EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (AMENDMENT) REGULATIONS 2021

2021 No. 1152

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument corrects a deficiency in UK legislation following EU exit and the end of the transition period in an area of DWP policy. It amends legislation in order to continue the policy to make payments of Christmas Bonus to eligible people in Switzerland. This instrument also amends legislation to change the words "member State" to "EEA state" in line with the European Economic Area Act 1993[1].

3. Matters of special interest to Parliament

Matters of Special Interest to the Joint Committee on Statutory Instruments

3.1 This instrument, The Social Security (Amendment) Regulations 2021, was laid for sifting by the Sifting Committees on 6 September 2021by the Minister for Disabled People, Health and Work at the Department for Work and Pensions. The Sifting Committees have agreed with the Government that the instrument be laid in Parliament following the negative procedure.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales and Scotland.

4.2 The territorial application of this instrument is England and Wales and Scotland.

4.3 Social security is a devolved matter in Northern Ireland. The Department for Communities in Northern Ireland will bring forward corresponding provisions for Northern Ireland.

5. European Convention on Human Rights

5.1 Chloe Smith, the Minister for Disabled People, Health and Work at the Department for Work and Pensions has made the following statement regarding Human Rights:

"In my view the provisions of the Social Security (Amendment) Regulations 2021 are compatible with the Convention rights."

[1] https://www.legislation.gov.uk/ukpga/1993/51/contents

6. Legislative Context

6.1 The Christmas Bonus, an annual payment of £10, is currently paid as set out in section 148 of the Social Security Contributions and Benefits Act 1992[2]. It is paid to all persons present or ordinarily resident in the United Kingdom or a member State who receive one of the qualifying benefits listed in section 150 of the Act.

6.2 "Member" in the expression "member State" generally refers to membership of the European Union (EU). However, the European Economic Area Act 1993 section 2(1) extends the definition of "member State" in section 148 of the Social Security Contributions and Benefits Act (SSCBA 1992) to include states in the European Economic Area. The European Economic Area (EEA) consists of the member states of the EU plus Iceland, Norway and Liechtenstein.

6.3 Switzerland is not part of the EEA. However, in 2001 Switzerland signed an agreement[3] with the EU for the free movement of people. The agreement amended the definition of "member States" in the social security co-ordination regulations applicable throughout the EU to include Switzerland. Consequently, the Christmas Bonus was paid to people in Switzerland who satisfied the qualifying conditions.

6.4 As a result of the UK's exit from the EU, the social security co-ordination regulations that extended the payment of the Christmas Bonus to people in Switzerland were revoked at the end of the transition period. Now the only people in Switzerland who will be able to receive the Christmas Bonus are those people who are within the scope of the Withdrawal Agreement[4], the EEA EFTA Separation Agreement[5] or the Swiss Citizens' Rights Agreement[6] .

6.5 The UK Government's policy has been to pay the Christmas Bonus in the UK and EEA states under UK legislation and for the last 20 years in Switzerland under European law. The UK's exit from the EU has impacted this policy and created a deficiency in retained EU law, whereby section 148 of the SSCBA 1992 and the EU social security co-ordination regulations are no longer able to fulfil this policy objective.

[2] https://www.legislation.gov.uk/ukpga/1992/4/contents
[3] https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:22002A0430(01):EN:HTML
[4] https://www.gov.uk/government/publications/agreement-on-the-withdrawal-of-the-united-kingdom-of-great-britain-and-northern-ireland-from-the-european-union-and-the-european-atomic-energy-communi
[5] https://www.gov.uk/government/publications/eea-efta-separation-agreement-and-explainer
[6] https://www.gov.uk/government/publications/swiss-citizens-rights-agreement-and-explainer

6.6 The instrument amends primary legislation, section 148 of the SSCBA 1992, in order to continue the policy to make payments of Christmas Bonus to eligible people in Switzerland who were previously paid using the EU social security co-ordination regulations (Regulation (EC) No 883/2004[7] and Regulation (EC) No 1408/71[8]). These social security regulations were revoked on 31 December 2020. The instrument also changes the words "member State" in section 148 of the SSCBA 1992 to "EEA state" in line with the European Economic Area Act 1993.

6.7 The instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018[9].

7. Policy background

What is being done and why?

7.1 The Christmas Bonus is an annual payment of £10 made to people who satisfy the qualifying conditions. In order to qualify for the Christmas Bonus a person must be present in the UK, an EEA state or Switzerland in the qualifying week, which is the week starting with the first Monday in December. The person must also be in receipt of a qualifying UK benefit in the qualifying week.

