HOUSE OF COMMONS LIBRARY

BRIEFING PAPER

Number CBP-7894, 11 June 2020

Brexit and State Pensions

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Entitlement to the UK State Pension is based on an UK individual's National Insurance record. As part of the EU, the UK was 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 to remove barriers to workers moving between Member States. They enable periods of insurance in different countries to be aggregated. An individual makes one application to the relevant agency in the country of residence - in the UK, the International Pension Centre. It 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. Being part of social security co-ordination, has also ensured that the UK State Pension is uprated annually in EEA countries.

The Withdrawal Agreement

The arrangements to apply post-Brexit were part of the negotiations under Article 50 on the UK's withdrawal from the EU. The October 2019 UK-EU Withdrawal Agreement (WA) covers EU citizens who were residing in the UK, and UK nationals who were residing in one of the 27 EU Member States at the end of the transition period (on 31 December 2020) where such residence is in accordance with EU law on free movement. The UK Government explains that those covered by it will "continue to have broadly the same entitlements to work, study and access public services and benefits as before the UK left the EU."

Guidance on Gov.UK includes: Living in Europe; Benefits and pensions for UK nationals in the EEA and Switzerland; Benefits and pensions for EEA and Swiss citizens in the UK.

Future arrangements

The social security co-ordination arrangements for those who are not in scope of the WA, who move to the EU from 1 January 2021, are the subject of negotiations between the UK and EU on the future relationship. As set out in the Political Declaration, the UK and the EU agreed to consider future social security co-ordination arrangements in the light of the future movement of persons. The exception relates to Ireland, with which the UK Government signed a Convention so that "reciprocal benefit and social security rights for Irish and UK nationals and their family members continue to operate independently of those afforded to EU nationals from other Member States."

The European Commission published a draft treaty text on 18 March 2020, including a Protocol on Social Security Coordination. In May, the UK has published a Draft Social Security Coordination Agreement. For more detail, see Library Briefing Paper CBP 8928 The UK-EU future relationship negotiations: social security co-ordination (June 2020).

1. Arrangements post-Brexit

1.1 The Withdrawal Agreement

The Johnson Government published its Withdrawal Agreement (WA) in October 2019. Substantially the same as that published by the May Government in February 2018, it was given effect to by the *European Withdrawal Act 2020*. It sets out a framework for the continued legal residence (and associated rights, including social security co-ordination) of EU citizens in the UK and UK, at the end of the transition period. Equivalent separation agreements have been made with Switzerland and the EEA/EFTA states. Individuals will be able to rely on the WA and separation agreements directly to asset their rights.

Under the WA, the EU social security co-ordination rules continue to apply during the transition period (i.e. until 31 December 2020) and for those people who are within its scope. A European Commission factsheet explains who is within scope:

> **EU citizens** who were **residing in the UK and UK nationals** who were **residing in one of the 27 EU Member States at the end of the transition period,** where such residence is in accordance with EU law on free movement.
>
> **Family members** that are granted rights under EU law (current spouses and registered partners, parents, grandparents, children, grandchildren and a person in an existing durable relationship), who do not yet live in the same host state as the EU citizen or the UK national will be able to join them in the future.
>
> **Children** are protected, wherever they are born, before or after the UK's withdrawal
>
> **Frontier workers** and frontier self-employed person are also protected in the countries where they work.[1]

Those within the scope of the WA, "will maintain their right to healthcare, pensions and other social security benefits, and if they are entitled to a cash benefit from one country, they will in principle be entitled to receive it, even if they decide to live in another country."[2]

The UK Government's Explainer for the previous Withdrawal Agreement said that this would ensure that people moving between the UK and the EU before the end of the transition period "are not disadvantaged in their access to pensions, benefits, and other forms of social security, including healthcare cover."[3] The WA also provides protections in other circumstances so that, for example, where a UK national has previously worked and paid social security contributions in a Member State, rights flowing from those contributions, such as benefits and pensions, are protected.

Gov.UK explains what the WA means for UK nationals living in the EEA or Switzerland by 31 December 2020:

For more information on

the background to the social security co-ordination provisions in the WA, see section 3 of Library Briefing Paper Citizen's rights provisions in the European Union (Withdrawal Agreement) Bill 2019/21 (CBP 8772, Jan 2020). A more detailed analysis of the relevant articles in the WA is in The UK's EU Withdrawal Agreement (CBP 8453, July 2019).

1 European Commission, The revised EU/UK withdrawal agreement maintained
2 Ibid
3 HM Government, Withdrawal Agreement explainer, 14 November 2018, para 37

If you are a UK national living in an EEA state or Switzerland by 31 December 2020 you are covered by the Withdrawal Agreement.

You will get your UK State Pension uprated every year for as long as you continue to live there. This will happen even if you start claiming your pension on or after 1 January 2021, as long as you meet the qualifying conditions.

