

2024 No. 21

SOCIAL SECURITY

The Social Security (Gibraltar) Order (Northern Ireland) 2024

Made - - - - 26th February 2024

Coming into operation in accordance with article 1

The Secretary of State and the Commissioners for His Majesty's Revenue and Customs make the following Order in exercise of the powers conferred by section 155(1)(a) and (2) of the Social Security Administration (Northern Ireland) Act 1992(a).

Citation, commencement, extent and interpretation

1.—(1) This Order may be cited as the Social Security (Gibraltar) Order (Northern Ireland) 2024.

(2) Article 1 of this Order comes into operation on the day after the day this Order is made.

(3) Articles 2 and 3 come into operation on the first day of the month after such time as each party to the Agreement has notified the other that domestic procedures for entry into force have been completed, in accordance with Article 61 of the Agreement(b) (entry into force).

(4) This Order extends to Northern Ireland.

(5) In this Order “the Agreement” means the agreement in the Schedule to this Order as set out in the Exchange of Letters between His Majesty's Government of the United Kingdom of Great Britain and Northern Ireland and His Majesty's Government of Gibraltar dated 25th January 2024 and 26th January 2024, respectively.

Modification of legislation

2.—(1) The legislation to which this paragraph applies is modified to the extent required to give effect to the provisions contained in the Agreement so far as such legislation relates to Northern Ireland.

(2) Paragraph (1) applies to—

(a) 1992 c. 8, as amended by S.I. 2020/1508. There are other amendments but none are relevant to this Order. In relation to Child Benefit and Guardian's Allowance in Northern Ireland, the power under section 155 was transferred to the Board by section 50(1) and (2)(d) of the Tax Credits Act 2002 (c. 21). The Board is defined in section 67 of that Act as the Commissioners of Inland Revenue. The functions of the Commissioners of Inland Revenue were transferred to the Commissioners for His Majesty's Revenue and Customs by section 5(2) of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50(1) of that Act provides that, insofar as is appropriate, in consequence of section 5, a reference to the Commissioners of Inland Revenue in an enactment, however expressed, shall be taken as a reference to the Commissioners for His Majesty's Revenue and Customs.

(b) Upon the parties having notified each other that their respective domestic procedures for entry into force have been completed, in accordance with Article 61 of the Agreement, a notice will be published in The Gazette by the Department for Work and Pensions.

- (a) the Social Security Administration (Northern Ireland) Act 1992(a);
- (b) the Social Security Contributions and Benefits (Northern Ireland) Act 1992(b);
- (c) the Jobseekers (Northern Ireland) Order 1995(c);
- (d) Chapter 2 of Part 2 of the Social Security (Northern Ireland) Order 1998(d);
- (e) the State Pension Credit Act (Northern Ireland) 2002(e);
- (f) Part 1 of the Welfare Reform Act (Northern Ireland) 2007(f);
- (g) Parts 2 and 5 of the Welfare Reform (Northern Ireland) Order 2015(g);
- (h) Parts 1 and 5 of the Pensions Act (Northern Ireland) 2015(h);
- (i) the following as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018(i)—
 - (i) Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems;
 - (ii) Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004; and
- (j) regulations within the scope of section 155(5) of the Social Security Administration (Northern Ireland) Act 1992(j).

Variation of Order

3. The Family Allowances, National Insurance and Industrial Injuries (Gibraltar) Order (Northern Ireland) 1974(k) is varied in accordance with Article 65 of the Agreement (relationship with the 1974 Exchange of Letters), so far as the Order relates to Northern Ireland.

Signed by the authority of the Secretary of State for Work and Pensions

Jo Churchill
Minister of State
Department for Work and Pensions

26th February 2024

Signed by the authority of two of the Commissioners for His Majesty's Revenue and Customs

Jonathan Athow
Myrtle Lloyd

26th February 2024

Two of the Commissioners for His Majesty's Revenue and Customs

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- (a) No modifications are made in respect of payments out of the social fund, Christmas bonus, statutory sick pay or statutory maternity pay because section 155(4)(b)(i) to (iv) of the Social Security Administration (Northern Ireland) Act 1992 excludes these benefits from the scope of the power to modify.
 - (b) 1992 c. 7.
 - (c) S.I. 1995/2705 (N.I. 15).
 - (d) S.I. 1998/1506 (N.I. 10).
 - (e) 2002 c. 14 (N.I.).
 - (f) 2007 c. 2 (N.I.).
 - (g) S.I. 2015/2006 (N.I. 1).
 - (h) 2015 c. 5 (N.I.).
 - (i) 2018 c. 16. Section 3 was amended by section 25(2) of the European Union (Withdrawal Agreement) Act 2020 (c. 1). Regulations (EC) No 883/2004 and 987/2009 as they form part of domestic law under section 3 of the European Union (Withdrawal) Act 2018 were revoked (with savings) by S.I. 2020/1508 with effect from IP completion day.
 - (j) Section 155(5) has been amended by paragraph 48(4) of Schedule 2 to S.I. 1995/2705 (N.I. 15); paragraph 19(c) of Schedule 2 to the State Pension Credit Act (Northern Ireland) 2002; paragraph 1 of Schedule 6 to the Tax Credits Act 2002 (c. 21); paragraph 4(25)(c) of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2007; paragraph 23(5) of Schedule 2 to S.I. 2015/2006 (N.I. 1); paragraph 21(4) of Schedule 12, and paragraph 31(4) of Schedule 16 to the Pensions Act (Northern Ireland) 2015; and by regulation 3 of S.R. 2011/357.
 - (k) S.R. 1974/153.

SCHEDULE

Articles 1, 2 and 3

Exchange of Letters between His Majesty's Government of the United Kingdom of Great Britain and Northern Ireland and His Majesty's Government of Gibraltar for the agreement on social security between His Majesty's Government of the United Kingdom of Great Britain and Northern Ireland and His Majesty's Government of Gibraltar



HM Revenue
& Customs

Our address

Nicholas Richardson
Director, Department of Social Security
Department of Social Security

Our phone number

Email

Website

www.dwp.gov.uk

Date

25/01/2024

Dear Nicholas

We have the honour to refer to discussions which have taken place between the Department for Work and Pensions and His Majesty's Revenue and Customs of His Majesty's Government of the United Kingdom of Great Britain and Northern Ireland, and the Department of Social Security of His Majesty's Government of Gibraltar. These discussions between our two Governments have concerned existing and future arrangements concerning social security coordination between them, namely:

1. the exchange of letters between the Secretary of State for Foreign and Commonwealth Affairs dated 12 December 1973 and the Governor of Gibraltar dated 30 December 1974 which constitute an Interim Agreement on Social Security arising from the United Kingdom's Accession to the European Economic Community ('the 1974 Exchange of Letters'), including the modification of the 1974 Exchange of Letters by a further exchange of letters between the Department for Work and Pensions and His Majesty's Revenue and Customs dated 16 December 2020 and the Department of Social Security of His Majesty's Government of Gibraltar dated 21 December 2020 ('the 2020 Exchange of Letters'), and,
2. the proposed Agreement on Social Security between His Majesty's Government of the United Kingdom of Great Britain and Northern Ireland and His Majesty's Government of Gibraltar which is set out in the Annex to this Letter ('the Agreement').

In these discussions our two Governments have confirmed the desire to continue to coordinate social security for persons who move between the United Kingdom of Great Britain and Northern Ireland ('the United Kingdom') and Gibraltar on the basis of the provisions set out in the Agreement. The existing arrangements constituted by the 1974 Exchange of Letters, as modified by the 2020 Exchange of Letters, shall continue to operate in accordance with Article 65 of the Agreement.

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If the foregoing proposals are acceptable to you, I propose that this letter and your reply notifying the acceptance of His Majesty's Government of Gibraltar will constitute an understanding with regards to social security coordination between the United Kingdom and Gibraltar which will come into effect in accordance with Article 61 of the Agreement.

Ronan O'Connor
Deputy Director International Strategy
Department for Work and Pensions

Edmund Hair
Deputy Director - National Insurance Policy,
International and Student Finance
HM Revenue and Customs

Annex

AGREEMENT ON SOCIAL SECURITY BETWEEN HIS MAJESTY'S GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND ON THE ONE PART AND HIS MAJESTY'S GOVERNMENT OF GIBRALTAR ON THE OTHER

PART I

GENERAL PROVISIONS

ARTICLE 1

Definitions

(1) For the purpose of this Agreement the following definitions apply, except where the context otherwise requires:

"activity as an employed person" means any activity or equivalent situation treated as such for the purposes of the legislation of the Party in which such activity or equivalent situation exists;

"activity as a self-employed person" means any activity or equivalent situation treated as such for the purposes of the legislation of the Party in which such activity or equivalent situation exists;

"additional pension" means any additional pension payable under the legislation of the United Kingdom based on the payment of contributions above the level required for entitlement to basic pension;

"benefit" means, as appropriate, any benefit, pension, allowance, payment or grant to which this Agreement applies (in accordance with Article 3) and includes any increases of, or any additional amount payable with, such benefit, pension, allowance, payment or grant respectively;

"benefits in kind" means

- (i) for the purposes of Part IV, Section 1 (sickness, maternity, paternity, long-term care and unemployment benefits), benefits in kind provided for under the legislation of either the United Kingdom or Gibraltar which are intended to supply, make available, pay directly or reimburse the cost of medical care and products and services ancillary to that care. This includes long-term care benefits in kind;
- (ii) for the purposes of Part IV, Section 3 (benefits for accidents at work and occupational diseases), all benefits in kind relating to accidents at work and occupational diseases as defined in point (i) above and provided for under the United Kingdom and Gibraltar's accidents at work and occupational diseases schemes;

"civil servant" means a person considered to be such or treated as such by the Party to which the administration employing them is subject;

"competence", in relation to a Party, means responsibility for payment of a particular benefit under the legislation it applies to a person who:

- (i) is insured in that Party in relation to a benefit of that type, at the time of their claim for it; or
- (ii) would be entitled to such benefit if they (or a member of their family or survivor, where relevant) resided in that Party,

and the word "competent" shall be construed accordingly;

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"contribution period" means a period in respect of which contributions relevant to entitlement to the benefit concerned are payable, have been paid or treated as paid under the relevant legislation;

"credited period" means a period (other than a period of employment or a period of self-employment) for which contributions relevant to entitlement to the benefit in question have been credited under the legislation concerned;

"dependant" means an individual who would be treated as such for the purpose of any claim for an increase of benefit in respect of a dependant under the legislation concerned;

