

2007 No. 2122**SOCIAL SECURITY****The Social Security (Ireland) Order 2007**

Made - - - - - *25th July 2007*

Coming into force - *1st October 2007*

At the Court at Buckingham Palace, the 25th day of July 2007

Present,

The Queen's Most Excellent Majesty in Council

This Order is made under the powers in section 179(1)(a) and (2) of the Social Security Administration Act 1992(a), which provide that, for the purpose of giving effect to agreements made with the governments of countries outside the United Kingdom providing for reciprocity in specified matters, Her Majesty may by Order in Council make provision for modifying and adapting specified legislation in its application to cases affected by such agreements.

At Dublin, on 14th December 2004, a Convention on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland(b) was signed on behalf of those Governments. This Convention, which is referred to in this Order as "the Convention", provides for earlier Agreements between the Parties concerning reciprocity in the field of social security and their extension and modification to be consolidated into a new convention, with further extensions and modifications and taking account of changes in legislation.

The provisions of the Convention were modified by an Exchange of Notes between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland on 3rd July 2007 which specify that the amendments to the Convention shall enter into force at the same time as the Convention.

Article 37 of the Convention provides that the Convention shall enter into force on the first day of the third month following the month in which the instruments of ratification are exchanged.

Instruments of ratification were exchanged on behalf of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland on 3rd July 2007. The Convention and the amendments to the Convention therefore enter into force on 1st October 2007.

In order to give effect to the Convention and the amendments to the Convention, therefore, Her Majesty, in exercise of the powers conferred on Her by section 179(1)(a) and (2) of the Social Security Administration Act 1992 and of all other powers enabling Her to do so, is pleased, by and with the advice of Her Privy Council, to order as follows:

(a) 1992 c. 5.

(b) See Cm 6633.

Citation and commencement

1. This Order may be cited as the Social Security (Ireland) Order 2007 and comes into force on 1st October 2007.

Modification of Acts

2. The Social Security Administration Act 1992, the Social Security Contributions and Benefits Act 1992(a) and the Jobseekers Act 1995(b) are modified to such extent as may be required to give effect to the provisions contained in the Convention set out in Schedule 1, as amended by the Exchange of Notes set out in Schedule 2, so far as those provisions relate to England, Wales and Scotland.

Revocation and variation of Orders

3.—(1) The National Insurance and Industrial Injuries (Republic of Ireland) Order 1960(c), the National Insurance (Republic of Ireland) Order 1966(d), the National Insurance and Industrial Injuries (Republic of Ireland) Order 1968(e) and the National Insurance (Republic of Ireland) Order 1971(f) are revoked.

(2) The references to any of these Orders shall be omitted in—

- (a) Schedule 1 to the Social Security (Reciprocal Agreements) Order 1976(g);
- (b) the Schedule to the Social Security (Reciprocal Agreements) Order 1979(h);
- (c) the Schedule to the Social Security (Reciprocal Agreements) Order 1988(i);
- (d) Schedule 2 to the Social Security (Reciprocal Agreements) Order 1995(j);
- (e) Schedule 2 to the Social Security (Reciprocal Agreements) Order 1996(k);
- (f) Schedule 2 to the Social Security (Reciprocal Agreements) Order 2001(l);
and
- (g) Schedule 2 to the Social Security (Reciprocal Agreements) Order 2005(m).

Judith Simpson
Clerk of the Privy Council

(a) 1992 c. 4.
(b) 1995 c. 18.
(c) S.I. 1960/707.
(d) S.I. 1966/270.
(e) S.I. 1968/1655.
(f) S.I. 1971/1742.
(g) S.I. 1976/225.
(h) S.I. 1979/290.
(i) S.I. 1988/591.
(j) S.I. 1995/767.
(k) S.I. 1996/1928.
(l) S.I. 2001/407.
(m) S.I. 2005/2765.

SCHEDULE 1

Article 2

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

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland;

Having established reciprocity in the field of social security by means of the Agreements which were signed on their behalf at London on 29 March 1960 (which Agreement did not include Northern Ireland), at Dublin on 28 February 1966, at Dublin on 3 October 1968 and at London on 14 September 1971 and also including the arrangements made on 22 July 1964 between the Ministry of Labour and National Insurance in relation to Northern Ireland and the Minister for Social Welfare in relation to Ireland;

Wishing to consolidate the earlier Agreements and their extension and modification into a new convention;

Wishing to extend and modify the scope of that reciprocity and to take account of changes in their legislation;

Have agreed as follows:

PART 1

GENERAL PROVISIONS

ARTICLE 1

Definitions

(1) For the purpose of this Convention the following definitions apply, except where the context otherwise requires:

“additional pension” payable under the legislation of Great Britain, Northern Ireland or the Isle of Man means any additional pension based on the payment of insurance contributions above the level required for entitlement to basic pension;

“benefit” means, as appropriate, any benefit, pension, allowance or grant to which this Convention applies and includes any increases of, or any additional amount payable with, such benefit, pension, allowance or grant respectively;

“benefits for industrial accidents and industrial diseases” means—

- (i) a pension or benefit payable to a person for loss of physical or mental faculty as a result of an industrial accident or an industrial disease arising out of, and in the course of, employed earner’s employment under the legislation of Great Britain, Northern Ireland or the Isle of Man, and accident benefit payable under the legislation of Jersey, or
 - (ii) a benefit payable to a person for personal injury or for loss of physical or mental faculty as a result of an accident arising out of, and in the course of, an insured person’s employment or self-employment, or an industrial disease under the legislation of Guernsey, or
 - (iii) occupational injuries benefit payable under the legislation of Ireland;
- ¹“Category A retirement pension” means either, or both, a basic retirement pension and an additional pension based on a person’s own insurance contributions or, for certain persons whose marriages have ended by divorce or widowhood, or for

¹Defn. of “Category A retirement pension” & “Category B retirement pension” substituted by Sch. 2 to this S.I. as from 1.10.07.

certain persons whose civil partnerships have ended by dissolution or by the death of a civil partner, a basic retirement pension based on the former spouse's or civil partner's insurance contributions, payable under the legislation of Great Britain, Northern Ireland or the Isle of Man, and an old age pension based on a person's own contributions or, for certain persons whose marriages have ended by divorce or widowhood, based on the former spouse's contributions, payable under the legislation of Jersey or Guernsey;

"Category B retirement pension" means a basic retirement pension payable to a married person or civil partner on the spouse's or civil partner's contributions or, for a widow, widower or surviving civil partner, either, or both, a basic retirement pension and an additional pension based on the late spouse's or civil partner's contributions, payable under the legislation of Great Britain, Northern Ireland or the Isle of Man, and an old age pension payable under the legislation of Jersey or Guernsey to a married woman by virtue of the contributions of her husband while he is alive;◀

"competent authority" means, in relation to the territory of the United Kingdom, the Department for Work and Pensions for Great Britain, the Commissioners of Inland Revenue or their authorized representative, the Department for Social Development for Northern Ireland, the Department of Health and Social Security of the Isle of Man, the Employment and Social Security Committee of the States of Jersey or the Guernsey Social Security Authority as the case may require, and, in relation to Ireland, the Department of Social and Family Affairs;

"contribution period" means a period in respect of which contributions appropriate to the benefit in question are payable, have been paid or treated as paid under the legislation concerned or, in the case of Ireland, a period in respect of which a person has qualifying contributions appropriate to the benefit in question;

"death grant" means a death grant payable under the legislation of Jersey, Guernsey and bereavement grant under the legislation of Ireland;

"dependant" means a person who would be treated as such for the purpose of any claim for an increase of benefit in respect of a dependant under the legislation concerned;

"earlier agreements" means the Agreements on Social Security signed on behalf of the Governments of the two Parties at London on 29 March 1960 (which Agreement did not include Northern Ireland), at Dublin on 28 February 1966, at Dublin on 3 October 1968 and at London on 14 September 1971 and also includes the arrangements made on 22 July 1964 between the Ministry of Labour and National Insurance in relation to Northern Ireland and the Minister for Social Welfare in relation to Ireland;

"EEA Agreement" means the Agreement establishing the European Economic Area dated 2 May 1992 made between the European Community its Member States and the Member States of the European Free Trade Association and any amendments or modifications thereto;

"EC Treaty" means the Treaty establishing the European Community, signed at Rome on 25 March 1957;

"employed person" means—

- (i) except for the purposes of Articles 25 to 27, a person who, in the applicable legislation, comes within the definition of an employed earner or of an employed person or is treated as such, and
- (ii) for the purposes of Articles 25 to 27, a person who, under the legislation of Great Britain, Northern Ireland or the Isle of Man comes within the definition of an employed earner or an employed person, or is treated as such, or an employed or self-employed person under the legislation of Jersey or Guernsey, and
- (iii) in relation to Ireland, an employed contributor within the meaning given by Section 9 of the Social Welfare (Consolidation) Act 1993, and the words "person is employed" shall be construed accordingly;

