STATUTORY INSTRUMENTS

1971 No. 1742

SOCIAL SECURITY

The National Insurance (Republic of Ireland) Order 1971

Made - - - 27th October 1971

At the Court at Buckingham Palace, the 27th day of October 1971

Present,

The Queen's Most Excellent Majesty in Council

Whereas at London on 14th September 1971, an Agreement on social security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Ireland (which Agreement is set out in the Schedule to this Order) was signed on behalf of those Governments :

And Whereas by Article 13 of the said Agreement it was provided that the Agreement should enter into force on 23rd September 1971 :

And Whereas by section 105 of the National Insurance Act 1965(**a**) it is provided that Her Majesty may, by Order in Council, make provision for modifying or adapting the said Act of 1965 in its application to cases affected by agreements with other governments providing for reciprocity in matters specified in that section :

Now, therefore, Her Majesty, in pursuance of the said section 105 of the National Insurance Act 1965, 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 National Insurance (Republic of Ireland) Order 1971.

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

Modification of Acts

2. The provisions contained in the Agreement 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 with the Government of the Republic of Ireland in any matters specified in section 105(1) of the National Insurance Act 1965 ; and the National Insurance Acts 1965 to 1971 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.

(**a**) 1965 c. 51. (**b**) 1889 c. 63.

SCHEDULE

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

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Ireland;

Desirous of amending the Agreements on social security which have been signed on their behalf and extending the scope of those Agreements;

Have agreed as follows:

ARTICLE 1

(1) This Agreement shall be read as one with the Agreement on Social Security which was signed on behalf of the Contracting Parties at Dublin on 28 February 1966, as amended by the Agreement on Social Security which was signed on their behalf at Dublin on 3 October 1968 (hereinafter called, respectively, "the Agreement of 1966" and "the Agreement of 1968").

(2) In Article 1(1) of the Agreement of 1966, for the definitions of "competent authority", "old age benefit" and "yearly average" there shall be, respectively, substituted the following definitions:

"competent authority" means, in relation to the United Kingdom, according to the context, the Secretary of State for Social Services or the Ministry of Health and Social Services for Northern Ireland or the Isle of Man Board of Social Security and, in relation to the Republic of Ireland, the Minister for Social Welfare;

"old age benefit" means retirement pension (other than graduated retirement benefit) under the legislation of the United Kingdom and retirement pension or old age (contributory) pension under the legislation of the Republic of Ireland;

"yearly average", with respect to any person, means—

(*a*) in relation to the legislation of the United Kingdom, the yearly average of the contributions paid by or credited to him ascertained in accordance with that legislation at the date of his attaining pensionable age or dying under that age;

(*b*) in relation to the legislation of the Republic of Ireland, the average per contribution year of the contributions paid by or credited to him ascertained in accordance with that legislation for the purposes of satisfying, according to the context,

(i) the third contribution condition for either retirement pension or old age (contributory) pension or

(ii) the second contribution condition set out in paragraph 4(*b*)(ii) of the Fourth Schedule to the Social Welfare Act, 1952 (as amended by the Social Welfare (Miscellaneous Provisions) Act, 1966) for widow's (contributory) pension by virtue of the insurance of the widow's late husband.

(3) At the end of Article 1(1) of the Agreement of 1966, as amended by Article 3(2) of the Agreement of 1968, there shall be added the following definitions:

"contribution of the appropriate class" means a contribution under the legislation of one (or the other) country having effect for all the purposes of the benefit in question;

"invalidity pension" has the meaning assigned to it in the legislation concerned ;

"relevant reciprocal provisions" means the provisions of any reciprocal agreement made before 1966 between the Contracting Parties or the competent authorities of the two countries.

(4) The relevant reciprocal provisions, and the provisions of the Agreement of 1966 and the Agreement of 1968, concerning sickness benefit and disability benefit shall apply to invalidity pension in the same way as they apply to sickness benefit and disability benefit provided that Article 7(1)(*aa*) of the Agreement of 1960 and Article 7(2)(*aa*) of the Agreement of 1964 shall not apply.

(5) For the purposes of any of the provisions of this Agreement in relation to widow's benefit, no account shall be taken of any contributions paid by or credited to the widow either before or after her late husband's death.

ARTICLE 2

The relevant reciprocal provisions on maternity grants shall no longer apply but in their place the following provisions shall apply:

(1) For the purpose of any claim to receive a maternity grant under the legislation of one country, a woman who is in, or is confined in, the other country shall be treated as if she were, respectively, in, or confined in, the former country.

(2) Where, but for the provisions of this paragraph, a woman would have been entitled to receive maternity grants for the same confinement under the legislation of both countries, she shall be entitled to receive a grant or grants only under that legislation under which the grant or the sum of the grants, as the case may be, is greater.

