



Switzerland No.4 (2021)

# Convention

on Social Security Coordination between the United Kingdom of Great Britain and  
Northern Ireland and the Swiss Confederation

London, 9 September 2021

[The Convention is not in force]

*Presented to Parliament  
by the Secretary of State for Foreign, Commonwealth and Development Affairs  
by Command of Her Majesty  
September 2021*



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**CONVENTION ON SOCIAL SECURITY COORDINATION BETWEEN  
THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN  
IRELAND AND THE SWISS CONFEDERATION**

The United Kingdom of Great Britain and Northern Ireland (“United Kingdom”) and The Swiss Confederation (“Switzerland”) (together “the States” and individually “the State”)

NOTING that the United Kingdom withdrew from the European Union on 31 January 2020 and ceased applying the Free Movement of Persons Agreement with effect from 1 January 2021,

RECOGNISING the importance of the coordination of social security rights enjoyed by persons moving between both States to work, to stay or to reside, as well as the rights enjoyed by their family members and survivors,

Have agreed as follows:

**TITLE I**

**GENERAL PROVISIONS**

**ARTICLE 1**

**Definitions**

For the purposes of this Convention, the following definitions apply:

- (a) “activity as an employed person” means any activity or equivalent situation treated as such for the purposes of the social security legislation of the State in which such activity or equivalent situation exists;
- (b) “activity as a self-employed person” means any activity or equivalent situation treated as such for the purposes of the social security legislation of the State in which such activity or equivalent situation exists;
- (c) “assisted reproduction services” means any medical, surgical or obstetric services provided for the purpose of assisting a person to carry a child;
- (d) “benefits in kind” means:
  - (i) for the purposes of Chapter 1 of Title III, benefits in kind provided for under the legislation of a State which are intended to supply, make available, pay directly or reimburse the cost of medical care and products and services ancillary to that care;

- (ii) for the purposes of Chapter 2 of Title III, all benefits in kind relating to accidents at work and occupational diseases as defined in point (i) and provided for under the States' accidents at work and occupational diseases schemes;
- (e) "civil servant" means a person considered to be such or treated as such by the State to which the administration employing them is subject;
- (f) "competent authority" means, in respect of each State, the Minister, Ministers or other equivalent authority responsible for social security schemes throughout or in any part of the State in question;
- (g) "competent institution" means:
  - (i) the institution with which the person concerned is insured at the time of the application for benefit; or
  - (ii) the institution from which the person concerned is or would be entitled to benefits if that person or a member or members of their family resided in the State in which the institution is situated; or
  - (iii) the institution designated by the competent authority of the State concerned; or
  - (iv) in the case of a scheme relating to an employer's obligations in respect of the matters to which this Convention applies under Article 6, either the employer or the insurer involved or, in default thereof, the body or authority designated by the competent authority of the State concerned;
- (h) "competent State" means the State in which the competent institution is situated;
- (i) "death grant" means any one-off payment in the event of death, excluding the lump-sum benefits referred to in paragraph (y);
- (j) "electronic exchange" means a system for the exchange of social security information using transmission by electronic means;
- (k) "family benefit" means all benefits in kind or in cash intended to meet family expenses;
- (l) "fraud" means any deliberate act or omission to act, carried out with the intention to either:
  - (i) receive social security benefits, or enable another person to receive social security benefits, when the conditions of entitlement to such

benefits under the legislation of the State or States concerned or under the provisions of this Convention are not met; or

- (ii) avoid paying social security contributions, or enable another person to avoid paying social security contributions, when such contributions are required under the legislation of the State or States concerned or under the provisions of this Convention;
- (m) “frontier worker” means any person pursuing an activity as an employed or self-employed person in a State and who resides in the other State to which that person returns as a rule daily or at least once a week;
- (n) “home base” means the place from where the crew member normally starts and ends a duty period or a series of duty periods, and where, under normal conditions, the operator/airline is not responsible for the accommodation of the crew member concerned;
- (o) “institution” means, in respect of each State, the body or authority responsible for applying all or part of the legislation;
- (p) “institution of the place of residence” and “institution of the place of stay” mean, respectively, the institution which is competent to provide benefits in the place where the person concerned resides and the institution which is competent to provide benefits in the place where the person concerned is staying, in accordance with the legislation administered by that institution or, where no such institution exists, the institution designated by the competent authority of the State concerned;
- (q) “insured person” means, in relation to the matters to which Chapters 1 and 3 of Title III apply, any person satisfying the conditions required under the legislation of the State competent under Title II to have the right to benefits, taking into account the provisions of this Convention;
- (r) “legal residence” means residence or stay in accordance with the relevant State’s immigration laws;
- (s) “legislation” means, in respect of each State, laws, regulations and other statutory provisions and all other implementing measures relating to the matters to which this Convention applies under Article 6, but excludes contractual provisions other than those which serve to implement an insurance obligation arising from the laws and regulations referred to in this paragraph or which have been the subject of a decision by the public authorities which makes them obligatory or extends their scope, provided that the State concerned makes a declaration to that effect, notified to the Joint Administrative Committee;
- (t) “liaison body” means any body designated by a competent authority for one or more of the branches of social security referred to in Article 6 of

this Convention to respond to requests for information and assistance for the purposes of the application of this Convention and which has to fulfil the tasks assigned to it under Title IV of Annex 1;

- (u) “long-term care benefit” means a benefit in kind or in cash the purpose of which is to address the care needs of a person who, on account of impairment, requires considerable assistance, including but not limited to assistance from another person or persons to carry out essential activities of daily living for an extended period of time in order to support their personal autonomy; this includes benefits granted for the same purpose to a person providing such assistance;
- (v) “member of the family” means:
  - (i) (A) any person defined or recognised as a member of the family or designated as a member of the household by the legislation under which benefits are provided;  
  
(B) with regard to benefits in kind pursuant to Chapter 1 of Title III, any person defined or recognised as a member of the family or designated as a member of the household by the legislation of the State in which that person resides;
  - (ii) if the legislation of a State which is applicable under point (i) does not make a distinction between the members of the family and other persons to whom it is applicable, the spouse, minor children and dependent children who have reached the age of majority shall be considered members of the family;
  - (iii) if, under the legislation which is applicable under points (i) and (ii), a person is considered a member of the family or member of the household only if that person lives in the same household as the insured person or pensioner, this condition shall be considered satisfied if the person in question is mainly dependent on the insured person or pensioner;
- (w) “national of a European Union Member State” means a national of a Member State of the European Union according to the laws of the relevant Member State;
- (x) “obligation of professional secrecy” means an obligation to protect such information effectively through appropriate security, technical and organisational measures and prevent unauthorised access, unauthorised modification and unauthorised disclosure of such information;
- (y) “pension” covers not only pensions but also lump-sum benefits which can be substituted for them and payments in the form of reimbursement

of contributions and, subject to the provisions of Title III, revaluation increases or supplementary allowances;

- (z) “period of employment” or “period of self-employment” mean periods so defined or recognised by the legislation under which they were completed, and all periods treated as such, where they are regarded by that legislation as equivalent to periods of employment or to periods of self-employment;
- (aa) “period of insurance” means periods of contribution, employment or self-employment as defined or recognised as periods of insurance by the legislation under which they were completed or considered as completed, and all periods treated as such, where they are regarded by that legislation as equivalent to periods of insurance;
- (bb) “period of residence” means periods so defined or recognised by the legislation under which they were completed or considered as completed;
- (cc) “personal data” means any data concerning or relating to an identified or identifiable natural person;
- (dd) “refugee” has the meaning assigned to it in Article 1 of the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951;
- (ee) “registered office or place of business” means the registered office or place of business where the essential decisions of the undertaking are adopted and where the functions of its central administration are carried out;
- (ff) “residence” (except in Article 3) means the place where a person habitually resides;
- (gg) “special non-contributory cash benefits” means those non-contributory cash benefits which:
  - (i) are intended to provide either:
    - (A) supplementary, substitute or ancillary cover against the risks covered by the branches of social security referred to in Article 6(1), and which guarantee the persons concerned a minimum subsistence income having regard to the economic and social situation in the State concerned; or
    - (B) solely specific protection for the disabled, closely linked to the said person’s social environment in the State concerned, and

- (ii) where the financing exclusively derives from compulsory taxation intended to cover general public expenditure and the conditions for providing and for calculating the benefits are not dependent on any contribution in respect of the beneficiary. However, benefits provided to supplement a contributory benefit shall not be considered to be contributory benefits for this reason alone;
- (hh) “special scheme for civil servants” means any social security scheme which is different from the general social security scheme applicable to employed persons in the State concerned and to which all, or certain categories of, civil servants are directly subject;
- (ii) “stateless person” has the meaning assigned to it in Article 1 of the Convention relating to the Status of Stateless Persons, signed in New York on 28 September 1954;
- (jj) “stay” means temporary residence;
- (kk) “Swiss national” means a Swiss citizen according to the Federal Constitution of the Swiss Confederation;
- (ll) “United Kingdom national” means:
  - (i) a British citizen;
  - (ii) a person who is a British subject by virtue of Part IV of the British Nationality Act 1981 and who has the right of abode in the United Kingdom and is therefore exempt from United Kingdom immigration control;
  - (iii) a British overseas territories citizen who acquires their citizenship from a connection with Gibraltar.

## ARTICLE 2

### **Persons covered**

- (1) As applied by Switzerland, this Convention shall apply to:
  - (a) United Kingdom nationals, Swiss nationals, nationals of a European Union Member State, stateless persons and refugees, in each case who are or have been subject to the legislation of either or both of the States; and
  - (b) the members of the family and survivors of the persons described in point (a).



(2) Notwithstanding paragraph 1, Switzerland shall apply the provisions of this Convention, insofar as they relate to a determination of the applicable legislation for the purposes of Title II, to:

- (a) persons who are or have been subject to the legislation of either or both of the States; and
- (b) the members of the family and survivors of the persons described in point (a).

(3) As applied by the United Kingdom, this Convention shall apply to:

- (a) persons who are or have been subject to the legislation of either or both the States; and
- (b) the members of the family and survivors of the persons described in point (a).

(4) Notwithstanding paragraph 3, the United Kingdom shall apply the provisions of this Convention (except Article 19), insofar as they relate to benefits in kind, only to:

- (a) United Kingdom nationals, Swiss nationals, nationals of a European Union Member State, stateless persons and refugees, in each case who are or have been subject to the legislation of either or both of the States; and
- (b) the members of the family and survivors of the persons described in point (a).

### ARTICLE 3

#### **Legally residing**

(1) This Convention shall apply to persons legally residing in Switzerland or the United Kingdom.

(2) Paragraph 1 of this Article shall not affect entitlements to cash benefits which relate to previous periods of legal residence of persons covered by Article 2.

### ARTICLE 4

#### **Cross border situations**

This Convention shall not apply to a person whose situation is confined in all respects either within Switzerland, or within the United Kingdom.

## ARTICLE 5

### **Territorial scope**

The provisions of this Convention shall apply, on the one hand, to the United Kingdom and Gibraltar and, on the other hand, to Switzerland. Accordingly, references in this Convention to the “United Kingdom” shall include Gibraltar.

## ARTICLE 6

### **Matters covered**

- (1) This Convention shall apply to the following branches of social security:
  - (a) sickness benefits;
  - (b) maternity and equivalent paternity benefits;
  - (c) invalidity benefits;
  - (d) old-age benefits;
  - (e) survivors’ benefits;
  - (f) benefits in respect of accidents at work and occupational diseases;
  - (g) death grants;
  - (h) unemployment benefits.
- (2) Unless otherwise provided for in Annex 4, this Convention shall apply to general and special social security schemes, whether contributory or non-contributory, and to schemes relating to the obligations of an employer or ship-owner.
- (3) The provisions of Title III shall not, however, affect the legislative provisions of either State concerning a ship-owner’s obligations.
- (4) This Convention shall not apply to:
  - (a) special non-contributory cash benefits which are listed in Part 1 of Annex 2;
  - (b) social and medical assistance;
  - (c) benefits in relation to which a State assumes the liability for damages to persons and provides for compensation, such as those for victims of war and military action or their consequences; victims of crime, assassination

or terrorist acts; victims of damage occasioned by agents of the State in the course of their duties; or victims who have suffered a disadvantage for political or religious reasons or for reasons of descent;

- (d) long-term care benefits which are listed in Part 2 of Annex 2;
- (e) assisted reproduction services;
- (f) payments which are connected to a branch of social security listed in paragraph 1 and which are:
  - (i) paid to meet expenses for heating in cold weather; and
  - (ii) listed in Part 3 of Annex 2;
- (g) family benefits;
- (h) Swiss old-age, survivors' and invalidity benefits under the statutory occupational benefit plans.

## ARTICLE 7

### **Relationship with other agreements**

- (1) This Convention shall apply without prejudice to the Agreement between the Swiss Confederation and the United Kingdom of Great Britain and Northern Ireland on citizens' rights following the withdrawal of the United Kingdom from the European Union and the free movement of persons Agreement, signed in Berne on 25 February 2019.
- (2) Nothing in this Convention shall be construed as requiring either State to act in a manner inconsistent with its obligations under agreements with third countries.

## ARTICLE 8

### **Equality of treatment**

- (1) Unless otherwise provided for in this Convention, as regards the matters to which this Convention applies under Article 6, persons to whom this Convention applies shall enjoy the same benefits and be subject to the same obligations under the legislation of a State as the nationals thereof.
- (2) This provision does not apply to the exportability of cash benefits covered by point (c) of Article 6(1).
- (3) This provision does not apply to the Swiss legislation:

- (a) in relation to voluntary old-age, survivors' and disability insurance;
- (b) in relation to old-age, survivors' and disability insurance of Swiss nationals who are gainfully occupied abroad in the service of the Swiss Confederation or organisations in the meaning of subparagraph 1(c) of Article 1a of the Federal Law on old-age and survivors' insurance; and
- (c) in relation to voluntary old-age, survivors' and disability insurance for Swiss nationals employed by organisations in the meaning of subparagraph 4(b) of Article 1a of the Federal Law on old-age and survivors' insurance.

## ARTICLE 9

### **Equal treatment of benefits, income, facts or events**

Unless otherwise provided for in this Convention, the States shall ensure the application of the principle of equal treatment of benefits, income, facts or events in the following manner:

- (a) where, under the legislation of the competent State, the receipt of social security benefits and other income has certain legal effects, the relevant provisions of that legislation shall also apply to the receipt of equivalent benefits acquired under the legislation of the other State or to income acquired in the other State;
- (b) where, under the legislation of the competent State, legal effects are attributed to the occurrence of certain facts or events, that State shall take account of like facts or events that have occurred in the other State as though they had taken place in its own territory.

## ARTICLE 10

### **Aggregation of periods**

Unless otherwise provided for in this Convention, the competent institution of a State shall, to the extent necessary, take into account periods of insurance, employment, self-employment or residence completed under the legislation of the other State as though they were periods completed under the legislation which it applies, where its legislation makes conditional upon the completion of periods of insurance, employment, self-employment or residence:

- (a) the acquisition, retention, duration or recovery of the right to benefits;
- (b) the coverage by legislation; or

- (c) the access to or the exemption from compulsory, optional continued or voluntary insurance.

## ARTICLE 11

### **Waiving of residence rules**

The States shall ensure the application of the principle of exportability of cash benefits in accordance with paragraphs (a) and (b):

- (a) Cash benefits payable under the legislation of a State or under this Convention shall not be subject to any reduction, amendment, suspension, withdrawal or confiscation on account of the fact that the beneficiary or the members of their family reside in the other State.
- (b) Paragraph (a) does not apply to the cash benefits covered by points (c) and (h) of Article 6(1).

## ARTICLE 12

### **Prevention of overlapping of benefits**

Unless otherwise provided, this Convention shall neither confer nor maintain the right to several benefits of the same kind for one and the same period of compulsory insurance.

## TITLE II

### **DETERMINATION OF THE LEGISLATION APPLICABLE**

## ARTICLE 13

### **General rules**

- (1) Persons to whom this Convention applies shall be subject to the legislation of a single State only. Such legislation shall be determined in accordance with this Title.
- (2) For the purposes of this Title, persons receiving cash benefits because or as a consequence of their activity as an employed or self-employed person shall be considered to be pursuing the said activity. This shall not apply to invalidity, old-age or survivors' pensions or to pensions in respect of accidents at work or occupational diseases or to sickness benefits in cash covering treatment for an unlimited period.
- (3) Subject to Articles 14 to 17:

- (a) a person pursuing an activity as an employed or self-employed person in a State shall be subject to the legislation of that State;
  - (b) a civil servant shall be subject to the legislation of the State to which the administration employing them is subject;
  - (c) any other person to whom points (a) and (b) do not apply shall be subject to the legislation of the State of residence, without prejudice to other provisions of this Convention guaranteeing them benefits under the legislation of the other State.
- (4) For the purposes of this Title, an activity as an employed or self-employed person normally pursued on board a vessel at sea flying the flag of a State shall be deemed to be an activity pursued in that State. However, a person employed on board a vessel flying the flag of a State and remunerated for such activity by an undertaking or a person whose registered office or place of business is in the other State shall be subject to the legislation of the latter State if that person resides in that State. The undertaking or person paying the remuneration shall be considered as the employer for the purposes of the said legislation.
- (5) An activity as a flight crew or cabin crew member performing air passenger or freight services shall be deemed to be an activity pursued in the State where the home base is located.
- (6) (a) Members of the family residing or staying with a person who is subject to the legislation of a State as a result of the application of paragraph (3)(b), Article 14 or Article 17 shall also be subject to the legislation of that State.
  - (b) Point (a) does not apply to a member of the family who is pursuing an activity as an employed or self-employed person or is a civil servant.

## ARTICLE 14

### **Detached workers**

- (1) A person who pursues an activity as an employed person in a State for an employer which normally carries out its activities there and who is sent by that employer to the other State to perform work on that employer's behalf shall continue to be subject to the legislation of the first State, provided that:
- (a) the anticipated duration of such work does not exceed 24 months; and
  - (b) that person is not sent to replace another detached worker.
- (2) A person who normally pursues an activity as a self-employed person in a State who goes to pursue a similar activity in the other State shall continue to be subject

to the legislation of the first State, provided that the anticipated duration of such activity does not exceed 24 months.

## ARTICLE 15

### **Pursuit of activities in both States**

(1) A person who normally pursues an activity as an employed person in both States shall be subject to the legislation of the State of residence, provided they pursue a substantial part of their activity there.

(2) Where a person does not pursue a substantial part of the activity described in paragraph 1 in the State of residence, the legislation applicable to that person shall be determined as follows:

- (a) if the person is employed by one or more employers, all of which have their registered office or place of business in one State, they shall be subject to the legislation of that State;
- (b) if the person is employed by two or more employers which have their registered office or place of business in both States, they shall be subject to the legislation of the State which is not their State of residence;
- (c) if the person is employed by one or more employers, none of which have a registered office or place of business in either State, they shall be subject to the legislation of their State of residence.

(3) A person who normally pursues an activity as a self-employed person in both States shall be subject to:

- (a) the legislation of their State of residence, provided they pursue a substantial part of their activity there; or
- (b) the legislation of the State in which the centre of interest of their activities is situated, provided they do not reside in the State in which they pursue a substantial part of their activity.

(4) A person who normally pursues an activity as an employed person and an activity as a self-employed person in both States shall be subject to the legislation of the State in which they carry out their activity as an employed person; or, if that person is employed in both States, that person shall be subject to the legislation determined in accordance with paragraph 1.

