

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 (Council Regulation (EEC) No 1408/71 and Council Regulation (EC) No 859/2003) (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 (Council Regulation (EEC) No 1408/71 and Council Regulation (EC) No 859/2003) (Amendment) (EU Exit) Regulations 2019 and come into force on exit day.

(2) In these Regulations “Regulation (EEC) No 1408/71” means Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community⁽²⁾.

Amendment of Regulation (EEC) No 1408/71

2. The Schedules to these Regulations amend Regulation (EEC) No 1408/71 as follows—
- (a) Schedule 1 amends Title 1 (general provisions);
 - (b) Schedule 2 amends Title 2 (determination of the legislation applicable);

⁽¹⁾ 2018 c. 16.

⁽²⁾ The text of Regulation (EEC) 1408/71 is restated in Annex A, Part 1 of Council Regulation (EC) No 118/97 of 2 December 1996. There are amendments to that text.

- (c) Schedule 3 amends Title 3 (special provisions relating to the various categories of benefits);
- (d) Schedule 4 amends Title 6 (miscellaneous provisions);
- (e) Schedule 5 amends Title 7 (transitional and final provisions);
- (f) Schedule 6 amends the Annexes.

Amendment of Regulation (EC) No 859/2003

3.—(1) Council Regulation (EC) No 859/2003 of 14 May 2003 extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality is amended as follows.

(2) In Article 1—

- (a) for “Member State” in both places it occurs substitute “State”;
- (b) at the end add the following paragraph—

“In this Regulation “State” means the United Kingdom or a Member State.”.

(3) In Article 2 for “Member State” in each place it occurs substitute “State”.

(4) After Article 3 omit “This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community”.

Revocation in relation to Regulation (EEC) No 1408/71

4. Titles 4 and 5 of Regulation (EEC) No 1408/71 are revoked.

Signed on behalf of the Secretary of State for Work and Pensions

Date

Name
Minister of State for Employment
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 point (a)(3) for “Member State” in each place it occurs substitute “State”;

(c) for point (b) substitute—

“(b) “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,

however, a frontier worker who is posted elsewhere in the territory of the same or another State by the undertaking to which he is normally attached, or who engages in the provision of services elsewhere in the territory of the same or another State, shall retain the status of frontier worker for a period not exceeding four months, even if he is prevented, during that period, from returning daily or at least once a week to the place where he resides;”;

(d) for point (c) substitute—

“(c) “seasonal worker” means any employed person who goes:

(i) from the United Kingdom, where the person is resident, to the territory of a Member State; or

(ii) from a Member State, where the person is resident, to the territory of the United Kingdom,

to do work there of a seasonal nature for an undertaking or an employer of that State for a period which may on no account exceed eight months, and who stays in the territory of the said State for the duration of this work; work of a seasonal nature shall be taken to mean work which, being dependent on the succession of the seasons, automatically recurs each year;”;

(e) in point (ca)(4) for “Member State” substitute “State”;

(f) in point (f)(5) for “Member State” in each place it occurs substitute “State”;

(g) in point (j)—

(i) for “Member State” in both places it occurs substitute “State”;

(3) Point (a) was amended by Council Regulation (EC) No 1606/98 of 29 June 1998 (“Regulation No 1606/98”).

(4) Point (ca) was inserted by Council Regulation (EC) No 307/1999 of 8 February 1999 (“Regulation No 307/1999”).

(5) Point (f) was amended by Council Regulation (EC) No 1290/97 of 27 June 1997 (“Regulation No 1290/97”) and Regulation No 307/1999.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Social Security Coordination (Council Regulation (EEC) No 1408/71 and Council Regulation (EC) No 859/2003) (Amendment) (EU Exit) Regulations 2019 No. 726*

- (ii) omit the words from “The term excludes” to “No 3 applied”;
 - (iii) omit “also”;
 - (h) in points (ja)(6) and (k) for “Member States” in each place it occurs substitute “States”;
 - (i) in point (l) for “Member State” substitute “State”;
 - (j) omit point (m);
 - (k) in point (n) for “Member State” substitute “State”;
 - (l) in point (o)—
 - (i) for “Member State” in both places it occurs substitute “State”;
 - (ii) for “member State” substitute “State”;
 - (m) in points (p) and (q) for “Member State” 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 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 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(7) for “Member States” in each place it occurs substitute “States”.
 4. Omit Article 3.
 5. In Article 4(8) for “Member State” in each place it occurs substitute “State”.
 6. Omit Articles 5 and 6.

(6) Point (ja) was inserted by Regulation No 1606/98.

(7) Article 2 was amended by Regulation No 1290/97 and Regulation No 1606/98 and substituted by Regulation No 307/1999.

(8) Article 4 was amended by Regulation No 1606/98 and Regulation (EC) No 647/2005 of the European Parliament and of the Council of 13 April 2005 (“[Regulation No 647/2005](#)”).

7. In Article 7(9)—

- (a) in paragraph 1(a) for “Member States” substitute “States”;
- (b) in paragraph 2—
 - (i) omit “provisions of Article 6 notwithstanding, the”;
 - (ii) for “Member States” substitute “United Kingdom and a Member State”;
- (c) after paragraph 2 add—

“3. 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 different provision.”.

8. Omit Article 8.

9. In Article 9—

- (a) for “The” substitute “Any”;
- (b) for “any Member State” substitute “the United Kingdom”;
- (c) for “territory of that State” substitute “United Kingdom”;
- (d) for “another Member State” in both places it occurs substitute “a Member State”;
- (e) for “first State” in both places it occurs substitute “United Kingdom”;
- (f) for “a Member State” substitute “the United Kingdom”.

10. In Article 9a(10)—

- (a) for “a Member State” substitute “the United Kingdom”;
- (b) for “that Member State” in both places it occurs substitute “the United Kingdom”;
- (c) for “another Member State” in both places it occurs substitute “a Member State”.

11. In Article 10(11)—

- (a) for “one or more Member States” substitute “the United Kingdom”;
- (b) omit “other than that in which the institution responsible for payment is situated”;
- (c) omit paragraph 2.

12. In Article 10a(12)—

- (a) in paragraph 1—
 - (i) for “The persons” substitute “Where they reside in the United Kingdom, the persons”;
 - (ii) for “Member State in which they reside” substitute “United Kingdom”;
 - (iii) for “that State” substitute “the United Kingdom”;
 - (iv) for “place of residence” substitute “United Kingdom”;
- (b) in paragraph 2—
 - (i) for “The institution of a Member State under whose legislation” substitute “Where, under the legislation of the United Kingdom,”;
 - (ii) after “or residence” in the first place it occurs insert “, the competent institution in the United Kingdom”;

(9) Article 7 was amended by Regulation No 647/2005.

(10) Article 9a was amended Regulation No 307/1999 and substituted by Regulation No 647/2005.

(11) Article 10 was amended by Regulation No 307/1999.

(12) Article 10a was amended by Regulation No 647/2005.