

STATES OF JERSEY



DRAFT SOCIAL SECURITY (RECIPROCAL AGREEMENT WITH CHILE) (JERSEY) ACT 201-

**Lodged au Greffe on 31st March 2015
by the Minister for External Relations**

STATES GREFFE



Jersey

DRAFT SOCIAL SECURITY (RECIPROCAL AGREEMENT WITH CHILE) (JERSEY) ACT 201-

REPORT

In 1997 the Chilean Authorities made an approach to the United Kingdom Authorities requesting that consideration be given to establishing a full Social Security Reciprocal Agreement. The United Kingdom responded to say that they would not be prepared to enter a full Agreement, but would be prepared to negotiate a ‘contributions only’ Agreement. Chile agreed to proceed on this basis. As is customary, Jersey, Guernsey and the Isle of Man were separately invited to be included in the Agreement, and all 3 Crown Dependencies agreed. The invitation and response was conveyed through official channels.

The initial round of negotiations was held in Santiago, Chile in January 1998. The next round of negotiations was due to take place in London, which in the event did not take place and negotiations stalled.

The Jersey Social Security Department heard little more about the proposed agreement with Chile until contact was made recently by H.M. Revenue and Customs – Tax Treaty Team. In their communication, they explained that Chile had expressed an interest in resuming talks on a ‘contributions only’ Reciprocal Agreement. The UK authorities agreed to this request and made contact with Jersey, Guernsey and the Isle of Man to ascertain whether they were still minded to be party to an Agreement with Chile.

Negotiations recommenced in early February 2011 and a draft Convention was constructed. The Convention follows the normal structure of a ‘contributions only’ Reciprocal Agreement. The text of the Convention conforms to the usual pattern –

- Article 1 – the interpretation Article which defines the terms used in the Convention
- Article 2 – describes the legislation covered under the Convention
- Article 3 – describes the personal scope of the Convention
- Article 4 – is the main reciprocity or equal treatment provision of the Convention
- Articles 5 to 8 – these Articles determine where contributions should be paid as workers move between countries

- Article 9 – allows the competent Authorities to modify the provisions of the Convention
- Article 10 – deals with administrative arrangements
- Article 11 – provides the means by which any disputes should be resolved
- Articles 12 to 15 – deal with transitional arrangements, the coming into force and life of the Convention and rights of individuals should the Convention be terminated.

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of this draft Act.

Re-issue Note

This Projet is being re-issued because the front cover as originally published showed the lodging Minister as the Chief Minister, instead of the Minister for External Relations.

Explanatory Note

This Act gives effect in Jersey to the convention establishing a reciprocal agreement on social security between the governments of Chile and the United Kingdom, which the States of Jersey agreed should apply to Jersey.

The agreement was signed in Chile on 13th March 2012. The Chilean government notified the UK government of the completion of its procedures under Article 13 of the agreement on 30th October 2013. The UK gave its equivalent notification on 10th March 2015. That will bring the agreement into force on 1st June 2015, as the first day of the third calendar month following the last notification, under Article 13 of the agreement. This Act would therefore come into force on the 1st June 2015, to bring Jersey's social security legislation into line with the agreement on the same date as the agreement itself comes into force.



Jersey

DRAFT SOCIAL SECURITY (RECIPROCAL AGREEMENT WITH CHILE) (JERSEY) ACT 201-

Arrangement

Article

STATES OF JERSEY	1
1 Modification or adaptation of Social Security (Jersey) Law 1974.....	9
2 Citation and commencement.....	9
STATES OF JERSEY	1
SCHEDULE	10
CONVENTION ON SOCIAL SECURITY BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE REPUBLIC OF CHILE	10



Jersey

DRAFT SOCIAL SECURITY (RECIPROCAL AGREEMENT WITH CHILE) (JERSEY) ACT 201-

Made [date to be inserted]

Coming into force [date to be inserted]

THE STATES, in pursuance of Article 48 of the Social Security (Jersey) Law 1974¹, have made the following Act –