"EU Social Security Coordination Regulation", for the purposes of Article 19, means either of:

- (i) 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 members of their families moving within the Community (as amended); or
- (ii) Regulation (EC) No. 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (as amended);

"Gibraltar" means the territory of Gibraltar;

"home base" means the place from where the crew member normally starts and ends a duty period or a series of duty periods, and where, under normal conditions, the operator/airline is not responsible for the accommodation of the crew member concerned;

"income tax year" means:

- (i) in relation to the United Kingdom, the twelve months beginning on 6 April in any year and ending on 5 April in the following year; and
- (ii) in relation to Gibraltar, the twelve months beginning on 1 July in any year and ending on 30 June in the following year;

"insurance period" means a contribution period or a credited period;

"insured" means, in relation to a person under the legislation of United Kingdom and Gibraltar, that they have the right to a type of benefit set out in Article 3(1), taking into account the provisions of this Agreement;

"legally resident" means being resident or staying in a Party in accordance with the Party's immigration laws;

"legislation" means, in respect of each Party, laws, regulations and other statutory provisions and all other implementing measures relating to the social security branches covered by Article 3(1);

"member of the family", in relation to a person, means:

- (i) any individual defined or recognised as a member of the family or designated as a member of the household of that person by the legislation of the Party under which the benefit concerned is provided; or
- (ii) if the legislation of a Party referred to in sub-paragraph (i) does not make a distinction between the members of the family and other individuals to whom it is

applicable, the person's spouse, minor children and dependent children who have reached the age of majority shall be considered members of their family; and if, under the legislation referred to in sub-paragraphs (i) and (ii), an individual is considered a member of the person's family or member of their household on condition that they live in the same household as the person, such condition shall be considered satisfied if the individual in question is mainly dependent on the person;

"Parties" means:

- (i) the United Kingdom; and
- (ii) Gibraltar,

(each, a "Party"), and includes the territory of either Party or any part of either Party, as the context requires;

"pension" means an old-age benefit, invalidity benefit or a survivor's benefit;

"pensioner" means a person who is receiving a pension;

"period of employment" or "period of self-employment" means a period so defined, treated or recognised by the legislation of the Party under which it was completed or considered as completed, or any period regarded by that legislation as equivalent to a period of employment or a period of self-employment;

"period of residence" means a period so defined, treated or recognised by the legislation of a Party under which it was completed or considered as completed;

"person" has the meaning given to it in Article 2(1) of this Agreement, unless the context otherwise requires;

"qualifying year" means in relation to the United Kingdom:

- a. an insurance period of not less than 50 weeks which ended prior to 6 April 1975;
- b. an income tax year falling between 6 April 1975 and 5 April 1978 during which contributions have been paid on earnings received, or treated as received, of at least 50 times the lower earnings limit for that year; or
- c. an income tax year commencing after 6 April 1978 in which the person has received, or been treated as having received, earnings of at least 52 times the lower earnings limit;

"refugee" means an individual so defined in Article 1 of the Convention on the Status of Refugees done at Geneva on 28 July 1951, as extended by Article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31 January 1967;

"registered office or place of business" means, in relation to an employer or undertaking, the registered office or place of business where the essential decisions of the employer or undertaking are adopted and where the functions of its central administration are carried out;

"relevant authority" means:

- (i) in relation to the United Kingdom, the Department for Work and Pensions for Great Britain, the Commissioners for His Majesty's Revenue and Customs, the Scottish

- Ministers, the Department for Communities for Northern Ireland (as appropriate), or an authorised representative of any one of those; and
- (ii) in relation to Gibraltar, the Department of Social Security, the Department for Employment, the Income Tax Office, or an authorised representative of any of those;

“residence” means habitual residence in a Party as defined or construed under the legislation of that Party and the words “reside” and “resident” shall be construed accordingly;

“social assistance” means in relation to the United Kingdom:

- (a) universal credit payable under Part 1 of the Welfare Reform Act 2012 or Part 2 of the Welfare Reform (Northern Ireland) Order 2015;
- (b) income support payable under section 124 of the Social Security Contributions and Benefits Act 1992 or section 123 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992;
- (c) income-related employment and support allowance payable under Part 1 of the Welfare Reform Act 2007 or Part 1 of the Welfare Reform Act (Northern Ireland) 2007;
- (d) income-based jobseeker’s allowance payable under the Jobseekers Act 1995 or the Jobseeker’s (Northern Ireland) Order 1995; and
- (e) state pension credit payable under the State Pension Credit Act 2002 or the State Pension Credit Act (Northern Ireland) 2002;

“stateless person” means an individual so defined in Article 1 of the Convention on the Status of Stateless Persons done at New York on 28 September 1954;

“survivor” means, in relation to a person:

- (i) a spouse or civil partner to whom a survivor’s benefit or death grant is payable under the legislation of the United Kingdom;
- (ii) a spouse, civil partner, or child to whom a survivor’s benefit or death grant is payable under the legislation of Gibraltar;

“UK-EU Withdrawal Agreement” means the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, made between the European Union and the European Atomic Energy Community on the one hand, and the United Kingdom on the other hand, and any amendments or modifications made to it;

“UK-EEA EFTA Separation Agreement” means the Agreement on arrangements between Iceland, the Principality of Liechtenstein and the Kingdom of Norway, and the United Kingdom of Great Britain and Northern Ireland, following the withdrawal of the United Kingdom from the European Union, the European Economic Area Agreement and other agreements applicable between the United Kingdom and the EEA EFTA States by virtue of the United Kingdom’s membership of the European Union, and any amendments or modifications made to it, signed on 28 January 2020;

“UK-Swiss Citizens’ Rights Agreement” means the agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation on citizens’ rights following the withdrawal of the United Kingdom from the European Union and the Free Movement of Persons Agreement, and any amendments or modifications made to it, signed on 25 February 2019;

"UK-Swiss Social Security Convention" means the Convention on Social Security Coordination between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation, and any amendments or modifications made to it, signed on 9 September 2021;

"United Kingdom" means the territory of the United Kingdom of Great Britain and Northern Ireland;

"United Kingdom national" means:

- (i) a British citizen;
- (ii) a person who is a British subject by virtue of Part IV of the British Nationality Act 1981 and who has the right of abode in the United Kingdom and is therefore exempt from United Kingdom immigration control;
- (iii) a British overseas territories citizen who acquires their citizenship from a connection with Gibraltar;

"1974 Exchange of Letters" means:

- (a) the exchange of letters between the Secretary of State for Foreign and Commonwealth Affairs dated 12 December 1973 and the Governor of Gibraltar dated 30 December 1974 constituting an Interim Agreement on Social Security arising from the United Kingdom's Accession to the European Economic Community; and,
- (b) the modification of the agreement referred to in paragraph (a) by a further exchange of letters between the Department for Work and Pensions and His Majesty's Revenue and Customs dated 16 December 2020 and the Department of Social Security of His Majesty's Government of Gibraltar dated 21 December 2020 regarding the continuation of the reciprocity in social security matters between His Majesty's Government of the United Kingdom of Great Britain and Northern Ireland and His Majesty's Government of Gibraltar following the United Kingdom's exit from the European Union.

(2) Other words and expressions which are used in this Agreement have the meanings respectively assigned to them in the legislation concerned. Where a term is defined within an Article (but not set out in paragraph (1) above), such definition applies only for the purposes of that particular Article.

(3) Any reference in this Agreement to an "Article" means an Article of this Agreement, and any reference to a "paragraph" or "sub-paragraph" is a reference to a paragraph or sub-paragraph of the Article in which the reference is made, unless it is stated to the contrary.

ARTICLE 2

Persons covered

- (1) This Agreement shall apply to persons residing in either Party, including stateless persons and refugees, who are or have been subject to the legislation of either Party, as well as to the members of their families and their survivors.
- (2) Persons to whom paragraph (1) applies must be legally resident in Gibraltar or the United Kingdom.
- (3) Persons to whom paragraph (1) applies must be persons whose situation is not confined in all respects within Gibraltar, or within the United Kingdom.

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ARTICLE 3

Matters covered

(1) This Agreement applies to cash benefits falling under the following branches of social security:

- (a) sickness benefits;
- (b) long-term care benefits;
- (c) maternity and equivalent paternity benefits;
- (d) invalidity benefits;
- (e) old-age benefits;
- (f) survivors' benefits;
- (g) benefits in respect of accidents at work and occupational diseases;
- (h) death grants
- (i) unemployment benefits;
- (j) family benefits.

(2) This Agreement shall apply only to cash benefits specified in Annex A which fall within the branches listed at paragraph (1) and to schemes relating to the obligations of an employer unless the Parties agree otherwise.

(3) This Agreement shall not apply to social and medical assistance or to benefit schemes for victims of war or its consequences.

ARTICLE 4

Equality of treatment

Unless otherwise provided by this Agreement, a person who is subject to the legislation of:

- (a) the United Kingdom shall enjoy the same rights and be subject to the same obligations under that legislation as those which apply to a United Kingdom national;
- (b) Gibraltar shall enjoy the same rights and be subject to the same obligations under that legislation as those which apply to a United Kingdom national.

ARTICLE 5

Equal treatment of benefits, income, facts or events

Unless otherwise provided by this Agreement, the following provisions shall apply:

- (a) where, under the legislation of a Party, the receipt of benefits and other income has certain legal effects, the relevant provisions of that legislation shall also apply to the receipt of equivalent benefits under the legislation of, or to income acquired in, the other Party;

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(b) where, under the legislation of a Party (Party A), legal effects are attributed to the occurrence of certain facts or events, that Party shall take account of like facts or events occurring in the other Party (Party B) as though they had taken place in Party A.

ARTICLE 6

Aggregation provisions

- (1) This Article applies where the legislation of a Party makes the following conditional upon the completion of insurance periods, and periods of employment, self-employment or residence:
- (a) the acquisition, retention, duration or recovery of the right to benefits;
 - (b) coverage by legislation; or
 - (c) access to or exemption from compulsory or voluntary insurance.
- (2) Where this Article applies, and unless otherwise provided by this Agreement, a Party shall to the extent necessary take into account insurance periods, or periods of employment, self-employment or residence completed under the legislation of the other Party as though they were periods completed under its own legislation.

ARTICLE 7

Waiving of residence rules

Unless otherwise provided by this Agreement, benefits payable to a person or a member of their family under the legislation of a Party, or by a Party under this Agreement, shall not be subject to any reduction, amendment, suspension, withdrawal, or confiscation on account of the fact that such a person or a member of their family resides in the other Party.