7.2 The regulations correct a deficiency in retained EU law so that people who are present in Switzerland during the qualifying week and are in receipt of a UK qualifying benefit can be paid the annual Christmas Bonus. Prior to the end of the transition period, people who met the qualifying conditions and were living in the United Kingdom or another EEA State were paid using the power in section 148 of the Social Security Contributions and Benefits Act 1992 (SSCBA 1992) but residents in Switzerland were paid using the social security co-ordination regulations, Regulation (EC) No 1408/71 and Regulation (EC) No 883/2004. These regulations were revoked on 31 December 2020.

Explanations

What did any law do before the changes to be made by this instrument?

7.3 People in Switzerland who met the qualifying conditions for payment of Christmas bonus were paid under the EU social security co-ordination regulations. People in the UK and other EEA states who met the qualifying conditions were paid under section 148 of the SSCBA 1992.

Why is it being changed?

7.4 The EU social security co-ordination regulations were revoked on 31 December 2020. And so if Switzerland is not included in section 148 of the SSCBA 1992 payment of the Christmas bonus cannot be made to those people in Switzerland who are not in scope of the international agreements set out in paragraph 6.4 above.

[7] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02004R0883-20140101&from=EN
[8] https://www.legislation.gov.uk/eur/1971/1408
[9] https://www.legislation.gov.uk/ukpga/2018/16/contents

What will it now do?

7.5 It will enable payment of the Christmas Bonus to be made to people in Switzerland who meet the qualifying conditions. Payment will continue to be made to people in EEA states who meet the qualifying conditions.

8. European Union Withdrawal and Future Relationship

8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

9.1 This instrument does not involve consolidation and there are no plans to consolidate the relevant legislation at this time.

10. Consultation outcome

10.1 No formal consultation has taken place for these regulations as they are making technical amendments in consequence of EU exit.

11. Guidance

11.1 It is not necessary to provide guidance on these regulations as the amendment is to ensure a continuation of business as usual.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because no impact is foreseen for business, charities, voluntary bodies or the public sector.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 It is not foreseen that monitoring and evaluation will be necessary as these regulations are making technical amendments in consequence of EU exit.

14.2 As this instrument is made under the European Union (Withdrawal) Act 2018 no review clause is required.

15. Contact

15.1 Clare Glass at the Department for Work and Pensions email: londoncaxtonhouse.statepensionsenquiries@dwp.gov.uk can be contacted with any queries regarding the instrument.

15.2 Cathy Payne, Deputy Director for State Pensions and Service Delivery at the Department for Work and Pensions, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Chloe Smith, Minister for Disabled People, Work and Health at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018 and the European Union (Future Relationship) Act 2020

Part 1A

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before IP completion day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal	Sub-paragraphs (3) and (7)	Ministers of the Crown	Set out the 'good reasons' for creating a

offences	of paragraph 28, Schedule 7	exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising section 8 or part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 5 or 19, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after IP completion day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before IP completion day, and explaining the instrument's effect on retained EU law.

Part 1B

Table of Statements under the 2020 Act

This table sets out the statements that may be required under the 2020 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraph 8 Schedule 5	Ministers of the Crown exercising section 31 to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees

Part 2

Statements required under the European Union (Withdrawal) Act 2018 or the European Union (Future Relationship) Act 2020

1. Sifting statement

1.1 The Minister for Disabled People, Health and Work at the Department for Work and Pensions has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Social Security (Amendment) Regulations 2021 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)".

1.2 This is the case because the proposed regulations make amendments as a consequence of EU exit and the end of the transition period. This is a technical amendment to continue the policy of making payments of the annual Christmas bonus to people in Switzerland who meet the qualifying conditions.

2. Appropriateness statement

2.1 The Minister for Disabled People, Health and Work, Chloe Smith, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Social Security (Amendment) Regulations 2021 does no more than is appropriate".

2.2 This is the case because it does no more than allow for the continuation of the policy to make payment of Christmas bonus to people in Switzerland who fulfil the qualifying conditions.

3. Good reasons

3.1 The Minister for Disabled People, Health and Work, Chloe Smith, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action".

3.2 These are set out in this Explanatory Memorandum at section 7.

4. Equalities

4.1 The Minister for Disabled People, Health and Work, Chloe Smith, has made the following statement(s):

"The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.

4.2 The Minister for Disabled People, Health and Work, Chloe Smith, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the instrument, I, Chloe Smith, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010."

4.3 There is no impact by this instrument on equalities issues as it is a technical amendment to continue the policy of making payments of the Christmas bonus to eligible people in Switzerland.

5. Explanations

5.1 The explanations statement has been made in section 7 of the main body of this Explanatory Memorandum.