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(Acts whose publication is obligatory)

REGULATION (EEC) No 1392/74 OF THE COUNCIL

of 4 June 1974

amending Regulation (EEC) Nos 1408/71 and 574/72 on the application of social security schemes to employed persons and their families moving within the Community

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to Council Regulation (EEC) No 1408/71 [1] of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, as last amended by Regulation (EEC) No 2864/72 [2], and in particular Articles 95 and 97 thereof;

Having regard to Council Regulation (EEC) No 574/72 [3] of 21 March 1972 fixing the procedures for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community, as last amended by Regulation (EEC) No 878/73 [4], and in particular Article 121 thereof;

Having regard to the proposal from the Commission drawn up after consultation with the Administrative Commission on Social Security for Migrant Workers;

Having regard to the Opinion of the European Parliament;

Having regard to the Opinion of the Economic and Social Committee;

Whereas Regulation (EEC) Nos 1408/71 and 574/72 entered into force on 1 October 1972 and have been applicable in the new Member States since 1 April 1973;

Whereas certain national laws have been amended since those dates and experience has revealed some gaps in Community rules,

HAS ADOPTED THIS REGULATION:

Article 1

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

1. The second subparagraph of Article 15 (3) shall be deleted.

2. Annex II shall be amended as follows:

   Parts A and B, point 21. GERMANY — UNITED KINGDOM:

   The following shall be substituted for subparagraph (a):

   '(a) Article 3 (1) and (6) and Article 7 (2) to (6) of the Convention on Social Security of 20 April 1960;'

3. Annex III shall be amended as follows:

   The following shall be substituted for point I. UNITED KINGDOM:

   'I. UNITED KINGDOM

   Great Britain

   Law of 14 July 1971 on invalidity benefits.

   Northern Ireland

   Law of 16 July 1971 on invalidity benefits.'

4. Annex IV shall be amended as follows:

   1. In the General scheme column under ITALY in the table for BELGIUM:

[1] OJ No L 149, 5. 7. 1971, p. 2.
[2] OJ No L 306, 31. 12. 1972, p. 1.
[3] OJ No L 74, 27. 3. 1972, p. 1.
[4] OJ No L 86, 31. 3. 1973, p. 1.

The words 'no concordance' shall be substituted for the word 'concordance'.

2. In the General scheme (Group I), Agricultural scheme (2/3 invalidity) and Miners' scheme (2/3 General invalidity) columns under ITALY in the table for FRANCE:

The words 'no concordance' shall be substituted for the word 'concordance'.

3. In the 'Workers' Invalidity — manual workers' column under ITALY in the table for LUXEMBOURG:

The words 'no concordance' shall be substituted for the word 'concordance'.

5. Annex V shall be amended as follows:

1. Point B. DENMARK:

The following paragraphs shall be added after paragraph 9:

'10. For the purpose of determining entitlement to benefits in kind pursuant to Article 22 (1) (a) and Article 31 of the Regulation, "member of the family" shall mean any person regarded as a member of the family under the law concerning the public health service.

11. For the purpose of applying Article 12 (2) of the Regulation to Danish legislation, invalidity, old age and widows' pensions shall be regarded as benefits of the same kind.'

2. Point C. GERMANY:

The following paragraphs shall be added after paragraph 7:

'8. Article 1233 of the insurance code (RVO) and Article 10 of the clerical staff insurance law (AVG), as amended by the pension reform law of 16 October 1972, which govern voluntary insurance under German pension insurance schemes, shall apply to nationals of the other Member States and to stateless persons and refugees residing in the territory of the other Member States, according to the following rules:

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

(a) if the person concerned has his domicile or residence in the territory of the Federal Republic of Germany;

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

(c) if the person concerned is a national of another Member State, has his domicile or residence in the territory of a third State and has paid contributions for German pension insurance for at least sixty months, or was eligible for voluntary insurance under the transitional provisions previously in force and is not compulsorily or voluntarily insured under the legislation of another Member State.

9. The Regulation shall not affect Article 51 a (2) of the manual workers pension reform law (ArVNG) or Article 49 a (2) of the clerical staff pension reform law (AnVNG), as amended by the pension reform law of 16 October 1972. The persons who, under paragraph 8 (b) and (c), may join voluntary insurance, may pay contributions only in respect of periods for which they have not yet paid contributions under the legislation of another Member State.'

