



BRIEFING PAPER

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Brexit and State Pensions

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Summary

Entitlement to the UK State Pension is based on an individual's UK National Insurance record. As part of the EU, the UK was part of a system to **co-ordinate the social security** entitlements for people moving within the EU. The rules also apply to the EEA and Switzerland.

The aim of these provisions is to remove barriers to workers moving between Member States. They enable periods of insurance in different countries to be aggregated. An individual makes one application to the relevant agency in the country of residence - in the UK, the [International Pension Centre](#). It then notifies details of the claim to all countries in which the person has been insured. Each Member State in which the person was insured then calculates its pro-rata contribution and puts that amount into payment. Social security co-ordination has also ensured annual uprating of the UK State Pension in EEA countries and Switzerland.

The Withdrawal Agreement

The arrangements to apply post-Brexit were part of the [negotiations under Article 50 on the UK's withdrawal from the EU](#). For people covered by part two of the October 2019 UK-EU [Withdrawal Agreement](#) (WA) EU social security co-ordination rules continue to apply. (HM Government, [The Withdrawal Agreement: what UK nationals need to know about citizens' rights](#), November 2020).

Guidance on Gov.UK includes: [Living in Europe](#); [Benefits and pensions for UK nationals in the EEA and Switzerland](#); [Benefits and pensions for EEA and Swiss citizens in the UK](#). There is more detail in [DWP staff guidance](#) (November 2020).

After the Brexit transition period

The social security co-ordination arrangements for those who move to the EU from 1 January 2021 or are not in scope of the WA, are the subject of negotiations between the UK and EU on the future relationship. As set out in the [Political Declaration](#), the UK and the EU agreed to consider future social security co-ordination arrangements in the light of the future movement of persons. The exception relates to [Ireland](#), with which the UK Government signed a Convention so that "reciprocal benefit and social security rights for Irish and UK nationals and their family members continue to operate independently of those afforded to EU nationals from other Member States."

The European Commission published a [draft treaty text](#) on 18 March 2020, including a Protocol on Social Security Coordination. In May, the UK published a [Draft Social Security Coordination Agreement](#).

A discussion of what might happen at the end of the Brexit transition period in different scenarios, see [End of the Brexit transition: Social security co-ordination](#), Library Briefing Paper CBP 9097, December 2020.

1. The Withdrawal Agreement

The Johnson Government published its [Withdrawal Agreement](#) (WA) in October 2019. Substantially the same as that published by the May Government in February 2018, it was given effect to by the [European Withdrawal Act 2020](#). It sets out a framework for the continued legal residence (and associated rights, including social security co-ordination) of EU citizens in the UK and UK, at the end of the transition period. Equivalent [separation agreements](#) have been made with Switzerland and the EEA/EFTA states. Individuals will be able to rely on the WA and separation agreements directly to assert their rights.

The aim was to ensure that people moving between the UK and the EU before the end of the transition period “are not disadvantaged in their access to pensions, benefits, and other forms of social security, including healthcare cover.”¹ The WA also provides protections in other circumstances so that, for example, where a UK national has previously worked and paid social security contributions in a Member State, rights flowing from those contributions, such as benefits and pensions, are protected.

Gov.UK explains what the WA means for UK nationals living in an EEA state or Switzerland by 31 December 2020:

If you are a UK national living in an EEA state or Switzerland by 31 December 2020 you are covered by the [Withdrawal Agreement](#).

You will get your UK State Pension uprated every year for as long as you continue to live there. This will happen even if you start claiming your pension on or after 1 January 2021, as long as you meet the [qualifying conditions](#).

If you are working in the EEA or Switzerland, you will be able to count future social security contributions towards meeting the qualifying conditions for your UK State Pension.

You will continue to receive any UK benefits you already receive in the EEA or Switzerland for as long as you continue to live there, and continue to meet all other eligibility requirements.

You may also be able make new claims for certain UK benefits from 1 January 2021, if you meet all the other eligibility requirements. Read:

- guidance on which [benefits you can claim if you live, move or travel abroad](#) and
 - further guidance for [UK nationals in the EU](#)
- [Check which benefits you can claim while abroad](#) and how to claim them, using an online checker.²

UK nationals receiving a pension or benefit paid by an EEA state or Switzerland should “check with the organisation that pays them to find out what they need to do to continue receiving any benefits or pension after 31 December 2020.” Further information is in [country specific guidance for UK nationals](#).

