STATUTORY INSTRUMENTS

1981 No. 1542

SOCIAL SECURITY

The Social Security (Mauritius) Order 1981

Made - - - - 28*th October* 1981

Coming into Operation 1*st November* 1981

At the Court at Buckingham Palace, the 28th day of October 1981

Present,

The Queen's Most Excellent Majesty in Council

Whereas at Port Louis on 22nd April 1981 a Convention on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Mauritius (which Convention is set out in Schedule 1 to this Order and is hereinafter referred to as "the Convention") was signed on behalf of those Governments:

And Whereas by Article 28 of the Convention it is provided that the Convention shall enter into force on the first day of the third month following the month in which the instruments of ratification are exchanged:

And Whereas by Notes exchanged on 8th October 1981 (which Notes are set out in Schedule 2 to this Order) it was agreed on behalf of the said Governments that, notwithstanding and without prejudice to the provisions of Article 28 of the Convention, the Convention shall be applied provisionally from 1st November 1981:

And Whereas in accordance with the terms of the Notes the Convention applies provisionally from 1st November 1981 pending its entry into force in accordance with Article 28 of the Convention:

And Whereas by section 143(1) of the Social Security Act 1975(**a**) and section 15(1) of the Child Benefit Act 1975 (**b**) it is provided that Her Majesty may by Order in Council make provision for modifying or adapting the said Social Security Act and for modifying the provisions of Part I of the said Child Benefit Act and regulations made under it in their application to cases affected by agreements with other governments providing for reciprocity in matters specified in those sections:

Now, therefore, Her Majesty, in pursuance of the said section 143(1), and the said section 15(1), and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows—

Citation and commencement

1. This Order may be cited as the Social Security (Mauritius) Order 1981 and shall come into operation on 1st November 1981.

(**a**) 1975 c. 14; section 143 was amended by section 6(1) of the Social Security Act 1981 (c. 33).

(**b**) 1975 c. 61; section 15 was amended by section 6(2) of the Social Security Act 1981.

Modification of the Social Security Act 1975

2. The Social Security Act 1975 shall be modified to such extent as may be required to give effect to the provisions contained in the Convention on social security set out in Schedule 1 to this Order (which Convention is subject to the agreement contained in the Notes set out in Schedule 2 to this Order), so far as the same relate to England, Wales and Scotland.

Modification of the Child Benefit Act 1975

3. Part I of the Child Benefit Act 1975 and any regulations made under it shall be modified to such extent as may be required to give effect to the provisions contained in the Convention on social security set out in Schedule 1 to this Order (which Convention is subject to the agreement contained in the Notes set out in Schedule 2 to this Order), so far as the same relate to England, Wales and Scotland.

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

SCHEDULE I

CONVENTION ON SOCIAL SECURITY BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF MAURITIUS

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

Being resolved to co-operate in the field of social affairs and in particular, in the matter of social security;

Desirous of promoting the welfare of persons moving between or working in their respective territories;

Desirous of ensuring that persons from both countries shall enjoy equal rights under their respective social security legislation;

Desirous of making arrangements for insurance periods completed under the legislation of the Contracting Parties to be added together for the purpose of determining the right to receive benefit;

Desirous further of making arrangements enabling persons moving between their respective territories to keep the rights which they have acquired under the legislation of the one Party or to enjoy corresponding rights under the legislation of the other;

HAVE AGREED AS FOLLOWS:

PART I

General Provisions

ARTICLE 1

(1) For the purpose of this Convention:

(*a*) "Mauritius" means the Islands under the jurisdiction of the State of Mauritius;

(*b*) "legislation" means, in relation to a Party, such of the legislation specified in Article 2 of this Convention as applies in the territory of that Party or in any part thereof;

(*c*) "competent authority" means the authority responsible for the social security schemes in all or part of the territory of each Party; that is to say, in relation to the United Kingdom, 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, and, in relation to Mauritius, the Minister to whom responsibility for the subject of Social Security is assigned;

(*d*) "insurance authority" means the authority competent to decide entitlement to the benefit in question;

(*e*) "competent institution" means the authority from which the person concerned is entitled to receive benefit or would be entitled to receive benefit if he were resident in the territory of the Party where that authority is situated;

(*f*) "insured" means, in relation to the United Kingdom, that contributions have been paid by or are payable by, or in respect of, or have been credited in respect of, the person concerned, or for the purposes of Article 17 of this Convention, that the person is, or is treated as being, an employed person, and in relation to Mauritius, that contributions have been paid, or are payable by, or are considered to have been paid in respect of, the person concerned and includes a person for whom contributions would have been payable had he reached the age of eighteen;

(*g*) "insurance period" means a contribution period or an equivalent period;

(*h*) "contribution period" means a period in respect of which contributions appropriate to the benefit in question are payable, have been paid or treated as paid under the legislation in question;

(*i*) "equivalent period" means, in relation to the United Kingdom, a period for which contributions appropriate to the benefit in question have been credited under the legislation of that Party;

