

**EXPLANATORY MEMORANDUM TO**  
**THE SOCIAL SECURITY (RECIPROCAL AGREEMENTS) (MISCELLANEOUS**  
**AMENDMENTS) (EU EXIT) REGULATIONS 2021**

**2021 No. [XXXX]**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions (DWP) and is laid before Parliament by Act.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments, the Select Committee on Statutory Instruments and the Sifting Committees.

**2. Purpose of the instrument**

- 2.1 This instrument corrects deficiencies in UK legislation following the end of the transition period in areas of DWP policy. It aligns the statute book with certain arrangements which are already set out in international agreements, and removes certain redundant provisions, so providing legislative clarity, with some savings provisions where appropriate.

*Explanations*

What did any relevant EU law do before exit day?

- 2.2 The impact of the relevant EU law before exit day is set out in section 7 of this memorandum. These regulations reflected in domestic law, the UK's obligations under EU law whilst a member state of the EU.

Why is it being changed?

- 2.3 The proposed regulations will align our domestic regulations with the position following EU exit, as set out in section 7 of this memorandum. Regulations 2, 3, 4, 5 and 6 (except from 2(2)(iv)) tidy up UK domestic legislation to align this with the position under the UK's new social security arrangements with the EU, European Economic Area (EEA) European Free Trade Area (EFTA)<sup>1</sup> states and Switzerland, as detailed in section 6. Regulation 2(2)(iv) restores the social security position, which was in place immediately before exit day, for individuals in scope of the Convention on Social Security between the UK and Ireland<sup>2</sup>, for the purpose of Winter Fuel Payment. Regulation 7 repeals retained EU law, related to transfer rights of certain accrued state benefits, for employees of certain EU institutions, in line with the ending of free movement between the UK and the EU.

What will it now do?

- 2.4 The impact of the proposed regulations is set out in section 7 of this memorandum.

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<sup>1</sup> The EEA EFTA states are Iceland, Liechtenstein and Norway

<sup>2</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/778087/CS\\_Ireland\\_1.2019\\_Soc\\_Sec.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/778087/CS_Ireland_1.2019_Soc_Sec.pdf)

### **3. Matters of special interest to Parliament**

#### *Matters of special interest to the Sifting Committees*

3.1 This instrument is being laid for sifting by the Sifting Committees.

#### *Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

### **4. Extent and Territorial Application**

4.1 The territorial extent of regulations 5, 6 and 7 is the United Kingdom. The territorial extent of regulations 2, 3 and 4 is England and Wales and Scotland.

4.2 The territorial application of regulations 5, 6 and 7 is the United Kingdom. The territorial application of regulations 2, 3 and 4 is England and Wales and Scotland.

### **5. European Convention on Human Rights**

5.1 The Minister for Disabled People, Health and Work at the Department for Work and Pensions, Justin Tomlinson has made the following statement regarding Human Rights:

“In my view regulation 7 of the Social Security (Reciprocal Agreements) (Miscellaneous Amendments) (EU Exit) Regulations 2021, which revokes provisions of EU Council Regulation (EEC, Euratom, ECSC) No 259/68, is compatible with the Convention rights.”

5.2 As regulations 2, 3, 4, 5 and 6 of the Social Security (Reciprocal Agreements) (Miscellaneous Amendments) (EU Exit) Regulations 2021 do not amend primary legislation or retained EU law and the instrument is subject to the negative procedure, no statement is required in respect of those provisions.

### **6. Legislative Context**

6.1 The UK’s arrangements on social security with the EEA and Switzerland are now governed by the Withdrawal Agreement<sup>3</sup> (and parallel agreements with EEA EFTA states<sup>4</sup> and Switzerland<sup>5</sup>), the Trade and Cooperation Agreement<sup>6</sup> for the EU, and UK-Ireland Convention on Social Security between the UK and Ireland. The UK is in the process of negotiating arrangements with the EEA EFTA States and separately with

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<sup>3</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/840655/Agreement\\_on\\_the\\_withdrawal\\_of\\_the\\_United\\_Kingdom\\_of\\_Great\\_Britain\\_and\\_Northern\\_Ireland\\_from\\_the\\_European\\_Union\\_and\\_the\\_European\\_Atomic\\_Energy\\_Community.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840655/Agreement_on_the_withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union_and_the_European_Atomic_Energy_Community.pdf)

