

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.

ARTICLE 7

Where a person is gainfully occupied on board any ship or vessel flying the flag of one (or the other) High Contracting Party, he shall be subject to the legislation of that Party as if any conditions relating to residence were satisfied in his case.

ARTICLE 8

(1) Where any person in the Government Service of one High Contracting Party or in the service of any public corporation of that Party is employed in the territory of the other Party, he shall be subject to the legislation of the former Party.

(2) Subject to the provisions of paragraph (1) of this Article, where a person, other than a diplomatic agent of Austria or a member of a consular post of Austria or an established member of the diplomatic service of the United Kingdom, is employed in a diplomatic mission or consular post of one Party in the territory of the other Party or in the private service of an official of such a mission or post, he shall be subject to the legislation of the latter Party, but within three months of the beginning of the employment he may choose to be subject to the legislation of the former Party.

(3) For the purpose of this Article, "Government Service" includes, in relation to the United Kingdom, the Government Service of any part of the territory of the United Kingdom.

ARTICLE 9

(1) The competent authorities of the two High Contracting Parties may provide, by agreement with one another, exceptions to the provisions of Articles 5 to 8 of this Convention where this is in the interest of persons affected thereby.

(2) The application of the provisions of paragraph (1) of this Article shall be subject to a request by the employed person concerned and by his employer.

(3) Where in accordance with the provisions of paragraph (1) of this Article and of Articles 5 to 8 of this Convention, a person is subject to the legislation of one Party while he is gainfully occupied in the territory of the other Party, that legislation shall apply as if he were gainfully occupied in the territory of the former Party.

PART III

Special Provisions

SECTION 1

**Special Provisions relating to the Application
of the Legislation of the United Kingdom**

ARTICLE 10

(1) For the purpose of calculating an earnings factor for entitlement to any benefit provided under the legislation specified in Article 2(1)(b)1 of this Convention a person shall be treated:

- (a) for each week beginning in a relevant tax year under the legislation of the United Kingdom, the whole of which week is a contribution period completed as an employed person under the legislation of Austria, as having paid contributions as an employed earner on earnings equivalent to two thirds of that year's upper earnings limit;
- (b) for each week beginning in a relevant tax year under the legislation of the United Kingdom, the whole of which week is an equivalent period completed as an employed person under the legislation of Austria, as having a contribution credited to him as an employed earner, provided that the total earnings factor for that year shall, by virtue of such contributions, not exceed that year's lower earnings limit multiplied by 50.

(2) For the purpose of calculating the appropriate contribution factor to establish entitlement to benefit under the legislation specified in Article 2(1)(b)2 of this Convention a person shall be treated:

- (a) for each week in a contribution period completed under the legislation of Austria, being a week beginning in the relevant quarter, as having paid contributions which derive a quarterly contribution factor of 0·077 for that quarter;
- (b) for each week in a contribution period completed under the legislation of Austria, being a week beginning in the relevant year, as having paid contributions which derive an annual contribution factor of 0·0192 for that year;
- (c) for each week, the whole of which is an equivalent period under the legislation of Austria, as if a contribution had been credited to him under the legislation of Jersey in the same manner as a contribution period is treated under the provisions of sub-paragraphs (a) and (b) of this paragraph.

(3) For the purpose of converting to an insurance period any earnings factor achieved in any tax year under the legislation specified in Article 2(1)(b)1 of this Convention, the earnings factor achieved by a person in that year shall be divided by that year's lower earnings limit. The result shall be expressed as a whole number, any remaining fraction being ignored. The figure so calculated, subject to a maximum of the number of weeks during which the person was subject to that legislation in that year, shall be treated as representing the number of weeks in the insurance period completed under that legislation.

(4) For the purpose of converting into an insurance period a contribution factor completed under the legislation specified in Article 2(1)(b)2 of the Convention:

- (a) in the case of a quarterly contribution factor, the factor achieved by a person in a quarter shall be multiplied by thirteen; and
- (b) in the case of an annual contribution factor, the factor achieved by a person in a year shall be multiplied by fifty-two.

The result shall be expressed as a whole number, any remaining fraction being ignored. The figure so calculated, subject to a maximum of the number of weeks during which the person was subject to that legislation in a year, shall be treated as representing the number of weeks in the insurance period completed under that legislation.