(5) A person who is employed as a civil servant by a State and who pursues an activity as an employed and/or self-employed person in the other State shall be subject to the legislation of the first State.

(6) A person referred to in paragraphs 1 to 5 shall be treated, for the purposes of the legislation determined in accordance with these provisions, as though that person was pursuing all their activities as an employed or self-employed person and were receiving all their income in the State concerned.

## ARTICLE 16

### **Voluntary insurance or optional continued insurance**

(1) Articles 13 and 15 shall not apply to voluntary insurance or to optional continued insurance unless, in respect of one of the branches referred to in Article 6, only a voluntary scheme of insurance exists in a State.

(2) Where, by virtue of the legislation of a State, the person concerned is subject to compulsory insurance in that State, that person may not be subject to a voluntary insurance scheme or an optional continued insurance scheme in the other State. In all other cases in which, for a given branch, there is a choice between several voluntary insurance schemes or optional continued insurance schemes, the person concerned shall join only the scheme of their choice.

(3) However, in respect of invalidity, old-age and survivors' benefits, the person concerned may join the voluntary or optional continued insurance scheme of a State, even if that person is compulsorily subject to the legislation of the other State, provided that that person has been subject at some stage in their career to the legislation of the first State because of, or as a consequence of, an activity as an employed or self-employed person and provided such overlapping is explicitly or implicitly allowed under the legislation of the first State.

(4) Where the legislation of a State makes admission to voluntary insurance or optional continued insurance conditional upon residence in that State or upon previous activity as an employed or self-employed person, Article 9(b) shall apply only to persons who have been subject, at some earlier stage, to the legislation of that State on the basis of an activity as an employed or self-employed person.

## ARTICLE 17

### **Exceptions**

The competent authorities of the States or the bodies designated by these authorities may by common agreement provide for exceptions to Articles 13 to 15 in the interest of certain persons or categories of persons.



## ARTICLE 18

### **Obligations of the employer**

(1) An employer who has its registered office or place of business outside the competent State shall fulfil all the obligations laid down by the legislation applicable to its employees, in particular any obligation to pay the contributions provided for by that legislation, as if it had its registered office or place of business in the competent State.

(2) An employer who does not have a registered office or place of business in the State whose legislation is applicable and the employee may agree that the latter may fulfil the employer's obligations on its behalf as regards the payment of contributions without prejudice to the employer's underlying obligations. The employer shall send notice of such an arrangement to the competent institution of that State.

## TITLE III

### **SPECIAL PROVISIONS CONCERNING THE VARIOUS CATEGORIES OF BENEFITS**

#### CHAPTER 1

#### **Sickness, maternity and equivalent paternity benefits**

## ARTICLE 19

### **Immigration health fees**

This Convention shall apply without prejudice to the right of a State to charge a health fee under domestic law in connection with an application for a permit to enter, to stay, to work, or to reside in that State.

#### Section 1

#### **Insured persons and members of their families except pensioners and members of their families**

## ARTICLE 20

### **Residence in the State which is not the competent State**

An insured person or members of their family who reside in the State which is not competent shall receive benefits in kind in the State of residence provided, on behalf of the competent institution, by the institution of the place of residence in accordance

with the legislation it applies, as though the persons concerned were insured under the said legislation.

## ARTICLE 21

### **Stay in the competent State when residence is in the other State – special rules for the members of the families of frontier workers**

(1) Unless otherwise provided for by paragraph 2, the insured person and the members of their family referred to in Article 20 shall also be entitled to benefits in kind while staying in the competent State. The benefits in kind shall be provided by the competent institution and at its own expense, in accordance with the legislation it applies, as though the persons concerned resided in that State.

(2) The members of the family of a frontier worker shall be entitled to benefits in kind during their stay in the competent State.

Where the United Kingdom is the competent State, however, the members of the family of a frontier worker who reside in Switzerland shall be entitled to benefits in kind in the United Kingdom only under the conditions laid down in Article 22(1).

## ARTICLE 22

### **Stay outside the competent State**

(1) Unless otherwise provided for by paragraph 2, an insured person and the members of their family staying in the State which is not competent shall be entitled to benefits in kind, provided on behalf of the competent institution by the institution of the place of stay in accordance with the legislation it applies, as though the persons concerned were insured under that legislation, where:

- (a) the benefits in kind become necessary on medical grounds during their stay, in the opinion of the provider of the benefits in kind, taking into account the nature of the benefits and the expected length of the stay;
- (b) the person did not travel to that State with the purpose of receiving the benefits in kind, unless the person is a passenger or member of the crew on a vessel or aircraft travelling to that State and the benefits in kind became necessary on medical grounds during the voyage or flight; and
- (c) a valid entitlement document is presented in accordance with Article 22(1) of Annex 1.

(2) The Joint Administrative Committee shall list benefits in kind which, in order to be provided during a stay in the other State, require for practical reasons a prior agreement between the person concerned and the institution providing the care.

## ARTICLE 23

### **Travel with the purpose of receiving benefits in kind – authorisation to receive appropriate treatment outside the State of residence**

- (1) Unless otherwise provided for in this Convention, an insured person travelling to the other State with the purpose of receiving benefits in kind during the stay shall seek authorisation from the competent institution.
- (2) An insured person who is authorised by the competent institution to go to the other State with the purpose of receiving the treatment appropriate to their condition shall receive the benefits in kind provided, on behalf of the competent institution, by the institution of the place of stay, in accordance with the legislation it applies, as though that person were insured under the said legislation. The authorisation shall be accorded where the treatment in question is among the benefits provided for by the legislation in the State where the person concerned resides and where that person cannot be given such treatment within a time limit which is medically justifiable, taking into account their current state of health and the probable course of their illness.
- (3) Paragraphs 1 and 2 apply *mutatis mutandis* to the members of the family of an insured person.

## ARTICLE 24

### **Cash benefits**

- (1) An insured person and members of their family residing or staying in the State which is not competent shall be entitled to cash benefits provided by the competent institution in accordance with the legislation it applies.
- (2) The competent institution of a State whose legislation stipulates that the calculation of cash benefits shall be based on average income or on an average contribution basis shall determine such average income or average contribution basis exclusively by reference to the incomes confirmed as having been paid, or contribution bases applied, during the periods completed under the said legislation.
- (3) The competent institution of a State whose legislation provides that the calculation of cash benefits shall be based on standard income shall take into account exclusively the standard income or, where appropriate, the average of standard incomes for the periods completed under the said legislation.
- (4) Paragraphs 2 and 3 apply *mutatis mutandis* to cases where the legislation applied by the competent institution lays down a specific reference period which corresponds in the case in question either wholly or partly to the periods which the person concerned has completed under the legislation of the other State.

## ARTICLE 25

### **Pension claimants**

(1) An insured person who, on making a claim for a pension, or during the investigation thereof, ceases to be entitled to benefits in kind under the legislation of the State last competent, shall remain entitled to benefits in kind under the legislation of the State in which that person resides, provided that the pension claimant satisfies the insurance conditions of the legislation of the State referred to in paragraph 2. The right to benefits in kind in the State of residence shall also apply to the members of the family of the pension claimant.

(2) The benefits in kind shall be chargeable to the institution of the State which, in the event of a pension being awarded, would become competent under Articles 26 and 27.

## Section 2

### **Special provisions for pensioners and members of their families**

## ARTICLE 26

### **Right to benefits in kind for persons who receive pensions under the legislation of both States**

A person who receives pensions under the legislation of both States, of which one is the State of residence, shall, with the members of their family, receive such benefits in kind from and at the expense of the institution of the place of residence, as though that person were a pensioner whose pension was payable solely under the legislation of that State.

## ARTICLE 27

### **Right to benefits in kind for persons who receive a pension or pensions under the legislation of one State**

(1) A person who receives a pension or pensions under the legislation of one State and resides in the other State but is not entitled to benefits in kind under the legislation of the State of residence, shall nevertheless receive such benefits for themselves and the members of their family, insofar as the pensioner would be entitled to them under the legislation of the State competent in respect of their pension, if they resided in that State. The benefits in kind shall be provided by the institution of the place of residence, as though the person concerned were entitled to a pension and entitled to benefits in kind under the legislation of that State. The costs of these benefits in kind shall be borne by the institution of the State from which that person receives a pension.

(2) Where a person receiving a pension or pensions under the legislation of Switzerland resides in the United Kingdom, and that person does not receive a pension from the United Kingdom, the cost of benefits in kind provided to them shall be borne by the institution of Switzerland to the extent that the person would be entitled to such benefits if they resided in Switzerland.

#### ARTICLE 28

##### **Residence of members of the family in the State other than the one in which the pensioner resides**

Where a person:

- (a) receives a pension or pensions under the legislation of one or both States; and
- (b) resides in the State other than the one in which members of their family reside,

those members of that person's family shall be entitled to receive benefits in kind from the institution of the place of their residence in accordance with the legislation it applies insofar as the pensioner is entitled to benefits in kind under the legislation of either State. The costs shall be borne by the competent institution responsible for the costs of the benefits in kind provided to the pensioner in their State of residence.

#### ARTICLE 29

##### **Stay of the pensioner or the members of their family in the State other than the State of residence – stay in the competent State – authorisation for appropriate treatment outside the State of residence**

(1) Article 22 applies *mutatis mutandis* to:

- (a) a person receiving a pension or pensions under the legislation of one or both States and who is entitled to benefits in kind under the legislation of one of the States which provide their pension(s);
- (b) the members of their family,

who are staying in the State other than the one in which they reside.

(2) Article 21(1) applies *mutatis mutandis* to the persons described in paragraph 1 when they stay in Switzerland and the competent institution responsible for the cost of the benefits in kind provided to the pensioner in their State of residence is situated in Switzerland.

(3) Article 23 applies *mutatis mutandis* to a pensioner or members of their family who are staying in the State other than the one in which they reside with the purpose of receiving in that State the treatment appropriate to their condition.

(4) Unless otherwise provided for by paragraph 5, the cost of the benefits in kind referred to in paragraphs 1 to 3 shall be borne by the competent institution responsible for the cost of benefits in kind provided to the pensioner in their State of residence.

(5) The cost of the benefits in kind referred to in paragraph 3 shall be borne by the institution of the place of residence of the pensioner or of the members of their family, if these persons reside in a State which has opted for reimbursement on the basis of fixed amounts. In these cases, for the purposes of paragraph 3, the institution of the place of residence of the pensioner or of the members of their family shall be considered to be the competent institution.

## ARTICLE 30

### **Cash benefits for pensioners**

(1) Cash benefits shall be paid to a person receiving a pension or pensions under the legislation of one or both States by the competent institution of the State in which is situated the competent institution responsible for the cost of benefits in kind provided to the pensioner in their State of residence. Article 24 applies *mutatis mutandis*.

(2) Paragraph 1 shall also apply to the members of a pensioner's family.

## ARTICLE 31

### **Contributions by pensioners**

(1) The institution of a State which is responsible under the legislation it applies for making deductions in respect of contributions for sickness, maternity and equivalent paternity benefits, may request and recover such deductions, calculated in accordance with the legislation it applies, only to the extent that the cost of the benefits pursuant to Articles 26 to 28 is to be borne by an institution of that State.

(2) Where, in the cases referred to in Article 27(2), the acquisition of sickness, maternity and equivalent paternity benefits is subject to the payment of contributions or similar payments under the legislation of a State in which the pensioner concerned resides, these contributions shall not be payable by virtue of such residence.

### Section 3

#### **Common provisions**

#### ARTICLE 32

#### **General provisions**

Articles 26 to 31 shall not apply to a pensioner or the members of their family who are entitled to benefits under the legislation of a State on the basis of an activity as an employed or self-employed person. In such a case, the person concerned shall be subject, for the purposes of this Chapter, to Articles 20 to 24.

#### ARTICLE 33

#### **Prioritising of the right to benefits in kind – special rule for the right of members of the family to benefits in the State of residence**

- (1) Unless otherwise provided for by paragraph 2, where a member of the family has an independent right to benefits in kind based on the legislation of either State or under this Chapter such right shall take priority over a derivative right to benefits in kind for members of the family.
- (2) Where the independent right in the State of residence exists directly and solely on the basis of the residence of the person concerned in that State, a derivative right to benefits in kind shall take priority over the independent right.

#### ARTICLE 34

#### **Family members residing in the United Kingdom**

Notwithstanding Article 20, Articles 26 to 28 and Article 33, the members of the family residing in the United Kingdom of a person for whom Switzerland is the competent State under the terms of Title II of this Convention, or of an employed or self-employed person, a civil servant or a pensioner who resides in Switzerland and is insured under the Swiss sickness insurance scheme, or of a person for whom Switzerland is the competent State under Articles 27 to 28, are entitled to benefits in kind as though they were insured solely under the legislation of the United Kingdom and have no derivative right to benefits in kind in Switzerland.

## ARTICLE 35

### **Reimbursements between institutions**

- (1) The benefits in kind provided by the institution of a State on behalf of the institution of the other State under this Chapter shall give rise to full reimbursement.
- (2) The reimbursements referred to in paragraph 1 shall be determined and effected in accordance with Annex 1, either on production of proof of actual expenditure, or on the basis of fixed amounts, as appropriate.
- (3) The States, and their competent authorities, may provide for other methods of reimbursement or waive all reimbursement between the institutions coming under their jurisdiction.

## CHAPTER 2

### **Benefits in respect of accidents at work and occupational diseases**

## ARTICLE 36

### **Right to benefits in kind and in cash**

- (1) Without prejudice to any more favourable provisions in paragraphs 2 and 3 of this Article, Articles 20, 21(1), 22(1) and 23(1) shall also apply to benefits relating to accidents at work or occupational diseases.
- (2) A person who has sustained an accident at work or has contracted an occupational disease and who resides or stays in a State other than the competent State shall be entitled to the special benefits in kind of the scheme covering accidents at work and occupational diseases provided, on behalf of the competent institution, by the institution of the place of residence or stay in accordance with the legislation which it applies, as though that person were insured under that legislation.
- (3) The competent institution may not refuse to grant the authorisation provided for in Article 23(1) to a person who has sustained an accident at work or who has contracted an occupational disease and is entitled to benefits chargeable to that institution, where the treatment appropriate to their condition cannot be given in the State in which that person resides within a time limit which is medically justifiable, taking into account that person's current state of health and the probable course of the illness.
- (4) Article 24 also applies to benefits falling within this Chapter.



## ARTICLE 37

### **Costs of transport**

- (1) The competent institution of a State whose legislation provides for meeting the costs of transporting a person who has sustained an accident at work or is suffering from an occupational disease, either to their place of residence or to a hospital, shall meet such costs to the corresponding place in the State where the person resides, provided that institution gives prior authorisation for such transport, duly taking into account the reasons justifying it. Such authorisation shall not be required in the case of a frontier worker.
- (2) The competent institution of a State whose legislation provides for meeting the costs of transporting the body of a person killed in an accident at work to the place of burial shall, in accordance with the legislation it applies, meet such costs to the corresponding place in the State where the person was residing at the time of the accident.

## ARTICLE 38

### **Benefits for an occupational disease where the person suffering from such a disease has been exposed to the same risk in both States**

When a person who has contracted an occupational disease has, under the legislation of both States, pursued an activity which by its nature is likely to cause the said disease, the benefits that that person or their survivors may claim shall be provided exclusively under the legislation of the last of those States whose conditions are satisfied.

## ARTICLE 39

### **Aggravation of an occupational disease**

In the event of aggravation of an occupational disease for which a person suffering from such a disease has received or is receiving benefits under the legislation of a State, the following rules shall apply:

- (a) if the person concerned, while in receipt of benefits, has not pursued, under the legislation of the other State, an activity as an employed or self-employed person likely to cause or aggravate the disease in question, the competent institution of the first State shall bear the cost of the benefits under the legislation which it applies, taking into account the aggravation;
- (b) if the person concerned, while in receipt of benefits, has pursued such an activity under the legislation of the other State, the competent institution

of the first State shall bear the cost of the benefits under the legislation it applies without taking the aggravation into account. The competent institution of the second State shall grant a supplement to the person concerned, the amount of which shall be equal to the difference between the amount of benefits due after the aggravation and the amount which would have been due prior to the aggravation under the legislation it applies, if the disease in question had occurred under the legislation of that State;

- (c) the rules concerning reduction, suspension or withdrawal laid down by the legislation of a State shall not be invoked against persons receiving benefits provided by institutions of both States in accordance with paragraph (b).

#### ARTICLE 40

##### **Rules for taking into account the special features of certain legislation**

- (1) If there is no insurance against accidents at work or occupational diseases in the State in which the person concerned resides or stays, or if such insurance exists but there is no institution responsible for providing benefits in kind, those benefits shall be provided by the institution of the place of residence or stay responsible for providing benefits in kind in the event of sickness.
- (2) If there is no insurance against accidents at work or occupational diseases in the competent State, the provisions of this Chapter concerning benefits in kind shall nevertheless be applied to a person who is entitled to those benefits in the event of sickness, maternity or equivalent paternity under the legislation of that State if that person sustains an accident at work or suffers from an occupational disease during a residence or stay in the other State. Costs shall be borne by the institution that is competent for the benefits in kind under the legislation of the competent State.
- (3) Article 9 applies to the competent institution in a State as regards the equivalence of accidents at work and occupational diseases which either have occurred or have been confirmed subsequently under the legislation of the other State when assessing the degree of incapacity, the right to benefits or the amount thereof, on condition that:
  - (a) no compensation is due in respect of an accident at work or an occupational disease which had occurred or had been confirmed previously under the legislation it applies; and
  - (b) no compensation is due in respect of an accident at work or an occupational disease which had occurred or had been confirmed subsequently, under the legislation of the other State under which the accident at work or the occupational disease had occurred or been confirmed.

## ARTICLE 41

### **Reimbursements between institutions**

- (1) Article 35 applies to benefits falling within this Chapter, and reimbursement shall be made on the basis of actual costs.
- (2) The States, or their competent authorities, may provide for other methods of reimbursement or waive all reimbursement between the institutions under their jurisdiction.

## CHAPTER 3

### **Death grants**

## ARTICLE 42

### **Right to grants where death occurs in, or where the person entitled resides in, the State which is not the competent State**

- (1) When an insured person or a member of their family dies in the State which is not the competent State, the death shall be deemed to have occurred in the competent State.
- (2) The competent institution shall be obliged to provide death grants payable under the legislation it applies, even if the person entitled resides in the State which is not the competent State.
- (3) Paragraphs 1 and 2 shall also apply when the death is the result of an accident at work or an occupational disease.

## ARTICLE 43

### **Provision of benefits in the event of the death of a pensioner**

- (1) In the event of the death of a pensioner who was entitled to a pension under the legislation of one State, or to pensions under the legislations of both States, when that pensioner was residing in a State other than that of the institution responsible for the cost of benefits in kind provided under Article 27, the death grants payable under the legislation administered by that institution shall be provided at its own expense as though the pensioner had been residing at the time of their death in the State in which that institution is situated.
- (2) Paragraph 1 applies *mutatis mutandis* to the members of the family of a pensioner.

## CHAPTER 4

### **Invalidity benefits**

#### ARTICLE 44

##### **Calculation of invalidity benefits**

Without prejudice to Article 10, where, under the legislation of the State competent under Title II of this Convention, the amount of invalidity benefits is dependent on the duration of the periods of insurance, employment, self-employment or residence, the competent State is not required to take into account any such periods completed under the legislation of the other State for the purposes of calculating the amount of invalidity benefit payable.

