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Brexit and State Pensions

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Summary

Entitlement to the UK State Pension is based on an UK individual's National Insurance record. As part of the EU, the UK is part of a system to co-ordinate the social security entitlements for people moving within the EU. The rules also apply to EEA countries and Switzerland. The aim of these provisions is not to harmonise social security systems, but to remove barriers to workers moving between Member States. They enable periods of insurance to be aggregated, so an individual who has worked in other Member States can make one application to the relevant agency in the country of residence - in the UK, the International Pension Centre. This agency then notifies details of the claim to all countries in which the person has been insured. Each Member State in which the person was insured then calculates its pro-rata contribution and puts that amount into payment. There is detailed guidance on this in volume 2 of DWP's Decision Makers' Guide.

The UK State Pension is payable overseas but is only uprated if the pensioner is in an EEA country or one with which the UK has a reciprocal agreement requiring uprating. For more detail, see Library Briefing Paper SN-01457 Frozen Overseas Pensions (August 2018) and DWP Decision Makers Guide, Volume 2: international subjects (para 070310 ff).

The arrangements to apply in future have been part of the negotiations under Article 50 on the UK's withdrawal from the EU. A joint report on progress published on 8 December 2017 said that, with the caveat that "nothing is agreed until everything is agreed", the Withdrawal Agreement would include a commitment to social security co-ordination.

The Withdrawal Agreement

The draft Withdrawal Agreement (WA) published on 14 November 2018 states that EU Regulations on social security co-ordination will continue to apply after the end of the implementation period for individuals in scope of the WA. The intention is to ensure that citizens who have moved between the UK and EU before the end of the transition period are not disadvantaged in their access to pensions. The WA provides protections in other circumstances so that, for example, where a UK national has previously work and paid social security contributions in a Member State, rights flowing from those contributions, such as pensions are protected (see para 37-42 of the UK Government's explainer for the agreement).

Information for individuals is on Gov.UK for example - UK nationals in the EU: essential information. The European Commission has produced a Q&A on the rights of EU and UK citizens as outlined in the Withdrawal Agreement (26 November 2018).

The Political Declaration setting out the framework for the future relationship between the EU and UK, states that social security co-

ordination is to be considered in the light of future arrangements on the mobility of people.

In the event of 'no deal'

The UK Government made an announcement on 6 December 2018 on citizens' rights in the event of "no deal". It said it had taken steps to provide reassurance for EU Citizens in the UK and had asked the EU and Member States to reciprocate:

> 19. UK nationals who went to the EU and EU citizens who came to the UK before the UK's exit from the EU did so on the basis that they would be able to settle permanently and build a life here, or in the EU. That is why the UK has taken steps to remove any ambiguity and provide complete reassurance for EU citizens in the UK. We ask that the EU and Member States do the same for our nationals.
>
> 20. We will continue to push the EU and Member States to secure these rights as soon as possible, which are in the mutual interest of all our citizens. Where it is in our control, the UK will also continue to preserve certain rights of UK nationals in the EU, for example by continuing to pay an uprated UK state pension to eligible UK nationals living in the EU. (DEXEU, Citizens' Rights – EU citizens in the UK and UK nationals in the EU, 6 December 2018)

It was exploring options in relation to those areas that required reciprocity (like social security co-ordination) and would announce further details prior to exit (Ibid, para 28).

Regarding uprating, it said it was committed to uprating the UK State Pension for UK nationals in the UK in 2019 to 2020, and beyond that subject to reciprocity:

> **Will UK nationals continue to get their State Pension uprated under no deal?**
>
> The UK leaving the EU will not affect entitlement to continue receiving the UK State Pension if you live in the EU, and we are committed to uprate across the EU in 2019 to 2020. We would wish to continue uprating pensions beyond that but would take decisions in light of whether, as we would hope and expect, reciprocal arrangements with the EU are in place. (Guidance - UK nationals in the EU: benefits and pensions in a 'no deal' scenario, 18 December 2018)

On 30 January 2019, the European Commission published final set of 'no deal' contingency proposals for social security co-ordination. Its aim was to ensure that, in the event of a "no deal" scenario, EU Member State authorities would continue to take into account periods of insurance, (self) employment or residence in the United Kingdom before withdrawal, when calculating social security benefits, such as pensions.

1. The current framework

As of May 2018, there were 484,975 UK State Pensioners resident elsewhere in the European Economic Area (EEA) or Switzerland. Of these, 468,813 were resident in the European Union.[1]

As a member of the EU, the UK is part of long-standing provisions in EU law to co-ordinate social security schemes for people moving within the EU,[2] which also apply to non-EU EEA countries and Switzerland.[3]

The main purpose of these rules is to ensure that people who choose to exercise the right of freedom of movement do not find themselves at a disadvantage in respect of social security benefits or pensions– for example if they should fall ill or become unemployed while working in another EU/EEA State. The Regulations do not guarantee a general right to benefit throughout the EEA; nor do they harmonise the social security systems of the Member States. Their primary function is to support free movement throughout the EU/EEA by removing some of the disadvantages that migrants might encounter. They achieve this by, for example:

- prohibiting discrimination in matters of social security systems on grounds of nationality;
- clarifying which state is responsible for paying benefits in particular cases (the 'single state principle');
- allowing a person's periods of employment, residence and contributions paid in one EEA country to count towards entitlement to benefit in another country (this is referred to as the principle of 'aggregation'); and
- allowing people to take certain benefits abroad with them to another EU/EEA state ('exportation').

As the European Commission explains it:

> The principles underpinning the rules on social security coordination ensure that citizens are only covered by the legislation of one Member State (unicity), and that they have the same rights and obligations as the nationals of the Member State where they are covered (equal treatment). The principles also ensure that previous periods of insurance, work or residence in other Member States are taken into account when authorities determine a person's eligibility for a benefit (aggregation), and that citizens may, as a rule, receive cash benefits to which they are entitled even if they live in a different Member State (exportability). (Contingency action plan etc, 19 December 2018, p4).

1 DWP Stat-xplore and Benefit Expenditure and Caseload Tables
2 Now in EC Regulations 883/2004 and 987/2009.
3 There is a list of EU and EEA countries on Gov.UK

1.1 State Pension entitlement

Entitlement to the UK State Pension depends on an individual's UK National Insurance (NI) record.

