

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Eleventh Delegated Legislation Committee

DRAFT SOCIAL SECURITY COORDINATION
(REGULATION (EC) NO 987/2009) (AMENDMENT)
(EU EXIT) REGULATIONS 2019

DRAFT SOCIAL SECURITY COORDINATION
(COUNCIL REGULATION (EEC) NO 1408/71 AND
COUNCIL REGULATION (EC) NO 859/2003)
(AMENDMENT) (EU EXIT) REGULATIONS 2019

DRAFT SOCIAL SECURITY COORDINATION
(REGULATION (EC) NO 574/72) (AMENDMENT)
(EU EXIT) REGULATIONS 2019

DRAFT SOCIAL SECURITY COORDINATION
(REGULATION (EC) NO 883/2004, EEA
AGREEMENT AND SWISS AGREEMENT)
(AMENDMENT) (EU EXIT) REGULATIONS 2019

Wednesday 20 March 2019

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Sunday 24 March 2019

© Parliamentary Copyright House of Commons 2019

This publication may be reproduced under the terms of the Open Parliament licence, which is published at www.parliament.uk/site-information/copyright/.

The Committee consisted of the following Members:

Chair: JAMES GRAY

- | | |
|--|---|
| † Amesbury, Mike (<i>Weaver Vale</i>) (Lab) | † Pow, Rebecca (<i>Taunton Deane</i>) (Con) |
| † Beckett, Margaret (<i>Derby South</i>) (Lab) | † Sharma, Alok (<i>Minister for Employment</i>) |
| † Charalambous, Bambos (<i>Enfield, Southgate</i>) (Lab) | † Stephens, Chris (<i>Glasgow South West</i>) (SNP) |
| † Drax, Richard (<i>South Dorset</i>) (Con) | † Streeting, Wes (<i>Ilford North</i>) (Lab) |
| † Green, Kate (<i>Stretford and Urmston</i>) (Lab) | † Thomas, Derek (<i>St Ives</i>) (Con) |
| † Harrison, Trudy (<i>Copeland</i>) (Con) | † Turley, Anna (<i>Redcar</i>) (Lab/Co-op) |
| † Heaton-Jones, Peter (<i>North Devon</i>) (Con) | † Zeichner, Daniel (<i>Cambridge</i>) (Lab) |
| † Hughes, Eddie (<i>Walsall North</i>) (Con) | Anwen Rees, <i>Committee Clerk</i> |
| † Jack, Mr Alister (<i>Dumfries and Galloway</i>) (Con) | |
| † Mann, Scott (<i>North Cornwall</i>) (Con) | † attended the Committee |

Eleventh Delegated Legislation Committee

Wednesday 20 March 2019

[JAMES GRAY *in the Chair*]

Draft Social Security Coordination (Regulation (EC) No 987/2009) (Amendment) (EU Exit) Regulations 2019

2.35 pm

The Minister for Employment (Alok Sharma): I beg to move,

That the Committee has considered the draft Social Security Coordination (Regulation (EC) No 987/2009) (Amendment) (EU Exit) Regulations 2019.

The Chair: With this it will be convenient to consider the draft Social Security Coordination (Council Regulation (EEC) No 1408/71 and Council Regulation (EC) No 859/2003) (Amendment) (EU Exit) Regulations 2019, the draft Social Security Coordination (Council Regulation (EEC) No 574/72) (Amendment) (EU Exit) Regulations 2019 and the draft Social Security Coordination (Regulation (EC) No 883/2004, EEA Agreement and Swiss Agreement) (Amendment) (EU Exit) Regulations 2019.

Alok Sharma: It is an absolute pleasure to serve under your chairmanship, Mr Gray. We are all delighted that we are able to proceed this afternoon.

The draft regulations were laid before both Houses on 30 January, alongside the other three sets of regulations we are debating. They form a package that will enable the Government to address deficiencies in retained European Union law that will impact on the operation of the retained social security co-ordination regulations should the UK withdraw from the EU in a no-deal scenario.