For more information on

the background to the social security co-ordination provisions in the WA, see section 3 of Library Briefing Paper [Citizen’s rights provisions in the European Union \(Withdrawal Agreement\) Bill 2019/21](#) (CBP 8772, Jan 2020). A more detailed analysis of the relevant articles in the WA is in [The UK’s EU Withdrawal Agreement](#) (CBP 8453, July 2019).

¹ HM Government, [Withdrawal Agreement explainer](#), 14 November 2018, para 37

² Gov.UK, [Benefits and pensions for UK nationals in the EEA or Switzerland](#)

For citizens of the EEA or Switzerland living in the UK, it says:

Irish citizens living in the UK

You, and members of your family living in the UK, will be able to claim or continue to receive the UK benefits you are entitled to, now that the UK has left the EU. You will also continue to receive any Irish benefits you remain entitled to while living in the UK.

Other EEA and Swiss citizens

Living in the UK by 31 December 2020

You will be able to enter the UK, as now, until 31 December 2020.

You will be eligible to claim benefits until 31 December 2020. Under the [Withdrawal Agreement](#), you and your family members living in the UK by 31 December 2020 will be able to claim or continue receiving UK benefits for as long as you continue to be lawfully resident in the UK and meet the eligibility requirements.

You will need to apply to the [EU Settlement Scheme](#) by 30 June 2021 to remain in the UK and be eligible to claim benefits [...]

Moving back to the EEA or Switzerland from 1 January 2021

If you move back to the EEA or Switzerland and you are covered by the Withdrawal Agreement, you may still be able to claim certain UK benefits as long as you meet all other eligibility requirements.³

1.1 Who is in scope?

Under the WA, the EU social security co-ordination rules continue to apply during the transition period (i.e. until 31 December 2020) and beyond for those people who are within its scope. A European Commission factsheet gives an overview of its scope:

EU citizens who were **residing in the UK and UK nationals** who were **residing in one of the 27 EU Member States at the end of the transition period**, where such residence is in accordance with EU law on free movement.

Family members that are granted rights under EU law (current spouses and registered partners, parents, grandparents, children, grandchildren and a person in an existing durable relationship), who do not yet live in the same host state as the EU citizen or the UK national will be able to join them in the future.

Children are protected, wherever they are born, before or after the UK's withdrawal

Frontier workers and frontier self-employed person are also protected in the countries where they work.⁴

There is an explanation aimed at UK nationals in Government guidance: [The Withdrawal Agreement: what UK nationals need to know about citizens; rights](#), 6 November 2020.

³ Gov.UK. [Benefits and pensions for EU, EEA or Swiss nationals in the UK; DWP Explanatory Memorandum on Social Security Convention between the Governments of UK and Ireland; Convention on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland](#), (1 February 2019)

⁴ European Commission, [The revised EU/UK withdrawal agreement maintained](#)

There is more detail in:

- HM Government, [Explainer for part two \(citizens' rights\) of the agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union](#), October 2020
- DWP, [Social security arrangements between the UK and EU from 1 January 2021: staff guide](#), 11 November 2020

Individuals in full scope of the Withdrawal Agreement for social security coordination purposes will continue to be subject to the EU social security coordination rules.⁵ They are primarily those in a “cross-border situation” (involving both the UK and an EU member State) on 31 December 2020, who continue to be so. For example:

- a. EU citizens subject to the legislation of the UK at the end of the transition period. For example, an EU citizen working in the UK at the end of the transition period.
- b. UK nationals subject to the legislation of a Member State at the end of the transition period. For example, a UK state pensioner who has retired to a Member State, a UK national living and working in a Member State or a UK national living in the UK but working in a Member State.
- c. EU citizens living in the UK but subject to the legislation of a Member State at the end of the transition period. For example, an EU citizen living in the UK but working in a Member State.
- d. UK nationals living in a Member State but subject to the legislation of the UK at the end of the transition period. For example, a UK national living in a Member State but working in the UK.
- e. EU citizens who are employed or self-employed in the UK at the end of the transition period, but subject to the legislation of a Member State; and UK nationals who are employed or self-employed in one or more Member States at the end of the transition period but subject to the legislation of the UK. For example, an EU citizen living in France, working for a French employer in both France and the UK, who carries out the substantial part of their work in France.
- f. Stateless persons and refugees, as well as third country nationals, lawfully residing in the UK or a Member State as long as they are in one of the situations above.⁶