“employment” means employment as an employed person and the words “employ”, “employed” or “employer” shall be construed accordingly;

“equivalent period” means a period for which contributions appropriate to the benefit in question have been credited under the legislation in question;

“gainfully employed” means employed or self-employed and, in relation to Ireland, insurably employed or insurably self-employed;

“Guernsey” means the Islands of Guernsey, Alderney, Herm and Jethou;

“Implementing Regulation” means the Regulation (EEC) No 574/72 of the Council laying down the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, including its application to the European Economic Area, and includes amendments and adaptations from time to time applicable thereto;

“income tax year” means—

- (i) in relation to the United Kingdom, the Isle of Man, Jersey and Guernsey the twelve months beginning with 6 April in any year; and
- (ii) in relation to Ireland:
 - (a) in respect of a period prior to 6 April 2001, the twelve months beginning with 6 April in one year and ending on 5 April in the following year, and
 - (b) the period beginning on 6 April 2001 and ending on 31 December 2001, and
 - (c) thereafter, a calendar year;

“insurance authority” means the authority competent to decide entitlement to the benefit in question;

“insurance period” means a contribution period or an equivalent period;

“insured” means that contributions have been paid by, or are payable by, or in respect of, or have been credited in respect of, the person concerned under the legislation of the United Kingdom, or that a person has qualifying or credited contributions under the legislation of Ireland;

▶ “invalidity benefit” means—

- (i) long-term incapacity benefit, additional pension, invalidity allowance and incapacity age addition payable under the legislation of Great Britain, Northern Ireland or the Isle of Man, or
- (ii) invalidity benefit payable under the legislation of Guernsey, or
- (iii) invalidity benefit, long term incapacity allowance or incapacity pension payable under the legislation of Jersey, or
- (iv) invalidity pension payable under the legislation of Ireland;◀

¹Defn. of “invalidity benefit” substituted by Sch. 2 to this S.I. as from 1.10.07.

“Jersey” means the Island of Jersey;

“legislation” means, in relation to a Party, such of the legislation specified in Article 3 as applies in the territory of a Party, or in any part of the territory of that Party;

“maternity allowance” means maternity allowance payable under the legislation of the United Kingdom and maternity benefit payable under the legislation of Ireland;

“Party” means, unless otherwise defined—

- (i) the United Kingdom and
- (ii) Ireland;

“qualifying year” means—

- (i) in relation to Great Britain, Northern Ireland or the Isle of Man, at least fifty weeks of insurance for periods before 6 April 1975, or that the person has received, or been treated as having received, earnings of at least fifty-two times the lower earnings limit in an income tax year after 5 April 1978 under the legislation of Great Britain, Northern Ireland and the Isle of Man, or

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(ii) in relation to Jersey, an annual contribution factor of 1.00 under the legislation of Jersey, or

(iii) in relation to Guernsey, an insurance period of not less than fifty weeks under the legislation of Guernsey;

“reckonable year” means, in relation to Great Britain, Northern Ireland or the Isle of Man, an income tax year between 6 April 1975 and 5 April 1978 during which contributions have been paid on earnings received, or treated as received, of at least fifty times the lower earnings limit for that year;

“refugee” means a person so defined in Article 1 of the Convention on the Status of Refugees done at Geneva on 28 July 1951, as extended by Article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31 January 1967;

“Regulation (EEC) 1408/71” means the Regulation (EEC) No 1408/71 of the Council on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, including its application to the European Economic Area, and includes amendments and adaptations from time to time applicable thereto;

“retirement pension” means retirement pension or old age pension payable under the legislation of the United Kingdom, and retirement pension or old age (contributory) pension payable under the legislation of Ireland;

“seasonal worker” means a person subject to the legislation of Jersey or Guernsey or Ireland who goes to the territory of Jersey or Guernsey or Ireland (not being the one in which he is ordinarily resident) in order to carry out in that territory for an employer or undertaking with a place of business there, employment of a seasonal character which depends on the cycle of the seasons and which recurs automatically each year, and the duration of which cannot in any case exceed eight months, and who remains in that territory for the duration of that employment;

“self-employed person” means—

(i) in relation to the United Kingdom, a person who, in the applicable legislation, comes within the definition of a self-employed earner or of a self-employed person or is treated as such, and

(ii) in relation to Ireland, a self-employed contributor within the meaning given by Section 9 of the Social Welfare (Consolidation) Act 1993, and the words “person is self-employed” shall be construed accordingly;

“ship or vessel” means any ship or vessel whose port of registry is a port in either territory, or a hovercraft which is registered in either territory, and whose owner (or managing owner if there is more than one owner) resides in, or has a place of business in, either territory;

►¹“sickness benefit” means—

(i) short-term incapacity benefit at the lower, higher or long-term rate payable under the legislation of Great Britain, Northern Ireland or the Isle of Man, or

(ii) sickness benefit and industrial injury benefit payable under the legislation of Guernsey, or

(iii) short-term incapacity allowance payable under the legislation of Jersey, or

(iv) disability benefit payable under the legislation of Ireland.◄

“social assistance” means income support and income-based jobseeker’s allowance payable under the legislation of Great Britain, Northern Ireland or the Isle of Man, and, in relation to Ireland, any payment made under any assistance scheme described in Section 118 of the Social Welfare (Consolidation) Act 1993;

“stateless person” means a person so defined in Article 1 of the Convention on the Status of Stateless Persons done at New York on 28 September 1954;

“statutory maternity pay” means a payment which an employer must make under the legislation of Great Britain or Northern Ireland in connection with pregnancy and for a period before and after confinement;

¹Defn. of “sickness benefit” substituted by Sch. 2 to this S.I. as from 1.10.07.

“statutory sick pay” means a payment which an employer must make under the legislation of Great Britain or Northern Ireland in respect of sickness;

“survivor’s benefit” means—

- (i) bereavement payment, bereavement allowance, and widowed parent’s allowance payable under the legislation of Great Britain or Northern Ireland, and
- (ii) widow’s payment, widowed mother’s allowance and widow’s pension payable under the legislation of Great Britain, Northern Ireland or the Isle of Man, or
- (iii) widow’s allowance, widowed mother’s allowance, widow’s pension and widowed father’s allowance payable under the legislation of Jersey, or
- (iv) survivor’s grant, widowed parent’s allowance and widow’s pension payable under the legislation of Guernsey, or
- (v) Widow’s and Widower’s (Contributory) Pension, and bereavement grant under the legislation of Ireland.

“territory” means, in relation to the United Kingdom, Great Britain, Northern Ireland and also the Isle of Man, Jersey and Guernsey; and references to the “United Kingdom” or to “territory” in relation to the United Kingdom shall include the Isle of Man, Jersey and Guernsey where appropriate;

“unemployment benefit” means unemployment benefit or contribution-based jobseeker’s allowance payable under the legislation of Great Britain or Northern Ireland, or unemployment benefit payable under the legislation of Guernsey or Ireland.

(2) Other words and expressions which are used in this Convention have the meanings respectively assigned to them in the legislation concerned.

(3) Any reference in this Convention to an “Article” means an Article of this Convention, and any reference to a “paragraph” is a reference to a paragraph of the Article in which the reference is made, unless it is stated to the contrary.

ARTICLE 2

Persons covered

Subject to Article 36, this Convention shall apply:

- (a) as regards relations between Great Britain, Northern Ireland and Ireland, only to persons to whom, in relation to a specific event or circumstance, Regulation (EEC) 1408/71 and the Implementing Regulation do not apply, or do not become applicable; and
- (b) as regards relations between Jersey, Guernsey, the Isle of Man and Ireland, to persons who are, or have been, subject to their legislation, to members of their families and to their survivors.

