1979 No. 303

SOCIAL SECURITY

The Social Security (Portugal) Order (Northern Ireland) 1979

Made . . . . . *29th August* 1979

Coming into operation . . . . *1st October* 1979

In exercise of the powers conferred on me by section 134(1) of the Social Security (Northern Ireland) Act 1975(a), Article 17(1) of the Child Benefit (Northern Ireland) Order 1975(b), and of all other powers enabling me in that behalf, I hereby make the following order:

Citation and commencement

1. This order may be cited as the Social Security (Portugal) Order (Northern Ireland) 1979 and shall come into operation on 1st October 1979.

Modification of the Social Security (Northern Ireland) Act 1975

2. The Social Security (Northern Ireland) Act 1975 shall be modified to such extent as may be required to give effect to the provisions contained in the Convention on Social Security set out in the Schedule to this order, so far as the same relate to Northern Ireland.

Modification of the Child Benefit (Northern Ireland) Order 1975

3. Part II of the Child Benefit (Northern Ireland) Order 1975 (child benefit) and any regulations made under it shall be modified to such extent as may be required to give effect to the provisions contained in the Convention on Social Security set out in the Schedule to this order, so far as the same relate to Northern Ireland.

Dated this 29th day of August 1979.

Humphrey Atkins
One of Her Majesty's Principal Secretaries of State

(a) 1975 c. 15 as amended by section 20(3) of, and extended by section 20(4) of, the Social Security (Miscellaneous Provisions) Act 1977 (1977 c. 5)
(b) S.I. 1975/1504 (N.I. 16)

SCHEDULE Article 2

Convention on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Portugal

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

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 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:

(i) "the United Kingdom" means the United Kingdom of Great Britain and Northern Ireland, and "Portugal" means the Portuguese Republic;

(ii) "territory" means, in relation to the United Kingdom, England, Scotland, Wales, Northern Ireland and also the Isle of Man, the Island of Jersey and the Islands of Guernsey, Alderney, Herm and Jethou and, in relation to Portugal, the territory of Portugal in the Continent and the Archipelagos of Azores and Madeira;

(iii) "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;

(iv) "competent authority" means the authority responsible for the social security schemes in all or part of the territory of each Contracting Party; in relation to the territory of the United Kingdom, the Secretary of State for Social Services, the Department of Health and Social Services for Northern Ireland, the Isle of Man Board of Social Security, the Social Security Committee of the States of Jersey or the States of Guernsey Insurance Authority as the case may require, and in relation to Portugal, the Minister responsible for the implementation of the Portuguese legislation;

(v) "insurance authority" means the authority competent to decide entitlement to the benefit in question;

(vi) "competent institution" means the authority from which the person concerned is entitled to receive benefit or would be entitled to receive benefit if he were resident in the territory of the Party where that authority is situated;

(vii) "insured" means, in relation to the territory of the United Kingdom, that contributions have been paid or are payable by, or in respect of, or have been credited in respect of, the person concerned, and for the purposes of Section VI of Part III of this Convention, that the person is, or is treated as being, an employed person, and in relation to Portugal that contributions have been paid, or are payable by, or have been considered to have been paid in respect of, the person concerned;

(viii) "insurance period" means a contribution period or an equivalent period;

(ix) "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 of one or the other Party;

(x) "equivalent period" means, in relation to the territory of the United Kingdom, a period for which contributions appropriate to the benefit in question have been credited under the legislation of that Party and, in relation to Portugal a period admitted as equivalent to a contribution under Portuguese legislation;

(xi) "dependant" means a person who would be treated as such for the purpose of any claim for benefit in respect of a dependant under the legislation of the territory of the United Kingdom or Portugal;

(xii) "pension", "allowance" or "benefit" includes any increase of, or any additional amount payable with a pension, allowance or benefit respectively;

(xiii) "sickness benefit" means, in relation to the territory of the United Kingdom, sickness benefit payable under the legislation of that Party and, in relation to Portugal, sickness benefit as defined in Portuguese legislation, including tuberculosis benefit;