3. Point E. IRELAND

(a) The following shall be substituted for paragraph 3:

'3. Workers, unemployed persons, pension claimants and pensioners, together with members of their families, referred to in Articles 19 (1), 22 (1) and (3), 25 (1) and (3), 26 (1), 28a, 29 and 31 of the Regulation, who are residing or staying in Ireland, shall be entitled free of charge to all medical treatment provided for by Irish legislation where the cost of this treatment is payable by the institution of a Member State other than Ireland.'

(b) The following paragraph shall be inserted after paragraph 3:

'3a The members of the family of a worker who is subject to the legislation of a Member State other than Ireland and who satisfies the conditions laid down by that legislation for entitlement to benefits, account being taken, where appropriate, of Article 18 of the Regulation, shall be entitled free of charge, if they are resident in Ireland, to all medical treatment provided for by Irish legislation.

The cost of such benefits shall be payable by the institution with which the worker is insured.

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

(c) The following paragraphs shall be added after paragraph 4:

'5. For the purpose of determining entitlement to benefits in kind pursuant to Article 22 (1) (a) and Article 31 of the Regulation, "member of the family" shall mean any person regarded as a dependant of the worker for the purposes of the Health Acts 1947—1970.

6. For the purpose of applying Article 12 (2) of the Regulation to Irish legislation, invalidity, old age and widows' pensions shall be regarded as benefits of the same kind.'

(d) The following paragraph shall be added after paragraph 6:

'7. For the purpose of calculating the earnings for the granting of the earnings-related benefit payable under Irish legislation with sickness, maternity and unemployment benefits, an amount equal to the average weekly wage in that year of male or female workers, as applicable, shall, notwithstanding Articles 23 (1) and 68 (1) of the Regulation, be credited to the worker in respect of each week of employment completed as a worker under the legislation of another Member State during the relevant income tax year.'

4. Point G. LUXEMBOURG:

The text under this heading shall become paragraph 1.

The following paragraph shall be added after this paragraph:

'2. For the purpose of granting the fixed part of Luxembourg pensions, insurance periods completed under Luxembourg legislation by workers not residing in Luxembourg territory shall, as from 1 October 1972, be treated as periods of residence.'

5. Point I. UNITED KINGDOM:

The following paragraphs shall be added after paragraph 9:

'10. For the purposes of Title III, Chapter 3 of the Regulation, no account shall be taken of graduated contributions paid by the insured person under United Kingdom legislation or of graduated retirement benefits payable under that legislation. The amount of the graduated benefits shall be added to the amount of the benefit due under the United Kingdom legislation as determined in accordance with the said chapter. The total of these two amounts shall constitute the benefit actually due to the person concerned.

11. For the purpose of calculating the earnings for the granting of the earnings-related supplement provided for by United Kingdom legislation, in particular for cash benefits in respect of sickness, unemployment benefits and temporary widows' benefits, an amount equal to the average weekly wage corresponding to the average weekly rate of the earnings-related supplement which, according to the estimates, is payable to a male or female worker respectively during the current benefit

year shall, notwithstanding Articles 23 (1), 47 and 68 (1) of the Regulation, be credited to the worker in respect of each week of employment completed as a worker under the legislation of another Member State during the relevant income tax year.

12. For the purpose of determining entitlement to benefits in kind pursuant to Articles 22 (1) (a) and 31 of the Regulation, "member of the family" shall mean any person regarded as a dependant within the meaning of the United Kingdom National Insurance Act or of its legislation on accidents at work.

13. For the purpose of applying Article 12 (2) of the Regulation to the legislation of the United Kingdom, invalidity, old age and widows' pensions shall be regarded as benefits of the same kind.

14. For the purpose of applying the Non-contributory Social Insurance Benefit and Unemployment Insurance Ordinance (Gibraltar), any person to whom this Regulation is applicable shall be deemed to be domiciled in Gibraltar if he resides in a Member State.'

6. The English text of the Articles mentioned below shall be amended as follows:

1. In Article 14 (1) (b), fifth line, the word 'its' shall be inserted before 'own account'.

2. In Article 38 (2), third to fifth lines:

'in an occupation which is subject to a special scheme or, where appropriate', shall be substituted for 'in an completion of insurance periods shall take account to where appropriate'

3. In Article 45 (2), first line, and (3), first line:

for 'am' read 'a'

In Article 45 (2) seventh line:

for 'bei' read 'be'

In Article 45 (3), seventh line:

for 'ist' read 'is'

In Article 45 (3), eighth line:

for 'stil' read 'still'

In Article 45 (3), thirteenth line:

for 'bedeemed' read 'be deemed'

4. In Article 47 (3), sixth line:

the words 'in the territory of another Member State as if they were residing' shall be inserted after 'residing'