ARTICLE 3

Scope of legislation

(1) This Convention shall apply,

- (a) in relation to the territory of the United Kingdom, to:
 - (i) the Social Security Administration Act 1992, the Social Security Contributions and Benefits Act 1992, the Social Security (Consequential Provisions) Act 1992, the Social Security (Incapacity for Work) Act 1994, the Jobseekers Act 1995, the Social Security Act 1998, the Social Security Contributions (Transfer of Functions etc.) Act 1999 and the Welfare Reform and Pensions Act 1999,

- (ii) the Social Security Administration (Northern Ireland) Act 1992, the Social Security Contributions and Benefits (Northern Ireland) Act 1992, the Social Security (Consequential Provisions) (Northern Ireland) Act 1992, the Social Security (Incapacity for Work) (Northern Ireland) Order 1994, the Jobseekers (Northern Ireland) Order 1995, the Social Security (Northern Ireland) Order 1998, the Social Security Contributions (Transfer of Functions etc.) (Northern Ireland) Order 1999 and the Welfare Reform and Pensions (Northern Ireland) Order 1999,
 - (iii) the Social Security Administration Act 1992, the Social Security Contributions and Benefits Act 1992, the Social Security (Consequential Provisions) Act 1992 and the Social Security (Incapacity for Work) Act 1994, the Jobseekers Act 1995, the Social Security Act 1998 and the Welfare Reform and Pensions Act 1999 (Acts of Parliament) as those Acts apply to the Isle of Man by virtue of Orders made, or having effect as if made, under the Social Security Act 2000 (an Act of Tynwald),
 - (iv) the Social Security (Jersey) Law, 1974,
 - (v) the Social Insurance (Guernsey) Law, 1978 and the Family Allowances (Guernsey) Law, 1950, and the legislation which was repealed or consolidated by those Acts, Laws or Orders or repealed by legislation consolidated by them;
- (b) in relation to Ireland to the Social Welfare Acts 1981 to 2004 and the Regulations made under those Acts as they relate to:
- (i) disability benefit,
 - (ii) maternity benefit,
 - (iii) unemployment benefit (including any additional amount payable by way of pay-related benefit),
 - (iv) invalidity pension,
 - (v) old age (contributory) pension,
 - (vi) retirement pension,
 - (vii) widow's or widower's (contributory) pension,
 - (viii) orphans (contributory) allowance,
 - (ix) bereavement grant,
 - (x) occupational injuries benefits, and
 - (xi) the liability of a person gainfully employed outside of Ireland to the payment of employment or self-employment contributions.

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

(3) This Convention shall apply, unless the Parties agree otherwise, only to benefits under the legislation specified in paragraph (1) at the date of entry into force of this Convention and for which specific provision is made in this Convention.

(4) This Convention shall not affect rights and obligations arising under legislation on social security enacted in accordance with the EC Treaty or the EEA Agreement or apply to any convention on social security which either Party has concluded with a third party or to any laws or regulations which amend the legislation specified in paragraph (1) for the purpose of giving effect to such a convention, but shall not prevent either Party taking into account under its legislation the provisions of any other convention which that Party has concluded with a third party.

ARTICLE 4

Equal treatment

A person, together with his dependants and survivors, who is, or has been, subject to the legislation of one Party shall, while he is in the territory of the other Party, have the same rights and obligations under the legislation of the other Party as a national of that Party, subject to the special provisions of this Convention.

ARTICLE 5

Refugees and stateless persons

This Convention shall apply to refugees or stateless persons who are residing in the territory of either Party. It shall apply under the same conditions to members of their families, and to their survivors, with respect to the rights they derive from those refugees or stateless persons.

ARTICLE 6

Provisions for the export of benefit

(1) Subject to paragraph (2) and Articles 15, 17 to 27 and 33, a person who would be entitled to receive a retirement pension, survivor's benefit, invalidity benefit or any pension or benefit payable in respect of an industrial accident or industrial disease under the legislation of one Party if he were in the territory of that Party shall be entitled to receive that pension or benefit while he is in the territory of the other Party, as if he were in the territory of the former Party.

(2) Subject to Article 14(3) and (5), a person who continues to be entitled to receive sickness benefit under the legislation of Great Britain, Northern Ireland or the Isle of Man while he is in Ireland may, after having received, or been deemed to have received, 364 days sickness benefit, become entitled to receive invalidity benefit under the legislation of Great Britain, Northern Ireland or the Isle of Man while he is in Ireland, provided that he continues to satisfy the insurance authority of the former Party that he remains incapable of work.

▶¹(3) Subject to Article 15(3) to (5), a person who continues to be entitled to receive sickness benefit under the legislation of Jersey while he is in Ireland may, after having received, or been deemed to have received, 364 days sickness benefit, become entitled to receive long term incapacity allowance under the legislation of Jersey provided that he continues to satisfy the insurance authority of Jersey of a loss of physical or mental faculty.◀

¹Sub-para. (3) substituted by Sch. 2 to this S.I. as from 1.10.07.

(4) Subject to Article 14(3) to (5), a person who continues to be entitled to receive sickness benefit or industrial injury benefit under the legislation of Guernsey while he is in Ireland may, after having received, or been deemed to have received, 156 days sickness benefit or industrial injury benefit, become entitled to receive invalidity benefit under the legislation of Guernsey while he is in Ireland, provided that he continues to satisfy the insurance authority of Guernsey that he remains incapable of work.

(5) Subject to Article 22, where, under the legislation of one Party, an increase of any of the benefits for which specific provision is made in this Convention would be payable for a dependant if he were in the territory of that Party, it shall be payable while he is in the territory of the other Party.

PART II

PROVISIONS WHICH DETERMINE THE LEGISLATION APPLICABLE
CONCERNING CONTRIBUTION LIABILITY

ARTICLE 7

General provisions

(1) Subject to paragraphs (2) to (9) and Articles 8 to 12, where a person is employed, liability for contributions for him shall be determined under the legislation of the Party in whose territory he is so employed. Where a person is subject only to the legislation of the United Kingdom in accordance with this paragraph, that legislation shall apply to him as if he were ordinarily resident in the United Kingdom.

(2) Where a person is employed in the territory of both Parties for the same period, liability for contributions for him shall be determined only under the legislation of the Party in whose territory he is ordinarily resident.

(3) Where a person is ordinarily resident in the territory of one Party and is self-employed in the territory of the other Party, or in the territory of both Parties, liability for contributions for him shall be determined only under the legislation of the Party in whose territory he ordinarily resides and that legislation shall apply to him as if he were self-employed in the territory of that Party.

(4) Where a person is employed in the territory of one Party and self-employed in the territory of the other Party for the same period, liability for contributions for him shall be determined only under the legislation of the former Party.

(5) No provision of this Article shall affect a person's liability to pay a Class 4 contribution under the legislation of Great Britain, Northern Ireland or the Isle of Man, or to pay contributions arising from employment which is insurable (occupational injuries) employment only, under the legislation of Ireland.

(6) Where a person is not gainfully employed, any liability for contributions shall be determined under the legislation of Guernsey if he is ordinarily resident in Guernsey, or under the legislation of Jersey if he is ordinarily resident in Jersey.

(7) Where, but for this paragraph, a person would be entitled to pay contributions voluntarily under the legislation of both Parties for the same period, he shall be entitled to pay contributions only under the legislation of one Party according to his choice.

(8) Where under Articles 8, 9(a) or (b), or 10(2), a person is employed in the territory of one Party while remaining liable for contributions under the legislation of the other Party, the legislation of the former Party shall not apply to him and he shall not be liable, nor entitled, to pay contributions under the legislation of the former Party.

(9) A person who is entitled to receive sickness benefit, maternity allowance, invalidity benefit or injury benefit for any period under the legislation of Ireland while he is in Jersey or Guernsey, shall be excepted from liability to pay a contribution in respect of that period, other than as an employed or self-employed person, under the legislation of Jersey or Guernsey.

ARTICLE 8

Detached workers

Subject to Articles 9 and 10, where a person insured under the legislation of one Party, and employed by an employer with a place of business in the territory of that Party, is sent by that employer, either from the territory of that Party, or from a third country not

party to this Convention, to work in the territory of the other Party, the legislation of the former Party concerning liability for contributions shall continue to apply to him as if he were employed in the territory of that Party, provided that the employment in the territory of the other Party is not expected to last for more than three years, and the legislation of the latter Party shall not apply to him.

ARTICLE 9

Travelling personnel

Subject to Article 10, 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 whether for another undertaking or on its own account:

- (a) subject to sub-paragraphs (b) and (c), where a person is employed by an undertaking which has its principal place of business in the territory of one Party, the legislation of that Party concerning liability for contributions shall apply to him as if he were employed in its territory, even if he is employed in the territory of the other Party;
- (b) subject to sub-paragraph (c), where the undertaking has a branch or agency in the territory of one Party and a person is employed by that branch or agency, the legislation of that Party concerning liability for contributions shall apply to him;
- (c) where a person is ordinarily resident in the territory of one Party and is employed wholly or mainly in that territory, the legislation of that Party concerning liability for contributions shall apply to him, even if the undertaking which employs him does not have a place of business or branch or any agency in that territory.

ARTICLE 10

Mariners and others employed on board a ship or vessel

(1) Subject to paragraphs (2) to (4), where a person is employed on board any ship or vessel of one Party, the legislation of that Party concerning liability for contributions shall apply to him as if any conditions relating to residence were satisfied in his case, provided that he is ordinarily resident in the territory of either Party.