#### ARTICLE 45

##### **Special provisions on aggregation of periods**

The competent institution of a State whose legislation makes the acquisition, retention or recovery of the right to benefits conditional upon the completion of periods of insurance or residence shall, where necessary, apply Article 48 *mutatis mutandis*.

#### ARTICLE 46

##### **Conversion of invalidity benefits into old-age benefits**

Where provided for in the legislation of the State paying invalidity benefit in accordance with this Convention, invalidity benefits shall be converted into old-age benefits under the conditions laid down by the legislation under which they are provided and in accordance with Chapter 5.

## CHAPTER 5

### **Old-age and survivors' pensions**

#### ARTICLE 47

##### **General provisions**

(1) The competent institutions shall determine entitlement to benefit, under the legislations of the States to which the person concerned has been subject, when a

request for award has been submitted, unless the person concerned expressly requests deferment of the award of old-age benefits under the legislation of one or both States.

(2) If at a given moment the person concerned does not satisfy, or no longer satisfies, the conditions laid down by the legislations of the States to which that person has been subject, the institutions applying legislation the conditions of which have been satisfied shall not take into account, when performing the calculation in accordance with points (a) or (b) of Article 49(1), the periods completed under the legislations the conditions of which have not been satisfied, or are no longer satisfied, where this gives rise to a lower amount of benefit.

(3) Paragraph 2 applies *mutatis mutandis* when the person concerned has expressly requested deferment of the award of old-age benefits.

(4) A new calculation shall be performed automatically as and when the conditions to be fulfilled under the other legislations are satisfied or when a person requests the award of an old-age benefit deferred in accordance with paragraph 1, unless the periods completed under the other legislations have already been taken into account by virtue of paragraphs 2 or 3.

## ARTICLE 48

### **Insurance when the risk materialises**

Where the legislation or specific scheme of a State makes the acquisition, retention or recovery of the right to benefits conditional upon the person concerned being insured at the time of the materialisation of the risk, this condition shall be regarded as having been satisfied if that person has been previously insured under the legislation or specific scheme of that State and is, at the time of the materialisation of the risk, insured under the legislation of the other State for the same risk or, failing that, if a benefit is due under the legislation of the other State for the same risk. The latter condition shall, however, be deemed to be fulfilled in the cases referred to in Article 54.

## ARTICLE 49

### **Award of benefits**

(1) The competent institution shall calculate the amount of the benefit that would be due:

- (a) under the legislation it applies, only where the conditions for entitlement to benefits have been satisfied exclusively under national law (independent benefit);

- (b) by calculating a theoretical amount and subsequently an actual amount (pro rata benefit), as follows:
  - (i) the theoretical amount of the benefit is equal to the benefit which the person concerned could claim if all the periods of insurance and/or of residence which have been completed under the legislation of the other State had been completed under the legislation it applies on the date of the award of the benefit. If, under this legislation, the amount does not depend on the duration of the periods completed, that amount shall be regarded as being the theoretical amount;
  - (ii) the competent institution shall then establish the actual amount of the pro rata benefit by applying to the theoretical amount the ratio between the duration of the periods completed before materialisation of the risk under the legislation it applies and the total duration of the periods completed before materialisation of the risk under the legislations of both States concerned.
- (2) Where appropriate, the competent institution shall apply, to the amount calculated in accordance with points (a) and (b) of paragraph 1, all the rules relating to reduction, suspension or withdrawal, under the legislation it applies, within the limits provided for by Articles 50 to 52.
- (3) The person concerned shall be entitled to receive from the competent institution of each State the higher of the amounts calculated in accordance with points (a) and (b) of paragraph 1.
- (4) Where the calculation pursuant to point (a) of paragraph 1 in one State invariably results in the independent benefit being equal to or higher than the pro rata benefit, calculated in accordance with point (b) of paragraph 1, the competent institution shall waive the pro rata calculation, provided that:
  - (a) such a situation is set out in Part 1 of Annex 3;
  - (b) no legislation containing rules against overlapping, as referred to in Articles 50 and 52, is applicable unless the conditions laid down in Article 52(2) are fulfilled; and
  - (c) Article 54 is not applicable in relation to periods completed under the legislation of the other State in the specific circumstances of the case.
- (5) Notwithstanding paragraphs 1, 2 and 3, the pro rata calculation shall not apply to schemes providing benefits in respect of which periods of time are of no relevance to the calculation, subject to such schemes being listed in Part 2 of Annex 3. In such cases, the person concerned shall be entitled to the benefit calculated in accordance with the legislation of the State concerned.

## ARTICLE 50

### **Rules to prevent overlapping**

- (1) Any overlapping of old-age and survivors' benefits calculated or provided on the basis of periods of insurance or residence completed by the same person shall be considered to be overlapping of benefits of the same kind.
- (2) Overlapping of benefits which cannot be considered to be of the same kind within the meaning of paragraph 1 shall be considered to be overlapping of benefits of a different kind.
- (3) The following provisions shall be applicable for the purposes of rules to prevent overlapping laid down by the legislation of a State in the case of overlapping of a benefit in respect of old-age or survivors with a benefit of the same kind or a benefit of a different kind or with other income:
  - (a) the competent institution shall take into account the benefits or incomes acquired in the other State only where the legislation it applies provides for benefits or income acquired abroad to be taken into account;
  - (b) the competent institution shall take into account the amount of benefits to be paid by the other State before deduction of tax, social security contributions and other individual levies or deductions, unless the legislation it applies provides for the application of rules to prevent overlapping after such deductions, under the conditions and the procedures laid down in Annex 1;
  - (c) the competent institution shall not take into account the amount of benefits acquired under the legislation of the other State on the basis of voluntary insurance or continued optional insurance;
  - (d) if a State applies rules to prevent overlapping because the person concerned receives benefits of the same or of a different kind under the legislation of the other State or income acquired in the other State, the benefit due may be reduced solely by the amount of such benefits or such income.

## ARTICLE 51

### **Overlapping of benefits of the same kind**

- (1) Where benefits of the same kind due under the legislation of both States overlap, the rules to prevent overlapping laid down by the legislation of either State shall not be applicable to a pro rata benefit.

(2) The rules to prevent overlapping shall apply to an independent benefit only if the benefit concerned is:

- (a) a benefit the amount of which does not depend on the duration of periods of insurance or residence; or
- (b) a benefit the amount of which is determined on the basis of a credited period deemed to have been completed between the date on which the risk materialised and a later date, overlapping with:
  - (i) a benefit of the same type, except where an agreement has been concluded between the States to avoid the same credited period being taken into account more than once; or
  - (ii) a benefit referred to in point (a).

## ARTICLE 52

### **Overlapping of benefits of a different kind**

(1) If the receipt of benefits of a different kind or other income requires the application of the rules to prevent overlapping provided for by the legislation of the States concerned regarding:

- (a) two or more independent benefits, the competent institutions shall divide the amounts of the benefit or benefits or other income, as they have been taken into account, by the number of benefits subject to the said rules;

however, the application of this subparagraph cannot deprive the person concerned of their status as a pensioner for the purposes of the other chapters of this Title under the conditions and the procedures laid down in Annex 1;

- (b) one or more pro rata benefits, the competent institutions shall take into account the benefit or benefits and/or other income and all the elements stipulated for applying the rules to prevent overlapping as a function of the ratio between the periods of insurance or residence established for the calculation referred to in point (b)(ii) of Article 49(1);
- (c) one or more independent benefits and one or more pro rata benefits, the competent institutions shall apply *mutatis mutandis* point (a) as regards independent benefits and point (b) as regards pro rata benefits.

(2) The competent institution shall not apply the division stipulated in respect of independent benefits, if the legislation it applies provides for account to be taken of benefits of a different kind or other income and all other elements for calculating part of their amount determined as a function of the ratio between periods of insurance or residence referred to in point (b)(ii) of Article 49(1).



(3) Paragraphs 1 and 2 shall apply *mutatis mutandis* where the legislation of either or both States provides that a right to a benefit cannot be acquired in the case where the person concerned is in receipt of a benefit of a different kind, payable under the legislation of the other State, or of other income.

## ARTICLE 53

### **Additional provisions for the calculation of benefits**

(1) For the calculation of the theoretical and pro rata amounts referred to in point (b) of Article 49(1), the following rules shall apply:

- (a) where the total length of the periods of insurance and/or residence completed before the risk materialised under the legislations of both States is longer than the maximum period required by the legislation of a State for receipt of full benefit, the competent institution of that State shall take into account this maximum period instead of the total length of the periods completed; this method of calculation shall not result in the imposition on that institution of the cost of a benefit greater than the full benefit provided for by the legislation it applies. This provision shall not apply to benefits the amount of which does not depend on the length of insurance;
- (b) the procedure for taking into account overlapping periods is laid down in Annex 1;
- (c) if the legislation of a State provides that the benefits are to be calculated on the basis of incomes, contributions, bases of contributions, increases, earnings, other amounts or a combination of more than one of them (average, proportional, fixed or credited), the competent institution shall:
  - (i) determine the basis for calculation of the benefits in accordance only with periods of insurance completed under the legislation it applies;
  - (ii) use, in order to determine the amount to be calculated in accordance with the periods of insurance and/or residence completed under the legislation of the other State, the same elements determined or recorded for the periods of insurance completed under the legislation it applies;

where necessary in accordance with the procedures laid down in Annex 4 for the State concerned;

- (d) in the event that point (c) is not applicable because the legislation of a State provides for the benefit to be calculated on the basis of elements other than periods of insurance and/or residence which are not linked to

time, the competent institution shall take into account, in respect of each period of insurance and/or residence completed under the legislation of the other State, the amount of the capital accrued, the capital which is considered as having been accrued or any other element for the calculation under the legislation it administers divided by the corresponding units of periods in the pension scheme concerned.

(2) The provisions of the legislation of a State concerning the revalorisation of the elements taken into account for the calculation of benefits shall apply, as appropriate, to the elements to be taken into account by the competent institution of that State, in accordance with paragraph 1, in respect of the periods of insurance and/or residence completed under the legislation of the other State.

## ARTICLE 54

### **Periods of insurance or residence of less than one year**

(1) Notwithstanding point (b) of Article 49(1), the institution of either State shall not be required to provide benefits in respect of periods completed under the legislation it applies which are taken into account when the risk materialises, if:

- (a) the duration of the said periods is less than one year, and
- (b) taking only these periods into account no right to benefit is acquired under that legislation.

For the purposes of this Article, ‘periods’ shall mean all periods of insurance, employment, self-employment or residence which either qualify for, or directly increase, the benefit concerned.

(2) The competent institution of each of the States concerned shall take into account the periods referred to in paragraph 1, for the purposes of point (b)(i) of Article 49(1).

(3) This Article shall not apply to schemes listed in Part 2 of Annex 3.

## ARTICLE 55

### **Recalculation and revaluation of benefits**

(1) If the method for determining benefits or the rules for calculating benefits are altered under the legislation of a State, or if the personal situation of the person concerned undergoes a relevant change which, under that legislation, would lead to an adjustment of the amount of the benefit, a recalculation shall be carried out in accordance with Article 49.

(2) On the other hand, if, by reason of an increase in the cost of living or changes in the level of income or other grounds for adjustment, the benefits of the State concerned are altered by a percentage or fixed amount, such percentage or fixed amount shall be applied directly to the benefits determined in accordance with Article 49, without the need for a recalculation.

## CHAPTER 6

### **Unemployment benefits**

#### ARTICLE 56

##### **Special rules on aggregation of periods of insurance, employment or self-employment**

(1) The competent institution of a State whose legislation makes the acquisition, retention, recovery or duration of the right to benefits conditional upon the completion of either periods of insurance, employment or self-employment shall, to the extent necessary, take into account periods of insurance, employment or self-employment completed under the legislation of the other State as though they were completed under the legislation it applies.

However, when the applicable legislation makes the right to benefits conditional on the completion of periods of insurance, the periods of employment or self-employment completed under the legislation of the other State shall not be taken into account unless such periods would have been considered to be periods of insurance had they been completed in accordance with the applicable legislation.

(2) The application of paragraph 1 of this Article shall be conditional on the person concerned having the most recently completed, in accordance with the legislation under which the benefits are claimed:

- (a) periods of insurance, if that legislation requires periods of insurance,
- (b) periods of employment, if that legislation requires periods of employment, or
- (c) periods of self-employment, if that legislation requires periods of self-employment.

#### ARTICLE 57

##### **Calculation of unemployment benefits**

(1) Where the calculation of unemployment benefits is based on the amount of the previous salary or professional income of the person concerned, the competent State

shall take into account the salary or professional income received by the person concerned based exclusively on their last activity as an employed or self-employed person under the legislation of the competent State.

(2) Where the legislation applied by the competent State provides for a specific reference period for the determination of the salary or professional income used to calculate the amount of benefit, and the person concerned was subject to the legislation of the other State for all or part of that reference period, the competent State shall only take into account the salary or professional income received during their last activity as an employed or self-employed person under that legislation.

#### TITLE IV

### MISCELLANEOUS PROVISIONS

#### ARTICLE 58

##### **Cooperation**

(1) The competent authorities of the States shall notify the Joint Administrative Committee of any changes to their legislation concerning the branches of social security covered by Article 6(1) which are relevant to or may affect the implementation of this Convention.

(2) The competent authorities of the States shall communicate to each other measures taken to implement this Convention that are not notified under paragraph 1.

(3) For the purposes of this Convention, the authorities and institutions of the States shall lend one another their good offices and act as though implementing their own legislation. The administrative assistance given by those authorities and institutions shall, as a rule, be free of charge. However, the Joint Administrative Committee shall establish the nature of reimbursable expenses and the limits above which their reimbursement is due.

(4) The authorities and institutions of the States may, for the purposes of this Convention, communicate directly with one another and with the persons involved or their representatives.

(5) The institutions and persons covered by this Convention shall have a duty of mutual information and cooperation to ensure the correct implementation of this Convention.

The institutions, in accordance with the principle of good administration, shall respond to all queries within a reasonable period of time and shall in this connection provide the persons concerned with any information required for exercising the rights conferred on them by this Convention.

The persons concerned must inform the institutions of the competent State and of the State of residence as soon as possible of any change in their personal or family situation which affects their right to benefits under this Convention.

(6) Failure to respect the obligation of information referred to in the third subparagraph of paragraph 5 may result in the application of proportionate measures in accordance with national law. Nevertheless, these measures shall be equivalent to those applicable to similar situations under domestic law and shall not make it impossible or excessively difficult in practice for claimants to exercise the rights conferred on them by this Convention.

(7) The authorities, institutions and tribunals of one State may not reject applications or other documents submitted to them on the grounds that they are written in an official language of the States.

## ARTICLE 59

### **Preventing and combatting fraud and error**

(1) The States, through their competent authorities, undertake to prevent and combat fraud and error in respect of contributions or benefits due under this Convention.

(2) For the purpose of preventing and combatting fraud and error the liaison bodies of the States may share information, which may include the dates of death of the beneficiaries of a pension or benefit paid in accordance with the legislation of one State and who reside in the territory of the other State.

## ARTICLE 60

### **Protection of personal data**

(1) Any personal data received under this Convention shall be protected as such in accordance with the receiving State's domestic law.

(2) Any personal data received under this Convention shall be used solely for the purposes of this Convention and in accordance with the domestic law of the receiving State.

(3) Where one of the States wishes to use such personal data for other purposes, it shall obtain, in conformity with the domestic law of the State which provided the personal data, the prior written consent of the competent authorities or competent institutions. Such use shall be subject to any restrictions laid down by that authority or institution.

(4) Where this Convention provides for the transfer of personal data, such transfer shall take place in accordance with the transferring State's rules on international transfers of personal data. Where needed, each State will make best efforts, while respecting the transferring State's rules on international transfers of personal data, to establish safeguards necessary for the transfer of personal data.

## ARTICLE 61

### **Confidentiality**

(1) Any information communicated pursuant to this Convention shall be covered by an obligation of professional secrecy and shall enjoy the protections available to similar information subject to those obligations under the domestic law of the receiving State, unless the State which provided the information gives, in conformity with its domestic law, its consent to the disclosure of such information.

(2) Any information subject to an obligation of professional secrecy that is received under this Convention shall be used solely for the purposes of this Convention and in accordance with the domestic law of the receiving State.

(3) Where one of the States wishes to use such information for other purposes, it shall obtain, in conformity with the domestic law of the State which provided the information, the prior written consent of the competent authorities or competent institutions. Such use shall be subject to any restrictions laid down by that authority or institution.

## ARTICLE 62

### **Data processing**

(1) The States shall progressively use new technologies for the exchange, access and processing of the data required to apply this Convention.

(2) Each State shall be responsible for managing its own part of any system of electronic exchange of information.

(3) An electronic document sent or issued by an institution in conformity with this Convention may not be rejected by any authority or institution of the other State on the grounds that it was received by electronic means, once the receiving institution has declared that it can receive electronic documents. Reproduction and recording of such documents shall be presumed to be a correct and accurate reproduction of the original document or representation of the information it relates to, unless there is proof to the contrary.

(4) An electronic document shall be considered valid if the computer system on which the document is recorded contains the safeguards necessary in order to prevent

any alteration, disclosure or unauthorised access to the recording. It shall at any time be possible to reproduce the recorded information in an immediately readable form.

#### ARTICLE 63

##### **Exemptions**

(1) Any exemption from or reduction of taxes, stamp duty, notarial or registration fees provided for under the legislation of one State in respect of certificates or documents required to be produced in application of the legislation of that State shall be extended to similar certificates or documents required to be produced in application of the legislation of the other State or of this Convention.

(2) All statements, documents and certificates of any kind whatsoever required to be produced in application of this Convention shall be exempt from authentication by diplomatic or consular authorities.

#### ARTICLE 64

##### **Claims, declarations or appeals**

Any claim, declaration or appeal which should have been submitted, in application of the legislation of one State, within a specified period to an authority, institution or tribunal of that State shall be admissible if it is submitted within the same period to a corresponding authority, institution or tribunal of the other State. In such a case, the authority, institution or tribunal receiving the claim, declaration or appeal shall forward it without delay to the competent authority, institution or tribunal of the former State either directly or through the competent authorities of the State concerned. The date on which such claims, declarations or appeals were submitted to the authority, institution or tribunal of the second State shall be considered as the date of their submission to the competent authority, institution or tribunal.

#### ARTICLE 65

##### **Medical examinations**

(1) Medical examinations provided for by the legislation of one State may be carried out, at the request of the competent institution, in the territory of the other State, by the institution of the place of stay or residence of the person entitled to benefits, under the conditions laid down in Annex 1 or agreed between the competent authorities of the States.

(2) Medical examinations carried out under the conditions laid down in paragraph 1 shall be considered as having been carried out in the territory of the competent State.

## ARTICLE 66

### **Collection of contributions and recovery of benefits**

- (1) Collection of contributions due to a State and recovery of benefits provided by a State but not due may be effected in the other State in accordance with the procedures and with the guarantees and privileges applicable to the collection of contributions due to the corresponding institution of the latter State and the recovery of benefits provided by it but not due.
- (2) Enforceable decisions of the judicial and administrative authorities relating to the collection of contributions, interest and any other charges or to the recovery of benefits provided but not due under the legislation of one State shall be recognised and enforced at the request of the other State within the limits and in accordance with the laws and procedures applicable to similar decisions of the latter State concerning the collection of contributions and the recovery of benefits. Such decisions shall be declared enforceable in that State insofar as the legislation and any other procedures of that State so require.
- (3) Claims of an institution of one State shall in enforcement, bankruptcy or settlement proceedings in the other State enjoy the same privileges as the legislation of the latter accords to claims of the same kind.
- (4) The procedure for implementing this Article, including costs reimbursement, shall be governed by Annex 1 or, where necessary and as a complementary measure, by means of agreements between the States.