(5) Where it is not possible to determine accurately the periods of time in which certain periods of insurance were completed under the legislation of one Party, such periods shall be presumed not to overlap with periods of insurance completed under the legislation of the other Party.

SECTION 2

Sickness Benefit and Maternity Benefit

ARTICLE 11

(1) Where a person has, since his last arrival in the territory of one High Contracting Party, completed a contribution period under the legislation of that Party, then for the purpose of any claim to sickness benefit or maternity allowance made under the legislation of that Party any contribution period, or any equivalent period completed under the legislation of the other Party, shall be treated as if it was respectively a contribution period or an equivalent period completed under the legislation of the former Party.

(2) Where a person would be entitled to receive sickness benefit under the legislation of both Parties for the same incapacity by virtue of the provisions of this Convention, he shall be entitled to receive sickness benefit only under the legislation of the Party in whose territory the incapacity began.

(3) Where a woman would be entitled to receive maternity allowance under the legislation of both Parties for the same confinement by virtue of the provisions of this Convention, she shall be entitled to receive the allowance only under the legislation of the Party in whose territory the confinement took place.

ARTICLE 12

(1) Where a woman who is insured under the legislation of one High Contracting Party, or who is the wife of a person so insured, is confined in the territory of the other Party, she shall, for the purpose of any right to receive a maternity grant under the legislation of the former Party, be treated as if she had been confined in the territory of the former Party.

(2) Where a woman would be entitled to receive a maternity grant under the legislation of both Parties for the same confinement by virtue of the provisions of this Convention she shall be entitled to receive the grant only under the legislation of the Party in whose territory the confinement took place.

SECTION 3

Unemployment Benefit

ARTICLE 13

(1) If a person has been employed since his last arrival in the territory of Austria in employment which is subject to unemployment insurance, then, for the purpose of any claim to unemployment benefit under the legislation of Austria, any contribution period completed under the legislation of any part of the territory of the United Kingdom except Jersey shall be treated as if it were a contribution period completed under the legislation of Austria.

(2) The application of paragraph (1) of this Article shall be subject to the condition that the employed person, in the last 12 months before his claim to benefit, has been employed for an aggregate of at least four weeks in employment which is subject to unemployment insurance, but this restriction shall not apply if the employed person is not to blame for the termination of his employment.

ARTICLE 14

(1) If a person, since his last arrival in the territory of the United Kingdom, has completed a contribution period under the legislation of any part of the territory of the United Kingdom, except Jersey then, for the purpose of any claim to receive unemployment benefit under that legislation, any period of his employment which has been subject to unemployment insurance under the legislation of Austria shall be treated as if it were a period during which he had paid contributions as an employed person or employed earner under the legislation of any part of the territory of the United Kingdom except Jersey.

(2) Where a person claims unemployment benefit under the legislation of any part of the territory of the United Kingdom by virtue of the provisions of paragraph (1) of this Article, any period during which he received benefit under the legislation of Austria during the last 12 months before the day on which his claim is made shall be taken into account as if it were a period during which he had received such benefit under the legislation of any part of the territory of the United Kingdom.

ARTICLE 15

Where an employed person claims unemployment benefit under the legislation of Austria by virtue of the provisions of Article 13 of this Convention the rate of unemployment benefit shall depend on the earnings which he was entitled to receive during the last four weeks of his employment which was subject to unemployment insurance. Where there have not been four weeks of employment in Austria subject to unemployment insurance the customary local wage rate for a similar employment at his place of residence shall be used.

SECTION 4

Old Age Pensions

ARTICLE 16

(1) If a person has completed insurance periods under the legislation of both High Contracting Parties, then, for the purpose of determining whether he is entitled to an old age pension under the legislation of one Party, any contribution period or any equivalent period completed under the legislation of the other Party shall be treated in accordance with the provisions of Articles 17 and 18 of this Convention as if it were respectively a contribution period or an equivalent period completed under the legislation of the former Party.

(2) Where a person is entitled to an old age pension under the legislation of any one part of the territory of the United Kingdom without the application of the provisions of paragraph (1) of this Article, that pension shall be paid and the provisions of paragraph (1) of Article 17 of this Convention shall not be applied under that legislation.