(2) Where a person who is insured under the legislation of one Party and employed either in the territory of that Party or on board any ship or vessel of that Party, is sent by his employer in the territory of that Party to work on board a ship or vessel of the other Party, the legislation of the former Party concerning liability for contributions shall continue to apply to him provided that his employment on board the ship or vessel of the latter Party is not expected to last for a period of more than one year. Where his employment on board the ship or vessel of the latter Party continues after such period of one year, the legislation of the former Party shall continue to apply to him for any further period of not more than one year, provided that the competent authority of the latter Party agrees thereto before the end of the first period of one year.

(3) Where a person who is not normally employed at sea is employed other than as a member of the crew, on board a ship or vessel of one Party, in the territorial waters of, or at a port of, the other Party, the legislation concerning liability for contributions of the Party in whose territory he is ordinarily resident shall apply to him.

(4) Where a person who is ordinarily resident in the territory of one Party and employed on board any ship or vessel of the other Party is paid remuneration in respect of that employment by a person who is ordinarily resident in, or by an undertaking having a place of business in, the territory of the former Party, the

legislation of the former Party concerning liability for contributions shall apply to him as if the ship or vessel were a ship or vessel of the former Party, and the person or undertaking by whom the remuneration is paid shall be treated as the employer for the purpose of such legislation.

ARTICLE 11

Diplomats, Government Servants and Consular Employees

(1) This Convention shall not apply to persons who are exempted from the social security law of the Party in whose territory they are present or resident by virtue of the Vienna Conventions on Diplomatic or Consular Relations.

(2) Subject to paragraph (1), where any person who is in the Government Service of one Party or in the service of any public corporation of that Party is employed in the territory of the other Party, the legislation of the former Party concerning liability for contributions shall apply to him as if he were employed in its territory.

(3) Subject to paragraphs (1) and (2), where a person 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, the legislation of the latter Party concerning liability for contributions shall apply to him as if he were employed in its territory, unless within three months of the entry into force of this Convention, or within three months of the beginning of the employment in the territory of the latter Party, whichever is later, he chooses to be insured under the legislation of the former Party, provided that he was so insured within the period of one month immediately before the commencement of the employment at that mission or post. Where, under this paragraph, a person has the right to choose to be insured under the legislation of the former Party but does not choose to do so, he shall not be liable, nor entitled, to pay contributions under the legislation of the former Party.

ARTICLE 12

Modification Provisions

Exceptionally, the competent authorities of the Parties may agree to modify the application of Articles 7 to 11 in respect of particular persons or categories of persons.

PART III
SPECIAL PROVISIONS

ARTICLE 13

Conversion formulae for contributions

(1) For the purpose of calculating entitlement to any benefit under the legislation of Great Britain, Northern Ireland or the Isle of Man in accordance with Articles 17 to 24, contribution periods or equivalent periods completed under the legislation of Ireland before 6 April 1975 shall be treated as if they had been contribution periods or equivalent periods completed under the legislation of Great Britain, Northern Ireland or the Isle of Man, as the case may be.

(2) For the purpose of calculating entitlement to any benefit under the legislation of Great Britain, Northern Ireland or the Isle of Man in accordance with Articles 17 to 24, contribution periods completed as a self-employed person or as a non-employed person or equivalent periods completed under the legislation of Ireland after 5 April 1975 shall be treated as if they had been contribution periods completed as a self-employed person or as a non-employed person or equivalent periods completed under the legislation of Great Britain, Northern Ireland or the Isle of Man, as the case may be.

(3) Subject to paragraph (4), for the purpose of calculating an earnings factor for assessing entitlement to any benefit under the legislation of Great Britain, Northern Ireland or the Isle of Man in accordance with Articles 14 and 16 to 24, a person shall be treated for each week beginning in a relevant income tax year commencing after 5 April 1975, the whole or any part of which week is a contribution period completed as an employed person under the legislation of Ireland, as having paid a contribution as an employed earner, or having earnings on which primary Class 1 contributions have been paid, on earnings equivalent to two-thirds of that year's upper earnings limit.

(4) For the purpose of calculating entitlement to additional pension under the legislation of Great Britain, Northern Ireland or the Isle of Man, no account shall be taken of any contribution period completed under the legislation of Ireland.

(5) For the purposes of the calculation in Article 18(3), where:

- (a) in any income tax year commencing after 5 April 1975, an employed person has completed periods of insurance exclusively in Ireland and the application of paragraph (3) results in that year being a qualifying year under the legislation of Great Britain, Northern Ireland or the Isle of Man, he shall be deemed to have been insured for fifty-two weeks in that year;
- (b) any income tax year commencing on or after 5 April 1975 does not count as a qualifying year under the legislation of Great Britain, Northern Ireland or the Isle of Man, any periods of insurance completed in that year shall be disregarded.

(6) For the purpose of calculating the appropriate contribution factor to establish entitlement to any benefit under the legislation of Jersey in accordance with Articles 14, 15, 17 to 27 and 29, a person shall be treated:

- (a) for each week in an insurance period completed under the legislation of Ireland, being a week 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 an insurance period completed under the legislation of Ireland, being a week in a relevant year, as having paid contributions which derive an annual contribution factor of 0.0193 for that year.

(7) For the purpose of calculating entitlement to any benefit under the legislation of Guernsey, in accordance with Articles 14 to 29, contribution periods or equivalent

periods completed under the legislation of Ireland shall be treated as if they had been contribution periods or equivalent periods completed under the legislation of Guernsey.

(8) For the purpose of calculating entitlement to any benefit under the legislation of Ireland in accordance with Articles 14 to 29, each contribution period or equivalent period completed under the legislation of Great Britain, Northern Ireland or the Isle of Man before 6 April 1975, shall be treated as if it had been a contribution period or an equivalent period completed under the legislation of Ireland.

(9) For the purpose of calculating entitlement to any benefit under the legislation of Ireland in accordance with Articles 14 to 29, any earnings factor achieved in any income tax year commencing on or after 6 April 1975 under the legislation of Great Britain, Northern Ireland or the Isle of Man shall be converted by the competent authority of the United Kingdom to contribution weeks under the legislation of Ireland by dividing the earnings factor by that income tax year's lower earnings limit. The result shall be expressed as a whole number, any remaining fraction being ignored. The number of contribution weeks so calculated, subject to a maximum of the number of weeks during which the person was subject to the legislation of Great Britain, Northern Ireland or the Isle of Man, as the case may be, in that year, shall be treated as if they were contribution weeks completed under the legislation of Ireland.

(10) For the purpose of calculating entitlement to any benefit under the legislation of Ireland in accordance with Articles 14 to 29, any insurance periods completed under the legislation of Jersey shall be converted to contribution weeks completed under the legislation of Ireland as follows:

The competent authority of Jersey shall—

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

The result shall be expressed as a whole number, any remaining fraction being ignored. The number of contribution weeks so calculated, subject to a maximum of the number of weeks during which the person was subject to that legislation in a quarter or in a year, as the case may be, shall be treated as if they were contribution weeks completed under the legislation of Ireland.

(11) For the purpose of calculating entitlement under the legislation of Ireland to any benefit in accordance with Articles 14 to 29 contribution periods or equivalent periods completed under the legislation of Guernsey shall be treated as if they had been contribution periods or equivalent periods completed under the legislation of Ireland.

PART IV
BENEFIT PROVISIONS

SECTION 1

PROVISIONS FOR SICKNESS, MATERNITY, INVALIDITY AND UNEMPLOYMENT

ARTICLE 14

Sickness benefit and Maternity allowance

(1) Where a person has, since his last arrival in the territory of one 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 insurance period completed under the legislation of the other Party shall be treated in accordance with Article 13 as if it were an insurance period completed under the legislation of the former Party.

(2) Where a person is employed in the territory of one Party and the legislation of the other Party applies to him in accordance with any of the provisions of Articles 7 to 12, he shall be treated under that legislation for the purpose of any claim to sickness benefit or maternity allowance as if he were in the territory of the latter Party.

(3) Subject to paragraphs (4) and (5) and Article 33, where a person would be entitled to receive sickness benefit or maternity allowance under the legislation of one Party if he were in the territory of that Party, he shall be entitled to receive that sickness benefit or maternity allowance while he is in the territory of the other Party if:

- (a) his condition necessitates immediate treatment during a stay in the territory of the latter Party and, within 6 days of commencement of incapacity for work or such longer period as the competent authority may allow, he submits to the competent authority of the former Party a claim to benefit and documentary evidence of incapacity for work issued by the doctor treating him; or
- (b) having claimed and become entitled to sickness benefit or maternity allowance under the legislation of the former Party he is authorised by the competent authority of that Party to return to the territory of the latter Party where he resides, or to transfer his residence to the territory of the latter Party; or
- (c) having claimed and become entitled to sickness benefit or maternity allowance under the legislation of the former Party, he is authorised by the competent authority of that Party to go to the territory of the latter Party to receive there treatment for his condition.

