

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(79) 172 final

Brussels, 6 April 1979

PROPOSAL FOR A COUNCIL REGULATION

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

PROPOSAL FOR A COUNCIL REGULATION

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

(submitted to the Council by the Commission)

Proposal for a Council Regulation amending Regulations (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 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (1), as last amended by Regulation (EEC) No 2595/77 (2), and in particular Article 97 thereof,

Having regard to Council Regulation (EEC) No. 574/72 of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No. 1408/71 on the application of social security schemes to employed persons and their families moving within the Community (3), as last amended by Regulation (EEC) No. 2595/77,

Having regard to the proposal from the Commission drawn up after consulting the Administrative Commission on Social Security for Migrant Workers,

Having regard to the opinion of the European Parliament (4),

Having regard to the opinion of the Economic and Social Committee (5),

(1) O.J. No. L 149, 5.7.1971, p. 2.

(2) O.J. No. L 302, 26.11.1977, p. 1.

(3) O.J. No. L 74, 27.3.1972, p. 1.

(4)

(5)

Whereas experience of the operation of Regulation (EEC) No. 1408/71 and (EEC) No. 574/72 has shown the need to make some improvements to the rights of migrant workers; whereas, consequently, conscientious objectors who are called up or recalled for civilian service and who are in respect thereof assimilated to persons performing military service for certain benefits should benefit under Regulation (EEC) No. 1408/71;

Whereas it is necessary for persons covered by agreements concluded under Article 17 of Regulation (EEC) No. 1408/71 to be provided with documentary evidence indicating the legislation of which Member State is applicable in their case;

Whereas it is necessary to remove the practical difficulties confronting a worker, other than an international transport worker, who normally pursues his activity in the territory of two or more Member States;

Whereas provision should be made to simplify the procedures laid down by Regulation (EEC) No. 574/72 to be followed in order that a worker temporarily posted to another Member State may obtain benefits in kind in respect of sickness, maternity, accident at work or occupational disease.

Whereas, by virtue of Article 121 of Regulation (EEC) No. 574/72, the Annexes to that Regulation must be amended by a Regulation adopted by the Council acting on a proposal from the Commission;

Whereas the adoption of such a Regulation by the Council consists, in regard to the modification of certain of those Annexes, in taking account of decisions taken by each Member State concerned or by the two Member States concerned or by the competent authorities of those States; whereas it is therefore desirable to have recourse to a simpler procedure;

Whereas it is appropriate to amend the said Article 121 so as to make it possible for Annexes 1, 4, 5, 6, 7 and 8 of Regulation (EEC) No. 574/72 to be amended by means of a Regulation adopted by the Commission at the request of the Member State or States concerned or their competent authorities;

Whereas, moreover, the said Article 121 provides that the Annexes to Regulation (EEC) No. 574/72 form an integral part of the latter; whereas, mutatis mutandis, the same applies in regard to the Annexes to Regulation (EEC) No. 1408/71; whereas Article 95 of the latter Regulation should therefore be amended accordingly,
has adopted this Regulation:

ARTICLE 1

Regulation (EEC) No. 1408/71 is hereby amended as follows:-

1. Article 13 (2)(d) shall be amended to read as follows:-

"(d) A worker called up or recalled for service in the armed forces of a Member State or civilian service in a Member State shall retain the status of a worker and shall be subject to the legislation of that State; if entitlement under that legislation is subject to the completion of insurance periods before entry into or release from such military or, as the case may be, civilian service, insurance periods completed under the legislation of any other Member State shall be taken into account, to the extent necessary, as if they were insurance periods completed under the legislation of the first State".

2. (a) In Article 95, after the heading, there shall be inserted the following paragraph:-

"(1) The Annexes to this Regulation shall form an integral part thereof".

(b) The present text of Article 95 shall be numbered "2".

ARTICLE 2

Regulation (EEC) No. 574/72 is hereby amended as follows:-

1. (a) In the sub-heading to Title III, for the figure "16" there shall be substituted the figure "17".
- (b) The heading to Article 11 shall be amended by the addition 11, after the words "Formalities in the case of posting elsewhere", of the following:
"pursuant to Article 14 (1)(a) and (2) and in the case of agreements concluded under Article 17 of the Regulation".
- (c) Article 11(1) shall be replaced by the following:-
"1. A certificate testifying that a worker shall remain subject to the legislation of a Member State up to a specified date shall be issued by the institution designated by the competent authority of the Member State whose legislation is to remain applicable,
 - (a) at the request of the worker or his employer in cases referred to in Article 14 (1)(a) and (2)(a) of the Regulation;
 - (b) in cases where Article 17 of the Regulation applies".

2. After Article 12 there shall be inserted the following Article:-

"Article 12 a"

Rules applicable in respect of a worker other than one employed in international transport, who normally pursues his activity in the territory of two or more Member States.

1. For the purposes of Article 14 (1)(c)(i) of the Regulation a worker who normally pursues his activity in the territory of two or more Member States shall inform the institution designated by the competent authority of the Member State on whose territory he resides of this fact. That institution shall issue him with a certificate testifying that he is subject to the legislation of that State and shall send a copy thereof to the institution designated by the competent authority of each Member State in whose territory an employer has a registered office or place of business in which the said worker is employed. This latter institution shall, in so far as necessary, send to the institution designated by the competent authority of the Member State whose legislation is applicable the information necessary to assess the contributions for which the employer or employers and/or the worker are liable by virtue of that legislation.