Individuals in full scope of the WA retain social security co-ordination rights as long as they remain, without interruption, in one of the situations above.⁷

Also covered are those individuals who have residence rights or the right to work in the UK or a Member State under the residency provisions of the Withdrawal Agreement.⁸

⁵ [Withdrawal Agreement](#), 19 October 2019, Article 30 (3) or (1)

⁶ HM Government, [Explainer for part two \(citizens' rights\) of the agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union](#), October 2020

⁷ Ibid, para 32; See also DWP, [Social security arrangements between the UK and EU from 1 January 2021: staff guide](#), 11 November 2020, paras 26-30 and 38-42

⁸ Ibid para 33

Partial scope

The Withdrawal Agreement also provides protections in a number of other circumstances to ensure there is no 'cliff edge', or loss of rights, for individuals who are not, or are no longer in full scope for social security coordination purposes.⁹ For State Pension purposes, this means:

- a. A UK national, who is not living in the EU at the end of the transition period but has paid social security contributions in a Member State in the past, or an EU citizen, who is not living in the UK at the end of the transition period but has paid social security contributions in the UK in the past, will have those contributions protected by the Withdrawal Agreement. The rights that flow from those contributions such as benefit, pension and reciprocal healthcare rights will also be protected. Periods completed before and after the end of the transition period will be taken into account. This means that a person will be able to aggregate their past social security contributions with contributions they make after the end of the transition period for the purpose of meeting the minimum qualifying period for a state pension or relevant benefit.
- b. Where a UK State Pension is paid to an individual in the situation above (a UK national with contributions in a Member State before the end of the transition period, or an EU citizen with contributions in the UK before the end of the transition period) this will be paid at the same rate as in the UK (uprated).¹⁰

For example:

A Slovenian national who worked and has paid or been credited with National Insurance contributions for 8 years in the UK between 2001 and 2009, and is living and working in Slovenia on 31 December 2020. While they will not be in full scope of the social security provisions, they will still be able to rely on these past periods for rights derived from them. In this case they will be able to rely on these contributions when they come to claim their State Pension in 2024, and so will be able to aggregate periods of insurance in Slovenia to meet the minimum qualifying period in the UK, and their UK State Pension will increase in line with those in the UK while they live in the EU.¹¹

1.2 Agreement with Ireland

In recognition of the "special status that UK and Irish nationals have in each other's countries," in February 2019, the Governments of the UK and Ireland signed a Convention that "upholds the principles of equal treatment and reciprocity created by the Common Travel Area in 1922." It demonstrates a "continued commitment to the principles of the Common Travel Area and ensures that reciprocal benefit and social security rights for Irish and UK nationals and their family members

⁹ [Withdrawal Agreement](#), 19 October 2019, Article 32

¹⁰ HM Government, [Explainer for part two \(citizens' rights\) of the agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union](#), October 2020

¹¹ IDWP, [Social security arrangements between the UK and EU from 1 January 2021: staff guide](#), 11 November 2020 para 52

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continue to operate independently of those afforded to EU nationals from other Member States.”¹² Gov.UK explains:

The UK and Irish governments have a bilateral agreement to ensure that social security rights, including access to pensions, will continue to be protected after the UK leaves the EU. This agreement also means that there will be no change to the payment of your UK State Pension in Ireland. UK State Pensions will continue to be paid as before 31 January 2020, including upratings.¹³

The Convention is expected to come into force at the end of the transition period.¹⁴

¹² Cabinet Office, [Memorandum of Understanding between the UK and Ireland on the CTA](#), May 2019, para 10 (social security co-ordination); [UK/Ireland: Convention on social security \[CS Ireland No1.2019\]](#)

See Library Briefing Paper CBP 7661 [The Common Travel Area and the special status of Irish nationals in UK law](#) (October 2019)

¹³ Gov.UK, [Living in Ireland](#) (updated Sept 2020)

¹⁴ See [Article 65 of the Convention](#) and p2 of the [Explanatory Memorandum](#)

2. After the Brexit transition period

2.1 The Political Declaration

The social security co-ordination arrangements for those who are not in scope of the WA, are the subject of negotiations between the UK and EU on the future relationship:

While the UK State Pension is payable worldwide and this will not change as a result of the UK leaving the EU, social security co-ordination arrangements for those not in scope of the Withdrawal Agreement who move to the EU from 1 January 2021 are subject to the outcome of negotiations with the EU.