(3) For the purposes of this Article and Articles 17 and 19 of this Convention additional component shall be treated as a separate benefit to which the provisions of those Articles do not apply. For the purposes of determining entitlement to additional component payable under the legislation of the United Kingdom, no account shall be taken of any contribution period completed under the legislation of Austria.

ARTICLE 17

(1) Where a person is entitled to receive an old age pension under the legislation of one High Contracting Party in accordance with the provisions of paragraph (1) of Article 16 of this Convention, the competent insurance authority of that Party shall calculate:

- (a) first the amount of the pension which would be payable under the legislation of that Party if all the insurance periods completed by him under the legislation of both Parties had been insurance periods completed by him under the legislation of the former Party; and then
- (b) the amount of that part of such pension which bears the same relation to the whole as the total of the insurance periods completed by him under the legislation of the former Party bears to the total of all the insurance periods which he has completed under the legislation of both Parties and are taken into account in the calculation of the pensions under subparagraph (a) of this paragraph.

(2) For the purposes of the calculation in paragraph (1) of this Article, where all the insurance periods completed by any person under the legislation of:

- (a) either the United Kingdom or the Isle of Man amount to less than one reckonable or, as the case may be, qualifying year, or relate only to periods before 6th April 1975 and in aggregate amount to less than 50 weeks;
- (b) Jersey, Guernsey or Austria in aggregate amount to less than 12 months in any one country;

those periods shall be treated as if they had been completed under the legislation of another part of the territory of that Party under which a pension is, or if such periods are taken into account would be, payable, or under the legislation of that part which would be most beneficial to that person or, where no pension is or would be payable under the legislation of any other part of that territory, under the legislation of the other Party.

ARTICLE 18

(1) Where a person satisfies the conditions for receiving an old age pension under the legislation of Austria without the application of the provisions of paragraph (1) of Article 16 of this Convention, but does not satisfy the conditions for receiving a pension under the legislation of any part of the territory of the United Kingdom, the pension payable to him under the legislation of Austria shall be determined under that legislation without regard to the provisions of Article 17 of this Convention.

(2) Where a person who has received an old age pension under the legislation of Austria in accordance with the provisions of paragraph (1) of this Article afterwards satisfies the conditions for receiving such a pension under the legislation of any part of the territory of the United Kingdom, the pension due to him under the legislation of Austria shall be determined afresh notwithstanding any provision of that legislation which precludes such a revised determination, and the new rate of pension shall have effect from the date on which a pension becomes payable under the legislation of any part of the territory of the United Kingdom.

ARTICLE 19

Where in accordance with the provisions of Articles 16 and 17 of this Convention a person is entitled to receive old age pensions under the legislation of both High Contracting Parties and the sum of those two pensions is less than the old age pension that would have been payable to him under the legislation of Austria if those provisions had not been applied in his case, the amount by which that sum is less than that old age pension shall be added by the competent insurance authority of Austria to the pension which that authority is liable to pay in accordance with the provisions of Article 17 of this Convention.

ARTICLE 20

The Austrian insurance authorities shall apply the provisions of paragraph (1) of Article 16 and of Article 17 of this Convention according to the following principles:

