S C O T T I S H S T A T U T O R Y I N S T R U M E N T S

2019 No. 318

SOCIAL SECURITY

The Social Security (Switzerland) (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 between the European Community and its Member States, on the one part, and the Swiss Confederation, on the other, on the free movement of persons signed at Luxembourg on 21 June 1999 ("FMOPA") no longer applies as between the United Kingdom and the Swiss Confederation.

At Bern on 25 February 2019 an Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Swiss Confederation(**b**) on citizens' rights following the withdrawal of the United Kingdom from the European Union and the Free Movement of Persons Agreement ("the Switzerland Citizens' Rights Agreement") was signed on behalf of those Governments. Part 3 of the Switzerland Citizens' Rights Agreement makes provision in relation to social security.

The Switzerland Citizens' Rights Agreement enters into force from the later of the specified date or the first day of the second month following the date of receipt of the later of the parties'

(**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**) 2019 CP 64 (Switzerland No. 5 (2019)).

notifications that they have completed their internal procedures. The specified date is the date on which, in the absence of any transitional arrangements, the United Kingdom ceases to be a Member State of the European Union, or in the event there are transitional arrangements, the date on which those transitional arrangements cease to apply to the United Kingdom. A transitional arrangement means an arrangement during which time FMOPA continues to apply to the United Kingdom. Article 36(3) of the Switzerland Citizens' Rights Agreement provides that pending entry into force of the agreement, the parties shall provisionally apply the agreement from the specified date.

In order to give effect to the Switzerland 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 (Switzerland) (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 first day of the second month following the date of receipt of the later of the notifications referred to in Article 36(2)(b) of the Citizens' Rights Agreement set out in the schedule of the 2019 Order, and

(ii) the specified date referred to in Article 36(3)(a) of the Switzerland Citizens' Rights Agreement set out in the schedule of the 2019 Order(**b**).

(3) In this Order "the 2019 Order" means the Social Security (Switzerland) (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 Switzerland 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: https://www.gov.uk/uk-treaties.
(**c**) S.I. 2019/1303.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for the modification of certain social security legislation, so far as it relates to devolved matters, so as to give effect to the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation on Citizens' Rights following the Withdrawal of the United Kingdom from the European Union and the Free Movement of Persons Agreement ("the Switzerland Citizens' Rights Agreement"), signed at Bern on 25 February 2019. It does so by applying the modification provided for by article 2(1) of the Social Security (Switzerland) (Citizens' Rights Agreement) 2019 (S.I. 2019/1303) ("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 Switzerland Citizens' Rights Agreement is set out in the schedule of the 2019 Order. Part 3 of the 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 Switzerland as provided for by the Agreement between the European Community and its Member States, on the one part, and the Swiss Confederation, on the other, on the free movement of persons, signed at Luxembourg on 21 June 1999 ("FMOPA"). When the United Kingdom leaves the European Union, FMOPA 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 36(2) of the Switzerland Citizens' Rights Agreement provides that it comes into force on the later of the specified date, or the first day of the second month following the date of receipt of the later of the parties' notifications that they have completed their internal procedures. Article 36(3) permits provisional application from the specified date.

The specified date for the purposes of the Switzerland Citizens' Rights Agreement is the date on which, in the absence of any transitional arrangements, the United Kingdom ceases to be a Member State of the European Union, or in the case that there are transitional arrangements, the date on which these cease to apply. A transitional arrangement means an arrangement during which time FMOPA continues to apply to the United Kingdom.

The 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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