As set out in the Political Declaration, the UK and the EU have agreed to consider addressing future social security co-ordination arrangements in the light of the future movement of persons. This is without prejudice to the rights of individuals who are protected by the Withdrawal Agreement.¹⁵

The [Political Declaration](#) of 17 October 2019 set out the framework for the Future Relationship. It states that, for those moving between the EU and the UK after the end of the transition period, the two parties would “agree to consider addressing social security coordination in the light of future movement of persons.” Noting that the UK had decided that the free movement of persons would no longer apply, the parties would need to establish new mobility arrangements, based on non-discrimination between EU Member states and full reciprocity.¹⁶

2.2 Negotiations

The European Commission’s agreed [mandate](#) for negotiations with the UK, published in February 2020, said future mobility arrangements should be “based on non-discrimination between the Union Member States and full reciprocity” and that the “envisaged partnership should address social security coordination.”¹⁷

Setting out its approach to the negotiations, the UK Government commented that social security co-ordination “can remove barriers and support mobility of labour between countries.” It added that arrangements that allowing “workers to rely on contributions made in two or more countries for their state pension access, including uprating principles, and that prevent dual concurrent social security contribution liabilities, could be good for business and support trade.” The UK was “ready to work to establish practical, reciprocal provisions on social security coordination” and said that any agreement “should be similar

¹⁵ [DEP 2020-0044, 20 January 2020](#); See Library Briefing Paper [CBP 8714](#).

¹⁶ Para 52 and 49

¹⁷ European Council, [Annex to Council decision authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for a new partnership agreement](#), 25 February 2020

in kind to agreements the UK already has with countries outside the EU and respect the UK's autonomy to set its own social security rules."¹⁸

Proposals

The [EU's Draft Protocol](#) followed closely the wording of the existing [Regulation 883/2004](#) on social security co-ordination and covers the same range of benefits.¹⁹ However, it applies only to limited groups of persons:

- researchers, students, trainees, people on youth exchange programmes, and their family members;
- pensioners; and
- for the purposes of reimbursement of costs incurred for necessary medical treatment during short stays, EU or UK citizens temporarily abroad.²⁰

The [UK's Draft Agreement](#) was more limited in terms of the areas covered, but they do include the rules to determine which state a person moving between the UK and EU is liable to pay social security contributions to, and old age pensions. In terms of the persons covered, the text states that the Agreement shall apply to people who are or have been in a cross-border situation who:

- are, or have been, subject to the legislation of one or more Party; and
- to the spouse, civil partner, or surviving spouse/civil partner of such a person (if the latter is entitled to a right under the provisions in the Agreement on old age pensions).²¹

'Subject to the legislation' means the legislation on payment of social security contributions, old age pensions, or healthcare.²²

In relation to the pensions, the UK Government's proposal shares some common ground with the EU proposal and, therefore, existing social security co-ordination arrangements. This is in respect of:

- **Provision for equal treatment** on grounds of nationality (article 15);
- **Aggregation** - the ability for periods of insurance in the UK and EU Member States to be aggregated in deciding whether minimum qualifying conditions are met (article 16);
- **Provision for State Pensions to be exported and updated annually** (article 17);

¹⁸ HM Government, [The Future Relationship with the EU: The UK's Approach to Negotiations](#), CP211, 27 February 2020, p23

¹⁹ Draft Protocol, Art MOBI.SSC.3. Benefits covered are: sickness benefits, maternity and equivalent paternity benefits, invalidity benefits, old age benefits, survivors' benefits, benefits in respect of accidents at work and occupational diseases; death grants; unemployment benefits; pre-retirement benefits; family benefits.

²⁰ Draft Protocol, Art MOBI.SSC.2

²¹ Article 2

²² [Draft UK negotiating document](#), May 2020, article 1

- **Provisions for calculating State Pension entitlements where an individual has periods of insurance in the UK and EU Member States** (articles 18 to 19).