Before I go into the detail of the draft regulations, it might be useful if I provide some context. The whole system of social security co-ordination across the EU relies on co-operation and reciprocity. The legal framework for that would cease in a no-deal scenario. The UK would have no means of enforcing reciprocal obligations on EU member states, and therefore cannot legislate for that when correcting deficiencies in the co-ordination regulations. We cannot force member states to co-operate with the UK or to provide the UK with information when dealing with UK benefit claims. In a no-deal scenario, member states cannot be required to apply the rules contained in the co-ordination regulations to individuals moving to and from the UK.

The draft statutory instruments will allow the UK to apply the current social security co-ordination regulations on a unilateral basis to ensure that citizens' rights are protected as far as possible in a no-deal scenario. They are intended to ensure that the UK has a functioning statute book by fixing deficiencies in retained EU law in line with the power provided by section 8 of the European Union (Withdrawal) Act 2018.

As hon. Members are aware, the Immigration and Social Security Co-ordination (EU Withdrawal) Bill was considered recently in Committee—a number of colleagues present served on the Bill Committee—and is being prepared for Report. The draft statutory instruments are necessary to ensure that we are ready for exit day. The Bill will provide the legislative framework that is required to deliver future policy at the appropriate time.

The legislation that the draft instruments will amend is lengthy, but it can be split broadly into three categories. The first category is data and information sharing. The co-ordination regulations require EU member states to exchange information through specific procedures laid down in the regulations. The data shared are used to establish which member state is responsible for the payment of benefits, to take into account contributions made in other member states when deciding benefit entitlement, and to avoid overlapping benefit payments.

The draft statutory instruments will ensure that the UK can continue to share data with member states when they are applying the co-ordination regulations, and we will continue to work closely with the EU27 so that the first port of call for all contribution queries will be the appropriate administration in a member state. However, if the member state is unable to provide information, the instruments will enable us to ask claimants to provide, within a reasonable timeframe, the relevant information to allow the UK to determine if it is competent in respect of benefits.

Secondly, the instruments remove provisions in the retained co-ordination regulations that will be inoperable if the UK leaves the EU without a deal. For example, the co-ordination regulations provide for a number of bodies at EU level to deal with administrative and technical issues or disputes arising from the application of the social security co-ordination regulations, the administrative commission being the main one. The instruments remove references to those bodies on the basis that they will be inoperable if the UK withdraws from the EU in a no-deal scenario. If disputes arise post exit date, the UK will continue to use the same rules as it does now to determine whether it is the responsible country for making payments. However, any challenges will be resolved through domestic routes.

Finally, the instruments deal with applicable legislation. The co-ordination regulations state that an individual shall be subject to only one EU member state's legislation at a time. The arrangements rely on co-ordination between member states to operate effectively. The instruments amend the co-ordination regulations to maintain the status quo on when the UK legislation does and does not apply.

The regulations are being made using powers in the European Union (Withdrawal) Act 2018 to fix legal inoperabilities and other deficiencies that will arise in retained EU law on exit, so that the converted law continues to operate effectively post exit. The amendments are in line with both the policy and the legal intent of the Act. The use of secondary legislation to amend primary legislation through so-called Henry VIII powers was debated at length during the passage of the Act.

Kate Green (Stretford and Urmston) (Lab): As the Minister says, we debated some of these points when we served together on the Immigration and Social Security

Co-ordination (EU Withdrawal) Bill Committee a couple of weeks ago. May I ask him about the use of Henry VIII powers? As he knows, clause 5 of the Bill has very wide Henry VIII powers in relation to changing social security rules. When the Bill becomes an Act of Parliament, could clause 5 be used to make amendments to the regulations that we are debating in this Committee?

Alok Sharma: As the hon. Lady acknowledges, we debated this issue, in particular the Henry VIII powers, in the Immigration and Social Security Co-ordination (EU Withdrawal) Bill Committee. The process for any changes will be affirmative and they will therefore be debated and voted on in Parliament. I made that point in the Bill Committee, and no doubt we will have an opportunity to discuss the matter again on Report.