5. In Article 57 (2), third line:

for 'conditions' read 'condition'

6. In Article 58 (2), fourth line *et seq.;*

the passage:

'shall determine such average wage or salary exclusively by reference where appropriate, the average of the standard wages or salaries corresponding to the periods completed under the said legislation'

shall be replaced by:

'shall take account exclusively of the standard wage or salary or, where appropriate, of the average of the standard wages or salaries corresponding to the periods completed under the said legislation'

7. In Article 71 (1) (a) (ii), sixth line, a comma shall be inserted after the word 'employed'

8. In Article 75 (1) (a), twelfth line, the words 'residing or staying' shall be substituted for the words 'staying, residing or situated'

Article 2

Regulation (EEC) No 574/72 shall be amended as follows:

1. Article 12 (2) shall be deleted.

2. Article 46 (3) shall be deleted.

3. Annex 1 shall be amended as follows:

Point I. UNITED KINGDOM

The following shall be substituted for paragraph 4:

'4. Department of Health and Social Services for Northern Ireland, Belfast.'

The following paragraph shall be added after paragraph 4:

'5. Director of the Department of Labour and Social Security, Gibraltar.'

4. Annex 2 shall be amended as follows:

1. Point C. GERMANY

(a) Paragraph 1. **Sickness Insurance**

(i) The following shall be inserted before the words 'For the purpose of applying Article 25 (1) of the Regulation':

'For the purposes of applying Article 13 (2) (d) of the Regulation:

(a) where the person concerned is resident in the territory of the Federal Republic of Germany:	the competent Allgemeine Ortskrankenkasse (Local General Sickness Fund) of the place of residence of the person concerned;
(b) where the person concerned is resident in the territory of another Member State:	Allgemeine Ortskrankenkasse Bonn (Local General Sickness Fund Bonn), Bonn;
(c) where the members of the family of the person concerned were, prior to his being called up or recalled for service in the armed forces, insured with a German institution in accordance with Article 17 (1) of the Implementing Regulation:	the sickness insurance institution with which these members of the family are insured;'

(ii) The following shall be substituted for subparagraph (a):

'(a) where the person concerned is insured with an Allgemeine Ortskrankenkasse (Local General Sickness Fund) or where he is not insured with any sickness insurance institution:	Allgemeine Ortskrankenkasse Bonn (Local General Sickness Fund Bonn), Bonn;'

(b) Paragraph 2. **Pension insurance for manual workers, clerical staff and miners:**

The following shall be substituted for the introductory subparagraph:

'For the determination of claims to benefits and on admission to voluntary insurance during the procedure of awarding benefits, and for the granting of benefits pursuant to the Regulation:'

2. Point D. FRANCE

(a) The following shall be substituted for paragraph 2:

'2. For the purpose of applying Article 96 of the Implementing Regulation:

(a) general scheme:	Caisse nationale de l'assurance-maladie (National Sickness Insurance Fund), Paris
(b) agricultural scheme:	Caisse de mutualité sociale agricole (Agricultural Social Insurance Mutual Benefit Fund)
(c) miners' scheme:	Caisse autonome nationale de sécurité sociale dans les mines (National Independent Social Security Fund for Miners), Paris
(d) mariners' scheme:	Établissement national des invalides de la marine (National Institute for Disabled Mariners), Paris.'

(b) The following shall be substituted for paragraph 4 I (b) (iii):

'(iii) Accidents at work:	
(aa) as a general rule:	— the employer or the insurer acting in his stead, for accidents occurring before 1 July 1973
	"Caisse de mutualité sociale agricole" (Agricultural Social Insurance Mutual Benefit Fund), for accidents occurring after 30 June 1973;
(bb) for pension increases:	— "Caisse des dépôts et consignations" (Deposit and Consignment Office), Arceuil (94), for accidents occurring before 1 July 1973,
	— "Caisse de mutualité sociale agricole" (Agricultural Social Insurance Mutual Benefit Fund), for accidents occurring after 30 June 1973.'

3. Point G. LUXEMBOURG

(a) The following shall be substituted for paragraph 1 (a):

'(a) for the purpose of applying Article 28 (2) of the Regulation:	"Caisse nationale d'assurance maladie des ouvriers" (National Sickness Insurance Fund for Manual Workers), Luxembourg.'

(b) The following shall be substituted for paragraph 6:

'6. **Death grants**

For the purpose of applying Article 66 of the Regulation:	"Caisse nationale d'assurance-maladie des ouvriers" (National Sickness Insurance Fund for Manual Workers), Luxembourg.'

