

## POLICY NOTE

### THE SOCIAL SECURITY CO-ORDINATION (EU EXIT) (SCOTLAND) (AMENDMENTS ETC.) REGULATIONS 2020

#### SSI 2020/399

The above instrument was made in exercise of the powers conferred by paragraph 1 of schedule 2 to the European Union (Withdrawal) Act 2018. These regulations are subject to negative procedure in accordance with paragraph 1(7) of schedule 7 of the European Union (Withdrawal) Act 2018

#### **Purpose of the instrument.**

These regulations repeal retained EU rules on social security coordination from 31 December 2020, when existing arrangements under EU law will cease to have direct effect in the UK. They make amendments to existing social security legislation made under the Social Security (Scotland) Act 2018 in connection with the revocation of the retained EU rules, to replace references to the EEA and retained direct EU law on social security co-ordination with new provisions which reflect the ending of the UK's reciprocal arrangements with the EU while ensuring that individuals who retain rights to social security under the terms of the EU-UK Withdrawal Agreement, or other UK social security agreements with the European Free Trade Area countries (Norway, Lichtenstein, Iceland), Switzerland, the Republic of Ireland and Gibraltar, remain eligible for assistance.

#### **Policy Objectives**

These regulations ensure that, aside from some specific savings provisions, the EU Social Security Co-ordination Regulations (SSC Regulations) which are retained on a unilateral basis under section 3 of the European Union (Withdrawal) Act 2018 (EUWA) will not take effect in domestic law from 31 December 2020 in areas of devolved competence. The regulations are drafted to preserve existing rights of eligible EU/EEA/Swiss nationals in accordance with the terms of the UK-EU Withdrawal Agreement.

#### **Explanation of the law being amended by the regulations**

EU SSC Regulations 883/2004, 987/2009, 1408/1971, 574/1972 and 859/2003 will cease to have direct effect in domestic law from 31 December 2020 as specified in Article 126 of the Withdrawal Agreement. Section 3 of EUWA 2018 converts the EU SSC Regulations into "retained direct EU legislation" which will be incorporated into UK law at the end of the transition period. These rules form the basis of a reciprocal pan-European system of social security coordination of which the UK, including Scotland, will no longer be a member after 31 December 2020.

UK regulations were laid using powers in the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 ("ISSC Act") on 17 November which make the same revocations and which have effect across the UK. However, to the extent that those regulations have

effect in Scotland, the Scottish Government's view is that they only extend to forms of social security in Scotland which remain reserved to the UK Government, such as income replacement benefits. This is because the ISSC Act powers expressly cannot be used to make provision in relation to matters which are within the legislative competence of the Scottish Parliament. As such, the Scottish Government considers separate provision is required to implement the changes necessitated by the end of the EU Exit transition period.

The amendments to the Funeral Expense Assistance (Scotland) Regulations 2019 (in regulation 5) will ensure that support for funerals in an EU Member State, Iceland, Liechtenstein, Norway or Switzerland will continue to be available after IP completion day to certain EU/EEA/Swiss citizens in accordance with the Withdrawal Agreement.

These amendments protect the rights of EU/EEA/Swiss citizens currently in the UK by providing that where they are granted indefinite or limited leave to enter or remain in the UK under the EU Settlement Scheme, they will continue to be eligible for the same support that they were entitled to before EU exit. Individuals who are eligible to apply for status under the EU Settlement Scheme but have not yet applied will also retain eligibility.

The amendments to The Early Years Assistance (Best Start Grants) (Scotland) Regulations 2018 and Welfare Foods (Best Start Foods) (Scotland) Regulations 2019 protect the rights of EU/EEA/Swiss citizens currently in the UK by providing that where they are granted indefinite or limited leave to enter or remain in the UK under the EU Settlement Scheme, they will continue to be eligible on the same terms as before EU Exit. Individuals who are eligible to apply for status under the EU Settlement Scheme but have not applied will also retain eligibility.

