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Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to *The Social Security (Australia) Order 1992*. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULE 1

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

PART VI

MISCELLANEOUS PROVISIONS

ARTICLE 15

TEMPORARY ABSENCES

(1) A benefit which is payable to a person by Australia under Part II of this Agreement shall not cease to be payable solely where the person is absent from Australia and the competent authority of Australia is satisfied that the absence is temporary. After the person has been temporarily absent from Australia for a period of 12 months at any one time that person shall then be deemed to have departed permanently from Australia.

(2) Where a person, who is qualified to receive any benefit under the legislation of the United Kingdom, would be qualified to receive also an increase of that benefit for a dependant if the dependant were in that territory, he or she shall be qualified to receive that increase while the dependant is temporarily in Australia.

ARTICLE 16

CALCULATION OF AUSTRALIAN BENEFITS

(1) Subject to paragraph (5), the provisions of this Article shall apply, in relation to the territory of the United Kingdom, only to retirement pensions and widows' benefits, and, in relation to Australia only to age pensions, wives' pensions, spouse carer's pensions and pensions payable to widows, being benefits payable under the legislation of Australia solely by virtue of this Agreement; and, for the purpose of applying those provisions, the effect of any provision of the legislation of any part of the territory of the United Kingdom which concerns overlapping benefits shall be disregarded.

(2) Subject to the provisions of paragraph (3), where a person who is qualified to receive an Australian benefit also receives a United Kingdom benefit, the rate of that Australian benefit shall be set by:

- (a) calculating that person's income according to the legislation of Australia but disregarding in that calculation the United Kingdom benefit received by that person;
- (b) deducting the amount of the United Kingdom benefit received by that person from the maximum rate of that Australian benefit; and
- (c) applying to the remaining benefit obtained under sub-paragraph (b) the relevant rate calculation set out in the legislation of Australia using as the person's income the amount calculated under sub-paragraph (a).

(3) Where a married person is, or both that person and his or her spouse are, in receipt of a United Kingdom benefit or benefits, each of them shall be deemed, for the purpose of paragraph (2) and

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for the legislation of Australia, to be in receipt of one half of either the amount of that benefit or the total of both of those benefits, as the case may be.

(4) If a person would receive an Australian benefit except for the operation of paragraph (2) or except for that person's failure to claim the benefit, then for the purpose of a claim by that person's spouse for a payment under the legislation of Australia that person shall be deemed to receive that benefit.

(5) The reference in paragraph (4) to a payment under the legislation of Australia to the spouse of a person is a reference to a payment of:

- (a) an age pension;
- (b) an invalid pension;
- (c) an unemployment benefit;
- (d) a sickness benefit;
- (e) a sheltered employment allowance; or
- (f) a rehabilitation allowance,

under that legislation, whether payable by virtue of this Agreement or otherwise.

(6) For the purpose of this Article "benefit" includes any additional earnings-related pension, incremental addition, invalidity allowance and age addition payable with the benefit.

ARTICLE 17

DUAL ENTITLEMENT IN AUSTRALIA

Where:

- (a) a claim is made for a benefit payable by Australia, by virtue of this Agreement; and
- (b) there are reasonable grounds for believing that the claimant may also be entitled, whether by virtue of this Agreement or otherwise, to a benefit that is payable under the legislation of the United Kingdom and that, if paid, would affect the amount of the first-mentioned benefit,

that first-mentioned benefit shall not be paid until a claim is duly lodged for payment of the second-mentioned benefit and the first-mentioned benefit shall not continue to be paid if the claim for the second-mentioned benefit is not actively pursued.

ARTICLE 18

DUAL ENTITLEMENT IN UK

Where a person is qualified to receive a benefit under the legislation of the United Kingdom pursuant to Articles 3, 5 or 13 and is also qualified to receive an Australian benefit, the rate of that Australian benefit shall be determined under the legislation of Australia but in that determination the amount of the benefit payable under the legislation of the United Kingdom shall be disregarded in the computation of that person's income.

ARTICLE 19

RECOVERY OF BENEFIT

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(1) Where a benefit is payable by a Party to a person in respect of a past period (in this Article referred to as “the first benefit”), and

- (a) for all or part of that same period, the other Party has paid to that person a benefit under its legislation (in this Article referred to as “the second benefit”); and
- (b) the amount of the second benefit would have been reduced had the first benefit been paid during that period,

the competent authority of the former Party, at the request of the competent authority of the latter Party, shall:

- (c) deduct from the first benefit an amount equal to the amount of the second benefit that would not have been paid had the first benefit been paid on a periodical basis throughout that past period, and
- (d) transmit any sum deducted in accordance with sub-paragraph (c) above to the competent authority of the latter Party.

Any balance shall be paid by the former Party direct to the person.

(2) Where the United Kingdom has paid a benefit to a person in respect of a past period and:

- (a) for all or part of that same period, Australia has paid to that person a benefit under its legislation; and
- (b) the amount of the benefit paid by Australia would have been reduced had the United Kingdom paid its benefit during that period,

the competent authority of Australia may determine that:

- (c) the amount of its benefit which would not have been paid had the United Kingdom paid its benefit on a periodical basis throughout that period is a debt due by that person to Australia; and
- (d) the amount, or any part, of that debt may be recovered from future benefits which Australia may pay under its legislation to that person.

(3) A reference in paragraphs (1) or (2) to a payment under the legislation of a Party means a benefit payable whether by virtue of this Agreement or otherwise.

(4) Where a person has received income support under the legislation of Great Britain, Northern Ireland or the Isle of Man for a period for which that person subsequently becomes entitled to any benefit under the legislation of Australia, the competent institution of Australia, at the request of and on behalf of the competent institution of Great Britain, Northern Ireland or the Isle of Man, shall withhold from the benefit due for that period the amount by which the income support paid exceeded what would have been paid had the benefit under the legislation of Australia been paid before the amount of income support was determined, and shall transmit the amount withheld to the competent institution of Great Britain, Northern Ireland or the Isle of Man.

ARTICLE 20

MEANING OF PERMANENTLY RESIDENT

For the purpose of applying the provisions of this Agreement, a person shall be treated as permanently resident in the territory of the United Kingdom if he or she is ordinarily resident in that territory and the competent authority of that territory is satisfied that it is that person’s intention to remain so resident permanently.

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