RECIPROCAL AGREEMENTS

1959 No. 2216

The Family Allowances and National Insurance (Canada) Order, 1959

Made - - - - 21st December, 1959

At the Court at Buckingham Palace, the 21st day of December, 1959

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in pursuance of section 64 of the National Insurance Act, 1946(a), as extended by subsection (1) of section 4 of the Family Allowances and National Insurance Act, 1956(b), 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 (Canada) Order, 1959.

(2) The Interpretation Act, 1889(c), applies to the interpretation of this Order as it applies to the interpretation of an Act of Parliament.

Modification of Acts

2. The provisions contained in the Letters set out in the Schedule to this Order shall have full force and effect, so far as the same relate to England, Wales and Scotland and provide for reciprocity in any matters specified in subsection (1) of section 64 of the National Insurance Act, 1946, as extended by subsection (1) of section 4 of the Family Allowances and National Insurance Act, 1956, (which subsections relate to reciprocity with other countries); and the Family Allowances Acts, 1945 to 1959, and the National Insurance Acts, 1946 to 1959, shall have effect subject to such modifications as may be required therein for the purpose of giving effect to any such provisions.

W. G. Agnew.

SCHEDULE

LETTERS EXCHANGED BETWEEN THE HIGH COMMISSIONER FOR THE UNITED KINGDOM IN CANADA AND THE CANADIAN MINISTER OF NATIONAL HEALTH AND WELFARE

No. 1

THE HIGH COMMISSIONER FOR THE UNITED KINGDOM IN CANADA TO THE CANADIAN MINISTER OF NATIONAL HEALTH AND WELFARE

8th December, 1959

My dear Minister,

As you know our officials have had informal talks with yours about the social security of people who migrate from the United Kingdom to Canada or from Canada to the United Kingdom. As a result, the Government of the United Kingdom of Great Britain and Northern Ireland would like to make certain proposals which it hopes will be acceptable to the Government of Canada.

2. The United Kingdom Government has studied the provisions of the social security legislation passed by the Parliament of Canada which affect people who migrate from the United Kingdom to Canada. It understands that these provisions are as described in paragraphs 3 to 11 below.

(a) 9 & 10 Geo. 6. c. 67. (b) 4 & 5 Eliz. 2. c. 50. (c) 52 & 53 Vict. c. 63.

3. *Family Allowances and Family Assistance.*—By an amendment to the Family Allowances Act, passed in 1949, the Parliament of Canada has reduced from three years to one year the period of residence in Canada required before payment of family allowance benefits may begin in respect of each child under sixteen, born outside of Canada, and migrating with his parents to settle in Canada. During the waiting period of one year, while newly-arrived families are not eligible to receive family allowances, a slightly smaller benefit, known as the family assistance benefit ($5 monthly instead of $6 to $8 depending on the child's age) is payable out of a special Parliamentary appropriation at present included in the Annual Estimates of the Department of Citizenship and Immigration.

4. *Old Age Security.*—By an amendment to the Old Age Security Act, passed in 1957, the Parliament of Canada has reduced from twenty years to ten years the basic period of residence required for the establishment of eligibility for benefit. This benefit, amounting to $55 a month, is now payable to all persons who have reached the age of seventy and who have resided in Canada continuously during the ten-year period immediately before the proposed benefit begins. The benefit is payable also to those who have interrupted their residence in Canada but who have resided there during the year immediately before the proposed benefit begins and also during earlier periods which in the aggregate are at least twice as long as any parts of that ten-year period during which they have not resided in Canada.

5. *Unemployment Insurance.*—Eligibility for benefits under the Unemployment Insurance Act is not based on any residence requirement, but rather on a record of prior contributions in respect of periods of insured employment. Newly-arrived migrants, like all other persons in Canada who are entering insured employment for the first time, acquire rights to benefit after making contributions in respect of at least thirty weeks of insurable employment. During the period December 1st to May 15th each year, special seasonal benefits are payable to unemployed insured persons who lack the full record of prior contributions required in the case of regular benefits, but have made contributions in respect of fifteen weeks of insurable employment since the previous March 31st.

6. In addition to these provisions contained in legislation of the Parliament of Canada in respect of social security programmes administered directly by the Dominion Government, there are the following provisions contained in legislation passed by the Parliament of Canada, but provincially administered. It is understood that, wherever necessary, enabling legislation has been passed by the Provincial legislatures and agreements have been entered into between the Provincial and Dominion Governments.

7. *Old Age Assistance.*—Under the Old Age Assistance Act, the Dominion and Provincial Governments share the cost of provincially administered old age assistance payments made to needy persons sixty-five years of age or over. In 1957, by amendment to the legislation, the residence requirement of twenty years was reduced to ten. The provisions respecting residence in this and the two next following enactments are now the same as those set out in the Old Age Security Act. (See paragraph 4 above.)

