

Council Regulation (EEC) No 1390/81 of 12 May 1981 extending to self-employed persons and members of their families Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community

COUNCIL REGULATION (EEC) No 1390/81

of 12 May 1981

extending to self-employed persons and members of their families Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 2, 7, 51 and 235 thereof,

Having regard to the proposal from the Commission drawn up after consultation of the Administrative Commission on Social Security for Migrant Workers⁽¹⁾,

Having regard to the opinion of the European Parliament⁽²⁾,

Having regard to the opinion of the Economic and Social Committee⁽³⁾,

Whereas, in order to attain freedom of movement for employed persons and eliminate the obstacles that would, in the sphere of social security, result from the application of national legislations only, the Council adopted, on the basis of Article 51 of the Treaty, Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community⁽⁴⁾, as last amended by Regulation (EEC) No 196/81⁽⁵⁾ fixing the rules for coordinating social security schemes for employed persons;

Whereas freedom of movement for persons, which is one of the cornerstones of the Community, is not confined to employed persons but also extends to self-employed persons in the framework of the freedom of establishment and the freedom to supply services;

Whereas the coordination of the social security schemes applicable to self-employed persons is necessary to attain one of the objectives of the Community; whereas the Treaty has not provided the necessary specific powers for this purpose;

Whereas, in pursuance of the Treaty, any discrimination on grounds of nationality with regard to establishment and the provision of services has been prohibited since the end of the transitional period;

Whereas, in the sphere of social security, the application of national legislations only would not afford sufficient protection to self-employed persons moving within the Community; whereas, in order to make the freedom of establishment and the freedom to provide services fully effective, the social security schemes for self-employed persons should be coordinated;

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Whereas Regulation (EEC) No 1408/71, even though it applies to employed persons, already covers certain categories of self-employed persons; whereas, for reasons of equity, it would be appropriate to apply, to the largest possible extent, the same rules to self-employed persons as are laid down for employed persons;

Whereas there are grounds for making the necessary adaptations to Regulation (EEC) No 1408/71 to make it possible to apply the provisions of that Regulation to self-employed persons and their families moving within the Community to the largest possible extent that is compatible with the nature of their occupation and the characteristics of the special social security schemes that cover them;

Whereas the adjustments to be made to Regulation (EEC) No 1408/71 call for adjustments to certain of the Annexes to that Regulation;

Whereas, in particular, it is necessary to stipulate in an Annex, what the terms ‘employed person’ and ‘self-employed person’, introduced in Regulation (EEC) No 1408/71, mean when the person concerned is insured under a social security scheme which applies to all residents or to certain categories of resident or to the entire working population of a Member State; whereas it seems preferable to define these expressions and the expression ‘member of the family’ in a separate Annex; whereas two further Annexes are needed, to indicate the special arrangements for self-employed persons excluded from the scope of the Regulation and for instances in which a person is subject simultaneously to the legislation of two Member States,

HAS ADOPTED THIS REGULATION:

Article 1 **U.K.**

Regulation (EEC) No 1408/71 shall be amended as follows:

1. The title shall be replaced by the following:
COUNCIL REGULATION (EEC) No 1408/71
of 14 June 1971
on the application of social security schemes to employed persons, to self-employed persons and to their families moving within the Community.
2. In Article 1:
 - (a) subparagraphs (a) and (b) be replaced by the following:
 - (a) “employed person” and “self-employed person” mean respectively:
 - (i) any person who is insured, compulsorily or on an optional continued basis, for one or more of the contingencies covered by the branches of a social security scheme for employed or self-employed persons;
 - (ii) any person who is compulsorily insured for one or more of the contingencies covered by the branches of social security dealt with in this Regulation, under a social security scheme for all residents or for the whole working population, if such person:

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- can be identified as an employed or self-employed person by virtue of the manner in which such scheme is administered or financed, or,
 - failing such criteria, is insured for some other contingency specified in Annex I under a scheme for employed or self-employed persons, or under a scheme referred to in (iii), either compulsorily or on an optional continued basis, or, where no such scheme exists in the Member State concerned, complies with the definition given in Annex I;
- (iii) any person who is compulsorily insured for several of the contingencies covered by the branches dealt with in this Regulation, under a standard social security scheme for the whole rural population in accordance with the criteria laid down in Annex I;
- (iv) any person who is voluntarily insured for one or more of the contingencies covered by the branches dealt with in this Regulation, under a social security scheme of a Member State for employed or self-employed persons or for all residents or for certain categories of residents:
- if such person carries out an activity as an employed or self-employed person, or
 - if such person has previously been compulsorily insured for the same contingency under a scheme for employed or self-employed persons of the same Member State;
- (b) “frontier worker” means any employed or self-employed person who pursues his occupation in the territory of a Member State and resides in the territory of another Member State to which he returns as a rule daily or at least once a week; however, a frontier worker who is posted elsewhere in the territory of the same or another Member State by the undertaking to which he is normally attached, or who engages in the provision of services elsewhere in the territory of the same or another Member State, shall retain the status of frontier worker for a period not exceeding four months, even if he is prevented, during that period, from returning daily or at least once a week to the place where he resides;
- (b) in subparagraph (c), first line, ‘any worker’ shall be replaced by ‘any employed person’;
- (c) subparagraph (f) shall be replaced by the following:
- (f) “member of the family” means any person defined or recognized as a member of the family or designated as a member of the household by the legislation under which benefits are provided or, in the cases referred to in Article 22 (1) (a) and Article 31, by the legislation of the Member State in whose territory such person resides; where, however, the said legislations regard as a member of the family or a

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member of the household only a person living under the same roof as the employed or self-employed person, this condition shall be considered satisfied if the person in question is mainly dependent on that person. Where a Member State's legislation on sickness or maternity benefits in kind does not enable members of the family to be distinguished from the other persons to whom it applies, the term "member of the family" shall have the meaning given to it in Annex I;

- (d) in subparagraph (g), sixth and eighth lines, 'deceased worker' shall be replaced by 'deceased';
- (e) in subparagraph (j) the following subparagraph shall be inserted after the last subparagraph:

The term "legislation" also excludes provisions governing special schemes for self-employed persons the creation of which is left to the initiatives of those concerned or which apply only to a part of the territory of the Member State concerned, irrespective of whether or not the authorities decided to make them compulsory or extend their scope. The special schemes in question are specified in Annex II;
- (f) in the first and second lines of paragraph (r), the words 'periods of contribution or periods of employment' shall be replaced by the words 'periods of contribution or periods of employment or self-employment';
- (g) paragraph (s) shall be replaced by the following:
 - (s) "periods of employment" and "periods of self-employment" mean periods so defined or recognized by the legislation under which they were completed, and all periods treated as such, where they are regarded by the said legislation as equivalent to periods of employment or of self-employment;
- (h) in the last line of paragraph (u) (i) 'Annex I' shall be replaced by 'Annex II'.

3. In Article 2:

- (a) in the first line of paragraph 1, 'to workers' shall be replaced by 'to employed or self-employed persons';
- (b) paragraph 2:
 - in line 2, 'workers' shall be replaced by 'employed or self-employed persons',
 - in line 4, 'such workers' shall be replaced by 'such employed or self-employed persons'.

4. In Article 3 (3) in the first line, 'Annex II' shall be replaced by 'Annex III'.

5. In the last line of Article 7 (2) (c), 'Annex II' shall be replaced by 'Annex III'.

6. Article 9 (1) shall be replaced by the following:

- 1. The provisions of the legislation of any Member State which make admission to voluntary or optional continued insurance conditional upon residence in the territory of that State shall not apply to persons resident in the territory of another Member

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State, provided that at some time in their past working life they were subject to the legislation of the first State as employed or as self-employed persons.

7. In the sixth line of Article 10 (2), ‘as a worker’ shall be replaced by ‘as an employed or self-employed person’.
8. Articles 13 and 14 shall be replaced by the following:

Article 13

General rules

1 Subject to Article 14 (c), persons to whom this Regulation applies shall be subject to the legislation of a single Member State only. That legislation shall be determined in accordance with the provisions of this Title.

- 2 Subject to Articles 14 to 17:
- a a person employed in the territory of one Member State shall be subject to the legislation of that State even if he resides in the territory of another Member State or if the registered office or place of business of the undertaking or individual employing him is situated in the territory of another Member State;
 - b a person who is self-employed in the territory of one Member State shall be subject to the legislation of that State even if he resides in the territory of another Member State;
 - c a person employed on board a vessel flying the flag of a Member State shall be subject to the legislation of that State;
 - d civil servants and persons treated as such shall be subject to the legislation of the Member State to which the administration employing them is subject;
 - e a person called up or recalled for service in the armed forces, or for civilian service, of a Member State shall be subject to the legislation of that State. If entitlement under that legislation is subject to the completion of periods of insurance before entry into or after release from such military or civilian service, periods of insurance completed under the legislation of any other Member State shall be taken into account, to the extent necessary, as if they were periods of insurance completed under the legislation of the first State. The employed or self-employed person called up or recalled for service in the armed forces or for civilian service shall retain the status of employed or self-employed person.