Individuals who reached State Pension age before 6 April 2016 are entitled to a State Pension under the 'old' system – which was made up of two tiers, the basic State Pension and additional State Pension. Individuals who reach State Pension age after that date are entitled to the new State Pension.[4]

As part of the EU system of co-ordination of social security, an individual who has lived or worked in the UK and another EEA country or Switzerland, need only make one claim – in their last country of residence. They will be eligible for annual increases on their pension in payment:

> If you've lived or worked in another country in the past, you might be eligible for that country's state pension and a UK State Pension.
>
> To check if you can pay into or receive another country's state pension, contact the pension service for that country.
>
> **Claiming another country's state pension**
>
> Depending on where you've lived or worked, you may need to make more than one pension claim.
>
> **European Economic Area (EEA) countries and Switzerland**
>
> You only need to claim your state pension in the last country where you lived or worked. Your claim will cover all EEA countries (including the UK) and Switzerland. You don't need to claim for each country separately.
>
> **Countries outside the EEA (except Switzerland)**
>
> You need to claim your pension from each country separately.
>
> Check with the pension service for the country where you've lived or worked to find out how to make a claim.
>
> **Your UK State Pension if you've lived or worked abroad**
>
> Your UK State Pension will be based on your UK National Insurance record. You need 10 years of UK National Insurance contributions to be eligible for the new State Pension.
>
> You may be able to use time spent abroad to make up the 10 qualifying years. This is most likely if you've lived or worked in:
>
> - The EEA
> - Switzerland
> - certain countries that have a social security agreement with the UK
>
> **Example**
>
> *You have 7 qualifying years from the UK on your National Insurance record when you reach State Pension age.*

4 For more information, see DWP, Your State Pension explained, April 2016; DWP, State Pensions – your guide, October 2014

> *You worked in an EEA country for 16 years and paid contributions to that country's state pension.*
>
> *You will meet the minimum qualifying years to get the new State Pension because of the time you worked overseas. Your new State Pension amount will only be based on the 7 years of National Insurance contributions you made in the UK.*
>
> **You want to retire overseas**
>
> You can claim the new State Pension overseas in most countries.
>
> Your State Pension will increase each year but only if you live in:
>
> - the EEA
> - Switzerland
> - certain countries that have a social security agreement with the UK
>
> Your new State Pension may be affected if your circumstances change. You can get more information from the International Pension Centre.[5]

Information for individuals is also on the European Commission website – here.

System for co-ordinating entitlements

The European Parliament explains that the principle of equal treatment is at the core of the EU's social security co-ordination rules. The central piece of social security co-ordination legislation is Regulation 883/2004:

> The principle of equal treatment between host-country citizens and other EU citizens is also at the core of the EU's social security coordination. EU coordination measures in the field of social security are required by Article 48 TFEU in order to ensure that citizens do not suffer disadvantages in their social security protection when exercising their right to free movement across the EU. Otherwise, and due to the principle of territoriality applicable to a great extent in the Member States, only contributions and periods in the Member State concerned would be considered for the provision of social security benefits.
>
> Social security rules are based on four principles:
>
> • Equal treatment: non-national EU citizens have the same rights and obligations as nationals of the host Member State;
>
> • One country only: Union citizens who have exercised their free movement rights are covered by the system of one Member State at a time, and pay contributions in one country only.
>
> • Aggregation: previous periods of insurance, work or residence in other Member States are taken into account for the provision and calculation of social security benefits.
>
> • Exportability: cash benefits (but not in-kind benefits such as medical care) can be exported to the Member State of residence.
>
> The EU regulations on the coordination of social security coordinate the national social security systems but do not harmonise them, so that the Member States decide on the benefits to be granted, their amount, etc., provided equal treatment is ensured.

5 Gov.UK, The new State Pension

> The central piece of social security coordination legislation is **Regulation 883/2004**,* in force since May 2010. It contains rules for establishing the **Member State (of work or of residence) responsible for the provision of social security benefits** such as sickness benefits, maternity and equivalent paternity benefits, invalidity benefits, old-age benefits, survivors' benefits, benefits in respect of accidents at work and occupational diseases, death grants, unemployment benefits, pre-retirement benefits and family allowances. As a general rule, social security benefits are paid in the Member State where the activity (employment, self-employment)** is undertaken, regardless of the place of residence and nationality of the claimant.[6]
>
> * Regulation 883/2004 of the European Parliament and Council of 29 April 2004 on the coordination of social security systems replaced Regulation 1408/71 as of 1 May 2010. The procedure for the implementation of the regulation is laid down by Regulation 987/2009.
>
> ** The regulation is applicable to refugees and stateless people too. Moreover, Regulation 1231/2010 extends the new social co-ordination provisions to third-country nationals legally resident in the EU and in a cross-border situation and provides rights to them for instance when they have moved from one EU country to another for work, but their children have stayed in the previous EU country.

DWP Decision Makers' Guide explains that, in general, a person is insured in only one European Economic Area country for any period:

> 070553 In general a person is insured in only one European Economic Area country for any period. A person cannot therefore use insurance from one period to obtain entitlement to benefits of the same kind (see DMG 070570) from two different countries.[7]

If they have been insured in more than one EEA country, they may be entitled to a pro-rata State Pension.[8] Each Member State in which the person was insured will calculate its pro rata contribution (using agreed formulae) and put that amount into payment.

If the individual would be entitled to a higher amount under UK legislation alone, that higher amount is payable.[9]

Periods of insurance in another EEA Member State can help satisfy the minimum qualifying period (MQP) for entitlement to the new State Pension. However, the pension is based solely on UK contributions:

> 7.23 As is currently the case for people who reached state pension age before 6 April 2010, years of insurance or residence in another Member State of the European Economic Area (EEA) or in certain countries with which the UK has a bilateral social security agreement (for example, the United States) will count towards the MQP. However, entitlement to new state pension will be based solely on UK contributions, on a pro-rata basis. For example, a person with only five years of UK National Insurance contributions who has a further 30 years of insurance in another EEA Member State would satisfy the MQP through the combination of their UK and foreign insurance and be entitled to 5/35ths of the full rate of the new state pension.[10]

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6 European Parliament, The Brexit negotiations: Issues for the first phase, June 2017
7 DWP, Decision Makers' Guide, Vol 2, para 070553
8 DWP, Decision Makers' Guide, Chapter 7. Part 5
9 Ibid para 076061-2
10 Explanatory Memorandum to the State Pension Regulations 2015 (SI 2015 No. 173)

DWP's Decision Makers' Guide explains the calculation:

> **076063 The rate of RP [retirement pension] is calculated in three stages.**
>
> **Stage 1 - Addition**
>
> Add together all the periods of insurance (or residence, if entitlement in that country depends on periods of residence) in all the EEA countries where the person was insured and treat them as periods of insurance completed in the UK.
>
> **Stage 2 - Theoretical rate of Retirement Pension**
>
> Calculate the theoretical amount of RP which would be payable if all the insurance added together in Stage 1 had been paid in the UK. The theoretical rate of RP must be at least 25% of the standard rate. If not no further calculation is necessary.
>
> **Stage 3 - Actual rate of Retirement Pension**
>
> The purpose of the calculation of the actual rate of RP is to decide the amount to be paid by each of the EEA countries where the person was insured.
>
> The rate of RP to be paid by the UK is Periods of UK insurance x theoretical rate
>
> Total insurance
>
> **Example**
>
> A man was insured in Germany for 1450 weeks and in the UK for 200 weeks. The total insurance is 1650 weeks.
>
> If all that insurance had been paid in the UK, he would be entitled to RP at 75% of the standard rate. At April 1994 figures this is £43.20. The actual rate to be paid by the UK is 200 (UK insurance) x £43.20 (theoretical amount) 1650 (total insurance). That is £5.24.[11]

There is a discussion of what the social security co-ordination rules mean in practice in section 4.1 of Library Briefing Paper CBP-8473 The Immigration and Social Security Co-ordination (EU Withdrawal) Bill 2017-18 (January 2019).