ARTICLE 8

Prevention of overlapping entitlement to benefits

Unless otherwise provided, this Agreement shall not confer nor maintain the right to two or more benefits of the same type (as determined in accordance with Article 3(1)) under the legislation of both Parties for the same period of compulsory insurance.

PART II

PROVISIONS WHICH DETERMINE THE LEGISLATION APPLICABLE

ARTICLE 9

General provisions

- (1) A person shall be subject to the legislation of a single Party which shall be determined in accordance with this Part.

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- (2) A person receiving a benefit from one Party because or as a consequence of their activity as an employed or self-employed person shall be considered to be pursuing that activity in that Party.
- (3) Paragraph (2) shall not apply to pensions or to benefits in respect of accidents at work or occupational diseases.
- (4) Subject to Articles 10 to 13 and Article 38:
 - (a) a person pursuing an activity as an employed or self-employed person in one Party shall be subject to the legislation of that Party;
 - (b) a civil servant shall be subject to the legislation of the Party to which the administration employing them is subject;
 - (c) a person receiving an unemployment benefit in accordance with Article 22 shall be subject to the legislation of the Party in which they reside;
 - (d) any other person to whom sub-paragraphs (a) to (c) do not apply shall be subject to the legislation of the Party in which they reside, without prejudice to other provisions of this Agreement guaranteeing them benefits under the legislation of the other Party.
- (5) For the purposes of this Part, a person pursuing an activity as an employed or self-employed person normally pursued on board a vessel at sea registered in a Party shall be deemed to be an activity pursued in that Party. However, a person employed on board a vessel registered in a Party and remunerated for such activity by an undertaking or a person whose registered office or place of business is in the other Party shall be subject to the legislation of the latter Party if that person resides in that Party. The undertaking or person paying the remuneration shall be considered as the employer for the purposes of the said legislation.
- (6) For the purposes of this Part, a person pursuing an activity as a flight crew or cabin crew member performing air passenger or freight services shall be deemed to be an activity pursued in the Party where the home base is located.

ARTICLE 10

Pursuit of employed or self-employed activity in the other Party

- (1) A person who pursues an activity as an employed person in one Party (Party A) on behalf of an employer which normally carries out its activities there, and who performs work on that employer's behalf in the other Party (Party B), shall continue to be subject to the legislation of Party A, provided that the anticipated duration of such work does not exceed 24 months.
- (2) A person who normally pursues an activity as a self-employed person in one Party (Party A), who goes to pursue a similar activity in the other Party (Party B), shall continue to be subject to the legislation of Party A, provided that the anticipated duration of such activity in Party B is not expected to last for more than 24 months.

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ARTICLE 11

Pursuit of employed or self-employed activity in both Parties

(1) A person who normally pursues an activity as an employed person in both Parties shall be subject to the legislation of the Party in which they reside, if they pursue a substantial part of their activity there.

(2) Where a person does not pursue a substantial part of the activity described in paragraph (1) in the Party in which they reside, the following provisions shall apply:

- (a) where they are employed by one or more undertakings or employers, all of which have their registered office or place of business in one Party, they shall be subject to the legislation of that Party;
- (b) where they are employed by two or more undertakings or employers which have their registered office or place of business in both Parties, they shall be subject to the legislation of the Party other than the Party in which they reside;
- (c) where they are employed by two or more undertakings or employers, at least one of which has its registered office or place of business in a territory not covered by this Agreement, they shall be subject to the legislation of the Party in which they reside; or
- (d) where they are employed by one or more undertakings or employers, none of which have a registered office or place of business in either Party, they shall be subject to the legislation of the Party in which they reside.

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

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

(4) A person who normally pursues an activity as an employed person in one Party and an activity as a self-employed person in the other Party, shall be subject to the legislation of the Party in which they pursue an activity as an employed person or, if they pursue such an activity in both Parties, to the legislation determined in accordance with paragraph (1).

(5) A person who is employed as a civil servant in one Party and who pursues an activity as an employed person and/or as a self-employed person in the other Party shall be subject to the legislation of the Party to which the administration employing them is subject.

(6) Persons referred to in paragraphs (1) to (5) shall be treated, for the purposes of the legislation determined in accordance with these provisions, as though they were pursuing all their activities as employed or self-employed persons and were receiving all their income in the Party to whose legislation they are subject.

ARTICLE 12

Voluntary insurance or optional continued insurance

(1) Articles 9 to 11 shall not apply to voluntary insurance or to optional continued insurance.

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(2) Subject to paragraph (4), where a person is subject to compulsory insurance in one Party by virtue of the legislation of that Party, they shall not be subject to a voluntary or optional continued insurance scheme in the other Party.

(3) If paragraph (2) does not apply and a person has, for the purpose of entitlement to a benefit, a choice between several voluntary or optional continued insurance schemes, they shall be entitled to pay contributions only under the legislation of one Party according to their choice.

(4) In respect of pensions, a person may join the voluntary or optional continued insurance scheme of a Party, even if they are compulsorily subject to the legislation of the other Party, provided that they have been previously subject to the legislation of the former Party because or as a consequence of an activity as an employed or self-employed person and if such overlapping is explicitly or implicitly allowed under the legislation of the former Party.

(5) Where the legislation of a Party makes admission to voluntary insurance or optional continued insurance conditional upon residence in that Party or upon previous activity as an employed or self-employed person, Article 5(b) shall apply only to persons who have been subject, at some earlier stage, to the legislation of that Party on the basis of an activity as an employed or self-employed person.

ARTICLE 13

Exceptions to Articles 9 to 12

(1) The relevant authorities of the Parties or bodies designated by those authorities may agree to modify the application of Articles 9 to 12 in the interest of particular persons or categories of persons.

(2) A pensioner who receives a pension or pensions under the legislation of one Party and who resides in the other Party may at their request be exempted from application of the legislation of the latter Party, provided that they are not subject to that legislation on account of pursuing an activity as an employed or self-employed person.

ARTICLE 14

Obligations of an employer in the other Party

(1) An employer of a person which has its registered office or place of business in the Party (Party A) other than the Party whose legislation is applicable to such a person (Party B) shall fulfil all the obligations laid down by that legislation, notably the obligation to pay the contributions provided for by that legislation, as if it had its registered office or place of business in Party B.

(2) An employer of a person which has its registered office or place of business in the Party (Party A) other than the Party whose legislation is applicable to such a person (Party B) and the employee may agree that the latter may fulfil the employer's obligations on its behalf as regards the payment of contributions without prejudice to the employer's underlying obligations. The employer shall send notice of such an arrangement to the relevant authority of Party B.

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Part III

SPECIAL PROVISIONS

ARTICLE 15

Conversion Formulae for Contributions

(1) For the purpose of calculating entitlement to any benefit under the legislation of the United Kingdom in accordance with Articles 16 to 30, contribution periods or credited periods completed under the legislation of Gibraltar before 6 April 1975 shall be treated as if they had been contribution periods or credited periods completed under the legislation of the United Kingdom, as the case may be.

(2) For the purpose of calculating entitlement to any benefit under the legislation of the United Kingdom in accordance with Articles 16 to 30, contribution periods completed as a self-employed person or credited periods completed under the legislation of Gibraltar after 5 April 1975 shall be treated as if they had been contribution periods completed as a self-employed person or credited periods completed under the legislation of the United Kingdom, as the case may be.

(3) Subject to paragraph (4), for the purpose of calculating an earnings factor in order to determine a person's entitlement to any benefit under the legislation of the United Kingdom in accordance with Articles 16 to 30, for each week or part of a week which is a contribution period completed as an employed person under the legislation of Gibraltar, and which commenced during a relevant income tax year commencing on or after 6 April 1975 within the meaning of the legislation of the United Kingdom, such person shall be treated as having paid contributions as an employed earner on earnings equivalent to two-thirds of that year's upper earnings limit.

(4) For the purpose of calculating entitlement to additional pension under the legislation of the United Kingdom, no account shall be taken of any contribution period completed under the legislation of Gibraltar.

(5) For the purposes of the calculation in Article 26(1), where:

(a) in any income tax year commencing on or after 6 April 1975, an employed person has completed insurance periods exclusively in Gibraltar and the application of paragraph (3) results in that year being a qualifying year under the legislation of the United Kingdom, that person shall be deemed to have been insured for fifty-two weeks in that year;

(b) any income tax year commencing on or after 6 April 1975 does not count as a qualifying year under the legislation of the United Kingdom, any insurance periods completed in that year shall be disregarded.

(6) In relation to the United Kingdom, for the purpose of determining the minimum number of qualifying years for entitlement to a state pension under section 2 or 4 of the Pensions Act 2014, each contribution period or credited period completed under the legislation of Gibraltar shall be treated as a contribution period or credited period completed under the legislation of the United Kingdom, as the case may be.

(7) For the purpose of calculating entitlement to any benefit under the legislation of Gibraltar in accordance with Articles 16 to 30, each contribution period or credited period completed under the legislation of the United Kingdom before 6 April 1975 shall be treated as if it had been a contribution period or a credited period completed under the legislation of Gibraltar, as the case may be.

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(8) For the purpose of calculating entitlement to any benefit under the legislation of Gibraltar in accordance with Articles 16 to 30, any earnings factor achieved in any income tax year commencing on or after 6 April 1975 under the legislation of the United Kingdom shall be converted to contribution weeks under the legislation of Gibraltar by dividing the earnings factor by that income tax year's lower earnings limit. The result shall be expressed as a whole number, any remaining fraction being ignored. The number of contribution weeks so calculated, subject to a maximum of the number of weeks during which the person was subject to the legislation of the United Kingdom, as the case may be, in that year, shall be treated as if they were contribution weeks completed under the legislation of Gibraltar.

Part IV

BENEFIT PROVISIONS

SECTION 1

PROVISIONS FOR SICKNESS, MATERNITY, PATERNITY, INVALIDITY, LONG-TERM CARE AND UNEMPLOYMENT

ARTICLE 16

Sickness Benefit, Maternity and Paternity Benefit

(1) A person and any members of their family residing in the Party which is not competent for payment of sickness, maternity or paternity benefit (Party A) shall be entitled to such benefit in accordance with the legislation of the Party with competence (Party B).

(2) By agreement between the two Parties, such benefits may, however, be provided by Party A at the expense of Party B in accordance with the legislation of Party A.

