STATUTORY INSTRUMENTS

1975 No. 812

SOCIAL SECURITY

The Social Security (Australia) Order 1975

Made - - - - 14*th May* 1975

At the Court at Buckingham Palace, the 14th day of May 1975

Present,

The Queen's Most Excellent Majesty in Council

Whereas an agreement was made on 29th January 1958 between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Commonwealth of Australia and effect was given to that agreement by the Family Allowances and National Insurance (Australia) Order 1958**(a)**:

And Whereas that agreement was modified and extended by a further agreement made on 16th August 1962 between the said Governments and effect was given to that further agreement by the Family Allowances and National Insurance (Australia) Order 1962**(b)**:

And Whereas at Canberra on 6th March 1975 Notes were exchanged on behalf of the said Governments for the purpose of further amending the said agreement of 1958 to take account of changes in the legislation of the United Kingdom and of Australia and the terms of the Note from the United Kingdom High Commissioner were reproduced in the Note from the Australian Minister for Social Security which is set out in Schedule 1 to this Order:

And Whereas it is proposed that the said agreement of 1958 as so modified, extended and amended shall be replaced by an agreement which takes account of further changes in the legislation of the United Kingdom**(c)** but which is otherwise of similar effect to the said agreement of 1958 as so modified, extended and amended:

And Whereas by virtue of section 117(1) of the National Insurance Act 1965**(d)** the said Orders in Council are deemed to have been made under section 105 of that Act:

And Whereas by virtue of section 2 of, and paragraph 10 of Schedule 3 to, the Social Security (Consequential Provisions) Act 1975**(e)** it is provided that Her Majesty may by Order in Council provide that an Order in Council made under the said section 105 shall have effect for the purposes of section 143 of the Social Security Act 1975**(f)** and shall have effect as if any reference in the said section 105 and the said section 143 to an agreement included a reference to a proposed agreement:

(a) S.I. 1958/422 (1958 II, p. 1584).
(b) S.I. 1962/1869 (1962 II, p. 2179).
(c) *See* Social Security Act 1975 c. 14.
(d) 1965 c. 51.
(e) 1975 c. 18.
(f) 1975 c. 14.

Now, therefore, Her Majesty, in pursuance of the said section 143 and the said section 2 and the said paragraph 10 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 Social Security (Australia) Order 1975.

(2) In this Order, unless the context otherwise requires,—

"the Act" means the Social Security Act 1975;

"year" means the period of 12 months beginning with 6th April in any year; and other expressions have the same meanings as in the Act.

(3) Any reference in this Order to any provision made by or contained in any enactment or instrument shall, except in so far as the context otherwise requires, be construed as a reference to that provision as amended or extended by any enactment or instrument, and as including a reference to any provision which it re-enacts or replaces, or which may re-enact or replace it, with or without modification.

(4) The rules for the construction of Acts of Parliament contained in the Interpretation Act 1889**(a)** shall apply for the purposes of this Order as they apply for the interpretation of an Act of Parliament.

Modification of Orders

2.—(1) The Family Allowances and National Insurance (Australia) Order 1958 and the Family Allowances and National Insurance (Australia) Order 1962 shall for the purposes of section 143 of the Act have effect, subject to the modifications contained in the following provisions of this Order, as if a proposed agreement which takes account of the matters dealt with in those modifications but which is otherwise of similar effect to the agreements set out in the Schedules to those Orders, had been entered into.

(2) The said Orders in Council shall be modified so as to give effect to the agreement made on 6th March 1975 the terms of which are contained in the Note from the Australian Minister for Social Security to the United Kingdom High Commissioner which is set out in Schedule 1 to this Order.

(3) Any reference in the said Orders in Council as so modified to any matter dealt with by, or provision contained in, the National Insurance Acts 1965 to 1974 shall have effect as if it were a reference to the corresponding or most nearly corresponding matter dealt with by, or provision contained in, the Social Security Act 1975.