The European Commission website also provides an explanation and links to other sources of information.

Uprating

The UK State Pension is payable overseas but is only uprated if the pensioner is in an EEA country or one with which the UK has a reciprocal agreement requiring uprating.[12] The UK has reciprocal arrangements with some EU Member States providing for uprating but these are generally superseded by EU law:

> Preet Kaur Gill: To ask the Secretary of State for Work and Pensions, which current EU Member States had historical bilateral agreements with the UK that guaranteed annual uprating of UK state pensions?

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11 DWP, Decision Makers' Guide, Chapter 7. Part 5, 076050

12 *Social Security Contributions and Benefits Act 1992*, s113; *Social Security Benefit (Persons Abroad) Regulations 1975 (SI 1975/563); Pensions Act 2014* s20; DWP's Decision Makers Guide, Volume 2: international subjects, para 070310 ff

> Guy Opperman: The United Kingdom's reciprocal social security agreements with EU Member States as well as Norway, Iceland, Liechtenstein and Switzerland are generally superseded by EU law. The reciprocal agreements with Austria, Belgium, Croatia, Cyprus, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Luxembourg, Malta, Netherlands, Norway, Portugal, Slovenia, Spain, Sweden and Switzerland all made provision regarding annual increases in the state pension.[13]

For more on the UK Government's policy for uprating the State Pension overseas see Library Briefing Paper SN-01457 Frozen Overseas Pensions (December 2018).

[13] PQ 118842. State Retirement Pensions: British Nationals Abroad

2. What will happen in future?

Until such time as the UK formally leaves the EU, the existing social security rules continue to apply and entitlements remain unchanged. The situation once the UK is no longer part of Europe will depend on the outcome of negotiations:

> Lord Jones of Cheltenham: To ask Her Majesty's Government whether the annual increase of the basic state pension for UK citizens
>
> Lord Henley: The reciprocal rights and entitlements that will apply following the UK's exit are subject to the wider negotiation on our future relationship with the EU and the Government has not yet begun these negotiations.[14]

In its report on [The Government's negotiating objectives: the rights of UK and EU citizens](), the Select Committee on Exiting the European Union identified uprating and co-ordination of pension entitlement as issues to be addressed in the negotiations:

> 31. A number of questions have been raised about the impact of exiting the EU on the pension rights of UK citizens living in the EU. The UK state pension is uprated on the triple lock—the higher of the rate of inflation, the rate of increase in wages, or 2.5%. This is passed on to British recipients abroad but only in an EEA country or where there is a reciprocal social security agreement. On exiting the EU, the UK would be free to negotiate a reciprocal agreement with the EU. However, the UK state retirement pension is frozen when paid to pensioners in certain countries, including Australia, Canada, New Zealand and South Africa as no such agreement has been reached with these countries.
>
> 32. Sue Wilson, Chair of Bremain in Spain, was concerned about the possible impact of exiting the EU on pensions. Adding to worries about a reduction in the value of UK pensions (state and private) because of the decrease in sterling's value against the euro was concern at the possibility of pensions being frozen. Sue Wilson told us that many had moved to Spain with the expectation that their pension would see an annual increase.51
>
> 33. UK citizens also benefit from the current system if they work in one or more EU country. At present, rules enable the co-ordination of social security entitlement for people moving within the EU. They allow periods of contributions to be aggregated, so that an individual who has worked in other member states can make one application in their country of residence, which then arranges for each state where they were insured to pay a pension. This includes the UK, and allows for a pension built up in one member state to be drawn in another. This does not apply to contributions made by nationals of non-EU countries. Gareth Horsfall explained the situation in Italy:
>
>> If I were a non-EU member, I would have to contribute at least 10 years' contributions to the national insurance equivalent in Italy, otherwise I would not be entitled to anything. Under the EU system, I only need to be in one EU member state for one year, and then I qualify under the aggregate system. If I moved to Italy for eight or nine years and then left having made social security contributions, as a

[14] PQ HL 4944 30 January 2017; See also PQ44853 7 September 2016

> non-EU citizen, I would be entitled [to] nothing at the end of the day.

> The International Consortium of British Pensioners told us that free movement throughout the EU has meant a "significant number of people" have acquired state pension rights in more than one country, and if there was "nothing specifically in the Brexit negotiations to cover this, then it is a distinct possibility that the UK National Insurance contribution record will not be consolidated with the other periods worked in the EU."

> **34. The Government should seek the continuation of existing reciprocal arrangements for pension uprating for UK citizens living in other EU member states and for EU citizens living in the UK. The Government also needs to clarify whether it will seek to continue to cooperate on EU-wide mechanisms to enable pension contributions in different member states to be aggregated.**[15]

In June 2017, the European Parliament said that if current rules ceased to apply, both UK citizens working or having worked in the EU and EU citizens working or having worked in the UK, would see their pension rights curtailed:

> Although there are some agreements between the EU and third countries providing for limited coordination in the social security field, the principles of aggregation and exportability underlying the pension rights of EU citizens exercising their free movement rights are generally not guaranteed outside the EU social coordination framework. This means that, if the current rules ceased to apply, both UK citizens working or having worked in the EU and EU citizens working or having worked in the UK will see their pension rights curtailed, particularly if they have worked both in the UK and in the rest of the EU as their insurance periods will not be aggregated automatically.

> Furthermore, outside the EU social coordination framework, the export of state pensions usually involves disadvantages regarding their calculation, administrative formalities, etc. UK pensions are for instance indexed to insure an annual increase, which is not the case if the pension is exported outside the EU.[16]

2.1 Negotiations

Information about the Brexit negotiations is on the European Commission website and on Gov.UK.

