

Social Security Advisory Committee
Minutes of the meeting held on 19 May 2021
Caxton House, Tothill Street, London, SW1H 9NA

Chair: Dr Stephen Brien

Members: Bruce Calderwood
Carl Emmerson
Kayley Hignell
Phil Jones
Grainne McKeever
Seyi Obakin
Charlotte Pickles
Liz Sayce

Apologies: Chris Goulden
Dom Morris

1. Private session

[RESERVED ITEM]

2. The Social Security (Reciprocal Agreements) (Miscellaneous Amendments) (EU Exit) Regulations 2021

2.1 The Chair welcomed Sophia Harrington, Helen Birch, and Liam Maher (G7, SEO and HEO respectively from the International Policy Strategy Division) and Harriet Marsh (lawyer). Introducing the item, Helen Birch presented each of the four sets of regulations in turn, followed by questions from the Committee where required:

i) The European Network of Employment Services (EU Exit) Regulations 2018

These proposals are purely technical. If the UK had left the EU without a deal it may have been that funding agreements which had been made through this scheme were not honoured by the EU. The UK Government would have covered those grants in such an event, and regulations were made to that effect. However, as the Withdrawal Agreement covered the payment of these grants there was no need to have that back-up stated in regulations, so that is removed. This is simply a tidy up.

ii) *The Social Fund Winter Fuel Payments Regulations 2000*

Winter Fuel Payments (WFP) involve a one off payment between £100-£300, if the criteria is met in the qualifying week for the benefit in September of each year. These were paid to those resident in the EEA and Switzerland, but only in countries whose average winter temperature was lower than or equal to the warmest area in the UK. There are approximately 40,000 WFP recipients in the EEA and Switzerland, of which approximately 30,000 recipients are in Ireland, and approximately 90% of all recipients are UK or Irish nationals. WFPs continue to be paid to those in scope of the Withdrawal Agreement, and the agreements with EEA EFTA states and Switzerland. Also these will be paid to UK and Irish nationals in Ireland who are in scope of the reciprocal agreement. The domestic position is being aligned with the Withdrawal Agreement and the Trade and Cooperation Agreement, and the position remains the same for UK and Irish nationals in the UK and Ireland.

(a) Who is going to continue receive the payments – UK nationals, Irish nationals, and EU Nationals over pension age who have some kind of UK pension already?

Within Ireland the position will be unchanged for UK and Irish nationals, as long as they meet the qualifying criteria. Then there will be UK nationals resident in EEA countries, but also some EU citizens will be in the Withdrawal Agreement cohort.

(b) Is it the case that they must have a “genuine and sufficient” link to the UK if they are living in the EU?

Yes, which is based on a variety of factors – some EU nationals will qualify– for instance if they have family in UK, receive a UK State Pension etc. It is a broad test.

(c) Is this simply applying the EU Withdrawal Agreement into domestic legislation in the UK, and then applying the Irish agreement?

The Department is not making changes, rather just making it clear how the Withdrawal Agreement and the Trade and Cooperation Agreement applies, and for UK and Irish nationals it is putting the existing reciprocal agreement into effect.

(d) If these regulations were not laid, what would happen?

The Withdrawal Agreement and Trade and Cooperation Agreement already have effect, so legally these already apply. The only difference is the Irish aspect.

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

A person retiring in the UK following a period of residence in Australia (before March 2001), Canada or New Zealand can treat these periods of residence as type three national insurance contributions in the UK for calculating their UK State Pension.

In 2015 this was extended so that a UK national or any other EEA or Swiss citizen retiring in EEA countries or Switzerland could also have periods of residence in Australia (before March 2001), Canada and New Zealand counted towards their UK State Pension. Very few have relied on it; the Department estimates that less than 0.05% of UK State Pension recipients in the EEA and Switzerland are paid under these provisions. Now that free movement has ended the 2015 Regulations will be revoked, and the language of the regulations must be tidied up. By revoking the 2015 regulations these regulations are brought into line with the position with the rest of the world, where periods of residence in Australia, Canada or New Zealand are discounted. There is a savings provision for those already resident in the EEA or Switzerland as long as they remain in the same state as on 31 December 2021. So, a UK national currently in France, will remain able to benefit as long as they remain in France. Guidance on this has been published on Gov.UK.

