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 883/2004, EEA Agreement and Swiss Agreement) (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, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security Coordination (Regulation (EC) No 883/2004, EEA Agreement and Swiss Agreement) (Amendment) (EU Exit) Regulations 2019 and come into force on exit day.

(2) In these Regulations, "Regulation (EC) No 883/2004" means Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems.

Amendment of Regulation (EC) No 883/2004

2. The Schedules to these Regulations amend Regulation (EC) No 883/2004 as follows—

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

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

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

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

(d) Schedule 4 amends Title 5 (miscellaneous provisions);

(e) Schedule 5 amends Title 6 (transitional and final provisions);

(f) Schedule 6 amends the Annexes.

Amendment of the EEA Agreement

3.—(1) Annex 6 to the EEA agreement is amended as follows.

(2) Omit part 2 of the section headed "SECTORAL ADAPTATIONS".

(3) In Part 1 (general social security coordination – acts referred to)—

(a) in paragraph 1—

(i) for "as corrected by" in the first place it occurs to the end of point (d) substitute "as retained by the European Union (Withdrawal) Act 2018 and as amended by regulations made under that Act";

(ii) omit points (g) to (k);

(iii) in point (l) omit the headings ICELAND and NORWAY and the text under each;

(iv) omit from "modalities for the participation of EFTA states" to the end of the paragraph.

(b) in paragraph 2 for "as amended by" to the end of the paragraph substitute "as retained by the European Union (Withdrawal) Act 2018 and as amended by regulations made under that Act".

Modification of the Swiss Agreement

4.—(1) As it applies in the United Kingdom, the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, done at Luxembourg on 21st June 1999 is to be read as if the following modifications were made.

(2) In Annex 2 (co-ordination of social security schemes) in Article 1 as if after paragraph 2 there is added—

"**3.** References to legal acts of the European Union in section A of this Annex are references to those acts as retained by the European Union (Withdrawal) Act 2018 and as amended by regulations made under that Act.".

(3) In section A (legal acts referred to) as if there are the following omissions—

(a) in paragraph (1)—

(i) from "as amended by" to the end of point (c);

(ii) from point (e) to the end of the paragraph;

(b) in paragraph (2) from "as amended by" to "health care benefits".

Revocation

5. Title 4 (Administrative Commission and Advisory Committee) of Regulation (EC) No 883/2004 is revoked.

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

Name
Minister of State for Employment
Date Department for Work and Pensions

SCHEDULES

SCHEDULE 1

Regulation 2(a)

Amendments to Title 1: General Provisions

1. In Article 1—

(a) before point (a) insert—

"(za) "State" means the United Kingdom or a Member State;";

(b) in points (a) to (e) for "Member State" in each place it occurs substitute "State";

(c) for point (f) substitute—

"(f) "frontier worker" means any person pursuing an activity as an employed or self-employed person—

(i) in the United Kingdom and who resides in a Member State to which the person returns as a rule daily or at least once a week; or

(ii) in a Member State and who resides in the United Kingdom to which the person returns as a rule daily or at least once a week;";

(d) in point (i) in paragraph 2 for "Member State" substitute "State";

(e) in point (l)—

(i) for "Member State" in the first place it occurs substitute "State";

(ii) omit the second subparagraph;

(f) in point (m) for "Member State" in both places it occurs substitute "State";

(g) omit point (n);

(h) in points (p) to (s) for "Member State" in each place it occurs substitute "State";

2. After Article 1 insert—

"Article 1A

Performance of obligations dependent on Member State information

1. This Article applies where, in the view of the competent authority in 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) for "Member State" in each place it occurs substitute "State";

(b) for "Member States" in each place it occurs substitute "States".

4. In Article 3(**2**) for "Member State" in each place it occurs substitute "State".

5. Omit Article 4.

6. In Article 5—

(a) in point (a)—

(i) for "where, under the legislation of the competent Member State" substitute "where the United Kingdom is the competent State and, under the legislation of the United Kingdom";

(ii) for "another Member State" in both places it occurs substitute "a Member State";

(b) in point (b)—

(i) for "where, under the legislation of the competent Member State" substitute "where the United Kingdom is the competent State and, under the legislation of the United Kingdom";

(ii) for "that Member State" substitute "the competent authority";

(iii) for "any Member State" substitute "a Member State";

(iv) for "its own territory" substitute "the United Kingdom".

7. In Article 6—

(a) for "the competent institution of a Member State whose legislation makes" substitute "the United Kingdom is the competent State and legislation of the United Kingdom makes";

(b) after "residence" in the first place it occurs, insert "the competent institution in the United Kingdom";

(c) for "other Member State" substitute "Member State";

(d) for "which it applies" substitute "of the United Kingdom".

8. In Article 7—

(a) for "one or more Member States or under this Regulation" substitute "the United Kingdom";

(b) omit from "other than" to the end of the Article.

9. Article 8 is amended as follows—

(a) for "This Regulation" to "shall, however," substitute "The provisions listed in Annex 2";

(**2**) Paragraph 5 of Article 3 of the Regulation was substituted by Regulation (EC) No 988/2009 of the European Parliament and of the Council of 16 September ("Regulation No 988/2009").