ARTICLE 17

Invalidity benefit

(1) A person who has been successively or alternately subject to the legislation of both Parties and completed insurance periods in either or both Parties shall be entitled to invalidity benefit only under the legislation of the Party which was applicable at the time when their incapacity for work followed by invalidity occurred and shall receive such benefits in accordance with that legislation.

(2) A person who is not entitled to invalidity benefit under such legislation in accordance with paragraph (1) shall receive the invalidity benefit to which they are entitled under the legislation of the other Party.

(3) Where, in respect of the same incapacity and for the same period, a person would be entitled to receive:

(a) invalidity benefit under the legislation of both Parties; or

(b) invalidity benefit under the legislation of one Party and sickness benefit under the legislation of the other Party; or

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(c) invalidity benefit under the legislation of Gibraltar and statutory sick pay under the legislation of the United Kingdom,

whether by virtue of this Agreement or otherwise, they shall be entitled to receive only the invalidity benefit, sickness benefit or statutory sick pay, as the case may be, under the legislation of the Party where their incapacity began.

ARTICLE 18

Conversion of invalidity benefits into old-age benefits

(1) A person receiving invalidity benefits from a Party shall have those benefits converted to old-age benefits in accordance with Section 2 of this Part if the legislation of that Party provides for such a conversion.

(2) Where a person receiving invalidity benefits from a Party (Party A) becomes eligible for old-age benefits under the legislation of the other Party (Party B) in accordance with Article 25, the relevant authority of Party A shall continue to provide that person with the invalidity benefits to which they are entitled under the legislation it applies, until paragraph (1) becomes applicable in respect of that authority, or for as long as the person concerned satisfies the conditions for such invalidity benefits.

(3) Where invalidity benefits paid to a person under the legislation of a Party (Party A) are converted into old-age benefits in accordance with paragraph (1) and the person concerned does not yet satisfy the conditions for entitlement to old-age benefit under the legislation of the other Party (Party B), the person concerned shall receive, from Party B, invalidity benefits from the date of the conversion.

(4) The invalidity benefits provided by Party B under paragraph (3) shall be provided in accordance with Section 2 of this Part (in the same way, subject to necessary modifications) as if that section had been applicable at the time when the incapacity for work leading to invalidity occurred, until the person concerned satisfies the qualifying conditions for old-age benefit under the legislation of Party B or, for as long as the person is entitled to invalidity benefits under that legislation.

(5) The invalidity benefits provided under Article 17 shall be recalculated in accordance with Section 2 of this Part as soon as the person receives old-age benefits under the legislation of the other Party.

ARTICLE 19

Long-term care benefits

(1) Subject to paragraph (2), an insured person and any members of their family residing in the Party which is not competent shall be entitled to long-term care benefits provided by the other Party in accordance with the legislation it applies.

(2) For the purposes of paragraph (1), when determining any entitlement to such benefit under the legislation of the United Kingdom:

(a) any condition requiring that an EU Social Security Coordination Regulation applies shall not apply; and

(b) as regards periods spent in Gibraltar, only periods of residence during which a person was insured prior to the day on which entitlement to the relevant benefit first arises may be

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taken into account in so far as is necessary to satisfy a condition regarding presence in the United Kingdom.

ARTICLE 20

Benefits for pensioners

(1) This Article does not apply where a person who receives a pension, or a member of their family, is entitled under the legislation of or one or both of the Parties to a sickness benefit, maternity and paternity benefit, or long-term care benefit on the basis of the activity of that person or of a member of their family.

(2) Where a person receives a pension from one or both of the Parties, they, along with the members of their family, shall be entitled to sickness benefits, maternity and paternity benefits, and long-term care benefits under the legislation of the Party which is responsible for meeting the costs of that person's benefits in kind in accordance with the legislation it applies.

(3) Where the application of paragraph (2) would result in both Parties being competent for payment of such benefit(s), only the Party of residence shall be competent for such benefit(s).

ARTICLE 21

Unemployment benefit

Aggregation provision

(1) Where a person has, since their last arrival in a Party, completed a contribution period under the legislation of that Party, then for the purpose of any claim to unemployment benefit made under the legislation of that Party, any insurance period or period of employment, completed under the legislation of the other Party shall be treated in accordance with Article 15 as if it were an insurance period or period of employment completed under the legislation of the former Party, in so far as those periods do not coincide.

(2) Except in the case referred to in Article 22(4)(a), the application of paragraph (1) shall be conditional on the person concerned having completed their most recent insurance period or period of employment in the Party in which the benefit is claimed, as may be required by the legislation of that Party.

Export provision

(3) For the purpose of this Article, Article 7 shall apply only in the cases provided for by paragraphs (4) and (5) and within the limits prescribed in those paragraphs.

(4) A wholly unemployed person who satisfies the entitlement conditions for unemployment benefit under the legislation of the Party competent for payment of such benefit (Party A), and who goes to the other Party (Party B) in order to seek work there, shall retain entitlement to that benefit in accordance with the legislation of Party A and at its own expense, under the following conditions and within the following time limits:

(a) before going to Party B, the person concerned must have registered with the employment services of Party A as a person seeking work and remained available to the employment services of Party A for at least 4 weeks after becoming unemployed (or such shorter time as the relevant authority of Party A may agree);

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(b) the person concerned shall, in Party B:

- (i) register with the employment services of that Party as a person seeking work;
- (ii) be subject to the control procedure organised there; and
- (iii) adhere to the conditions laid down under the legislation of that Party;

within 7 days of ceasing to be available to the employment services of Party A (or such longer time as the relevant authority of Party A may agree to). Where this condition is satisfied, it shall be treated as satisfied for the period before registration;

(c) the person concerned shall retain their entitlement to unemployment benefit from Party A for as long as they remain entitled to it under the legislation of that Party, up to a maximum of 13 weeks from the date when they ceased to be available to the employment services of that Party. Party A may extend the duration of such benefit to a maximum of 26 weeks.

(5) If the person concerned returns to Party A on or before the expiry of the period during which they are entitled to benefits under paragraph (4)(c), they shall continue to be entitled to unemployment benefit under the legislation of that Party provided that the duration for which the benefit is paid under that legislation is not exceeded.

(6) If the person concerned does not return to Party A on or before the expiry of that period, they shall lose entitlement to unemployment benefit from the end of that period, unless the provisions of the legislation of Party A are more favourable or the relevant authority of Party A agrees to extend their entitlement until a date after the expiry of that period.

(7) Unless the legislation of Party A is more favourable, between two periods of employment the maximum total period for which entitlement to unemployment benefit shall be retained under paragraph (4) shall be 13 weeks. However, the relevant authority of Party A may extend that period up to a maximum of 26 weeks.

ARTICLE 22

Unemployed persons who resided in the Party other than the competent Party

(1) A person who is partially or intermittently unemployed and who, during their last activity as an employed or self-employed person, resided in the Party which is not the Party competent for payment of unemployment benefit, shall make themselves available to their employer or register as a person seeking work with the employment services in the competent Party, and shall comply with the conditions applicable under its legislation. The competent Party shall pay unemployment benefit to that person in accordance with its legislation as if the person was residing in that Party.

(2) A wholly unemployed person who, during their last activity as an employed or self-employed person, resided in Party A and who continues to reside there or returns there shall register with the employment services in that Party as a person seeking work and comply with the conditions applicable under the legislation of that Party. Without prejudice to Article 21, the wholly unemployed person may, as a supplementary step, register as a person seeking work with the employment services of Party B, if that is the Party in which they pursued that last activity, and only the obligations applicable under the legislation of that Party will apply.

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(3) A wholly unemployed person falling within paragraph (2) who remains in Party B after the end of their activity there, shall register as a person seeking work with the employment services of that Party and only the conditions applicable under the legislation of that Party will apply.

(4) (a) The unemployed person referred to in paragraph (2) shall receive unemployment benefits from Party A in accordance with the legislation it applies as if they had been subject to that legislation during their last activity as an employed or self-employed person.

(b) However, a worker shall firstly receive, on their return to Party A, benefits in accordance with Article 21. No benefit shall be payable by Party A in accordance with sub-paragraph (a) for the period during which they receive benefit under the legislation of Party B to which they were last subject.

(5) The benefit provided by Party A under paragraph (4) shall continue to be paid at its own expense. However, subject to paragraphs (6) and (7), Party B (in cases where the person concerned was last subject to the legislation of that Party) shall reimburse Party A for the full amount of the benefits provided by Party A during the first 13 weeks of the payment. The amount of the reimbursement during this period may not be higher than the amount payable as unemployment benefit under the legislation of Party B. In the case referred to in paragraph (4)(b), the period during which benefit is provided under Article 21 shall be deducted from the 13 week period.

(6) However, the period of reimbursement referred to in paragraph (5) shall be extended to 22 weeks when the person concerned has, during the preceding 24 months, completed periods of employment of at least 12 months in Party B, where such periods would be taken into account for the purposes of establishing entitlement to unemployment benefits.

(7) For the purposes of paragraphs (5) and (6), Party A may waive the reimbursement.

(8) Where the legislation applicable in the Parties requires the fulfilment of certain obligations and/or job-seeking activities by the unemployed person, the obligations and/or job-seeking activities required in the Party of residence shall have priority. The non-fulfilment by the unemployed person of all the obligations and/or job-seeking activities in the Party in which they pursued their last activity shall not affect the benefits awarded in the Party of residence.

ARTICLE 23

Calculation of unemployment benefits

(1) For the purpose of calculating a person's entitlement to an unemployment benefit where Gibraltar is competent for payment of such benefit, Gibraltar shall take into account the members of the person's family residing in the United Kingdom as if they resided in Gibraltar.

(2) Paragraph (1) shall not apply where another person is entitled to an unemployment benefit under the legislation of Gibraltar for those same members of the family.

ARTICLE 24

Reimbursement of unemployment benefits

(1) For the purposes of Article 22(5) and (6) the relevant authority of the Party in which the person concerned resides (Party A) shall request reimbursement of unemployment benefits from the relevant authority of the other Party (Party B). The request shall be made within six months of the

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end of the calendar half-year during which the last payment of unemployment benefit, for which reimbursement is requested, was made. Party B shall not be required to consider requests made after this time-limit. The request shall indicate the:

- (a) amount of benefit paid during the 13 or 22 week period referred to in Article 22(5) and (6);
- (b) period for which the benefits were paid; and
- (c) identification data of the unemployed person.

(2) Where such a request is made during the time-limit set out in paragraph (1), Party B shall pay the amount set out in such request to Party A within 18 months of the end of the month during which the request was sent to Party B. From the end of that 18-month period, interest may be charged by Party A on outstanding claims, calculated on the basis of a rate to be agreed between the Parties.