8. *Blindness Allowances.*—The Blind Persons Act, first passed in 1951, contains provisions similar to those described in the preceding paragraph for the payment of blindness allowances to needy blind persons eighteen years of age or over. Dominion and Provincial Governments share the cost of these provincially administered allowances. The residence requirement since 1951 has been ten years.

9. *Disability Allowances.*—The Disabled Persons Act of 1954 provides allowances for totally and permanently disabled persons who are in need on approximately the same basis as in the case of old age assistance and blindness allowances. A recent amendment, passed by the Parliament of Canada in 1957, has reduced the residence requirement from twenty to ten years in order to bring it into conformity with the provisions of the Old Age Security Act, the Old Age Assistance Act and the Blind Persons Act.

10. *Unemployment Assistance.*—Under the Unemployment Assistance Act of 1956, provision is made for the Government of Canada to share with provincial and municipal governments in the costs of general assistance provided to needy persons, both employable and unemployable, who are not covered by the provisions of other legislation, or whose needs are not adequately met by the benefits made available under other enactments. Determination of need and of eligibility is left entirely in the hands of provincial and municipal authorities, except that the agreement now in effect with all ten Provinces of Canada provides that "length of residence shall not be made a condition for the receipt of assistance if the applicant has come from a province whose government has entered into an agreement respecting unemployment assistance". The Dominion Government has endeavoured in this way to assure, so far as it lies within its power, that no needy individual will be denied assistance which he needs solely because he lacks a sufficient period of residence in any province to enable him to qualify. This provision now applies in all the Provinces of Canada, since all ten provinces have now entered into agreements with the Dominion under the Unemployment Assistance Act.

11. *Hospital Insurance and Diagnostic Services.*—Under the Hospital Insurance and Diagnostic Services Act, the Government of Canada makes contributions to Provincial hospital insurance programmes in respect of the operating costs of hospital and diagnostic services specified in the Act. Hospital Insurance programmes are now in operation in the Provinces of Newfoundland, Nova Scotia, New Brunswick, Prince Edward Island, Ontario, Manitoba, Saskatchewan, Alberta and British Columbia. The Federal legislation requires participating Provinces to make "insured services" available to all residents upon uniform terms and conditions. All Provinces receiving Federal hospital insurance grants provide the full range of "in-patient services" set out in the Federal Act, while the extent of "out-patient services" provided varies from Province to Province. "Residents of a Province" means persons legally entitled to remain in Canada who make their home and are ordinarily present in that Province, but does not include tourists, transients, or visitors to the Province. A waiting period not exceeding three months is permitted as a requirement for a person coming to reside in a Province. Also, provision is made for an insured resident of a Province to be deemed to be a resident of that Province for a period not exceeding three months after moving to another Province.

12. If the Government of Canada can confirm that the above paragraphs accurately describe the relevant provisions of the legislation passed by the Parliament of Canada, that it does not at present intend to propose any amendment of those provisions which would adversely affect the position of people who migrate from the United Kingdom to Canada, and that, should such an amendment be enacted at any time, it will inform the United Kingdom Government, then the United Kingdom Government will undertake to ensure that the provisions set out in the following paragraphs 13 to 20 relating to National Insurance and Family Allowances benefits shall apply. There are other benefits such as National Assistance and benefits under National Health Service Acts which, apart from these arrangements, are available for people from Canada who become ordinarily resident in the United Kingdom.

13. Where a person is ordinarily resident in the United Kingdom he shall, for the purpose of any claim to receive a family allowance under the legislation of the United Kingdom, be treated—

(*a*) as if his place of birth were in the United Kingdom, if it is in Canada; and

(*b*) as if he had been resident or present in the United Kingdom during any period during which he was, respectively, resident or present in Canada.

14. For the purpose of any claim to receive unemployment benefit under the legislation of the United Kingdom, a person shall be treated as if he had been resident in the United Kingdom during any period during which he was resident in Canada, and, if he has at any time paid at least twenty-six weekly contributions

as an employed person under United Kingdom legislation, he shall be treated, for the purpose of any such claim as if—

(*a*) he had paid a contribution under that legislation as an employed person for any week during which he was gainfully occupied in employment under a contract of service in Canada; and

(*b*) he had had a contribution credited to him under that legislation as an employed person for any week during which he was resident in Canada and was unemployed and available for work or was incapable of work, if that week was part of a period during which he was ordinarily gainfully occupied in employment under a contract of service.

