

SCHEDULES

SCHEDULE 2

Regulation 2(b)

Amendments to Title 2: Determination of the legislation applicable

1. Before Article 13 insert—

“Article A13

Purpose of this Title

This Title contains provisions that determine for the purposes of this Regulation—

- (a) which persons to whom this Regulations applies are subject to the legislation of the United Kingdom; and
- (b) which persons to whom this Regulation applies are treated as being subject to the legislation of a Member State.”.

2. In Article 13—

- (a) for paragraph 1(1) substitute—

“1. The persons subject to the legislation of the United Kingdom, and the persons treated as being subject to the legislation of a Member State, are to be determined in accordance with this Title.

1A. The question of whether a person was subject to the legislation of the United Kingdom at a time before exit day is to be determined as it would have been determined immediately before exit day.”;

- (b) in paragraph 2 after “to 17,” insert “on or after exit day, the following persons are subject to the legislation of the United Kingdom”;

- (c) in paragraph 2(a)—

- (i) for “one Member State shall be subject to the legislation of that State” substitute “the United Kingdom”;

- (ii) for “another Member State” in both places it occurs substitute “a Member State”;

- (d) in paragraph 2(b)—

- (i) for “one Member State shall be subjected to the legislation of that State” substitute “the United Kingdom”;

- (ii) for “another Member State” substitute “a Member State”;

- (e) in paragraph 2(c) for “a Member State shall be subject to the legislation of the State” substitute “the United Kingdom”;

- (f) in paragraph 2(d) for “shall be subject to the legislation of the Member State to which the administration employing them is subject” substitute “if the administration employing those persons is subject to the legislation of the United Kingdom”;

- (g) for paragraph 2(e) and (f) substitute—

(1) Paragraph 1 of Article 13 was substituted by Regulation No 1606/98.

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- “(e) a person called up or recalled for service in the armed forces, or for civilian service, in the United Kingdom (if entitlement under the legislation of the United Kingdom is subject to the completion of periods of insurance before entry into or after release from such military or civilian service, periods of insurance completed under the legislation of any Member State shall be taken into account, to the extent necessary, as if they were periods of insurance completed under the legislation of the United Kingdom. The employed or self-employed person called up or recalled for service in the armed forces or for civilian service shall retain the status of employed or self-employed person);
 - (f) a person to whom sub-paragraphs (a) to (e) do not apply if:
 - (i) the person resides in the United Kingdom; and
 - (ii) the person is not treated as being subject to the legislation of a Member State in accordance with paragraph 4.”;
 - (h) after paragraph 2 insert—
 - “3. The question of whether a person was subject to the legislation of a Member State (other than the United Kingdom) at a time before exit day is to be determined as it would have been determined immediately before exit day.
 - 4. Subject to Articles 14 to 17, on or after exit day the following persons are treated as being subject to the legislation of a Member State:
 - (a) a person employed in the territory of that Member State even if he resides in the territory of another State or if the registered office or place of business of the undertaking or individual employing him is situated in the territory of another State;
 - (b) a person who is self-employed in the territory of that Member State even if he resides in the territory of another State;
 - (c) a person employed on board a vessel flying the flag of that Member State;
 - (d) civil servants and persons treated as such if the administration employing those persons is subject to the legislation of that Member State;
 - (e) a person called up or recalled for service in the armed forces, or for civilian service, in that Member State;
 - (f) a person to whom the legislation of a State ceases to be applicable, without the legislation of another State becoming applicable to him in accordance with one of the rules laid down in this Article or in accordance with one of the exceptions or special provisions laid down in Articles 14 to 17 if he resides in the territory of that Member State.”.
3. For Articles 14 to 14d(2) substitute—

“Article 14

Special rules applicable to persons, other than mariners, engaged in paid employment

Articles 13(2)(a) and 13(4)(a) shall apply subject to the following exceptions and circumstances:

- (a) A person employed in the territory of the United Kingdom by a undertaking to which he is normally attached who is posted by that undertaking to the territory of a Member State to perform work there for that undertaking shall continue to be subject to the legislation of the United Kingdom, provided that the anticipated

(2) Paragraph 1 of Article 14d was substituted by Regulation No 1606/98.

duration of that work does not exceed 12 months and that he is not sent to replace another person who has completed his term of posting.