## ARTICLE 67

### **Rights of institutions**

- (1) If a person receives benefits under the legislation of a State in respect of an injury resulting from events occurring in the other State, any rights of the institution responsible for providing benefits against a third party liable to provide compensation for the injury shall be governed by the following rules:
  - (a) where the institution responsible for providing benefits is, under the legislation it applies, subrogated to the rights which the beneficiary has against the third party, such subrogation shall be recognised by each State;
  - (b) where the institution responsible for providing benefits has a direct right against the third party, each State shall recognise such rights.
- (2) If a person receives benefits under the legislation of one State in respect of an injury resulting from events occurring in the other State, the said legislation which determines the cases in which the civil liability of employers or of their employees



is to be excluded shall apply with regard to the said person or to the competent institution.

Paragraph 1 shall also apply to any rights of the institution responsible for providing benefits against employers or their employees in cases where their liability is not excluded.

(3) Where, in accordance with Articles 35(3) or 41(2), the States or their competent authorities have concluded an agreement to waive reimbursement between institutions under their jurisdiction, or, where reimbursement does not depend on the amount of benefits actually provided, any rights arising against a liable third party shall be governed by the following rules:

- (a) where the institution of the State of residence or stay grants benefits to a person in respect of an injury sustained in its territory, that institution, in accordance with the provisions of the legislation it applies, shall exercise the right to subrogation or direct action against the third party liable to provide compensation for the injury;
- (b) for the application of point (a):
  - (i) the person receiving benefits shall be deemed to be insured with the institution of the place of residence or stay, and
  - (ii) that institution shall be deemed to be the institution responsible for providing benefits;
- (c) paragraphs 1 and 2 shall remain applicable in respect of any benefits not covered by the waiver agreement or a reimbursement which does not depend on the amount of benefits actually provided.

## ARTICLE 68

### **Implementation of legislation**

Special provisions for implementing the legislation of a State are referred to in Annex 4.

## ARTICLE 69

### **Establishment and role of the Joint Administrative Committee**

(1) The competent authorities of the States shall establish a joint committee to be called the Joint Administrative Committee. The Joint Administrative Committee shall comprise representatives of each State. It shall be co-chaired by a representative of each State.

- (2) The Joint Administrative Committee may:
- (a) monitor and review the interpretation, implementation and application of this Convention and make recommendations in respect thereof;
  - (b) agree administrative arrangements necessary for the application of this Convention;
  - (c) provide a forum for the States to exchange information, and discuss best practices and technical issues;
  - (d) provide a forum for the States to seek to resolve disputes in accordance with Article 70(2).
- (3) The Joint Administrative Committee may adopt decisions in respect of all matters where this Convention so provides.
- (4) The Joint Administrative Committee may, when carrying out its functions, consider guidance issued in relation to other international social security agreements by which either of the States is bound.
- (5) The Joint Administrative Committee shall meet at the request of either State, and, in any event, at least once a year unless the co-chairs decide otherwise. The co-chairs shall set the Joint Administrative Committee's meeting schedule and agenda by mutual consent.
- (6) The co-chairs may set rules of procedure for the Joint Administrative Committee.

## ARTICLE 70

### **Dispute resolution**

- (1) The States shall make all reasonable efforts to resolve between them all disputes concerning this Convention.
- (2) If a dispute cannot be resolved in accordance with paragraph 1 it shall be submitted for discussion at the Joint Administrative Committee in accordance with Article 69(2)(d).
- (3) If a dispute cannot be resolved following discussion at the Joint Administrative Committee in accordance with paragraph 2, it shall be submitted, at the request of either State, to an arbitration tribunal which shall be constituted in the following manner:
- (a) each State shall appoint an arbitrator within one month from receipt of the demand for arbitration. The two arbitrators shall appoint a third

arbitrator, who shall not be a national of either State, within two months from the date on which the State which was the last to appoint its arbitrator has notified the other State of the appointment;

- (b) if within the prescribed period either State should fail to appoint an arbitrator, the other State may request the President of the International Court of Justice or, in the event of their having the nationality of one of the States, the Vice-President or next senior judge of that Court not having the nationality of either State, to make the appointment. A similar procedure shall be adopted at the request of either State if the two arbitrators cannot agree on the appointment of the third arbitrator.

(4) The arbitration tribunal shall decide the matter by majority vote and this decision shall be binding on both States. The arbitration tribunal shall determine its own rules of procedure, and its costs shall be agreed with both States and borne equally by them.

#### ARTICLE 71

##### **Annexes**

The Annexes (including any appendices) shall form integral parts of this Convention.

#### TITLE V

### **TRANSITIONAL AND FINAL PROVISIONS**

#### ARTICLE 72

##### **Entry into force**

This Convention shall enter into force on the first day of the third month following the date of receipt of the later of the States' written notifications that they have complied with all statutory and constitutional requirements for the entry into force of this Convention.

#### ARTICLE 73

##### **Provisional application**

(1) Pending its entry into force, the States may agree to provisionally apply this Convention by an exchange of notes through diplomatic channels. Provisional application shall take effect on the day following the later of the States' notes.

(2) Either State may terminate the provisional application of this Convention by giving written notice to the other State. Such termination shall take effect on the first day of the second month following notification.

(3) Where this Convention is provisionally applied, the term “entry into force of this Convention” in any provisionally applied provisions shall be deemed to refer to the date that such provisional application takes effect.

#### ARTICLE 74

##### **Termination of this Convention**

Subject to Article 75, this Convention shall remain in force until the expiration of 12 months from the date on which either State receives from the other written notice through diplomatic channels of the intention of the other State to terminate this Convention.

#### ARTICLE 75

##### **Post-termination arrangements**

(1) In the event that this Convention is terminated in accordance with Article 74, rights to cash benefits acquired by a person in accordance with the provisions of this Convention shall be maintained, if:

- (a) at the date of termination, they are in receipt of those cash benefits;
- (b) at or prior to the date of termination, they have lodged a claim for, and would be entitled to receive, those cash benefits; or
- (c) the only reason they are not entitled to receive those cash benefits is that they have not lodged a claim for them at or prior to the date of termination.

(2) Prior to the expiry of the period referred to in Article 74, and without prejudice to the protections in paragraph 1, the States shall commence discussions on appropriate consequential and transitional arrangements for the protection of persons affected by the termination of this Convention.

#### ARTICLE 76

##### **Transitional provision**

(1) No provision of this Convention shall confer any right to receive a benefit for any period before the date of entry into force of this Convention.

(2) The following shall also be taken into consideration in determining the right to benefits under this Convention:

- (i) any period of insurance, and, where appropriate, any period of employment, self-employment or residence completed under the legislation of the States before the date of entry into force of this Convention; and
- (ii) insured events occurring before the date of entry into force of this Convention.

(3) This Convention shall not apply to rights extinguished by the payment of a lump-sum payment.

## ARTICLE 77

### **Relationship with the 1968 Convention**

(1) The 1968 Convention between the United Kingdom of Great Britain and Northern Ireland and Switzerland (the “1968 Convention”) shall continue to apply to the Isle of Man, Jersey, Guernsey, Alderney, Herm and Jethou.

(2) The 1968 Convention shall, from the date of entry into force of this Convention, cease to apply to England, Scotland, Wales and Northern Ireland, subject to paragraph 3.

(3) The provisions of the 1968 Convention shall continue to apply in relation to:

- (a) any award of benefit, pension or allowance made prior to the date in paragraph 2;
- (b) any claim to a benefit, pension or allowance made but not determined at the date in paragraph 2;
- (c) any claim to a benefit, pension or allowance made after the date in paragraph 2 but only where that claim relates to entitlement to such benefit, pension or allowance for a period prior to that date.

In witness whereof the undersigned, duly authorised by their respective Governments, have signed this Convention.

Done in duplicate at London on 9<sup>th</sup> September 2021 in the English and German languages, each text being equally authentic.

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

**NIGEL ADAMS**

**For the Swiss Confederation:**

**ALAIN Berset**

## **ANNEX 1: IMPLEMENTING PART**

### **TITLE I: GENERAL PROVISIONS**

#### **CHAPTER 1**

##### **ARTICLE 1**

##### **Definitions**

For the purposes of this Annex the following definitions, in addition to those contained in Article 1 of this Convention, apply:

- (a) “Administrative arrangements” means the arrangements necessary for the application of this Convention agreed from time to time by the Joint Administrative Committee under Article 69(2)(b) of this Convention;
- (b) “document” means a set of data, irrespective of the medium used, structured in such a way that it can be exchanged electronically and which must be communicated in order to enable the operation of this Convention;
- (c) “Joint Administrative Committee” means the committee established under Article 69 of this Convention;
- (d) “transmission by electronic means” means the transmission of data using electronic equipment for the processing (including digital compression) of data and employing wires, radio transmission, optical technologies or any other electromagnetic means.

#### **CHAPTER 2**

### **PROVISIONS CONCERNING COOPERATION AND EXCHANGES OF DATA**

##### **ARTICLE 2**

##### **Scope and rules for exchanges between institutions**

- (1) For the purposes of this Annex, exchanges between authorities of the States and institutions and persons covered by this Convention shall be based on the principles of public service, efficiency, active assistance, rapid delivery and accessibility, including e-accessibility, in particular for the disabled and the elderly.
- (2) The institutions shall without delay provide or exchange all data necessary for establishing and determining the rights and obligations of persons to whom this

Convention applies. Such data shall be transferred between the States directly by the institutions themselves or indirectly via the liaison bodies.

(3) Where a person has mistakenly submitted information, documents or claims to an institution in the territory of a State other than that in which the institution designated in accordance with this Annex is situated, the information, documents or claims shall be resubmitted without delay by the former institution to the institution of the other State designated in accordance with this Annex, indicating the date on which they were initially submitted. That date shall be binding on the latter institution. The institutions of the States shall not, however, be held liable, or be deemed to have taken a decision by virtue of their failure to act as a result of the late transmission of information, documents or claims by States' institutions.

(4) Where data are transferred indirectly via the liaison body of the State of destination, time limits for responding to claims shall start from the date when that liaison body received the claim, as if it had been received by the institution in that State.

### ARTICLE 3

#### **Scope and rules for exchanges between the persons concerned and institutions**

(1) The States shall ensure that the necessary information is made available to the persons concerned in order to inform them of the provisions introduced by this Convention and this Annex to enable them to assert their rights. They shall also provide for user-friendly services.

(2) Persons to whom this Convention applies shall be required to forward to the relevant institution the information, documents or supporting evidence necessary to establish their situation or that of their families, to establish or maintain their rights and obligations and to determine the applicable legislation and their obligations under it.

(3) To the extent necessary for the application of this Convention and this Annex, the relevant institutions shall forward the information and issue the documents to the persons concerned without delay and in all cases within any time limits specified under the legislation of the State in question.

(4) The relevant institution shall notify the claimant residing or staying in the other State of its decision directly or through the liaison body of the State of residence or stay. When refusing the benefits, it shall also indicate the reasons for refusal, the remedies and periods allowed for appeals. A copy of this decision shall be sent to other involved institutions.



## ARTICLE 4

### **Forms, documents and methods of exchanging data**

- (1) Subject to Appendix 1, the structure, content and format of forms and documents issued on behalf of the States for the purposes of implementing this Convention shall be agreed by the States through the Joint Administrative Committee.
- (2) The transmission of data between the institutions or the liaison bodies may, subject to the approval of the States through the Joint Administrative Committee, be carried out by way of electronic exchange. To the extent the forms and documents referred to in paragraph 1 are transmitted by electronic exchange, they shall respect the rules applicable to that system.
- (3) Where the transmission of data between institutions or the liaison bodies is not carried out by way of electronic exchange, the relevant institutions and liaison bodies shall use the arrangements appropriate to each case, and favour the use of electronic means as far as possible.
- (4) In their communications with the persons concerned, the relevant institutions shall use the arrangements appropriate to each case, and favour the use of electronic means as far as possible.

## ARTICLE 5

### **Legal value of documents and supporting evidence issued in the other State**

- (1) Documents issued by the institution of one State and showing the position of a person for the purposes of the application of this Convention and this Annex, and supporting evidence on the basis of which the documents have been issued, shall be accepted by the institutions of the other State for as long as they have not been withdrawn or declared to be invalid by the issuing State.
- (2) Where there is doubt about the validity of a document or the accuracy of the facts on which the particulars contained therein are based, the institution of the State that receives the document shall ask the issuing institution for the necessary clarification and, where appropriate, the withdrawal of that document. The issuing institution shall reconsider the grounds for issuing the document and, if necessary, withdraw it.
- (3) Pursuant to paragraph 2, where there is doubt about the information provided by the persons concerned, the validity of a document or supporting evidence or the accuracy of the facts on which the particulars contained therein are based, the institution of the place of stay or residence shall, insofar as this is possible, at the request of the competent institution, proceed to the necessary verification of this information or document.

(4) Where no agreement is reached between the institutions concerned, the matter may be referred to the Joint Administrative Committee by the competent authorities of either State.

## ARTICLE 6

### **Provisional application of legislation, granting of benefits and calculation of benefits and contributions**

(1) Unless otherwise provided for in this Annex, where there is a difference of views between the institutions or authorities of the States concerning the determination of the applicable legislation, the person concerned shall be made provisionally subject to the legislation of one State, the order of priority being determined as follows:

- (a) the legislation of the State where the person actually pursues their employment or self-employment, if the employment or self-employment is pursued in only one of the States;
- (b) the legislation of the State of residence if the person concerned pursues employment or self-employment in both States, or if the person concerned is neither employed nor self-employed;
- (c) in all other cases, the legislation of the State the application of which was first requested if the person pursues an activity, or activities, in both States.

(2) Where there is a difference of views between the institutions or authorities of the States about which institution should provide the benefits in cash or in kind, the person concerned who could claim benefits if there was no dispute shall be entitled, on a provisional basis, to the benefits provided for by the legislation applied by the institution of that person's place of residence or, if that person does not reside on the territory of one of the States concerned, to the benefits provided for by the legislation applied by the institution to which the request was first submitted.

(3) Where no agreement is reached between the institutions or authorities concerned, the matter may be referred to the Joint Administrative Committee by the competent authorities of either State.

(4) Where it is established either that the applicable legislation is not that of the State of provisional membership, or the institution which granted the benefits on a provisional basis was not the competent institution, the institution identified as being competent shall be deemed retroactively to have been so, as if that difference of views had not existed, at the latest from either the date of provisional membership or of the first provisional granting of the benefits concerned.

(5) If necessary, the institution identified as being competent and the institution which provisionally paid the cash benefits or provisionally received contributions shall settle the financial situation of the person concerned as regards contributions and cash benefits paid provisionally, where appropriate, in accordance with Title IV, Chapter 2 of this Annex.

(6) Benefits in kind granted provisionally by an institution in accordance with paragraph 2 shall be reimbursed by the competent institution in accordance with Title IV of this Annex.

(7) Unless otherwise provided for in this Annex, where a person is eligible for a benefit, or is liable to pay a contribution in accordance with this Convention, and the competent institution does not have all the information concerning the situation in the other State which is necessary to calculate definitively the amount of that benefit or contribution, that institution may award this benefit or calculate this contribution on a provisional basis, if such a calculation is possible on the basis of the information at the disposal of that institution.

(8) The benefit or the contribution concerned shall be recalculated once all the necessary supporting evidence or documents are provided to the institution concerned.

## ARTICLE 7

### **Periods of insurance or residence**

(1) Where the only reason that a period of insurance, employment, self-employment or residence would not be considered to be such a period for the purposes of this Convention is the fact that a person does not fall within the scope of this Convention, as applied by Switzerland under Article 2(1) of this Convention, by virtue of their nationality, that period will be considered as such for the application of this Convention by the United Kingdom in relation to benefits other than benefits in kind.

(2) This Article also applies to such periods completed by members of the family of a person who does not fall within the scope of this Convention, as applied by Switzerland under Article 2(1) of this Convention, by virtue of their nationality.

## CHAPTER 3

### **OTHER GENERAL PROVISIONS FOR THE APPLICATION OF THIS CONVENTION**

#### ARTICLE 8

##### **Other procedures between authorities and institutions**

- (1) The competent authorities of the States may agree procedures other than those provided for by this Annex, provided that such procedures do not adversely affect the rights or obligations of the persons concerned.
- (2) Any agreements concluded to this end shall be agreed by the States through the Joint Administrative Committee.

#### ARTICLE 9

##### **Prevention of overlapping of benefits**

Notwithstanding other provisions in this Convention, when benefits due under the legislation of the States are mutually reduced, suspended or withdrawn, any amounts that would not be paid in the event of strict application of the rules concerning reduction, suspension or withdrawal laid down by the legislation of the State concerned shall be divided by the number of benefits subjected to reduction, suspension or withdrawal.

#### ARTICLE 10

##### **Elements for determining residence**

- (1) Where there is a difference of views between the institutions of the States about the determination of the residence of a person to whom this Convention applies, these institutions shall establish by common agreement the centre of interests of the person concerned, based on an overall assessment of all available information relating to relevant facts, which may include, as appropriate:
  - (a) the duration and continuity of presence in the territory of the States;
  - (b) that person's situation, including:
    - (i) the nature and the specific characteristics of any activity pursued, in particular the place where such activity is habitually pursued, the stability of the activity, and the duration of any work contract;
    - (ii) that person's family status and family ties;

- (iii) the exercise of any non-remunerated activity;
  - (iv) in the case of students, the source of that student's income;
  - (v) that person's housing situation, in particular how permanent it is;
  - (vi) the State in which that person is deemed to reside for taxation purposes.
- (2) Where the consideration of the various criteria based on relevant facts as set out in paragraph 1 does not lead to agreement between the institutions concerned, the person's intention, as it appears from such facts and circumstances, especially the reasons that led the person to move, shall be considered to be decisive for establishing that person's actual place of residence.
- (3) The centre of interest of a student who goes to the other State to pursue a full-time course of study shall not be considered as being in the State of study for the entire duration of the course of study in that State, without prejudice to the possibility of rebutting this presumption.
- (4) Paragraph 3 applies *mutatis mutandis* to the family members of the student.

## ARTICLE 11

### **Aggregation of periods**

- (1) For the purposes of applying Article 10 of this Convention the competent institution shall contact the institutions of the other State to whose legislation the person concerned has also been subject in order to determine all the periods completed under their legislation.
- (2) The respective periods of insurance, employment, self-employment or residence completed under the legislation of a State shall be added to those completed under the legislation of the other State, insofar as necessary for the purposes of applying Article 10 of this Convention, provided that these periods do not overlap.
- (3) Where a period of insurance or residence which is completed in accordance with compulsory insurance under the legislation of a State coincides with a period of insurance completed on the basis of voluntary insurance or continued optional insurance under the legislation of the other State, only the period completed on the basis of compulsory insurance shall be taken into account.
- (4) Where a period of insurance or residence other than an equivalent period completed under the legislation of a State coincides with an equivalent period on the basis of the legislation of the other State, only the period other than an equivalent period shall be taken into account.