(*j*) "dependant" means a person who would be treated as such for the purpose of any claim for an increase of benefit in respect of a dependant under the legislation of the United Kingdom or a dependent child under the legislation of Mauritius;

(*k*) "pension", "allowance" or "benefit" includes any increase of, or any additional amount payable with, a pension, allowance or benefit respectively;

(*l*) "retirement pension" means in relation to the territory of Mauritius, a basic retirement pension;

(*m*) "widows' benefit" means, in relation to the United Kingdom, widow's allowance, widowed mother's allowance and widow's pension payable under the legislation of that Party and, in relation to Mauritius, widow's basic pension;

(*n*) "industrial disablement benefit" means, in relation to Mauritius, a permanent disablement pension;

(*o*) "orphan's benefit" means, in relation to the United Kingdom, guardian's allowance and child's special allowance payable under the legislation of that Party and, in relation to Mauritius, orphan's pension and guardian's allowance payable under the legislation of that Party;

(*p*) "family allowance" means, in relation to the United Kingdom, child benefit payable under the legislation of that Party and, in relation to Mauritius, the allowance payable under the Family Allowance Ordinance 1961;

(*q*) "gainfully occupied" means being an employed or self-employed person;

(*r*) "employed person" means a person who comes within the definition of an employed person or employee or of an employed earner or a person who is treated as such in the applicable legislation and the words "person is employed" shall be construed accordingly;

(*s*) "employment" means employment as an employed person or employee and the words "employ", "employed" or "employer" shall be construed accordingly;

(*t*) "self-employed person" means a person who comes within the definition of a self-employed person or of a self-employed earner or a person who is treated as such in the applicable legislation and the words "person is self-employed" shall be construed accordingly;

(*u*) "qualifying contribution year" means, in relation to Mauritius, a contribution year for which contributions have been paid amounting to a figure which is at least equivalent to the amount of contributions which would be paid on the earnings floor for a full year.

(2) Other words and expressions which are used in this Convention have the meanings respectively assigned to them in the legislation concerned.

(3) The present Convention applies also to the Isle of Man and references to "the United Kingdom" or to "territory" in relation to the United Kingdom shall be construed accordingly.

ARTICLE 2

(1) The provisions of this Convention shall apply:

(*a*) in relation to the United Kingdom, to:

(i) the Social Security Acts 1975 to 1980 and the Social Security (Northern Ireland) Acts 1975 to 1980;

(ii) the Social Security Acts 1975 to 1980 (Acts of Parliament) as applied to the Isle of Man by orders made under the provisions of the Social Security Legislation (Application) Act 1974 (an Act of Tynwald);

(iii) the Child Benefit Act 1975; the Child Benefit (Northern Ireland) Order 1975; and the Child Benefit Act 1975 (an Act of Parliament) as applied to the Isle of Man by orders made under the provisions of the Social Security Legislation (Application) Act 1974 (an Act of Tynwald);

and the legislation which was consolidated by those Acts or Orders or repealed by legislation consolidated by them;

(*b*) in relation to Mauritius, to:

The National Pensions Act 1976 and the Family Allowance Ordinance 1961.

(2) Subject to the provisions of paragraphs (3), (4) and (5) of this Article, this Convention shall also apply to any legislation which supersedes, replaces, amends, supplements or consolidates the legislation specified in paragraph (1) of this Article.

(3) This Convention shall apply, unless the Parties agree otherwise, only to benefits described in the legislation specified in paragraph (1) of this Article at the date of coming into force of this Convention and for which specific provision is made in this Convention.

(4) This Convention shall apply to any legislation which relates to a branch of social security not covered by the legislation specified in paragraph (1) of this Article, only if the two Parties make an agreement to that effect.

(5) This Convention shall not apply to Regulations on social security of the Council of the European Communities or to any convention on social security which either Party has concluded with a third Party or to any laws or regulations which amend the legislation specified in paragraph (1) of this Article for the purpose of giving effect to such a convention but shall not prevent either Party from taking into account under its legislation the provisions of any other convention which that Party has concluded with a third Party.

ARTICLE 3

A person subject to the legislation of one Party who becomes resident in the territory of the other Party shall, together with his dependants, be subject to the obligations and shall enjoy the advantages of the legislation of the other Party under the same conditions as a national of that Party subject to any special provision of this Convention.

ARTICLE 4

(1) Subject to the provisions of paragraph (2) of this Article and Articles 11 to 17 of this Convention, a person who would be entitled to receive a retirement pension, widows' benefit, or any pension, allowance or gratuity payable in respect of an industrial injury or industrial disease (other than injury benefit under the legislation of the United Kingdom or industrial injury allowance under the legislation of Mauritius) under the legislation of one Party if he were in the territory of that Party shall be entitled to receive that pension, benefit, allowance or gratuity while he is in the territory of the other Party, as if he were in the territory of the former Party. For the purpose of this Article only, "retirement pension" includes a contributory retirement pension payable under the legislation of Mauritius and "widows' benefit" includes a contributory widow's pension payable under the legislation of that Party.

