1978 No. 327

SOCIAL SECURITY

The Social Security (Jersey and Guernsey) Order (Northern Ireland) 1978

Made . . . . . 30*th October* 1978
Coming into operation . . . 6*th November* 1978

In exercise of the powers conferred on me by section 134(1) of the Social Security (Northern Ireland) Act 1975(**a**), as amended by section 20(3) of, and extended by section 20(4) of, the Social Security (Miscellaneous Provisions) Act 1977(**b**), and of all other powers enabling me in that behalf, I hereby make the following order:

Citation, commencement and interpretation

1.—(1) This order may be cited as the Social Security (Jersey and Guernsey) Order (Northern Ireland) 1978 and shall come into operation on 6th November 1978.

(2) 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.

(3) The rules for the construction of Acts of Parliament contained in the Interpretation Act 1889(**c**) shall apply for the purposes of the interpretation of this order and the revocation effected by it as they would apply if this order and the Order which it revokes were Acts of Parliament and the revocation were a repeal.

Modification of the Social Security (Northern Ireland) Act 1975

2. 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 Agreement on Social Security set out in the Schedule to this order, so far as the same relate to Northern Ireland.

Revocation and Variation of Orders

3.—(1) The National Insurance and Industrial Injuries (Jersey and Guernsey) Order (Northern Ireland) 1972(**d**) is hereby revoked.

(2) In Part II of Schedule 1 to the Social Security (Reciprocal Agreements) (Northern Ireland) Order 1976(**e**) the reference to the said Order of 1972 shall be omitted.

Dated this 30th day of October 1978.

Roy Mason
One of Her Majesty's Principal Secretaries of State

(a) 1975 c. 15
(b) 1977 c. 5
(c) 1889 c. 63
(d) S.R. & O. (N.I.) 1972 No. 320 (p. 1590)
(e) S.I. 1976/1044 (1976 II, p. 2752)

SCHEDULE Article 2

Agreement on Social Security between the Secretary of State for Social Services, the Department of Health and Social Services for Northern Ireland and the Lieutenant-Governor of the Isle of Man, with the advice and consent of the Isle of Man Board of Social Security constituted under the Isle of Man Board of Social Security Act 1970, of the first part, the Social Security Committee, with the consent of the States of Jersey, of the second part, and the States Insurance Authority, with the consent of the States of Guernsey, of the third part.

PART I: DEFINITIONS AND SCOPE

ARTICLE 1

(1) For the purpose of the present Agreement, unless the context otherwise requires—

(*a*) "country" means the United Kingdom and the Isle of Man, Jersey or Guernsey, as the case may require;

(*b*) "Guernsey" includes the Islands of Alderney, Herm and Jethou;

(*c*) "legislation" means, in relation to any country, the legislation of that country specified in Article 2 of the present Agreement;

(*d*) "competent authority" means—

(i) in relation to the United Kingdom and the Isle of Man, the Secretary of State for Social Services, the Department of Health and Social Services for Northern Ireland, or the Isle of Man Board of Social Security, as the case may require;

(ii) in relation to Jersey, the Social Security Committee;

(iii) in relation to Guernsey, the States Insurance Authority;

(*e*) "statutory adoption" means—

(i) in relation to the United Kingdom and the Isle of Man, adoption within the meaning of the Adoption Acts 1958 and 1968, the Adoption Act (Northern Ireland) 1967, the Adoption (Hague Convention) Act (Northern Ireland) 1969 or the Adoption Acts 1962 and 1965 of the Isle of Man as the case may require;

(ii) in relation to Jersey, adoption within the meaning of the Adoption (Jersey) Laws 1961 to 1965;

(iii) in relation to Guernsey, adoption within the meaning of the Adoption (Guernsey) Law 1960;

(*f*) "fund" means—

(i) in relation to the United Kingdom and the Isle of Man, the National Insurance Fund, the Northern Ireland National Insurance Fund or the Manx National Insurance Fund, as the case may require;

(ii) in relation to Jersey, the Social Security Fund, and

(iii) in relation to Guernsey, the Guernsey Insurance Fund;

(*g*) "contribution of the appropriate class" means a contribution having effect for the purpose of the benefit in question;

(*h*) any reference to a contribution paid under the legislation of one country includes a reference to a contribution treated as paid under that legislation;

(*i*) "old age benefit" means retirement pension (other than graduated retirement benefit) under the legislation of the United Kingdom and the Isle of Man or old age pension under the legislation of Jersey or Guernsey;

(*j*) "standard rate of benefit" means in relation to any country, the rate of old age benefit or widow's benefit, as the case may be, which would be payable under the legislation of that country, if all the conditions for that benefit were fully satisfied.

(2) Other expressions have the meanings respectively assigned to them in the legislation of the United Kingdom and the Isle of Man, Jersey or Guernsey, as the case may require.

(3) Unless the context otherwise requires, any reference to a numbered Article is a reference to the Article of this Agreement bearing that number and any reference in an Article to a numbered paragraph is a reference to the paragraph of that Article bearing that number.

ARTICLE 2

(1) The provisions of the present Agreement shall apply—

(*a*) in relation to the United Kingdom and the Isle of Man, to the Social Security Act 1975, the Social Security (Northern Ireland) Act 1975 and the Social Security Act 1975 (an Act of Parliament) as applied to the Isle of Man by order made under the provisions of the Social Security Legislation (Application) Act 1974 (an Act of Tynwald);

(*b*) in relation to Jersey, to the Social Security (Jersey) Law 1974 and the Attendance Allowances (Jersey) Law 1973;

(*c*) in relation to Guernsey, to the Social Insurance (Guernsey) Law 1964 and the legislation repealed by that Law.

(2) Subject to the provisions of paragraphs (3) and (4) the present Agreement shall apply to any Act, Law, Ordinance, Measure, order or regulation which amends, supplements, replaces or consolidates the legislation specified in paragraph (1).