(5) Any period regarded as equivalent under the legislation of both States shall be taken into account only by the institution of the State to whose legislation the person concerned was last compulsorily subject before that period. In the event that the person concerned was not compulsorily subject to the legislation of either State before that period, the latter shall be taken into account by the institution of the State to whose legislation the person concerned was compulsorily subject for the first time after that period.

(6) In the event that the time in which certain periods of insurance or residence were completed under the legislation of one State cannot be determined precisely, it shall be presumed that these periods do not overlap with periods of insurance or residence completed under the legislation of the other State, and account shall be taken thereof, where advantageous to the person concerned, insofar as they can reasonably be taken into consideration.

## ARTICLE 12

### Rules for conversion of periods

(1) Where periods completed under the legislation of one State are expressed in units different from those provided for by the legislation of the other State, the conversion needed for the purpose of aggregation under Article 10 of this Convention shall be carried out under the following rules:

- (a) the period to be used as the basis for the conversion shall be that communicated by the institution of the State under whose legislation the period was completed;
- (b) in the case of schemes where the periods are expressed in days the conversion from days to other units, and vice versa, as well as between different schemes based on days shall be calculated according to the following table:

Scheme based on	1 day corresponds to	1 week corresponds to	1 month corresponds to	1 quarter corresponds to	Maximum of days in one calendar year
5 days	9 hours	5 days	22 days	66 days	264 days
6 days	8 hours	6 days	26 days	78 days	312 days
7 days	6 hours	7 days	30 days	90 days	360 days

- (c) in the case of schemes where the periods are expressed in units other than days,
  - (i) three months or 13 weeks shall be equivalent to one quarter, and vice versa;

- (ii) one year shall be equivalent to four quarters, 12 months or 52 weeks, and vice versa;
  - (iii) for the conversion of weeks into months, and vice versa, weeks and months shall be converted into days in accordance with the conversion rules for the schemes based on six days in the table in point (b);
  - (d) in the case of periods expressed in fractions, those figures shall be converted into the next smaller integer unit applying the rules laid down in points (b) and (c). Fractions of years shall be converted into months unless the scheme involved is based on quarters;
  - (e) if the conversion under this paragraph results in a fraction of a unit, the next higher integer unit shall be taken as the result of the conversion under this paragraph.
- (2) The application of paragraph 1 shall not have the effect of producing, for the total sum of the periods completed during one calendar year, a total exceeding the number of days indicated in the last column in the table in point (b) of paragraph 1, 52 weeks, 12 months or four quarters.
- If the periods to be converted correspond to the maximum annual amount of periods under the legislation of the State in which they have been completed, the application of paragraph 1 shall not result within one calendar year in periods that are shorter than the possible maximum annual amount of periods provided under the legislation concerned.
- (3) The conversion shall be carried out either in one single operation covering all those periods which were communicated as an aggregate, or for each year, if the periods were communicated on a year-by-year basis.
- (4) Where an institution communicates periods expressed in days, it shall at the same time indicate whether the scheme it administers is based on five days, six days or seven days.

## **TITLE II DETERMINATION OF THE LEGISLATION APPLICABLE**

### **ARTICLE 13**

#### **Details relating to Articles 14 and 15 of this Convention**

- (1) For the purposes of the application of Article 14 (1) of this Convention, a *'person who pursues an activity as an employed person in a State for an employer which normally carries out its activities there and who is sent by that employer to the other State'* shall:

- (a) include a person who is recruited with a view to being sent to the other State, provided that, immediately before the start of that person's employment, the person concerned is already subject to the legislation of the State in which their employer is established;
- (b) have been subject to the legislation of the State in which their employer is established for a prior minimum period of time. The prior minimum period shall be agreed by the Joint Administrative Committee.

(2) For the purposes of the application of Article 14(1) of this Convention, the words 'which normally carries out its activities there' shall refer to an employer that ordinarily performs substantial activities, other than purely internal management activities, in the territory of the State in which it is established, taking account of all criteria characterising the activities carried out by the undertaking in question. The relevant criteria must be suited to the specific characteristics of each employer and the real nature of the activities carried out.

(3) For the purposes of the application of Article 14(2) of this Convention, the words '*who normally pursues an activity as a self-employed person*' shall refer to a person who habitually carries out substantial activities in the territory of the State in which that person is established. In particular, that person must have already pursued their activity for a minimum period of time before the date when they wish to take advantage of the provisions of that Article and, during any period of temporary activity in the other State, must continue to fulfil, in the State where they are established, the requirements for the pursuit of their activity in order to be able to pursue it on their return.

The minimum period of time that person must have already pursued their activity shall be agreed by the Joint Administrative Committee.

(4) For the purposes of the application of Article 14(2) of this Convention, the criterion for determining whether the activity that a self-employed person goes to pursue in the other State is 'similar' to the self-employed activity normally pursued shall be that of the actual nature of the activity, rather than of the designation of employed or self-employed activity that may be given to this activity by the other State.

(5) For the purposes of the application of Article 15 of this Convention, a person who 'normally pursues an activity as an employed person in both States' shall refer to a person who simultaneously, or in alternation, for the same undertaking or employer or for various undertakings or employers, exercises one or more separate activities in both States.

(6) For the purposes of Article 15 of this Convention, an employed flight crew or cabin crew member normally pursuing air passenger or freight services in both States shall be subject to the legislation of the State where the home base, as defined in Article 1 of this Convention, is located.



(7) Marginal activities shall be disregarded for the purposes of determining the applicable legislation under Article 15 of this Convention. Article 15 of this Annex shall apply to all cases under this Article.

(8) For the purposes of the application of Article 15(3) of this Convention, a person who ‘normally pursues an activity as a self-employed person in both States’, shall refer, in particular, to a person who simultaneously or in alternation pursues one or more separate self-employed activities, irrespective of the nature of those activities, in such States.

(9) For the purposes of distinguishing the activities under paragraphs 5 and 8 from the situations described in Article 14(1) of this Convention, the duration of the activity in one or both States (whether it is permanent or of an ad hoc or temporary nature) shall be decisive. For these purposes, an overall assessment shall be made of all the relevant facts including, in particular, in the case of an employed person, the place of work as defined in the employment contract.

(10) For the purposes of the application of Article 15(1) and (3) of this Convention, a ‘substantial part of employed or self-employed activity’ pursued in a State shall mean a quantitatively substantial part of all the activities of the employed or self-employed person pursued there, without this necessarily being the major part of those activities.

(11) To determine whether a substantial part of the activities is pursued in a State, the following indicative criteria shall be taken into account:

- (a) in the case of an employed activity, the working time or the remuneration; and
- (b) in the case of a self-employed activity, the turnover, working time, number of services rendered or income.

In the framework of an overall assessment, a share of less than 25% in respect of the criteria mentioned above shall be an indicator that a substantial part of the activities is not being pursued in the relevant State.

(12) For the purposes of the application of point (b) of Article 15(3) of this Convention, the ‘centre of interest’ of the activities of a self-employed person shall be determined by taking account of all the aspects of that person’s occupational activities, notably the place where the person’s fixed and permanent place of business is located, the habitual nature or the duration of the activities pursued, the number of services rendered, and the intention of the person concerned as revealed by all the circumstances.

(13) For the determination of the applicable legislation under paragraphs 10, 11 and 12, the institutions concerned shall take into account the situation projected for the following 12 calendar months.

## ARTICLE 14

### **Procedures for the application of Article 13(3)(b) and Article 13(4) and Article 14 of this Convention (on the provision of information to the institutions concerned)**

(1) Unless otherwise provided for by Article 15 of this Annex, where a person pursues their activity outside the competent State, the employer or, in the case of a person who does not pursue an activity as an employed person, the person concerned shall inform the competent institution of the State whose legislation is applicable thereof, whenever possible in advance. That institution shall issue the attestation referred to in Article 17(2) of this Annex to the person concerned and shall without delay make information concerning the legislation applicable to that person, pursuant to point (b) of Article 13(3) or Article 14 of this Convention, available to the institution designated by the competent authority of the State in which the activity is pursued.

(2) An employer within the meaning of Article 13(4) of this Convention who has an employee on board a vessel flying the flag of the other State shall inform the competent institution of the State whose legislation is applicable thereof, whenever possible in advance. That institution shall, without delay, make information concerning the legislation applicable to the person concerned, pursuant to Article 13(4) of this Convention, available to the institution designated by the competent authority of the State whose flag the vessel on which the employee is to perform the activity is flying.

## ARTICLE 15

### **Procedure for the application of Article 15 of this Convention**

(1) A person who pursues activities in both States shall inform the institution designated by the competent authority of the State of residence thereof.

(2) The designated institution of the place of residence shall without delay determine the legislation applicable to the person concerned, having regard to Article 15 of this Convention and Article 13 of this Annex. That initial determination shall be provisional. The institution shall inform the designated institutions of each State in which an activity is pursued of its provisional determination.

(3) The provisional determination of the applicable legislation, as provided for in paragraph 2, shall become definitive within two months of the institutions designated by the competent authorities of the State(s) concerned being informed of it, in accordance with paragraph 2, unless the legislation has already been definitively determined on the basis of paragraph 4, or at least one of the institutions concerned informs the institution designated by the competent authority of the State of

residence by the end of this two-month period that it cannot yet accept the determination or that it takes a different view on this.

(4) Where uncertainty about the determination of the applicable legislation requires contacts between the institutions or authorities of both States, at the request of one or more of the institutions designated by the competent authorities of the State(s), or of the competent authorities themselves, the legislation applicable to the person concerned shall be determined by common agreement, having regard to Article 15 of this Convention and the relevant provisions of Article 13 of this Annex.

Where there is a difference of views between the institutions or competent authorities concerned, those bodies shall seek agreement in accordance with the conditions set out above and Article 6 of this Annex shall apply.

(5) The competent institution of the State whose legislation is determined to be applicable either provisionally or definitively shall without delay inform the person concerned.

(6) If the person concerned fails to provide the information referred to in paragraph 1, this Article shall be applied at the initiative of the institution designated by the competent authority of the State of residence as soon as it is appraised of that person's situation, possibly via another institution concerned.

## ARTICLE 16

### **Procedure for the application of Article 17 of this Convention**

A request by the employer or the person concerned for exceptions to Articles 13 to 15 of this Convention shall be submitted, whenever possible in advance, to the competent authority or the body designated by the authority of the State, whose legislation the employee or person concerned requests be applied.

## ARTICLE 17

### **Provision of information to persons concerned and employers**

(1) The competent institution of the State whose legislation becomes applicable pursuant to Title II of this Convention shall inform the person concerned and, where appropriate, their employer(s) of the obligations laid down in that legislation. It shall provide them with the necessary assistance to complete the formalities required by that legislation.

(2) At the request of the person concerned or of the employer, the competent institution of the State whose legislation is applicable pursuant to Title II of this Convention shall provide an attestation that such legislation is applicable and shall indicate, where appropriate, until what date and under what conditions.

## ARTICLE 18

### **Cooperation between institutions**

- (1) The relevant institutions shall communicate to the competent institution of the State whose legislation is applicable to a person pursuant to Title II of this Convention the necessary information required to establish the date on which that legislation becomes applicable and the contributions which that person and his or her employer(s) are liable to pay under that legislation.
- (2) The competent institution of the State whose legislation becomes applicable to a person pursuant to Title II of this Convention shall make the information indicating the date on which the application of that legislation takes effect available to the institution designated by the competent authority of the State to whose legislation that person was last subject.

## ARTICLE 19

### **Cooperation in case of doubts about the validity of issued documents concerning the applicable legislation**

Where there is doubt about the validity of a document showing the position of the person for the purposes of the applicable legislation or the accuracy of the facts on which the document is based, the institution of the State that receives the document shall ask the issuing institution for the necessary clarification and, where appropriate, the withdrawal or rectification of that document. The requesting institution shall substantiate its request and provide the relevant supporting documentation that gave rise to the request.

## **TITLE III SPECIAL PROVISIONS CONCERNING THE VARIOUS CATEGORIES OF BENEFITS**

### **CHAPTER 1**

### **SICKNESS, MATERNITY AND EQUIVALENT PATERNITY BENEFITS**

## ARTICLE 20

### **General implementing provisions**

- (1) The competent authorities or institutions shall ensure that any necessary information is made available to insured persons regarding the procedures and

conditions for the granting of benefits in kind where such benefits are received in the territory of a State other than that of the competent institution.

(2) The competent authorities or institutions shall ensure that any necessary information, including but not limited to information related to receipt of benefits and contribution history, is made available to insured persons to assist in the granting of benefits in the other State.

(3) Notwithstanding point (a) of Article 9 of this Convention, a State may become responsible for the cost of benefits in accordance with Article 25 of this Convention only if, either the insured person has made a claim for a pension under the legislation of that State, or in accordance with Articles 26 to 31 of this Convention, they receive a pension under the legislation of that State.

## ARTICLE 21

### **Residence in a State other than the competent State**

#### *Procedure and scope of right*

(1) For the purposes of the application of Article 20 of this Convention, the insured person or members of that person's family shall be obliged to register promptly with the institution of the place of residence. Their right to benefits in kind in the State of residence shall be certified by a document issued by the competent institution upon request of the insured person or upon request of the institution of the place of residence.

(2) The document referred to in paragraph 1 shall remain valid until the competent institution informs the institution of the place of residence of its cancellation.

The institution of the place of residence shall inform the competent institution of any registration under paragraph 1 and of any change or cancellation of that registration.

(3) This Article applies *mutatis mutandis* to the persons referred to in Articles 25, 27 and 28 of this Convention.

#### *Reimbursement*

(4) Where a person or the members of that person's family:

- (a) have been issued with the document referred to in paragraph 1;
- (b) have registered that document with the institution of the place of residence in accordance with paragraph 1; and

- (c) a health fee has been paid by or on behalf of the person or members of their family to the State of residence as part of an application for a permit to enter, stay, work or reside in that State,

that person or members of that person's family may apply to the institution of the State of residence for reimbursement (in whole or part, as the case may be) of the health fee paid.

(5) Where a claim is made in accordance with paragraph 1, the institution of the State of residence shall determine that claim within three calendar months, starting on the day the claim was received, and shall make any reimbursement in accordance with this Article.

(6) Where the period of validity of the document referred to in paragraph 1 is less than the period of time in respect of which the health fee has been paid, the amount reimbursed shall not exceed that portion of the health fee which corresponds to the period for which the document had been issued.

(7) Where the health fee was paid by another person on behalf of a person to whom this Article applies, reimbursement may be made to that other person.

## ARTICLE 22

### **Stay outside the competent State**

#### *Procedure and scope of right*

(1) For the purposes of the application of Article 22 of this Convention, the insured person shall present to the health care provider in the State of stay an entitlement document issued by the competent institution indicating their entitlement to benefits in kind. If the insured person does not have such a document, the institution of the place of stay, upon request or if otherwise necessary, shall contact the competent institution in order to obtain one.

(2) That document shall satisfy the requirements in Appendix 1.

(3) The benefits in kind referred to in Article 22(1) of this Convention shall refer to the benefits in kind which are provided in the State of stay, in accordance with its legislation, and which become necessary on medical grounds with a view to preventing an insured person from being forced to return, before the end of the planned duration of stay, to the competent State to obtain the necessary treatment.

#### *Procedure and arrangements for meeting the costs and providing reimbursement of benefits in kind*

(4) If the insured person has actually borne the costs of all or part of the benefits in kind provided within the framework of Article 22 of this Convention and if the

legislation applied by the institution of the place of stay enables reimbursement of those costs to an insured person, they may send an application for reimbursement to the institution of the place of stay. In that case, that institution shall reimburse directly to that person the amount of the costs corresponding to those benefits within the limits of and under the conditions of the reimbursement rates laid down in its legislation.

(5) If the reimbursement of such costs has not been requested directly from the institution of the place of stay, the costs incurred shall be reimbursed to the person concerned by the competent institution in accordance with the reimbursement rates administered by the institution of the place of stay or the amounts which would have been subject to reimbursement to the institution of the place of stay, if Article 44 of this Annex had applied in the case concerned.

The institution of the place of stay shall provide the competent institution, upon request, with all necessary information about these rates or amounts.

(6) By way of derogation from paragraph 5, the competent institution may undertake the reimbursement of the costs incurred within the limits of and under the conditions of the reimbursement rates laid down in its legislation, provided that the insured person has agreed to this provision being applied to them.

(7) If the legislation of the State of stay does not provide for reimbursement pursuant to paragraphs 4 and 5 in the case concerned, the competent institution may reimburse the costs within the limits of and under the conditions of the reimbursement rates laid down in its legislation, without the agreement of the insured person.

(8) The reimbursement to the insured person shall not, in any event, exceed the amount of costs actually incurred by them.

(9) In the case of substantial expenditure, the competent institution may pay the insured person an appropriate advance as soon as that person submits the application for reimbursement to it.

### *Family members*

(10) Paragraphs 1 to 9 apply *mutatis mutandis* to the members of the family of the insured person.

### *Reimbursement for students*

(11) Where a person:

- (a) holds a valid entitlement document referred to in Appendix 1 issued by the competent institution;
- (b) has been accepted by a higher education institution in a State other than the competent State (“State of study”) to pursue a full-time course of study leading to a higher education qualification recognised by that State, including diplomas, certificates or doctoral degrees at a higher education institution, which may cover a preparatory course prior to such education, in accordance with national law, or compulsory training;
- (c) does not exercise, or has not exercised, an activity as an employed or self-employed person in the State of study during the period to which the health fee relates; and
- (d) a health fee has been paid by or on behalf of that person to the State of study as part of an application for a permit to enter, stay or reside for the purposes of pursuing a full-time course of study in that State;

that person may apply to the institution of the State of study for reimbursement (in whole or part, as the case may be) of the health fee paid.

(12) Where a claim is made in accordance with paragraph 11, the institution of the State of study shall process and settle that claim within a reasonable period but not later than six calendar months starting on the day the claim was received and make any reimbursement in accordance with this Article.

(13) Where the period of validity of the entitlement document referred to in point (a) of paragraph 11 is less than the period of time in respect of which the health fee has been paid, the amount of the health fee reimbursed shall be the amount paid which corresponds to the period of validity of that document.

(14) Where the health fee was paid by another person on behalf of a person to whom this Article applies, reimbursement may be made to that other person.

(15) Paragraphs 11 to 14 apply *mutatis mutandis* to the members of the family of that person.

(16) This Article shall enter into force 12 months after the date of entry into force of this Convention.



(17) A person who satisfied the conditions in paragraph 11 in the period between the entry into force of this Convention and the date specified in paragraph 16 may, upon the entry into force of this Article, make a claim for reimbursement under paragraph 11 in relation to that period.

(18) By way of derogation from Article 8(1) of this Convention, charges may be imposed by the State of study in accordance with its national law in respect of benefits in kind that do not fulfil the criteria set out in point (a) of Article 22(1) and which are provided to a person in respect of whom reimbursement has been made during that person's stay for the period to which that reimbursement relates.

## ARTICLE 23

### **Scheduled treatment**

#### *Authorisation procedure*

(1) For the purposes of the application of Article 23(1) of this Convention, the insured person shall present a document issued by the competent institution to the institution of the place of stay. For the purposes of this Article, the competent institution shall mean the institution which bears the cost of the scheduled treatment; in the cases referred to in Article 29(5) of this Convention, in which the benefits in kind provided in the State of residence are reimbursed on the basis of fixed amounts, the competent institution shall mean the institution of the place of residence.