<sup>4</sup> EEA EFTA Separation Agreement - <https://www.gov.uk/government/publications/eea-efta-separation-agreement-and-explainer>

<sup>5</sup> Swiss Citizens’ Rights Agreement - <https://www.gov.uk/government/publications/swiss-citizens-rights-agreement-and-explainer>

<sup>6</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/948119/EU-UK\\_Trade\\_and\\_Cooperation\\_Agreement\\_24.12.2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948119/EU-UK_Trade_and_Cooperation_Agreement_24.12.2020.pdf)

Switzerland similar to those in place under the Trade and Cooperation Agreement<sup>7</sup> with the EU.

- 6.2 The Social Fund Winter Fuel Payment Regulations 2000<sup>8</sup> were made in the context of the UK being a member of the EU, to fulfil the UK's obligations under Regulation (EC) No 883/2004<sup>9</sup>.
- 6.3 The Transfer of State Pensions and Benefits Regulations 2007<sup>10</sup> and the Social Security (Application of Reciprocal Agreements with Australia, Canada and New Zealand) (EEA States and Switzerland) Regulations 2015<sup>11</sup> were made under section 2(2) of the European Communities Act 1972 in compliance with the UK's European treaty obligations.
- 6.4 The European Network of Employment Services (EU Exit) Regulations 2018<sup>12</sup> relate to the European Union Programme for Employment and Social Innovation. As such, these regulations relate to the EEA.
- 6.5 The regulations listed in 6.2, 6.3 and 6.4 are EU derived domestic legislation. The European Union (Withdrawal) Act (EUWA) 2018<sup>13</sup> repeals the European Communities Act 1972<sup>14</sup> but section 2 saves EU-derived domestic legislation so that it continues to have effect in domestic legislation on or after exit day. These regulations are, therefore, retained EU law under section 6(7) of EUWA 2018.
- 6.6 Regulation (EEC, Euratom, ECSC) No 259/68<sup>15</sup> of the Council of 29 February 1968, laying down the Staff Regulations of Officials of the European Union and Conditions of Employment of Other Servants of the European Union referred to in regulation 7, is an EU regulation which had direct effect immediately before the implementation period completion date and is, therefore, direct EU legislation under EUWA 2018. Section 3 of EUWA 2018 provides that direct EU legislation forms part of domestic law after the implementation period completion date. This EU Council regulation is therefore, retained EU law under section 6(7) of EUWA 2018.
- 6.7 There are deficiencies in the operation of these provisions of retained EU law, as detailed in section 7, which this instrument corrects pursuant to the power in section 8 of EUWA 2018. In addition, the articles being omitted are expressly referenced in

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<sup>7</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/948119/EU-UK\\_Trade\\_and\\_Cooperation\\_Agreement\\_24.12.2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948119/EU-UK_Trade_and_Cooperation_Agreement_24.12.2020.pdf)

<sup>8</sup> Regulations - [https://www.legislation.gov.uk/ukxi/2000/729/pdfs/ukxi\\_20000729\\_310518\\_en.pdf](https://www.legislation.gov.uk/ukxi/2000/729/pdfs/ukxi_20000729_310518_en.pdf)

<sup>9</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02004R0883-20140101&from=EN>

<sup>10</sup> Regulations - [https://www.legislation.gov.uk/ukxi/2007/1398/pdfs/ukxi\\_20071398\\_301114\\_en.pdf](https://www.legislation.gov.uk/ukxi/2007/1398/pdfs/ukxi_20071398_301114_en.pdf)

Explanatory memorandum - [https://www.legislation.gov.uk/ukxi/2007/1398/pdfs/ukxiem\\_20071398\\_en.pdf](https://www.legislation.gov.uk/ukxi/2007/1398/pdfs/ukxiem_20071398_en.pdf)

<sup>11</sup> Regulations - [https://www.legislation.gov.uk/nisr/2015/281/pdfs/nisr\\_20150281\\_en.pdf](https://www.legislation.gov.uk/nisr/2015/281/pdfs/nisr_20150281_en.pdf)

Explanatory memorandum - [https://www.legislation.gov.uk/ukxi/2015/349/pdfs/ukxiem\\_20150349\\_en.pdf](https://www.legislation.gov.uk/ukxi/2015/349/pdfs/ukxiem_20150349_en.pdf)