(3) The present Agreement shall apply, unless the Contracting Parties agree otherwise, only to benefits described in the legislation specified in this Article at the date of coming into force of the present Agreement and for which specific provision is made in the present Agreement.

(4) The present Agreement shall apply, only if the Contracting Parties so agree, to any Act, Law, Ordinance, Measure, order or regulation which amends or supplements the legislation specified in paragraph (1) for the purpose of giving effect to any agreement providing for reciprocity with a scheme of social security in a fourth country.

PART II: CONTRIBUTIONS

Payment of Contributions

ARTICLE 3

(1) Where a person who is ordinarily resident in one country and is employed in that country in the service of an employer who is ordinarily resident there or has a place of business there goes in the course of that employment to work temporarily in another country, contributions in respect of that employment shall be payable under the legislation of the former country as if he were employed in that country and shall not be payable under the legislation of the latter country, provided that the employment in that country is not expected to last more than twelve months.

(2) The competent authority of the latter country may agree to apply the provisions of paragraph (1) for a further period not exceeding twelve months provided that the employment in that country is extended beyond twelve months duration for unforeseen reasons.

(3) Where a person in the service of the Government of the United Kingdom or the Isle of Man or in service in the employment of the States of Jersey or Guernsey goes in the course of that employment to work in another country and the provisions of paragraph (1) do not apply to him or have ceased to apply

to him, he shall be entitled to choose within three months of the beginning of that employment in the latter country or of the time when those provisions cease to apply to him that, as from the date on which he gives notice to the competent authority of the latter country, contributions in respect of that employment shall be payable under the legislation of the former country as if he were employed in that country and shall not be payable under the legislation of the latter country.

(4) The competent authorities of any two countries or of all three countries may agree that paragraph (3) shall apply to persons in the service of any public corporation of one country, being a public corporation designated by them, in the same way as it applies to persons in the Government service of that country.

(5) Where, by virtue of the provisions of paragraph (1) or (3), a person is relieved of the liability to pay a contribution for any period as an employed person or earner under the legislation of any country, he shall not be liable to pay any other contribution for that period under that legislation.

(6) (*a*) Where, but for the provisions of this paragraph, a person would be liable to pay contributions under the legislation of two or more countries, the following provisions shall apply—

(i) where a person is employed in two or more countries for the same period, he shall be subject to the legislation of the country in which he is ordinarily resident;

(ii) where a person is liable to pay a contribution in respect of his employment in one country and is liable to pay any other class of contribution for the same period under the legislation of another country, he shall be liable to pay a contribution only in respect of his employment;

(iii) where a person is liable to pay a contribution in respect of his self-employment in one country and liable to pay a contribution other than as an employed person or earner, as the case may be, under the legislation of another country for the same period, he shall be liable to pay a contribution as a self-employed person or self-employed earner, as the case may be, only under the legislation under which liability to pay such a contribution first arises in that period;

(iv) where a person is liable to pay a contribution other than as an employed or self-employed person or earner under the legislation of one country and such a contribution for the same period under the legislation of another country, he shall be liable to pay a contribution only under the legislation under which liability to pay a contribution first arises in that period.

(*b*) Where a person would have the right to pay contributions voluntarily under the legislation of two or more countries for the same period, he shall be entitled to pay such contributions only under the legislation of one of those countries, according to his choice.

(*c*) For the purpose of the provisions of this Article, "contribution" shall not include a Class 4 contribution payable under the legislation of the United Kingdom.

(7) A person who has paid a contribution for which he is liable for any period under the legislation of one country shall not be entitled to pay a contribution, for which he is not liable but which he may choose to pay, under the legislation of another country for the same period, provided that—

(*a*) this paragraph shall not apply to any such contributions which may be payable under the legislation of the United Kingdom or the Isle of Man in respect of any tax year commencing on or after 6 April 1975 during which he is liable to pay a contribution for any part of that year under the legislation of the United Kingdom or the Isle of Man;

(*b*) this paragraph shall not apply to a person who was insured under the legislation of Guernsey immediately before 4 January 1965 and who before that date had paid 156 contributions under that legislation and 156 voluntary contributions under the legislation of the other country concerned.

(8) For the purpose of calculating the yearly average of contributions under the legislation of Guernsey any contributions which a person has paid or had credited to him under that legislation for any contribution year after the contribution year which includes 4 April 1966 and before 1 October 1972 shall for the purpose of widow's benefit and old age benefit be disregarded insofar as they raise the sum of their number and the corresponding number for the same contribution year of another country above the number of weeks in that year, provided that this paragraph shall not apply to a person who was insured under the legislation of Guernsey immediately before 4 January 1965 and who before that date had paid 156 contributions under that legislation and 156 voluntary contributions under the legislation of the other country concerned.

(9) Where a person has paid contributions under the legislation of the United Kingdom or the Isle of Man and fully satisfied the contribution conditions for entitlement to old age benefit under the legislation of that country, he shall not be liable or entitled to pay a contribution as a non-employed person under the legislation of Guernsey.

ARTICLE 4

(1) For the purpose of those provisions of the legislation of one country which relate to mariners, airmen and the crew of hovercraft, a person who is domiciled or has a place of residence in another country shall be treated as if he were domiciled or has a place of residence in the former country.

(2) Where a person is ordinarily resident in one country and is employed either—

(*a*) as master or a member of the crew of a ship, vessel or hovercraft which is registered or owned in another country and engaged in regular trade between any two countries or all three countries; or

(*b*) as pilot, commander, navigator or member of the crew of an aircraft which is registered in another country and engaged in regular trade between any two countries or all three countries;

the legislation of the country in which he is ordinarily resident shall apply to him as if, as the case may be, the ship, vessel or hovercraft were registered or owned in that country or the aircraft were registered in that country, and contributions shall not be payable in respect of that employment under the legislation of any other country.