If you are working in the EEA or Switzerland, you will be able to count future social security contributions towards meeting the qualifying conditions for your UK State Pension.

You will continue to receive any UK benefits you already receive in the EEA or Switzerland for as long as you continue to live there, and continue to meet all other eligibility requirements.

You may also be able make new claims for certain UK benefits from 1 January 2021, if you meet all the other eligibility requirements. Read: guidance on which benefits you can claim if you live, move or travel abroad and further guidance for UK nationals in the EU

Check which benefits you can claim while abroad and how to claim them, using an online checker.

Moving to an EEA state or Switzerland from 1 January 2021

If you are not covered by the Withdrawal Agreement and you move to live in an EEA state or Switzerland from 1 January 2021, the rules on entitlement to UK benefits in these countries will depend on the outcome of negotiations with the EU and may change. This includes:

- receiving certain UK benefits in the EEA and Switzerland
- counting future social security contributions in the EEA and Switzerland towards your UK State Pension and some other UK benefits
- getting your UK State Pension uprated every year in the EEA and Switzerland

You'll continue to receive your UK State Pension in the EEA or Switzerland, as long as you meet the qualifying conditions.

If you have made social security contributions in an EEA state or Switzerland by 31 December 2020 you can still use these to help you qualify for a UK State Pension. They may also help you qualify for some other UK benefits, for example New Style Jobseeker's Allowance and New Style Employment and Support Allowance.

For more information, contact the International Pensions Centre.

Moving to Ireland from 1 January 2021

You'll continue to get your UK State Pension uprated if you move to Ireland and you are a UK or Irish national.

You'll be able to claim and continue to receive UK benefits in Ireland if you are a UK or Irish national, as long as you continue to meet the eligibility requirements.

Pensions and benefits paid by an EEA state or Switzerland

If you are paid a pension or benefit by an EEA state or Switzerland, check with the organisation that pays you to find out what you will need to do to continue receiving any benefits or pension after 31 December 2020. You can find out more by checking the country specific guidance for UK nationals.

Moving to an EEA state or Switzerland from 1 January 2021

If you move to an EEA state or Switzerland from 1 January 2021 and you are not covered by the Withdrawal Agreement, your entitlement to a pension or benefits from that country will depend on the outcome of negotiations with the EU.[4]

And for citizens of the EEA or Switzerland living in the UK:

Irish citizens living in the UK

You, and members of your family living in the UK, will be able to claim or continue to receive the UK benefits you are entitled to, now that the UK has left the EU. You will also continue to receive any Irish benefits you remain entitled to while living in the UK.

Other EEA and Swiss citizens

Living in the UK by 31 December 2020

You will be able to enter the UK, as now, until 31 December 2020.

You will be eligible to claim benefits until 31 December 2020. Under the Withdrawal Agreement, you and your family members living in the UK by 31 December 2020 will be able to claim or continue receiving UK benefits for as long as you continue to be lawfully resident in the UK and meet the eligibility requirements.

You will need to apply to the EU Settlement Scheme by 30 June 2021 to remain in the UK and be eligible to claim benefits.

Moving to the UK from 1 January 2021

If you arrive in the UK from 1 January 2021 you will be able to apply for an immigration status under the future immigration system. The rules on claiming certain UK benefits will change.

You will still be eligible for a UK State Pension as long as you meet the qualifying conditions.

If you have made social security contributions in the EEA or Switzerland by 31 December 2020 and you are covered by the Withdrawal Agreement, you can still use these to help you qualify for a UK State Pension.

Moving back to the EEA or Switzerland from 1 January 2021

If you move back to the EEA or Switzerland and you are covered by the Withdrawal Agreement, you may still be able to claim certain UK benefits as long as you meet all other eligibility requirements.[5]

Agreement with Ireland

In recognition of the "special status that UK and Irish nationals have in each other's countries," in February 2019, the Governments of the UK and Ireland signed a Convention that "upholds the principles of equal treatment and reciprocity created by the Common Travel Area in 1922." It demonstrates a "continued commitment to the principles of the

4 Gov.UK, Benefits and Pensions for UK Nationals in the EU, EEA or Switzerland

5 Gov.UK. Benefits and pensions for EU, EEA or Swiss nationals in the UK; DWP Explanatory Memorandum on Social Security Convention between the Governments of UK and Ireland; Convention on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland, (1 February 2019)

Common Travel Area and ensures that reciprocal benefit and social security rights for Irish and UK nationals and their family members continue to operate independently of those afforded to EU nationals from other Member States."[6] Gov.UK explains:

> The UK and Irish governments have a bilateral agreement to ensure that social security rights, including access to pensions, will continue to be protected after the UK leaves the EU. This agreement also means that there will be no change to the payment of your UK State Pension in Ireland. UK State Pensions will continue to be paid as before 31 January 2020, including upratings.[7]