SECTION 2

OLD-AGE BENEFIT AND SURVIVOR'S BENEFIT

ARTICLE 25

General provisions

(1) Where a person has been subject to the legislation of both Parties, each Party shall determine whether that person satisfies the conditions for entitlement to old-age benefit under its legislation when it receives the person's claim for such benefit, unless the person has expressly requested deferment of the award of old-age benefit under the legislation of that Party (where deferment is allowed under such legislation).

(2) Where the person satisfies the conditions for entitlement to old-age benefit under the legislation of both Parties, each Party shall calculate the person's entitlement to such benefit in accordance with Article 26.

(3) (a) Where the person satisfies the conditions for entitlement to an old-age benefit under the legislation of one Party (Party A) but does not simultaneously satisfy or no longer satisfies such conditions under the legislation of the other Party (Party B), or has expressly requested deferment of award of such benefit (and the legislation of Party B provides for such deferment), Party A shall calculate their entitlement to the benefit in accordance with sub-paragraph (b) and Article 26.

(b) Where paragraph (a) applies, when performing the calculation in Article 26, Party A shall not take into account insurance periods completed under the legislation of Party B where this gives rise to a lower amount of old-age benefit.

(c) As and when the person satisfies the entitlement conditions for old-age benefit under the legislation of Party B, or makes a claim to Party B for such benefit following deferment of it in accordance with paragraph (1), each Party shall calculate the person's entitlement to such benefit under its legislation in accordance with Article 26, but Party B shall not take into account insurance periods completed under the legislation of Party A which have already been taken into account by virtue of sub-paragraphs (a) and (b).

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ARTICLE 26

Calculation and award of old-age benefit

- (1) Subject to paragraphs (4) and (5) and Articles 27 to 29, the relevant Party shall calculate the amount of old-age benefit that would be due to be paid to a person:
- (a) under the legislation it applies, where the person has satisfied the conditions for entitlement to the old-age benefit exclusively on the basis of all the relevant insurance periods completed under the legislation of that Party (the "independent amount"); and
 - (b) on a pro-rata basis, as follows (the "pro-rata amount"):
 - (i) firstly, calculating the amount of old-age benefit which would be payable by that Party if all the relevant insurance periods completed by the person under the legislation of both Parties had been completed under the legislation which it applies on the date of award of the benefit (the "theoretical amount");
 - (ii) then, expressing the relevant insurance periods completed by the person under the legislation of that Party as a percentage of the sum of all relevant insurance periods completed by that person under the legislation of both Parties;
 - (iii) lastly, by multiplying the theoretical amount by the percentage calculated under paragraph (ii) above.
- (2) Where appropriate, the relevant Party shall apply, to the independent amount or the pro rata amount, all the rules relating to reduction, suspension or withdrawal under the legislation it applies, within the limits provided for by Articles 31 to 33.
- (3) The person concerned shall be entitled to receive from the Party the higher of the independent amount and the pro-rata amount.
- (4) Where, in a Party, the independent amount is invariably equal to or higher than the pro-rata amount, that Party need not carry out the calculation of the pro-rata amount.
- (5) For the purpose of determining the rate of state pension under section 2 or 4 of the Pensions Act 2014, the United Kingdom shall calculate the amount of such benefit based solely on the insurance periods completed or, in accordance with Article 15(6) treated as paid, under its legislation.
- (6) For the purpose of the calculation in paragraph (1), where all the insurance periods completed by a person under the legislation of the United Kingdom amount to less than one qualifying year, or relate only to periods ending before 6 April 1975 and in aggregate amount to less than 50 weeks, those periods shall be treated as if they had been completed under the legislation of Gibraltar.
- (7) Any increase of benefit payable under the legislation of the United Kingdom because of deferred retirement shall be based on the pro-rata amount calculated in accordance with paragraph (1)(b) above.
- (8) Where all the insurance periods completed by a person under the legislation of Gibraltar amount to less than one year, those periods shall be treated as if they had been completed under the legislation of the United Kingdom.
- (9) Notwithstanding Article 60, any Party which establishes, while investigating a claim for old-age benefits, that the person is entitled to an independent amount under its legislation in

accordance with paragraph (1)(a) above, shall pay that amount without delay on a provisional basis.

ARTICLE 27

Insurance periods to be taken into account

For the purpose of applying Article 26, a Party shall take into account only insurance periods (completed under the legislation of either Party) which would be taken into account for the determination of benefits under its legislation if they were completed under that legislation.

ARTICLE 28

Overlapping contribution periods

For the purpose of applying Article 26:

(a) where a compulsory contribution period or credited period completed under the legislation of one Party (Party A) coincides with a voluntary contribution period or continued optional contribution period completed under the legislation of the other Party (Party B), only the compulsory contribution period or credited period shall be taken into account;

(b) where a compulsory contribution period completed under the legislation of Party A coincides with a credited period completed under the legislation of Party B, only the contribution period completed under the legislation of Party A shall be taken into account;

(c) where a credited period completed under the legislation of one Party coincides with a credited period completed under the legislation of the other Party, account shall be taken only of the credited period completed:

(i) under the legislation under which the person was last compulsorily insured before the day when the periods in question began; or

(ii) if they were never compulsorily insured before that day, under the legislation under which they first became compulsorily insured after the day when the periods in question ended;

(d) where it is not possible to determine accurately the period of time in which certain insurance periods were completed under the legislation of one Party, such insurance periods shall be treated as if they did not overlap with insurance periods completed under the legislation of the other Party and shall be taken into account where possible and to the best advantage of the person concerned.

(e) Subject to sub-paragraph (f), where periods of voluntary or optional continued insurance have not been taken into account under this Article, the Party under whose legislation those periods were completed shall, where possible, calculate the amount of old-age benefit to which the person concerned would be entitled, on the basis of those periods under the legislation it applies. The pro-rata amount of the benefit payable to the person, calculated in accordance with Article 26(1), shall be increased by the amount corresponding to periods of voluntary or optional continued insurance.

(f) Each Party shall calculate, under the legislation it applies, the amount of old-age benefit to which the person concerned is entitled, on the basis of periods of voluntary or optional continued insurance which, under the last sentence of Article 31(3), shall not be subject to the other Party's rules relating to withdrawal, reduction or suspension.

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ARTICLE 29

Benefits to be excluded

For the purpose of applying Article 26 no account shall be taken of the following benefits payable to the person concerned under the legislation of the United Kingdom:

- (i) any additional pension;
- (ii) any graduated retirement benefit payable by virtue of any graduated contributions paid before 6 April 1975;

but any such benefit shall be added to the amount of any benefit payable under that legislation in accordance with Article 26(3).

ARTICLE 30

Survivor's benefit

Articles 25 to 29 shall apply in the same way, subject to any necessary modifications, to survivor's benefit.

ARTICLE 31

Rules to prevent overlapping

- (1) Any overlapping entitlement to an old-age, invalidity or survivor's benefit under the legislation of both Parties and calculated or provided on the basis of insurance periods completed by the same person shall be considered, for the purposes of this Article and Article 32, to be overlapping of benefits of the same kind.
- (2) Overlapping entitlement to benefits which cannot be considered to be of the same kind within the meaning of paragraph (1) shall be considered to be overlapping of benefits of a different kind.
- (3) For the purpose of any rules preventing overlapping under the legislation of a Party (Party A) in the case of overlapping of an old-age, invalidity or survivor's benefit with a benefit of the same kind or a benefit of a different kind, Party A shall take into account the amount of benefits to be paid to the person by the other Party (Party B) before deduction of tax, social security contributions and other individual levies or deductions, where the legislation of Party A provides for benefits acquired abroad to be taken into account and unless such legislation provides otherwise. Party A shall not take into account any amount of benefits acquired under the legislation of Party B on the basis of voluntary insurance or continued optional insurance.
- (4) If one Party applies rules to prevent overlapping because the person concerned receives benefits of the same or of a different kind under the legislation of the other Party, the benefit due may be reduced solely by the amount of such benefits.

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ARTICLE 32

Overlapping of benefits of the same kind

Where benefits of the same kind due under the legislation of both Parties overlap, the rules to prevent overlapping laid down by the legislation of a Party shall not be applicable to a pro-rata amount (calculated under Article 26(1)(b)).

ARTICLE 33

Overlapping of benefits of a different kind

- (1) If the receipt of benefits of a different kind requires the application of the rules to prevent overlapping provided for by the legislation of the Parties regarding:
 - (a) two independent amounts, the Parties shall divide the amounts of the benefit or benefits, as they have been taken into account, by the number of benefits subject to the said rules;
 - (b) one or more pro-rata amounts, the Parties shall take into account the benefit or benefits or other income and all the elements stipulated for applying the rules to prevent overlapping as a function of the ratio between the insurance periods established for the calculation referred to in Article 26(1)(b)(ii); or
 - (c) one or more independent amounts and one or more pro-rata amounts, the Parties shall apply sub-paragraph (a) in the same way, subject to any necessary modifications, as regards independent amounts and sub-paragraph (b) as regards pro-rata amounts.

The application of sub-paragraph (a) shall not deprive the person concerned of their status as a pensioner for the purposes of this Agreement.

- (2) A Party shall not apply the division stipulated in respect of independent amounts, if the legislation it applies provides for account to be taken of benefits of a different kind and all other elements for calculating part of their amount determined as a function of the ratio between insurance periods referred to in Article 26(1)(b)(ii).
- (3) Paragraphs (1) and (2) shall apply in the same way, subject to necessary modifications, where the legislation of one or both Parties provides that a right to a benefit cannot be acquired in cases where the person concerned is in receipt of a benefit of a different kind, payable under the legislation of the other Party.

SECTION 3

BENEFITS FOR ACCIDENTS AT WORK AND OCCUPATIONAL DISEASES

ARTICLE 34

General provisions

- (1) A person who has sustained an accident at work or has contracted an occupational disease and who resides in a Party (Party A) which is not the Party competent for payment of

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benefits for accidents at work and occupational diseases (Party B) shall be entitled to such benefits in accordance with the legislation of Party B.

- (2) By agreement between the two Parties, such benefits may, however, be provided by Party A in accordance with its legislation, at the expense of Party B.

