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Technical Notice – No Deal Brexit – Social Security Coordination

In November 2018, the European Union (the “EU”) and the United Kingdom (the “UK”) concluded the terms of a Withdrawal Agreement providing for the UK’s orderly departure from the EU. Gibraltar forms part of these arrangements. The Agreement includes a transition period until the end of 2020. The transition period would also apply to Gibraltar. The Agreement has been debated and voted upon at length but it is still subject to ratification by the UK Parliament and the European Parliament.

The door is now open for a short extension to the Article 50 process. There will be an extension to 22 May if the Withdrawal Agreement is approved. The extension will run to 12 April if the Withdrawal Agreement is not approved.

In the meantime, HM Government of Gibraltar (“HMGoG”) continues to plan for the eventuality that the UK and Gibraltar may leave the EU without this Agreement.

Purpose

If the UK and Gibraltar leave the EU without a deal current arrangements concerning the coordination of social security systems across the EU and as between Gibraltar and individual Member States will change. This Notice explains the future arrangements for how social security coordination will work in the context of a No-Deal Brexit.

Existing Position

EU law provides for common rules to protect social security rights when moving within the EU (as well as Iceland, Liechtenstein, Norway and Switzerland). The law covers all the traditional branches of social security and it ensures, for example, that beneficiaries:

- Are covered by the legislation of a single country and pay premiums in that country;
- Have the same rights and obligations;
- Are guaranteed that previous periods of insurance, work and residence in other countries will be taken into account in the calculation of their benefits;
- Can, if they are entitled to a cash benefit in a country, collect this benefit if they do not live in that country.



If there is a Withdrawal Agreement

If the Withdrawal Agreement enters into effect, the status quo would remain up to the end of the transition period – that being 31 December 2020.

If there is no Withdrawal Agreement

Pursuant to the Gibraltar European Union (Withdrawal) Act 2019 (the “Act”), Gibraltar will retain EU law as part of Gibraltar’s domestic legislation after the UK and Gibraltar’s withdrawal from the EU. At the same time, the Act allows EU law to be amended to remedy any deficiencies that arise as a result of exit. Gibraltar will thus retain EU legislation on social security coordination subject to making necessary modifications to ensure that the law remains operable.

It is therefore HMGoG’s intention, like that of the UK Government, to initially maintain status quo, on a unilateral basis, ensuring that citizens’ acquired rights are protected in relation to social security matters even in the context of a No-Deal Brexit.

However, in circumstances where the EU system of social security coordination relies on cooperation and reciprocity from other EU Member States, it should not be assumed that this will continue in a No-Deal scenario in relation to other EU Member States. Gibraltar cannot, as a matter of domestic legislation, require EU Member States to cooperate with Gibraltar authorities, provide information, or apply the rules contained in EU law to individuals moving to/from Gibraltar.

Notwithstanding the above, it should be noted that the EU have recently adopted an EU Regulation which is intended to safeguard, in case of a No-Deal Brexit, the social security rights of (1) citizens of EU Member States in the UK and Gibraltar; and (2) UK nationals (including Gibraltarians) in the EU who have benefitted from the right of free movement prior to the UK and Gibraltar’s exit from the EU.

Moreover, with regard to the position in Spain specifically, it should be noted that the Government of Spain has enacted national legislation outlining contingency measures applicable in the case of a No-Deal Brexit. The legislation, which has been extended to cover Gibraltar, and which will apply for a period of 21 months following a No-Deal exit, complements legislation adopted at EU level on matters concerning the coordination of social security systems.

In the medium to long term, and in the absence of a future agreement covering social security matters, HMGoG will develop policy in this area, amending legislation where necessary, to take into account the level of reciprocity guaranteed by individual EU Member States.

Lastly, it is also important to underline that a No-Deal exit from the EU would be of no practical effect on the coordination of social security as between Gibraltar and the UK. Longstanding bilateral arrangements, already in place as between the UK and Gibraltar, will be maintained.



Further information

This Notice is meant for guidance only.

Where appropriate, professional legal advice on the implications of these changes should be sought.