(2) If an insured person does not reside in the competent State, they shall request authorisation from the institution of the place of residence, which shall forward it to the competent institution without delay.

In that event, the institution of the place of residence shall certify in a statement whether the conditions set out in the second sentence of Article 23(2) of this Convention are met in the State of residence.

The competent institution may refuse to grant the requested authorisation only if, in accordance with the assessment of the institution of the place of residence, the conditions set out in the second sentence of Article 23(2) of this Convention are not met in the State of residence of the insured person, or if the same treatment can be provided in the competent State itself, within a time limit which is medically justifiable, taking into account the current state of health and the probable course of illness of the person concerned.

The competent institution shall inform the institution of the place of residence of its decision.

In the absence of a reply within the deadlines set by its national legislation, the authorisation shall be considered to have been granted by the competent institution.

(3) If an insured person who does not reside in the competent State is in need of urgent vitally necessary treatment, and the authorisation cannot be refused in accordance with the second sentence of Article 23(2) of this Convention, the authorisation shall be granted by the institution of the place of residence on behalf of the competent institution, which shall be immediately informed by the institution of the place of residence.

The competent institution shall accept the findings and the treatment options of the doctors approved by the institution of the place of residence that issues the authorisation, concerning the need for urgent vitally necessary treatment.

(4) At any time during the procedure granting the authorisation, the competent institution shall retain the right to have the insured person examined by a doctor of its own choice in the State of stay or residence.

(5) The institution of the place of stay shall, without prejudice to any decision regarding authorisation, inform the competent institution if it appears medically appropriate to supplement the treatment covered by the existing authorisation.

*Meeting the cost of benefits in kind incurred by the insured person*

(6) Without prejudice to paragraph 7, Article 22(4) and (5) of this Annex apply *mutatis mutandis*.

(7) If the insured person has actually borne all or part of the costs for the authorised medical treatment themselves and the costs which the competent institution is obliged to reimburse to the institution of the place of stay or to the insured person according to paragraph 6 (actual cost) are lower than the costs which it would have had to assume for the same treatment in the competent State (notional cost), the competent institution shall reimburse, upon request, the cost of treatment incurred by the insured person up to the amount by which the notional cost exceeds the actual cost. The reimbursed sum may not, however, exceed the costs actually incurred by the insured person and may take account of the amount which the insured person would have had to pay if the treatment had been delivered in the competent State.

*Meeting the costs of travel and stay as part of scheduled treatment*

(8) Where the national legislation of the competent institution provides for the reimbursement of the costs of travel and stay which are inseparable from the treatment of the insured person, such costs for the person concerned and, if necessary, for a person who must accompany them, shall be assumed by this institution when an authorisation is granted in the case of treatment in another State.

*Family members*

(9) Paragraphs 1 to 8 apply *mutatis mutandis* to the members of the family of the insured person.

## ARTICLE 24

### **Cash benefits relating to incapacity for work in the event of stay or residence in the State that is not the competent State**

#### *Procedure to be followed by the insured person*

- (1) If the legislation of the competent State requires that the insured person presents a certificate in order to be entitled to cash benefits relating to incapacity for work pursuant to Article 24(1) of this Convention, the insured person shall ask the doctor of the State of residence who established that person's state of health to certify their incapacity for work and its probable duration.
- (2) The insured person shall send the certificate to the competent institution within the time limit laid down by the legislation of the competent State.
- (3) Where the doctors providing treatment in the State of residence do not issue certificates of incapacity for work, and where such certificates are required under the legislation of the competent State, the person concerned shall apply directly to the institution of the place of residence. That institution shall immediately arrange for a medical assessment of the person's incapacity for work and for the certificate referred to in paragraph 1 to be drawn up. The certificate shall be forwarded to the competent institution forthwith.
- (4) The forwarding of the document referred to in paragraphs 1, 2 and 3 shall not exempt the insured person from fulfilling the obligations provided for by the applicable legislation, in particular with regard to that person's employer. Where appropriate, the employer or the competent institution may call upon the employee to participate in activities designed to promote and assist their return to employment.

#### *Procedure to be followed by the institution of the State of residence*

- (5) At the request of the competent institution, the institution of the place of residence shall carry out any necessary administrative checks or medical examinations of the person concerned in accordance with the legislation applied by this latter institution. The report of the examining doctor concerning, in particular, the probable duration of the incapacity for work, shall be forwarded without delay by the institution of the place of residence to the competent institution.

#### *Procedure to be followed by the competent institution*

- (6) The competent institution shall reserve the right to have the insured person examined by a doctor of its choice.
- (7) The competent institution shall pay the cash benefits directly to the person concerned and shall, where necessary, inform the institution of the place of residence thereof.

(8) For the purposes of the application of Article 24(1) of this Convention, the particulars of the certificate of incapacity for work of an insured person drawn up in the State which is not competent on the basis of the medical findings of the examining doctor or institution shall have the same legal value as a certificate drawn up in the competent State.

(9) If the competent institution refuses the cash benefits, it shall notify its decision to the insured person and at the same time to the institution of the place of residence.

Procedure in the event of a stay in a State other than the competent State

(10) Paragraphs 1 to 9 apply *mutatis mutandis* when the insured person stays in the State that is not the competent State.

## CHAPTER 2

### **BENEFITS IN RESPECT OF ACCIDENTS AT WORK AND OCCUPATIONAL DISEASES**

#### ARTICLE 25

Right to benefits in kind and in cash in the event of residence or stay in the State that is not the competent State

(1) For the purposes of the application of Article 36 of this Convention, the procedures laid down in Articles 21 to 24 of this Annex apply *mutatis mutandis*.

(2) When providing special benefits in kind in connection with accidents at work and occupational diseases under the national legislation of the State of stay or residence, the institution of that State shall without delay inform the competent institution.

#### ARTICLE 26

##### **Procedure in the event of an accident at work or occupational disease which occurs in the State that is not the competent State**

(1) If an accident at work occurs or an occupational disease is diagnosed for the first time in the State that is not the competent State, the declaration or notification of the accident at work or the occupational disease, where the declaration or notification exists under national legislation, shall be carried out in accordance with the legislation of the competent State, without prejudice, where appropriate, to any other applicable legal provisions in force in the State in which the accident at work occurred or in which the first medical diagnosis of the occupational disease was made, which remain applicable in such cases. The declaration or notification shall be addressed to the competent institution.

(2) The institution of the State in the territory of which the accident at work occurred or in which the occupational disease was first diagnosed, shall notify the competent institution of medical certificates drawn up in the territory of that State.

(3) Where, as a result of an accident while travelling to or from work which occurs in the territory of the State that is not the competent State, an inquiry is necessary in the territory of the first State in order to determine any entitlement to relevant benefits, a person may be appointed for that purpose by the competent institution, which shall inform the authorities of that State. The institutions shall cooperate with each other in order to assess all relevant information and to consult the reports and any other documents relating to the accident.

(4) Following treatment, a detailed report accompanied by medical certificates relating to the permanent consequences of the accident or disease, in particular the injured person's present state and the recovery or stabilisation of injuries, shall be sent upon request of the competent institution. The relevant fees shall be paid by the institution of the place of residence or of stay, where appropriate, at the rate applied by that institution to the charge of the competent institution.

(5) At the request of the institution of the place of residence or stay, where appropriate, the competent institution shall notify it of the decision setting the date for the recovery or stabilisation of injuries and, where appropriate, the decision concerning the granting of a pension.

## ARTICLE 27

### **Disputes concerning the occupational nature of the accident or disease**

(1) Where the competent institution disputes the application of the legislation relating to accidents at work or occupational diseases under Article 36(2) of this Convention, it shall without delay inform the institution of the place of residence or stay which provided the benefits in kind, which will then be considered as sickness insurance benefits.

(2) When a final decision has been taken on that subject, the competent institution shall, without delay, inform the institution of the place of residence or stay which provided the benefits in kind.

Where an accident at work or occupational disease is not established, benefits in kind shall continue to be provided as sickness benefits if the person concerned is entitled to them.

Where an accident at work or occupational disease is established, sickness benefits in kind provided to the person concerned shall be considered as accident at work or occupational disease benefits from the date on which the accident at work occurred or the occupational disease was first medically diagnosed.

- (3) Article 6(6) of this Annex applies *mutatis mutandis*.

## ARTICLE 28

### **Procedure in the event of exposure to the risk of an occupational disease in both States**

- (1) In the case referred to in Article 38 of this Convention, the declaration or notification of the occupational disease shall be sent to the competent institution for occupational diseases of the last State under the legislation of which the person concerned pursued an activity likely to cause that disease.

When the institution to which the declaration or notification was sent establishes that an activity likely to cause the occupational disease in question was last pursued under the legislation of the other State, it shall send the declaration or notification and all accompanying certificates to the equivalent institution in that State.

- (2) Where the institution of the last State under the legislation of which the person concerned pursued an activity likely to cause the occupational disease in question establishes that the person concerned or their survivors do not meet the requirements of that legislation, *inter alia*, because the person concerned had never pursued in that State an activity which caused the occupational disease or because that State does not recognise the occupational nature of the disease, that institution shall forward without delay the declaration or notification and all accompanying certificates, including the findings and reports of medical examinations performed by the first institution to the institution of the previous State under the legislation of which the person concerned pursued an activity likely to cause the occupational disease in question.

## ARTICLE 29

### **Exchange of information between institutions and advance payments in the event of an appeal against rejection**

- (1) In the event of an appeal against a decision to refuse benefits taken by the institution of a State under the legislation of which the person concerned pursued an activity likely to cause the occupational disease in question, that institution shall inform the institution to which the declaration or notification was sent, in accordance with the procedure provided for in Article 28(2) of this Annex, and shall subsequently inform it when a final decision is reached.

- (2) Where a person is entitled to benefits under the legislation applied by the institution to which the declaration or notification was sent, that institution shall make the advance payments, the amount of which shall be determined, where appropriate, after consulting the institution which made the decision against which the appeal was lodged, and in such a way that overpayments are avoided. The latter

institution shall reimburse the advance payments made if, as a result of the appeal, it is obliged to provide those benefits. That amount will then be deducted from the benefits due to the person concerned, in accordance with the procedure provided for in Articles 53 and 54 of this Annex.

(3) Article 6(6) of this Annex applies *mutatis mutandis*.

## ARTICLE 30

### **Aggravation of an occupational disease**

In the cases covered by Article 39 of this Convention, the claimant must provide the institution in the State from which they are claiming entitlement to benefits with details concerning benefits previously granted for the occupational disease in question. That institution may contact any other previously competent institution in order to obtain the information it considers necessary.

## ARTICLE 31

### **Assessment of the degree of incapacity in the event of occupational accidents or diseases which occurred previously or subsequently**

Where a previous or subsequent incapacity for work was caused by an accident which occurred when the person concerned was subject to the legislation of a State which makes no distinction according to the origin of the incapacity to work, the competent institution or the body designated by the competent authority of the State in question shall:

- (a) upon request by the competent institution of the other State, provide information concerning the degree of the previous or subsequent incapacity for work, and where possible, information making it possible to determine whether the incapacity is the result of an accident at work within the meaning of the legislation applied by the institution in the other State;
- (b) take into account the degree of incapacity caused by these previous or subsequent cases when determining the right to benefits and the amount, in accordance with the applicable legislation.

## ARTICLE 32

### **Submission and investigation of claims for pensions or supplementary allowances**

In order to receive a pension or supplementary allowance under the legislation of a State, the person concerned or their survivors residing in the territory of the other State shall submit, where appropriate, a claim either to the competent institution or to the institution of the place of residence, which shall send it to the competent institution.

The claim shall contain the information required under the legislation applied by the competent institution.

## CHAPTER 3

### **DEATH GRANTS**

## ARTICLE 33

### **Claim for death grants**

For the purposes of applying Articles 42 and 43 of this Convention, the claim for death grants shall be sent either to the competent institution or to the institution of the claimant's place of residence, which shall send it to the competent institution. The claim shall contain the information required under the legislation applied by the competent institution.

## CHAPTER 4

### **INVALIDITY BENEFITS AND OLD-AGE AND SURVIVORS' PENSIONS**

## ARTICLE 34

### **Additional provisions for the calculation of the benefit**

(1) For the purposes of calculating the theoretical amount and the actual amount of the benefit in accordance with Article 49(1)(b) of this Convention, the rules provided for in Article 11(3), (4), (5) and (6) of this Annex shall apply.

(2) Where periods of voluntary or optional continued insurance have not been taken into account under Article 11(3) of this Annex, the institution of the State under whose legislation those periods were completed shall calculate the amount corresponding to those periods under the legislation it applies. The actual amount of the benefit, calculated in accordance with Article 49(1)(b) of this Convention, shall



be increased by the amount corresponding to periods of voluntary or optional continued insurance.

(3) The institution of a State shall calculate, under the legislation it applies, the amount due corresponding to periods of voluntary or optional continued insurance which, under Article 50(3)(c) of this Convention, shall not be subject to the other State's rules relating to withdrawal, reduction or suspension.

Where the legislation applied by the competent institution does not allow it to determine this amount directly, on the grounds that that legislation allocates different values to insurance periods, a notional amount may be established. The Joint Administrative Committee shall lay down the detailed arrangements for the determination of that notional amount.

## ARTICLE 35

### **Submission of claims for old-age and survivors' pensions**

(1) The claimant shall submit a claim to the institution of their place of residence or to the institution of the State whose legislation was applicable. If the person concerned was not, at any time, subject to the legislation applied by the institution of the place of residence, that institution shall forward the claim to the institution of the State whose legislation was applicable.

(2) The date of submission of the claim shall apply to the institutions concerned.

## ARTICLE 36

### **Certificates and information to be submitted with the claim by the claimant**

(1) The claim shall be submitted by the claimant in accordance with the provisions of the legislation applied by the institution referred to in Article 35(1) of this Annex, and be accompanied by the supporting documents required by that legislation. In particular, the claimant shall supply all available relevant information and supporting documents relating to periods of insurance (institutions, identification numbers), employment (employers) or self-employment (nature and place of activity) and residence (addresses) which may have been completed under other legislation, as well as the length of those periods.

(2) Where, in accordance with Article 47(1) of this Convention, the claimant requests deferment of the award of old-age benefits under the legislation of either State, the claimant shall state that in their claim and specify under which legislation the deferment is requested. In order to enable the claimant to exercise that right, the institutions concerned shall, upon the request of the claimant, notify the claimant of all the information available to the institutions so that the claimant can assess the consequences of concurrent or successive awards of benefits which they might claim.

(3) Should the claimant withdraw a claim for benefits provided for under the legislation of a State, that withdrawal shall not be considered as a concurrent withdrawal of claims for benefits under the legislation of the other State.

## ARTICLE 37

### **Investigation of claims by the institutions concerned**

#### *Contact institution*

(1) The institution to which the claim for benefits is submitted or forwarded in accordance with Article 35(1) of this Annex shall be referred to hereinafter as the 'contact institution'. The institution of the place of residence shall not be referred to as the contact institution if the person concerned has not, at any time, been subject to the legislation which that institution applies.

In addition to investigating the claim for benefits under the legislation which it applies, that institution shall, in its capacity as contact institution, promote the exchange of data, the communication of decisions and the operations necessary for the investigation of the claim by the institutions concerned, and supply the claimant, upon request, with any information relevant to the aspects of the investigation which arise under this Convention, and keep the claimant informed of its progress.

#### *Investigation of claims for old-age and survivors' pensions*

(2) The contact institution shall, without delay, send claims for benefits and all the documents which it has available and, where appropriate, the relevant documents supplied by the claimant to the institution of the other State so that it can start the investigation of the claim concurrently. The contact institution shall notify the institution of the other State of periods of insurance or residence subject to its legislation. It shall also indicate which documents shall be submitted at a later date and supplement the claim as soon as possible.

(3) The institution of the other State shall notify the contact institution, as soon as possible, of the periods of insurance or residence subject to its legislation.

(4) The institution of the other State shall calculate the amount of benefits in accordance with Article 49 of this Convention and shall notify the contact institution of its decision, of the amount of benefits due and of any information required for the purposes of Articles 50 to 52 of this Convention.

(5) Should an institution establish, on the basis of the information referred to in paragraphs 2 and 3 of this Article, that Article 54(2) or (3) of this Convention is applicable, it shall inform the contact institution.

(6) Notwithstanding Article 2(1) of this Convention, the Swiss institution shall also notify the contact institution of the United Kingdom of the periods of insurance

completed under Swiss legislation for the purpose of the application of this Convention by the United Kingdom to:

- (a) a person who does not fall within the scope of this Convention, as applied by Switzerland under Article 2(1) of this Convention, by virtue of their nationality; and
- (b) the members of the family of a person described in point (a).

#### ARTICLE 38

##### **Notification of decisions to the claimant**

Each institution shall notify the claimant of the decision it has taken in accordance with the applicable legislation. Each decision shall specify the remedies and periods allowed for appeals.

#### ARTICLE 39

##### **Provisional instalments and advance payment of a benefit**

(1) Notwithstanding paragraphs (7) and (8) of Article 6 of this Annex, an institution which establishes, while investigating a claim for benefits, that the claimant is entitled to an independent benefit under the applicable legislation, in accordance with point (a) of Article 49(1) of this Convention, shall pay that benefit without delay. That payment shall be considered provisional if the amount might be affected by the result of the claim investigation procedure.

(2) Whenever it is evident from the information available that the claimant is entitled to a payment from an institution under point (b) of Article 49(1) of this Convention, that institution shall make an advance payment, the amount of which shall be as close as possible to the amount which will probably be paid under point (b) of Article 49(1) of this Convention.

(3) Each institution which is obliged to pay the provisional benefits or advance payment under paragraphs 1 or 2 shall inform the claimant without delay, specifically drawing the claimant's attention to the provisional nature of the measure and any rights of appeal in accordance with its legislation.

#### ARTICLE 40

##### **New calculation of benefits**

(1) Where there is a new calculation of benefits in accordance with Article 47(4) and 55(1) of this Convention, Article 39 of this Annex shall apply *mutatis mutandis*.

(2) Where there is a new calculation, withdrawal or suspension of the benefit, the institution which took the decision shall inform the person concerned without delay and shall inform each of the institutions in respect of which the person concerned has an entitlement.

#### ARTICLE 41

##### **Measures intended to accelerate the pension calculation process**

(1) In order to facilitate and accelerate the investigation of claims and the payment of benefits, the institutions to whose legislation a person has been subject shall:

- (a) exchange with or make available to institutions of the other State the elements for identifying persons who change from one applicable national legislation to the other, and together ensure that those identification elements are retained and correspond, or, failing that, provide those persons with the means to access their identification elements directly;
- (b) sufficiently in advance of the minimum age for commencing pension rights or before an age to be determined by national legislation, exchange with or make available to the person concerned and to institutions of the other State information (periods completed or other important elements) on the pension entitlements of persons who have changed from one applicable legislation to the other or, failing that, inform those persons of, or provide them with, the means of familiarising themselves with their prospective benefit entitlement.

(2) For the purposes of applying paragraph 1, the States through the Joint Administrative Committee shall agree the elements of information to be exchanged or made available and shall establish the appropriate procedures and mechanisms, taking account of the characteristics, administrative and technical organisation, and the technological means at the disposal of both States' pension schemes.

#### ARTICLE 42

##### **Determination of the degree of invalidity**

Each institution shall, in accordance with its legislation, have the possibility of having the claimant examined by a medical doctor or other expert of its choice to determine the degree of invalidity. However, the institution of a State shall take into consideration documents, medical reports and administrative information collected by the other institution as if they had been drawn up in its own territory.

