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Frontier Workers and Their Families: Rights After Brexit

Case Studies

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This publication was written by Dr Sylvia de Mars from Newcastle University, with the assistance of the Border People project; Annmarie O’Kane, Centre for Cross Border Cooperation; Manus Reid, North Connacht & Ulster Citizens Information Service; and Aisling Doran, Community Advice Newry, Mourne and Down.

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The Border People project is recognised as an important source of information and advice for citizens with cross-border lives. Managed by the Centre for Cross Border Cooperation, the project aims to empower citizens through the provision of accessible information. It also seeks to enhance the capacity of advice sector organisations in both jurisdictions and to support policy and systems change that reduces barriers to the cross-border mobility of people on the island of Ireland. For further information see www.borderpeople.info

Foreword

Who is this resource for?

This resource has been put together to help navigate the complex landscape of rights for frontier workers and their families after the UK's exit from the EU. The resource is intended as an aid to information and advice officers working with frontier workers, as well as to decision-makers in various sectors, such as healthcare and social security. The resource could be a useful resource for frontier workers themselves seeking clarity on their entitlements and references the relevant law.

What is in this resource?

This resource is comprised of six case studies based on common situations frontier workers and their families find themselves in. Each case study is built around two timelines, before the end of the transition period on 31 December 2020, and after. The case-studies contain helpful analysis on the correct law that must be applied in each case, as well as a summary decision on what benefits the frontier worker should be entitled to.

The resource contains template letters that frontier workers or their advisers can use when appealing decisions about access to benefits and entitlements.

Who developed/compiled the resource?

Dr Sylvia de Mars from Newcastle University, with the assistance of the Border People project; Annmarie O'Kane, Centre for Cross Border Cooperation; Manus Reid, North Connacht & Ulster Citizens Information Service; Aisling Doran, Community Advice Newry, Mourne and Down; and staff at the NI Human Rights Commission.

What is the resource based on?

The legal analysis in each case study highlighted has featured in the ["Frontier Workers and their Families: Rights After Brexit"](#) independent research report by Dr Sylvia de Mars, Newcastle University; and Professor Charlotte O'Brien, University of York, commissioned by the NI Human Rights Commission and first published in 2023.

Where can we find more information?

You can find more detailed legal analysis on the NI Human Rights Commission's [website](#) and on the Border People [website](#).

Glossary of Terms

Agreements and Treaties

UK-EU Withdrawal Agreement

The [UK-EU Withdrawal Agreement](#) establishes the terms of the UK's withdrawal from the EU in accordance with Article 50 of the Treaty on the European Union. [Article 50 of the Treaty on European Union](#) provides for a mechanism for the voluntary and unilateral withdrawal of a country from the EU. Part II of the UK-EU Withdrawal Agreement on Citizens Rights safeguards the rights of EU citizens who were in the UK and UK citizens who were in EU countries on 31 December 2020. The Windsor Framework is a Protocol to the UK-EU Withdrawal Agreement. The UK-EU Withdrawal Agreement entered into force on 1 February 2020.

European Union (Withdrawal Agreement) Act 2020

The [European Union \(Withdrawal Agreement\) Act 2020](#) brought the provisions of the UK-EU Withdrawal Agreement into UK law. It amended the [Northern Ireland Act 1998](#) and the [European Union \(Withdrawal\) Act 2018](#).

European Union (Withdrawal) Act 2018

The [European Union \(Withdrawal\) Act 2018](#) repealed the European Communities Act 1972, ended the supremacy of European Union law in UK law and converted EU law as it stood at the moment of exit into domestic law.

UK-EU Trade and Cooperation Agreement

The [UK-EU Trade and Cooperation Agreement](#) sets out the terms of the relationship between the UK and the EU after the UK's exit from the EU in areas such as trade in goods, services, law enforcement, and social coordination. The EU-UK Trade and Cooperation Agreement entered into force on 1 May 2021.

UK-EU Trade and Cooperation Agreement's Protocol on Social Security Coordination

Prior to the UK exiting the EU, the EU rules governing social security coordination underpinned the freedom of UK citizens to move, work and live across the EU and of EU citizens in the UK. After the UK's exit from the EU, the [Protocol of Social Security Coordination](#) sets out the rules for coordination between the UK and the EU on various social security benefits for EU citizens who arrived in the UK and UK citizens who arrived in EU countries after 31 December 2020. The [Specialised Committee on Social Security Coordination](#) is a joint forum between the UK and the EU that monitors for the proper functioning of the Protocol on Social Security Coordination.

Common Travel Area

The Common Travel Area precedes both the UK and Irish membership of the EU and provides for British and Irish citizens to move freely between both jurisdictions. Prior to UK's exit from the EU, EU law facilitated many of the rights associated with the Common Travel Area. After the UK's exit from the EU, the UK-Ireland Convention on Social Security preserves many of these rights for British and Irish citizens.

UK-Ireland Convention on Social Security

The [UK-Ireland Convention on Social Security](#) preserves the reciprocal social security rights between the UK and Ireland that have historically been associated with the Common Travel Area arrangements and were underpinned by EU law in relation to social security contributions, pensions and benefits. The Convention guarantees continued access to, and equality of treatment in relation to, social security provision for British and Irish nationals and their qualifying family members in each country. The Convention entered into force in 2021.

Frontier Workers

Frontier worker

In EU law, a frontier worker is a worker who lives in one country and works in another and returns home at least once a week. Some frontier workers are 'dual' frontier workers, meaning they live in one country they are not a national of, and work in a different country they are not a national of.

The rights of frontier workers and their family members are protected by EU law (for more detail, see the independent report '[Frontier Workers and their Families: Rights after Brexit](#)' by Dr Sylvia de Mars and Professor Charlotte O'Brien). After the UK's withdrawal from the EU, the rights of EU national frontier workers who were in the UK before 31 December 2020 are governed by [Part II \(Citizens' Rights\) of the UK-EU Withdrawal Agreement](#). Newly arrived EU nationals would not be covered by the UK-EU Withdrawal Agreement.

For more information on how the UK implemented these EU law instruments into UK domestic law, see Chapter 2 of the independent report '[Frontier Workers and their Families: Rights after Brexit](#)' by Dr Sylvia de Mars and Professor Charlotte O'Brien.

Frontier worker permit

A [Frontier Worker Permit](#) allows individuals meeting the criteria of 'frontier worker' under the UK-EU Withdrawal Agreement to enter the UK and work legally. To be eligible for a Frontier Worker Permit, the frontier worker must have begun working in the UK by 31 December 2020. The Frontier Worker Permit is proof of right to access benefits and services, including National Health Service healthcare, if other relevant eligibility requirements are met. Irish citizens do not need to apply for a Frontier Worker Permit but may apply for one if they wish. People who have both British and EU member state citizenship (dual citizenship) are not eligible for a Frontier Worker Permit.

The Frontier Worker Permit is free of charge and can be renewed. Both employed and self-employed frontier workers can apply for a Frontier Workers Permit. Family members are not covered by a Frontier Worker Permit.

The EU

EU classification of benefits system

EU rules on social security

coordination are a key part of the freedom to move to and work in another EU country that EU law guarantees. EU rules on social security coordination ensure that no one is disadvantaged on account of working or living in another EU member state, and that individuals are not able to claim the same social security benefit twice from their country of residence and their country of employment.

The key EU law is the EU Social Security Coordination Regulation, which applies the EU rules on social security coordination to ten categories of social security benefits: sickness benefits; maternity and equivalent paternity benefits; invalidity benefits; old-age benefits; survivors' benefits; benefits in respect of accidents at work and occupational diseases; death grants; unemployment benefits; pre-retirement benefits; and family benefits (Article 3).

Under the EU Social Security Coordination Regulation, EU Member States make a declaration to the European Commission in which they designate a category from the list above to their national social security benefits (Article 9).

For example, the UK has designated the Employment Support Allowance a benefit in cash in the category of sickness benefits.

After the UK's exit from the EU, social security coordination between the UK and the EU is regulated by the UK-EU Withdrawal Agreement for EU citizens who were in the UK and UK citizens who were in EU countries on 31 December 2020; and by the Protocol on Social Security Coordination within the UK-EU Trade and Cooperation Agreement for newly arrived people. (For more information, see the independent report 'Frontier Workers and their Families: Rights after Brexit' by Dr Sylvia de Mars and Professor Charlotte O'Brien).

Benefits

Benefit in kind

Social security benefits are payments made to individuals under the social security system in their jurisdiction (for more information on what benefits frontier workers and their families are entitled to, see the independent report 'Frontier Workers and their Families: Rights after Brexit' by Dr Sylvia de Mars and Professor Charlotte O'Brien).

Benefits in kind are free or heavily subsidised non-cash benefits or services that the State provides to eligible individuals. Examples of benefits in kind in the UK are the National Health Service (NHS); state-funded education; and adult social care. Employees can also receive benefits in kind which are not part of their salaries from their employer, such as company cars, for example.

Benefit in cash

Benefits in cash are direct payments or allowances that the State provides to eligible individuals. Examples of state benefits in cash in the UK are disability benefits, such as the Personal Independence Payment; or low-income related benefits, such as Universal Credit.

Contributory benefits

Social security benefits the eligibility for which depends on making enough National Insurance contributions in a set period of time. An example of [a contributory benefit in the UK](#) would be the State Pension.

Non-contributory benefits

Social security benefits that eligibility for does not depend on the payment of National Insurance contributions. These [non-contributory benefits](#) can be either means-tested, meaning that those earning above a certain threshold do not qualify for them; or non-means tested, meaning they are generally available to all those in a specific situation.

Abbreviations

EU SSCR	EU Social Security Coordination Regulation
UK-EU TCA	UK-EU Trade and Cooperation Agreement
UK/Ireland SSC	UK/Ireland Social Security Convention
NHS BSO	NHS Business Services Organisation
NHS	National Health Service
TFEU	Treaty on the Functioning of the European Union

Case Study 1

Child Benefit

Aleksy, a Polish national, is living in Ireland with his wife and two children under the age of 18. His wife is not employed. Aleksy himself works 40 hours a week for a company in Northern Ireland (NI). Aleksy is looking to apply for child benefit for his two children.¹ He wants to know what he is entitled to, and in which country he should apply.

If Aleksy started working in NI before 31 December 2020

Legal Rules Applicable

Aleksy is covered by the United Kingdom (UK)-European Union (EU) Withdrawal Agreement, concluded by the UK and the EU as part of the Brexit process.² He is a “frontier worker” under that Agreement,³ and will continue to be a “frontier worker” provided he continues to live in Ireland, and work in NI.

UK law implementing the UK-EU Withdrawal Agreement’s provisions on frontier work clarifies that anyone who is “not primarily resident” in the UK, but is a worker there, is understood to be a frontier worker.⁴ To be “not primarily resident”, Aleksy has to

either spend less than 180 days a year in the UK, or return to Ireland at least twice in twelve months.⁵

There is one condition to Aleksy carrying on his work after 31 December 2020, however: under the UK-EU Withdrawal Agreement, the UK can require that frontier workers apply for a document called a “Frontier Worker Permit”. The UK-EU Withdrawal Agreement makes clear that this document “certifies” that Aleksy is a frontier worker, which suggests it is not a source of his rights; but the manner in which the UK has implemented the UK-EU Withdrawal Agreement in domestic law makes it clear that he needs to hold a Frontier Worker Permit in order to be admitted to the UK for the purposes of employment.⁶

1 UK child benefit: eligibility in NI is regulated by Social Security Contributions and Benefits (Northern Ireland) Act 1992. Ireland child benefit: eligibility in Ireland is regulated by the Social Welfare Consolidation Act 2005 (26/2005).

2 Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and European Atomic Energy Community [2019] OJ C 384 I/92 (‘UK-EU Withdrawal Agreement’).

3 Article 9(b), UK-EU Withdrawal Agreement: “Union citizens or United Kingdom nationals who pursue an economic activity in accordance with Article 45 [workers] or 49 [self-employed] of the Treaty on the Functioning of the European Union (TFEU) in one or more States in which they do not reside”.

4 Regulation 3, The Citizens’ Rights (Frontier Workers) (EU Exit) Regulations 2020, (‘Frontier Workers Regulations 2020’).

5 Regulation 3(3), Frontier Workers Regulations 2020.

6 Article 26, UK-EU Withdrawal Agreement, which is implemented in the UK in the Frontier Workers Regulations: Regulation 6 reads that admission as a frontier worker is conditional on a valid identity document and a valid frontier worker permit for all bar Irish nationals, who do not need such a permit.

