

PARLIAMENTARY DEBATES

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OFFICIAL REPORT

First Delegated Legislation Committee

DRAFT SOCIAL SECURITY CO-ORDINATION (REVOCATION OF RETAINED DIRECT EU LEGISLATION AND RELATED AMENDMENTS) (EU EXIT) REGULATIONS 2020

Monday 7 December 2020

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Friday 11 December 2020

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The Committee consisted of the following Members:

Chair: JAMES GRAY

† Afolami, Bim (*Hitchin and Harpenden*) (Con)
 † Anderson, Stuart (*Wolverhampton South West*) (Con)
 Antoniazzi, Tonia (*Gower*) (Lab)
 † Buck, Ms Karen (*Westminster North*) (Lab)
 † Clark, Feryal (*Enfield North*) (Lab)
 † Davies, Gareth (*Grantham and Stamford*) (Con)
 † Docherty, Leo (*Aldershot*) (Con)
 Fletcher, Mark (*Bolsover*) (Con)
 † Gideon, Jo (*Stoke-on-Trent Central*) (Con)
 † Gullis, Jonathan (*Stoke-on-Trent North*) (Con)
 † Kawczynski, Daniel (*Shrewsbury and Atcham*) (Con)

† Newlands, Gavin (*Paisley and Renfrewshire North*) (SNP)
 Rees, Christina (*Neath*) (Lab/Co-op)
 † Richardson, Angela (*Guildford*) (Con)
 Sharma, Mr Virendra (*Ealing, Southall*) (Lab)
 † Tomlinson, Justin (*Minister for Disabled People, Health and Work*)
 Winter, Beth (*Cynon Valley*) (Lab)
 Yohanna Sallberg, *Committee Clerk*
 † **attended the Committee**

First Delegated Legislation Committee

Monday 7 December 2020

[JAMES GRAY *in the Chair*]

Draft Social Security Co-ordination (Revocation of Retained Direct EU Legislation and Related Amendments) (EU Exit) Regulations 2020

4.30 pm

The Minister for Disabled People, Health and Work (Justin Tomlinson): I beg to move,

That the Committee has considered the draft Social Security Co-ordination (Revocation of Retained Direct EU Legislation and Related Amendments) (EU Exit) Regulations 2020.

It is a pleasure to see you in the Chair again, Mr Gray, and to serve under Wiltshire's finest. The draft regulations, which concern policy areas within my Department and Her Majesty's Treasury, and which apply UK-wide, were laid before both Houses on 16 November. They are required to clear the way for the legislation that will implement our new system of social security co-ordination with the EU, European economic area states and Switzerland.

The current EU SSC—social security co-ordination—regulations operate to facilitate the EU's free movement rules. They ensure that individuals pay social security contributions in only one member state at a time, set out which member state is responsible for the payment of social security benefits, require the export of some benefits to claimants resident in the EU, and provide for the aggregation of social security contributions when claiming certain benefits and the state pension. The rules require equal treatment for citizens across the EU, overriding any domestic legislation, and have continued to apply to the UK throughout the transition period. As hon. Members will be aware, the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 came into force on 11 November, and section 6 of the Act provides a power to modify the SSC regulations, which have been retained in UK law.

Before I go into the draft regulations in detail, I will provide some further detail on the context in which they are being made. The system of social security co-ordination across the EU relies on reciprocal arrangements. None the less, the unilateral provisions retained and fixed under the European Union (Withdrawal) Act 2018 in that area would have provided a measure of short-term protection for citizens, to the extent possible, in the event that there were no withdrawal agreement in place. Now that the UK has left the EU with a withdrawal agreement, those retained provisions are not necessary. Citizens who are covered by the withdrawal agreement and related agreements with the EEA and Switzerland will be unaffected by the regulations for as long as they remain covered by those agreements. Arrangements in this area for UK and Irish nationals who move between the UK and Ireland will also continue unchanged, under a recent reciprocal agreement with Ireland.

The Government are negotiating future arrangements with the EU, similar in kind to the UK's social security relationships with nations outside the EU. Such agreements are not, of course, as extensive in coverage as is required under the EU SSC regulations, which operate to facilitate free movement, as I have set out. That means that there will be changes in social security co-ordination policy with the EU from the end of the transition period, regardless of the outcome of the negotiations. The Government have been clear about that, including during the passage of the ISSC Act and in public communications.

