STATUTORY INSTRUMENTS

1962 No. 1869

FAMILY ALLOWANCES

NATIONAL INSURANCE

The Family Allowances and National Insurance (Australia) Order 1962

Made - - - - 24th August 1962

At the Court at Balmoral, 24th August 1962

Present,

The Queen's Most Excellent Majesty in Council

Whereas by the Family Allowances and National Insurance (Australia) Order 1958(a) (hereinafter referred to as " the Principal Order "), made in pursuance of section 64 of the National Insurance Act 1946(b) as extended by section 4 (1) of the Family Allowances and National Insurance Act 1956(c), it was ordered that the provisions of an Agreement set out in the schedule to the Principal Order (hereinafter referred to as " the Principal Agreement ") providing for reciprocity between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Commonwealth of Australia should have effect in relation to matters specified in the said section as so extended, and that the enactments referred to in the Principal Order should be modified accordingly:

And Whereas at Canberra on 16th August 1962 an Agreement between the aforementioned Governments (which Agreement is set out in the Schedule hereto), modifying and extending the Principal Agreement, was signed on behalf of those Governments:

And Whereas by Article 18 of the Agreement it was provided that the Agreement should enter into force on 1st October 1962 and should be read and construed as one with the Principal Agreement:

Now, therefore, Her Majesty, in pursuance of the said section 64 of the National Insurance Act 1946 as so extended, and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Citation and interpretation

1.—(1) This Order may be cited as the Family Allowances and National Insurance (Australia) Order 1962.

(2) The rules for the construction of Acts of Parliament contained in the Interpretation Act 1889(d), shall apply for the purpose of the interpretation of this Order as they apply for the interpretation of an Act of Parliament.

(a) S.I. 1958/422 (1958 II, p. 1584).
(b) 9 & 10 Geo. 6. c. 67.
(c) 4 & 5 Eliz. 2. c. 50.
(d) 52 & 53 Vict. c. 63.

Modification of Acts

2. The provisions contained in the Agreement set out in the Schedule hereto shall have full force and effect, so far as the same relate to England, Wales and Scotland and provide by way of agreement with the Government of the Commonwealth of Australia for reciprocity in any matters specified in section 64 (1) of the National Insurance Act 1946, as extended by section 4 (1) of the Family Allowances and National Insurance Act 1956 (which subsections relate to reciprocal agreements with other governments); and the Family Allowances Acts 1945 to 1961 and the National Insurance Acts 1946 to 1961 shall have effect subject to such modifications as may be required therein for the purpose of giving effect to the said provisions.

E. N. Landale.

SCHEDULE

AGREEMENT ON SOCIAL SECURITY BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE COMMONWEALTH OF AUSTRALIA

Canberra, 16th August 1962

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Commonwealth of Australia,

Desiring to modify and extend the Agreement on Social Security which was signed on their behalf at Canberra on the 29th January 1958,

Have agreed as follows:

ARTICLE 1

For the purposes of this Agreement, the expression "the Principal Agreement" means the Agreement on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Commonwealth of Australia which was signed at Canberra on behalf of those Governments on the 29th January 1958,

ARTICLE 2

Article 1 of the Principal Agreement shall be amended—

(*a*) by inserting after paragraph (*d*) the following paragraph:—

"(*da*) 'contribution', in relation to the legislation of the United Kingdom, does not include a graduated contribution within the meaning of that legislation;";

(*b*) by omitting paragraph (*n*) and substituting the following paragraph:—

"(*n*) 'retirement pension' means a retirement pension under the legislation of the United Kingdom and includes a contributory old age pension under that legislation and any graduated retirement benefit constituted by an increase in the weekly rate of a retirement pension under that legislation;"; and

(*c*) by omitting paragraph (*p*) and substituting the following paragraph:—

"(*p*) 'widow's benefit', in relation to the United Kingdom, means a widow's allowance, a widowed mother's allowance (including any graduated retirement benefit constituted by an increase in the weekly rate of a widowed mother's allowance) or a widow's pension under the legislation of that country or a widow's basic pension payable under the legislation of that country to a woman who became a widow before the 5th July, 1948;".