If Aleksy has not already applied for a Frontier Worker Permit, he should do so as soon as possible – provided he can demonstrate that his work commenced prior to 31 December 2020. See here: <https://www.gov.uk/frontier-worker-permit>

Rights to Benefits

As Aleksy is covered by the UK-EU Withdrawal Agreement, the EU's Social Security Coordination Regulation (EU SSCR) applies to him.⁷ The EU SSCR⁸ determines, in situations where EU nationals are covered by the legislation of two different EU Member States, which of those States is responsible for their social security: this State is known as the “competent State”. It is ordinarily the State where an EU national *works* if they are working.⁹ Under the UK-EU Withdrawal Agreement, the UK is treated as *if* a Member State for the purposes of social security coordination. In Aleksy's situation, therefore, the UK is his “competent State”.

UK Child Benefit is a “family benefit” under the EU's classification of benefits system.¹⁰ UK law on Child Benefit states explicitly that child benefit will only be payable in respect of children who are “in Northern Ireland” in a given week.¹¹ However, it also makes clear that there can be circumstances where a child or person is treated as “in Northern Ireland” even where they are not. The EU SSCR sets out one such circumstance. Article 67 of the EU SSCR states explicitly that

“a person shall be entitled to family benefits in accordance with the legislation of the competent Member State, including for his family members residing in another Member State, as if they were residing in the former Member State”.

This means that Aleksy is able to claim UK Child Benefit for his children, *even though* they reside in Ireland.

7 Article 30(1), UK-EU Withdrawal Agreement. Aleksy, as someone working in the UK, is subject to the legislation of the UK; this brings him within the scope of the UK-EU Withdrawal Agreement's rules on social security coordination, as set out in Article 31, UK-EU Withdrawal Agreement.

8 Regulation (EC) 883/2004, 'Regulation of the European Parliament and of the Council on the coordination of social security systems', 29 April 2004.

9 Ibid, Article 11(3): 'a person pursuing an activity as an employed ... person in a Member State shall be subject to the legislation of that Member State'. If there is a disagreement between Member States about what the competent state is, Article 6(2) of Regulation (EC) 987/2009 notes that 'where there is a different of views' as to what the competent state is, provisionally, benefits are to be provided by the state of residence. See Regulation (EC) 987/2009, 'Regulation of the European Parliament and of the Council laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems' 16 September 2009. In *SSWP v Fileccia*, the England and Wales Court of Appeal determined that such a difference of views does not need to be established by formal decisions, but can be evidenced by a difference of opinion between Member State institutions. See *SSWP v Fileccia* [2017] EWCA Civ 1907, at para 39.

10 See European Commission, 'Declaration by United Kingdom pursuant to Article 9 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems for the reference year ending 31 December 2023' (2024). Available at: https://employment-social-affairs.ec.europa.eu/policies-and-activities/moving-working-europe/eu-social-security-coordination/specialised-information/official-documents/declarations-made-eea-efta-states-and-united-kingdom-accordance-article-9-regulation-ec-no-8832004_en.

11 Section 142, Social Security Contributions and Benefits (Northern Ireland) Act 1992.

However, Aleksy is also entitled to family benefits – and so the equivalent of Child Benefit – in Ireland on account of his residence there.¹² Because he is employed in the UK, but resident in Ireland, and his situation is covered by the EU SSCR, he effectively has an entitlement to family benefits under both jurisdictions. Ireland has declared its child benefit – Irish Child Benefit, for ease – as a “family benefit” under the EU classification system as well, meaning Aleksy is eligible to claim the same kind of family benefit from two different States (NI as his state of employment and Ireland as his state of residence) at the same time, meaning NI and Ireland classify their child benefits in the same way, resulting in an overlapping of family benefits.¹³ The EU SSCR makes clear that in the case of overlapping entitlements to family benefits, primary responsibility falls to the state of employment – but the state of residence, as secondarily responsible, can owe a so-called “supplement” if its family benefit payments are paid at a higher rate.¹⁴ In Aleksy’s case, the Irish Child Benefit payment is greater than the UK Child Benefit payment. Aleksy can consequently claim UK Child Benefit to its full amount – but also claim a “supplement” of Irish Child Benefit, which is the difference between the UK and Ireland’s payments of child benefits.

In summary: Aleksy is an EU national, resident in Ireland with his family. He is a frontier worker on account of being employed in NI, but not residing there. Because he commenced his work prior 31 December 2020, he is covered by the UK-EU Withdrawal Agreement’s social security coordination provisions, provided he meets the criteria. Under these, he is entitled to claim Child Benefit in the UK in respect of his children resident in Ireland. He is also entitled to Irish Child Benefit on account of his residence in Ireland; however, because the UK is primarily responsible for his social security, Ireland will pay only a *top-up* payment to him (amounting to difference between UK Child Benefit and Irish Child Benefit). He should apply for both UK and Irish Child Benefit, and the UK will coordinate the total amount of benefit with Ireland.

If Aleksy started working in NI after 31 December 2020

Legal Rules Applicable

Aleksy is covered by the UK-EU Trade and Cooperation Agreement (UK-EU TCA) concluded by the UK and the EU after the UK left the EU.¹⁵ This Agreement comes with a “Protocol on Social Security Coordination” that addresses the coordination of social security between the UK and the EU Member States for all those

¹² See Sections 219-220, Irish Social Welfare Consolidation Act 2005.

¹³ See European Commission, ‘Declaration by Ireland pursuant to Article 9 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems for the reference year ending 31 December 2023’. Available at <https://ec.europa.eu/social/main.jsp?catId=868&intPageId=2285&langId=en>.

¹⁴ Article 68, Regulation (EC) 883/2004, ‘Regulation of the European Parliament and of the Council on the coordination of social security systems’, 29 April 2004.

¹⁵ Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part’, 30 December 2020 (‘UK-EU Trade and Cooperation Agreement’).

commencing economic activity *after* the UK left the EU. Under this Protocol, Aleksy is also a “frontier worker” – provided he meets the stricter definition set out in the Protocol:

“frontier worker” means any person pursuing an activity as an employed or self-employed person in a State and who resides in another State to which that person returns as a rule daily or at least once a week”.¹⁶

Aleksy works a normal 8-hour workday in NI, five days a week, and he travels back to Ireland every workday, so he satisfies this definition.

The UK implementation of the UK-EU TCA’s Protocol on Social Security Coordination is done by reference; meaning UK domestic law implementing the UK-EU TCA’s Protocol on Social Security Coordination (in this case the European Union (Future Relationships) Act 2020) lists the provisions of the UK-EU TCA that become part of domestic law as they are written in the UK-EU TCA text, or verbatim; as such, the Protocol’s contents form part of domestic law verbatim.¹⁷ There are no further conditions set out in the Protocol or its domestic implementation that Aleksy needs to satisfy to claim his rights as a frontier worker under the Protocol: in principle, he simply has to be active as a frontier worker in the UK or an EU Member State to be entitled to rights under the Protocol.

However, the reality is less simple for Aleksy. As he commenced frontier work after Brexit, he – as an EU national, rather than an Irish national – has no automatic right to be *present* in NI. He and his family are entitled to live in Ireland under EU law, but any work Aleksy carries out in the UK has to be done while he holds a relevant employment visa. If he does not have a work visa for the frontier work he does in NI, he is working illegally – and would not be entitled to any of the social security coordination set out in the UK-EU TCA’s Protocol.

Rights to Benefits

Assuming that Aleksy has a work visa for his activity in the UK, he is covered by the UK-EU TCA, and the UK-EU TCA’s Protocol on Social Security Coordination applies to him. The UK-EU TCA’s Protocol is in many ways a copy of the EU SSCR; as such, the state of employment is the “competent” state for social security under the Protocol as well.¹⁸ The UK is thus Aleksy’s “competent State”.

There is, however, one significant difference between the EU SSCR and the UK-EU TCA’s Protocol on Social Security Coordination: the UK-EU TCA’s Protocol explicitly does *not* apply to family benefits.¹⁹ This means that Child Benefit cannot be “exported”, meaning workers in the UK with family members living *outside* of the UK will not be able to apply for benefits on the basis of those family members. As such, Aleksy will not be able to claim Child Benefit in the UK.

¹⁶ Article SSC.1(I), UK-EU Trade and Cooperation Agreement 2020.

¹⁷ See Section 26, European Union (Future Relationship) Act 2020.

¹⁸ Article SSC.10(3), UK-EU Trade and Cooperation Agreement 2020.

¹⁹ Article SSC.3.4(g), UK-EU Trade and Cooperation Agreement 2020.

Aleksy may nonetheless be entitled to Child Benefit in Ireland, as he remains resident there. This will be dependent on him proving his residency rights as an EU national frontier worker. Those frontier workers who demonstrate their frontier worker status should be able to rely on the frontier worker exemption from the “habitual residency condition” and be assessed for eligibility for Child Benefit according to their need. The Irish Department of Social Work assesses eligibility for Child Benefit based on set criteria; therefore, they will assess Aleksy’s particular circumstances in determining whether he is entitled to claim the benefit.

In summary: Aleksy is an EU national, resident in Ireland with his family. He is a frontier worker on account of being employed in NI but not residing there. Because he commenced his work after 31 December 2020, he is covered by the UK-EU TCA’s Protocol on Social Security Coordination. Under this Protocol, he cannot claim Child Benefit in the UK in respect of his children resident in Ireland, as the Protocol does not cover family benefits. He is, however, potentially entitled to Irish Child Benefit on account of his residence in Ireland, and may wish to claim for that.

Case Study 2

Invalidity Pension from Ireland

Darragh is an Irish national who lives in NI. He was employed in Ireland for many years, but an injury acquired in February 2021 has left him permanently unable to work. He wants to know what benefits he is entitled to, and which country he should apply in.

If Darragh was employed in Ireland *before* 31 December 2020

Legal Rules Applicable

In this scenario, Darragh was still working in Ireland at the time the transition period ended – and became permanently unable to work later. This means he was subject to Irish legislation on social security at the time of Brexit. As such, Darragh is covered by the Social Security Coordination provisions retained in the UK-EU Withdrawal Agreement, concluded by the UK and the EU as part of the Brexit process.²⁰

These provisions maintain application of the EU SSCR²¹ to those UK and EU nationals who were covered by the social security legislation of either the UK or a Member State at the time of Brexit,²² and also enable the aggregation of social security accumulated *prior* to Brexit in either the UK or the Member States.²³

Rights to Benefits

Darragh's social security contributions have been paid to Ireland, in light of his employment there, which entitles him to contribution-based benefits in Ireland. However, he might be entitled to benefits based on his residency in the UK; these will not be contribution-based, but may be needs-based or otherwise generally available.²⁴

20 Article 30, Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and European Atomic Energy Community [2019] OJ C 384 I/92 ('UK-EU Withdrawal Agreement').

21 Regulation (EC) 883/2004, 'Regulation of the European Parliament and of the Council on the coordination of social security systems', 29 April 2004.

22 Art 30(1), UK-EU Withdrawal Agreement.

23 Art 32(1), UK-EU Withdrawal Agreement.

24 Article 11(3)(e), Regulation (EC) 883/2004, 'Regulation of the European Parliament and of the Council on the coordination of social security systems', 29 April 2004. Note that this being subject to the legislation of the UK is 'without prejudice' to other provisions of the Regulation that guarantee him benefits in, e.g., Ireland.

The EU SSCR determines *which* of these two States is the “competent State” for the purposes of his benefit claims. It also precludes Darragh from claiming the same “kind” of benefit in both the UK and Ireland.²⁵

When first injured, as an employee in Ireland, Darragh will have claimed a *short-term* illness benefit. The EU SSCR makes Darragh entitled to claim this benefit in Ireland – regardless of his residence being in NI.²⁶ He will have been entitled to the Irish Illness Benefit, as he has paid sufficient social security contributions and is not of retirement age.²⁷ Under the EU SSCR, Ireland has classified Illness Benefit as a *sickness benefit*.²⁸ Irish Illness Benefit is available for maximum of two years, depending on the amount of Pay Related Social Insurance paid, or credited, within the relevant tax year.²⁹ Because of the non-overlapping requirements of the EU SSCR, the fact that Darragh can claim Irish Illness Benefit for two years means that during those two years, Darragh is *not* able to apply for further social insurance-based sickness benefits in the UK, such as

the contribution-based Employment Support Allowance, even if he meets the conditions for it.³⁰ Darragh might be able to get assessed for the work capability elements of Universal Credit in the UK and may be entitled to some amount of Universal Credit with the illness benefit taken into account as income.

Darragh should consider applying for a *long-term* payment after two years of claiming Irish Illness Benefit. In some circumstances, such as being deemed permanently incapable of all types of work indefinitely, Darragh might be eligible to claim a long-term payment, straight away. He is eligible to apply for the Irish Invalidity Pension, a long-term invalidity benefit, as he has paid sufficient social security contributions and meets the medical requirements for such a pension.³¹ Under the EU SSCR, Ireland has classified Invalidity Pension as an *invalidity benefit* – rather than a *sickness benefit*.³²

²⁵ Ibid, Article 10.