(2) A person who is entitled to receive a retirement pension or widows' benefit under the legislation of the United Kingdom and who would be entitled to an increase in the rate of that pension or benefit if he were in the territory of that Party shall, after the date of coming into force of this Convention, be entitled to receive any such increase prescribed on or after that date by that legislation, if he is in the territory of Mauritius, but nothing in this paragraph shall confer entitlement to receive any such increases prescribed before that date by that legislation.

(3) Subject to Article 15 of this Convention, where, under the legislation of one Party, any increase of a benefit for which specific provision is made in this Convention would be payable for a dependant if the dependant were in the territory of that Party, that increase shall be payable while the dependant is in the territory of the other Party except that, where the increase is payable in respect of a dependent child, that increase shall only be payable where the person claiming or receiving the increase is residing with, and is responsible for, the child, or would be residing with the child but for the temporary absence of the one from the other.

PART II

Provisions which Determine the Legislation Applicable

ARTICLE 5

(1) Subject to the following provisions of this Article and the provisions of Articles 6 to 9 of this Convention, where a person is gainfully occupied, his liability to be insured shall be determined only under the legislation of the Party in whose territory he is so occupied.

(2) Where a person is employed in the territory of both Parties for the same period, his liability to be insured shall be determined only under the legislation of the Party in whose territory he is ordinarily resident.

(3) Where a person is self-employed in the territory of both Parties for the same period, his liability to be insured shall be determined under the legislation of the Party in whose territory he is ordinarily resident.

(4) Where a person is employed in the territory of one Party and self-employed in the territory of the other Party for the same period, his liability to be insured shall be determined only under the legislation of the former Party.

(5) For the purposes of the provisions of paragraphs (3) and (4) of this Article, "liability to be insured" shall not include liability to pay a Class 4 contribution under the legislation of the United Kingdom.

ARTICLE 6

(1) Where a person who is insured under the legislation of one Party and is employed by an employer in the territory of that Party is sent by that employer to work in the territory of the other Party, the legislation of the former Party concerning liability for

contributions shall continue to apply to him for the first 24 months of that employment as if he were employed in the territory of that Party and no contributions shall be payable in respect of that period of employment under the legislation of the latter Party. Where for unforeseen reasons his employment in the territory of the latter Party continues after such period of 24 months, the legislation of the former Party shall continue to apply to him for any further period of not more than 12 months, provided that the competent authority of the latter Party agrees thereto before the end of the first period of 24 months.

(2) Where a person is gainfully occupied in the United Kingdom and the legislation of Mauritius does not apply to him in accordance with paragraph (1) of this Article or Article 5 of this Convention, the legislation of the United Kingdom shall apply to him as if he were ordinarily resident in the United Kingdom.

(3) Where a person is gainfully occupied in Mauritius and the legislation of the United Kingdom does not apply to him in accordance with paragraph (1) of this Article or Article 5 of this Convention, the legislation of Mauritius shall apply to him as if he were a citizen of Mauritius.

(4) The following provisions shall apply to any person employed as a member of the travelling personnel of an undertaking engaged in the transport of goods or passengers by air, whether for another undertaking or on its own account:

(*a*) subject to the provisions of sub-paragraphs (*b*) and (*c*) of this paragraph, where a person is employed by an undertaking which has its principal place of business in the territory of one Party, the legislation of that Party concerning liability for contributions shall apply to him as if he were employed in its territory, even if he is employed in the territory of the other Party,

(*b*) subject to the provisions of sub-paragraph (*c*) of this paragraph, where the undertaking has a branch or agency in the territory of one Party and a person is employed by that branch or agency, the legislation of that Party concerning liability for contributions shall apply to him;

(*c*) where a person is ordinarily resident in the territory of one Party and is employed wholly or mainly in that territory, the legislation of that Party concerning liability for contributions shall apply to him, even if the undertaking which employs him does not have its principal place of business or branch or any agency in that territory.

ARTICLE 7

(1) Subject to the provisions of paragraphs (2), (3) and (4) of this Article, where a person is employed on board any ship or vessel of one Party, the legislation of that Party concerning liability for contributions shall apply to him as if any conditions relating to residence were satisfied in his case, provided that he is ordinarily resident in the territory of either Party.

(2) Where a person who is insured under the legislation of one Party and employed either in the territory of that Party or on board any ship or vessel of that Party, is sent by an employer in the territory of that Party to work on board a ship or vessel of the other Party, the legislation of the former Party concerning liability for contributions shall continue to apply to him for the first 24 months of that employment as if any conditions relating to residence were satisfied in his case and no contributions shall be payable in respect of that period of employment under the legislation of the latter Party. Where for unforeseen reasons his employment on board the ship or vessel of the latter Party continues after such period of 24 months, the legislation of the former Party shall continue to apply to him for any further period of not more than 12 months, provided that the competent authority of the latter Party agrees thereto before the end of the first period of 24 months.