The authorisation required in accordance with sub-paragraph (b) may be refused only if it is established that movement of the person concerned would be prejudicial to his state of health, or to the receipt of medical treatment.

(4) Where a seasonal worker, who is entitled to sickness benefit under the legislation of Jersey or Guernsey, or Ireland, returns to the territory in which he is ordinarily resident, he shall be entitled to continue to receive such benefit for a period of not more than thirteen weeks from the date of his departure from Jersey or Guernsey or Ireland, as the case may be.

(5) Where a person who is resident in the territory of one Party claims but is not entitled to receive sickness benefit or maternity allowance under the legislation of that Party but would be entitled to receive sickness benefit or maternity allowance

under the legislation of the other Party if he were in the territory of that Party, he shall be entitled to receive that sickness benefit or maternity allowance while he is in the territory of the former Party provided that, since his last arrival in the territory of that Party, he has not completed a contribution period under its legislation.

(6) Where a person would be entitled to receive sickness benefit or maternity allowance under the legislation of Ireland if he were in the territory of that Party, he shall be entitled to receive that sickness benefit or maternity allowance while he is in the territory of the United Kingdom.

(7) Where, but for this paragraph, a person would be entitled to receive, for the same period, whether by virtue of this Convention, or otherwise:

- (a) sickness benefit, including industrial injury benefit under the legislation of Guernsey, or maternity allowance under the legislation of both Parties; or
- (b) statutory sick pay or statutory maternity pay under the legislation of Great Britain or Northern Ireland, and sickness benefit or maternity allowance under the legislation of Ireland;

that benefit, allowance or payment shall be granted only under the legislation under which the person was last insured before entitlement arose.

(8) For the purpose of calculating the weekly rate of maternity allowance under the legislation of Ireland, where the provisions of Section 39 (1)(a) of the Social Welfare (Consolidation) Act, 1993, are being applied, an amount equal to the average weekly wage of female employed persons in the income tax year prescribed for the purpose of the aforesaid Section 39, shall be credited to the employed person in respect of each week completed as an employed person under the legislation of the United Kingdom in respect of that income tax year.

ARTICLE 15

Incapacity benefit

(1) Where a person has been insured under the legislation of both Parties, the competent authority in the territory of the Party whose legislation was applicable when incapacity for work followed by incapacity began shall determine, in accordance with its legislation, whether the person concerned satisfied the conditions for entitlement to incapacity benefit taking account, where appropriate, of any insurance period which that person has completed under the legislation of the other Party as if it were an insurance period completed under its legislation.

(2) Where a person would be entitled to receive for the same incapacity and for the same period incapacity benefit under the legislation of both Parties, or incapacity benefit under the legislation of one Party and sickness benefit under the legislation of the other Party, including statutory sick pay under the legislation of Great Britain or Northern Ireland, or industrial injury benefit under the legislation of Guernsey, whether by virtue of this Convention or otherwise, he shall be entitled to receive only the incapacity benefit, sickness benefit, statutory sick pay or industrial injury benefit, as the case may be, under the legislation of the Party in whose territory the incapacity began.

¹Sub-para. (3) inserted by Sch. 2 to this S.I. as from 1.10.07.

►¹(3) Where a person is entitled to incapacity pension under the legislation of Jersey, only contribution periods completed, or deemed to be completed, under the legislation of Jersey shall be taken into consideration in the calculation of the rate of incapacity pension.◀

ARTICLE 16

Unemployment benefit

(1) In this Article “Party” means Great Britain, Northern Ireland, Guernsey or Ireland, as the case may be.

(2) Subject to paragraphs (4) to (6) and paragraph (8) where a person has, since his last arrival in the territory of one Party, completed a contribution period under the legislation of that Party, then for the purpose of any claim to unemployment benefit made under the legislation of that Party, any insurance period, or period of employment, completed under the legislation of the other Party shall be treated in accordance with Article 13 as if it were an insurance period, or period of employment, completed under the legislation of the former Party in so far as those periods do not coincide.

(3) Periods of employment in one Party shall be taken into account for the purpose of determining whether a person who has previously exhausted his right to unemployment benefit under the legislation of Guernsey or Ireland requalifies for it.

(4) Where a person is entitled to unemployment benefit under the legislation of Great Britain or Northern Ireland in accordance with paragraph (2), any unemployment benefit paid to that person for any period under the legislation of Ireland during the last twelve weeks before the day for which his claim is made shall be treated, for the purpose of determining the duration of entitlement to the payment, as if it were unemployment benefit paid for the same period under the legislation of Great Britain or Northern Ireland, as the case may be.

(5) Where a person is entitled to unemployment benefit under the legislation of Guernsey in accordance with paragraph (2), any unemployment benefit paid to that person for any period under the legislation of Ireland during the last twelve months before the day for which his claim is made shall be treated, for the purpose of determining the duration of entitlement to the payment, as if it were unemployment benefit paid for the same period under the legislation of Guernsey.

(6) This Article shall not apply to a person who claims unemployment benefit under the legislation of Guernsey and who has not paid twenty-six contributions as an employed person under the legislation of Guernsey.

(7) For the purpose of paragraph (2), insurance periods completed under the legislation of Jersey or the Isle of Man shall be taken into account for the purpose of determining entitlement to unemployment benefit under the legislation of Ireland provided the person has thirty-nine qualifying contributions as an employed contributor under the legislation of Ireland.

(8) For the purpose of determining whether a person is entitled to be credited with a Class 1 contribution under the legislation of Guernsey in respect of any week of unemployment, any insurance period, or any period of employment, completed by him under the legislation of Ireland, shall be treated as an insurance period or period of employment, as the case may be, under the legislation of Guernsey.

SECTION 2

RETIREMENT PENSION AND SURVIVOR’S BENEFIT

ARTICLE 17

General provisions

(1) Subject to paragraphs (2) to (4) and Article 22, where a person is entitled to a basic retirement pension under the legislation of any part of either Party otherwise than by virtue of this Convention, that pension shall be payable and Article 18 shall not apply under that legislation.

(2) Notwithstanding paragraph (1), a person entitled to a Category B retirement pension under the legislation of Great Britain, Northern Ireland or the Isle of Man shall also be entitled to have any Category A retirement pension entitlement determined in accordance with Article 18.

(3) Notwithstanding paragraph (1), a married woman entitled to a retirement pension solely on her husband's contributions under the legislation of Jersey or Guernsey shall also be entitled to have any pension entitlement based entirely on her own insurance determined in accordance with Article 18. Such a married woman shall be entitled to receive only the benefit of her choice.

(4) Entitlement to a retirement pension in the circumstances referred to in paragraph (1) shall not preclude the competent authority of any part of either Party from taking into account in accordance with Article 18(4) to (6) and (8) insurance periods completed under the legislation of any other part of either Party.

ARTICLE 18

Pro-rata Pensions

(1) Subject to Articles 19 to 23, this Article shall apply to determine a person's entitlement to retirement pension, including any increase for dependants, under the legislation of any part of either Party.

(2) For the purposes of determining entitlement to retirement pension, no account shall be taken of any increase for dependent children, but any such increase shall be payable in accordance with Article 22.

(3) In accordance with Article 13, the competent authority of any part of either Party shall determine:

- (a) the amount of the theoretical pension which would be payable if all the relevant insurance periods completed under the legislation of both Parties had been completed under its own legislation;
- (b) the proportion of such theoretical pension which bears the same relation to the whole as the total of the insurance periods completed under the legislation of that part of either Party bears to the total of all the relevant insurance periods completed under the legislation of both Parties.

The proportionate amount thus calculated shall be the rate of pension actually payable by the competent authority.

(4) For the purpose of the calculation in paragraph (3), where all the insurance periods completed by any person under the legislation of:

- (a) Great Britain, Northern Ireland and the Isle of Man amount to less than one reckonable year or, as the case may be, one qualifying year, or relate only to periods before 6 April 1975 and in aggregate amount to less than fifty weeks, or if the combined total of the number of weeks of insurance, after conversion to contribution weeks in accordance with Article 13(9), if appropriate, is less than fifty; or
- (b) Jersey amount to less than an annual contribution factor of 1.00; or
- (c) Guernsey amount to less than fifty weeks;

those periods shall be treated in accordance with paragraph (5) or (6).

(5) Insurance periods under paragraphs (4) and (8) shall be treated as follows:

- (a) as if they had been completed under the legislation of any part of the United Kingdom under which a pension is, or if such periods are taken into account, would be, payable; or
- (b) where a pension is, or would be, payable under the legislation of two or more

parts of the United Kingdom as if they had been completed under the legislation of that part which, at the date on which entitlement first arose or arises, is paying, or would pay, the greater, or greatest, amount.

