

Citizens' Rights Agreement: protecting the rights acquired under the Agreement on the free movement of persons

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Brexit must not result in people losing the rights they enjoyed while the United Kingdom was still a member of the EU. Switzerland and the United Kingdom rapidly entered into negotiations to guarantee such rights, in conjunction with the parallel (and chaotic) negotiations between the EU and the UK.

When a state withdraws from an international agreement, the doctrine of acquired rights aims to ensure that the rights granted on the basis of the agreement are protected. As a result of Brexit, all agreements between Switzerland and the EU ceased to apply to the UK. That includes the [Agreement on the free movement of persons](#) (SR 0.142.112.681), which governs, among other things, coordination of social security matters. Article 23 is dedicated to the safeguarding of acquired rights and stipulates that the parties shall settle by mutual agreement the action to be taken in respect of rights in the process of being acquired. On this basis, on 25 February 2019, Switzerland and the UK concluded a [Citizen's Rights Agreement](#), which was applicable provisionally on 1 January 2021 and came into force on 1 March 2021 (SR 0.142.113.672).

Key aspects of the Agreement

The Agreement between Switzerland and the UK is based on [the Withdrawal agreement between the EU and the UK](#) (OJ 2020 L 29/7). In particular, the provisions on social security matters (Part 3 of the Agreement) are essentially identical. This ensures that Swiss nationals will not be placed in a worse position than EU nationals and ensures the continuity and homogeneity of the rules applicable within Europe.

To ensure that individuals who acquired rights on the basis of the Agreement on the free movement of persons (FMOPA) can continue to benefit from them post Brexit, the Agreement upholds the coordination rules provided for in FMOPA ([Regulation \(EC\) No. 883/2004](#) and [Regulation \(EC\) No. 987/2009](#)).

Individuals affected and applicable rules

The Agreement aims to protect individuals who were subject to FMOPA. It applies to Swiss, British and EU nationals who were in a cross-border social security situation involving the UK and Switzerland prior to 1 January 2021, the date on which the UK ceased to apply FMOPA.

A distinction needs to be made between two categories of people, based on their situation as at 31 December 2020.

1. Individuals in a cross-border situation on this date (Article 25), for example, Swiss employees posted by their Swiss company to work in the UK between 1 October 2020 and 30 March 2021:

All provisions of Regulation (EC) No. 883/2004 and Regulation (EC) No. 987/2009 apply to such employees as long as their cross-border situation remains in effect

without interruption (Article 26). They therefore have access to all benefits covered by these regulations. For further details of the concept of a cross-border situation, see below.

2. Individuals who were not in a cross-border situation on 31 December 2020 but benefited from certain rights under FMOPA (Article 26a):

Not all of the coordination rules apply to these individuals; only the provisions on the specific rights to be protected apply. These mainly relate to individuals who were insured in one and/or both countries prior to 1 January 2021. Rights relating to these periods, especially as regards future pension rights, are protected.

Example: a Swiss national who contributed to the UK social security system between 1995 and 2003 could be entitled to payment of a UK disability pension in Switzerland.

The other specific situations protected by Article 26a are access to health care benefits for individuals with health insurance in one country who need health care in the other country when FMOPA ceases to apply (e.g. tourists in one of these countries on 31 December 2020) and the continued payment of family benefits for a child resident in the other country.

A detailed outline of the provisions of the Agreement can be found in the dispatch of the Federal Council of 6 December 2019 (Federal Council 2019).

Cross-border situation

It is essential to identify whether individuals were in a cross-border situation on 31 December 2020 because this determines whether the coordination rules remain applicable in full or only in part. These situations relate to individuals who have a relationship with both countries due to their nationality, work or place of residence. These cases are listed in Article 25.

There is no limit on the number of years for which a cross-border situation may last. In this case, the same country remains responsible for insuring any individual still covered by Regulation No. 883/2004 and Regulation No. 987/2009.

Example: a Swiss citizen who worked permanently in the UK prior to 31 December 2020 and continues to work there remains in a cross-border situation.

Changes within the situation that do not interrupt its cross-border nature do not alter the applicable rules.

Examples: individuals who continue to work without interruption in the same country but change their employer remain subject to the EU coordination rules; posted workers from one country who continue to work in the other at the end of the posting period remain in a cross-border situation even if they become insured in the country in which they work.

When the cross-border situation ends, the individual is no longer subject to all of the EU regulations. However, rights arising from periods of insurance during the cross-border situation remain protected. If such individuals subsequently establish a new cross-border situation, this situation is covered by the provisions of the new agreement.

Global coordination: including the EU

The FMOPA coordinates the social security systems of all states party to the Agreement and grants rights to all nationals affected. To uphold this multilateral aspect of the protection of acquired rights between the UK, Switzerland and the EU, the three parties have coordinated their relationships (*triangulation*). The EU and the UK have included Swiss citizens in their Withdrawal Agreement, Switzerland and the UK have integrated EU citizens into the Citizens' Rights Agreement (Article 26b) and Switzerland and the EU have concluded a special agreement to protect UK citizens (cf. [Decision No. 1/2020 of the Joint Committee FMOPA](#), OR 2021 12).

A British "frontier worker" who, on 31 December 2020, is resident in France and employed in Switzerland is entitled to all benefits under the EU coordination regulations as long as he or she continues to work in Switzerland; in particular, he/she is entitled to unemployment benefits and family benefits, based on Decision No. 1/2020 of the Joint Committee FMOPA.

Examples of application of the Agreement

- 1. Individuals seconded from Switzerland to the UK before 1 January 2021 who remain insured in Switzerland continue to benefit from all rights as set out in FMOPA during the full period of secondment, including any extension of such period of secondment. Upon returning to Switzerland, such individuals are no longer subject to Regulation No. 883/2004 and Regulation No. 987/2009 and do not benefit from acquired rights in accordance with the Citizens' Rights Agreement because no periods of insurance were completed in the UK. Any new period of secondment will be subject to the new agreement between Switzerland and the UK.*
- 2. A pensioner who retired to Switzerland in 2010 and only receives a UK pension continues to enjoy the right to receive benefits under the EU rules while living in Switzerland. The pensioner is also entitled to any supplementary Swiss benefits without any waiting period and health insurance under the British system remains in place.*
- 3. A German national who, as at 31 December 2020, was working in Switzerland and in receipt of a Swiss family allowance for a child living in the UK continues to receive the family allowance.*
- 4. In the event of disability, British citizens who have worked in Switzerland in the past and returned to live in the UK before 1 January 2021 can have a Swiss pension exported provided that they fulfil the conditions for payment of a disability pension.*

Conclusion

The Citizens' Rights Agreement only covers individuals who exercised their right of free movement between Switzerland and the UK prior to 1 January 2021. In fact, it affects many people. There are more than 200,000 UK nationals registered with Switzerland's Old Age and Survivors' Insurance scheme. While the number of individuals in cross-border situations with protected rights will decline as such situations end, the acquired rights permitting them access to a pension in the future will remain in place for many years.

It is therefore always necessary to check whether an individual has completed periods of insurance prior to 1 January 2021 in order to determine which legal provisions apply for the granting of benefits. This applies, in particular, to invalidity pensions, which can no longer be exported under the new agreement.

Bibliography

Federal Council (2019) [*Dispatch relating to the approval and implementation of the agreement between the Swiss Confederation and the United Kingdom of Great Britain and Northern Ireland on citizens' rights following the withdrawal of the United Kingdom from the European Union and the free movement of persons agreement.*](#) FF 2020 989.