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BRIEFING PAPER

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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. For the new State Pension introduced on 6 April 2016, an individual needs 35 'qualifying years', of National Insurance contributions or credits (which are available for certain circumstances in which a person is not able to work) to qualify for the full amount (£159.55pw in 2017/18). If they have fewer than 35 qualifying years, they are eligible for a proportionate amount, provided they have at least ten qualifying years (*Pensions Act 2014,* Part 1).

As part of the EU, the UK is currently 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. This is discussed in Library Briefing Paper SN-01457 Frozen Overseas Pensions (May 2016). The details of what is required under reciprocal agreements between the UK and other countries outside the EEA vary. Information is in DWP Decision Makers Guide, Volume 2: international subjects (para 070310 ff).

A parliamentary written answer from January 2017 said that "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." (PQ HL 4944).

The UK Government's offer for EU citizens in the UK and UK nationals in the EU on their rights and status after the UK leaves the EU published on 26 June 2017 said:

> 7. In relation to benefits, pensions, healthcare, economic and other rights, in the expectation that these rights will be reciprocated by EU member states, the Government intends 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 contributory benefits and State Pension, even where entitlement to these rights may be exercised after exit.

A joint technical note on the comparison of EU-UK positions on citizen's rights published on 28 September 2017 said both sides to the negotiations had committed to:

- Lifetime export of uprated pension;
- Recognising contributions but before and after exit in the EU27 and the UK; and
- Equal treatment under the conditions set out in EU law (page 14).

The potential impact on private pensions is discussed in CBP-07629 Brexit – implications for private pensions (March 2017).

1. The current framework

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,[1] which also apply to non-EU EEA countries and Switzerland.[2]

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').

Numbers

Around 1.26 million recipients of the UK State Pension are resident overseas. A Parliamentary Written Answer from November 2016 gave a breakdown for EU, Commonwealth countries and the rest of the world:

> The table below shows the number of pensioners in receipt of the UK State Pension living in the country groupings requested. Please note that residents in Cyprus and Malta appear in both the European Union and Commonwealth totals.

Country Group	Number of UK State Pensioners
EU (excluding UK)	474,130
Commonwealth (excluding UK)	565,770
Rest of world	218,580

> Source: DWP Work and Pensions Longitudinal Study May 2016. Figures are rounded to the nearest 10.[3]

1 Now in EC Regulations 883/2004 and 987/2009.
2 There is a list of EU and EEA countries on Gov.UK
3 PQ 53851, 24 November 2016

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]

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.
>
> 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)**

5 Gov.UK, The new State Pension

> **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:

> **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**

[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

> 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.[9]

If the individual would be entitled to a higher amount under UK legislation alone, that higher amount is payable.[10]

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.[11]

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 details of what is required under reciprocal agreements between the UK and other countries both in and outside the EEA vary.[13]

This is discussed in Library Briefing Paper SN-01457 Frozen Overseas Pensions (May 2016).

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9 DWP, Decision Makers' Guide, Chapter 7. Part 5, 076050
10 Ibid para 076061-2
11 Explanatory Memorandum to the State Pension Regulations 2015 (SI 2015 No. 173)
12 *Social Security Contributions and Benefits Act 1992*, s113; *Social Security Benefit (Persons Abroad) Regulations 1975 (SI 1975/563); Pensions Act 2014* s20
13 DWP's Decision Makers Guide, Volume 2: international subjects, para 070310 ff

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 The UK Government's proposals

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

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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

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

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]

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.[19]

2.2 The EU position

In June 2017, the European Parliament published a document on Brexit negotiations: Issues for the first phase (June 2017). It said 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.[20]

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[18] Ibid

[19] HC Deb, 12 September 2017 c259-60WH

[20] 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

This means that "the principles of social security coordination, which include aggregation, export of benefits and equal treatment, should be maintained."[21]

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

However, a joint technical note on the comparison of EU-UK positions on citizen's rights published on 28 September 2017 said both sides to the negotiations had committed to:

- Lifetime export of uprated pension;
- Recognising contributions but before and after exit in the EU27 and the UK; and
- Equal treatment under the conditions set out in EU law (page 14).

[21] Ibid, p9

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