For UK nationals in the EEA or Switzerland, the Government is seeking to maintain arrangements with the EU in some areas, including:

- counting future social security contributions in the EEA and Switzerland towards meeting UK State Pension qualifying conditions;
- getting your UK State Pension uprated every year in the EEA and Switzerland.²³

In a speech on 25 November, European Commission President, Ursula von der Leyen, cited social security co-ordination as an area in which there had been “genuine progress”.²⁴

In November 2020, the Government laid draft regulations before Parliament which include provision enabling aggregation and uprating of the State Pension to continue if no agreement is in place by the end of the transition period.²⁵ Work and Pensions Minister, Baroness Stedman-Scott explained it was an interim measure:

This saving will provide for continued state pension aggregation and uprating in those countries 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 agreements on social security with individual EU countries instead; even where such negotiations are progressing well, the saving may be needed for a short period beyond March 2022 to finalise and implement bilateral agreements. For this reason, the saving is not time limited. However, it is a strictly interim measure targeted at those who move to the EU, the EEA and Switzerland after the transition period, while future arrangements are put on a reciprocal footing.²⁶

She said the Government did not think it would be “appropriate to continue unilaterally to operate EU [social security co-ordination] rules after we have left the EU and the transition period ends, in doing so creating different dates of change, additional cohorts and complexity for staff and citizens.” While it would “prefer a single social security co-ordination agreement with the EU, the Government would “seek to put in place [bilateral] reciprocal agreements with member states swiftly if no agreement can be reached with the EU.”²⁷

For a discussion of what in different scenarios, see [End of the Brexit transition: Social security co-ordination](#), Library Briefing Paper CBP 9097, December 2020.

²³ Gov.UK, [Benefits and pensions for UK nationals in the EEA or Switzerland](#), updated October 2020

²⁴ [Speech by President von der Leyen at the European Parliament Plenary on the preparation of the European Council meeting of 10-11 December](#), 25 November 2020

²⁵ [Draft Social Security Co-ordination \(Revocation of Retained Direct EU Legislation and Related Amendments\) \(EU Exit\) Regulations 2020](#)

²⁶ [HL Deb 8 December 2020 c296-7GC](#)

²⁷ Ibid

3. Background

3.1 Social Security co-ordination

As a member of the EU, the UK was part of long-standing provisions in EU law to co-ordinate social security schemes for people moving within the EU,²⁸ which also apply to non-EU EEA countries and Switzerland.²⁹ The main purpose of these rules is to ensure that people who choose to exercise the right of freedom of movement do not find themselves at a disadvantage in respect of social security benefits or pensions– for example if they should fall ill or become unemployed while working in another EU/EEA State. The Regulations do not guarantee a general right to benefit throughout the EEA; nor do they harmonise the social security systems of the Member States. Their primary function is to support free movement throughout the EU/EEA by removing some of the disadvantages that migrants might encounter. They achieve this by, for example:

- prohibiting discrimination in matters of social security systems on grounds of nationality;
- clarifying which state is responsible for paying benefits in particular cases (the ‘single state principle’);
- allowing a person’s periods of employment, residence and contributions paid in one EEA country to count towards entitlement to benefit in another country (this is referred to as the principle of ‘aggregation’); and
- allowing people to take certain benefits abroad with them to another EU/EEA state (‘exportation’).

As the European Commission explains it:

The principles underpinning the rules on social security coordination ensure that citizens are only covered by the legislation of one Member State (unicity), and that they have the same rights and obligations as the nationals of the Member State where they are covered (equal treatment). The principles also ensure that previous periods of insurance, work or residence in other Member States are taken into account when authorities determine a person’s eligibility for a benefit (aggregation), and that citizens may, as a rule, receive cash benefits to which they are entitled even if they live in a different Member State (exportability).³⁰

There is an overview of the social security coordination provisions in chapter 3 of DWP’s [Guidance relating to the UK’s operational implementation of the social security coordination provisions of Part 2 of the EU Withdrawal Agreement: Citizen’s Rights](#) (November 2020).

For a discussion of what it means in practice, see section 4.1 of Library Briefing Paper CBP 8706 [The Immigration and Social Security Co-ordination \(EU Withdrawal\) Bill 2019-20](#) (March 2020).

