1975 No. 77

SOCIAL SECURITY

The Family Allowances, National Insurance and Industrial Injuries (Spain) Order (Northern Ireland) 1975

Made . . . . . *25th March* 1975

Coming into operation . . . *1st April* 1975

WHEREAS at London on 13th September 1974 a Convention on social security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Spain (which Convention is set out in the Schedule and is hereinafter referred to as "the Convention") was signed on behalf of those Governments:

AND WHEREAS by Article 36 of the Convention it is provided that the Convention shall enter into force on the first day of the second month following the month in which the instruments of ratification are exchanged:

AND WHEREAS the Convention has been ratified by the said Governments and the instruments of ratification were exchanged on 25th February 1975, and accordingly the Convention enters into force on 1st April 1975:

AND WHEREAS by section 99 of the National Insurance Act (Northern Ireland) 1966(a) as extended by section 21 of the Family Allowances Act (Northern Ireland) 1966(b), and section 79 of the National Insurance (Industrial Injuries) Act (Northern Ireland) 1966(c), it is provided that the Governor of Northern Ireland may by Order in Council make provision for modifying or adapting the said Acts of 1966 in their application to cases affected by agreements with other Governments providing for reciprocity in matters specified in those sections:

AND WHEREAS by paragraph 4 of Schedule 5 to the Northern Ireland Constitution Act 1973(d) it is provided that any reference to the Governor of Northern Ireland, as respects functions to be discharged by him, or to the Governor of Northern Ireland in Council shall be construed as a reference to the Secretary of State and that any reference to the making of an Order in Council by the Governor of Northern Ireland shall be construed as a reference to the making of an order by the Secretary of State:

NOW, THEREFORE, the Secretary of State, in exercise of the powers conferred upon him by the said section 99 as so extended, by the said section 79 and by paragraph 4 of Schedule 5 to the Northern Ireland Constitution Act 1973 and of all other powers enabling him in that behalf, hereby makes the following Order:

Citation

1. This Order may be cited as the Family Allowances, National Insurance and Industrial Injuries (Spain) Order (Northern Ireland) 1975.

(a) 1966 c. 6 (N.I.)
(b) 1966 c. 8 (N.I.)
(c) 1966 c. 9 (N.I.)
(d) 1973 c. 36

Modification of Acts

2. The provisions contained in the Convention shall have full force and effect so far as they relate to Northern Ireland and provide for reciprocity in any matters specified in either section 99(1) of the National Insurance Act (Northern Ireland) 1966 as extended by section 21 of the Family Allowances Act (Northern Ireland) 1966, or section 79(1) of the National Insurance (Industrial Injuries) Act (Northern Ireland) 1966; and accordingly the Family Allowances Acts (Northern Ireland) 1966 to 1969, the National Insurance Measures (Northern Ireland) 1966 to 1974 and the National Insurance (Industrial Injuries) Measures (Northern Ireland) 1966 to 1974 shall have effect subject to such modifications as may be required therein for the purpose of giving effect to those provisions.

Dated this 25th day of March 1975.

Merlyn Rees
One of Her Majesty's Principal
Secretaries of State

SCHEDULE

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

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

Being resolved to co-operate in the field of social affairs and, in particular, in the matter of social security;

Desirous of promoting the welfare of persons moving between or working in the territories of their two countries;

Desirous of ensuring that persons from both countries shall enjoy equal rights under their respective social security legislation;

Desirous of making arrangements for insurance periods completed under the legislation of the two Contracting Parties to be added together for the purpose of determining the right to receive benefit;

Desirous further of making arrangements enabling persons who go from the territory of one Party to the territory of the other either to keep the rights which they have acquired under the legislation of the former Party or to enjoy corresponding rights under the legislation of the latter;

Have agreed as follows:

PART I

GENERAL PROVISIONS

ARTICLE 1

(1) For the purpose of this Convention:

(*a*) "the United Kingdom" means the United Kingdom of Great Britain and Northern Ireland and "Spain" means the Spanish State;

(*b*) "territory" means, in relation to the United Kingdom, England, Scotland, Wales, Northern Ireland, the Isle of Man, the Island of Jersey and the Islands of Guernsey, Alderney, Herm and Jethou and, in relation to Spain, the territory of the Spanish State;

(*c*) "legislation" means the legislation specified in Article 2 of this Convention which is in force in the territory of one (or the other) Contracting Party or in any part of that territory;

