

Standards for the XXI<sup>st</sup> Century

## **SOCIAL SECURITY**





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# SOCIAL SECURITY

Martine Humblet & Rosinda Silva



INTERNATIONAL  
LABOUR OFFICE



International Labour  
Standards Department

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## Preface

The importance of social security in the world is growing, which is not to say that its development in the various States is taking a parallel course. In many emerging nations, social security systems are still undergoing construction, while in others such as the former socialist States, these systems are being completely restructured in the so-called transformation process. At the same time fundamental challenges, posed above all by unemployment, population ageing and medical progress in the industrialized States, insofar as they have social security systems, make extensive reforms necessary. International developments highlighted by globalisation and human mobility have moreover caused States and nations to move closer together, thus also bringing an internationalisation of social security in their wake. It is in this scenario that common minimum standards are being demanded – not only as a logical conclusion drawn from fundamental social rights, but also to achieve an approximation of competitive conditions in a global economy.

In this light, the standards set by the International Labour Organization in the field of social security are accorded mounting significance. However, Conventions dealing with social security issues have so far not experienced the same degree of dissemination in the ILO Member States as the labour law Conventions. What is more, the strong focus on the core labour standards could push social security into the background internationally. And that would run counter to the requirements of social progress.

An extensive investigation into ILO standards on social security is therefore expedient because standard setting by the International Labour Organization has progressed, with earlier Conventions today no longer conforming to the socio-political reality experienced in most States. It must therefore be highly welcomed that officials of the International Labour Office have undertaken this survey that retraces the development of ILO standards on social security and provides a detailed portrayal of the regulatory content of the relevant Conventions. It is to be hoped that this study will find a wide circulation and in this way further intensify the discussion on social security standards.

Prof. Dr. Bernd Baron von Maydell  
Member of the Committee of Experts on the  
Application of Conventions and Recommendations

## Foreword

This year, the ILO is celebrating the 50th anniversary of the adoption of Convention No. 102 concerning social security (minimum standards), which marked the advent of modern standards covering in a global manner the nine branches of social security.

In June 2001, the Conference held a general discussion aimed at defining a vision of social security for the ILO at the dawn of the XXIst century. It concluded that ILO activities in the area of social security should be anchored in the Declaration of Philadelphia, the decent work concept and the relevant standards in the area. In addition, the Governing Body completed, between 1995 and 2002, a review of all ILO standards. In the framework of this examination it concluded that Convention No. 102, along with the Conventions and Recommendations adopted subsequently in the area of social security, were up-to-date and therefore relevant. However, notably due to the complexity of the provisions in these instruments, the Governing Body also considered that the Office should offer technical assistance to member States in this area, including through the dissemination of information. The present publication is intended to be the first response to this request. The Office hopes in this way to contribute to the efforts aimed at ensuring a better understanding of ILO Conventions and Recommendations on social security, with the view to strengthening their range and impact.





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Social security

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# Introduction

## The ILO and social security

The ILO has always attached great importance to social security, in accordance with the mandate set out in its Constitution, which includes improving conditions of labour, for example by “the prevention of unemployment, ... the protection of the worker against sickness, disease and injury arising out of his employment, ... provision for old age and injury”. Since its first session in 1919, the International Labour Conference has adopted 31 Conventions and 23 Recommendations on social security. As will be seen, only certain of these instruments are still considered to be up to date and can therefore be supported by ILO promotional activities. The most recent standards in this field were adopted in June 2000 and cover maternity protection. In general, these standards are traditionally divided into three “generations” corresponding to different approaches.

The *first generation* standards were mainly based on the notion of social insurance. They were only applicable to certain categories of workers and not to the whole of the population. Each instrument covered a specific contingency and, in addition, separate instruments were adopted for certain contingencies in different economic sectors (in particular, industry and agriculture).

After the Second World War, the *second generation* standards were inspired by the broader concept of social security developed in the Beveridge Report.<sup>1</sup> The Declaration of Philadel-

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<sup>1</sup> This report, published in 1942 at the request of the British Government, proposed a radical reform of social legislation. The new system would not be based on either assistance or social

phia, adopted in 1944, redefined the ILO's objectives by including the extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care. This conception also inspired the Conference when it adopted the Social Security (Minimum Standards) Convention, 1952 (No. 102). As indicated by its title, this Convention provides for a minimum level of benefits in each of the nine branches of social security that it covers. In view of the flexibility clauses in Convention No. 102, this minimum level constitutes an objective that the 175 member States of the ILO are called upon to achieve, and even exceed in some cases, irrespective of their level of economic development.

The instruments adopted subsequently constitute the *third generation* standards. They are drawn up on the model of Convention No. 102, although offering a higher level of protection in terms of the population covered and the level of benefits.

It should be emphasized from the outset that ILO social security standards have had an important impact outside the Organization. For example, the European Social Charter provides that the Contracting Parties undertake to maintain a level of protection at least equal to that required for the ratification of Convention No. 102. Moreover, the European Code of Social Security, adopted under the auspices of the Council of Europe with the collaboration of the ILO, reproduces the substantive provisions of Convention No. 102, except for those respecting equality of treatment.

## **Outcome of the general discussion on social security**

In June 2001, the Conference held a general discussion on social security or, in other terms, a very broad tripartite debate with the objective of establishing an ILO vision of social security that, while continuing to be rooted in the basic principles of the

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Continued from note 1

insurance exclusively covering employees. It would take the form of a universal and uniform system of social benefits financed through contributions and unified through a single public service placed under the direct authority of the Government.

ILO, would respond to the challenges that are arising in this field. The conclusions of the discussion recall, as does the Universal Declaration of Human Rights, adopted 50 years earlier, that social security is a basic human right. As a fundamental instrument of social cohesion, it thereby helps to ensure social peace and inclusion. In general terms, ILO activities in the field of social security should be anchored in the Declaration of Philadelphia, the concept of decent work and relevant ILO social security standards.

The conclusions adopted by the Conference also emphasize a number of essential points. If properly managed, social security enhances productivity by providing health care, income security and social services. On the issue of management, they recall that, while there is no single right model of social security administration, the good governance of schemes is essential for their success. However, the establishment of systems based on individual savings accounts should not weaken solidarity systems, which share risks between all insured persons. In general, the social partners have a crucial role to play in this field.

The Conference also emphasized that the extension of social security coverage to those who are not yet protected should be given the highest priority and that the major challenge in this respect is the existence of the informal economy. Each country should determine a national strategy on this subject, which should be closely linked to its employment and social policies. In this regard, social dialogue is required to ensure the effectiveness of initiatives to establish or extend social security coverage.

Social security systems should also respect and promote the principle of gender equality, which implies in particular the adoption of measures to ensure equitable outcomes for women providing unpaid care to family members.

In many countries, the ageing of the population constitutes a challenge in terms of the cost of health-care and retirement schemes, whether they are financed through funded or pay-as-you-go systems. Responses to this challenge need to be based on the promotion of sustainable economic growth, with a view to the inclusion of a broader section of the population in productive employment: for persons of working age, the best means of obtaining stable income is to gain access to decent work. Other countries are experiencing substantial difficulties in view of the

very serious consequences of the HIV/AIDS pandemic on the financing of social security. The Conference emphasized that this situation requires an intensification of ILO technical assistance to the developing countries concerned.

### The up-to-date standards

Some of the social security standards adopted by the Conference were intended to address major concerns at the time of their adoption, but do not necessarily still correspond to the current needs of the international community. With a view to strengthening the relevance, coherence and impact of its standards system, the ILO therefore embarked upon an important process of the detailed examination on a case-by-case basis of all of its Conventions and Recommendations. A tripartite working party was established for this purpose by the Governing Body in 1995. The working party completed its work in 2002 and examined several important social security instruments. This examination and the decisions taken by the Governing Body on this basis have shown that, of the 184 international labour Conventions and 194 Recommendations, a total of 71 Conventions and 73 Recommendations remain up to date and should be promoted on a priority basis. This examination was particularly important with regard to social security since, as noted above, the Conference concluded in June 2001 that ILO activities in this field should be rooted in the relevant ILO standards.

The up-to-date standards for each of the nine branches of social security are as follows:

Social security branches	Second generation standards: Convention No. 102 (1952)	Third generation standards
Medical care	Part II	Convention No. 130 (1969)
Sickness benefit	Part III	Convention No. 130 (1969)
Unemployment benefit	Part IV	Convention No. 168 (1988)
Old-age benefit	Part V	Convention No. 128 (1967)
Employment injury benefit	Part VI	Convention No. 121 (1964)
Family benefit	Part VII	–
Maternity benefit	Part VIII	Convention No. 183 (2000)
Invalidity benefit	Part IX	Convention No. 128 (1967)
Survivors' benefit	Part X	Convention No. 128 (1967)

Moreover, certain ILO instruments specifically cover the issue of the social security of migrant workers. The up-to-date standards in this field are Part XII (Equality of treatment) of Convention No. 102, as well as the Equality of Treatment (Social Security) Convention, 1962 (No. 118), and the Maintenance of Social Security Rights Convention, 1982 (No. 157), which will be examined below. Annex 3 to this paper contains an overview of the decisions taken by the Governing Body in the field of social security.

Before examining the protection afforded by the ILO's social security instruments, a description is provided of their principal characteristics.





# **I. Characteristics of social security standards**

## **1. Universality and flexibility**

### **(a) Ratification**

International labour standards are by nature universal in their vocation. They are intended to be applied by the 175 member States of the ILO, irrespective of their legal system or their level of economic development. It should also be recalled that ILO Conventions are international treaties of a specific nature. They are adopted by the Conference, which is composed of representatives of the governments of member States, as well as representatives of workers and employers. A government cannot therefore unilaterally decide to make reservations when ratifying an instrument, as this would go against the principle of tripartism. Nevertheless, most Conventions contain a number of flexibility clauses in order to facilitate their ratification. The balance between universality and flexibility is difficult to attain and consists of endeavouring not to adopt standards which are too high, and which cannot therefore be applied in most member States, or inadequate standards, which would only serve to endorse the lowest common denominator in the various countries.

As emphasized by the Committee of Experts on the Application of Conventions and Recommendations, the body responsible for supervising the application of these standards, ILO social security Conventions offer perhaps the largest set of options and flexibility clauses allowing for the goal of universal coverage to be attained gradually and in step with the economic development of member States.

As a result, various social security Conventions contain several parts, of which only certain have to be accepted at the time of ratification. This is the case of Convention No. 102, which is composed of common parts and nine other parts corresponding to the nine branches of social security referred to above. In addition to the common provisions, a State which ratifies Convention No. 102 has to accept at least three of these nine parts, including at least one of the following five: unemployment, old age, employment injury, invalidity and survivors. Any State party to the Convention may subsequently notify the ILO that it accepts one or more additional parts of the Convention. This flexibility is also found in Convention No. 118 and the Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128). A State which ratifies Convention No. 118 may, for example, limit its commitments to only one of the nine parts, which each corresponds to one of the nine branches of social security. In the case of Convention No. 128, the State has to accept as a minimum one of the three parts corresponding to old-age, invalidity and survivors' benefit. These flexibility clauses therefore allow the progressive extension of protection in line with the development of the national legislation and capacity to implement the Convention.

