



## BRIEFING PAPER

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# Brexit and State Pensions

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2. What will happen in future?



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## Summary

Entitlement to the UK State Pension is based on an UK individual's National Insurance record. For the new State Pension introduced on 6 April 2016, an individual needs 35 'qualifying years', of [National Insurance](#) contributions or credits (which are available for certain circumstances in which a person is not able to work) to qualify for the full amount (£155.65pw in 2015/16). If they have fewer than 35 qualifying years, they are eligible for a proportionate amount, provided they have at least ten qualifying years (*Pensions Act 2014*, Part 1).

As part of the EU, the UK is currently part of a system to co-ordinate the social security entitlements for people moving within the EU. The rules also apply to EEA countries and Switzerland. The aim of these provisions is not to harmonise social security systems, but to remove barriers to workers moving between Member States. They enable periods of insurance to be aggregated, so an individual who has worked in other Member States can make one application to the relevant agency in the country of residence - in the UK, the [International Pension Centre](#). This agency then notifies details of the claim to all countries in which the person has been insured. Each Member State in which the person was insured then calculates its pro-rata contribution and puts that amount into payment. There is detailed guidance on this in volume 2 of DWP's [Decision Makers' Guide](#).

The UK State Pension is payable overseas but is only uprated if the pensioner is in an EEA country or one with which the UK has a reciprocal agreement requiring uprating. This is discussed in Library Briefing Paper SN-01457 [Frozen Overseas Pensions](#) (May 2016). The details of what is required under reciprocal agreements between the UK and other countries outside the EEA vary. Information is in DWP Decision Makers Guide, [Volume 2: international subjects](#) (para 070310 ff).

As answers to PQs make clear, future arrangements will be a matter for negotiation:

*Alison Thewlis:* To ask the Secretary of State for Exiting the European Union, if he will make it his policy in negotiations to seek to retain European Economic Area (EEA) rules on state pensions paid to UK nationals living in EEA countries.

*Robin Walker:* The reciprocal entitlements that will apply following the UK's exit are subject to the wider negotiation on our future relationship with the EU. We will approach the negotiations with the full intention of securing a deal that delivers the best possible outcome for the UK and its nationals ([PQ 60094](#), 20 January 2017; [PQ HL 4943](#) 30 January 2017).

The potential impact on private pensions is discussed in CBP-07629 [Brexit – implications for pensions](#) (August 2016).

# 1. The current framework

As a member of the EU, the UK is part of long-standing provisions in EU law to co-ordinate social security schemes for people moving within the EU,<sup>1</sup> which also apply to non-EU EEA countries and Switzerland.<sup>2</sup>

The main purpose of these rules is to ensure that people who choose to exercise the right of freedom of movement do not find themselves at a disadvantage in respect of social security benefits or pensions— for example if they should fall ill or become unemployed while working in another EU/EEA State. The Regulations do not guarantee a general right to benefit throughout the EEA; nor do they harmonise the social security systems of the Member States. Their primary function is to support free movement throughout the EU/EEA by removing some of the disadvantages that migrants might encounter. They achieve this by, for example:

- prohibiting discrimination in matters of social security systems on grounds of nationality;
- clarifying which state is responsible for paying benefits in particular cases (the ‘single state principle’);
- allowing a person’s periods of employment, residence and contributions paid in one EEA country to count towards entitlement to benefit in another country (this is referred to as the principle of ‘aggregation’); and
- allowing people to take certain benefits abroad with them to another EU/EEA state (‘exportation’).

## Numbers

Around 1.26 million recipients of the UK State Pension are resident overseas. A recent Parliamentary Written Answer gave a breakdown for EU, Commonwealth countries and the rest of the world:

The table below shows the number of pensioners in receipt of the UK State Pension living in the country groupings requested. Please note that residents in Cyprus and Malta appear in both the European Union and Commonwealth totals.

Country Group	Number of UK State Pensioners
EU (excluding UK)	474,130
Commonwealth (excluding UK)	565,770
Rest of world	218,580

Source: DWP Work and Pensions Longitudinal Study May 2016. Figures are rounded to the nearest 10.<sup>3</sup>

<sup>1</sup> Now in EC Regulations 883/2004 and 987/2009.

<sup>2</sup> There is a list of EU and EEA countries on [Gov.UK](http://Gov.UK)

<sup>3</sup> [PQ 53851, 24 November 2016](http://PQ.53851)

## 1.1 State Pension entitlement

Entitlement to the UK State Pension depends on an individual's UK National Insurance (NI) record.

Individuals who reached State Pension age before 6 April 2016 are entitled to a State Pension under the 'old' system – which was made up of two tiers, the [basic State Pension](#) and [additional State Pension](#). Individuals who reach State Pension age after that date are entitled to the [new State Pension](#).<sup>4</sup>

As part of the EU system of co-ordination of social security, an individual who has lived or worked in the UK and another EEA country or Switzerland, need only make one claim – in their last country of residence. They will be eligible for annual increases on their pension in payment:

If you've lived or worked in another country in the past, you might be eligible for that country's state pension and a UK State Pension.