2. For the purposes of Article 14 (1)(c)(ii) of the Regulation the provisions of paragraph 1 of this Article shall apply by analogy.

However, the worker in question may obtain the certificate testifying that he shall be subject to the legislation of the Member State on whose territory the employer or undertaking employing him has its registered office or place of business, from the institution designated by the competent authority of that State, where necessary, through the agency of the institution designated by the competent authority of the Member State on whose territory he resides".

3. (a) The heading to Article 20 shall be amended to read as follows:-

"Benefits in kind in the case of a stay in a Member State other than the competent State-Special case of workers employed in international transport and members of their families".

(b) Paragraph 1 of Article 20 shall be deleted and the remaining paragraphs of that Article shall be renumbered 1 to 6 respectively.

(c) The renumbered paragraph 4 of Article 20 shall be amended to read as follows:-

"4. In place of the certified statement provided for in paragraph 1, a worker covered by that paragraph may submit to the institution of the place of stay a certified statement testifying that the conditions for the acquisition of the right to benefits in kind have been satisfied. This certified statement, which shall be issued by the competent institution, shall specify in particular, where necessary, the maximum period during which benefits in kind may be granted in accordance with the legislation of the competent State. In such a case paragraphs 1, 2 and 3 shall not apply".

(d) In the renumbered paragraph 6 of Article 20 for the words "paragraphs 1 or 2" there shall be substituted "paragraph 1".

(e) In paragraph (1) of Article 21, at line 2, for the word "cases" there shall be substituted the word "case".

(f) In paragraph 1 of Article 34, at lines 3 to 4, for the reference to "Article 20(1), (2) and (5)", there shall be substituted the reference, "Article 20(1) and (4)".

(g) Paragraph 1 of Article 62 shall be deleted and the remaining paragraphs of that Article shall be renumbered 1 to 7 respectively.

(h) In the renumbered paragraph 2 of Article 62, at lines 3 and 4, the words "or 2" shall be deleted.

(i) In the renumbered paragraph 4 of Article 62, at line 2, the words "or 2" shall be deleted.

(j) The renumbered paragraph 5 of Article 62 shall be amended to read as follows:-

"5. In place of the certified statement provided for in paragraph 1, workers covered by that paragraph may submit to the institution of the place of stay a certified statement as provided for in paragraph 6".

(k) In the renumbered paragraph 6 of Article 62, at line 3, for the words "paragraphs 1 and 2" there shall be substituted "paragraph 1".

(l) At paragraphs 1 and 2 of Article 113 for each reference to "Article 20(2) or Article 62(2)", there shall be substituted the following reference, "Article 20(1) or Article 62(1)".

4. Article 121 shall be amended as follows:-

(a) In paragraph 2, for the words "These Annexes" there shall be substituted the words "Annexes 2, 3, 9 and 10".

(b) Paragraph 3 shall be replaced by the following:-

"3. Annexes 1, 4, 5, 6, 7 and 8 may be amended by a Regulation of the Commission at the request of the Member State or States concerned or their competent authorities".

ARTICLE 3

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

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

Done at Brussels

19

For the Council:

EXPLANATORY MEMORANDUM

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

- 1.1 Article 13(2)(d) of Regulation 1408/71 In the Federal Republic of Germany conscientious objectors who perform a civilian service are treated in the same way as persons who perform military service, for the purposes of sickness and unemployment insurance as well as for pension insurance (invalidity, old-age and death).

The amendment is intended to ensure that persons who perform such civilian service may benefit from the provisions of Article 13(2)(d) which at present extend only to a worker who is called up or recalled for service in the armed forces of a Member State.

- 1.2 Article 95 of Regulation 1408/71 Articles 95 of Regulation 1408/71 and 121 of Regulation 574/72 fix the procedures to be followed for amending the Annexes to those Regulations. In addition, Article 121 provides that the Annexes to Regulation 574/72 form an integral part of the latter. It is obviously the same, mutatis mutandis in respect of the Annexes to Regulation 1408/71.

So as to avoid ambiguity on this point, it is sought to amend Article 95 of Regulation 1408/71.

2. Articles 11, 20 and 62 of Regulation 574/72 The amendments to Article 11 on the one hand and Articles 20 and 62 on the other are to a certain extent inter-related and may be conveniently explained together.

(a) In its present form Article 11 provides for the issue of a certificate of posting in respect of detached workers indicating that the said workers shall remain subject to the legislation of the sending State up to a specified date. It is intended that Article 11 should continue to apply in the same way in this respect.

All that the present amendment seeks to achieve is to provide a similar administrative procedure as already exists for detached workers for those workers or categories of workers who, by virtue of an agreement concluded under Article 17 of Regulation 1408/71 are to remain subject to the legislation of a Member State.

(b) In their present form Articles 20(1) and 62(1) make special provision for detached workers by presuming that the conditions for acquisition of a right to benefits in kind have been satisfied where the certificate referred to in Article 11 has been produced. The institution of the place of stay must within 3 days enquire from the competent institution whether the person concerned satisfies the conditions for such acquisition. Notwithstanding the presumption mentioned above, benefits in kind may be provided for not more than 30 days unless the competent institution confirms that entitlement to benefits in kind exists under its le-

gislation (see Articles 20(3) and 62(3)). It is felt that this need, subsequent to the risk arising, to verify entitlement to benefits in kind with the competent institution, constitutes an additional and avoidable hurdle. It is therefore proposed that Articles 20 and 62 be amended in such a way that the detached worker is made to fall under the provisions of Articles 21 and 62(6) (as amended) respectively. This would have the merit of enabling such persons to be provided by their competent institutions with a certificate before leaving that Member State where they are insured and which would forthwith prove their entitlement to benefits in kind.