### **(b) Scope of the Conventions in terms of the persons protected**

Both Convention No. 102 and the Conventions adopted subsequently authorize the exclusion from their scope of application of particular categories of occupations, namely:

- The Employment Injury Benefits Convention, 1964 (No. 121), the Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128), and the Medical Care and Sickness Benefits Convention, 1969 (No. 130), allow the exclusion of *seafarers*, including seafishermen. Convention No. 102 does not apply to seafarers or seafishermen, even without the country concerned making a specific exclusion, due to the fact that instruments specifically covering the social security of these categories of workers were adopted in 1946<sup>1</sup>;

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<sup>1</sup> Notably the Social Security (Seafarers) Convention, 1946 (No. 70), and the Seafarers' Pensions Convention, 1946 (No. 71).

- *public servants* may be excluded from the application of Conventions Nos. 121, 128 and 130 where they are protected by special schemes which provide benefits at least equivalent to those required by the above Conventions. The Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168) only allows the exclusion of public employees where their employment up to a normal retirement age is guaranteed by national laws or regulations;
- *persons performing casual work, members of the employer's family* living in his house in respect of their work for him, and other categories of employees, which must not exceed in number 10 per cent of all employees, may be excluded from the application of Conventions Nos. 121, 128 and 130. Convention No. 121 also provides for the possibility of excluding "out-workers" (in the sense of homeworkers);
- Conventions Nos. 128 and 130 also authorize States whose legislation protects employees to temporarily exclude from their application *agricultural employees* under certain conditions;
- The Maternity Protection Convention, 2000 (No. 183) permits, after consulting the representative organizations of employers and workers concerned, the exclusion wholly or partly from the scope of the Convention of *limited categories of workers* when its application to them would raise special problems of a substantial nature.

The possibilities offered by these flexibility clauses for the determination of the categories of persons protected should be borne in mind in relation to the explanations provided below concerning the various branches of social security. The same applies to the temporary exceptions of which developing countries may avail themselves in order to facilitate the ratification of ILO Conventions. These exceptions are described below.

### **(c) Temporary exceptions for developing countries**

Countries whose economy and/or medical facilities are insufficiently developed, and which make a declaration to this effect when ratifying the instrument, may cover a smaller number

of persons protected. For example, Convention No. 102 allows countries benefiting from such exceptions to determine the persons protected with reference only to the numbers of employees in industrial workplaces of a certain importance. This makes the standard more easily accessible to less industrialized countries since, on the one hand, they have few industrial enterprises and, on the other hand, only those of a certain size are taken into account in determining the number of persons to be protected. Furthermore, these temporary exceptions may allow a State party to provide benefits of a lower level or for a shorter period in certain branches. It should be emphasized that the exceptions envisaged for developing countries are of a temporary nature and that States availing themselves of these exceptions must report regularly on whether the reasons for their decision still exist or whether they give up the right to avail themselves of the exception in question.

#### **(d) Method of calculating the rate of cash benefits**

It should first be emphasized that the minimum rate of benefit is defined for any given State in relation to the wages in that country. The provisions of the Conventions therefore take into account differences in levels of economic development in member States.

Moreover, the Conventions provide States with a choice of three formulae to determine whether the benefits provided by national legislation reach the levels set out in the instruments.<sup>2</sup> These formulae take account of the methods of calculation that are used most often in practice.

- The first method consists of setting the minimum rate of benefit at a certain percentage of the previous earnings of the beneficiary or breadwinner, with the possibility of setting a maximum limit for the rate of the benefit or the earnings taken into account. This percentage has to be attained wherever the previous earnings of the beneficiary or breadwinner are equal to or lower than the wage of a skilled manual male employee.

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<sup>2</sup> Under Convention No. 102, these formulae are valid for all branches of social security, with the exception of family benefit. Of the third generation instruments, only Conventions Nos. 168 and 183 contain other specific rules.

- Under the second method, benefit is set at a flat rate or must include a minimum amount determined in relation to the wage of an ordinary adult male labourer.
- Finally, the third method consists of fixing the rate of benefit according to a prescribed scale which may depend on the level of the other resources of the beneficiary's family. In this case, the rate should not be less than that resulting from the previous method. This latter method can, however, only be applied in systems that cover all residents.

Irrespective of the method chosen, the rate of the benefit for a “standard beneficiary” must attain a certain percentage of the reference wage. The standard beneficiary is defined in a specific manner for each contingency and serves solely as a reference for comparison between the rate of benefit provided for by national legislation and the requirements of the Conventions. States are permitted to choose their own rules and methods for calculating the rate of benefit, provided only that the resulting rate is at least equal to that laid down in the instruments.

## **2. Common principles**

Both Convention No. 102 and most of the Conventions adopted subsequently are drawn up so as to leave great flexibility to member States in the method of organizing the schemes providing benefits. However, these instruments set forth basic principles concerning the organization and administration of social security institutions, which have to be complied with irrespective of the type of scheme established. This has been recalled by the Committee of Experts which, when called upon to examine the compatibility of a private pensions system with Convention No. 102, considered that the coexistence within a social security system of both a public and a private scheme is not in itself incompatible with the Convention, since this instrument allows the minimum level of social security to be maintained through various methods, subject to compliance with the fundamental principles of organization and management on which the structure of social security schemes must continue to be based. The flexibility afforded in the methods of protection used is therefore accompanied by very clear rules relating to the

organization and administration of schemes providing benefits. These rules of “good governance” concern, among other matters, the responsibility which in the last resort rests with the State, the various interests to be represented in the administration of the system and the financing of benefits.

### **(a) General responsibility of the State**

The general responsibility of the State for the proper administration of social security institutions is one of the rules set forth in both Convention No. 102 and the Conventions adopted subsequently.<sup>3</sup> Irrespective of the administrative system chosen, the State has to take general responsibility for the proper administration of the institutions and services concerned in securing the protection envisaged in the Conventions.

The responsibility of the State also covers the provision of benefits. Irrespective of the method of financing adopted, the competent authorities are under the obligation to take all the necessary measures to ensure that benefits are duly provided. Convention No. 102 indicates in this respect that the State shall ensure, where appropriate, that the necessary actuarial studies and calculations concerning financial equilibrium are made periodically and, in any event, prior to any change in benefits, the rate of insurance contributions or the taxes allocated to cover the contingencies. The State’s supervisory or monitoring powers should not, however, allow it to use the assets of its social security system for such purposes as making up for a deficit in its budget, which could cause insured persons to lose confidence in the institutions responsible for their protection. The provisions concerning the participation of insured persons are also important in this respect.

### **(b) Participation of insured persons**

The ILO’s concern not to impose a single form of organization was accompanied by the desire to take into account the various interests which should be represented in the administration of social security systems, and particularly those of the persons

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<sup>3</sup> Convention No. 183, on maternity protection, does not contain a provision to this effect.

protected. Where the administration is not entrusted to an institution regulated by the public authorities or to a government department responsible to a legislature, the representatives of the persons protected must participate in its management or be associated therewith in a consultative capacity. Moreover, national laws or regulations may, or “shall” under certain Conventions, envisage the participation of representatives of employers and of the public authorities.

### **(c) Financing of benefits**

Convention No. 102 confines itself to setting forth principles concerning the financial guarantees of social security systems. The cost of the benefits envisaged by the Convention and the cost of the administration of such benefits must be borne collectively by way of insurance contributions or taxation, or both. The Convention also contains certain provisions relating to the sharing of the financial burden. In general, the methods of financing must avoid hardship to persons with meagre resources and take into account the economic situation of the country and of the persons protected. In the particular case of contributory schemes, it is specified that the total of the insurance contributions borne by the employees protected must not exceed 50 per cent of the total of the financial resources allocated for protection.

Conventions Nos. 121, 128, 130 and 168 do not contain provisions on the financing of benefits. States therefore retain a broad margin for manoeuvre in this respect. However, the question of the method of financing is of particular importance in relation to maternity protection Conventions. Traditionally, these Conventions have always contained provisions on this subject, on the one hand referring to insurance systems or financing from public funds and, on the other hand, setting forth the principle of the non-responsibility of employers in relation to the cost of benefits. The intent is to prevent maternity protection measures making the employment of women more expensive for employers, thereby leading to the recruitment of fewer women workers. This concern is found in Convention No. 183, which provides that, in order to protect the situation of women in the labour market, benefits are to be provided through compulsory social insurance or public funds, or in a manner determined by national

law and practice. There are, however, three exceptions to this principle. An employer may therefore be liable to the cost of maternity cash benefits where that employer specifically agrees to do so; where such liability was provided for in national law or practice prior to the date of adoption of the Convention; or where such liability is subsequently agreed upon by the government and the representative organizations of employers and workers.

#### **(d) Other questions**

Two other points should be examined in this context, namely the right of appeal of claimants and the rules concerning the suspension of benefit.

##### **■ Right of appeal of claimants**

The right of appeal in the event of the refusal of a benefit or of complaints as to its quality or quantity is a principle that is recognized by Convention No. 102 and the Conventions adopted subsequently. However, these instruments do not specify the channels of appeal which must be made available. The preparatory work for the adoption of Conventions Nos. 121 and 128 nevertheless provides indications as to the nature of this right. For example, it was stated that, according to the current interpretation, the right of appeal relates to a decision which would have been final if this right had not existed. Furthermore, the concept of recourse implies that the matter must be determined by an authority that is independent of the administrative authority which made the first decision. The mere right to request re-examination of the matter by this authority is not sufficient to constitute an appeal procedure. Furthermore, Conventions Nos. 128 and 168 provide that procedures must be prescribed which permit the claimant to be represented or assisted by a qualified person of his or her choice or by a delegate of an organization representative of the persons protected.

##### **■ Suspension of benefit**

Convention No. 102 and the Conventions adopted subsequently envisage a number of cases in which the benefit to which a person protected would be entitled may be suspended. These cases may be grouped into three types: the absence of the person



concerned from the territory of the State in which entitlement to the benefit has been acquired; situations in which the person concerned is maintained at public expense, or at the expense of a social security institution or service, or is in receipt of other benefits or indemnities; and, finally, a number of cases related to the personal conduct of the beneficiary. The latter category includes a fraudulent claim, cases where the contingency has been caused by a criminal offence or the wilful misconduct of the person concerned, or failure to make use of the appropriate services (such as medical services or employment, vocational guidance and training services). It should nevertheless be emphasized that Conventions Nos. 121, 128 and 130 provide that, in certain cases of suspension, part of the cash benefit otherwise due must be paid to the dependants of the person concerned.

There are other cases of suspension which are specific to the contingency of unemployment. For example, unemployment benefit may be refused, withdrawn or suspended where the person concerned has deliberately contributed to his or her own dismissal, or has left employment voluntarily without just cause.

An overview is provided below of the protection guaranteed in the various branches of social security and the principal provisions of the instruments on the social security of migrant workers.



## **II. Protection afforded in the different branches of social security**

The protection afforded in the nine branches of social security is now examined in the order that they appear in Convention No. 102. For each of these branches, a definition is provided of the contingency covered or, in other words, the risk confronting the person protected; the scope of the instrument in terms of the persons protected, that is the persons who are to receive the benefits guaranteed by the instruments; and the extent of the benefits guaranteed and the qualifying conditions for their provision. In addition, in order to provide an overview of the protection afforded by the ILO's social security instruments, Annex 1 contains comparative tables of the benefits envisaged in each of the branches.

