



## New social security convention between Switzerland and the United Kingdom

### Explanation of the provisions

#### *General remark*

Like the EU Coordination Regulation (EC) No. 883/2004, the convention contains the basic provisions. Annex 1 sets out the implementing provisions (procedures, documents to be used). It corresponds to Regulation (EC) No 987/2009.

### General provisions (Title I)

#### **Personal scope (Art. 2-4)**

The Convention applies to nationals of the two Contracting States and to nationals of EU Member States and, for derived rights, to their family members and survivors, irrespective of their nationality. Refugees and stateless persons residing in the territory of one of the Contracting States are also covered. The United Kingdom also applies the Convention unilaterally to nationals of third countries, with the exception of the provisions on healthcare. Switzerland, on the other hand, only applies the provisions determining the applicable legislation to third-country nationals.

Since the United Kingdom includes all persons regardless of their nationality, it is necessary to delimit precisely the scope of the convention. **Article 3** therefore specifies that the Convention only applies to persons who are lawfully resident in the territory of the Contracting States. This condition does not affect the entitlement to cash benefits relating to previous insurance periods completed by persons legally residing in the territory of the Contracting States.

**Article 4** specifies that the Convention applies only to persons who are or have been in a cross-border situation between Switzerland and the United Kingdom. It defines the situations covered by the convention and targets persons who have moved between the two states. Persons in a situation where all elements have taken place exclusively within one state are not covered by the convention. It should be noted that a British citizen who was born in Switzerland and has never resided in the UK would also be covered, as its nationality constitutes a cross-border element.

#### **Territorial scope (Art. 5)**

Like the Agreement on the Free Movement of Persons between Switzerland and the EU (FMOPA), the Convention on the UK side also applies to Gibraltar, but not to the British Overseas Territories, nor to the Crown Dependencies (Isle of Man and Channel Islands). The Crown Dependencies, which are covered by the old 1968 convention on social security between Switzerland and the United Kingdom, have their own social security system. They are not included in the new convention and it was agreed that the old convention would continue to apply to these territories (cf. Art. 77).

### **Material scope (Art. 6)**

The Convention applies to sickness, maternity and paternity benefits, invalidity and old-age benefits, survivors' benefits, benefits in respect of accidents at work and occupational diseases, death grants and unemployment benefits. This provision is modelled on EU law, but deviates from it in several respects. Family benefits are excluded from the scope of application. Special non-contributory cash benefits, such as the Swiss supplementary benefits to AHV/IV, are also excluded from the material scope (entry in Part 1 of Annex 2). Furthermore, long-term care benefits, i.e. Swiss helplessness allowances, are also excluded (entry in Part 2 of Annex 2). These benefits excluded from the material scope are never coordinated in social security conventions of Switzerland with states outside the EU/EFTA.

Occupational pensions (2nd pillar) are also excluded from the scope of the convention. The Swiss occupational pension system is not coordinated in the bilateral conventions with non-EU and EFTA states.

Although disability and unemployment benefits are covered by the convention, they are not subject to the export obligation (cf. Art. 11).

### **Relationship to other agreements (Art. 7)**

As an accompanying measure to the UK's departure from the EU and to protect the rights that citizens had acquired under the FMOPA, particularly in the area of social security, Switzerland has concluded the citizens' rights agreement with the UK that maintains the EU coordination rules for some categories of persons. Article 7(1) of the new convention contains a reservation in favor of this agreement. The EU has concluded a similar agreement with the United Kingdom.

Switzerland and the EU coordinate their social security systems under the FMOPA. Switzerland has also concluded social security conventions with numerous other States. It is therefore important to ensure that the present convention does not conflict with the obligations arising from these conventions (para. 2).

### **Equal treatment (Art. 8)**

This is a fundamental principle of international social security coordination. Persons protected by the agreement are entitled to the same benefits in a state and are subject to the same obligations as nationals of that state.

In its standard agreements with non-EU/ EFTA States, Switzerland always provides for reservations concerning voluntary OASI/DI, OASI/DI of Swiss nationals working abroad in the service of the Confederation or certain organizations, and voluntary accession to OASI/DI for international civil servants with Swiss nationality.

