STATUTORY INSTRUMENTS

1976 No. 2148

NORTHERN IRELAND

The Social Security (Spain) (Northern Ireland) Order 1976

Made - - - - 15th December 1976

At the Court at Buckingham Palace, the 15th day of December 1976

Present,

The Queen's Most Excellent Majesty in Council

Whereas on 13th September 1974 a Convention on social security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Spain (hereinafter referred to as "the Principal Convention") was signed on behalf of those Governments and effect was given thereto by the Family Allowances, National Insurance and Industrial Injuries (Spain) Order (Northern Ireland) 1975(**a**):

And Whereas at London on 4th November 1976 Notes were exchanged on behalf of those Governments (which Notes are set out in the Schedule hereto) for the purpose of amending the Principal Convention:

And Whereas it is provided that the said Notes shall constitute an agreement which shall enter into force on 15th November 1976:

And Whereas by virtue of section 2 of, and paragraph 13(1A) (as inserted by paragraph 71(*b*) of Schedule 4 to the Social Security Pensions Act 1975(**b**)) of Schedule 3 to, the Social Security (Consequential Provisions) Act 1975(**c**) it is provided that any order(**d**) made under section 99 of the National Insurance Act (Northern Ireland) 1966(**e**) or section 79 of the National Insurance (Industrial Injuries) Act (Northern Ireland) 1966(**f**) shall have effect as if it were an Order in Council made under section 134 of the Social Security (Northern Ireland) Act 1975(**g**):

And Whereas by section 155(4) of the Social Security (Northern Ireland) Act 1975 a power conferred by that Act to make an Order in Council includes a power to vary any such Order in Council by a subsequent Order in Council:

Now, therefore, Her Majesty, in pursuance of the said section 134 and the said section 155(4) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Citation and interpretation

1.—(1) This Order may be cited as the Social Security (Spain) (Northern Ireland) Order 1976.

(a) S.R. 1975 No. 77. (b) 1975 c. 60. (c) 1975 c. 18.
(d) *See* para. 4 of Sch. 5 to Northern Ireland Constitution Act 1973 c. 36.
(e) 1966 c. 6 (N.I.). (f) 1966 c. 9 (N.I.). (g) 1975 c. 15.

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

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

Modification of Act and variation of Order

2. The Social Security (Northern Ireland) Act 1975 shall be modified and the Family Allowances, National Insurance and Industrial Injuries (Spain) Order (Northern Ireland) 1975 shall be varied to such extent as may be required to give effect to the provisions contained in the Notes set out in the Schedule to this Order, so far as the same relate to Northern Ireland.

N. E. Leigh,
Clerk of the Privy Council

SCHEDULE Article 2.

NOTES EXCHANGED ON 4TH NOVEMBER 1976 BETWEEN HER MAJESTY'S PRINCIPAL SECRETARY OF STATE FOR FOREIGN AND COMMONWEALTH AFFAIRS AND THE SPANISH AMBASSADOR TO THE COURT OF ST. JAMES'S

No. 1

HER MAJESTY'S PRINCIPAL SECRETARY OF STATE FOR FOREIGN AND COMMONWEALTH AFFAIRS TO THE SPANISH AMBASSADOR TO THE COURT OF ST. JAMES'S

4 November 1976

Your Excellency

I have the honour to refer Your Excellency to the Convention on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Spain signed on 13 September 1974.

(a) 1889 c. 63.

As the Spanish authorities are aware, in consequence of a recent decision by one of the competent insurance authorities of the United Kingdom, it has been found that Article 5(2) of the Convention, which is a unilateral provision, has wider effect than the Government of the United Kingdom intended. Article 5(2) of the Convention reads as follows:—

"(2) Subject to the provision of Articles 12(2), 15(5), 21(2) and 22 of this Convention, where a person claims any benefit under the legislation of the United Kingdom no provision of that legislation which would affect his claim by reason of his absence or the absence of a child, adult dependant or other person from the United Kingdom shall apply to him if he, the child, adult dependant or other person, as the case may be, is, or was, at the time in question, in Spain."

In the same way as Article 5(1) relates to dependency benefit payable under the legislation of Spain, it was intended that Article 5(2) should relate only to dependency benefit payable under the legislation of the United Kingdom, for the purpose of ensuring that that benefit would be payable in respect of dependants of a person claiming benefit, notwithstanding the absence of himself or his dependants in Spain.