ARTICLE 3

Article 2 of the Principal Agreement shall be amended by inserting in clause (ii) of sub-paragraph (*a*) of paragraph (1), after the words "the Family Allowances Act, 1945,", the words "the Family Allowances Act (Northern Ireland), 1945".

ARTICLE 4

Article 3 of the Principal Agreement shall be amended—

(*a*) by inserting in paragraph (2), before the word "unless", the words "in respect of any period during which she was a married woman"; and

(*b*) by omitting paragraph (3) and substituting the following paragraphs:—

"(3) Where—

(*a*) a woman claiming a retirement pension by virtue of her own insurance has been, but is not at the time of the claim, married and chooses to have her former husband's contributions taken into account for the purposes of her claim; and

(*b*) her former husband had been resident in Australia for any period,

her former husband shall be treated, for the purposes of her claim, as if he had paid contributions under the legislation of the United Kingdom for any period referred to in sub-paragraph (*b*) of this paragraph and for any other period commencing immediately after, or ending immediately before, that period during which he was proceeding on a journey between Australia and the United Kingdom that was completed within thirteen weeks.

"(3A) Where a person claiming a retirement pension is a woman who—

(*a*) would have been qualified to receive a widow's benefit, other than a widow's basic pension, for any period by virtue of Article 9 of this Agreement, if this Agreement had been in force during that period; or

(*b*) would be qualified, under the arrangements made for crediting contributions to widows claiming retirement pensions under the legislation of the United Kingdom, to have contributions credited to her for any period if this Agreement had been in force during that period,

she shall be treated, for the purposes of her claim, as if contributions had been credited to her for that period.";

(*c*) by omitting from paragraph (4) the words and figures "paragraphs (1), (2) and (3)" and substituting the words "the preceding paragraphs"; and

(*d*) by omitting the proviso to paragraph (4) and substituting the following proviso:—

"Provided that, if that person is a married woman who does not satisfy either of the conditions specified in paragraph (2) of this Article, she shall be treated as if her husband and not she satisfied the said contribution conditions.".

ARTICLE 5

Article 5 of the Principal Agreement shall be amended by inserting after the word "contributions" (first occurring) the words ", including graduated contributions,".

ARTICLE 6

Article 8 of the Principal Agreement shall be amended by inserting after paragraph (1) the following paragraph:—

"(1A) For the purposes of any claim to receive an age pension, a woman who is permanently resident in Australia and who is, or has been, married shall be treated as if she had been resident in Australia during any period of absence from the United Kingdom during her marriage, if her husband paid contributions or had contributions credited to him for that period under the legislation of the United Kingdom.".

ARTICLE 7

Article 12 of the Principal Agreement shall be amended—

(*a*) by omitting paragraph (2) and substituting the following paragraph:—.

"(2) Subject to the provisions of paragraph (1) of this Article—

(*a*) if a person who has claimed family benefit under the legislation of one country is permanently resident in that country, then, for the purposes of any right to receive that benefit, any period during which he was in the other country shall be treated as a period during which he was in the first-mentioned country, and, if he was born in the other country, he shall be treated as if he had been born in the first-mentioned country;

(*b*) if a child for whom family benefit has been claimed under the legislation of one country is permanently resident in that country, then, for the purposes of any right to receive that benefit, any period during which he was resident in the other country shall be treated as a period during which he was resident in the first-mentioned country, and, if he was born in the other country, he shall be treated as if he had been born in the first-mentioned country;

(*c*) if a person who has claimed family benefit for a child under the legislation of one country is in the other country and is not qualified to receive family benefit for that child under the legislation of the other country, he shall be treated for the purposes of his claim as if he were in the first-mentioned country; and

(*d*) if a person who has claimed family benefit under the legislation of one country is temporarily absent from that country and, during that absence, is in the other country for a period commencing within thirteen weeks after his departure from the first-mentioned country, he shall, for the purposes of any right to receive that benefit, be treated as if during that period he were in the first-mentioned country, but he shall not be qualified to receive during that period an amount of family benefit greater than the amount that he would have been qualified to receive during that period under the legislation of the other country if that legislation had applied in relation to him and his family during that period."; and

(*b*) by omitting from paragraph (4) the word and letter "sub-paragraph (*b*)" and substituting the word and letter "sub-paragraph (*d*)".