(6) Where no pension is, or would be, payable under paragraph (5), insurance periods under paragraph (4) shall be treated as if they had been completed under the legislation of Ireland.

(7) Any increase of benefit payable under the legislation of Great Britain, Northern Ireland or the Isle of Man because of deferred retirement or deferred entitlement, shall be based on the amount of the pro-rata pension calculated in accordance with this Article.

(8) Where all the insurance periods completed by a person under the legislation of Ireland amount to less than one year those periods shall be treated as if they had been completed under the legislation of the United Kingdom in accordance with paragraph (5).

ARTICLE 19

Insurance periods to be taken into account

(1) For the purpose of applying Article 18 the competent authority of either Party shall take account only of insurance periods (completed under the legislation of either Party) which would be taken into account for the determination of pensions under its legislation if they were completed under that legislation, and shall, where appropriate, take into account in accordance with that legislation insurance periods completed by a spouse ►¹or civil partner◄, or former spouse ►¹or former civil partner◄, as the case may be.

¹Words inserted in Art. 19(1) by Sch. 2 to this S.I. as from 1.10.07.

(2) Where, in relation to any claim to receive old age benefit or survivor's benefit, it is found that the insured person was paid sickness benefit, disability benefit or invalidity pension as the case may be, by virtue of reciprocal provisions in the earlier agreements, for any continuous period of not less than 26 weeks the contributions credited to him in respect of that period shall—

- (a) if before the beginning of that period he has paid at least 156 contributions of the appropriate class under the legislation of one Party, but less than 156 contributions of the appropriate class under the legislation of the other Party, be treated as credited to him under the legislation of the first Party; or
- (b) if before the beginning of that period he has paid at least 156 contributions of the appropriate class under the legislation of both Parties, be treated as credited to him under the legislation of the Party under whose legislation the benefit or pension was paid during that period; or
- (c) if before the beginning of that period he has paid less than 156 contributions of the appropriate class under the legislation of either Party be treated as credited to him under the legislation of each Party for that part of that period which bears the same relation to the whole as the number of the appropriate class paid by him under that legislation before the beginning of that period bears to the total number of contributions of the appropriate class paid by him under the legislation of the two Parties before the beginning of that period.

ARTICLE 20

Overlapping periods

For the purpose of applying Article 18:

- (a) where a compulsory contribution period or an equivalent period completed

under the legislation of one Party coincides with a voluntary contribution period completed under the legislation of the other Party, only the compulsory contribution period or equivalent period shall be taken into account, provided that the amount of pension payable under the legislation of the latter Party under Article 18(3) shall be increased by the amount by which the pension payable under the legislation of that Party would have been increased if all voluntary contributions paid under that legislation had been taken into account;

- (b) where a contribution period, other than a voluntary contribution period, completed under the legislation of one Party coincides with an equivalent period completed under the legislation of the other Party, only the contribution period shall be taken into account;
- (c) where an equivalent period completed under the legislation of one Party coincides with an equivalent period completed under the legislation of the other Party, account shall be taken only of the equivalent period completed under the legislation under which the insured person was last insured before the day when the periods in question began or, if he was never insured before that day, under the legislation under which he first became insured after the day when the periods in question ended;
- (d) where a compulsory contribution period completed under the legislation of one Party coincides with a compulsory contribution period completed under the legislation of the other Party, each Party shall take into account only the compulsory contribution period completed under its own legislation;
- (e) where a voluntary contribution period completed under the legislation of one Party coincides with a voluntary contribution period completed under the legislation of the other Party, each Party shall take into account only the voluntary contribution period completed under its own legislation;
- (f) where it is not possible to determine accurately the period of time in which certain insurance periods were completed under the legislation of one Party, such insurance periods shall be treated as if they did not overlap with insurance periods completed under the legislation of the other Party and shall be taken into account to the best advantage of the beneficiary.

ARTICLE 21

Benefits to be excluded

(1) For the purpose of applying Article 18 no account shall be taken of the following benefits payable under the legislation of Great Britain, Northern Ireland or the Isle of Man:

- (a) any additional pension payable;
- (b) any graduated retirement benefit payable by virtue of any graduated contributions paid before 6 April 1975;
- (c) any invalidity allowance or incapacity age addition payable;

but any such benefit shall be added to the amount of any benefit payable under that legislation in accordance with Article 18(3).

(2) For the purpose of applying Article 18 no account shall be taken of the following payments under the legislation of Ireland:

- (a) any increase for child dependants;
- (b) any increase where the person has attained pensionable age and is living alone;
- (c) any increase where the person has attained the age of eighty years;

but such payments shall, where appropriate, be added to the amount of benefit payable under that legislation in accordance with Article 18(3).

ARTICLE 22

Increases for dependent children

(1) This Article shall apply to any increase of a retirement pension or a survivor's benefit payable under the legislation of either Party in respect of a dependent child or dependent children.

(2) Such increase shall be payable in accordance with the following provisions:

- (a) where a retirement pension or a survivor's benefit is payable only under the legislation of one Party, the increase shall be payable under the legislation of that Party;
- (b) where a retirement pension or a survivor's benefit is payable under the legislation of both Parties and an increase would otherwise be payable under the legislation of both Parties in respect of the same child, the increase shall be payable under the legislation of the Party in whose territory the pensioner, widow or widower is ordinarily resident at the date of entitlement to the increase.

(3) Where an increase cannot be paid under paragraph (2)(b) because the pensioner or widow is not ordinarily resident in the territory of either Party, the increase shall be payable under the legislation of the Party in whose territory the pensioner or widow was last ordinarily resident.

ARTICLE 23

Non-simultaneous entitlement

Where a person does not simultaneously satisfy the conditions for entitlement to a retirement pension under the legislation of both Parties, his entitlement from each Party shall be established as and when he satisfies the conditions applicable under the legislation of that Party, taking account, where appropriate, of Article 18.

ARTICLE 24

Survivor's benefit

(1) Articles 17 to 23 shall also apply, with such modifications as the differing nature of the benefits shall require, to survivor's benefit.

(2) Where survivor's benefit would be payable under the legislation of one Party if a child were in the territory of that Party, it shall be payable while the child is in the territory of the other Party.

(3) A person who is entitled to receive survivor's benefit under the legislation of Jersey shall be awarded credits only for periods during which that person is ordinarily resident in Jersey.

(4) A person who is entitled to receive survivor's benefit under the legislation of Guernsey while he is in Ireland, shall not be credited with a Class 3 contribution in respect of every week during which that benefit is payable to him, but shall be credited, for the purposes of entitlement to retirement pension or death grant, in respect of each year during the whole or part of which such benefit is payable, with a number of Class 3 contributions equal to his spouse's yearly average of reckonable contributions at the date of her death. If the rate of retirement pension payable to such a person would

be less than the rate of survivor's benefit formerly payable it shall be increased to that of the survivor's benefit.

SECTION 3

BENEFITS FOR INDUSTRIAL ACCIDENTS AND INDUSTRIAL DISEASES

ARTICLE 25

General provisions

(1) Where a person is employed in the territory of one Party and the legislation of the other Party applies to him in accordance with any of the provisions of Articles 8 to 12, he shall be treated under the legislation of the latter Party for the purpose of any claim for benefit in respect of an industrial accident or an industrial disease contracted during that employment, as if the accident had occurred or the disease had been contracted in the territory of the latter Party. Where benefit would be payable in respect of that claim if the person were in the territory of the latter Party, it shall be payable while he is in the territory of the former Party.

(2) Where a person leaves the territory of one Party to go in the course of his employment to the territory of the other Party, but before he arrives in the latter territory sustains an accident, then, for the purpose of any claim to benefit in respect of that accident:

- (a) the accident shall be treated as if it had occurred in the territory of the Party whose legislation applied to him at the time the accident occurred; and
- (b) his absence from the territory of that Party shall be disregarded in determining whether his employment was as an employed person under that legislation.

(3) Where a seasonal worker who is entitled to industrial injury benefit under the legislation of Guernsey goes to Ireland, he shall be entitled to continue to receive such benefit for a period of not more than thirteen weeks from the date of departure from Guernsey.

(4) Where because of a death resulting from an industrial accident or an industrial disease, a benefit would be payable under the legislation of one Party in respect of a child if that child were in the territory of that Party, that benefit shall be payable while the child is in the territory of the other Party.

ARTICLE 26

Dual Attribution and Aggravation of an Industrial Disease

(1) Subject to paragraph (2), where a person contracts an industrial disease, after having been employed in the territories of both Parties in an occupation to which, under the legislation of both Parties, the disease may be attributed and he would be entitled to receive benefit in respect of that disease under the legislation of both Parties, whether by virtue of this Convention or otherwise, the benefit shall be payable only under the legislation of the Party in whose territory he was last employed in that occupation before the disease was diagnosed.

