

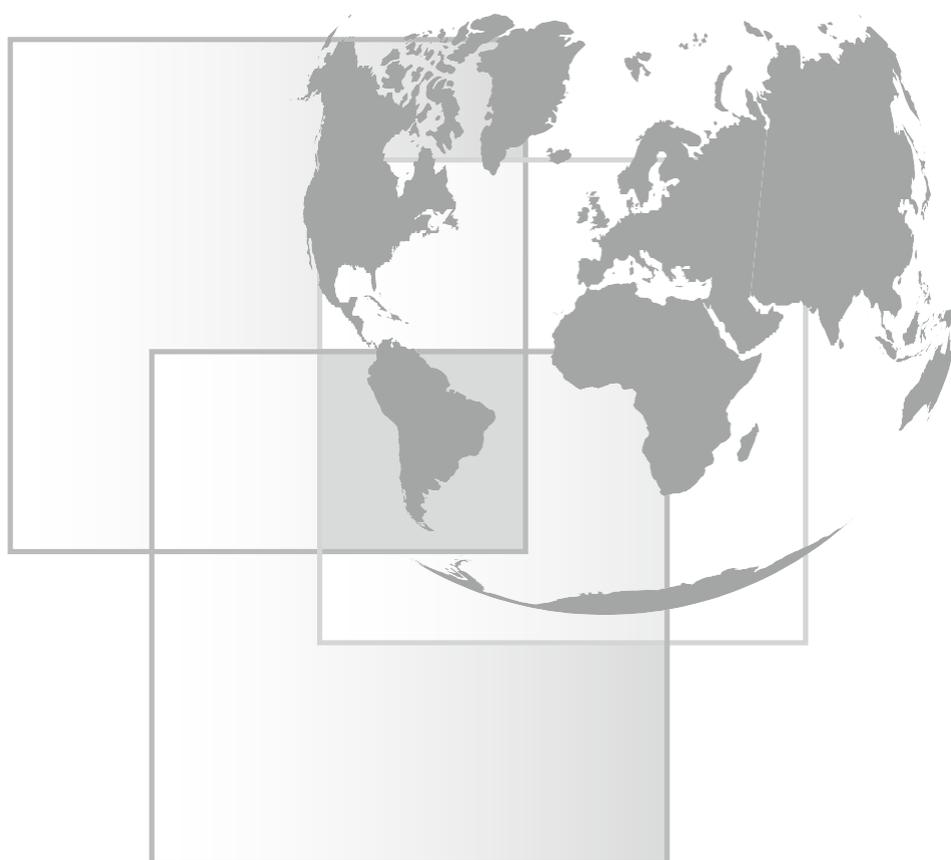


International
Labour
Organization



Handbook of procedures relating to international **labour Conventions** and **Recommendations**

Abstracts related to the
Ratification of ILO Social Security Conventions



Centenary Edition 2019

International
Labour
Standards
Department



International
Labour
Organization



Ratification of ILO Social Security Conventions

***Abstracts from the Handbook of procedures
relating to international labour Conventions and
Recommendations***

International Labour Standards Department

International Labour Office Geneva

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[...]

Ratification of Conventions and acceptance of obligations

Procedure

1. Article 19 of the Constitution provides:
 - 5.
 - ...
 - (d) if the Member obtains the consent of the authority or authorities within whose competence the matter lies, it will communicate the formal ratification of the Convention to the Director-General and will take such action as may be necessary to make effective the provisions of such Convention.

Form of communication of ratifications¹

2. No specific requirements as to form are laid down in the Constitution. Each State will have its own constitutional provisions and practice. In order to be registered, an instrument of ratification must nevertheless:
 - (a) clearly identify the Convention being ratified;
 - (b) be an original document (on paper, not a facsimile or photocopy) signed by a person with authority to engage the State (such as the Head of State, Prime Minister, Minister responsible for Foreign Affairs or Labour);
 - (c) clearly convey the Government's intention that the State should be bound by the Convention concerned and its undertaking to fulfil the Convention's provisions, preferably with a specific reference to article 19(5)(d) of the ILO Constitution.

An instrument of ratification must always be communicated to the Director-General of the ILO, in order for the ratification to become effective in *international* law. If this is not done, it may be that a Convention is regarded by a State as "ratified" in its *internal* legal system, but this will be of no effect in the *international* legal system. An instrument of ratification might thus contain the following statement: "The Government of ... hereby ratifies the ... Convention and undertakes, in accordance with article 19, para. 5(d), of the Constitution of the ILO, to fulfil its obligations in this respect".