- (1) for the purpose of determining the insurance authority responsible for paying benefit only Austrian insurance periods shall be taken into account;
- (2) if the award of benefits under miners' pensions insurance depends on the completion of insurance periods in the mining industry, only insurance periods under the legislation of any part of the territory of the United Kingdom which are based on an occupation corresponding to one of the employments specified under the legislation of Austria shall be taken into account;
- (3) the provisions of paragraph (1) of Article 16 and of Article 17 of this Convention shall not apply to conditions of entitlement and to payment of miners' long service allowance provided under the miners' pension insurance scheme;
- (4) for the purpose of applying the provisions of paragraph (1) of Article 16 and of Article 17 of this Convention insurance periods of any part of the territory of the United Kingdom are to be taken into account without application of the legislation of Austria on reckonable insurance periods;
- (5) for the purpose of applying the provisions of sub-paragraph (a) of paragraph (1) of Article 17 of this Convention the following shall apply:
 - (a) the basis of the assessment shall be determined only on Austrian insurance periods;
 - (b) contributions for supplementary insurance, the miners' supplementary benefit, the helpless person's allowance, and the equalisation supplement shall be disregarded;
 - (c) overlapping insurance periods shall be taken into account in full measure;
- (6) for the purpose of applying the provisions of sub-paragraph (b) of paragraph (1) of Article 17 of this Convention the following shall apply. If the total duration of insurance periods to be taken into account under the legislation of both Parties exceeds the highest possible maximum number of insurance months taken into account for the purpose of calculation of the rate of increments under the legislation of Austria, the partial pension due shall be calculated according to the relationship between the duration of the insurance periods taken into account under the legislation of Austria and the aforementioned maximum number of insurance months;
- (7) the helpless person's allowance shall be calculated in accordance with the provisions of paragraph (1) of Article 17 of this Convention; Article 19 of this Convention shall apply *mutatis mutandis*;
- (8) the amount calculated in accordance with the provisions of sub-paragraph (b) of paragraph (1) of Article 17 of this Convention is increased where appropriate on account of the amounts of increments for contributions for supplementary insurance, the miners' supplementary benefit, the helpless person's allowance and the equalisation supplement;
- (9) the special payments are due in proportion to the Austrian partial pension; Article 19 of this Convention shall apply *mutatis mutandis*.

ARTICLE 21

For the purpose of applying the provisions of paragraph (1) of Article 16 and of Article 17 of this Convention to the legislation of any part of the territory of the United Kingdom:

- (1) where an insurance period completed under the legislation of Austria is treated as if it had been completed under the legislation of any part of the territory of the United Kingdom, it shall be treated as a contribution period if it was a contribution period or as an equivalent period if it was an equivalent period;
- (2) no account shall be taken of any graduated contributions paid under the legislation of the United Kingdom before 6th April 1975, but the amount of old age pension determined under the legislation of the United Kingdom in accordance with sub-paragraph (b) of paragraph (1) of Article 17 of this Convention shall be increased by the full amount of any graduated pension based on those contributions and payable under that legislation;

- (3) where a person has reached pensionable age as defined in the legislation of any part of the territory of the United Kingdom, no account shall be taken under that legislation of any subsequent insurance period which he completes under the legislation of Austria; and
- (4) in those cases under the legislation of any part of the territory of the United Kingdom where the person concerned is a woman:
- (a) who is claiming an old age pension by virtue of her husband's insurance; or
- (b) whose husband's contributions are taken into account in determining her right to receive an old age pension by virtue of her own insurance, her marriage having been terminated by the death of her husband or otherwise;
- any reference to an insurance period completed by her shall be construed—
- (i) for the purpose of ascertaining whether in relation to the legislation specified in Article 2(1)(b) 1 of this Convention, the contribution condition for the benefit is satisfied by her husband in the requisite number of years; and
- (ii) for the purpose of ascertaining whether in relation to the legislation specified in Article 2(1)(b) 2 of this Convention, her husband's life average contribution factor satisfies the condition for the benefit; and
- (iii) for the purpose of ascertaining in relation to the legislation specified in Article 2(1)(b) 3 of this Convention, her husband's yearly average of contributions paid or credited;

as including a reference to an insurance period completed by her husband.

SECTION 5

Survivors' Pensions

ARTICLE 22

(1) The provisions of Articles 16 to 21 of this Convention shall apply *mutatis mutandis* and subject to the provisions of this Article to claims for survivors' pensions under the legislation of one (or the other) High Contracting Party.

(2) The provisions of paragraph (2) of Article 17 of this Convention shall not apply in any case where, without the application of the provisions of paragraph (1) of Article 16 of this Convention a survivor's pension would be payable under the legislation of Austria or a widow's allowance would be payable under the legislation of the United Kingdom specified in Article 2(1)(b) 1 of this Convention.

(3) Where a woman in receipt of a widow's benefit under the legislation of any part of the territory of the United Kingdom qualifies for an old age pension under that legislation, the survivor's pension payable under the legislation of Austria shall not be determined afresh.