²⁶ Ibid, Art 21(1).

²⁷ Sections 40-45, Social Welfare Consolidation Act 2005.

²⁸ See European Commission, ‘Declaration by Ireland pursuant to Article 9 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems for the reference year ending 31 December 2023’. Available at <https://ec.europa.eu/social/main.jsp?catId=868&intPageId=2285&langId=en>.

²⁹ Section 44, Social Welfare Consolidation Act 2005.

³⁰ Article 10, Regulation (EC) 883/2004, ‘Regulation of the European Parliament and of the Council on the coordination of social security systems’, 29 April 2004.

³¹ Sections 118-122, Social Welfare Consolidation Act 2005. See also Article 44(2), Regulation (EC) 883/2004: Ireland operates ‘Type A’ legislation, as does the UK, and consequently the state of employment *when* injured is the one responsible for his invalidity benefits. Regulation (EC) 883/2004, ‘Regulation of the European Parliament and of the Council on the coordination of social security systems’, 29 April 2004.

³² See European Commission, ‘Declaration by Ireland pursuant to Article 9 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems for the reference year ending 31 December 2023’. Available at <https://ec.europa.eu/social/main.jsp?catId=868&intPageId=2285&langId=en>.

For the purposes of the EU SSCR, Darragh is at this time, after two years, subject to the legislation of the UK alone, on the basis of his residence there: he is not *employed* in Ireland, nor is he in receipt of a *pension* there, as the Invalidity Pension is an *invalidity benefit* rather than a *pension*.³³

This means that, in addition to Irish Invalidity Pension, Darragh might be able to claim for UK *sickness benefits* that he meets the conditions for, on account of being resident in NI. This was clarified in the *SP v Department for Communities (PIP)* case, where the NI Social Security Commissioner deciding the case concluded that *despite* a claimant being entitled to Invalidity Pension in Ireland, the UK was the competent State for the purposes of payment of sickness benefits under the EU SSCR.³⁴

One of the UK's listed *sickness benefits* is the “daily living component” of Personal Independence Payments.³⁵

The “daily living component” of the Personal Independence Payment is available to all those who are resident in Northern Ireland and have a limited ability to “carry out daily living activities” on account of a physical or mental condition.³⁶ Darragh meets both of these conditions and consequently should apply for Personal Independence Payment (daily living component) in the UK.

The UK does *not* list the “mobility component” of Personal Independence Payment as a *sickness benefit*; instead, it is classified as a special non-contributory cash benefit.³⁷ Darragh is not claiming such a benefit elsewhere, so there is no question of “overlap” with benefits received from Ireland; and the UK remains a competent state for Darragh for residency-based benefits in light of the EU SSCR. Entitlement to Personal Independence Payment (mobility component) is based on residence in the UK.³⁸ If Darragh's “ability to carry out mobility activities is limited by” his physical or mental condition, Darragh is also entitled to claim this.

33 Article 11(3)(e), Regulation 883/2004. Article 11(2) does not apply to Darragh, as it explicitly excludes receipt of invalidity pensions and non-term-limited sickness benefits as meaning that their claimants are deemed to be “employed” in the State paying for that payment. Regulation (EC) 883/2004, ‘Regulation of the European Parliament and of the Council on the coordination of social security systems’, 29 April 2004.

34 *SP v Department for Communities (PIP)* [2023] NICom 23, at paras 61-62.

35 Part 5, Welfare Reform (Northern Ireland) Order 2015, relating to Personal Independence Payment (daily living component). See also European Commission, ‘Declaration by United Kingdom pursuant to Article 9 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems for the reference year ending 31 December 2023’ (2024). Available at: https://employment-social-affairs.ec.europa.eu/policies-and-activities/moving-working-europe/eu-social-security-coordination/specialised-information/official-documents/declarations-made-eea-efta-states-and-united-kingdom-accordance-article-9-regulation-ec-no-8832004_en.

36 Ibid, Articles 82 and 83.

37 *Bartlett, Ramos and Taylor v Secretary of State for Work and Pensions*, Case C-537/09, 21 December 2009, as discussed in *KR v SSWP* [2019] UKUT 85 (AAC).

38 Part 5, Article 82(3), Welfare Reform (Northern Ireland) Order 2015. On residency-based claims, see *SE v SSWP* [2024] UKUT 405 and *IP v Department for Communities (AA)* [2023] NICom 27.

Summary: Darragh, given that his inability to work is permanent, should – once he exhausts *sickness benefits* in NI – apply for an *invalidity benefit* in Ireland (where he has paid his social security) but should also apply for a *sickness benefit* in the NI (where he is resident). Because they are not benefits in the same category, and so there is no “overlap” of claims of the *same type* of benefit from *two different* States for the purposes of the EU SSCR, Darragh is entitled to both an exported Invalidity Pension from Ireland (on account of his social security contributions there) and a Personal Independence Payment (daily living component) payment from NI (on account of his residency in the UK, which is the competent State for his social security coordination under the EU SSCR), and should apply for both of these. Furthermore, he is under UK domestic law entitled to Personal Independence Payment (mobility component) if he meets the conditions for it, as there is no “overlap” of claims in relation to that benefit. He might also be able to get assessed for the work capability elements of Universal Credit in the UK and may be entitled to some amount of Universal Credit with the illness benefit taken into account as income.

If Darragh was employed in Ireland *after* 31 December 2020

Legal Rules Applicable

If Darragh commenced work in Ireland *after* Brexit, and became disabled following a period of work there, he is not covered by the UK-EU Withdrawal Agreement. Instead, given that he is an Irish national, his frontier work – between the UK and Ireland – is covered by the UK/Ireland Social Security Convention (UK/Ireland SSC) concluded as part of the Common Travel Area arrangements between the UK and Ireland.³⁹

The UK/Ireland SSC in effect copies over the EU SSCR; as such, it, too, coordinates social security between its signatories for all those subject to the legislation of either the UK or Ireland from 31 December 2020 onwards. It also precludes overlapping of benefits – eg, the same category of benefits cannot be claimed in both countries.⁴⁰

Rights to Benefits

First, Darragh needs to determine who his competent State is for the purposes of paying his invalidity benefits. Article 9 of the UK/Ireland SSC sets out the rules on the competent State – and they are only slightly different from the rules in the EU SSCR.

Darragh, when employed, will be covered by the legislation of Ireland. A short-term injury does not change this; Article 9(2) of the UK/Ireland SSC makes clear that “a person receiving a

³⁹ Convention on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland 2020 (‘UK/Ireland SSC’). He is also covered in principle by the UK-EU TCA – but the UK/Ireland SSC offers him more generous rights and takes precedence on that basis.

⁴⁰ Article 8, UK/Ireland SSC.

benefit ... because or as a consequence of their activity as an employed ... person shall be considered to be pursuing that activity". This means that Darragh will continue to hold the status of frontier worker even though he is unable to work. However, Article 9(3) of the UK/Ireland SSC adds that Article 9(2) does *not* apply where the benefit being received is a *pension* or "benefits in respect of accidents at work and occupational diseases". None of the other provisions of Article 9 apply to Darragh, bar 9(4)(e), which makes his state of residence the "competent State".

Darragh will, on account of his work in Ireland, have claimed Irish Illness Benefit for the first two years following his injury, which was the competent state for him at this point, as per Article 9(2) of the Irish UK/SSC. The UK/Ireland SSC declares Illness Benefit to be a *sickness benefit*.⁴¹ This means that Darragh cannot simultaneously claim for the contribution-based UK equivalent – Employment Support Allowance.⁴² Darragh can still claim the non-contributory elements of Universal Credit; the contributory based sickness benefit from Ireland will be considered income for the purpose of calculating how much Universal Credit he is entitled to.

After two years, Darragh may be eligible for a long-term UK sickness payment, for example Employment Support Allowance Support Group.⁴³ In some circumstances, such as being deemed permanently incapable of all types of work indefinitely, Darragh might be eligible to claim a long-term illness benefit straight away. The UK/Ireland SSC declares Invalidity Pension to be an *invalidity benefit*.⁴⁴ However, it is also clearly a *pension*, and thus falls within Article 9(3) of the UK/Ireland SSC. This means that Darragh, once claiming the Ireland Invalidity Pension, falls within Article 9(4)(e) of the UK/Ireland SSC, which declares his state of residence to be his "competent state" if he is not seen as economically active anywhere else. This means that Darragh can also apply for relevant UK benefits.

The UK, in the UK/Ireland SSC, has created a new category of benefits called *long term care benefits*. These are distinct from *invalidity benefits*, and Darragh should be able to claim them simultaneously. One of the UK's listed *long-term care benefits* is the "daily living component" of Personal Independence Payment.⁴⁵ The "daily living component" of Personal Independence Payment is available to all those who are resident in NI

41 Article 3(1)(b)(i), UK/Ireland SSC.

42 Article (3)(1)(a)(i), UK/Ireland SSC.

43 For details, see NI Direct website. Available at: <https://www.nidirect.gov.uk/articles/employment-and-support-allowance>

44 Article (3)(1)(b)(iii), UK/Ireland SSC.

45 Part 5, Welfare Reform (Northern Ireland) Order 2015, relating to Personal Independence Payment (daily living component). See European Commission, 'Declaration by United Kingdom pursuant to Article 9 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems for the reference year ending 31 December 2023' (2024). Available at: https://employment-social-affairs.ec.europa.eu/policies-and-activities/moving-working-europe/eu-social-security-coordination/specialised-information/official-documents/declarations-made-eea-efta-states-and-united-kingdom-accordance-article-9-regulation-ec-no-8832004_en.

and have a limited ability to “carry out daily living activities” on account of a physical or mental condition.⁴⁶ Darragh meets both of these conditions, and consequently should apply for Personal Independence Payment (daily living component) in the UK.

Here, also, the UK does *not* list the “mobility component” of Personal Independence Payment at all in the UK/Ireland SSC, suggesting it is outside of its scope, and there is no need to determine if the UK is the competent state under the UK/Ireland SSC for this benefit. As above, entitlement to Personal Independence Payment (mobility component) is based on residence in the UK.⁴⁷ If Darragh’s “ability to carry out mobility activities is limited by” his physical or mental condition, Darragh is entitled to claim this purely on the basis of UK domestic law – the coordinating UK/Ireland SSC simply plays no role in this determination.

Summary: Darragh, given that his inability to work is permanent, should – once he exhausts *sickness benefits* – apply for an *invalidity benefit* in Ireland (where he has paid his social security) but should also apply for a *long-term care benefit* in the United Kingdom (where he is resident). Because they are not benefits in the same category, and so there is no ‘overlap’ of claims of the *same type* of benefit from *two different* States for the purposes of the UK/Ireland SSC, Darragh is entitled to an exported Invalidity Pension from Ireland (on account of his social security contributions there) and is also entitled to a PIP (daily living component) payment from the United Kingdom (on account of his residency in the UK, which is the competent State for his social security under the UK/Ireland SSC). Furthermore, he is under UK domestic law entitled to Personal Independence Payment (mobility component) if he meets the conditions for it, as it is outside of the scope of the UK/Ireland SSC altogether.

⁴⁶ Articles 82 and 83, ‘Declaration by United Kingdom pursuant to Article 9 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems for the reference year ending 31 December 2023’ (2024). Available at: https://employment-social-affairs.ec.europa.eu/policies-and-activities/moving-working-europe/eu-social-security-coordination/specialised-information/official-documents/declarations-made-eea-efta-states-and-united-kingdom-accordance-article-9-regulation-ec-no-8832004_en.

⁴⁷ Part 5, Articles 82(3), Welfare Reform (Northern Ireland) Order 2015. On residency-based claims, see *SE v SSWP* [2024] UKUT 405 and *IP v Department for Communities (AA)* [2023] NICom 27.

Case Study 3

Employment Support Allowance from Northern Ireland

Conor is a British/Irish national who lives in Ireland. He was employed in NI for many years, but illness has left him permanently unable to work. He wants to know what benefits he is entitled to, and which country he should apply in.

If Conor was employed in NI before 31 December 2020

Legal Rules Applicable

In this scenario, Conor was still working in NI at the time of Brexit – and became disabled later. This means he was subject to NI legislation on social security at the time of Brexit. As such, Conor is covered by the Social Security Coordination provisions retained in the UK-EU Withdrawal Agreement, concluded by the UK and the EU as part of the Brexit process.⁴⁸

These provisions maintain application of the EU's Social Security Coordination Regulation (EU SSCR)⁴⁹ to those UK and EU nationals who were covered by the social security

legislation of either the UK or a Member State at the time of Brexit,⁵⁰ and also enable the aggregation of social security accumulated both before and after Brexit in either the UK or the Member States.⁵¹

Rights to Benefits

Conor's social security contributions have been paid to the UK, in light of his employment there. However, he might be entitled to benefits based on his residency in Ireland; these will not be contribution-based, but may be needs-based or otherwise generally available.⁵² The EU SSCR determines *which* of these two States is the "competent State" for the purposes of his benefit claims.