## CHAPTER 5

### UNEMPLOYMENT BENEFITS

#### ARTICLE 43

##### **Aggregation of periods and calculation of benefits**

(1) Article 11(1) of this Annex applies *mutatis mutandis* to Article 56 of this Convention. Without prejudice to the underlying obligations of the institutions involved, the person concerned may submit to the competent institution a document issued by the institution of the State to whose legislation they were subject in respect of that person's last activity as an employed or self-employed person specifying the periods completed under that legislation.

(2) For the purposes of applying Article 57 of this Convention, the competent institution of a State whose legislation provides that the calculation of benefits varies with the number of members of the family shall also take into account the members of the family of the person concerned residing in the other State as if they resided in the competent State. This provision shall not apply where, in the State of residence of members of the family, another person is entitled to unemployment benefits calculated on the basis of the number of members of the family.

## TITLE IV FINANCIAL PROVISIONS

### CHAPTER 1

#### **REIMBURSEMENT OF THE COST OF BENEFITS IN APPLICATION OF ARTICLE 35 AND ARTICLE 41 OF THIS CONVENTION**

##### Section 1

##### **Reimbursement on the basis of actual expenditure**

#### ARTICLE 44

##### **Principles**

(1) For the purposes of applying Article 35 and Article 41 of this Convention, the actual amount of the expenses for benefits in kind, as shown in the accounts of the institution that provided them, shall be reimbursed to that institution by the competent institution, except where Article 54 of this Annex is applicable.

(2) If any or part of the actual amount of the expenses for benefits referred to in paragraph 1 is not shown in the accounts of the institution that provided them, the amount to be refunded shall be determined on the basis of a lump-sum payment calculated from all the appropriate references obtained from the data available. The

Joint Administrative Committee shall agree the bases to be used for calculation of the lump-sum payment and shall decide the amount thereof.

(3) Higher rates than those applicable to the benefits in kind provided to insured persons subject to the legislation applied by the institution providing the benefits referred to in paragraph 1 may not be taken into account in the reimbursement.

## Section 2

### **Reimbursement on the basis of fixed amounts**

#### ARTICLE 45

##### **Fixed amount for benefits in kind**

In the case of the United Kingdom, the amount of benefits in kind supplied to:

- (a) subject to Article 34 of this Convention, family members who do not reside in the same State as the insured person, as provided for in Article 20 of this Convention; and to
- (b) pensioners and members of their family, as provided for in Articles 27(1) and 28 of this Convention;

shall be reimbursed by the competent institutions to the institutions providing those benefits, on the basis of a fixed amount established for each calendar year. This fixed amount shall be as close as possible to actual expenditure.

#### ARTICLE 46

##### **Calculation method of the monthly fixed amounts and the total fixed amount**

(1) For the United Kingdom as creditor State, the monthly fixed amount per person ( $F_i$ ) for a calendar year shall be determined by dividing the annual average cost per person ( $Y_i$ ), broken down by age group ( $i$ ), by 12 and by applying a reduction ( $X$ ) to the result in accordance with the following formula:

$$F_i = Y_i * 1/12 * (0.85)$$

Where:

- the index ( $i = 1, 2$  and  $3$ ) represents the three age groups used for calculating the fixed amounts:

-  $i = 1$ : persons aged under 20,

- $i = 2$ : persons aged from 20 to 64,
- $i = 3$ : persons aged 65 and over,
- $Y_i$  represents the annual average cost per person in age group  $i$ , as defined in paragraph 2.

(2) The annual average cost per person ( $Y_i$ ) in age group  $i$  shall be obtained by dividing the annual expenditure on all benefits in kind provided by the institutions of the United Kingdom to all persons in the age group concerned subject to its legislation and residing within its territory by the average number of persons concerned in that age group in the calendar year in question.

(3) For the United Kingdom as debtor State, the total fixed amount for a calendar year shall be the sum of the products obtained by multiplying, in each age group  $i$ , the determined monthly fixed amounts per person by the number of months completed by the persons concerned in Switzerland in that age group.

The number of months completed by the persons concerned in Switzerland shall be the sum of the calendar months in a calendar year during which the persons concerned were, because of their residence in Switzerland, eligible to receive benefits in kind in that territory at the expense of the United Kingdom. Those months shall be determined from an inventory kept for that purpose by the institution of the place of residence, based on documentary evidence of the entitlement of the beneficiaries supplied by the competent institution.

(4) The Joint Administrative Committee may agree a proposal containing any amendments which may prove necessary in order to ensure that the calculation of fixed amounts comes as close as possible to the actual expenditure incurred.

(5) The Joint Administrative Committee shall agree the methods for determining the elements for calculating the fixed amounts referred to in paragraphs 1 to 4.

## ARTICLE 47

### **Notification of annual average costs**

The annual average cost per person in each age group for a specific year shall be notified to the Joint Administrative Committee at the latest by the end of the second year following the year in question. If the notification is not made by this deadline, the annual average cost per person which the Joint Administrative Committee has last determined for a previous year will be taken.

### Section 3

#### **Common provisions**

#### ARTICLE 48

##### **Procedure for reimbursement between institutions**

(1) The reimbursements between the States shall be made as promptly as possible. Every institution concerned shall be obliged to reimburse claims before the deadlines mentioned in this Section, as soon as it is in a position to do so. A dispute concerning a particular claim shall not hinder the reimbursement of another claim or other claims.

(2) The reimbursements between the institutions of Switzerland and the United Kingdom, provided for in Article 35 and Article 41 of this Convention, shall be made via the liaison body. There may be a separate liaison body for reimbursements under Article 35 and Article 41 of this Convention.

#### ARTICLE 49

##### **Deadlines for the introduction and settlement of claims**

(1) Claims based on actual expenditure shall be introduced to the liaison body of the debtor State within 12 months of the end of the calendar half-year during which those claims were recorded in the accounts of the creditor institution.

(2) Claims of fixed amounts for a calendar year shall be introduced to the liaison body of the debtor State within the 12-month period following the month during which the average costs for the year concerned were approved by the Joint Administrative Committee. The inventories referred to in Article 46(3) of this Annex shall be presented by the end of the year following the reference year.

(3) In the case referred to in the second point of Article 6(5) of this Annex, the deadline set out in paragraphs 1 and 2 of this Article shall not start before the competent institution has been identified.

(4) Claims introduced after the deadlines specified in paragraphs 1 and 2 shall not be considered.

(5) The claims shall be paid to the liaison body of the creditor State referred to in Article 48 of this Annex by the debtor institution within 18 months of the end of the month during which they were introduced to the liaison body of the debtor State.

This does not apply to the claims which the debtor institution has rejected for a relevant reason within that period.



(6) Any disputes concerning a claim shall be settled, at the latest, within 36 months following the month in which the claim was introduced.

(7) The Joint Administrative Committee shall facilitate the final closing of accounts in cases where a settlement cannot be reached within the period set out in paragraph 6, and, upon a reasoned request by one of the parties in the dispute, shall give its opinion on a dispute within six months following the month in which the matter was referred to it.

## ARTICLE 50

### **Interest on late payments and down payments**

(1) From the end of the 18-month period set out in Article 49(5) of this Annex, interest can be charged by the creditor institution on outstanding claims, unless the debtor institution has made, within six months of the end of the month during which the claim was introduced, a down payment of at least 90% of the total claim introduced pursuant to Article 49(1) or (2) of this Annex. For those parts of the claim not covered by the down payment, interest may be charged only from the end of the 36-month period set out in Article 49(6) of this Annex.

(2) The interest shall be calculated on the basis of the reference rate agreed by the Joint Administrative Committee. The reference rate applicable shall be that in force on the first day of the month on which the payment is due.

(3) No liaison body shall be obliged to accept a down payment as provided for in paragraph 1. If, however, a liaison body declines such an offer, the creditor institution shall no longer be entitled to charge interest on late payments related to the claims in question other than under the second sentence of paragraph 1.

## ARTICLE 51

### **Statement of annual accounts**

The States shall notify each other the amount of the claims introduced, settled or contested (creditor position) and the amount of claims received, settled or contested (debtor position).

## CHAPTER 2

### **RECOVERY OF BENEFITS PROVIDED BUT NOT DUE, RECOVERY OF PROVISIONAL PAYMENTS AND CONTRIBUTIONS, OFFSETTING AND ASSISTANCE WITH RECOVERY**

#### Section 1

#### **Principles**

#### ARTICLE 52

#### **Common provisions**

For the purposes of applying Article 66 of this Convention and within the framework defined therein, the recovery of claims shall, wherever possible, be by way of offsetting either between the institutions of the States, or vis-à-vis the natural or legal person concerned in accordance with Articles 53 to 55 of this Annex. If it is not possible to recover all or any of the claim via this offsetting procedure, the remainder of the amount due shall be recovered in accordance with Articles 56 to 66 of this Annex.

#### Section 2

#### **Offsetting**

#### ARTICLE 53

#### **Benefits received unduly**

(1) If the institution of one State has paid undue benefits to a person, that institution may, within the terms and limits laid down in the legislation it applies, request the institution of the other State responsible for paying benefits to the person concerned to deduct the undue amount from arrears or ongoing payments owed to the person concerned regardless of the social security branch under which the benefit is paid. The institution of the latter State shall deduct the amount concerned subject to the conditions and limits applying to this kind of offsetting procedure in accordance with the legislation it applies in the same way as if it had made the overpayments itself, and shall transfer the amount deducted to the institution that has paid undue benefits.

(2) By way of derogation from paragraph 1, if, when awarding or reviewing benefits in respect of invalidity benefits, old-age and survivors' pensions pursuant to Chapters 3 and 4 of Title III of this Convention, the institution of one State has paid to a person benefits of undue sum, that institution may request the institution of the other State responsible for the payment of corresponding benefits to the person concerned to deduct the amount overpaid from the arrears payable to the person

concerned. After the latter institution has informed the institution that has paid an undue sum of these arrears, the institution which has paid the undue sum shall within two months communicate the amount of the undue sum. If the institution which is due to pay arrears receives that communication within the deadline it shall transfer the amount deducted to the institution which has paid undue sums. If the deadline expires, that institution shall without delay pay out the arrears to the person concerned.

(3) If a person has received social welfare assistance in one State during a period in which they were entitled to benefits under the legislation of the other State, the body which provided the assistance may, if it is legally entitled to reclaim the benefits due to the person concerned, request the institution of the other State responsible for paying benefits in favour of the person concerned to deduct the amount of assistance paid from the amounts which that State pays to the person concerned.

This provision applies *mutatis mutandis* to any family member of a person concerned who has received assistance in the territory of one State during a period in which the insured person was entitled to benefits under the legislation of the other State in respect of that family member.

The institution of a State which has paid an undue amount of assistance shall send a statement of the amount due to the institution of the other State, which shall then deduct the amount, subject to the conditions and limits laid down for this kind of offsetting procedure in accordance with the legislation it applies, and transfer the amount without delay to the institution that has paid the undue amount.

## ARTICLE 54

### **Provisionally paid benefits in cash or contributions**

(1) For the purposes of applying Article 6 of this Annex, at the latest three months after the applicable legislation has been determined or the institution responsible for paying the benefits has been identified, the institution which provisionally paid the cash benefits shall draw up a statement of the amount provisionally paid and shall send it to the institution identified as being competent.

The institution identified as being competent for paying the benefits shall deduct the amount due in respect of the provisional payment from the arrears of the corresponding benefits it owes to the person concerned and shall without delay transfer the amount deducted to the institution which provisionally paid the cash benefits.

If the amount of provisionally paid benefits exceeds the amount of arrears, or if arrears do not exist, the institution identified as being competent shall deduct this amount from ongoing payments subject to the conditions and limits applying to this kind of offsetting procedure under the legislation it applies, and without delay

transfer the amount deducted to the institution which provisionally paid the cash benefits.

(2) The institution which has provisionally received contributions from a legal or natural person shall not reimburse the amounts in question to the person who paid them until it has ascertained from the institution identified as being competent the sums due to it under Article 6(4) of this Annex.

Upon request of the institution identified as being competent, which shall be made at the latest three months after the applicable legislation has been determined, the institution that has provisionally received contributions shall transfer them to the institution identified as being competent for that period for the purpose of settling the situation concerning the contributions owed by the legal or natural person to it. The contributions transferred shall be retroactively deemed as having been paid to the institution identified as being competent.

If the amount of provisionally paid contributions exceeds the amount the legal or natural person owes to the institution identified as being competent, the institution which provisionally received contributions shall reimburse the amount in excess to the legal or natural person concerned.

## ARTICLE 55

### **Costs related to offsetting**

No costs are payable where the debt is recovered via the offsetting procedure provided for in Articles 53 and 54 of this Annex.

## Section 3

### **Recovery**

## ARTICLE 56

### **Definitions and common provisions**

(1) For the purposes of this Section:

- (a) “claim” means all claims relating to contributions or to benefits paid or provided unduly, including interest, fines, administrative penalties and all other charges and costs connected with the claim in accordance with the legislation of the State making the claim;
- (b) “applicant party” means, in respect of each State, any institution which makes a request for information, notification or recovery concerning a claim as defined above;

- (c) “requested party” means, in respect of each State, any institution to which a request for information, notification or recovery can be made.
- (2) Requests and any related communications between the States shall, in general, be addressed via designated institutions.
- (3) Practical implementation measures, including, among others, those related to Article 4 of this Annex and to setting a minimum threshold for the amounts for which a request for recovery can be made, shall be taken by the Joint Administrative Committee.

## ARTICLE 57

### **Requests for information**

- (1) At the request of the applicant party, the requested party shall provide any information which would be useful to the applicant party in the assessment and recovery of its claim.
- (2) In order to obtain that information, the requested party shall make use of the powers provided for under the laws, regulations or administrative practices applying to the recovery of similar claims arising in its own State. The request for information from the applicant party shall indicate the name, last known address, and any other relevant information relating to the identification of the legal or natural person concerned to whom the information to be provided relates and the nature and amount of the claim in respect of which the request is made.
- (3) The requested party shall not be obliged to supply information:
  - (a) which it would not be able to obtain for the purpose of recovering similar claims arising in its own territory;
  - (b) which would disclose any commercial, industrial or professional secrets;  
or
  - (c) the disclosure of which would be liable to prejudice the security of or be contrary to the public policy of a State.
- (4) The requested party shall inform the applicant party of the grounds for refusing a request for information.

## ARTICLE 58

### **Notification**

- (1) The requested party shall, at the request of the applicant party, and in accordance with the rules in force for the notification of similar instruments or decisions in its own territory, notify the addressee of all instruments and decisions, including those of a judicial nature, which come from the State of the applicant party and which relate to a claim or to its recovery.
- (2) The request for notification shall indicate the name, address and any other relevant information relating to the identification of the addressee concerned to which the applicant party normally has access, the nature and the subject of the instrument or decision to be notified and, if necessary, the name, address and any other relevant information relating to the identification of the debtor and the claim to which the instrument or decision relates, and any other useful information.
- (3) The requested party shall without delay inform the applicant party of the action taken on its request for notification and, particularly, of the date on which the decision or instrument was forwarded to the addressee.

## ARTICLE 59

### **Request for recovery**

- (1) At the request of the applicant party, the requested party shall recover claims that are the subject of an instrument permitting enforcement issued by the applicant party to the extent permitted by and in accordance with the laws and administrative practices in force in the State of the requested party.
- (2) The applicant party may only make a request for recovery if:
  - (a) it also provides to the requested party an official or certified copy of the instrument permitting enforcement of the claim in the State of the applicant party;
  - (b) the claim or instrument permitting its enforcement are not contested in its own State;
  - (c) it has, in its own State, applied appropriate recovery procedures available to it on the basis of the instrument referred to in paragraph 1, and the measures taken will not result in the payment in full of the claim;
  - (d) the period of limitation according to its own legislation has not expired.
- (3) The request for recovery shall indicate:

- (a) the name, address and any other relevant information relating to the identification of the natural or legal person concerned or to the identification of any third party holding that person's assets;
  - (b) the name, address and any other relevant information relating to the identification of the applicant party;
  - (c) a reference to the instrument permitting its enforcement, issued in the State of the applicant party;
  - (d) the nature and amount of the claim, including the principal, interest, fines, administrative penalties and all other charges and costs due indicated in the currencies of the State(s) of the applicant and requested parties;
  - (e) the date of notification of the instrument to the addressee by the applicant party or by the requested party;
  - (f) the date from which and the period during which enforcement is possible under the laws in force in the State of the applicant party;
  - (g) any other relevant information.
- (4) The request for recovery shall also contain a declaration by the applicant party confirming that the conditions laid down in paragraph 2 have been fulfilled.
- (5) The applicant party shall forward to the requested party any relevant information relating to the matter which gave rise to the request for recovery, as soon as this comes to its knowledge.

## ARTICLE 60

### **Instrument permitting enforcement of recovery**

- (1) In accordance with Article 66(2) of this Convention, the instrument permitting enforcement of the claim shall be directly recognised and treated automatically as an instrument permitting the enforcement of a claim of the State of the requested party.
- (2) Notwithstanding paragraph 1, the instrument permitting enforcement of the claim may, where appropriate and in accordance with the provisions in force in the State of the requested party, be accepted as, recognised as, supplemented with, or replaced by an instrument authorising enforcement in the territory of that State.
- (3) Within three months of the date of receipt of the request for recovery, the State shall endeavour to complete the acceptance, recognition, supplementing or replacement, except in cases where paragraph 4 applies. States may not refuse to complete these actions where the instrument permitting enforcement is properly

drawn up. The requested party shall inform the applicant party of the grounds for exceeding the three-month period.

(4) If any of these actions should give rise to a dispute in connection with the claim or the instrument permitting enforcement issued by the applicant party, Article 62 of this Annex shall apply.

## ARTICLE 61

### **Payment arrangements and deadline**

(1) Claims shall be recovered in the currency of the State of the requested party. The entire amount of the claim that is recovered by the requested party shall be remitted by the requested party to the applicant party.

(2) The requested party may, where the laws, regulations or administrative provisions in force in its own State so permit, and after consulting the applicant party, allow the debtor time to pay or authorise payment by instalment. Any interest charged by the requested party in respect of such extra time to pay shall also be remitted to the applicant party.

(3) From the date on which the instrument permitting enforcement of the recovery of the claim has been directly recognised in accordance with Article 60(1) of this Annex, or accepted, recognised, supplemented or replaced in accordance with Article 60(2) of this Annex, interest shall be charged for late payment under the laws, regulations and administrative provisions in force in the State of the requested party and shall also be remitted to the applicant party.

## ARTICLE 62

### **Contestation concerning the claim or the instrument permitting enforcement of its recovery and contestation concerning enforcement measures**

(1) If, in the course of the recovery procedure, the claim or the instrument permitting its enforcement issued in the State of the applicant party are contested by an interested party, the action shall be brought by this party before the appropriate authorities of the State of the applicant party, in accordance with the laws in force in that State. The applicant party shall without delay notify the requested party of this action. The interested party may also inform the requested party of the action.

(2) As soon as the requested party has received the notification or information referred to in paragraph 1 either from the applicant party or from the interested party, it shall suspend the enforcement procedure pending the decision of the appropriate authority in the matter, unless the applicant party requests otherwise in accordance with paragraph 3. Should the requested party deem it necessary, and without prejudice to Article 65 of this Annex, it may take precautionary measures to



guarantee recovery insofar as the laws or regulations in force in its own State allow such action for similar claims.