(3) If, but for the provisions of this Article, a woman would not be entitled to receive a maternity grant under the legislation of either country, then, for the purpose of her claim to receive a grant or grants under the legislation of the country in which she is confined or, if she is not confined in either country, under the legislation of that country in which she was last ordinarily resident before her confinement, any contribution of the appropriate class paid or credited under the legislation of the other country shall be treated as if it were, respectively, a contribution of the appropriate class paid or credited under the legislation of the former country.

ARTICLE 3

(1) Where an insured person claims unemployment benefit under the legislation of one country, having completed, since his last arrival in that country, spells of employment in that country which amount in the aggregate to at least six weeks, the relevant reciprocal provisions on unemployment benefit shall not apply to him but, for the purpose of his claim, he shall be treated as if any contribution of the appropriate class which he has paid or had credited to him under the legislation of the other country were, respectively, a contribution of the appropriate class which he had paid or had had credited to him under the legislation of the former country.

(2) For the purpose of applying the provisions of paragraph (1) of this Article, no account shall be taken of any spell of employment for which contributions of the appropriate class are not payable under the legislation under which the claim is made.

(3) The number of days for which an insured person would, but for the provisions of this paragraph, be entitled to receive unemployment benefit under the legislation of one country by virtue of paragraph (1) of this Article shall be reduced by the number of days for which he has received it under the legislation of the other country in the same period of interruption of employment, as defined in the legislation of the former country.

ARTICLE 4

No one shall be entitled, after the entry into force of this Agreement, to make an election under Part II or Part III of the Agreement of 1966, but any election made before the entry into force of this Agreement may be cancelled and, where an election is so cancelled, no right shall exist to any further benefit under the legislation of the Republic of Ireland arising either directly or indirectly out of that election.

ARTICLE 5

Where the contribution conditions for old age benefit or widow's benefit are satisfied under the legislation of one country or both countries and no election has been made under Part II or Part III of the Agreement of 1966 or any election so made has been cancelled, benefit shall be paid subject to the provisions of the legislation of that one country or both countries, as the case may be: provided that nothing in this Article shall confer a right to double benefit in respect of a child or an adult dependant and, in any case where but for this provision a person would have a right to such double benefit, an increase of benefit in respect of the child or adult dependant shall be paid only under the legislation of the country which provides the higher total payment by way of such increases in that case or, where such total payments are of equal amount, only under the legislation of—

(*a*) that country in which the person ordinarily resides, or

(*b*) if he is not ordinarily resident in either country, that country in which he was last ordinarily resident.

ARTICLE 6

(1) If, but for the provisions of this Article, no old age benefit or widow's benefit would be payable under the legislation of one country but such benefit would be so payable if the provisions of paragraph (3) of this Article were applied, and the total number of contributions paid by an insured person under the legislation of the other country were added to the total number of contributions paid by him under the legislation of the first country, and his yearly average under the legislation of the other country were added to his yearly average under the legislation of the first country, then old age benefit or widow's benefit, as the case may be, shall be payable under the legislation of the first country.

(2) Where old age benefit or widow's benefit is payable under the legislation of one country by virtue of paragraph (1) of this Article, the rate of that benefit shall be a part of the rate at which it would be paid if the number of contributions paid under the legislation of the other country were added to the number paid under the legislation of the first country and the yearly average under the legislation of the other country were added to the yearly average under the legislation of the first country, namely, that part which bears the same relation to the whole as the yearly average under the legislation of the first country bears to the sum of the yearly averages under the legislation of the two countries: provided

that where the benefit is payable under the legislation of the Republic of Ireland, no account shall be taken of any increase of that benefit under section 26(4) of the Social Welfare Act, 1952, in the calculation of the rate of benefit payable but such increase, where payable, shall be paid in full.

(3) In applying the provisions of paragraphs (1) and (2) of this Article in relation to old age benefit or widow's benefit under the legislation of the Republic of Ireland, the date of the insured person's entry into insurance under the legislation of the United Kingdom shall—

(*a*) if it was on or after 5 January 1953, but before he entered insurance under the legislation of the Republic of Ireland, be treated as the date of his entry into insurance under the legislation of the Republic of Ireland, and

(*b*) if it was before 5 January 1953, be treated as a date of entry into insurance under the legislation of the Republic of Ireland.

(4) The provisions of paragraph (1) of this Article shall apply in relation to any claim only if the conditions for the benefit in question, other than contribution conditions, are satisfied under the legislation of both countries.

(5) Where the yearly average under the legislation of one country, the provisions of paragraph (3) of this Article having been applied where appropriate, is less than three, no benefit shall be payable under that legislation by virtue of the provisions of paragraph (1) of this Article.

(6) Where a man who, by virtue of this Article, is entitled under the legislation of the Republic of Ireland to payment of old age benefit which includes an increase in respect of his wife, dies, such entitlement shall not be taken into account in determining the widow's entitlement to widow's benefit under that legislation.