1 Modification or adaptation of Social Security (Jersey) Law 1974

- (1) The Social Security (Jersey) Law 1974² is to be read as modified or adapted, in its application to cases affected by the reciprocal agreement with Chile, to the extent required by that agreement for the purpose of giving effect to that agreement.
- (2) The reciprocal agreement with Chile referred to in paragraph (1) is the Convention on Social Security between the Republic of Chile and the United Kingdom of Great Britain and Northern Ireland signed on behalf of the respective Governments of those countries at Santiago in Chile on 13th March 2012, the text of which is set out in the Schedule to this Act.

2 Citation and commencement

This Act may be cited as the Social Security (Reciprocal Agreement with Chile) (Jersey) Act 201- and comes into force on 1st June 2015.

SCHEDULE

(Article 1)

**CONVENTION ON SOCIAL SECURITY BETWEEN THE GOVERNMENT
OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN
IRELAND AND THE GOVERNMENT OF THE REPUBLIC OF CHILE**

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Chile hereinafter referred to as “the Parties”;

Determined to cooperate in the scope of social welfare and, in particular, as regards obligations on social security contributions;

Desirous of promoting the welfare of people moving between their respective territories or working there;

Desirous of ensuring that individuals from both countries enjoy equal rights in respect of those matters comprised in this Convention in accordance with their respective social security laws;

Have agreed as follows:

PART I**GENERAL PROVISIONS****ARTICLE 1****Definitions**

- (1) For the purpose of this Convention the following definitions shall apply, except where the context otherwise requires:
- (a) “Country” or “territory” means:
- (i) in relation to the Republic of Chile, the scope of application of the Political Constitution of the Republic of Chile, and
 - (ii) in relation to the United Kingdom, Great Britain and Northern Ireland and, where so required by the context of this Convention, the Isle of Man, Jersey and Guernsey also. Likewise, where so required by the context, any reference to “territory”, applicable to the United Kingdom, shall include the Isle of Man, Jersey and Guernsey, and
- “Guernsey” means the Islands of Guernsey, Alderney, Herm and Jethou, and
- “Jersey” means the Island of Jersey;
- (b) “Competent Authority” means:

-
- (i) in relation to the Republic of Chile, the Minister of Labour and Social Security, and
 - (ii) in relation to the territory of the United Kingdom, the Department for Work and Pensions and the Commissioners for Her Majesty's Revenue and Customs or their authorised representative for Great Britain, the Department for Social Development for Northern Ireland, the Departments of the Treasury and Social Care of the Isle of Man, the Social Security Department of the States of Jersey or the Social Security Department of the States of Guernsey as the case may require;
- (c) "employed worker" means:
- (i) in relation to the Republic of Chile, any person who is at the service of an employer under a subordination and dependence relationship, as well as a person considered as such by the applicable regulations, and
 - (ii) in relation to the United Kingdom, a person who, under the applicable legislation, comes within the definition of an employed earner or of an employed person or is treated as such,
- and the words "worker is employed" shall be construed accordingly;
- (d) "self-employed worker" means:
- (i) in relation to the Republic of Chile, any person who performs a gainful activity on his own account, and
 - (ii) in relation to the United Kingdom, a person who, in the applicable legislation, comes within the definition of a self-employed earner or of a self-employed person or is treated as such,
- and the words "worker is self-employed" shall be construed accordingly;
- (e) "employment" means employment as an employed worker and the words "employ", "employed" or "employer" shall be construed accordingly;
- (f) "gainfully employed" means employed, or self-employed;
- (g) "insured" means:
- (i) in relation to the Republic of Chile, that the person is affiliated to or is a contributor to the applicable social security system, and
 - (ii) in relation to the United Kingdom, that contributions have been paid by, or are payable by, or in respect of, or have been credited in respect of, the person concerned.
- (h) "legislation" means:
- (i) in relation to the Republic of Chile, the laws, regulations and provisions on contributions and benefits of the Social Security systems indicated under Article 2 of this Convention, and