4. Point I. UNITED KINGDOM

The following shall be substituted for point 2:

'2. **Cash benefits:**

Great Britain	Department of Health and Social Security, London

Northern Ireland	Department of Health and Social Services for Northern Ireland, Belfast
Gibraltar	Department of Labour and Social Security' Gibraltar.'

5. Annex 3 shall be amended as follows:

1. Point C. GERMANY:

(a) Paragraph 1. **Sickness insurance:**

(i) The following words in the right-hand column of subparagraph (a) shall be deleted:

'or, in the absence of such a fund, the competent Landkrankenkasse (Rural Sickness Fund) of the place of residence or place of stay of the person concerned';

(ii) In the right-hand column of point 1 (b) the words 'with a "Landwirtschaftliche Krankenkasse" (Agricultural Sickness Fund)' shall be substituted for the words 'with a "Landkrankenkasse" (Rural Sickness Fund)';

(iii) In the right-hand column of (c) in the German text the word 'Arbeiter' shall be substituted for the word 'Arbeitnehmer'.

(b) Paragraph 2. **Accident insurance:**

The following words in the right-hand column of subparagraph (a) shall be deleted:

'or, in the absence of such a fund, the competent "Landkrankenkasse" (Rural Sickness Fund) of the place of residence or place of stay of the person concerned'.

2. Point I. UNITED KINGDOM

The following shall be substituted for paragraph 2:

'2. **Cash benefits:**

Great Britain	Department of Health and Social Security — Overseas Group, Newcastle-upon-Tyne
Northern Ireland	Department of Health and Social Services for Northern Ireland — Overseas Branch, Belfast
Gibraltar	Department of Labour and Social Security, Gibraltar'

6. Annex 4 shall be amended as follows:

The following shall be substituted for the text of Point I. UNITED KINGDOM:

I. UNITED KINGDOM

Great Britain	Department of Health and Social Security — Overseas Group, Newcastle-upon-Tyne
Northern Ireland	Department of Health and Social Services for Northern Ireland — Overseas Branch, Belfast

Gibraltar	Department of Health and Social Security — Overseas Group, Newcastle-upon-Tyne'

7. Annex 6 shall be amended as follows:

Point C. GERMANY

The following shall be substituted for paragraph 2:

'2. **Pension insurance for miners (invalidity, old-age, death):**

(a) dealings with Belgium, Denmark, France, Ireland, Luxembourg and the United Kingdom:	direct payment;
(b) dealings with Italy and the Netherlands:	payment through the liaison bodies (joint implementation of Articles 53 to 58 of the implementing Regulation and of the provisions set out in Annex 5)'

8. Annex 7 shall be amended as follows:

The following shall be added to point I. UNITED KINGDOM:

'Gibraltar	Barclays Bank, Gibraltar'

9. Annex 9 shall be amended as follows:

Point C. GERMANY

In the right-hand column, subparagraph (b) of paragraphs 1 and 2 shall be deleted and the lettering of the subparagraphs following adjusted accordingly.

10. Annex 10 shall be amended as follows:

1. Point C. GERMANY

The following shall be substituted for paragraph 6:

'6. For the purpose of applying Article 91 (2) of the implementing Regulation:

(a) family allowances paid to a person in respect of an orphan:	"Arbeitsamt (Employment Office) Nürnberg"
(b) pension supplements for children paid under legal pension insurance schemes:	the pension insurance institutions for manual workers, clerical staff and miners, designated as competent institutions in Annex 2, point C, paragraph 2'

2. Point I. UNITED KINGDOM

The following shall be substituted for the text concerning Northern Ireland:

'Northern Ireland	Department of Health and Social Services for Northern Ireland — Overseas Branch, Belfast'

Article 3

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities.*

It shall apply from 1 April 1973, with the exception of:

— Article 1 paragraph 5 (4) and Article 2 paragraph 4 (1) and (3), paragraph 5 (1) and paragraph 9, which shall apply from 1 October 1972 in dealings between the Member States of the Community as originally constituted;

— Article 1 paragraph 1 and paragraph 5 (2) and Article 2 paragraph 2, which shall apply from 19 October 1972 in dealings between the Member States of the Community as originally constituted;

— Article 2 paragraph 4 (2), which shall apply from 1 July 1973;

— Article 1 paragraph 5 (3) (d), which shall apply from 6 April 1974.

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

Done at Luxembourg, 4 June 1974.

For the Council

The President

J. ERTL