Article 14

Special rules applicable to persons, other than mariners, engaged in paid employment

Article 13 (2) (a) shall apply subject to the following exceptions and circumstances:

1. (a) A person employed in the territory of a Member State by an undertaking to which he is normally attached who is posted by that undertaking to the territory of another Member State to perform work there for that undertaking shall continue to be subject to the legislation of the first Member State, provided that the anticipated duration of that work does not exceed 12 months and that he is

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- not sent to replace another person who has completed his term of posting;
- (b) if the duration of the work to be done extends beyond the duration originally anticipated, owing to unforeseeable circumstances, and exceeds 12 months, the legislation of the first Member State shall continue to apply until the completion of such work, provided that the competent authority of the Member State in whose territory the person concerned is posted or the body designated by that authority gives its consent; such consent must be requested before the end of the initial 12-month period. Such consent cannot, however, be given for a period exceeding 12 months.
2. A person normally employed in the territory of two or more Member States shall be subject to the legislation determined as follows:
- (a) a person who is a member of the travelling or flying personnel of an undertaking which, for hire or reward or on its own account, operates international transport services for passengers or goods by rail, road, air or inland waterway and has its registered office or place of business in the territory of a Member State, shall be subject to the legislation of the latter State, with the following restrictions:
- (i) where the said undertaking has a branch or permanent representation in the territory of a Member State other than that in which it has its registered office or place of business, a person employed by such branch or permanent representation shall be subject to the legislation of the Member State in whose territory such branch or permanent representation is situated;
- (ii) where a person is employed principally in the territory of the Member State in which he resides, he shall be subject to the legislation of that State, even if the undertaking which employs him has no registered office or place of business or branch or permanent representation in that territory;
- (b) a person other than that referred to in (a) shall be subject:
- (i) to the legislation of the Member State in whose territory he resides, if he pursues his activity partly in that territory or if he is attached to several undertakings or several employers who have their registered offices or places of business in the territory of different Member States;
- (ii) to the legislation of the Member State in whose territory is situated the registered office or place of business of the undertaking or individual employing him, if he does not reside in the territory of any of the Member States where he is pursuing his activity.
3. A person who is employed in the territory of one Member State by an undertaking which has its registered office or place of business in the territory of another Member State and which straddles the common frontier

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of these States shall be subject to the legislation of the Member State in whose territory the undertaking has its registered office or place of business.

Article 14a

Special rules applicable to persons, other than mariners, who are self-employed

Article 13 (2) (b) shall apply subject to the following exceptions and circumstances:

1. (a) A person normally self-employed in the territory of a Member State and who performs work in the territory of another Member State shall continue to be subject to the legislation of the first Member State, provided that the anticipated duration of the work does not exceed 12 months;
- (b) if the duration of the work to be done extends beyond the duration originally anticipated, owing to unforeseeable circumstances, and exceeds 12 months, the legislation of the first Member State shall continue to apply until the completion of such work, provided that the competent authority of the Member State in whose territory the person concerned has entered to perform the work in question or the body appointed by that authority gives its consent; such consent must be requested before the end of the initial 12-month period. Such consent cannot, however, be given for a period exceeding 12 months.
2. A person normally self-employed in the territory of two or more Member States shall be subject to the legislation of the Member State in whose territory he resides if he pursues any part of his activity in the territory of that Member State. If he does not pursue any activity in the territory of the Member State in which he resides, he shall be subject to the legislation of the Member State in whose territory he pursues his main activity. The criteria used to determine the principal activity are laid down in the Regulation referred to in Article 97.
3. A person who is self-employed in an undertaking which has its registered office or place of business in the territory of one Member State and which straddles the common frontier of two Member States shall be subject to the legislation of the Member State in whose territory the undertaking has its registered office or place of business.
4. If the legislation to which a person should be subject in accordance with paragraphs 2 or 3 does not enable that person, even on a voluntary basis, to join a pension scheme, the person concerned shall be subject to the legislation of the other Member State which would apply apart from these particular provisions or, should the legislations of two or more Member States apply in this way, he shall be subject to the legislation decided on by common agreement amongst the Member States concerned or their competent authorities.

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Article 14b

Special rules applicable to mariners

Article 13 (2) (c) shall apply subject to the following exceptions and circumstances:

1. A person employed by an undertaking to which he is normally attached, either in the territory of a Member State or on board a vessel flying the flag of a Member State, who is posted by that undertaking on board a vessel flying the flag of another Member State to perform work there for that undertaking shall, subject to the conditions provided in Article 14 (1), continue to be subject to the legislation of the first Member State.
2. A person normally self-employed, either in the territory of a Member State or on board a vessel flying the flag of a Member State and who performs work on his own account on board a vessel flying the flag of another Member State shall, subject to the conditions provided in Article 14a (1), continue to be subject to the legislation of the first Member State.
3. A person who, while not being normally employed at sea, performs work in the territorial waters or in a port of a Member State on a vessel flying the flag of another Member State within those territorial waters or in that port, but is not a member of the crew of the vessel, shall be subject to the legislation of the first Member State.
4. A person employed on board a vessel flying the flag of a Member State and remunerated for such employment by an undertaking or a person whose registered office or place of business is in the territory of another Member State shall be subject to the legislation of the latter State if he is resident in the territory of that State; the undertaking or person paying the remuneration shall be considered as the employer for the purposes of the said legislation.

Article 14c

Special rules applicable to persons employed simultaneously in the territory of one Member State and self- employed in the territory of another Member State

1. A person who is employed simultaneously in the territory of one Member State and self-employed in the territory of another Member State shall be subject:
 - (a) to the legislation of the Member State in the territory of which he is engaged in paid employment, subject to subparagraph (b);
 - (b) in the instances referred to in Annex VII, to the legislation of each of these Member States, as regards the activity pursued in its territory.
2. The detailed rules for implementing subparagraph (b) of paragraph 1 shall be laid down in a Regulation to be adopted by the Council on a proposal from the Commission.

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Article 14d

Miscellaneous provisions

1. The person referred to in Article 14 (2) and (3), Article 14a (2), (3) and (4) and Article 14c (1) (a) shall be treated, for the purposes of application of the legislation laid down in accordance with these provisions, as if he pursued all his professional activity or activities in the territory of the Member State concerned.
 2. The provisions of the legislation of a Member State under which a pensioner who is pursuing a professional or trade activity is not subject to compulsory insurance in respect of such activity shall also apply to a pensioner whose pension was acquired under the legislation of another Member State, unless the person concerned expressly asks to be so subject by applying to the institution designated by the competent authority of the first Member State and named in Annex 10 to the Regulation referred to in Article 97.
9. Article 15 (1) shall be replaced by the following:
1. Articles 13 to 14d shall not apply to voluntary insurance or to optional continued insurance unless, in respect of one of the branches referred to in Article 4, there exists in any Member State only a voluntary scheme of insurance.
10. Article 17 shall be replaced by the following:

Article 17

Exceptions to Articles 13 to 16

Two or more Member States, the competent authorities of those States or the bodies designated by those authorities may, by common agreement, provide for exceptions to the provisions of Articles 13 to 16 in the interests of certain categories of employed or self-employed persons, or of certain such persons.

11. Article 18 (2), in the fifth line, 'worker concerned' shall be replaced by 'person concerned'.
12. In the heading of Section 2, 'Workers' shall be replaced by 'Employed or self-employed persons'.
13. In the first line of Article 19 (1), 'A worker' shall be replaced by 'An employed or self-employed person' and in the eighth line of the second subparagraph of Article 19 (2), 'the worker' shall be replaced by 'the employed or self-employed person'.
14. In the fifth line of Article 20, 'the worker' shall be replaced by 'the person concerned'.
15. In the first line of Article 21 (1), in the second line of the second subparagraph of Article 21 (2) and in the first line of Article 21 (4), 'the worker' or 'a worker' shall be replaced by 'the employed or self-employed person' or 'an employed or self-employed person', as the case may be.
16. In Article 22:

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- (a) in the first line of paragraph 1, ‘a worker’ shall be replaced by ‘an employed or self-employed person’;
 - (b) in the second line of the first subparagraph of paragraph 3, ‘of a worker's’ shall be replaced by ‘of an employed or self-employed person's’;
 - (c) in the third line of the second subparagraph of paragraph 3 and in the fourth line of (a) in the second subparagraph of paragraph 3, ‘the worker’ shall be replaced by ‘the employed or self-employed person’;
 - (d) in the second line of paragraph 4, ‘a worker’ shall be replaced by ‘an employed or self-employed person’.
17. In Article 23, paragraphs 1 and 2 shall be replaced by the following:
- 1. The competent institution of a Member State whose legislation provides that the calculation of cash benefits shall be based on average earnings, shall determine such average earnings exclusively by reference to earnings confirmed as having been paid during the periods completed under the said legislation.
 - 2. The competent institution of a Member State whose legislation provides that the calculation of cash benefits shall be based on standard earnings, shall take account exclusively of the standard earnings or, where appropriate, of the average of standard earnings for the periods completed under the said legislation.
18. In Article 24 (1):
- in the first line, ‘a worker’ shall be replaced by ‘an employed or self-employed person’;
 - in the sixth line ‘the said worker’ shall be replaced by ‘the said employed or self-employed person’.
19. In Article 25:
- (a) in the first line of paragraph 1 ‘an unemployed person’ shall be replaced by ‘an unemployed. person who was formerly employed or self-employed’;
 - (b) in the first line of paragraph 2, ‘who was formerly employed and’ shall be added after ‘A totally unemployed person’.
20. In the first line of Article 26 (1) ‘a worker’ shall be replaced by ‘an employed or self-employed person’.
21. Article 34 shall be replaced by the following:

Article 34

General provisions

- 1. For the purposes of Articles 28, 28a, 29 and 31, a pensioner who is in receipt of two or more pensions due under the legislation of a single Member State shall be regarded as a pensioner entitled to draw a pension under the legislation of one Member State, within the meaning of these provisions.
- 2. Articles 27 to 33 shall not apply to a pensioner or to members of his family who are entitled to benefits under the legislation of a Member State as a result of pursuing a professional or trade activity. In such a case, the person concerned shall,

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for the purposes of the implementation of this Chapter, be considered as an employed or self-employed person or as a member of an employed or self-employed person's family.

22. In Article 35:

(a) Paragraphs 1 and 2 shall be replaced by the following:

1. Subject to paragraph 2, where the legislation of the country of stay or residence contains several sickness or maternity insurance schemes, the provisions applicable under Articles 19, 21 (1), 22, 25, 26, 28 (1), 29 (1) or 31 shall be those of the scheme covering manual workers in the steel industry. Where, however, the said legislation includes a special scheme for workers in mines and similar undertakings, the provisions of such scheme shall apply to that category of workers and members of their families provided the institution of the place of stay or residence to which application is made is competent to administer such scheme.