SECTION 6

Invalidity Pensions

ARTICLE 23

(1) For the purpose of any claim to invalidity pension under the legislation of one High Contracting Party any insurance period, or period of entitlement to sickness benefit or invalidity pension completed under the legislation of the other Party shall be treated as if it were respectively an insurance period, or period of entitlement to sickness benefit or invalidity pension under the legislation of the former Party.

(2) The provisions of paragraph (3) of Article 16 of this Convention shall apply *mutatis mutandis* for the purposes of determining entitlement to additional component payable under the legislation of the United Kingdom.

(3) Where there is entitlement to invalidity pension under the legislation of both Parties whether by virtue of this Convention or otherwise the provisions of Articles 17 to 21 of this Convention shall apply *mutatis mutandis* subject to the provisions of paragraphs (4) and (5) of this Article.

(4) The provisions of paragraph (2) of Article 17 of this Convention shall not apply in any case where, without the application of the provisions of paragraph (1) of this Article an invalidity pension would be payable under the legislation of either Party.

(5) In any claim to invalidity pension, every insurance period completed by the person concerned before the onset of invalidity which would be taken into account in a claim to old age pension shall be taken into account for the purpose of the calculation specified in paragraph (1) of Article 17 of this Convention, and no insurance period subsequently completed under the legislation of any part of the territory of the United Kingdom shall be taken into account.

SECTION 7

Benefits for Industrial Injuries and Diseases

ARTICLE 24

(1) Where a person is employed in the territory of Austria and the legislation of any part of the territory of the United Kingdom applies to him in accordance with any of the provisions of Articles 5 to 9 of this Convention he shall be treated under that legislation for the purpose of any claim to benefit for an industrial accident occurring or an industrial disease contracted during that employment as if the accident had happened or the disease had been contracted in the territory of the United Kingdom.

(2) If a person has an accident after he leaves the territory of one High Contracting Party to go in the course of his employment to the territory of the other Party, but before he arrives in the latter territory, and the legislation of any part of the territory of the United Kingdom applies to him, then, for the purpose of any claim to benefit under that legislation for that accident:

- (a) the accident shall be treated as if it had happened in the territory of the United Kingdom; and
- (b) his absence from the territory of the United Kingdom shall be disregarded in determining whether his employment was employed earner's employment under that legislation.

ARTICLE 25

(1) Where a person contracts an industrial disease after having been employed in the territories of both High Contracting Parties in occupations to which, under the legislation of both Parties, the disease may be attributed, there shall be applied in his case only the legislation of that Party in whose territory he was last employed in such occupations before the disease was diagnosed and, for this purpose account shall be taken, if necessary, of any employment in such occupations in the territory of the other Party.

(2) Where a person who, under the legislation of one Party, has received or is receiving benefit in respect of an industrial disease, makes a claim under the legislation of the other Party on the ground that he has suffered an aggravation of the disease while he was employed in the territory of the other Party in an occupation to which, under the legislation of the latter Party, the aggravation may be attributed, the insurance authority of that Party shall be liable to pay benefit only in respect of the aggravation as determined under the legislation of that Party.

SECTION 8

Death Grant

ARTICLE 26

For the purpose of any claim for death grant under the legislation of one High Contracting Party, any contribution period or any equivalent period completed under the legislation of the other Party shall be treated as if it were respectively a contribution period or an equivalent period completed under the legislation of the former Party.

ARTICLE 27

(1) Where a person dies in the territory of one High Contracting Party, then for the purpose of any claim to receive a death grant under the legislation of the other Party, his death shall be treated as if it had occurred in the territory of the latter Party.

(2) Where a person would be entitled to receive a death grant under the legislation of both Parties in respect of the same death by virtue of the provisions of this Convention, he shall be entitled to receive a death grant only under the legislation of the Party in whose territory the death occurred.

SECTION 9

Guardian's Allowance under the Legislation of the United Kingdom

ARTICLE 28

Where guardian's allowance would be payable to any person under the legislation of the United Kingdom if the person and the orphan for whom the allowance is claimed were ordinarily resident in the United Kingdom, it shall be paid while that person and the orphan are ordinarily resident in Austria, provided that the deceased parent, by virtue of whose presence or insurance the allowance is payable, had completed, under the legislation of one or both Parties, periods of presence or insurance, as the case may be, which are in aggregate not less than five years.

