

Briefing Note to Committee on Immigration & Social Security Coordination Bill

British in Europe is the Coalition of groups of UK nationals living in the other EU countries. We have always worked in collaboration with **the3million**, our counterparts in the UK, and fully support them. As they are giving separate evidence, in this Note we confine ourselves to points of direct impact on UK nationals living in other EU countries (“UKinEU”).

Our underlying themes

- **Do not move the goalposts:** All the life-changing decisions which UKinEU and EUinUK made – where to live, work, make a family etc – were taken within the framework of our rights as EU citizens, and the legitimate expectation that we would keep these for life. The preservation of these rights was correctly made a priority by both sides in the negotiations. Although the Withdrawal Agreement (“WA”) does not always match these promises, the evident injustice of moving the goalposts when it is too late for us to do anything about it underlies all the points we make in this paper.
- **Ring-fence our rights:** if the WA is not ratified, ring-fencing the Citizens’ Rights part of the WA by making it the only agreement under Article 50 remains by far the simplest and most secure way of protecting the rights of UKinEU and EUinUK. This is a “backstop” which everyone could willingly embrace, but to be effective such agreement has to be made before March 29 or any extended Art. 50 time limit. The Government should make a public commitment now to propose this to the EU.
- **Creating uncertainty over rights in the UK damages UKinEU.** All EU countries are in the process of legislating for the rights of UKinEU in the event of No Deal. Many have made it clear that their approach depends on what the UK does¹. By conferring on the government wide-ranging Henry VIII powers to reduce existing legal rights this Bill seriously undermines our attempts to argue for legal guarantees in our home countries.
- As Brexit approaches **there is widespread serious anxiety among UKinEU** about vital matters such as future healthcare and benefits and the right to return to the UK, including with family members, if they have to. We will give the Committee examples of this.

Immigration clauses

As EU citizens we have had an unconditional right (known as *Surinder Singh* after the case which decided it) to return to the UK with our non-British families. Deal or No Deal, the Government has given no commitment to preserve this right after the end of any transition period: instead we will have to meet the UK’s restrictive minimum income conditions. This will put many UK citizens in a situation of having to make impossible choices between being with family in the UK when we are needed and with family in our home country. This was not a choice we faced when we moved, found partners or produced children and it should not be a choice we face now. The

¹ Nowhere more clearly than France which has published a law which includes a power to remove any of the rights conferred if the rights enjoyed by French citizens in the UK are reduced.

Bill should be amended to include an express preservation of the existing unqualified EU right to return to the UK with our families for this finite group of people.

Clause 5 (Social Security Coordination)

The EU does not dictate what Social Security benefits each State should give or what contributions should be paid. What it does is ensure that those who move from one EU country to another do not lose out by doing so and are given equal treatment with the nationals of the country paying their benefits, such as pensions.

The main EU law is contained in Reg. 883/2004/EC. This includes the following fundamental provisions:

- Art. 4 – right of beneficiaries to equal treatment with nationals of the State paying the benefit;
- Art. 6 – where entitlement to a benefit in one country depends on a minimum period of residence/contribution/employment, the periods of residence/contribution/employment in all the States are aggregated;
- Art. 7 – cash benefits payable by one State cannot be reduced because the recipient is residing in a different State. Art. 7 is the provision which prevents the UK from refusing to pay increases in the State Pension to UK pensioners living in the EU. To date they have only guaranteed increases up to April 2020.

The Government's planned legislation to deal with exiting the EU if there is No Deal² involves three steps:

- The EU Withdrawal Act 2018 which retains EU law within the UK. This includes Reg. 883/2004.
- The retained law is then to be modified by a series of draft Statutory Instruments laid under that Act ("the First Modifications")³.
- The present Bill which creates Henry VIII powers to further modify that law by regulation to enable the implementation of as yet unspecified "post-exit policy changes".

The scope and dangers of the changes open to the Government in this scheme are apparent from the First Modifications they have already proposed:

- An amendment to delete the fundamental rule that those entitled to a benefit in a country are entitled to equal treatment with the nationals of that country (deletion of Art. 4 of Reg. 883/2004).
- An amendment to provide that if, when the rules on data exchange between the UK and the EU go, the DWP cannot get information as to a person's contribution history from another country and then "is of the view" that information supplied by the claimant on the subject is "inaccurate or incomplete" it does not have to pay anything at all (addition of a new Art. 1A to Reg. 883/2004).

² If the Withdrawal Agreement is ratified, the EU scheme is retained and the regulation-making powers could only be used to modify its application to those not covered by the Withdrawal Agreement.

³ <https://beta.parliament.uk/statutory-instruments/k4I4Bd6o> and 3 others laid 30.1.19.

British in Europe argues that:

- Given the fundamental nature of the rights created by Reg. 883/2004/EC, no amendment should be made reducing those rights for citizens who are or have been covered by it as at March 29 (or any extension of the Art. 50 period). Any amendment necessary to reflect the UK's departure from the EU should be made only by primary legislation.
- The First Modifications should not be made by regulation at all, and any provisions thereof which are necessary should be made by primary legislation.
- In particular, the provisions of Arts. 4, 6 and 7 of Reg. 883 should be confirmed by primary legislation without alteration of their substance.
- The proposed Art. 1A should be redrafted so that benefit can only be withheld where there has been dishonesty and cannot be withheld because someone cannot produce evidence of their contribution record possibly decades before they claim.
- For detailed justification we attach a paper we wrote in January on Pension Up-rating and Aggregation.

British in Europe

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