1981 No. 144

SOCIAL SECURITY

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

Made	*25th April 1981*
Coming into operation . . .	*1st May 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 (Austria) Order (Northern Ireland) 1981 and shall come into operation on 1st May 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 the Schedule 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 the Schedule to this order, so far as the same relate to Northern Ireland.

Revocation and Variation of Orders

4.—(1) The Family Allowances, National Insurance and Industrial Injuries (Austria) Order (Northern Ireland) 1972(**c**) and the Social Security (Austria) (Northern Ireland) Order 1977(**d**) are hereby revoked.

(2) In Part II of Schedule 1 to the Social Security (Reciprocal Agreements) (Northern Ireland) Order 1976(**e**) the reference to the said order of 1972 shall be omitted.

(3) In the Schedule to the Social Security (Reciprocal Agreements) Order (Northern Ireland) 1979(**f**) the reference to the said order of 1972 shall be omitted.

Dated this 25th day of April 1981.

Humphrey Atkins
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)
(**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))
(**c**) S.R. & O. (N.I.) 1972 No. 321
(**d**) S.I. 1977/54
(**e**) S.I. 1976/1044
(**f**) S.R. 1979 No. 92

SCHEDULE

CONVENTION ON SOCIAL SECURITY BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE REPUBLIC OF AUSTRIA

Her Majesty The Queen of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories, Head of the Commonwealth (hereinafter referred to as "Her Britannic Majesty") and the Federal President of the Republic of Austria;

Having established reciprocal arrangements in the field of social security by means of the Convention which was signed on their behalf at Vienna on 18th June 1971 and by means of the Supplementary Convention which was signed on their behalf at Vienna on 16th September 1975;

Desiring to amend and consolidate those arrangements;

Have resolved to conclude a Convention and for that purpose have appointed as their Plenipotentiaries:

Her Britannic Majesty:

For the United Kingdom of Great Britain and Northern Ireland:

His Excellency Mr. Donald McDonald Gordon, C.M.G.,
Her Britannic Majesty's Ambassador Extraordinary
and Plenipotentiary at Vienna.

The Federal President of the Republic of Austria:

For the Republic of Austria:

Dr. Willibald Pahr, Federal Minister for Foreign Affairs.

Who, having communicated to each other their full powers, found in good and due form, have agreed as follows:

PART I

General Provisions

ARTICLE 1

(1) For the purpose of this Convention:

1. "the United Kingdom" means the United Kingdom of Great Britain and Northern Ireland and "Austria" means the Republic of Austria;
2. "territory" means, in relation to the United Kingdom, England, Scotland, Wales, Northern Ireland, and also the Isle of Man, the Island of Jersey and the Islands of Guernsey, Alderney, Herm and Jethou, and, in relation to Austria, the territory of Austria;
3. "legislation" means, in relation to the territory of the United Kingdom, the legislation specified in paragraph (1)(*b*) of Article 2 of this Convention which is in force in the territory of that High Contracting Party or any part of that territory, and, in relation to Austria, any laws, regulations and other statutory instruments which relate to the social security branches and schemes specified in paragraph (1)(*a*) of Article 2 of this Convention;
4. "national" means, in relation to the United Kingdom, any British subject or British protected person who is recognised by the Government in the United Kingdom as its national, and in relation to Austria, an Austrian citizen;

5. "competent authority" means, in relation to the territory of the United Kingdom, the Secretary of State for Social Services, the Department of Health and Social Services for 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, and, in relation to Austria, the Federal Minister for Social Administration and, in respect of family allowances, the Federal Minister for Finance;

6. "insurance authority" means, in relation to the territory of the United Kingdom, the competent authority, and, in relation to Austria, the institution or authority competent for the application of the relevant legislation of Austria;

7. "competent insurance authority" means the insurance authority responsible under the applicable legislation for dealing with the matter in question;

8. a "pension", "allowance" or "benefit" shall be taken to include any increase in its rate and any additional allowance payable with it, other than the equalisation supplement payable under the legislation of Austria;

9. "insurance" means, in relation to the legislation specified in paragraph (1)(*b*)1 of Article 2 of this Convention, that the person concerned has paid a contribution or has had a contribution credited to him, and the word "insured" shall be construed accordingly;

10. "insurance period" means a contribution period or an equivalent period;

11. "contribution period" means a period in respect of which contributions appropriate to the benefit in question have been paid or are payable or treated as paid under the legislation of one (or the other) Party;

12. "equivalent period" means, in relation to the territory of the United Kingdom, a period for which contributions appropriate to the benefit in question have been credited under the legislation of that Party, and, in relation to Austria, a period which is treated as equivalent to the contribution period;

13. "maternity benefit" means, in relation to the territory of the United Kingdom, maternity grant and maternity allowance payable under the legislation of that Party, and, in relation to Austria, benefit payable under the sickness insurance legislation of Austria in the case of maternity;

14. "unemployment benefit" means unemployment benefit as defined in the legislation concerned other than unpaid leave benefit (Karenzurlaubsgeld) under the legislation of Austria;

15. "old age pension" means, in relation to the territory of the United Kingdom, retirement pension or old age pension payable under the legislation of that Party, and, in relation to Austria, benefit payable under the pensions insurance legislation of Austria in the case of old age;