(4) Where in the agreement to which the said Order in Council of 1958 relates (as modified, extended and amended by any further agreement) there is a reference or provision to the effect set out in column 1 of Schedule 2 to this Order, the modifications of the said Orders in Council made by the preceding provisions of this Order shall have effect as if the reference or provision set out in the corresponding paragraph of column 2 of the said Schedule 2 were substituted for the former reference or provision so however that this paragraph shall not apply to any act, omission or event occurring before 6th April 1975.

(a) 1889 c. 63.

(5) Nothing in the said Orders in Council shall deprive a person of an increase of—

(*a*) a widowed mother's allowance, or

(*b*) benefit by virtue of section 39(4) of the Act corresponding to widowed mother's allowance,

in respect of a dependant who is an only, elder or eldest child in respect of whom child endowment is payable under the legislation of Australia.

N. E. Leigh.

SCHEDULE 1 Article 2(2)

NOTE FROM THE AUSTRALIAN MINISTER FOR SOCIAL SECURITY TO THE UNITED KINGDOM HIGH COMMISSIONER AT CANBERRA

6th March 1975

Sir,

I have the honour to acknowledge the receipt of your Note of today's date which reads as follows:

"I have the honour to refer to the Agreement on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Australia, which was signed at Canberra on 29th January 1958, as amended by the Agreement signed at Canberra on 16th August 1962, (which for the purposes of this Note are together referred to as "the Agreement"), and to recent discussions between the Department of Health and Social Security of the United Kingdom and the Department of Social Security of Australia concerning the need further to amend the Agreement in the light of the Australian Social Services Act (No. 2) 1973 and the Australian Social Services Act 1974, which allow Australian pensions to be paid abroad, the National Insurance Act 1971, which introduced invalidity benefit into the United Kingdom, the Social Services (Parity) Order (Northern Ireland) 1971, which made similar provision for invalidity benefit in Northern Ireland and the National Insurance (Isle of Man) Order 1972, which made similar provision for invalidity benefit in the Isle of Man.

Pending the outcome of these discussions the Government of the United Kingdom takes the view that some immediate steps are necessary to prevent the possibility of duplicate payments of United Kingdom and Australian pensions by virtue of the Agreement. Accordingly, they propose that the following amendments to the Agreement should be made forthwith as an interim measure and without prejudice to any other amendments which may be agreed subsequently between the United Kingdom and Australian Governments:

(*a*) Article 17 of the Agreement shall be amended in the heading and in paragraphs (1) and (2) by inserting the words "or invalidity" after the word "sickness", and in paragraph (3) by substituting the words "sickness or invalidity benefit is payable" for the words "sickness benefit is payable for an indefinite period".

(*b*) Where a person is entitled to receive a benefit by virtue of the provisions of Article 3 or 9, or of paragraphs (1) and (3) of Article 17 of the Agreement as amended by sub-paragraph (*a*) of this paragraph:

(i) the rate of benefit which he would otherwise be entitled to receive, but for this sub-paragraph, by virtue of the provisions of Article 3 or 9 shall be reduced by the amount of benefit which is payable by virtue of the Australian Social Services Act (No. 2) 1973 and the Australian Social Services Act 1974; and

(ii) the rate of benefit which he would be entitled to receive, but for this sub-paragraph, by virtue of the provisions of paragraphs (1) and (3) of Article 17 of the Agreement as amended by sub-paragraph (*a*) of this

paragraph shall be reduced by the total amount of invalid pension and wife's pension which may be payable by virtue of the Australian Social Services Act (No. 2) 1973 and the Australian Social Services Act 1974.

(*c*) Article 1, paragraph (*a*) of the Agreement shall be amended as follows:

(i) omit the words ", "wife's allowance" " and substitute the words "and "wife's pension" ";

(ii) omit the words " and "child's allowance" ".

(*d*) Article 1 of the Agreement shall be amended as follows:

(i) omit the full-stop after paragraph (*q*) and substitute a semi-colon;

(ii) after paragraph (*q*) insert the following paragraph:

"(*r*) "Invalidity benefit" means, in relation to the United Kingdom, invalidity benefit as defined under the legislation of the United Kingdom.".

(*e*) Article 16, paragraph (2) of the Agreement shall be amended by omitting the words from "wife's allowance" to the end of the paragraph and substituting the words "wife's pension.".