- (b) If the duration of the work to be done extends beyond the duration originally anticipated, owing to unforeseeable circumstances, and exceeds 12 months, the legislation of the United Kingdom shall continue to apply until the completion of such work.
- (a) A person employed in the territory of a Member State by a undertaking to which he is normally attached who is posted by that undertaking to the territory of the United Kingdom to perform work there for that undertaking shall continue to be treated as being subject to the legislation of that Member State, provided that the anticipated duration of that work does not exceed 12 months and that he is not sent to replace another person who has completed his term of posting.
- (b) If the duration of the work to be done extends beyond the duration originally anticipated, owing to unforeseeable circumstances, and exceeds 12 months, the person shall be treated as being subject to the legislation of the Member State until the completion of such work.

2. Paragraphs 2A to 2E apply in the case of a person normally employed in the territory of two or more States.

2A. A person who is a member of the travelling or flying personnel of an undertaking which, for hire or reward or on its own account, operates international transport services for passengers or goods by rail, road, air or inland waterway and has its registered office or place of business in the territory of a State shall (subject to paragraphs 2B and 2C) be:

- (a) subject to the legislation of the United Kingdom if the undertaking has its registered office or place of business in the territory of the United Kingdom; or
- (b) treated as being subject to the legislation of a Member State if the undertaking has its registered office or place of business in the territory of a Member State.

2B. Where the undertaking in paragraph 2A has a branch or permanent representation in the territory of a State other than that in which it has its registered office or place of business, a person employed by such branch or permanent representation shall (subject to paragraph 2C) be:

- (a) subject to the legislation of the United Kingdom if such branch or permanent representation is situated in the territory of the United Kingdom; or
- (b) treated as being subject to the legislation of a Member State if such branch or permanent representation is situated in the territory of a Member State.

2C. Where a person is employed principally in the territory of the State in which he resides, he shall be:

- (a) subject to the legislation of the United Kingdom if he resides in the United Kingdom (even if the undertaking which employs him has no registered office or place of business or branch or permanent representation in the territory of the United Kingdom); or
- (b) treated as being subject to the legislation of a Member State if he resides in a Member State (even if the undertaking which employs him has no registered office or place of business or branch or permanent representation in the territory of that Member State).

2D. A person other than a person referred to in paragraphs 2A to 2C shall be:

- (a) subject to the legislation of the United Kingdom if:
 - (i) he resides in the territory of the United Kingdom, and

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- (ii) he pursues his activity partly in the territory of the United Kingdom, or he is attached to several undertakings or several employers who have their registered offices or places of business in the territory of different States; or
- (b) treated as being subject to the legislation of a Member State if:
 - (i) he resides in the territory of that Member State, and
 - (ii) he pursues his activity partly in the territory of that Member State, or he is attached to several undertakings or several employers who have their registered offices or places of business in the territory of different States.

2E. Where the person in paragraph 2D does not reside in the territory of the State in which he is pursuing his activity, he shall be:

- (a) subject to the legislation of the United Kingdom if the registered office or place of business of the undertaking or individual employing him is situated in the territory of the United Kingdom; or
- (b) treated as being subject to the legislation of a Member State if the registered office or place of business of the undertaking or individual employing him is situated in the territory of a Member State.
- (a) A person who is employed in the territory of one Member State by an undertaking which has its registered office or place of business in the territory of the United Kingdom and which straddles the common frontier of those States shall be subject to the legislation of the United Kingdom.
- (b) A person who is employed in the territory of the United Kingdom by an undertaking which has its registered office or place of business in the territory of a Member State and which straddles the common frontier of those States shall be treated as subject to the legislation of a Member State.