June 2017

On 26 June 2017, the Government published its offer for EU citizens in the UK and UK nationals in the EU on their rights and status after the UK leaves the EU. It said that:

- the UK will continue to export and uprate the UK State Pension within the EU;
- the UK will continue to aggregate periods of relevant insurance, work or residence within the EU accrued before exit to help meet the entitlement conditions for UK

[15] Exiting the European Union Select Committee, The Government's negotiating objectives: the rights of the UK and EU citizens, 3 March 2017, Chapter 2

[16] European Parliament, The Brexit negotiations: issues for the first phase, June 2017

> contributory benefits and State Pension, even where entitlement to these rights may be exercised after exit.[17]

In more detail:

> **Export of UK benefits to the EU**
>
> 42. Existing rules on the rights of EU citizens and UK nationals to export UK benefits to the EU will be protected for those that are exporting such UK benefits on the specified date, including child benefit, subject to on-going entitlement to the benefit. Those not exporting UK benefits at the specified date will be treated on the same basis as UK nationals in future. We will need to ensure that we have the necessary arrangements in place for information and data to continue to be shared between the UK and EU in respect to benefits, and that UK nationals in the EU are protected in the same way.
>
> **Coordination of social security systems between the UK and EU**
>
> 43. The UK intends to continue to apply the rules for determining which country is responsible for deciding entitlement and to aggregate periods of relevant insurance, work or residence within the EU made before exit to help meet the entitlement conditions for UK contributory benefits and State Pension even where entitlement to these rights may be exercised after exit. We would expect member states to do the same for their contributory benefits and pensions.
>
> **Pension up-rating**
>
> 44. UK law already provides that UK state pensions are payable to anyone eligible, wherever they reside in the world. But annual increases to the UK state pension (known as 'uprating') to anyone living in the EU are payable because of EU law. The UK intends to continue to export and uprate the UK State Pension within the EU, subject to reciprocity.[18]

In June 2017, the European Parliament published a document on Brexit negotiations: Issues for the first phase (June 2017). Its aim was to:

> […] ensure that citizens – both UK and EU-27 – who moved to work, study or retire in another Member State and have thereby availed themselves of their Treaty rights before the withdrawal date, should not suffer disadvantages from the UK's decision to leave the EU but, in most respects, continue to enjoy rights they now have.[19]

This meant that "the principles of social security coordination, which include aggregation, export of benefits and equal treatment, should be maintained."[20]

A joint technical note on the comparison of EU-UK positions on citizen's rights published on 19 July 2017 identified lifetime uprating of State Pensions as an issue on which both parties were agreed. Aggregation of

17 HM Government, The United Kingdom's Exit from the European Union: Safeguarding the Position of EU Citizens Living in the UK and UK Nationals Living in the EU, Cm 9464, June 2017
18 Ibid
19 European Parliament, The Brexit negotiations: issues for the first phase, June 2017, p8; See also European Commission Working Paper, Essentials Principles on Citizen's Rights, May 2017
20 Ibid, p9

State Pension rights (for individuals insured in more than one Member State) was an area needing further discussion to deepen understanding.

September 2017

On 12 September 2017, Parliamentary Under Secretary of State in the Department for Exiting the European Union, Robin Walker said:

> […] we have agreed to protect social security contributions made before and after exit by those UK and EU nationals covered by the withdrawal agreement. That means where an individual has moved between the EU and the UK, their contributions will continue to be recognised—for example, when determining their state pension entitlements. As we have previously set out, such pensions will be uprated every year, as they are now.[21]

A joint technical note on the comparison of EU-UK positions on citizen's rights was published on 28 September 2017. As regards the scope of social security co-ordination, both sides were agreed that:

> Persons within the personal scope of Regulation 883/2004 as covered in Article 2 who on exit day are or have been subject to the legislation of an EU27 Member State for UK nationals, or UK legislation for EU27 citizens, and EU27 and UK nationals within the personal scope of the agreement by virtue of residence.*
>
> EU and UK Citizens having worked or resided in the EU27/UK in the past shall, for the purposes of aggregation of periods of social security insurance, including rights flowing from such periods, in accordance with Regulation 883/2004 be covered by the Withdrawal Agreement.
>
> *This includes stateless persons and refugees (article 2 (2) of regulation 883/2004). Moreover, as regards other third country nationals, both sides to consider how to address their contributions in the withdrawal agreement.[22]

Both sides to the negotiations had committed to:

- Lifetime export of uprated pension;
- Recognising contributions both before and after exit in the EU27 and the UK, for those covered by the Withdrawal Agreement; and
- Equal treatment under the conditions set out in EU law.[23]

December 2017

This was confirmed in a joint report on progress during phase 1 of negotiations published on 8 December 2017. Subject to the caveat that "nothing is agreed until everything is agreed," the commitments would be reflected in the Withdrawal Agreement in full detail.[24] On social security co-ordination, it confirmed that:

21 HC Deb, 12 September 2017 c259-60WH
22 Joint technical note on the comparison of EU/UK positions on citizen's rights – 28 September 2017, p13
23 Page 14
24 Joint report from the negotiators of the EU and the UK Government on progress during phase1 of negotiations under article 50 TEU on the UK's orderly withdrawal from the EU, December 2017, para 4-5

> 28. Social security coordination rules set out in Regulations (EC) No 883/2004 and (EC) No 987/2009 will apply. Social security coordination rules will cover Union citizens who on the specified date are or have been subject to UK legislation and UK nationals who are or have been subject to the legislation of an EU27 Member State, and EU27 and UK nationals within the scope of the Withdrawal Agreement by virtue of residence. Those rules will also apply, for the purposes of aggregation of periods of social security insurance, to Union and UK citizens having worked or resided in the UK or in an EU27 Member State in the past.[25]

The specified date should be the time of the UK's withdrawal.[26]

More detail was provided in a joint technical note:[27]

Social security co-ordination	**Personal scope**	Persons within the personal scope of Regulation (EC) No. 883/2004 as covered in article 2 who on the specified date are or have been subject to the legislation of an EU27 Member State for UK Nationals, or UK legislation for EU27 citizens, and EU 27 and UK nationals within the personal scope of the agreement by virtue of residence.
	Past residence and work	EU and UK citizens having worked or resided in the EU 27/UK in the past will, for the purposes of aggregation of periods of social security insurance, including rights flowing from such periods, in accordance with Regulation (EC) No 883/2004 be covered by the Withdrawal Agreement.
	Past and future	Contributions both before and after the specified date in the EU 27 and the UK will be recognised for those covered by the Withdrawal Agreement.
	Equal Treatment	Equal treatment under the conditions set out in EU law.
	Benefits	All those referred to in Regulation (EC) No 883/2004.
	Benefits – export of benefits	All those referred to in Regulation (EC) No 883/2004, including lifetime export of uprated pensions.

Guidance for individuals is on Gov.UK. See, for example: UK nationals in the EU: essential information.

