1961. No. 224 [NC]

NATIONAL INSURANCE

Reciprocal Agreement with the Federal Republic of Germany

ORDER IN COUNCIL, DATED 27TH NOVEMBER, 1961, MADE UNDER SECTION SIXTY-ONE OF THE NATIONAL INSURANCE ACT (NORTHERN IRELAND), 1946.

BY THE GOVERNOR IN THE PRIVY COUNCIL OF NORTHERN IRELAND

WAKEHURST

Whereas at Bonn on the twentieth day of April, nineteen hundred and sixty, a Convention on unemployment insurance between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Federal Republic of Germany (which Convention is set out in the First Schedule and is hereinafter referred to as "the Convention") and a Protocol supplementing the Convention (which Protocol is set out in the Second Schedule and is hereinafter referred to as "the Protocol") were signed on behalf of those Governments:

And whereas by Article 24 of the Convention it was provided that the Convention should enter into force on the first day of the second month following the month in which the instruments of ratification had been exchanged:

And whereas by Article 7 of the Protocol it was provided that the Protocol should enter into force on the day when the Convention entered into force:

And whereas the Convention has been ratified by the Governments of the United Kingdom of Great Britain and Northern Ireland and of the Federal Republic of Germany and the instruments of ratification were exchanged on the thirty-first day of July, 1961, and accordingly the Convention and the Protocol entered into force on the first day of September, 1961:

And whereas by section sixty-one of the National Insurance Act (Northern Ireland), 1946(a), it is provided that the Governor of Northern Ireland may by Order in Council make provision for modifying or adapting that Act in its application to cases affected by agreements with other governments providing for reciprocity in the matters specified in that section:

Now, therefore, I, John de Vere, Baron Wakehurst, Knight Commander of the Most Distinguished Order of Saint Michael and Saint George, Governor of Northern Ireland, in pursuance of the said section sixty-one of the National Insurance Act (Northern Ireland), 1946, and of all other powers enabling me in that behalf, by and with the advice of the Privy Council of Northern Ireland, do hereby order as follows:

1. This Order may be cited as the National Insurance (Reciprocal Agreement with Germany) Order (Northern Ireland), 1961, and shall come into operation with effect from 1st September, 1961.

(a) 1946. c. 23.

2. The provisions contained in the Convention and in the Protocol shall have full force and effect, so far as the same relate to Northern Ireland and provide by way of agreement with the Government of the Federal Republic of Germany for reciprocity in any matters specified in sub-section (1) of section sixty-one of the National Insurance Act (Northern Ireland), 1946, and accordingly the National Insurance Acts (Northern Ireland), 1946 to 1960, shall have effect subject to such modifications as may be required therein for the purpose of giving effect to the said provisions.

Given at Government House, Hillsborough, this twenty-seventh day of November, one thousand nine hundred and sixty-one.

Terence O'Neill
Brian Faulkner
Ivan Neill
Brian Maginess

FIRST SCHEDULE

CONVENTION ON UNEMPLOYMENT INSURANCE BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE FEDERAL REPUBLIC OF GERMANY

The United Kingdom of Great Britain and Northern Ireland and the Federal Republic of Germany

Being resolved to cooperate in the social field,

Affirming the principle that the nationals of one Contracting Party should receive under the legislation of the other concerning unemployment insurance equal treatment with the nationals of the latter,

Desirous of giving effect to this principle and of making arrangements enabling persons who go from the territory of the one Party to the territory of the other to keep the rights which they have acquired under the legislation of the former Party or to acquire corresponding rights under the legislation of the latter,

Desirous further of making arrangements for insurance periods completed under the legislation of the two Parties to be added together for the purpose of determining the right to receive benefit,

Have agreed as follows:—

PART I

Definitions and Scope

ARTICLE 1

For the purpose of the present Convention—

(1) "the United Kingdom" means the United Kingdom of Great Britain and Northern Ireland, and "the Federal Republic" means the Federal Republic of Germany;

(2) "territory" means, in relation to the United Kingdom, England, Scotland, Wales, Northern Ireland and the Isle of Man, and, in relation to the Federal Republic, the area in which the Basic Law for the Federal Republic of Germany is in force;