²⁸ Now in EC Regulations [883/2004](#) and [987/2009](#)

²⁹ There is a list of EU and EEA countries on [Gov.UK](#)

³⁰ European Commission, [Contingency action plan](#) etc, 19 December 2018, p4

What this meant for State Pensions

Entitlement to the UK State Pension depends on an individual's UK National Insurance (NI) record.

Individuals who reached State Pension age before 6 April 2016 are entitled to a State Pension under the 'old' system – which was made up of two tiers, the [basic State Pension](#) and [additional State Pension](#). Individuals who reach State Pension age after that date are entitled to the [new State Pension](#).³¹

As part of the EU system of co-ordination of social security, an individual who has lived or worked in the UK and another EEA country or Switzerland, need only make one claim – in their last country of residence. They will be eligible for annual increases on their pension in payment:

If you've lived or worked in another country in the past, you might be eligible for that country's state pension and a UK State Pension.

To check if you can pay into or receive another country's state pension, contact the pension service for that country.

Claiming another country's state pension

Depending on where you've lived or worked, you may need to make more than one pension claim.

European Economic Area (EEA) countries and Switzerland

You only need to claim your state pension in the last country where you lived or worked. Your claim will cover all [EEA countries](#) (including the UK) and Switzerland. You don't need to claim for each country separately.

Countries outside the EEA (except Switzerland)

You need to claim your pension from each country separately.

Check with the pension service for the country where you've lived or worked to find out how to make a claim.

Your UK State Pension if you've lived or worked abroad

Your UK State Pension will be based on your [UK National Insurance record](#). You need 10 years of UK National Insurance contributions to be eligible for the new State Pension.

You may be able to use time spent abroad to make up the 10 qualifying years. This is most likely if you've lived or worked in:

- The EEA
- Switzerland
- certain countries that have a [social security agreement with the UK](#)

Example

You have 7 qualifying years from the UK on your National Insurance record when you reach State Pension age.

³¹ For more information, see DWP, [Your State Pension explained](#), April 2016; DWP, [State Pensions – your guide](#), October 2014

You worked in an EEA country for 16 years and paid contributions to that country's state pension.

You will meet the minimum qualifying years to get the new State Pension because of the time you worked overseas. Your new State Pension amount will only be based on the 7 years of National Insurance contributions you made in the UK.

You want to retire overseas

You can claim the new State Pension overseas in most countries.

Your State Pension will increase each year but only if you live in:

- the EEA
- Switzerland
- certain countries that have a [social security agreement with the UK](#)

Your new State Pension may be affected if your circumstances change. You can get more information from the [International Pension Centre](#).

Moving to an EEA country or Switzerland from 1 January 2020

Read the [guidance on claiming your State Pension in the EEA or Switzerland from 1 January 2021](#) for more information if you're thinking about moving to the EEA or Switzerland.³²

Information for individuals is also on the European Commission website – [here](#).

System for co-ordinating entitlements

The European Parliament explains that the principle of equal treatment is at the core of the EU's social security co-ordination rules. The central piece of social security co-ordination legislation is Regulation 883/2004:

The principle of equal treatment between host-country citizens and other EU citizens is also at the core of the EU's social security coordination. EU coordination measures in the field of social security are required by Article 48 TFEU in order to ensure that citizens do not suffer disadvantages in their social security protection when exercising their right to free movement across the EU. Otherwise, and due to the principle of territoriality applicable to a great extent in the Member States, only contributions and periods in the Member State concerned would be considered for the provision of social security benefits.

Social security rules are based on four principles:

- Equal treatment: non-national EU citizens have the same rights and obligations as nationals of the host Member State;
- One country only: Union citizens who have exercised their free movement rights are covered by the system of one Member State at a time, and pay contributions in one country only.
- Aggregation: previous periods of insurance, work or residence in other Member States are taken into account for the provision and calculation of social security benefits.

³² Gov.UK, [The new State Pension/living and working overseas](#)

- Exportability: cash benefits (but not in-kind benefits such as medical care) can be exported to the Member State of residence.

The EU regulations on the coordination of social security coordinate the national social security systems but do not harmonise them, so that the Member States decide on the benefits to be granted, their amount, etc., provided equal treatment is ensured.

