



The Scottish Parliament
Pàrlamaid na h-Alba

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SPICe Briefing

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What is social security co-ordination and why does it matter for Scotland?

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This briefing explains what EU social security co-ordination is, who and which benefits are covered, and the four basic principles which underpin the system. It is the first in a series of three briefings on Scottish social security and Brexit being produced under the Parliament's academic fellowship scheme.



14 December 2020
SB 20-82

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Introduction

The [European Union \(EU\)](#) protects the social security rights of people who move within the EU. These arrangements (which include healthcare) are the outcome of long and complex negotiations since the beginning of the [European Economic Community \(EEC\)](#). They are provided by [Regulation \(EC\) 883/2004](#) and [Implementing Regulation \(EC\) 987/2009](#), referred to as the 'Co-ordinating Regulations'. In February 2017, the [House of Commons European Scrutiny Committee](#) said that the EU's Social Security Co-ordinating Regulations'

“ impact on the lives of individual citizens is profound, as they provide a measure of legal and financial clarity about their rights and obligations if they move between Member States.”

House of Commons European Scrutiny Committee, 2017¹

However, as Eichenhofer noted, the source of these rights goes largely unnoticed:

“ The co-ordination of social security between Member States has been the most significant development so far in social policy at the European level. Its success has been remarkable, yet its implementation has been scarcely noticeable... benefits of EU social security co-ordination are today taken for granted.”

Eichenhofer, 2000²

Co-ordination matters for Scotland because, even though the UK has left the EU, provisions in the [EU-UK Withdrawal Agreement](#) mean that co-ordination will apply for at least several decades into the future. These provisions largely mirror those of the current EU Co-ordinating Regulations. They will apply to most UK-wide benefits and several of [Scotland's devolved social security benefits](#).

This briefing explains what EU social security co-ordination is, who and which benefits are covered, and the four basic principles which underpin the system.

What is social security co-ordination and why do we need it?

The EU's social security Co-ordinating Regulations are linked to [free movement of workers](#), one of the pillars of the [EU Single Market](#). The drafters of the [Treaty of Rome](#), which established the [EEC](#) in 1958, recognised that the member countries' different social security systems could present obstacles to accessing benefits - including pensions and healthcare – for mobile workers. This could be a barrier to the right to free movement enshrined in the Treaty. To mitigate these obstacles, the Treaty provided for member countries' social security systems to be co-ordinated. Co-ordination adjusts social security systems in relation to each other to protect entitlements of mobile workers without interfering in the national schemes in other respects. ³

Who is covered by the EU's social security Co-ordinating Regulations?

The Co-ordinating Regulations cover:

- nationals of an [EEA](#) member country (EU-27, Iceland, Liechtenstein, Norway), Switzerland and the United Kingdom, who are or have been insured in one of these countries, and members of their family
- stateless persons and refugees residing in one of the above countries and their family members
- nationals of non-EU countries, who are legally residing within the territory of the EU, and have moved between two or more EU countries, and members of their family.

An 'insured person' is someone who satisfies the conditions of entitlement to benefits under the legislation of the country which is responsible for their social security when taking into account the provisions of the Co-ordinating Regulations described below.

Which benefits are covered?

The Co-ordinating Regulations apply to the following branches of social security, with a UK example in brackets:

- sickness benefits (Statutory Sick Pay). The Regulations also cover healthcare (NHS)
- maternity and equivalent paternity benefits (Maternity Allowance)
- invalidity benefits (Employment and Support Allowance)
- old-age benefits (State Pension)
- survivors' benefits (Bereavement Support Payment)
- benefits in respect of accidents at work and occupational diseases (Industrial Injuries Disablement Benefit)
- death grants (none in UK)
- unemployment benefits (Jobseeker's Allowance)
- pre-retirement benefits (none in UK)
- family benefits (Child Benefit).

How is social security co-ordinated by the regulations?

The Regulations employ four key principles to co-ordinate social security in the context of free movement.

Applicable legislation

These are rules to determine which country is responsible for collecting contributions, determining eligibility and administering benefits and services. This is to prevent workers and their employers having to pay contributions in two or more member countries or not being covered by social security anywhere. The general rule is that a person is subject to the legislation of the country where she or he works.

However, there are several exceptions to the general rule which include:

- workers '[posted](#)' temporarily to another member country by their employer, who remain insured in their 'home' country for a maximum of 24 months.
- workers who live in one member country and work in another ([frontier workers](#)). For most benefits the country where the work is carried out is responsible for their social security – although special rules apply to unemployment benefits and healthcare.
- people who normally work in two or more member countries which gives rise to several potential scenarios with different rules.

Equal treatment

Equal Treatment prohibits discrimination on nationality grounds. It requires people to be given the same rights and obligations as nationals of the country responsible for their social security.

Aggregation

Previous periods of insurance, work or residence in other EU member countries are added together to establish entitlement to benefit.