(3) Where a person who is not normally employed at sea is employed other than as a member of the crew, on board a ship or vessel of one Party, in the territorial waters of, or at a port of, the other Party, the legislation of the latter Party concerning liability for contributions shall apply to him as if any conditions relating to residence were satisfied in his case, provided that he is ordinarily resident in the territory of either Party.

(4) Where a person who is ordinarily resident in the territory of one Party and employed on board any ship or vessel of the other Party is paid remuneration in respect of that employment by a person who is ordinarily resident in, or by an undertaking having its principal place of business in, the territory of the former Party, the legislation of the former Party concerning liability for contributions shall apply to him as if the ship or vessel were a ship or vessel of the former Party, and the person or undertaking by whom the remuneration is paid shall be treated as the employer for the purposes of such legislation.

ARTICLE 8

(1) This Convention shall not apply to established members of the Diplomatic Service of either Party.

(2) Subject to the provisions of paragraph (1) of this Article, where any person, who is in the Government Service of one Party or in the service of any public corporation of that Party, is employed in the territory of the other Party, the legislation of the former Party concerning liability for contributions shall apply to him as if he were employed in its territory.

(3) Subject to the provisions of paragraphs (1) and (2) of this Article, where a person is employed in a diplomatic mission or consular post of one Party in the territory of the other Party, or in the private service of an official of such a mission or post, the legislation of the latter Party concerning liability for contributions shall apply to him as if he were employed in its territory, unless within three months of the entry into force of this Convention, or within three months of the beginning of the employment in the territory of the latter Party, whichever is later, he chooses to be insured under the legislation of the former Party, provided that he was so insured immediately before the commencement of the employment at that mission or post.

ARTICLE 9

The competent authorities of the Parties may agree to modify the provisions of Articles 5 to 8 of this Convention in respect of particular persons or categories of persons.

PART III

Special Provisions

SECTION 1

Special Provisions relating to the Application of the Legislation of the United Kingdom

ARTICLE 10

(1) For the purpose of calculating entitlement, under the legislation of the United Kingdom, to a retirement pension in accordance with Article 12 of this Convention, or to widows' benefit in accordance with Article 16, a person shall be treated as if he, or, in the case of a claim made by a woman by virtue of her husband's residence, her husband, had paid a Class 3 contribution under the legislation of the United Kingdom for any week during which he was resident in Mauritius.

(2) For the purpose of calculating entitlement to a retirement pension under the legislation of Mauritius in accordance with Article 12 of this Convention, or for the purpose of calculating entitlement to a widows' benefit under that legislation in accordance with Article 16, each week for which a person paid or was credited with a contribution under the legislation of the United Kingdom shall be treated as a week during which the person was resident in Mauritius. For the purpose of determining the number of weeks after 5 April 1975 for which a person has paid or been credited with contributions under the legislation of the United Kingdom, the competent authority of the United Kingdom shall divide the earnings factor achieved by that person in any tax

year commencing on or after 6 April 1975 under the legislation specified in Article 2(1)(*a*)(i) and (ii) of this Convention by that year's lower earnings limit. The result shall be expressed as a whole number, any fraction being ignored. The figure so calculated, subject to the maximum of the number of weeks during which the person was subject to that legislation in that year, shall be treated as representing the number of weeks for which the person has paid a contribution during that tax year.

(3) Where it is not possible to determine accurately the periods of time in which certain insurance periods were completed under the legislation of the United Kingdom, such periods shall be treated as if they did not overlap with periods of residence in Mauritius.

SECTION 2

Retirement Pension and Widows' Benefit

ARTICLE 11

(1) Subject to the provisions of paragraph (3) of this Article, where a person is entitled to a retirement pension (other than the basic component of a Category B retirement pension payable to a married woman under the legislation of the United Kingdom by virtue of the contributions of her husband) under the legislation of one Party otherwise than by virtue of the provisions of this Convention, that pension shall be payable and the provisions of Article 12 of this Convention shall not apply under that legislation.

(2) For the purpose of determining entitlement to additional component or graduated retirement benefit payable under the legislation of the United Kingdom, no account shall be taken of any contribution period completed under the legislation of Mauritius; and for the purposes of this Article and Article 12 of this Convention additional component and graduated retirement benefit shall be treated as separate benefits to which the provisions of that Article 12 do not apply.

(3) Entitlement to a retirement pension in the circumstances referred to in paragraph (1) of this Article shall not preclude either Party from taking into account in accordance with paragraph (3) or paragraph (4) of Article 12 of this Convention insurance periods completed under the legislation of the other Party.

ARTICLE 12

(1) The provisions of this Article shall apply for the purpose of determining entitlement to retirement pension in respect of a person under the legislation of one Party under which there is no entitlement in respect of that person in accordance with the provisions of Article 11 of this Convention.

