursements (including recovery and set-off) shall continue to apply as follows:

- **In cases that occurred before the end of the transitional period:**
  - health care for a UK citizen provided in September 2020 will be billed and reimbursed in accordance with the above regulations in the following years;
  - if an overpayment of a cash benefit has arisen by the end of the transitional period in cases covered by Regulation 883/04, it may be recovered under Regulation 883/04 even after its end.

- **With regard to events after the end of the transitional period which have occurred for persons covered by Articles 30 and 32:**
  - The provisions of Regulations 883/04 and 987/09 shall apply to the reimbursement of health care provided to the recipients of a partial old-age pension granted in 2022.
  - For the recovery and set-off of pension overpayments for a person to whom a pension has been granted through the application of Article 32 of the WA.