

1969 No. 384

SOCIAL SECURITY

**The Family Allowances, National Insurance and
Industrial Injuries (Switzerland) Order 1969**

Made - - - -

18th March 1969

[Under S.I. 1976/225, references in the following Order to provisions of the National Insurance Acts 1965 to 1974 and the National Insurance (Industrial Injuries) Acts 1965 to 1974 have effect, with certain modifications, as references to the corresponding or most nearly corresponding provisions of the Social Security Act 1975 (c. 14).]

[Under Regulation 9 of, and the Schedule to, S.I. 1976/963, Part I of the Child Benefit Act 1975 (c. 61) has effect as if the provisions relating to family allowances under the Family Allowances Acts 1965 to 1975 contained in the following Order applied to child benefit under that Part.]

[Provisions in the following Order relating to the calculation of retirement pension, widow's benefit or invalidity pension under U.K. legislation are modified, as to any additional pension payable, by S.I. 1979/290.]

[Under S.I. 1988/591, any provision in the following Order relating to the calculation of widow's allowance under U.K. legislation includes a reference to a widow's payment under U.K. legislation.]

[Under art. 2 of S.I. 1995/767 the SSC&B Act 1996 (c. 4) the SSA Act 1992 (c. 5) and the Jobseekers Act 1995 (c. 18) are modified so that the effect can be given to the proposal that any references in the Agreement set out in Sch. 1 to this Order, to sickness benefit, invalidity benefit or invalidity pension under UK legislation shall include short-term incapacity benefit or long-term incapacity benefit and to the proposal that any provisions relating to the calculation or payment of the former benefits apply also to the appropriate latter benefit.]

At the Court at Buckingham Palace, the 18th day of March 1969

Present,

The Queen's Most Excellent Majesty in Council

Whereas at Berne on 21st February 1968, a Convention on social security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Swiss Federal Council (which Convention is set out in Schedule 1 to this Order and is hereinafter referred to as "the Convention") was signed on behalf of the said Government and Council:

And Whereas by Article 26 to the Convention it is provided that the Convention shall enter into force on the first day of the second month following the month in which the instruments of ratification are exchanged:

And Whereas the said instruments of ratification were exchanged on 19th February 1969 and, accordingly, the Convention enters into force on 1st April 1969:

SWITZERLAND

F.A., N.I. AND I.I. (SWITZERLAND) ORDER 1969

And Whereas by section 105(1) of the National Insurance Act 1965(a), as extended by section 22(1) of the Family Allowances Act 1965(b), and section 84(1) of the National Insurance (Industrial Injuries) Act 1965(c), it is provided that Her Majesty may, by Order in Council, make provision for modifying or adapting the said Acts of 1965 in their application to cases affected by agreements with other governments providing for reciprocity in matters specified in those sections:

Now, therefore, Her Majesty, in pursuance of the said section 105(1), as so extended, and the said section 84(1), and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Citation and interpretation

1.—(1) This Order may be cited as the Family Allowances, National Insurance and Industrial Injuries (Switzerland) Order 1969.

(2) The rules for the construction of Acts of Parliament contained in the Interpretation Act 1889(d) shall apply in relation to this Order and in relation to the Orders revoked by it as if this Order and the Orders revoked by it were Acts of Parliament, and as if each revocation were a repeal.

Modification of Acts

2. The provisions contained in the Convention shall have full force and effect, so far as the same relate to England, Wales and Scotland and provide by way of agreement with the Swiss Federal Council for reciprocity with the said Council in any matters specified in either section 105(1) of the National Insurance Act 1965, as extended by section 22(1) of the Family Allowances Act 1965, or section 84(1) of the National Insurance (Industrial Injuries) Act 1965; and the Family Allowances Acts 1965 to 1969, the National Insurance Acts 1965 to 1969 and the National Insurance (Industrial Injuries) Acts 1965 to 1969, shall have effect subject to such modifications as may be required therein for the purpose of giving effect to any such provisions.

Revocation of Orders

3. The Orders specified in Schedule 2 to this Order are hereby revoked.

W. G. Agnew.

(a) 1965 c. 51.

(b) 1965 c. 53.

(c) 1965 c. 52.

(d) 1889 c. 63.

