



Switzerland No. 7 (2019)

# Transitional Agreement

on Social Security between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation for a Temporary Period following the Withdrawal of the United Kingdom from the European Union and the Free Movement of Persons Agreement

London, 31 October 2019

[The Agreement is not in force]

*Presented to Parliament  
by the Secretary of State for Foreign and Commonwealth Affairs  
by Command of Her Majesty  
December 2019*



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**TRANSITIONAL AGREEMENT ON SOCIAL SECURITY BETWEEN THE  
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND  
AND THE SWISS CONFEDERATION FOR A TEMPORARY PERIOD  
FOLLOWING THE WITHDRAWAL OF THE UNITED KINGDOM FROM  
THE EUROPEAN UNION AND THE FREE MOVEMENT OF PERSONS  
AGREEMENT**

The United Kingdom of Great Britain and Northern Ireland (“The United Kingdom”) and the Swiss Confederation (“Switzerland”),

(together “the Parties”);

RECOGNISING that in the absence of a relevant UK-EU Withdrawal Agreement the Agreement of 21<sup>st</sup> June 1999 between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons (FMOPA) will cease to apply to the United Kingdom from the date of UK exit;

RECOGNISING the importance of the coordination of social security rights enjoyed by persons moving between the Parties as defined for the purposes of this agreement;

RECOGNISING that the Parties have also signed on 10<sup>th</sup> July 2019 an Agreement on admission to the labour market for a temporary transitional period following the withdrawal of the United Kingdom from the European Union and the FMOPA;

DESIRING to secure social security rights enjoyed by persons moving between the Parties and to ensure the continuation of the social security coordination provided for under the provisions of FMOPA in force at the time of UK exit;

INTENDING to do so by transitionally applying the EU Social Security Coordination Regulations between the Parties:

- a) as they had effect immediately before UK exit;
- b) as if the United Kingdom remained, for these purposes, a Member State of the European Union; and
- c) as subject to any relevant reservations that were in effect immediately before UK exit;

AND INTENDING nationals of EU Member States to be covered by this Agreement where applicable.

HAVE AGREED AS FOLLOWS:

**PART ONE**  
**COMMON PROVISIONS**

ARTICLE 1

**Definitions**

- (1) For the purposes of this Agreement, the following definitions apply:
- a) “FMOPA” means the Agreement between the European Community and its Member States, of the one part, and Switzerland, of the other, on the free movement of persons, signed at Luxembourg on the 21<sup>st</sup> June 1999;
  - b) “Citizens’ Rights Agreement” means the Agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation on Citizens’ Rights following the withdrawal of the United Kingdom from the European Union and the FMOPA signed at Bern on 25<sup>th</sup> February 2019;
  - c) “EU Social Security Coordination Regulations” mean Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems and Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems, as incorporated by Article 8 of the FMOPA and as applicable immediately prior to UK exit;
  - d) “relevant UK-EU Withdrawal Agreement” means an Agreement between the United Kingdom and the European Union on the United Kingdom’s withdrawal from the European Union which has the effect of creating appropriate provision in relation to social security coordination between the United Kingdom and Switzerland;
  - e) “UK exit” means the point in time at which the United Kingdom ceases to be a Member State of the European Union.
- (2) Unless specified otherwise, all other terms in this Agreement have the same meaning as in the EU Social Security Coordination Regulations and the FMOPA.

## ARTICLE 2

### **Territorial Scope**

- (1) This Agreement shall apply, on the one part, to Switzerland and on the other part, to the United Kingdom and Gibraltar, a territory for whose international relations the United Kingdom is responsible. Accordingly, references in this Agreement to the United Kingdom shall include Gibraltar.
- (2) Notwithstanding paragraph (1) this Agreement shall apply to Gibraltar from the date on which the United Kingdom provides written notification to Switzerland through diplomatic channels of its application to Gibraltar.