Our new system will support workers who come into the UK under the new immigration system who are contributing to our economy. As the Committee will be aware, negotiations with the EU are at a very advanced stage. The Government's position is that new rules should take effect from the end of the transition period, whether or not there is a future agreement. We still hope to secure a future agreement with the EU, including reciprocal provisions on the state pension and national insurance contributions. Good progress is being made, but of course wider negotiations are ongoing, and we have been preparing for all outcomes. The draft regulations are a core part of our legislative preparation, and will stand whatever the outcome.

We are also in discussions on future social security co-ordination rules with a number of EEA states and Switzerland. The absence of a future agreement with the EU would not preclude agreements with any EEA states or Switzerland from being concluded.

I will summarise the draft regulations. Part 1 sets out that the regulations come into force at the end of the transition period, apart from some of the amendments being remade in part 4, which will come into force on the day after the regulations are made. Part 2 revokes the EU SSC regulations retained under section 3 of the European Union (Withdrawal) Act 2018 and those unilateral fixing statutory instruments made under section 8 of that Act. The fixing SIs were, as I said, brought forward for a scenario in which the UK did not leave the EU with a deal, and they would have enabled the UK to operate some of the retained SSC regulations unilaterally, as far as possible. That means that the rules for individuals not covered by the withdrawal agreement and who move between the UK and the EU, the EEA states and Switzerland after the end of the transition period will be determined by any new international agreements that are in place—be they with the EU or with individual countries, such as that which the UK has signed with Ireland.

Where there is no provision in any international agreement or no international agreement, the relevant domestic law in each country will apply. In respect of UK benefits, this means the UK will no longer export child benefit to children living in the EU, with the exception of Ireland, delivering on the manifesto commitment. As the Government have set out previously, we expect that arrangements in relation to, but not limited to, disability and unemployment benefits will be less comprehensive in all scenarios, reflecting long-standing UK policy in that area of EU requirements. As we have also set out, industrial injury disability benefit is payable worldwide and will therefore be payable in the EU, EEA and Switzerland in all scenarios.

In respect of national insurance contributions, the change means that, where no reciprocal agreement applies, the rules on the payment of national insurance contributions

for individuals moving between the UK and the EU, EEA and Switzerland will be the same as the rules for the rest of the world. That arrangement will ensure a consistent approach to the EU and the rest of the world by making sure that workers and employers have to follow only a single set of rules when moving between the UK and another country. That means that employees and their employers cannot be required to pay social security contributions in more than one country at the same time after someone's first year overseas.

The regulations will, however, make four limited savings from the general revocation of the retained SSC regulations at part 3. First, they will save the retained SSC regulations relating to the co-ordination of benefits in kind, namely healthcare, which is a policy competence of the Department of Health and Social Care. The Department has made separate secondary legislation in respect of the reciprocal healthcare aspects of the retained SSC regulations.

Secondly, the regulations save the existing debt recovery provisions, which will enable the UK to collect overpaid Her Majesty's Revenue and Customs benefits and social security contributions on the behalf of a foreign social security authority where the individual or the employer is present in the UK. This saving will be made so that the provisions are available only where the UK has accepted a debt recovery obligation from a foreign authority on a reciprocal basis as part of an international social security co-ordination agreement, such as that with Ireland.

Thirdly, the regulations save the retained SSC regulations to the extent necessary to provide for continued operation of the agreement on social security between the Governments of the UK and Gibraltar. It is the intention of both Governments to agree a new relationship not based on the EU SSC regulations. Once that has been implemented, this saving will no longer be required and will be revoked a later date.

Fourthly, the regulations save provisions relating to the aggregation and uprating of the state pension. This saving would not be needed should the UK reach a future agreement with the EU, EEA states and Switzerland. However, in the absence of all such agreements being in place by the end of the transition period, the saving will provide for continued state pension aggregation and uprating in the EU, EEA states and Switzerland up to the end of the financial year 2021-22. In the absence of a future agreement with the EU, the UK would seek to put in place reciprocal arrangements on social security with individual EU countries instead, some of which the UK had agreements with prior to our or their accession to the EU.

Even where such negotiations are progressing well, it may well be that the saving is needed for a short period beyond March 2022 in order to finalise and implement bilateral agreements. The saving is therefore not time-limited; it is, however, a strictly interim measure targeted at those who move to the EU, the EEA or Switzerland after the transition period while future arrangements are put on a reciprocal footing.

Part 4 makes related amendments to other EU exit legislation, including by bringing forward the day on which amendments will be made to section 179 of the Social Security Administration Act 1992 and section 155 of the Social Security Administration (Northern Ireland) Act 1992. Those amendments were previously made by the Social Security (Amendment) (EU Exit)

Regulations 2019 and the Social Security (Amendment) (Northern Ireland) (EU Exit) Regulations 2019, which are not revoked by the draft regulations. The amendments were otherwise due to come into effect at the end of the transition period, and will provide the option of delivering a future agreement with the EU on social security co-ordination through an Order in Council before the end of the transition period, should that be needed.