ARTICLE 35

Dual attribution and aggravation of an occupational disease

- (1) Subject to paragraph (2), where a person who has contracted an occupational disease has, under the legislation of both Parties, pursued an activity as an employed person which by its nature is likely to cause the said disease, and they would be entitled to receive a benefit for accidents at work and occupational diseases in respect of that disease under the legislation of both Parties whether by virtue of this Agreement or otherwise, any benefits that the person or their survivors may claim shall be provided exclusively under the legislation of the Party in which they were last employed in that occupation before the disease was diagnosed.
- (2) Where a person has suffered an aggravation of an occupational disease for which a benefit has been paid or is payable by a Party (Party A) in accordance with paragraph (1), the following provisions shall apply:
- (a) if the person concerned, while in receipt of such benefit, has not pursued, under the legislation of the other Party (Party B), any further activity as an employed person in an occupation likely to cause or aggravate the disease in question, Party A shall bear the cost of the benefit taking into account the aggravation;
 - (b) if the person concerned, while in receipt of such benefit, has pursued such an activity under the legislation of Party B:
 - (i) Party A shall bear the cost of the benefit under its legislation without taking the aggravation into account; and
 - (ii) Party B shall grant a supplement to the person concerned, the amount of which shall be equal to the difference between the amount of benefits due after the aggravation and the amount which would have been due prior to the aggravation under the legislation it applies as if they had first contracted the disease whilst pursuing such activity under the legislation of that Party; and
 - (c) the rules concerning reduction, suspension or withdrawal laid down by the legislation of a Party shall not be invoked against persons receiving benefits provided by both Parties in accordance with sub-paragraph (b).

ARTICLE 36

Equivalence of accidents at work and occupational diseases in the two Parties

When assessing the degree of incapacity, the right to benefit for such accident or disease or the amount of a benefit for accidents at work and occupational diseases, Article 5 shall apply to a Party (Party A) as regards the equivalence in that Party of an accident at work and occupational disease which has either occurred in the other Party (Party B), or been confirmed subsequently under the legislation of Party B, on condition that:

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(a) no compensation from a third party is due in respect of an accident at work or an occupational disease which had occurred previously in Party B or had been confirmed previously under the legislation of Party B; and

(b) no compensation is due in respect of a further accident at work or occupational disease which had also occurred in Party B or also been confirmed subsequently under the legislation of Party B.

ARTICLE 37

Exchange of information between the Parties and advance payments in the event of an appeal

(1) In the event of an appeal against a decision to refuse a claim for a benefit for accidents at work and occupational diseases to a person, taken by the relevant authority of one Party (Party A) under whose legislation the person concerned pursued an activity as an employed person likely to have caused the occupational disease in question, that relevant authority shall inform the relevant authority of the other Party (Party B) of such appeal and shall subsequently inform it when a final decision is reached.

(2) Where a person is entitled to such benefit under the legislation of Party B, that Party shall make advance payments of the benefit in accordance with the legislation of that Party. The relevant authority of Party A shall reimburse to Party B the amount of advance payments made if, as a result of the appeal, it is obliged to provide those benefits. Party A shall then deduct that amount from the benefits due under its legislation to the person concerned.

SECTION 4

FAMILY BENEFITS

ARTICLE 38

Family Benefits

(1) Articles 5 to 11 shall not apply to family benefits.

(2) In relation to family benefit, where under the legislation applicable to a Party:

(a) the completion of a period of presence in that Party is required, any period during which a person was in the other Party shall be treated as a period during which they were in the Party to which the legislation applies;

(b) the place of a person's birth is relevant, a person who was born in the other Party shall be treated as having been born in the Party to which the legislation applies.

(3) Family benefits shall not be payable in respect of the same child under the legislation of both Parties and where, but for this provision, they would have been so payable, they shall be paid under the legislation which applies to the Party in which the child is resident.

SECTION 5
DEATH GRANTS

ARTICLE 39

Death grant

(1) Where a person (other than a pensioner), or a member of their family, dies in the Party which is not competent for the payment of death grants, their death shall be treated as if it had occurred in the competent Party.

(2) Where a pensioner, who was entitled to a pension under the legislation of one or both Parties, or a member of their family dies, the Party competent for the payment of benefits under Article 20 shall also be competent for the payment of death grants.

(3) Where a person or a member of their family dies, the competent Party shall pay the death grant under the legislation it applies, even if the person entitled to it resides in the other Party.

(4) This Article shall also apply when the death is the result of an accident at work or an occupational disease.

PART V
MISCELLANEOUS PROVISIONS

SECTION 1

PRINCIPLES

ARTICLE 40

Collection of contributions and recovery of benefits

(1) Collection of contributions due to one Party and recovery of overpaid or wrongly paid benefits provided by one Party may be effected in the other Party in accordance with the procedures and with the guarantees and privileges applicable in relation to similar claims arising in the latter Party.

(2) Enforceable decisions of the judicial and administrative authorities relating to the collection of contributions, interest and any other charges or to the recovery of overpaid or wrongly paid benefits in one Party shall be recognised and enforced at the request of the relevant authority in the other Party, to the extent that the laws of the latter Party allow and within the limits and in accordance with the procedures laid down by the legislation and any other procedures applicable to similar decisions of that Party. Such decisions shall be declared enforceable in the latter Party in so far as the legislation and any other procedures of that Party so require.

(3) Claims of a relevant authority of one Party shall in enforcement, bankruptcy or settlement proceedings in the other Party enjoy the same privileges as the legislation of the latter Party accords to similar claims.

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ARTICLE 41

Offsetting provisions

For the purposes of applying Article 40, and within the framework set out in this Agreement, the recovery of claims shall, wherever possible, be effected by way of offsetting either between the relevant authorities of the Party concerned, or vis-à-vis the individual or entity concerned in accordance with Article 43. If it is not possible to recover all or any of the claim via this offsetting procedure, the remainder of the amount due shall be recovered in accordance with Articles 44 to 54. No costs are payable between the Parties where the claim is recovered through this offsetting procedure.

ARTICLE 42

Rights of institutions

- (1) This paragraph applies where a person receives benefits under the legislation of one Party (Party A) in respect of an injury resulting from events occurring in the other Party (Party B).
- (2) Where paragraph (1) applies and the relevant authority of Party A has a direct right against a third party which is liable to provide compensation to the person for the injury, Party B shall recognise such right.
- (3) Where paragraph (1) applies, the provisions of the legislation of Party A which determine the cases in which the civil liability of employers or of their employees is to be excluded shall apply with regard to the person or to the relevant authority of Party A.
- (4) Paragraph (2) shall also apply to any rights of the relevant authority of Party A against employers or their employees in cases where their liability is not excluded.

SECTION 2

OFFSETTING

ARTICLE 43

Benefit overpayments

- (1) If a Party (Party A) has overpaid an amount of benefit to a person, Party A may, within the terms and limits laid down in the legislation applying in that Party, request that the other Party (Party B) deduct the overpaid amount from arrears or on-going payments of benefit (whether of the same or a different type) payable by that Party to the person concerned. Party B shall deduct the amount subject to the conditions and limits applying to this kind of offsetting procedure under the legislation it applies in the same way as if it had made the overpayment itself, and shall transfer the amount deducted to Party A.
- (2) By way of derogation from paragraph (1), if Party A has overpaid an amount of a pension to a person, Party A may request that the relevant authority of Party B deduct the overpaid amount from the arrears of a benefit of the same type payable by that Party to the person concerned. After Party B has informed Party A of these arrears, Party A shall within two months inform Party B of the amount of the overpayment. If Party B receives that communication within such time, it shall deduct the amount, subject to the conditions and limits applying to this kind of offsetting procedure under the legislation it applies, in the same way as if it had made the

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overpayment itself, and shall transfer the amount deducted to Party A. If such time elapses without having received such communication, Party B shall without delay pay the arrears to the person concerned.

- (3) (a) If a person has received social assistance in one Party (Party A) during a period in which they were entitled to benefits under the legislation of the other Party (Party B) and Party A is entitled under its own legislation to recover an amount of social assistance paid to such person, Party A shall request that Party B deduct such amount of social assistance from the arrears or ongoing payments of benefit payable by Party B to the person concerned.

(b) Sub-paragraph (a) shall apply in the same way, subject to necessary adjustments, to any member of a person's family who has received social assistance from one Party during a period in which the person was entitled to benefits under the legislation of the other Party in respect of that member of their family.

(c) The relevant authority of a Party which has overpaid an amount of social assistance to a person (Party A) shall send a statement of the overpaid amount to the relevant authority of the other Party (Party B). Party B shall then deduct the amount in accordance with sub-paragraph (a), subject to the conditions and limits laid down for this kind of offsetting procedure in accordance with the legislation it applies, and transfer the amount without delay to Party A.

SECTION 3

RECOVERY

ARTICLE 44

Definitions and common provisions

- (1) For the purposes of this Section:

- (a) "claim" means all claims relating to contributions or to benefits overpaid or wrongly paid, including interest, fines, administrative penalties and all other charges and costs connected with the claim in accordance with the legislation of the Party making the claim;
- (b) "Party A" means the Party which makes a request under this Section;
- (c) "Party B" means the Party to which a request is made under this Section.

- (2) The relevant authorities of the Parties may agree a minimum amount of a claim for which a request for recovery may be made.

ARTICLE 45

Requests for information

At the request of Party A, Party B shall provide any information which would be useful to Party A in the recovery of its claim, using such powers as are available to it under the laws of Party B to obtain such information, and provided that Party B shall not be obliged to supply information which it would not be able to obtain for the purpose of recovering similar claims arising in that Party, or which would disclose any commercial, industrial or professional secrets or be contrary to its law or public policy.

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ARTICLE 46

Notification to the addressee

At the request of Party A, Party B shall in accordance with its laws, notify the addressee specified by Party A of all instruments and decisions, including those of a judicial nature, which come from Party A and which relate to a claim and/or to its recovery. Party B shall subsequently inform Party A of the date on which the decision or instrument was notified to the addressee.

ARTICLE 47

Request for recovery

- (1) At the request of Party A, Party B shall recover claims that are the subject of an instrument permitting enforcement issued by Party A to the extent permitted by and in accordance with the laws in force in Party B.
- (2) Party A may only make a request for recovery if:
 - (a) it also provides to Party B an official or certified copy of the instrument permitting enforcement of the claim in Party A;
 - (b) the claim and/or instrument permitting its enforcement are not disputed in that Party;
 - (c) it has, in that Party, applied appropriate recovery procedures available to it on the basis of the instrument permitting enforcement, and the measures taken will not result in the payment in full of the claim;
 - (d) the period of limitation according to the laws in force in Party A has not expired.