(e) *Supposing Spain doesn't have a reciprocal agreement with Australia - the person spends time working in Australia and retires in Spain, but in future the person would not have this time in Australia contributed to their UK pension?*

To clarify, these regulations are based on residence, rather than on working, but in this instance, yes this individual would see a change between old and new rules if they move to Spain from next year.

(f) *In that case, say, a person is married to a worker in Australia, they then retire in Spain, that person with no work history in Australia but who would be earning their stamps is no longer supported?*

Correct. They would also be covered based on residence. If they retire to Spain after 31 December 2021 then their UK State Pension would only be calculated based on their UK national insurance record. This is the same as if they retired to a non EEA country.

- (g) How would a reciprocal agreement help? So, using the example given, could they qualify based on a Spanish reciprocal agreement? If they can, then would the UK will pay the part based only on UK national insurance contributions, and Spain would pay for the part based on the Australian residence period?**

Some EEA countries will have an agreement with all three (Canada, Australia, New Zealand), or some but not others. If a UK national is living in an EU country, following a period of residence in, for example, New Zealand, and that EU country has its own reciprocal agreement with New Zealand then DWP would consider if the individual would be covered by that agreement. If they were then they would receive a pro rata pension from New Zealand under the terms of that agreement and their UK State Pension would be calculated based only on their UK National Insurance record. To clarify, under the agreements the EU member states have, the EU state would pay a pro rata pension and, in the example, New Zealand would also pay a pro rata pension.

- (h) Why does the policy care that the person moves? Also, is it clearly explained to them how moving their country of residence could affect their state pensions rights? Could we see a copy of the relevant letter that is sent to individuals in such instances?**

The policy reflects the fact that a move of country outside the UK can affect pension entitlement. For example, if a person moved to the USA, they would not receive an enhancement for years spent in Australia, New Zealand or Canada. So this aligns with the position in the rest of the world.

People are asked to contact DWP before they move, to ask what the impact would be on their state pension, and to inform them of the need to inform the Department of all changes of circumstances including a move of address, and that these could impact on the amount paid. The effect now is the same as if they informed us they were moving to the USA. Identifying the small number of individuals would come at a disproportionate cost to the tax payer.

The Department agreed to share an example of the correspondence issued.

- (i) France and Spain are separate sovereign nations, but psychologically people might see the move from France to Spain as not as significant due to them both being EU Member states.**

Free movement has ended, and so UK nationals can no longer move between EU states to live as before without applying for a visa in the host country, so in this context it is the same as if they were moving to the USA. It is made explicit in the press notice that this includes moving between EEA states.

- (j) For those who went to Spain before EU exit, what information would they have been given which explained the parameters of how receiving the benefit was impacted differently by, say, moving to the USA rather than between EEA states?**

They would have been informed of how their UK state pension is made up, how it is made up of residence periods in Canada, New Zealand, and Australia, but because the rules are so complex they would be asked to contact the Department so the specific impact on them could be investigated and communicated.

- (k) So the Department has already told them that if they are moving to another country there will be an impact to their pension?**

Correct. When they contact DWP to inform us of the move, the Department would inform them of the impact on their UK State Pension.

- (l) If these regulations were not laid, what would happen?**

There would be domestic legislation that said the UK would pay the enhancements in EEA countries, so the UK would be being more generous with EEA states than rest of the world with no justification for that. This would create a situation of inequality without a reciprocal agreement.

iv) Transfer of State Pensions and Benefits Regulations 2007

EU Council Regulation 259/68 sets out that those who worked in certain EU Institutions can request that a member state in which they have previously made social security contributions transfer the capital value of their state pension entitlement based on these contributions to the Pension Scheme of the EU (PSEU). Article 114 of the Withdrawal Agreement sets out a saving provision so individuals who have commenced work in a relevant EU institution before the end of transition period will continue to be covered by these provisions as at the end of transition period. The relevant articles of Regulation 259/68 will be revoked, except as they pertain to those covered under Article 114. These regulations clarify the position in domestic law.

When someone has UK national insurance contributions and they are transferred to the EU scheme, that person can no longer benefit from those contributions in the UK.