### **1. Medical care**

*Convention No. 102, Part II; Convention No. 130  
and Recommendation No. 134*

#### **Definition of the contingency**

The contingency covered includes any morbid condition, whatever its cause, and the medical care required as a result. Convention No. 102 also covers the medical care necessitated by pregnancy, confinement and their consequences. In addition, the State has to secure to the persons protected medical care of a

preventive nature. Generally speaking, medical care has to be afforded with a view to maintaining, restoring or improving the health of the persons protected and their ability to work and to attend to their personal needs.

### Persons protected

Contrary to the first generation standards, the personal coverage of Conventions Nos. 102 and 130 is defined not in relation to branches of economic activity (industry, services, etc.) and the legal status of persons employed in these branches, but in a much more flexible way based on quantitative criteria. The State has to protect a certain proportion of persons in a specific group. It can choose one of the three methods proposed for the identification of the persons protected. The latter must include:

Convention No. 102	Convention No. 130
<ul style="list-style-type: none"><li>• prescribed classes of <i>employees</i>, constituting not less than 50 per cent of all employees, and also their wives and children; or</li><li>• prescribed classes of the <i>economically active population</i>, constituting not less than 20 per cent of all residents, and also their wives and children; or</li><li>• not less than 50 per cent of all <i>residents</i>.</li></ul>	<ul style="list-style-type: none"><li>• all <i>employees</i>, including apprentices, and their wives and children; or</li><li>• prescribed classes of the <i>economically active population</i>, constituting not less than 75 per cent of the whole economically active population, including their wives and children; or</li><li>• not less than 75 per cent of all <i>residents</i>.</li></ul>

Recommendation No. 134 advocates the extension of medical care by stages to all economically active persons and to all residents.

### Benefits

Under Convention No. 102, the persons protected must enjoy the following benefits in the case of sickness: general practitioner care, including domiciliary visiting; specialist care;

pharmaceutical supplies; and hospitalization where necessary. In addition to the above care, Convention No. 130 provides for dental care and medical rehabilitation, including the supply, maintenance and renewal of prosthetic and orthopaedic appliances. In accordance with Recommendation No. 134, medical care should also include the supply of medical aids, such as eye-glasses, and services for convalescence.

The above two Conventions admit that beneficiaries may be required to share in the cost of the medical care received. However, such cost-sharing must not result in hardship nor, according to Convention No. 130, prejudice the effectiveness of medical and social protection.

### **Qualifying conditions**

Entitlement to benefit may be made subject to the completion of a qualifying period as may be considered necessary to preclude abuse. The qualifying period may consist of a period of contribution, a period of employment, a period of residence or a combination of such periods.<sup>1</sup> It should, however, be noted that Recommendation No. 134 advocates that the right to medical care should not be made subject to a qualifying period.

Once entitlement to benefits has been acquired, medical care must be granted throughout the contingency. Convention No. 102 nevertheless authorizes States to limit the duration of the benefit to 26 weeks in each case, or 13 weeks in the case of countries whose economy and medical facilities are insufficiently developed. Under Convention No. 130, a limitation to 26 weeks is only authorized where the beneficiary ceases to belong to the categories of persons protected and the sickness started while the beneficiary still belonged to such categories. Both Conventions provide that medical care may not be suspended while the beneficiary continues to receive a sickness benefit and that the period for which care is provided must be extended for diseases recognized as entailing prolonged care.

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<sup>1</sup> This definition of the qualifying period covers all contingencies.

## 2. Sickness benefit

*Convention No. 102, Part III; Convention No. 130 and Recommendation No. 134*

### Definition of the contingency

The contingency covered includes incapacity for work resulting from a morbid condition and involving suspension of earnings. Recommendation No. 134 also advocates the granting of cash benefit in cases where absence from work is justified, among other reasons, by the beneficiary being placed under medical supervision for the purpose of rehabilitation or convalescent leave.

### Persons protected

The persons protected must comprise:

Convention No. 102	Convention No. 130
<ul style="list-style-type: none"><li>• prescribed classes of <i>employees</i>, constituting not less than 50 per cent of all employees; or</li><li>• prescribed classes of the <i>economically active population</i>, constituting not less than 20 per cent of all residents; or</li><li>• all <i>residents</i> whose means during the contingency do not exceed prescribed limits.</li></ul>	<ul style="list-style-type: none"><li>• all <i>employees</i>, including apprentices; or</li><li>• prescribed classes of the <i>economically active population</i>, constituting not less than 75 per cent of the whole economically active population; or</li><li>• all <i>residents</i> whose means during the contingency do not exceed certain limits.</li></ul>

Recommendation No. 134 advocates the progressive extension of the right to sickness benefit to all economically active persons.

### Benefits

Convention No. 102 and the Conventions adopted subsequently define the minimum level of cash benefit to be paid to persons protected. This constitutes progress in relation to the first

generation Conventions, which recognized the right to benefits, without specifying their amount. In the case of sickness benefit, the level of the periodical payments<sup>2</sup> for a standard beneficiary (man with wife and two children) must correspond to 45 per cent of the reference wage or earnings in the case of Convention No. 102, while under Convention No. 130 this level must correspond to at least 60 per cent of the reference wage.

Convention No. 130 also provides that, in the case of the death of a beneficiary of sickness benefit, a funeral benefit shall be paid to the survivors or to the person who has borne the expense of the funeral.

### **Qualifying conditions**

Entitlement to sickness benefit may be made subject to the completion of a qualifying period. Once this requirement has been met, the benefit must be granted throughout the contingency. However, Convention No. 102 authorizes the limitation of the duration of the benefit to 26 weeks in each case of sickness and states that it need not be paid for the first three days of suspension of earnings. Under the terms of Convention No. 130, the grant of the benefit may be limited to not less than 52 weeks, with the same waiting period of three days.

States whose economy and medical facilities are insufficiently developed may reduce the minimum duration of the provision of benefit in each case of sickness to 13 weeks under Convention No. 102 and to 26 weeks under Convention No. 130.

## **3. Unemployment benefit**

*Convention No. 102, Part IV; Convention No. 168  
and Recommendation No. 176*

### **Definition of the contingency**

The contingency covered by these instruments includes suspension or loss of earnings due to inability to obtain suitable

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<sup>2</sup> The method of calculating the minimum rate of such periodical payments is described above.

employment in the case of a person protected who is capable of and available for work. Convention No. 168 explicitly provides that the person must be actually seeking work.

Convention No. 102 focuses on full unemployment. However, Convention No. 168 provides that States must, on the one hand, endeavour to extend protection to loss of earnings due to partial unemployment and the suspension or reduction of earnings due to a temporary suspension of work and, on the other hand, provide for the payment of benefits to part-time workers who are actually seeking full-time work. States in which the limited scope of the social security system so warrants may benefit from exceptions allowing them, *inter alia*, to defer the implementation of these measures. Moreover, the Convention contains a series of provisions for new applicants for employment under which States must take account of the existence of many categories of persons seeking work who have never been, or have ceased to be recognized as unemployed or have never been, or have ceased to be covered by schemes for the protection of the unemployed. The Convention consequently requires the provision of social benefits to certain of these categories of persons.<sup>3</sup>

It should be noted that Convention No. 168 is not solely intended to protect unemployed persons, but also to promote employment. States ratifying the Convention undertake to adopt appropriate steps to coordinate their system of protection against unemployment and their employment policy. The system of protection against unemployment, and in particular the methods of providing unemployment benefit, have to contribute to the promotion of full, productive and freely chosen employment and must not be such as to discourage employers from offering and workers from seeking productive employment. Part II of the Convention contains a series of provisions relating to the promotion of productive employment and refers notably to the Human Resources Development Convention (No. 142), 1975, and the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169).

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<sup>3</sup> Social benefits have to be provided for at least three of the ten categories of persons mentioned in the Convention, including young persons who have completed their vocational training or their studies; persons after a period devoted to bringing up a child or caring for someone who is sick, disabled or elderly; and, under certain conditions, migrant workers on their return to their home country.



## Persons protected

The persons protected must comprise:

Convention No. 102	Convention No. 168
<ul style="list-style-type: none"><li>• prescribed classes of <i>employees</i>, constituting not less than 50 per cent of all employees; or</li><li>• all <i>residents</i> whose means during the contingency do not exceed certain limits.</li></ul>	<ul style="list-style-type: none"><li>• prescribed classes of <i>employees</i>, constituting not less than 85 per cent of all employees, including public employees and apprentices; or</li><li>• all <i>residents</i> whose resources during the contingency do not exceed prescribed limits.<sup>4</sup></li></ul>

Recommendation No. 176 encourages States to extend progressively the application of the legislation concerning unemployment benefit to cover all employees.

## Benefits

Pursuant to Convention No. 102, the benefit must be a periodical payment, the amount of which, for a standard beneficiary (man with wife and two children), must attain 45 per cent of the reference wage. In the case of Convention No. 168, this rate is 50 per cent of the reference wage. These percentages apply in cases of full unemployment and, under Convention No. 168, suspension of earnings due to a temporary suspension of work without any break in the employment relationship. In the case of countries benefiting from temporary exceptions, Convention No. 168 authorizes a rate of 45 per cent of the reference wage.

Recommendation No. 176 also contains detailed provisions respecting, among other matters, partial unemployment, the protection of workers who are experiencing hardship during a waiting period, new applicants for employment and part-time workers.

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<sup>4</sup> By virtue of the provisions of the Convention on methods of protection.

## Qualifying conditions

Entitlement to unemployment benefit may be made subject to the completion of a qualifying period. However, such qualifying period must not exceed the duration considered necessary to preclude abuse.

Furthermore, unemployment benefit need not be paid for a waiting period, the duration of which must not exceed seven days in each case of suspension of earnings. However, Convention No. 168 authorizes a waiting period of ten days in the case of countries benefiting from temporary exceptions. Moreover, both Convention No. 102 and Convention No. 168 provide, in the case of seasonal workers, that the waiting period may be adapted to their occupational circumstances.

Once entitlement to benefit has been recognized, the unemployment benefit has to be granted to the person protected throughout the contingency. Nevertheless, under Convention No. 102, where classes of employees are protected, the duration of the benefit may be limited to 13 weeks within a period of 12 months. Where the protection covers all residents whose means during the contingency do not exceed prescribed limits, this duration may be limited to 26 weeks within a period of 12 months. In the case of Convention No. 168, the initial duration of payment of the benefit may be limited to 26 weeks in each spell of unemployment, or to 39 weeks over any period of 24 months. Convention No. 168 authorizes States benefiting from temporary exceptions to limit the duration of payment of benefit to 13 weeks over any period of 12 months.

It should be noted that, in the case of the continuation of full unemployment for longer than this initial duration of the payment of the benefit, Convention No. 168 provides for the payment of benefit for a subsequent period, the duration of which may be limited. Moreover, the rate of such benefit may be calculated in the light of the resources of the beneficiary and his or her family.