2. Where the legislation of the country of stay or residence includes one or more special schemes, covering all or most occupational categories of self-employed persons, which grant benefits in kind less favourable than those granted to employed persons, the provisions applicable to the person concerned and to the members of his family pursuant to Article 19 (1) (a) and (2), Article 22 (1) under (i) and (3), Article 28 (1) (a) and Article 31 (a) shall be those of the scheme or schemes determined by the implementing Regulation referred to in Article 97:

- a where, in the competent State, the person concerned is insured under a special scheme for self-employed persons which also grants less favourable benefits in kind than those granted to employed persons, or
- b where a person in receipt of one or more pensions is, under the pensions legislation of the competent Member State or Member States, entitled only to the benefits in kind provided for by a special scheme for self-employed persons which also grants less-favourable benefits in kind than those granted to employed persons.;

(b) paragraphs 2 and 3 shall become paragraphs 3 and 4 respectively;

(c) in the fourth line of the new paragraph 3, 'workers' shall be replaced by 'employed or self-employed persons'.

23. In the heading of Section 1, Chapter 2 of Title III, the word 'workers' shall be replaced by 'employed or self-employed persons'.

24. In Article 37:

(a) in the first line of paragraph 1, 'a worker' shall be replaced by 'an employed or self-employed person';

(b) in the first line of paragraph 2, 'Annex II' shall be replaced by 'Annex IV'.

25. (a) Article 38 (2) shall read as follows:

2. Where the legislation of a Member State makes the granting of certain benefits conditional upon the periods of insurance having been completed only in an occupation which is subject to a special scheme for

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employed persons or, where appropriate, in a specific employment, periods of insurance completed under the legislations of other Member States shall be taken into account for the granting of these benefits only if completed under a corresponding scheme or, failing this, in the same occupation or, where appropriate, in the same employment. If, account having been taken of the periods thus completed, the person concerned does not satisfy the conditions for receipt of these benefits, these periods shall be taken into account for the granting of the benefits, under the general scheme or, failing this, under the scheme applicable to manual or clerical workers, as appropriate.;

(b) the following paragraph shall be added:

3. Where the legislation of a Member State makes the granting of certain benefits conditional upon the periods of insurance having been completed only in an occupation subject to a special scheme for self-employed persons, periods of insurance completed under the legislations of other Member States shall be taken into account for the granting of these benefits only if completed under a corresponding scheme or, failing this, in the same occupation.

If, account having been taken of the periods thus completed, the person concerned does not satisfy the conditions for receipt of these benefits, these periods shall be taken into account for the granting of the benefits under the general scheme or, failing this, under the scheme applicable to manual or clerical workers, as appropriate, in so far as they have been completed under a scheme other than the abovementioned corresponding scheme and provided that the person concerned has also been insured under this general scheme or, failing this, under the scheme applicable to manual or clerical workers, as appropriate.

26. Article 39 (3) shall be replaced by the following:

3. A person who is not entitled to benefits under paragraph 1 shall receive the benefits to which he is still entitled under the legislation of another Member State, taking account, where appropriate, of the provisions of Article 38.

27. In the heading of Section 2, Chapter 2 of Title III, the word ‘workers’ shall be replaced by ‘employed or self-employed persons’.

28. In Article 40:

- (a) in the first line of paragraph 1, ‘a worker’ shall be replaced by ‘an employed or self-employed person’;
- (b) in the first line of paragraph 2, ‘a worker’ shall be replaced by ‘an employed or self-employed person’; ‘Annex III’ shall be replaced by ‘Annex IV’:
 - in the third line,
 - in the last line of the first indent,
 - in the last line of the second indent;
- (c) in paragraph 3 (a):
 - in the second line, ‘Annex III’ shall be replaced by ‘Annex IV’,
 - in the fifth line, ‘where a worker’ shall be replaced by ‘where an employed or self-employed person’;

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- (d) in the last line of paragraph 4, ‘Annex IV’ shall be replaced by ‘Annex V’.
29. In Article 41:
- (a) in the second line of paragraph 1, ‘a worker’ shall be replaced by ‘an employed or self-employed person’;
- (b) in the last line of paragraph 1 (d) (iii), ‘Annex III’ shall be replaced by ‘Annex IV’;
- (c) in the second line of paragraph 2, ‘a worker’ shall be replaced by ‘an employed or self-employed person’.
30. In Article 44:
- (a) in the title, ‘a worker’ shall be replaced by ‘an employed or self-employed person’;
- (b) in the first line of paragraph 1, ‘of a worker’ shall be replaced by ‘of an employed or self-employed person’;
- (c) in the fourth line of paragraph 2, ‘the worker’ shall be replaced by ‘the employed or self-employed person’.
31. In Article 45:
- (a) in the heading, ‘a worker’ shall be replaced by ‘an employed or self-employed person’;
- (b) paragraph 2:
— in the third line ‘only’ shall be added after ‘completed’,
— in the fourth line ‘for employed persons’ shall be added after ‘special scheme’;
- (c) the following paragraph shall be added:
3. Where the legislation of a Member State makes the granting of certain benefits conditional upon the periods of insurance having been completed only in an occupation subject to a special scheme for self-employed persons, periods completed under the legislations of other Member States shall be taken into account for the granting of such benefits only if completed under a corresponding scheme or, failing this, in the same occupation.
- If, taking into account the periods thus completed, the person concerned does not satisfy the conditions for receipt of these benefits, those periods shall be taken into account for the granting of the benefits under the general scheme or, failing this, under the scheme applicable to manual or clerical workers, as appropriate, in so far as they have been completed under a scheme other than the abovementioned corresponding scheme and provided that the person concerned has also been insured under this general scheme or, failing this, under the scheme applicable to manual or clerical workers, as appropriate.;
- (d) paragraph 3 shall become paragraph 4 and shall read as follows:
4. Where the legislation of a Member State which makes the granting of benefits conditional upon an employed person being subject to its

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legislation at the time when the risk materializes has no requirements as to the length of insurance periods either for entitlement to or calculation of benefits, any employed person who is no longer subject to that legislation shall for the purposes of this Chapter, be deemed to be still so subject at the time when the risk materializes, if at that time he is subject to the legislation of another Member State or, failing this, can establish a claim to benefits under the legislation of another Member State However, this latter condition shall be deemed to be satisfied in the case referred to in Article 48 (1).;

(e) the following paragraphs shall be added:

5. Paragraph 4 shall apply to self-employed persons in order to determine whether the conditions for entitlement to survivors' benefits have been satisfied.

6 Where the legislation of a Member State which makes granting of invalidity benefits conditional upon the person concerned being subject to that legislation at the time when the risk materializes has no requirements as to the length of insurance periods either for the entitlement to or the calculation of benefits, any self-employed person who is no longer subject to that legislation shall, for the purposes of this Chapter, be deemed to be still so subject at the time when the risk materializes, if at that time he is subject to the legislation of another Member State.

32. In Article 46:

- (a) in the first line of the first subparagraph of paragraph 1, 'a worker' shall be replaced by 'an employed or self-employed person';
- (b) in the first line of paragraph 2, 'a worker' shall be replaced by 'an employed or self-employed person';
- (c) in the sixth line of paragraph 2 (a), 'worker' shall be replaced by 'employed or self-employed person'.

33. Article 47 (1) shall be replaced by the following:

- 1. For the calculation of the theoretical amount referred to in Article 46 (2) (a), the following rules shall apply:
 - a where, under the legislation of a Member State, benefits are calculated on the basis of average earnings, an average contribution, an average increase or on the ratio which existed, during the periods of insurance, between the claimant's gross earnings and the average gross earnings of all insured persons other than apprentices, such average figures or ratios shall be determined by the competent institution of that State solely on the basis of the periods of insurance completed under the legislation of the said State, or the gross earnings received by the person concerned during those periods only;
 - b where, under the legislation of a Member State, benefits are calculated on the basis of the amount of earnings, contributions or increases, the competent institution of that State shall determine the earnings, contributions and increases to be taken into account in respect of the periods of insurance or residence completed under the legislation of other Member States on the basis of the average earnings, contributions or increases recorded in respect of the periods of insurance completed under the legislation which it administers;

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- c where, under the legislation of a Member State, benefits are calculated on the basis of standard earnings or a fixed amount, the competent institution of that State shall consider the standard earnings or the fixed amount to be taken into account by it in respect of periods of insurance or residence completed under the legislations of other Member States as being equal to the standard earnings or fixed amount or, where appropriate, to the average of the standard earnings or the fixed amount corresponding to the periods of insurance completed under its own legislation;
 - d where, under the legislation of a Member State, benefits are calculated for some periods on the basis of the amount of earnings, and, for other periods, on the basis of standard earnings or a fixed amount, the competent institution of that State shall, in respect of periods of insurance or residence completed under the legislations of other Member States, take into account the earnings or fixed amounts determined in accordance with the provisions of (b) or (c) above or, as appropriate, the average of these earnings or fixed amounts; where benefits are calculated on the basis of standard earnings or a fixed amount for all the periods completed under the legislation which it administers, the competent institution shall consider the earnings to be taken into account in respect of the periods of insurance or residence completed under the legislations of other Member States as being equal to the notional earnings corresponding to the standard earnings or fixed amount.
34. In the first line of Article 52, ‘a worker’ shall be replaced by ‘an employed or self-employed person’.
35. In the last line of Article 53, ‘worker’ shall be replaced by ‘person concerned’.
36. In the first lines of paragraphs 1 and 2 of Article 54, ‘worker’ shall be replaced by ‘an employed or self-employed person’.
37. In the first line of Article 55 (1), ‘A worker’ shall be replaced by ‘An employed or self-employed person’.
38. Article 58 (1) and (2) shall be replaced by the following:
- 1. The competent institution of a Member State whose legislation provides that the calculation of cash benefits shall be based on average earnings shall determine such average earnings exclusively by reference to earnings confirmed as having been paid during the periods completed under the said legislation.
 - 2. The competent institution of a Member State whose legislation provides that the calculation of cash benefits shall be based on standard earnings shall take account exclusively of the standard earnings or, where appropriate, of the average of standard earnings for the periods completed under the said legislation.
39. Article 60 (1) shall be replaced by the following:
- 1. In the event of aggravation of an occupational disease for which an employed or self-employed person has received or is receiving benefit under the legislation of a Member State, the following rules shall apply:
 - a if the person concerned has not, while in receipt of benefits, been engaged in an occupation under the legislation of another Member State likely to cause or aggravate the disease in question, the competent institution of the first Member State shall be bound to meet the cost of the benefits under