ARTICLE 5

The competent authorities of any two countries, or of all three countries, may agree to modify the provisions of paragraph (1) of Article 3 and paragraph (2) of Article 4 in particular cases.

Credited Contributions and Exception from Liability

ARTICLE 6

(1) For the purpose of determining whether a person is excepted from liability to pay a contribution for any period under the legislation of one country or entitled to have a contribution credited to him for that period under that legislation, any contribution which he has paid or had credited to him under the legislation of another country shall be treated as if it were, respectively, a contribution which he had paid or had credited to him under the legislation of the former country, and any employment he has had in the latter country shall be treated as if it were employment he had had in the former country.

(2) Where a woman is entitled to receive widow's benefit or old age benefit under the legislation of one country, the widow's benefit or old age benefit, as the case may be, shall be treated, for the purpose of determining whether she is liable or entitled to pay a contribution under the legislation of another country as if it were a widow's benefit which she was entitled to receive under the legislation of the latter country.

(3) A person entitled to receive a sickness benefit, invalidity benefit, maternity allowance or injury benefit for any period under the legislation of one country or one hundred per cent. disablement benefit for any period under the legislation of Jersey shall be excepted from liability to pay a contribution in respect of that period under the legislation of another country.

PART III: SHORT TERM BENEFITS AND INVALIDITY BENEFIT

Sickness Benefit, Invalidity Benefit, Maternity Allowance and Unemployment Benefit

ARTICLE 7

(1) For the purpose of any claim for sickness benefit, invalidity benefit and maternity allowance under the legislation of one country, any contribution of the appropriate class paid by or credited to a person under the legislation of another country shall be treated as if it were a contribution of the same class which had, respectively, been paid by or credited to that person under the legislation of the former country, provided that he has become liable to pay contributions of the appropriate class under the legislation of the former country since his last arrival in that country.

(2) Where a person would be entitled to receive sickness benefit, invalidity benefit or maternity allowance under the legislation of one country if he were in that country, he shall be entitled to receive that benefit or allowance while he is in another country, provided that where a person would be entitled to any of these benefits under the legislation of two or more countries for the same period, benefit shall be granted only under the legislation of the country where contributions were last paid by or credited to him.

ARTICLE 8

For the purpose of any claim for unemployment benefit—

(*a*) under the legislation of the United Kingdom and the Isle of Man or Guernsey by a person who, since his last arrival in that country, has completed a contribution period as an employed earner, and

(*b*) under the legislation of Guernsey by a person who has actually paid at least 26 contributions under that legislation,

any contributions of the appropriate class paid by or credited to him under the legislation of one of those two countries shall be treated as if it were a contribution of the same class which had, respectively, been paid by or credited to him under the legislation of the other country.

Exhaustion of Benefit Rights

ARTICLE 9

In determining whether a person has exhausted his right to benefit under the legislation of one country or requalified for benefit under that legislation account shall be taken of any benefit of the same kind which he has been entitled to receive under the legislation of another country and of any contribution of the appropriate class which he has paid under the legislation of the latter country as if it were respectively benefit or contribution under the legislation of the former country.

Maternity Grants

ARTICLE 10

(1) For the purpose of any claim for a maternity grant under the legislation of one country, a woman who is in, or is confined in, another 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 two or all three countries—

(*a*) the grant or grants shall be payable only under the legislation of the country in which the confinement occurs; or

(*b*) if the confinement does not occur in any one of these countries, under the legislation of the country under which the woman, or her husband, as the case may be, last paid a contribution.

(3) If, but for the provisions of this paragraph, a woman would not be entitled to a maternity grant under the legislation of any 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 any country, under the legislation of the country under which the last contribution had been paid, any contribution of the appropriate class paid or credited under the legislation of another country shall be treated as if it were, respectively, a contribution of the same class paid or credited under the legislation of the former country.

Death Grants

ARTICLE 11

(1) For the purpose of any claim for a death grant under the legislation of one country, a death which occurred in another country shall be treated as if it had occurred in the former 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 two or all three countries—

(*a*) the grant shall be payable only under the legislation of the country in which the death occurs; or

(*b*) if the death does not occur in any one of those countries, under the legislation of the country under which the last contribution had been paid.

(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 any country, then, for the purpose of a claim for a grant under the legislation of the country in which the death occurred or, if it did not occur in any country, under the legislation of the country under which the last contribution had been paid, any contribution of the appropriate class paid or credited under the legislation of another country shall be treated as if it were, respectively, a contribution of the same class paid or credited under the legislation of the former country.

Conversion of Contributions

ARTICLE 12

(1) Where a contribution paid or credited in respect of a person or which is to be treated as paid or credited has to be taken into account under the provisons of Articles 7, 8, 9, 10 and 11 it shall be treated as a flat-rate or earnings-related contribution or a flat-rate or earnings-related credit, as the case may be, in accordance with the following provisions of this Article.

(2) A person who:

(*a*) has paid a contribution as an employed person for any week under the legislation of Guernsey shall be treated as if he:—

(i) has a quarterly contribution factor of 0·077 as a Class 1 insured person under the legislation of Jersey for the quarter in which that week begins;

(ii) has paid a contribution as an employed earner under the legislation of the United Kingdom or the Isle of Man on earnings equivalent to two thirds of the upper earnings limit for the tax year in which that week begins, in respect of one week in that year;

(*b*) (i) has a monthly contribution factor of 1·00 under the legislation of Jersey shall be treated as if he has paid a contribution as an employed person under the legislation of Guernsey in respect of each week beginning in that month during which he was employed as a Class 1 insured person;

(ii) has earnings as a Class 1 insured person during the four quarters ending on 31 March in any year, being earnings which are taken into account for the purpose of determining a contribution factor under the legislation of Jersey, shall be treated as if he had, during the tax year in which those four quarters ended, paid contributions on those earnings as an employed earner under the legislation of the United Kingdom or the Isle of Man;