<sup>12</sup> Regulations - [https://www.legislation.gov.uk/ukxi/2018/1283/pdfs/ukxi\\_20181283\\_en.pdf](https://www.legislation.gov.uk/ukxi/2018/1283/pdfs/ukxi_20181283_en.pdf)

Explanatory memorandum - [https://www.legislation.gov.uk/ukxi/2018/1283/pdfs/ukxiem\\_20181283\\_en.pdf](https://www.legislation.gov.uk/ukxi/2018/1283/pdfs/ukxiem_20181283_en.pdf)

<sup>13</sup> [https://www.legislation.gov.uk/ukpga/2018/16/pdfs/ukpga\\_20180016\\_en.pdf](https://www.legislation.gov.uk/ukpga/2018/16/pdfs/ukpga_20180016_en.pdf)

<sup>14</sup> [https://www.legislation.gov.uk/ukpga/1972/68/pdfs/ukpga\\_19720068\\_en.pdf](https://www.legislation.gov.uk/ukpga/1972/68/pdfs/ukpga_19720068_en.pdf)

<sup>15</sup> Council Reg 259 is retained EU legislation that is now part of UK domestic law pursuant to section 3 of EUWA 2018, and regulation 6 of the proposed regulations amends this UK domestic law. As there is not yet an established citation to Council Reg 259 as it exists in UK domestic law, text of Council Reg 259 as it exists in EU law can be found at the following citation and link but the text of the EU law cannot be relied upon as accurately reflecting UK domestic law as the EU text could include amendments made after the UK's exit that are not part of UK domestic law. Council Regulation (EEC, Euratom, ECSC) No 259/68 (OJ L 56, 4.3.1968), as last amended by Council Regulation (EC, Euratom) No 1023/13 of 22/10/2013. See <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1488382707485&uri=CELEX:01962R0031-20170101>

Article 114 of the Withdrawal Agreement, and are therefore recognised and available in UK domestic law for the purposes outlined in Article 114 pursuant to section 7A EUWA 2018.

## **7. Policy background**

### **The Social Fund Winter Fuel Payment Regulations 2000**

- 7.1 Winter Fuel Payments (WFPs) were introduced as part of the government's initiative to tackle fuel poverty amongst pensioners and is a lump sum paid each winter to individuals who have reached state pension age and are ordinarily resident in Great Britain in the qualifying week in September (equivalent provisions cover Northern Ireland). Under the EU social security coordination regulations (Regulation (EC) No 883/2004) individuals who met the qualifying conditions for WFPs, and had a genuine and sufficient link to the UK, could receive the payment if they were habitually resident in a EEA state or Switzerland in the qualifying week. This was restricted in 2015 to only those EEA states or Switzerland with an average winter temperature equal to, lower than, or close enough to be statistically equivalent to, the warmest winter area of the UK.
- 7.2 The Trade and Cooperation Agreement with the EU states at Annex SSC-1, Part 3(i) that WFPs are not in scope of this agreement. As a result, the UK will not pay WFPs to people who reside in the EU unless they are in full scope of the EU Withdrawal Agreement or parallel agreements with the EEA EFTA states and Switzerland, and have a genuine and sufficient link to the UK. Regulation 2(2)(i)-(iii) of the proposed regulations tidies up references in the Social Fund Winter Fuel Payment Regulations 2000 to align them with the position under these agreements.
- 7.3 The UK will also continue to pay WFPs to beneficiaries of the UK-Ireland Convention on Social Security, namely UK and Irish nationals who are habitually resident in Ireland, who have a genuine and sufficient link to the UK. Regulation 2(2)(iv) of the proposed regulations amends the Social Fund Winter Fuel Payment Regulations 2000 to align these domestic regulations with this position.