1.2 The Political Declaration

The social security co-ordination arrangements for those who are not in scope of the WA, are the subject of negotiations between the UK and EU on the future relationship:

> While the UK State Pension is payable worldwide and this will not change as a result of the UK leaving the EU, social security co-ordination arrangements for those not in scope of the Withdrawal Agreement who move to the EU from 1 January 2021 are subject to the outcome of negotiations with the EU.
>
> As set out in the Political Declaration, the UK and the EU have agreed to consider addressing future social security co-ordination arrangements in the light of the future movement of persons. This is without prejudice to the rights of individuals who are protected by the Withdrawal Agreement.[8]

The Political Declaration of 17 October 2019 set out the framework for the Future Relationship. It states that, for those moving between the EU and the UK after the end of the transition period, the two parties would "agree to consider addressing social security coordination in the light of future movement of persons." Noting that the UK had decided that the free movement of persons would no longer apply, the parties would need to establish new mobility arrangements, based on non-discrimination between EU Member states and full reciprocity.[9]

A commentary published in December 2019 suggested that while EU negotiators would prefer future arrangements to mirror as closely as possible the existing social security co-ordination regulations, the UK Government's preference was for a much less comprehensive agreement covering only some contributory benefits.[10]

The European Commission's agreed mandate for negotiations with the UK, published in February 2020, said future mobility arrangements should be " based on non-discrimination between the Union Member

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6 Cabinet Office, Memorandum of Understanding between the UK and Ireland on the CTA, May 2019, para 10 (social security co-ordination); See Library Briefing Paper CBP 7661 The Common Travel Area and the special status of Irish nationals in UK law (October 2019)

7 Gov.UK, Living in Ireland (updated Jan 2020)

8 DEP 2020-0044, 20 January 2020; See Library Briefing Paper CBP 8714.

9 Para 52 and 49

10 Simon Roberts, 'Social security coordination after Brexit: trying to take an egg out of an omelette?', ERA Forum (2019); doi:10.1007/s12027-019-00591-9

States and full reciprocity" and that the "envisaged partnership should address social security coordination."[11]

On 27 February, the UK Government commented that social security co-ordination "can remove barriers and support mobility of labour between countries." It added arrangements that:

> allow workers to rely on contributions made in two or more countries for their state pension access, including uprating principles, and that prevent dual concurrent social security contribution liabilities, could be good for business and support trade. These arrangements could benefit UK nationals and EU citizens travelling or moving between the UK and the EU in future.[12]

The UK was "ready to work to establish practical, reciprocal provisions on social security coordination" and said that any agreement "should be similar in kind to agreements the UK already has with countries outside the EU and respect the UK's autonomy to set its own social security rules."[13]

Proposals

The EU's Draft Protocol follows closely the wording of the existing Regulation 883/2004 on social security co-ordination and covers the same range of benefits.[14] However, it applies only to limited groups of persons:

- researchers, students, trainees, people on youth exchange programmes, and their family members;
- pensioners; and
- for the purposes of reimbursement of costs incurred for necessary medical treatment during short stays, EU or UK citizens temporarily abroad.[15]

The UK's Draft Agreement is more limited in terms of the areas covered, but they do include the rules to determine which state a person moving between the UK and EU is liable to pay social security contributions to, and old age pensions. In terms of the persons covered, the text states that the Agreement shall apply to people who are or have been in a cross-border situation who:

- are, or have been, subject to the legislation of one or more Party; and

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11 European Council, Annex to Council decision authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for a new partnership agreement, 25 February 2020

12 HM Government, The Future Relationship with the EU: The UK's Approach to Negotiations, CP211, 27 February 2020, p23

13 Ibid.

14 Draft Protocol, Art MOBI.SSC.3. Benefits covered are: 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; family benefits.

15 Draft Protocol, Art MOBI.SSC.2

- to the spouse, civil partner, or surviving spouse/civil partner of such a person (if the latter is entitled to a right under the provisions in the Agreement on old age pensions.[16]

'Subject to the legislation' means the legislation on payment of social security contributions, old age pensions, or healthcare.[17]

In relation to the pensions, the UK Government's proposal shares some common ground with the EU proposal and, therefore, existing social security co-ordination arrangements. This is in respect of:

- **Provision for equal treatment** on grounds of nationality (article 15);
- **Aggregation -** the ability for periods of insurance in the UK and EU Member States to be aggregated in deciding whether minimum qualifying conditions are met (article 16);
- **Provision for State Pensions to be exported and uprated annually** (article 17);
- **Provisions for calculating State Pension entitlements where an individual has periods of insurance in the UK and EU Member States** (articles 18 to 19).

