1984 No. 449

SOCIAL SECURITY

The Social Security (United States of America) Order (Northern Ireland) 1984

Made . . . . . 14th December 1984

Coming into operation—

Articles 1 and 2 . . . . . 1st January 1985
Article 3 . . . . . 1st January 1988

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

Citation and commencement

1. This order may be cited as the Social Security (United States of America) Order (Northern Ireland) 1984 and shall come into operation on 1st January 1985 with the exception of Article 3 which comes into operation on 1st January 1988.

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 is implemented by the Administrative Agreement set out in Schedule 2 to this order), so far as the same relate to Northern Ireland.

Revocation of Order

3. The National Insurance (United States of America) Order (Northern Ireland) 1969(**b**) is revoked with effect from 1st January 1988.

Dated this 14th day of December 1984.

Douglas Hurd
One of Her Majesty's Principal Secretaries of State

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

(**b**) S.R. & O. (N.I.) 1969 No. 316

SCHEDULE 1

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

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

Being desirous of regulating the relationship between their two countries in the field of social security;

Have agreed as follows:

PART I

General Provisions

ARTICLE 1

For the purpose of this Agreement:

1. "Territory" means, as regards the United States, the States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam and American Samoa, and as regards the United Kingdom, England, Scotland, Wales, Northern Ireland, and also the Isle of Man and the Islands of Jersey, Guernsey, Alderney, Herm and Jethou; and references to the "United Kingdom" or to "territory" in relation to the United Kingdom shall include the Isle of Man, Jersey, Guernsey, Alderney, Herm and Jethou where appropriate;
2. "Laws" means, the laws specified in Article 2 of this Agreement, or regulations or Orders emanating from those laws, which are applicable in the territory of a Party or in any part thereof;
3. "Competent Authority" means, as regards the United States, the Secretary of Health and Human Services, and as regards the United Kingdom, the Secretary of State for Social Services, the Department of Health and Social Services of Northern Ireland, the Isle of Man Board of Social Security, the Social Security Committee of the States of Jersey or the States of Guernsey Insurance Authority, as the case may require;
4. "Agency" means, as regards the United States, the Social Security Administration, and as regards the United Kingdom, the Departmental and independent authorities duly appointed to decide the matter in question;
5. "Period of coverage" means, as regards the United States, a period of payment of contributions or a period of earnings from employment or self-employment; as defined or recognized as a period of coverage under the laws of the United States, or any similar period insofar as it is recognized by such laws as equivalent to a period of coverage, and as regards the United Kingdom, it means an insurance period;
6. "Benefit" means, any benefit, pension or allowance provided for in the laws of either Party, including any increase of, or any additional amount payable with a benefit, pension or allowance;
7. As regards the United Kingdom:
   (*a*) "insurance period" means, a contribution period or an equivalent period;
   (*b*) "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;
   (*c*) "equivalent period" means, a period for which contributions appropriate to the benefit in question have been credited;
   (*d*) "survivor's benefit" means, widow's allowance, widowed mother's allowance and widow's pension;
   (*e*) "child's survivor benefit" means, guardian's allowance and child's special allowance;
   (*f*) "laws on coverage" means, the laws and regulations relating to the imposition of liability for the payment of social security contributions.

ARTICLE 2

1. For the purpose of this Agreement, the applicable laws are:

(*a*) As regards the United States, the laws governing the Federal Old-Age, Survivors and Disability Insurance Program:

(i) Title II of the Social Security Act and regulations pertaining thereto, except sections 226, 226A and 228 of that title and regulations pertaining to those sections; and

(ii) Chapter 2 and Chapter 21 of the Internal Revenue Code of 1954 and regulations pertaining to those chapters;

(*b*) As regards the United Kingdom,

(i) the Social Security Acts 1975 to 1982 and the Social Security (Northern Ireland) Acts 1975 to 1982;

(ii) the Social Security Acts 1975 to 1982 (Acts of Parliament) as applied to the Isle of Man by Orders made under the provisions of the Social Security Act 1982 (an Act of Tynwald);

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

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

and the laws which were consolidated by those Acts, Laws or Orders or repealed by legislation consolidated by them.