SCHEDULE 1
CONVENTION
ON SOCIAL SECURITY BETWEEN THE UNITED
KINGDOM OF GREAT BRITAIN AND NORTHERN
IRELAND AND SWITZERLAND

The Government of the United Kingdom for Great Britain and Northern Ireland and the Swiss Federal Council,

HAVING established reciprocal arrangements in the field of social security by means of the Conventions which were signed on their behalf at Berne on the 16th January 1953^(a) and the 12th November 1959^(b), respectively,

DESIRING to widen the scope of those arrangements and, in particular, to give more complete effect to the principal that nationals of the two Contracting Parties should receive equal treatment under the social insurance legislation of each Party,

HAVE AGREED as follows:—

PART I
DEFINITIONS AND LEGISLATION

Article 1

For the purpose of the present Convention—

- (a) “territory” means, in relation to the United Kingdom, England, Scotland, Wales, Northern Ireland, the Isle of Man, Jersey, Guernsey, Alderney, Herm and Jethou, and, in relation to Switzerland, the territory of the Swiss Confederation;
- (b) “national” means, in relation to the United Kingdom, a citizen of the United Kingdom and Colonies, and, in relation to Switzerland, a person having Swiss nationality;
- (c) “legislation” means, according to the context, the laws and regulations of one or the other Contracting Party which are mentioned in Article 2 of the Convention;
- (d) “Swiss pensions insurance” means Swiss legislation on old age and survivors’ insurance and invalidity insurance;
- (e) “Swiss accident insurance” means Swiss legislation on accident insurance;
- (f) “competent authority” means, in relation to the United Kingdom, the Minister of Social Security, the Ministry of Health and Social Services for Northern Ireland, the Isle of Man Board of Social Services, the Social Security Committee of the States of Jersey or the States Insurance Authority of Guernsey, as the case may require, and in relation to Switzerland, the Federal Office of Social Insurance;
- (g) “social insurance authority” means, in relation to the United Kingdom, the competent authority of the United Kingdom, and, in relation to Switzerland, the appropriate compensation fund for old age and survivors’ insurance or the Swiss National Institute for Accident Insurance, as the case may require;

(a) “Treaty Series No. 36 (1954)”, Cmnd. 9157.

(b) “Treaty Series No. 43 (1960)”, Cmnd. 1108.

- (h) “Swiss sickness insurance fund” means an institute approved by the Swiss competent authority under the Federal Sickness and Accidents Insurance Act of the 13th June 1911;
- (i) “the former Conventions” means the Convention on Social Insurance and the Supplementary Convention on Social Insurance which were signed on behalf of the Contracting Parties at Berne on the 16th January 1953 and the 12 November 1959, respectively;
- (j) “employed person” means a person who comes within the definition of an employed person or a person who is treated as an employed person in the legislation which is being applied; “employment” means employment as an employed person, and the words “employ” and “employer” refer to such employment;
- (k) “contribution period” means, in relation to the United Kingdom, a period for which contributions appropriate to the benefit in question have been paid under the legislation of the United Kingdom, and, in relation to Switzerland, a period during which contributions have been paid under Swiss pensions insurance or a period which is treated as such period under that insurance;
- (l) “equivalent period” means a period for which contributions appropriate to the benefit in question have been credited under the legislation of the United Kingdom.
- (m) “benefit” and “pension” mean, according to the context, any benefit or pension provided under the legislation of one or the other Party, other than a family allowance, and include any increase in the benefit or pension and any additional allowances payable therewith under that legislation;
- (n) “period of interruption of employment” has the meaning assigned to it in the legislation of the United Kingdom;
- (o) other words and expressions have the meanings respectively assigned to them in the legislation of the United Kingdom or Switzerland, as the case may require.

Article 2

- (1) The present Convention shall apply—
 - (a) in relation to the United Kingdom, to—
 - (i) the National Insurance Act 1965, the National Insurance Act (Northern Ireland) 1966, the National Insurance (Isle of Man) Act 1948, and the legislation which was consolidated by, or repealed by legislation consolidated by, those Acts;
 - (ii) the National Insurance (Industrial Injuries) Act 1965, the National Insurance (Industrial Injuries) Act (Northern Ireland) 1966, and the National Insurance (Industrial Injuries) (Isle of Man) Act 1948;
 - (iii) the Insular Insurance (Jersey) Law 1950;
 - (iv) the Social Insurance (Guernsey) Law 1964 and the legislation repealed by that Law;
 - (v) the Family Allowances Act 1965, the Family Allowances Act (Northern Ireland) 1966, the Family Allowances (Isle of Man) Act 1945, the Family Allowances (Guernsey) Law 1950, and the Family Allowances (Jersey) Law 1951.
 - (b) in relation to Switzerland to—
 - (i) the Federal Old Age and Survivors’ Insurance Act of the 20th December 1946;
 - (ii) the Federal Invalidity Insurance Act of the 19th June 1959;
 - (iii) the Federal Act on Family Allowances for Agricultural Workers and Small Farmers of the 20th June 1952;

(iv) the Federal Sickness and Accidents Insurance Act of the 13th June 1911;

provided that none of the Articles of Parts II, III and IV of the Convention, except Article II, shall apply to Part I of the last-mentioned Act (which Part concerns sickness insurance).

(2) Subject to the provisions of paragraph (3) of this Article, the Convention shall apply also to any law or regulation which amends, supplements or consolidates the legislation specified in paragraph (1) of this Article.