48 Article 30, Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and European Atomic Energy Community [2019] OJ C 384 I/92. ('UK-EU Withdrawal Agreement').

49 Regulation (EC) 883/2004, 'Regulation of the European Parliament and of the Council on the coordination of social security systems', 29 April 2004.

50 Article 30(1), UK-EU Withdrawal Agreement.

51 Article 32(1), UK-EU Withdrawal Agreement.

52 Article 11(3)(e), Regulation 883/2004: note that his being subject to the legislation of Ireland is 'without prejudice' to other provisions of the Regulation that guarantee him benefits in, eg, the UK. Regulation (EC) 883/2004, 'Regulation of the European Parliament and of the Council on the coordination of social security systems', 29 April 2004.

It also precludes Conor from claiming the same ‘kind’ of benefit in both the UK and Ireland.⁵³

When he first became ill, as an employee in NI, Conor will have claimed a *short-term* illness payment. The EU SSCR makes Conor entitled to claim this payment in NI – regardless of his residence being in Ireland.⁵⁴ He will have been entitled to Statutory Sick Pay⁵⁵ for the first 28 weeks of being injured, and will have then been entitled to the UK (New Style) Employment and Support Allowance, as he has paid sufficient social security contributions and is not of retirement age.⁵⁶ Under the EU SSCR, the UK has classified both Statutory Sick Pay and Employment and Support Allowance as a *sickness benefit*.⁵⁷ UK Statutory Sick Pay is available for 28 weeks, and Employment and Support Allowance is generally available for 365 days – but if Conor is ill to the point where he is not able to work at all, it is available indefinitely.⁵⁸ His entitlement will be determined through a Work Capability Assessment, which will either find he is in the “Work-Related Activity”

group – which limits Employment and Support Allowance payments to 365 days, and expects some employment from applicants – or the “Support Group” – which has no limit or employment expectation.⁵⁹ As in this scenario Conor’s illness is permanent, he should be placed in the “Support Group”.

Because of the non-overlapping requirements of the EU SSCR, the fact that Conor can claim Statutory Sick Pay for 28 weeks and Employment and Support Allowance for at least 365 days means that Conor is *not* able to apply for sickness benefits in Ireland during this time, even if he meets the conditions for them.⁶⁰

One further NI benefit that Conor should consider applying for as soon as he is entitled to Employment and Support Allowance is the Personal Independence Payment daily living component. This is a sickness benefit that those with “physical or mental health condition or disability” that is expected to last for more than 12 months are potentially entitled to; it is designed to help them with everyday activities they may

53 Article 10, Regulation (EC) 883/2004, ‘Regulation of the European Parliament and of the Council on the coordination of social security systems’, 29 April 2004.

54 Ibid, Article 21(1).

55 Part XI, Social Security Contributions and Benefits (Northern Ireland) Act 1992.

56 Section 1, Welfare Reform Act (Northern Ireland) 2007, and the referred provisions therein.

57 See European Commission, ‘Declaration by United Kingdom pursuant to Article 9 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems for the reference year ending 31 December 2023’ (2024). Available at: https://employment-social-affairs.ec.europa.eu/policies-and-activities/moving-working-europe/eu-social-security-coordination/specialised-information/official-documents/declarations-made-eea-efta-states-and-united-kingdom-accordance-article-9-regulation-ec-no-8832004_en..

58 Section 1A(2), Welfare Reform Act (Northern Ireland) 2007.

59 For details, see NI Direct website. Available at: <https://www.nidirect.gov.uk/articles/employment-and-support-allowance>

60 Article 10, Regulation (EC) 883/2004, ‘Regulation of the European Parliament and of the Council on the coordination of social security systems’, 29 April 2004.

struggle with.⁶¹ Under the EU SSCR, Personal Independence Payment living component is classified as a cash *sickness benefit* – much like Statutory Sick Pay and Employment and Support Allowance. We have already determined that on account of his social security payments in NI, NI is Conor’s competent state for sickness benefits; this is also the case for Personal Independence Payment living component.⁶² Therefore, if he meets the qualifying conditions for Personal Independence Payment living component – in terms of having a disability and it affecting his ability to do everyday activities – he will be entitled to claim it on the basis of NI being the competent state for his benefits.⁶³

Conor could however apply for benefits that are *not* sickness benefits within the first 365 days of his illness. One such benefit is Disability Allowance, which Ireland lists as a special non-contributory cash benefit for EU SSCR purposes.⁶⁴ Conor is not claiming such a benefit elsewhere, so there is no question of “overlap” with benefits received from the UK. Entitlement to Disability Allowance is based on residence in Ireland.⁶⁵

If Conor has “an injury ... or physical ... disability that is likely to continue for at least one year” that “substantially [restricts]” his ability to do work suited to his age, experience and qualifications, and if Conor satisfies the means-testing conditions for Disability Allowance (where he is not eligible if his cash income or capital is above a certain level), Conor consequently is also entitled to claim this. UK Employment and Support Allowance will be treated as income for the purposes of determining an award of Irish Disability Allowance, if Conor meets the eligibility criteria.

Long-Term Illness

If Conor’s illness is such that he will remain unable to work for more than 365 days, and so his assessment for the Employment and Support Allowance consequently places him in what is called the “Support Group”,⁶⁶ the Employment and Support Allowance is treated by the UK as an *invalidity benefit*: the UK no longer operates a distinct *long-term* illness benefit for new claimants.⁶⁷ For the purposes of the EU SSCR, Conor is (after these 365 days) subject to the legislation of Ireland alone, on the basis of his residence

61 As per NI Direct website. Available at: <https://www.nidirect.gov.uk/articles/personal-independence-payment-pip>.

62 See Article 89, Welfare Reform (Northern Ireland) Order 2015.

63 There is ordinarily a residence condition attached to PIP claims, but being covered by the EU SSCR generally satisfies this as long as a ‘genuine link’ to the UK can be demonstrated; this is satisfied by having worked or lived there.

64 See European Commission, ‘Declaration by Ireland pursuant to Article 9 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems for the reference year ending 31 December 2023’. Available at <https://ec.europa.eu/social/main.jsp?catId=868&intPageId=2285&langId=en>.

65 Sections 209-212, Social Welfare Consolidation Act 2005.

66 For details, see NI Direct website. Available at: <https://www.nidirect.gov.uk/articles/employment-and-support-allowance>

67 For details, see NI Direct website. Available at: <https://www.nidirect.gov.uk/articles/review-your-incapacity-benefits-if-you-live-abroad>.

there: he is not *employed* in the UK, nor is he in receipt of a *pension* there.⁶⁸

This means that Conor might be able to claim in Ireland for benefits that he meets the conditions for, on account of being resident in Ireland, and where there is no overlap with benefit claims he is making in the UK. Once his Employment and Support Allowance is treated as an *invalidity benefit*, Conor should in principle be able to claim a *sickness benefit* in Ireland if he meets the conditions for entitlement. He does not, however: the *sickness benefits* Ireland declares under the EU SSCR are all *contributory* benefits, meaning that Conor is not entitled to them (as his social security contributions are made in the UK).⁶⁹

However, he may be entitled to other benefits not classified as *invalidity benefits* or *sickness benefits*, such as the Disability Allowance discussed above.

Summary: Given that his inability to work is permanent, Conor should apply for a *sickness benefit* in NI (where he has paid his social security). This *sickness benefit* will eventually be treated as an *invalidity benefit* if Conor remains unable to work at all long-term. He is not entitled to any *sickness benefits* in Ireland on account of a lack of social security contributions there – but he should also apply for a *special*

non-contributory cash benefit in Ireland (where he is resident). Because they are not benefits in the same category, and so there is no “overlap” of claims of the *same type* of benefit from *two different* States for the purposes of the EU SSCR, Conor is entitled to both an exported Employment and Support Allowance from NI (on account of his social security contributions there) and Disability Allowance from Ireland (on account of his residency there, making it the competent State for his social security coordination under the EU SSCR), and should apply for both of these. Conor might also be entitled to the living component of the Personal Independent Payment in the UK and should apply for this. This will not have an impact on his claiming Disability Allowance in Ireland.

If Conor was employed in Northern Ireland after 31 December 2020

Legal Rules Applicable

If Conor commenced work in the UK *after* Brexit, and became disabled following a period of work there, he is not covered by the UK-EU Withdrawal Agreement. Instead, given that he is a British/Irish national, his frontier work – between the UK and Ireland – is covered by the Irish/UK Social Security Convention (UK/Ireland SSC) concluded as part of the

⁶⁸ Article 11(3)(e), Regulation 883/2004. Article 11(2) does not apply to Conor, as it explicitly excludes receipt of invalidity pensions and non-term-limited sickness benefits as meaning that their claimants are deemed to be ‘employed’ in the State paying for that payment. Regulation (EC) 883/2004, ‘Regulation of the European Parliament and of the Council on the coordination of social security systems’, 29 April 2004.

⁶⁹ Chapter 8 (Illness Benefit), Social Welfare Consolidation Act 2005.

Common Travel Area arrangements between the UK and Ireland.⁷⁰

The UK/Ireland SSC in effect copies over the EU SSCR; as such, it, too, coordinates social security between its signatories for all those subject to the legislation of either the UK or Ireland from 31 December 2020 onwards. It also precludes overlapping of benefits – eg, the same category of benefits cannot be claimed in both countries.⁷¹

Rights to Benefits

First, Conor needs to determine who his competent State is for the purposes of paying his invalidity benefits. Article 9 of the Irish/UK Social Security Convention sets out the rules on the competent State – and they are only slightly different from the rules in the EU SSCR.

When employed, Conor will be covered by the legislation of the UK. A short-term illness does not change this; Article 9(2) makes clear that “a person receiving a benefit ... because or *as a consequence of* their activity as an employed ... person shall be considered to be pursuing that activity”. However, Article 9(3) adds that Article 9(2) does *not* apply where the benefit being received is a pension or “benefits in respect of accidents at work and occupational

diseases”. Conor’s situation likely fits this exception, in that his illness is permanent and so his benefit claim works equivalent to a pension – which means that only Article 9(4) (e) accurately describes his situation, and therefore Ireland is his competent State for the purposes of the UK/Ireland SSC.

Conor will, on account of his work in NI, first have claimed SSP for 28 weeks, and then be claiming Employment and Support Allowance. For the first 365 days of his claim of Employment and Support Allowance, the UK/Ireland SSC declares Employment and Support Allowance to be a *sickness benefit*.⁷² This means that Conor cannot simultaneously claim for Ireland’s equivalent – Illness Benefit – even if he were to meet eligibility conditions for it.⁷³ From day 366 of his illness, if (as explained above) Conor meets the conditions for being placed in the “Support Group”⁷⁴ for Employment and Support Allowance because he remains incapable of working and so retains his Employment and Support Allowance entitlement, Conor’s claim for ESA becomes an *invalidity benefit* under the UK/Ireland SSC.⁷⁵ As explained above, if the UK authorities accept that his claim for Employment and Support Allowance

70 Convention on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland 2020 (“UK/Ireland SSC”). He is also covered in principle by the UK-EU Trade and Cooperation Agreement – but the UK/Ireland SSC offers him more generous rights and takes precedence on that basis.

71 Article 8, UK/Ireland SSC.

72 Article 3(1)(a)(i)(b), UK/Ireland SSC.

73 Article 3(1)(b)(i), UK/Ireland SSC.

74 See NI Direct website. Available at: <https://www.nidirect.gov.uk/articles/employment-and-support-allowance>

75 Article 3(1)(a)(iii)(b), UK/Ireland SSC.

can be treated as equivalent to a pension, this makes Ireland his competent State for all other social security claims *even though* he is in receipt of an invalidity benefit from NI. This means that Conor can also apply for relevant benefits in Ireland, provided they are not *invalidity benefits*.

Personal Independence Payment should, as above, be considered separately from Employment and Support Allowance. The UK/Ireland SSC lists Personal Independence Payment living component as a UK *long term care benefit*.⁷⁶ Conor may apply for Personal Independence Payment living component at any stage if the UK is competent for his *long term care benefits* and he satisfies the ordinary Personal Independence Payment qualifying conditions – where, on account of the UK/Ireland SSC, the residency condition is satisfied by frontier workers living in Ireland.⁷⁷ The relevant component is the daily living component, payable at either the standard or enhanced rate depending on the assessment.

