

SCHEDULES

SCHEDULE 5

Regulation 17

Savings and transitional provision

Interpretation

1.—(1) In this Schedule—

“competent authority” and “competent institution” have the meaning given by Regulation (EC) No 883/2004 or (as the case may be) Regulation (EEC) No 1408/71;

“relevant benefits in kind”—

- (a) in relation to Regulation (EC) No 883/2004, means the benefits in kind referred to in Article 1(va)(i) and (ii) of that Regulation;
- (b) in relation to Regulation (EEC) No 1408/71, means the benefits in kind to which Chapter 1 or 4 of Title 3 of that Regulation applies immediately before exit day;

“the relevant retained direct EU legislation” means—

- (a) Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009, and
- (b) Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 (as extended by Regulation (EC) No 859/2003),

so far as relating to the coordination of the provision of relevant benefits in kind.

(2) A reference in this Schedule to a member State includes—

- (a) where the relevant retained direct EU legislation applies in relation to an EEA state which is not a member State, a reference to the EEA state, and
- (b) where the relevant retained direct EU legislation applies in relation to Switzerland, a reference to Switzerland.

Cases arising before exit day

2.—(1) The relevant retained direct EU legislation is to continue to apply on and after exit day, subject to the modifications set out in paragraphs 6 to 8, in a case where sub-paragraph (2), (3), (4) or (5) applies.

(2) This sub-paragraph applies where relevant benefits in kind were provided, or began to be provided, in the United Kingdom to an individual before exit day under—

- (a) Chapter 1 or 2 of Title 3 of Regulation (EC) No 883/2004, or
- (b) Chapter 1 or 4 of Title 3 of Regulation (EEC) No 1408/71.

(3) This sub-paragraph applies where relevant benefits in kind were provided, or began to be provided, in a member State (other than the United Kingdom) to an individual before exit day under—

- (a) Chapter 1 or 2 of Title 3 of Regulation (EC) No 883/2004, or
- (b) Chapter 1 or 4 of Title 3 of Regulation (EEC) No 1408/71,

Status: This is the original version (as it was originally made).

in circumstances where reimbursement for the provision of those benefits fell to be made, or would have fallen to be made had exit day not occurred, under Regulation (EC) No 883/2004 or Regulation (EEC) No 1408/71 by the competent institution of the United Kingdom.

- (4) This sub-paragraph applies where—
 - (a) authorisation for treatment in the United Kingdom was given before exit day under Article 20 of Regulation (EC) No 883/2004 or (as the case may be) Article 22 of Regulation (EEC) No 1408/71, or
 - (b) authorisation for treatment in a member State (other than the United Kingdom) was given before exit day by the competent institution of the United Kingdom under Article 20 or (as the case may be) Article 22.
- (5) This sub-paragraph applies where—
 - (a) a request for authorisation for treatment in a member State (other than the United Kingdom) was made before exit day under Article 20 of Regulation (EC) No 883/2004 or (as the case may be) Article 22 of Regulation (EEC) No 1408/71, and
 - (b) the competent institution in the United Kingdom has not given or refused that authorisation for treatment before exit day.
- (6) Nothing in sub-paragraphs (1) to (5) requires an institution of the United Kingdom—
 - (a) to provide relevant benefits in kind after the later of—
 - (i) the end of the period of one year beginning with the day after the day on which exit day falls;
 - (ii) in a case where the authorisation under Article 20 or (as the case may be) Article 22 authorises relevant benefits in kind to be provided within a specified period, the end of the specified period;
 - (b) to reimburse an institution of a member State for relevant benefits in kind provided, or a person for payment made for such relevant benefits in kind, after the later of—
 - (i) the end of the period of one year beginning with the day after the day on which exit day falls;
 - (ii) in a case where the authorisation under Article 20 or (as the case may be) Article 22 authorises relevant benefits in kind to be provided within a specified period, the end of the specified period.

Cases arising during reciprocal arrangements

3.—(1) The relevant retained direct EU legislation is to continue to apply on and after exit day, subject to the modifications set out in paragraphs 6 to 8, so far as relating to—

- (a) the provision of relevant benefits in kind in the United Kingdom, or
- (b) the provision of relevant benefits in kind in a member State, in circumstances where reimbursement for the provision of those benefits would have fallen to be made by the competent institution of the United Kingdom had exit day not occurred,

subject to sub-paragraph (2).

(2) The relevant retained direct EU legislation, as applied by sub-paragraph (1), has effect so as to impose an obligation on an institution of the United Kingdom as regards the provision of, or reimbursement for the provision of, relevant benefits in kind to an individual only if, and only during the period when, reciprocal arrangements have effect between—

- (a) the United Kingdom, and
- (b) the member State by reference to which the obligation arises in the case of the individual.