Compulsory declarations to be included in or accompany the instrument of ratification

3. Several Conventions require *declarations* to be made either in the instrument of ratification itself or in an accompanying document. If no such *declaration* is received by the Office, the ratification cannot be registered. In some cases, a compulsory *declaration* will define the scope of the obligations accepted or give other essential specifications. In all these cases, the substance of the *declaration* has to be considered before the instrument of ratification is prepared and the necessary indications either included in or attached to the instrument of ratification. The Social Security Conventions in question are as follows:

¹ See Appendix I for a model instrument concerning the ratification of an ILO convention.

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- (i) Convention No. 102: Social Security (Minimum Standards), 1952 – Article 2(b);²
 - (ii) Convention No. 118: Equality of Treatment (Social Security), 1962 – Article 2, paragraph 3;³
 - (iii) Convention No. 128: Invalidity, Old-Age and Survivors' Benefit, 1967 – Article 2, paragraph 2;
 - (iv) Convention No. 183: Maternity Protection, 2000 – Article 4, paragraph 2;
 - (v) Maritime Labour Convention, 2006, as amended (MLC, 2006) – Standard A4.5, paragraph 10. (Declaration specifying which, at least three of the nine contingencies)

Optional declarations to be included in or to accompany ratifications

4. In the case of some Conventions (and Protocols) a *declaration* is needed only where the ratifying State wishes to make use of permitted exclusions, exceptions or modifications. When this applies, the *declaration* must be included in or attached to the instrument of ratification: if the instrument of ratification is received by the Office without any qualifying *declaration*, the ratification will be duly registered as it stands and the exclusion, exception or modification will no longer be available. The Conventions in question that are open for ratification are as follows:

- (i) Convention No. 102: Social Security (Minimum Standards), 1952 – Article 3, paragraph 1;⁴
- (ii) Convention No. 121: Employment Injury Benefits, 1964 – Article 2, paragraph 1, and Article 3, paragraph 1;
- (iii) Convention No. 128: Invalidity, Old-Age and Survivors' Benefits, 1967 – Article 4, paragraph 1, Article 38 and Article 39;
- (iv) Convention No. 130: Medical Care and Sickness Benefits, 1969 – Article 2, paragraph 1, Article 3, paragraph 1, and Article 4, paragraph 1;
- (v) Convention No. 168: Employment Promotion and Protection (Unemployment), 1988 – Article 4, paragraph 1, and Article 5, paragraphs 1 and 2;

² See Appendix II for a model compulsory declaration .

³ (a) When a member State ratifies this Convention, it should also communicate to the Office a confirmation in terms of Article 2, para. 1, that it has “in effective operation legislation covering its own nationals within its own territory” in the branch or branches of social security in respect of which it is accepting the obligations of the Convention. A similar confirmation should be given in the case of a notification of acceptance of further obligations under Article 2, para. 4. (b) Each Member accepting the obligations of the Convention in respect of any branch of social security which has legislation providing for benefits of the type indicated in Article 2, para. 6(a) or (b), must at the time of ratification communicate to the Office a statement indicating such benefits. Under Article 2, para. 7, a similar statement should be made on any subsequent notification of acceptance of the Convention’s obligations under Article 2, para. 4, or within three months of the adoption of relevant legislation. Though such statements are compulsory, they are for information purposes and failure to make them does not invalidate the ratification or notification.

⁴ See Appendix III for a model optional declaration.

Optional declarations concerning the limitation of the scope of a Convention

5. For all the cases referred to in paragraphs above, a Member which has made use of the option to limit the scope of the Convention's application to it may subsequently modify, cancel or withdraw such limitation: this is done by a further declaration, notification or statement of renunciation in a report under article 22 of the Constitution, as the case may be according to each Convention. In addition, the following provide for declarations to extend the scope of the Convention's application by the State concerned either at the time of ratification or at any subsequent time⁵:

(i) Convention No. 183: Maternity Protection, 2000 – Article 2, paragraph 3.

Inadmissibility of reservations

6. Conventions contain various provisions ensuring flexibility, including some specifically enabling ratifying States to limit or qualify the obligations assumed on ratification. However, no limitations on the obligations of a Convention other than those specifically provided for (i.e. no *reservations*) are possible.

Registration of ratifications and acceptances of obligations

7. The final provisions of all Conventions contain Articles on the registration of ratifications by the Director-General, their notification to member States and the communication of particulars to the Secretary-General of the United Nations for registration in accordance with article 102 of the United Nations Charter. All ratifications are reported to the Governing Body and are notified to member States through publication in the Official Bulletin. Declarations and other acts accepting or modifying obligations referred to in paragraphs above are dealt with in the same way.

Entry into force

8. Each Convention contains a provision as to how it comes into force. Most often, since 1928, Conventions come into force 12 months after registration of the second ratification and afterwards for each State 12 months after its ratification. Until a Convention comes into force, it can have no effect in international law.

