1987 No. 402

SOCIAL SECURITY

The Social Security (Austria) Order (Northern Ireland) 1987

Made	*26th October 1987*
Coming into operation . .	*1st November 1987*

In exercise of the powers conferred on me by section 134 of the Social Security (Northern Ireland) Act 1975(**a**) and of all other powers enabling me in that behalf, I hereby make the following order:

Citation and commencement

1. This order may be cited as the Social Security (Austria) Order (Northern Ireland) 1987 and shall come into operation on 1st November 1987.

Amendment of order and modification of Act

2. The Social Security (Austria) Order (Northern Ireland) 1981(**b**) shall be amended in accordance with, and accordingly the Social Security (Northern Ireland) Act 1975 shall be modified 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 Northern Ireland.

Dated this 26th day of October 1987.

Tom King
One of Her Majesty's Principal
Secretaries of State

(**a**) 1975 c. 15: section 134 was amended by section 20(3) of, and extended by section 20(4) of, the Social Security (Miscellaneous Provisions) Act 1977 (1977 c. 5), and subsection (1A) of section 134 was inserted by Article 7(1) of the Social Security (Northern Ireland) Order 1981 (S.R. 1981/1118 (N.I. 25))

(**b**) S.R. 1981 No. 144

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;

Desiring to amend and supplement the Convention of 22 July 1980 on social security;

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:

The Rt. Hon. The Baroness Young
Minister of State for Foreign and Commonwealth Affairs

The Federal President of the Republic of Austria:

For the Republic of Austria:

Dr. Reginald Thomas
Ambassador Extraordinary and Plenipotentiary of the Republic of Austria to the United Kingdom of Great Britain and Northern Ireland.

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

ARTICLE I

For the purposes of this supplementary Convention, "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 22 July 1980.

ARTICLE II

(1) (*a*) In sub-paragraph (5) of paragraph (1) of Article 1 of the Convention the words "the Federal Minister for Finance" shall be replaced by the words "the Federal Minister for Family, Youth and Consumer Protection".

(*b*) Sub-paragraph (17) of paragraph (1) of Article 1 of the Convention shall be deleted and the following substituted:

"17. "invalidity pension" means, in relation to the territory of the United Kingdom, invalidity benefit payable under the legislation of that Party, and, in relation to Austria, benefit payable under the pension insurance legislation of Austria in the case of reduced working capacity or permanent loss of earning capacity;"

(2) To Article 6 of the Convention a paragraph (3) with the following wording shall be added:

"(3) A person employed as a member of the non-travelling personnel of an undertaking engaged in the international transport of passengers or goods by railway, road, or air, whether for a third party or on its own account, having its principal place of business in the territory of one Party, shall remain subject to the legislation of that Party when he is sent by that undertaking to work in the territory of the other Party."

(3) To Article 9 of the Convention a paragraph (4) with the following wording shall be added:

"(4) Where in accordance with the provisions of paragraph (1) of this Article and of Articles 6 and 8 of this Convention a person is subject to the legislation of any part of the territory of the United Kingdom while he is gainfully occupied in the territory of Austria he shall be entitled to contribute voluntarily to sickness insurance under the legislation of Austria as if he were permanently resident in its territory."

(4) Sub-paragraph (*b*) of paragraph (1) of Article 10 of the Convention shall be deleted and the following substituted:

"(*b*) for each week beginning in a relevant tax year under the legislation of the United Kingdom, the whole of which week is an equivalent period completed as an employed person under the legislation of Austria, as having completed an equivalent period under the legislation of the United Kingdom."

(5) Article 12 of the Convention shall be deleted.

(6) Paragraph (2) of Article 16 of the Convention shall be deleted and the following substituted:

"(2) Where a person is entitled to an old age pension (other than the basic component of a Category B retirement pension payable to a married woman) under the legislation of any one part of the territory of the United Kingdom without the application of the provisions of paragraph (1) of this Article, that pension shall be paid and the provisions of paragraph (1) of Article 17 of this Convention shall not be applied under that legislation. Where the old age pension payable is the basic component of a Category B retirement pension payable to a married woman, her pension entitlement shall be determined in accordance with the provisions of Article 17, if this is to her advantage."