### **Reasons for and effect of the proposed change or changes on retained EU law**

The EU rules on social security coordination contained in the instruments referred to above will continue to have direct effect in the UK until 31 December 2020, after which they will be retained in domestic law by operation of s3 of EUWA 2018. The changes made by these regulations are necessary to ensure that the retained rules do not continue to have effect in Scotland as far as they affect devolved forms of social security assistance. Failing to make these changes would mean Scottish Ministers had a legal obligation to adhere to the rules of a reciprocal system of social security coordination unilaterally.

### **Statements required by European Union (Withdrawal) Act 2018**

#### **Statement that in their opinion Scottish Ministers consider that the regulations do no more than is appropriate**

The Cabinet Secretary for Social Security and Older People has made the following statement "In my view The Social Security Co-ordination (EU Exit) (Scotland) (Amendments etc.) Regulations 2020 do no more than is appropriate.

"This is the case because the regulations revoke parts of the retained EU law on social security coordination which will no longer function properly after 31 December 2020, fixing these deficiencies in a way which ensures payments remain available to eligible EU/EEA/Swiss nationals after 31 December 2020 in accordance with our legal obligations under the UK-EU Withdrawal Agreement, and other UK international social security

agreements with Iceland, Norway, Lichtenstein, Switzerland, the Republic of Ireland and Gibraltar.”

**Statement as to why the Scottish Ministers consider that there are good reasons for the regulations and that this is a reasonable course of action**

The Cabinet Secretary for Social Security and Older People has made the following statement  
“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action.

“Failure to make the regulations timeously would leave Scottish Ministers bound to honour the reciprocal EU rules on social security coordination unilaterally as a non-Member State.

**Statement as to whether the SSI amends, repeals or revokes any provision of equalities legislation, and, if it does, an explanation of that amendment, repeal or revocation**

The Cabinet Secretary for Social Security and Older People has made the following statement  
“In my view The Social Security Co-ordination (EU Exit) (Scotland) (Amendments etc.) Regulations 2020 do not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”

**Statement that Scottish Ministers have, in preparing the regulations, had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010**

The Cabinet Secretary for Social Security and Older People has made the following statement  
“In my view The Social Security Co-ordination (EU Exit) (Scotland) (Amendments etc.) Regulations 2020 have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

**Additional information provided for EU Exit instruments in terms of the protocol agreed between the Scottish Government and the Scottish Parliament**

**Statement that Scottish Ministers have, in preparing the regulations, had due regard to the guidance principles on the environment and animal welfare**

This heading is not applicable.

**Statement explaining the effect (if any) of the regulations on rights and duties relating to employment and health and safety and matters relating to consumer protection (so far as is within devolved competence)**

This heading is not applicable.

**An indication of how the regulations should be categorised in relation to the significance of the change proposed**

The regulations should be categorised as Low. The amendments are technical in nature, do not implement a policy choice of Scottish Ministers, and confer no new powers.

## **Statement setting out the Scottish Ministers' reasons for their choice of procedure**

Negative procedure is considered appropriate as these are minor and technical amendments and do no more than is necessary to ensure that the relevant legislation continues to operate effectively following the UK's withdrawal from EU. They do not impose any additional financial burdens on local authorities or businesses and do not include provision which falls within paragraph 1(2) of schedule 7 of the European Union (Withdrawal) Act 2018.

### **Further information**

#### **Consultation**

To comply with the requirements of paragraph 4 of schedule 2 of the EU (Withdrawal) Act 2018 the Secretary of State for Work and Pensions was consulted by way of letter from the Cabinet Secretary for Social Security and Older People dated 16 November 2020. No other consultation was considered necessary as the amendments are minor and technical in nature.

#### **Impact Assessments**

Full impact assessments have not been prepared for this instrument because the amendments made by the instrument are minor and technical in nature. The amendments do not alter Scottish Government's current environmental policies and priorities and, therefore, do not have a significant impact on the environment. The impact on business, charities or voluntary bodies is expected to be minimal.

#### **Financial Effects**

The Cabinet Secretary for Social Security and Older People confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government  
Social Security Directorate

26 November 2020