(3) The Convention shall apply, only if the Contracting Parties so decide, to laws and regulations which amend the legislation specified in paragraph (1) of this Article for the purpose of giving effect to a reciprocal agreement on social security with a third Party.

PART II

PROVISIONS CONCERNING EQUALITY OF TREATMENT

Article 3

(1) Subject to the provisions of the present Convention, a national of one Contracting Party shall be entitled to enjoy the advantages, and shall be subject to the obligations, of the legislation of the other Party, under the same conditions as a national of the latter Party.

(2) Where a person, not being a national of either Party, has claimed, by virtue of the contributions of a national of either Party or in respect of the death of a national of either Party, any benefit under the legislation of either Party, other than a special pension under Swiss pensions insurance, any provision of the Convention which applies to nationals of either Party shall apply also to him in relation to his claim.

(3) Paragraph (1) of this Article shall not apply to those provisions of Swiss legislation which concern emergency allowances for Swiss invalids resident abroad, the Swiss pensions insurance of Swiss nationals working abroad in the service of employers in Switzerland, or the voluntary Swiss pensions insurance of Swiss nationals resident abroad.

Article 4

No provision of any of the Articles 3, 9, 11 and 16 of the present Convention shall be construed as affecting any provision of the legislation of either Contracting Party which is more favourable to the person concerned.

PART III

PROVISIONS CONCERNING CONTRIBUTIONS

Article 5

(1) Subject to the provisions of paragraphs (3), (5) and (6) of this Article and of Articles 6 and 7 of the present Convention, where a national of either Contracting Party is gainfully occupied in the territory of one Party, either as an employed person or otherwise, the legislation of that party shall apply to him, and, for the purpose of calculating any contributions payable under that legislation, no account shall be taken of any income he may receive from a gainful occupation in the territory of the other Party.

(2) Where a national of one Party is ordinarily resident in the territory of the other Party and not gainfully occupied in the territory of either Party, the legislation of the latter Party shall apply to him.

(3) Where a person, in the service of an employer having a place of business in the territory of one Party, is sent by that employer to the territory of the other Party immediately after a contribution period or equivalent period under the legislation of the former Party, that legislation shall continue to apply to him as if he were employed in the territory of the former Party, provided that his employment in the territory of the latter Party is not expected to last for more than twenty-four months or such longer period as may be agreed by the competent authorities of the two Parties in any particular case; and no contributions shall be payable in respect of his employment under the legislation of the latter Party.

(4) Where a national of Switzerland is employed as a member of the crew of a British ship or vessel which is registered in the United Kingdom or of which the owner is resident in the United Kingdom, the legislation of the United Kingdom shall apply to him as if he were domiciled or had a place of residence in the United Kingdom.

(5)(a) Subject to the provisions of sub-paragraph (b) of this paragraph, where a person, ordinarily resident in the territory of either Party, is employed as a member of the crew of an aircraft registered in the United Kingdom, the legislation of the United Kingdom shall apply to him as if any conditions relating to residence or domiciles in the United Kingdom were satisfied in his case.

(b) Where a person is employed as a member of the crew of an aircraft which is managed by an air transport undertaking whose principal place of business is in Switzerland, Swiss legislation shall apply to him unless he is in the service of an undertaking whose principal place of business is in the United Kingdom.

(c) Where a person, to whom none of the provisions of sub-paragraphs (a) and (b) of this paragraph apply, is in the service of an air transport undertaking whose principal place of business is in the territory of one Party and is sent by that undertaking to the territory of the other Party immediately after a contribution period or equivalent period under the legislation of the former Party, that legislation shall continue to apply to him as if he were employed in the territory of the former Party.

(6) Subject to the provisions of sub-paragraph (b) of paragraph (5) of this Article, where a person, ordinarily resident in the United Kingdom and in the service of a person or undertaking having a place of business there, is employed on board an aircraft which is owned by a person or undertaking whose principal place of business is in Switzerland, the legislation of the United Kingdom shall apply to him as if the aircraft were registered in the United Kingdom.

Article 6

- (1) The provisions of this Part of the present Convention shall not apply—
- (a) in relation to the United Kingdom, to established members of the Diplomatic Service; and
 - (b) in relation to Switzerland, to established members of the Diplomatic or Consular Service.

(2) Subject to the provisions of paragraph (1) of this Article, where a national of one Contracting Party, in the government service of that Party, is sent to the territory of the other Party, the legislation of the former Party shall apply to him as if he were employed in its territory.

(3) Subject to the provisions of paragraph (1) of this Article, where a national

of one party is engaged in the territory of the other Party for employment in that territory in the government service of the former Party, the legislation of the latter party shall apply to him unless, within three months after his engagement, he chooses that the legislation of the former Party shall apply to him.