SECTION 10

Family Allowances

ARTICLE 29

(1) Where a person is resident in the territory of one High Contracting Party and the legislation of the other Party applies to him as an employed person in accordance with any of the provisions of Articles 5 to 9 of this Convention he or his spouse residing with him shall be treated, for the purpose of any claim to receive family allowance under the legislation of the latter Party:

- (a) as if he were present in the territory of the latter Party; and
- (b) as if any child of his family or any child for which he is responsible, as the case may be, were present in the territory of the latter Party, if they are present in the territory of the former Party.

(2) Where, under the legislation of one Party, the right to family allowance is conditional on the completion of a period of presence in the territory of that Party, any such period during which the person was in the territory of the other Party shall be treated as if it were such a period in the territory of the former Party.

(3) For the purpose of any claim to family allowance under the legislation of one Party, a person whose place of birth is in the territory of the other Party shall be treated as if his place of birth were in the territory of the former Party.

(4) For the purposes of the legislation, of Austria, the words "present" and "presence" used in this Article mean respectively, "ordinarily present" and "ordinary presence".

(5) The entitlement to family allowance under the legislation of Austria shall exist only if the employment does not offend against regulations concerning the employment of foreign employed persons and lasts longer than one month.

ARTICLE 30

Where, but for the provisions of this Article, family allowance would be payable under the legislation of both High Contracting Parties for the same children, family allowance shall be paid only under the legislation of the Party in whose territory the children concerned are ordinarily resident.

ARTICLE 31

For the purposes of Articles 29 and 30 of this Convention, "children" means persons for whom family allowance is provided under the applicable legislation.

PART IV

Miscellaneous Provisions

ARTICLE 32

(1) The competent authorities shall establish by means of an arrangement the administrative measures necessary for the application of this Convention. This arrangement may be completed before the entry into force of this Convention, but shall not come into operation before this Convention enters into force.

(2) The competent authorities shall communicate to each other all information about the measures taken by them for the application of this Convention or about changes in their legislation in so far as these changes affect the application of this Convention.

(3) For the purpose of facilitating the implementation of this Convention, liaison offices shall be established.

ARTICLE 33

(1) The authorities and insurance authorities of the two High Contracting Parties shall assist one another on any matter relating to the application of this Convention as if the matter were one affecting the application of their own legislation. This assistance shall be free of charge.

(2) Where any benefit is payable under the legislation of one Party to a person in the territory of the other Party, the payment may be made by an insurance authority of the latter Party, at the request of the insurance authority of the former Party.

ARTICLE 34

(1) Where the legislation of one High Contracting Party provides that any certificate or other document which is submitted under that legislation to an authority or insurance authority of that Party shall be exempt, wholly or partly, from any taxes, legal dues, consular fees or administrative charges, this exemption shall apply to any certificate or other document which is submitted under the legislation of the other Party.

(2) Any certificate, document or written statement of any kind which has to be submitted for the application of this Convention shall not require authentication.

ARTICLE 35

Where a claim is submitted to an authority or insurance authority of one High Contracting Party, it shall not be rejected on the ground that it is written in the official language of the other Party.

ARTICLE 36

(1) Any notice or claim which should, for the purpose of a claim for benefit under the legislation of one High Contracting Party, have been submitted to an insurance authority of that Party, shall be treated as if it had been submitted to that authority, if it is submitted to an insurance authority of the other Party which is competent to deal with claims to the corresponding benefit of the latter Party.

(2) Any claim for benefit submitted under the legislation of one Party shall be treated as if it were a claim for the corresponding benefit under the legislation of the other Party in so far as that corresponding benefit is payable in accordance with the provisions of this Convention. The provisions of the first sentence of this paragraph shall not apply when the claimant expressly requests that the determination of his old age pension under the legislation of one Party be deferred.

(3) Any document submitted under the legislation of Austria may, where appropriate, be treated as a notice of retirement given under the legislation of the United Kingdom.

(4) In any case to which the provisions of paragraph (1), (2) or (3) of this Article apply, the authority to which the notice, claim or document has been submitted shall transmit it without delay to the competent insurance authority of the other Party.

ARTICLE 37

(1) Payment of any benefit in accordance with the provisions of this Convention may be made in the currency of the High Contracting Party whose insurance authority makes the payment and any such payment shall constitute a full discharge of the obligation.