(*d*) "competent authority" means, in relation to the United Kingdom, the Secretary of State for Social Services, the Department of Health and Social Services for Northern Ireland, the Isle of Man Board of Social Security, the Social Security Committee of the States of Jersey or the States of Guernsey Insurance Authority, as the case may require, and, in relation to Spain, the Ministry of Labour;

(*e*) "insurance authority" means, in relation to the United Kingdom, the competent authority and, in relation to Spain, the Managing Bodies of the General Scheme and those of the Special Schemes listed in Article 2(1)(*b*)(ii) of this Convention;

(*f*) "competent insurance authority" means the insurance authority responsible under the applicable legislation for dealing with the matter in question;

(*g*) "worker" means, for the purpose of applying the legislation of the United Kingdom, a person who comes within the definition of an employed person or a person who is treated as an employed person and, for the purpose of applying the legislation of Spain, a gainfully occupied person who is not self-employed;

(*h*) "employment" means, for the purpose of applying the legislation of the United Kingdom, employment as a worker and the word "employ" refers to such employment;

(*i*) "insurance period" means a contribution period or equivalent period;

(*j*) "contribution period" means a period in respect of which contributions appropriate to the benefit in question have been paid or treated as paid under the legislation of one (or the other) Contracting Party;

(*k*) "equivalent period" means, in relation to the United Kingdom, a period for which contributions appropriate to the benefit in question have been credited under the legislation of the United Kingdom and, in relation to Spain, a period which is treated as equivalent to a contribution period under the legislation of Spain;

(*l*) "pension", "allowance" or "benefit" means a pension, allowance or benefit, including any increase thereof and any additional allowance payable therewith;

(*m*) "sickness benefit" means, in relation to the United Kingdom, sickness benefit payable under the legislation of the United Kingdom and, in relation to Spain, cash benefits for temporary incapacity for work caused by common illness and non-industrial accident;

(*n*) "invalidity pension" means, in relation to the United Kingdom, invalidity benefit as defined in the legislation of the United Kingdom and, in relation to Spain, any cash benefit provided under its legislation for cases of temporary and permanent invalidity caused by common illness and non-industrial accident;

(*o*) "old age pension" means, in relation to the United Kingdom, a contributory old age pension or retirement pension (including age addition where payable) payable under the legislation of the United Kingdom and, in relation to Spain, an old age pension as provided under the legislation of Spain;

(*p*) "survivor's benefit" means, in relation to the United Kingdom, widow's allowance, widowed mother's allowance, widow's pension and widow's basic pension payable under the legislation of the United Kingdom and, in relation to Spain, widows' pensions and temporary allowances and pensions for surviving dependants as a result of common illness and non-industrial accident as defined in the legislation of Spain;

(*q*) "orphan's benefit" means, in relation to the United Kingdom, guardian's allowance payable under the legislation of the United Kingdom and, in relation to Spain, orphans' pensions arising out of common illness and non-industrial accident as defined in the legislation of Spain;

(*r*) "ship or aircraft" means, in relation to the United Kingdom, a ship, vessel or hovercraft registered in the territory of the United Kingdom or any other British ship, vessel or hovercraft of which the owner (or managing owner if there is more than one owner) or manager has his principal place of business in that territory and an aircraft registered in that territory of which the owner (or managing owner if there is more than one owner) has his principal place of business in that territory and, in relation to Spain, a ship flying the Spanish flag in accordance with the legislation of Spain and an aircraft registered in Spain.

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

ARTICLE 2

(1) The provisions of this Convention shall apply:

(*a*) in relation to the United Kingdom, to:

(i) the National Insurance Act 1965, the National Insurance Act (Northern Ireland) 1966, the National Insurance (Isle of Man) Act 1971 and the legislation which was consolidated by those Acts or repealed by legislation consolidated by them;

(ii) the National Insurance (Industrial Injuries) Act 1965, the National Insurance (Industrial Injuries) Act (Northern Ireland) 1966 and the National Insurance (Industrial Injuries) (Isle of Man) Act 1971;

(iii) the Insular Insurance (Jersey) Law 1950;
(iv) the Social Insurance (Guernsey) Laws 1964-1973; and
(v) the Family Allowances Act 1965, the Family Allowances Act (Northern Ireland) 1966, the Family Allowances (Isle of Man) Act 1971, the Family Allowances (Jersey) Law 1972 and the Family Allowances (Guernsey) Laws 1950-1965;

(*b*) in relation to Spain, to:
(i) the legal provisions of the General Scheme of Social Security;
(ii) the legal provisions relating to the following Special Schemes of Social Security:
(*aa*) agriculture;
(*bb*) mariners;
(*cc*) coal miners;
(*dd*) railway workers;
(*ee*) domestic service;
(*ff*) independent workers;
(*gg*) commercial travellers;
(*hh*) students;
(*ii*) artists;
(*jj*) authors;
(*kk*) bullfighters.