July 2018 – White Paper

The July 2018 White Paper said that the UK would seek reciprocal arrangements on the future rules around some defined elements of social security co-ordination. These could cover provisions for the uprating of State Pensions, including export rules and aggregation provisions:

> 89. While ending free movement, the UK will also make a sovereign choice to discuss other specific mobility areas. The UK will seek reciprocal arrangements on the future rules around some defined elements of social security coordination. This will be

[25] Ibid
[26] Ibid, para 8
[27] Comparison of EU/UK position on citizen's rights – December 2017, p11-12

important for UK nationals who want to live, work or retire in the EU in the future, as part of our new arrangements. This could cover provisions for the uprating of state pensions, including export rules and accompanying aggregation principles for people who have contributed into multiple countries' systems. It would also ensure workers only pay social security contributions in one state at a time. There should be reciprocal healthcare cover for state pensioners retiring to the EU or the UK, continued participation in the EHIC scheme and cooperation on planned medical treatment. This would be supported by any necessary administrative cooperation and data-sharing requirements.

90. The UK will also seek to secure onward movement opportunities for UK nationals in the EU who are covered by the citizens' rights agreement. Some of these UK nationals have chosen to make their lives in the EU, and this should be respected in the opportunities available to them if they decide to change their Member State of residence.[28]

2.2 The draft Withdrawal Agreement

On 28 February 2018, the European Commission published a draft Withdrawal Agreement (WA), which put into legal language the conclusions of the negotiations in phase one, which were agreed in the Joint Report on 8 December 2017. An amended version published on 19 March 2018, highlighted areas of agreement and disagreement. [29] Its provisions are discussed in Library Briefing paper CBP-8269 Brexit: the draft withdrawal agreement (March 2018).

On 14 November 2018, the European Commission and the UK's negotiators announced that they had reached agreement on a Withdrawal Agreement (WA).

Articles 30-36 cover the coordination of social security. The provisions are substantively the same as in the previous draft Withdrawal Agreement published in March 2018. The UK Government explains:

Coordination of social security systems

37. EU Regulations on social security coordination will continue to apply across the whole of the UK at the end of the implementation period for individuals in scope of the Withdrawal Agreement. This will ensure that citizens who have moved between the UK and the EU before the end of the implementation period are not disadvantaged in their access to pensions, benefits and other forms of social security, including healthcare cover. The Withdrawal Agreement also provides protections in a number of other circumstances, such as where a UK national, although not living in the EU at the end of the implementation period, has paid social security contributions in a Member State in the past. The rights that flow from those contributions such as benefits, pension and reciprocal healthcare rights will also be protected.

38. Member States will be required to take into account contributions paid into their respective social security systems by individuals within scope of the Withdrawal Agreement. As now,

[28] HM Government, The future relationship between the United Kingdom and the European Union, Cm 9593, July 2018

[29] For more detail, see Library briefing paper CBP 8629 Brexit: the draft withdrawal agreement

> the amount of State Pension to which those individuals will be entitled as a result of the contributions will be determined according to each state's social security legislation.
>
> 39. Persons who are in scope of the Withdrawal Agreement for full social security coordination purposes will also continue to benefit from the coordination rules, for as long as they remain within the scope of that section. This will ensure that the worker (and their employer) only pays into one social security system at a time, and that the right to aggregate both contributions paid, and periods of insured residence completed, for the purposes of meeting different states' benefit entitlement conditions continues. This includes all contributions made both in the UK and the EU before and after the implementation period, and the rules will also protect the rights that flow from such contributions.[30]

The draft agreement and related documents are here. There is guidance on the circumstances in which individuals remain within scope of the Withdrawal Agreement – here (p36-7). The provisions are discussed in more detail in section 3.5 of Library Briefing Paper CBP-8453 The UK's EU Withdrawal Agreement (December 2018).

What does this mean for individuals?

Both the UK Government and the European Commission produced information to explain what the WA would mean for individuals. The UK Government said:

> The agreement sets out the terms for a time-limited implementation period that will start on 30 March 2019 and last until 31 December 2020. This means that all UK nationals lawfully residing in another EU Member State on 31 December 2020 will be covered by the Withdrawal Agreement.
>
> During the Implementation Period, as a UK national you will be able to visit, live and work in the EU broadly as you do now. If you currently live in the EU and want to move to a different Member State, you will be able to continue to do so during the Implementation Period.
>
> UK nationals and their families covered by the Agreement:
>
> - will continue to have broadly the same access to healthcare, pensions and other benefits as they currently do
> - will be able to leave their EU country of residence for up to 5 years without losing their right to return, if they have acquired the relevant residency status.
>
> […]
>
> **Who will be covered by the Withdrawal Agreement**
>
> If you are a UK national lawfully residing in another EU country on 31 December 2020, you will be covered by the Withdrawal Agreement.
>
> If you are covered by the Agreement:
>
> - close family members (spouses, civil partners, unmarried partners, dependent children and grandchildren, and dependent parents and grandparents) will be able to join

30 HM Government, Explainer for the agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union, 14 November 2018

those under the Withdrawal Agreement after the end of the implementation period on the basis of current EU rules, where the relationship existed before the end of the implementation period. All family members lawfully resident with an EU citizen at the end of the implementation period will also be protected.

- your children, born or adopted, will be covered by the agreement if you are outside your EU country of residence after 31 December 2020.[31]

It goes onto explain what its effect would be during the implementation period and beyond:

Working in the EU after 29 March 2019

During the Implementation Period, as a UK national you will enjoy the same rights to work in an EU Member State as at present.

If you are legally resident in the EU by the end of this period you will be covered by the Withdrawal Agreement, and will be able to continue living and working in your EU country of residence broadly as at present.

After the end of the Implementation Period, future arrangements if you are not covered by the Withdrawal Agreement will be determined by the negotiations on the UK-EU future partnership.

Receiving an uprated UK state pension in the EU after 29 March 2019

During the Implementation Period, the current framework of EU rules and regulations will apply. This includes social security coordination rules and the right to an uprated state pension.

We have now confirmed who will be in scope of the Withdrawal Agreement for social security coordination purposes. As a UK national living in an EU country by the end of the implementation period, if you remain in the scope of the Agreement, you will:

- maintain the right to export an uprated UK state pension
- receive associated reciprocal healthcare cover in the EU

The UK State Pension is payable worldwide under domestic legislation.[32]

The position of those not covered by the WA was subject to further discussions:

Madeleine Moon: To ask the Secretary of State for Work and Pensions, whether the state pensions of UK pensioners living in the EEA will continue to be up-rated annually after the UK leaves the EU; and if she will make a statement.