(c) The remaining amendments contained to Article 2.1 and 3 of the proposal are consequential upon the adoption of the foregoing.

3. Article 12a of Regulation 574/72 - A worker other than one employed in international transport who normally pursues his activity in the territory of two or more Member States - This new provision seeks to establish methods for implementing Article 14 (1)(c) of Regulation 1408/71 in order to deal with difficulties encountered by a worker who normally pursues his activity in the territory of two or more Member States.

Paragraph 1 is concerned with the case of a worker who in compliance with the provisions of Article 14(1)(c)(i) of Regulation 1408/71, is subject to the legislation of the Member State on whose territory he resides.

The administrative procedure envisaged in this provision is intended to improve the material conditions in which a worker may be made so subject in conformity with the legislation applicable ; it is also intended to facilitate the collection of contributions and as a consequence to assure a better protection of the worker when he invokes his right to benefit.

Paragraphe 2 is concerned with the case of a worker who in compliance with the provisions of Article 14(1)(c)(ii) of Regulation 1408/71, is subject to the legislation of the Member State on whose territory the undertaking or employer employing him has its registered office or place of business. The procedure envisaged for paragraph 1 is also applicable in this case. It is also made explicit that the certificate to be issued by the institution designated by the competent authority of the Member State whose legislation is applicable may be obtained through the agency of the institution designated by the competent authority of the Member State on whose territory the worker resides.

4.(a) Article 121 of Regulation 574/72—Article 121 of Regulation 574/72 provides that the Annexes to that Regulation may be amended, at the request of the Member State or Member States concerned, by a Council Regulation adopted on a proposal from the Commission, after having received the opinion of the Administrative Commission. With the exception of Annex 9, the nature of a certain number of these Annexes does not justify such a weighty procedure.

- Annexes 1 to 4, 7 and 10 make mention of the authorities, institutions, banks and bodies responsible for implementing Community Regulations in each Member State and whose designation remains within the competence of that Member State alone ;
- Annex 5 makes mention of bilateral provisions concerning special rules of procedure which are applicable in dealings between two Member States or the methods of reimbursement between the institutions of two Member States. These bilateral provisions are drawn up by common agreement by the Member States concerned, since the relevant provisions of the implementing Regulation provide such possibility for the Member States ;
- the same applies both in respect of Annex 6 which indicates the choice made by two Member States in respect of the methods of payment of pensions and pensions in respect of accidents at work and occupational diseases and also in respect of Annex 8 which concerns the methods of payment of family benefits in particular cases.

It is therefore desirable that these Annexes be amended by means of a procedure which is simpler and speedier than that of the Council Regulation. Provision should be made so as to enable those amendments which are needed, to be effected by means of a simple Regulation of the Commission on the basis of information furnished by a Member State or Member States and which result from the development of legislative and administrative procedures. However, this new procedure cannot be effectively implemented in respect of all the Annexes cited. Amendments to Annex 9 must continue to follow the procedure currently used because of the object of the provisions which it contains. Those provisions in fact deal with matters concerning the coordination to be operated between Member States. That same procedure must also remain for Annexes 2, 3 and 10 because of the particular problems to which amendments give rise.

It is therefore proposed limiting the application of the new procedure for effecting amendments to Annexes 1, 4, 5, 6, 7 and 8.

(b) The revocation of the present paragraph 3 of Article 121 of Regulation 574/72 is consequential upon the amendment which is being made to Annex V, C 7 (Federal Republic of Germany) of Regulation 1408/71.

ANNEX III

Proposal for a Council Regulation amending the Annexes to Regulations (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,

Having regard to Council Regulation (EEC) No. 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (1), as last amended by Regulation (EEC) No. 2595/77(2), and in particular Article 95 thereof,

Having regard to Council Regulation (EEC) No. 574/72 of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No. 1408/71 on the application of social security schemes to employed persons and their families moving within the Community (3), as last amended by Regulation (EEC) No. 2595/77, and in particular Article 95 thereof,

Having regard to the proposal from the Commission drawn up after consulting the Administrative Commission on Social Security for Migrant Workers,

Having regard to the opinion of the European Parliament (4),

Having regard to the opinion of the Economic and Social Committee (5),

(1) O.J. No. L 149, 5.7.1971, p. 2.

(2) O.J. No. L 302, 26.11.1977, p. 1.

(3) O.J. No. L 74, 27.3.1972, p. 1.

