

1987 No. 935

SOCIAL SECURITY

The Social Security (Australia) Order 1987

Made 18th May 1987

Coming into force 18th May 1987

At the Court at Buckingham Palace, the 18th day of May 1987

Present,

The Queen's Most Excellent Majesty in Council

Whereas an agreement was made on 29th January 1958 between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Commonwealth of Australia and effect was given to that agreement by the Family Allowances and National Insurance (Australia) Order 1958(a) (hereinafter referred to as "the 1958 Order"):

And Whereas that agreement was modified and extended by a further agreement made on 16th August 1962 between the said Governments and effect was given to that agreement by the Family Allowances and National Insurance (Australia) Order 1962(b) (hereinafter referred to as "the 1962 Order"):

And Whereas the said agreement as so modified and extended was further amended by Notes exchanged on 6th March 1975 and effect was given to that amendment by the Social Security (Australia) Order 1975(c) (hereinafter referred to as "the 1975 Order"):

And Whereas at London on 31st December 1986 Notes were exchanged on behalf of the said Governments for the purpose of further amending the said agreement and the terms of the Note from the Secretary of State for Foreign and Commonwealth Affairs were reproduced in the Note from the Australian High Commissioner which is set out in the Schedule to this Order:

And Whereas by virtue of section 117(1) of the National Insurance Act 1965(d) the 1958 Order and the 1962 Order are deemed to have been made under section 105 of that Act:

And Whereas by virtue of section 2 of, and paragraph 10 of Schedule 3 to, the Social Security (Consequential Provisions) Act 1975(e) the 1975 Order provided for the 1958 Order and the 1962 Order to have effect for the purposes of section 143 of the Social Security Act 1975(f) with such modifications as are specified therein and to have effect as if any references in the said section 105 and the said section 143 to an agreement included a reference to a proposed agreement:

And Whereas by section 143 of the Social Security Act 1975 it is provided that Her Majesty may by Order in Council make provision for modifying or adapting the said Social Security Act in its application to cases affected by agreements with other governments providing for reciprocity in matters specified in that section:

(a) S.I. 1958/422.

(b) S.I. 1962/1869.

(c) S.I. 1975/812.

(d) 1965 c. 51.

(e) 1975 c. 18.

(f) 1975 c. 14; subsection (1A) of section 143 was inserted by section 6(1) of the Social Security Act 1981 (c. 33).

And Whereas by virtue of section 166(4) of the Social Security Act 1975 any Order in Council made under the said section 143 may be varied by a subsequent Order in Council made under that section:

Now, therefore, Her Majesty, in pursuance of the said section 143 and the said section 2, and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

Citation and commencement

1. This Order may be cited as the Social Security (Australia) Order 1987 and shall come into force on 18th May 1987.

Modification of Act and Variation of Orders

2. The Social Security Act 1975 shall be modified and the Family Allowances and National Insurance (Australia) Order 1958, the Family Allowances and National Insurance (Australia) Order 1962 and the Social Security (Australia) Order 1975 shall be varied so as to give effect to the agreement made on 31st December 1986 the terms of which are contained in the Note from the Australian High Commissioner to the Secretary of State for Foreign and Commonwealth Affairs which is set out in the Schedule to this Order, so far as the same relate to England, Wales and Scotland.

G.I. de Deney
Clerk of the Privy Council

**NOTE FROM THE AUSTRALIAN HIGH COMMISSIONER TO THE
SECRETARY OF STATE FOR FOREIGN AND COMMONWEALTH
AFFAIRS**

31st December 1986

Sir,

I have the honour to acknowledge receipt of your Note of 29th December 1986 which reads as follows:

"I have the honour to refer to the Agreement on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Australia, which was signed at Canberra on 29th January 1958, as amended by the Agreement signed at Canberra on 16th August 1962, and by an Exchange of Notes at Canberra on 6th March 1975 (which, for the purposes of this Note, are together referred to as "the Agreement"), and to recent discussions between the Department of Health and Social Security of the United Kingdom and the Department of Social Security of Australia, concerning the need further to amend the Agreement so as to preclude working holidaymakers from receiving unemployment benefit under the Agreement and to make other minor modifications.

I now have the honour to propose the following amendments to the Agreement:

- (a) Article 3 shall be amended by deleting paragraph (2) and the proviso to paragraph (4).
- (b) Article 17 shall be amended by inserting after paragraph (3) the following new paragraph:

"(4) For the purposes of any claim to invalidity pension under the legislation of the United Kingdom, any period in respect of which a person was qualified to receive a sickness benefit or an invalid pension under the legislation of Australia shall be treated as if it were a period of entitlement to sickness benefit or invalidity pension completed under the legislation of the United Kingdom."

- (c) Article 18 shall be amended—

- (i) by inserting after paragraph (2) the following new paragraph:

"(3) The provisions of this Article shall not apply to a person—

- (a) who is in Australia having been granted an entry permit pursuant to a visa issued on an application for a visa to enter that country for a working holiday; or

- (b) who is in the United Kingdom by virtue only of his having obtained leave to enter that country given in accordance with any provision of the immigration rules (as defined in section 33(1) of the Immigration Act 1971 of the United Kingdom) which required him to satisfy an immigration officer at the date upon which that obligation last arose that—

- (i) he was seeking permission to enter the United Kingdom for an extended holiday, and

- (ii) he intended to take only employment within the United Kingdom which was incidental to that holiday.";

- (ii) by renumbering the existing paragraph (3) as paragraph (4), deleting the word and figure "paragraph (2)" and substituting the words and figures "paragraphs (2) and (3)".

- (d) Article 22 shall be amended by deleting from paragraph (1) the words:

"unless the dependant is a child for whom child endowment is payable under the legislation of Australia".

If the foregoing proposals are acceptable to the Government of Australia I have the honour to propose that this Note and Your Excellency's reply to that effect shall constitute an Agreement between our two Governments which shall enter into force on 9th February 1987.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration."

I have the honour to confirm that the foregoing proposals are acceptable to the Government of Australia, who therefore agree that your Note together with this reply, shall constitute an Agreement between our two Governments which shall enter into force on 9th February 1987.

A.R. Parsons

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for the modification of the Social Security Act 1975 so as to give effect in England, Wales and Scotland to the agreement (set out in the Schedule) contained in Notes exchanged between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Australia amending the Agreement contained in the Family Allowances and National Insurance (Australia) Order 1958, the Family Allowances and National Insurance (Australia) Order 1962, and the Social Security (Australia) Order 1975. The principal amendment precludes payment of unemployment benefit under the Agreement to visitors from one country who are on holiday in the other country and who are entitled, under their terms of entry, to work during their stay.

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