Guy Opperman: The UK State Pension will remain payable worldwide following our departure from the EU. We have now reached agreement with the EU to maintain State Pension up-rating for those covered by the Withdrawal Agreement, subject to reciprocity. This information can be found here:

For UK State Pension recipients living in the EU on the specified date, this includes those who are already receiving their UK State Pension as well as future UK State Pension recipients. We will wish to discuss State Pension up-rating for individuals not covered by

31 Gov.UK, UK nationals in the EU: essential information
32 Gov.UK, UK nationals in the EU: essential information

> the Withdrawal Agreement in future talks. We are currently in discussion with the EEA-EFTA states (Norway, Iceland, and Liechtenstein) and Switzerland on agreements to protect the rights of UK nationals living in those countries and their nationals living in the UK.[33]

The European Commission produced a Q&A to explain how it would apply to individuals in different situations. For example:

> **I am Spanish and I work in the United Kingdom. What will happen to my social security cover after the end of the transition period?**
>
> When it comes to social security rules, the objective of the Withdrawal Agreement is to ensure that everything will be as now. The current EU rules will continue to apply. This means, for example, that:
>
> - The United Kingdom will continue to be competent for your **social security benefits** – you pay contributions in the UK and are entitled to UK benefits without any discrimination;
>
>   […]
>
> - **When you retire** after the end of the transition period, you are entitled to a UK pension under the conditions provided in national legislation:
>   - If you do not have enough periods of insurance in order to be entitled to a UK pension, the United Kingdom will take into consideration the periods you completed in other EU Member States to the extent necessary;
>   - If you decide to go back to Spain:
>   - You will continue to receive the UK pension without any reduction;
>   - Your UK pension will continue to be uprated;
>   - The responsibility for paying for your healthcare cover will be determined depending on the other pensions you receive and your residence.
>
> For more details, see https://ec.europa.eu/social/main.jsp?catId=860&langId=en.[34]

The document goes on to address other FAQs. For example:

> **I have worked all my life in the UK and have now retired in France. I am worried that my UK pension will no longer be uprated after the end of the transition period**
>
> The Withdrawal Agreement makes it clear that all social security benefits, such as old age pension, will continue to be uprated in accordance with national rules.
>
> **Should I decide to leave the UK in future, will I be able to take my social security benefits with me?**

33 PQ 183980 2 November 2018
34 European Commission Memo, Questions and Answers – the rights of EU and UK citizens, as outlined in the Withdrawal Agreement, 26 November 2018

> If you are protected by the Withdrawal Agreement, all relevant social security benefits will continue to be exportable both to EU states and the UK, under the same conditions as under the current EU rules.[35]

Application to EEA/EFTA countries

The UK Government's explainer for the draft WA said that:

> 11. Similar agreements are being discussed with the European Economic Area/ European Free Trade Agreement States (Norway, Iceland and Liechtenstein) and Switzerland on citizens' rights and a small number of separation issues. As with the Withdrawal Agreement, this will ensure that our respective nationals will be able to carry on living their lives broadly as they do now and ensure a smooth transition to our future relationship with these countries.[36]

On 20 December 2018, the UK Government published the separation agreement it had reached EEA EFTA States (Norway, Liechtenstein, Iceland). EU social security co-ordination arrangements would continue to apply for those within the scope of the agreement:

> 24. EU Regulations on social security coordination will continue to apply across the whole of the UK at the end of the implementation period for individuals in scope of the UK-EEA EFTA separation agreement. This will ensure that citizens who have moved between the UK and the EEA EFTA states before the end of the implementation period are not disadvantaged in their access to pensions, benefits and other forms of social security, including healthcare cover. The UK-EEA EFTA separation agreement also provides protections in a number of other circumstances, such as where a UK national, although not living in an EEA EFTA state at the end of the implementation period, has paid social security contributions in an EEA EFTA state in the past. The rights that flow from those contributions such as benefits, pension and reciprocal healthcare rights will also be protected.
>
> 25. EEA EFTA states will be required to take into account contributions paid into their respective social security systems by individuals within scope of the UK-EEA EFTA separation agreement. As now, the amount of State Pension to which those individuals will be entitled as a result of the contributions will be determined according to each state's social security legislation.[37]

The deal with Switzerland would also protect citizens' rights in a 'no deal scenario.'[38]

2.3 The political declaration

The Political Declaration setting out the framework for the future relationship between the EU and UK states that social security co-ordination is to be considered in the light of future arrangements on the

[35] Ibid

[36] HM Government, Explainer for the agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union, 14 November 2018

[37] HM Government, Explainer for the agreement on arrangements between Iceland, the Principality of Liechtenstein and the Kingdom of Norway, and the United Kingdom of Great Britain and Northern Ireland, following the withdrawal of the United Kingdom from the European Union, 20 December 2018

[38] UK agreements with the EEA EFTA states and Switzerland, 20 December 2018

mobility of people between the UK and Member States. On this second issue, it states that the parties should establish "mobility arrangements based on non-discrimination between the Union's Member States and full reciprocity."[39]

The Government's Explainer for the Political Declaration published on 25 November states that:

> 60. The UK and the EU will also return to more detailed discussions on defined areas of social security, reflecting the UK's future mobility arrangements with the EU as free movement ends. The UK is still seeking commitments in specific areas such as uprating of state pensions and reciprocal healthcare, including the European Health Insurance Card (EHICs), to ensure that UK citizens living in the EU, in future, continue to benefit from their pension entitlements and associated healthcare.[40]

The issues are discussed in more detail in CBP-8454 The Political Declaration on the Framework for Future EU-UK Relations (November 2018).

2.4 What would happen in a 'no deal' scenario?

In the event of the UK leaving the EU without a deal, the social security co-ordination rules would cease to apply. In the absence of alternative arrangements, this would apparently leave individuals who are or were in a cross-border situation covered by:

- Those bilateral social security treaties that are already in place between the UK and the relevant Member State;
- The legislation of the relevant Member State;
- EU Member States would be bound by the EU directives on the status of third-country nationals vis-à-vis the UK citizens.[41]

Bilateral social security treaties have not been concluded with all Member States and those that exist are far more limited in scope than the EU co-ordination rules and may well be outdated.