### **The Social Security (Application of Reciprocal Agreements with Australia, Canada and New Zealand) (EEA States and Switzerland) Regulations 2015**

- 7.4 The social security reciprocal agreements with Canada<sup>16</sup>, New Zealand<sup>17</sup>, and the former agreement with Australia<sup>18</sup>, include provisions applying to persons resident in the United Kingdom who had previously been resident in the named country. These specify that, for the purpose of calculating entitlement to a retirement pension in the United Kingdom, legislation mentioned in the agreements is modified so that those persons are treated as if they (or, in some cases their spouse) had paid national insurance contributions in the United Kingdom during the periods in which they were resident in Australia, Canada or New Zealand. The agreement with New Zealand also

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<sup>16</sup> S.I. 1995/2699, Social Security (Canada) Order 1995 - [https://www.legislation.gov.uk/ukSI/1995/2699/pdfs/ukSI\\_19952699\\_301114\\_en.pdf](https://www.legislation.gov.uk/ukSI/1995/2699/pdfs/ukSI_19952699_301114_en.pdf)

<sup>17</sup> S.I. 1983/1894, Social Security (New Zealand) Order 1983 - [https://www.legislation.gov.uk/ukSI/1983/1894/pdfs/ukSI\\_19831894\\_310515\\_en.pdf](https://www.legislation.gov.uk/ukSI/1983/1894/pdfs/ukSI_19831894_310515_en.pdf)

<sup>18</sup> S.I. 1992/1312, Social Security (Australia Order) 1992 - [https://www.legislation.gov.uk/ukSI/1992/1312/pdfs/ukSI\\_19921312\\_301114\\_en.pdf](https://www.legislation.gov.uk/ukSI/1992/1312/pdfs/ukSI_19921312_301114_en.pdf)

contains similar provisions for widows and orphans benefits, and the former agreement with Australia contains similar provisions for widows benefits.

- 7.5 The Australia Order was revoked in 2001, with saving provisions for individuals with periods of residence in Australia prior to 1 March 2001, and those saving provisions continue to have effect to the extent provided for by virtue of section 299 of the Pensions Act 2004<sup>19</sup>.
- 7.6 The 2015 Regulations set out how the provisions of the agreements with Canada, New Zealand and Australia, noted above, relate to persons who (a) are an EEA citizen (inclusive of UK, at the time) or Swiss national, (b) fall within the personal scope of Regulation (EC) No 1408/71<sup>20</sup> or Regulation (EC) No 883/2004 on the coordination of social security systems, otherwise known as the “EU SSC Regulations”, (c) are habitually resident in an EEA State or Switzerland and (d) have a genuine and sufficient link to the UK. This means that a UK national, EEA citizen or Swiss national who retired in the EEA or Switzerland after a period of residence in, for example New Zealand, could benefit from the provisions when calculating their UK State Pension. This was as a result of the EU Commission taking the position that the requirement for a beneficiary to be resident in the UK imposed a restriction on a citizen’s free movement rights.
- 7.7 Following the end of the transition period, free movement has ended and new arrangements for social security coordination are in place under the Trade and Cooperation Agreement with the EU. Regulation 4(1) of the proposed regulations will therefore revoke the Social Security (Application of Reciprocal Agreements with Australia, Canada and New Zealand) (EEA States and Switzerland) Regulations 2015. This will align the position with that of persons retiring to countries outside of the EEA or Switzerland.
- 7.8 Savings provisions are included at Regulation 4(2) of the proposed regulations for individuals resident in an EEA state or Switzerland on 31 December 2021, while they remain resident in that state. This will mean that individuals resident in the EEA or Switzerland, already receiving a UK State Pension which is partially based on years of residence in the named country, or an individual resident in the EEA or Switzerland by 31 December 2021 yet to claim their UK State Pension but which would be partially based on years of residence in the named country when they come to claim it, would not be impacted while they continue to reside in that state, or if they return to the UK. This was announced [here](#) on 30 April 2021. These provisions never extended to individuals who were not EEA or Swiss citizens, so those citizens from so-called “third countries” will see no change.
- 7.9 Regulation 3(3) of the proposed regulations will amend the Social Security (Application of Reciprocal Agreements with Australia, Canada and New Zealand) (EEA States and Switzerland) Regulations 2015 to clarify that the savings provisions apply to UK nationals, as well as EEA citizens and Swiss nationals, now that EEA citizens no longer includes UK nationals. In addition to replacing the reference Regulation (EC) No 883/2004 with references to the EU Withdrawal Agreement, or equivalent agreements with the EEA EFTA states or Switzerland regulation 3(4) of the proposed regulations will also insert a reference to the Trade and Cooperation Agreement, to ensure that the provisions will extend to UK nationals who move to the

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<sup>19</sup> Pensions Act 2004 - <https://www.legislation.gov.uk/ukpga/2004/35/contents>

<sup>20</sup> <https://www.legislation.gov.uk/eur/1971/1408>

EEA or Switzerland between 1 January 2021 and 31 December 2021 and who are not covered by the by Regulation (EC) No 883/2004 or 1408/71.