(2) Subject to the provisions of Articles 10 and 13 of this Convention, the insurance authority shall determine:

(*a*) the amount of the theoretical pension which would be payable if all the insurance periods completed by that person under the legislation of the United Kingdom were treated as periods of residence in Mauritius, or all periods of residence in Mauritius were treated as insurance periods completed under the legislation of the United Kingdom;

(*b*) the proportion of such theoretical pension which bears the same relation to the whole as the total of the insurance periods, or periods of residence, as the case may require, completed by him under the legislation of that Party bears to the total of all the insurance periods, or periods of residence, which he has completed under the legislation of both Parties.

The proportionate amount thus calculated shall, subject to the provisions of Articles 13 and 16 of this Convention, be the rate of pension actually payable to that person by the competent institution.

(3) For the purposes of the calculation in paragraph (2) of this Article, where all the insurance periods completed by any person under the legislation of 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, those periods shall be treated as if they had been completed under the legislation of Mauritius.

(4) For the purpose of the calculation in paragraph (2) of this Article, where a period of residence in the territory of Mauritius amounting to fifty-two weeks has not been completed in the period between the person's sixteenth birthday and the end of the tax year prior to that in which that person reaches pension age under that legislation, no account shall be taken of that person's residence under the legislation of Mauritius and it shall, subject to the provisions of Article 10(1) of this Convention, be taken into account as if it had been an insurance period completed under the legislation of the United Kingdom.

(5) For the purpose of applying the provisions of paragraph (2) of this Article:

(*a*) the insurance authority of the United Kingdom shall take account only of periods of residence in Mauritius which would be taken into account for the determination of pensions under the legislation of the former Party if they had been insurance periods completed under the legislation of the United Kingdom, and in relation to a woman shall where appropriate take into account in accordance with that legislation insurance periods or periods of residence completed by her husband;

(*b*) no account shall be taken of any graduated contributions paid under the legislation of the United Kingdom before 6 April 1975 and the amount of any graduated retirement benefit payable by virtue of such contributions shall be added to the amount of any pension payable in accordance with paragraph (2) of this Article under that legislation;

(*c*) no account shall be taken under the legislation of the United Kingdom of any insurance period after the person attained pensionable age, but any increase of benefit in respect of such a period under the legislation of the United Kingdom shall be added to any benefit payable under that legislation which has been calculated under paragraph (2) of this Article;

(*d*) where a period of residence completed under the legislation of Mauritius coincides with a voluntary contribution period under the legislation of the United Kingdom, no account shall be taken under the legislation of the latter Party of the voluntary contribution period but the amount of any pension payable under its legislation under the provisions of paragraph (2) of this Article shall be increased by the amount by which the pension payable under its legislation would have been increased if all voluntary contributions paid under its legislation had been taken into account;

(*e*) for the purpose of applying the provisions of paragraph (2) of this Article, "pension" shall not include any increase payable in respect of a dependent child, but any such increase shall be added to any benefit payable by virtue of the calculation under paragraph (2) of this Article, subject to any limitations provided in Article 15 of this Convention;

(*f*) where an equivalent period completed under the legislation of the United Kingdom coincides with a period of residence completed under the legislation of Mauritius, account shall be taken only of the period of residence.

ARTICLE 13

(1) Where a person has paid contributions under the legislation of Mauritius for at least twelve qualifying contribution years, any retirement pension to which that person is entitled under the legislation of Mauritius in accordance with the provisions of this Convention or otherwise shall also be payable while that person is in the United Kingdom.

(2) Where a person has paid contributions under the legislation of Mauritius for fewer than twelve qualifying contribution years, any retirement pension to which that person is entitled under the legislation of Mauritius in accordance with the provisions of this Convention or otherwise shall be reduced in accordance with the provisions of paragraph (3) of this Article while he is in the United Kingdom.

(3) The pension of a person referred to in paragraph (2) of this Article shall not, while he is in the United Kingdom, exceed an amount which is equal to the standard rate of retirement pension payable under the legislation of Mauritius, multiplied by the number of qualifying contribution years which he has completed under that legislation, and divided by twelve.

(4) Where the person concerned is a married woman, for the purpose of calculating the reduction, if any, to be made of her retirement pension in accordance with the foregoing paragraphs of this Article, the number of her qualifying contribution years shall be deemed to be either the number she herself has achieved or the number achieved by her husband, whichever is the greater.

ARTICLE 14

Where a person does not simultaneously satisfy the conditions for entitlement to a retirement pension under the legislation of both Parties, his entitlement under the legislation of one Party shall be established as and when he satisfies the conditions laid down by the legislation of that Party. The provisions of Article 12 of this Convention shall be applied where there is no entitlement under the provisions of Article 11 of this Convention to a retirement pension under the legislation of that Party and his entitlement shall be determined afresh under those provisions when the conditions under the legislation of the other Party are satisfied.