16. "survivor's pension" means, in relation to the territory of the United Kingdom, widow's benefit, and, in relation to Austria, benefit payable under the pensions insurance legislation of Austria in the case of death;

17. "invalidity pension" means, in relation to the territory of the United Kingdom, invalidity benefit payable under the legislation of that Party, and any sickness benefit as defined in the legislation of any part of the territory of the United Kingdom which becomes payable for a period of interruption of employment as defined in that legislation to a person who has received such benefit for 312 days of that period while he was in the territory of either Party and is, in the opinion of the insurance authority of any party of the territory of the United Kingdom, likely to remain permanently incapable of work; and in relation to Austria, benefit payable under the pension legislation of Austria in the case of reduced working capacity or loss of earning capacity;

18. "family allowance" means, in relation to the territory of the United Kingdom, child benefit or family allowances as defined in the legislation specified in Article 2(1) (*b*) 4 of this Convention, and, in relation to Austria, family allowance as defined in the legislation of Austria;

19. "gainfully occupied" means that the person concerned is an employed or self-employed person or earner as defined under the legislation of any part of the territory of the United Kingdom, or an employed or self-employed person as defined under the legislation of Austria;

20. "employed person" means an employed person or an employed earner or a person who is treated as such under the legislation applicable;

21. "employment" means, in relation to the territory of the United Kingdom, employment as an employed person or an employed earner as defined under the legislation of that Party.

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

ARTICLE 2

(1) The provisions of this Convention shall apply:

(*a*) in relation to Austria, to the legislation concerning:

1. sickness insurance;
2. accident insurance;
3. pension insurance with the exception of the special insurance for notaries;
4. unemployment insurance;
5. family allowance;

(*b*) in relation to the territory of the United Kingdom to:

1. the Social Security Acts 1975 to 1979, the Social Security (Northern Ireland) Acts 1975 to 1979; the Social Security Act 1975 as applied to the Isle of Man by order made under the provisions of the Social Security Legislation (Application) Act 1974 (an Act of Tynwald);
2. the Social Security (Jersey) Law 1974;
3. the Social Insurance (Guernsey) Law 1978;
4. the Child Benefit Act 1975, the Child Benefit (Northern Ireland) Order 1975, the Child Benefit Act 1975 (an Act of Parliament) as applied to the Isle of Man by the Social Security Legislation (Application) (Child Benefit) Order 1976, an order made by virtue of Section 1 of the Social Security Legislation (Application) Act 1974 (an Act of Tynwald), the Family Allowances (Jersey) Law 1972 and the Family Allowances (Guernsey) Law 1950.

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

(3) The provisions of 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 High Contracting Parties make an agreement to that effect.

(4) This Convention shall not affect any agreement on social security which either Party has concluded with a third party or any laws or regulations which amend the legislation specified in paragraph (1) of this Article for the purpose of giving effect to such an agreement so far as it does not contain in relation to Austria regulations concerning insurance charges (Versicherungslastregelungen).

ARTICLE 3

(1) Subject to the provisions of paragraph (2) of this Article, nationals of one High Contracting Party shall be treated in the same way as nationals of the other Party so far as concerns their rights and obligations under the legislation of the latter Party.

(2) Paragraph (1) of this Article shall not apply to:

(*a*) regulations concerning insurance charges (Versicherungslastregelungen) in any agreement on social security which Austria has concluded with a third party;

(*b*) the provisions of the Austrian Federal Act of 22nd November 1961 concerning entitlement to benefits and rights in course of acquisition in the field of pensions insurance and industrial injuries insurance for gainful occupation outside Austria nor to the provisions concerning the recognition of periods of self-employment completed outside the territory of Austria, but within the territory of the former Austro-Hungarian Monarchy;

(*c*) the legislation of Austria concerning the recognition of periods of war service and periods equivalent to such periods;

(*d*) the legislation of Austria concerning the participation of insured persons and employers in the administration of insurance authorities and associations as well as adjudication in the field of social security;

(*e*) the legislation of Austria concerning the insurance of persons employed by an Austrian government agency in a third state or by members of such an agency.

ARTICLE 4

(1) Where a person would be entitled to receive sickness benefit, maternity benefit, old age pension, invalidity pension, survivor's pension, death grant or any benefit payable in respect of an accident or an industrial injury or disease under the legislation of one High Contracting Party if he were in the territory of that Party, he shall be entitled to receive that benefit while he is in the territory of the other Party.

(2) Where under the legislation of one Party any benefit, other than family allowances, or any increase of benefit would be payable for a dependant if he were in the territory of that Party, it shall be paid while he is in the territory of the other Party.

PART II

Provisions which Determine the Legislation Applicable

ARTICLE 5

Subject to the provisions of Articles 6 to 9 of this Convention, if a person is gainfully occupied, he shall be subject to the legislation of the High Contracting Party in whose territory he is so occupied.

ARTICLE 6

(1) Where a person employed by an employer in the territory of one High Contracting Party and subject in respect of that employment to the legislation of that Party, is sent by that employer to work in the territory of the other Party, that legislation shall continue to apply to him, provided that the employment in the territory of the latter Party is not expected to last for more than 24 months.

(2) The following provisions shall apply to any person employed as a member of the travelling personnel of an undertaking engaged in the international transport of passengers or goods by railway, road, or air, whether for a third party 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, he shall be subject to the legislation of that 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, he shall be subject to the legislation of that Party;

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