### **European Network of Employment Services (EU Exit) Regulations 2018**

- 7.10 Regulation 3 of The European Network of Employment Services (EU Exit) Regulations 2018 was a contingency measure should the UK have left the EU without a withdrawal agreement, which saved Council Regulation (EC) No 1296/2013<sup>21</sup> of the European Parliament and of the Council, of 11 December 2013 on a European Union Programme for Employment and Social Innovation (“EaSI”), for the purposes of providing grants to existing grantees should the European Commission have refused to provide this post “exit day”. This gave a discretionary power to the Secretary of State to give financial provision to a person who had a grant agreement under the Employment and Social Innovation fund had the European Commission declined to make further payments. Under the EU Withdrawal Agreement the European Commission committed to honouring all such payments. Regulation 3 is therefore no longer needed and is being revoked by regulation 5 of the proposed regulations.

### **Transfer of State Pensions and Benefits Regulations 2007**

- 7.11 EU Council Regulation (EEC, Euratom, ECSC) No 259/68 (Council Reg 259) outlines the employment rights and benefits of individuals employed by certain EU institutions. These individuals can request to have the capital value of their rights accrued to certain state benefits (through their national insurance contributions in the case of the UK) transferred from an EU member state to the Pension Scheme of the European Union institutions in order to receive additional credit under the scheme. Section 3 of EUWA 2018 converted Council Reg 259 into “retained direct EU legislation” which was incorporated into UK law at the end of the transition period. The Transfer of State Pensions and Benefits Regulations 2007 set out the UK’s administrative process for applying for, calculating, and making the transfer, as well as preventing transferred rights from providing future contributory benefit entitlement to the transferor in the UK State scheme.
- 7.12 Article 114 of the EU Withdrawal Agreement (Article 114) provides for the continuation of the UK’s obligations, as they were immediately before the end of the transition period, with respect to the transfer rights of individuals who had commenced employment with certain EU institutions before the end of the transition period. Section 7A EUWA 2018 ensures that, where it is necessary to continue to apply directly applicable EU law under the Withdrawal Agreement, that legislation will form part of domestic law. The relevant Council Reg 259 Articles 11, 12, 39, 109, and 135 relating to transfer rights (Relevant Articles) are expressly referenced in Article 114, and are therefore recognised and available in UK domestic law for the purposes outlined in Article 114 pursuant to section 7A EUWA 2018.
- 7.13 Regulation 6 of the proposed regulations omits the ambulatory provision in regulation 1(2A) of the Transfer of State Pensions and Benefits Regulations 2007. Although no longer connected with EU changes to Council Reg 259 as of the end of the transition period, this ambulatory provision is being omitted because it is no longer needed as the regulations are saved as they were at the end of the transition period.

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<sup>21</sup> <https://www.legislation.gov.uk/eur/2013/1296/contents>

- 7.14 Regulation 7 of the proposed regulations omits the Relevant Articles to the extent they form part of UK domestic law pursuant to section 3 EUWA 2018, eliminating a parallel set of the Relevant Articles in domestic law. This will leave only the Relevant Articles in UK domestic law for purposes of Article 114. Identifying language has been included in the regulation to ensure only the articles that form part of UK domestic law pursuant to section 3 EUWA, as distinguished from the articles that form part of UK domestic law pursuant to section 7A EUWA 2018, are omitted. This change definitively ends transfer rights under the Transfer of State Pensions and Benefits Regulations 2007, as outlined above, for employees who are not within the scope of Article 114, as the UK is no longer a member state of the EU.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument is being made using the power in section 8 of the EU (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

## **9. Consolidation**

- 9.1 This instrument does not involve consolidation and there are no plans to consolidate the relevant legislation at this time.

## **10. Consultation outcome**

- 10.1 No formal consultation has taken place for these regulations as they are making technical amendments in consequence of EU exit.
- 10.2 The Social Security Advisory Committee (SSAC) have been consulted on the proposed Regulations. Drafts have been shared with the Scottish Government and Northern Ireland Executive.