The central piece of social security coordination legislation is **Regulation 883/2004**,* in force since May 2010. It contains rules for establishing the **Member State (of work or of residence) responsible for the provision of social security benefits** such as sickness benefits, maternity and equivalent paternity benefits, invalidity benefits, old-age benefits, survivors' benefits, benefits in respect of accidents at work and occupational diseases, death grants, unemployment benefits, pre-retirement benefits and family allowances. As a general rule, social security benefits are paid in the Member State where the activity (employment, self-employment)** is undertaken, regardless of the place of residence and nationality of the claimant.³³

* [Regulation 883/2004](#) of the European Parliament and Council of 29 April 2004 on the coordination of social security systems replaced Regulation 1408/71 as of 1 May 2010. The procedure for the implementation of the regulation is laid down by [Regulation 987/2009](#).

** The regulation is applicable to refugees and stateless people too. Moreover, [Regulation 1231/2010](#) extends the new social co-ordination provisions to third-country nationals legally resident in the EU and in a cross-border situation and provides rights to them for instance when they have moved from one EU country to another for work, but their children have stayed in the previous EU country.

DWP Decision Makers' Guide explains that, in general, a person is insured in only one European Economic Area country for any period:

070553 In general a person is insured in only one European Economic Area country for any period. A person cannot therefore use insurance from one period to obtain entitlement to benefits of the same kind (see DMG 070570) from two different countries.³⁴

If they have been insured in more than one EEA country, they may be entitled to a pro-rata State Pension.³⁵ Each Member State in which the person was insured will calculate its pro rata contribution (using agreed formulae) and put that amount into payment.

If the individual would be entitled to a higher amount under UK legislation alone, that higher amount is payable.³⁶

Periods of insurance in another EEA Member State can help satisfy the minimum qualifying period (MQP) for entitlement to the new State Pension. However, the pension is based solely on UK contributions:

7.23 As is currently the case for people who reached state pension age before 6 April 2010, years of insurance or residence in another Member State of the European Economic Area (EEA) or in certain countries with which the UK has a bilateral social security agreement (for example, the United States) will count towards the MQP. However, entitlement to new state pension will

³³ European Parliament, [The Brexit negotiations: Issues for the first phase](#), June 2017

³⁴ DWP, [Decision Makers' Guide](#), Vol 2, para 070553

³⁵ DWP, [Decision Makers' Guide](#), Chapter 7. Part 5

³⁶ *Ibid* para 076061-2

be based solely on UK contributions, on a pro-rata basis. For example, a person with only five years of UK National Insurance contributions who has a further 30 years of insurance in another EEA Member State would satisfy the MQP through the combination of their UK and foreign insurance and be entitled to 5/35ths of the full rate of the new state pension.³⁷

DWP's [Decision Makers' Guide](#) explains the calculation:

076063 The rate of RP [retirement pension] is calculated in three stages.

Stage 1 - Addition

Add together all the periods of insurance (or residence, if entitlement in that country depends on periods of residence) in all the EEA countries where the person was insured and treat them as periods of insurance completed in the UK.

Stage 2 - Theoretical rate of Retirement Pension

Calculate the theoretical amount of RP which would be payable if all the insurance added together in Stage 1 had been paid in the UK. The theoretical rate of RP must be at least 25% of the standard rate. If not no further calculation is necessary.

Stage 3 - Actual rate of Retirement Pension

The purpose of the calculation of the actual rate of RP is to decide the amount to be paid by each of the EEA countries where the person was insured.

The rate of RP to be paid by the UK is $\text{Periods of UK insurance} \times \text{theoretical rate}$

Total insurance

Example

A man was insured in Germany for 1450 weeks and in the UK for 200 weeks. The total insurance is 1650 weeks.

If all that insurance had been paid in the UK, he would be entitled to RP at 75% of the standard rate. At April 1994 figures this is £43.20. The actual rate to be paid by the UK is $200 \text{ (UK insurance)} \times £43.20 \text{ (theoretical amount)} / 1650 \text{ (total insurance)}$. That is £5.24.³⁸

For more on what the social security co-ordination rules mean in practice, see section 4.1 of Library Briefing Paper CBP-8706 [The Immigration and Social Security Co-ordination \(EU Withdrawal\) Bill 2019-21](#) (March 2020).

The European Commission website also provides an [explanation](#) and [links to other sources of information](#).