-
- (ii) in relation to the United Kingdom, the laws, regulations and provisions on contributions and benefits of the Social Security systems indicated under Article 2 of this Convention.
 - (i) “Ordinarily Resident”,
 - (i) in relation to the Republic of Chile, means domiciled in the terms defined by its legislation, and
 - (ii) in relation to the United Kingdom, is given its natural and ordinary meaning in the context of its legislation.
 - (j) “liability for contributions” means:
 - (i) in relation to the Republic of Chile, the obligation to pay contributions according to the Chilean legislation, and
 - (ii) in relation to the United Kingdom, the obligation to pay contributions according to United Kingdom legislation.
 - (2) Other words and expressions which are used in this Convention have the meanings respectively assigned to them in the legislation concerned.
 - (3) Any reference in this Convention to an “Article” means an Article of this Convention, and any reference to a “paragraph” is a reference to a paragraph of the Article in which the reference is made, unless it is stated to the contrary.

ARTICLE 2

Scope of Legislation

- (1) This Convention shall apply,
 - (a) in relation to the territory of the Republic of Chile, to:
 - (i) the old age, disability and survivorship pension system based on individual capitalisation, and
 - (ii) the old age, disability and survivorship pension schemes administered by the Social Security Institute.
 - (b) in relation to the territory of the United Kingdom, to:
 - (i) the Social Security Administration Act 1992, the Social Security Contributions and Benefits Act 1992, the Social Security (Consequential Provisions) Act 1992, the Social Security Contributions (Transfer of Functions, etc.) Act 1999;
 - (ii) the Social Security Administration (Northern Ireland) Act 1992, the Social Security Contributions and Benefits (Northern Ireland) Act 1992, the Social Security (Consequential Provisions) (Northern Ireland) Act 1992 the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999;
 - (iii) the Social Security Administration Act 1992, the Social Security Contributions and Benefits Act 1992 and the Social Security (Consequential Provisions) Act 1992 (Acts of

Parliament) as those Acts apply to the Isle of Man by virtue of Orders made, or having effect as if made, under the Social Security Act 2000 (an Act of Tynwald);

- (iv) the Social Insurance (Guernsey) Law, 1978;
- (v) the Social Security (Jersey) Law, 1974;

and the legislation which was repealed or consolidated by those Acts, Laws or Orders or repealed by legislation consolidated by them.

- (2) Subject to paragraph (3), this Convention shall apply also to any legislation which supersedes, replaces, amends, supplements or consolidates the legislation specified in paragraph (1).
- (3) This Convention shall not affect rights and obligations arising under legislation on social security in accordance with the Treaty on the Functioning of the European Union or the EEA Agreement or apply to any convention on social security which either Party has concluded with a third party or to any laws or regulations which amend the legislation specified in paragraph (1) for the purpose of giving effect to such a convention, but shall not prevent either Party taking into account under this Convention the provisions of any other convention which that Party has concluded with a third party.

ARTICLE 3

Personal Scope of Application

This Convention shall apply to those individuals who are or were subject to the laws of either Party and to those individuals who derive their rights therefrom.

ARTICLE 4

Equal Treatment

Any person who is or has been subject to the legislation of one Party shall, while in the territory of the other Party, have the same rights and obligations, by virtue of the legislation of the other Party, as a national of that Party, subject to the special provisions of this Convention.

PART II**PROVISIONS WHICH DETERMINE THE LEGISLATION APPLICABLE
CONCERNING CONTRIBUTION LIABILITY****ARTICLE 5****General Provisions**