(4) Where a national of one Party is employed in the territory of the other Party in the private service of a national of the former Party who is employed in its government service, the provisions of paragraphs (2) and (3) of this Article shall apply to him in the same way as they apply to a national of the former Party who is employed in its government service.

(5) Where a person who is not a national of either Party is employed in Switzerland in the private service of a national of the United Kingdom who is employed in the government service of the United Kingdom, the legislation of Switzerland shall apply to him unless, within three months after that employment in Switzerland begins, he chooses that the legislation of the United Kingdom shall apply to him.

(6) The competent authorities may provide by agreement that, where a national of either Party is employed by a public corporation or official body of one Party in the territory of the other Party, the legislation of the former Party shall apply to him as if he were employed in its territory.

Article 7

The competent authorities of the two Contracting Parties may, by agreement with one another, modify the provisions of Articles 5 and 6 of the present Convention in relation to particular persons or classes of persons where this is in the interest of those persons or classes of persons.

Article 8

Where a person is ordinarily resident in the territory of the United Kingdom or has, since his last arrival in that territory, become liable to pay contributions under the legislation of the United Kingdom as an employed person or a self-employed person and applies, on grounds of incapacity for work, confinement or unemployment, for exception from liability to pay contributions for any period, and for contributions to be credited to him for that period, then, for the purpose of that application—

- (a) any period during which he was employed in Switzerland shall be treated as a period during which he was employed in the United Kingdom and for which he paid contributions as an employed person under the legislation of the United Kingdom;
- (b) any period during which he was gainfully occupied on his own account in Switzerland shall be treated as a period during which he was self-employed in the United Kingdom for which he paid contributions as a self-employed person under the legislation of the United Kingdom.

PART IV

PROVISIONS CONCERNING BENEFIT

Benefits for Employed Persons Sent From One Country to the Other

Article 9

(1) Where a person is employed in the United Kingdom, and Swiss legislation applies to him in accordance with the provisions of the present Convention, he shall be treated, for the purpose of any right to receive benefit under that legislation for an accident, industrial accident or industrial disease, as if the

accident or industrial accident had occurred or the disease had been contracted in Switzerland.

(2) Where a person is employed in Switzerland, and the legislation of the United Kingdom applies to him in accordance with the provisions of the present Convention, he shall be treated—

- (a) for the purpose of any right to receive sickness or maternity benefit under that legislation, as if he were in the United Kingdom;
- (b) for the purpose of any right to receive benefit under that legislation for an industrial accident occurring or an industrial disease contracted in the course of that employment, as if the accident had occurred or the disease had been contracted in the United Kingdom.

(3) If an accident happens to an insured person after he leaves the territory of one Contracting Party to go, in the course of his employment, to the territory of the other Party, and before he arrives in the latter territory, and the legislation of the United Kingdom was expected to apply to him in the latter territory, then, for the purpose of any claim to receive benefit in respect of that accident under that legislation—

- (a) the accident shall be treated as if it had happened in the United Kingdom; and
- (b) his absence from the territory of either Party shall be disregarded in determining whether his employment was insurable under that legislation.

Family Allowances

Article 10

For the purpose of any condition requiring persons who claim family allowances under the legislation of the United Kingdom to have been in the United Kingdom for a prescribed period, a national of either Contracting Party, who is ordinarily resident in the United Kingdom or is required to pay contributions under that legislation as an employed or self-employed person shall, be treated—

- (a) as if his place of birth were in the United Kingdom, if it is in Switzerland;
- (b) as if he had been in the United Kingdom during any period during which he was in Switzerland.

Sickness Benefit in Case of Transfer From One Country to the Other

Article 11

(1) The Swiss competent authority shall designate those Swiss sickness insurance funds which have undertaken responsibility for giving effect to the provisions of paragraphs (2) and (3) of this Article.

(2) Where a national of either Contracting Party—

- (a) has paid contributions under the legislation of the United Kingdom or had contributions credited to him under that legislation or is entitled to a retirement pension or widow's benefit under that legislation, and furnishes evidence of this; and
- (b) applies for membership of a Swiss sickness insurance fund designated in accordance with the provisions of paragraph (1) of this Article within three months—
 - (i) of the end of the week for which his last contribution was paid or credited; or

- (ii) of ►his or her◄ departure from the United Kingdom if ►he or she◄ is entitled to one of the benefits mentioned in sub-paragraph (a) of this paragraph;

Words in art. 11(2), (3), (4) & art 12(1) substituted by art. 2 of S.I. 2005/2765 as from 5.12.05.