(*c*) (i) has paid a contribution under the legislation of the United Kingdom or the Isle of Man as an employed earner in respect of any week shall be treated as if he has paid a contribution as an employed person under the legislation of Guernsey in respect of each contribution week beginning in that week;

(ii) has, in the tax year which would have been appropriate had the claim for benefit been made under the legislation of the United Kingdom or the Isle of Man, an earnings factor derived from contributions paid as an employed earner, shall be treated as if he has earnings, amounting to one quarter of that factor, on which he has paid contributions as a Class 1 insured person in the relevant benefit quarter under the legislation of Jersey; provided that if such earnings are below the lower threshold level he shall then be treated as if any earnings on which he has paid a contribution under the legislation of the United Kingdom or the Isle of Man during the relevant quarter appropriate under the legislation of Jersey were earnings on which he has paid contributions as a Class 1 insured person under that legislation;

(*d*) has a monthly contribution factor of 1·00 as a Class 2 insured person under the legislation of Jersey, shall be treated as if he has paid a contribution as a self-employed person or as a self-employed earner under the legislation of Guernsey, the United Kingdom or the Isle of Man, as the case may be, in respect of each week, ending within that month;

(*e*) has paid a contribution under the legislation of the United Kingdom or the Isle of Man as a self-employed earner in respect of any week shall be treated as if he has a quarterly contribution factor of 0·077 as a Class 2 insured person under the legislation of Jersey for the quarter in which that week ends;

(*f*) has paid a contribution as a self-employed person under the legislation of Guernsey in respect of any week shall be treated as if he has a quarterly contribution factor of 0·077 as a Class 2 insured person under the legislation of Jersey for the quarter in which that week ends;

(*g*) has paid a contribution as a non-employed person under the legislation of Guernsey in respect of any week shall be treated as if he:—

(i) has paid a Class 3 contribution under the legislation of the United Kingdom or the Isle of Man in respect of that week if such a contribution is necessary to provide entitlement to benefit, or for making up entitlement;

(ii) for the purposes only of Articles 10 and 11, has a quarterly contribution factor of 0·077 under the legislation of Jersey in respect of the quarter in which that week ends;

(*h*) has paid Class 3 contributions in respect of any tax year under the legislation of the United Kingdom or the Isle of Man shall be treated:—

(i) as if he has, in respect of that year, paid contributions as a non-employed person under the legislation of Guernsey equivalent to the number obtained by dividing the earnings factor derived from those contributions by the lower earnings limit for that year, fractions of a number being ignored;

(ii) for the purposes only of Articles 10 and 11 as if he has, in respect of that year, a contribution factor under the legislation of Jersey equivalent to 0·0192 multiplied by the number obtained by dividing the earnings factor derived from those contributions by the lower earnings limit for that year.

(3) A person who has a contribution of the appropriate class credited to him under the legislation of one country shall be treated as having a contribution credited to him under the legislation of Guernsey or Jersey, as the case may be, in the same manner as a contribution is treated as paid by him under the provisions of paragraph (2).

(4) Where, under the provisions of this Article, it is not possible to determine in which contribution, calendar or tax year, as the case may be, a contribution is to be treated as paid or credited it shall be allocated to the person's best advantage.

PART IV: OLD AGE BENEFIT AND WIDOW'S BENEFIT

Contributions Credited to Widows

ARTICLE 13

(1) Where contributions have been credited to a woman for any period of entitlement to widow's benefit under the legislation of two countries or all three countries, those contributions shall, for the purpose of calculating the yearly average of the contributions which she had paid or had credited to her under the legislation of Guernsey or the life average of the annual contribution factors under the legislation of Jersey or for determining whether the contribution condition in the requisite number of years is satisfied under the legislation of the United Kingdom and the Isle of Man, be taken into account only under the legislation under which the highest standard rate of benefit would be payable at the date from which old age benefit first becomes payable: provided that where two countries have the same highest standard rate the contributions credited shall be taken into account only under the legislation under which her husband last had a contribution paid by or credited to him. Provided that, if the effect of this Article would be to reduce the total amount of benefit (other than graduated retirement benefit and increments relating to contributions paid after pensionable age) payable to a woman under the legislation of the countries concerned to less than it was at the time when the widow's benefit payable to her under the legislation which is being applied, was being replaced by old age benefit then the old age benefit payable to her shall be paid at the rate at which widow's benefit would have been payable if her widow's benefit had not been replaced by old age benefit.

(2) For the purpose of paragraph (1) the following provisions shall apply:—

(*a*) in relation to the legislation of Jersey, the annual contribution factor derived from the contributions credited in any year multiplied by the number of weeks in that year shall be deemed to be the number of weeks for which contributions have been credited in that year, a fraction of a week being ignored;

(*b*) in relation to the legislation of the United Kingdom and the Isle of Man, in respect of any contribution credited after 5 April 1975 the annual earnings factor derived from the contributions credited in any year divided by the lower earnings limit for that year shall be deemed to be the number of weeks for which contributions have been credited in that year, a fraction of a week being ignored.

Double Benefit

ARTICLE 14

(1) Subject to the provisions of paragraph (2) a woman shall not be entitled to receive for the same period both—

(*a*) old age benefit payable by virtue of her own contributions and credits under the legislation of one country; and

(*b*) widow's benefit, or old age benefit payable by virtue of her husband's contributions and credits or old age benefit payable by virtue of her own insurance but based wholly or partly on her husband's record of contributions and credits under the legislation of another country.