(xiv) "maternity benefit" means, in relation to the territory of the United Kingdom, maternity grant and maternity allowance payable under the legislation of that Party; and in relation to Portugal, maternity allowance payable under Portuguese legislation;

(xv) "invalidity pension" means, in relation to the territory of the United Kingdom, invalidity benefit payable under the legislation of that Party, and any sickness benefit as defined in the legislation of the United Kingdom which becomes payable for a period of interruption of employment as defined in that legislation to a person who has received such benefit for 312 days of that period while he was in the territory of either Party and is, in the opinion of the insurance authority of the territory of the United Kingdom, likely to remain permanently incapable of work; and in relation to Portugal an invalidity pension as defined in Portuguese legislation;

(xvi) "old age pension" includes in relation to the territory of the United Kingdom, a retirement pension payable under the legislation of that Party and, in relation to Portugal, means a retirement pension payable under Portuguese legislation;

(xvii) "survivor's benefit" means, in relation to the territory of the United Kingdom, widow's allowance, widowed mother's allowance and widow's pension payable under the legislation of that Party and, in relation to Portugal survivor's pension and death benefit payable under Portuguese legislation;

(xviii) "industrial injury benefit" includes in relation to the territory of the United Kingdom accident benefit payable under the legislation specified in Article 2(1)(*a*)(iii) of this Convention;

(xix) "death grant" includes in relation to the legislation of Portugal a funeral grant payable under that legislation;

(xx) "family allowance" includes, in relation to the territory of the United Kingdom, child benefit payable under the legislation of that Party;

(xxi) "ship or vessel" means, in relation to the territory of the United Kingdom, any ship or vessel, whose port of registry is a port in that territory, or, in the case of a hovercraft, which is registered in that territory, provided that the owner (or managing owner if there is more than one owner) has a place of business in that territory, and, in relation to Portugal any ship or boat registered in a port located in Portuguese territory or which may be owned by a company established in Portuguese territory and having its registered office and principal place of business in the same territory and flying the Portuguese flag;

(xxii) "gainfully occupied" means being an employed or self-employed person;

(xxiii) "employed person" means a person who comes within the definition of an employed person or an employed earner or a person who is treated as such in the applicable legislation and the words "person is employed" shall be construed accordingly;

(xxiv) "employment" means employment as an employed person and the words "employ", "employed" or "employer" shall be construed accordingly;

(xxv) "self-employed person" means a person who comes within the definition of a self-employed person or a self-employed earner or a person who is treated as such in the applicable legislation and the words "person is self-employed" shall be construed accordingly;

(xxvi) "seasonal worker" means a person subject to the legislation of Portugal or Jersey who goes to the territory of Portugal or Jersey (not being the one in which he ordinarily resides) in order to carry out in that territory for an employer or undertaking with a place of business there employment of a seasonal character, the duration of which cannot in any case exceed eight months, and who remains in that territory for the duration of his employment; a reference to the territory or legislation of the Islands of Guernsey, Alderney, Herm or Jethou may be substituted in this definition for a reference to the territory or legislation of Jersey as the case may require; "employment of a seasonal character" means employment which depends on the cycle of the seasons and which recurs automatically each year.

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

ARTICLE 2

(1) The provisions of this Convention shall apply:

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

(i) the Social Security Act 1975 and the Social Security (Northern Ireland) Act 1975; the Social Security Pensions Act 1975 and the Social Security Pensions (Northern Ireland) Order 1975;

(ii) the Social Security Act 1975 and the Social Security Pensions Act 1975 (Acts of Parliament) as applied to the Isle of Man by orders made under the provisions of the Social Security Legislation (Application) Act 1974 (an Act of Tynwald);

(iii) the Social Security (Jersey) Law 1974;

(iv) the Social Insurance (Guernsey) Law 1964;