To check if you can pay into or receive another country's state pension, contact the pension service for that country.

### **Claiming another country's state pension**

Depending on where you've lived or worked, you may need to make more than one pension claim.

### **European Economic Area (EEA) countries and Switzerland**

You only need to claim your state pension in the last country where you lived or worked. Your claim will cover all [EEA countries](#) (including the UK) and Switzerland. You don't need to claim for each country separately.

### **Countries outside the EEA (except Switzerland)**

You need to claim your pension from each country separately.

Check with the pension service for the country where you've lived or worked to find out how to make a claim.

### **Your UK State Pension if you've lived or worked abroad**

Your UK State Pension will be based on your [UK National Insurance record](#). You need 10 years of UK National Insurance contributions to be eligible for the new State Pension.

You may be able to use time spent abroad to make up the 10 qualifying years. This is most likely if you've lived or worked in:

- The EEA
- Switzerland
- certain countries that have a [social security agreement with the UK](#)

### **Example**

*You have 7 qualifying years from the UK on your National Insurance record when you reach State Pension age.*

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<sup>4</sup> For more information, see DWP, [Your State Pension explained](#), April 2016; DWP, [State Pensions – your guide](#), October 2014

*You worked in an EEA country for 16 years and paid contributions to that country's state pension.*

*You will meet the minimum qualifying years to get the new State Pension because of the time you worked overseas. Your new State Pension amount will only be based on the 7 years of National Insurance contributions you made in the UK.*

### **You want to retire overseas**

You can claim the new State Pension overseas in most countries.

Your State Pension will increase each year but only if you live in:

- the EEA
- Switzerland
- certain countries that have a [social security agreement with the UK](#)

Your new State Pension may be affected if your circumstances change. You can get more information from the [International Pension Centre](#).<sup>5</sup>

## **System for co-ordinating entitlements**

More detailed guidance is in DWP Decision Makers' Guide. This explains that, in general, a person is insured in only one European Economic Area country for any period:

070553 In general a person is insured in only one European Economic Area country for any period. A person cannot therefore use insurance from one period to obtain entitlement to benefits of the same kind (see DMG 070570) from two different countries.<sup>6</sup>

If they have been insured in more than one EEA country, they may be entitled to a pro-rata State Pension.<sup>7</sup> Each Member State in which the person was insured will calculate its pro rata contribution (using agreed formulae), and put that amount into payment:

### **076063 The rate of RP [retirement pension] is calculated in three stages.**

#### **Stage 1 - Addition**

Add together all the periods of insurance (or residence, if entitlement in that country depends on periods of residence) in all the EEA countries where the person was insured and treat them as periods of insurance completed in the UK.

#### **Stage 2 - Theoretical rate of Retirement Pension**

Calculate the theoretical amount of RP which would be payable if all the insurance added together in Stage 1 had been paid in the UK. The theoretical rate of RP must be at least 25% of the standard rate. If not no further calculation is necessary.

#### **Stage 3 - Actual rate of Retirement Pension**

The purpose of the calculation of the actual rate of RP is to decide the amount to be paid by each of the EEA countries where the person was insured.

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<sup>5</sup> Gov.UK, [The new State Pension](#)

<sup>6</sup> DWP, [Decision Makers' Guide](#), Vol 2, para 070553

<sup>7</sup> DWP, [Decision Makers' Guide](#), Chapter 7. Part 5

The rate of RP to be paid by the UK is Periods of UK insurance x theoretical rate

Total insurance

**Example**

A man was insured in Germany for 1450 weeks and in the UK for 200 weeks. The total insurance is 1650 weeks.

If all that insurance had been paid in the UK, he would be entitled to RP at 75% of the standard rate. At April 1994 figures this is £43.20. The actual rate to be paid by the UK is

200 (UK insurance) x £43.20 (theoretical amount)

1650 (total insurance)

That is £5.24.

*Reg (European Community) 1408/71, Art 45(1); 2 Art 46(2)(a); 3 Case 793/79 Meuzies; 4 Reg (European Community) 1408/71, Art 46(2); R(S) 3/85 076064<sup>8</sup>*

If the individual would be entitled to a higher amount under UK legislation alone, that higher amount is payable.<sup>9</sup>

Periods of insurance in another EEA Member State can help satisfy the minimum qualifying period (MQP) for entitlement to the new State Pension. However, the pension is based solely on UK contributions:

7.23 As is currently the case for people who reached state pension age before 6 April 2010, years of insurance or residence in another Member State of the European Economic Area (EEA) or in certain countries with which the UK has a bilateral social security agreement (for example, the United States) will count towards the MQP. However, entitlement to new state pension will be based solely on UK contributions, on a pro-rata basis. For example, a person with only five years of UK National Insurance contributions who has a further 30 years of insurance in another EEA Member State would satisfy the MQP through the combination of their UK and foreign insurance and be entitled to 5/35ths of the full rate of the new state pension.<sup>10</sup>

## 1.2 Up-rating

The UK State Pension is payable overseas but is only up-rated if the pensioner is in an EEA country or one with which the UK has a reciprocal agreement requiring up-rating.<sup>11</sup>

The details of what is required under reciprocal agreements between the UK and other countries outside the EEA vary.<sup>12</sup>

This is discussed in Library Briefing Paper SN-01457 [Frozen Overseas Pensions](#) (May 2016).