2. The Agreement shall apply also to any law which supersedes, replaces, amends, supplements or consolidates the laws specified in paragraph 1 of this Article.

3. Unless the Parties agree otherwise, as regards the United Kingdom, this Agreement:

(*a*) shall apply only to benefits described in the laws specified in paragraph 1(*b*) of this Article at the date of entry into force of this Agreement and for which specific provision is made in this Agreement; and

(*b*) shall not apply to any laws which relate to a branch of social security not covered by the laws specified in paragraph 1(*b*) of this Article unless the two Parties make an agreement to that effect.

4. This Agreement shall not apply to Regulations on Social Security of the institutions of the European Communities or to any convention or other international agreement on social security which either Party has concluded with a third party or to any laws or regulations which amend the laws specified in paragraph 1 of this Article for the purpose of giving effect to such a convention or agreement but shall not prevent either Party from taking into account under its laws the provisions of any other convention or agreement which that Party has concluded with a third Party.

ARTICLE 3

A person who is or has been subject to the laws of one Party and who resides within the territory of the other Party shall, together with his dependants, receive equal treatment with nationals of the other Party in the application of the laws of the other Party regarding the payment of benefits.

PART II

Provisions on Coverage

ARTICLE 4

1. Except as otherwise provided in this Part, a person employed within the territory of one of the Parties shall, with respect to that employment, be subject to the laws on coverage of only that Party. Where a person is subject only to the laws on coverage of the United Kingdom in accordance with this paragraph, those laws shall apply to him as if he were ordinarily resident in the territory of the United Kingdom.

2. Where a person who is covered under the laws on coverage 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 person shall be subject only to the laws on coverage of the former Party, as if

he were employed in the territory of the former Party, provided that the period of work in the territory of the latter Party is not expected to exceed 5 years, or such longer period as may be agreed upon by the Competent Authorities in a particular case. This paragraph does not apply to employment as an officer or member of a crew on a ship or aircraft.

3. A person who would otherwise be covered under the laws on coverage of both Parties with respect to self-employment performed in the territory of either Party shall be subject only to the laws on coverage of the Party in whose territory he ordinarily resides.

4. Where a person is employed under the laws on coverage of one Party and self-employed under the laws on coverage of the other Party for the same activity, he shall be subject only to the laws on coverage of the Party in whose territory he ordinarily resides.

5. A person who would otherwise be covered under the laws on coverage of both Parties with respect to employment as an officer or member of a crew on a ship or aircraft shall, in respect of that employment, be subject only to the laws on coverage of the United Kingdom if he ordinarily resides in the territory of the United Kingdom, and only to United States laws on coverage if he ordinarily resides in the territory of the United States.

6. A person who ordinarily resides in the territory of the United Kingdom and who is not employed or self-employed shall be subject to the laws on coverage of only the United Kingdom with respect to social security contributions.

ARTICLE 5

1. This Agreement shall not affect the provisions of the Vienna Convention on Diplomatic Relations of 18 April 1961, or of the Vienna Convention on Consular Relations of 24 April 1963.

2. Notwithstanding Article 4, nationals of one of the Parties who are employed by the National Government of that Party in the territory of the other party and to whom the provisions mentioned in paragraph 1 of this Article do not apply, shall be subject to the laws on coverage of only the first Party, as if they were employed in the territory of that Party. For the purposes of the United States, employment by the National Government shall include employment by an instrumentality of the United States Government.

ARTICLE 6

The Competent Authorities of the two Parties may grant an exception to the provisions in this Part, in respect of particular persons or categories of persons, provided that the affected persons will be subject to the laws on coverage of one of the Parties.

PART III

Benefit Provisions

ARTICLE 7

1. Except as otherwise provided in this Agreement, any provision of United States laws which restricts entitlement to or payment of cash benefits for persons who are not nationals of the United States solely because such persons reside outside or are absent from the territory of the United States shall not be applicable to persons who reside in the territory of the United Kingdom.