Finally, it should be noted that, where protected persons have received severance pay directly from their employer or from any other source, Convention No. 168 permits the suspension of the unemployment benefit to which they would be entitled or

the reduction of the severance pay as a function of the total amount of the unemployment benefit. The Convention also permits the refusal, withdrawal, suspension or reduction of the benefit if the person concerned refuses to accept suitable employment. The Convention enumerates a number of elements which must be taken into account in assessing the suitability of employment, including the age of unemployed persons, their length of service in their former occupation, their acquired experience, the length of their period of unemployment and the labour market situation. Recommendation No. 176 indicates the types of employment to which the concept of suitable employment should not be applied, and particularly employment involving a change of occupation which does not take into account the qualifications and work experience of the person concerned. The concept of suitable employment is not developed as such in Convention No. 102. However, it is found in the definition of the contingency, and benefit may therefore be suspended in the event of refusal to accept such employment.

#### **4. Old-age benefit**

*Convention No. 102, Part V; Convention No. 128  
and Recommendation No. 131*

##### **Definition of the contingency**

The contingency covered is survival beyond a prescribed age. Both for Convention No. 102 and Convention No. 128, this age should not normally be more than 65 years.

However, the instruments allow a higher age to be fixed for certain specific reasons. In the case of Convention No. 102, these consist of taking into account the working ability of elderly persons and, for Convention No. 128, demographic, economic and social criteria, demonstrated statistically. Exceptions therefore have to be based on objective criteria demonstrated by statistics covering, for example, life expectancy and the activity rate of elderly persons.

Moreover, where the prescribed age is 65 years or higher, Convention No. 128 provides that this age shall be lowered

in respect of persons who have been engaged in occupations that are deemed to be arduous or unhealthy. Recommendation No 131 also advocates the lowering of the pensionable age in respect of categories of persons for which such a measure is justified on social grounds.

### Persons protected

The persons protected must comprise:

Convention No. 102	Convention No. 128
<ul style="list-style-type: none"><li>• prescribed classes of <i>employees</i>, constituting not less than 50 per cent of all employees; or</li><li>• prescribed classes of the <i>economically active population</i>, constituting not less than 20 per cent of all residents; or</li><li>• all <i>residents</i> whose means during the contingency do not exceed certain limits.</li></ul>	<ul style="list-style-type: none"><li>• all <i>employees</i>, including apprentices; or</li><li>• prescribed classes of the <i>economically active population</i>, constituting not less than 75 per cent of the whole economically active population; or</li><li>• all <i>residents</i> or residents whose means during the contingency do not exceed certain limits.</li></ul>

Recommendation No. 131 calls for the extension by stages of coverage of old-age benefits to persons whose employment is of a casual nature and to all economically active persons.

### Benefits

The objective of the relevant provisions of Conventions Nos. 102 and 128 is to guarantee protected persons who have reached a certain age the means of a decent standard of living for the rest of their life. These instruments accordingly envisage the payment of benefit in the form of periodical payments throughout the contingency, that is until the death of the beneficiary.

The level of benefit must attain, for a standard beneficiary (a man with a wife and who has reached pensionable age) after completion of the maximum qualifying period, 40 per cent of the reference wage, under the terms of Convention No. 102. This

percentage is raised to 45 per cent by Convention No. 128,<sup>5</sup> and 55 per cent by Recommendation No. 131. The Recommendation also indicates that national legislation should fix minimum amounts of old-age benefit so as to ensure a minimum standard of living and that the level of the benefit should be increased in certain circumstances, and particularly for beneficiaries requiring the constant help of another person.

The maintenance of the purchasing power of pensions is a problem that has to be faced by social security systems. Pensioners are particularly vulnerable to the risks of inflation, especially where the pension is their main, if not their only source of income. The adjustment of long-term benefits therefore appears to be necessary in order to take into account changes in the cost of living and prevent the loss of the real value of pensions. Conventions Nos. 102 and 128 consequently set forth the principle of adjusting the rates of benefit following substantial changes in the general level of earnings or the cost of living. However, these instruments confine themselves to establishing the principle, while leaving it to States to determine how this is to be given effect (methods and periodicity of adjustments).

### Qualifying conditions

Persons protected have to fulfil two conditions to receive old-age benefit: the first, which has already been mentioned above, is related to the pensionable age; and the second to the completion of a qualifying period.

With regard to the qualifying period, a distinction should be made between two points. In the first place, Conventions Nos. 102 and 128 refer to a *maximum* qualifying period which may be required to obtain benefits of the minimum level prescribed by these Conventions. This qualifying period consists of a period of contribution or of employment which may not exceed 30 years,<sup>6</sup> or a period of residence which may not exceed 20 years. Moreover, these Conventions also envisage a *minimum*

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<sup>5</sup> These percentages may be decreased by up to ten points where benefit is secured to at least any person protected who has completed a qualifying period of not more than ten years of employment or contribution, or five years of residence.

<sup>6</sup> More flexible conditions are envisaged by the two instruments where all of the economically active population is protected.

qualifying period which may be prescribed to acquire entitlement to benefit. Where the grant of old-age benefit is subject to the completion of a minimum period of contribution or employment, a reduced benefit must be secured for protected persons who have completed a qualifying period of 15 years of contribution or employment. In this respect, the Conventions leave it to national legislation to determine the conditions under which the qualifying period is to be completed, provided that it does not exceed the durations indicated above.

## **5. Employment injury benefit**

*Convention No. 102, Part VI; Convention No. 121  
and Recommendation No. 121*

### **Definition of the contingency**

The contingency covered by these instruments includes: a morbid condition, incapacity for work, invalidity or a loss of faculty due to an industrial accident or a prescribed occupational disease.

The contingency also includes loss of support as a result of the death of the breadwinner following employment injury. Under Convention No. 102, the beneficiaries are the widow or children. In the case of Convention No. 121, they are prescribed categories of beneficiaries, namely: a widow, as prescribed, or a disabled and dependent widower; dependent children of the deceased and any other person prescribed by the legislation (generally parents, grandparents, etc.).

Convention No. 121 places the obligation upon States to prescribe a definition of “industrial accident”, including the conditions under which a commuting accident is considered to be an industrial accident. With regard to the concept of occupational disease, Convention No. 121 offers States three options: to prescribe in their legislation a list of diseases, comprising at least the diseases enumerated in Schedule I to the Convention, which are to be regarded as occupational diseases; to include in its legislation a general definition of occupational diseases broad enough to cover at least the diseases enumerated in Schedule I to the Convention; or, finally, to prescribe a list of diseases in its legislation, supplemented by a general definition of occupational dis-

eases. In its left-hand column, Schedule I to the Convention identifies 29 categories of occupational diseases and, in its right-hand column, the types of work involving exposure to the risk. This Schedule initially included 15 categories of occupational diseases, but was updated in 1980.<sup>7</sup> Protected persons who are victims of one of these diseases and employed in work involving exposure to the corresponding risk benefit from the presumption of the occupational origin of the disease.

Recommendation No. 121 indicates the cases in which accidents should be considered by national legislation as industrial accidents, as well as the conditions under which the occupational origin of the disease should be presumed.

### **Persons protected**

Convention No. 102 and Convention No. 121 refer to employees in defining the persons protected. Under Convention No. 102, the persons protected must comprise prescribed classes of employees constituting not less than 50 per cent of all employees. The scope of Convention No. 121 is broader, since it envisages that all employees, including apprentices in the public and private sector, and in cooperatives, are to be protected.

Recommendation No. 121 calls for the progressive extension of the application of legislation providing for employment injury benefits to any categories of employees which may have been excluded. It also recommends States to secure the provision of benefits, if necessary through voluntary insurance, to prescribed categories of self-employed persons and certain categories of persons working without pay.

### **Benefits**

The benefits envisaged by Conventions Nos. 102 and 121 are of three types: medical care; cash benefits in the event of incapacity for work and loss of earning capacity (invalidity); and,

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<sup>7</sup> It should be noted in this respect that in June 2002 the Conference adopted the List of Occupational Diseases Recommendation (No. 194). This Recommendation calls upon member States to establish a national list of occupational diseases for the purposes of prevention, recording, notification and compensation, which should include at least those in the Schedule to Convention No. 121 and, to the extent possible, other diseases contained in the list annexed to the Recommendation. This latter list, as well as the national list, should be periodically reviewed and updated.

where appropriate, cash benefits in the event of the death of the breadwinner.

*Medical care* has to be afforded with a view to maintaining, restoring or improving the health of the persons protected and their ability to work and to attend to their personal needs. The care must comprise: general practitioner and specialist in-patient care and out-patient care, including domiciliary visiting; dental care; nursing care at home or in hospital or other medical institutions; maintenance in hospitals, convalescent homes, sanatoria or other medical institutions; dental, pharmaceutical and other medical or surgical supplies, including prosthetic appliances and eyeglasses; and the care furnished by members of such other professions as may be recognized as allied to the medical profession, under the supervision of a medical or dental practitioner. Convention No. 121 also envisages emergency treatment at the place of work of persons sustaining a serious accident, and follow-up treatment of those whose injury is slight and does not entail discontinuance of work. In the case of States availing themselves of temporary exceptions, the extent of the care to be provided is more limited.

The *cash benefits* to be provided in the event of incapacity for work, loss of earning capacity, corresponding loss of faculty or the death of the breadwinner, must be a periodical payment. In case of temporary incapacity for work, total loss of earning capacity likely to be permanent or corresponding loss of faculty, the amount of the periodical payments must attain for a standard beneficiary (man with wife and two children) 50 per cent of the reference wage under the terms of Convention No. 102. This rate is raised to 60 per cent by Convention No. 121. Moreover, Recommendation No. 121 indicates that the rate of benefits should not be less than two-thirds of the injured person's former earnings.

In case of partial loss of earning capacity likely to be permanent, the rate of benefit must be a suitable proportion of that specified for total loss of earning capacity.

These instruments nevertheless permit the benefit due in the event of permanent incapacity to be converted into a lump sum<sup>8</sup> where the degree of incapacity is slight or where the competent

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<sup>8</sup> The lump sum corresponds to the actuarial equivalent of the periodical payment.



authority is satisfied that the lump sum will be properly utilized. Nevertheless, in such cases, Convention No. 121 emphasizes the exceptional nature of this measure and makes it subject to the consent of the person protected. The Convention also permits such conversion in the case of States which lack the necessary administrative facilities for periodical payments.

Finally, the rate of *survivors' benefit* in the event of the death of the breadwinner must attain, for a widow with two children, at least 40 per cent of the reference wage for Convention No. 102 and 50 per cent under the terms of Convention No. 121.

In addition to the rules set out in terms of percentages of the reference wage, Convention No. 121 provides that no periodical payment may be less than a prescribed minimum amount.

As in the case of old-age and other long-term benefits, the two Conventions provide that the rates of periodical payments have to be reviewed following substantial changes in the general level of earnings or the cost of living.

It should be noted that Convention No. 121 provides broader protection than Convention No. 102. By way of illustration, injured persons requiring the constant assistance of another person have to be provided with additional benefits. Moreover, a funeral benefit at a rate which is not less than the normal cost of a funeral has to be envisaged by the legislation. States also have to take measures to prevent industrial accidents and occupational diseases, provide rehabilitation services and take measures to further the placement of disabled persons in suitable employment.