This provision confirms the legal situation as it has existed in relations between Switzerland and the United Kingdom since the end of the application of the FMOPA on 1 January 2021. Voluntary AHV/IV is no longer open to UK nationals. In contrast, Swiss nationals moving to the UK will be able to join the voluntary insurance scheme from 1 January 2021 if they meet the conditions, as membership of the voluntary insurance scheme is possible if they live outside the EU and EFTA. The conditions for joining under Swiss law are confirmed by an entry in Annex 4.

### **Equal treatment of benefits, income, facts or events (Art. 9)**

According to this principle of international social security coordination, certain facts occurring in one state must be taken into account by the other state as if they had occurred in its own territory.

### **Aggregation of periods (Art. 10)**

Periods of insurance, employment or residence completed in one State shall be taken into account, if necessary, by the other State, in particular if entitlement to benefits there depends on the completion of such periods. Persons who have completed periods in Switzerland may use this principle to obtain entitlement to UK benefits.

Aggregation only takes place if the legislation of a state provides for a minimum insurance period of more than one year for the granting of benefits. On the Swiss side, this does not apply to the AHV, which has a minimum insurance period of one year. On the other hand, the IV is affected, since there is a minimum insurance period of three years in order to be entitled to a disability pension. However, the prorated pension paid by Switzerland only corresponds to the contributions paid in Switzerland. Chapters 4 and 5 of Title III specify the application of this principle.

### **Abolition of residence clauses (Art. 11)**

The purpose of this provision is to ensure the export of cash benefits to beneficiaries residing in the other State. However, the convention does not provide for the export of invalidity and unemployment benefits. For Swiss nationals, the export of Swiss disability pensions is in any case guaranteed under Swiss law. The non-export of unemployment benefits corresponds to the situation with other non-EU/ EFTA states.

In addition, the convention contains the usual reservations of Switzerland in bilateral social security conventions with other non-EU/ EFTA states regarding certain benefits that are only paid in Switzerland, namely extraordinary pensions and helplessness allowances. Since the agreement does not apply to supplementary benefits (Art. 6), these are only paid to entitled persons resident in Switzerland.

Payment in third countries is not dealt with in this article, but is governed by the application of the principle of equal treatment (Art. 8): If a state provides exportation for its own nationals, it applies the same rule to the nationals of the other state.

### **Prohibition of overlapping benefits (Art. 12)**

This principle prevents the unjustified accumulation of benefits of the same kind relating to the same compulsory insurance period. Migrant workers are therefore not in a more favorable situation than those who remain in the country.

### **Determination of the applicable legislation (Title II)**

Title II of the Convention (Articles 13 to 18) is intended to determine the applicable national legislation. It contains a system of conflict rules for this purpose. The aim is to avoid double insurance or gaps in insurance. These provisions are largely based on the rules of the social security coordination provisions in force between Switzerland and the European Union (Regulation [EC] No 883/2004), but apply bilaterally between Switzerland and the United Kingdom.

According to these rules, persons covered by the convention are subject to the legislation of a single state (Art. 13(1)), and in principle to that of the country of employment (*lex loci*

laboris Art. 13(3)(a)). For certain groups of persons (civil servants, seafarers, aircrew) special provisions apply which deviate from this *lex loci laboris* rule.

Provisions are made for employees and self-employed persons who are temporarily posted to the other state (Art. 14) and for employees who are simultaneously employed in both states (Art. 15). A clause (Art. 17) allows the competent authorities of both states to make special arrangements for special cases in the interest of the insured persons and by mutual agreement.

A provision (Art. 18) also concerns the obligations of employers who have their registered office outside the competent state, in particular with regard to contributions.

A standard provision from bilateral agreements with other non-EU/ EFTA states on the insurance of accompanying family members allows the non-working spouse and children to remain insured with the posted worker in the home state (Art. 13 para. 6).

One provision concerns the coordination of voluntary insurance and voluntary continued insurance (Art. 16).

Annex 1 of the Agreement contains provisions on implementation and procedures that largely correspond to those of Regulation (EC) No. 987/2009.