(4)

(5)

Whereas account should be taken of changes in the internal financial administration within the Federal Republic of Germany and also of the fact that lump-sum contributions for medical treatment on the occasion of confinement should be considered as benefits in kind;

Whereas the changes that have been made in United Kingdom legislation make it necessary to amend Annexes III and V.I to Regulation (EEC) No. 1408/71, so as to allow for the taking into account of periods accomplished under other Member States' legislations for the purpose of satisfying presence conditions imposed for the receipt of United Kingdom family allowances and also so as to make special provision for calculating the amount of the United Kingdom additional component pension;

Whereas it is appropriate that certain provisions of Annex 5 to Regulation (EEC) No. 574/72 be amended to take account of agreements concluded between Member States;

Whereas it is appropriate that the procedure for the payment of certain arrears and other single payments be improved;

has adopted this Regulation :

Article 1

The Annexes to Regulation (EEC) No. 1408/71 is hereby amended as follows:-

1. Annex III, Point I., United Kingdom.

For the existing entry at Point I there shall be substituted the following:-

"(a) Great Britain.

Section 15 of the Social Security Act, 1975;

Sections 14 to 16 of the Social Security (Pensions) Act, 1975.

(b) Northern Ireland.

Section 15 of the Social Security (Northern Ireland) Act, 1975;

Articles 16 to 18 of the Social Security Pensions (Northern Ireland) Order, 1975."

2. Annex V, Point C. Germany.

(a) For paragraph 7 there shall be substituted the following:-

"7. For the purposes of this Regulation, the lump sum contributions for medical treatment granted under German legislation to female insured persons and to members of the families of insured persons on the occasion of confinement shall be considered as a benefit in kind".

(b) After paragraph 9 there shall be inserted the following paragraph:-

"10. Where the costs of benefits in kind which are granted by German institutions of the place of residence to pensioners or their dependants who are insured with competent institutions of other Member States must be refunded in monthly lump sums, such costs shall, for the purpose of financial equalization among institutions of the German sickness insurance scheme for pensioners, be treated as expenditure on German insurance for pensioners' sickness benefits; the lump sums refunded to the German institutions in the place of residence by the competent institutions of other Member States shall be regarded as receipts which must be taken into account in that financial equalization".

3. Annex V, Point I. United Kingdom.

(a) There shall be substituted for paragraph 1 the following:-

"1. All persons who are "employed earners" within the meaning of the legislations of either Great Britain or of Northern Ireland and all persons in respect of whom contributions are payable as "employed persons" in accordance with the legislation of Gibraltar shall be regarded as "workers" for the purposes of Article 1(a)(ii) of this Regulation."

(b) In paragraph 2 in each place where the words "the United Kingdom", or "United Kingdom" appear, there shall be substituted the word, "Gibraltar".

(c) Paragraphs (4) and (11) shall be deleted and the remaining paragraphs shall be renumbered accordingly.

(d) The renumbered paragraph 4 shall be replaced by the following:-

"4 (a) Where United Kingdom unemployment benefit is paid to a person by virtue of Article 71(1)(a)(ii) or (b)(ii) of this Regulation, then for the purpose of satisfying the conditions imposed by United Kingdom legislation in relation to child benefit concerning a period of presence within Great Britain or, as the case may be, Northern Ireland, periods of insurance or employment accomplished by that person under the legislation of another Member State shall be treated as presence in Great Britain, or as the case may be, Northern Ireland.

(b) Where by virtue of Title II of this Regulation United Kingdom legislation is applicable in respect of a worker who does not satisfy the condition imposed by United Kingdom legislation in relation to child benefit concerning:

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

(ii) a period of presence within Great Britain, or as the case may be, Northern Ireland, periods of insurance or employment accomplished by that person under the legislation of another Member State shall for the purpose of satisfying such conditions be treated as presence in Great Britain, or as the case may be, Northern Ireland.

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

(e) Sub-paragraph (b) of the renumbered paragraph 6 shall be replaced by the following:-

"(b) for the purposes of determining whether he was an employed earner under the legislation of Great Britain or Northern Ireland or an employed person under the legislation of Gibraltar, by disregarding his absence from those territories".

(f) The renumbered paragraph 10 shall be replaced by the following:-

"10. For the purpose of determining entitlement to benefit in kind pursuant to Articles 22(1)(a) and 31 of this Regulation, the expression "member of the family" shall mean:

(a) as regards the legislation of either Great Britain or Northern Ireland, any person regarded as a dependant within the meaning of the Social Security Act, 1975, or as the case may be, the Social Security (Northern Ireland) Act, 1975 and

(b) as regards the legislation of Gibraltar, any person regarded as a dependant within the meaning of the Group Practice Medical Scheme Ordinance, 1973".

(g) - In the renumbered paragraph 15(1) at line 4, after the words, "under United Kingdom legislation" there shall be added, "save as provided in paragraph 17 below".

- In the renumbered paragraph 15(1)(b) for the words, "lower earnings limit multiplied by 50", there shall be substituted, "level required to make that year a reckonable year within the meaning of the United Kingdom legislation governing the crediting of contributions".

(h) After the renumbered paragraph 16 there shall be added the following:-

"17 (1) For the purpose of calculating under Article 46(2)(a) of this Regulation the theoretical amount of that part of the pension which consists of an additional component under United Kingdom legislation:-

(a) references in Article 47(1)(b) of this Regulation to "wages or salaries, contributions or increases in contributions" shall be construed as meaning surpluses in earnings factors as defined in the Social Security Pensions Act, 1975, or as the case may be, the Social Security Pensions (Northern Ireland) Order, 1975;

(b) an average of the surpluses in earnings factors shall be calculated by virtue of Article 47(1)(b) of this Regulation as construed in sub-paragraph (a) above by dividing the aggregated surpluses recorded under the United Kingdom legislation by the number of income tax years within the meaning of United Kingdom legislation (including part income tax years) completed under that legislation since 6th April, 1978 which occur within the relevant period of insurance.

