1981 No. 363

SOCIAL SECURITY

The Social Security (Mauritius) Order (Northern Ireland) 1981

Made . . . . . *28th October 1981*

Coming into operation . . . *1st November 1981*

In exercise of the powers conferred on me by section 134(1) of the Social Security (Northern Ireland) Act 1975(**a**), Article 17(1) of the Child Benefit (Northern Ireland) Order 1975(**b**) 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 (Mauritius) Order (Northern Ireland) 1981 and shall come into operation on 1st November 1981.

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 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 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 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 Northern Ireland.

Dated this 28th day of October 1981.

James Prior
One of Her Majesty's Principal Secretaries of State

(**a**) 1975 c. 15; section 134(1) 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 further amended by Article 7(1) of the Social Security (Northern Ireland) Order 1981 (S.I. 1981/1118 (N.I. 25))

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

SCHEDULE 1

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 Legilsation (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.