ARTICLE 8

Article 14 of the Principal Agreement shall be omitted.

ARTICLE 9

Article 16 of the Principal Agreement shall be amended—

(*a*) by omitting from paragraph (2) the word and figure "paragraph (3)" and substituting the words and figures "paragraphs (3) and (4)"; and

(*b*) by omitting paragraph (3) and substituting the following paragraphs:—

"(3) Where a person is permanently incapacitated for work or permanently blind at the time when he arrives in Australia, the fortnightly amount of any invalid pension, or the sum of the fortnightly amounts of any invalid pension, wife's allowance and child's allowance, payable in his case by virtue of the provisions of paragraphs (1) and (2) of this Article, shall not exceed twice the full standard weekly rate of sickness benefit which would be payable to him under the legislation of the United Kingdom if he and his family (if any) had remained in that country and none of the provisions of that legislation about overlapping benefits were applied to him.

"(4) Where the sum of the fortnightly amounts of two or more benefits is reduced by virtue of the provisions of paragraph (3) of this Article, the fortnightly amount payable by way of each of those benefits shall bear the same relation to the maximum fortnightly amount of that benefit as the first-mentioned sum, thus reduced, bears to the sum of the maximum fortnightly amounts of these benefits.

"(5) For the purposes of this Article, a person shall be deemed to be permanently incapacitated for work if the degree of his permanent incapicty for work is not less than 85 per centum as determined under the legislation of Australia.".

ARTICLE 10

Sub-paragraph (*b*) (ii) of paragraph (1) of Article 17 and sub-paragraph (*b*) (ii) of paragraph (2) of Article 18 of the Principal Agreement shall be omitted and in their places there shall be substituted the following sub-paragraph:—

"(ii) as a self-employed person for any other week during which he was resident in Australia and was incapable of work, if that week was part of a period during which he was ordinarily gainfully occupied or if he was having contributions credited to him on grounds of incapacity for work under the legislation of the United Kingdom immediately before the time when he last left that country before that week.".

ARTICLE 11

Article 19 of the Principal Agreement shall be omitted and in its place there shall be substituted:—

"ARTICLE 19

"Where a person—

Australian pensioner migrating to the United Kingdom.

(*a*) leaves Australia to become permanently resident in the United Kingdom and arrives in the United Kingdom within thirteen weeks after leaving Australia; and

(*b*) was qualified to receive and was receiving an age pension, an invalid pension, a wife's allowance, a child's allowance or a widow's pension under the legislation of Australia, whether by virtue of this Agreement or otherwise, immediately before leaving Australia,

that pension or allowance shall not cease to be payable, and may be paid, for the period during which he is proceeding to the United Kingdom and, if he makes a claim within fourteen days after the day of his arrival in the United Kingdom for a benefit under the legislation of the United Kingdom corresponding to that pension or allowance and that benefit is payable to him under the legislation of the United Kingdom, for the period from the day of his arrival in the United Kingdom till the day immediately before the day from which the benefit that he claims becomes payable to him.".

ARTICLE 12

Article 20 of the Principal Agreement shall be amended—

(*a*) by inserting in sub-paragraph (*a*) of paragraph (2), after the word "Australia" (first occurring), the words "for the primary purpose of visiting the United Kingdom"; and

(*b*) by inserting in sub-paragraph (*a*) of paragraph (3), after the word "Australia" (first occurring), the words "for the primary purpose of visiting the United Kingdom".