(7) Paragraph (2) of Article 17 of the Convention shall be deleted and the following substituted:

"(2) For the purposes of the calculation in paragraph (1) of this Article:

(*a*) where all the insurance periods completed by any person under the legislation of:

(i) either Great Britain, Northern Ireland or the Isle of Man amount to less than one reckonable or, as the case may be, qualifying year, or relate only to periods before 6 April 1975 and in aggregate amount to less than 50 weeks; or

(ii) Jersey amount to less than an annual contribution factor of 1.00; or

(iii) Guernsey amount to less than 50 weeks;

those periods shall be treated as if they had been completed under the legislation of any other part of the territory of the United Kingdom under which a pension is, or if such periods were taken into account would be, payable, or, where two such pensions are or would be payable, under the legislation of that part which, at the date on which entitlement first arose or arises, is paying or would pay the greater amount. Where, notwithstanding the foregoing, no old age pension is payable under the legislation of any part of the territory of the United Kingdom such periods

shall be treated as if they had been completed under the legislation of Austria;

(*b*) where all the insurance periods completed by any person under the legislation of Austria amount to less than twelve months, no pension shall be payable under that legislation and those periods shall be treated as if they had been completed under the legislation of that part of the territory of the United Kingdom under which a pension is, or if such periods were taken into account would be payable, or, where such a pension is or would be payable under the legislation of two or more parts of the territory of the United Kingdom, as if they had been completed under the legislation of that part which, at the date on which entitlement first arose or arises, is paying or would pay the greater or greatest amount.''

(8) Paragraph (4) of Article 20 of the Convention shall be deleted and the following substituted:

''(4) For the purpose of applying the provisions of paragraph (1) of Article 16 and of Article 17 of this Convention periods during which a person was entitled to receive an invalidity pension or an old age pension under the legislation of any part of the territory of the United Kingdom shall be treated as if they were neutral periods under the legislation of Austria;''

(9) (*a*) In the German text of paragraph (2) of Article 22 of the Convention the words ''Artikel 2 Absatz 1 Buchstabe a Ziffer 1'' shall be replaced by the words ''Artikel 2 Absatz 1 Buchstabe b Ziffer 1''.

(*b*) Paragraph (3) of Article 22 of the Convention shall be deleted and the following substituted:

''(3) Where a woman is entitled to an old age pension under the legislation of any part of the territory of the United Kingdom instead of a widow's benefit under that legislation, then for the purpose of calculating a widow's pension under the legislation of Austria paragraph (1) of this Article shall be applied as if the woman were entitled to widow's benefit under the legislation of any part of the territory of the United Kingdom.''

(10) (*a*) Paragraph (1) of Article 23 of the Convention shall be deleted and the following substituted:

''(1) If a person has completed insurance periods under the legislation of both High Contracting Parties, then for the purpose of any claim to invalidity pension under the legislation of one Party any insurance period or period of entitlement to sickness benefit or invalidity pension completed under the legislation of the other Party shall be treated as if it were respectively an insurance period or period of entitlement to sickness benefit or invalidity pension under the legislation of the former Party.''

(*b*) The wording of paragraph (3) of Article 23 of the Convention shall become sub-paragraph (*a*) of paragraph (3) and a sub-paragraph (*b*) of paragraph (3) with the following wording shall be added:

''(*b*) for the purpose of a claim for invalidity pension by virtue of this Convention under the legislation of Austria, the provisions of Articles 17 to 21 of this Convention shall apply mutatis mutandis subject to the provisions of paragraphs (4) and (5) of this Article.''

(11) Paragraph (3) of Article 43 of the Convention shall be deleted and the following substituted:

''(3) This Convention shall not diminish any right to benefit acquired under the legislation of either High Contracting Party before its date of entry into force, except to the extent to which such right to benefit would have to be determined afresh had the Conventions specified in paragraph (1) of this Article remained in force.''

(12) In paragraph (*a*) of Article 1 of the Protocol to the Convention concerning benefits in kind after the words "under the National Health Service of the United Kingdom" the words "or the Isle of Man" shall be inserted.

ARTICLE III

(1) This supplementary Convention shall be ratified and the instruments of ratification shall be exchanged at Vienna as soon as possible.

(2) This supplementary Convention shall enter into force on the first day of the third month following the month in which the instruments of ratification are exchanged.

In witness whereof the above named Plenipotentiaries have signed this supplementary Convention.

Done in duplicate at London this 9th day of December 1985 in the English and German languages, both texts being equally authoritative.

For Her Britannic Majesty:
Baroness Young

For the Federal President of
the Republic of Austria:
Dr. Reginald Thomas (Ambassador)

EXPLANATORY NOTE

(This note is not part of the Order.)

This order makes provision for modification of the Social Security (Northern Ireland) Act 1975 so as to give effect in Northern Ireland to the Supplementary Convention (set out in the Schedule) which amends the Convention on social security signed at Vienna on 22 July 1980 between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Austria.

The changes (which do not affect the Convention insofar as family allowances are concerned) take account of amendments in the legislation of both Contracting Parties; the pension provisions have been simplified and a new provision has been included which allows persons employed in Austria but insured under United Kingdom legislation to contribute voluntarily to the Austrian scheme for purposes of sickness insurance. The provision dealing with maternity grant (Article 12) has been removed from the Convention.