Conor *would* in theory be able to apply for *sickness benefits* in Ireland at this point – but he does not meet the eligibility conditions for these, as Illness Benefit is a contributory benefit and he has not made contributions in Ireland. Unlike the UK, Ireland does not declare any benefits as *long term care benefits* in the UK/Ireland SSC, and so there

is also nothing Conor could claim there.

However, in addition, Ireland does not declare Disability Allowance in the UK/Ireland SSC, suggesting it is outside of its scope. As above, entitlement to Disability Allowance is based on residence in Ireland.⁷⁸ If Conor has “an injury ... or physical ... disability that will continue for at least one year” that “substantially [restricts]” his ability to do work suited to his age, experience and qualifications, and if Conor satisfies the means-testing conditions for Disability Allowance (where he is not eligible if his cash income or capital is above a certain level), Conor consequently is also entitled to claim this.

Summary: Given that his inability to work is permanent, Conor should apply for benefits in NI (where he has paid his social security) – and after one year, if Conor is in the “Support Group” for Employment and Support Allowance, these will shift from being treated as a *sickness benefit* to becoming an *invalidity benefit*. He should be able to claim living component of Personal Independence Payment immediately if he meets the eligibility conditions. He can in principle apply for any benefits that are *not* invalidity benefits in Ireland, as there would be no “overlap” of those benefits under the UK/Ireland SSC.

⁷⁶ Article(3)(1)(iv), UK/Ireland SSC.

⁷⁷ Article 20, UK/Ireland SSC.

⁷⁸ Sections 209-212, Social Welfare Consolidation Act 2005.

Conor is entitled to an exported Employment and Support Allowance from NI (on account of his social security contributions there), but unfortunately is not eligible for any simultaneous *sickness benefits* from Ireland, as these are all contribution-based. However, under Irish domestic law, he is also entitled to Disability Allowance if he meets the conditions for it, as it is outside of the scope of the UK/Ireland SSC altogether.

Case Study 4

State Pension in NI

Catriona is an Irish national who has worked, over the course of her career, in Germany, the UK, and Ireland. Her final employment was in NI, where she retired in 2023 (and lives) and claims her state pension. She experienced problems because her pension contributions in Ireland were taken into account in the UK's calculations, but the German contributions were not. Catriona has paid social insurance in each country for more than one year but less than ten years. She wants to know if they should be, and if so, on what basis.

If Catriona made pension contributions in the UK and another Member State *prior to 31 December 2020*

Legal Rules Applicable

As someone who worked in various EU Member States, including the UK when it was a Member State, Catriona is covered by the social security coordination rules retained in the UK-EU Withdrawal Agreement.⁷⁹ Even though she was *not* in a cross-border situation at the time of Brexit, she is within the *partial scope* of the UK-EU Withdrawal Agreement as someone who had periods of residence, employment or insurance in EU Member States *prior to 1 January 2021*.⁸⁰

For these purposes, Catriona's competent State – responsible for her social security – is her state of residence, meaning, the UK.⁸¹

Rights to Benefit Aggregation

As someone within the partial scope of the UK-EU Withdrawal Agreement's social security coordinating provisions, Catriona has rights to “reliance on and aggregation of”⁸² periods of employment and insurance; this in fact includes periods that were completed *before* and *after* the UK left the EU. In other words, her entire work history in the EU should be included in the UK's calculation of her pension entitlement.⁸³

79 Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and European Atomic Energy Community [2019] OJ C 384 I/92 ('UK-EU Withdrawal Agreement').

80 Article 32(1)(a), UK-EU Withdrawal Agreement.

81 Article 11(3)(e), Regulation (EC) 883/2004, 'Regulation of the European Parliament and of the Council on the coordination of social security systems', 29 April 2004: as someone in receipt of a pension, she will not be treated as an employee.

82 Article 32(1)(a), UK-EU Withdrawal Agreement.

83 See, *inter alia*, Article 50, Regulation (EC) 883/2004, 'Regulation of the European Parliament and of the Council on the coordination of social security systems', 29 April 2004.

As such, her overall UK State pension should be based on the UK's calculations of how much State pension she would be entitled to if her *entire* work history had taken place in the UK.⁸⁴

Summary: As she was resident in Northern Ireland when she retired, the UK is the competent State for the purposes of Catriona's State Pension. Under the UK-EU Withdrawal Agreement, she is to be treated as remaining partially in the scope of the EU Social Security Coordination Regulation (EU SSCR) – and the UK therefore needs to aggregate all of the pension contributions she made in Ireland, Germany, *and* the UK when determining how much UK State Pension she is entitled to.

If Catriona made pension contributions in the UK and another Member State after 31 December 2020

Legal Rules Applicable

If Catriona's work history was *entirely* after Brexit, she would be outside of the scope of the UK-EU Withdrawal Agreement's social security coordination rules.

She would at that point be subject to the Trade and Cooperation Agreement's (TCA) Protocol on Social Security ('the Protocol'), which coordinates social security across all the EU Member States and the UK after Brexit⁸⁵ – where it does not involve *any* cross-border insurance periods prior to Brexit. As someone resident in the UK, Catriona is covered by the Protocol.⁸⁶ The Protocol also designates the UK as Catriona's competent State.⁸⁷

Rights to Benefit Aggregation

As someone within the scope of the Protocol, Catriona has rights to aggregation of her periods of contribution to pensions in all EU Member States as well as the UK.⁸⁸ The UK, as the competent State, consequently has to determine Catriona's entitlement to State pension on the basis of *all the legislation of the States to which she has been subject*.⁸⁹ As such, her overall UK State pension should be based on the UK's calculations of how much State pension she would be entitled to if her *entire* work history had taken place in the UK.⁹⁰

84 Ibid, Article 52.

85 Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part', 30 December 2020 ('UK-EU Trade and Cooperation Agreement'). Note that Catriona is also covered by the Irish/UK SSC – but as it only coordinates social security between the UK and Ireland, it is of little help to her in relation to her contributions in Germany.

86 Article 489, UK-EU Trade and Cooperation Agreement 2020.

87 Article SSC.10(3)(c), UK-EU Trade and Cooperation Agreement 2020; Article SSC.10.2 means that as someone in receipt of a pension, she will not be treated as an employee.

88 Article SSC.7, UK-EU Trade and Cooperation Agreement 2020.

89 Article SSC.45, UK-EU Trade and Cooperation Agreement 2020.

90 Article SSC.47, UK-EU Trade and Cooperation Agreement 2020.

Summary: As she was resident in NI when she retired, the UK is the competent State for the purposes of Catriona's State Pension. Under the TCA's Protocol on Social Security Coordination, the UK needs to aggregate all of the pension contributions she made in Ireland, Germany, *and* the United Kingdom when determining how much UK State Pension she is entitled to.

Note: *If Catriona was claiming an invalidity pension rather than a state pension, see **Case Study 2b** for the general cross-border rules applicable pre- and post-Brexit. On the subject of aggregating pension contributions made in various Member States, there is a real difference here in how invalidity pensions and state pensions are treated. Pre-Brexit, pension contributions of all kinds are aggregated under the EU Social Security Coordinating Regulation; but the Trade and Cooperation Agreement (Article SSC.39) precludes the aggregation of periods of employment abroad when considering invalidity pension entitlement. Catriona would consequently be entitled to significantly less invalidity pension on the basis of contributions made abroad after Brexit than she would be before Brexit.*

Case Study 5

Healthcare

Clíodhna, an Irish national, and Pedro, a Spanish national, are roommates living in Ireland. They both work in NI; Clíodhna works 20 hours a week as an accountant for a large company, and Pedro works 40 hours a week as a nurse in a hospital. They both travel back and forth between Ireland and NI at least three times a week. They are trying to use NHS services in NI, and are being told that while emergency care is free for them, they are visitors and they cannot see follow-up appointments without being charged. They want to know what rules apply to them, and where they are entitled to healthcare and under what conditions.

They commenced their work in NI before 31 December 2020

Legal Rules Applicable

Both Pedro and Clíodhna are covered by the UK-EU Withdrawal Agreement, concluded by the UK and the EU as part of the Brexit process.⁹¹ They are “frontier workers” under that Agreement,⁹² and will continue to be “frontier workers” provided they continue to live in Ireland, and work in NI.

UK law implementing the UK-EU Withdrawal Agreement’s provisions on frontier work clarifies that anyone who is “not primarily resident” in the UK,

but is a worker there, is understood to be a frontier worker.⁹³ To be “not primarily resident”, Pedro and Clíodhna have to either spend less than 180 days a year in the UK, or return to Ireland at least twice in twelve months.⁹⁴ They both easily satisfy this condition.

There is one condition to Pedro carrying on his work after 31 December 2020, however: under the UK-EU Withdrawal Agreement, and its UK implementation, he has to apply for a document called a “Frontier Worker Permit”.⁹⁵ This certifies that he is a frontier worker, and gives him permission to enter NI for the purposes of his employment.

91 Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and European Atomic Energy Community [2019] OJ C 384 I/92 (‘UK-EU Withdrawal Agreement’).

92 Article 9(b), UK-EU Withdrawal Agreement: “Union citizens or United Kingdom nationals who pursue an economic activity in accordance with Article 45 [workers] or 49 TFEU [self-employed] in one or more States in which they do not reside”.

93 Regulation 3, The Citizens’ Rights (Frontier Workers) (EU Exit) Regulations 2020.

94 Ibid, Regulation 3(3).

95 Article 26, UK-EU Withdrawal Agreement, which is implemented in the UK in The Citizens’ Rights (Frontier Workers) (EU Exit) Regulations 2020. Regulation 6 reads that admission as a frontier worker is conditional on a valid identity document and a valid frontier worker permit for all bar Irish nationals, who do not need such a permit.

If Pedro has not already applied for a Frontier Worker Permit, he should do so as soon as possible, and can continue to do so – provided he can demonstrate that his work commenced prior to 31 December 2020.

Clíodhna, as an Irish national, does not *need* a Frontier Worker Permit to be admitted to the UK for the purposes of work⁹⁶ – but *can* apply for one, and as it will help her demonstrate her entitlement to benefits in the UK on the basis of the UK-EU Withdrawal Agreement, it is recommended that she does apply for one.

Right to Healthcare

As Pedro and Clíodhna are covered by the UK-EU Withdrawal Agreement, the EU's Social Security Coordination Regulation (EU SSCR) applies to them.⁹⁷ The EU SSCR⁹⁸ determines, in situations where EU nationals are covered by the legislation of two different EU Member States, which of those States is responsible for their social security: this State is known as the “competent State”. It is ordinarily the State where an EU national *works*

if they are working.⁹⁹ Under the UK-EU Withdrawal Agreement, the UK is treated *as if* a Member State for the purposes of social security coordination. In both Pedro and Clíodhna's situation, therefore, the UK is the “competent State”.

The EU SSCR terms healthcare as a *sickness benefit* in kind – as opposed to a “cash” benefit. The UK's declaration in relation to the EU SSCR makes clear that treatment by the NHS in NI is such a benefit in kind.

As Pedro and Clíodhna do not *live* in the competent State, the EU SSCR makes clear that they are entitled to access healthcare in Ireland, as their state of residence.¹⁰⁰ However, as frontier workers, they will also be entitled to healthcare while *staying* in the UK, as if they are resident there – so under the same conditions as UK *residents* having healthcare rights.¹⁰¹ These rights do not extend to any family members they might have, who are only entitled to *emergency* treatment in the UK if they need it while there.¹⁰² Clíodhna and Pedro

96 Regulation 6(2), The Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020.

97 Article 30(1), UK-EU Withdrawal Agreement. Both Pedro and Clíodhna, as workers in the UK, are subject to the legislation of the UK; this brings them within the scope of the Withdrawal Agreement's rules on social security coordination, as set out in Article 31, UK-EU Withdrawal Agreement.

98 Regulation (EC) 883/2004, 'Regulation of the European Parliament and of the Council on the coordination of social security systems', 29 April 2004.

99 Article 11(3), Regulation 883/2004: 'a person pursuing an activity as an employed ... person in a Member State shall be subject to the legislation of that Member State'. Regulation (EC) 883/2004, 'Regulation of the European Parliament and of the Council on the coordination of social security systems', 29 April 2004.

100 Article 17, Regulation 883/2004. Healthcare as a benefit in kind in Ireland is termed 'Sickness Benefits in Kind' under Ireland's declaration under Regulation 883/2004, and its functioning is set out in the Health Act 1947. See European Commission, 'Declaration by Ireland pursuant to Article 9 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems for the reference year ending 31 December 2023'. Available at <https://ec.europa.eu/social/main.jsp?catId=868&intPageId=2285&langId=en>.

101 Article 18(1), Regulation (EC) 883/2004, 'Regulation of the European Parliament and of the Council on the coordination of social security systems', 29 April 2004.