►he or she◄ shall be treated as if ►he or she◄ satisfied any condition concerning age which that fund imposes on persons applying for membership, and ►he or she◄ shall be admitted, provided that—

- (i) ►he or she◄ satisfies the other statutory conditions for membership; and
(ii) ►he or she◄ has not come to Switzerland solely for the purpose of receiving medical or curative treatment;

and, if ►he or she◄ is admitted to membership of the fund, ►he or she◄ shall be treated, for the purpose of any claim to receive the benefits of the fund, as if any period for which ►he or she◄ paid contributions under the legislation of the United Kingdom or had contributions credited to ►him or her◄ under that legislation were a period of membership of the fund, provided that, if the national concerned is a woman claiming maternity benefits, she has been a member of the fund for a continuous period of at least three months immediately before her confinement.

(3) Where a national of either Party satisfies the conditions (a) and (b) specified in paragraph (2) of this Article, the provisions of that paragraph shall apply, in relation to benefits in kind, to ►his or her spouse or civil partner◄ also and to any child of ►his or her◄ who has not reached the age of twenty.

(4) Where a national of either Party is ordinarily resident in the United Kingdom or has, since ►his or her◄ last arrival in the United Kingdom, become liable to pay contributions as an employed person or as a self-employed person under the legislation of the United Kingdom, ►he or she◄ shall, for the purpose of any claim to receive sickness benefit under that legislation, be treated as if—

- (a) ►he or she◄ had so paid a contribution for every week during which he was a member of a Swiss sickness insurance fund and was gainfully occupied;
(b) ►he or she◄ had had a contribution so credited to ►him or her◄ for every week during which ►he or she◄ was a member of such a fund and was prevented by illness or unemployment from being gainfully occupied; and
(c) ►he or she◄ satisfied the contribution conditions for receiving that benefit throughout the first six months after the time when ►he or she◄ last ceased to be a member of a Swiss sickness insurance fund by which ►he or she◄ was insured for benefits in cash;

provided that ►he or she◄ shall not be entitled, by virtue of this paragraph, to receive sickness benefit:—

- (i) for any day for which ►he or she◄ is entitled to receive a daily allowance under Swiss accident insurance or a pension, under Swiss pensions insurance, in respect of any invalidity which is assessed under that insurance at not less than two-thirds;
(ii) for more than 312 days in any period of interruption of employment;

and the amount of any sickness benefit which is payable by virtue of this paragraph shall be reduced by the amount of any Swiss benefit payable for the same period other than an invalidity pension payable under Swiss accident insurance.

**United Kingdom Retirement Pensions, Widow's Benefit and Long-term
Sickness Benefit**

Article 12

(1) For the purpose of determining whether sickness benefit, widow's benefit or retirement pension is payable under the legislation of the United Kingdom, any contribution period which an insured person has completed under Swiss pensions insurance shall be treated as if it were a contribution period which ►he or she◄ had completed under the legislation of the United Kingdom; and, where such benefit is so payable, the rate of that benefit shall be a part of the rate at which it would have been payable if all the contribution periods completed by the insured person under Swiss pensions insurance had been completed under the legislation of the United Kingdom, namely, that part which bears the same relation to the whole as the total of all the contribution periods and equivalent periods completed by him under the legislation of the United Kingdom bears to the total of all the contribution periods and equivalent periods completed by him under the legislation of the two Contracting Parties, provided that, if the relation which the former total bears to the latter has been determined on a claim to sickness benefit for any day, it shall not be determined afresh on any claim for a later day which is part of the same period of interruption of employment.

(2) For the purpose of applying the provisions of paragraph (1) of this Article—

- (a) no account shall be taken of any contribution period completed under Swiss pensions insurance in so far as that period, together with contribution periods completed under the legislation of the United Kingdom, raises the total number of contributions paid or credited in any contribution year after the legislation of the United Kingdom above the total number of weeks in that year;
- (b) if the claim is for sickness benefit, no account shall be taken of any contribution period completed under Swiss pensions insurance during which the insured person was neither gainfully occupied nor prevented by illness or unemployment from being gainfully occupied;
- (c) no account shall be taken of any contributions paid under the legislation of the United Kingdom which are calculated by reference to taxable earnings, or of any benefit payable under that legislation which is so calculated, but the rate of any benefit, determined in accordance with the provisions of that paragraph, shall be increased by any benefit which is so calculated;
- (d) in those cases where the person concerned is—
 - (i) a ►person◄ claiming retirement pension by virtue of ►his or her spouse or civil partner's◄ insurance; or
 - (ii) a ►person◄ whose ►spouse or civil partner's◄ contributions are taken into account in determining ►his or her◄ right to receive a retirement pension by virtue of ►his or her◄ own insurance, ►his or her marriage or civil partnership◄ having been terminated by the death of ►his or her spouse or civil partner◄ or otherwise;

any reference to a contribution period or equivalent period completed by the person shall be construed, for the purpose of ascertaining ►his or her spouse or civil partner's◄ yearly average of contributions paid or credited, as including a reference to a contribution period or equivalent period completed by the ►spouse or civil partner◄.

