Draft Order laid before Parliament under paragraph 1(3) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2019 No.

EXITING THE EUROPEAN UNION
SOCIAL SECURITY

The Social Security Coordination (Regulation (EC) No 987/2009) (Amendment) (EU Exit) Regulations 2019

Made - - - - ***

Coming into force in accordance with regulation 1

In accordance with paragraph 1(3) of Schedule 7 to the European Union (Withdrawal) Act 2018(**1**) a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

The Secretary of State makes these Regulations in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, that Act.

Citation and commencement

1. These Regulations may be cited as the Social Security Coordination (Regulation (EC) No 987/2009) (Amendment) (EU Exit) Regulations 2019 and come into force on exit day.

Amendment of Regulation (EC) No 987/2009

2. The Schedules to these Regulations amend Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems—

(a) Schedule 1 amends Title 1 (general provisions);

(b) Schedule 2 amends Title 2 (determination of the legislation applicable);

(c) Schedule 3 amends Title 3 (special provisions concerning the various categories of benefits);

(d) Schedule 4 amends Title 4 (financial provisions);

(e) Schedule 5 amends Title 5 (miscellaneous, transitional and final provisions);

(**1**) 2018 c. 16.

(f) Schedule 6 amends the Annexes.

Signed by authority of the Secretary of State for Work and Pensions

Name
Parliamentary Under Secretary of State
Date Department for Work and Pensions

SCHEDULES

SCHEDULE 1

Regulation 2(a)

Amendments to Title 1: General provisions

PART 1

Amendments to Chapter 1: Definitions

1. In Article 1—

(a) in paragraph 2(b) for "Member State" substitute "State";

(b) in paragraph 2(d) for "Member States" substitute "States";

(c) omit paragraph 2(f).

PART 2

Amendments to Chapter 2: Provisions concerning cooperation and exchanges of data

2. Before Article 2 insert—
"Article A2

Performance of obligations dependent on Member State information

1. This Article applies where, in the view of the competent authority of the United Kingdom, performance of an obligation under this Regulation by an institution in the United Kingdom is wholly or partly dependent on information held by an institution or authority in a Member State.

2. The institution in the United Kingdom must take all reasonable steps to obtain the information from the institution or authority in the Member State.

3. If the institution in the United Kingdom complies with the duty in paragraph 2 but is unable to obtain the information and the institution considers that the claimant could provide the information, it must inform the claimant that it has been unable to obtain the information and ask the claimant:

(a) to take reasonable steps to obtain the information from the institution or authority in the Member State; or

(b) where it is not possible for the claimant to obtain the information from the institution or authority in the Member State, to provide such relevant information or evidence as the claimant has.

4. The institution in the United Kingdom is not required to perform the obligation if it complies with the duty in paragraphs 2 or 3 but is unable to obtain the information and:

(a) the claimant does not provide it within a reasonable time; or

(b) the claimant does provide it but the institution is of the view that the information is not accurate or is incomplete.".

3. In Article 2—

(a) in paragraph 1 for "Member States'" substitute "States'";

(b) in paragraph 2—

(i) for "shall without delay" substitute "in the United Kingdom may take reasonable steps to";

(ii) after "applies" insert ", including the establishing and determining of those rights and obligations by a Member State applying the basic regulation as it applies in the European Union";

(iii) for "Such" substitute "Any such data";

(iv) for "Member States" substitute "States";

(c) in paragraph 3—

(i) for "territory of a Member State other than that in which the institution designated in accordance with the implementing Regulation is situated" substitute "United Kingdom instead of the institution in the Member State designated in accordance with the implementing Regulation";

(ii) for "former institution" substitute "institution in the United Kingdom";

(iii) omit from "That date" to the end of paragraph 3;

(iv) after paragraph 3 insert—

"**3A.** Where a person has mistakenly submitted information, documents or claims to an institution in a Member State and the implementing Regulation designated the United Kingdom, the date on which they were submitted to the institution in the Member State shall be binding on the institution in the United Kingdom to whom they should have been submitted. An institution in the United Kingdom shall not, however, be held liable, or deemed to have taken a decision, by virtue of its failure to act as a result of the late transmission of information, documents or claims by Members States' institutions.";

(d) in paragraph 4—

(i) for "Member State of destination" substitute "United Kingdom";

(ii) for "that Member State" substitute "the United Kingdom".

4. In Article 3—

(a) in paragraph 1 for "Member States" substitute "An institution in the United Kingdom";

(b) in paragraph 3 for "Member States" substitute "an institution in the United Kingdom";

(c) in paragraph 4—

(i) for "relevant institutions" substitute "relevant institution in the United Kingdom";

(ii) for "Member State in question" substitute "United Kingdom";

(iii) for "another Member State" substitute "a Member State".

5. Omit Article 4.

6. In Article 5—

(a) in the heading for "another Member State" substitute "a Member State";

(b) in paragraph 1 for "other Member States" substitute "United Kingdom";

(c) in paragraph 2—

(i) for "Member State that receives the document" substitute "United Kingdom";

(ii) for "shall reconsider" substitute "may reconsider";

(d) in paragraph 3 for "shall, insofar as this is possible," substitute "may";

(e) omit paragraph 4.

7. Omit Article 6(**2**).

8. In Article 7(1)—

(a) after "competent institution" insert "in the United Kingdom";

(b) for "another Member State" substitute "a Member State".

PART 3

Amendments to Chapter 3: Other general provisions for the application of the basic Regulation

9. In Article 8—

(a) in the heading for "Member States" substitute "States";

(b) in paragraph 1—

(i) omit from "provisions of the implementing Regulation" to ", except the";

(ii) at the end add ", may continue to have effect";

(c) for paragraph 2 substitute—

"**2.** This Regulation does not apply to any matter within the scope of a convention in force between the United Kingdom and a Member State on or after exit day, to the extent that convention makes difference provision.".

10. In Article 9—

(a) in paragraph 1 and 3 for "Member States" in each place it occurs substitute "States";

(b) in paragraph 2 for "shall be notified to the Administrative Commission and" substitute "are".

11. In Article 10 for "Member States" in both places it occurs substitute "States".

12. In Article 11—

(a) in paragraph 1—

(i) for "Where there is" to "agreement" substitute "Where there is a question about whether the place of residence of a person to whom the basic Regulation applies is the United Kingdom or a Member State, the institution in the United Kingdom shall establish";

(ii) in point (a) after "territory of" insert "the United Kingdom or";

(iii) in point (b)(vi) for "Member State" substitute "State";

(b) in paragraph 2 for "agreement between the institutions concerned" substitute "a conclusion".

13. In Article 12—

(**2**) Paragraph 1(b) and (c) of Article 6 were substituted by Regulation (EU) No 465/2012 of the European Parliament and of the Council of 22 May 2012 ("Regulation (EU) 465/2012").