1977 No. 51

SOCIAL SECURITY

The Social Security (Austria) Order 1977

Made - - - -	*17th January* 1977
Coming into Operation	*1st February* 1977

At the Court at Buckingham Palace, the 17th day of January 1977

Present,

The Queen's Most Excellent Majesty in Council

Whereas on 18th June 1971 a Convention on social security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Austria (hereinafter referred to as "the Principal Convention") was signed on behalf of those Governments and effect was given thereto by the Family Allowances, National Insurance and Industrial Injuries (Austria) Order 1972(**a**):

And Whereas at Vienna on 16th September 1975 a supplementary Convention between those Governments (which Convention is hereinafter referred to as "the Supplementary Convention" and is set out in the Schedule hereto), amending and extending the Principal Convention, was signed on behalf of those Governments:

And Whereas by Article 18 of the Supplementary Convention it is provided that the Supplementary Convention shall enter into force on the first day of the second month following the month in which the instruments of ratification are exchanged:

And Whereas the Supplementary Convention has been ratified by those Governments and instruments of ratification were exchanged on 23rd December 1976, and accordingly the Supplementary Convention enters into force on 1st February 1977:

And Whereas by virtue of section 2 of, and paragraph 13 of Schedule 3 to, the Social Security (Consequential Provisions) Act 1975(**b**) it is provided that any Order in Council made under section 105 of the National Insurance Act 1965(**c**) or section 84 of the National Insurance (Industrial Injuries) Act 1965(**d**) shall have effect as if made under section 143 of the Social Security Act 1975(**e**):

And Whereas by section 166(4) of the Social Security Act 1975 a power conferred by that Act to make an Order in Council includes a power to vary any such Order in Council by a subsequent Order in Council:

(**a**) S.I. 1972/1586 (1972 III, p. 4592). (**b**) 1975 c. 18. (**c**) 1965 c. 51. (**d**) 1965 c. 52.
(**e**) 1975 c.14.

Now, therefore, Her Majesty, in pursuance of the said section 143 and the said section 166(4) 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, commencement and interpretation

1.—(1) This Order may be cited as the Social Security (Austria) Order 1977 and shall come into operation on 1st February 1977.

(2) Any reference in this Order to any provision made by, or contained in, any enactment or instrument shall, except insofar 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.

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

Modification of Act and variation of Order

2. The Social Security Act 1975 shall be modified and the Family Allowances, National Insurance and Industrial Injuries (Austria) Order 1972 shall be varied to such extent as may be required to give effect to the provisions contained in the Supplementary Convention set out in the Schedule to this Order, so far as the same relate to England, Wales and Scotland.

N. E. Leigh,
Clerk of the Privy Council.

SCHEDULE Article 2

SUPPLEMENTARY CONVENTION ON SOCIAL SECURITY BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE REPUBLIC OF AUSTRIA

Her Majesty The Queen of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories, Head of the Commonwealth (hereinafter referred to as "Her Britannic Majesty") and the Federal President of the Republic of Austria;

Having established reciprocal arrangements in the field of social security by means of the Convention which was signed on their behalf in Vienna on 18 June 1971;

Desiring to amend and widen the scope of those arrangements;

Have resolved to conclude a supplementary Convention and for that purpose have appointed as their Plenipotentiaries:

Her Britannic Majesty:

For the United Kingdom of Great Britain and Northern Ireland:

His Excellency Sir Denis Seward Laskey, KCMG, CVO, Her Britannic Majesty's Ambassador Extraordinary and Plenipotentiary at Vienna;

(a) 1889 c. 63.

The Federal President of the Republic of Austria:

For the Republic of Austria:
Herrn Dr. Erich Bielka, Federal Minister for Foreign Affairs;

Who, having communicated to each other their full powers, found in good and due form, have agreed as follows:

PART I

ARTICLE 1

For the purposes of the present Convention, the expression, "the Principal Convention", means the Convention on Social Security between the United Kingdom of Great Britain and Northern Ireland and the Republic of Austria which was signed at Vienna on 18 June 1971.