### **Qualifying conditions**

In contrast with other contingencies, the granting of benefits in the event of employment injury cannot be made subject to a qualifying period, either in the case of medical care or cash benefits. Benefits have to be provided from the first day of the contingency without a waiting period. However, but only in the case of incapacity for work resulting from employment injury, Convention No. 102 provides that the benefit need not be paid for the first three days in each case of suspension of earnings. Convention No. 121 is more restrictive in this respect, since the waiting period is only permitted in two cases: where the State

benefits from temporary exceptions or where the waiting period was provided for in the legislation at the date on which the Convention came into force and if the reasons for having recourse to this exception subsist. Recommendation No. 121 advocates the removal of any waiting period.

## 6. Family benefit

*Convention No. 102, Part VII*

### Definition of the contingency

The contingency covered by the Convention is the “responsibility for the maintenance of children as prescribed”. The term “child” means a child under school-leaving age or under 15 years of age. The Convention leaves it to national laws or regulations to determine the number of children in respect of whom benefits are payable.

### Persons protected

The persons protected must comprise:

- prescribed classes of *employees*, constituting not less than 50 per cent of all employees; or
- prescribed classes of the *economically active population*, constituting not less than 20 per cent of all residents; or
- all *residents* whose means during the contingency do not exceed prescribed limits.

### Benefits

The Convention envisages the provision of benefits either in cash or in kind (food, clothing, housing, holidays or domestic help), or a combination of both. In contrast with the provisions for other contingencies, the level of family benefit is not determined as a function of a standard beneficiary, but as a global level. The total value of the benefits granted for the whole of the country has to be such as to represent:

- either 3 per cent of the wage of an ordinary adult male labourer, multiplied by the total number of children of persons protected; or
- 1.5 per cent of the said wage, multiplied by the total number of children of all residents.

## Qualifying conditions

Entitlement to family benefit may be made subject to the completion of a qualifying period, which may be three months of contribution or employment, or one year of residence. The benefit must be granted throughout the contingency, that is up to the fifteenth year of the child or up to school-leaving age.

## 7. Maternity benefit

*Convention No. 102, Parts II and VIII; Convention No. 183 and Recommendation No. 191*

### Definition of the contingency

Under Convention No. 102, the contingencies covered include, on the one hand, the medical care required by pregnancy, confinement and their consequences and, on the other hand, the resulting suspension of earnings.

Convention No. 183, although not explicitly defining the contingency, nevertheless covers the same contingencies as Convention No. 102 and provides for much broader benefits.

### Persons protected

The persons protected must comprise:

Convention No. 102	Convention No. 183
<ul style="list-style-type: none"> <li>• either all <i>women</i> in prescribed classes of <i>employees</i>, constituting not less than 50 per cent of all employees and, for medical care in case of maternity, also the wives of men who belong to these classes; or</li> <li>• all <i>women</i> in prescribed classes of the <i>economically active population</i>, constituting not less than 20 per cent of all residents and, for medical care in case of maternity, also the <i>wives</i> of men who belong to this category.</li> </ul>	<ul style="list-style-type: none"> <li>• all <i>employed women</i>, including those in atypical forms of dependent work.<sup>9</sup></li> </ul> <p>————— Note on page 34</p>

## Benefits

Convention No. 102 envisages the provision of maternity medical care and, in the event of suspension of earnings resulting from pregnancy, confinement and their consequences, the provision of cash benefits for at least 12 weeks. *Medical benefits* must include at least pre-natal, confinement and post-natal care, either by medical practitioners or by qualified midwives, and hospitalization where necessary. The minimum rate of *cash benefits* must correspond to at least 45 per cent of the reference wage.

It should be emphasized that Convention No. 102 is an instrument that is devoted exclusively to social security and that it only addresses maternity from the point of view of social security, while Convention No. 183, in the same way as Conventions Nos. 3 and 103 in their time, is specifically devoted to maternity protection and therefore provides for much more extensive benefits, as described below.

Convention No. 183 explicitly sets forth the *right to a minimum period of maternity leave*. All women to whom the Convention applies must, on production of a medical certificate or other appropriate certification, be entitled to a period of maternity leave of not less than 14 weeks.<sup>10</sup> This leave must include a period of six weeks' compulsory leave after childbirth, unless otherwise agreed at the national level by the government and the representative organizations of employers and workers. The pre-natal portion of maternity leave also has to be extended by any period elapsing between the presumed date and the actual date of childbirth. Finally, in case of illness, complications or risk of complications arising out of pregnancy or childbirth, additional leave must be granted. Recommendation No. 191 calls for the extension of the period of maternity leave to 18 weeks.

Women who are absent from work on leave related to maternity must be provided with *cash benefits* at a level which

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<sup>9</sup> The Maternity Protection Convention (Revised), 1952 (No. 103), was already broader in scope than Convention No. 102, since it applies to women employed in industrial undertakings and in non-industrial and agricultural occupations, including women wage-earners working at home. At the time of the adoption of Convention No. 183, it clearly emerged that the objective should be the extension of maternity protection to the broadest possible number of employed women.

<sup>10</sup> Earlier Conventions on maternity protection (Conventions Nos. 3 and 103) prescribed maternity leave of 12 weeks.

ensures that they can maintain themselves and their child in proper conditions of health and with a suitable standard of living. Where such benefits are based on previous earnings, they must not be less than two-thirds of such earnings. Where other methods are used to determine the cash benefits, their amount has to be comparable with the amount resulting on average from the determination of benefits based on previous earnings. However, in the case of countries whose economy and social security system are insufficiently developed, the level of cash benefits may be equivalent to the benefits payable for sickness or temporary disability. Recommendation No. 191 encourages member States to raise the level of maternity benefit to the full amount of the woman's previous earnings.

The *medical benefits* provided to protected persons must include pre-natal, childbirth and post-natal care, as well as hospitalization when necessary.

Moreover, Convention No. 183 envisages the right of breastfeeding mothers to one or more daily breaks or a daily reduction of hours of work. These breaks or reduction of hours of work have to be counted as working time and remunerated accordingly.

Finally, Convention No. 183 also contains several provisions respecting *health protection, employment protection and non-discrimination*. States must take measures to ensure that pregnant or breastfeeding women are not obliged to perform work which has been determined to be prejudicial to the health of the mother or the child. Moreover, they have to adopt measures to ensure that maternity does not constitute a source of discrimination in employment or in access to employment. It is also prohibited for employers to terminate the employment of a woman during her pregnancy or absence on leave or during a period following her return to work, except on grounds unrelated to the pregnancy or birth of the child and its consequences or nursing. Finally, when the woman returns to work, she must be guaranteed the right to return to the same position or an equivalent position paid at the same rate.

### **Qualifying conditions**

Under Convention No. 102, the right to benefit may be made subject to the completion of a qualifying period as may be

considered necessary to preclude abuse. Once the benefit has been granted, it must be provided throughout the contingency, although the cash benefit may nevertheless be limited to 12 weeks. However, if national laws or regulations require or authorize maternity leave longer than 12 weeks, the cash benefit must be paid to the woman throughout the whole of the leave.

Convention No. 183 also envisages that entitlement to cash benefits may be made subject to conditions, which conditions must however be able to be satisfied by a large majority of the women to whom the Convention applies. Furthermore, where women do not meet the prescribed conditions, they must be entitled to adequate benefits financed by social assistance funds.

## 8. Invalidation benefit

*Convention No. 102, Part IX; Convention No. 128 and Recommendation No. 131*

### Definition of the contingency

The contingency covered is the inability to engage in any gainful activity where such inability is likely to be permanent or persists after the period during which the beneficiary is entitled to benefit for temporary incapacity.

Recommendation No. 131 also calls for incapacity to engage in an activity involving substantial gain to be taken into account.

### Persons protected

The persons protected must comprise:

Convention No. 102	Convention No. 128
<ul style="list-style-type: none"><li>• prescribed classes of <i>employees</i>, constituting not less than 50 per cent of all employees; or</li><li>• prescribed classes of the <i>economically active population</i>, constituting not less than 20 per cent of all residents; or</li></ul>	<ul style="list-style-type: none"><li>• all <i>employees</i>, including apprentices; or</li><li>• prescribed classes of the <i>economically active population</i>, constituting not less than 75 per</li></ul>

Convention No. 102	Convention No. 128
<ul style="list-style-type: none"> <li>all <i>residents</i> whose means during the contingency do not exceed certain limits.</li> </ul>	<p>cent of the whole economically active population; or</p> <ul style="list-style-type: none"> <li>all <i>residents</i>, or residents whose means during the contingency do not exceed certain limits.</li> </ul>

Recommendation No. 131 advocates the extension of the right to invalidity benefit to casual workers and to all economically active persons.

### Benefits

The benefits have to take the form of a periodical payment, the amount of which for a standard beneficiary (man with wife and two children) must be equivalent to at least 40 per cent of the reference wage for Convention No. 102. This rate is raised to 50 per cent by Convention No. 128, while Recommendation No. 131 advocates increasing it to 60 per cent. It also recommends that national legislation should fix minimum amounts of benefits so as to ensure a minimum standard of living<sup>11</sup> and that increments to the amounts of these benefits should be provided in certain circumstances, and particularly for beneficiaries requiring the constant help of another person.

Invalidity benefit has to be granted throughout the contingency or until an old-age benefit becomes payable. As in the case of old-age benefit, both Convention No. 102 and Convention No. 128 provide that the rates of the pension have to be reviewed following substantial changes in the general level of earnings or the cost of living.

In addition to cash benefits, Convention No. 128 envisages the adoption of measures for the provision of rehabilitation services designed to prepare disabled persons for the resumption of their previous activity or for another activity suited to their

<sup>11</sup> It is interesting to note in this respect that it is only in the case of employment injury that it has been possible to prescribe at the level of the Convention that invalidity and survivors' benefits must not be below a minimum standard of living. In the case of invalidity of common origin, the concept of the minimum standard of living is only found in the Recommendation.

aptitudes. The obligation to provide such services does not, however, apply to countries benefiting from temporary exceptions.

### **Qualifying conditions**

Invalidity benefit at the level envisaged by the Conventions must be secured to protected persons who have completed a qualifying period of 15 years of contribution or employment, or ten years of residence. As in the case of old-age benefit, where the invalidity benefit is conditional upon a minimum period of contribution or employment or, under Convention No. 128, of residence, a reduced benefit must be secured to a person protected who has completed a qualifying period of five years of contribution, employment or residence. Where all economically active persons are protected, more flexible rules apply both for the full invalidity pension and the reduced pension.

## **9. Survivors' benefit**

*Convention No. 102, Part X; Convention No. 128  
and Recommendation No. 131*

### **Definition of the contingency**

The contingency covered is the loss of support suffered by the widow or children as a result of the death of the breadwinner. The protection provided therefore concerns widows who were dependent on the deceased breadwinner, and children whose breadwinner (father or mother) has died. The term "child" means a child under school-leaving age or under 15 years of age (whichever is the higher), or in the case of Convention No. 128 a higher age where the child is an apprentice or student, or has a chronic illness or infirmity disabling him or her from any gainful activity.