The statutory instruments are part of a wider legislative package that my Department is laying before Parliament. We have laid SIs relating to private pensions and the European job mobility portal, which is more commonly known as EURES, and we have made consequential amendments to domestic legislation. The Department for Work and Pensions has carried out no formal consultation on the regulations, as they address deficiencies in retained EU law and there is no material impact on business, charities, voluntary bodies or the public sector. My officials nevertheless held informal discussions last year with the Social Security Advisory Committee on the instruments, which focused on both technical issues and policy considerations.

In conclusion, the regulations are an essential part of the legislative programme and have been laid in preparation for a potential no-deal scenario. They are needed so that the social security co-ordination system can function, even unilaterally, and in order to retain the ability of the Department for Work and Pensions to make payments to claimants and to determine claims. Not proceeding with this legislation would result in a statute book that did not function correctly, and in not doing so we would be failing to protect citizens' rights. I therefore commend the regulations to the Committee.

2.44 pm

Mike Amesbury (Weaver Vale) (Lab): It is a pleasure to serve under your chairmanship, Mr Gray. I thank the Minister for outlining the Government's position on the regulations. I am less thankful to the Government for causing us once again to be in a Committee discussing detailed statutory instruments, regulations and amendments that will affect thousands of people, when we have little or no idea of exactly what our relationship with the European Union will be in just a few days' time.

In June 2018, there were 3.7 million EU nationals living in the UK. The most recent figure we have, which is for 2017, put the number of UK nationals living in other EU states, excluding Ireland, at 750,000 people. The current situation is causing incredible uncertainty for those people.

As we all know, Brexit is a divisive issue. From where we are now, it seems we can all agree that the statement made by the right hon. Member for Wokingham (John Redwood) in July 2016 that,

"Getting out of the EU can be quick and easy—the UK holds most of the cards in any negotiation",

has not aged well. Certainly, from the explanatory notes associated with the regulations, it does not appear that we hold all the cards; in fact, quite the opposite. Having read the regulations in detail, if this is "quick and easy", I would hate to see what constitutes technical, difficult and protracted. However, we are where we are.

Unfortunately, there is the strong possibility of no deal in nine days' time. That is the crux of the issue. Paragraph 2.4 of the explanatory note states:

"The whole system...relies on cooperation and reciprocity from other Member States"—

as the Minister rightly said—

"but we cannot assume this would continue in a no deal scenario. It will not be possible to impose reciprocal obligations on Member States...such as requiring that they cooperate with the UK"

to provide information. Indeed, the regulations adopted yesterday by the European Council reaffirm this.

Countries usually have a minimum number of qualifying years for a state pension. When people move between one EU member state and another, the system for social security co-ordination allows contributions made in one member state to count towards the state pension of another. There are nearly half a million retired people—some 468,000 of them—living in other EU states where they draw a UK state pension. The largest numbers are in Ireland, where there are 132,700, and Spain, where there are 106,400, but there are 67,000 living in France, 42,100 in Germany and 35,200 in Italy. Those figures include not only UK citizens, but citizens of other EU states who have worked in the UK and built up pension and social security entitlements here.

The UK state pension is already the lowest in the OECD and the state pensions of people drawing them in other EU states have been hit by the devaluation of sterling following Brexit. What assessment has the Minister made of the likelihood and consequences of any member state refusing to co-operate? Does the Minister have a more recent estimate of the number of people who could be affected should this scenario occur?

The explanatory memorandum tells us:

"These instruments aim to ensure that citizens' rights are protected"—

as the Minister rightly said—

"as far as possible in a no-deal scenario."

That is a necessary and welcome aim, but we should all be concerned by the phrase "as far as possible", because it leaves open the suggestion that citizens may not be protected. Indeed, the intention to remove article 4 of regulation 883/2004 reaffirms that. What assessment has the Minister made of the likelihood of individuals' rights being affected in a no-deal scenario? What rights are they and what might the consequences be?

One of the key concerns is data-sharing. The regulations enable the Government to ask claimants to provide relevant data, within a reasonable time, to determine competence because an EU member state has not been able to do so when asked. What assessment have the Government made of claimants' ability to source and provide that information in a manner acceptable to the Government? Will the Government produce guidance to assist claimants so that they know what they might need and what they might need to do in order to provide the necessary information?