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

(3) This Convention shall apply to any legislation which relates to a branch of social security not covered by the legislation specified in paragraph (1) of this Article only if the Contracting Parties conclude an agreement to that effect.

(4) This Convention shall not apply to any agreement 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) of this Article for the purpose of giving effect to such an agreement.

ARTICLE 3

A national of one Contracting Party or a person subject to the legislation of that Party who becomes resident in the territory of the other Contracting Party shall, together with his dependants, be subject to the obligations and shall enjoy the advantages of the legislation of the other Contracting Party under the same conditions as a national of that Party, subject to any special provision of this Convention.

ARTICLE 4

Unless this Convention otherwise provides, invalidity, old age or survivor's benefit, pensions awarded for industrial accident or disease and death benefits acquired by virtue of the legislation of one Contracting Party shall not be subject to any reduction, modification, suspension, abolition or confiscation by reason of the fact that the beneficiary resides in the territory of the other Contracting Party.

ARTICLE 5

(1) Subject to the provisions of Articles 12(2), 15(5), 21(2) and 22 of this Convention, where under the legislation of Spain any benefit or any increase of benefit would be payable for a dependant if he were in the territory of Spain, it shall be paid while he is in the territory of the United Kingdom.

(2) Subject to the provisions of Articles 12(2), 15(5), 21(2) and 22 of this Convention, where a person claims any benefit under the legislation of the United Kingdom no provision of that legislation which would affect his claim by reason of his absence or the absence of a child, adult dependant or other person from the United Kingdom shall apply to him if he, the child, adult dependant or other person, as the case may be, is, or was, at the time in question, in Spain.

PART II

PROVISIONS WHICH DETERMINE THE LEGISLATION APPLICABLE

ARTICLE 6

(1) Subject to the provisions of Articles 7 to 10 of this Convention, if a person is gainfully occupied his liability to pay contributions shall be determined under the legislation of the Contracting Party in whose territory he is so occupied and a worker employed in the territory of one Party shall be subject to the legislation of that Party.

(2) Where the application of paragraph (1) of this Article would involve liability to pay contributions under the legislation of both Parties, if a person is employed in the territory of one Party and self-employed in the territory of the other Party he shall be liable to pay contributions only under the legislation of the former Party.

(3) Where a person is self-employed in the territories of both Parties, his insurance liability shall be determined under the legislation of the Party in whose territory he is ordinarily resident.

(4) Where, but for the provisions of this paragraph, a person would be entitled to pay contributions voluntarily under the legislation of both Parties, he shall be entitled so to pay contributions only under the legislation of one Party.

ARTICLE 7

Where a worker, who is insured under the legislation of one Contracting Party and who is employed by an employer in the territory of that Party, is sent by that employer to work in the territory of the other Party, that legislation shall continue to apply to him as if he were employed in the territory of the former Party provided that the employment in the territory of the latter Party is not expected to last for more than twelve months and that he is not sent to replace another worker who has completed his tour of duty; and no contributions shall be payable in respect of his employment under the legislation of the latter Party. If his employment in the territory of the latter Party should for unforeseen reasons continue after such period of twelve months, the legislation of the former Party shall continue to apply to him for any further period of not more than twelve months, provided that the competent authority of the latter Party agrees thereto before the end of the first twelve months.

ARTICLE 8

(1) Subject to the provisions of paragraphs (2) to (4) of this Article, where a worker is employed on board any ship or aircraft of one Contracting Party the legislation of that Party shall apply to him as if any condition relating to residence were satisfied in his case.

(2) Where a worker who is insured under the legislation of one Party and employed either in the territory of that Party or on board any ship or aircraft of that Party is sent by his employer to work on board a ship or aircraft of the other Party, the provisions of Article 7 of this Convention shall apply.

(3) Where a worker, who is not normally employed at sea, is employed, other than as a member of the crew, on board a ship of one Party in the territorial waters or a port of the other Party, he shall be subject to the legislation of the latter Party as if any conditions relating to residence were satisfied in his case.

(4) Where a worker, who is ordinarily resident in the territory of one Party and employed on board any ship or aircraft of the other Party, is paid a remuneration in respect of that employment by a person who is ordinarily resident in, or by an undertaking having its principal place of business in, the territory of the former Party and who is subject to its legislation, the legislation of the former Party shall apply to him as if the ship or aircraft were a ship or aircraft of the former Party, and the person or undertaking by whom the remuneration is paid shall be treated as the employer for the purposes of such legislation.