(2) If a woman was married before 1 June 1967—

(*a*) paragraph (1) shall not apply to her; but

(*b*) subject to the provisions of paragraphs (3) and (4), for the purpose of calculating the yearly average of contributions and credits or the life average of the annual contribution factors or for the purpose of ascertaining whether the contribution conditions for benefit are satisfied in the requisite number of years, as the case may be, which she has paid or had credited to her under the legislation of one country, any contributions which she has paid or had credited to her for any period under that legislation shall be disregarded if, for the same period, under the legislation of another country her husband has paid contributions or had contributions credited to him, and she is receiving, under the legislation of the latter country, widow's benefit or old age benefit payable by virtue of her husband's insurance or old age benefit payable by virtue of her own insurance but based wholly or partly on the husband's record of contributions and credits;

(*c*) for the purpose of applying sub-paragraph (*b*) of this paragraph the provisions of sub-paragraphs (*a*) and (*b*) of paragraph (2) of Article 17 shall apply.

(3) Where a man and a woman were married before 4 April 1966, and, immediately before 4 January 1965, one of them was insured under the legislation of Guernsey and before the latter date had paid 156 contributions under that legislation, and the other had paid 156 contributions under the legislation of another country, the provisions of sub-paragraph (*b*) of paragraph (2) shall not apply to the woman.

(4) If a woman was married before 4 April 1966 and paragraph (3) does not apply to her, sub-paragraph (*b*) of paragraph (2) shall apply to her only in relation to any period after 4 April 1966.

(5) For the purpose of this Article reference to "husband" and "married" in relation to a woman who has been married more than once shall be taken as referring only to her last husband or marriage.

Determination of Benefit Rights

ARTICLE 15

Where a person was insured under the legislation of Guernsey at any time before 4 January 1965 and the number of contributions which he has paid or had credited to him under the legislation of any country or countries, for the contribution year which includes the week immediately before 4 January 1965, is not less than 50, he shall be treated, if it is to his advantage, as if he had been insured under the legislation of Guernsey immediately before 4 January 1965 but not so as to affect his date of entry into insurance under the legislation of the United Kingdom, the Isle of Man or Jersey, or to enable him to satisfy the conditions set out in sub-paragraph (*b*) of paragraph (7) and the proviso to paragraph (8) of Article 3 or of paragraph (3) of Article 14 or sub-paragraph (*a*) of paragraph (2) of Article 26.

ARTICLE 16

(1) Where the contribution conditions for old age benefit or widow's benefit are satisfied under the legislation of any country, that benefit shall be paid, subject to the provisions of that legislation, and to the provisions of paragraph (7) and the proviso to paragraph (8) of Article 3 and Articles 13 and 14 and the provisions of Article 17 shall not apply under that legislation.

(2) For the purposes of determining entitlement to additional component payable under the legislation of the United Kingdom, no account shall be taken of any contribution period under the legislation of Jersey or Guernsey; and for the purposes of this Article and Article 17, additional component shall be treated as a separate benefit to which the provisions of Article 17 do not apply.

ARTICLE 17

(1) Where, 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 contributions paid by the person or credited to him under the legislation of the other two countries were treated as if they had been paid or credited under the legislation of the first country, and in the case of a married woman, the contributions paid or credited in respect of her under the legislation of the other two countries were treated as if they had been paid or credited under the legislation of the first country, 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), the rate of that benefit shall, subject to paragraph (9), be a part of the rate at which it would be paid if the number of contributions paid by or credited to him under the legislation of the other two countries were added to the number paid or credited under the legislation of the first country, namely that part which bears the same relation to the whole as the number of contributions paid or credited under the legislation of the first country bears to the total of the contributions paid or credited under the legislation of the three countries, and for the purpose of this paragraph the number of weeks for which contributions have been paid or credited—

(*a*) under the legislation of the United Kingdom or the Isle of Man in any tax year shall be the number obtained by dividing his earnings factor for that year by the lower earnings limit for that year, fractions of a week being disregarded, provided that where paragraph (4)(*c*)(ii) applies the number so determined shall not exceed the number of weeks in that year during which he was subject to that legislation;

(*b*) under the legislation of Jersey shall be the number obtained by dividing his annual contribution factor for that year by 0·0192.

(3) Contributions paid by the person or credited to him under the legislation of the other two countries shall be disregarded under the legislation of the first country if they would not have been taken into account for the determination of benefit under the legislation of that country had they been paid or credited under the legislation of that country.

(4) For the purpose of applying the provisions of paragraph (1) to contributions paid by or credited to any person under the legislation of the United Kingdom and the Isle of Man in respect of any period after 5 April 1975, and under the legislation of Jersey and Guernsey—

(*a*) a person who under the legislation of Jersey has an annual contribution factor in any year shall be treated as if he has paid a contribution or has a contribution credited to him, as the case may be, in respect of the number of weeks obtained by dividing that annual contribution factor by 0·0192, fractions of a week being ignored, during—

(i) the same year under the legislation of Guernsey;

(ii) the tax year which ends in the following calendar year under the legislation of the United Kingdom or the Isle of Man;

(*b*) a person for whom a contribution has been paid or credited, as the case may be, for any week under the legislation of Guernsey, or who is treated as if a contribution has been paid or credited under the provision of sub-paragraph (*a*)(ii) of this paragraph shall be treated for the purpose of the legislation of the United Kingdom and the Isle of Man as if—

(i) he has paid a contribution as an employed earner for that week on earnings equivalent to two thirds of the upper earnings limit for that year in respect of contributions as an employed person;

(ii) he has paid a contribution or had a contribution credited to him, as the case may be, for that week on earnings equivalent to the lower earnings limit for that year in respect of any contribution paid other than as an employed person or in respect of any contribution credited; provided that contributions as a non-employed person and credits of any class shall be taken into account only in so far as they are necessary to provide entitlement to benefit, or for making up entitlement;

(*c*) a person who during any tax year has been subject to the legislation of the United Kingdom or the Isle of Man—