- (3) Sub-paragraph (2) does not affect cases to which paragraph 2 applies.
- (4) For the purposes of this paragraph—
 - (a) arrangements between the United Kingdom and a member State relating to the coordination of the provision of relevant benefits in kind are reciprocal arrangements if and only if the member State is included in the list maintained by the Secretary of State under paragraph 4;
 - (b) reciprocal arrangements between the United Kingdom and a member State are to be treated as beginning and ceasing to have effect at the times specified in the list maintained by the Secretary of State under paragraph 4.

List for the purposes of paragraph 3

- 4.—(1) The Secretary of State must maintain a list for the purposes of paragraph 3.
- (2) The list must specify in relation to each member State listed in it—
 - (a) when reciprocal arrangements between the member State and the United Kingdom are to be treated as beginning to have effect;
 - (b) when reciprocal arrangements between the member State and the United Kingdom are to be treated as ceasing to have effect.
- (3) The time specified in the list as the time when reciprocal arrangements are to be treated as beginning to have effect may not be before exit day.
- (4) The time specified in the list as the time when reciprocal arrangements are to be treated as ceasing to have effect may not be after 31 December 2020.
- (5) The Secretary of State may remove a member State from the list before the time specified in the list as the time when the member State’s reciprocal arrangements are to be treated as beginning to have effect.
- (6) The Secretary of State may change a time specified in the list (but not after the time specified).
- (7) The Secretary of State must publish the list and keep it up to date.
- (8) For “reciprocal arrangements” see paragraph 3.

Savings provision for cases arising during reciprocal arrangements

- 5.—(1) The relevant retained direct EU legislation is to continue to apply on and after exit day (and despite reciprocal arrangements ceasing to have effect), subject to the modifications set out in paragraphs 6 to 8, in a case where sub-paragraph (2), (3), (4) or (5) applies.
- (2) This sub-paragraph applies where relevant benefits in kind were provided, or began to be provided, in the United Kingdom to an individual during the relevant period under—
 - (a) Chapter 1 or 2 of Title 3 of Regulation (EC) No 883/2004 (as modified by paragraph 6), or
 - (b) Chapter 1 or 4 of Title 3 of Regulation (EEC) No 1408/71 (as modified by paragraph 6).
- (3) This sub-paragraph applies where relevant benefits in kind were provided, or began to be provided, in a member State to an individual during the relevant period, in circumstances where reimbursement for the provision of those benefits fell to be made, or would have fallen to be made had the relevant period not ended, by the competent institution of the United Kingdom under Regulation (EC) No 883/2004 or Regulation (EEC) No 1408/71 (as modified by paragraph 6).
- (4) This sub-paragraph applies where—
 - (a) authorisation for treatment in the United Kingdom under Article 20 of Regulation (EC) No 883/2004 or (as the case may be) Article 22 of Regulation (EEC) No 1408/71 (as modified by paragraph 6) is given during the relevant period by an institution of a member State, or

Status: This is the original version (as it was originally made).

- (b) authorisation for treatment in a member State is given during the relevant period by the competent institution of the United Kingdom under Article 20 or (as the case may be) Article 22 (as modified by paragraph 6).
- (5) This sub-paragraph applies where—
 - (a) a request for authorisation for treatment in a member State is made during the relevant period under Article 20 of Regulation (EC) No 883/2004 or (as the case may be) Article 22 of Regulation (EEC) No 1408/71 (as modified by paragraph 6), and
 - (b) the competent institution of the United Kingdom has not given or refused that authorisation for treatment before the end of the relevant period.
- (6) Nothing in sub-paragraphs (1) to (5) requires an institution of the United Kingdom—
 - (a) to provide relevant benefits in kind after the later of—
 - (i) the end of the period of one year beginning with the day after the end of the relevant period;
 - (ii) in a case where the authorisation for treatment in the United Kingdom authorises relevant benefits in kind to be provided within a specified period, the end of the specified period;
 - (b) to reimburse an institution of a member State for relevant benefits in kind provided, or a person for payment made for such relevant benefits in kind, provided after the later of—
 - (i) the end of the period of one year beginning with the day after the end of the relevant period;
 - (ii) in a case where the authorisation for treatment in a member State requires that the relevant benefits in kind be provided within a specified period, the end of the specified period.
- (7) This paragraph does not apply in a case to which paragraph 2 applies.
- (8) In this paragraph—
 - “reciprocal arrangements” has the meaning given by paragraph 3;
 - “relevant period”, in relation to a member State, means the period during which reciprocal arrangements between the United Kingdom and the member State have effect.