ARTICLE 7

(1) For the purpose of any claim to receive a death grant under the legislation of one country, a death which occurred in the other country shall be treated as if it had occurred in the first country and, if the deceased was last ordinarily resident in the other country immediately before his death, he shall be treated as if he had been ordinarily resident at that time in the first country.

(2) Where, but for the provisions of this paragraph, death grants would have been payable in respect of the same death under the legislation of both countries, only the greater of these grants shall be paid, and if the grants should be of equal amount, only that grant shall be paid which is payable under the legislation of the country in which the death occurred or, if it occurred in neither country, under the legislation of the country in which the deceased was last ordinarily resident.

(3) If, but for the provisions of this paragraph, no death grant would have been payable in respect of a death under the legislation of either country, then, for the purpose of a claim to receive a grant under the legislation of that country in which the death occurred, or, if it occurred in neither country, under the legislation of that country in which the deceased was last ordinarily resident, any contribution of the appropriate class paid or credited under the legislation of the other country shall be treated as if it were, respectively, a contribution of the appropriate class paid or credited under the legislation of the first country.

(4) For the purpose of applying the provisions of paragraph (3) of this Article no account shall be taken of a contribution under the legislation of the United Kingdom if it was paid or credited for a week for which a contribution paid or credited, as the case may be, under the legislation of the Republic of Ireland would not have effect for the purpose of death grant under that legislation.

ARTICLE 8

Where, in relation to any claim to receive old age benefit or widow's benefit, it is found that the insured person was paid sickness benefit, disability benefit or invalidity pension, as the case may be, by virtue of reciprocal provisions for any continuous period of not less than 6 months, the contributions credited to him in respect of that period shall—

(*a*) if before the beginning of that period he has paid not less than 156 contributions of the appropriate class under the legislation of one country, but less than 156 contributions of the appropriate class under the legislation of the other country, be treated as credited to him under the legislation of the first country ; or

(*b*) if before the beginning of that period he has paid not less than 156 contributions of the appropriate class under the legislation of each country, be treated as credited to him under the legislation of the country under whose legislation the benefit or pension was paid during that period ; or

(*c*) if before the beginning of that period he has paid less than 156 contributions of the appropriate class under the legislation of each country, be treated as credited to him under the legislation of each country for that part of that period which bears the same relation to the whole as the number of contributions of the appropriate class paid by him under that legislation before the beginning of that period bears to the total number of contributions of the appropriate class paid by him under the legislation of the two countries before the beginning of that period.

ARTICLE 9

Where a woman is receiving widow's benefit under the legislation of the United Kingdom by virtue of Article 6 of this Agreement and would, but for the provisions of this Article, have had contributions credited to her for that period under that legislation by virtue of that benefit, contributions shall be so credited only for the part of that period which bears the same relation to the whole as the yearly average under the legislation of the United Kingdom bears to the sum of the yearly averages under the legislation of the two countries.

ARTICLE 10

(1) Where a person has received any assistance under the laws of one country for a period for which he afterwards becomes entitled to old age benefit or widow's benefit under the legislation of the other country, the competent authority of the latter country, at the request of the authority which has provided the assistance and on behalf of that authority may withhold and transfer to that authority the amount provided by way of assistance from the arrears of benefit due to be paid for the same period.

(2) In this Article "assistance" means supplementary benefit, as defined in the laws of the United Kingdom, or a non-contributory widow's pension or old age pension, home assistance, unemployment assistance or deserted wife's allowance, as defined in the laws of the Republic of Ireland.

ARTICLE 11

Where, in the course of any day, a person goes from one country to the other, he shall be treated for the purpose of any claim to sickness benefit, disability benefit or invalidity pension, as the case may be, in respect of that day as if he had been in the first country throughout the day and as if he had not been in the other country on that day.

ARTICLE 12

(1) The provisions of this Agreement, other than Article 4, shall not diminish any right which a person has acquired under the legislation of either country before the entry into force of the Agreement, whether by virtue of the Agreement of 1966, as amended by the Agreement of 1968, or the earlier Agreements or otherwise.

(2) The provisions of this Agreement shall not confer any right to receive benefit in respect of a period before the date of entry into force of the Agreement but may enable benefit, other than death grant or maternity grant, to be paid in respect of an event which happened before that date.

(3) Contributions shall be credited in accordance with the provisions of this Agreement for periods before the date of its entry into force, and any contribution which a person has paid or had credited to him for such a period shall, subject to the provisions of paragraph (2) of this Article, be taken into account for the purpose of a claim to receive benefit under the legislation of one country (or the other).

ARTICLE 13

This Agreement shall come into force on 23 September 1971.

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

Done in two copies at London this fourteenth day of September 1971.

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

LOTHIAN.

PAUL DEAN.

For the Government of the Republic of Ireland:

JOSEPH BRENNAN.

EXPLANATORY NOTE

(This Note is not part of the Order.)

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 and the Republic of Ireland in so far as it relates to the matters for which provision is made by the National Insurance Acts 1965 to 1971.

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