(2) Where an insurance authority has made a payment of benefit in accordance with the provisions of paragraph (2) of Article 33 of this Convention, any reimbursement shall be in the currency of the Party in whose territory the insurance authority has its principal place of business.

(3) Any remittance to be made in accordance with this Convention shall be made in accordance with any agreement binding the two Parties at the time when such a remittance is made.

ARTICLE 38

(1) Any dispute about the interpretation or application of this Convention shall be resolved through diplomatic channels.

(2) If any such dispute cannot be resolved in this manner, it shall be submitted at the request of either High Contracting Party, to an arbitration tribunal which shall be composed in the following manner:

(a) Each Party shall appoint a referee within one month from receipt of the demand for arbitration. The two referees shall appoint, from the nationals of a third country, a third referee within two months from the date on which the Party which was the last to appoint its referee has notified the other Party of the appointment.

(b) If within the prescribed period either Party should fail to appoint a referee, the other Party may request the President of the International Court of Justice to make the appointment. A similar procedure shall be adopted at the request of either Party if the two referees cannot agree on the appointment of the third referee.

(3) The decision of the arbitration tribunal shall be by majority vote. Its decision shall be binding on both Parties. Each Party shall bear the expenses of the referee appointed by it. The remaining costs shall be borne equally by the two Parties. The arbitration tribunal shall determine its rules of procedure.

ARTICLE 39

(1) Where an insurance authority of one High Contracting Party has made an advance payment to a person for any period and arrears of a corresponding benefit become payable for the same period under the legislation of the other Party, the insurance authority of the latter Party shall deduct from those arrears the amount paid by way of advance payment and shall transfer the amount so deducted to the insurance authority of the first Party. Where an insurance authority of one Party has overpaid benefit for any period for which the insurance authority of the other Party afterwards becomes liable to pay a corresponding benefit, the overpayment shall be regarded, for the purpose of the first sentence of this paragraph, as an advance payment.

(2) Where a social assistance authority of one Party has paid assistance to a person for any period for which he afterwards becomes entitled to benefit under the legislation of the other Party, the competent insurance authority of the latter Party shall, at the request of that social assistance authority and on behalf of that authority, withhold the amount paid by way of assistance from the arrears of benefit due to be paid for the same period, treating that amount as if it were an equal amount of assistance paid by a social assistance authority of the latter Party, and shall transfer the amount so withheld to the social assistance authority of the former Party.

PART V

Transitional and Final Provisions

ARTICLE 40

(1) Benefit, other than lump sum payments, shall be payable in accordance with the provisions of this Convention in respect of events which happened before the date of its entry into force. For the purpose of determining claims in accordance with the provisions of this Convention, account shall be taken of insurance periods completed before the date of its entry into force.

(2) Paragraph (1) of this Article shall not confer any right to receive payment of benefit for any period before the date of the entry into force of this Convention.

ARTICLE 41

This Convention shall not affect any existing rights under the legislation of Austria of any person who has suffered disadvantages in the field of social insurance because of political or religious reasons or by reason of descent.

ARTICLE 42

(1) This Convention shall be ratified. The instruments of ratification shall be exchanged in London as soon as possible.

(2) This Convention shall enter into force on the first day of the third month following the month in which the instruments of ratification are exchanged.

(3) This Convention shall remain in force for an indefinite period. Either High Contracting Party may denounce it by giving three months' notice in writing to the other.

ARTICLE 43

(1) The Convention on Social Security between the United Kingdom of Great Britain and Northern Ireland and the Republic of Austria which was signed at Vienna on 18th June 1971(a) and the Supplementary Convention on Social Security which was signed at Vienna on 16th September 1975(b) shall terminate on the coming into force of this Convention.

(2) Notwithstanding the provisions of paragraph (1) of this Article any old age or survivor's benefit payable under the legislation of any part of the territory of the United Kingdom and determined under the provisions of the Conventions specified in paragraph (1) of this Article may be redetermined under the provisions of this Convention provided that application for such redetermination is made within two years of the entry into force of this Convention.