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the provisions of the legislation which it administers taking into account the aggravation;

- b if the person concerned, while in receipt of benefits, has pursued such an activity under the legislation of another Member State, the competent institution of the first Member State shall be bound to meet the cost of the benefits under the legislation which it administers without taking into account the aggravation. The competent institution of the second Member 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 which it administers if the disease in question had occurred under the legislation of that Member State;
- c if, in the case covered by subparagraph (b), an employed or self-employed person suffering from sclerogenic pneumoconiosis or from a disease determined under Article 57 (4) is not entitled to benefits under the legislation of the second Member State, the competent institution of the first Member State shall be bound to provide benefits under the legislation which it administers, taking into account the aggravation. The competent institution of the second Member State shall, however, meet the cost of the difference between the amount of cash benefits, including pensions, due from the competent institution of the first Member State, taking into account the aggravation, and the amount of the corresponding benefits which were due prior to the aggravation.

- 40. In the third line of Article 61 (1) 'a worker' shall be replaced by 'person concerned'.
- 41. In the third line of Article 62 (1), 'workers' shall be replaced by 'employed or self-employed persons'.
- 42. In the first line of Article 65 (1), 'when a worker' shall be replaced by 'when an employed or self-employed person'.
- 43. In Article 67 (1) and (2) the words 'completed under the legislation of any other Member State' shall be replaced by the words 'completed as an employed person under the legislation of any other Member State.'
- 44. In the first line of Article 69 (1), 'a worker' shall be replaced by 'an employed or self-employed person'.
- 45. In the second line of the second subparagraph of Article 70 (1), 'a worker' shall be replaced by 'an employed or self-employed person'.
- 46. In Article 71 (1):
 - (a) in the first line, 'an unemployed person who' shall be replaced by 'an unemployed person who was formerly employed and who';
 - (b) in the first line of (b) (i) and in the first line of (b) (ii), 'a worker' shall be replaced by 'an employed person';
 - (c) in the 11th line of (b) (ii), 'such worker' shall be replaced by 'such employed person'.
- 47. In Title III:
 - (a) the title of Chapter 7 shall be replaced by the following:

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FAMILY BENEFITS AND FAMILY ALLOWANCES;

- (b) the title of Section 1 of Chapter 7 shall be replaced by the following:
Provision common to benefits for employed, self-employed and unemployed persons;
 - (c) in the title of Section 2 of Chapter 7 ‘Workers and unemployed workers’ shall be replaced by ‘Employed and unemployed persons’.
48. The title of Article 72 shall read ‘Aggregation of periods of insurance, employment or self-employment’ and, in the Article itself, ‘periods of insurance or employment’ shall be replaced by ‘periods of insurance, employment or self-employment’.
49. In Article 73:
- (a) the title shall be replaced by the following:
Employed persons;
 - (b) in the first line of both paragraphs 1 and 2 and in the sixth line of paragraph 2, ‘a worker’ shall be replaced by ‘an employed person’;
 - (c) paragraph 3 shall be replaced by the following:

3. However, an employed person who is subject to French legislation by virtue of Article 14 (1) shall be entitled to the family benefits set out in Annex VI in respect of members of his family who accompany him to the territory of the Member State where he is working.
50. In the first line of Article 74 (1) and of Article 74 (2), ‘an unemployed person drawing’ shall be replaced by ‘an unemployed person who was formerly employed and who draws’.
51. In Article 75:
- (a) in the fourth line of paragraph 1 (a), ‘the worker’ shall be replaced by ‘the employed person’ and, in the seventh line, ‘the unemployed worker’ shall be replaced by ‘the unemployed person’;
 - (b) in the second line of paragraph 2 (b), ‘to the worker’ shall be replaced by ‘to the employed person’.
52. In Article 78:
- (a) in the first line of both paragraph 2 (a) and (b), ‘deceased worker’ shall be replaced by ‘deceased employed or self-employed person’;
 - (b) in the third line of paragraph 2 (b) (ii), ‘deceased worker’ shall be replaced by ‘the deceased’.
53. In Article 79:
- (a) paragraph 1:
 - in the sixth line of the first subparagraph, the word ‘worker’ shall be deleted,
 - in the fourth line of (a) of the second subparagraph, ‘self-employment’ shall be inserted between ‘employment’ and ‘or residence’;

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- (b) in the last line of paragraph 2, ‘the worker’ shall be replaced by ‘the pensioner or the deceased’;
 - (c) in the last line of paragraph 3, ‘of a worker’ shall be replaced by ‘of an employed or self-employed person’.
54. In Article 89, ‘Annex V’ shall be replaced by ‘Annex VI’.
55. In Article 93 (2), in the sixth line of the first subparagraph, ‘or of their employees’ shall be replaced by ‘or of the persons employed by them’. In the third line of the second subparagraph, ‘or his employees’ shall be replaced by ‘or the persons employed by him’.
56. Annexes I to V shall become Annexes II to VI and the following Annex shall be inserted:

ANNEX I U.K.

PERSONS COVERED BY THE REGULATION

I. **Employed persons and/or self-employed persons** U.K.

(Article 1 (a) (ii) and (iii) of the Regulation)

A. **BELGIUM** U.K.

Does not apply.

B. **DENMARK** U.K.

1. Any person who, from the fact of pursuing an activity as an employed person, is subject to legislation on accidents at work and occupational diseases, shall be considered an employed person within the meaning of Article 1 (a) (ii) of the Regulation.
2. Any person who, pursuant to the law on daily cash benefits in the event of sickness or maternity, is entitled to such benefits on the basis of an earned income other than a wage or salary shall be considered a self-employed person within the meaning of Article 1 (a) (ii) of the Regulation.

C. **GERMANY** U.K.

If the competent institution for granting family benefits in accordance with Title III, Chapter 7, of the Regulation is a German institution, then within the meaning of Article 1 (a) (ii) of the Regulation:

- (a) “employed person” means any person compulsorily insured against unemployment or any person who, as a result of such insurance, obtains cash benefits under sickness insurance or comparable benefits;
- (b) “self-employed person” means any person pursuing a self-employed activity who is bound:
 - to join, or pay contributions in respect of, an old-age insurance within a scheme for self-employed persons, or
 - to join a scheme within the framework of compulsory pension insurance.

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D. FRANCE **U.K.**

Does not apply.

E. GREECE **U.K.**

1. Persons insured under the OGA scheme who pursue exclusively activities as employed persons or who are or have been subject to the legislation of another Member State and who consequently are or have been “workers” within the meaning of Article 1 (a) of the Regulation are considered as workers within the meaning of Article 1 (a) (iii) of the Regulation.
2. For the purposes of granting the national family allowances, persons referred to in Article 1 (a) (i) and (iii) of the Regulation are considered as workers within the meaning of Article 1 (a) (ii) of the Regulation.

F. IRELAND **U.K.**

1. Any person who is compulsorily or voluntarily insured pursuant to the provisions of Sections 5 and 37 of the Social Welfare (Consolidation) Act 1981 shall be considered an employed person within the meaning of Article 1 (a) (ii) of the Regulation.
2. Any person who is pursuing a professional or trade activity without a contract of employment or who has retired from such activity shall be considered a self-employed person within the meaning of Article 1 (a) (ii) of the Regulation. As regards sickness benefits in kind, the person concerned must also be entitled to such benefits under Section 45 or Section 46 of the Health Act 1970.

G. ITALY **U.K.**

Does not apply.

H. LUXEMBOURG **U.K.**

Does not apply.

I. NETHERLANDS **U.K.**

Any person pursuing an activity or occupation without a contract of employment shall be considered a self-employed person within the meaning of Article 1 (a) (ii) of the Regulation.

J. UNITED KINGDOM **U.K.**

Any person who is an “employed earner” or a “self-employed earner” within the meaning of the legislation of Great Britain or of the legislation of Northern Ireland shall be regarded respectively as an employed person or a self-employed person within the meaning of Article 1 (a) (ii) of the Regulation. Any person in respect of whom contributions are payable as an “employed person” or a “self-employed person” in accordance with the legislation of Gibraltar shall be regarded respectively as an employed person or a self-employed person within the meaning of Article 1 (a) (ii) of the Regulation.

II. Members of the family **U.K.**

(Article 1 (f), second sentence, of the Regulation)

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A. BELGIUM U.K.

Does not apply.

B. DENMARK U.K.

For the purpose of determining entitlement to benefits in kind pursuant to Article 22 (1) (a) and Article 31 of the Regulation, “member of the family” means any person regarded as a member of the family under the Law on the Public Health Service.

C. GERMANY U.K.

Does not apply.

D. FRANCE U.K.

Does not apply.

E. GREECE U.K.

Does not apply.

F. IRELAND U.K.

For the purpose of determining entitlement to benefits in kind pursuant to Article 22 (1) (a) and Article 31 of the Regulation, “member of the family” means any person regarded as a dependent of the employed or self-employed person for the purposes of the Health Acts 1947 to 1970.

G. ITALY U.K.

Does not apply.

H. LUXEMBOURG U.K.

Does not apply.

I. NETHERLANDS U.K.

Does not apply.

