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SCOTTISH STATUTORY INSTRUMENTS

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**2020 No. 399**

**EXITING THE EUROPEAN UNION  
SOCIAL SECURITY**

**The Social Security Co-ordination (EU Exit)  
(Scotland) (Amendments etc.) Regulations 2020**

*Made* - - - - *at 10.45 a.m. on*  
*26th November 2020*  
*Laid before the Scottish* *at 2.45 p.m. on 26th*  
*Parliament* - - - - *November 2020*  
*Coming into force in accordance with regulation 1*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by paragraph 1(1) of schedule 2 of the European Union (Withdrawal) Act 2018<sup>(1)</sup> and all other powers enabling them to do so.

In accordance with paragraph 4(b) of schedule 2 of that Act<sup>(2)</sup>, they have consulted the Secretary of State before making these Regulations.

**Citation, commencement and interpretation**

1. These Regulations may be cited as the Social Security Co-ordination (EU Exit) (Scotland) (Amendments etc.) Regulations 2020 and come into force on IP completion day.

2. In these Regulations, “devolved social security matters” means matters which are within the legislative competence of the Scottish Parliament by virtue of exceptions 1 to 10 in Section F1 of Part 2 of schedule 5 of the Scotland Act 1998<sup>(3)</sup>.

**Amendment of the Early Years Assistance (Best Start Grants) (Scotland) Regulations 2018**

3.—(1) The Early Years Assistance (Best Start Grants) (Scotland) Regulations 2018<sup>(4)</sup> are amended in accordance with paragraphs (2) to (4).

(2) In paragraph 4(2) of schedule 2 (residence requirement)—

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(1) 2018 c.16.

(2) Paragraph 4 of schedule 2 was amended by section 27(7)(a) of the European Union (Withdrawal Agreement) Act 2020 (c.1).

(3) 1998 c.46. Exceptions 1 to 10 in Section F1 of Part 2 of schedule 5 were inserted by sections 22 to 28 of the Scotland Act 2016 (c.11).

(4) S.S.I. 2018/370 was relevantly amended by S.S.I. 2019/110.

- (a) in head (a), for “, the Isle of Man, the European Economic Area or Switzerland” substitute “or the Isle of Man”,
- (b) after head (a), insert—
- “(aa) a person who, or has a partner who, is habitually resident in the European Economic Area or Switzerland and—
- (i) is a qualified person within the meaning of regulation 6(1)(a) (jobseeker), (b) (worker), (c) (self-employed person), (d) (self-sufficient person) or (e) (student) of the Immigration (European Economic Area) Regulations 2016<sup>(5)</sup> (the EEA Regulations);
  - (ii) retains the status referred to in sub-head (i) pursuant to regulation 6(2) or (4) of the EEA Regulations<sup>(6)</sup>;
  - (iii) is a family member of a person referred to in sub-head (i) or (ii) within the meaning of regulation 7(1) of the EEA Regulations<sup>(7)</sup>;
  - (iv) has a right to reside permanently in the United Kingdom by virtue of regulation 15(1) of the EEA Regulations<sup>(8)</sup>; or
  - (v) has been granted indefinite or limited leave to enter, or remain in, the United Kingdom under the Immigration Act 1971<sup>(9)</sup> by virtue of Appendix EU to the immigration rules made under section 3(2) of that Act<sup>(10)</sup>.”.
- (3) In paragraph 3(2) of schedule 3 (residence requirement)—
- (a) in head (a), for “, the Isle of Man, the European Economic Area or Switzerland” substitute “or the Isle of Man”,
- (b) after head (a), insert—
- “(aa) a person who, or has a partner who, is habitually resident in the European Economic Area or Switzerland and—
- (i) is a qualified person within the meaning of regulation 6(1)(a) (jobseeker), (b) (worker), (c) (self-employed person), (d) (self-sufficient person) or (e) (student) of the Immigration (European Economic Area) Regulations 2016 (the EEA Regulations);
  - (ii) retains the status referred to in sub-head (i) pursuant to regulation 6(2) or (4) of the EEA Regulations;
  - (iii) is a family member of a person referred to in sub-head (i) or (ii) within the meaning of regulation 7(1) of the EEA Regulations;
  - (iv) has a right to reside permanently in the United Kingdom by virtue of regulation 15(1) of the EEA Regulations; or
  - (v) has been granted indefinite or limited leave to enter, or remain in, the United Kingdom under the Immigration Act 1971 by virtue of Appendix EU to the immigration rules made under section 3(2) of that Act.”.
- (4) In paragraph 4(2) of schedule 4 (residence requirement)—
- (a) in head (a), for “, the Isle of Man, the European Economic Area or Switzerland” substitute “or the Isle of Man”,

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(5) S.I. 2016/1052 was relevantly amended by S.I. 2018/801, S.I. 2019/468 and S.I. 2019/1155.