The two States will agree on the structure and content of the forms used for the application of the convention (Art. 4 para. 1 of Annex 1) and on the minimum period of insurance required before a posting (Art. 13 para. 1 and 3 of Annex 1) within the framework of the Joint Administrative Committee established by Article 69 of the convention.

### **Special provisions concerning the various types of benefits (Title III)**

#### **Sickness, maternity and accident benefits (Chapters 1 and 2).**

In the area of healthcare, the convention adopts the coordination system of EU law. These rules guarantee access to and coverage of the costs of healthcare for persons who are insured in one state and need care while staying in another state. The scope of access to healthcare and the procedures to be followed differ according to the category of insured person (worker, frontier worker, pensioner, family member) and according to the type of stay (long-term or temporary).

If you are insured in one country and fall ill in another country, you will be treated as a person insured there at the local social security rate. The costs are later invoiced to the responsible insurer via the reimbursement system that also exists in relation to the EU and EFTA states. The competent insurer reimburses the costs either in the amount actually incurred or as a lump sum. The competent insurer may also authorize the person to receive treatment in the other state. Cash benefits are paid directly by the competent insurer if the convention provides for payment abroad.

As far as pensioners are concerned, **Section 2 of Chapter 1** contains provisions for determining the State competent to insure pensioners. Thus, a person who receives a pension from one State and resides in the other State is insured, together with the members of his family, in the State which pays him the pension.

**Section 3 of Chapter 1** contains a special rule for family members residing in the United Kingdom of a person insured in Switzerland who has been copied from the FMOPA. Instead of being insured in Switzerland and having to pay per capita premiums, they are insured in the UK, which has a national healthcare system for the entire resident population.

As in the case of health insurance, the agreement also provides for reimbursement of benefits between insurance institutions for accidents at work or occupational diseases (**Chapter 2**). A person insured in one state who resides in the other state is entitled to the necessary medical treatment in the country of residence in the event of an occupational accident or disease, without having to pay for the costs themselves. In addition, Chapter 2 of the convention and Annex 1 contain provisions on the delimitation of the obligation to pay benefits for occupational diseases in cases where a person has been exposed to a harmful substance in both states, as well as special delimitation and allocation rules, for example, if an occupational disease or the consequences of an accident worsen.

#### **Health fees when applying for visas (Art. 19)**

The United Kingdom has introduced a fee to be paid when applying for a residence permit to cover health costs. Article 19 reserves this right for the United Kingdom. However, the convention (Art. 21 and 22 Annex 1) provides that this fee shall be reimbursed to persons who, under the convention, remain compulsorily insured under the Swiss health insurance scheme during their stay in the United Kingdom, as the health costs are covered by their Swiss insurance.

#### **Death, invalidity/old-age and survivors' benefits (Chapter 3 - 5)**

**Chapter 3** contains provisions concerning entitlement to **death grants**, whereby only the United Kingdom has provided for these benefits in national law.

**Invalidity benefits** are dealt with in **Chapter 4**. As mentioned above, they are not exported, but the other coordination rules apply, e.g. taking into account periods completed in the other state to reach the minimum insurance period required under national law (Art. 44 and 45). For Switzerland, this means that UK insurance periods would have to be aggregated if a person covered by the convention does not reach the three years of insurance in Switzerland (minimum period required by Switzerland to be entitled to a Swiss pension).

**Chapter 5** deals with the granting and calculation of **old-age and survivors' benefits**.

If a person has completed insurance periods in both countries and the legislation of one country requires a minimum insurance period in order to be entitled to a pension, the principle of taking foreign periods into account (aggregation) applies. Insurance periods completed in other countries are to be taken into account for the fulfilment of any pre-insurance conditions in the pension insurance. However, this only enables access to pensions. The calculation of pensions continues to be carried out exclusively according to the principles of national law.

Switzerland can dispense with the calculation method according to the totalization and proratisation procedure, according to which all insurance periods in both countries are taken into account when calculating the amount of the pension and a fictitious pension is calculated on this basis and then the part of this fictitious pension corresponding to the

insurance period in the own country is paid out (entry in Annex 3). The coordination rules do not require the granting of benefits for an insurance period of less than one year (Art. 54).

Special rules govern the application of national provisions in the event of overlapping of benefits (Art. 50-52).