ARTICLE 9

(1) This Convention shall not apply to established Members of the Diplomatic Service of either Contracting Party.

(2) Subject to the provisions of paragraph (1) of this Article, where a worker who is in the Government Service of one Contracting Party is sent to the territory of the other Party the legislation of the former Party shall apply to him as if he were employed in its territory.

(3) Subject to the provisions of paragraphs (1) and (2) of this Article, where a person, other than an established Member of the Diplomatic Service of either Contracting Party, 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 shall apply to him, but, 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, he may choose to be insured under the legislation of the former Party, provided that he was so insured immediately before the commencement of the employment at that mission or post.

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

ARTICLE 10

The competent authorities of the Contracting Parties may provide, by agreement with one another, exceptions to the provisions of Articles 6 to 9 of this Convention in relation to self-employed persons or to particular workers or classes of workers, where this is in the interest of such self-employed persons or workers.

ARTICLE 11

(1) Where a worker is employed in the territory of one Contracting Party and the legislation of the other Party applies to him in accordance with any of the provisions of Articles 7 to 10 of this Convention he shall be treated under that legislation:

(*a*) for the purpose of any claim to sickness benefit or maternity benefit, as if he were in the territory of the latter Party; and

(*b*) for the purpose of any claim to benefit for an industrial accident occurring or an industrial disease contracted during that employment, as if the accident had occurred or the disease had been contracted in the territory of the latter Party.

(2) If an accident happens to a worker after he 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, then, for the purpose of any claim to benefit for that accident:

(*a*) the accident shall be treated as if it had happened in the territory of the Party under whose legislation he was last compulsorily insured before the accident;

(*b*) his absence from the territory referred to in sub-paragraph (*a*) of this paragraph shall be disregarded in determining whether his employment was insurable under that legislation.

PART III

SPECIAL PROVISIONS

Section 1

Sickness Benefit, Maternity Benefit and Death Grant

ARTICLE 12

(1) Where a person is subject to the legislation of one Contracting Party, then for the purposes of any claim to sickness benefit or maternity benefit under the legislation of that Party he shall be treated as if any insurance period completed under the legislation of the other Party were an insurance period completed under the legislation of the former Party.

(2) 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 benefit 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 three days of commencement of incapacity for work, he submits to the competent authority of the former Party a certificate of incapacity for work issued by the doctor treating him; or

(*b*) having become entitled to receive sickness benefit or maternity allowance chargeable to the competent authority of the former Party, he is authorised by that competent authority to return to the territory of the Party where he resides or to transfer his residence to the territory of the other Party; or

(*c*) he is authorised by the competent authority of the former Party to go to the territory of the latter Party to receive there the treatment appropriate to his condition.

The authorisation required in accordance with sub-paragraph (*b*) of this paragraph may be refused only if it is established that movement of the person concerned would be prejudicial to his state of health or the receipt of medical treatment. The authorisation required in accordance with sub-paragraph (*c*) of this paragraph may not be refused where the treatment in question cannot be provided for the person concerned within the territory in which he resides.

(3) The provisions of paragraph (1) of this Article shall apply also to death grant, subject to such modification as the differing nature of that benefit may require.

ARTICLE 13

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

(2) Where a woman would be entitled, by virtue of this Convention or otherwise, to receive a maternity grant under the legislation of the United Kingdom and a birth grant under the legislation of Spain for the same confinement, she shall be entitled to receive the grant only under the legislation of the territory where the confinement occurs, or if the confinement does not occur in the territory of either Party, under the legislation of the Party with which the woman, or her husband, as the case may be, was last insured before the confinement.

ARTICLE 14

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

(2) Death grant shall not be payable under the legislation of both Parties in respect of the same death, either by virtue of this Convention or otherwise.

(3) The following provisions shall determine the right to receive a death grant in cases where paragraph (2) of this Article applies:

(*a*) if the death occurs in the territory of one Party, a death grant shall be paid only under the legislation of that Party;

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

Section 2

Benefits for Occupational Injuries and Diseases

ARTICLE 15

(1) If a worker has sustained an industrial injury or contracted an industrial disease to which the legislation of one Contracting Party applies and later sustains an industrial injury or contracts an industrial disease to which the legislation of the other Party applies, then for the purpose of determining the degree of his disablement under the legislation of the latter Party account shall be taken of the former injury or disease as if the legislation of the latter Party applied to it.