PART II

ARTICLE 2

(1) Paragraph (1)(v) of Article 1 of the Principal Convention shall be deleted and the following substituted:

"(v) 'Competent authority' means, in relation to the United Kingdom, the Secretary of State for Social Services, the Department of Health and Social Services for Northern Ireland, the Isle of Man Board of Social Security, the Social Security Committee of the States of Jersey or the States of Guernsey Insurance Authority, as the case may require, and, in relation to Austria, the competent Federal ministers;"

(2) Paragraph (1)(xiv) of Article 1 of the Principal Convention shall be deleted and the following substituted:

"(xiv) 'sickness benefit' means, in relation to the United Kingdom, sickness benefit payable under the legislation of the United Kingdom, and, in relation to Austria, benefit payable under the legislation of Austria in the case of incapacity for work due to illness;"

(3) Paragraph (1)(xvii) of Article 1 of the Principal Convention shall be deleted and the following substituted:

"(xvii) 'invalidity pension' means, in relation to the United Kingdom, invalidity benefit as defined in the legislation referred to in Article 2(1)(ii)(*a*) and Article 2(1)(ii)(*c*) and any sickness benefit as defined in the legislation of the United Kingdom which becomes payable for a period of interruption of employment as defined in that legislation to a person who:

(*a*) has received such benefit for 312 days of that period while he was in the territory of either High Contracting Party and is, in the opinion of the insurance authority of the United Kingdom, likely to remain permanently incapable of work; or

(*b*) has received such benefit for 36 days of that period and is entitled to an invalidity pension under the legislation of Austria for those 36 days; or

(*c*) has become entitled while he is in Austria to an invalidity pension under the legislation of Austria;

and, in relation to Austria, a pension payable under the pension legislation of Austria for reduced working capacity or loss of earning capacity;"

ARTICLE 3

Paragraph (1)(ii)(*e*) of Article 2 of the Principal Convention shall be deleted and the following substituted:

"(*e*) the Family Allowances Act 1965, the Family Allowances Act (Northern Ireland) 1966, the Family Allowances (Isle of Man) Act 1946, the Family Allowances (Guernsey) Law 1950 and the Family Allowances (Jersey) Law 1972."

ARTICLE 4

Paragraph (1) of Article 5 of the Principal Convention shall be deleted and the following substituted:

"(1) Where under the legislation of Austria gainful occupation or compulsory insurance has legal effects on entitlement to social insurance benefits, then subject to the provisions of paragraphs (2) and (3) of this Article, gainful occupation or compulsory insurance in the territory of the United Kingdom shall have the same legal effects."

ARTICLE 5

Paragraph (3) of Article 6 of the Principal Convention shall be deleted.

ARTICLE 6

Paragraph (2) of Article 13 of the Principal Convention shall be deleted.

ARTICLE 7

Paragraph (3) of Article 18 of the Principal Convention shall be deleted and replaced by the following:

"(3) Any person claiming an old age or survivor's benefit (other than an allowance in respect of an orphan) under the legislation of the United Kingdom may choose to have his benefit determined under that legislation without regard to the provisions of this Section."

ARTICLE 8

Paragraph (3) of Article 19 of the Principal Convention shall be deleted.

ARTICLE 9

(1) Paragraph (1) of Article 22 of the Principal Convention shall be deleted and the following substituted:

"(1) For the purpose of determining the pensions insurance scheme under which a claim to benefit should be made, and the competent insurance authority responsible for paying benefit, only insurance periods under the legislation of Austria shall be taken into account."

(2) Paragraphs (2) and (4) of Article 22 of the Principal Convention shall be deleted.

(3) Sub-paragraph (i) of paragraph (7) of Article 22 of the Principal Convention shall be deleted and the following substituted:

"(i) Overlapping periods of insurance shall be taken into account in full measure."