(3) The provisions of paragraph (1) of this Article shall apply—

- (a) only where the contributions periods and equivalent periods completed by the insured person under the legislation of each of the two Parties amount to one year or more;
- (b) in the case of sickness benefit, only where—

Words in art. 12(2)(d) substituted by art. 2 of S.I. 2005/2765 as from 5.12.05.

- (i) the competent authority of the United Kingdom is satisfied that the insured person is likely to remain incapable of work for a period of at least three months; and
- (ii) the contribution periods completed by the insured person under the legislation of the two Parties, other than periods which are ignored in accordance with the provisions of paragraph (2) of this Article, amount in the aggregate to three years or more; and
- (iii) either—
 - (aa) the insured person is not entitled to sickness benefit under the legislation of the United Kingdom by virtue of the provisions of paragraph (4) of Article 11 of the present Convention or otherwise; or
 - (bb) ►he or she◄ is receiving benefit in cash under Swiss legislation, other than an invalidity pension payable under Swiss accident insurance or a lump sum, and has received sickness benefit under the legislation of the United Kingdom for one hundred and fifty six days in any period of interruption of employment which includes the day for which benefit is claimed;
- (c) in the case of retirement pension or widow's benefit, only where the insured person does not wholly or partially satisfy the contribution conditions for that benefit solely by virtue of contribution periods and equivalent periods completed under the legislation of the United Kingdom.

Words substituted in art. 12(3)(bb) & (4) by art. 2 of S.I. 2005/3765 as from 5.12.05.

(4) Where a person is entitled to receive benefit under the legislation of the United Kingdom in accordance with the provisions of paragraph (1) of this Article, ►he or she◄ shall be entitled to receive under that legislation any amount also by which the sum of that benefit and any benefit in cash which ►he or she◄ is receiving under Swiss legislation is less than the benefit which would be payable to ►him or her◄ under the legislation of the United Kingdom if the provisions of that paragraph were not applied in ►his or her◄ case.

Rehabilitation

Article 13

A national of the United Kingdom shall be entitled to take advantage of the rehabilitation measures provided under Swiss pensions insurance only so long as ►he or she◄ maintains ►his or her◄ domicile in Switzerland and only—

- (a) if, immediately before the onset of invalidity—
 - (i) ►he or she◄ has completed a contribution period of at least one year under that legislation; or
 - (ii) being a ►married person or civil partner◄ or ►widow, widower or surviving civil partner◄ who is not gainfully occupied, ►he or she◄ has lived in Switzerland for a continuous period of at least one year; and
 - (iii) being a child, ►he or she◄ has lived in Switzerland for a continuous period of at least one year; or
- (b) if, being a child, ►he or she◄ was born an invalid in Switzerland or has lived there continuously since ►his or her◄ birth.

Words in art. 13 substituted by art. 2 of S.I. 2005/3765 as from 5.12.05.

Ordinary Invalidity Pensions under Swiss Pensions Insurance

Article 14

For the purpose of any claim to receive an ordinary invalidity pension under

Words in arts. 14, 15 & 16 substituted by art. 2 of S.I. 2005/3765 as from 5.12.05.

Swiss pensions insurance, a national of the United Kingdom who has ceased to be insured under that insurance shall be treated as if ►he or she◄ were so insured if, immediately before the onset of invalidity, ►he or she◄ was paying contributions under the legislation of the United Kingdom or having contributions credited to ►him or her◄ under that legislation.

Special Pensions under Swiss Pensions Insurance

Article 15

A national of the United Kingdom who is resident in Switzerland shall be

entitled to receive a special pension under Swiss pensions insurance only if, immediately before the month from which he claims the pension, ►he or she◄ has resided in Switzerland for a continuous period of not less than—

- (a) ten years in the case of an old age pension;
- (b) five years in the case of an invalidity pension or survivor's pension or an old age pension which replaces an invalidity or survivor's pension;

and, for this purpose—

- (i) no account shall be taken of any period during which ►he or she◄ was exempt from liability to pay contributions under Swiss pensions insurance;
- (ii) a period of residence in Switzerland shall be treated as continuous if any spells of absence from Switzerland during that period do not amount in the aggregate to more than three months in any calendar year.

Payment of Benefit Abroad

Article 16

(1) Where a national of the United Kingdom would be entitled to receive any benefit under Swiss legislation if ►he or she◄ were resident in Switzerland, he shall be entitled to receive that benefit if he is resident outside Switzerland, provided that ►he or she◄ shall not be entitled, under Swiss pensions insurance, to receive a special pension, a helpless person's allowance or an ordinary pension in respect of any invalidity which is assessed under that insurance at less than one-half unless ►he or she◄ is resident in Switzerland.