- (m) An individual must be employed before the end of the transition date, and then this just maintains the eligibility in future, is that correct?**

Correct. These changes are consequential of the UK no longer being an EU member state and so the changes have already taken effect. These regulations repeal what is not needed any more. UK nationals who have acquired an EU passport could still take up work in an EU institution.

- (n) Are there any particular groups who benefitted before who could be impacted by this change in future?**

The Department is not aware of any specific groups. While a person may benefit by moving contributions into the EU scheme, they will also no longer be able to benefit from them in the UK scheme.

- (o) If the scheme was particularly beneficial to part time workers in the EU institutions could there be an impact on them? Also, was the date of introduction impacted by Covid at all?**

It is not possible to say definitively either way if there is a particular impact for part time workers, but the Department is not revoking the provisions for those employed before this year. The date was set by Article 114 of the Withdrawal Agreement and is based on starting employment not taking up residency, so is not impacted by Covid in the same way. Individuals who cannot transfer can continue to benefit from their UK national insurance record under the UK social security system.

- (p) Selling the national insurance contributions might be advantageous in terms of the EU pension but disadvantageous if you become unemployed or sick - how do people know how to make a balanced choice?**

People apply and are informed of the estimated value they would be transferring, and then they have three months to make that decision, as part of that the details of the decision is explained.¹ To work in a EU institution one has to be a national of the EU, so in future there will be no UK nationals who could have benefitted from these provisions.

¹ Sample letters provided to show what information is provided to individuals.

- (q) People already employed in the EU Institutions retain the right to transfer and this will linger on, so in 35 years this could still be relevant. Could this have been time limited?**

No. Under Article 114 of the Withdrawal Agreement the UK committed to continuing these provisions for people who have commenced employment in a relevant EU institution by 31 December 2020, so it will continue but will taper off over time.

- (r) A general question that applies to all these regulations – there has been concern that following EU exit that we may end up in a weaker relationship with EEA countries and that the exchange of information would suffer. Has that been your experience?**

Joint committees have been set up with EU member states and, we still attend the EU Administrative Commission in an observer role. This committee is responsible for seeking solutions and common approaches to administrative matters of EU Social Security Coordination Regulations. There have been no reports yet of any problem with information flow beyond some Covid related problems.

2.2 The Chair thanked the officials for attending the meeting and answering the Committee's questions. After a subsequent period of private discussion, it was agreed that the regulations would not be taken on formal reference, and that they may proceed accordingly.

3. The Child Support (Collection and Enforcement) (Amendment) and Miscellaneous Amendment Regulations 2021

3.1 The Chair welcomed Sheena Taylor, Alex Hayes and Lorraine Alexander (SEO, SEO and EO respectively of DWP Child Maintenance Policy) and Sukhi Grewal (Lawyer).

3.2 Introducing the item, Sheena Taylor provided an overview of the changes. She explained that, in the current statutory child maintenance scheme, the criteria that specified whether children aged 16 and under 20 qualify to receive maintenance are defined in secondary legislation. In Regulation 76 of the *Child Support Maintenance Calculation Regulations 2012* a Qualifying Young Person (QYP) is defined by reference to section 142(2) of the *Social Security Contributions and Benefits Act 1992*. This in turn refers to the *Child Benefit (General) Regulations 2006* (the "2006 Regulations"). This means that, to determine whether a child aged 16 and under 20 qualifies to receive maintenance, they must be in full-time non-advanced education or meet other conditions specified in the 2006 Regulations.

3.3 The definition of a QYP in regulations is not in line with the longstanding policy intent. The policy intent was aligned with Child Benefit payability provisions, for consistent treatment of children across government. These regulations remedy that situation. There are 3 main elements to the QYP provisions:

- i. New regulation 76(4) requires that the words “the week in which” are read into case 2.1(b)(i) of regulation 7(2) of the 2006 Regulations. The effect is to align the calculation of the terminal date for the majority of young people who are entered for exams with the calculation of terminal dates in other circumstances.

This provision appears to be correcting a drafting omission which has arisen because Child Benefit is a weekly benefit whereas child maintenance can be calculated daily. The Child Benefit week runs from a Monday to a Sunday. If for example, the terminal date is on a Wednesday, then a child maintenance liability would continue until the Sunday of that week.