## PART TWO

### **SPECIAL PROVISIONS**

## ARTICLE 3

### **Applicable Rules**

- (1) The Parties shall continue to apply between them the provisions of the EU Social Security Coordination Regulations and of Annex II FMOPA to the extent possible and necessary for the purposes of this Agreement.
- (2) For the purposes of this Agreement, the term ‘Member State(s)’ contained in the EU Social Security Coordination Regulations shall be understood to include the Parties, and where reference is made in the Swiss domestic legislation to an EU Member State this shall be understood to include the UK. However, where a person has an overlapping right to benefits in kind under the legislation of a Party to this Agreement, and under the legislation of a Member State of the European Union by virtue of FMOPA, the right arising under the legislation of a Member State of the European Union shall take priority.
- (3) Subject to paragraphs (4) and (5) below, this Agreement shall suspend, for the period that it has effect, the rights and obligations arising from any existing convention or agreement on social security between the Parties that falls within the scope of this Agreement to the extent that the existing convention or agreement covers the same persons, matters and territories.
- (4) This Agreement shall not prevent either Party from taking into account under its legislation the provisions of any existing convention or agreement which that Party has concluded with a third party.
- (5) This Agreement shall not suspend or supersede the Citizens’ Rights Agreement or any part of it. This Agreement shall operate in parallel with the

Citizens' Rights Agreement and each shall apply to the extent that it is more favourable to the person to whom they apply. This Agreement shall not constitute a "transitional arrangement" for the purposes of Article 2(b) of the Citizens' Rights Agreement.

## **PART THREE**

### **IMPLEMENTING PROVISIONS**

#### ARTICLE 4

##### **Notification of Health Care Costs**

Where provisions in respect of reimbursement in the EU Social Security Coordination Regulations on benefits in kind include reliance on information relating to costs being transmitted by Member States to bodies of the European Union, or to be published in the Official Journal of the European Union, the United Kingdom shall continue to act in accordance with that information. The United Kingdom shall provide equivalent information directly to Switzerland, with which Switzerland shall act in accordance.

#### ARTICLE 5

##### **Participation in EU Bodies and Electronic Data Exchange of the EU**

For the purposes of this Agreement, the Parties shall not participate in or refer to, the Administrative Commission, Audit Board, Advisory Committee, the Electronic Exchange of Social Security Information system, or the Technical Commission, save in so far as due regard is to be had to decisions and recommendations of these bodies made prior to UK exit and only in so far as is applicable to the Parties in a bilateral context.

#### ARTICLE 6

##### **National Contact Information**

(1) For the purposes of this Agreement competent authorities, institutions and liaison bodies of the Parties mean the bodies that were contained immediately before UK exit in the Institutions Repository established by the EU Social Security Coordination Regulations.

(2) The Parties shall inform each other of any change of the national contact information.

## ARTICLE 7

### **Documents and Forms**

The legislation applicable to a person and their entitlement to benefits in cash and in kind shall be indicated by:

- (a) any relevant documents issued by Switzerland in the format used for the purpose of the EU Social Security Coordination Regulations;
- (b) any relevant documents issued prior to UK exit by the United Kingdom or Gibraltar in the format used for the purpose of the EU Social Security Coordination Regulations; and
- (c) any relevant documents issued after UK exit by one Party to be used for this purpose and in a format recognised by the other Party.

## ARTICLE 8

### **Data Protection**

(1) The competent authorities or competent institutions of a Party shall transmit, in accordance with its legislation personal data collected under its legislation to the competent authorities or competent institutions of the other Party insofar as it is necessary for the implementation of this Agreement.

(2) With regard to transmission in accordance with paragraph (1), personal data shall be protected in accordance with the following provisions:

- a) the transmitted personal data may be used by the receiving body for the purpose of the implementation of this Agreement and in accordance with the legislation of the receiving Party;
- b) the transmitting body shall ensure that the data to be transmitted are correct and limited to the extent necessary for the purpose of the transmission. If it becomes evident that incorrect data or data whose transmission is incompatible with the laws and regulations of the transmitting Party were transmitted, the transmitting body shall immediately notify the receiving body of this fact. In this case the receiving body shall correct or delete this data immediately;
- c) the transmitting body and the receiving body shall, upon the request of the person concerned, inform that person of any personal data transmitted and of the purpose of their transmission;
- d) the transmitted personal data shall be deleted by the receiving body in accordance with the relevant laws and regulations of the receiving

Party if they are no longer required for the purpose for which they were transmitted;

- e) the transmitting body and the receiving body shall record the transmission and the receipt of personal data; and
- f) the transmitting body and the receiving body shall protect personal data effectively from unauthorized access, unauthorized modification and unauthorized disclosure.