(3) No provision of this Convention shall diminish any right to benefit which a person has acquired under the legislation of either High Contracting Party before the date of entry into force of this Convention whether by virtue of the Conventions specified in paragraph (1) of this Article or otherwise.

ARTICLE 44

In the event of the termination of this Convention, any right acquired by a person in accordance with its provisions shall be maintained. Negotiations shall take place for the settlement of any rights then in course of acquisition by virtue of those provisions.

In witness whereof the Plenipotentiaries have signed this Convention.

Done in duplicate at Vienna, this 22nd day of July 1980 in the English and German languages, both texts being equally authoritative.

For Her Britannic Majesty:

For the Federal President of
the Republic of Austria:
WILLIBALD PAHR

DONALD McDONALD GORDON

(a) S.R. & O., (N.I.) 1972 No. 321
(b) S.I. 1977/54

**PROTOCOL
CONCERNING BENEFITS IN KIND**

At the time of signing the Convention on Social Security concluded this day between the United Kingdom of Great Britain and Northern Ireland and the Republic of Austria (hereinafter called the "Convention") the Plenipotentiaries of the two High Contracting Parties have agreed as follows:

ARTICLE 1

For the purpose of this Protocol:

- (a) "hospital treatment" means, in relation to the United Kingdom, hospital in-patient treatment provided under the National Health Service of the United Kingdom, or by the States of Jersey or the States of Guernsey and, in relation to Austria, hospital in-patient treatment provided under the Federal Act of 9th September 1955 concerning general social insurance;
- (b) all other words and expressions have the meanings assigned to them in the Convention.

ARTICLE 2

(1) Where a national of one High Contracting Party falls ill, meets with an accident, or, for any other reason, is in urgent need of medical treatment when he is in the territory of the other Party, he shall be entitled to receive hospital treatment in that territory under the same conditions as a national of the latter Party who is ordinarily resident in the territory of that Party. For this purpose a national of the United Kingdom shall be treated in relation to Austria as an insured person under the legislation of Austria.

(2) The provisions of paragraph (1) of this Article shall apply *mutatis mutandis* to an Austrian national who is ordinarily resident in any part of the territory of the United Kingdom during a temporary stay in Austria.

(3) An Austrian national who is entitled to receive an old age pension, survivor's pension or invalidity pension solely under the legislation of any part of the territory of the United Kingdom shall be affiliated under the legislation of Austria concerning sickness insurance for pensioners provided that he is ordinarily resident in Austria. For this purpose a pension payable under the legislation of any part of the territory of the United Kingdom shall be treated as if it were payable under the legislation of Austria.

ARTICLE 3

For the purpose of applying Article 2 of this Protocol benefits in kind shall be provided in Austria by the Gebietskrankenkasse fuer Arbeiter und Angestellte (Regional Fund for Sickness Insurance of Wage-earners and Employees) competent for the place of residence of the person concerned, and in this connection the refund of expenses shall be made from contributions for sickness insurance for pensioners received by the Hauptverband der Oesterreichischen Sozialversicherungstraeger (Main Association of the Austrian Social Insurance Institutes).

ARTICLE 4

The competent authorities shall establish by means of an arrangement the administrative measures necessary for the application of this Protocol. This arrangement may be completed before the entry into force of this Protocol, but shall not come into operation before this Protocol enters into force.

ARTICLE 5

This Protocol shall form an integral part of the Convention.

In witness whereof the Plenipotentiaries have signed this Protocol.

Done in duplicate at Vienna, this 22nd day of July 1980 in the English and German languages, both texts being equally authoritative.

For Her Britannic Majesty:
DONALD McDONALD GORDON

For the Federal President of
the Republic of Austria:
WILLIBALD PAHR

EXPLANATORY NOTE

(This note is not part of the Order.)

This order makes provision for the modification of the Social Security (Northern Ireland) Act 1975 and Part II of the Child Benefit (Northern Ireland) Order 1975 so as to give effect to the Convention and Protocol (set out in the Schedule) made between the Governments of the United Kingdom and Austria on 22nd July 1980. The Convention consolidates two previous Conventions made between those Governments set out in the Schedule to the Family Allowances, National Insurance and Industrial Injuries (Austria) Order (Northern Ireland) 1972 and the Schedule to the Social Security (Austria) (Northern Ireland) Order 1977.