[Mike Amesbury]

We are told that if the information provided by the claimant is insufficient, the UK will no longer be required to fulfil any obligation under the co-ordination regulations. The UK will, of course, cease to be represented on the bodies that deal with disputes in this area and will no longer have those powers or functions. What, if anything, does the Minister think will replace those bodies, and what safeguards are there to ensure that individuals are not left in complete limbo, given the absence of the provisional payments that exist in the EU system?

There is particular concern about medical assessments, employment and support allowance, and state pensions. The Government already have a record of underpayments in this kind of circumstance—for example, 210,000 people are currently affected by ESA underpayments. What assessment has the Minister made of the capacity and ability of the Department to avoid any problems in this area?

We hope that the Minister can provide satisfactory answers to our questions, and we look forward to hearing them and responding constructively. What is not satisfactory, however, is the fact that we are having to do this at all. Paragraph 11.1 of the explanatory notes states:

“In the event of a no deal scenario, guidance will be provided in due course and in adequate time in order to adapt these amendments in practice.”

We are nine days away from exit day. Is that really adequate time? The Government expect claimants to accept that the DWP needs five weeks to process and pay a universal credit claim—something the Opposition dispute—but here we are, expecting the Department to prepare for relationships with 27 other EU member states in a little over a week. It is no wonder that an impact assessment has not been prepared—there would barely have been time to read it, let alone respond to its findings. This is, of course, a matter of concern.

With that in mind, will the Minister confirm why he believes that these changes will not give rise to any new costs or financial or economic impact beyond the status quo? It might be expected in the case of no deal that, should the potential consequences of a refusal to co-operate come to pass, there may well be some cost to the Government in supporting, administering and responding to such a situation. Will the Minister confirm whether the Department believes that there is likely to be any impact or any consequences in respect of legal challenges, or any wider costs of individuals returning to the UK from other member states as a result of a loss of entitlements there?

Given that it is necessary to deal with the situation as we find it, rather than as we might expect it to be had the Government had an effective and competent approach to Brexit, we do not intend to oppose the draft regulations, but we cannot give them enthusiastic support either. I hope that the Minister can answer the concerns and queries that I have outlined.

2.53 pm

Chris Stephens (Glasgow South West) (SNP): It is good to see a fellow Glaswegian in the Chair, Mr Gray. It is the greatest city in the world, as you and I are well aware.

First, the Government suggest that the draft regulations will protect citizens' rights “as far as possible”. However, it is clear that there can be absolutely no guarantees that the current rights of UK citizens in the EU will be protected.

Secondly, I think that the European Statutory Instruments Committee was correct to decide that the statutory instruments should be upgraded to the affirmative procedure, as opposed to the negative procedure. I say that as a former member of that Committee—I thought the Whips were disciplining me for something. It is a Committee that always takes the issues very seriously.

Thirdly, there appears to be a paradox in the UK Government putting in place mechanisms for the operation of social security co-ordination agreements in the event of no deal. The statutory instruments will enable the UK Government to ask claimants to provide them with data to determine whether the UK or another relevant member state is responsible for the payment of social security. The explanatory notes state that should the information be insufficient, the UK will simply not make the payment, even if it is its competence to do so. What information will claimants be asked to provide? Will claimants have to obtain the information themselves at their own cost? What deadline will the UK Government give to such claimants? Will the Minister also tell us what the determination of “sufficiency” is? How will such determinations of sufficiency be communicated to claimants? These are serious questions, and the Government must answer them.

What is the situation for people who have worked in the UK, whether they are UK or EU nationals, but who do not live in the UK? In the event of no deal or there being no reciprocal arrangements, will their national insurance contributions be put on hold? Will they be inaccessible for the duration until the person provides sufficient information? What will the Government do with those national insurance contributions until the person provides the information? Is there a cut-off point? If that person passes away, will the national insurance contributions pass to their next of kin?

Will the Minister confirm that a UK claimant in the EU will lose their right to provisional payments by the DWP during disputes over competence? Will he also confirm that workers who are resident outside the UK, whether UK or EU nationals, could be subject to legislation in two different states at the same time? The entire point of the social security co-ordination regulations at the EU level is to stop that from happening.