(2) Where a worker contracts an industrial disease after having been employed and insured in the territory of only one Party in occupations which, under the legislation of that Party, may by their nature give rise to such a disease, the legislation of that Party shall apply in his case, even if the disease is first diagnosed in the territory of the other Party. This shall apply also in relation to any aggravation of the disease provided that the worker has not in the meantime been further exposed to the same risk in the territory of the latter Party.

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

(4) Where it is ascertained that a worker has suffered an aggravation of an industrial disease for which benefit has been paid in accordance with the provisions of paragraph (2) of this Article, the following provisions shall apply:

(*a*) if the worker has not had further employment in occupations 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, that legislation shall apply also in relation to any increase in the benefit;

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

(5) The provisions of paragraph (2) of Article 12 of this Convention shall apply also to the payment of injury benefit to a worker who has sustained an industrial injury or contracted an industrial disease.

Section 3

Old Age Pensions and Survivor's Pensions

ARTICLE 16

(1) Where a person has been insured under the legislation of both Contracting Parties, his entitlement to an old age pension shall be determined in accordance with the provisions of paragraphs (2) to (8) of this Article.

(2) For the purpose of determining whether such a person is entitled to receive an old age pension under the legislation of one Party, any contribution period or equivalent period which he has completed under the legislation of the other party shall be treated as if it were, respectively, a contribution period or equivalent period completed under the legislation of the former Party.

(3) The competent insurance authority of the Party or Parties under whose legislation such a person satisfies the conditions for an old age pension shall determine:

(*a*) the amount of pension to which he would be entitled under its own legislation without the application of paragraph (2) of this Article; and

(*b*) the amount of pension to which he would be entitled under its own legislation with the application of the provisions of paragraph (4) of this Article.

The higher rate so determined shall be the rate of benefit to be taken into account in the application of the provisions of paragraphs (6) and (7) of this Article.

(4) Where a person claims an old age pension and would satisfy the conditions for such a pension under the legislation of one Party, or both Parties, only if the provisions of paragraph (2) of this Article were applied, the competent insurance authority of that Party or of each Party, as the case may be, shall determine:

(*a*) first the amount of the theoretical pension which would be payable if all the insurance periods completed under the legislation of both Parties had been completed under its own legislation; and then

(*b*) the amount of that part of such pension which bears the same relation to the whole as the total of the insurance periods which he has completed under the legislation of the former Party bears to the total of all the insurance periods which he has completed under the legislation of both Parties.

For the purpose of United Kingdom legislation insurance periods completed after pensionable age shall be disregarded in the calculation of the pension under the provisions of sub-paragraphs (*a*) and (*b*) of this paragraph. For the purpose of calculating any increase in pension payable by virtue of insurance periods completed after pensionable age, sub-paragraphs (*a*) and (*b*) shall be applied only in respect of such periods and the amount of increases of pension so determined shall be added to the amount of pension determined by virtue of insurance periods completed before pensionable age.

(5) For the purpose of applying the provisions of paragraphs (3) and (4) of this Article:

(*a*) no account shall be taken of any graduated contributions paid under the legislation of the United Kingdom or of any graduated benefit payable under that legislation;

(*b*) where in accordance with United Kingdom legislation, a woman applies for an old age pension:

(i) on the basis of her husband's insurance; or

(ii) on the basis of her personal insurance, and where, because the marriage has ended as the result of the death of the husband, or for other reasons, the contributions paid by the latter are taken into account for the determination of pension rights,

any reference to a period of insurance completed by her shall be considered for the purposes of establishing the annual average of the contributions paid by her husband or credited to him, to include reference to a period of insurance completed by her husband;

(*c*) where a period of compulsory insurance completed under the legislation of one Party coincides with a period of voluntary insurance completed under the legislation of the other Party, only the period of compulsory insurance shall be taken into account, provided that the amount of pension payable by the United Kingdom under paragraphs (3)(*b*) and (4) of this Article shall be increased by the amount by which the pension payable under United Kingdom legislation would have been increased if all voluntary contributions paid under that legislation had been taken into account;

(*d*) where a 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;

(*e*) 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 compulsorily insured before the day when the period in question began or, if he was never compulsorily insured before that day, under the legislation under which he was first compulsorily insured after the day when the periods in question ended;

(*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 presumed not to overlap with insurance periods completed under the legislation of the other Party and shall, where advantageous, be taken into account;

(*g*) notwithstanding the provisions of paragraph (2) of this Article, if the total length of the periods of insurance or residence completed under the legislation of one Party does not amount to a year and if, taking into account these periods alone, no entitlement to benefit is acquired under the provisions of that legislation, the competent insurance authority of that Party shall not grant any benefit in respect of those periods, but they shall be taken into account under the legislation of the other Party for the purpose of any calculation in accordance with paragraph (4) of this Article, excepting sub-paragraph (*b*).