(3) "national" means, in relation to the United Kingdom, a citizen of the United Kingdom and Colonies, and, in relation to the Federal Republic, a German within the meaning of the Basic Law for the Federal Republic;

(4) "legislation" means the legislation specified in Article 2 in force in any part of the territory of one (or the other) Contracting Party;

(5) "competent authority" means, in relation to the United Kingdom, the Minister of Pensions and National Insurance, the Ministry of Labour and National Insurance for Northern Ireland or the Isle of Man Board of Social Services, as the case may require, and, in relation to the Federal Republic, the Federal Minister of Labour and Social Affairs;

(6) "insurance authority" means, in relation to the United Kingdom, the Minister of Pensions and National Insurance, the Ministry of Labour and National Insurance for Northern Ireland, the Isle of Man Board of Social Services or the statutory authorities appointed to determine questions under the legislation of the United Kingdom, as the case may require, and, in relation to the Federal Republic, the Federal Institute for Labour Placing and Unemployment Insurance;

(7) "employed person" means a person who comes within the definition of an employed person or a person who is treated as such in the legislation of one (or the other) Contracting Party; "employment" means employment as an employed person, and the words "employ" and "employer" refer to such employment;

(8) "dependant" means, in relation to the United Kingdom, a person who would be treated as such for the purpose of any claim to receive benefit for a dependant under the legislation of the United Kingdom, and, in relation to the Federal Republic, a person who, for the purpose of the benefit in question, comes within the definition of a dependant in German legislation;

(9) "vessel or aircraft" means, in relation to the United Kingdom, a sea-going ship or vessel, registered in the territory of the United Kingdom, or any other British sea-going ship or vessel of which the owner (or managing owner; if there is more than one owner) or manager resides or has his principal place of business in the territory of the United Kingdom, or an aircraft, registered in that territory, of which the owner (or managing owner, if there is more than one owner) resides or has his principal place of business in that territory; and, in relation to the Federal Republic, a sea-going ship which flies the Federal flag in accordance with German legislation or an aircraft which is included in the register of German aircraft.

ARTICLE 2

(1) The provisions of the present Convention shall apply—

in relation to the United Kingdom, to the National Insurance Act, 1946, the National Insurance Act (Northern Ireland), 1946, and the National Insurance (Isle of Man) Act, 1948;
in relation to the Federal Republic, to the legislation concerning unemployment insurance.

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

(3) The Convention shall apply to any legislation which extends the existing legislation to new classes of persons, unless, within three months of the date when information concerning the said legislation is given in accordance with the provisions of paragraph (*b*) of Article 13 of the Convention, the competent authority of one Contracting Party gives notice to the competent authority of the other Party that it shall not so apply.

(4) The Convention shall apply to legislation which amends or supplements the legislation specified in paragraph (1) of this Article for the purpose of giving effect to a reciprocal agreement concluded with one or more other countries, or a Regulation, promulgated by the European Economic Community, which is binding on one of the Parties, only if the two Parties make an agreement to that effect.

(5) Subject to the provisions of Article 5 of the Convention, the Convention shall apply to those members of the forces, members of the civilian component and their dependants, who are mentioned in the first sentence of paragraph (1) of Article 13 of the Agreement to Supplement the Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces with respect to Foreign Forces stationed in the Federal Republic of Germany, signed at Bonn on the 3rd August, 1959,[1] in so far as that Agreement relates to the Forces of the United Kingdom and their civilian component, in the same way as the Convention applies to other persons.

PART II

Legislation to be Applied

ARTICLE 3

Subject to the provisions of Article 22 of the present Convention, a national of one Contracting Party shall be entitled to receive the benefits, and shall be subject to the obligations, of the legislation of the other Party under the same conditions as a national of the latter Party.

ARTICLE 4

(1) Subject to the provisions of paragraphs (2) and (3) of this Article and of Articles 5, 6 and 7 of the present Convention, where a national of either Contracting Party is employed in the territory of one Party, the legislation of that Party shall apply to his employment, even if his employer is ordinarily resident in the territory of the other Party or has his principal place of business in the territory.

