Reciprocal Agreement with Australia

ORDER IN COUNCIL, DATED 1ST JANUARY, 1954, MADE UNDER SECTION SIXTY-ONE OF THE NATIONAL INSURANCE ACT (NORTHERN IRELAND), 1946.

1954. No. 8

BY THE DEPUTIES APPOINTED TO ADMINISTER THE GOVERNMENT OF NORTHERN IRELAND

IN THE PRIVY COUNCIL OF NORTHERN IRELAND

MACDERMOTT

A. B. BABINGTON

WE, THE DEPUTIES appointed to administer for the time being the government of Northern Ireland, do hereby, in pursuance of section sixty-one of the National Insurance Act (Northern Ireland), 1946(a), and of all other powers enabling us in that behalf, by and with the advice of the Privy Council of Northern Ireland, order as follows:—

1. This Order may be cited as the National Insurance (Reciprocal Agreement with Australia) Order (Northern Ireland), 1954.

2. The Interpretation Act, 1889(b), applies for the purpose of the interpretation of this Order in like manner as it applies for the purpose of the interpretation of an Act of the Parliament of Northern Ireland.

3. Those provisions of the Agreement on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Commonwealth of Australia which are set out in the schedule hereto shall, as from the 7th January, 1954, have full force and effect so far as the same relate to Northern Ireland, and the National Insurance Acts (Northern Ireland), 1946 to 1953(c), shall have effect subject to such modifications as may be required therein for the purpose of giving effect to the said provisions.

Given at the Royal Courts of Justice (Ulster), Belfast, this first day of January, 1954.

Brian Maginess

Ivan Neill

S. H. Hall-Thompson

(a) 1946. c. 23.

(b) 52 & 53 Vict. c. 63.

(c) 1946. c. 23; 1949. c. 20; 1951. c. 18; 1952. c. 14; 1953. c. 27.

SCHEDULE

AGREEMENT ON SOCIAL SECURITY BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE COMMONWEALTH OF AUSTRALIA

London, 8th June, 1953

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Commonwealth of Australia,

Being resolved to co-operate in the social field,

Desiring to make arrangements enabling persons who go from one country to the other to receive social security benefits in respect of old age, widowhood, invalidity, sickness, unemployment and children, as far as possible at the same rates and under the same conditions as persons who have been resident in the latter country,

Have agreed as follows:

PART I.—DEFINITIONS AND GENERAL PROVISIONS

Article 1

For the purposes of the present Agreement—

(*a*) "benefit", "pension" and "allowance" include any increase payable in respect of a dependant and any additional allowance payable with a benefit, pension or allowance;

(*b*) "child" means, in relation to any person, a child, as defined in the legislation which is being applied, who would be treated under that legislation as being a child of that person or included in his family;

(*c*) "competent authority" means, in relation to the United Kingdom, the Minister of 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 Australia, the Director-General of Social Services;

(*d*) "country" means, according to the context, the United Kingdom or Australia;

(*e*) "earnings rule" means any provision of the legislation of the United Kingdom under which the weekly rate of benefit or pension is reduced on account of earnings;

(*f*) "full standard rate" in relation to any benefit or pension payable under the legislation of the United Kingdom, means, subject to the provisions of paragraph (6) of Article 3, the rate at which the benefit or pension would be paid to the person concerned, subject to any earnings rule which may be appropriate, if the relevant contribution conditions were fully satisfied in his case;

(*g*) "legislation" means, according to the context, the laws, orders and regulations specified in Article 2 which are or have been or may hereafter be in force in any part of one (or the other) country;

(*h*) "means test" means any provision of the legislation of Australia which affects the payment or rate of the benefit, pension or allowance in question on account of income or property;

(*i*) "qualified to receive" means, in relation to the United Kingdom, entitled to receive subject to any earnings rule which may be appropriate and, in relation to Australia, qualified to receive after taking into account any means test which may be appropriate;

(*j*) "retirement pension" means a retirement pension as defined in the legislation of the United Kingdom and includes a contributory old age pension payable under that legislation;

(*k*) "United Kingdom" means England, Scotland, Wales, Northern Ireland and the Isle of Man;

(*l*) "widow's benefit" means a widow's allowance, a widowed mother's allowance or a widow's pension as defined in the legislation of the United Kingdom.

Article 2

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

(*a*) in relation to the United Kingdom, to the National Insurance Act, 1946, the National Insurance Act (Northern Ireland), 1946, the National Insurance (Isle of Man) Act, 1948, and the legislation in force before the 5th July, 1948, which was replaced by those Acts; and

(*b*) in relation to Australia, to the Social Services Consolidation Act, 1947-1952.

(2) Subject to the provisions of paragraph (3) of this Article, the Agreement shall also apply to any law, order or regulation which carries into effect, amends, supplements or consolidates the legislation specified in paragraph (1) of this Article.