J. UNITED KINGDOM U.K.

For the purpose of determining entitlement to benefits in kind pursuant to Articles 22 (1) (a) and 31 of the Regulation, the expression ‘member of the family’ shall mean:

- (a) as regards the legislation of either Great Britain or Northern Ireland, any person regarded as a dependant within the meaning of the Social Security Act 1975 or, as the case may be, the Social Security (Northern Ireland) Act 1975, and
- (b) as regards the legislation of Gibraltar, any person regarded as a dependant within the meaning of the Group Practice Medical Scheme Ordinance 1973.

57. In Annex II:

- (a) the title shall be replaced by the following:
ANNEX II(Article 1 (u) of the Regulation)

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I. Special childbirth allowances excluded from the scope of the Regulation in pursuance of Article 1 (u);

(b) the following shall be added:

II. Special schemes for self-employed persons excluded from the scope of the Regulation pursuant to Article 1 (j), second subparagraph

A. BELGIUM

Does not apply.

B. DENMARK

Does not apply.

C. GERMANY

Insurance and welfare institutions (Versicherungs- und Versorgungswerke) for doctors, dentists, veterinary surgeons, dispensing chemists, barristers and counsel, patent agents (Patentanwälte), notaries public, auditors (Wirtschaftsprüfer), tax consultants and advisers (Steuerbevollmächtigte), sea pilots (Seelotsen) and architects, set up pursuant to legislation of the Länder, and other insurance and welfare institutions, in particular welfare funds (Fürsorgeeinrichtungen) and the system for extended fee-sharing (erweiterte Honorarverteilung).

D. FRANCE

1. Self-employed persons outside the agricultural sphere:

(a) The supplementary old-age insurance schemes and the invalidity and death insurance schemes for self-employed persons, such as are mentioned in Articles L 658, L 659, L 663-11, L 663-12, L 682 and L 683-1 of the Social Security Code.

(b) The additional benefits referred to in Article 9 of Law No 66-509 of 12 July 1966.

2. Self-employed persons in agriculture:

The types of insurance set out in Articles 1049 and 1234.19 of the Rural Code, concerning, on the one hand, sickness, maternity and old-age and, on the other, accidents at work and occupational diseases of self-employed persons in agriculture.

E. GREECE

Does not apply.

F. IRELAND

Does not apply.

G. ITALY

Does not apply.

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H. LUXEMBOURG

Does not apply.

I. NETHERLANDS

Does not apply.

J. UNITED KINGDOM

Does not apply.

58. In Part A, point 7, BELGIUM—LUXEMBOURG, of Annex III, the present text shall become subparagraph (a) and the following shall be inserted:

(b) Exchange of letters of 10 and 12 July 1968 concerning self-employed persons.

59. In Annex IV:

(a) point A shall be replaced by the following:

A. BELGIUM

The legislation relating to the general invalidity scheme, to the special invalidity scheme for miners and to the special scheme for sailors in the Merchant Navy and the legislation concerning insurance against incapacity for work for self-employed persons.

(b) point D shall be replaced by the following:

D. FRANCE

1. Employed persons

All legislation on invalidity insurance, except for the legislation concerning the invalidity insurance of the social security scheme for miners.

2. Self-employed persons

The legislation on invalidity insurance for self-employed workers.

60. Annex VI shall be replaced by the following:

ANNEX VI U.K.

(Article 89 of the Regulation)

Special procedures for applying the legislations of certain Member States

A. BELGIUM U.K.

1. Persons whose entitlement to sickness insurance benefits in kind derives from the provisions of the Belgian compulsory sickness and invalidity scheme applicable to self-employed persons shall be eligible under the provisions of Title III, Chapter 1, of the Regulation, including Article 35 (1) under the following conditions: U.K.

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- (a) in the event that they are temporarily resident in the territory of a Member State other than Belgium, the persons concerned shall be entitled:
 - (i) to the benefits in kind provided for under the legislation of the Member State of temporary residence in respect of hospitalization care;
 - (ii) to reimbursement in respect of other benefits in kind provided for under the Belgian scheme by the relevant Belgian institution at the rate provided for under the legislation of the State of temporary residence;
 - (b) in the event that they are permanently resident in the territory of a Member State other than Belgium, the persons concerned shall be entitled to the benefits in kind provided for under the legislation of the Member State of permanent residence provided that they pay the relevant Belgian institution the appropriate additional contribution provided for under Belgian regulations.
2. For the application of the provisions of Chapters 7 and 8 of Title III of the Regulation by the competent Belgian institution, a child shall be considered to have been brought up in the Member State in whose territory he resides.
 3. For the purposes of Article 46 (2) of the Regulation, periods of old-age insurance completed under Belgian legislation before 1 January 1945 shall also be considered as periods of insurance completed under the Belgian legislation on the general invalidity scheme and the mariners' scheme.
 4. In applying Article 40 (3) (a) (ii), account shall only be taken of periods during which the employed or self-employed person was incapable of work within the meaning of Belgian legislation.
 5. For the purposes of Article 46 (2) of the Regulation, periods of old-age insurance completed by self-employed persons under Belgian legislation, prior to the entry into force of the legislation on the incapacity for work of self-employed persons, shall be considered as periods completed under the latter legislation.
 6. In order to establish whether the requirements imposed by Belgian legislation for entitlement to unemployment benefits are fulfilled, account shall be taken of days accepted as equivalent within the meaning of the said legislation only in so far as the days worked which preceded them were days of paid employment.
- B. DENMARK U.K.**
1. Completed periods of insurance, employment or self-employment in a Member State other than Denmark shall be taken into account for admission to membership of an approved unemployment insurance fund in the same way as if they were periods of employment or self-employment completed in Denmark.
 2. Employed persons, self-employed persons, applicants for pensions and pensioners with members of their family referred to in Articles 19, 22 (1) and (3), 25 (1) and (3), 26 (1), 28a, 29 and 31 of the Regulation, resident or staying in Denmark shall be entitled to benefits in kind on the same terms

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as those laid down by Danish legislation for persons whose income does not exceed the level indicated in Article 3 of Law No 311 of 9 June 1971 concerning the Public Health Service, where the cost of the said benefits shall be borne by the institution of a Member State other than Denmark.

3. The provisions of Article 1 (1), No 2, of the Law on old-age pensions, Article 1 (1), No 2, of the Law on invalidity pensions and Article 2 (1), No 2, of the Law on widows' pensions and allowances are not applicable to employed or self-employed persons or their survivors whose residence is in the territory of a Member State other than Denmark.
4. The provisions of the Danish legislation governing old-age and widows' pensions are applicable to the widow of an employed or self-employed person subject to the Danish legislation, even if she has not resided in Denmark.
5. The terms of the Regulation shall be without prejudice to the provisional rules under the Danish Laws of 7 June 1972 on the pension rights of Danish nationals having their effective residence in Denmark for a specified period immediately preceding the date of the application. However, a pension shall be granted under those conditions laid down for Danish nationals to nationals of other Member States having their effective residence in Denmark during the year immediately preceding the date of application.
6.
 - (a) The periods during which a frontier worker residing within the territory of a Member State other than Denmark has pursued his professional or trade activity in Denmark are to be considered as periods of residence for the purposes of Danish legislation. The same shall apply to periods in which a frontier worker is posted to or provides services in a Member State other than Denmark.
 - (b) The periods during which a seasonal worker residing within the territory of a Member State other than Denmark has pursued his occupation in Denmark are to be considered as periods of residence for the purposes of Danish legislation. The same applies to periods during which a seasonal worker is posted to the territory of a Member State other than Denmark.
7. In order to determine whether the conditions of a right to maternity benefits laid down in Chapter 12 of the Law on the daily cash benefits for sickness or maternity are satisfied in the case where the person concerned was not subject to the Danish legislation throughout the whole period referred to in Article 34 (1) or (2) of the aforementioned Law: **U.K.**
 - (a) account shall be taken of the periods of insurance completed, as appropriate, under the legislation of a Member State other than Denmark, during the course of the said period of reference during which the person concerned was not subject to the Danish legislation, as if those periods completed were under the latter legislation; and
 - (b) the person concerned shall be deemed to have received during the periods taken into account an average salary equal to that of the average salary confirmed as having been paid during the periods completed under the Danish legislation for the said period of reference,

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8. For the purpose of applying Article 12 (2) of the Regulation to Danish legislation, invalidity, old-age and widows' pensions shall be regarded as benefits of the same kind.
9. For the purpose of applying Article 67 of the Regulation, unemployment benefits for self-employed persons insured in Denmark shall be calculated in accordance with Danish legislation.

C. GERMANY **U.K.**

1.

- (a) Where no provision is already made under German legislation for accident insurance, German institutions shall also provide compensation, in accordance with that legislation, for accidents at work (and occupational diseases) which occurred in Alsace-Lorraine before 1 January 1919, the responsibility for the cost of which has not been assumed by French institutions in pursuance of the Decision of the Council of the League of Nations of 21 June 1921 (Reichsgesetzblatt, p. 1289), where the person concerned or his survivors are residing in a Member State;
- (b) the provisions of Article 10 of the Regulation shall not affect the provisions under which accidents (and occupational diseases) occurring outside the territory of the Federal Republic of Germany, and periods completed outside that territory, do not give rise to payment of benefits, or only give rise to payment of benefits under certain conditions, when those entitled to them reside outside the territory of the Federal Republic of Germany.

2.

- (a) In order to determine whether periods considered by German legislation as interrupted periods (Ausfallzeiten) or supplementary periods (Zurechnungszeiten) should be taken into account as such, compulsory contributions paid under the legislation of another Member State and insurance under the insurance scheme of another Member State shall be treated as compulsory contributions paid under German legislation and as insurance under the German pension insurance scheme. This provision shall not apply to old-age insurance for farmers of the Federal Republic of Germany or to corresponding special schemes in the other Member States.