(6) The amount of benefit payable under this Article shall be the total sum of the benefits determined in accordance with the provisions of paragraphs (3) and (4) of this Article, except that the total benefit payable shall not exceed the higher theoretical amount calculated under paragraph (4).

(7) For the purpose of applying the provisions of paragraph (6) of this Article, where the total amount of benefit which, except for the provisions of this paragraph, would otherwise be payable exceeds the higher theoretical amount calculated under paragraph (4) of this Article, the competent authority of a Party applying the provisions of paragraph (3) of this Article shall reduce its share of the benefit which would otherwise be payable by that amount of the excess proportionate to the amounts of benefit determined in accordance with the provisions of paragraph (3).

(8) The amount of pension actually due in accordance with paragraphs (6) and (7) of this Article shall be increased by the full amount of any graduated benefit payable under the legislation of the United Kingdom.

ARTICLE 17

Where a person does not simultaneously satisfy the conditions laid down by the legislation of both Contracting Parties for receiving an old age pension, his entitlement to receive an old age pension under the legislation of one Party shall be established as and when he satisfies the conditions laid down by that legislation. The provisions of Article 16 of this Convention shall be applied where there is otherwise no entitlement to receive an old age pension under the legislation of that Party without the application of paragraph (2) of that Article and also when the conditions laid down by the legislation of the other Party are satisfied.

ARTICLE 18

(1) The provisions of this Article shall apply to any increase of or supplement to an old age pension under the legislation of either Contracting Party in respect of a dependent child or dependent children.

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

(*a*) if a pensioner draws a pension under the legislation of one Party only, the increase or supplement shall be paid in accordance with the legislation of the Party responsible for the pension;

(*b*) if a pensioner draws pensions under the legislation of both Parties, the increase or supplement shall be paid:

(i) in accordance with the legislation of the Party under which the higher amount of increase or supplement is payable; or

(ii) where the amounts are equal, in accordance with the legislation of the Party in whose territory he resides.

ARTICLE 19

The provisions concerning old age pensions contained in Articles 16 to 18 of this Convention shall apply (with such modifications as the differing nature of the benefits shall require) to survivor's benefit, other than orphan's benefit under the legislation of Spain.

Section 4

Invalidity Pension

ARTICLE 20

(1) The competent insurance authority in the territory of the Party whose legislation was applicable at the time when incapacity for work followed by invalidity occurred shall determine, in accordance with that legislation, whether the person concerned satisfies the conditions for entitlement to invalidity pension taking account, where appropriate, of any contribution period or equivalent period which that person has completed under the legislation of the other Party as if it were, respectively, a contribution period or equivalent period completed under the legislation of the former Party.

(2) If the provision of invalidity pension determined under the previous paragraph is to be resumed following suspension or cessation, the competent insurance authority responsible for the payment of invalidity pension at the time of suspension or cessation shall remain responsible for its payment, provided that the illness is the same as the one which caused the original invalidity and it occurs within a period of twelve months from the date of the suspension or cessation of invalidity pension.

Section 5

Orphan's Benefit

ARTICLE 21

(1) The following provisions shall determine the right to receive orphan's benefit:

(*a*) where the deceased parent was insured only under the legislation of one Contracting Party entitlement to benefit shall be determined exclusively under the legislation of that Party;

(*b*) where the deceased parent was insured under the legislation of both Parties, entitlement to benefit shall be determined under the legislation of the Party in whose territory the orphan is ordinarily resident, provided that where no right to benefit exists under the legislation of that Party, entitlement to benefit shall be determined under the legislation of the other Party.

(2) Where orphan's benefit would be payable to any person under the legislation of one Party if that person or the orphan for whom the benefit is claimed were ordinarily resident in the territory of that Party, it shall be paid while that person, or the orphan, is ordinarily resident in the territory of the other Party.

Section 6

Family Allowances

ARTICLE 22

(1) Where a worker is employed in the territory of one Contracting Party and the legislation of the other Party applies to him in accordance with any of the provisions of Articles 7 to 10 of this Convention, he shall be treated, for the purpose of any claim to receive family allowances under that legislation:

(*a*) as if he were in the territory of the latter Party and employed in that territory;

(*b*) as if his children or other dependants were in the territory of the latter Party, if they are in the territory of the former Party.