Modifications of the relevant retained direct EU legislation

6.—(1) In a case falling within paragraph 2, 3 or 5, the relevant retained direct EU legislation has effect—

- (a) with the modifications set out in the following sub-paragraphs and paragraphs 7 and 8,
- (b) without the amendments and revocations of that legislation in Schedules 1 to 4 to these Regulations or other regulations under section 8 of the European Union (Withdrawal) Act 2018, and
- (c) as if—
 - (i) the amendments and revocations of the EEA agreement, and
 - (ii) the modifications of the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, done at Luxembourg on 21st June 1999,

made by regulation 16 of these Regulations or regulations 3 and 4 of the Social Security Coordination (Regulation (EC) No 883/2004, EEA Agreement and Swiss Agreement) (Amendment) (EU Exit) Regulations 2019, so far as relating to the coordination of the provision of relevant benefits in kind, had not been made.

(2) A reference in the relevant retained direct EU legislation to a member State is to be read as if the United Kingdom were a member State.

(3) Where a provision of the relevant retained direct EU legislation imposes an obligation on the United Kingdom or an authority, institution or other body of the United Kingdom the performance of which would have been, immediately before exit day, wholly or partly dependent on a step being taken or a requirement being satisfied by—

- (a) an EU institution⁽¹⁾,
- (b) a member State or an authority, institution or other body of a member State, or
- (c) any other person or body,

the United Kingdom or an authority, institution or other body of the United Kingdom is not required to perform the obligation unless that step is taken or the requirement is satisfied.

(4) A provision of the relevant retained direct EU legislation that requires effect to be given to—

- (a) a list or other document issued by the Administrative Commission,
- (b) a decision or determination made by the Administrative Commission,
- (c) a procedure or other method established by the Administrative Commission,
- (d) an opinion given by the Administrative Commission, or
- (e) rules made or a measure taken by the Administrative Commission,

has effect as a provision that permits an authority, institution or other body of the United Kingdom to have regard to the act done by the Administrative Commission, whether the act is done before, or on or after, exit day.

(5) The relevant retained direct EU legislation is not to be treated by virtue of this paragraph as—

- (a) conferring powers or imposing duties on an EU institution in relation to the United Kingdom,
- (b) conferring powers or imposing duties on a member State or an authority, institution or other body of a member State in relation to the United Kingdom,
- (c) requiring the United Kingdom or an authority, institution or other body of the United Kingdom to provide information to, or to take any other step as regards, an EU institution, or
- (d) requiring the United Kingdom or an authority, institution or other body of the United Kingdom to publish material in the Official Journal of the European Union.

(6) Sub-paragraphs (2) to (5) are subject to the specific modifications in paragraphs 7 and 8.

(7) In this paragraph, “the Administrative Commission” means the Administrative Commission for the Coordination of Social Security Systems (see Title 4 of Regulation (EC) No 883/2004) or, where functions have been assumed by the EEA Joint Committee, the EEA Joint Committee; and references in this paragraph to an EU institution are to be read accordingly.

Regulation (EC) No 987/2009

7. Regulation (EC) No 987/2009 has effect as if—

- (a) Articles 4, 5(4) and 6(3) were omitted;
- (b) in Article 9(2), the words “shall be notified to the Administrative Commission and” were omitted;

(1) See Schedule 1 to the Interpretation Act 1978 (c. 30) as to the meaning of “EU institution”.

Status: This is the original version (as it was originally made).

- (c) Article 62(2) required the amount of a refund to be determined on a basis agreed between the United Kingdom and the member State in question or between their competent authorities;
- (d) Article 65 were omitted;
- (e) the reference in Article 67(2) to publication in the Official Journal of the European Union were a reference to notification sent to the member State concerned;
- (f) Articles 67(7), 69, 75(3), 86, 88 and 89 were omitted;
- (g) in Article 90, the second sentence required the date to be fixed by agreement between the United Kingdom and the member State in question or between their competent authorities;
- (h) Articles 91, 92 and 95 were omitted;
- (i) Annex 4 were omitted.

Regulation (EEC) No 574/72

- 8. Regulation (EEC) No 574/72 has effect as if—
 - (a) Article 93(3) required the amount of a refund to be determined on a basis agreed between the United Kingdom and the member State in question or between their competent authorities;
 - (b) the reference in Article 100(2) to the date of publication in the Official Journal of the European Union were a reference to the date on which notification is given to the member State in question;
 - (c) Articles 104(2) and 105(2) provided for Annex 5 to be treated as if an agreement described in Article 104(2) or 105(2), to which the United Kingdom or the competent authority of the United Kingdom is party, were entered in the Annex when it was made.

Provision for United Kingdom legislation

9. The legislation repealed or revoked by Parts 2 and 3 of these Regulations is to have effect on and after exit day, as if it had not been repealed or revoked by Parts 2 and 3, so far as necessary for the purposes of provision made by paragraphs 2 to 8 of this Schedule.