When calculating the number of calendar months which have elapsed between the date of entry into the insurance scheme and the materialization of the risk, periods taken into consideration under the legislation of another Member State which fall between those two dates shall not be taken into account, neither shall periods during which the person concerned has been in receipt of a pension;

- (b) the provisions of subparagraph (a) shall not apply to the standard interrupted period (pauschale Ausfallzeit). This shall be determined exclusively on the basis of insurance periods completed in Germany;
- (c) the taking into account of a supplementary period (Zurechnungszeit) in pursuance of German legislation on pension insurance for miners shall, moreover, be subject to the condition that the last contribution paid under German legislation was paid into the pension insurance for miners;

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- (d) for the purpose of taking into account German substitute periods (Ersatzzeiten), only German national legislation shall apply;
 - (e) by way of derogation from the provision laid down in subparagraph (d), the following provision shall apply to persons insured under the German pension insurance scheme who were residing in German territories under Netherlands administration during the period 1 January 1948 to 31 July 1963 for the purpose of taking into account German substitute periods (Ersatzzeiten) within the meaning of Article 1251 (2) of the German social security law (RVO) or corresponding provisions, payment of contributions to Netherlands insurance schemes during that period shall be treated as equivalent to having been employed or having pursued an activity coming under compulsory insurance within the meaning of German legislation.
3. Where payments to be made into German sickness insurance funds are concerned, compulsory payment of the contributions referred to in Article 26 (2) of the Regulation shall be suspended until a decision is made concerning pension claims.
 4. In order to determine whether a child is receiving an orphan's pension, receipt of one of the benefits referred to in Article 78 or of another family benefit granted under French legislation for a minor residing in France shall be treated as the receipt of an orphan's pension under German legislation.
 5. If application of this Regulation or of subsequent social security Regulations involves exceptional expenses for certain sickness insurance institutions, such expenses may be partially or totally reimbursed. The National Federation of Local Sickness Funds, in its function as liaison body (sickness insurance) shall decide on such reimbursement by common agreement with the other Central Associations of Sickness Funds. The resources needed for effecting such reimbursements shall be provided by taxes imposed on all sickness insurance institutions in proportion to the average number of members during the preceding year, including retired persons.
 6. For the purposes of the Regulation, the lump-sum payment for following a course of medical treatment on the occasion of confinement granted under German legislation to female insured persons and to members of the families of insured persons shall be considered as a benefit in kind.
 7. Article 1233 of the insurance code (RVO) and Article 10 of the clerical staff insurance law (AVG), as amended by the pension reform law of 16 October 1972, which govern voluntary insurance under German pension insurance schemes, shall apply to nationals of the other Member States and to stateless persons and refugees residing in the territory of the other Member States, according to the following rules. **U.K.**

Where the general conditions are fulfilled, voluntary contributions to the German pension insurance scheme may be paid:

- (a) if the person concerned has his domicile or residence in the territory of the Federal Republic of Germany;
- (b) if the person concerned has his domicile or residence in the territory of another Member State and at any time previously belonged compulsorily or voluntarily to a German pension insurance scheme;

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- (c) if the person concerned is a national of another Member State, has his domicile or residence in the territory of a third State and has paid contributions for German pension insurance for at least 60 months, or was eligible for voluntary insurance under the transitional provisions previously in force and is not compulsorily or voluntarily insured under the legislation of another Member State.
 8. The Regulation shall not affect Article 51a (2) of the manual workers pension reform law (ArVNG) or Article 49a (2) of the clerical staff pension reform law (AnVNG), as amended by the pension reform law of 16 October 1972. The persons who, under paragraph 8 (b) and (c), may join voluntary insurance, may pay contributions only in respect of periods for which they have not yet paid contributions under the legislation of another Member State.
 9. Where the costs of benefits in kind which are granted by German institutions of the place of residence to pensioners or members of their family who are insured with competent institutions of other Member States must be refunded on the basis of monthly lump sums, such costs shall, for the purpose of financial equalization among German institutions of sickness insurance for pensioners, be treated as expenditure on the German sickness insurance scheme for pensioners. The lump sums refunded to the German institutions of the place of residence by the competent institutions of other Member States shall be regarded as receipts which must be taken into account in the aforementioned financial equalization.
 10. In the case of self-employed persons, the award of unemployment assistance (Arbeitslosenhilfe) shall be conditional on the person concerned having, before reporting himself unemployed, worked for at least a year mainly as a self-employed person in the territory of the Federal Republic of Germany, and not having simply left that work temporarily.
 11. Periods of insurance completed under the legislation of another Member State, under a special old-age insurance scheme for farmers or, if no such scheme exists, as farmers under the general scheme, shall be taken into account to satisfy the conditions of minimum length of insurance required for the person to be subject to contribution within the meaning of Article 27 of the law on old-age insurance for farmers (Gesetz über die Altershilfe der Landwirte — GAL), always providing that: **U.K.**
 - (a) the declaration on which the obligation to pay contributions is based shall have been lodged within the prescribed time; and
 - (b) before lodging the declaration, the person concerned shall have been last subject to contribution under the old-age insurance scheme for farmers in the territory of the Federal Republic of Germany.
 12. Periods of compulsory insurance completed under the legislation of another Member State, either under a special scheme for craftsmen or, if no such scheme exists, under a special scheme for self-employed persons or under the general scheme, are counted towards the completion of the 216 months of compulsory insurance required to establish the right to voluntary withdrawal from the pension insurance scheme for craftsmen.
- D. FRANCE **U.K.**

Status: Point in time view as at 31/01/2020.

Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EEC) No 1390/81. (See end of Document for details)

1.
 - (a) The allowance for elderly employed persons, together with the allowance for elderly self-employed persons, and the agricultural old-age allowance shall be granted, under the conditions laid down for French workers by French legislation, to all employed or self-employed persons who are nationals of other Member States and who, at the time of making their claim, are resident in French territory.
 - (b) The same shall apply to refugees and stateless persons.
 - (c) The provisions of the Regulation shall not affect the provisions of French legislation under which only periods of work as employed persons or periods treated as such or, as appropriate, periods of work as self-employed persons in the territories of the European Departments and the Overseas Departments (Guadeloupe, Guyana, Martinique and Reunion) of the French Republic shall be taken into consideration for acquisition of the right to the allowance for elderly employed persons.
2. The special allowance and cumulative indemnity provided for by the special legislation for social security in the mines shall be provided only for workers employed in French mines.
3. Law No 65-555 of 10 July 1965 which grants to French nationals, who are pursuing, or who have pursued, a professional or trade activity abroad, the right to join the voluntary old-age insurance scheme, shall apply to nationals of other Member States under the following conditions: **U.K.**
 - the professional or trade activity giving rise to voluntary insurance under the French system should not be, or have been, pursued either on French territory or on the territory of the Member State of which the employed or self-employed person is a national,
 - the employed or self-employed person must produce evidence, when making his claim, either that he has resided in France for at least 10 years, consecutive or not, or that he has been continuously subject to French legislation on a compulsory or optional basis for the same length of time.
4. Within the meaning of Article 73 (3) of the Regulation, the expression 'family benefits' shall include: **U.K.**
 - (a) prenatal allowances provided for in Article L 516 of the Social Security Code;
 - (b) the family allowances provided for in Articles L 524 and L 531 of the Social Security Code;
 - (c) the compensatory allowance for scheduled taxes provided for in Article L 532 of the Social Security Code;

However, this benefit can only be paid if the wage or salary received during the period of the posting is subject to tax on income in France;

 - (d) the single wage or salary allowance provided for in Article L 533 of the Social Security Code.
5. For the calculation of the theoretical amount referred to in Article 46 (2) (a) of the Regulation, in schemes in which old-age pensions are calculated on the

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Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EEC) No 1390/81. (See end of Document for details)

basis of retirement points, the competent institution shall take into account, in respect of each of the years of insurance completed under the legislation of any other Member State, the number of retirement points arrived at by dividing the number of retirement points acquired under the legislation it applies by the number of years corresponding to these points.

E. GREECE **U.K.**

1. Notwithstanding Annex I, Section I, Part E, point 1, Article 22 (1) (a) of the Regulation applies to an OGA-insured person whose state of health necessitates immediate care before he begins the employment which he has come to take up in a Member State other than Greece.
2. Article 10 (1) of the Regulation does not affect the provision of Article 2 (4) of Decree Law No 4577/66 whereby the payment of pensions awarded by IKA to persons of Greek nationality or origin coming from Egypt or Turkey is suspended if the pension-holder resides abroad without valid reason for more than six months.

F. IRELAND **U.K.**

1. Employed or self-employed persons, unemployed persons, pension claimants and pensioners, together with members of their families, referred to in Articles 19 (1), 22 (1) and (3), 25 (1) and (3), 26 (1), 28a, 29 and 31 of the Regulation, who are residing or staying in Ireland, shall be entitled free of charge to all medical treatment provided for by Irish legislation where the cost of this treatment is payable by the institution of a Member State other than Ireland.
2. The members of the family of an employed or self-employed person who is subject to the legislation of a Member State other than Ireland and who satisfies the conditions laid down by that legislation for entitlement to benefits, account being taken, where appropriate, of Article 18 of the Regulation, shall be entitled free of charge, if they are resident in Ireland, to all medical treatment provided for by Irish legislation. **U.K.**

The cost of such benefits shall be payable by the institution with which the employed or self-employed person is insured.

However, where the spouse of the employed or self-employed person or the person looking after the children pursues a professional or trade activity in Ireland, benefits for members of the family shall remain payable by the Irish institution to the extent that entitlement to such benefits is granted solely under the provisions of Irish legislation.

3. If an employed person subject to Irish legislation has left the territory of a Member State to proceed, in the course of his employment, to the territory of another Member State and sustains an accident before arriving there, his entitlement to benefit in respect of the said accident shall be established: **U.K.**
 - (a) as if this accident had occurred on the territory of Ireland; and
 - (b) without taking into consideration his absence from the territory of Ireland, when determining whether, by virtue of his employment, he was insured under the said legislation.

Status: Point in time view as at 31/01/2020.

Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EEC) No 1390/81. (See end of Document for details)

4. For the purpose of applying Article 12 (2) of the Regulation to Irish legislation, invalidity, old-age and widows' pensions shall be regarded as benefits of the same kind.
 5. For the purpose of calculating the earnings for the granting of the pay-related benefit payable under Irish legislation with sickness, maternity and unemployment benefits, an amount equal to the average weekly wage in that year of male or female employed persons, as applicable, shall, notwithstanding Articles 23 (1) and 68 (1) of the Regulation, be credited to the employed person in respect of each week of employment completed as an employed person under the legislation of another Member State during the relevant income tax year.
 6. In applying Article 40 (3) (a) (ii), account shall only be taken of periods during which the employed or self-employed person was incapable of work within the meaning of Irish legislation.
 7. For the purposes of Article 44 (2), an employed person shall be deemed to have expressly asked for postponement of the award of an old-age pension to which he would be entitled under the legislation of Ireland if, where retirement is a condition for receiving the old-age pension, he has not retired.
 8. Until 31 December 1983, for the purpose of applying Irish legislation to benefits other than family benefits and sickness and maternity benefits in kind, periods other than periods completed as an employed person shall not be reckonable.
- G. ITALY **U.K.**
- None.
- H. LUXEMBOURG **U.K.**
1. By way of derogation from Article 94 (2) of the Regulation, periods of insurance or periods treated as such completed before 1 January 1946 under Luxembourg legislation for invalidity, old-age or death pension insurance shall only be taken into consideration for the purpose of applying this legislation to the extent that rights in the process of being acquired should be maintained until 1 January 1959 or subsequently recovered in accordance with that legislation alone, or in accordance with bilateral conventions in force or to be concluded. Where several bilateral conventions apply, the periods of insurance or periods treated as such dating the farthest back shall be taken into consideration.
 2. For the purpose of granting the fixed part of Luxembourg pensions, periods of insurance completed under Luxembourg legislation by employed or self-employed persons not residing in Luxembourg territory shall, as from 1 October 1972, be treated as periods of residence.
- I. NETHERLANDS **U.K.**
1. *Insurance for medical expenses* **U.K.**
 - (a) As regards entitlement to benefits in kind, Title III, Chapter 1 of the Regulation shall apply only to persons who are entitled to benefits in kind through compulsory insurance, voluntary insurance or elderly persons'

Status: Point in time view as at 31/01/2020.

Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EEC) No 1390/81. (See end of Document for details)

insurance, which insurance schemes are covered by the law on sickness funds (Ziekenfondswet).

- (b) A person receiving an old-age pension under Netherlands legislation and a pension under the legislation of another Member State shall, for the purposes of Article 27 and/or Article 28, be considered to be entitled to benefits in kind if, taking into account Article 9, where appropriate, he satisfies the conditions required for admission to sickness insurance schemes for elderly persons or to voluntary insurance schemes laid down in the law on sickness fund insurance (Ziekenfondswet).

This provision also applies to a married woman whose husband is receiving an old-age pension for married persons under Netherlands legislation and satisfies the conditions required for admission to sickness insurance schemes for elderly persons or to voluntary insurance schemes laid down in the law on sickness fund insurance.

- (c) A person receiving an old-age pension under Netherlands legislation who resides in another Member State shall, if he is insured under the sickness insurance schemes for elderly persons or under the voluntary insurance schemes laid down in the law on sickness fund insurance, pay for himself and, if appropriate, for members of his family, a contribution based on half of the average costs incurred in the Netherlands for medical treatment for an elderly person and members of his family. A reduction of this contribution shall be granted, the costs thereof being borne by the compulsory insurance scheme provided for in the law on sickness fund insurance, corresponding to the part of the reduction, the costs whereof are borne by the said scheme, that is granted to persons residing in the Netherlands who are covered by the sickness insurance schemes for elderly persons and whose contributions are fixed on the same basis.
- (d) A person who is not receiving an old-age pension under Netherlands legislation and, if he is married, whose spouse is not receiving an old-age pension for married persons under Netherlands legislation shall, if he resides in another Member State and if he is insured under the voluntary insurance scheme laid down in the Law on sickness fund insurance, pay for himself and, if appropriate, for each member of his family who has reached the age of 16 years an amount of contribution which corresponds to the average of the contributions fixed by the sickness funds in the Netherlands for voluntary insured persons residing in the Netherlands. The contribution shall be rounded up to the nearest multiple of one guilder.

2. *Application of Netherlands legislation on general old-age insurance* **U.K.**

- (a) Periods of insurance before 1 January 1957 during which a recipient, not satisfying the conditions permitting him to have such periods treated as periods of insurance, resided in the territory of the Netherlands after the age of 15 or during which, whilst residing in the territory of another Member State, he pursued an activity as an employed person in the Netherlands for an employer established in that country, shall also be considered as periods of insurance completed in application of Netherlands legislation for general old-age insurance.
- (b) Periods to be taken into account in pursuance of subparagraph (a) above shall not be taken into account if they coincide with periods taken into account

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Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EEC) No 1390/81. (See end of Document for details)

for the calculation of the pension payable under the legislation of another Member State in respect of old-age insurance.

- (c) As regards a married woman whose husband is entitled to a pension under Netherlands legislation on general old-age insurance, periods of the marriage preceding the date when she reached the age of sixty-five years and during which she resided in the territory of one or more Member States shall also be taken into account as insurance periods, in so far as those periods coincide with periods of insurance completed by her husband under that legislation and with those to be taken into account in pursuance of subparagraph (a).
- (d) Periods to be taken into account in pursuance of subparagraph (c) shall not be taken into account where they coincide with periods taken into account for calculating, a pension payable to the married woman in question under the old-age insurance legislation of another Member State or with periods during which she received an old-age pension in pursuance of such legislation.
- (e) As regards a woman who has been married and whose husband has been subject to Netherlands legislation on old-age insurance, or is deemed to have completed periods of insurance in pursuance of subparagraph (a), the provisions of the two preceding subparagraphs shall apply *mutatis mutandis*.
- (f) The periods referred to in subparagraphs (a) and (c) shall only be taken into account for calculation of the old-age pension if the person concerned has resided for six years in the territory of one or more Member States after the age of 59 years and for as long as that person is residing in the territory of one of those Member States.

3. *Application of Netherlands legislation on general insurance for widows and orphans* **U.K.**

- (a) For the purposes of the provisions of Article 46 (2) of the Regulation, periods before 1 October 1959 during which the employed or self-employed person resided in the territory of the Netherlands after the age of 15 years or during which, whilst residing in the territory of another Member State, he pursued an activity as an employed person in the Netherlands for an employer established in that country shall also be considered as periods of insurance completed under Netherlands legislation relating to general insurance for widows and orphans.
- (b) Periods to be taken into account in pursuance of the provisions of subparagraph (a) shall not be taken into account where they coincide with periods of insurance completed under the legislation of another State in respect of survivors' pensions.

4. *Application of the Netherlands legislation on insurance against incapacity for work* **U.K.**

For the purposes of applying Article 46 (2) of the Regulation, Netherlands institutions will respect the following provisions:

- (a) if, when incapacity for work or the resultant invalidity occurred, the person concerned was an employed person within the meaning of Article 1 (a) of the Regulation, the competent institution shall fix the amount of cash benefits in accordance with the provisions of the law of 18 February 1966 on insurance against incapacity for work (WAO), taking account of:

Status: Point in time view as at 31/01/2020.

Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EEC) No 1390/81. (See end of Document for details)

- insurance periods completed under the abovementioned law of 18 February 1966 (WAO),
 - insurance periods completed after the age of 15 under the law of 11 December 1975 on incapacity for work (AAW), provided that they do not coincide with insurance periods completed by the person concerned under the abovementioned law of 18 February 1966 (WAO),
- and
- periods of paid work and equivalent periods completed in the Netherlands before 1 July 1967;
- (b) if, when incapacity for work and the resultant invalidity occurred, the person concerned was not an employed person within the meaning of Article 1 (a) of the Regulation, the competent institution shall fix the amount of cash benefits in accordance with the provisions of the law of 11 December 1975 on incapacity for work (AAW), taking account of:
- insurance periods completed by the person concerned after the age of 15 under the abovementioned law of 11 December 1975 (AAW),
 - insurance periods completed under the law of 18 February 1966 on insurance against incapacity for work (WAO), provided that they do not coincide with insurance periods completed under the abovementioned law of 11 December 1975 (AAW), and
 - periods of paid work and equivalent periods completed in the Netherlands before 1 July 1967.

5. *Application of certain transitional provisions* **U.K.**

Article 45 (1) shall not apply to the assessment of entitlement to benefits under the transitional provisions of the legislations on general old-age insurance (Article 46), on general insurance for widows and orphans and on general insurance against incapacity for work.

J. UNITED KINGDOM **U.K.**

1. When a person who is normally resident in Gibraltar, or who has been required, since he last arrived in Gibraltar, to pay contributions under the legislation of Gibraltar as an employed person, applies, as a result of incapacity to work, maternity or unemployment, for exemption from the payment of contributions over a certain period, and asks for contributions for that period to be credited to him, any period during which that person has been working in the territory of a Member State other than the United Kingdom shall, for the purposes of his application, be regarded as a period during which he has been employed in Gibraltar and for which he has paid contributions as an employed person in accordance with the legislation of Gibraltar.
2. For the purposes of the provisions of Title III, Chapter 3, of the Regulation, where, in accordance with United Kingdom legislation, a woman applies for an old-age pension: **U.K.**
 - (a) on the basis of her husband's insurance; or
 - (b) on the basis of her personal insurance, and where, because the marriage has ended as a result of the death of the husband, or for other reasons, the

Status: Point in time view as at 31/01/2020.

Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EEC) No 1390/81. (See end of Document for details)

contributions paid by the latter are taken into account for the determination of pension rights,

any reference to a period of insurance completed by her shall be considered, for the purposes of establishing the annual average of the contributions paid by her husband or credited to him, to include reference to a period of insurance completed by the husband.

3.