102 Articles 18(2) and 19(1), Regulation (EC) 883/2004, 'Regulation of the European Parliament and of the Council on the coordination of social security systems', 29 April 2004.

themselves, however, have equal rights to access healthcare – without limitations – in the UK and in Ireland.¹⁰³

Summary: Pedro and Cliodhna, as frontier workers living in Ireland and working in the United Kingdom who are covered by the UK-EU Withdrawal Agreement, are entitled to access healthcare in the UK under the same terms as everyone resident in the UK is able to access healthcare there. They should therefore be able to register for a Medical Card with the NI Health & Social Care Business Services Organisation, which will make it significantly easier for them to access both primary and secondary care in NI free of charge, alongside their right to access healthcare in Ireland. Note that they have this right as frontier workers *regardless* of whether they hold a Medical Card – the Medical Card is recognised, however, and will be easier for them to use as ‘evidence’ of their rights than other proof they can present.

They commenced their work in NI after 31 December 2020

Legal Rules Applicable

Pedro and Cliodhna are both covered by the UK-EU Trade and Cooperation Agreement (UK-EU TCA) concluded by the UK and the EU after the UK left the EU.¹⁰⁴ This Agreement comes with a “Protocol on Social Security Coordination” that addresses the coordination of social security

between the UK and the EU Member States for all those commencing economic activity *after* the UK left the EU. Under this Protocol, Pedro and Cliodhna are also “frontier workers” – provided they meet the stricter definition set out in the Protocol:

“frontier worker” means any person pursuing an activity as an employed or self-employed person in a State and who resides in another State to which that person returns as a rule daily or at least once a week”.¹⁰⁵

Both Pedro and Cliodhna appear to satisfy this definition, on account of having meaningful employment that is not ancillary and returning to Ireland more than once a week.

The UK implementation of the UK-EU TCA’s Protocol on Social Security Coordination is done by reference; as such, the Protocol’s contents form part of domestic law in their entirety as they were originally drafted. *verbatim*.¹⁰⁶ There are no further conditions set out in the Protocol or its domestic implementation that Pedro or Cliodhna need to satisfy to claim their rights as a frontier worker under the Protocol: in principle, they simply have to be active as a frontier worker in the UK or an EU Member State to be entitled to rights under the Protocol. This is genuinely the case for Cliodhna, who – on account

¹⁰³ Ibid, Article 4.

¹⁰⁴ Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part’, 30 December 2020 (‘UK-EU Trade and Cooperation Agreement’).

¹⁰⁵ Article SSC.1(I), UK-EU Trade and Cooperation Agreement 2020.

¹⁰⁶ See Section 26, European Union (Future Relationship) Act 2020.

of her Irish nationality – is not subject to UK immigration law.¹⁰⁷

However, the reality is less simple for Pedro. As he commenced frontier work after Brexit, he – as an EU national, rather than an Irish national – has no automatic right to be *present* in NI. He is entitled to live in Ireland under EU law, but any work Pedro carries out in the UK has to be done while he holds a relevant employment visa. If he does not have a work visa for the frontier work he does in NI, he is working illegally – and would not be entitled to any of the social security coordination set out in the UK-EU TCA’s Protocol on Social Security Coordination.

Right to Healthcare

Assuming that Pedro has a work visa for his activity in the UK, both he and Clíodhna are covered by the UK-EU TCA, and the UK-EU TCA’s Protocol on Social Security Coordination applies to them. The UK-EU TCA’s Protocol is in many ways a copy of the EU SSCR; as such, the state of employment is the “competent” state for social security under the Protocol as well.¹⁰⁸ The UK is thus Pedro and Clíodhna’s “competent State”.

Healthcare, as a sickness benefit in kind, is addressed in the UK-EU TCA’s Protocol on Social Security Coordination in the same way as it is under the EU SSCR. Frontier workers – or any other workers who do not reside where they work – are entitled to access healthcare in their state of residence.¹⁰⁹ They are also entitled to healthcare in their competent State, under the same conditions as those who *are* resident in the competent State.¹¹⁰ As under the EU SSCR, this is not extended to their family members.¹¹¹ Clíodhna and Pedro themselves, however, have equal rights to access healthcare – without limitations – in the UK and in Ireland.¹¹²

It should be noted that Pedro is already likely to be entitled to access NHS care on account of his visa status. Most visa holders in the UK must pay a health surcharge as part of their immigration application, which entitles them to free use of the NHS thereafter; some other visa holders are exempt from the NHS surcharge but are nonetheless also entitled to access the NHS.¹¹³ The Protocol’s further entitlement is thus less important for him than for Clíodhna.

107 Section 3ZA(1), Immigration Act 1971.

108 Article SSC.10(3), UK-EU Trade and Cooperation Agreement 2020.

109 Article SSC.15, UK-EU Trade and Cooperation Agreement 2020.

110 Article SSC.16(1), UK-EU Trade and Cooperation Agreement 2020.

111 Article SSC.16(2), UK-EU Trade and Cooperation Agreement 2020.

112 Article SSC.4, UK-EU Trade and Cooperation Agreement 2020.

113 See the Gov.UK website for a full list of immigration status holders exempt from paying NHS surcharge. Available at: <https://www.gov.uk/healthcare-immigration-application>. As a registered nurse, Pedro might be working in NI with a Health and Care Worker visa and therefore would not need to pay the NHS surcharge.

Summary: Pedro and Clíodhna, as frontier workers living in Ireland and working in the United Kingdom who are covered by the UK-EU TCA's Protocol on Social Security Coordination, are entitled to access healthcare in the UK under the same terms as everyone resident in the UK is able to access healthcare there. They should therefore be able to register for a Medical Card with the Business Service Organisation and access both primary and secondary care in NI free of charge, alongside their right to access healthcare in Ireland. Pedro, as a visa holder, is also likely be entitled to NHS healthcare on the basis of that visa status, and so may not need to register for a Medical Card.

Case Study 6

Universal Credit

Ingrid, a German national, is living in Ireland with her (German) husband, Gert, and their two children. Ingrid works for 35 hours a week for a company in NI. Gert is not employed and has no income. Ingrid earns minimum wage, and consequently is seeking to apply for a benefit to top up her income. She wants to know what she is entitled to, and in which country she should apply.

If Ingrid started working in NI before 31 December 2020

Legal Rules Applicable

Ingrid is covered by the UK-EU Withdrawal Agreement, concluded by the UK and the EU as part of the Brexit process.¹¹⁴ She is a “frontier workers” under that Agreement,¹¹⁵ and will continue to be a “frontier worker” provided she continues to live in Ireland, and work in NI

UK law implementing the UK-EU Withdrawal Agreement’s provisions on frontier work clarifies that anyone who is “not primarily resident” in the UK, but is a worker there, is understood to be a frontier worker.¹¹⁶ To be “not primarily resident”, Ingrid has to either spend less than 180 days a year in

the UK, *or* return to Ireland at least twice in twelve months.¹¹⁷ Ingrid easily satisfies this condition.

There is one condition to Ingrid carrying on her work after 31 December 2020, however: under the UK-EU Withdrawal Agreement, and its UK implementation, she has to apply for a document called a “Frontier Worker Permit”.¹¹⁸ This certifies that she is a frontier worker, and gives her permission to enter NI for the purposes of her employment.

If Ingrid has not already applied for a Frontier Worker Permit, she should do so as soon as possible, and can continue to do so – provided she can demonstrate that her work commenced prior to 31 December 2020.

¹¹⁴ Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and European Atomic Energy Community [2019] OJ C 384 I/92 (‘UK-EU Withdrawal Agreement’).

¹¹⁵ Article 9(b), UK-EU Withdrawal Agreement: “Union citizens or United Kingdom nationals who pursue an economic activity in accordance with Article 45 [workers] or 49 TFEU [self-employed] in one or more States in which they do not reside”.

¹¹⁶ Regulation 3, The Citizens’ Rights (Frontier Workers) (EU Exit) Regulations 2020.

¹¹⁷ Ibid, Regulation 3(3).

¹¹⁸ Article 26, UK-EU Withdrawal Agreement, which is implemented in the UK in the Frontier Workers Regulations: Reg 6 reads that admission as a frontier worker is conditional on a valid identity document and a valid frontier worker permit for all bar Irish nationals, who do not need such a permit.

Rights to Benefits

As Ingrid is covered by the UK-EU Withdrawal Agreement, the EU's Social Security Coordination Regulation (EU SSCR) applies to her.¹¹⁹ The EU SSCR¹²⁰ determines, in situations where EU nationals are covered by the legislation of two different EU Member States, which of those States is responsible for their social security: this State is known as the "competent State". It is ordinarily the State where an EU national *works* if they are working.¹²¹ Under the UK-EU Withdrawal Agreement, the UK is treated as *if* a Member State for the purposes of social security coordination. In Ingrid's situation, therefore, the UK is her "competent State".

The UK "low-income supplement" benefit is Universal Credit – which has replaced a whole range of other "income support" benefits that existed in the UK social security system prior to 2020. The UK has not yet declared Universal Credit under the EU's classification of benefits system; instead, the benefits replaced by Universal Credit remain listed there.¹²² For ease, the benefits that have been absorbed into Universal Credit, and how the UK has declared them for EU law purposes, are summarised in this table:

119 Article 30(1), UK-EU Withdrawal Agreement. Ingrid, as someone working in the UK, is subject to the legislation of the UK; this brings her within the scope of the UK-EU Withdrawal Agreement's rules on social security coordination, as set out in Article 31 of the UK-EU Withdrawal Agreement.

120 Regulation (EC) 883/2004, 'Regulation of the European Parliament and of the Council on the coordination of social security systems', 29 April 2004.

121 Article 11(3), Regulation 883/2004: 'a person pursuing an activity as an employed ... person in a Member State shall be subject to the legislation of that Member State'. If there is a disagreement between Member States about what the competent state is, Article 6(2) of Regulation (EC) 987/2009 notes that 'where there is a different of views' as to what the competent state is, provisionally, benefits are to be provided by the state of residence. See Regulation (EC) 987/2009, 'Regulation of the European Parliament and of the Council laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems' 16 September 2009. In *SSWP v Fileccia*, the England and Wales Court of Appeal determined that such a difference of views does not need to be established by formal decisions, but can be evidenced by a difference of opinion between Member State institutions. See *SSWP v Fileccia* [2017] EWCA Civ 1907, at para 39.

122 European Commission, 'Declaration by United Kingdom pursuant to Article 9 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems for the reference year ending 31 December 2023' (2024). Available at: https://employment-social-affairs.ec.europa.eu/policies-and-activities/moving-working-europe/eu-social-security-coordination/specialised-information/official-documents/declarations-made-eea-efta-states-and-united-kingdom-accordance-article-9-regulation-ec-no-8832004_en.

Benefit	Type of Income Support	Declared Benefit Type for EU SSCR
Employment and Support Allowance (income-related) ¹²³	General low-income support for the employed	Special non-contributory cash benefit intended to provide a minimum level of subsistence ¹²⁴
Jobseeker's Allowance (income-based)	Low income support for those unemployed	Special non-contributory cash benefit intended to provide a minimum level of subsistence. ¹²⁵
Child Tax Credits	Low income support for families with children	Family benefit. ¹²⁶
Housing Benefit (Rental)	Low income support to address rental accommodation	<i>Not declared – fully replaced by Universal Credit</i>
Working Tax Credit	Low income top-up for employed and self-employed individuals on low income.	<i>Previously declared as “social advantage”. Now fully replaced by Universal Credit.</i>

The most relevant for these for Ingrid, given that she is looking to supplement a low income as an employed person, is what used to be called Working Tax Credit. Universal Credit has replaced claims for Working Tax Credit altogether. A Universal Credit application for this type of income support consequently will be treated as a claim for a special

non-contributory cash benefit.

UK law on Universal Credit makes clear that to be eligible, a claimant has “be in” the UK¹²⁷ – though NI Direct guidance makes clear that this condition is satisfied by claimants who *live in Ireland but work in NI*.¹²⁸ There is further guidance published by NI Direct for frontier workers in

¹²³ Note that this itself has replaced a benefit called Income Support, as set out in *Ibid*, Article 11, and has also subsumed a benefit called Working Tax Credits, which is not declared under the EU SSCR at all.

¹²⁴ *Ibid*, Article 11(a).

¹²⁵ *Ibid*, Article 11(a).

¹²⁶ *Ibid*, Article 10(ii).

¹²⁷ Section 9, Welfare Reform (Northern Ireland) Order 2015: there was a period where universal credit claims by frontier workers were precluded by legislation, but this was overturned in 2022 by the Welfare Reform (Northern Ireland) Order 2015 (Commencement No. 16 and Commencement No. 8, 13 and 14 and Transitional and Transitory Provisions (Amendment)) Order (Northern Ireland) 2022.