The of future social security co-ordination is discussed in more detail in Library Briefing Paper CBP 8928 The UK-EU future relationship negotiations: social security co-ordination (June 2020).

[16] Article 2
[17] Draft UK negotiating document, May 2020, article 1

2. Background

2.1 Social Security co-ordination

As a member of the EU, the UK was part of long-standing provisions in EU law to co-ordinate social security schemes for people moving within the EU,[18] which also apply to non-EU EEA countries and Switzerland.[19]

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 disadvantaged 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).[20]

For more detail on what this means in practice, see section 4.1 of Library Briefing Paper CBP 8706 The Immigration and Social Security Co-ordination (EU Withdrawal) Bill 2019-20 (March 2020).

What this meant for State Pensions

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

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[18] Now in EC Regulations 883/2004 and 987/2009
[19] There is a list of EU and EEA countries on Gov.UK
[20] European Commission, Contingency action plan etc, 19 December 2018, p4

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.[21]

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.*
>
> *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*

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

> *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.[22]

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.
>
> 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

[22] Gov.UK, The new State Pension

> 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.[23]
>
> * 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.[24]

If they have been insured in more than one EEA country, they may be entitled to a pro-rata State Pension.[25] 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.[26]

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.[27]

DWP's Decision Makers' Guide explains the calculation:

> **076063 The rate of RP [retirement pension] is calculated in three stages.**

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

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.[28]

For more on what the social security co-ordination rules mean in practice, see section 4.1 of Library Briefing Paper CBP-8706 The Immigration and Social Security Co-ordination (EU Withdrawal) Bill 2019-21 (March 2020).

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

Uprating

It has been a long-standing feature of UK policy that the State Pension is payable overseas but only uprated if the pensioner is resident in an EEA country or one with which the UK has a reciprocal agreement requiring uprating.[29]

In relation to EEA countries, this is currently required under the social security co-ordination arrangements. The UK has reciprocal arrangements with some EU Member States, 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

28 DWP, Decision Makers' Guide, Chapter 7. Part 5, 076063

29 *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

> agreements with the UK that guaranteed annual uprating of UK state pensions?
>
> 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.[30]

There are "no reciprocal agreements with Bulgaria, the Czech Republic, Estonia, Greece, Hungary, Latvia, Liechtenstein, Poland, Romania and Slovakia."[31]

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

2.2 Bilateral agreements

The UK has bilateral social security treaties with 17 out of the 27 EU Member States. These bilateral agreements were replaced by European social security co-ordination provisions for people within scope and where the right to benefit was acquired on or after the date those provisions came into force). They could still apply to non-EEA nationals.[32]

An academic article from 2017 suggested that the existing agreements were far more limited in scope than the EU co-ordination rules and could well be outdated.[33] The Government said in March 2019 that officials were assessing the pre-existing Reciprocal Agreements on a case by case basis to see whether they are capable of revival:

> The UK has 17 reciprocal agreements on social security with EU Member States. There are 10 EU countries where there is no reciprocal social security agreement in place. These countries are: Bulgaria, Czechia, Estonia, Greece, Hungary, Latvia, Lithunia, Poland, Romania and Slovakia.
>
> Officials are assessing pre-existing Reciprocal Agreements on a case by case basis as to whether they are capable of revival, for both legal and administrative operability reasons. Any revival will require technical discussions and formal agreement between the parties.
>
> Social Security is an area of shared competence. Therefore, Member States will have to consider the legal and political position and form their own view on whether the EU's contingency regulation poses any limits to bilateral agreements. There is provision in domestic law which could give effect to pre-existing bilateral agreements in relation to social security, should that be desirable.
>
> Article 6 (1) of the contingency Regulation as agreed at the General Affairs Council recognises the operability of existing bilateral agreements between the UK and Member States that are listed in Annex II to Regulation 883/2004 under Article 8. Article 8

30 PQ 118842, State Retirement Pensions: British Nationals Abroad
31 HL Deb 5 March 2019 c563
32 DWP, Decision Makers' Guide, para 075820-076121
33 Herwig Verschueren, 'Scenarios for Brexit and social security', Maastricht Journal of European and Comparative Law, 2017, vol 24 (3), pp367-381

> (2) of the contingency Regulation acknowledges that bilateral agreements may be concluded between the UK and Member States after exit that cover periods before exist, provided they satisfy the conditions set out in that Article, namely to meet the requirements of the contingency Regulation and give effect to the principles in Regulation 883/2004.[34]

For more detail on the reciprocal social security agreements the UK has with other countries, see Library Briefing Paper CBP 8706 p36-8 and DWP's Decision Makers' Guide para 070330 ff.

[34] Brexit: co-ordination of social security and access to healthcare, European Scrutiny Committee, 30 April 2019; HL Deb 5 March 2019 c563

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BRIEFING PAPER
Number CBP-7894
11 June 2020