(i) for the whole of that year and whose earnings factor for any year commencing not later than 6 April 1977 is not less than 50 times the lower earnings limit for that year and for any year commencing on or after 6 April 1978 is not less than 52 times the lower earnings limit for that year shall be treated as if a contribution has been paid or credited in respect of him, as the case may be, under the legislation of Guernsey for each week in that year, and as if he has an annual contribution factor of 1·00 in respect of contributions or credits, as the case may be, under the legislation of Jersey;

(ii) for part of that year and has been subject to the legislation of one or both of the other countries in that year shall be treated under the legislation of—

(aa) Guernsey as if contributions have been paid by or credited to him equal to the number of weeks during which he had been subject to the legislation of the United Kingdom or the Isle of Man;

(bb) Jersey as if he has an annual contribution factor of 0·0192 in respect of each week during which he had been subject to the legislation of the United Kingdom or the Isle of Man;

provided that the number of weeks determined under (aa) and (bb) of this sub-paragraph shall not exceed the number of weeks obtained by dividing the earnings factor for that year by the lower earnings limit for that year, a fraction of a week being treated as a whole week;

(iii) and to whom the provisions of sub-paragraphs (i) and (ii) of this paragraph do not apply, shall be treated as if a contribution has been paid or credited in respect of him during that year, as the case may be, under the legislation of Guernsey for the number of weeks obtained by dividing the earnings factor for that year by the lower earnings limit for that year a fraction of a week being treated as a whole week, and as if he has an annual contribution factor of 0·0192 under the legislation of Jersey for the number of weeks obtained by dividing that earnings factor by the lower earnings limit for that year;

(*d*) a person for whom a contribution has been paid or credited, as the case may be, under the legislation of Guernsey shall be treated as if he has an annual contribution factor of 0·0192 paid or credited for that week under the legislation of Jersey in respect of each week ending in that year.

(5) The provisions of paragraphs (1), (2) and (3) shall apply in relation to any two countries or all three countries only if, apart from those provisions, the conditions for the benefit in question other than contribution conditions are satisfied under the legislation of each of those countries, widow's benefit and old age benefit being treated for this purpose as if they were respectively old age benefit and widow's benefit.

(6) (*a*) No benefit shall be payable by virtue of the provisions of paragraph (1) under the legislation of—

(i) Guernsey, where the number of contributions paid or credited in respect of a person is less than 50; or

(ii) Jersey, where a person does not have an annual contribution factor totalling 1·00; or

(iii) the United Kingdom or the Isle of Man, where the contributions paid by or credited to a person 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.

(*b*) Where no benefit is payable under the legislation of one country and the provisions of sub-paragraph (*a*) of this paragraph apply, the contributions paid or credited in respect of a person under the legislation of that country shall be treated as if they have been paid or credited, as the case may be, in respect of that person under the legislation of the other country or under the legislation of the country under whose legislation the highest rate of benefit would be payable at the date on which entitlement first arises.

(7) For the purpose of applying the provisions of paragraphs (1), (2) and (3)—

(*a*) no account shall be taken of any right to graduated retirement benefit but any such benefit shall be added to the rate of any benefit calculated in accordance with the provisions of paragraph (2);

(*b*) no account shall be taken of any contribution or credit which is disregarded in accordance with the provisions of paragraph (8) of Article 3 or of Article 13 or 14.

(8) Where under the provisions of this Article it is not possible to determine in which contribution, calendar or tax year, as the case may be, a contribution is to be treated as paid or credited it shall be allocated to the person's best advantage.

(9) The rate of old age benefit or widow's benefit payable under the legislation of a country by virtue of paragraph (1) shall, notwithstanding any provision of the legislation of that country, not include any increase or increases of such benefit for a child or children except where old age benefit is payable to the same person under the legislation of two countries, or widow's benefit under the legislation of two countries, or old age benefit under the legislation of one country and widow's benefit under the legislation of another country and the rate of benefit rate falls to be determined under the legislation of both countries in accordance with the provisions of this Article.

ARTICLE 18

(1) Where a claim for old age benefit or widow's benefit has been determined before the entry into force of the present Agreement, it shall not be determined afresh in accordance with the provisions of Article 16 or Article 17 of the present Agreement.

(2) Notwithstanding the provisions of paragraph (1), a claim for old age benefit or widow's benefit determined under the provisions of the Agreement between the United Kingdom and Jersey, signed on 2 August 1954, may be determined afresh as from the date on which the present Agreement comes into force, if such determination would be to the beneficiary's advantage, and such advantage would under the legislation of Jersey derive solely from the application by Jersey of Article 16. Where benefit is so determined afresh no additional benefit shall be payable in respect of any period prior to the date of entry into force of the present Agreement.

ARTICLE 19

For the purpose solely of the condition under the legislation of the United Kingdom and the Isle of Man that the number of years of a married woman's working life for which her earnings factor was sufficient for her to satisfy the conditions for a retirement pension, shall be at least one half of the number of complete years between the year in which her marriage took place and the year in which she attained pensionable age, contributions paid or credited to her under the legislation of Jersey or Guernsey, during that period shall be treated as if they were contributions paid or credited to her under the legislation of the United Kingdom or the Isle of Man in accordance with the provisions of sub-paragraph (*b*) of paragraph (4) of Article 17.

Unemployment Benefit, Sickness Benefit and Invalidity Benefit after pensionable age

ARTICLE 20

(1) If a person would be entitled to receive old age benefit under the legislation of the United Kingdom or the Isle of Man, had he retired from regular employment, and would be entitled also, by virtue of the provisions of Article 17, to receive old age benefit under the legislation of one or both of the other two countries, then, for the purpose of those provisions of the legislation of the United Kingdom and the Isle of Man which concern the payment of unemployment benefit, sickness benefit or invalidity benefit to persons who are over pensionable age, the rate at which old age benefit would be payable to him under that legislation, if he had retired, shall be deemed to include the rate or rates at which old age benefit would be payable to him under the legislation of one or both of those two countries.

