STATUTORY RULES OF NORTHERN IRELAND

1992 No. 269

SOCIAL SECURITY

The Social Security (Australia) Order (Northern Ireland) 1992

Made - - - -	*4th June 1992*
Coming into operation	*29th June 1992*

In exercise of the powers conferred on me by section 134 of the Social Security (Northern Ireland) Act 1975(**1**) and Article 17 of the Child Benefit (Northern Ireland) Order 1975(**2**) and of all other powers enabling me in that behalf, I hereby make the following order:

Citation and commencement

1. This order may be cited as the Social Security (Australia) Order (Northern Ireland) 1992 and shall come into operation on 29th June 1992.

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 Schedule 1 to this order (which Agreement enters into force on the date specified in the Notes set out in Schedule 2 to this order), as amended by the Notes set out in Schedule 3 to this order, so far as the same relate to Northern Ireland.

Modification of the Child Benefit (Northern Ireland) Order 1975

3. Part II of the Child Benefit (Northern Ireland) Order 1975 (child benefit) 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 Agreement on Social Security set out in Schedule 1 to this order (which Agreement enters into force on the date specified in the Notes set out in Schedule 2 to this order), as amended by the Notes set out in Schedule 3 to this order, so far as the same relate to Northern Ireland.

(**1**) 1975 c. 15; section 134 was amended by section 20(3) of, and extended by section 20(4) of, the Social Security (Miscellaneous Provisions) Act 1977 (c. 5), and further amended by Article 66(2) of the Social Security (Northern Ireland) Order 1986 (S. I. 1986/1888 (N. I.18)); subsection (1A) was inserted by Article 7(1) of the Social Security (Northern Ireland) Order 1981 (S. I. 1981/1118 (N. I. 25))

(**2**) S. I. 1975/1504 (N. I. 16); Article 17 was amended by Article 16 of the Social Security (Miscellaneous Provisions) (Northern Ireland) Order 1977 (S. I. 1977/610 (N. I. 11)), and Article 66(3) of the Social Security (Northern Ireland) Order 1986; paragraph (1A) was inserted by Article 7(2) of the Social Security (Northern Ireland) Order 1981

Revocation and variation of orders

4.—(1) The Family Allowances and National Insurance (Reciprocal Agreement with Australia) Order (Northern Ireland) 1962(**3**), the Social Security (Australia) (Northern Ireland) Order 1975(**4**) and the Social Security (Australia) Order (Northern Ireland) 1987(**5**) are hereby revoked.

(2) The National Insurance (Reciprocal Agreements with Australia and New Zealand) Order (Northern Ireland) 1964(**6**) is hereby revoked, so far as it relates to Australia.

(3) In the Schedule to the Social Security (Reciprocal Agreements) Order (Northern Ireland) 1979(**7**), the entry relating to the Family Allowances and National Insurance (Reciprocal Agreement with Australia) Order (Northern Ireland) 1962 shall be omitted and in the Schedule to the Social Security (Reciprocal Agreements) Order (Northern Ireland) 1988(**8**) the entries relating to the orders set out in paragraph (1) of this Article shall be omitted.

P. B. B. Mayhew
One of Her Majesty's Principal Secretaries of State

Dated this 4th day of June 1992.

(**3**) S. R. & O. (N. I.) 1962 No. 218
(**4**) S. I. 1975/1041
(**5**) S. R. 1987 No. 231
(**6**) S. R. & O. (N. I.) 1964 No. 85
(**7**) S. R. 1979 No. 92, to which there are amendments not relevant to the subject matter of this order
(**8**) S. R. 1988 No. 120

SCHEDULE 1 Articles 2 and 3

AGREEMENT ON SOCIAL SECURITY BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF AUSTRALIA

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Australia,

Wishing to strengthen the existing friendly relations between the two countries;

Having established reciprocity in the field of social security by means of an Agreement signed by the Parties at Canberra on 29 January 1958, which was amended by a further Agreement signed at Canberra on 16 August 1962 and by other Agreements set out in Exchanges of Notes at Canberra on 6 March 1975 and at London on 29 and 31 December 1986;

Wishing to consolidate the above Agreements and their extensions and modifications into a single document; and

Wishing to extend and modify the scope of that reciprocity and to take account of changes in their legislation;

Have agreed as follows:

Part I

General Provisions

ARTICLE 1

Definitions

(1) For the purpose of this Agreement, unless the context otherwise requires:

"benefit" means pension, allowance or benefit payable under the legislation of one (or the other) Party and includes any increase payable for a dependant;

"competent authority" means, in relation to the territory of the United Kingdom, the Secretary of State for Social Security for Great Britain, the Department of Health and Social Services for Northern Ireland, the Department of Health and Social Security of the Isle of Man, the Social Security Committee of the States of the Island of Jersey or the States of Guernsey Insurance Authority, as the case may require, and, in relation to Australia the Secretary to the Department of Social Security;

"competent institution" means the institution 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 institution is situated;

"contribution" , in relation to the legislation of the United Kingdom, does not include a reduced rate contribution payable by a married woman or a widow, or a graduated contribution within the meaning of that legislation;

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

"employment" means employment as an employed person and the words "employ", "employed" or "employer" shall be construed accordingly;

