

New social security agreement between Switzerland and the United Kingdom

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In order to ensure the long term coordination of social insurance between Switzerland and the United Kingdom, the two countries swiftly negotiated a new social security agreement following the United Kingdom's departure from the EU. This is part of the Federal Council's Mind the Gap strategy.

In relation to the Member States of the European Union (EU), Switzerland coordinates its social insurance within the framework of the [Agreement on the free movement of persons between Switzerland and the EU](#) (FMOPA, SR 0.142.112.681). Owing to Brexit, the FMOPA ceased to apply to the United Kingdom (UK) after 31 December 2020. The bilateral [Social security agreement of 1968](#) (SR 0.831.109367.1), which had been suspended when the FMOPA came into force, then came back into effect. Since the 1968 agreement was not an equivalent substitute because it only covered pension insurance and had never been updated, the two countries had to negotiate a new convention swiftly.

At the last minute, the EU and the UK agreed upon a [Trade and Cooperation Agreement](#) (OJ 2021 L 149/10), which also coordinates social insurance and came into force on 1 January 2021. As the UK wanted to conclude the agreement with the EU first, the negotiations on a new social security agreement with Switzerland could not start until the beginning of 2021.

As part of its Mind the Gap strategy, the Federal Council had decided that the existing rights and obligations between Switzerland and the UK under the FMOPA should be safeguarded as far as possible. The negotiations resulted in a comprehensive regulation on the coordination of social security systems between the EU and the UK; it has a reduced scope of application and has been tailored to the bilateral relations between the two countries.

The agreement was signed in London by Federal Councillor Alain Berset, head of the Federal Department of Home Affairs, in September 2021, and it provisionally applies as of 1 November 2021. This means that the negative effects of the coordination gap will be limited in time for insured persons, companies and implementing bodies. The agreement will take definitive effect as soon as it is approved by the parliaments of the two countries.

Major transplantation of the EU–UK agreement

The [new agreement](#) is based on the Trade and Cooperation Agreement between the EU and the UK, which contains many provisions of EU legislation on the coordination of social security ([Regulation \(EC\) No. 883/2004](#), SR 0.831.109.268.1). Therefore, numerous clauses are identical to the provisions of the FMOPA. Based on [European Regulation \(EC\) No. 987/2009](#) (SR 0.831.109.268.11), the agreement also sets forth very detailed implementation provisions in Annex 1. This deliberate transposition of content ensures a certain continuity as regards the provisions of the FMOPA, as well as uniformity between the applicable laws on social security coordination in Europe.

Bilateral coordination and application to EU nationals

Unlike the FMOPA, the agreement contains bilateral provisions only; these exclusively coordinate the social insurance systems of Switzerland and the UK. The provisions of the agreement apply to Switzerland on the one hand and the UK and Gibraltar on the other. The social security agreement of 1968 continues to apply to the Isle of Man and to the islands of Jersey, Guernsey, Alderney, Herm and Jethou.

The convention applies not only to nationals of the contracting states, but also to EU nationals, which is rather unusual for a Swiss bilateral social security agreement. This extension of the personal scope is justified by the need to establish new rules on relations with a former EU Member State whose previously accepted rights and obligations do not simply expire after Brexit. Furthermore, Swiss nationals are also covered by the agreement between the UK and the EU. This means that, in principle, the EU Member States, Switzerland and the UK will all apply equivalent provisions. The UK is even unilaterally applying the agreement to nationals of third countries, with one exception. Conversely, Switzerland takes third-country nationals into account only when determining the applicable legislation.

Example 1: Since third-country nationals are also covered by the agreement as regards social insurance coverage, a citizen of North Macedonia who works in Switzerland can be posted to the UK.

Example 2: Switzerland does not include third-country nationals in the scope of application of the new social security agreement (only when determining the applicable law). Therefore, a South African citizen who is covered by health insurance in the UK, cannot claim benefits from a Swiss service provider using the European Health Insurance Card.

Example 3: A German citizen who is covered by health insurance in Switzerland but lives in the UK falls within the scope of the new agreement. She can register in the UK to be entitled to healthcare.

Same coordination, reduced scope of application

The new social security agreement contains the same coordination principles as the FMOPA (equal treatment; determination of the applicable legislation; aggregation of insurance periods, exportability of benefits, administrative assistance and cooperation between authorities and institutions). However, its scope covers fewer benefits than the FMOPA, but more than the bilateral agreements with countries outside the EU/EFTA. On the Swiss side, the new agreement coordinates not only old age and survivors' insurance (OASI) and invalidity insurance (IV), but also health and accident insurance and, to a limited extent, unemployment insurance.