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<sup>8</sup> DWP, [Decision Makers' Guide](#), Chapter 7. Part 5, 076050

<sup>9</sup> Ibid para 076061-2

<sup>10</sup> [Explanatory Memorandum to the State Pension Regulations 2015 \(SI 2015 No. 173\)](#)

<sup>11</sup> [Social Security Contributions and Benefits Act 1992](#), s113; [Social Security Benefit \(Persons Abroad\) Regulations 1975 \(SI 1975/563\)](#); [Pensions Act 2014](#) s20

<sup>12</sup> DWP's Decision Makers Guide, [Volume 2: international subjects](#), para 070310 ff

## 2. What will happen in future?

Until such time as the UK formally leaves the EU, the existing social security rules continue to apply and entitlements remain unchanged. The situation once the UK is no longer part of Europe will depend on the outcome of negotiations:

Lord Jones of Cheltenham: To ask Her Majesty's Government whether the annual increase of the basic state pension for UK citizens

Lord Henley: The reciprocal rights and entitlements that will apply following the UK's exit are subject to the wider negotiation on our future relationship with the EU and the Government has not yet begun these negotiations.<sup>13</sup>

Withdrawal from the system of co-ordination would pose questions, such as how to deal with people who have lived and worked in more than one Member State and accrued rights to contributory benefits on the basis of social insurance paid in different countries.

In place of the co-ordination rules, the UK could seek to negotiate bilateral reciprocal social security agreements with individual EEA Member States (the UK already has a [number of such agreements](#) with non-EEA states, and agreements with certain EEA states which pre-date the UK's EC entry).

As an alternative to seeking individual bilateral social security agreements, the UK could seek to negotiate a single agreement with the EU/EEA as a whole, which would simplify matters for people who had worked and been insured in more than two Member States. However, such an agreement might end up closely resembling the existing EU/EEA social security co-ordination rules.

In its report on [The Government's negotiating objectives: the rights of UK and EU citizens](#), the Select Committee on Exiting the European Union identified uprating and co-ordination of pension entitlement as issues to be addressed in the negotiations:

31. A number of questions have been raised about the impact of exiting the EU on the pension rights of UK citizens living in the EU. The UK state pension is uprated on the triple lock—the higher of the rate of inflation, the rate of increase in wages, or 2.5%. This is passed on to British recipients abroad but only in an EEA country or where there is a reciprocal social security agreement. On exiting the EU, the UK would be free to negotiate a reciprocal agreement with the EU. However, the UK state retirement pension is frozen when paid to pensioners in certain countries, including Australia, Canada, New Zealand and South Africa as no such agreement has been reached with these countries.

32. Sue Wilson, Chair of Bremain in Spain, was concerned about the possible impact of exiting the EU on pensions. Adding to worries about a reduction in the value of UK pensions (state and private) because of the decrease in sterling's value against the euro was concern at the possibility of pensions being frozen. Sue

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<sup>13</sup> [PQ HL 4944 30 January 2017](#); See also [PQ44853 7 September 2016](#)

Wilson told us that many had moved to Spain with the expectation that their pension would see an annual increase.<sup>51</sup>

33. UK citizens also benefit from the current system if they work in one or more EU country. At present, rules enable the co-ordination of social security entitlement for people moving within the EU. They allow periods of contributions to be aggregated, so that an individual who has worked in other member states can make one application in their country of residence, which then arranges for each state where they were insured to pay a pension. This includes the UK, and allows for a pension built up in one member state to be drawn in another. This does not apply to contributions made by nationals of non-EU countries. Gareth Horsfall explained the situation in Italy:

If I were a non-EU member, I would have to contribute at least 10 years' contributions to the national insurance equivalent in Italy, otherwise I would not be entitled to anything. Under the EU system, I only need to be in one EU member state for one year, and then I qualify under the aggregate system. If I moved to Italy for eight or nine years and then left having made social security contributions, as a non-EU citizen, I would be entitled [to] nothing at the end of the day.

The International Consortium of British Pensioners told us that free movement throughout the EU has meant a "significant number of people" have acquired state pension rights in more than one country, and if there was "nothing specifically in the Brexit negotiations to cover this, then it is a distinct possibility that the UK National Insurance contribution record will not be consolidated with the other periods worked in the EU."

**34. The Government should seek the continuation of existing reciprocal arrangements for pension uprating for UK citizens living in other EU member states and for EU citizens living in the UK. The Government also needs to clarify whether it will seek to continue to cooperate on EU-wide mechanisms to enable pension contributions in different member states to be aggregated.**<sup>14</sup>

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<sup>14</sup> Exiting the European Union Select Committee, [The Government's negotiating objectives: the rights of the UK and EU citizens](#), 3 March 2017, Chapter 2

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