Although the UK has left the EU, we are not leaving the European convention on human rights. In my view, the provisions of the draft regulations are compatible with the convention.

In summary, the draft regulations, which are technical in nature, will make changes to prepare the statute book for the end of the transition period, particularly in relation to preventing the unilateral export of benefits. They will deliver on our manifesto commitment to prevent people from claiming child benefit for children living outside the UK, and they will ensure that the Government have the option to make a future social security co-ordination agreement with the EU through an Order in Council before the end of the transition period, should that be needed. I commend them to the Committee.

4.41 pm

Ms Karen Buck (Westminster North) (Lab): It is a pleasure to serve under your chairmanship this afternoon, Mr Gray. As I think is reasonably obvious, the Opposition will not oppose the draft regulations. Social security with the EU and EEA countries will be vital post Brexit, and the temporary unilateral measures that are ended by the regulations are clearly not a basis for that ongoing co-ordination. We support bringing forward the changes to the Social Security Administration Act 1992 to the extent that that facilitates agreement on ongoing social security co-ordination. However, I have to note the absurdity of the circumstances under which we are discussing the statutory instrument. It is now 7 December 2020. On the 31st, the transition period will come to an end, and we still do not know whether there will be a deal between the UK and the EU—

The Chair: Order. The hon. Lady's remarks must be strictly in the context of the draft SI.

Ms Buck:—let alone whether that deal will include social security co-ordination or whether it will replace the regulations being ended by the draft SI. It is testimony to the Government's entire approach to the negotiations that the draft instrument has come before the Committee so late in the day and under such continuing uncertainty. The time to discuss these measures is when a deal has been secured and the future framework of co-ordination that will replace the regulations that are being ended is a known quantity, but that is not the situation that we are in.

We therefore need clarification of the implications of the draft regulations in the event of a deal and in the event of no deal. First, I am sure that the Minister will be happy to confirm that in the event of no deal, nothing in the draft regulations will in any way alter the social security protections afforded to resident EU, EEA or European Free Trade Association citizens under the withdrawal agreement.

Justin Tomlinson: Correct.

Ms Buck: Secondly, can the Minister clarify the implications of the draft regulations for EU citizens living in the UK who are not covered with the withdrawal agreement provisions, in relation to such matters as accidents at work, maternity pay, state pension contributions, access to the NHS and benefit entitlement? Will they enter a legal no man's land until future reciprocal agreements are negotiated? What are the implications for UK social security expenditure in the event of no deal?

The draft regulations will be made under the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020. The Home Office's explanatory notes on the Bill note:

"The power to make regulations under Part 2 of the Bill has the potential to be used in a way that could change the cost to the public sector in terms of social security co-ordination. It is not possible to quantify precisely what those costs may be at this stage, but there is the potential for costs that are more than merely notional."

Why have the Government not provided an impact assessment to enable us to assess that?

On part 4 of the draft regulations, which brings forward the date on which changes to the Social Security Administration Act 1992 come into effect, the explanatory memorandum states that

"subject to the outcome of the negotiations with the EU, and the details of any agreement, it may be necessary to use the powers in section 179 of the SSAA 1992 and section 155 of the SSAA(NI) Act 1992 to make a reciprocal agreement with the EU prior to the end of the transition period. This instrument brings forward the changes as a precaution given that the amendments in the Social Security (Amendment) (EU Exit) Regulations 2019 and the Social Security (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 only take effect from the end of the transition period, as a consequence of the EU (Withdrawal Agreement) Act 2020."

I read this as saying that if there is to be an agreement on social security as part of a deal, the necessary amendments to the 1992 legislation will need to already have come into force beforehand. The question is, have the Government only just realised this? Have they have been negotiating on social security all year without noticing that they did not have the powers to do a deal until after the transition period? Some clarity on this important point would be welcome.

4.45 pm

Gavin Newlands (Paisley and Renfrewshire North) (SNP): It is a pleasure to see a son of Glasgow in the Chair, Mr Gray. I will not detain the Committee for particularly long, and will not be forcing a vote on today's proceedings either, but I want to put a couple of quick points on the record.

The explanatory memorandum states:

"The territorial application of this instrument is the entire United Kingdom. The changes being made to DWP areas of social security policy, which is transferred in Northern Ireland and partially devolved in Scotland, are in this context subject to the foreign affairs reservation."