(2) Where a person would be entitled to receive sickness benefit, a widow's benefit, guardian's allowance, retirement pension, injury benefit, disablement benefit or death benefit under the legislation of the United Kingdom if ►he or she◄ were in the United Kingdom or resident there, ►he or she◄ shall be entitled to receive that benefit while ►he or she◄ is, respectively, in Switzerland or resident there, provided that—

- (a) in the case of sickness benefit, ►he or she◄—
 - (i) can wholly or partially satisfy the contribution conditions for receiving that benefit without taking advantage of the provisions of Article 11 of the present Convention; and
 - (ii)(aa) is receiving, under Swiss legislation, a pension in respect of any invalidity which is assessed under that legislation at not less than two-thirds; or
 - (bb) before leaving the United Kingdom, has notified the competent authority of the United Kingdom of ►his or her◄ intention to reside in Switzerland and satisfied that authority that ►he or she◄ is likely to remain permanently incapable of work; or
 - (cc) is temporarily absent from the United Kingdom for the purpose of receiving treatment for an incapacity which began before ►he or she◄ left the United Kingdom;

- (b) in the case of guardian's allowance, the person by virtue of whose insurance the benefit is claimed has completed contribution periods under the legislation of the United Kingdom which amount in the aggregate to at least five years.

(3) Where a person claims any benefit under the legislation of the United Kingdom, no provision of that legislation which would affect ►his or her◄ claim by reason of the absence of a child, adult dependant or other person from the United Kingdom shall apply to ►him or her◄ if the child, adult dependant or other person, as the case may be, is, or was at the time in question, in Switzerland.

Words in art. 16(3)
substituted by art. 2 of
S.I. 2005/3765 as from
5.12.05

PART V

MISCELLANEOUS PROVISIONS

Article 17

The competent authorities—

- (a) shall make such administrative arrangements as may be required for the application of the present Convention;
- (b) shall communicate to each other information regarding any measure taken by them for the application of the Convention;
- (c) shall communicate to each other, as soon as possible, information regarding any changes made under their national legislation which affect the application of the Convention.

Article 18

(1) The competent authorities and the social insurance authorities of the two Contracting Parties shall furnish assistance to one another with regard to any matter relating to the application of the present Convention as if the matter were one affecting the application of their own national legislation.

(2) The competent authorities shall, in particular, agree upon the measures to be adopted for the medical and administrative supervision of persons entitled to benefit by virtue of the present Convention.

Article 19

(1) Where any benefit in cash is payable by a social insurance authority of one Contracting Party to a person who is resident in the territory of the other Party, the payment may be made by a social insurance authority of the latter Party as agent for the authority of the former Party in accordance with any arrangements which may be made by the competent authorities of the two Parties.

(2) Where payment of any benefit is made by a social insurance authority of one Party as agent for a social insurance authority of the other, in accordance with the provisions of paragraph (1) of this Article, payment may be made, except in the case of a lump sum, in arrear at intervals of two months.

Article 20

(1) Any exemption from, or reduction of, legal dues, charges and fees provided for in the legislation of one Contracting Party in connection with the issue of any certificate or document required to be produced for the purposes of that legislation, shall be extended to certificates and documents required to be produced for the purposes of the legislation of the other Party.

(2) Where any certificate or other document has to be produced to the competent authority or social insurance authority of one or the other Party for the purpose of applying the present Convention, that authority shall not require

the certificate or other document to be legalized by a diplomatic or consular authority.

Article 21

(1) Any claim, notice or appeal which should, for the purposes of the legislation of one Contracting Party, have been presented within a prescribed period of the social insurance authority of that Party, but which is in fact presented within the same period to the social insurance authority of the other Party, shall be treated as if it had been presented to the social insurance authority of the former Party. In such cases, the social insurance authority of the latter Party shall, as soon as possible, send the claim, notice or appeal to the social insurance authority of the former Party.

(2) Any appeal which should, for the purposes of the legislation of Switzerland, have been presented within a prescribed period to a tribunal specified in that legislation, but which is in fact presented within the same period to a tribunal established under the legislation of the United Kingdom, shall be treated as if it had been presented to the former tribunal. In such cases, the social insurance authority of the United Kingdom shall, as soon as possible, send the appeal to the social insurance authority of Switzerland, which shall send it to the appropriate tribunal.

(3) Any appeal which should, for the purposes of the legislation of the United Kingdom, have been presented within a prescribed period to a tribunal established under that legislation, but which is in fact presented within the same period to a tribunal specified in the legislation of Switzerland, shall be treated as if it had been presented to the former tribunal. In such case, the latter tribunal shall, as soon as possible, send the appeal through the social insurance authority of Switzerland to the social insurance authority of the United Kingdom.

Article 22

The amount of any benefit due in accordance with the provisions of the present Convention shall be calculated in the currency of the Contracting Party whose social insurance authority is responsible for such benefit.