(v) the Child Benefit Act 1975, the Child Benefit (Northern Ireland) Order 1975, and the Child Benefit Act 1975 (an Act of Parliament) as applied to the Isle of Man by the Social Security Legislation (Application) Act 1974 (an Act of Tynwald); the Family Allowances (Jersey) Law 1972 and the Family Allowances (Guernsey) Law 1950;

and the legislation which was consolidated by those Acts, Laws or Orders or repealed by legislation consolidated by them;

(*b*) in relation to the territory of Portugal, to:

(i) the Social Welfare and family allowance general scheme in reference to sickness, maternity (cash benefits), disablement, old age, survivors, family allowance and complementary benefits;

(ii) the Social Welfare or family allowance special schemes;

(iii) work injury and occupational diseases;

(iv) unemployment benefits.

(2) Subject to the provisions of paragraphs (4) and (5) of this Article, this Convention shall apply also to any legislation which supersedes, replaces, amends, supplements or consolidates the legislation specified in paragraph (1) of this Article.

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

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

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

ARTICLE 4

(1) Subject to the provisions of paragraph (2) of this Article and Articles 14 to 22 of this Convention, a person who would be entitled to receive an old age pension, survivor's benefit, invalidity pension, or any pension, allowance or gratuity payable in respect of an industrial injury or industrial disease under the legislation of one Contracting Party if he were in the territory of that Party, shall be entitled to receive that pension, benefit, allowance or gratuity while he is in the territory of the other Party, as if he were in the territory of the former Party.

(2) A person who is entitled to receive an old age pension or survivor's benefit under the legislation of the territory of the United Kingdom and who would be entitled to an increase in the rate of that pension or benefit if he were in that territory shall, if he is in the territory of Portugal, after the date of coming into force of this Convention, be entitled to receive any such increase prescribed after that date by that legislation; but nothing in this paragraph shall confer entitlement to receive any such increases prescribed before that date by that legislation.

(3) Subject to the provisions of later Articles of this Convention, where under the legislation of one Party, any benefit or any increase in benefit would be payable for a dependant if he were in the territory of that Party, it shall be paid while he is in the territory of the other Party.

PART II

Provisions which determine the legislation applicable

ARTICLE 5

(1) Subject to the following provisions of this Article and the provisions of Articles 6 to 9 of this Convention, where a person is gainfully occupied, his liability to be insured shall be determined under the legislation of the Contracting Party in whose territory he is so occupied.

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

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

(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, his liability to be insured shall be determined only under the legislation of the former Party.

(5) For the purposes of the provisions of paragraphs (3) and (4) of this Article, "liability to be insured" shall not include liability to pay a Class 4 contribution under the legislation of the territory of the United Kingdom.

(6) Where a person is not gainfully occupied, any liability to be insured shall be determined under the legislation of the Party in whose territory he is ordinarily resident.

(7) Where, but for the provisions of 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.

ARTICLE 6

(1) Where a person, who is insured under the legislation of one Contracting Party and 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, the legislation of the former Party 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 latter Party is not expected to last for more than twelve months and that he is not sent to replace another employee who has completed his period of posting. No contributions shall be payable in respect of his employment under the legislation of the latter Party. Where, for unforeseen reasons his employment in the territory of the latter Party continues 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 period of twelve months.

(2) 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 by railway, road or air, whether for another undertaking or on its own account:

(*a*) subject to the provisions of sub-paragraph (*b*) and (*c*) of this paragraph, where a person is employed by an undertaking which has its principal place of business in the territory of one Party, the legislation of that Party shall apply to him, even if he is employed in the territory of the other Party;

(*b*) subject to the provisions of sub-paragraph (*c*) of this paragraph, where the undertaking has a branch or agency in the territory of one Party and a person is employed by that branch or agency, the legislation of that Party 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 shall apply to him, even if the undertaking which employs him does not have its principal place of business or branch or any agency in that territory.

ARTICLE 7

(1) Subject to the provisions of paragraphs (2), (3) and (4) of this Article, where a person is employed on board any ship or vessel of one Contracting Party, the legislation of that Party 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 an 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 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 twelve months and that he is not sent to replace another employee who has completed his period of posting. No contributions shall be payable in respect of his employment under the legislation of the other Party. Where for unforeseen reasons his employment on board the ship or vessel of the latter Party continues 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 period of twelve months.