Article 14a

Special rules applicable to persons, other than mariners, who are self-employed

Articles 13(2)(b) and 13(4)(b) shall apply subject to the following exceptions and circumstances:

- (a) A person normally self-employed in the territory of the United Kingdom and who performs work in the territory of a Member State shall continue to be subject to the legislation of the United Kingdom, provided that the anticipated duration of the work does not exceed 12 months.
- (b) If the duration of the work to be done extends beyond the duration originally anticipated, owing to unforeseeable circumstances, and exceeds 12 months, the legislation of the United Kingdom shall continue to apply until the completion of such work.
- (a) A person normally self-employed in the territory of a Member State and who performs work in the territory of the United Kingdom shall be treated as being subject to the legislation of that Member State provided that the anticipated duration of such activity does not exceed 12 months.
- (b) If the duration of the work to be done extends beyond the duration originally anticipated, owing to unforeseeable circumstances, and exceeds 12 months, the person shall be treated as being subject to the legislation of the Member State until the completion of such work.

2. A person normally self-employed in the territory of the United Kingdom and one or more Member States shall be subject to the legislation of the United Kingdom if he resides

in the United Kingdom and if he pursues any part of his activity in the United Kingdom. If he does not pursue any activity in the territory of the United Kingdom, he shall be treated as being subject to the legislation of the Member State in whose territory he pursues his main activity. The criteria used to determine the principal activity are laid down in the Regulation referred to in Article 98.

- (a) A person who is self-employed in the territory of one Member State by an undertaking which has its registered office or place of business in the territory of the United Kingdom and which straddles the common frontier of those States shall be subject to the legislation of the United Kingdom.
- (b) A person who is self-employed in the territory of the United Kingdom by an undertaking which has its registered office or place of business in the territory of a Member State and which straddles the common frontier of those States shall be treated as subject to the legislation of a Member State.

Article 14b

Special rules application to mariners

Articles 13(2)(c) and 13(4)(c) shall apply subject to the following exceptions and circumstances:

1. A person employed by an undertaking to which he is normally attached, either in the territory of a Member State or on board a vessel flying the flag of a Member State, who is posted by that undertaking on board a vessel flying the flag of the United Kingdom to perform work there for that undertaking shall, subject to the conditions provided in Article 14(1), continue to be treated as being subject to the legislation of the Member State.

1A. A person employed by an undertaking to which he is normally attached, either in the United Kingdom or on board a vessel flying the flag of the United Kingdom, who is posted by that undertaking on board a vessel flying the flag of a Member State to perform work there for that undertaking shall, subject to the conditions provided in Article 14(1), continue to be subject to the legislation of the United Kingdom.

2. A person normally self-employed, either in the territory of a Member State or on board a vessel flying the flag of a Member State and who performs work on his own account on board a vessel flying the flag of the United Kingdom shall, subject to the conditions provided in Article 14a(1), continue to be treated as being subject to the legislation of the Member State.

2A. A person normally self-employed, either in the United Kingdom or on board a vessel flying the flag of the United Kingdom and who performs work on his own account on board a vessel flying the flag of a Member State shall, subject to the conditions provided in Article 14a(1), continue to be subject to the legislation of the United Kingdom.

3. A person who, while not being normally employed at sea, performs work in the territorial waters or in a port of a Member State on a vessel flying the flag of the United Kingdom within those territorial waters or in that port, but is not a member of the crew of the vessel, shall be subject to the legislation of the Member State.

3A. A person who, while not being normally employed at sea, performs work in the territorial waters or in a port of the United Kingdom on a vessel flying the flag of a Member State within those territorial waters or in that port, but is not a member of the crew of the vessel, shall be subject to the legislation of the United Kingdom.

4. A person employed on board a vessel flying the flag of a Member State and remunerated for such employment by an undertaking or a person whose registered office or place of business is in the territory of another Member State shall be treated as being subject

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to the legislation of the latter Member State if he is resident in the territory of that State; the undertaking or person paying the remuneration shall be considered as the employer for the purpose of the said legislation.