(2) References in Article 46(2) of this Regulation to periods of insurance or residence shall be construed for the purpose of assessing the amount of that part of the pension which consists of the additional component under United Kingdom legislation as meaning periods of insurance or residence which have been accomplished since 6 April 1978."

Article 2

The Annexes to Regulation (EEC) 574/72 are hereby amended as follows:-

1. In Annex 5, point 3, Belgium-France, there shall be inserted after paragraph (e) the following paragraph:-

"(f) The Agreement of 3 October 1977 implementing Article 92 of Regulation 1408/71 (recovery of social security contributions)."

2. In Annex 5, point 13, Denmark-Luxembourg, for the words "No convention" there shall be substituted the following:-

"The Agreement of 19 June 1978 concerning the reciprocal waiving of reimbursement provided for in Articles 36(3), 63(3) and 70(3) of the Regulation and Article 105(2) of the implementing Regulation (costs in respect of benefits in kind for sickness, maternity, accidents at work and occupational diseases and costs of unemployment benefit and administrative checks and medical examinations)".

3. In Annex 5, point 16, Germany-France, after paragraph (b) there shall be added the following:-

"(c) The Agreement of 14 October 1977 concerning the waiving of reimbursement provided for in Article 70(3) of the Regulation (costs of unemployment benefit)."

4. In Annex 5, point 21, Germany-United Kingdom, the following amendments shall be made:-

(i) The existing paragraph shall be lettered "(a)".

(ii) After paragraph (a), there shall be inserted the following:-

"(b) The Agreement of 29 April 1977 concerning the reciprocal waiving of reimbursement of costs as provided for in Articles 36(3), 63(3) and 70(3) of the Regulation and Article 105(2) of the implementing Regulation (costs in respect of benefits in kind for sickness, maternity, accidents at work and occupational diseases and costs of unemployment benefit and costs of administrative checks and medical examinations)."

5. In Annex 5, point 29, Ireland-Netherlands, for the entry "No convention", there shall be substituted the following:-

"The exchange of letters of 28 July 1978 and 10 October 1978 regarding Articles 36 (3) and 63 (3) of the Regulation (partial reciprocal waiving of reimbursement of costs of benefits in kind in respect of sickness or maternity, accidents at work and occupational diseases)."

6. In Annex 6 in the paragraph entitled "General observation" for the words "Payments of arrears and other single payments shall be made", there shall be substituted "Payments of arrears and other single payments shall in principle be made".

7. In Annex 10, C. Germany, paragraph 7 (a), second column, for the reference, "Annex 3 Section B (2) (b)" there shall be substituted the following, "Annex 3 Section C (2) (b)".

Article 3

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

Article 1.2(a) shall apply with effect from 1 July 1977.

Article 1.2(b) shall apply with effect from 1 August 1977.

Article 1.3 (a), (b), (d), (e) and (f) in so far as they concern Gibraltar, shall apply with effect from 1 April 1973.

Article 1.3 (a), (b), (c) (in relation to the revocation of paragraph 4 of Annex V.I. of Regulation 1408/71), (e) and (f), in so far as they concern Great Britain and Northern Ireland, shall apply with effect from 6 April 1975.

Article 1.3 (c) shall apply as regards the deletion of paragraph 11 of Annex V.I. or Regulation 1408/71 with effect from 2 January 1977.

Article 1.3 (d), in so far as it concerns Great Britain and Northern Ireland, shall apply with effect from 4 April 1977.

Article 1.1,3(g) and (h) shall apply with effect from 6 April 1978.

Article 2.1 shall apply with effect from 1 May 1978.

Article 2.2 shall apply with effect from 1 April 1973.

Article 2.3 shall apply with effect from 27 April 1978.

Article 2.4 shall apply with effect from 28 December 1977.

Article 2.5 shall apply with effect from 1 April 1973.

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

Done at Brussels,

For the Council :

EXPLANATORY MEMORANDUM

of the proposal for a Council Regulation
concerning the amendment of the Annexes to Regulations (EEC)
Nos. 1408/71 and 574/72
on the application of social security schemes
to employed persons and their families
moving within the Community

1.1 Annex III, Point I, United Kingdom

The United Kingdom legislation of 1971 referred to in the existing entry of Annex III has been superseded by the Social Security Act, 1975, the Social Security Pensions Act, 1975, the Social Security (Northern Ireland) Act, 1975 and the Social Security Pensions (Northern Ireland) Order, 1975. As from 6th April, 1979, invalidity pensions payable under the new legislation to persons who have contributed to the United Kingdom scheme as employed earners will consist of two components - a flat-rate basic component and an earnings related additional component. The basic qualifying conditions for invalidity pension and the nature of the benefit as a whole, remain unchanged. The amendment reflects the changes in United Kingdom legislation.

1.2.(a) Annex V C. paragraph 7 of Regulation 1408/71

As a result of amendments to the Reich insurance code (RVO) and the law concerning sickness insurance for farmers, the lump sum contributions now granted are intended to ensure that the examinations required for an adequate and effective medical treatment during pregnancy and after confinement are undergone. Therefore the present reference in paragraph 7 to a lump sum as a contribution "towards confinement expenses" is not justified even though there has been no change as regards its being a benefit in kind within the meaning of Regulation 1408/71. The lump sum contribution is granted in conjunction with the benefit in kind of "medical treatment" and the present amendment seeks to reflect this change.

