SCOTTISH STATUTORY INSTRUMENTS

2019 No. 317

SOCIAL SECURITY

The Social Security (Iceland) (Liechtenstein) (Norway) (Citizens' Rights Agreement) (Further provision in respect of Scotland) Order 2019

Made - - - - *8th October 2019*

Laid before the Scottish Parliament *10th October 2019*

Coming into force in accordance with article 1

At the Court at Buckingham Palace, the 8th day of October 2019

Present,

The Queen's Most Excellent Majesty in Council

This Order is made under the powers in section 179(1) and (2) of the Social Security Administration Act 1992(**a**), which provide that, for the purpose of giving effect to any agreement with the government of a country outside the United Kingdom providing for reciprocity in specified matters, Her Majesty may by Order in Council make provision for modifying or adapting specified legislation in its application to cases affected by such agreement or proposed alterations.

Following the withdrawal of the United Kingdom from the European Union, the Agreement on the European Economic Area of 2 May 1992, as amended and with its Protocols and Annexes ("the EEA Agreement"), will no longer apply as between the United Kingdom and Iceland, the Principality of Liechtenstein ("Liechtenstein") and the Kingdom of Norway ("Norway").

At London on 2 April 2019 an Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Governments of Iceland, Liechtenstein and Norway(**b**) on arrangements regarding citizens' rights following the withdrawal of the United Kingdom from the European Union and the EEA Agreement ("the EEA Citizens' Rights Agreement") was signed on behalf of those Governments.

(**a**) 1992 c.5. Section 179 is to be amended by S.I. 2019/128 with effect from exit day (as defined in section 20(1) of the European Union (Withdrawal) Act 2018 (c.16)) and there are other amendments that are not relevant to this Order. Legislative competence for some welfare benefits was devolved to the Scottish Parliament by Part 3 of the Scotland Act 2016 (c.11), which inserted exceptions into the Scotland Act 1998 (c.46), schedule 5, Part 2, Section F1. This devolution is subject to transitional arrangements set out in S.I. 2017/444. By virtue of section 27(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10), the function of Her Majesty of making an Order in Council, so far as the function is exercisable within devolved competence, is exercisable by a Scottish Statutory Instrument.

(**b**) A copy of this Agreement can be found at: https://www.gov.uk/government/publications/eea-efta-no-deal-citizens-rights-agreement-and-explainer.

The EEA Citizens' Rights Agreement will enter into force on the later of either exit day, or the date on which both the United Kingdom of Great Britain and Northern Ireland and at least one other party have deposited their instruments of ratification, acceptance or approval with the Depositary. Article 43(5) of the EEA Citizens' Rights Agreement allows for provisional application, from either the later of exit day or the date on which both the United Kingdom of Great Britain and Northern Ireland and at least one other party have deposited their notifications.

In order to give effect to the EEA Citizens' Rights Agreement, therefore, Her Majesty, in exercise of the powers conferred on Her by section 179(1) and (2) of the Social Security Administration Act 1992 and all other powers enabling Her to do so, is pleased, by and with the advice of Her Privy Council, to order as follows:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Social Security (Iceland) (Liechtenstein) (Norway) (Citizens' Rights Agreement) (Further provision in respect of Scotland) Order 2019 and comes into force on the occurrence of the later of the events in paragraph (2).

(2) The events are—

(a) immediately after the Social Security (Amendment) (EU Exit) Regulations 2019(**a**) having come into force, and

(b) the earlier of the following—

(i) the requirements of Article 43(3) of the EEA Citizens' Rights Agreement as set out in the schedule of the 2019 Order(**b**) having been met, and

(ii) the requirements of Article 43(5) of the EEA Citizens' Rights Agreement as set out in the schedule of the 2019 Order having been met.

(3) In this Order "the 2019 Order" means the Social Security (Iceland) (Liechtenstein) (Norway) (Citizens' Rights Agreement) Order 2019(**c**).

Application of article 2 of the 2019 Order

2. Paragraphs (1) and (2) of article 2 of the 2019 Order (modification of legislation) apply insofar as—

(a) it is within the legislative competence of the Scottish Parliament to make the modification paragraph (1) of article 2 of that Order describes, and

(b) that modification is not made by that Order.

Ceri King
Deputy Clerk of the Privy Council

(**a**) S.I. 2019/128.
(**b**) The date on which the EEA Citizens' Rights Agreement enters into force for the United Kingdom will be published on the relevant page on UK Treaties Online which can be found at this link: https://www.gov.uk/uk-treaties.
(**c**) S.I. 2019/1302.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for the modification of social security legislation, so far as it relates to devolved matters, so as to give effect to the Agreement between the United Kingdom of Great Britain and Northern Ireland and Iceland, the Principality of Liechtenstein, and the Kingdom of Norway regarding arrangements for citizens' rights following the withdrawal of the United Kingdom from the European Union and the EEA Agreement, signed at London on 2 April 2019 ("the EEA Citizens' Rights Agreement"). It does so by applying the modification provided for by article 2(1) of the Social Security (Iceland) (Liechtenstein) (Norway) (Citizens' Rights Agreement) Order 2019 (S.I. 2019/1302) ("the 2019 Order"), where the legislation being modified relates to a matter which falls within the legislative competence of the Scottish Parliament, and in relation to which competence for the exercise of functions has transferred to the Scottish Ministers.

The EEA Citizens' Rights Agreement is set out in the schedule of the 2019 Order and makes provision for citizens' rights following the withdrawal of the United Kingdom from the European Union when the Agreement on the European Economic Area of 2 May 1992 as amended, as well as its Protocols and Annexes ("the EEA Agreement"), ceases to apply. Title III of Part Two of the EEA Citizens' Rights Agreement makes provision in relation to social security coordination.

The rules of the European Union relating to social security coordination also apply between the United Kingdom and Iceland, Liechtenstein and Norway by virtue of the EEA Agreement. When the United Kingdom leaves the European Union, the EEA Agreement will also cease to apply.

The relevant European Union regulations are Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems and Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 ("the EU social security coordination regulations"). The EU social security coordination regulations form part of domestic law from exit day by virtue of section 3 of the European Union (Withdrawal) Act 2018 (c.16).

Article 43(3) of the EEA Citizens' Rights Agreement provides that it comes into force, in relation to those parties who have deposited their instruments of approval, from the later of exit day or the date on which the United Kingdom and at least one of the other three signatory states have deposited their instruments of approval with the depositary of this agreement. Article 43(5) allows any party to agree to provisional application of the EEA Citizens' Rights Agreement in similar circumstances to the conditions set out in Article 43(3).

This Order does not impact upon business, charities or the voluntary sector. Accordingly, no Business and Regulatory Impact Assessment has been prepared.

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