## **11. Guidance**

- 11.1 DWP will be producing operational guidance for staff on the legislative changes as a result of these regulations.
- 11.2 Guidance for UK nationals in the EU, EEA and Switzerland on changes resulting from EU Exit in areas of DWP policy can be found [here](#).
- 11.3 Notice of the changes to The Social Security (Application of Reciprocal Agreements with Australia, Canada and New Zealand) (EEA States and Switzerland) Regulations 2015 was provided for on 30 April 2020 [here](#).

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because no impact on business is foreseen. The changes are auxiliary to changes for which an impact

assessments have already been published under the Immigration and Social Security Co-ordination Act 2020<sup>22</sup>.

### **13. Regulating small business**

13.1 The legislation does not apply to activities that are undertaken by small businesses.

### **14. Monitoring & review**

14.1 As this instrument is made under the EU (Withdrawal) Act 2018, no review clause is required.

14.2 This is a technical rectification and it is not foreseen that monitoring and evaluation will be necessary

### **15. Contact**

15.1 Liam Maher at the Department for Work and Pensions email: eu.agreements@dwp.gov.uk, can be contacted with any queries regarding the instrument.

15.2 Ronan O'Connor Deputy Director for International Strategy Division, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

15.3 Justin Tomlinson, Minister for Disabled People, Health and Work at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

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<sup>22</sup> <https://www.gov.uk/government/publications/immigration-bill-2020-overarching-documents/updated-impact-assessment-for-eu-social-security-co-ordination-february-2021-accessible-version>



# Annex

## Statements under the European Union (Withdrawal) Act 2018

### Part 1

#### Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.  State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.

Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the ‘good reasons’ for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister’s opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument’s effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority’s response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

## Part 2

### Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

#### 1. Sifting statement(s)

- 1.1 The Minister for Disabled People, Health and Work at the Department for Work and Pensions, Justin Tomlinson, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Social Security (Reciprocal Agreements) (Miscellaneous Amendments) (EU Exit) Regulations 2021 should be subject to annulment in pursuance of a resolution of either House of Parliament.”
- 1.2 This is because the proposed regulations make amendments as a consequence of EU exit and the end of the transition period. The amendments to the Social Fund Winter Fuel Payment Regulations 2000 are to implement policies which have already been agreed between the UK and Ireland, and to tidy up the regulations to align them with the position under the agreements with the EU.
- 1.3 The amendments to the Social Security (Application of Reciprocal Agreements with Australia, Canada and New Zealand) (EEA States and Switzerland) Regulations 2015 deal with technical provisions and impact a very small number of individuals. At present we estimate that less than 0.05% of recipients of a UK State Pension in the EEA or Switzerland do so under these provisions. The changes will align the position with that for individuals moving to countries outside of the EEA or Switzerland.
- 1.4 The amendments to the Transfer of State Pensions and Benefits Regulations 2007 deal with technical provisions.
- 1.5 The amendments to the European Network of Employment Services (EU Exit) Regulations 2018 are to tidy up the regulations.

#### 2. Appropriateness statement

- 2.1 The Minister for Disabled People, Health and Work at the Department for Work and Pensions, Justin Tomlinson, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Social Security (Reciprocal Agreements) (Miscellaneous Amendments) (EU Exit) Regulations 2021 does no more than is appropriate”.
- 2.2 This is the case because it does no more than is necessary to ensure that the UK statute book operates correctly, is coherent and tidy, and aligns with the position following EU exit, the ending of free movement, and the position with countries outside of the EEA and Switzerland. Further explanation can be found in section 7 of this Explanatory Memorandum.

#### 3. Good reasons

- 3.1 The Minister for Disabled People, Health and Work at the Department for Work and Pensions, Justin Tomlinson, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

3.2 These reasons are provided for in section 7 of this Explanatory Memorandum.

#### **4. Equalities**

4.1 The Minister for Disabled People, Health and Work at the Department for Work and Pensions, Justin Tomlinson, has made the following statement(s):

“The draft instrument does 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.”

4.2 “In relation to the draft instrument, I, Justin Tomlinson, 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”.

#### **5. Explanations**

5.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.