ARTICLE 15

(1) The provisions of this Article shall apply to any increase of or supplement to a retirement pension under the legislation of either Party in respect of a dependent child or dependent children.

(2) Such increase or supplement shall be payable in accordance with the following provisions:

(*a*) where the person is entitled to a retirement pension only under the legislation of one Party, the increase or supplement shall be payable under the legislation of that Party;

(*b*) where the person is entitled to a retirement pension under the legislation of both Parties, the increase or supplement shall be payable only under the legislation of the Party in whose territory he is ordinarily resident.

ARTICLE 16

(1) Subject to the provisions of paragraph (2) of this Article, the provisions contained in Articles 11 to 15 of this Convention shall apply, with such modifications as the differing nature of the benefit shall require, to widows' benefit.

(2) Where a widow or her late spouse has completed a qualifying contribution year under the legislation of Mauritius, any widows' benefit to which that widow is entitled under the legislation of Mauritius in accordance with the provisions of this Convention, or otherwise, shall also be payable while that widow is in the United Kingdom.

SECTION 3

Benefits for Industrial Injuries and Diseases

ARTICLE 17

(1) Where a person is employed in the territory of one Party and the legislation of the other Party applies to him in accordance with any of the provisions of Articles 5 to 9 of this Convention he shall be treated under that legislation for the purpose of any claim for benefit in respect of an industrial accident or an industrial disease contracted during that period of employment, as if the accident had occurred or the disease had been contracted in the territory of the latter Party but injury benefit under the legislation of the United Kingdom or industrial injury allowance under the legislation of Mauritius shall not be payable in respect of that industrial accident or disease for any period before the date on which that person returns to the territory of that latter Party.

(2) Subject to the provisions of paragraph (1) of this Article in respect of the payment of benefit, where a person sustains an accident after he leaves the territory of one Party to go in the course of his employment to the territory of the other Party but before he arrives in the latter territory, then, for the purpose of any claim for benefit in respect of that accident:

(*a*) the accident shall be treated as if it had occurred in the territory of the Party whose legislation applied to him at the time the accident occurred; and

(*b*) his absence from the territory of that Party shall be disregarded in determining whether his employment was as an employed person under that legislation.

(3) Where by virtue of a death resulting from an industrial accident or an industrial disease a benefit would otherwise be payable under the legislation of one Party in respect of a child, that benefit shall not be payable to a person who is permanently resident in the territory of the other Party unless the person is residing with, and is responsible for, the child, or he would be residing with the child but for the temporary absence of the one from the other. Such benefit shall not cease to be payable under the legislation of one or the other Party solely because of the temporary absence of the beneficiary and or the child in the territory of the other Party.

SECTION 4

Orphan's Benefit

ARTICLE 18

(1) For the purpose of any claim for orphan's benefit under the legislation of one Party any insurance period or period of presence completed under the legislation of or in the territory of the other Party, as the case may be, shall be treated as if it were respectively an insurance period or period of presence completed under the legislation of or in the territory of the former Party.

(2) Where orphan's benefit would be payable to a person under the legislation of one Party if that person or the orphan for whom the benefit is claimed were ordinarily resident in the territory of that Party, it shall be paid while that person, or the orphan, is temporarily in, or temporarily resident in, the territory of the other Party and orphan's benefit shall not be payable under the legislation of that other Party.

(3) Subject to paragraph (4) of this Article, where a person is ordinarily resident in the territory of one Party, any claim for orphan's benefit in respect of an orphan who is in the territory of either Party shall be made under the legislation of the former Party, and no orphan's benefit shall be payable to that person under the legislation of the other Party in respect of that orphan.

(4) Where orphan's benefit in respect of the same orphan is claimed from one Party by one person and from the other Party by another person, benefit shall be payable only under the legislation of the territory of the Party in which the orphan is ordinarily resident.

(5) Where a contributory orphan's benefit would be payable under the legislation of Mauritius to a person in respect of an orphan if that person and, or, the orphan were in Mauritius, that benefit shall be payable while the person and, or, the orphan is in the United Kingdom.

SECTION 5

Family Allowances

ARTICLE 19

(1) Where a person and a child for whom he is responsible are resident in the territory of one Party then for the purpose of any claim to family allowance under the legislation of that Party, any period of presence or residence completed by him in the territory of the other Party shall be treated as if it were respectively a period of presence or residence completed in the territory of the former Party.

(2) Where, but for the provisions of this paragraph, family allowance would be payable under the legislation of both Parties for the same period in respect of the same child, whether by virtue of this Convention or otherwise, family allowance shall be paid only under the legislation of the Party in whose territory the child is ordinarily resident.