2. Subject to the provisions of paragraph 3 of this Article, a person who would be entitled to receive an old age pension, a retirement pension or a survivor's benefit under the laws of the United Kingdom if he were in the United Kingdom shall be entitled to receive that pension or benefit while he ordinarily resides in the territory of the United States, as if he were in the United Kingdom.

3. A person who is entitled to receive an old age pension, a retirement pension or a survivor's benefit under the laws of the United Kingdom and who would be entitled to receive an increase in the rate of that pension or benefit if he were in the United Kingdom shall, after the date of entry into force of Part III of this Agreement, be entitled to receive any such increase prescribed after that date by those laws if he ordinarily resides in the territory of the United States; but nothing in this paragraph shall confer entitlement to receive any such increases prescribed before that date by those laws.

4. Where under the laws of the United Kingdom, an increase of any of the benefits for which provision is made in this Agreement would be payable for a dependant if the dependant were in the United Kingdom, it shall be payable while the dependant is in the territory of the United States.

CHAPTER A

Provisions Applicable to the United States

ARTICLE 8

1. Where a person has completed at least six quarters of coverage under United States laws, but does not have sufficient periods of coverage to satisfy the requirements for entitlement to benefits under United States laws, the Agency of the United States shall take into account periods of coverage which are creditable under the laws of the United Kingdom and which do not coincide with periods of coverage already credited under United States laws for the purpose of establishing entitlement to benefits under this Article.

2. In determining eligibility for benefits under paragraph 1, the Agency of the United States shall credit:

(*a*) one quarter of coverage for every thirteen contributions or fraction thereof paid or credited in any contribution year before 6 April 1975 under the laws specified in Article 2.1(*b*)(i) and (ii); and

(*b*) one quarter of coverage for every thirteen contributions calculated in accordance with Article 9.5, or fraction thereof, paid or credited in any United Kingdom tax year beginning after 5 April 1975 under the laws specified in Article 2.1(*b*)(i) and (ii); and

(*c*) one quarter of coverage for each annual contribution factor of 0·25 or any part thereof which has been derived under the laws specified in Article 2.1(*b*)(iii); and

(*d*) one quarter of coverage for every thirteen contributions or fraction thereof paid or credited in any contribution year under the laws specified in Article 2.1(*b*)(iv);

provided, however, that periods of coverage credited under United States laws shall not exceed four quarters of coverage in any calendar year.

3. Where entitlement to a benefit under United States laws is established according to the provisions of paragraph 1, the Agency of the United States shall compute a pro rata Primary Insurance Amount in accordance with United States laws based on the duration of a worker's periods of coverage completed under United States laws. Benefits payable under United States laws shall be based on the pro rata Primary Insurance Amount.

4. Entitlement to a benefit from the United States which results from paragraph 1 shall terminate with the acquisition of sufficient periods of coverage under United States laws to establish entitlement to an equal or higher benefit without the need to invoke the provisions of paragraph 1.

CHAPTER B

Provisions Applicable to the United Kingdom

ARTICLE 9

1. For the purpose of calculating entitlement to a retirement pension or a survivor's benefit under the laws specified in Article 2.1(*b*)(i) and (ii) of this Agreement, for each quarter of coverage credited to a person under the laws of the United States before 6 April 1975 the person shall be treated as having paid thirteen contributions under the laws specified in Article 2.1(*b*)(i) and (ii).

2. For the purpose of calculating entitlement to a basic retirement pension or a basic survivor's benefit provided under the laws specified in Article 2.1(*b*)(i) and (ii) of this Agreement, for each quarter of coverage credited under the laws of the United States after 5 April 1975 a person shall be treated as having paid thirteen contributions on earnings equivalent to the lower earnings level under the laws specified in Article 2.1(*b*)(i) and (ii).

3. For the purpose of calculating the appropriate contribution factor to establish entitlement to old age pension or survivor's benefit under the laws specified in Article 2.1(*b*)(iii) of this