¹²⁸ See NI Direct website. Available at: <https://www.nidirect.gov.uk/articles/who-can-claim-universal-credit>

relation to their claims for Universal Credit, which explains what type of evidence is needed to support a Universal Credit claim by a frontier worker.¹²⁹ These claims become more complicated where a claimant's partner also works in a different state – so, if Gert, in this example, works in Ireland. In that case, his income needs to be taken into account when a Universal Credit payment calculation is made.

The calculation for Universal Credit is more complicated as Ingrid and Gert have children; to replace the former Child Tax Credit benefit, there is a “child element” to Universal Credit that for the EU SSCR is declared as a family benefit. To avoid overlap, it therefore will only be paid out if the children are not receiving a similar family benefit – so child-related income support – in their state of residence. Ireland does not operate a similar benefit specifically to account for “children” in income support that Ingrid would be qualified for;¹³⁰ however, it does classify Child Benefit as a family benefit.¹³¹ It is therefore important for Ingrid to stress that Child Benefit in Ireland, which she may be entitled to on account of her residency there,¹³² is not means-tested the way that the “child” element

of Universal Credit is, and there consequently is no overlap between Child Benefit and Universal Credit. Therefore, Child Benefit from Ireland should not be treated as income for claiming Universal Credit in NI purposes.

There is a *housing* element to Universal Credit, but this is only payable in respect of housing *in NI*, as a matter of UK law; the UK has not declared it for the purposes of the EU SSCR, meaning it is not a benefit that is “coordinated” with Ireland.¹³³ Ingrid, not having rental accommodation in NI, simply cannot claim for it.

Finally, there is also an “other particular needs or circumstances” element to Universal Credit, which addresses caring responsibilities that a claimant might have or any disability/illness a claimant might have.¹³⁴ In both of these cases, a claimant needs to satisfy evidentiary standards of these caring responsibilities or illnesses/disabilities – but their entitlement is not affected by them being a frontier worker resident in Ireland. Ingrid, in the above scenario, does not have caring responsibilities or illnesses/disabilities that she would claim for.

129 See NI Direct website. Available at: <https://www.nidirect.gov.uk/articles/frontier-and-cross-border-workers-claiming-universal-credit>

130 The main form of income support is called Supplementary Welfare Allowance. See Part 3, Chapter 9, Social Welfare Consolidation Act 2005, but those working more than 30 hours a week are not normally entitled to claim it (see Section 189).

131 European Commission, ‘Declaration by Ireland pursuant to Article 9 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems for the reference year ending 31 December 2023’. Available at <https://ec.europa.eu/social/main.jsp?catId=868&intPagId=2285&langId=en>.

132 She is also entitled to UK Child Benefit – for more on a possible claim for Child Benefit as a frontier worker, see Case Study 1.

133 Section 16, Welfare Reform (Northern Ireland) Order 2015.

134 Ibid, Section 17.

Because some of these elements of Universal Credit are declared by the UK for EU SSCR purposes, it is important to check that Ingrid is not going to have overlapping benefits stemming from Ireland. Ireland, in its declaration under the EU SSCR, does not offer a benefit in cash to support low-income households akin to Universal Credit as a special non-contributory cash benefit intended to provide a minimum level of subsistence.¹³⁵ The income-support benefit most similar to Universal Credit in Ireland is the Working Family Payment – which Ireland declares under the EU SSCR as a family benefit.¹³⁶ However, Ingrid is not eligible for this: she does not pay taxes or social security contributions in Ireland, which are a precondition for eligibility for family benefits for the employed under the EU SSCR.¹³⁷ Ingrid should therefore not be in receipt of either income support or a “child element” of a benefit akin to Universal Credit from Ireland, and this should be considered when calculating her claim for Universal Credit in NI.

If, however, Ingrid (or Gert) *is* in receipt of certain types of benefits from Ireland, as a matter of UK domestic law, this might affect the calculation of her so-called “unearned income” for Universal Credit means-

testing – and would thus affect the overall amount of Universal Credit to which she would be entitled.¹³⁸

However, Irish *family benefits* are not regarded as unearned income for the calculation of Universal Credit means-testing by the Department for Communities.¹³⁹

In summary: Ingrid is an EU national, resident in Ireland with her family. She is a frontier worker on account of being employed in NI, but not residing there. Because she commenced her work prior to 31 December 2020, she is covered by the UK-EU Withdrawal Agreement’s social security coordination provisions, provided she holds a Frontier Worker Permit (as required under UK law). Under these, she is entitled to claim Universal Credit in NI on account of her employment there. When calculating the amount of Universal Credit Ingrid is entitled to, relevant factors are that her husband, Gert, is not employed, and so adds no income to the household income; and that she has two children, for whom she receives no child-specific income support in Ireland. She consequently should claim for the “child element” and the full household income amount of Universal Credit in NI.

135 See European Commission, ‘Declaration by Ireland pursuant to Article 9 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems for the reference year ending 31 December 2023’. Available at <https://ec.europa.eu/social/main.jsp?catId=868&intPageId=2285&langId=en>, Article 11.

136 Ibid, Article 10.

137 Sections 227-233, Irish Social Welfare Consolidation Act 2005.

138 Regulation 66(c), The Universal Credit Regulations (Northern Ireland) 2016 (NISR 216/2016).

139 See Department for Work and Pensions, ‘Advice for Decision-Making Chapter H5 – Unearned Income’ (DWP, 2013). Available at: <https://www.communities-ni.gov.uk/sites/default/files/2026-05/dm-adm-chapter-h5.pdf>.

If Ingrid started working in NI after 31 December 2020

Legal Rules Applicable

Ingrid is now covered by the UK-EU Trade and Cooperation Agreement (UK-EU TCA) concluded by the UK and the EU after the UK left the EU.¹⁴⁰ This Agreement comes with a “Protocol on Social Security Coordination” that addresses the coordination of social security between the UK and the EU Member States for all those commencing economic activity *after* the UK left the EU. Under this Protocol, Ingrid is also a “frontier worker” – provided she meets the stricter definition set out in the Protocol:

“frontier worker” means any person pursuing an activity as an employed or self-employed person in a State and who resides in another State to which that person returns as a rule daily or at least once a week”;¹⁴¹

Ingrid appears to satisfy this definition, on account of working 30 hours a week and returning to Ireland more than once a week.

The UK implementation of the UK-EU TCA’s Protocol on Social Security Coordination is done by reference; as such, the Protocol’s contents form part of domestic law in its entirety as it was originally drafted.¹⁴² There are no further conditions set

out in the Protocol or its domestic implementation that Ingrid needs to satisfy to claim her rights as a frontier worker under the UK-EU TCA’s Protocol on Social Security Coordination: in principle, she simply has to be active as a frontier worker in the UK or an EU Member State to be entitled to rights under the Protocol.

However, the reality is less simple for Ingrid. As she commenced frontier work after Brexit, she – as an EU national, rather than an Irish national – has no automatic right to be *present* in NI. She is entitled to live in Ireland under EU law, but any work Ingrid carries out in the UK has to be done while she holds a relevant employment visa. If she does not have a work visa for the frontier work she does in NI, she is working illegally – and would not be entitled to any of the social security coordination set out in the UK-EU TCA’s Protocol on Social Security Coordination.

Right to Benefits

Assuming that Ingrid has a work visa for her activity in the UK, she is covered by the UK-EU TCA, and the UK-EU TCA’s Protocol on Social Security Coordination applies to her. The UK-EU TCA’s Protocol on Social Security Coordination is in many ways a copy of the EU SSCR; as such, the state of employment is the “competent” state for social security

¹⁴⁰ Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part’, 30 December 2020 (‘UK-EU Trade and Cooperation Agreement’).

¹⁴¹ Article SSC.1(I), UK-EU Trade and Cooperation Agreement 2020.

¹⁴² See Section 26, European Union (Future Relationship) Act 2020.

under the Protocol as well.¹⁴³ The UK is thus Ingrid’s “competent State”.

However, the UK-EU TCA’s Protocol on Social Security Coordination treats special non-contributory cash benefits, like Universal Credit, very differently from their treatment under the EU SSCR. Article 3(4) (a) of the EU SSC makes clear that the UK-EU TCA’s Protocol on Social Security Coordination does *not* apply to special non-contributory cash benefits that are listed in an Annex to the Protocol.

While this may have consequences for how much Universal Credit *some* claimants will be entitled to, it does not in Ingrid’s case, where her claim is exclusively based in NI (on account of her employment there) and will not be “coordinated” with authorities in Ireland, simply because she is not eligible for similar income-support related benefits in Ireland (like the Working Family Payment). Her entitlement to the household income support dimension of Universal Credit is consequently not affected by the fact that the Protocol excludes Universal Credit as a benefit: her claim for this benefit is based exclusively on her work in NI, as a matter of UK domestic law.

The UK-EU TCA’s Protocol on Social Security Coordination defines family benefits as “all benefits in kind or in cash intended to meet family expenses”.

This clearly covers both Child Benefit and the “child” element of Universal Credit. Family benefits are *also* excluded from the Protocol; this means that Ingrid’s entitlement to the “child” element of Universal Credit here is again based exclusively on her work in NI, as a matter of UK domestic law.¹⁴⁴

The same would be true if she did qualify for the housing element or the “other particular needs” elements in light of caring responsibilities or illnesses/disabilities, neither of which fit within the type of benefits that the UK-EU TCA’s Protocol on Social Security Coordination addresses.

If she is in receipt of any benefits from Ireland, again, as a matter of UK domestic law, this would affect the calculation of her so-called “unearned income” for Universal Credit means-testing – and would thus affect the overall amount of Universal Credit she would be entitled to.¹⁴⁵ The fact that the UK-EU TCA’s Protocol on Social Security Coordination does not “coordinate” how Universal Credit operates with EU Member States does not change this.

¹⁴³ Article SSC.10(3), UK-EU Trade and Cooperation Agreement 2020.

¹⁴⁴ Article SSC.3.(4)(g), UK-EU Trade and Cooperation Agreement 2020.

¹⁴⁵ Regulation 66(c), The Universal Credit Regulations (Northern Ireland) 2016.

Summary: Ingrid, as a frontier worker living in Ireland and working in the United Kingdom who is covered by the UK-EU Trade and Cooperation Agreement's Protocol on Social Security, is entitled to Universal Credit as a matter of UK domestic law – the Protocol does not affect her entitlement, but this entitlement is not *as a matter of the Protocol* coordinated with Ireland. When calculating the amount of Universal Credit Ingrid is entitled to, relevant factors are that her husband, Gert, is not employed, and so adds no income to the household income; and that she has two children, for whom she receives no child-specific income support in Ireland. She consequently should claim for the “child element” and the full household income amount of Universal Credit in NI.

Annex: Template Letters

1. Template Appeal Form: Rejection of Child Benefit Claim

This template is designed to be used by an advisor or claimant where an EU national frontier worker employed in the UK, with family resident in Ireland, has been denied Child Benefit despite having commenced their frontier work prior to 31 December 2020 – possibly because they do not currently hold a Frontier Worker permit.

I am appealing the decision made on _____ [date] that I am not eligible for Child Benefit because my family is not habitually resident in the UK. I am eligible, because I am a frontier worker with family resident in Ireland, and the UK is my competent state for Child Benefit under the UK-EU Withdrawal Agreement, which is an exportable benefit under Article 67 of the EU Social Security Coordination Regulation (Regulation 883/2004).

My family is resident in Ireland, and I am employed/self-employed in Northern Ireland. [Provide details of employment here: start date of employment, continuity of employment, hours worked weekly.] I return to Ireland, where my family lives, daily/once a week/at least two times per year. This means I am a 'frontier worker' under The Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020 (Regulation 3), which reflect Article 9(b) of the UK-EU Withdrawal Agreement.

As a frontier worker, I am covered by the EU Social Security Coordination Regulation (Regulation 883/2004), as preserved under Article 30 of the UK-EU Withdrawal Agreement. Child Benefit is classified as a 'family benefit' under the UK's Declaration made pursuant Article 9 of the EU Social Security Coordination Regulation (Regulation 883/2004). The UK is my competent State under Regulation 883/2004, and is thus responsible for the payment of my family benefits (Art 11(3) and Art 67 of the EU Social Security Coordination Regulation (Regulation 883/2004)).

Because my family resides in Ireland, I am entitled to a differential supplement from Ireland, and I will claim for this separately. However, the UK, as the competent State, is primarily responsible for the payment of my Child Benefit.

I have proven via the following evidence that I am a frontier worker covered by the UK-EU Withdrawal Agreement, employed in Northern Ireland and resident in Ireland:

- [evidence of employment: eg, pay slips, letter from employer, signifying a start date *before* 31 December 2020]
- [evidence of residency: eg, Irish council tax bill equivalent, energy bills, phone bills, etc]
- [Frontier Worker permit, if available]

As such, I am entitled to Child Benefit in respect of my children resident in Ireland.