- ii. New regulation 76(2)(a), the remunerative work provision, provides that a person does not satisfy the conditions to be a QYP if they engage in remunerative work in any week from the time that they leave education to the week in which the applicable terminal date falls. New regulation 76(3) disapplies a provision in the 2006 Regulations which provides that some conditions to be a QYP are cumulative. Currently, if any one of those provisions are satisfied QYP status can be retained even where the remunerative work condition is not satisfied. This will no longer apply.

New regulation 76(5) provides that remunerative work has the same meaning as that given in regulation 1(3) of the 2006 Regulations. This is defined as 24 hours or more work within a week that is undertaken for payment or in expectation of payment. There are 4 terminal dates set out in regulation 7(1) of the 2006 Regulations. The terminal date that applies to the greatest number of QYPs is the August terminal date.

- iii. New regulation 76(2)(b) provides that a person who is in receipt of “other financial support” does not satisfy the QYP criteria. “Other financial support” is defined in regulation 76(5) by reference to the 2006 Regulations. Broadly, “other financial support” is specified income-related benefits such as Universal Credit, Employment Support Allowance and Tax Credits. The provisions in regulations 2(4) and 8 of the 2006 Regulations determine that a person receiving other financial support does not satisfy the conditions of a QYP. Currently, only the Child Benefit payability ends, but it is not clear that the QYP status also

ends in these circumstances. The amendment seeks to put this issue beyond doubt for child maintenance purposes.

3.4 Committee Members asked the following main questions in discussion:

- (a) Regarding the QYP changes, some of these technical details deal with dates that occur after exams have happened. However, this year there will be no exams – what is the impact of that?**

Children will be treated as if they were entered for those exams, so there is no impact on the CM calculations of terminal dates. It should also be noted that there are only small differences of up to a maximum of six days between cases where young people are entered for exams and those that leave education in other circumstances.

Currently, persons that are entered for exams liabilities end on the terminal dates whereas others end on the Sunday following the terminal date. This arises because, as set out previously, Child Benefit is a weekly benefit whereas CM liabilities can be calculated daily. That discrepancy will end as a result of these regulations.

- (b) The CM law had not reflected the policy or practice – so what are the consequences and plans around that?**

There is a detailed investigation underway into addressing any issues that may have led to under or overpayments.

- (c) Is there a set of principles that guides this investigation? You have the complication of one person's loss being another's gain, how do you insulate those people?**

There are complications that occur due to child maintenance payments coming from a non-resident parent as opposed to DWP, and that is part of the Department's investigation. The Department is not in a position to share more information at this stage.

- (d) Applicants move in and out of the Child Benefit system frequently, and reclaiming the benefit after a break in payability is commonplace. How does that work in Child Maintenance?**

Where children have left education and take up remunerative work the payability of Child Benefit (CB) ends but underlying entitlement continues, so their claim remains in place. However, CM ceases when they start full-time remunerative work in these circumstances. This also applies where the young

person aged 16 and under 20 makes a claim to specified benefits in their own right. They are no longer then classed as a QYP and consequently no longer a qualifying child for maintenance purposes. There is no capacity to pause a case in these circumstances, so the CM liability ends, but only small volumes are affected.

Analysis has been completed for purposes of assessing the impacts of the historic errors we have referred to. This analysis is largely based on estimates using Department for Education (DfE) published statistics, as DWP is unable to determine exact figures due to limitations of the IT system.

The Department made an assumption that the percentage of children that do not take exams is likely to be less than the difference between two education attainment levels, this is around 28%. The statistics published by the DfE also show that around 4% of children take up sustained employment after leaving education, and under 10% claim benefits in their own rights. It is important to note that we know that the benefit claim figure likely overstates the size of the issue, as it includes other destination categories such as apprenticeships. DWP analysts were not able to provide figures that *only* include children in receipt of benefits.

Between 2013 and 2020 around 85,000 children in the current maintenance scheme left education. Of these, based on the DfE estimates; under 28% (around 21,000 children) did not take exams, under 4% (around 3,400 children) took up full-time employment, and under 10% (around 8,500 children) claimed a specified benefit in their own right.

It is also important to note that a parent that receives maintenance (the parent with care) must reside with the child. Generally a child won't be claiming benefit in their own right in those circumstances.