- (1) Subject to paragraphs (2) to (9) of this Article and to Articles 6 to 8, where an employed worker is employed in the territory of either Party, the liability for his or her contributions shall be determined only in accordance with the legislation of the party in whose territory he or she is working. Where a worker is only subject to the legislation of the United Kingdom in accordance with this paragraph, such legislation shall apply as if he or she were ordinarily resident in the United Kingdom.
- (2) Where an employed worker is employed in the territory of both Parties for the same period, the liability for his or her contributions shall be determined only under the legislation of the Party of which territory he or she is ordinarily resident.
- (3) Where a self-employed worker is ordinarily resident in the territory of one Party and the worker is self-employed in the territory of the other Party, or in the territory of both Parties, liability for contributions for him or her shall be determined only under the legislation of the Party in whose territory he or she ordinarily resides and that legislation shall apply to him or her as if he or she were self-employed in the territory of that Party.
- (4) Where a person is an employed worker in the territory of one Party and a self-employed worker in the territory of the other Party for the same period, liability for contributions for him or her shall be determined only under the legislation of the Party in whose territory he or she ordinarily resides.
- (5) No provision of this Article shall affect a person's liability to pay a Class 4 contribution under the legislation of Great Britain, Northern Ireland or the Isle of Man.
- (6) Where, in accordance with Article 6, an employed worker works in the territory of the United Kingdom, being bound to pay contributions in accordance with the legislation of the Republic of Chile, the legislation of the United Kingdom shall not apply nor will he or she be responsible or entitled to pay contributions according to the legislation of the United Kingdom.
- (7) Where, in accordance with Article 6, an employed worker works in the Chilean territory, being bound to pay contributions in accordance with the legislation of the United Kingdom, the legislation of the Republic of Chile shall not apply nor will he or she be responsible or entitled to pay contributions according to the legislation of the Republic of Chile.

-
- (8) Where a person is employed in the United Kingdom and the legislation of the Republic of Chile ceases to apply to him or her under Article 6, the legislation of the United Kingdom shall apply to him or her as if he or she were ordinarily resident in the United Kingdom.
 - (9) Where a person is not gainfully employed, any liability for contributions shall be determined under the legislation of Guernsey if he or she is ordinarily resident in Guernsey, or under the legislation of Jersey if he or she is ordinarily resident in Jersey.

ARTICLE 6

Detached Workers

Subject to Articles 7 and 8, where an employed worker who is insured under the legislation of one Party, and employed by an employer with a place of business in the territory of that Party, is sent by that employer, either from the territory of that Party, or from a third country not party to this Convention, to work in the territory of the other Party, the legislation of the former Party concerning liability for contributions shall continue to apply to him or her as if he or she were employed in the territory of that Party, and the legislation of the latter Party shall not apply to him or her, provided that the employment in the territory of the other Party is not expected to last for more than 5 years.

ARTICLE 7

Mariners and Aircraft Crew

- (1) The crew of a vessel and other workers employed on board a vessel, who perform work in the territories of both Parties and who would otherwise be covered under the laws of both Parties shall be subject to the legislation of the Party whose flag the vessel flies.
- (2) Aircraft crew who perform work in the territories of both Parties and who would otherwise be covered under the laws of both Parties shall, with respect to that work, be subject to the laws of only the Party in the territory of which the employer has its main office. However, if such employees are ordinarily resident of the other Party, they shall be subject to the laws of only that Party.

ARTICLE 8

Diplomats, Government Servants and Consular Employees

- (1) This Convention shall not apply to persons who are exempt from the social security legislation of the Party in whose territory they render services by virtue of the Vienna Convention on Diplomatic Relations of

April 18, 1961, or the Vienna Convention on Consular Relations of April 24, 1963.

- (2) Subject to paragraph (1), where any person who is employed in the Government Service of one Party, or treated as such, is sent to work in the territory of the other Party, the legislation of the former Party concerning liability for contributions shall apply to him or her as if he or she were employed in its territory.
- (3) Subject to paragraphs (1) and (2), where a person is employed in a diplomatic mission or consular post of one Party in the territory of the other Party, or in the private service of an official of such a mission or post, the legislation of the latter Party concerning liability for contributions shall apply to him or her as if he or she were employed in its territory, unless within three months of the entry into force of this Convention, or within three months of the beginning of the employment in the territory of the latter Party, whichever is later, he or she chooses to be insured under the legislation of the former Party, provided that he or she has been so insured at any time before the commencement of the employment at that mission or post. Where, under this paragraph, a person has the right to choose to be insured under the legislation of the former Party but does not choose to do so, he or she shall not be liable, nor entitled, to pay contributions under the legislation of the former Party.