ARTICLE 48

Instrument permitting enforcement of the recovery

- (1) Any instrument permitting enforcement of the claim in Party A shall be directly recognised and treated automatically as an instrument permitting the enforcement of that claim in Party B, to the extent that the laws of Party B allow.
- (2) Notwithstanding paragraph (1), the instrument permitting enforcement of the claim may, where appropriate and in accordance with the provisions in force in Party B, be accepted as, recognised as, supplemented with, or replaced by an instrument permitting enforcement in that Party. Within three months of the date of receipt of the request for recovery, the relevant authority shall endeavour to complete the acceptance, recognition, supplementing or replacement, except in cases where paragraph (3) applies. The relevant authorities may not refuse to complete these actions where the instrument permitting enforcement is properly drawn up. Party B shall inform Party A of the grounds for exceeding the three-month period.
- (3) If any of these actions should give rise to a dispute in connection with the claim and/or the instrument permitting enforcement issued by Party A, Article 50 shall apply.

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ARTICLE 49

Payment arrangements

- (1) Claims shall be recovered in the currency of Party B.
- (2) Interest (if any) shall be charged under the laws in force in Party B from the date of receipt by Party B of the request for recovery.
- (3) The entire amount of the claim that is recovered by Party B (including any interest) shall be remitted by Party B to Party A.

ARTICLE 50

Dispute concerning the claim or the instrument permitting its enforcement or regarding enforcement measures

- (1) If, in the course of the recovery procedure, the claim and/or the instrument permitting its enforcement issued in Party A are contested by an interested party:
 - (a) the action shall be brought by the interested party before the appropriate authorities in Party A, in accordance with the laws in force in Party A;
 - (b) Party A shall without delay notify Party B of this action;
 - (c) as soon as Party B has received notification of the action, it shall suspend the enforcement procedure pending the decision of the appropriate authority;
 - (d) where the appropriate authority is a judicial or administrative tribunal, the decision of that tribunal, insofar as it permits recovery of the claim in Party A, shall constitute the "instrument permitting enforcement" within the meaning of Article 48 and the recovery of the claim shall proceed on the basis of that decision.
- (2) Where the dispute concerns enforcement measures taken in Party B, the action shall be brought before the appropriate authority in Party B in accordance with the laws in force in Party B.

ARTICLE 51

Limits applying to assistance by Party B

Party B shall not be obliged:

- (a) to grant assistance with recovery of a claim if it would create serious economic or social difficulties in Party B, insofar as the laws in force in Party B allow it to refrain from taking such action for similar domestic claims;
- (b) to grant assistance with a request for information, notification or recovery of a claim, if the initial request applies to claims more than five years old, dating from the date the instrument permitting the recovery was established in accordance with the laws in force in Party A. If the claim or instrument is contested, the time limit begins from the date it is established that the claim or the instrument may no longer be contested.

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ARTICLE 52

Periods of limitation in respect of enforcement action

Questions concerning periods of limitation of a claim and/or instrument permitting enforcement shall be governed by the laws in force in Party A, insofar as they concern the claim and/or the instrument permitting its enforcement, and by the laws in force in Party B, insofar as they concern enforcement measures in Party B.

ARTICLE 53

Precautionary measures

(1) At the request of Party A, Party B shall take precautionary measures intended to ensure recovery of a claim in so far as the laws in force in Party B so permit.

(2) For the purposes of this Article, the provisions and procedures laid down in Articles 47 to 48 and 50 to 51 shall apply in the same way with all necessary adjustments.

ARTICLE 54

Costs related to recovery

(1) In respect of any assistance provided for under Articles 45 to 47 and 53, Party B shall not make any charge to Party A unless otherwise agreed, but may recover and retain any costs incurred linked to the recovery, from the person concerned.

(2) Party A shall remain liable to Party B for any costs and losses incurred, as a result of actions that are held to be unfounded.

PART VI

ADMINISTRATIVE PROVISIONS

ARTICLE 55

Arrangements for administration and co-operation

(1) The Parties shall establish the administrative arrangements necessary for the application of this Agreement and shall comply with those arrangements.

(2) The Parties shall communicate to each other, in a timely manner, all information about the measures taken by them for the application of this Agreement and about changes in their domestic legislation in so far as these changes affect the application of this Agreement.

(3) The relevant authorities of the Parties shall assist one another on any matter relating to the application of this Agreement as if the matter were one affecting the application of their own legislation. This assistance shall be free of charge.

(4) The relevant authorities of the Parties may, for the purposes of this Agreement, communicate directly with one another and with the persons covered by this Agreement or their representatives.

(5) The relevant authorities and the persons covered by this Agreement shall have a duty of mutual information and co-operation to ensure the correct application of this Agreement. The relevant

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authorities, in accordance with the principle of good administration, shall respond to all queries (unless otherwise specified) within a reasonable period of time and shall in this connection provide the persons concerned with any information required for exercising the rights conferred on them by this Agreement.

(6) Where any benefit is payable under the legislation of one Party to a person in the other Party, arrangements for the payment may, in exceptional circumstances, be made by the latter Party, at the request of the former Party, and the former Party shall reimburse the latter Party on the basis of the actual amount of the benefit paid.

(7) Where a person in one Party (Party A) has claimed or is receiving benefit under the legislation of the other Party (Party B) and a medical examination is necessary, the relevant authority of Party A, at the request of the relevant authority of Party B, shall arrange for this examination. The cost of such examination may be met by Party A. The report of the examination shall be forwarded without delay by the relevant authority of Party A to the relevant authority of Party B.

(8) Where the legislation of one Party provides that any certificate or other document which is submitted under the legislation of that Party shall be exempt, wholly or partly, from any taxes, legal dues or administrative charges, that exemption shall apply to any certificate or other document which is submitted under the legislation of the other Party or in accordance with this Agreement.

(9) All statements, documents and certificates of any kind required to be produced for the purposes of this Agreement shall be exempt from authentication by relevant authorities.

(10) Documents issued by a relevant authority of one Party showing the position of a person for the purposes of the application of this Agreement and supporting evidence on the basis of which such documents have been issued shall be accepted by the relevant authority of the other Party for as long as they have not been withdrawn or declared to be invalid by the Party in which they were issued.

(11) A relevant authority of one Party shall not reject a certificate, document or statement of any kind written in an official language of the other Party on the grounds that it is written in a language which is not an official language of that Party.

(12) If one Party (Party A) communicates personal data or information to the other Party (Party B) in accordance with, and for the purposes of, this Agreement, such communication shall be subject to the data protection laws applicable in Party A. Unless disclosure is required under the laws of a Party, such data and information shall be treated as confidential and shall only be used by Party B for the purpose of applying this Agreement and the legislation to which it applies. Its storage, alteration and destruction by either Party shall be subject to the data protection laws of that Party.

(13) The Parties shall without delay provide or exchange all data necessary for establishing and determining the rights and obligations of persons under this Agreement and for the administration or enforcement of the Agreement.

(14) The Parties may, in a particular case, agree procedures other than or in addition to those provided for by this Agreement or the administrative arrangements provided for in paragraph (1), provided that such procedures do not adversely affect the rights or obligations of any individual or individuals concerned.

ARTICLE 56

Submission of claim or appeal

(1) Any claim, declaration, request for review or reconsideration of a decision (including information or documents relating to any of those), which is submitted by a person to the relevant authority of a Party (Party A), in the case where it should for the purposes of the legislation of the other Party (Party B), have been submitted to the relevant authority of that Party, shall be treated as if it had been submitted to the relevant authority of Party B. In such a case the relevant authority of Party A shall forward the request for review or reconsideration without delay to the relevant authority of Party B.

(2) The date on which such a claim, declaration, request or reconsideration was submitted to the relevant authority of Party A shall be considered as the date of submission to the relevant authority of Party B.

(3) By way of derogation from paragraph (2), if a person who is employed or resides in one Party does not, despite having been asked to do so, notify the fact that they have been employed or have resided in the other Party, the date on which the person provides this information or submits a new claim for missing periods of employment and/or residence in a Party shall be considered as the date of submission of the claim to that Party, subject to more favourable provisions of that legislation.

ARTICLE 57

Method of payment

Where a person in one Party is receiving benefit under the legislation of the other Party, it shall be payable by whatever method the relevant authority of the latter Party deems appropriate.

ARTICLE 58

Resolution of disputes

(1) In the event of a dispute regarding the interpretation or application of this Agreement, the relevant authorities of the two Parties shall make all reasonable efforts to resolve the dispute.

(2) If the dispute in paragraph (1) cannot be resolved, the relevant authorities shall endeavour to settle the issue through negotiation, mediation, or other mutually agreed procedure.

ARTICLE 59

Provisional application of legislation and provisional granting of benefits

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

- (a) the legislation of the Party where the person pursues their activity as an employed person or self-employed person, if such activity is pursued in only one Party;

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- (b) the legislation of the Party of residence if the person concerned pursues activity as an employed person or self-employed person in both Parties, or if the person concerned has no such activity in either Party.
- (2) Where there is a difference of views between the Parties as to which is competent for payment of a benefit to a person who has made a claim, they shall be entitled, on a provisional basis, to such benefits under the legislation of their Party of residence.
- (3) Where a difference of views arises under paragraph (1) or (2), the Parties shall seek to resolve the difference without delay.
- (4) Where in accordance with paragraph (1) or (2), a determination is made that a Party is provisionally competent or its legislation is provisionally applicable, and it is subsequently determined that in fact the other Party is competent or its legislation is applicable, that latter Party shall be deemed to have been competent or its legislation applicable as if the difference of views had not existed, from the later of either the date from which the person was made provisionally subject to the former Party's legislation or the date of the first provisional payment of the benefit concerned.
- (5) If necessary, the Parties shall between themselves settle the financial situation of the person concerned as regards contributions received and benefits paid provisionally, where appropriate, in accordance with Articles 41 to 54. Any deadline agreed between the Parties for settlement of such claims shall not start before the competent Party has been identified.

ARTICLE 60

Provisional calculation of benefits and contributions

- (1) Unless otherwise provided for in this Agreement, where a person is eligible for a benefit, or is liable to pay a contribution, and the relevant authority does not have all the information concerning the situation in the other Party which is necessary to calculate definitively the amount of that benefit or contribution, that relevant authority may award the benefit or calculate the contribution on a provisional basis, where such calculation is possible on the basis of the information at its disposal.
- (2) The benefit or the contribution concerned shall be recalculated once all the necessary supporting evidence or documents are provided to the relevant authority.

ARTICLE 61

Entry into force

The Parties shall notify each other in writing when the necessary domestic procedures for entry into force have been completed. This Agreement shall enter into force on the first day of the month following the later of such notifications.