(2) Where a person has suffered an aggravation of an industrial disease for which benefit has been paid in accordance with paragraph (1), the following provisions shall apply:

- (a) if the person has not had further employment in an occupation to which the disease or the aggravation may be attributed, or has had such employment only in the territory of the Party under whose legislation benefit has been paid, any additional benefit to which he may become entitled as a result of such aggravation shall be payable only under that legislation;

- (b) if the person makes a claim under the legislation of the Party in whose territory he is employed on the ground that he has suffered an aggravation of the disease while he was employed in the territory of that Party in an occupation to which, under the legislation of that Party, the aggravation may be attributed, the competent authority of that Party shall be liable to pay benefit only in respect of the aggravation as determined under the legislation of that Party.

ARTICLE 27

Dual entitlement

A person shall not be entitled, whether by virtue of this Convention or otherwise, to receive sickness benefit, including industrial injury benefit under the legislation of Guernsey, invalidity benefit or maternity allowance under the legislation of one Party for any period during which he is entitled to benefit, other than a pension, under the legislation of the other Party in respect of incapacity for work which results from an industrial accident or an industrial disease.

SECTION 4

FAMILY BENEFITS

ARTICLE 28

Family allowance

For the purposes of any claim to family allowance under the legislation of Guernsey:

- (a) any period of residence or presence in Ireland shall be treated as a period of residence or presence in Guernsey; and
- (b) a person whose place of birth was in Ireland shall be treated as if his place of birth were in Guernsey.

SECTION 5

DEATH BENEFIT

ARTICLE 29

Death Grant under the legislation of Jersey, Guernsey or Ireland

- (1) In this Article "Party" means Jersey, Guernsey or Ireland, as the case may be.
- (2) For the purpose of any claim to death grant under the legislation of either Party any insurance period completed by the relevant person under the legislation of one Party shall be treated in accordance with Article 13 as if it were an insurance period completed under the legislation of the other Party.
- (3) For the purpose of any claim to death grant under the legislation of Ireland the relevant person may, in addition to the deceased person, also include the spouse of the deceased person or, in the case where a grant is claimed in respect of a deceased child, the father or mother of the child or such persons defined in Section 114(2) (a)(ii) and (iii) of the Social Welfare (Consolidation) Act 1993.
- (4) Where a person dies in the territory of either Party his death shall be treated, for the purpose of any claim to death grant under the legislation of one Party, as if it had occurred in the territory of that Party.

(5) Where there would be entitlement to death grant under the legislation of both Parties, whether by virtue of this Convention or otherwise:

- (a) the grant shall be payable only under the legislation of the Party in whose territory the death occurs; or
- (b) if the death does not occur in the territory of either Party, the grant shall be payable only under the legislation of the Party under whose legislation the person on whose insurance the right to the grant is determined was last insured before the death.

(6) For the purposes of this Article no account shall be taken of any insurance period completed under the legislation of the other Party:

- (a) under the legislation of the Republic of Ireland in respect of any period prior to 1 October 1970;
- (b) under the legislation of Guernsey in respect of any period prior to 7 June 1971.

PART V
MISCELLANEOUS PROVISIONS

ARTICLE 30

Recovery of advance payments and overpayments of benefit

(1) Where a competent authority of one Party has made a payment of any benefit to a person for any period, or event, in advance of the period, or event, to which it relates or has paid him any benefit for a period, or event, whether by virtue of this Convention or otherwise, and the competent authority of the other Party afterwards decides that the person is entitled to benefit for that period, or event, under its legislation, the competent authority of the latter Party, at the request of the competent authority of the former Party, shall deduct from the benefit due for that period, or event, under its legislation any overpayment which, by virtue of this Convention, results from the advance payment of benefit, or from the benefit paid, by the competent authority of the former Party and shall, where appropriate, transmit this sum to the competent authority of the former Party.

(2) Where a person has received social assistance under the legislation of one Party for a period for which that person subsequently becomes entitled to any benefit under the legislation of the other Party, the competent authority of the latter Party, at the request of and on behalf of the competent authority of the former Party, shall withhold the benefit due for that period and shall transmit the amount withheld to the competent authority of the former Party. The competent authority of the former Party shall deduct from the benefit due under the legislation of the other Party the amount by which the social assistance paid exceeded what would have been paid had the benefit under the legislation of the latter Party been paid before the amount of social assistance was determined. Any benefit not so deducted shall be transmitted to the person.

ARTICLE 31

Arrangements for Administration and Co-operation

(1) The competent authorities of the two Parties shall establish the administrative measures necessary for the application of this Convention.

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

(3) The competent authorities of the two Parties shall establish liaison offices for the purpose of facilitating the implementation of this Convention.

(4) The competent authorities of the two 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.

(5) Where any benefit is payable under the legislation of one Party to a person in the territory of the other Party, arrangements for the payment may, in exceptional circumstances, be made by the competent authority of the latter Party, at the request of the competent authority of the former Party, and the former Party shall reimburse the latter Party.

(6) Where a person who is in the territory of one Party has claimed, or is receiving, benefit under the legislation of the other Party and a medical examination is necessary,

the competent authority of the former Party, at the request of the competent authority of the latter Party, shall arrange for this examination. The cost of such examination shall be met by the competent authority of the former Party.

(7) A medical board appointed by the competent authority of Ireland at the request of the competent authority of Guernsey, shall be treated as a medical board for determination of the disablement questions under the legislation of Guernsey.

(8) Where the legislation of one Party provides that any certificate or other document which is submitted under the legislation of that Party shall be exempt, wholly or partly, from any taxes, legal dues, consular fees or administrative charges, that exemption shall apply to any certificate or other document which is submitted under the legislation of the other Party or in accordance with this Convention.

(9) All statements, documents and certificates of any kind required to be produced for the purposes of this Convention shall be exempt from authentication by diplomatic or consular authorities.

(10) No certificate, document or statement of any kind written in an official language of either Party shall be rejected on the ground that it is written in a foreign language.

(11) Unless disclosure is required under the legislation of a Party, any information about an individual which is sent in accordance with, and for the purposes of, this Convention to that Party by the other Party is confidential and shall be used only for the purpose of implementing this Convention and the legislation to which this Convention applies.

ARTICLE 32

Submission of claim or appeal

(1) Any claim or appeal which should, for the purposes of the legislation of one Party, have been submitted within a prescribed period to the competent authority of that Party, shall be treated as if it had been submitted to that competent authority if it is submitted within the same period to the competent authority of the other Party.

(2) Any claim to benefit submitted under the legislation of one Party shall also be deemed to be a claim to the corresponding benefit under the legislation of the other Party in so far as this corresponding benefit is payable in accordance with this Convention.

ARTICLE 33

Currency and method of payment

(1) Payment of any benefit in accordance with this Convention may be made in the currency of the Party whose competent authority makes the payment and any such payment shall constitute a full discharge of the obligation in respect of which payment has been made.

(2) Where the competent authority of one Party has made a payment of benefit on behalf of the competent authority of the other Party in accordance with paragraph (5) of Article 31, any reimbursement of the amounts paid by the competent authority of the former Party shall be in the currency of the latter Party.

(3) Where a person in the territory of one Party is receiving benefit under the legislation of the other Party, it shall be payable by whatever method the competent authority of the latter Party deems appropriate.

ARTICLE 34

Resolution of disputes

(1) The competent authorities of the Parties to this Convention shall make all reasonable efforts to resolve through agreement between them any dispute about its interpretation or application.

(2) If any dispute cannot be resolved as in paragraph (1) it shall be submitted, at the request of the competent authority of either Party, to an arbitration tribunal which shall be constituted in the following manner:

- (a) each Party shall appoint an arbitrator within one month from receipt of the demand for arbitration. The two arbitrators shall appoint a third arbitrator, who shall not be a national of either Party, within two months from the date on which the Party which was the last to appoint its arbitrator has notified the other Party of the appointment;
- (b) if within the prescribed period either Party should fail to appoint an arbitrator, the other Party may request the President of the International Court of Justice or, in the event of his having the nationality of one of the Parties, the Vice-President or next senior judge of that Court not having the nationality of either Party, to make the appointment. A similar procedure shall be adopted at the request of either Party if the two arbitrators cannot agree on the appointment of the third arbitrator.

(3) The decision of the arbitration tribunal, which shall be binding on both Parties, shall be by majority vote. The arbitration tribunal shall determine its own rules of procedure, and its costs shall be borne equally by the two Parties.

PART VI
TRANSITIONAL AND FINAL PROVISIONS

ARTICLE 35

Prior acquisition of rights-old Agreements replaced by new Convention-persons covered by this Convention

(1) Upon the entry into force of this Convention the earlier agreements shall terminate and shall be replaced by this Convention.