The Department does not know how many children are removed from the scheme due to the work or benefit provisions whose parents then re-apply to it. This issue will be monitored closely. It should also be noted that DWP is not aware of any complaints due to this issue before, and this is a long-established process that has been in place since 2013.

(e) For young people who take up remunerative work after leaving education, and then stop that work, what would they have lost?

Once they stop full-time remunerative work the parent with care or non-resident parent can re-apply. They are not entitled during the period they are working, and we can't pause that. Once that period is over they can re-join the scheme through a parent making a new application.

(f) In terms of the 85,000, is that the total number? Or is it a subset?

85,000 is the number of system tasks on the CM computer system that are created when a child leaves education. The Department modelled potential impacts from that starting point using estimates based on published DfE statistics.

(f) How long does it take to reclaim Child Maintenance? Is there a rapid reclaim process? Could this spark more conflict between the parents?

It could cause conflict or, on the other hand, the break and need to re-apply could encourage them to make a private family-based arrangement outside of the CM scheme. Regarding the time it takes to re-apply, it can take up to six weeks from the time of application for a claim to be set up and in payment. This varies depending on the circumstances of the case and the behaviour of the non-resident parent.

It is also important to consider that the Child Maintenance Service (CMS) has recently introduced an 'apply online' service. Over 80% of all applications are now made this way, many using smartphones. This has been developed using modern user-centred design techniques which ensure it is simple, fast and highly accessible to members of the public. CMS also maintain a telephone service for customers that are unable to apply online.

(g) Please could you talk the Committee through the user journey, both as the law would suggest it applied before these changes, and as a result of these regulations?

The law states that CM should be paid in the circumstance where the qualifying child has left education all the way until the terminal date, even where the person has taken up remunerative work. The law also states CM should be paid where a person 16 years old and under 20 is in receipt of other financial support.

Following the proposed legislative changes, when a person leaves education and takes up remunerative work CM stops in the week that they take up that work and the week in which they are in receipt of specified benefits. CB is more flexible than CM, there is a distinction between payability and underlying eligibility. CM is not a benefit, so there is another party who has to pay, changes tend to be longer term and less responsive. The way the legislation works and the way the IT system is designed means that CM cannot be temporarily paused in the way CB can.

- (h) It is clear that, in policy terms, for the young person who finishes college, gets a job, and then goes back into education a substantial time later, the Department may want to treat that differently, and allow for the parents to figure out how they will support that child. However, for short term changes, say, where the child leaves college to go to work, and then in a couple of weeks decides to return to college, asking the parents to start again from scratch does not seem to have a justification. What happens in these circumstances?**

The likelihood is that these very short term changes are not reported, and unless the change is reported the entitlement will continue. The change has to be reported to CM or to CB in order for any action to be taken. This will all be kept under review so if there are any adverse impact changes will be considered.

- (i) What does 'keep it under review' entail?**

There will be careful monitoring, and steps put in place, for instance the complaints team can report whether it is a topical subject.

- (j) But if the practice is not changing, why would it come up?**

It is not an issue right now, so it is reasonable to believe that there wouldn't be any impacts we are not already aware of, but nevertheless we will monitor the situation.

- (k) If the inflexibility of the current system means people don't report changes because it is better in human terms to not report things, then you would not be aware of such problems. Does the law require that if any young person takes up remunerative work when out of education their claim fails immediately?**

If somebody takes up remunerative work (more than 24 hours per week where they receive payment or have the expectation of payment) when out of education in *any* week they no longer satisfy one condition of a QYP, but may well retain the status as they satisfy others. Further, the status of a QYP is relevant for child benefit payability not underlying eligibility. It is intended to start interacting digitally with HMRC who will broadcast information to DWP, which will ensure we will know about these changes when they occur in CB. If CB payability stops the system will say why, for instance whether they have left education.

- (l) It seems the policy is driven somewhat by the IT limitations. Is there an**

IT fix that can be done to deal with the process, as having to make new claims has an impact both from the customer perspective and from the Department perspective in having to do extra work?

The Department has considered the viability of having a temporary 'pause' period of nil liability in these circumstances. However, it is important to recognise that it not just about having the IT systems changed, there is also the matter of the primary legislation. *The Child Support Act 1991* allows for a pause in CM payability and liability where there is variation in parental income, but there are insufficient primary legislation powers to trigger a pause in CM payability and liability on the basis of a child's income. However, for QYPs, once they leave education and are in remunerative work, or go onto the benefits classed as 'other financial support' they are no longer a qualifying child at all, they are deemed financially independent and outside the CM regime.