(a) If unemployment benefit provided under United Kingdom legislation is paid to a person pursuant to Article 71 (1) (a) (ii) or (b) (ii) of the Regulation, then for the purpose of satisfying the conditions imposed by United Kingdom legislation in relation to child benefit concerning a period of presence within Great Britain or, as the case may be, Northern Ireland, periods of insurance, employment or self-employment completed by that person under the legislation of another Member State shall be regarded as periods of presence in Great Britain or, as the case may be, Northern Ireland.

(b) If, pursuant to Title II of the Regulation, United Kingdom legislation is applicable in respect of an employed or self-employed person who does not satisfy the condition imposed by United Kingdom legislation in relation to child benefit concerning:

(i) presence within Great Britain or, as the case may be, Northern Ireland, he shall be regarded, for the purpose of satisfying such condition, as being so present;

(ii) a period of presence within Great Britain, or, as the case may be, Northern Ireland, periods of insurance, employment or self-employment completed by the said worker under the legislation of another Member State shall, for the purpose of satisfying such conditions, be regarded as periods of presence in Great Britain or, as the case may be, Northern Ireland.

(c) In respect of claims to family allowances under the legislation of Gibraltar the foregoing provisions of subparagraph (a) and (b) shall apply by analogy.

4. Any employed or self-employed person subject to United Kingdom legislation in accordance with the provisions of Title II of the Regulation shall be treated for the purposes of entitlement to the attendance allowance: **U.K.**

(a) as if his place of birth were within the territory of the United Kingdom, if his place of birth is within the territory of another Member State; and

(b) as if he had been normally resident in the United Kingdom and had been present there during any period of insurance, employment or self-employment that he may have completed within the territory or under the legislation of another Member State.

5. In the event of an employed person subject to United Kingdom legislation being the victim of an accident after leaving the territory of one Member State while travelling, in the course of his employment, to the territory of another Member State, but before arriving there, his entitlement to benefits in respect of that accident shall be established: **U.K.**

Status: Point in time view as at 31/01/2020.

Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EEC) No 1390/81. (See end of Document for details)

- (a) as if the accident had occurred within the territory of the United Kingdom and
 - (b) for the purpose of determining whether he was an employed earner under the legislation of Great Britain or the legislation of Northern Ireland or an employed person under the legislation of Gibraltar, by disregarding his absence from those territories.
6. The Regulation does not apply to those provisions of United Kingdom legislation which are intended to bring into force any social security agreement concluded between the United Kingdom and a third State.
 7. Wherever required by United Kingdom legislation for the purposes of determining entitlement to benefits, nationals of any Member State born in a third State are to be considered nationals of the United Kingdom born in a third State.
 8. For the purposes of Title III, Chapter 3, of the Regulation no account shall be taken of graduated contributions paid by the insured person under United Kingdom legislation or of graduated retirement benefits payable under that legislation. The amount of the graduated benefits shall be added to the amount of the benefit due under the United Kingdom legislation as determined in accordance with the said chapter. The total of these two amounts shall constitute the benefit actually due to the person concerned.
 9. For the purpose of applying Article 12 (2) of the Regulation to the legislation of the United Kingdom, invalidity, old-age and widow's pensions shall be regarded as benefits of the same kind.
 10. For the purpose of applying the Non-Contributory Social Insurance Benefit and Unemployment Insurance Ordinance (Gibraltar), any person to whom this Regulation is applicable shall be deemed to be domiciled in Gibraltar if he resides in a Member State.
 11. For the purposes of Articles 10, 27, 28, 28a, 29, 30 and 31 of the Regulation, the attendance allowance granted to an employed or self-employed person under United Kingdom legislation shall be considered as an invalidity benefit.
 12. For the purposes of Article 10 (1) of the Regulation any beneficiary under United Kingdom legislation who is staying in the territory of another Member State shall, during that stay, be considered as if he resided in the territory of that other Member State.
 - 13.
 - (1) For the purpose of calculating an earnings factor with a view to determining the right to benefits under United Kingdom legislation, subject to paragraph 15, each week during which an employed or self-employed person has been subject to the legislation of another Member State and which commenced during the relevant income tax year within the meaning of United Kingdom legislation shall be taken into account in the following way:
 - (a) (i) for each week of insurance, employment, or residence as an employed person the person concerned shall be

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Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EEC) No 1390/81. (See end of Document for details)

- deemed to have paid contributions as an employed earner on the basis of earnings equivalent to two-thirds of that year's upper earnings limit;
- (ii) for each week of insurance, self-employment or residence as a self-employed person the person concerned shall be deemed to have paid Class 2 contributions as a self-employed earner;
- (b) for each full week during which he has completed a period treated as a period of insurance, employment, self-employment or residence, the person concerned shall be deemed to have had a contribution credited to him, but only to the extent required to bring his total earnings factor that year to the level required to make that year a reckonable year within the meaning of the United Kingdom legislation governing the crediting of contributions.
- (2) 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.
14. In applying Article 40 (3) (a) (ii), account shall only be taken of periods during which the employed or self-employed person was incapable of work within the meaning of United Kingdom legislation.
- 15.
- (1) For the purpose of calculating, under Article 46 (2) (a) of the Regulation, the theoretical amount of that part of the pension which consists of an additional component under United Kingdom legislation:
- (a) the expression 'earnings, contributions or increases' in Article 47 (1) (b) of the Regulation shall be construed as meaning surpluses in earnings factors as defined in the Social Security Pensions Act 1975 or, as the case may be, the Social Security Pensions (Northern Ireland) Order 1975;
- (b) an average of the surpluses in earnings factors shall be calculated in accordance with Article 47 (1) (b) of the Regulation as construed in subparagraph (a) above by dividing the aggregated surpluses recorded under United Kingdom legislation by the number of income tax years within the meaning of United Kingdom legislation (including part income tax years) completed under that legislation since 6 April 1978 which occur within the relevant period of insurance.
- (2) The expression 'periods of insurance or residence' in Article 46 (2) of the Regulation shall be construed, for the purpose of assessing the amount of that part of the pension which consists of an additional component under

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United Kingdom legislation, as meaning periods of insurance or residence which have been completed since 6 April 1978.

61. The following Annex shall be added:

ANNEX VII **U.K.**

(Implementation of subparagraph (b) of Article 14c (1)) Instances in which a person shall be simultaneously subject to the legislation of two Member States

1. Where he is self-employed in Belgium and gainfully employed in any other Member State except Luxembourg. For Luxembourg the exchange of letters of 10 and 12 July 1968 between Belgium and Luxembourg shall be applicable.
2. Where a person resident in Denmark is self-employed in Denmark and gainfully employed in any other Member State.
3. Where he is self-employed in farming in Germany and gainfully employed in any other Member State.
4. Where he is self-employed in France and gainfully employed in any other Member State except Luxembourg.
5. Where he is self-employed in farming in France and gainfully employed in Luxembourg.
6. Where he is self-employed in Greece and gainfully employed in any other Member State.
7. Where he is self-employed in Italy and gainfully employed in any other Member State.

Article 2 **U.K.**

1 No right shall be acquired under this Regulation in respect of a period prior to the date of its entry into force.

2 All insurance periods and, where appropriate, all periods of employment, of self-employment or of residence completed under the legislation of a Member State before the date of entry into force of this Regulation shall be taken into consideration for the determination of rights to benefits under this Regulation.

3 Subject to paragraph 1, a right shall be acquired under this Regulation though relating to a contingency which materialized prior to the date of entry into force of this Regulation.

4 Any benefit which has not been awarded or which has been suspended by reason of the nationality or place of residence of the person concerned shall, on the application of the person concerned, be awarded or resumed with effect from the entry into force of this Regulation provided that the rights previously determined have not given rise to a lump sum payment.

5 The rights of a person to whom a pension was awarded prior to the entry into force of this Regulation may, on the application of the person concerned, be reviewed, taking into account the provisions of this Regulation. This provision shall also apply to the other benefits referred to in Article 78 of Regulation (EEC) No 1408/71.

Status: Point in time view as at 31/01/2020.

Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EEC) No 1390/81. (See end of Document for details)

6 If an application referred to in paragraph 4 or 5 is submitted within two years from the date of entry into force of this Regulation, the rights acquired under this Regulation shall have effect from that date, and the provisions of the legislation of any Member State concerning the forfeiture or limitation of rights may not be invoked against the persons concerned.

7 If the application referred to in paragraph 4 or 5 is submitted after the expiry of the two-year period following the date of entry into force of this Regulation, rights which have not been forfeited or are not barred by limitation shall have effect from the date on which the application was submitted, except where more favourable provisions of the legislation of any Member State apply.

Article 3 **U.K.**

Unless the Member States concerned decide otherwise, the agreements concluded pursuant to Article 36 (3), Article 63 (3) and Article 70 (3) of Regulation (EEC) No 1408/71, prior to the entry into force of this Regulation, shall not apply to the persons to whom the scope of Regulation (EEC) No 1408/71 has been extended by virtue of this Regulation.

Article 4 **U.K.**

This Regulation shall enter into force on the first day of the seventh month following the publication in the *Official Journal of the European Communities* of the Regulation adapting Regulation (EEC) No 574/72⁽⁶⁾ with a view to applying it to self-employed persons and to their families.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 12 May 1981.

For the Council

The President

G. BRAKS

Status: Point in time view as at 31/01/2020.

Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EEC) No 1390/81. (See end of Document for details)

- (1) OJ No C 14, 18. 1. 1978, p. 15.
- (2) OJ No C 131, 5. 6. 1978, p. 45.
- (3) OJ No C 269, 13. 11. 1978, p. 40.
- (4) OJ No L 149, 5. 7. 1971, p. 2.
- (5) OJ No L 24, 28. 1. 1981, p. 3.
- (6) OJ No L 74, 27. 3. 1972, p. 1.

Status:

Point in time view as at 31/01/2020.

Changes to legislation:

There are currently no known outstanding effects for the Council Regulation (EEC) No 1390/81.