(2) Where a person who is ordinarily resident in the territory of one Party and in the service of an employer who has a place of business or is ordinarily resident in that territory, is employed by that employer in the territory of the other Party, the legislation of the former Party shall apply to that person for a period of twelve months as if he were employed in the territory of the former Party. If his employment in the territory of the latter Party should continue after the first twelve months, the legislation of the former Party shall continue to apply to him for any period that may be specified, provided that the competent authority of the latter Party or any agency which it may nominate has agreed thereto before the end of the first twelve months.

(3) The following provisions shall apply to any person employed as a member of the travelling personnel of an undertaking engaged in the transport of passengers or goods by railway or road, whether for a third party or on its own account:

(*a*) subject to the provisions of sub-paragraphs (*b*) and (*c*) of this paragraph, if the person is employed by an undertaking which has its principal place of business in the territory of one Party, the legislation of that Party shall apply to him, even if he is employed in the territory of the other Party;

(*b*) subject to the provisions of sub-paragraph (*c*) of this paragraph, if the undertaking has a branch or permanent representative in the territory of one Party and the person is employed by that branch or permanent representative, the legislation of that Party shall apply to him;

(*c*) if the person is ordinarily resident in the territory of one Party and is employed wholly or mainly in that territory, the legislation of that Party

(1) "Miscellaneous No. 12 (1959)", Cmnd. 852.

shall apply to him, even if the undertaking which employs him has no principal place of business or branch or permanent representative in that territory.

ARTICLE 5

(1) Article 4 of the present Convention and paragraphs (2) and (3) of this Article shall not apply to—

(*a*) members of the forces of either Contracting Party;

(*b*) established members of the Foreign Service of the United Kingdom and career diplomats and career consular officers of the Federal Republic.

(2) Subject to the provisions of paragraphs (3) and (5) of this Article—

(*a*) where a German national is employed in the territory of the United Kingdom in the service of the Federal Republic or of another public authority in the Federal Republic, German legislation shall apply to him as if he were employed in the territory of the Federal Republic in the place where the Government of the Federal Republic or the other public authority has its principal place of business;

(*b*) where a person is employed in the territory of the Federal Republic in the Government service of the United Kingdom or of Northern Ireland or in the service of a public corporation of the United Kingdom, the legislation of the United Kingdom shall apply to him as if he were employed in its territory.

(3) Where a German national is employed in the circumstances described in sub-paragraph (*a*) of paragraph (2) of this Article in the territory of the United Kingdom, and, in accordance with his contract of service, is employed for service with a specified office in the territory of the United Kingdom, or a person is employed in the circumstances described in sub-paragraph (*b*) of paragraph (2) of this Article in the territory of the Federal Republic and his contract of service has been concluded by a person employed in the territory of the Federal Republic in the Government service of the United Kingdom or in the service of a public corporation of the United Kingdom—

(*a*) the legislation of the Party in whose territory he is employed shall apply to him, unless and until he gives notice in accordance with the provisions of sub-paragraph (*b*) of this paragraph;

(*b*) he shall be entitled to choose within three months of the beginning of such employment or of the entry into force of the Convention, whichever is the later, that the legislation of the other Party shall apply to him; if he so chooses—

(i) his choice shall take effect from the day on which he gives notice to his employer and the competent social security authority of the former Party;

(ii) from the day specified in paragraph (i) of this sub-paragraph, the legislation of the former Party shall cease to apply to him and the legislation of the latter Party shall apply to him as if he were employed in the territory of the latter Party;

(iii) if the latter Party is the Federal Republic, he shall be treated as if he were employed at the place where the Government of the Federal Republic or the other public authority has its principal place of business.

(4) If a person employed in any of the circumstances described in paragraphs (1), (2) and (3) of this Article employs in his personal service in the territory of one Party a national of the other Party, the provisions of paragraph (3) of this Article shall apply to that national.

(5) If a person is employed in the territory of one Party by the forces of the other Party in a civilian capacity or by an organisation serving those forces and is not ordinarily resident in that territory, then the legislation of the latter Party shall apply to him as if he were employed in its territory.