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ARTICLE 62

Termination of this Agreement

Either Party may terminate this Agreement by written notification being provided to the other Party. Subject to Article 63, this Agreement shall cease to be in force on the first day of the sixth month following the date of notification.

ARTICLE 63

Rights on termination of this Agreement not replaced by another

In the event of the termination of this Agreement, and unless a new Agreement containing provisions regulating its subject matter is made, any right to benefit acquired by a person in accordance with this Agreement shall be maintained and negotiations shall take place for the settlement of any other rights then in course of acquisition by virtue of those provisions.

ARTICLE 64

Transitional Provisions

- (1) No provision of this Agreement shall confer any right to receive a benefit for any period before the date of entry into force of this Agreement.
- (2) The following shall be taken into consideration in determining the right to benefits under this Agreement:
 - (a) any period of insurance, and, where appropriate, any period of employment, self-employment or residence completed under the legislation of the Parties before the date of entry into force of this Agreement; and
 - (b) insured events occurring before the date of entry into force of this Agreement.

ARTICLE 65

Relationship with the 1974 Exchange of Letters

- (1) The 1974 Exchange of Letters shall, from the date of entry into force of this agreement, cease to apply subject to paragraph (2).
- (2) The provisions of the 1974 Exchange of Letters shall continue to apply in relation to:
 - (a) any award of benefit, pension or allowance made on or before 31 December 2020;
 - (b) any claim to a benefit, pension or allowance made but not determined on or before 31 December 2020; and
 - (c) any claim to a benefit, pension or allowance made after 31 December 2020 but only where that claim relates to an entitlement to such benefit, pension or allowance for a period on or before 31 December 2020.
- (3) The provisions of this agreement shall apply in relation to:

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- (a) any award of benefit, pension or allowance made under the terms of the 1974 Exchange of Letters on or after 1 January 2021;
- (b) any claim to a benefit, pension or allowance made under the terms of the 1974 Exchange of Letters on or after 1 January 2021 but not determined on or before the date of entry into force of this agreement; and
- (c) any claim to a benefit, pension or allowance made after the date of entry into force of this agreement but only where that claim relates to an entitlement to such benefit, pension or allowance for a period on or before the date of entry into force of this agreement but on or after 1 January 2021.

ARTICLE 66

Relationship with other Agreements

- (1) This Agreement shall apply without prejudice to the following agreements:
 - (a) the UK-EU Withdrawal Agreement;
 - (b) the UK-EEA EFTA Separation Agreement;
 - (c) the UK-Swiss Citizens' Rights Agreement; and
 - (d) the UK-Swiss Social Security Convention.
- (2) Nothing in this Agreement shall be construed as requiring either Party to act in a manner inconsistent with its obligations under agreements with third countries.

ARTICLE 67

Integral Parts of this Agreement

The Protocol and Annex A to this Agreement shall form an integral part of this Agreement.

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PROTOCOL

As per Article 67 of the Agreement on social security between His Majesty's Government of the United Kingdom of Great Britain and Northern Ireland and His Majesty's Government of Gibraltar ("the Agreement"), this Protocol forms an integral part of the Agreement.

In relation to the Agreement the parties acknowledge the following:

- (1) That the United Kingdom continues to be responsible for the international relations of Gibraltar in international law and that the Agreement cannot therefore create obligations which are binding under international law. It is understood that both parties will implement the Agreement in their respective domestic legal systems to give legal effect to the terms of the Agreement.
- (2) That the Agreement is not intended to alter or affect the constitutional relationship between Gibraltar and the United Kingdom.

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ANNEX A
BENEFITS TO WHICH THIS AGREEMENT SHALL APPLY

(Article 3(1) of this Agreement)

PART 1

SICKNESS BENEFITS

GIBRALTAR

None applicable in relation to Gibraltar.

UNITED KINGDOM

As the legislation relates, in each of Great Britain and Northern Ireland (where applicable), to:

- (a) Employment and Support Allowance (contributory), payable for the initial 365 days of sickness for awards granted on or after 1 April 2016;
- (b) Statutory Sick Pay.

PART 2

LONG-TERM CARE BENEFITS

GIBRALTAR

None applicable in relation to Gibraltar.

UNITED KINGDOM

- 1. As the legislation relates, in each of Great Britain and Northern Ireland (where applicable), to:
 - (a) Attendance Allowance;
 - (b) Carer's Allowance;
 - (c) Disability Living Allowance (care component);
 - (d) Personal Independence Payment (daily living component).
- 2. As the legislation in Scotland relates to:
 - (a) Child Disability Payment (care component);
 - (b) Adult Disability Payment (daily living component);
 - (c) Young Carer Grant;
 - (d) Child Winter Heating Assistance;
 - (e) Carer's Allowance Supplement;

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- (f) Carer Support Payment.

PART 3

MATERNITY AND EQUIVALENT PATERNITY BENEFITS

GIBRALTAR

As the legislation relates, in Gibraltar, to:

- (a) Maternity Grant;
- (b) Maternity Allowance;

UNITED KINGDOM

As the legislation relates, in each of Great Britain and Northern Ireland (where applicable), to:

- (a) Maternity Allowance;
- (b) Statutory Maternity Pay;
- (c) Statutory Paternity Pay;
- (d) Statutory Adoption Pay;
- (e) Statutory Shared Parental Pay;
- (f) Statutory Parental Bereavement Pay.

PART 4

INVALIDITY BENEFITS

GIBRALTAR

None applicable in relation to Gibraltar.

UNITED KINGDOM

As the legislation relates, in each of Great Britain and Northern Ireland (where applicable), to Employment and Support Allowance (contributory), payable from the 366th day of sickness for awards granted on or after 1 April 2016 for claimants placed in the support group as defined under the relevant legislation.

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PART 5

OLD-AGE BENEFITS

GIBRALTAR

As the legislation relates, in Gibraltar, to:

- (a) Old-age pension.

UNITED KINGDOM

As the legislation relates, in each of Great Britain and Northern Ireland (where applicable), to:

- (a) Retirement Pension, for those who reach state pension age before 6 April 2016
- (b) State Pension, for those who reach state pension age on or after 6 April 2016

PART 6

SURVIVORS' BENEFITS

GIBRALTAR

As the legislation relates, to Gibraltar, to:

- (a) Survivor's Bereavement Allowance;
- (b) Widowed Parent's Allowance;
- (c) Survivor's Pension.

UNITED KINGDOM

As the legislation relates, in each of Great Britain and Northern Ireland (where applicable), to:

- (a) Widowed Mother's Allowance
- (b) Widow's Pension
- (c) Widowed Parent's Allowance

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PART 7

BENEFITS IN RESPECT OF ACCIDENTS AT WORK AND OCCUPATIONAL DISEASES

GIBRALTAR

As the legislation relates, in Gibraltar, to:

- (a) Injury benefit;
- (b) Disablement benefit;
- (c) Industrial death benefit.

UNITED KINGDOM

As the legislation relates, in each of Great Britain and Northern Ireland (where applicable), to Industrial Injuries Benefits and prescribed diseases.

PART 8

DEATH GRANTS

GIBRALTAR

As the legislation relates, in Gibraltar, to the Death Grant.

UNITED KINGDOM

As the legislation relates, in each of Great Britain and Northern Ireland (where applicable), to Bereavement Support Payment.

PART 9

UNEMPLOYMENT BENEFITS

GIBRALTAR

As the legislation relates, in Gibraltar, to unemployment benefit.

UNITED KINGDOM

As the legislation relates, in each of Great Britain and Northern Ireland (where applicable), to Jobseeker's Allowance (contribution-based).

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PART 10
FAMILY BENEFITS

GIBRALTAR

As the legislation relates, in Gibraltar, to:

- (a) the Guardian Allowance;
- (b) the Increase of Old Age Pension for children

UNITED KINGDOM

As the legislation relates, in each of Great Britain and Northern Ireland (where applicable), to Child Benefit; Guardian's Allowance.

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Department of Social Security

HM Government of Gibraltar

26th January 2024

Ronan O'Connor
Deputy Director International Strategy,
Department for Work and Pensions

Edmund Hair
Deputy Director – National Insurance Policy,
International and Student Finance,
HM Revenue and Customs

Dear Ronan, Dear Edmund,

I acknowledge receipt of your Letter dated 25/01/2024 concerning the existing and future arrangements for social security coordination between His Majesty's Government of the United Kingdom of Great Britain and Northern Ireland and His Majesty's Government of Gibraltar.

I have the honour to confirm that the arrangements set out in your Letter and the provisions of the Agreement set out in the Annex to your Letter are acceptable to His Majesty's Government of Gibraltar. I confirm that your Letter and this reply will place on record the understanding of our two Governments in this matter, which will come into effect in accordance with Article 61 of the Agreement set out in the Annex to your Letter.

Nicholas Richardson
Director of Social Security

Department of Social Security

HM Government of Gibraltar •

www.gibraltar.gov.gi

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for the modification of certain social security legislation, so as to give effect to the Agreement on Social Security in the Schedule as set out in the Exchange of Letters between His Majesty's Government of the United Kingdom of Great Britain and Northern Ireland and His Majesty's Government of Gibraltar dated 25th January 2024 and 26th January 2024, respectively ("the Agreement").

Article 1 of this Order will come into operation on the day after the day this Order is made. Articles 2 and 3 will come into operation, and implement the Agreement set out in the Schedule, on the first day of the month after such time as both parties to the Agreement have completed the necessary domestic procedures to prepare for their respective legislation to come into force and have notified the other party. This is in accordance with Article 61 of the Agreement (entry into force). A notice will be published in The Gazette by the Department for Work and Pensions to record that the notifications between the parties have been completed.

The Agreement makes provision for reciprocal arrangements in the field of social security between the parties.

Article 3 of this Order provides that the Family Allowances, National Insurance and Industrial Injuries (Gibraltar) Order (Northern Ireland) 1974 (S.R. 1974/153) is varied to reflect the effect of Article 65 of the Agreement (relationship with the 1974 Exchange of Letters). Article 65 of the Agreement, which governs the relationship between the 1974 Exchange of Letters and the Agreement, confirms that the 1974 Exchange of Letters will continue to apply for any awards made on a date on or before 31st December 2020 and will discontinue the 1974 Exchange of Letters for any awards made on or after 1st January 2021.

The Order does not impose any costs on business, charities or the voluntary sector. A Tax Information and Impact Note has not been prepared for this instrument as it gives effect to previously announced policy.

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