1.2.(b) Annex V C. paragraph 10 of Regulation 1408/71

In the Federal Republic of Germany since 1st July, 1977 the law curbing the cost of health insurance has entered into force (Krankenversicherungs-Kostendämpfungsgesetz). As a result the internal rules for financial equalization between German health insurance institutions in the sickness insurance scheme for pensioners have been changed and there is now a need to modify the accounting procedure and financial equalization among the German institutions in cases where they have provided benefits in kind on behalf of the institutions of other Member States and where the costs of such benefits are required to be refunded in a lump sum in compliance with Article 95 of Regulation No 574/72.

The addition at Annex V C. paragraph 10 seeks to meet that need; it is a device to meet the internal accounting procedures of the Federal Republic of Germany.

The amendments affect neither the persons insured nor the institutions of the Member States.

1.3.(a) Annex V.I. paragraph 1 of Regulation 1408/71

The Social Security Act, 1975 and the Social Security (Northern Ireland) Act, 1975 each introduced new terminology so as to describe employed workers who were insured under those Acts. The new terminology refers to such persons as "employed earners". There has, however, been no such change under the legislation of Gibraltar.

By up-dating references to national legislation, the present amendment seeks to facilitate the identification of "workers" insured in the United Kingdom schemes for the purposes of Community social security law.

1.3.(b) Annex V.I. paragraph 2 of Regulation 1408/71

The present entry at paragraph 2 is designed to assist a worker who has been employed in a Member State other than the United Kingdom to take account of such employment so as to satisfy the United Kingdom's qualifying contribution conditions and thereby benefit from the award of credited contributions in respect of periods of incapacity, pregnancy or unemployment under the United Kingdom legislation in force prior to 1975. Under the Social Security Act, 1975 and the Social Security (Northern Ireland) Act, 1975, these qualifying contribution conditions no longer exist and the paragraph has no relevance now for British or Northern Ireland legislation. However, the paragraph is still valid in the context of Gibraltar legislation and should be retained but amended so as to apply only to Gibraltar.

1.3.(c) Annex V.I. paragraph 4 of Regulation 1408/71

The present paragraph 4 was inserted so as to provide for the special residence condition imposed by Northern Ireland legislation in relation to unemployment benefit. That residence condition was not renewed when the Social Security (Northern Ireland) Act, 1975 came into force; paragraph 4 is therefore now otiose.

1.3.(d) Annex V.I. paragraph 5 (now renumbered (4)) of Regulation 1408/71

Under United Kingdom law, the Child Benefit Act, 1975 and the Child Benefit (Northern Ireland) Order, 1975 provide for the replacement of family allowances in Great Britain and Northern Ireland as from 4th April, 1977 by a new benefit which is called "child benefit". Child Benefit was put into payment at a rate similar to that of the former family allowance but unlike that allowance, child benefit is now payable in respect of the first child also.

The family allowance scheme in Gibraltar remains unchanged.

The qualifying conditions for child benefit do not require the place of birth of a worker, or of the children or dependents to be in the United Kingdom. In this respect the family allowance legislation of Gibraltar is the same. Paragraph 5 (a) of Annex V I. is therefore now otiose.

Although, generally, a person cannot acquire entitlement to child benefit unless he is in Great Britain or Northern Ireland and has been there for more than a stipulated period (at present 182 days in the preceding 52 weeks), this latter condition is deemed to be

satisfied if the person has started work as an employed earner and intends to stay or reside in Great Britain or Northern Ireland for 182 consecutive days (disregarding up to 28 days of temporary absence). In the generality of cases persons who become subject to United Kingdom legislation by virtue of Regulation 1408/71 will satisfy the "presence test" on that basis. Problems can arise, however, for smaller categories of persons, for example, seasonal workers, frontier workers or other workers who, by virtue of Regulation 1408/71, have become subject to United Kingdom legislation (e.g. mariners on a British ship); such a person may find difficulty in satisfying the above-mentioned presence test so as to be able to acquire entitlement to United Kingdom child benefit. Similar difficulties exist under Gibraltar legislation.

The amendments proposed develop the existing paragraph 5 (b) which relates only to the case of a person who is subject to United Kingdom legislation by virtue of Title II of Regulation 1408/71. It also extends the provision to the case of an unemployed person who returns to the United Kingdom in the circumstances envisaged in Article 71 (1) (a) (ii) or (b) (ii) and who is thereby entitled to United Kingdom unemployment benefit. Such person might well have difficulty in satisfying the United Kingdom conditions concerning "the period of presence" test in the United Kingdom.

The unemployed person is thereby allowed to treat periods of insurance or employment effected in other Member States as presence within the United Kingdom so as to satisfy the period of presence test imposed by United Kingdom legislation for the purpose of receiving its child benefit. This rule is applied by analogy to Gibraltar for the purpose of receiving family allowances.

1.3.(e) Annex V.I. paragraph 7 (now renumbered paragraph 6) of Regulation 1408/71

The amendment to the renumbered paragraph 6 (b) has been effected

for the reasons already given at paragraph 1.3 (a) above. The amendment is purely technical and the purport of the provision will remain unaltered.