(6) Regulation 6 was relevantly amended by S.I. 2018/801.

(7) Regulation 7 was relevantly amended by S.I. 2019/1155 and S.I. 2019/468.

(8) Regulation 15 was relevantly amended by S.I. 2018/801.

(9) 1971 c.77.

(10) <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-eu>, as amended from time to time.

(b) after head (a), insert—

- “(aa) a person who, or has a partner who, is habitually resident in the European Economic Area or Switzerland and—
- (i) is a qualified person within the meaning of regulation 6(1)(a) (jobseeker), (b) (worker), (c) (self-employed person), (d) (self-sufficient person) or (e) (student) of the Immigration (European Economic Area) Regulations 2016 (the EEA Regulations);
  - (ii) retains the status referred to in sub-head (i) pursuant to regulation 6(2) or (4) of the EEA Regulations;
  - (iii) is a family member of a person referred to in sub-head (i) or (ii) within the meaning of regulation 7(1) of the EEA Regulations;
  - (iv) has a right to reside permanently in the United Kingdom by virtue of regulation 15(1) of the EEA Regulations; or
  - (v) has been granted indefinite or limited leave to enter, or remain in, the United Kingdom under the Immigration Act 1971 by virtue of Appendix EU to the immigration rules made under section 3(2) of that Act.”

#### **Amendment of the Welfare Foods (Best Start Foods) (Scotland) Regulations 2019**

**4.—(1)** The Welfare Foods (Best Start Foods) (Scotland) Regulations 2019**(11)** are amended in accordance with paragraph (2).

(2) In regulation 9(2) (residence requirement)—

- (a) in sub-paragraph (a), for “, the Isle of Man, the European Economic Area or Switzerland” substitute “or the Isle of Man”,
- (b) after sub-paragraph (a), insert—

- “(aa) a person who, or has a partner who, is habitually resident in the European Economic Area or Switzerland and—
- (i) is a qualified person within the meaning of regulation 6(1)(a) (jobseeker), (b) (worker), (c) (self-employed person), (d) (self-sufficient person) or (e) (student) of the Immigration (European Economic Area) Regulations 2016**(12)** (the EEA Regulations);
  - (ii) retains the status referred to in head (i) pursuant to regulation 6(2) or (4) of the EEA Regulations**(13)**;
  - (iii) is a family member of a person referred to in head (i) or (ii) within the meaning of regulation 7(1) of the EEA Regulations**(14)**;
  - (iv) has a right to reside permanently in the United Kingdom by virtue of regulation 15(1) of the EEA Regulations**(15)**; or
  - (v) has been granted indefinite or limited leave to enter, or remain in, the United Kingdom under the Immigration Act 1971**(16)** by virtue of Appendix EU to the immigration rules made under section 3(2) of that Act.”

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**(11)** S.S.I. 2019/193 to which there are amendments not relevant to these Regulations.

**(12)** S.I. 2016/1052 was relevantly amended by S.I. 2018/801, S.I. 2019/468 and S.I. 2019/1155.

**(13)** Regulation 6 was relevantly amended by S.I. 2018/801.

**(14)** Regulation 7 was relevantly amended by S.I. 2019/1155 and S.I. 2019/468.

**(15)** Regulation 15 was relevantly amended by S.I. 2018/801.

**(16)** 1971 c.77.

### **Amendment of the Funeral Expense Assistance (Scotland) Regulations 2019**

5.—(1) The Funeral Expense Assistance (Scotland) Regulations 2019<sup>(17)</sup> are amended in accordance with paragraph (2).