(3) The Agreement shall apply, only if the Contracting Parties so agree, to laws, orders or regulations which amend or supplement the legislation specified in paragraph (1) of this Article for the purpose of giving effect to any reciprocal agreement on social security which one (or the other) Party has made with the government of a third country.

PART II.—RETIREMENT PENSIONS AND AGE PENSIONS

Article 3

(1) Where, under the legislation of the United Kingdom, a person would be qualified to receive a retirement pension if he were in that country, he shall be qualified, while he is in Australia, to receive that pension at a rate which shall be determined in accordance with the provisions of the legislation of the

United Kingdom which was in force at the time when he was last resident in that country or at the time when, in accordance with the provisions of this paragraph or otherwise, he was first qualified to receive such a pension, whichever is the later; provided that no increase of pension shall be paid for any child in respect of whom an allowance is payable under the legislation of Australia.

(2) Where a person, after having received a retirement pension under the legislation of the United Kingdom, is proceeding from one country to the other, the provisions of paragraph (1) of this Article shall apply to him as if he were in Australia provided that he arrives in the latter country within three months after his departure from the former country.

(3) Where a person who is permanently resident in Australia is qualified to receive a retirement pension under the legislation of the United Kingdom in accordance with the provisions of paragraph (1) of this Article, or would be so qualified if contributions were credited to him under that legislation at the rate of fifty contributions for each year during which he was resident in Australia, and the conditions concerning residence in Australia which are specified in the legislation of Australia in relation to age pensions are not satisfied in his case, he shall be treated, for the purposes of any claim to receive an age pension under that legislation, as if those conditions were satisfied in his case; and the amount of any age pension which he is qualified to receive under that legislation shall be calculated in accordance with the provisions of paragraph (4) or (5) of this Article, whichever is appropriate.

(4) Where a person is qualified to receive a retirement pension at the full standard rate under the legislation of the United Kingdom, or would be so qualified if contributions were credited to him under that legislation at the rate of fifty contributions for each year during which he was resident in Australia, the amount of any age pension which he is qualified to receive under the legislation of Australia by virtue of paragraph (3) of this Article shall be the amount of any age pension which he would have been qualified to receive under that legislation if the conditions concerning residence in Australia had been satisfied in his case, less the amount of any retirement pension which he is entitled to receive under the legislation of the United Kingdom.

(5) Where a person, other than a person to whom the provisions of paragraph (4) of this Article apply, is qualified to receive a retirement pension at less than the full standard rate under the legislation of the United Kingdom, or would be so qualified if contributions were credited to him under that legislation at the rate of fifty contributions for each year during which he was resident in Australia, the amount of any age pension which he is qualified to receive under the legislation of Australia by virtue of paragraph (3) of this Article shall be a part of the amount of any age pension which he would have been qualified to receive under that legislation if the conditions concerning residence in Australia had been satisfied in his case, namely, that part which bears the same relation to the whole

as the rate of the retirement pension which he would be qualified to receive under the legislation of the United Kingdom, if contributions were so credited to him, bears to the full standard rate of such pension, less the amount of any retirement pension which he is entitled to receive under the legislation of the United Kingdom.

(6) For the purposes of applying the provisions of paragraphs (3), (4) and (5) of this Article—

(*a*) a contribution credited to a person shall be deemed to mean a contribution credited to the husband of a person in those cases where the person concerned is a woman claiming an age pension under the legislation of Australia by reason of the fact that she is qualified to receive a retirement pension under the legislation of the United Kingdom by virtue of her husband's insurance or would be so qualified if contributions were credited to her husband at the rate of fifty contributions for each year during which he was resident in Australia; and

(*b*) in cases where a woman claims an age pension under the legislation of Australia by reason of the fact that she is qualified to receive a retirement pension under the legislation of the United Kingdom by virtue of her husband's insurance or would be so qualified if contributions were credited to her husband at the rate of fifty contributions for each year during which he was resident in Australia, the full standard rate of retirement pension payable under that legislation shall be deemed to mean the rate at which she would have been qualified to receive such a pension if she had fully satisfied the contribution conditions by virtue of her own insurance and had retired from regular employment on reaching the age of sixty years.

(7) Where a person is qualified to receive a retirement pension or a widow's benefit under the legislation of the United Kingdom and the conditions concerning residence in Australia which are specified in the legislation of Australia in relation to age pensions are satisfied in the case of that person, the amount of any age pension which the person is qualified to receive under the legislation of Australia shall be reduced by the amount of the retirement pension or widow's benefit which the person is entitled to receive under the legislation of the United Kingdom.

Article 4

(1) Subject to the provisions of paragraph (2) of this Article, a person who is permanently resident in the United Kingdom shall, for the purposes of any claim to receive a retirement pension under the legislation of that country, be treated, while he is there, as if he, or, in the case of a married woman, her husband, had paid contributions under that legislation at the rate of fifty contributions for each year during which he was resident in Australia after he had reached the age of sixteen years and before he had reached pensionable age; and, if the said person has drawn an age pension in Australia, he shall be deemed to have retired from regular employment.