However, it is our view that the revocation of retained EU law that has effect in respect of devolved social security benefits is within the legislative competence of the Scottish Parliament. The DWP has obviously made these regulations with UK-wide extent, but with no carve-out whatsoever for devolved social security matters, on the basis that it considers the draft regulations to relate entirely to reserved matters, by reference to the

foreign affairs reservation. In our view, the UK Government have construed the foreign affairs reservation in part I of schedule 5 to the Scotland Act 1998 far too widely. The modification, including repeal, of retained EU law on social security co-ordination, insofar as it has effect in respect of benefits, is devolved by the Scotland Act 2016. It is quite clearly a devolved matter.

I ask the Minister to confirm whether these powers are indeed fully devolved or not, but sadly the United Kingdom Internal Markets Bill, which runs roughshod over the devolution settlement, will make that point moot, as every aspect of devolved Government is undermined and could be overruled. It therefore follows—before I veer too far off course, Mr Gray—that these draft regulations will be ultra vires and thus ineffective in relation to devolved benefits.

It was only on 16 November, three weeks ago, as the UK Government laid their regulations, that the need for a Scottish statutory instrument became clear. Failing an agreed approach, Scottish Ministers were left with no choice but to table an SSI, which they have now done. The outcome is undesirable, as it will result in UK and Scottish legislation seeking to achieve the same result in relation to devolved benefits. Not only does that mean less legal clarity; it is a further example of the UK Government ignoring the needs and wishes of a democratically elected devolved Government. No disrespect to the Minister, who I have met with before, but I feel that the approach thus far has been high-handed and arrogant, which has increasingly frustrated Scottish Unionists, even those from his own party.

4.48 pm

Justin Tomlinson: I thank the two hon. Members for commenting. First, on the timing, to be clear, this is a technical rectification, as part of the amendments in part 4, so that was always going to be the case. Although it is late in the transition period, good progress has been made in this area and we hope to get the deal over the line. EU negotiations are renowned for going down to the wire, and the sticking points are well documented. We do not take it for granted that there will be an agreement, and the Government are prepared for all outcomes and have been communicating to citizens the importance of being prepared for rules in this area to change in all scenarios.

These affirmative-resolution regulations offer an opportunity for the House to approve the changes we are making in social security co-ordination before the end of the transition period. It would clearly not be appropriate to continue the unilateral export of benefits that are only paid overseas due to EU rules after we have left the EU and the transition period in the absence of reciprocal provisions. The principle of reciprocity is widely recognised as the basis on which international agreements on social security are operated. Therefore, the Government would seek to put in place reciprocal agreements with member states swiftly if no agreement can be reached with the EU.

Clearly, some member states attract a higher proportion of UK state pensioners and UK-based employees than others. The UK previously had 20 bilateral agreements with the EU, EEA states and Switzerland, including reciprocal provisions on the state pension and national

insurance contributions—priority areas for my Department and HMRC that cannot be effectively operated on a unilateral basis.

The Government have committed and remain committed to publishing an updated impact assessment once the outcome of negotiations is known. The relevant people covered by the withdrawal agreement are not impacted by this instrument. The measure does not impose any costs on businesses and ensures, once SSC rules cease to apply between the UK and the EU, that businesses can apply the standard rest-of-the-world rules for national insurance where no reciprocal agreements is in place.

Citizens do not need to have moved by the end of the transition period, and that has been consistently clear in communications. Those who move after the transition period and are subject to new social security rules may also be subject to new immigration residency requirements imposed by the country in question. My Department has been undertaking a communications campaign in this area since before the summer. Guidance is included in the gov.uk transition checker tool for anyone thinking of moving to the EU, EEA or Switzerland. In November, we launched advertising on post office screens in more than 250 locations across all four nations of the UK targeting those who may be undertaking activity in readiness for a move to the EU, EEA or Switzerland.

My Department is ready to implement changes from 1 January and has been preparing for a variety of outcomes while working closely and collaboratively across Government with other Departments. We have new processes in place to ensure that the right rules are applied to the right customers. While DWP policy is transferred in Northern Ireland and partially devolved in Scotland, the Government's position is that the foreign affairs reservation applies in this context and the revocations are UK wide, and I have exchanged written correspondence with the relevant Scottish Minister on that specific point.

The regulations are an essential part of the legislative programme and have been laid in preparation for the end of the transition period as we reset our relationship with the EU. Not proceeding with this legislation would result in the UK unilaterally operating EU rules after the end of the transition period, regardless of the outcome of the negotiations. That would be undesirable for the reasons I set out in my opening speech, and I commend the regulations to the Committee.

Question put and agreed to.

4.52 pm

Committee rose.

