

Immigration and Social Security Co-ordination (EU Withdrawal) Bill

The Social Security Coordination (Revocation of Retained Direct EU Legislation and Consequential Amendments) (EU Exit) Regulations 2020

The Government has shared with Parliamentarians draft illustrative Regulations it proposes to make under the power in Clause 5 of the Immigration and Social Security Co-ordination (EU Withdrawal) Bill (“the Bill”). The purpose is to support Parliament’s consideration of the Bill by showing how the Government intends to use this delegated power¹. Copies of the draft Regulations have been placed in the libraries of both Houses in Parliament.

The EU Social Security Coordination Regulations (“SSC Regulations”)² coordinate access to social security for individuals moving between EEA states (and Switzerland)³. The SSC Regulations are set out in further detail in the Bill’s [explanatory notes](#) and [Clause 5 factsheet](#).

Existing EU Exit legislation relating to social security coordination

The SSC Regulations are retained in UK law at the end of the transition period by the [EU \(Withdrawal\) Act 2018](#) (EUWA) (section 3). Four “fixing” Regulations⁴ were drafted to amend the retained SSC Regulations, made under the delegated power in EUWA 2018. This power is being used to fix deficiencies in retained EU law rather than to make policy changes.

[The EU \(Withdrawal Agreement\) Act 2020](#) (EUWAA) amended EUWA 2018 and established a cohort of citizens to whom the SSC Regulations will continue to apply after the end of the transition period for those people within scope of the Withdrawal Agreement (WA).⁵

The SSC Regulations are incorporated into domestic law for the purposes of the Withdrawal Agreement under section 7A and 7B of EUWA 2018, without the fixes provided for in the “fixing” Regulations. This is a separate legal mechanism to section 3 noted above and is why clause 5 of the ISSC Bill has no impact on the WA cohort.

The Government is preparing further public-facing guidance on Part Two of the Withdrawal Agreement.

The Government has also made consequential amendment Regulations, including [The Social Security \(Amendment\) \(EU Exit\) Regulations 2019](#) (2019 No. 128, made on 29 January 2019). These Regulations make provision to amend various pieces of legislation to reflect that the UK is no longer a member of the EU. These Regulations will still be needed and will come into force at the end of the transition period.

The UK signed an [agreement with Ireland](#) in February 2019 which protects the social security rights of all UK and Irish citizens travelling between the UK and Ireland whether or not they are covered by the WA. This position is similarly unaffected by any future UK-EU Agreement on social security coordination.

Future EU Exit legislation related to social security coordination

¹ The statutory instrument shared is a draft intended to assist Parliament with scrutiny of the Bill. It represents the regulations the Government intends to make, but changes may be made to the version presented to Parliament for approval as the result of further review.

² Regulation 883/2004, Regulation 987/2009, Regulation 1408/1971, Regulation 574/1972 and Regulation 859/2003

³ References to the EEA should be taken to include Switzerland.

⁴ 2019 No. 721, 722, 723, 726

⁵ References to the Withdrawal Agreement should be taken to include the equivalent agreements with the EEA and Switzerland

Clause 5 of the Immigration and Social Security Co-ordination (EU Withdrawal) Bill (ISSC Bill) will ensure that changes can be made to the retained SSC Regulations to deliver government policy for individuals who are not covered by the WA, from the end of the transition period.

The Social Security Coordination (Revocation of Retained Direct EU Legislation and Consequential Amendments) (EU Exit) Regulations 2020 (“the draft SI”) is illustrative of the content of an SI made under clause 5 in the event of a **negotiated outcome on a future social security coordination agreement with the EU**. In such a scenario, the power at clause 5 will be used to ensure that domestic legislation is consistent with that agreement and will repeal the retained (and fixed) SSC Regulations, as these will no longer be required.

The intended policy consequence of this approach is that where provision is not made under a future UK-EU Agreement on social security coordination, for example in relation to the export of a benefit, that provision will be ceased. This is in line with the Government’s [approach to negotiations](#) and [draft negotiating text](#).

The UK Government’s draft text provides for continuation, in full, of current provisions which prevent individuals from being required to pay social security contributions (National Insurance in the UK) in two countries at the same time and it covers aggregation and uprating of state (old-age) pensions, on the same terms as now.

Overview of the Regulations

In a negotiated outcome the Secretary of State will make Regulations by affirmative procedure in exercise of the powers conferred by clause 5 of the Bill, once enacted. Clause 6 of the ISSC Bill defines “modify”, for the purposes of the Act, as including, inter alia, “amend, repeal or revoke”. The proposed draft SI is required to give effect to the future UK-EU agreement on social security coordination to the extent that this cannot be achieved under [section 179 of the Social Security Administration Act 1992](#).

- Regulation 1 of the draft SI provides the coming into force date and its citation.
- Regulation 2 of the draft SI repeals the retained SSC Regulations.
- Regulation 3 repeals the fixing SIs mentioned above.
- Regulation 4 of the draft SI excludes revoking regulations relating to the coordination of benefits in kind (healthcare provision) therefore the draft SI repeals the retained SSC Regulations in so far as they relate to DWP and HMRC policy areas, in their entirety, and not to areas of competence for the Department of Health and Social Care.
- Regulation 5 of the draft SI makes amendments to the Social Security Co-ordination (Reciprocal Healthcare) (Amendment etc.) (EU Exit) Regulations 2019 which are consequential on the revocations made by regulations 2 and 3.

Section 179 procedure and order in council

The Government is also planning to implement a future relationship using the powers in Section 179 of the Social Security and Administration Act 1992, which is the primary legislation governing reciprocal agreements for social security benefits between the UK and the rest of the world.

The power will be amended with effect from the end of the transition period (see [SI 2019 No. 128](#)) to extend it to cover agreements with international organisations such as the EU. Section 179(1) provides that an Order in Council may be made for the purpose of giving effect to any particular reciprocal agreement and so modifying or adapting primary or secondary domestic legislation. Section 179(4) provides that the section applies to a range of primary legislation about social security.

Devolution

This SI applies UK wide as some areas of social security policy are reserved and others are subject to the international relations reservation. Some changes made by this SI may require consequential amendments to Northern Ireland legislation. The Government is working constructively with the NI Executive and has requested a motion of legislative consent from the Northern Ireland Assembly in respect of clause 5 of the ISSC Bill.