Exportability

Territorial boundaries are removed to make some, mainly long term, cash benefits exportable to other member countries so, for example, a person may draw their retirement pension anywhere in the EU.

Benefit categories

EU member countries' social security benefits are divided into three categories for the purpose of co-ordination. Which category a particular benefit falls into determines which of the co-ordination principles and mechanisms apply to that benefit

- Social security
- Special Non-Contributory Benefits (SNCBs)
- Social assistance

Social security

Social security benefits are fully co-ordinated, i.e. all four main principles of co-ordination described above apply. An example is basic State Pension.

Special Non-Contributory Benefits

Special Non-Contributory Benefits (SNCBs) are 'partially co-ordinated'. The principles of applicable legislation, equal treatment and aggregation apply. However, SNCBs are not exportable. One example is Income-related Employment and Support Allowance.

Social assistance

Social assistance is not included within the Co-ordinating Regulations although other regulations apply. These regulations are not the subject of this briefing.

How is a benefit categorised?

The distinction between social security, SNCBs and social assistance has been defined by case law. It is not for a member country to decide how a benefit is classified for the purpose of co-ordination. While the member country will describe the benefit's characteristics and may give an opinion, classification is a matter for the 'Administrative Commission for the co-ordination of social security systems' which:

“ comprises a representative of the government of each EU country and a representative of the Commission. It is responsible for dealing with administrative matters, questions of interpretation arising from the provisions of regulations on social security co-ordination, and for promoting and developing collaboration between EU countries ”

European Commission, Employment, Social Affairs and Inclusion, 2020⁴

Brexit and social security co-ordination

Although the UK left the EU on 31 January 2020 and the Transition period is scheduled to end on 31 December 2020, the EU social security Co-ordinating Regulations will continue to apply in and to the UK for many years to come. This is because social security co-ordination is included in the EU-UK Withdrawal Agreement.

People who have exercised their right to free movement before the end of the Transition period

EU citizens in the UK and UK citizens in the EU who have exercised their right to free movement before the end of the Transition period, scheduled to be 31 December 2020, will have their current and future social security rights protected by Part Two of the Withdrawal Agreement. All social security benefits covered by the Co-ordinating Regulations will continue to be covered under the terms of the Withdrawal Agreement and the principles of co-ordination described above will continue to apply. Future amendments to the legislation will also apply in and to the UK. Given the lead time for pension rights to mature, it is likely that the UK will be applying the Co-ordinating Regulations for many decades to come.

However, to be covered by the Withdrawal Agreement, a person must continue to be in one of the qualifying situations *without interruption*. For example, an EU citizen who is living in the UK at the end of the Transition period and continues to do so would be covered by co-ordination. However, an EU citizen who moves back to the UK one day after the end of the Transition period will not be covered by the Withdrawal Agreement but might be covered again if, for example, she later claims a retirement pension.

Future movers

Free movement of workers and citizens ends for the UK on 31 December 2020. People who move between the UK and EU member countries after the end of the Transition period will either have their social security rights provided for by a new post-Brexit agreement between the EU and the UK or, if there is no such agreement, by unilateral arrangements introduced by the UK and EU and/or by bilateral agreements negotiated between individual countries. These potential future arrangements will be addressed in a forthcoming briefing.

Relevance of social security co-ordination to Scotland

Devolved social security under [The Scotland Act \(2016\)](#) and [The Social Security \(Scotland\) Act 2018](#) includes some benefits covered by the EU social security Co-ordinating Regulations. This means that, in addition to the UK-wide issues, there are Scotland-specific questions to consider about the place of devolved benefits in the Withdrawal Agreement and arrangements for future movers.

Questions to consider include how are/will Scotland's devolved benefits be classified for co-ordination? Following discussions between the UK Government and the Administrative Commission, Carer's Allowance Supplement and Young Carer Grant have already been classified under EU law as 'social security' which means they are fully co-ordinated and exportable to other member countries.

The status of other benefits delivered by Social Security Scotland (Best Start Grants, Best Start Foods, Funeral Support Payment and Job Start Payment) have yet to be agreed within the Administrative Commission. The Scottish and UK Governments' view is that they are either Special Non-Contributory Benefits and not exportable or social assistance and not included in co-ordination. However, as described above, it is the Administrative Commission that decides which category a benefit falls into, based on the characteristics of the benefit and case law. Other devolved benefits soon to be delivered by Social Security Scotland will be considered by the Administrative Commission in due course. ⁵

Following the end of the Transition period, the UK will have Observer status at the Administrative Commission when the item on the agenda is relevant. A Joint Committee will be established to enable the EU to inform the UK if the Co-ordinating Regulations are replaced or amended after the end of the Transition period and the UK to inform the EU of relevant changes to domestic provisions.

Future Briefings

Forthcoming briefings will examine how Scotland's devolved benefits will be treated in the Withdrawal Agreement; and by emerging arrangements to co-ordinate social security for future movers.

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