(4) Sub-paragraphs (i) and (ii) of paragraph (8) of Article 22 of the Principal Convention shall be deleted and the following substituted:

"(i) If the total of the insurance periods completed under the legislation of both Parties exceeds the highest possible maximum number of insurance months allowed for calculation of increments under Austrian legislation the pension shall be calculated in accordance with the relationship between the length of insurance periods completed under Austrian legislation and the aforementioned maximum number of months.

(ii) The allowance payable to a helpless person shall be calculated in accordance with the legislation of Austria and for this purpose the limits within which the allowance is payable shall be reduced in the same proportion as the pension. Where, however, title to pension is by virtue of periods of insurance completed under Austrian legislation alone then the allowance shall be determined on the basis of this pension, unless an attendance allowance is payable under the legislation of the United Kingdom."

(5) Paragraph (9) of Article 22 of the Principal Convention shall be deleted and the following substituted:

"(9) Where under the legislation of Austria the award of benefits under miners' pension insurance depends upon the completion of insurance periods in a mining industry, only those insurance periods under the legislation of the United Kingdom shall be taken into account which were completed in an occupation corresponding to an occupation specified under the legislation of Austria."

ARTICLE 10

In the German text of Article 24(4) of the Principal Convention the word "bezeichnete" shall be replaced by the word "berechnete".

ARTICLE 11

Section 5 of Part III of the Principal Convention shall be deleted and replaced by the following:

"*Unemployment Insurance*

ARTICLE 28

(1) If an employed person who is a national of one of the High Contracting Parties, since his last arrival in the territory of Austria, has been employed in employment which is subject to unemployment insurance then for the purpose of any claim to unemployment benefit, any contribution period completed under the legislation of the United Kingdom shall be treated as if it were a contribution period completed under the legislation of Austria.

(2) The application of paragraph (1) of this Article shall be subject to the condition that the employed person, in the last 12 months before his claim to benefit, has been employed for an aggregate of at least 4 weeks in employment which is subject to unemployment insurance, but this restriction shall not apply if the employed person is not to blame for the termination of his employment.

ARTICLE 29

(1) If a person, since his last arrival in the territory of the United Kingdom, has completed a contribution period under the legislation of the United Kingdom, then, for the purpose of any claim to receive unemployment benefit under that legislation:

(*a*) any period of his employment subject to unemployment insurance under the legislation of Austria shall be treated as if it were a period during which he had paid contributions as an employed person under the legislation of the United Kingdom;

(*b*) any period during which he was entitled under the legislation of Austria to receive unemployment benefit or sickness benefit shall be treated as if it were a period during which contributions were credited to him as an employed person under the legislation of the United Kingdom, and

(*c*) any period during which he was resident in the territory of Austria shall be treated as if it were a period during which he was resident in the territory of the United Kingdom.

(2) If an employed person who has been employed in the territory of Austria goes to the territory of the United Kingdom and becomes employed there as an employed person and subsequently applies under that legislation for exemption from liability to pay contributions and for contributions to be credited to him on grounds of unemployment, then, for the purpose of that application:

(*a*) any period of employment completed by him which is subject to compulsory insurance under the legislation of Austria shall be treated as if it were a period during which he was employed as an employed person and had paid contributions as an employed person under the legislation of the United Kingdom; and

(*b*) any period during which he was entitled under the legislation of Austria to receive unemployment benefit or sickness benefit shall be treated as if it were a period during which contributions were credited to him as an employed person under the legislation of the United Kingdom.

(3) Where a person claims unemployment benefit under the legislation of the United Kingdom by virtue of the provisions of paragraph 1 of this Article any period during which he received such benefit under the legislation of Austria during the last 12 months before the day on which his claim is made shall be taken into account as if it were a period during which he had received such benefit under the legislation of the United Kingdom.

ARTICLE 30

Where an employed person claims unemployment benefit by virtue of the provisions of Article 28 under the Austrian legislation, the rate of unemployment benefit shall depend on the earnings which he was entitled to receive during the last four weeks of his employment which was subject to unemployment insurance. Where there have not been four weeks of employment in Austria subject to unemployment insurance the customary local wage rate for a similar employment at his place of residence is to be used."