(2) Any right to benefit acquired by a person in accordance with the earlier agreements shall be maintained. For the purposes of this paragraph "any right to benefit acquired" includes any right which a person would have had but for his failure to claim timeously where a late claim is allowed.

(3) Any rights in course of acquisition under the earlier agreements at the date of entry into force of this Convention shall be settled in accordance with the agreement, or Convention, in force at the date of entitlement.

(4) Where, from the date of entry into force of this Convention, any claim to benefit has not been determined and entitlement arises before that date, the claim shall be determined under the earlier agreements and shall be determined afresh under this Convention from its date of entry into force. The rate of benefit determined under this Convention shall be awarded from the date of its entry into force if this is more favourable than the rate determined under the earlier agreements.

(5) Benefit, other than lump sum payments, shall be payable in accordance with this Convention in respect of events which happened before the date of its entry into force, except that an accident which occurred or a disease which developed before that date shall not, solely by virtue of this Convention, be treated as an industrial accident or an industrial disease if it would not have been so treated under any legislation or agreement having effect at the time of its occurrence or development. For the purpose of determining claims in accordance with this Convention, account shall be taken, where appropriate, of insurance periods and periods of residence, employment or presence, completed before the date of its entry into force.

(6) Paragraph (5) shall not confer any right to receive payment of benefit for any period before the date of entry into force of this Convention.

(7) For the purpose of paragraph (2) and for applying the first sentence of paragraph (5):

- (a) any right to benefit may, at the request of the person concerned, be determined afresh in accordance with this Convention with effect from the date of its entry into force provided that the request has been made within two years of that date and, if applicable, benefit awarded at the higher rate from that date;
- (b) where the request for the benefit to be determined afresh is made more than two years after the date of entry into force of this Convention payment of benefit, and the payment of any arrears, shall be made in accordance with the legislation concerned.

(8) No provision of this Convention shall diminish any rights or benefits which a person has properly acquired under the legislation of any part of either Party before the date of entry into force of this Convention.

ARTICLE 36

Prior Acquisition of rights-old Agreements replaced by new Convention-persons excluded from this convention

As regards persons who, by virtue of Article 2, are not covered by this Convention, the following provisions shall apply:

- (a) any rights in course of acquisition under the earlier agreements before the date of entry into force of this Convention shall be determined in accordance with Regulation (EEC) 1408/71 and the Implementing Regulation;
- (b) the earlier agreements shall remain applicable to any award of a benefit which was made under them prior to the date of entry into force of this Convention.

ARTICLE 37

Ratification

This Convention shall be ratified and the instruments of ratification shall be exchanged in London as soon as possible. The Convention shall enter into force on the first day of the third month following the month in which the instruments of ratification are exchanged.

ARTICLE 38

Life of the Convention

This Convention shall remain in force for an indefinite period. The Government of the United Kingdom of Great Britain and Northern Ireland or the Government of Ireland may denounce it at any time by giving 6 months' notice in writing to the other Party.

ARTICLE 39

Rights on termination of this Convention not replaced by another

In the event of the termination of this Convention and unless a new Convention containing provisions regulating the matter is made, any right to benefit acquired by a person in accordance with this Convention shall be maintained and negotiations shall take place for the settlement of any other rights then in course of acquisition by virtue of those provisions.

In witness whereof the undersigned, duly authorised by their respective Governments, have signed this Convention.

Done in duplicate at Dublin this fourteenth day of December 2004.

For the Government of the United Kingdom of Great Britain and Northern Ireland

S G Eldon

For the Government of Ireland

John Hynes

SCHEDULE 2

Article 2

EXCHANGE OF NOTES BETWEEN THE GOVERNMENT OF THE
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
AND THE GOVERNMENT OF IRELAND

[No. 1]

3 July 2007

Your Excellency

I have the honour to refer to the Convention on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland, which was signed at Dublin on 14 December, 2004 and to propose that the following amendments should be made in the text of the Convention:

(A) In Article 1 (1) the definitions of “Category A retirement pension” and “Category B retirement pension” shall be replaced as follows:

““*Category A retirement pension*” means either, or both, a basic retirement pension and an additional pension based on a person’s own insurance contributions or, for certain persons whose marriages have ended by divorce or widowhood, or for certain persons whose civil partnerships have ended by dissolution or by the death of a civil partner, a basic retirement pension based on the former spouse’s or civil partner’s insurance contributions, payable under the legislation of Great Britain, Northern Ireland or the Isle of Man, and an old age pension based on a person’s own contributions or, for certain persons whose marriages have ended by divorce or widowhood, based on the former spouse’s contributions, payable under the legislation of Jersey or Guernsey;

“*Category B retirement pension*” means a basic retirement pension payable to a married person or civil partner on the spouse’s or civil partner’s contributions or, for a widow, widower or surviving civil partner, either, or both, a basic retirement pension and an additional pension based on the late spouse’s or civil partner’s contributions, payable under the legislation of Great Britain, Northern Ireland or the Isle of Man, and an old age pension payable under the legislation of Jersey or Guernsey to a married woman by virtue of the contributions of her husband while he is alive;”

(B) In Article 1(1) the definition of “invalidity benefit” shall be replaced as follows:

““*invalidity benefit*” means—

- (i) *long-term incapacity benefit, additional pension, invalidity allowance and incapacity age addition payable under the legislation of Great Britain, Northern Ireland or the Isle of Man, or*
- (ii) *invalidity benefit payable under the legislation of Guernsey, or*
- (iii) *invalidity benefit, long term incapacity allowance or incapacity pension payable under the legislation of Jersey, or*
- (iv) *invalidity pension payable under the legislation of Ireland;.”*

(C) In Article 1(1) the definition of “sickness benefit” shall be replaced as follows:

““*sickness benefit*” means—

- (i) *short-term incapacity benefit at the lower, higher or long-term rate payable under the legislation of Great Britain, Northern Ireland or the Isle of Man, or*
- (ii) *sickness benefit and industrial injury benefit payable under the legislation of Guernsey, or*
- (iii) *short term incapacity allowance payable under the legislation of Jersey, or*

(iv) disability benefit payable under the legislation of Ireland..”

(D) Article 6, paragraph (3) shall be replaced as follows:

“(3) Subject to Article 15(3) to (5), a person who continues to be entitled to receive sickness benefit under the legislation of Jersey while he is in Ireland may, after having received, or been deemed to have received, 364 days sickness benefit, become entitled to receive long term incapacity allowance under the legislation of Jersey provided that he continues to satisfy the insurance authority of Jersey of a loss of physical or mental faculty..”

(E) In Article 15 a new paragraph shall be inserted as follows:

“(3) Where a person is entitled to incapacity pension under the legislation of Jersey, only contribution periods completed, or deemed to be completed, under the legislation of Jersey shall be taken into consideration in the calculation of the rate of incapacity pension..”

(F) In Article 19, paragraph (1) after the words “*completed by a spouse*” there shall be added the words “*or civil partner*” and after the words “*or former spouse*” there shall be added the words “*or former civil partner*”.

If the foregoing proposals are acceptable to the Government of Ireland, I have the honour to suggest that this Note, together with Your Excellency’s reply to that effect, shall constitute an Agreement between our two Governments which shall enter into force at the same time as the Convention.

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

Win Harris

Director, Joint International Unit of the Department for Work and Pensions and the Department for Education and Skills

[No. 2]

3 July 2007.

Win Harris

Director, Joint International Unit of the Department for Work and Pensions and the Department for Education and Skills

I have the honour to acknowledge the receipt of your note dated 3 July 2007 which reads as follows:

[the Note here sets out the text for No 1]

I have the honour to confirm that the foregoing is acceptable to the Government of Ireland and that they agree that your Note together with this reply shall constitute an Agreement between our two Governments in this matter, which shall enter into force at the same time as the Convention.

I avail myself of this opportunity to renew assurances of my highest consideration.

Dáithí O’Ceallaigh

Ambassador of Ireland, London

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for the modification of the Social Security Administration Act 1992, the Social Security Contributions and Benefits Act 1992 and the Jobseekers Act 1995 so as to give effect to the Convention on Social Security signed between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland, as amended by the Exchange of Notes.

The Convention set out in Schedule 1 relates to reciprocity in benefits for sickness, maternity, invalidity and unemployment, retirement pension and survivor's benefit and benefit for industrial accidents and industrial diseases in relation to persons to whom Council Regulation (EEC) 1408/71(a) does not apply moving between Ireland and the United Kingdom of Great Britain and Northern Ireland. The Notes set out in Schedule 2 amend the Convention to take account of legislative changes in the United Kingdom relating to the benefit entitlement of spouses and civil partners.

The Order does not impose any costs on business, charities or the voluntary sector.

(a) OJ No. L 149, 5.7.71, p. 2.