(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 of the latter Party 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 one of the Parties.

(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 its principal place of business in, the territory of the former Party, the legislation of the former Party 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 purposes of such legislation.

ARTICLE 8

(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 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 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 who is ordinarily resident in the territory of either 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 whichever is later, 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.

ARTICLE 9

The competent authorities of the Contracting Parties may agree to modify the provisions of Articles 5 to 8 of this Convention in respect of particular persons or categories of persons, where this is in the interest of such persons.

PART III

Special Provisions

SECTION I

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

ARTICLE 10

(1) For the purpose of calculating an earnings factor for entitlement to any benefit referred to in Sections II to VII of this Part of this Convention and provided under the legislation specified in Article 2(1)(*a*)(i) and (ii) of this Convention a person shall be treated for each week beginning in a relevant tax year under the legislation of the territory of the United Kingdom, the whole of which week is a contribution period completed as an employed person under the legislation of Portugal, as having paid a contribution as an employed earner on earnings equivalent to two-thirds of that year's weekly upper earnings limit.

(2) For the purpose of calculating the appropriate contribution factor to establish entitlement to any benefit referred to in Sections II to VII of this Part of this Convention and provided under the legislation specified in Article 2(1)(*a*)(iii) of this Convention a person shall be treated:

(*a*) for each month in a contribution period completed under the legislation of Portugal, being a month in the relevant quarter, as having paid contributions which derive a quarterly contribution factor of 0·334 for that quarter;

(*b*) for each month in a contribution period completed under the legislation of Portugal, being a month in the relevant year as having paid contributions which derive an annual contribution factor of 0·0834 for that year;

(*c*) for each month, the whole of which is an equivalent period under the legislation of Portugal as if a contribution had been credited to him under the legislation of the territory of the United Kingdom in the same manner as a contribution period is treated under the provisions of sub-paragraphs (*a*) and (*b*) of this paragraph.

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

(4) For the purpose of converting to an insurance period any contribution factor achieved under the legislation of the territory of the United Kingdom, specified in Article 2(1)(*a*)(iii) of this Convention, the competent authority of the territory of the United Kingdom shall:

(*a*) in the case of a quarterly contribution factor, multiply the factor achieved by a person in a quarter by three; and

(*b*) in the case of an annual contribution factor, multiply the factor achieved by a person in a year by twelve.

The result shall be expressed as a whole number, any remaining fraction being ignored. The figure so calculated, subject to a maximum of the numbers of months 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 representing the number of months in the insurance period completed under that legislation.

(5) Where it is not possible to determine accurately the periods of time in which certain periods of insurance were completed under the legislation of one Party, such periods shall be treated as if they did not overlap with periods of insurance completed under the legislation of the other Party, but they shall be taken into account to the best advantage of the beneficiary.

SECTION II

Sickness Benefit and Maternity Benefit

ARTICLE 11

(1) Where a person has, since his last arrival in the territory of one Contracting Party, completed a contribution period under the legislation of that Party, then for the purpose of any claim for sickness benefit or maternity benefit made under the legislation of that Party, any insurance period, completed under the legislation of the other Party, shall, subject to the provisions of Article 10 of this Convention, be treated as if it were an insurance period completed under the legislation of the former Party.

(2) Subject to the provisions of paragraph (3) of this Article, where a person would be entitled to 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 that benefit or 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 he submits to the competent institution of the former Party a certificate of incapacity for work, issued by the doctor treating him, within three days of commencement of incapacity for work or such longer period as the competent institution may allow; or

(*b*) having become entitled to sickness benefit or maternity allowance under the legislation of the former Party, he is authorised by the competent institution 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 institution 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.