Article 23

(1) Any dispute concerning the interpretation or application of the present Convention shall, as far as possible, be resolved by the competent authorities of the Contracting Parties.

(2) If a dispute cannot be resolved in this way, it shall be submitted, at the request of either Party, to an arbitration tribunal.

(3) The arbitration tribunal shall be determined when the occasion arises, as follows: each Party shall appoint a representative and two representatives shall choose, in agreement with one another, among nationals of a third State, a chairman who shall be appointed by the Governments of the two parties. The representatives shall be appointed within two months, and the chairman within three months of the day on which one of the Parties informs the other that it proposes to submit the dispute to the arbitration tribunal.

(4) If any of the time limits prescribed in paragraph (3) of this Article is not observed, either Party may ask the President of the European Court of Human Rights to make the requisite appointments. If the President is a national of either Party or if he is prevented for any other reason, the Vice-President shall make the nominations. If the Vice-President also is a national of either party or if he is likewise prevented, the most senior member of the Court of Justice who is not a national of either Party shall make the appointments.

(5) The arbitration tribunal shall act by majority vote. Its decision shall be binding. Each Party shall bear the expenses of its representative on the arbitration tribunal. This shall apply also the expenses of its representation in the arbitration. The expenses of the chairman, as well as any other expenses, shall be borne equally by the two Parties. The arbitration tribunal may decide on another distribution of the expenses. Apart from these provisions, the arbitration tribunal shall itself determine its rules of procedure.

PART VI

TRANSITIONAL AND FINAL PROVISIONS

Article 24

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

(2) No provision of the Convention shall diminish any right which a person has acquired under the legislation of either Contracting Party before the date of the entry into force of the Convention, whether by virtue of the former Conventions or otherwise.

(3) Any contribution period or equivalent period which a person has completed before the date of the entry into force of the Convention shall be taken into account for the purpose of determining the right to receive benefit under the Convention, provided that no account shall be taken of a contribution period of the contributions paid for that period have been refunded to the insured person or transferred under the former conventions or if supplementary allowances have been paid in respect of those contributions under those conventions.

(4) Subject to the provisions of paragraphs (1), (2) and (3) of this Article, any benefit, other than lump sum payments, shall be payable under the present Convention in respect of events which happened before the date of the entry into force of the Convention, provided that any claim which a national of the United Kingdom makes, under Swiss pensions insurance, in respect of an event which happened before the 1st January 1960, shall be determined under the former Conventions and not under the present Convention.

(5) Any benefit which has been determined before the date of the entry into force of the Convention shall, if necessary, be determined afresh in accordance with the provisions of paragraph (4) of this Article.

(6) Any benefit which is payable, in accordance with the foregoing provisions of this Article, shall be paid or determined and paid, as the case may be, as from the date of entry into force of the Convention, and, for this purpose—

- (a) in the case of any benefit payable under Swiss legislation, any time limit for claiming that benefit shall be deemed to run from that date at the earliest;
- (b) in the case of any benefit payable under the legislation of the United Kingdom, any relevant claim may be submitted and any relevant notice of retirement may be given within twelve months of that date.

Article 25

In the event of the termination of the present Convention, any right acquired by a person in accordance with its provisions shall be maintained, and negotiations shall take place for the settlement of any rights then in course of acquisition by virtue of those provisions.

Article 26

(1) The present Convention shall be ratified and the instruments of ratification shall be exchanged in London as soon as possible. The convention shall enter into force on the first day of the second month following the month in which the instruments of ratification are exchanged.

(2) Subject to the provisions of Article 24, the former Conventions shall be terminated on the date of entry into force of the present Convention.

Article 27

The present Convention shall remain in force for a period of one year from the date of its entry into force. Thereafter, it shall continue in force from year to year unless it is denounced in writing three months before the expiry of any such yearly period.

IN WITNESS THEREOF the undersigned, duly authorised by their respective Governments, have signed the present Convention.

DONE in duplicate at Berne, this twenty-first day of February 1968, in the English and French languages, both texts being equally authoritative.

For the Government of the United Kingdom For the Swiss Federal Council:
of Great Britain and Northern Ireland:

H.A.F. HOHLER

CRISTOFORO MOTTA

SCHEDULE 2
ORDERS REVOKED

The National Insurance and Industrial Injuries (Switzerland) Order 1954**(a)**

The National Insurance (Switzerland) Order 1960**(b)**

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order gives effect in England, Wales and Scotland to the Convention (set out in Schedule 1) made between the United Kingdom and the Swiss Federal Council in so far as it relates to the matters for which provision is made by the Family Allowances Acts 1965 to 1969, the National Insurance Acts 1965 to 1969 and the National Insurance (Industrial Injuries) Acts 1965 to 1969.

(a) S.I. 1954/641 (1954 I, p. 1422).

(b) S.I. 1960/1064 (1060 II, p. 2340).