It is clear that social security co-ordination could essentially cease with these draft regulations, meaning that there would be no protection for those to whom it currently applies. This situation adds to the arguments of those of us in this House who believe that we should be extending article 50 and putting a vote to the people.

2.57 pm

Alok Sharma: I thank the hon. Members for Weaver Vale and for Glasgow South West for their speeches and their constructive approach to today's proceedings. I start by saying that this Committee is about fixing deficiencies in a set of regulations, rather than a detailed debate about Brexit. Many of those take place already in the main Chamber. I see that the urgent question is now over, but no doubt there will be lots more debate on the wider issues around Brexit.

The hon. Member for Weaver Vale said that there was incredible uncertainty for individuals. I hold out the hand of friendship to him and all colleagues on the Opposition Benches. If he wants to get rid of that incredible uncertainty, he should support the deal that is on the table when it returns to Parliament. As I said, I am sure there will be further discussion on that matter.

A large number of very good questions were raised by the hon. Members for Weaver Vale and for Glasgow South West. I will try to get through as many of those as I can. If I fail to answer any question of a material nature, I am very happy for my officials to write subsequently to Members. I will start with state pension uprating, which has garnered a lot of interest. As Members will know, it has been announced that state pensions for pensioners currently living in the EU will be uprated for 2019-20. We wish to continue uprating pensions beyond that, but we will take decisions in light of whether, as we would hope and expect, reciprocal arrangements are in place with the EU.

Kate Green: I note what the Minister says, and I understand the point he is making about reciprocity, but the Government could choose unilaterally to uprate pensions after 2020. That has been the case since at least 1996, when the then Department of Social Security made it clear in a memorandum.

Alok Sharma: I note what the hon. Lady is saying, and I know she is an expert in welfare and social security matters, but I can only repeat what I have said, which is that we have made a commitment for 2019-20. We want to see a reciprocal arrangement in place thereafter. No doubt these discussions will continue.

To return to the point about pensions that was raised by the hon. Member for Weaver Vale, I want to make it absolutely clear that the International Pensions Centre in Newcastle will guide claimants through any processes as required.

Both hon. Gentlemen who spoke raised the issue of protections and questioned the use of the phrase “as far as possible” in the explanatory notes. All I say is that we can only legislate to protect rights to benefits that are paid by the UK where we are maintaining the status quo; as hon. Members will appreciate, we cannot amend retained EU law to protect UK nationals receiving benefits from member states.

Both hon. Gentlemen asked what evidence individuals would be required to produce in order to confirm their contributions to the EU. The UK Government will obviously consider evidence on a case-by-case basis. We would expect the claimant to provide wage slips or proof of contributions made, and the Government will provide support to claimants where any additional information is required from them. On the specific point about the related costs, one of the issues that has come up before is the cost of any translation or notarisation of documents that are not in English. The Department for Work and Pensions currently receives documentation from all 27 EU member states and, where necessary, we translate those documents. The claimants would not need to pay to translate or notarise documents.

With regard to the issue of provisional payments and dispute resolution, which was raised by both hon. Gentlemen who spoke, the current provisional payments system operates where there is a dispute between member

states of the European Union. Such disputes are resolved following a decision by a mediation body of the administration commission of the European Union. As I said in my opening remarks, the UK will no longer be a member state or part of that body in a no-deal scenario, which is why that provision has been removed. We will continue to use the same rules that are used now to determine whether the UK is competent. DWP and Her Majesty's Revenue and Customs have only ever made provisional payments twice. They use all available data to ensure that disputes over which country is responsible for paying benefits do not arise, and individuals will be able to appeal any decision on benefit entitlement using domestic appeal routes.

The restoration of reciprocity in a no-deal scenario was raised. I have addressed this point, and I reiterate that the UK is seeking discussions with member states on social security co-ordination arrangements in a no-deal scenario. We are exploring options to protect past social security contributions as well. As Members know, an agreement has been reached with Ireland. The UK Government have announced an agreement with Ireland on social security, guaranteeing continued access to the state pension and benefits of UK and Irish citizens and their qualifying family members when in the other's state.