Uprating

It has been a long-standing feature of UK policy that the State Pension is payable overseas but only uprated if the pensioner is resident in an

³⁷ [Explanatory Memorandum to the State Pension Regulations 2015 \(SI 2015 No. 173\)](#)

³⁸ DWP, [Decision Makers' Guide](#), Chapter 7. Part 5, 076063

EEA country or one with which the UK has a reciprocal agreement requiring uprating.³⁹

In relation to EEA countries, this is currently required under the social security co-ordination arrangements. The UK has reciprocal arrangements with some EU Member States, but these are generally superseded by EU law:

Preet Kaur Gill: To ask the Secretary of State for Work and Pensions, which current EU Member States had historical bilateral agreements with the UK that guaranteed annual uprating of UK state pensions?

Guy Opperman: The United Kingdom's reciprocal social security agreements with EU Member States as well as Norway, Iceland, Liechtenstein and Switzerland are generally superseded by EU law. The reciprocal agreements with Austria, Belgium, Croatia, Cyprus, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Luxembourg, Malta, Netherlands, Norway, Portugal, Slovenia, Spain, Sweden and Switzerland all made provision regarding annual increases in the state pension.⁴⁰

There are "no reciprocal agreements with Bulgaria, the Czech Republic, Estonia, Greece, Hungary, Latvia, Liechtenstein, Poland, Romania and Slovakia."⁴¹

For more on the UK Government's policy for uprating the State Pension overseas see Library Briefing Paper SN-01457 [Frozen Overseas Pensions](#).

3.2 Bilateral agreements

The UK has bilateral social security treaties with 17 out of the 27 EU Member States. These bilateral agreements were replaced by European social security co-ordination provisions for people within scope and where the right to benefit was acquired on or after the date those provisions came into force). They could still apply to non-EEA nationals.⁴²

An academic article from 2017 suggested that the existing agreements were far more limited in scope than the EU co-ordination rules and could well be outdated.⁴³ The Government said in March 2019 that officials were assessing the pre-existing Reciprocal Agreements on a case by case basis to see whether they are capable of revival:

The UK has 17 reciprocal agreements on social security with EU Member States. There are 10 EU countries where there is no reciprocal social security agreement in place. These countries are: Bulgaria, Czechia, Estonia, Greece, Hungary, Latvia, Lithuania, Poland, Romania and Slovakia.

Officials are assessing pre-existing Reciprocal Agreements on a case by case basis as to whether they are capable of revival, for both legal and administrative operability reasons. Any revival will

³⁹ [Social Security Contributions and Benefits Act 1992](#), s113; [Social Security Benefit \(Persons Abroad\) Regulations 1975 \(SI 1975/563\)](#); [Pensions Act 2014](#), s20; DWP's Decision Makers Guide, [Volume 2: international subjects](#), para 070310 ff

⁴⁰ [PO 118842. State Retirement Pensions: British Nationals Abroad](#)

⁴¹ [HL Deb 5 March 2019 c563](#)

⁴² DWP, [Decision Makers' Guide](#), para 075820-076121

⁴³ Herwig Verschueren, 'Scenarios for Brexit and social security', *Maastricht Journal of European and Comparative Law*, 2017, vol 24 (3), pp367-381

require technical discussions and formal agreement between the parties.

Social Security is an area of shared competence. Therefore, Member States will have to consider the legal and political position and form their own view on whether the EU's contingency regulation poses any limits to bilateral agreements. There is provision in domestic law which could give effect to pre-existing bilateral agreements in relation to social security, should that be desirable.

Article 6 (1) of the contingency Regulation as agreed at the General Affairs Council recognises the operability of existing bilateral agreements between the UK and Member States that are listed in Annex II to Regulation 883/2004 under Article 8. Article 8 (2) of the contingency Regulation acknowledges that bilateral agreements may be concluded between the UK and Member States after exit that cover periods before exist, provided they satisfy the conditions set out in that Article, namely to meet the requirements of the contingency Regulation and give effect to the principles in Regulation 883/2004.⁴⁴

For more detail on the reciprocal social security agreements the UK has with other countries, see Library Briefing Paper [CBP 8706](#) p36-8 and DWP's [Decision Makers' Guide](#) para 070330 ff.

⁴⁴ [Brexit: co-ordination of social security and access to healthcare](#), European Scrutiny Committee, 30 April 2019; [HL Deb 5 March 2019 c563](#)

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