The UK Government's offer

On 6 December 2018, the Government set out the details of its offer to "EU citizens in the UK in the unlikely event of a no-deal scenario" and urged the EU and Member States to reciprocate. It had taken steps to provide reassurance for EU Citizens in the UK. Where it was within its control, the UK would also preserve certain rights of UK nationals in the EU, for example by continuing to uprate the State Pension:

> 19. UK nationals who went to the EU and EU citizens who came to the UK before the UK's exit from the EU did so on the basis that they would be able to settle permanently and build a life here, or in the EU. That is why the UK has taken steps to remove

[39] Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom, November 2018, para 50 to 54
[40] HM Government, Explainer for the Political Declaration, 25 November 2018, para 60
[41] Herwig Verschueren, 'Scenarios for Brexit and social security', Maastricht Journal of European and Comparative Law, 2017, vol 24 (3), pp367-381

> any ambiguity and provide complete reassurance for EU citizens in the UK. We ask that the EU and Member States do the same for our nationals.
>
> 20. We will continue to push the EU and Member States to secure these rights as soon as possible, which are in the mutual interest of all our citizens. Where it is in our control, the UK will also continue to preserve certain rights of UK nationals in the EU, for example by continuing to pay an uprated UK state pension to eligible UK nationals living in the EU.[42]

It was exploring options in relation to those aspects of the withdrawal agreement that required reciprocity, such as protecting past social security contributions:

> 28. Aspects of the reciprocal healthcare and social security coordination section of the Withdrawal Agreement require reciprocity from the EU or individual Member States and cannot be protected unilaterally. We are exploring options to protect past social security contributions, made in the EU and the UK, and reciprocal healthcare arrangements in the unlikely event of a 'no deal' scenario. We are in the early stages of discussions and will announce further details of such options prior to our exit to allow citizens to make appropriate arrangements.[43]

On 18 December, the UK Government said it was committed to uprating the UK State Pension for UK nationals living in the EU in 2019 to 2020. Decisions beyond that would be taken in light of whether reciprocal arrangements were in place:

> **I am a UK national living in the EU. Will I still get my State Pension?**
>
> Yes.
>
> **Will UK nationals continue to get their State Pension uprated under no deal?**
>
> The UK leaving the EU will not affect entitlement to continue receiving the UK State Pension if you live in the EU, and we are committed to uprate across the EU in 2019 to 2020. We would wish to continue uprating pensions beyond that but would take decisions in light of whether, as we would hope and expect, reciprocal arrangements with the EU are in place.[44]

For EU citizens resident in the UK, it said:

> **I am an EU citizen living in the UK. Will I be able to keep claiming benefits?**
>
> Yes. EU citizens and their family members living in the UK by 29 March 2019 will be able to continue receiving UK benefits on broadly the same terms as now.
>
> **Will EU citizens still be able to transfer benefits abroad?**
>
> Yes, as long as the benefit is already in payment to recipients living in EU countries and recipients still meet entitlement criteria

42 HC Deb 6 December 2018 c48WS; DEXEU, Citizens' Rights – EU citizens in the UK and UK nationals in the EU, 6 December 2018
43 Ibid
44 Guidance - UK nationals in the EU: benefits and pensions in a 'no deal' scenario, 18 December 2018

> for the benefit concerned. This entitlement may be different in future if domestic policy for UK nationals changes.[45]

The British in Europe group wrote to the Prime Minister on 31 January 2019 calling on the Government to continue to uprate the UK State Pension in the EU, regardless of reciprocity.[46]

Further information

The Government recommends that UK nationals monitor the [UK nationals in the EU] page, [Living in Guides] and [Travel Advice] on Gov.UK, where it will publish information on areas such as access to benefits.

The European Commission

On 19 December, the European Commission published a communication on its contingency action plan for a 'no deal' scenario. Regarding the rules on social security co-ordination it said:

> If the Withdrawal Agreement is not ratified, Union rules on social security coordination will no longer apply to the United Kingdom. This raises concerns for EU citizens who currently work or reside in the United Kingdom, or have done so previously, about their social security entitlements. The same applies to UK nationals currently working/residing in a different Member State.
>
> The Commission calls upon Member States to take all possible steps to respond to these concerns and to ensure legal certainty and protection of the social security entitlements acquired by citizens who exercised their right to free movement prior to 30 March 2019.
>
> In particular, the Commission calls upon Member States to:
>
> - take into account, for EU27 citizens and UK nationals, periods of work/insurance that occurred in the United Kingdom before the withdrawal;
> - inform citizens that they should keep the appropriate documentation that provides evidence for these periods;
> - ensure that 'aggregation' of periods completed until withdrawal also benefits those who continue to live in the United Kingdom;
> - export old-age pensions to the United Kingdom, despite the fact that it will be a third country. This would apply to those citizens who continue to reside in the United Kingdom after the withdrawal date, but also to the UK nationals who acquired old-age pension entitlements within the EU27 prior to the withdrawal date.
>
> The Commission will provide concrete and detailed advice to Member States (EU27) on 20 December 2018 on how to achieve a coherent contingency approach regarding social security

45 Guidance - EU citizens in the UK: benefits and pensions in a 'no deal' scenario, 18 December 2018
46 British In Europe, Letter to PM re. healthcare and pensions 31 January 2019

> coordination, which the Member States should apply as of the withdrawal date. [47]

It published a factsheet to address FAQs such as:

> **4. What happens, in case of no deal to the old-age pension of an EU27 citizen who is currently retired in the UK and receives an old-age pension from one or more EU27 Member States?**
>
> The Commission has called upon Member States to continue paying old-age pensions to EU27 citizens who are already residing in the UK on 29 March 2019 and remain there after that date. Nothing in EU law prevents Member States from paying pensions to beneficiaries residing in a third country.
>
> **5. In case of no deal, what happens to the old-age pension of an EU27 citizen who at one point worked in the UK before 30 March 2019?**
>
> The Commission has called upon EU27 Member States to ensure that EU27 citizens who worked in the UK for periods before 30 March 2019 retain their right for those periods to be taken into account when his or her right to an old-age pension is determined and calculated by the relevant Member State. Furthermore, the place of residence of the person entitled to the old-age pension, whether in the EU27 or in the UK, should not be of any relevance.
>
> **6. In case of no deal, what happens to old-age pension rights acquired by UK nationals from periods worked in (an) EU27 Member State(s) before 30 March 2019 if the person decides to retire in an EU27 Member State, the UK or another third country?**
>
> The Commission has called upon EU27 Member States to ensure that UK nationals – who exercised their right to free movement within the EU at a time when the United Kingdom was an EU Member State – retain their rights for their periods of insurance or employment completed in EU27 Member States before 30 March 2019 so that this is taken into account by EU27 Member States when determining and calculating their old-age pensions.
>
> The Commission recalls that the Union has exclusive competence on social security coordination for the periods completed and for facts and events that occurred before the withdrawal date.[48]

This proposal is limited in that whereas the protections in the Withdrawal Agreement continue to apply to individuals who remain within scope, the ‘no deal’ proposals are focused on the position as at 30 March 2019.