## **PART FOUR**

### **TRANSITIONAL AND FINAL PROVISIONS**

#### ARTICLE 9

##### **Entry into Force**

- (1) Each Party shall notify the other Party in writing of the completion of its domestic procedures required for the entry into force of this Agreement.
- (2) This Agreement shall enter into force upon the later of:
  - a) UK exit; or
  - b) the first day of the second month following the date of receipt of the later of the Parties' notifications that they have completed their domestic procedures required for the entry into force of this Agreement,

save that this Agreement shall not enter into force in the event that, prior to this Agreement entering into force a relevant UK-EU Withdrawal Agreement comes into effect as notified in writing by the United Kingdom to Switzerland through diplomatic channels.

#### ARTICLE 10

##### **Provisional Application**

Pending entry into force of this Agreement, the Parties shall provisionally apply this Agreement on the later of:

- a) UK exit; or
- b) the day of the signature of this Agreement,



save that this Agreement shall not be applied provisionally in the event that, prior to this Agreement being provisionally applied a relevant UK-EU Withdrawal Agreement comes into effect as notified in writing by the United Kingdom to Switzerland through diplomatic channels.

## ARTICLE 11

### **Termination of the Agreement**

(1) The Agreement, including any provisional application, shall terminate on the earlier of:

- a) 31<sup>st</sup> December 2020, or
- b) the time at which a relevant UK-EU Withdrawal Agreement as notified in writing by the United Kingdom to Switzerland through diplomatic channels comes into effect.

(2) Notwithstanding paragraph (1) a Party may terminate the Agreement or its provisional application by written notification through diplomatic channels to the other Party.

- a) The termination of the Agreement shall take effect six months following the date of receipt of such notification.
- b) The termination of the provisional application of the Agreement shall take effect on the first day of the second month following the date of receipt of such notification.

## ARTICLE 12

### **Rights after Termination of this Agreement**

Individuals' rights shall be protected on the termination of this Agreement, in as far as they are not provided for by any successor agreement or the Citizens' Rights Agreement. Negotiations shall take place between the Parties to specify these rights.

## ARTICLE 13

### **Monitoring of the Agreement**

(1) For the purpose of the proper implementation of this Agreement, the Parties shall regularly exchange information, consult each other and meet at the request of either of them.

(2) The Parties shall consider every possible means to maintain the good functioning of this Agreement.

(3) Where there is a difference of views between the competent authorities of both Parties concerning the interpretation or application of this Agreement, Article 6 of EC Regulation 987/2009 shall, as far as possible, be followed by the competent authorities of the Parties.

(4) Any disagreement between the Parties concerning the interpretation or application of this Agreement which has not been settled in accordance with paragraphs 1 to 3 shall be submitted, at the request of one Party, to an arbitration tribunal of three members. Each Party shall appoint one member. These two members shall select the president. Should the two members disagree on the nomination of the president, the president shall be appointed by the President of the International Court of Justice. The arbitration tribunal shall establish its own procedures. Its decision shall be binding on the two Parties.

#### ARTICLE 14

##### **Amendment**

The Agreement may be amended by an exchange of notes between the Parties. The amendments shall enter into force on the date established in the exchange of notes.

IN WITNESS WHEREOF, the undersigned, duly authorised by their respective Governments, have signed this Agreement.

DONE in duplicate at London on 31 October 2019 in the English and French languages, each text being equally authentic.

**For the United Kingdom of Great  
Britain and Northern Ireland:**

**For the Swiss Confederation:**

**JAMES DUDDRIDGE**

**ALEXANDRE FASEL**



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