In the case of a widow, Convention No. 102 provides that the right to benefit may be made conditional on her being presumed to be incapable of self-support. Convention No. 128 provides that the widow must have reached a prescribed age, which must not be higher than the age prescribed for old-age benefit. However, where a widow is an invalid or is caring for a dependent child of the deceased, there is no requirement as to age and the benefit must be provided to her in any event. The two instru-



ments also permit, under certain conditions, the requirement of a minimum period of marriage for entitlement to the benefit.

### Persons protected

The persons protected must comprise :

Convention No. 102	Convention No. 128
<ul style="list-style-type: none"> <li>• wives and children of breadwinners in prescribed classes of <i>employees</i>, which classes constitute not less than 50 per cent of all employees; or</li> <li>• wives and children of breadwinners in prescribed classes of the <i>economically active population</i>, which classes constitute not less than 20 per cent of all residents; or</li> <li>• all <i>resident</i> widows and resident children who have lost their breadwinner and whose means during the contingency do not exceed certain limits.</li> </ul>	<ul style="list-style-type: none"> <li>• wives, children and, as may be prescribed, other dependants of breadwinners who were <i>employees</i> or apprentices; or</li> <li>• wives, children and, as may be prescribed, other dependants of breadwinners in prescribed classes of the <i>economically active population</i>, which classes constitute not less than 75 per cent of the whole economically active population; or</li> <li>• all widows, all children and all other prescribed dependants who have lost their breadwinner, who are <i>residents</i> and, as appropriate, whose means during the contingency do not exceed certain limits.</li> </ul>

Recommendation No. 131 advocates the extension of entitlement to survivors' benefit to wives, children and other dependants of persons whose employment is of a casual nature and of all economically active persons. It also encourages member States to grant the same rights to an invalid and dependent widower as to widows.

### Benefits

The benefit must be a periodical payment, the amount of which for a standard beneficiary (widow with two children) must correspond to at least 40 per cent of the reference wage, in

accordance with Convention No. 102. This rate is raised to 45 per cent by Convention No. 128 and to 55 per cent by Recommendation No. 131. This instrument also recommends, as for old-age and invalidity benefit, that national legislation should fix minimum amounts of benefits so as to ensure a minimum standard of living and that increments to the amounts of these benefits should be provided in certain circumstances, and particularly for beneficiaries requiring the constant help of another person.

Survivors' benefit must be granted throughout the contingency. It is a long-term benefit which, in the same way as old-age and invalidity benefit, must be reviewed following substantial changes in the general level of earnings or in the cost of living.

### **Qualifying conditions**

The Conventions contain a number of provisions respecting the qualifying period which the breadwinner must, as appropriate, have completed for survivors' benefit at the rate prescribed by these Conventions to be secured to protected persons. This qualifying period may consist of a period of contribution or employment of not more than 15 years, or a period of residence not exceeding ten years.

As in the case of old-age and invalidity benefit, where the granting of survivors' benefit is conditional upon the completion of a period of contribution or employment, a reduced benefit shall be secured to a person protected whose breadwinner has completed a qualifying period of five years of contribution, employment or residence. Where the wives and children of all economically active persons are protected, more flexible rules apply to the provision of the full benefit and the reduced benefit.

### **III. Social security of migrant workers**

Migrant workers are confronted with particular difficulties in the field of social security. In the absence of international protection, they run the risk of losing the entitlement to social security benefits which they enjoyed in their country of origin, and may at the same time encounter restrictive conditions in the host country with regard to their coverage by the national social security system. Out of its concern from the outset for the situation of these particularly vulnerable workers, the ILO has endeavoured to provide them with protection through its standards, among other means. The Conference has adopted general instruments on migrant workers. In addition, general social security Conventions explicitly or implicitly set forth the principle of equality of treatment between nationals and foreign workers.

Finally, other ILO standards address the issue of the social security of migrant workers in a global manner. The two principal instruments in this respect are the Equality of Treatment (Social Security) Convention, 1962 (No. 118), and the Maintenance of Social Security Rights Convention, 1982 (No. 157). Both instruments contain provisions relating to all nine branches of social security. However, while a State which ratifies Convention No. 118 may limit its application to certain of these branches, such flexibility is not offered by Convention No. 157. Indeed, where a State party to the latter Convention has legislation in force covering a specific branch, it is obliged to apply the provisions of the Convention for that branch. The two instruments provide for the possibility of States parties to derogate from their

provisions by virtue of special arrangements concluded between them, on condition that they do not affect the rights and obligations of other States parties and settle the issues that they cover in terms which are at least as favourable as those envisaged in the Conventions. Conventions Nos. 118 and 157 therefore establish a system based on a number of basic principles, and primarily equality of treatment, the maintenance of acquired rights and the maintenance of rights in the course of acquisition.

## **1. Equality of treatment**

By virtue of the principle of equality of treatment, non-national workers must benefit in the host country from the same conditions as nationals in terms of coverage and entitlement to social security benefits. In 1925, the Conference first set forth this principle in a Convention specifically addressing the compensation of industrial accidents (Convention No. 19). The scope of Convention No. 118 is much broader, since it covers the nine branches of social security. For each of the branches that it accepts, a State party to the Convention undertakes to grant within its territory to nationals of any other State which has ratified the Convention equality of treatment in social security with its own nationals. An exception to this rule is, however, permitted to exert pressure on any other State which does not respect it. Furthermore, equality of treatment must be granted to refugees and stateless persons. In addition, where, under the national legislation, entitlement to benefit is subject to a residence requirement, such a condition cannot in principle be imposed only on non-nationals. The issue of equality of treatment, which is addressed in a comprehensive manner in Convention No. 118, is not developed further in Convention No. 157.<sup>1</sup>

## **2. Maintenance of acquired rights and the provision of benefits abroad**

The maintenance of acquired rights permits migrant workers to receive benefits which are due to them from a State, even

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<sup>1</sup> It should also be emphasized that most of the ILO Conventions covering one or more specific branches of social security contain provisions on equality of treatment. For example, Part XII of Convention No. 102 covers this subject.

when they cease to be resident on its territory. This principle, which is essential for the social protection of migrant workers, is intended to ensure them real equality of treatment and not just legal equality.

In the case of long-term benefits (particularly invalidity, old-age and survivors' benefit, and annuities paid as a result of an employment accident or an occupational disease), there is a direct obligation to maintain acquired rights,<sup>2</sup> in the sense that it is not dependent on the conclusion of an agreement between the States concerned. A State party to Convention No. 118 has to ensure the provision of benefits abroad in a specific branch for its own nationals and the nationals of any other State which has accepted the obligations of the Convention for the same branch, irrespective of the place of residence of the beneficiary. Convention No. 157 establishes a similar obligation. However, as it does not allow for the exclusion of any branches at the time of ratification, the maintenance of acquired rights has to be ensured for the nationals of other States parties to the Convention in any branch of social security in which the States concerned have legislation that is in force.<sup>3</sup> Finally, both Convention No. 118 and Convention No. 157 provide that this principle shall apply, without any condition of reciprocity, to refugees and stateless persons.

With regard to short-term benefits, the obligation to maintain acquired rights is indirect. States have to endeavour to participate in schemes for the maintenance of these rights. As in the case of long-term benefits, this obligation has to be ensured, under Convention No. 118, for nationals of any other State for which the Convention is also in force and for the branches of social security which have been accepted by the States concerned. Convention No. 157 establishes this principle for all the branches of social security in which each State has legislation in force. In any case, the obligation only rests on the States concerned, that is those between which there are movements of persons warranting the conclusion of such arrangements. Negotiations must be undertaken in good faith, although failure to

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<sup>2</sup> Moreover, specific rules apply to family benefit.

<sup>3</sup> Convention No. 157 however offers the alternative of allowing the States concerned to guarantee the provision of such benefits through bilateral or multilateral instruments.

conclude an agreement cannot be interpreted as non-compliance with this obligation.

### **3. Maintenance of rights in course of acquisition**

Certain provisions in national legislation may give rise to particular difficulties in their application to migrant workers. These include qualifying conditions for entitlement to benefits, which would oblige them to complete a new qualifying period each time they change their State of residence. In such cases, migrant workers would, for example, only receive very low retirement pensions in comparison with those to which they would have been entitled if they had contributed throughout their career to the social security system in a single State. To address this risk, the maintenance of rights in the course of acquisition makes it possible to add together periods of coverage of migrant workers under the social security legislation of the various countries in which they have lived.

States parties to Conventions Nos. 118 and 157 have to endeavour to participate in a scheme for the maintenance of rights in course of acquisition similar to those described above for the maintenance of acquired rights.

### **4. Applicable legislation**

Convention No. 157 addresses this important issue. The rules respecting the determination of the applicable legislation are intended to prevent conflicts of laws and the undesirable consequences that might ensue for those concerned either through lack of protection or as a result of undue plurality of contributions or benefits. The States concerned have to determine by common agreement the applicable legislation, in accordance with certain principles set out in the Convention itself. The applicable legislation is normally that of the State in which the persons concerned carry out their occupational activity or, in the case of persons who are not active, in which they are resident. However, the States concerned may agree to exceptions from this rule in the interests of the persons concerned.

## **5. Administrative assistance and assistance to persons**

Convention No. 118 provides that States parties shall afford each other administrative assistance free of charge with a view to facilitating the application of the Convention and the implementation of their respective social security legislation. Convention No. 157 also provides for such assistance, in principle free of charge, subject to the reimbursement of certain costs.

In addition, States parties to Convention No. 157 have to promote the development of social services to assist the persons concerned in their dealings with the authorities, particularly with respect to the award and receipt of benefits and the exercise of their right of appeal, as well as to promote their personal and family welfare.

The matters covered by Conventions Nos. 118 and 157 are very complex, as has been seen. With a view to facilitating the conclusion of agreements between the States concerned and their coordination at the international level, the Maintenance of Social Security Rights Recommendation, 1983 (No. 167) contains model provisions in annex for the conclusion of bilateral and multilateral social security instruments.





## **Annexes**

Annex 1 below provides a comparative description, for each of the nine branches of social security, of the protection afforded by Convention No. 102 and the corresponding third generation Conventions.

Annex 2 contains a chronological list of the ILO's social security Conventions and Recommendations. This list enumerates the instruments which are up to date, that is Conventions whose ratification is encouraged and Recommendations to which member States are invited to give effect. It also mentions instruments with interim status, that is those that are no longer completely up to date, but which remain relevant in certain respects.

Finally, Annex 3 describes the status of the ILO's social security standards in accordance with the decisions on standards policy taken by the Governing Body. As in Annex 2, only the up-to-date instruments and those with interim status are included. Instruments which are outdated, and which therefore no longer make a useful contribution to the achievement of the Organization's objectives, have been omitted.

## Annex 1 – Benefits at a glance

The tables below summarize the minimum benefits to be provided to the persons protected. Only the principal provisions of the social security Conventions are noted. The tables do not include the derogations allowed for by these instruments, such as the provisions for countries where the economy and medical resources are not sufficiently developed, nor the higher level of benefit advocated by the relevant Recommendations.