The hon. Member for Weaver Vale mentioned the European Commission regulations. I note that the Commission's proposals for contingency measures, which cover all member states and the UK, are more limited in scope than those set out in the Government's policy paper that was published on 6 December 2018, entitled “Citizens' Rights—EU citizens in the UK and UK nationals in the EU”. The Government have expressed concern with the EU that the coverage of the regulations is minimal in terms of social security rights, and that it does not match the UK's legislation.

The issue of equal treatment was raised in relation to article 4 of regulation 883/2004. The removal of the principle does not have a practical impact on the rights of EU nationals who wish to access the UK's social security schemes.

On impact assessments and related costs, the reason an impact assessment was not prepared is that the changes we are discussing are technical in nature and do not make any policy changes. As such, they do not give rise to any new cost or to any financial or economic impact beyond the status quo.

Kate Green: It may be very marginal, but there is a potential cost both to individuals and their employers and former employers in trying to find evidence that in the past could have been obtained automatically through reciprocal arrangements from other EU states. They may now find themselves having to track that down and having to pay to find, copy and produce it in a form that is acceptable to the Department.

Alok Sharma: I note the hon. Lady's point but, as I said, the impact assessment was in relation to any material changes. We do not believe that there are any, as these are merely technical changes to retained law.

A point was raised about data-sharing. We will of course continue to work closely with the EU so that the first port of call for contribution queries is other member

[Alok Sharma]

states. The instruments include provisions to ensure that the UK can continue to share data with EU member states when they are applying the co-ordination regulations. If I have not been able to answer any questions—

Chris Stephens: The Minister is obviously going to tell us that he is going to write to us on some of the questions. Could he also write to members of the Select Committee on Work and Pensions about this? Will he be liaising with that Committee on the regulations in the event of no deal, and what it means for social security claimants?

Alok Sharma: I will, of course, write to the hon. Gentleman. When it comes to the Select Committee and other bodies of the House, there is always an opportunity to have a dialogue with them. As he will know, DWP Ministers are in front of the Select Committee on a regular basis—I will be making another appearance in a few weeks—so we are always happy to liaise.

In conclusion, the Government are committed to ensuring that the social security system works for everyone post exit day. The draft regulations will help to do that by fixing deficiencies in retained EU law. I therefore commend them to the Committee.

Question put and agreed to.

Resolved,

That the Committee has considered the draft Social Security Coordination (Regulation (EC) No 987/2009) (Amendment) (EU Exit) Regulations 2019.

**DRAFT SOCIAL SECURITY COORDINATION
(COUNCIL REGULATION (EEC) NO 1408/71 AND
COUNCIL REGULATION (EC) NO 859/2003)
(AMENDMENT) (EU EXIT) REGULATIONS 2019**

Resolved,

That the Committee has considered the draft Social Security Coordination (Council Regulation (EEC) No 1408/71 and Council Regulation (EC) No 859/2003) (Amendment) (EU Exit) Regulations 2019.—(Alok Sharma.)

**DRAFT SOCIAL SECURITY COORDINATION
(COUNCIL REGULATION (EEC) NO 574/72)
(AMENDMENT) (EU EXIT) REGULATIONS 2019**

Resolved,

That the Committee has considered the draft Social Security Coordination (Council Regulation (EEC) No 574/72) (Amendment) (EU Exit) Regulations 2019.—(Alok Sharma.)

**DRAFT SOCIAL SECURITY COORDINATION
(REGULATION (EC) NO 883/2004, EEA
AGREEMENT AND SWISS AGREEMENT)
(AMENDMENT) (EU EXIT) REGULATIONS 2019**

Resolved,

That the Committee has considered the draft Social Security Coordination (Regulation (EC) No 883/2004, EEA Agreement and Swiss Agreement) (Amendment) (EU Exit) Regulations 2019.—(Alok Sharma.)

The Chair: Before we leave, I apologise again to the Committee for my disgraceful lateness. I have no excuse; I was just wrong.

3.8 pm

Committee rose.