SECTION 6

Recovery of Advance Payments and Overpayments of Benefit

ARTICLE 20

(1) Where a competent institution of one Party has made a payment of any benefit to a person for any period in advance of the period to which it relates or has paid him any benefit for a period, whether by virtue of the provisions of this Convention or otherwise, and the competent institution of the other Party afterwards decides that the person is entitled to benefit for that period under its legislation, the competent institution of the latter Party, at the request of the competent institution of the former Party, shall deduct from the benefit due for that period under its legislation any overpayment which, by virtue of the provisions of this Convention, results from the advance payment or benefit paid by the competent institution of the former Party and shall transmit this sum to the competent institution of the former Party.

(2) Where a person has received supplementary benefit under the legislation of the United Kingdom for a period for which that person subsequently becomes entitled to receive benefit under the legislation of Mauritius, the competent institution of Mauritius, at the request and on behalf of the competent institution of the United Kingdom, shall withhold from the benefit due for that period the amount by which the supplementary benefit paid exceeded what would have been paid had the benefit under the legislation of Mauritius been paid before the amount of supplementary benefit was determined, and shall transfer the amount withheld to the competent institution of the United Kingdom.

PART IV

Miscellaneous Provisions

ARTICLE 21

(1) The competent authorities of the two Parties shall establish the administrative measures necessary for the application of this Convention.

(2) The competent authorities of the two Parties shall communicate to each other, as soon as possible, all information about the measures taken by them for the application of this Convention or about changes in their national legislation in so far as these changes affect the application of the provisions of this Convention.

(3) The competent authorities, insurance authorities or competent institutions of the two Parties may, for the purpose of applying the provisions of this Convention, correspond directly with one another, or with any person affected by this Convention, or with his legal representative.

ARTICLE 22

(1) The competent authorities, insurance authorities and competent institutions of the two Parties shall assist one another on any matter relating to the application of this Convention as if the matter were one affecting the application of their own legislation. This assistance shall be free of charge.

(2) Where any benefit is payable under the legislation of one Party to a person in the territory of the other Party, the payment may be made by the competent institution of the latter Party at the request of the competent institution of the former Party.

(3) Where a person who is in the territory of one Party suffers an industrial accident or contracts an industrial disease and a medical examination is necessary for the purpose of a claim to benefit under the legislation of the other Party, the competent institution of the former Party, at the request of the competent institution of the latter Party, shall arrange for this examination. The cost of such examination shall be met by the competent institution of the former Party.

ARTICLE 23

(1) Where the legislation of one Party provides that any certificate or other document which is submitted under the legislation of that Party shall be exempt, wholly or partly, from any taxes, legal dues, consular fees or administrative charges, that exemption shall apply to any certificate or other document which is submitted under the legislation of the other Party or under the provisions of this Convention.

(2) All statements, documents and certificates of any kind required to be produced for the purposes of this Convention shall be exempt from authentication by diplomatic or consular authorities.

ARTICLE 24

(1) Any claim, notice or appeal which should, for the purposes of the legislation of one Party, have been submitted within a prescribed period to the insurance authority or the competent authority of that Party, shall be treated as if it had been submitted to that authority or competent authority if it is submitted within the same period to an insurance authority or competent authority of the other Party.

(2) Any claim for benefit submitted under the legislation of one Party shall be deemed to be a claim for 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.

(3) Any document submitted under the legislation of Mauritius may, where appropriate, be treated as a notice of retirement given under the legislation of the United Kingdom.

(4) In any case to which the provisions of paragraphs (1), (2) or (3) of this Article apply, the authority to which the claim, notice, appeal or document has been submitted shall transmit it without delay to the competent authority or insurance authority of the other Party.

ARTICLE 25

(1) Payment of any benefit in accordance with the provisions of this Convention may be made in the currency of the Party whose competent institution makes the payment

and any such payment shall constitute a full discharge of the obligation in respect of which payment has been made.

(2) Where the competent institution of one Party has made a payment of benefit on behalf of the competent institution of the other Party in accordance with the provisions of Article 22(2) of this Convention any reimbursement of the amount paid by the competent institution of the former Party shall be in the currency of the latter Party.

ARTICLE 26

(1) Any dispute between the competent authorities of the two Parties about the interpretation or application of this Convention shall be resolved through agreement between the competent authorities of each Party.

(2) If any such dispute cannot be resolved in this manner, it shall be submitted, at the request of either Party, to an arbitration tribunal which shall be composed in the following manner:

(*a*) each Party shall appoint an arbitrator within one month from receipt of the demand for arbitration. The two arbitrators shall appoint a third arbitrator, who shall not be a national of either Party, within two months from the date on which the Party which was the last to appoint its arbitrator has notified the other Party of the appointment;

(*b*) if within the prescribed period either Party should fail to appoint an arbitrator, the other Party may request the President of the International Court of Justice or, in the event of his having the nationality of one of the Parties, the Vice-President or next senior judge of that Court not having the nationality of either Party, to make the appointment. A similar procedure shall be adopted at the request of either Party if the two arbitrators cannot agree on the appointment of the third arbitrator.