ARTICLE 13

Article 21 of the Principal Agreement shall be amended by omitting paragraph (1) and substituting the following paragraph:—

"(1) Where a person—

(*a*) leaves the United Kingdom to become permanently resident in Australia and arrives in Australia within thirteen weeks after leaving the United Kingdom; and

(*b*) was qualified, whether by virtue of this Agreement or otherwise, to receive a retirement pension or a widow's benefit under the legislation of the United Kingdom immediately before his departure from the United Kingdom,

that person shall continue to be so qualified for the period of the journey and, if he makes a claim within fourteen days after the day of his arrival in Australia for a benefit under the legislation of Australia corresponding to that retirement pension or widow's benefit and that benefit is payable to him under the legislation of Australia, for the period from the day of his arrival in Australia till the day immediately before the day from which the benefit that he claims becomes payable to him.".

ARTICLE 14

Article 23 of the Principal Agreement shall be omitted and in its place there shall be substituted:—

"ARTICLE 23

Family benefit for the period of the journey and after.

"Where—

(*a*) a person was qualified under the legislation of one country, whether by virtue of this Agreement or otherwise, to receive family benefit for a child immediately before he or the child or both left that country to travel to the other country; and

(*b*) the person or the child or both, as the case may be, completes the journey within thirteen weeks,

any family benefit that would have been payable under the legislation of the first-mentioned country if the person or the child or both, as the case may be, had not left the first-mentioned country shall not cease to be payable, and may be paid, for the period of the journey and, if a claim is made within six months after the day of arrival in the other country for a family benefit for the child under the legislation of the other country and that benefit is payable, for the period from the day of arrival in the other country till the day immediately before the day from which the benefit claimed becomes payable.".

ARTICLE 15

Article 25 of the Principal Agreement shall be amended—

(*a*) by inserting in paragraph (1), after the words "widows' benefits", the words ", other than graduated retirement benefit"; and

(*b*) by omitting from paragraph (1) the words "whether they are payable by virtue of this Agreement or otherwise" and substituting the words "being benefits payable under the legislation of Australia by virtue of this Agreement".

ARTICLE 16

After Article 29 of the Principal Agreement there shall be added the following Article:—

"ARTICLE 29A

Meaning of 'gainfully occupied under a contract of service in Australia'.

"For the purposes of Articles 17 and 18, a person shall be treated as having been gainfully occupied under a contract of service in Australia during—

(*a*) any period of service, whether in Australia or elsewhere, in the Defence Force of Australia; and

(*b*) any period of absence from Australia during which he was an employee and was treated as being a resident of Australia within the meaning of any Act relating to the imposition, assessment and collection of a tax upon incomes in force in Australia.".

ARTICLE 17

Article 33 of the Principal Agreement shall be amended by omitting paragraph (3) and substituting the following paragraph:—

"(3) No provision of this Agreement shall diminish any rights which a person has acquired under the legislation of either country before the date of the entry into force of this Agreement, whether by virtue of the former Agreement or otherwise, and a person who makes a claim to receive any benefit under the legislation of either country may choose to have his claim determined without regard to the provisions of this Agreement.".

ARTICLE 18

This Agreement shall enter into force on the 1st October 1962, and shall be read and construed as one with the Principal Agreement.

In witness whereof the undersigned, duly authorized by their respective Governments, have signed this Agreement.

Done in duplicate at Canberra, this sixteenth day of August, nineteen hundred and sixty-two.

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

W. P. Oliver,

For the Government of the Commonwealth of Australia:

Hugh S. Roberton,

EXPLANATORY NOTE

(*This Note is not part of the Order, but is intended to indicate its general purport.*)

This Order gives effect in England, Wales and Scotland to the Agreement (set out in the Schedule) made between the Governments of the United Kingdom of Great Britain and of the Commonwealth of Australia modifying and extending an Agreement contained in the Family Allowances and National Insurance (Australia) Order 1958, and modifies the Family Allowances Acts 1945 to 1961 and the National Insurance Acts 1946 to 1961 in their application to persons affected by the Agreement.