(2) Subject to the provisions of paragraphs (1), (3) and (4) of this Article, a worker subject to the legislation of one Party in respect of his employment shall be entitled to the family allowances provided for by the legislation of that Party for members of his family residing in the territory of the other Party, as though they were residing in the territory of the former Party.

(3)(*a*) Subject to the provisions of paragraphs (4) and (5) of this Article, a person resident in the territory of either Party, other than a self-employed person, who is in receipt of maternity allowance or benefits for unemployment, old age, temporary total incapacity for work arising from industrial accident or industrial disease, total incapacity for work whether permanent or otherwise however caused, or survivor's benefit whether arising from industrial accident or industrial disease or otherwise under the legislation of one Party shall be entitled to the family allowances provided for by the legislation of that Party for members of his family residing in, or present in, as the case may be, the territory of the other Party, as though they were residing in, or present in, the territory of the former Party.

(*b*) For the purpose of this paragraph the expression "total incapacity" shall mean, in relation to the legislation of Spain, both provisional and permanent invalidity of any kind.

(4) The provisions of paragraph (3) of this Article shall not apply if there is entitlement to any of the benefits under the legislation of the Party in whose territory the family is ordinarily resident.

(5) Where there is entitlement to family allowances under the legislation of the United Kingdom otherwise than by virtue of this Convention and at the same time entitlement to family allowances for the same members of the family under the legislation of Spain in accordance with paragraphs (1) or (2) of this Article, entitlement to benefit under the legislation of the United Kingdom shall be suspended so long as entitlement to benefit under the legislation of Spain continues. Where, however, a person is subject to the legislation of Spain and his spouse, having entitlement to family allowances under the legislation of the United Kingdom, is gainfully occupied in the territory of the United Kingdom, the right to family allowances under the legislation of Spain shall be suspended and only family allowances under the legislation of the United Kingdom shall be paid.

(6) If United Kingdom legislation relating to entitlement to family allowances is applicable to a person, he shall be treated, for the purpose of entitlement to family allowance, as if he had been present in the United Kingdom prior to his application for allowances during any period when he was insured or employed within the territory or under the legislation of Spain.

(7) Where a person, his spouse, children or dependants, to whom the provisions of this Convention apply, were not born in the territory of the United Kingdom, the word "Spain" shall be substituted for the words "United Kingdom", "Isle of Man" or "Guernsey", as the case may be, in any provision of the legislation of the United Kingdom relating to the person's place of birth, or to the place of birth of his spouse, children or dependants.

(8) Where, but for the provisions of this paragraph, family allowance would be payable under the legislation of both Parties for the same children, family allowances shall be paid only under the legislation of the Party in whose territory the children concerned are ordinarily resident.

Section 7

Unemployment Benefit

ARTICLE 23

(1) If a worker has, since his last arrival in the territory of one Contracting Party, completed a contribution period under the legislation of that Party, he shall be treated, for the purpose of a claim to unemployment benefit under the legislation of that Party, as if any insurance period completed under the legislation of the other Party were an insurance period completed under the legislation of the former Party.

(2) Where a worker claims unemployment benefit under the legislation of one Party by virtue of paragraph (1) of this Article, any period during which he received such benefit under the legislation of the other Party during the last 12 months before the day on which his claim is made shall be taken into account as if it were a period during which he had received such benefit under the legislation of the former Party.

(3) For the purpose of any claim to receive unemployment benefit under the legislation of the United Kingdom, a worker shall be treated as if he had been resident in the territory of the United Kingdom during any period during which he was resident in the territory of Spain.

Section 8

Earnings Related Supplement

ARTICLE 24

For the purpose of calculating reckonable earnings for entitlement to the earnings-related supplement payable with sickness benefit and unemployment benefit and the widow's supplementary allowance payable with widow's allowance

under the legislation of the United Kingdom, a claimant or, in the case of a claim to widow's allowance, a claimant's late husband, shall be credited, for each week of employment as a worker under the legislation of Spain during the relevant or appropriate income tax year, with an amount equivalent to the average weekly earnings appropriate to the average weekly rate of earnings-related supplement estimated to be payable to a man or woman, as the case may be, during the current benefit year.

PART IV

MISCELLANEOUS PROVISIONS

ARTICLE 25

(1) The competent authorities of the two Contracting Parties shall establish 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 legislation in so far as these changes affect the application of the Convention.

(3) The competent authorities and insurance authorities of the two Parties may, for the purpose of applying this Convention, correspond directly with one another, or with any person who has claimed benefit by virtue of the Convention, or with his legal representative.