(*f*) Article 16, paragraph (3) of the Agreement shall be amended as follows:

(i) omit the words ", wife's allowance and child's allowance" and substitute the words "and wife's pension";

(ii) omit the word "sickness" and substitute the word "invalidity".

(*g*) Article 16, paragraph (4) of the Agreement shall be amended by omitting the words "or more".

(*h*) Article 19, sub-paragraph (*b*) of the Agreement shall be amended by omitting the words "allowance, a child's allowance" and substituting the word "pension".

(*i*) Article 20, paragraph (1) of the Agreement shall be amended by omitting the words "and children's allowances" and substituting the word "pensions".

(*j*) Article 25, paragraph (1) of the Agreement shall be amended by omitting the word "allowances" and substituting the word "pensions".

(*k*) Article 26 of the Agreement shall be amended by inserting the words "or invalidity" after the word "sickness".

I have the honour to suggest that, if these proposals are acceptable to the Government of Australia, this Note and your reply to that effect shall constitute an Agreement between our two Governments to enter into force on the date of your reply.

Either Government may terminate this Agreement within six months of the date of entry into force by giving written notice to the other of its intention to do so, in which case termination shall take effect immediately upon receipt of such notice."

I have the honour to inform you that these proposals are acceptable to the Government of Australia, and that they agree that your Note and this reply shall constitute an Agreement between our two Governments which shall enter into force on the date of this reply.

Please accept, Sir, the assurance of my highest consideration.

W. G. Hayden

SCHEDULE 2

Article 2(4)

SPECIFIC MODIFICATIONS TO THE ORDERS IN COUNCIL TO WHICH THIS ORDER RELATES

Reference or Provision in Agreement 1	Modification of Order in Council 2
1. periods of employment completed in Australia by a person to whom the agreement applies to be treated as if those periods were periods for which contributions had been paid under the legislation of the United Kingdom.	1. each complete week in any such period during which that person was an employed person in Australia to be treated as a week in which he had paid a contribution on earnings equal to two-thirds of the upper earnings limit within the meaning of section 4(1) of the Act for the year which includes that week.
2. a period of residence in Australia by a person to whom the agreement applies to be treated as a period for which contributions have been paid under the legislation of the United Kingdom.	2. that person to be treated as having paid as many Class 3 contributions under section 8 of the Act as there are complete weeks in any such period.
3. that, for the purposes of any claim by a married woman to receive a retirement pension under the legislation of the United Kingdom by virtue of her own insurance and her residence in Australia, she shall have paid 156 contributions under the legislation of the United Kingdom for any period after the date of her marriage and before the date on which she reaches pension age.	3. the number of contributions paid to be ascertained by dividing her earnings factor derived from contributions paid in any relevant year by the lower earnings limit for that year within the meaning of section 4(1) of the Act; provided that the number of contributions so ascertained shall not exceed the number of weeks the person was subject to the legislation of the United Kingdom.
4. for the purposes of a claim for guardian's allowance under the legislation of the United Kingdom the parent of the child in question who had been resident in Australia to be treated as having been insured under the legislation of the United Kingdom.	4. that parent to be deemed to satisfy the conditions set out in regulation 6 of the Social Security (Guardian's Allowances) Regulations 1975(a).
5. persons to be treated as having paid contributions as non-employed persons.	5. those persons to be treated as having paid Class 3 contributions.

EXPLANATORY NOTE

(*This Note is not part of the Order.*)

This Order applies to the Family Allowances and National Insurance (Australia) Order 1958 and the Family Allowances and National Insurance (Australia) Order 1962 (which give effect to agreements between the governments of the United Kingdom and Australia providing for reciprocity in certain social security matters) to the Social Security Act 1975 and modifies those Orders to take account of that Act as if those agreements were replaced by a agreement which takes account of that Act but which is otherwise of similar effect. The Order also gives effect to a supplementary agreement (set out in Schedule 1) made between those governments on 6th March 1975.

(a) S.I. 1975/515 (1975 I, p. 1693).

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