(2) If a person has chosen to be treated as if he were not entitled to receive old age benefit under the legislation of Guernsey and would be entitled, by virtue of the provisions of Article 17, to receive old age benefit under the legislation of one or both of the other two countries, had he not so chosen, then, for the purpose of those provisions of the legislation of Guernsey which concern the payment of unemployment benefit or sickness benefit to persons who are over pensionable age, the rate at which old age benefit would be payable to him under that legislation, had he not so chosen, shall be deemed to include the rate or rates at which old age benefit would be payable to him under the legislation of one or both of the other two countries.

Benefit of one country payable in the other two countries

ARTICLE 21

(1) The provisions of this Article shall apply only to any old age benefit or widow's benefit which is payable under the legislation of any country.

(2) For the purpose of any right to receive benefit under the legislation of one country, a person who is in another country or resident in that other country shall be treated as if he were, respectively, in the former country or resident there.

PART V: GUARDIAN'S ALLOWANCE

ARTICLE 22

(1) For the purpose of any claim to receive a guardian's allowance under the legislation of one country—

(*a*) any parent of the child in question who was born in or resident in, or who was insured under the legislation of, another country shall be treated as if he had been born in or resident in, as the case may be, or insured under the legislation of, the former country;

(*b*) the statutory adoption of a child in another country shall be treated as if it were a statutory adoption in the former country.

(2) Where, but for the provision of this paragraph, guardian's allowance would have been payable under the legislation of two countries for the same child, an allowance shall be paid only under the legislation of the country in which the child is ordinarily resident.

PART VI: ATTENDANCE ALLOWANCE

ARTICLE 23

(1) For the purpose of determining entitlement to attendance allowance under the legislation of either the United Kingdom and the Isle of Man or Jersey, any period of residence or presence, as the case may be, in one country of the person or persons in respect of whom the appropriate residence or presence conditions apply shall be treated as if it had been a period of residence or presence, as the case may be, in the other country.

(2) For the purpose of any right to receive attendance allowance under the legislation of either the United Kingdom and the Isle of Man or Jersey a person who is resident or present, as the case may be, in one country shall be treated as if he were resident or present, as the case may be, in the other country.

(3) Where but for the provisions of this paragraph, a person would be entitled to receive attendance allowance under the legislation of both countries for the same period he shall be entitled to receive payment only under the legislation of the country in which he is currently ordinarily resident.

PART VII: INDUSTRIAL INJURIES AND ACCIDENT BENEFITS

ARTICLE 24

(1) Where under the legislation of one country a person would be entitled to receive any cash benefit in respect of an accident, industrial injury or industrial disease if he were in that country, he shall be entitled to receive that benefit while he is in another country.

(2) For the purpose of any claim to receive benefit in respect of an industrial accident happening or an industrial disease contracted in the course of employment to which the provisions of paragraph (1) or (3) of Article 3 apply, the person shall be treated as if—

(*a*) the accident had happened or the disease had been contracted in the country whose legislation applied to him in respect of his employment; and

(*b*) the employment had been employed earner's employment or had been insurable under that legislation and not under the legislation of the country in which he was employed.

(3) If an accident happens to a person after he leaves one country to go in the course of his employment to another country and before he arrives in the latter country, then, for the purpose of any claim to receive benefit in respect of that accident—

(*a*) the accident shall be treated as if it had happened in the country whose legislation was expected to apply to him in respect of his employment in the latter country; and

(*b*) his absence from any country shall be disregarded in determining whether the employment was employed earner's employment or was insurable under that legislation.

PART VIII: MISCELLANEOUS PROVISIONS

Dependants

ARTICLE 25

(1) Where, under the legislation of one country, any benefit or increase of benefit would be paid in respect of a dependant (other than a child to whom paragraph (2) applies) if the dependant were in that country, that benefit or increase of benefit shall be paid if the dependant is in another country.

(2) Where, under the legislation of one country, any increase of benefit or any benefit, other than guardian's allowance or attendance allowance, would be paid in respect of a child or in respect of a dependant having the care of a child, if the child were in that country, that increase of benefit or that benefit, as the case may be, shall be paid if the child is in another country.

(3) Where, under the legislation of one country, a person would be entitled to widow's benefit or benefit in respect of a death due to an industrial injury or disease, if a child were in that country or had been there at the time when one of his parents died or at any other specified time, he shall be entitled to that benefit if the child is in another country or was in another country at that time.

(4) For the purpose of this Article, a child in one country who would be excluded from any family under the legislation of that country shall be treated as if he were excluded from any family under the legislation of another country.

Overlapping Benefits

ARTICLE 26

(1) Where, but for the provisions of this Article, benefit would have been payable to any person under the legislation of two countries for the same period, an adjustment shall be made, subject to the provisions of this Article, under the legislation of one of those countries, namely, that country where the person is at the beginning of the period or, if he is in neither country at that time, that country where he is ordinarily resident or, if he is not ordinarily resident in either country, that country where he was last ordinarily resident, or if the competent authorities of the two countries so agree, the other country provided that the provisions of this paragraph shall not apply in respect of a woman who is not excepted from liability to pay a contribution by virtue of paragraph (3) of Article 6.

(2) Where benefit is payable to any person for any period under the legislation of one country and, but for the provisions of this Article, an increase of benefit would have been payable in respect of that person for the same period under the legislation of another country, an adjustment shall be made, subject to the provisions of this Article, under the legislation of the latter country;

Provided that this paragraph shall not apply—

(*a*) in any case where one of the countries concerned is Guernsey and the person is claiming the increase of old age benefit in respect of his wife who is receiving old age benefit on her own insurance, if they were married before 4 April 1966, and, immediately before 4 January 1965 one of them was insured under the legislation of Guernsey and before the latter date had paid 156 contributions under that legislation and the other had paid 156 contributions under the legislation of the other country; or

(*b*) in any case where a woman is receiving old age benefit on her husband's contributions under the legislation of the United Kingdom or the Isle of Man, and he is claiming an increase of old age benefit in respect of her under the legislation of Jersey or Guernsey.