### 1. Medical care

	Convention No. 102	Convention No. 130
Nature of benefits	<ul style="list-style-type: none"> <li>• Preventive care.</li> <li>• General practitioner care, including home visits.</li> <li>• Specialist care in hospitals or outside.</li> <li>• The essential pharmaceutical supplies as prescribed.</li> <li>• Hospitalization where necessary.</li> <li>• Prenatal, confinement and postnatal care either by medical practitioners or by qualified midwives, and hospitalization were necessary.</li> </ul>	<ul style="list-style-type: none"> <li>• The benefits enumerated in Convention No. 102; and also</li> <li>• Dental care.</li> <li>• Medical rehabilitation.</li> </ul>

**Convention No. 102****Convention No. 130**

Conditions of entitlement to benefits  
Duration of benefits

- Possibility to impose a qualifying period.
- Benefit granted throughout the contingency covered.
- Possibility of limiting the duration of benefits to 26 weeks.
- Possibility of limiting the duration of benefits to 26 weeks only when the beneficiary ceases to belong to the categories of persons protected in a case of sickness which started while she/he belonged to such categories.
- The duration of medical care is to be prolonged as long as the beneficiary is entitled to sickness benefit (see below) and in case of diseases recognized as entailing prolonged care.
- idem.
- idem.
- Possibility of limiting the duration of benefits to 26 weeks only when the beneficiary ceases to belong to the categories of persons protected in a case of sickness which started while she/he belonged to such categories.
- idem.

## 2. Sickness benefit

	Convention No. 102	Convention No. 130
Nature of benefits	<ul style="list-style-type: none"> <li>• Periodical payments, corresponding to at least 45% of the reference wage.</li> </ul>	<ul style="list-style-type: none"> <li>• Periodical payments, corresponding to at least 60% of the reference wage.</li> <li>• In case of death of the beneficiary, benefit for funeral expenses.</li> </ul>
Conditions of entitlement to benefits	<ul style="list-style-type: none"> <li>• Possibility to impose a qualifying period.</li> </ul>	<ul style="list-style-type: none"> <li>• idem.</li> </ul>
Duration of benefits	<ul style="list-style-type: none"> <li>• The benefit is to be granted throughout the contingency.</li> <li>• Possibility of establishing a waiting period of three days.</li> <li>• Possibility of limiting the duration of benefits to 26 weeks in each case of sickness.</li> </ul>	<ul style="list-style-type: none"> <li>• idem.</li> <li>• Possibility of limiting the duration of benefits to 52 weeks in each case of sickness.</li> </ul>

### 3. Unemployment benefit

	Convention No. 102	Convention No. 168
Nature of benefits	<ul style="list-style-type: none"> <li>• Periodical payments corresponding to at least 45% of the reference wage.</li> </ul>	<ul style="list-style-type: none"> <li>• Periodical payments corresponding to at least 50% of the reference wage.</li> <li>• Beyond the initial period, possibility of applying special rules of calculation. Nevertheless, the total of benefits to which the unemployed may be entitled must guarantee them healthy and reasonable living conditions in accordance with national standards.</li> </ul>
Conditions of entitlement to benefits	<ul style="list-style-type: none"> <li>• Possibility of prescribing a qualifying period.</li> </ul>	<ul style="list-style-type: none"> <li>• idem.</li> </ul>
Duration of benefits	<ul style="list-style-type: none"> <li>• Possibility of establishing a waiting period of seven days.</li> <li>• The benefits have to be granted in principle throughout the contingency.</li> <li>• Nevertheless, the duration of the benefit can be limited to 13 or 26 weeks, depending on the case, within a period of 12 months.</li> </ul>	<ul style="list-style-type: none"> <li>• Possibility of limiting the initial duration of payment of the benefit to 26 weeks in case of unemployment, or to 39 weeks over any period of 24 months.</li> <li>• In the event of unemployment continuing beyond this initial period, the duration of the payment of benefit may be limited to a prescribed period and may be calculated in the light of the resources of the beneficiary and his or her family.</li> </ul>

#### 4. Old-age benefit

	Convention No. 102	Convention No. 128
Nature of benefits	<ul style="list-style-type: none"> <li>• Periodical payments, at least 40% of the reference wage.</li> <li>• The rates of periodical payments must be revised following substantial changes in the general level of earning and/or in the cost of living.</li> </ul>	<ul style="list-style-type: none"> <li>• Periodical payments, at least 45% of the reference wage.</li> <li>• idem.</li> </ul>
Conditions of entitlement to benefits	<ul style="list-style-type: none"> <li>• The prescribed age must not be more than 65 years.</li> <li>• Possibility of fixing a higher age with due regard to the working ability of elderly persons in the country.</li> </ul>	<ul style="list-style-type: none"> <li>• idem.</li> <li>• Possibility of fixing a higher age with due regard to demographic, economic and social criteria, which shall be demonstrated statistically.</li> <li>• If the prescribed age is 65 or higher, the age must be lowered in respect of persons who have been engaged in arduous or unhealthy occupations.</li> </ul>
Duration of benefits	<ul style="list-style-type: none"> <li>• Possibility of prescribing a qualifying period: either 30 years of contribution or employment or 20 years of residence.</li> <li>• Where a qualifying period is established, obligation to guarantee a reduced benefit after completion of a qualifying period of 15 years of contribution or employment.</li> <li>• The benefits have to be granted throughout the contingency.</li> </ul>	<ul style="list-style-type: none"> <li>• idem.</li> <li>• idem.</li> </ul>

## 5. Employment injury benefit

	Convention No. 102	Convention No. 121
Nature of benefits	<ul style="list-style-type: none"> <li>• Medical care (a list of which is contained in the Convention).</li> <li>• Periodical payments, corresponding to at least 50% of the reference wage in cases of incapacity for work or invalidity.</li> <li>• In case of death of the breadwinner, benefits for the widow and dependant children. Periodical payments corresponding to at least 40% of the reference wage.</li> <li>• Except in the case of incapacity for work, obligation to revise the rates of periodical payments following substantial changes in the cost of living.</li> <li>• Possibility of converting periodical payments into a lump sum where (1) the degree of incapacity is slight or where (2) the competent authority is satisfied that the lump sum will be properly utilized.</li> </ul>	<ul style="list-style-type: none"> <li>• idem. In addition, certain types of care at the place of work.</li> <li>• Periodical payments, corresponding to at least 60% of the reference wage in cases of incapacity for work or invalidity.</li> <li>• In case of death of the breadwinner, benefits for the widow, the disabled and dependent widower, dependent children, as well as all other persons, as recognized under national legislation. Periodical payments corresponding to at least 50% of the reference wage.</li> <li>• Obligation to prescribe a minimum amount for these periodical payments.</li> <li>• idem.</li> <li>• Possibility of converting periodical payments into a lump sum (1) in the case of loss of earning capacity which is not substantial and (2) in exceptional circumstances, and with the agreement of the injured person, when</li> </ul>

**Convention No. 102**

**Convention No. 121**

the competent authority has reason to believe that such lump sum will be utilized in a manner which is particularly advantageous for the injured person.

- Supplementary benefits for disabled persons requiring the constant help of a third person.

Conditions of entitlement to benefits

- Prohibition to prescribing a qualifying period.
- In the case of a widow, the right to benefit may be made conditional on her being presumed to be incapable of self-support.

Duration of benefits

- No waiting period except in the case of temporary incapacity to work (maximum 3 days).
- Possibility of fixing a waiting period in cases of incapacity to work if the delay was provided for under legislation at the time the Convention entered into force and the reasons for this still exist.
- The benefit has to be granted throughout the contingency.



## 6. Family benefit

	Convention No. 102	No third generation instrument
Nature of benefits	<p>(a) Either periodical payments; or</p> <p>(b) the provision of food, clothing, housing, holidays or domestic help; or</p> <p>(c) a combination of (a) and (b).</p> <p>Minimum amount for the total value of the benefits granted in the country.</p>	/
Conditions of entitlement to benefits	<p>Possibility of prescribing a qualifying period, either three months of contribution or employment, or one year of residence.</p>	/
Duration of benefits	<p>In the case of periodical payment, it shall be granted throughout the contingency.</p>	/

## 7. Maternity benefit

	Convention No. 102	Convention No. 183
Nature of benefits	<ul style="list-style-type: none"> <li>• Medical care including at least prenatal, confinement and postnatal care either by medical practitioners or by qualified midwives and hospitalization where necessary.</li> <li>• Periodical payments, at least 45% of the reference wage.</li> </ul>	<ul style="list-style-type: none"> <li>• Medical benefits including prenatal, childbirth and postnatal care, as well as hospitalization care when necessary.</li> <li>• Cash benefits that ensure that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living. At least 2/3 of previous earnings or equivalent amount.</li> </ul>
Conditions of entitlement to benefits	<ul style="list-style-type: none"> <li>• Possibility of prescribing a qualifying period.</li> <li>• Benefit also has to be secured to the wife of a man in the classes protected where the latter has completed the qualifying period.</li> </ul>	<ul style="list-style-type: none"> <li>• Conditions to qualify for cash benefits must be able to be satisfied by a large majority of the women to whom the Convention applies. Where a woman does not meet the conditions to qualify for cash benefits, she must be entitled to adequate benefits out of social assistance funds, subject to the means test required for such assistance.</li> </ul>
Duration of benefits	<ul style="list-style-type: none"> <li>• Benefits granted throughout the contingency.</li> </ul>	<ul style="list-style-type: none"> <li>• Benefits granted throughout the contingency; 14 weeks or more in cases of illness or complications.</li> </ul>

**Convention No. 102****Convention No. 183**

- Possibility of limiting periodical payments to 12 weeks, unless a longer period of absence from work is required or authorized by national laws or regulations.

## 8. Invalidation benefit

	Convention No. 102	Convention No. 128
Nature of benefits	<ul style="list-style-type: none"> <li>• Periodical payments, corresponding to at least 40% of the reference wage.</li> <li>• The rates of periodical payments must be revised following substantial changes in the general level of earning and/or in the cost of living.</li> </ul>	<ul style="list-style-type: none"> <li>• Periodical payments, corresponding to at least 50% of the reference wage.</li> <li>• idem.</li> </ul>
Conditions of entitlement to benefits	<ul style="list-style-type: none"> <li>• Possibility of prescribing a qualifying period, either 15 years of contribution or employment, or 10 years of residence.</li> <li>• In this case, obligation to secure a reduced benefit after a qualifying period of 5 years of contribution or employment.</li> </ul>	<ul style="list-style-type: none"> <li>• Obligation to provide rehabilitation services and take measures to further the placement of disabled persons in suitable employment.</li> <li>• idem.</li> <li>• Obligation to secure a reduced benefit after a qualifying period of 5 years of contribution, employment or residence.</li> </ul>
Duration of benefits	<ul style="list-style-type: none"> <li>• The benefits shall be granted throughout the contingency or until old-age benefits become payable.</li> </ul>	<ul style="list-style-type: none"> <li>• idem.</li> </ul>

## 9. Survivors' benefit

	Convention No. 102	Convention No. 128
Nature of benefits	<ul style="list-style-type: none"> <li>• Periodical payments, corresponding to at least 40% of the reference wage.</li> <li>• The rates of periodical payments must be revised following substantial changes in the general level of earning and/or in the cost of living.</li> </ul>	<ul style="list-style-type: none"> <li>• Periodical payments, corresponding to at least 45% of the reference wage.</li> <li>• idem.</li> </ul>
Conditions of entitlement to benefits	<ul style="list-style-type: none"> <li>• Possibility of requiring the breadwinner to complete a qualifying period which may be 15 years of contribution or employment, or 10 years of residence.</li> <li>• In this case, obligation to secure reduced benefits if the breadwinner has completed a qualifying period of five years of contribution or employment.</li> <li>• In the case of a widow, the right to benefits may be made conditional on her being presumed to be incapable of self-support.</li> <li>• For childless widows presumed to be incapable of self-support, a minimum duration of the marriage may also be required.</li> </ul>	<ul style="list-style-type: none"> <li>• idem. Nevertheless, the completion by a widow of a prescribed qualifying period of residence may be required instead.</li> <li>• idem.</li> <li>• Possibility of prescribing an age condition for widows (no higher than the age prescribed for old-age benefits), except if they are invalid or caring for a dependent child of the deceased.</li> </ul>

**Convention No. 102**

**Convention No. 128**

Duration of benefits

- The benefit has to be granted throughout the contingency.
- Possibility of requiring a minimum duration of the marriage.
- idem.