As in the FMOPA, reciprocal healthcare (entitlement to healthcare and cost reimbursement procedures between institutions) is included under health and accident insurance. People who are living or staying in the other country can therefore claim benefits in that country in the event of an accident or illness. Subsequently, these benefits are refunded directly to the service provider by the person's own health or accident insurance.

Example: Swiss tourists who have to go to hospital while on holiday in the UK can show their European Health Insurance Card (printed on the back of the insurance card issued by the health insurer). They will get medical care as though they were insured in the UK and are not required to make an advance payment. The costs are billed to the Swiss health insurance by the British social security authority.

It is intended to exchange information electronically in order to implement the agreement, either by using [EESSI](#) (Electronic Exchange of Social Security Information), which Switzerland uses in relation to the FMOPA, or an equivalent system. The Joint Administrative Committee will decide on the details.

Significant deviations from EU law

Switzerland was willing to accept the deviations from the EU legislation on social security coordination that the UK and the EU had agreed on in their treaty. In return, the UK also accepted certain deviations from the EU coordination legislation that Switzerland requested. The main differences from the EU legislation and from particular agreements that previously applied under the terms of the FMOPA were to do with invalidity benefits, occupational pension assets, family allowances, unemployment insurance, certain means-tested benefits, and access to the voluntary OASI scheme.

Invalidity benefits and occupational pension assets

A key difference from the EU coordination legislation obtained by the UK is the non-exportability of invalidity benefits. Since existing rights are protected under the [Citizens' Rights Agreement](#) (SR 0.142.113.672), this change will only take effect in the medium term and in particular circumstances. However, the exportability of Swiss invalidity benefits to Swiss and EU/EFTA nationals continues to be guaranteed under Swiss law and on the basis of the FMOPA and the EFTA Convention.

Unlike the FMOPA, the new agreement excludes the coordination of occupational pensions. Whereas the FMOPA restricts the cash payment of benefits from the compulsory scheme to persons who have moved permanently to an EU or EFTA Member State, cash payment is allowed without restriction as regards the UK.

Child allowances and unemployment benefits

Family allowances are also outside the scope of application. National law is applicable. Consequently, children who reside in the UK are not eligible for family allowances.

Example: A UK citizen working in Switzerland has no entitlement to Swiss child allowances or education allowances for his children resident in the UK.

Unlike the FMOPA, the agreement does not provide for the export or reimbursement of unemployment benefits.

Supplementary benefits, helplessness allowances and transition benefits

Whereas the FMOPA only excepts them from being exported, special non-contributory cash benefits, such as benefits paid in supplement to OASI or IV, and benefits for those in need of long-term care, such as helplessness allowances, are not covered at all by the agreement. For access to these benefits, only domestic law is applicable. The same is true of early retirement benefits, in relation to which Swiss law alone applies to all British nationals as regards meeting the eligibility conditions and calculating Swiss transition benefits.

Access to the voluntary OASI/IV schemes

In contrast to the FMOPA, access to the voluntary OASI/IV schemes is an exception to the rules on equal treatment in the newly negotiated agreement, and British nationals can no longer join this type of scheme. Now that the UK is no longer a member of the EU, Swiss and EU citizens who move to the UK after the FMOPA has lapsed may join the voluntary OASI/IV schemes, provided that they were insured under the Swiss mandatory OASI/IV schemes for at least five consecutive years immediately beforehand.

Citizens' Rights Agreement takes precedence

The new social security agreement contains a proviso regarding the agreement on citizens' rights. If a person is subject to this agreement, the provisions of European coordination law apply instead of the social security agreement (see Fréchelin, Kati [2021]. Citizens' Rights Agreement: protecting the rights acquired under the Agreement on the free movement of persons. *Social Security CHSS*).

Example: A UK national falls ill on 1 December 2021 and subsequently meets the conditions for an invalidity pension. He was insured in Switzerland between 2014 and 2020. Since the insurance periods were completed under the scope of the FMOPA, it is the Citizens' Rights Agreement rather than the bilateral social security agreement which will apply to his pension entitlement. His invalidity pension may therefore be exported to the UK.

Summary

The new social security agreement between Switzerland and the UK is a blend of the rules on social insurance coordination under the FMOPA and those under the relevant bilateral agreements that Switzerland has concluded with countries outside the EU/EFTA. Thus, Switzerland is on familiar ground. Furthermore, the other parties involved are also conversant with the proposed rules. The implementation of the new agreement is therefore unlikely to present any difficulties. In fact, there is every prospect that relations with the UK will be simplified and normalised.