Practice Note on Residence Rights in the EU and EEA

Structured Electronic Document S041 and Comprehensive Sickness Insurance
Version 3.0: 11 March 2018

The purpose of this practice note is to confirm that Structured Electronic Document S041 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, SED S041 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 period of time specified.

Please note that not all Member States are issuing SED S041 as proof of past healthcare coverage. Presently, we understand that only the Bulgarian and Czech social security institutions do so as a matter of course. The social security institutions of some Member States are continuing to issue Form E 104 (Certificate concerning the aggregation of periods of insurance, employment or residence), 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 Structured Electronic Document S041?

Structured Electronic Document S041 is a document that is usually issued by a social security institution in response to an enquiry about periods of insurance received from a social security body of another Member State. SED S041 is entitled "Reply to Request for Periods - Insurance Risk Type: Sickness and Maternity" (*a specimen is attached as an appendix to this note*).

SED S041 lists all former periods of affiliation to social security system for sickness and maternity benefits. In other words SED S041 confirms when a person was covered by the healthcare system of the country that issued the document.

SED 041 corresponds to the former Form E 104 (Certificate concerning the aggregation of periods of insurance, employment or residence) which used to be issued under the former Regulation 1408/71 before being phased out from 2010.

What is confirmed by Structured Electronic Document S041?

When Structured Electronic Document S041 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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SED S042 confirms that during the specified period of insurance coverage:

- the person named in SED 041 was covered by the healthcare insurance system of the issuing institution for the period specified in the document (*see section "5. Insurance Period" confirming the period of affiliation for the purposes of sickness and maternity benefits)*;

- the person named in SED 041 would have been eligible for a European Health Insurance Card 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*);

- the person named in SED 041 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*); and

- the costs of any healthcare received by the person named in SED 041 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*).

What is the legal basis for the issuance of Structured Electronic Document S041?

SED S041 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 Administrative Commission will determine the format of structured electronic documents: *"10. A standardised layout for paper SEDs, to be agreed on by the Administrative Commission, shall be made accessible to institutions."*

This decision also provides that institutions are under an obligation to cooperate: *"4. In all cases, during the transitional period, an institution shall accept relevant information on any document issued*

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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."

This gives further expression to the obligation to cooperate contained in Article 76(4) of Regulation 883/2004, 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.

The UK authorities are therefore under a duty to cooperate with the national authorities of the other EU Member States and the purpose of SED S041 is therefore to facilitate this cooperation.

What is the legal value of a Structured Electronic Document S041?

Article 5 of Regulation 987/2009 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."*

This provision gives effect to rulings of the EU Court of Justice regarding the compulsory nature of documents issued under the EU social security rules (Case C-178/97 *Banks* [2000] EU:C:2000:169; Case C-620/15 *A-Rosa Flussschiff* [2017] EU:C:2017:309).

The UK authorities are therefore under a duty to accept SED S041 as proof that the named person was covered by the healthcare insurance system of the issuing institution for the period specified in the document.

Where there is doubt about the validity of SED S041 or the accuracy of the facts contained in the document, Article 5(2) of Regulation 987/2009 requires the UK authorities to contact the issuing institution in order to obtain the necessary clarification and, where appropriate, the withdrawal of that document.

Does it matter that the Home Office's guidance on what constitutes comprehensive sickness insurance does not refer to Structured Electronic Document S041?

No. The absence of a reference to Structured Electronic Document S041 in the Home Office's guidance[1] does not limit the ability of persons to prove that they held comprehensive sickness

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

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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 SED S041 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 Structured Electronic Document S041 as proof comprehensive sickness insurance?

In the event that the Home Office refuses to approve an application for residence documentation supported by Structured Electronic Document S041, the applicant would have a right to challenge that decision by way of an appeal or judicial review proceedings as the case may be.[2]

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

Administrative Commission
for the coordination
of Social Security Systems

Reply to Request for Periods - Insurance Risk Type: Sickness and Maternity

Article 6 of Regulation (EC) No 883/2004; Article 12(1) of Regulation (EC) No 987/2009

Number of attachments	[integer]...
Date sent	[DD/MM/YYYY]...

Sending institution:	
Country code*	[list ISO3166-1-alpha-2 code]........
Institution code*	[25]...
Institution name*	[155]...
Street	[155]...
Town	[65]...
Postal code	[25]...
Region	[65]...
Country	[list ISO3166-1-alpha-2 code].........
Phone	[65]...
Fax	[65]...
Email	[255]...
Receiving institution:	
Country code*	[list ISO3166-1-alpha-2 code].........
Institution code*	[25]...
Institution name*	[155]...
Street	[155]...
Town	[65]...
Postal code	[25]...
Region	[65]...
Country	[list ISO3166-1-alpha-2 code].........
Phone	[65]...
Fax	[65]...
Email	[255]...

1. Case numbers	
1.1 Case number of the sending institution*	[65].....................
1.2 Case number of the receiving institution*	[65].....................

2. Person	
2.1 Person*	
2.1.1 Family name(s)*	[155].....................
2.1.2 Forename(s)*	[155].....................
2.1.3 Birth date*	[DD/MM/YYYY]...................................

2.1.4 Sex	
	❑ Female
	❑ Male
	❑ Unknown
2.1.5 Family name(s) at birth	[155]......................
2.1.6 Forename(s) at birth	[155]......................

2.1.7 If you have the Personal Identification Number of the person, please fill in the following:
❑Identification of the person with Personal Identification Number

2.1.7.1 Personal identification number in the sending institution	[65]......................
2.1.7.2 Personal identification number in the receiving institution	[65]......................

2.1.8 If you do not have the Personal Identification Number of the person, please fill in the following:
❑Identification of the person, without Personal Identification Number

2.1.8.1 Place of birth	[155]......................
2.1.8.2 Father family name at birth	[155]......................
2.1.8.3 Mother family name at birth	[155]......................
2.1.8.4 Forename of father	[155]......................
2.1.8.5 Forename of mother	[155]......................
2.2 Additional information on the person	
2.2.1 Nationality	[list ISO3166-1-alpha-2 code].........

3. Person's address	
3.1 Address	
3.1.1 Street	[155]......................
3.1.2 Town	[65]......................
3.1.3 Postal code	[25]......................
3.1.4 Region	[65]......................
3.1.5 Country	[list ISO3166-1-alpha-2 code].........
3.2 Residence in this country since	[DD/MM/YYYY]..

4. In reply to your S040 of	
4.1 Dated of*	[DD/MM/YYYY]..
4.2 Information*	
	❑ We inform that the person concerned completed no periods under our legislation
	❑ We confirm the requested periods completed by the person concerned under our legislation

5. Insurance period↻	
5.1 From	[DD/MM/YYYY]..
5.2 To	[DD/MM/YYYY]..
5.3 Insurance type	
	❑ Compulsory
	❑ Voluntary

❑ Optional continued insurance

6. Employment period ↻
6.1 From   [DD/MM/YYYY]...
6.2 To   [DD/MM/YYYY]...

7. Self-employment period ↻
7.1 From   [DD/MM/YYYY]...
7.2 To   [DD/MM/YYYY]...

8. Residence period ↻
8.1 From   [DD/MM/YYYY]...
8.2 To   [DD/MM/YYYY]...

9. Additional information
9.1 Additional information   [500].....................

Signature of the sending institution
Date   [DD/MM/YYYY]...
Signature   Stamp