(3) The decision of the arbitration tribunal shall be by majority vote. Its decisions shall be binding on both Parties. The costs of the arbitration tribunal shall be borne equally by the two Parties. The arbitration tribunal shall determine its own rules of procedure.

PART V

Transitional and Final Provisions

ARTICLE 27

(1) Benefit, other than lump sum payments, shall be payable in accordance with the provisions of this Convention in respect of events which happened before the date of its entry into force, except that an accident which occurred or a disease which developed before that date shall not, solely by virtue of this Convention, be treated as an industrial accident or disease if it would not have been so treated under any legislation or Convention having effect at the time of its occurrence or development. For the purpose of determining claims in accordance with the provisions of this Convention, account shall be taken of insurance periods and periods of residence or presence completed before the date of its entry into force.

(2) Paragraph (1) of this Article shall not confer any rights to receive payment of benefit for any period before the date of entry into force of this Convention.

(3) For the purpose of applying the first sentence of paragraph (1) of this Article:

(*a*) any right to benefit may, at the request of the person concerned, be determined afresh in accordance with the provisions of this Convention from the date of entry into force of this Convention, provided that the request has been made within two years after that date;

(*b*) where the request for the benefit to be determined afresh is made more than two years after the date of entry into force of this Convention payment shall be made from the date determined under the legislation concerned.

ARTICLE 28

This Convention shall be ratified and instruments of ratification shall be exchanged in London as soon as possible. The Convention shall enter into force on the first day of the third month following the month in which the instruments of ratification are exchanged.

ARTICLE 29

This Convention shall remain in force for an indefinite period. Either Party may denounce it at any time by giving six months' notice in writing to the other Party.

ARTICLE 30

In the event of the termination of this Convention, any right to benefit acquired by a person in accordance with its provisions shall be maintained and negotiations shall take place for the settlement of any other right then in course of acquisition by virtue of its provisions.

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

Done in duplicate at Port Louis, Mauritius, this 22nd day of April, 1981.

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

Mrs. Lynda Chalker
Parliamentary Under-Secretary of State
(Social Security)

J. N. Allan
United Kingdom High Commissioner at Port Louis, Mauritius.

For the Government of Mauritius:

R. Purryag
Minister of Social Security

SCHEDULE 2

NOTES EXCHANGED ON 8 OCTOBER 1981 BETWEEN HER MAJESTY'S HIGH COMMISSIONER AT PORT LOUIS AND THE MINISTER FOR FOREIGN AFFAIRS OF MAURITIUS

No. 1

HER MAJESTY'S HIGH COMMISSIONER AT PORT LOUIS TO THE MINISTER FOR FOREIGN AFFAIRS OF MAURITIUS

Your Excellency 24 August 1981

I have the honour to refer to discussions which have taken place between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Mauritius relating to the entry into force of the Convention on Social Security between the two Governments which was signed in Port Louis on 22 April 1981, and to propose that notwithstanding and without prejudice to the provisions of Article 28 of the Convention, the Convention shall be applied provisionally from 1 November 1981.

If the foregoing proposal is acceptable to the Government of Mauritius I have the honour to propose that this Note and Your Excellency's reply to that effect shall constitute an agreement between our two Governments which shall enter into force on the date of Your Excellency's reply.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

J. N. Allan

No. 2

THE MINISTER FOR FOREIGN AFFAIRS OF MAURITIUS TO HER MAJESTY'S HIGH COMMISSIONER AT PORT LOUIS

Sir 8 October 1981

I have the honour to acknowledge receipt of your Note of 24 August which reads as follows:

'I have the honour to refer to discussions which have taken place between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Mauritius relating to the entry into force of the Convention on Social Security between the two Governments which was signed in Port Louis on 22 April 1981, and to propose that notwithstanding and without prejudice to the provisions of Article 28 of the Convention, the Convention shall be applied provisionally from 1 November 1981.

If the foregoing proposal is acceptable to the Government of Mauritius I have the honour to propose that this Note and Your Excellency's reply to that effect shall constitute an agreement between our two Governments which shall enter into force on the date of Your Excellency's reply.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.'

I have the honour to confirm that the foregoing proposal is acceptable to the Government of Mauritius who therefore agree that your Note, together with this reply, shall constitute an agreement between our two Governments which shall enter into force on today's date

I take this opportunity to renew to you, Sir, the assurance of my highest consideration.

Sir Satcam Boolell

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order makes provision for the modification of the Social Security Act 1975 and that part of the Child Benefit Act 1975 which relates to child benefit so as to give effect to the Convention on social security (set out in Schedule 1) made between the Governments of the United Kingdom and Mauritius as extended by the Notes (set out in Schedule 2) exchanged on behalf of those Governments whereby it was agreed that the Convention shall apply provisionally from 1st November 1981 pending its entry into force after ratification. The Convention relates to reciprocity in contributions, retirement pensions, widows' benefits, industrial injuries benefits, orphans' benefits and family allowances.

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