ARTICLE 9

Modification Provisions

Exceptionally, the Competent Authorities or the Liaison Bodies of the Parties may agree to modify the application of Articles 5 to 8 in respect of particular persons or categories of persons.

PART III

MISCELLANEOUS PROVISIONS

ARTICLE 10

Arrangements for Administration and Co-operation

- (1) The Competent Authorities of the two Parties shall:
 - (a) establish the Administrative Arrangements necessary for the application of this Convention;
 - (b) establish Liaison Bodies for the purpose of facilitating the implementation of this Convention and determine their competence;

- (c) communicate to each other, as soon as possible, all information about the measures taken by them for the application of this Convention or about changes to their national legislation in so far as these changes affect the application of this Convention;
 - (d) assist one another on any matter relating to the application of this Convention as if the matter were one affecting the application of their own legislation. This assistance shall be free of charge.
- (2) Where the legislation of one Party establishes that any certificate or other document submitted in accordance with the legislation of that Party is wholly or partly exempt from any kind of legal consular or administrative taxes and duties, such exemption shall be applicable to any certificate or other document submitted under the legislation of the other Party or in accordance with this Convention.
 - (3) All declarations, documents and certificates of any type that need to be submitted for the purpose of this Convention shall be free from diplomatic or consular legalisation formalities.
 - (4) No certificate, document or statement of any kind written in English or Spanish shall be rejected on the ground that it is written in a foreign language.
 - (5) Unless disclosure is required under the legislation of a Party, any information about an individual which is sent in accordance with, and for the purposes of, this Convention to that Party by the other Party is confidential and shall be used only for the purpose of implementing this Convention and the legislation to which this Convention applies.

ARTICLE 11

Resolution of Disputes

- (1) Disagreements between the Parties regarding the interpretation or application of this Convention shall, as far as possible, be resolved through agreement of the Competent Authorities.
- (2) If a disagreement cannot be resolved through negotiation, the Parties will endeavour to settle the issue through arbitration, mediation, or other mutually agreed procedure.

PART IV**TRANSITIONAL AND FINAL PROVISIONS****ARTICLE 12****Transitional Provisions**

In applying Article 6 in the case of employed workers who were sent to the territory of a Party prior to the date of entry into force of this Convention, the period of employment referred to in that Article shall be considered to begin on that date.

ARTICLE 13**Entry into Force**

Each of the Parties shall notify the other in writing, through diplomatic channels, of the completion of the procedures required by its law for the bringing into force of this Convention. This Convention shall enter into force on the first day of the third calendar month following the date of the later of these notifications.

ARTICLE 14**Life of the Convention**

This Convention shall remain in force for an indefinite period. The Republic of Chile or the United Kingdom of Great Britain and Northern Ireland may terminate it at any time by giving six months' notice in writing through diplomatic channels to the other Party.

ARTICLE 15**Rights on Termination of this Convention not Replaced by Another**

In the event of termination of this Convention in accordance with Article 14 and unless a new Convention containing provisions regulating the matter is made, any right to benefit acquired by a person in accordance with this Convention shall be maintained and negotiations shall take place between the Competent Authorities for the settlement of any rights then in course of acquisition by virtue of its provisions.

IN WITNESS WHEREOF the undersigned, duly authorised by their respective Governments, have signed this Convention.

DONE in duplicate at Santiago this thirteenth day of March, 2012 in the English and Spanish languages, both texts being equally authentic.

**For the Government of the
United Kingdom of Great
Britain and Northern Ireland:**

**For the Government of the
Republic of Chile:**

JEREMY BROWNE

ALFREDO MORENO

-
- ¹ *chapter 26.900*
² *chapter 26.900*