1.3.(f) Annex V.I. paragraph 11 of Regulation 1408/71

As from the 2nd January, 1977 the special arrangements set out in paragraph 11 for the calculation of United Kingdom earnings related supplements were no longer needed. Earnings related supplements are now payable under new United Kingdom legislation but they are calculated by reference to earnings factors and the provisions now contained at the renumbered paragraph 15 of Annex V.I. of Regulation 1408/71 serve for the purpose of determining such factors.

Paragraph 11 is therefore being revoked (see Article 1.3 (c) of the proposal).

1.3.(g) Annex V.I. paragraph 12 (now renumbered 10) of Regulation 1408/71

The United Kingdom National Insurance Act and legislation on accidents at work which are mentioned in the present paragraph 12 have been repealed and replaced by the Social Security Act, 1975 and the Social Security (Northern Ireland) Act, 1975.

The paragraph has been amended so as to reflect this fact and also so as to make precise reference to the relevant Gibraltar legislation.

1.3.(h) Annex V.I. new paragraph 17 of Regulation 1408/71

Retirement and Widows' Pensions paid under the United Kingdom's Social Security Act, 1975 and Social Security (Northern Ireland) Act, 1975 are flat-rate; however, by virtue of that Member State's Social Security Pensions Act, 1975 and Social Security Pensions (Northern Ireland) Order, 1975 provision is made for improved benefits in respect of retirement and widowhood. As from 6th April, 1979 persons who have contributed as employed earners (and the widows of men who have so contributed) will be able to qualify for an earnings related pension in addition to the flat-rate pension referred to above.

Entitlement to the additional pension will be acquired by the means of contributions payable at an increased rate as from 6th April, 1978.

That element of the retirement or widow's pension which is flat-rate will be known as "the basic component" and the new element, the earnings related pension, will be known as "the additional component". These two elements will constitute the employed earner's total prospective pension entitlement under the United Kingdom social security scheme. The two elements are, however, quite distinct both in regard to their individual characteristics and to their respective qualifying conditions. For instance the basic component is flat-rate whereas the additional component is earnings-related; again each element may be awarded irrespective of whether entitlement exists for the other.

The distinction is more apparent when one considers the fundamental differences in the qualifying conditions. The contribution conditions for the basic component are related to the annual earnings factors achieved by an employed earner over the whole of his working life. It should be stated at this juncture that in the United Kingdom an employed earner pays, by way of social security contributions, a statutorily fixed percentage of his income which falls above a certain threshold and referred to as the lower earnings limit (as from 6th April, 1978 the weekly lower earnings limit is £ 17.50) and below a certain ceiling and referred to as an upper earnings limit (as from 6th April, 1978 the weekly upper earnings limit is £ 120). These contributions are converted annually and by reference to tables into earnings factors which are then entered on the employed earner's insurance record.

So as to obtain entitlement to the basic component retirement or widow's pension a minimum number of qualifying years must have been achieved (broadly, 9/10ths of the number of years between age 16 and the date of retirement or death, as appropriate), in which the earnings factor has reached at least 52 times the weekly lower earnings limit. For instance as from 6th April, 1978 the weekly lower earnings limit has been £17.50 and on an annual basis this represents £ 910 i.e. 52x £17.50. For 1978 the employed earner's earnings factor must have reached at least £ 910.

When examining the earnings factors achieved during an insurance career for the purpose of entitlement to a basic pension, the earnings factors achieved in different years cannot be aggregated in order to make good a deficiency in the record. The test is therefore conducted on a year by year basis covering virtually the entire period of a person's insurance career.

On the other hand, entitlement to the additional component will be calculated by reference to the aggregated amount of the revalued annual surpluses in earnings factors which the employed earner has accumulated over his best 20 years of insurance as from 6th April, 1978. For this purpose the surplus in any one year will be the amount by which the earnings factor for the year exceeds that which is needed for the basic component. Therefore, for example, the maximum achievable surplus in the year beginning 6th April, 1978 will be £ 5330.00, this represents 52 times the weekly upper earnings limit for that year i.e. $52 \times \text{£ } 120 = \text{£ } 6240$, less the £ 910 referred to above.

The formulae incorporated in the present paragraph 17 (1) of Annex V.I. and which were devised for the basic flat-rate benefit will still be applicable in respect of that element of the pension; for these purposes the value of the contributions deemed to be paid in respect of insurance or residence accomplished as a worker in another Member State is immaterial, provided the qualifying level of 52 times the weekly lower earnings limit is reached.

However, it would be inappropriate to apply the formulae in the present paragraph 17 (1) to the additional component, since the value of the contributions paid and which lies between the qualifying level for a basic pension and 52 times the weekly upper earnings limit will be a vital factor in establishing the amount of the additional component to which the employed earner is entitled.

So as to enable the United Kingdom authorities to apply Regulation 1408/71 in relation to claims for a prorata entitlement to the additional component pension in respect of retirement or survivors, paragraph 17 has been added.

Paragraph 17(1)(a) and (b) implement Article 47 (1) (b) of Regulation 1408/71 when assessing that theoretical amount of the United Kingdom additional component pension which would be payable by virtue of Article 46 (2) (a) of Regulation 1408/71 if all periods accomplished in all Member States since 6th April, 1978 had been accomplished within the United Kingdom.

Paragraph 17 (2) is designed to ensure that when periods accomplished in another Member State have been aggregated with those completed in the United Kingdom, the assessment of the pension is effected only on the basis of periods effected after 6th April, 1978. This is required because the additional component pension is only payable in the United Kingdom in respect of periods posterior to that date.