ARTICLE 12

A new Section 6 with the following wording shall follow Section 5 in Part III of the Principal Convention:

"*Section* 6

Benefits related to earnings under United Kingdom legislation

ARTICLE 31

For the purpose of calculation, under the legislation of the United Kingdom, the weekly rate of:

(*a*) earnings-related supplement of sickness benefit or unemployment benefit, or

(*b*) widow's supplementary allowances or earnings-related addition to a widow's allowance,

an amount shall be credited to the person concerned for each week of employment on which the person has paid contributions appropriate to the benefit in question under the legislation of Austria, during the relevant income tax year, equal to the weekly earnings corresponding to the average weekly rate of earnings-related supplement which is estimated to be payable to a male or female worker respectively during the current benefit year."

ARTICLE 13

Paragraph (2) of Article 36 of the Principal Convention shall be deleted and the following substituted:

"(2) Any claim to benefit submitted under the legislation of one Party shall be treated as if it were a claim to the corresponding benefit under the legislation of the other Party in so far as this corresponding benefit is payable in accordance with the provisions of this Convention. The provisions of the first sentence of this paragraph shall not apply when the claimant expressly requests that the determination of his old age pension under the legislation of one Party be deferred."

ARTICLE 14

Article 42 of the Principal Convention shall be deleted and the following substituted:

"ARTICLE 42

The present Convention shall not affect any existing rights under Austrian legislation of any person who has suffered disadvantages because of political or religious reasons or by reason of descent."

ARTICLE 15

Article 43 of the Principal Convention shall be deleted.

ARTICLE 16

Article 1 of the Protocol to the Principal Convention concerning Benefits in Kind shall be deleted and the following substituted:

"ARTICLE 1

(1) Where a national of one High Contracting Party falls ill, meets with an accident or, for any other reason, is in urgent need of medical treatment when he is in the territory of the other Party, he shall be entitled to receive hospital treatment in that territory under the same conditions as a national of the latter Party who is ordinarily resident in the territory of that Party and insured under the legislation of that Party concerning sickness insurance.

(2) The provisions of paragraph (1) of this Article shall apply *mutatis mutandis* to an Austrian national who is temporarily resident in Austria provided that he is insured under the legislation of the United Kingdom concerning sickness insurance.

(3) An Austrian national who is entitled to receive an old age pension, survivor's pension or invalidity pension solely under the legislation of the United Kingdom shall be affiliated under the legislation of Austria concerning sickness insurance for pensioners provided that he is ordinarily resident in Austria. For this purpose a pension payable under the legislation of the United Kingdom shall be treated as if it were payable under Austrian legislation."

PART III

ARTICLE 17

(1) No provision of the present Convention shall confer any right to receive any benefit for a period before the date of entry into force of the present Convention.

(2) Notwithstanding the provisions of paragraph (1) of this Article any old age or survivor's benefit payable under the legislation of the United Kingdom and determined under the provisions of the Principal Convention may be re-determined under the provisions of the present Convention provided that application for such redetermination is made within 2 years of the entry into force of the present Convention.

ARTICLE 18

(1) The present Convention shall be ratified and the instruments of ratification shall be exchanged at London as soon as possible.

(2) The present Convention shall enter into force on the first day of the second month following the month in which the instruments of ratification are exchanged.

In witness whereof the above named Plenipotentiaries have signed the present Convention and affixed thereto their seals.

Done in duplicate at Vienna this Sixteenth day of September 1975 in the English and German languages, both texts being equally authoritative.

For Her Britannic Majesty:

DENIS LASKEY

For the Federal President of the Republic of Austria:

E. BIELKA

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order makes provision for modification of social security legislation so as to give effect to the supplementary convention (set out in the Schedule) made between the Governments of the United Kingdom and Austria on 16th September 1975 and coming into operation on 1st February 1977, which amends the Convention on Social Security between those Governments dated 18th June 1971 and set out in the Family Allowances, National Insurance and Industrial Injuries (Austria) Order 1972.

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