(2) For regulation 9(3) (residence conditions, place of funeral and status), substitute—

“(3) This paragraph applies where the applicant is, or has a partner who is—

- (a) a qualified person within the meaning of regulation 6(1)(b) (worker) or (c) (self-employed person) of the Immigration (European Economic Area) Regulations 2016<sup>(18)</sup> (the EEA Regulations);
- (b) a person who retains the status referred to in sub-paragraph (a) pursuant to regulation 6(2) or (4) of the EEA Regulations<sup>(19)</sup>;
- (c) a person who is a family member of a person referred to in sub-paragraph (a) or (b) within the meaning of regulation 7(1) of the EEA Regulations<sup>(20)</sup>;
- (d) a person who has a right to reside permanently in the United Kingdom by virtue of regulation 15(1)(c), (d) or (e) of the EEA Regulations<sup>(21)</sup>; or
- (e) a person granted indefinite or limited leave to enter, or remain in, the United Kingdom under the Immigration Act 1971<sup>(22)</sup> by virtue of Appendix EU to the immigration rules made under section 3(2) of that Act<sup>(23)</sup>.”.

### **Savings for Gibraltar**

6.—(1) Notwithstanding regulation 7, the revoked RDEUL referred to in paragraph (2) forms part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 to the extent specified in that paragraph.

(2) This paragraph applies to those parts of the revoked RDEUL which are necessary to give effect to the Exchange of Letters between the Governments of the United Kingdom and Gibraltar on the co-ordination of social security between the United Kingdom and Gibraltar in so far as it relates to devolved social security matters.

(3) The Exchange of Letters referred to in paragraph (2) is contained in the schedule of the Family Allowances, National Insurance and Industrial Injuries (Gibraltar) Order 1974<sup>(24)</sup>.

(4) In this regulation, “the revoked RDEUL” means the retained direct EU legislation revoked by regulation 7.

### **Revocation of retained direct EU legislation**

7. The following retained direct EU legislation is revoked in so far as it has effect in relation to devolved social security matters—

- (a) Regulation (EC) No 883/2004 of the European Parliament and of the Council of 19 April 2004 on the coordination of social security systems<sup>(25)</sup>,

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(17) [S.S.I. 2019/292](#), to which there are amendments not relevant to these Regulations.

(18) [S.I. 2016/1052](#) was amended by [S.I. 2018/801](#).

(19) Regulation 6 was relevantly amended by [S.I. 2018/801](#).

(20) Regulation 7 was relevantly amended by [S.I. 2019/1155](#) and [S.I. 2019/468](#).

(21) Regulation 15 was relevantly amended by [S.I. 2018/801](#).

(22) [1971 c.77](#).

(23) <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-eu>, as amended from time to time.

(24) [S.I. 1974/555](#).

(25) [EUR 2004/883](#).

- (b) 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(26),
- (c) Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community(27),
- (d) Regulation (EEC) No 574/72 fixing the procedure for implementing Regulation (EEC) No 1408(28), and
- (e) Council Regulation (EC) No 859/2003 of 14 May 2003 extending the provisions of Regulation (EEC) No 1408/71 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality(29).

### **Revocation of instruments**

8. The following instruments are revoked in so far as they have effect in relation to devolved social security matters—

- (a) the Social Security Coordination (Council Regulation (EEC) No 574/72) (Amendment) (EU Exit) Regulations 2019(30),
- (b) the Social Security Coordination (Regulation (EC) No 883/2004, EEA Agreement and Swiss Agreement) (Amendment) (EU Exit) Regulations 2019(31),
- (c) the Social Security Coordination (Regulation (EC) No 987/2009) (Amendment) (EU Exit) Regulations 2019(32), and
- (d) the Social Security Coordination (Council Regulation (EEC) No 1408/71 and Council Regulation (EC) No 859/2003) (Amendment) (EU Exit) Regulations 2019(33).