In order to make it clear that it was not the intention to allow United Kingdom unemployment benefit to be drawn in respect of absences from the United Kingdom, the Government of the United Kingdom now proposes to amend Article 5(2) to read as follows:—

"(2) Subject to the provisions of Articles 12(2), 15(5), 21(2) and 22 of this Convention, where a person claims an increase of any benefit in respect of a dependant, child's special allowance or guardian's allowance, under the legislation of the United Kingdom no provision of that legislation which would affect that claim by reason of his absence or the absence of a child, adult dependant or other person from the United Kingdom shall apply to him in respect of that claim if he, the child, adult dependant or other person, as the case may be, is, or was, at the time in question, in Spain."

In addition, the Government of the United Kingdom wish to take this opportunity to make an amendment to Article 23 of the Convention. Sub-paragraph (3) of this Article, which is a further unilateral provision, was included in the Convention for the purpose of a provision of the legislation of the United Kingdom which has been repealed with effect from 6th April 1975. The Government of the United Kingdom now proposes that Article 23(3) be deleted from the Convention.

If these proposals are acceptable to the Government of Spain, I have the honour to suggest that this Note and your reply to that effect shall constitute an agreement between our two Governments which shall enter into force on 15 November 1976.

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

I. S. Winchester.
For the Secretary of State.

No. 2

THE SPANISH AMBASSADOR TO THE COURT OF ST. JAMES'S TO HER MAJESTY'S PRINCIPAL SECRETARY OF STATE FOR FOREIGN AND COMMONWEALTH AFFAIRS

[*Translation*]

4 November 1976

Sir

I have the honour to acknowledge receipt of your Note of 4 November 1976 which reads as follows:—

"I have the honour to refer Your Excellency to the Convention on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Spain signed on 13 September 1974.

As the Spanish authorities are aware, in consequence of a recent decision by one of the competent insurance authorities of the United Kingdom, it has been found that Article 5(2) of the Convention, which is a unilateral provision, has wider effect than the Government of the United Kingdom intended. Article 5(2) of the Convention reads as follows:—

"(2) Subject to the provision of Articles 12(2), 15(5), 21(2) and 22 of this Convention, where a person claims any benefit under the legislation of the United Kingdom no provision of that legislation which would affect his claim by reason of his absence or the absence of a child, adult dependant or other person from the United Kingdom shall apply to him if he, the child, adult dependant or other person, as the case may be, is, or was, at the time in question, in Spain."

In the same way as Article 5(1) relates to dependency benefit payable under the legislation of Spain, it was intended that Article 5(2) should relate only to dependency benefit payable under the legislation of the United Kingdom, for the purpose of ensuring that that benefit would be payable in respect of dependants of a person claiming benefit, notwithstanding the absence of himself or his dependants in Spain.

In order to make it clear that it was not the intention to allow United Kingdom unemployment benefit to be drawn in respect of absences from the United Kingdom, the Government of the United Kingdom now proposes to amend Article 5(2) to read as follows:—

"(2) Subject to the provisions of Articles 12(2), 15(5), 21(2) and 22 of this Convention, where a person claims an increase of any benefit in respect of a dependant, child's special allowance or guardian's allowance, under the legislation of the United Kingdom no provision of that legislation which would affect that claim by reason of his absence or the absence of a child, adult dependant or other person from the United Kingdom shall apply to him in respect of that claim if he, the child, adult dependant or other person, as the case may be, is, or was, at the time in question, in Spain."

In addition, the Government of the United Kingdom wish to take this opportunity to make an amendment to Article 23 of the Convention. Sub-paragraph (3) of this Article, which is a further unilateral provision, was included in the Convention for the purpose of a provision of the legislation of the United Kingdom which has been repealed with effect from 6 April 1975. The Government of the United Kingdom now proposes that Article 23(3) be deleted from the Convention.

If these proposals are acceptable to the Government of Spain, I have the honour to suggest that this Note and your reply to that effect shall constitute an agreement between our two Governments which shall enter into force on 15 November 1976.

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

As the Joint Commission established in accordance with Article 25 of the Convention on Social Security between the United Kingdom and Spain has approved the Note set out above, and as the Spanish delegation consider that the proposals therein do not substantially modify the terms of that Convention, I have the honour to state that the Government of Spain accepts the proposals of the Government of the United Kingdom of Great Britain and Northern Ireland and agrees that your Note and the present reply shall constitute an agreement between the two governments.

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

Perinat.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order makes provision for modification of social security legislation s as to give effect to the agreement contained in Notes (set out in the Schedule exchanged between the Governments of the United Kingdom and Spain o 4th November 1976, which amends the Convention on Social Security betwee those Governments dated 13th September 1974 and set out in the Schedule t the Family Allowances, National Insurance and Industrial Injuries (Spain Order (Northern Ireland) 1975.

SI 1976/2148
ISBN 0-11-062148-4