15. Nothing in paragraph 14 above shall diminish any right which a person has, apart from these arrangements, to receive unemployment benefit under the legislation of the United Kingdom.

16. (*a*) For the purpose of any claim to receive a retirement pension under the legislation of the United Kingdom, a person aged 70 or over who has been resident in the United Kingdom—

(i) throughout the period of ten years immediately before his claim; or

(ii) throughout the last year of that ten-year period and throughout earlier periods which in the aggregate are at least twice as long as any parts of that ten-year period during which he has not been resident in the United Kingdom;

shall be treated as if he or, in the case of a claim made by a married woman or widow by virtue of her husband's insurance, her husband had paid a contribution under the legislation of the United Kingdom for every week during which he was resident in Canada.

(*b*) Where the person claiming a retirement pension as aforesaid is a married woman claiming by virtue of her own insurance, the provisions of sub-paragraph (*a*) of this paragraph shall not apply to her claim unless she has, since the date of her marriage, or, if she has been married more than once, since the date of her last marriage, paid 156 contributions under the legislation of the United Kingdom.

(*c*) Where the person claiming a retirement pension as aforesaid is a woman—

(i) whose marriage has been terminated by the death of her husband or otherwise;

(ii) who satisfies one or other of the conditions set out in sub-paragraph (*a*) of this paragraph; and

(iii) who claims a pension by virtue of her own insurance and has chosen to have her husband's contributions taken into account;

she shall be treated as if she or her husband had paid a contribution under the legislation of the United Kingdom for every week during which she or her husband, as the case may be, was resident in Canada.

(*d*) For the purposes of applying the provisions of sub-paragraphs (*a*) and (*c*) of this paragraph, no account shall be taken of any period during which a person was resident in Canada before he reached the age of fifteen years or after he reached pension age.

17. For the purpose of those provisions of the legislation of the United Kingdom which concern the payment of contributions for any period after the insured person has reached pension age and the increase of the weekly rate of retirement pension by virtue of those contributions, a person who was resident in Canada for any period shall be treated as if he had been an insured person since the beginning of that period.

18. Any benefit which is awarded by virtue of paragraph 16 above shall be payable only for periods during which the beneficiary is ordinarily resident in the United Kingdom.

19. For the purpose of paragraphs 13 to 18 above—

(*a*) "United Kingdom" means England, Scotland, Wales, Northern Ireland and the Isle of Man;

(*b*) " legislation of the United Kingdom " means—

(i) the National Insurance Act, 1946, the National Insurance Act (Northern Ireland), 1946, and the National Insurance (Isle of Man) Act, 1948, and the legislation in force before 5th July, 1948, which was replaced by those Acts ; and

(ii) the Family Allowances Act, 1945, the Family Allowances Act (Northern Ireland), 1945, and the Family Allowances (Isle of Man) Act, 1946 ;

(*c*) " unemployment benefit " means unemployment benefit other than additional days of such benefit, as defined in the legislation of the United Kingdom ;

(*d*) " pension age " means, in relation to any person, the age at which that person is treated as reaching pensionable age under the legislation of the United Kingdom.

20. The United Kingdom Government proposes that the arrangements in paragraphs 12 to 19 should enter into force on the 1st January, 1960, and should remain in force until the two Governments agree to terminate them or either Government gives notice of termination to the other (such notice to be of a period of not less than 6 months).

Yours sincerely,

J. J. S. GARNER.

No. 2

THE CANADIAN MINISTER OF NATIONAL HEALTH AND WELFARE TO THE HIGH COMMISSIONER FOR THE UNITED KINGDOM IN CANADA

10th December, 1959.

My dear High Commissioner,

In reply to your letter of 8th December, 1959, concerning the position under our respective social security laws of people migrating from Canada to the United Kingdom or from the United Kingdom to Canada, I am happy to inform you that the Government of Canada confirms that paragraphs 3 to 11 of your letter accurately describe the relevant provisions of the legislation passed by the Parliament of Canada.

Further to this, I can confirm to you that the Government of Canada does not at present intend to propose any amendment of those provisions which would adversely affect the position of people migrating from the United Kingdom to Canada ; and that it would be willing to inform the United Kingdom Government if at any time in the future the Parliament of Canada should enact such an amendment.

The Government of Canada, therefore, is glad to accept the proposals set out in paragraph 12–20 of your letter.

Yours sincerely,

J. W. MONTEITH.

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 provisions for the reciprocal treatment of migrants in relation to family allowances and unemployment and old age insurance which have been arranged between the United Kingdom and Canada in the Letters set out in the Schedule to the Order, and modifies the Family Allowances Acts, 1945 to 1959, and the National Insurance Acts, 1946 to 1959, in their application to persons affected by those provisions.