(m) You mentioned that if someone not in education takes up remunerative work in any one week they are no longer a qualifying child – is that a CB rule?

Yes, it's a CB legislative rule, if they work in any one week their CB payability stops, within the certain window between the day they leave education and the next terminal date.

(n) Regarding the changes to the enforcement forms, what is the driver for this? Is the Department seeing more usage of these powers, so therefore there needs to be a rationalisation of the process? What are the risk and benefits attached to this change? These enforcement powers are quite serious, does the Magistrates Court provide a safeguard to their use?

Prescribing the exact form in legislation is quite outdated. Over time the forms have been updated by Her Majesty's Courts and Tribunal Service (HMCTS). Each time HMCTS change forms we have to change the legislation, so this is a simplification. Forms are also now being digitised.

There is no change in the volumes of use of these enforcement actions. The Court will still record the action as before. From the customer perspective nothing really changes, simply the forms that are used may be different.

There is no risk associated with the legislative change to remove prescribed forms. Removing the forms from legislation ensures that there is no longer any risk of inconsistency.

With regards to your question about safeguarding, the Magistrates Court process will act as a safeguard.

- (o) Why could the Department not just follow the HMCTS updates to the form in legislation?**

The use of prescribed forms is outdated, HMCTS have removed other prescribed forms from other part of legislation (such as Council Tax liability orders). If HMCTS make amendments to forms, the Department would have to lay new regulations each time, which is quite constraining and not agile, especially as HMCTS goes through their digitisation programme.

- (p) So, the removal of the form is not a risk as essentially the content is captured elsewhere in legislation, the Department cannot just change the criteria of what actually goes into the form?**

All the information that is put into the template is prescribed within the legislation, the only difference is in the format of the form itself – so that is correct.

- (q) Is the definition of a QYP the same in Scotland? If there is a difference how does that impact on your proposed changes?**

DWP discussed its proposed changes with the Office of the Advocate General for Scotland, they confirmed that the QYP provisions should apply across England and Wales and Scotland. In Scotland, there are some differences as to what can count as non-advanced education, but this difference is not relevant for these Regulations.

- (r) An Equality Assessment has been provided alongside the regulations however, as current practice is not affected, it is an odd exercise. The sections on age and gender were good, but on disability it notes there was no impact. It notes that the Department is looking at the characteristics of the recipient parent rather than the qualifying children, and perhaps if DWP had done that it would have had different results. There was more that could have been done there and, perhaps where there no relevant data, DWP should have simply acknowledged there was no data. Please also note that there should be a reference to 'sex' rather than 'gender' to comply with the correct terminology.**

The equality impact assessment is at a draft stage so those comments will be taken on board.

3.5 The Chair thanked the officials for attending the meeting and answering the Committee's questions. After a subsequent private discussion, and following further

clarification from the Department that provided reassurance that the policy intent and proposals were aligned, the Committee agreed that the regulations need not be taken on formal reference and may proceed accordingly.²

4, 5 & 6 Private sessions

[RESERVED IN PART]

Date of next meeting

6.2 The Committee's next meeting was scheduled to take place on 16 June 2021.

² The Department submitted the draft regulations to the Committee for their scrutiny as it was initially of the view that regulation 3 of the regulations fell within the Committee's remit. On closer scrutiny of the statutory powers the Department realised that the proposals for the regulations did not fall within the Committee's remit under section 172 of the Social Security Administration Act 1992.

Attendees

Guests and Officials

Item 2: Sophia Harrington (G7, International Strategy Division)
Helen Birch (SEO, International Strategy Division)
Liam Maher (HEO, International Strategy Division)
Helen Marsh (DWP Legal)

Item 3: Sheena Taylor (G7, Child Maintenance Policy)
Lorraine Alexander (SEO, Policy Adviser, Child Maintenance Policy)
Alex Hayes (EO, Child Maintenance Policy)
Sukhi Grewal (DWP Legal)

Secretariat: Denise Whitehead (Committee Secretary)
Jaishree Patel (Assistant Secretary)
Richard Whitaker (Assistant Secretary)