(3) For the purpose of an adjustment under the provisions of paragraph (1) or (2), the benefit or increase of benefit, as the case may be, which would otherwise have been payable under the legislation of the country specified in that paragraph shall—

(*a*) if the benefit payable by the other country is less than the benefit or increase of benefit payable by the country so specified, be reduced by the amount of the benefit payable by the other country; or

(*b*) if the benefit payable by the other country is greater, be eliminated;

provided that this paragraph shall apply only if the provisions of the legislation of the country specified which concern overlapping benefits would have applied if the benefits or increase of benefits had been payable by that country.

(4) The provisions of paragraph (3) shall not apply in any case where there is payable to the same person old age benefit under the legislation of two countries, or widow's benefit under the legislation of two countries, or old age benefit under the legislation of one country and widow's benefit under the legislation of another country, or old age benefit under the legislation of one country and sickness or invalidity benefit which is payable under the legislation of another country to a person who has reached retirement age.

(5) In a case to which paragraph (4) applies—

(*a*) except where the rate of such benefit has been determined under the legislation of both countries in accordance with the provisions of Article 17 the beneficiary shall not be entitled to receive an increase or increases of benefit for any child or children under the legislation of both countries, but shall receive only such increase or increases under the legislation of the country in which he resides when entitlement to that benefit first arises;

(*b*) the benefit payable under the legislation of the country specified in paragraph (1) shall be treated, for the purpose of any provisions of that legislation which concern overlapping benefits, as if it were increased by the amount of benefit payable under the legislation of the other country, and any corresponding provisions of the legislation of the latter country shall not apply.

Other Provisions concerning Benefit

ARTICLE 27

(1) Any overpayment which is recoverable by deduction from benefit under the legislation of one country may be recovered by deduction from benefit under the legislation of another country as if the overpayment had been made under the legislation of the latter country.

(2) Where a person has received any sum by way of benefit under the legislation of one country, and it is found he was not entitled to that sum but was entitled to benefit for the same period or in respect of the same event under the legislation of another country, the sum so received shall be treated as having been paid on account of the benefit due under the legislation of the latter country.

(3) Any claim or appeal which is made, or any notice which is given, or any question which is raised under the legislation of one country may, if the competent authorities so agree, be treated as if it has been made or given or raised, as the case may be, under the legislation of another country.

Final Provisions

ARTICLE 28

(1) The competent authorities shall, from time to time, determine the procedure appropriate for the purposes of the present Agreement, including matters of an incidental and supplementary nature which, in their opinion, are relevant for the purpose of giving effect to the present Agreement.

(2) The competent authority of one country shall furnish assistance to the competent authority of another country with regard to any matter relating to the application of the present Agreement as if the matter were one affecting the application of the legislation of the former country.

(3) The competent authorities shall make such financial adjustments between the funds of the three countries as they may agree to be necessary for the purposes of the present Agreement.

(4) The Agreement on Social Security which was signed by the Secretary of State for Social Services, the Secretary of State for Northern Ireland, the Lieutenant-Governor of the Isle of Man, the Greffier of the States of Jersey and the President of the States Insurance Authority of Guernsey in 1972 shall be terminated on the coming into force of the present Agreement but no provision of the present Agreement shall diminish any right which a person has acquired under the legislation of any country before the date of entry into force of the present Agreement whether by virtue of the former Agreement or otherwise.

(5) The present Agreement shall come into force on 6th November 1978 and shall remain in force for a period of one year from that date. Thereafter, it shall continue in force from year to year unless notice of termination is given in writing by the Secretary of State for Social Services, the Department of Health and Social Services for Northern Ireland and the Lieutenant-Governor of the Isle of Man, of the first part, or the Social Security Committee of Jersey, of the second part, or the States Insurance Authority of Guernsey with the consent of the States of Guernsey, of the third part, at least six months before the expiry of any such yearly period.

Given under the Official Seal of the Secretary of State for Social Services this 21st day of September 1978.

(L.S.) *David Ennals*
Secretary of State for Social Services

Given under the Official Seal of the Department of Health and Social Services for Northern Ireland this 26th day of September 1978.

(L.S.) *N. Dugdale*
Permanent Secretary

Given under the hand of the Deputy-Governor of the Isle of Man this 10th day of October 1978.

R. K. Eason
Deputy-Governor

The consent of the Isle of Man Board of Social Security is hereby given to this Agreement.

Noel Q. Cringle
Chairman, Isle of Man Board of Social Security

Signed on behalf of the Social Security Committee this 16th day of October 1978 and authorised by Act of the States of Jersey this 16th day of October 1978.

E. J. M. Potter
Greffier of the States

Signed on behalf of the States of Guernsey by the President of the States Insurance Authority this 19th day of October 1978.

E. H. Bodman
President, States Insurance Authority

EXPLANATORY NOTE

(This note is not part of the order but is intended to indicate its general purport.)

This order makes provision for modification of the Social Security (Northern Ireland) Act 1975 so as to give effect to the Agreement on Social Security (set out in the Schedule) made between the Secretary of State for Social Services, the Department of Health and Social Services for Northern Ireland and the Lieutenant-Governor of the Isle of Man, with the advice and consent of the Isle of Man Board of Social Security, of the first part, the Social Security Committee, with the consent of the States of Jersey, of the second part and the States Insurance Authority, with the consent of the States of Guernsey, of the third part. The Agreement relates to reciprocity in contributions, short-term benefits, invalidity benefit, old age and widow's benefit, guardian's allowance, attendance allowance and industrial injuries benefits.

1978 No. 328

As this Order has been classified as local it is not printed at length in this volume. A summary is given in the List of Statutory Rules of a Local Character under the heading ROAD TRAFFIC AND VEHICLES.