From a procedural point of view, a person who is entitled to a pension in both States may submit his application only in one State, which will forward the application to the other State (Art. 35 of Annex 1).

### **Unemployment benefits (Chapter 6)**

In the field of unemployment insurance, foreign periods of insurance and employment are also to be taken into account for the assessment of entitlement to benefits. However, it is up to each state to determine the general conditions for the acquisition of entitlements. In contrast to the FMOPA, the export of unemployment benefits is not provided for.

### **Other provisions (Title IV)**

This Title sets the framework necessary for the application of the convention.

**Cooperation** between authorities and institutions is governed by **Article 58**, a standard provision which provides in particular for mutual administrative assistance, recognition of documents issued in an official language of the other State, direct communication with insured persons residing in the other State and the obligation of insured persons to inform institutions of their situation. This cooperation extends to the **prevention of fraud and error** with a specific article (Art. 59) that allows liaison bodies, in particular, to exchange data on the death of pensioners in order to avoid the payment of benefits that are not due.

The **protection of the exchanged data** is regulated in **Articles 60 and 61**. Article 60 sets out the main principles of personal data protection that must be respected in the application of the convention. Article 61 specifies the rules of confidentiality that apply to all information exchanged.

The parties have agreed to **exchange information electronically (Art. 62 and Art. 4 of Annex 1)**. It is intended that both states will continue to use the current Electronic Exchange of Social Security Information (EESSI) system.

The convention contains various provisions on administrative cooperation, which facilitate administrative procedures in the application of the convention (**Art. 63 to 67**) and, in particular, allow for the recovery of contributions and undue benefits paid in the other State (Art. 66 and Title IV, Chapter II of Annex 1).

### **Joint Administrative Committee and settlement of disputes (Art. 69-70)**

The Parties shall establish a Joint Administrative Committee (JAC) to administer the convention. This formal and clearly defined framework favors exchanges and enables the details of application to be dealt with efficiently. Its responsibilities correspond to the normal tasks of the competent authorities in a social security convention and are clearly outlined in the relevant articles of the convention and in Annex 1.

Its powers include, in particular, dealing with questions of interpretation of the convention, concluding administrative arrangements where necessary to facilitate the application of the convention, and determining the forms required and the manner of their exchange. The JAC is empowered to determine the currency conversion rate, to monitor the reimbursement of healthcare costs and to take measures to facilitate the collection of contributions and recoveries. It provides a forum for exchange, and divergences and difficulties in application are dealt with there, with the possibility of recourse to **arbitration** in the event of persistent disagreement (**Art. 70**).

The JAC is co-chaired by a representative of each State and meets in principle once a year or on request.

### **Transitional and final provisions (Title V)**

#### **Entry into force and provisional application (Art. 72-73)**

In addition to a traditional provision for entry into force after completion of the legal procedures for ratification in each State (**Art. 72**), the convention provides for provisional application (**Art. 73**). This can take place after the signing of the convention at a time agreed by the contracting parties.

#### **Termination of the agreement and maintenance of acquired rights (Art. 74- 75)**

The convention may be terminated at any time by either State (**Art. 74**). Acquired rights are maintained and the states will agree on arrangements for other situations (**Art. 75**).

#### **Transitional Provisions and Relationship to the 1968 Convention (Art. 76-77)**

Art. 76 is a classic provision that regulates how situations and facts prior to the entry into force of the convention are to be taken into account. Art. 77 deals specifically with the 1968 Convention on Social Security, which ceases to apply in relations between Switzerland and the United Kingdom and is replaced by the present Convention, guaranteeing acquired rights. However, the old convention continues to apply to the Channel Islands and the Isle of Man (see commentary on Article 5).

### **Annexes**

Annex 1 contains the implementing provisions (procedures, documents to be used) and corresponds to Regulation (EC) No 987/2009 applied under the FMOPA.

Annex 2 contains the benefits excluded from the scope of the Agreement.

Annex 3 lists the situations in which the pro rata calculation is waived or does not apply.

The special provisions for the application of the legislation of both states are listed in Annex 4 and largely correspond to the entries in EU Regulation No. 883/2004. Some passages have been adapted to the bilateral context and integrated into the text of the Convention to improve readability.