"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;

"family allowance", in relation to the United Kingdom, includes child benefit payable under the legislation of the United Kingdom, and, in relation to Australia means family allowance payable under the legislation of Australia;

"former Agreement" means the Agreement on Social Security signed at Canberra on 29 January 1958, on behalf of the Parties, as amended by the Agreement on Social Security signed at Canberra on 16 August 1962 and by the Agreements set out in the Exchanges of Notes at Canberra on 6 March 1975 and at London on 29 and 31 December 1986;

"full standard rate" means, in relation to any benefit payable under the legislation of the United Kingdom, the rate at which the beneficiary would be qualified to receive that benefit if the relevant contribution conditions were fully satisfied;

"gainfully occupied" means employed or self-employed;

"Guernsey" means the Islands of Guernsey, Alderney, Herm and Jethou;

"income support" means income support payable under the legislation of Great Britain and Northern Ireland and supplementary benefit payable under the legislation of the Isle of Man;

"legislation" means the legislation specified in Article 2 which, in relation to the United Kingdom, is in force in any part of the territory of the United Kingdom and, in relation to Australia, is in force in Australia;

"means test" means any provision of the legislation of Australia which affects the payment or rate of a benefit on account of income or property;

"qualified to receive" means, in relation to the United Kingdom, entitled to receive subject to any disqualification or any provision about claiming, hospital treatment or overlapping benefits which may be appropriate;

"retirement pension" means retirement pension or old age pension payable under the legislation of the United Kingdom and includes a contributory old age pension under that legislation and any graduated retirement benefit constituted by an increase in the weekly rate of retirement pension under that legislation, but excludes additional (earnings-related) pension payable under that legislation;

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

"spouse carer's pension" means a carer's pension payable to a husband under the legislation of Australia;

"territory" means in relation to the United Kingdom, Great Britain, Northern Ireland and also the Isle of Man, the Island of Jersey and Guernsey;

"widow" means, in relation to Australia, a de jure widow but does not include a woman who is the *de facto* spouse of a man;

"widow's benefit" means, in relation to the United Kingdom, widow's allowance, widow's payment, widowed mother's allowance (including any graduated retirement benefit constituted by an increase in the weekly rate of widowed mother's allowance), widowed father's allowance or widow's pension under the legislation of any part of the United Kingdom.

(2) In the application by a Party of this Agreement in relation to a person, any term not defined in this Article shall, unless the context otherwise requires, have the meaning ascribed to it in the legislation of the Parties or, in the event of a conflict of meaning, by whichever of the legislation of the Parties is the more applicable to the circumstances of that person.

(3) Any reference in this Agreement to "Article" means an Article of this Agreement, and any reference to a "paragraph" is a reference to a paragraph of the Article in which the reference is made, unless it is stated to the contrary.

ARTICLE 2

Scope of Legislation

(1) The provisions of this Agreement shall apply:

(a) in relation to the territory of the United Kingdom, to:

(i) the Social Security Acts 1975 to 1989 and the Social Security (Northern Ireland) Acts 1975 to 1989;

(ii) the Social Security Acts 1975 to 1989 (Acts of Parliament) as those Acts apply to the Isle of Man by virtue of Orders made, or having effect as if made, under the Social Security Act 1982 (an Act of Tynwald);

(iii) the Social Security (Jersey) Law, 1974;

(iv) the Social Insurance (Guernsey) Law, 1978;

(v) the Child Benefit Act 1975, the Child Benefit (Northern Ireland) Order 1975 and the Child Benefit Act 1975 (an Act of Parliament) as that Act applies to the Isle of Man by virtue of Orders made, or having effect as if made, under the Social Security Act 1982 (an Act of Tynwald); the Family Allowances (Jersey) Law, 1972 and the Family Allowances (Guernsey) Law, 1950;

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

(b) in relation to Australia, to the Social Security Act 1947.

(2) Subject to the provisions of paragraphs (3) and (4) this Agreement shall apply also to any laws, orders and regulations which supersede, replace, amend, supplement or consolidate the legislation specified in paragraph (1).

(3) This Agreement shall not affect any benefits payable under the legislation of either Party except in the manner set out in this Agreement.

(4) This Agreement shall not apply to legislation on social security of the Institutions of the European Communities or to any convention or agreement on social security which either Party has concluded with a third party or to any laws, orders or regulations which amend the legislation specified in paragraph (l) for the purpose of giving effect to such a convention or agreement but shall not prevent either Party from taking into account under its legislation the provisions of any other convention or agreement which that Party has concluded with a third party.

(5) Subject to the provisions of paragraph (2), this Agreement shall apply, unless the Parties agree otherwise, only to benefits described in the legislation specified in paragraph (1) at the date of coming into force of this Agreement and for which specific provision is made in this Agreement.

Part II

Retirement Pensions, Age Pensions and Benefits for Widows

ARTICLE 3

Retirement Pensions

(1) For the purpose of determining entitlement to retirement pension under the legislation of any part of the territory of the United Kingdom, a person who is permanently resident in that part of the territory shall be treated as if he or she, or, in the case of a claim made by a married woman or a widow by virtue of her husband's insurance, her husband, had paid contributions under the legislation of