[**Download Template Appeal Form 1**](#)

2. Template Appeal Form: Rejection of PIP Claim (Invalidity Pension in RoI)

This template is designed to be used by an advisor or claimant where an Irish or British national with a work history in Ireland, in receipt of an Invalidity Pension from Ireland, wishes to claim sickness or long-term care benefits in the UK. The assumption made in this letter is that the work abroad (and the claim for the invalidity pension) took place prior to Brexit.

I am appealing the decision made on _____ [date] to deny my claim for Personal Independence Payment – Daily Living Component and/or Personal Independence Payment – Mobility Component. This denial is contrary to the rules applicable to me under the UK-EU Withdrawal Agreement.

As someone who engaged in cross-border work prior to Brexit, I am covered by the EU Social Security Coordination Regulation (Regulation 883/2004) when determining what (Member) State – the UK or Ireland – is the competent state for paying benefits to me (Article 30(1) of the UK-EU Withdrawal Agreement). Under Article 11(2) of the EU Social Security Coordination Regulation (Regulation 883/2004), as someone in receipt of an invalidity pension from Ireland, I am not ‘pursuing an activity as an employed person’ there. This means that I am not subject to the legislation of Ireland; instead, I am subject to the legislation of the state where I am resident, which is the UK (Article 11(3)(e) of the EU Social Security Coordination Regulation (Regulation 883/2004)).

The fact that I am in receipt of a benefit like an invalidity pension from Ireland does not mean that the UK is *not* the competent state for my benefit claims; this has been confirmed by the NI Social Security Commissioner, the UK Upper Tribunal, and the Court of Appeal.¹⁴⁶ The UK is the competent state in my situation and therefore is responsible for my benefits.

I am entitled to Personal Independence Payment (daily living component). Personal Independence Payment (daily living component) has been designated as a *sickness benefit* under the the EU Social Security Coordination Regulation (Regulation 883/2004). It is in a distinct category to invalidity pension, and consequently there is no ‘overlap’ in benefit claims under the EU Social Security Coordination Regulation (Regulation 883/2004) in making this claim. As demonstrated in my original claim, I meet the eligibility criteria for Personal Independence Payment (daily living component):

- [explain how the residence condition is fulfilled]

¹⁴⁶ See *SP v Department for Communities (PIP)* [2023] NI Com 23; *SE v Secretary of State for Work and Pensions* [2024] UKUT 405 (AAC); *Harrington v Secretary of State for Work and Pensions* [2023] EWCA Civ 433.

- [explain how the ‘difficulty doing everyday task’ condition is fulfilled]

I therefore am entitled to Personal Independence Payment (daily living component).

I am [also] entitled to Personal Independence Payment (mobility component). The Court of Justice of the European Union has ruled that the Personal Independence Payment (mobility component) is a special non-contributory cash benefit under the EU Social Security Coordination Regulation (Regulation 883/2004).¹⁴⁷ It is in a distinct category to invalidity pension [and sickness benefit] and consequently there is no ‘overlap’ in benefit claims under the EU Social Security Coordination Regulation (Regulation 883/2004) in making this claim. As demonstrated in my original claim, I meet the eligibility criteria for Personal Independence Payment (mobility component):

- [explain how the residence condition is fulfilled]
- [explain how the ‘difficulty getting around’ condition is fulfilled]

I therefore am entitled to PIP (mobility component).

Download Template Appeal Form 2

¹⁴⁷ See *Bartlett, Ramos and Taylor v Secretary of State for Work and Pensions*, Case C-537/09, 21 December 2009.

3. Template Appeal Form: Rejection of Disability Allowance (ESA in Northern Ireland)

This template is designed to be used by an advisor or claimant where an Irish or British national with a work history in Northern Ireland, in receipt of Employment Support Allowance from Northern Ireland for a period longer than 365 days (eg, in the 'support group'), wishes to claim for special non-contributory cash benefits in Ireland, where they reside. The assumption made in this letter is that the work abroad (and the initial claim for Employment Support Allowance) took place prior to Brexit.

I am appealing the decision made on _____ [date] to deny my claim for Disability Allowance. This denial is contrary to the rules applicable to me under the UK-EU Withdrawal Agreement.

As someone who engaged in cross-border work prior to Brexit, I am covered by the EU Social Security Coordination Regulation (Regulation 883/2004) when determining what (Member) State – the UK or Ireland – is the competent state for paying benefits to me (Article 30(1) of the UK-EU Withdrawal Agreement). Under Article 11(2) of the EU Social Security Coordination Regulation (Regulation 883/2004), as someone in receipt of non-term-limited Employment Support Allowance from the UK, I am not 'pursuing an activity as an employed person' there. This means that I am not subject to the legislation of the UK; instead, I am subject to the legislation of the state where I am resident, which is Ireland (Article 11(3)(e) of EU Social Security Coordination Regulation (Regulation 883/2004)).

I am entitled to Disability Allowance. Disability Allowance is listed as a special non-contributory cash benefit under the EU Social Security Coordination Regulation (Regulation 883/2004).¹⁴⁸ It is in a distinct category to Employment Support Allowance (which is an invalidity benefit) and consequently there is no 'overlap' in benefit claims under the EU Social Security Coordination Regulation (Regulation 883/2004) in making this claim. As demonstrated in my original claim, I meet the eligibility criteria for Disability Allowance:

- [explain how the residence condition is fulfilled]
- [explain how the having 'an injury ... or physical ... disability that has continued for at least one year' that 'substantially [restricts]' the ability to do work 'suited to their age, experience and qualifications' condition is fulfilled]
- [explain how the means-test for Disability Allowance is fulfilled]

I therefore am entitled to Disability Allowance.

Download Template Appeal Form 3

¹⁴⁸ Declaration by Ireland pursuant to Article 9 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems for the reference year ending 31 December 2023. Available at <https://ec.europa.eu/social/main.jsp?catId=868&intPageId=2285&langId=en>.

4. Template Appeal Form: State Pension Aggregation

This template is designed to be used by an advisor or claimant where an Irish or British national with a work history in not only the UK and/or Ireland, but also in other EU Member State or States, is told that the UK will not aggregate their pension contributions made in those other EU Member States. The assumption made in this letter is that the work abroad took place at least in part prior to Brexit.

I am appealing the decision made on _____ [date] that I am only eligible for [amount] of the UK State Pension, because my contributions from [country] are not being aggregated. This is contrary to the rules applicable to me under the UK-EU Withdrawal Agreement.

As a former cross-border worker, I am covered by the EU Social Security Coordination Regulation when it concerns the aggregation of all the pension contributions I have made in both the EU and the UK (Article 32(1)(a) of the UK-EU Withdrawal Agreement). This is the case for both periods in which I made contributions *before* Brexit, and any periods during which I made contributions *after* Brexit. My entire work history in [list EU Member States] should thus be considered when calculating my pension entitlement (Article 50 of the EU Social Security Coordination Regulation (Regulation 883/2004)). In particular, the total amount of State Pension I am paid by the UK should be calculated as if my *entire work history* had taken place in the UK (Article 52 of the EU Social Security Coordination Regulation (Regulation 883/2004)).

I have proven via the following evidence that I worked in the following EU Member States as well as the UK at the stated times:

- Country: [evidence of employment: eg, pay slips, letter from employer signifying length of employment]
- Country: [evidence of employment: eg, pay slips, letter from employer signifying length of employment]
- Country: [evidence of employment: eg, pay slips, letter from employer signifying length of employment]

As such, I am entitled to a State pension that reflects [years] of contributions made across the UK, Ireland and [other Member States].

Download Template Appeal Form 4

5. Template Appeal Form: Free NHS Care

This template is designed to be used by an advisor or claimant where an EU, British or Irish national frontier worker employed in the UK but resident in Ireland, has been told that they will be charged for NHS care in the UK. Please delete references to either the UK-EU Withdrawal Agreement or the UK-EU Trade and Cooperation Agreement's Protocol on Social Security depending on when your frontier work commenced (before or after 31 December 2020).

I am appealing the decision made on _____ [date] that I am not eligible for free NHS treatment because I am not resident in the UK. I am entitled to free NHS treatment, because I am a frontier worker resident in Ireland, working in the UK. This makes the UK the competent State for my social security under the UK-EU Withdrawal Agreement/ UK-EU Trade and Cooperation Agreement's Protocol on Social Security.

I am resident in Ireland, and I am employed/self-employed in Northern Ireland. [Provide details of employment here: start date of employment, continuity of employment, hours worked weekly.] I return to Ireland, where I live, daily/ at least once a week. This means I am a 'frontier worker' under Article 9(b) of the UK-EU Withdrawal Agreement /Article SSC.1(k) of the UK-EU Trade and Cooperation Agreement's Protocol on Social Security.

As a frontier worker, I am covered by the social security coordination rules in the UK-EU Withdrawal Agreement / UK-EU Trade and Cooperation Agreement's Protocol on Social Security.

Healthcare by the NHS is a sickness benefit in kind under those social security coordination rules. The UK is my competent State under Article 11(3) of the EU Social Security Coordination Regulation (Regulation 883/2004)/Article SSC.10.3(a) of the UK-EU Trade and Cooperation Agreement's Protocol on Social Security.

The rules set out in Article 18(1) of EU Social Security Coordination Regulation (Regulation 883/2004)/ Article SSC.16(1) of the UK-EU Trade and Cooperation Agreement's Protocol on Social Security make clear that I am entitled to healthcare, as if resident in the competent State, during a stay in the competent State. This means that I am entitled to all secondary and primary care *at no cost*, in the same way that anyone resident in the UK would be.

I have proven via the following evidence that I am a frontier worker covered by the UK-EU Withdrawal Agreement, employed in Northern Ireland and resident in Ireland:

- [evidence of employment: eg, pay slips, letter from employer, signifying a start date *before* 31 December 2020]
- [evidence of residency: eg, Irish council tax bill equivalent, energy bills, phone bills, etc]
- [Frontier Worker permit, if relevant/available]

As such, I am entitled to free NHS care in the UK. I would like to receive a Medical Card so that I can prove that entitlement.

[**Download Template Appeal Form 5**](#)

6. Template Appeal Form: Rejection of Universal Credit Claim

This template is designed to be used by an advisor or claimant where an EU national frontier worker employed in the UK, with family resident in Ireland, has been denied Universal Credit despite having commenced their frontier work prior to 31 December 2020 – possibly because they do not currently hold a Frontier Worker permit.

I am appealing the decision made on _____ [date] that I am not eligible for Universal Credit because my family is not habitually resident in the UK. I am eligible, because I am a frontier worker with family resident in Ireland, and the UK is my competent state for social security under the UK-EU Withdrawal Agreement because I am employed there (Article 11(3)(a) of the EU Social Security Coordination Regulation (Regulation 883/2004)).

My family is resident in Ireland, and I am employed in Northern Ireland. [Provide details of employment here: start date of employment, continuity of employment, hours worked weekly.] I return to Ireland, where my family lives, daily/once a week/at least two times per year. This means I am a ‘frontier worker’ under the Citizens’ Rights (Frontier Workers) (EU Exit) Regulations 2020 (Regulation 3), which reflect Article 9(b) of the UK-EU Withdrawal Agreement.

As a frontier worker, I am covered by the EU Social Security Coordination Regulation (Regulation 883/2004), as preserved under Article 30 of the UK-EU Withdrawal Agreement. Universal Credit is classified as a ‘special non-contributory cash benefit’ under the UK’s Declaration made pursuant Article 9 of the EU Social Security

Coordination Regulation (Regulation 883/2004). The UK is my competent State under the EU Social Security Coordination Regulation (Regulation 883/2004) and is thus responsible for the payment of my special non-contributory cash benefits (Article 11(3) and Article 67 of the EU Social Security Coordination Regulation (Regulation 883/2004)).

I have proven via the following evidence that I am a frontier worker covered by the UK-EU Withdrawal Agreement, employed in Northern Ireland and resident in Ireland:

- [evidence of employment: eg, pay slips, letter from employer, signifying a start date *before* 31 December 2020]
- [evidence of residency: eg, Irish council tax bill equivalent, energy bills, phone bills, etc]
- [Frontier Worker permit, if available]

I additionally provide the following information to assist in the calculation of my Universal Credit claim:

- [household income declaration: eg, does a partner work in Ireland?]
- [evidence of the existence of children for the child element, where relevant]

- [evidence of housing in Northern Ireland for the housing element, where relevant]
- [evidence of caring responsibilities, disabilities or illnesses, where relevant]

As such, I am entitled to Universal Credit in Northern Ireland, composed of the standard allowance/an amount for responsibility for children or young persons/an amount for housing in Northern Ireland/amounts for other particular needs or circumstances, namely, [caring responsibilities/disabilities/illnesses].

[**Download Template Appeal Form 6**](#)



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