Obligations arising out of ratification

9. The obligation under article 19, paragraph 5(d), of the Constitution is to “take such action as may be necessary to make effective the provisions” of a ratified Convention⁶. This means ensuring their implementation in practice, as well as giving them effect in law or other means that are in accordance with national practice (such as court decisions, arbitration awards or collective agreements)

⁵ This does not include cases where determinations by a member may have the effect of extending the obligations of a Convention, although there is no provision for a formal declaration, such as in the case of Convention No. 111, Article 1, para. 1(b).

⁶ See also the obligation to report under article 22 of the Constitution (paras 35–46 below). With regard to the termination of obligations under a ratified Convention through *denunciation*, see paras 79–83 below.

Incorporation in internal law

- 10.** In some countries, the Constitution gives the force of internal law to ratified Conventions. In those cases, it will still be necessary to take specific measures:
- (a) to eliminate any conflict between the provisions of the Convention and earlier national law and practice;
 - (b) to give effect to any provisions of the Convention which are not *self-executing* (e.g. provisions requiring given matters to be prescribed by national laws or regulations or determined by the competent authorities, or requiring special administrative arrangements);
 - (c) to prescribe penalties, where appropriate;
 - (d) to ensure that all interested persons and authorities (e.g. employers, workers, labour inspectors, courts, tribunals, other administrative bodies) are informed of the incorporation of the Convention into internal law and where necessary given guidance.

Consultation of employers' and workers' organizations

- 11.** Paragraph 5(c) of Recommendation No. 152 provides for consultation of representatives of employers' and workers' organizations, subject to national practice, on the preparation and implementation of legislative or other measures to give effect to Conventions – especially when ratified – and Recommendations. This applies in particular as regards measures implementing provisions as to consultation and collaboration with employers' and workers' representatives.

Non-metropolitan territories

- 12.** Article 35 of the Constitution provides for declarations to be made by member States as to the application of Conventions to non-metropolitan territories for whose international relations they are responsible.

Effect of withdrawal from the ILO

- 13.** Article 1, paragraph 5 (last sentence), of the Constitution provides:
- ... When a Member has ratified any international labour Convention, ... withdrawal (from the Organization) shall not affect the continued validity for the period provided for in the Convention of all obligations arising thereunder or relating thereto.

Information on ratifications

- 14.** Regularly updated information on ratifications and denunciations is available on the Office's website ([NORMLEX database](#)).
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Appendix I

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MODEL INSTRUMENT

CONCERNING THE RATIFICATION OF AN ILO CONVENTION¹

Whereas the **(title of the Convention)**
.....was adopted by the International Labour Conference at its
.....Session in **(place)**on **(date)**
.....

The Government of, having
considered the aforesaid Convention, hereby confirm and ratify the same and
undertake, in accordance with Article 19, paragraph 5 (d) of the Constitution of the
International Labour Organisation, faithfully to perform and carry out all the
stipulations therein contained.

(signed) _____
President of the Republic

Minister of Foreign Affairs

¹ This model may call for adaptation to take account particularly of:

- (a) any provisions in the Convention concerned requiring specified indications to be included in the ratification;
- (b) national provisions and practice concerning ratification on international instruments.

Appendix II

MODEL COMPULSORY DECLARATION

SOCIAL SECURITY (MINIMUM STANDARDS) CONVENTION, 1952 (NO.102)

In conformity with Article 2, paragraph b), of the Social Security (Minimum Standards), 1952 (No. 102), on behalf of the Government of.....,

I hereby accept the obligations under the following Parts of the said Convention (*See N.B*)

:

- Part ...
- Part ...
- Part ...
- Part ...
- ...

[Signature and Title of competent authority]

N.B. Pursuant to Article 2, paragraph a) ii) of the Convention, at least three of Parts II, III, IV, V, VI, VII, VIII, IX and X, including at least one of Parts IV, V, VI, IX and X, must be accepted at the time of the ratification of Convention NO. 102.

Appendix III

MODEL OPTIONAL DECLARATION

SOCIAL SECURITY (MINIMUM STANDARDS) CONVENTION, 1952 (NO.102)

In conformity with Article 3, paragraph 1, of the Social Security (Minimum Standards), 1952 (No. 102), I hereby declare that the Government of , avails itself of the temporary exceptions provided for in Article(s) 9 (d) ; 12 (2); 15 (d); 18 (2); 21 (c); 27 (d) ; 33 (b); 34 (3); 41 (d); 48 (c); 55 (d); and 61 (d).

[Signature and Title of competent authority]

N.B. Pursuant to Article 3, paragraph 1, of the Convention, upon ratification, a country may decide to temporarily limit the obligations assumed under the Convention by choosing to avail itself of one or several of the provisions mentioned by this Article with respect to the corresponding Parts of the Convention.