On 30 January 2019, the European Commission published a final set of ‘no deal’ contingency proposals for social security co-ordination.[49] It said the measures would ensure that in the event of a “no deal” scenario, EU Member State authorities would continue to take into account

47 European Commission, Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019: Implementing the Commission’s Contingency Action Plan, 19 December 2018

48 Questions and Answers: the consequences of the United Kingdom leaving the European Union without a ratified Withdrawal Agreement (no deal Brexit), 19 December 2018

49 European Commission, Brexit Preparedness: European Commission adopts final set of ‘no-deal’ continency measures for social security co-coordination rules, 30 January 2019

periods of insurance, (self) employment or residence in the United Kingdom before withdrawal, when calculating social security benefits, such as pensions."[50] The detail was in a proposal for a regulation of the European Parliament and Council on establishing contingency measures for social security co-ordination in the event of no deal. The aim of this was to ensure that people who had already exercised their right to free movement maintained their entitlements based on facts and events before the withdrawal date:

> There is indeed a need to ensure that those persons who exercised, as citizens of the Union, their right to free movement within the Union before the withdrawal date, maintain their social security entitlements based on facts and events that occurred and periods of insurance, (self) employment or residence that were completed before the withdrawal date, when the United Kingdom was a Member State of the Union. Certain core principles of social security coordination as enshrined in Regulation (EC) No 883/2004 on the coordination of social security systems (assimilation, aggregation, equality of treatment), as well as rules of this Regulation which give practical effect to the implementation of those principles (such as the pro-rata calculation of an old-age pension), should continue to apply in respect of those persons, as regards facts or events that occurred and periods completed before the withdrawal date.[51]

The specific provisions were explained as follows:

> The proposal aims at ensuring that persons who have exercised, as Union citizens, their right to freedom of movement before the withdrawal date maintain their social security entitlements related to facts or events that occurred and periods completed before the withdrawal date. Other relevant persons in situations involving the United Kingdom before the withdrawal date, who would otherwise be covered by Regulations (EC) Nos 883/2004 and 987/2009, should also maintain those entitlements: stateless persons, refugees, as well as family members and survivors of all the previous categories.
>
> Article 1 clarifies that the definitions applicable to this Regulation are those provided for in Article 1 of Regulation (EC) No 883/2004 and Article 1 of Regulation (EC) No 987/2009.
>
> Article 2 defines the personal scope of the proposed Regulation. It covers: persons (nationals of the Union or of the United Kingdom, stateless persons and refugees) who are or have been subject to Union social security coordination rules and in situations involving the United Kingdom while it was a Member State of the Union, together with their family members and survivors.
>
> Article 3 defines the material scope of the proposed Regulation, specifying that it will cover all branches of social security as listed in Article 3 of Regulation (EC) No 883/2004.
>
> Article 4 provides for equality of treatment of the persons covered by the proposed Regulation.

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50 Brexit Preparedness: European Commission adopts final set of 'no-deal' contingency measures for Erasmus+ students, social security co-ordination rules and the EU Budget, 30 January 2019

51 Proposal for a Regulation of the European Parliament and of the Council on establishing contingency measures in the field of social security co-ordination following the withdrawal of the UK of Great Britain and Northern Ireland from the European Union, 30 January 2019

> Article 5 sets out that the principles of assimilation and aggregation provided for in Regulation (EC) No 883/2004 will continue to apply in the Union as regards any claims that relate to facts and events that occurred and periods completed before the withdrawal date.
>
> Article 6 sets out the entry into force and the entry into application of the proposed Regulation.[52]

2.5 UK Legislation

Draft regulations were laid before Parliament on 20 December 2018, the aim of which is to ensure that citizens' social security rights are protected as far as possible in a 'no deal' scenario.[53] The Explanatory Memorandum states that:

> 6.5 The whole system of social security coordination across the EU relies on cooperation and reciprocity, for example in relation to data-sharing about social security contributions made in different member states. The legal framework for this will cease in a no deal scenario. The UK will have no means of enforcing reciprocal obligations on EU MS and cannot therefore legislate for this when correcting deficiencies in the Coordination Regulations - such as by legislating to require that EU MSs cooperate with us or provide information, or that they apply the rules contained in the Coordination Regulations to individuals moving to/from the UK.
>
> *What will it now do?*
>
> 6.6 These instruments aim to maintain the status quo on a unilateral basis, ensuring that citizens' rights are protected as far as possible in a 'no deal' scenario in relation to social security. They are intended to ensure a functioning statute book in the event of a no deal scenario, by fixing deficiencies in retained EU law, in line with the power provided by section 8 of the *EU (Withdrawal) Act.*[54]

Examples of circumstances to which the regulations might apply are:

- The calculation of entitlement to benefits for UK nationals or EU nationals who have spent a period of time residing and working in the EU, but who now live in the UK and make a claim for a UK benefit or State Pension. The amendments make provision for nationals to provide evidence relating to their claim - in the instance where an EU MS does not provide it if requested.
- UK nationals working (either employed or self-employed) in an EU MS, and residents of an EU MS working in the UK, and some third country nationals coming to work in the UK from an EU MS. This group may be impacted by, for example, being required to pay National Insurance Contributions ('NICs') in the UK, under UK legislation, as well as in an EU MS if that MS legislation also applies to them.[55]

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52 Ibid

53 Draft Social Security Coordination (Regulation (EC) No 883/2004, EEA (Agreement and Swiss Agreement) (Amendment) (EU Exit) Regulations Exit

54 Explanatory Memorandum to the *Social Security Co-ordination Regulations (EC) No 883/2004 EEA Agreement and Swiss Agreement) (Amendment) (EU Exit) Regulations 2018 [2018] No.[XXXX]*

55 Ibid

The *Immigration and Social Security Co-Ordination (EU Withdrawal) Bill* was presented to Parliament on 20 December 2018. Clause 5 would provide for a "power to modify retained direct EU legislation relating to social security co-ordination". It is intended to:

> be used to implement new policies in situations where the UK has not entered into an agreement with the EU and/or another member state of the EU. It is also intended to be used to make provision for persons who fall outside of the scope of any agreement, but who are nevertheless within the scope of the EU social security co-ordination regulations, as retained in domestic law on exit via the *EU (Withdrawal) Act*.[56]

A Home Office factsheet explains that the power will enable the government to make suitable legislative provision for a range of post EU exit day scenarios that may arise. It states that in developing a framework for future social security co-ordination policy, the government may wish to consider:

- what access EU nationals will have in the future to certain UK benefits and pensions;
- the extent to which UK nationals can export certain benefits and pensions; and
- the administration and rules which govern entitlement and obligations when people live and work in more than one country.[57]

For more detail see Library Briefing Paper CBP-8473 The Immigration and Social Security Co-ordination (EU Withdrawal Bill) 2017-18 (January 2019). Information about the progress of the Bill is on the Parliament website.

[56] Explanatory Notes, para 39

[57] Home Office, Factsheet 5: social security co-ordination, 21 December 2018

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