## **Annex 2 – List of social security standards**

### **Conventions**

- Maternity Protection Convention, 1919 (No. 3)
- Workmen's Compensation (Agriculture) Convention, 1921 (No. 12)
- Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)
- Social Security (Minimum Standards) Convention, 1952 (No. 102)
- Equality of Treatment (Social Security) Convention, 1962 (No. 118)
- Employment Injury Benefits Convention, 1964 (No. 121)
- Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128)
- Medical Care and Sickness Benefits Convention, 1969 (No. 130)
- Maintenance of Social Security Rights Convention, 1982 (No. 157)
- Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168)
- Maternity Protection Convention, 2000 (No. 183)

### **Recommendations**

- Social Insurance (Agriculture) Recommendation, 1921 (No. 17)
- Equality of Treatment (Accident Compensation) Recommendation, 1925 (No. 25)
- Income Security Recommendation, 1944 (No. 67)
- Social Security (Armed Forces) Recommendation, 1944 (No. 68)
- Medical Care Recommendation, 1944 (No. 69)
- Employment Injury Benefits Recommendation, 1964 (No. 121)
- Invalidity, Old-Age and Survivors' Benefits Recommendation, 1967 (No. 131)
- Medical Care and Sickness Benefits Recommendation, 1969 (No. 134)
- Maintenance of Social Security Rights Recommendation, 1983 (No. 167)
- Employment Promotion and Protection against Unemployment Recommendation, 1988 (No. 176)
- Maternity Protection Recommendation, 2000 (No. 191)

## Annex 3 – Status of social security standards

### Comprehensive standards

Instruments	Number of ratifications <sup>1</sup>	Status
<b>Up-to-date instruments</b>		
Social Security (Minimum Standards) Convention, 1952 (No. 102)	40	The Governing Body decided: (a) to invite the Office to offer, in appropriate cases, technical assistance with respect to Convention No. 102, including the dissemination of information in the light of the conclusions of the general discussion on social security that was held at the 89th Session (June 2001) of the Conference; (b) to invite member States to contemplate ratifying this Convention; (c) to invite member States to inform the Office of obstacles or difficulties encountered, if any, that might prevent or delay ratification; (d) that the Committee on Legal Issues and International Labour Standards re-examine the status of this Convention in due course.
Income Security Recommendation, 1944 (No. 67)	—	The Governing Body has invited member States to give effect to Recommendation No. 67.

<sup>1</sup> In the following tables, the number of ratifications is indicated as of 31 December 2002.



Instruments	Number of ratifications	Status
<b>Instruments with interim status</b>		
Social Insurance (Agriculture) Recommendation, 1921 (No. 17)	—	The Governing Body decided to maintain the status quo with regard to Recommendations Nos. 17 and 68.
Social Security (Armed Forces). Recommendation, 1944 (No. 68)	—	

## Medical care and sickness benefit

### Up-to-date instruments

Social Security (Minimum Standards) Convention, 1952 (No. 102) (Parts II and III)	40	See above (comprehensive standards).
Medical Care and Sickness Benefits Convention, 1969 (No. 130)	14	The Governing Body decided: <ul style="list-style-type: none"> <li>(a) to invite the Office to offer, in appropriate cases, technical assistance with respect to the Convention No. 130, including the dissemination of information in the light of the conclusions of the general discussion on social security that was held at the 89th Session (June 2001) of the Conference;</li> <li>(b) to invite member States to contemplate ratifying this Convention;</li> <li>(c) to invite member States to inform the Office of obstacles or difficulties encountered, if any, that might prevent or delay ratification;</li> </ul>

Instruments	Number of ratifications	Status
Medical Care and Sickness Benefits Recommendation, 1969 (No. 134)	—	<p>(d) that the Committee on Legal Issues and International Labour Standards re-examine the status of Convention No. 130 in due course.</p> <p>The Governing Body decided:</p> <p>(a) to invite member States to give effect to Recommendation No. 134;</p> <p>(b) to invite the Office to offer, in appropriate cases, technical assistance with respect to this Recommendation, including the dissemination of information in the light of the conclusions of the general discussion on social security that was held at the 89th Session (June 2001) of the Conference.</p>
<b>Instruments with interim status</b>		
Medical Care Recommendation, 1944 (No. 69)	—	The Governing Body decided to maintain the status quo with regard to Recommendation No. 69.
<b>Unemployment benefit</b>		
<b>Up-to-date instruments</b>		
Social Security (Minimum Standards) Convention, 1952 (No. 102) (Part IV)	40	See above (comprehensive standards).
Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168)	6	This instrument was adopted after 1985 and is considered up to date.

Instruments	Number of ratifications	Status
Employment Promotion and Protection against Unemployment Recommendation, 1988 (No. 176)	—	This instrument was adopted after 1985 and is considered up to date.
<b>Old-age, invalidity and survivors' benefit</b>		
<b>Up-to-date instruments</b>		
Social Security (Minimum Standards) Convention, 1952 (No. 102) (Parts V, IX and X)	40	See above (comprehensive standards).
Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128)	16	<p>The Governing Body decided:</p> <ul style="list-style-type: none"> <li>(a) to invite the Office to offer, in appropriate cases, technical assistance with respect to Convention No. 128, including the dissemination of information in the light of the conclusions of the general discussion on social security that was held at the 89th Session (June 2001) of the Conference;</li> <li>(b) to invite member States to contemplate ratifying this Convention;</li> <li>(c) to invite member States to inform the Office of obstacles or difficulties encountered, if any, that might prevent or delay ratification;</li> <li>(d) that the Committee on Legal Issues and International Labour Standards re-examine the status of Convention No. 128 in due course.</li> </ul>

Instruments	Number of ratifications	Status
Invalidity, Old-Age and Survivors' Benefits Recommendation, 1967 (No. 131)	—	<p>The Governing Body decided:</p> <p>(a) to invite member States to give effect to Recommendation No. 131;</p> <p>(b) to invite the Office to offer, in appropriate cases, technical assistance with respect to this Recommendation, including the dissemination of information in the light of the conclusions of the general discussion on social security that was held at the 89th Session (June 2001) of the Conference.</p>

## Employment injury benefit

### Up-to-date instruments

Social Security (Minimum Standards) Convention, 1952 (No. 102) (Part VI)	40	See above (comprehensive standards).
Employment Injury Benefits Convention, 1964 (No. 121)	23	<p>The Governing Body decided:</p> <p>(a) to invite the Office to offer, in appropriate cases, technical assistance with respect to Convention No. 121, including the dissemination of information in the light of the conclusions of the general discussion on social security that was held at the 89th Session (June 2001) of the Conference;</p> <p>(b) to invite member States to contemplate ratifying this Convention;</p> <p>(c) to invite member States to inform the Office of obstacles or difficulties encountered, if any, that might prevent or delay ratification;</p>

Instruments	Number of ratifications	Status
Employment Injury Benefits Recommendation, 1964 (No. 121)	—	(d) that the Committee on Legal Issues and International Labour Standards re-examine the status of Convention No. 121 in due course. The Governing Body has invited member States to give effect to Recommendation No. 121.
<b>Instruments with interim status</b>		
Workmen's Compensation (Agriculture) Convention, 1921 (No. 12)	75	The Governing Body decided to maintain the status quo with regard to Convention No. 12.
<b>Maternity benefit</b>		
<b>Up-to-date instruments</b>		
Social Security (Minimum Standards) Convention, 1952 (No. 102) (Part VIII)	40	See above (comprehensive standards).
Maternity Protection Convention, 2000 (No. 183)	4	These instruments were adopted after 1985 and are considered up to date.
Maternity Protection Recommendation, 2000 (No. 191)	—	

Instruments	Number of ratifications	Status
<b>Instruments with interim status</b>		
Maternity Protection Convention, 1919 (No. 3)	30	<p>The Governing Body decided:</p> <ul style="list-style-type: none"> <li>(a) to invite the States parties to Convention No. 3 to contemplate ratifying the Maternity Protection Convention, 2000 (No. 183), and denouncing Convention No. 3 at the same time;</li> <li>(b) to invite the States parties to Convention No. 3 to inform the Office of the obstacles and difficulties encountered, if any, that might prevent or delay the ratification of Convention No. 183;</li> <li>(c) to maintain of the status quo with regard to Convention No. 3;</li> <li>(d) that the Committee on Legal Issues and International Labour Standards re-examine the status of Convention No. 3 in due course.</li> </ul>
<b>Family benefit</b>		
<b>Up-to-date instruments</b>		
Social Security (Minimum Standards) Convention, 1952 (No. 102) (Part VII)	40	See above (comprehensive standards).

## Social security of migrant workers

Instruments	Number of ratifications	Status
<b>Up-to-date instruments</b>		
Social Security (Minimum Standards) Convention, 1952 (No. 102) (Part XII)	40	See above (comprehensive standards).
Equality of Treatment (Social Security) Convention, 1962 (No. 118)	38	The Governing Body decided: (a) to invite the Office to offer, in appropriate cases, technical assistance with respect to Conventions Nos. 118 and 157, including the dissemination of information in the light of the conclusions of the general discussion on social security that was held at the 89th Session (June 2001) of the Conference; (b) to invite member States to contemplate ratifying these Conventions;
Maintenance of Social Security Rights Convention, 1982 (No. 157)	3	(c) to invite member States to inform the Office of obstacles or difficulties encountered, if any, that might prevent or delay ratification; (d) that the Committee on Legal Issues and International Labour Standards re-examine the status of these Conventions in due course.
Maintenance of Social Security Rights Recommendation, 1983 (No. 167)	—	The Governing Body decided: (a) to invite member States to give effect to Recommendation No. 167; (b) to invite the Office to offer, in appropriate cases, technical assistance with respect to this Recommendation, including the dissemination of information in the light of the conclusions of the general discussion on social security that was held at the 89th Session (June 2001) of the Conference.

Instruments	Number of ratifications	Status
<b>Instruments with interim status</b>		
Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)	120	The Governing Body has invited the States parties to Convention No. 19 to contemplate ratifying the Equality of Treatment (Social Security) Convention, 1962 (No. 118), and to accept the obligations of this Convention in particular in respect of its branch (g) (employment injury benefits).
Equality of Treatment (Accident Compensation) Recommendation, 1925 (No. 25)	—	The Governing Body decided to maintain the status quo with regard to Recommendation No. 25.