4A. A person employed on board a vessel flying the flag of a Member State and remunerated for such employment by an undertaking or a person whose registered office or place of business is in the territory of the United Kingdom shall be subject to the legislation of the United Kingdom if he is resident in the territory of the United Kingdom; the undertaking or person paying the remuneration shall be considered as the employer for the purpose of the said legislation.

5. A person employed on board a vessel flying the flag of the United Kingdom and remunerated for such employment by an undertaking or a person whose registered office or place of business is in the territory of a Member State (“the employer’s Member State”) shall be subject to the legislation of the United Kingdom if he is resident in the United Kingdom or a Member State other than the employer’s Member State. The undertaking or person paying the remuneration shall be considered as the employer for the purpose of the said legislation.

5A. A person employed on board a vessel flying the flag of a Member State and remunerated for such employment by an undertaking or a person whose registered office or place of business is in the territory of the United Kingdom (“the employer’s Member State”) shall be treated as being subject to the legislation of a Member State if he is resident in a Member State other than the employer’s Member State. The undertaking or person paying the remuneration shall be considered as the employer for the purpose of the said legislation.

Article 14c

Special rules applicable to persons who are simultaneously employed in the territory of one State and self-employed in the territory of another State

1. A person who is simultaneously employed in the territory of one State and self-employed in the territory of another State shall:

- (a) be subject to the legislation of the United Kingdom if he is engaged in paid employment there; or
- (b) be treated as being subject to the legislation of a Member State if he is engaged in paid employment in that Member State.

2. Article 14(2), (2A) and (3) shall determine whether a person who is simultaneously employed in the territory of two States and self-employed in the territory of another State is subject to the legislation of the United Kingdom or treated as being subject to the legislation of a Member State.

Article 14d

Miscellaneous provisions

The person referred to in Article 14(1), (1A), (2), (2A) and (3), Article 14a(1), (1A), (2) and (3), Article 14b(1) and (2) and Article 14c shall be treated, for the purposes of application of the legislation laid down in accordance with these provisions, as if he pursued all his professional activity or activities in the State concerned.”.

4. Omit Articles 14e and 14f(3).

(3) Articles 14e and 14f were inserted by Regulation No 1606/98.

5. For Article 15 to 17a substitute—

“Article 15

Rules concerning voluntary insurance or optional continued insurance

Articles 13 to 14d shall not apply to voluntary insurance or to optional continued insurance.

Article 16

*Special rules regarding persons employed by diplomatic missions
and consular posts, and auxiliary staff of the European Communities*

1. The provisions of Articles 13(2)(a) and 13(4)(a) shall apply to persons employed by diplomatic missions and consular posts and to the private domestic staff of agents of such missions or posts.
2. Auxiliary staff of the European Communities may opt to be subject to the legislation of the United Kingdom, in respect of benefits other than those relating to family allowances provided by virtue of their employment with the European Communities if they are:
 - (a) employed in the United Kingdom;
 - (b) subject to the legislation of the United Kingdom immediately before their last employment preceding the commencement of their employment with the European Communities; or
 - (c) nationals of the United Kingdom.
3. This right of option, which may be exercised once only, shall take effect from the date of entry into employment with the European Communities.

Article 17

Exceptions to Articles 13 to 16

Exceptions to Articles 13 to 16 may be made in the interest of certain persons or categories of persons by common agreement between:

- (a) the United Kingdom and one or more Member States;
- (b) Her Majesty’s Revenue and Customs and the competent authority, or authorities, of one or more Member States; or
- (c) a body designated by Her Majesty’s Revenue and Customs and a body designated by the competent authority, or authorities, of one or more Member States.

Article 17a

*Special rules concerning recipients of pensions due
under the legislation of one or more Member States*

The recipient of a pension due under the legislation of a Member State or of pensions due under the legislation of several Member States who resides in the United Kingdom may at his request be exempted from the legislation of the United Kingdom provided that he is not subject to that legislation because of the pursuit of an occupation.”.