St Andrew's House,  
Edinburgh  
At 10.45 a.m. on 26th November 2020

*SHIRLEY-ANNE SOMERVILLE*  
A member of the Scottish Government

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(26) EUR 2009/987.  
(27) EUR 1971/1408.  
(28) EUR 1972/574, as repealed subject to savings by EUR 2009/987.  
(29) EUR 2003/859.  
(30) S.I. 2019/721.  
(31) S.I. 2019/722 as amended by S.I. 2019/776.  
(32) S.I. 2019/723.  
(33) S.I. 2019/726.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

Regulation 3 of these Regulations amends the Early Years Assistance (Best Start Grants) (Scotland) Regulations 2018. The amendments make changes to the residence requirements in relation to the pregnancy and baby grant, the early learning grant and the school-age grant. The amendments insert eligibility criteria relating to persons who fall within the scope of the Immigration (European Economic Area) Regulations 2016 which have effect by virtue of schedule 4 to the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) Regulations 2020. The amendments also insert an eligibility criterion relating to persons who have been granted indefinite or limited leave to enter, or remain in, the United Kingdom under the Immigration Act 1971 by virtue of Appendix EU to the immigration rules made under section 3(2) of that Act.

Regulation 4 of these Regulations amends the Welfare Foods (Best Start Foods) (Scotland) Regulations 2019. The amendments make changes to the residence requirements in relation to entitlement to Best Start Foods. The amendments also insert eligibility criteria relating to persons who fall within the scope of the Immigration (European Economic Area) Regulations 2016 which have effect by virtue of schedule 4 to the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) Regulations 2020. The amendments also insert an eligibility criterion relating to persons who have been granted indefinite or limited leave to enter, or remain in, the United Kingdom under the Immigration Act 1971 by virtue of Appendix EU to the immigration rules made under section 3(2) of that Act.

Regulation 5 of these Regulations amends the Funeral Expense Assistance (Scotland) Regulations 2019. The amendments make changes to the residence conditions relating to support for funerals in an EU member state, Iceland, Liechtenstein, Norway or Switzerland. The amendments substitute references to [Directive 2004/38/EC](#) of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States in regulation 9 with references to the Immigration (European Economic Area) Regulations 2016 which have effect by virtue of schedule 4 to the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) Regulations 2020. The amendments also insert an eligibility criterion relating to persons who have been granted indefinite or limited leave to enter, or remain in, the United Kingdom under the Immigration Act 1971 by virtue of Appendix EU to the immigration rules made under section 3(2) of that Act.

Regulation 6 of these Regulations makes savings from the revocations in regulation 7 as are necessary to give effect to the agreement on the co-ordination of social security as between the United Kingdom and Gibraltar as specified in this regulation.

Regulation 7 of these Regulations revokes Regulation [\(EC\) No 883/2004](#) of the European Parliament and of the Council on the coordination of social security systems, Regulation [\(EC\) No 987/2009](#) of the European Parliament and of the Council laying down the procedure for implementing Regulation [\(EC\) No 883/2004](#), Regulation [\(EEC\) No 1408/71](#) on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community and Regulation [\(EEC\) No 574/72](#) fixing the procedure for implementing Regulation [\(EEC\) No 1408](#) and Regulation [\(EC\) No 859/2003](#) extending Regulation [\(EEC\) No 1408/71](#) to nationals of non-EU Member Countries. Those Regulations relate to the co-ordination of social

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security systems throughout the EU. The retained direct EU legislation revoked by this regulation is revoked in so far as it has effect in relation to devolved social security matters.

Regulation 8 of these Regulations revokes the Social Security Coordination ([Council Regulation \(EEC\) No 574/72](#)) (Amendment) (EU Exit) Regulations 2019 ([S.I. 2019/721](#)), the Social Security Coordination (Regulation [\(EC\) No 883/2004](#), EEA Agreement and Swiss Agreement) (Amendment) (EU Exit) Regulations 2019 ([S.I. 2019/722](#)), the Social Security Coordination (Regulation [\(EC\) No 987/2009](#)) (Amendment) (EU Exit) Regulations 2019 ([S.I. 2019/723](#)) and the Social Security Coordination ([Council Regulation \(EEC\) No 1408/71](#) and Council Regulation [\(EC\) No 859/2003](#) (Amendment) (EU Exit) Regulations 2019 ([S.I. 2019/726](#)). Those Regulations were made under the powers in section 8(1) of the European Union (Withdrawal) Act 2018 ([2018 c.26](#)) amending the retained direct EU legislation revoked by regulation 7. The instruments revoked by this regulation are revoked in so far as they have effect in relation to devolved social security matters.

A Business and Regulatory Impact Assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.