1979 No. 303

SOCIAL SECURITY

The Social Security (Portugal) Order (Northern Ireland) 1979

Made . . . . . *29th August* 1979

Coming into operation . . . . *1st October* 1979

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 (Portugal) Order (Northern Ireland) 1979 and shall come into operation on 1st October 1979.

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.

Dated this 29th day of August 1979.

Humphrey Atkins
One of Her Majesty's Principal Secretaries of State

(a) 1975 c. 15 as 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)

SCHEDULE Article 2

Convention on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Portugal

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

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 the territories of their two countries;

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 who go from the territory of one Party to the territory of the other either to keep the rights which they have acquired under the legislation of the former Party or to enjoy corresponding rights under the legislation of the latter;

Have agreed as follows:

PART I

General Provisions

ARTICLE 1

(1) For the purpose of this Convention:

(i) "the United Kingdom" means the United Kingdom of Great Britain and Northern Ireland, and "Portugal" means the Portuguese Republic;

(ii) "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 Portugal, the territory of Portugal in the Continent and the Archipelagos of Azores and Madeira;

(iii) "legislation" means the legislation specified in Article 2 of this Convention which is in force in the territory of one or the other Contracting Party or in any part of that territory;

(iv) "competent authority" means the authority responsible for the social security schemes in all or part of the territory of each Contracting Party; 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 Portugal, the Minister responsible for the implementation of the Portuguese legislation;

(v) "insurance authority" means the authority competent to decide entitlement to the benefit in question;

(vi) "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;

(vii) "insured" means, in relation to the territory of the United Kingdom, that contributions have been paid or are payable by, or in respect of, or have been credited in respect of, the person concerned, and for the purposes of Section VI of Part III of this Convention, that the person is, or is treated as being, an employed person, and in relation to Portugal that contributions have been paid, or are payable by, or have been considered to have been paid in respect of, the person concerned;

(viii) "insurance period" means a contribution period or an equivalent period;

(ix) "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 of one or the other Party;

(x) "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 Portugal a period admitted as equivalent to a contribution under Portuguese legislation;

(xi) "dependant" means a person who would be treated as such for the purpose of any claim for benefit in respect of a dependant under the legislation of the territory of the United Kingdom or Portugal;

(xii) "pension", "allowance" or "benefit" includes any increase of, or any additional amount payable with a pension, allowance or benefit respectively;

(xiii) "sickness benefit" means, in relation to the territory of the United Kingdom, sickness benefit payable under the legislation of that Party and, in relation to Portugal, sickness benefit as defined in Portuguese legislation, including tuberculosis benefit;

(xiv) "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 Portugal, maternity allowance payable under Portuguese legislation;

(xv) "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 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 the territory of the United Kingdom, likely to remain permanently incapable of work; and in relation to Portugal an invalidity pension as defined in Portuguese legislation;

(xvi) "old age pension" includes in relation to the territory of the United Kingdom, a retirement pension payable under the legislation of that Party and, in relation to Portugal, means a retirement pension payable under Portuguese legislation;

(xvii) "survivor's benefit" means, in relation to the territory of 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 Portugal survivor's pension and death benefit payable under Portuguese legislation;

(xviii) "industrial injury benefit" includes in relation to the territory of the United Kingdom accident benefit payable under the legislation specified in Article 2(1)(*a*)(iii) of this Convention;

(xix) "death grant" includes in relation to the legislation of Portugal a funeral grant payable under that legislation;

(xx) "family allowance" includes, in relation to the territory of the United Kingdom, child benefit payable under the legislation of that Party;

(xxi) "ship or vessel" means, in relation to the territory of the United Kingdom, any ship or vessel, whose port of registry is a port in that territory, or, in the case of a hovercraft, which is registered in that territory, provided that the owner (or managing owner if there is more than one owner) has a place of business in that territory, and, in relation to Portugal any ship or boat registered in a port located in Portuguese territory or which may be owned by a company established in Portuguese territory and having its registered office and principal place of business in the same territory and flying the Portuguese flag;

(xxii) "gainfully occupied" means being an employed or self-employed person;

(xxiii) "employed person" means a person who comes within the definition of an employed person or 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;

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

(xxv) "self-employed person" means a person who comes within the definition of a self-employed person or 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;

(xxvi) "seasonal worker" means a person subject to the legislation of Portugal or Jersey who goes to the territory of Portugal or Jersey (not being the one in which he ordinarily resides) in order to carry out in that territory for an employer or undertaking with a place of business there employment of a seasonal character, the duration of which cannot in any case exceed eight months, and who remains in that territory for the duration of his employment; a reference to the territory or legislation of the Islands of Guernsey, Alderney, Herm or Jethou may be substituted in this definition for a reference to the territory or legislation of Jersey as the case may require; "employment of a seasonal character" means employment which depends on the cycle of the seasons and which recurs automatically each year.

(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 the territory of the United Kingdom, to:

(i) the Social Security Act 1975 and the Social Security (Northern Ireland) Act 1975; the Social Security Pensions Act 1975 and the Social Security Pensions (Northern Ireland) Order 1975;

(ii) the Social Security Act 1975 and the Social Security Pensions Act 1975 (Acts 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);

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

(iv) the Social Insurance (Guernsey) Law 1964;

(v) 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 the Social Security Legislation (Application) Act 1974 (an Act of Tynwald); the Family Allowances (Jersey) Law 1972 and the Family Allowances (Guernsey) Law 1950;

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

(*b*) in relation to the territory of Portugal, to:

(i) the Social Welfare and family allowance general scheme in reference to sickness, maternity (cash benefits), disablement, old age, survivors, family allowance and complementary benefits;

(ii) the Social Welfare or family allowance special schemes;

(iii) work injury and occupational diseases;

(iv) unemployment benefits.

(2) Subject to the provisions of paragraphs (4) and (5) 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) This Convention shall apply, unless both 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 any agreement 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 an agreement.

ARTICLE 3

A person subject to the legislation of one Contracting 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 14 to 22 of this Convention, a person who would be entitled to receive an old age pension, survivor's benefit, invalidity pension, or any pension, allowance or gratuity payable in respect of an industrial injury or industrial disease under the legislation of one Contracting 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.

(2) A person who is entitled to receive an old age pension or survivor's benefit under the legislation of the territory of the United Kingdom and who would be entitled to an increase in the rate of that pension or benefit if he were in that territory shall, if he is in the territory of Portugal, after the date of coming into force of this Convention, be entitled to receive any such increase prescribed after that date by that legislation; but nothing in this paragraph shall confer entitlement to receive any such increases prescribed before that date by that legislation.

(3) Subject to the provisions of later Articles of this Convention, where under the legislation of one Party, any benefit or any increase in 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.