1.3.(i) Annex V.I., amendments to renumbered paragraph 15 to Regulation 1408/71

The first amendment to the renumbered paragraph 15 (1) is consequential upon the addition of the new paragraph 17. It is intended to make clear that paragraph 17 and not paragraph 15 is to be used for the calculation of the United Kingdom additional component pension.

The amendment to paragraph 15 (1) (b) results from a modification to United Kingdom domestic legislation. Broadly, the position was that up to 6th April, 1978, one of the conditions for most benefits payable under the scheme (including retirement and widow's pension) was that the earnings factors derived from contributions must not be less than the lower earnings limit fixed for the year in question multiplied by 50. It is this condition which paragraph 15 (1) (b) currently reflects. However, as from the above date the Social Security (Pensions) Act, 1975 and the Social Security Pensions (Northern Ireland) Order, 1975 impose a factor of 52 instead of 50 for the purposes of retirement and widows' pensions. Whilst the factor of 50 still holds good for other benefits the provision needs amending to cater for pensions. The proposed amendment seeks to meet this need.

2.1. Annex 5 point 3., Belgium-France, to Regulation 574/72

Under the provisions of Article 92 (1) of Regulation 1408/71 contributions payable to an institution of one Member State may be collected in the territory of another Member State. Article 92 (2) of the same Regulation allows for agreements to be concluded between Member States to this end. Such agreements are required by virtue of Article 116 (1) of Regulation 574/72 to be entered in Annex 5 of the aforesaid Regulation. Belgium and France concluded such an agreement on 3rd October, 1977 and Article 2.1. records that agreement in Annex 5.

2.2. Annex 5 point 13., Denmark-Luxembourg, to Regulation 574/72

Under the provisions of Articles 36 (3), 63 (3) and 70 (3) of Regulation 1408/71 and Article 105 (2) of Regulation 574/72 Member States may, inter alia, reach agreement for the waiving of reimbursement of costs incurred by the competent institution of one Member State on behalf of another. The provisions cited cover waiver agreements in respect of costs incurred for sickness, maternity benefits, accidents at work, occupational diseases, unemployment benefits and administrative checks and medical examinations.

Under the provisions of Articles 104 (2) and 105 (2) of Regulation 574/72 where such agreements are reached they require to be entered in Annex 5 of the aforesaid Regulation.

Article 2. 2 recites an agreement of 19th June, 1978 concluded between Denmark and Luxembourg and which provides for waiver of reimbursement in respect of costs incurred for benefits in kind provided in cases of sickness, maternity and accidents at work and occupational diseases, and costs of unemployment benefit and administrative checks and medical examinations.

2.3. Annex 5, point 16., Germany-France, to Regulation 574/72

Article 2. 3 recites an agreement of 14th October, 1977 concluded between France and the Federal Republic of Germany concerning the waiving of reimbursement of costs of unemployment benefit.

2.4. Annex 5 point 21., Germany-United Kingdom, to Regulation 574/72

Article 2. 4 recites an agreement of 29th April, 1977 concluded between the Federal Republic of Germany and the United Kingdom concerning the waiving of reimbursement of costs in respect of benefits in kind for sickness, maternity, accidents at work and occupational diseases and of costs of unemployment benefits and costs of administrative checks and medical examinations.

2.5. Annex 5 point 21., Ireland-Netherlands, to Regulation 574/72

Article 2. 5 recites an exchange of letters dated 28th July, 1978 and 10th October, 1978 between Ireland and the Netherlands concerning partial waiving of reimbursement of costs in respect of benefits in kind for sickness, maternity, accidents at work and occupational diseases.

2.6. Annex 6 to Regulation 574/72

The object of the proposed amendment at Article 2. 6 is both to simplify and speed up the procedure for payment of arrears and other single payments to beneficiaries. The present situation is that where a beneficiary is resident in the territory of one Member State and is entitled to the payment of arrears or a single payment from another Member State, that payment is made through one of the liaison bodies mentioned at Annex 4.

This method is justified in cases where, for the settlement of claims for refunds made by the Member States of residence, deductions are made from amounts of pensions payable by the institution of another Member State. Such procedure is provided for in Article 111 of Regulation 574/72.

However, where no such refunds are due, there seems no valid reason for insisting that the payment be made through those liaison bodies listed in Annex 4. On the contrary, such insistence may well result in delaying payment to beneficiaries because channels have to be gone through which might be avoided. Also it may be added that the extra administrative work involved in using liaison bodies is unnecessary.

For these reasons it is proposed that the possibility should exist of obviating the need to use liaison bodies in all cases.

2.7. Annex 10 C. Germany, paragraph 7 (a), of Regulation 574/72

On the occasion of the adhesion of the new Member States, Regulation 574/72 underwent a series of amendments. Those amendments were included in Council Regulation 878/73 (1) and at Article 1.35 thereof, inter alia, the section heading in respect of the Federal Republic of Germany was changed from "B. Germany" to "C. Germany". Due to an oversight a similar reference at paragraph 7 (a), second column, of the new Annex 10 C. was not also carried out. The present modification contained at Article 2.7 seeks to rectify this situation. The modification concerns only the Federal Republic of Germany.

(1) O.J. No. L 86 of 31.3.1973, page 1.