(3) Notwithstanding paragraph 2, the applicant party may, in accordance with the laws, regulations and administrative practices in force in its own State, request the requested party to recover a contested claim, insofar as the relevant laws, regulations and administrative practices in force in the requested party's State allow such action. If the result of the contestation is subsequently favourable to the debtor, the applicant party shall be liable for the reimbursement of any sums recovered, together with any compensation due, in accordance with the legislation in force in the requested party's State.

(4) Where the contestation concerns enforcement measures taken in the State of the requested party, the action shall be brought before the appropriate authority of that State in accordance with its laws and regulations.

(5) Where the appropriate authority before which the action is brought in accordance with paragraph 1 is a judicial or administrative tribunal, the decision of that tribunal, insofar as it is favourable to the applicant party and permits recovery of the claim in the State of the applicant party, shall constitute the 'instrument permitting enforcement' within the meaning of Articles 59 and 60 of this Annex and the recovery of the claim shall proceed on the basis of that decision.

## ARTICLE 63

### **Limits applying to assistance**

(1) The requested party shall not be obliged:

- (a) to grant the assistance provided for in Articles 59 to 62 of this Annex, if recovery of the claim would, because of the situation of the debtor, create serious economic or social difficulties in the State of the requested party, insofar as the laws, regulations or administrative practices in force in the State of the requested party allow such action for similar national claims;
- (b) to grant the assistance provided for in Articles 57 to 62 of this Annex, if the initial request under Articles 57 to 59 of this Annex applies to claims more than five years old, dating from the moment the instrument permitting the recovery was established in accordance with the laws, regulations or administrative practices in force in the State of the applicant party at the date of the request. However, if the claim or instrument is contested, the time limit begins from the moment that the State of the applicant party establishes that the claim or the enforcement order permitting recovery may no longer be contested.

(2) The requested party shall inform the applicant party of the grounds for refusing a request for assistance.

## ARTICLE 64

### **Periods of limitation**

- (1) Questions concerning periods of limitation shall be governed as follows:
  - (a) by the laws in force in the State of the applicant party, insofar as they concern the claim or the instrument permitting its enforcement; and
  - (b) by the laws in force in the State of the requested party, insofar as they concern enforcement measures in the requested State.
- (2) Periods of limitation according to the laws in force in the State of the requested party shall start from the date of direct recognition or from the date of acceptance, recognition, supplementing or replacement in accordance with Article 60 of this Annex.
- (3) Steps taken in the recovery of claims by the requested party in pursuance of a request for assistance, which, if they had been carried out by the applicant party, would have had the effect of suspending or interrupting the period of limitation according to the laws in force in the State of the applicant party, shall be deemed to have been taken in the latter State, insofar as that effect is concerned.

## ARTICLE 65

### **Precautionary measures**

- (1) Upon reasoned request by the applicant party, the requested party shall take precautionary measures to ensure recovery of a claim insofar as the laws and regulations in force in the State of the requested party so permit.
- (2) For the purposes of implementing the first paragraph, the provisions and procedures laid down in Articles 59, 60, 62 and 63 of this Annex shall apply *mutatis mutandis*.

## ARTICLE 66

### **Costs related to recovery**

- (1) The requested party shall recover from the natural or legal person concerned and retain any costs linked to recovery which it incurs, in accordance with the laws and regulations of the State of the requested party that apply to similar claims.
- (2) Mutual assistance afforded under this Section shall, as a rule, be free of charge. However, where recovery poses a specific problem or concerns a very large amount

in costs, the applicant and the requested parties may agree on reimbursement arrangements specific to the cases in question.

(3) The State of the applicant party shall remain liable to the State of the requested party for any costs and any losses incurred as a result of actions held to be unfounded, as far as either the substance of the claim or the validity of the instrument issued by the applicant party is concerned.

## **TITLE V MISCELLANEOUS, TRANSITIONAL AND FINAL PROVISIONS**

### **ARTICLE 67**

#### **Medical examination and administrative checks**

(1) Without prejudice to other provisions, where a recipient or a claimant of benefits, or a member of that person's family, is staying or residing within the territory of a State other than that in which the debtor institution is located, the medical examination shall be carried out, at the request of that institution, by the institution of the beneficiary's place of stay or residence in accordance with the procedures laid down by the legislation applied by that institution.

The debtor institution shall inform the institution of the place of stay or residence of any special requirements, if necessary, to be followed and points to be covered by the medical examination.

(2) The institution of the place of stay or residence shall forward a report to the debtor institution that requested the medical examination. This institution shall be bound by the findings of the institution of the place of stay or residence.

The debtor institution shall reserve the right to have the beneficiary examined by a doctor of its choice. However, the beneficiary may be asked to return to the State of the debtor institution only if that beneficiary is able to make the journey without prejudice to that person's health and the cost of travel and accommodation is paid for by the debtor institution.

(3) Where a recipient or a claimant of benefits, or a member of that person's family, is staying or residing in the territory of a State other than that in which the debtor institution is located, the administrative check shall, at the request of the debtor institution, be performed by the institution of the beneficiary's place of stay or residence.

Paragraph 2 shall also apply in this case.

(4) As an exception to the principle of free-of-charge mutual administrative cooperation in Article 58(3) of this Convention, the effective amount of the expenses of the checks referred to in paragraphs 1 to 3 shall be refunded to the institution

which was requested to carry them out by the debtor institution which requested them.

## ARTICLE 68

### **Notifications**

- (1) The States shall notify the Joint Administrative Committee of the details of the bodies and entities defined in Article 1 of this Convention and of the institutions designated in accordance with this Annex.
- (2) The bodies specified in paragraph 1 shall be provided with an electronic identity in the form of an identification code and electronic address.
- (3) The Joint Administrative Committee shall agree the structure, content and detailed arrangements, including the common format and model, for notification of the details specified in paragraph 1.
- (4) The States shall be responsible for keeping the information specified in paragraph 1 up to date.

## ARTICLE 69

### **Currency conversion**

For the purposes of applying this Convention and this Annex, the exchange rate between two currencies shall be the reference rate agreed by the Joint Administrative Committee. The date to be taken into account for determining the exchange rate shall be agreed by the Joint Administrative Committee and set out in the administrative arrangements.

## ARTICLE 70

### **Interim provisions for forms and documents**

For an interim period, the end date of which shall be agreed by the Joint Administrative Committee, all forms and documents issued by the competent institutions in the format used immediately before this Convention comes into force shall be valid for the purposes of implementing this Convention and, where appropriate, shall continue to be used for the exchange of information between competent institutions. All such forms and documents issued before and during that interim period shall be valid until their expiry or cancellation.

## **APPENDIX 1**

### **Entitlement document (Articles 22 and 29(1) of this Convention and Article 22 of this Annex)**

(1) Entitlement documents valid for the purposes of Articles 22 and 29(1) of this Convention shall contain the following data:

- (a) surname and forename of the document holder;
- (b) personal identification number of the document holder;
- (c) date of birth of the document holder;
- (d) expiry date of the document;
- (e) the code “UK” in lieu of the ISO code of the United Kingdom or the ISO code of Switzerland, as the case may be;
- (f) identification number and acronym of the competent institution issuing the document;
- (g) logical number of the document;
- (h) in the case of a provisional document, the date of issue and date of delivery of the document, and the signature and stamp of the competent institution.

(2) The technical specifications of entitlement documents shall be agreed by both States through the Joint Administrative Committee in order to facilitate the acceptance of the respective documents by institutions of the States providing the benefits in kind.

## **ANNEX 2: CERTAIN BENEFITS TO WHICH THIS CONVENTION SHALL NOT APPLY**

### **Part 1: Special non-contributory cash benefits (point (a) of Article 6(4))**

#### **UNITED KINGDOM**

- (a) State Pension Credit (State Pension Credit Act 2002 and State Pension Credit Act (Northern Ireland) 2002);
- (b) Income-based allowances for jobseekers (Jobseekers Act 1995 and Jobseekers (Northern Ireland) Order 1995);

- (c) Disability Living Allowance, mobility component (Social Security Contributions and Benefits Act 1992 and Social Security Contributions and Benefits (Northern Ireland) Act 1992);
- (d) Personal Independence Payment, mobility component (Welfare Reform Act 2012 (Part 4) and Welfare Reform (Northern Ireland) Order 2015 (Part 5));
- (e) Employment and Support Allowance Income-related (Welfare Reform Act 2007 and Welfare Reform Act (Northern Ireland) 2007);
- (f) Best Start Foods payment (Welfare Foods (Best Start Foods) (Scotland) Regulations 2019 (SSI 2019/193));
- (g) Best Start Grants (pregnancy and baby grant, early learning grant, school-age grant) (The Early Years Assistance (Best Start Grants) (Scotland) Regulations 2018 (SSI 2018/370));
- (h) Funeral Support Payment (Funeral Expense Assistance (Scotland) Regulations 2019 (SSI 2019/292));
- (i) Scottish Child Payment (The Scottish Child Payment Regulations 2020 (SSI 2020/351)).

#### SWITZERLAND

- (a) Supplementary benefits (Federal Supplementary Benefits Act of 6 October 2006) and similar benefits provided for under cantonal legislation.
- (b) Non-contributory mixed benefits in the event of unemployment, as provided for under cantonal legislation.

#### **Part 2: Long-term care benefits (point (d) of Article 6(4))**

#### UNITED KINGDOM

- (a) Attendance Allowance (Social Security Contributions and Benefits Act 1992, Social Security (Attendance Allowance) Regulations 1991, Social Security Contributions and Benefits (Northern Ireland) Act 1992 and Social Security (Attendance Allowance) Regulations (Northern Ireland) 1992);
- (b) Carer's Allowance (Social Security Contributions and Benefits Act 1992, The Social Security (Invalid Care Allowance) Regulations 1976, Social Security Contributions and Benefits (Northern Ireland) Act 1992 and The Social Security (Invalid Care Allowance) Regulations (Northern Ireland) 1976);

- (c) Disability Living Allowance, care component (Social Security Contributions and Benefits Act 1992, Social Security (Disability Living Allowance) Regulations 1991, Social Security Contributions and Benefits (Northern Ireland) Act 1992 and Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992);
- (d) Personal Independence Payment, daily living component (Welfare Reform Act 2012 (Part 4), Social Security (Personal Independence Payment) Regulations 2013, The Personal Independence Payment (Transitional Provisions) Regulations 2013, Personal Independence Payment (Transitional Provisions) (Amendment) Regulations 2019, Welfare Reform (Northern Ireland) Order 2015 (Part 5), The Personal Independence Payment Regulations (Northern Ireland) 2016, The Personal Independence Payment (Transitional Provisions) Regulations (Northern Ireland) 2016 and Personal Independence Payment (Transitional Provisions) (Amendment) Regulations (Northern Ireland) 2019);
- (e) Carer's Allowance Supplement (The Social Security (Scotland) Act 2018);
- (f) Young Carer's Grant (The Carer's Assistance (Young Carer Grants) (Scotland) Regulations 2020 (as amended));
- (g) Child Winter Heating Assistance (The Winter Heating Assistance for Children and Young People (Scotland) Regulations 2020 (SSI 2020/352)).

## SWITZERLAND

Allowances for helpless persons under the Swiss Federal Act of 19 June 1959 on invalidity insurance (LAI) and under the Federal Act of 20 December 1946 on old-age and survivors' pensions (LAVS) as amended on 8 October 1999.

**Part 3: Payments which are connected to a branch of social security listed in Article 6(1) and which are paid to meet expenses for heating in cold weather (point (f) of Article 6(4))**

## UNITED KINGDOM

Winter Fuel Payment (Social Security Contributions and Benefits Act 1992, Social Fund Winter Fuel Payment Regulations 2000, Social Security Contributions and Benefits (Northern Ireland) Act 1992 and Social Fund Winter Fuel Payment Regulations (Northern Ireland) 2000).

**ANNEX 3: CASES IN WHICH THE PRO RATA CALCULATION SHALL  
BE WAIVED OR SHALL NOT APPLY  
(Articles 49(4) and 49(5))**

**Part 1: Cases in which the pro rata calculation shall be waived pursuant to Article 49(4)**

**UNITED KINGDOM**

All applications for retirement pension, state pension pursuant to Part 1 of the Pensions Act 2014, widows' and bereavement benefits, with the exception of those for which during a tax year beginning on or after 6 April 1975:

- (a) the person concerned had completed periods of insurance, employment or residence under the legislation of both States; and one (or more) of the tax years was not considered a qualifying year within the meaning of the legislation of the United Kingdom;
- (b) the periods of insurance completed under the legislation in force in the United Kingdom for the periods prior to 5 July 1948 would be taken into account for the purposes of point (b) of Article 49(1) of this Convention by application of the periods of insurance, employment or residence under the legislation of Switzerland.

All applications for additional pension pursuant to the Social Security Contributions and Benefits Act 1992, section 44, and the Social Security Contributions and Benefits (Northern Ireland) Act 1992, section 44.

**SWITZERLAND**

All claims for old-age, survivors' and invalidity pensions under the basic scheme (Federal Law on old-age and survivors' insurance and Federal Law on invalidity insurance).

**Part 2: Cases in which Article 49(5) applies**

**UNITED KINGDOM**

Graduated retirement benefits paid pursuant to the National Insurance Act 1965, sections 36 and 37, and the National Insurance Act (Northern Ireland) 1966, sections 35 and 36.



**ANNEX 4: SPECIAL PROVISIONS FOR THE APPLICATION OF THE  
LEGISLATION OF THE STATES  
(Articles 6(2), 53(1) and 68)**

**UNITED KINGDOM**

(1) Where, in accordance with United Kingdom legislation, a person may be entitled to a retirement pension if:

- (a) the contributions of a former spouse are taken into account as if they were that person's own contributions; or
- (b) the relevant contribution conditions are satisfied by that person's spouse or former spouse, then provided, in each case, that the spouse or former spouse is or had been exercising an activity as an employed or self-employed person, and had been subject to the legislation of both States, the provisions of Chapter 5 of Title III of this Convention shall apply in order to determine entitlement under United Kingdom legislation. In that case, references in Chapter 5 of Title III of this Convention to 'periods of insurance' shall be construed as references to periods of insurance completed by:
  - (i) a spouse or former spouse where a claim is made by:
    - a married woman, or
    - a person whose marriage has terminated otherwise than by the death of the spouse; or
  - (ii) a former spouse, where a claim is made by:
    - a widower who immediately before pensionable age is not entitled to a widowed parent's allowance, or
    - a widow who immediately before pensionable age is not entitled to a widowed mother's allowance, widowed parent's allowance or widow's pension, or who is only entitled to an age-related widow's pension calculated pursuant to point (b) of Article 49(1) of this Convention, and for this purpose 'age-related widow's pension' means a widow's pension payable at a reduced rate in accordance with section 39(4) of the Social Security Contributions and Benefits Act 1992.

(2) For the purposes of applying Article 11 of this Convention in the case of old-age or survivors' cash benefits, pensions for accidents at work or occupational diseases and death grants, any beneficiary under United Kingdom legislation who is staying in the territory of Switzerland shall, during that stay, be considered as if they resided in the territory of Switzerland.

(3) (a) For the purpose of calculating an earnings factor in order to determine entitlement to benefits under United Kingdom legislation, for each week of activity as an employed person under the legislation of Switzerland,

and which commenced during the relevant income tax year within the meaning of United Kingdom legislation, the person concerned shall be deemed to have paid contributions as an employed earner, or have earnings on which contributions have been paid, on the basis of earnings equivalent to two-thirds of that year's upper earnings limit.

- (b) For the purposes of point (b) of Article 49(1) of this Convention, where:
  - (i) in any income tax year starting on or after 6 April 1975, a person carrying out activity as an employed person has completed periods of insurance, employment or residence exclusively in Switzerland, and the application of point (1) of this paragraph results in that year being counted as a qualifying year within the meaning of United Kingdom legislation for the purposes of point (b)(i) of Article 49(1) of this Convention, they shall be deemed to have been insured for 52 weeks in that year in Switzerland;
  - (ii) any income tax year starting on or after 6 April 1975 does not count as a qualifying year within the meaning of United Kingdom legislation for the purposes of point (b)(i) of Article 49(1) of this Convention, any periods of insurance, employment or residence completed in that year shall be disregarded.
- (c) For the purpose of converting an earnings factor into periods of insurance, the earnings factor achieved in the relevant income tax year within the meaning of United Kingdom legislation shall be divided by that year's lower earnings limit. The result shall be expressed as a whole number, any remaining fraction being ignored. The figure so calculated shall be treated as representing the number of weeks of insurance completed under United Kingdom legislation during that year, provided that such figure shall not exceed the number of weeks during which in that year the person was subject to that legislation.
- (d) Where receipt of Widowed Parent's Allowance or Bereavement Support Payment (higher rate) is contingent on entitlement to UK Child Benefit, a person meeting all other eligibility criteria, and who would be eligible to receive UK Child Benefit if they, or the relevant child, were resident in the UK, will not be prevented from claiming Widowed Parent's Allowance or Bereavement Support Payment (higher rate) in accordance with this Convention, notwithstanding the fact that UK Child Benefit is excluded from the material scope of this Convention under Article 6(4)(g).

## SWITZERLAND

- (1) (a) Article 2 of the Federal Old-Age and Survivors' Insurance Act and Article 1 of the Federal Invalidity Insurance Act, which govern voluntary

insurance in these insurance branches for Swiss nationals who do not reside in a Member State of the European Union or in a European Free Trade Association state, shall be applicable to Swiss nationals and nationals of a European Union Member State if they declare their accession to the voluntary insurance not later than one year after the date on which they ceased to be covered by old-age, survivors' and invalidity insurance after a continuous period of insurance of at least five years.

- (b) Where a person ceases to be insured under Swiss old-age, survivors' and invalidity insurance after a continuous period of insurance of at least five years, they shall continue to be entitled to be insured with the agreement of the employer if they work outside the United Kingdom for an employer in Switzerland and if they submit an application to this effect within six months of the date on which they cease to be insured.
- (c) Where in application of Article 9(6), the Swiss legislation applies to the spouse and the children, they are insured in the Swiss old-age, survivors' and invalidity insurance.

(2) The Swiss legal provisions governing compulsory sickness insurance shall apply to persons subject to Swiss legal provisions under the terms of Title II of this Convention and persons for whom Switzerland is the competent State under Articles 27 and 28 of this Convention even if they are not resident in Switzerland.

(3) Periods of daily allowance insurance completed under the insurance scheme of the United Kingdom shall be taken into account for reducing or lifting a possible reserve in daily allowance insurance in the event of maternity or sickness where the person becomes insured with a Swiss insurer within three months of ceasing to be covered by insurance in the United Kingdom.

(4) Extraordinary pensions provided under the Swiss old-age, survivors' and disability insurance shall be provided exclusively if the person concerned resides in Switzerland. United Kingdom citizens shall, under the same conditions as Swiss nationals, be entitled to receive a Swiss extraordinary survivors' pension, disability pension or old-age pension which replaces a disability or survivors' pension if, immediately before the date from which they claim the pension they have resided in Switzerland for a continuous period of not less than five years. No account shall be taken of any period during which the persons concerned were exempted from the Swiss old-age, survivors' and disability insurance. A period of residence in Switzerland shall not be regarded as interrupted if the absence from Switzerland is not more than three months in any calendar year. The period of three months may be extended in exceptional cases.

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