(4) A Joint British-Spanish Social Security Commission, of a technical character, shall be established for the following purposes:

(*a*) to ensure exact fulfilment of the provisions of this Convention and to ensure maximum efficiency and speed in its application;

(*b*) to study those questions of interpretation and application which may arise between the Insurance Authorities of both Contracting Parties, and to report to the competent authorities;

(*c*) to propose the modification of the provisions of the Convention and of the administrative measures, when the development in practice of the said provisions shows such modification to be necessary;

(*d*) to revise procedures and liaison forms for the application of the Convention and its administrative measures;

(*e*) to perform any other function relating to studies or decisions which the competent authorities of each of the Contracting Parties may entrust to the Commission.

(5) The Commission referred to in the previous paragraph will meet at the request of the competent authority of either of the Contracting Parties alternately in Madrid and London.

ARTICLE 26

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

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

(3) Where a person who is in the territory of one Party has claimed benefit under the legislation of the other Party and a medical examination is necessary, the competent insurance authority of the former Party, at the request of the competent insurance authority of the latter Party, shall arrange for this examination. The costs of such examinations shall be met under arrangements to be made between the competent authorities under the provisions of Article 25(1) of this Convention.

ARTICLE 27

(1) Where the legislation of one Contracting 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, this exemption shall apply to any certificate or other document which is submitted under the legislation of the other Party or under this Convention.

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

ARTICLE 28

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

ARTICLE 29

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

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

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

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

ARTICLE 30

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

(2) Where a competent insurance authority has made a payment of benefit in accordance with the provisions of paragraph (2) of Article 26 of this Convention, any reimbursement shall be in the currency of the Party in whose territory the other competent insurance authority has its principal place of business.

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

ARTICLE 31

(1) Where an insurance authority of one Contracting Party has made an advance payment for any period, any arrears of a corresponding benefit which become payable for the same period under the legislation of the other Party may be withheld. Where an insurance authority of one Party has overpaid benefit for any period for which the insurance authority of the other Party afterwards becomes liable to pay a corresponding benefit, the overpayment shall be regarded, for the purpose of the first sentence of this paragraph, as an advance payment.

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

ARTICLE 32

Where, but for the provisions of this Article, a person would have been entitled to sickness benefit, maternity allowance or any benefit payable in respect of an industrial injury or disease under the legislation of both Parties, that benefit shall be granted exclusively under the legislation to which the person was last subject.

ARTICLE 33

(1) The competent authorities shall endeavour to resolve by negotiation any disagreement which may arise as to the interpretation or application of this Convention.

(2) If any such disagreement cannot be resolved by negotiation within a period of three months from the commencement of the negotiation, the disagreement shall be submitted to arbitration by an arbitral body whose composition and procedure shall be agreed upon by the Contracting Parties, or, in default of such agreement, within a further period of three months by an arbitrator chosen at the request of either Party by the President of the International Court of Justice.

(3) The decision of the arbitral body or arbitrator, as the case may be, shall be accepted as final and binding.

ARTICLE 34

Health Care Benefits

Health care for workers and their dependants resident in the territory of one (or the other) Contracting Party shall be given in accordance with the legislation of that Party.

PART V

TRANSITIONAL AND FINAL PROVISIONS

ARTICLE 35

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

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

(3) In cases covered by the first sentence of paragraph (1) of this Article:

(*a*) any benefit which has been determined before the date of the entry into force of this Convention may, at the request of the person concerned, be determined afresh in accordance with the provisions of the Convention notwithstanding any provisions of the legislation concerned which precludes such a revised determination, and payment shall be made from the date of entry into force of the Convention;

(*b*) any benefit or increase of benefit to which a person becomes entitled solely by virtue of the Convention shall be determined at his request from the date of entry into force of the Convention, provided that he makes the request within two years after that date; otherwise the benefit or increase of benefit shall be paid from the date determined under the domestic legislation concerned.

ARTICLE 36

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

ARTICLE 37

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

ARTICLE 38

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

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

Done in duplicate at London this 13th day of September 1974, in the English and Spanish languages, both texts being equally authoritative.

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

ROY HATTERSLEY

For the Government of Spain:

MANUEL FRAGA IRIBARNE

EXPLANATORY NOTE

(This note is not part of the Order but is intended to indicate its general purport.)

This Order gives effect in Northern Ireland to the Convention (set out in the Schedule) made between the Governments of the United Kingdom and Spain in relation to the matters for which provision is made by the Family Allowances Acts (Northern Ireland) 1966 to 1969, the National Insurance Measures (Northern Ireland) 1966 to 1974 and the National Insurance (Industrial Injuries) Measures (Northern Ireland) 1966 to 1974.