(3) Where a seasonal worker who is entitled to sickness benefit by virtue of the provisions of this Article in the territory of Portugal goes to Jersey or the Islands of Guernsey, Alderney, Herm or Jethou or where such a person is in the Island of Jersey or the Islands of Guernsey, Alderney, Herm or Jethou and goes to the territory of Portugal, 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 the territory of Portugal or the Island of Jersey or the Islands of Guernsey, Alderney, Herm or Jethou as the case may be.

(4) Where, but for the provisions of this paragraph, a person would be entitled to sickness benefit or maternity allowance under the legislation of both Parties for the same period whether by virtue of this Convention or otherwise, that benefit or allowance shall be granted only under the legislation under which the person was last insured before entitlement arose.

ARTICLE 12

(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 maternity grant under the legislation of the former Party, be treated as if she had been confined in the territory of the former Party.

(2) Where a woman would be entitled to a maternity grant under the legislation of both Parties in respect of the same confinement 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 confinement occurs; or

(*b*) if the confinement does not occur in the territory of either Party, the grant shall be payable only under the legislation of the Party under which the woman, or her husband, as the case may be, was last insured before the confinement.

SECTION III

Unemployment Benefit

ARTICLE 13

(1) Where a person 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 for unemployment benefit under the legislation of that Party, as if any insurance period or period of employment completed under the legislation of the other Party were an insurance period or period of employment, as the case may be, completed under the legislation of the former Party.

Provided that:

(*a*) periods of insurance or periods of employment completed under the legislation of Jersey shall not be taken into account for the purpose of determining entitlement to unemployment benefit under the legislation of Portugal, and

(*b*) periods of insurance or periods of employment completed under the legislation of Portugal shall be taken into account for the purpose of determining entitlement to unemployment benefit only under the legislation specified in Article 2(1)(*a*)(i), (ii) and (iv) of this Convention.

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

SECTION IV

Invalidity Pension

ARTICLE 14

(1) Where a person has been insured under the legislation of both Contracting Parties, the 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 insurance period or any period of sickness benefit or invalidity pension which that person has completed under the legislation of the other Party as if it were an insurance period completed under the legislation of the former Party.

(2) When, according to the provisions of the preceding paragraph, a Portuguese institution is responsible for the payment of the invalidity pension, the insurance periods fulfilled by a British or a Portuguese subject according to the legislation of the United Kingdom shall be taken into account, for the purpose of determining the amount of the pension, as if they had been periods of Portuguese contribution, provided that they do not overlap the latter. The average salary to be considered is determined according to the salaries obtained during the insurance period fulfilled under Portuguese legislation. This provision shall only apply if the duration of the Portuguese insurance period is of at least twelve months.

(3) If the provision of invalidity pension determined under paragraph (1) of this Article is to be resumed following suspension or cessation, the competent institution 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 thirteen weeks from the date of the suspension or cessation of invalidity pension.

(4) Where a person would be entitled to receive for the same incapacity and for the same period invalidity pension under the legislation of one Party and sickness benefit under the legislation of the other Party, whether by virtue of this Convention or otherwise, he shall be entitled to receive only the invalidity pension or sickness benefit, as the case may be, payable under the legislation of the Party in whose territory the incapacity began, in accordance with the provisions of paragraph (1) of this Article.

(5) For the purposes of determining entitlement to additional component payable under the legislation of the United Kingdom, no account shall be taken of any contribution period completed under the legislation of Portugal.

SECTION V

Old Age Pension and Survivor's Benefit

ARTICLE 15

(1) Where a person is entitled to an old age pension under the legislation of a Contracting Party, or under the legislation of any one part of the territory of a Contracting Party, otherwise than by virtue of the provisions of this Convention, that pension shall be payable and the provisions of Article 16 of this Convention shall not apply under that legislation.

(2) For the purposes of determining entitlement to additional component payable under the legislation of the United Kingdom, no account shall be taken of any contribution period completed under the legislation of Portugal; and for the purposes of this Article and Article 16 of this Convention additional component shall be treated as a separate benefit to which the provisions of that Article 16 do not apply.

ARTICLE 16

(1) The provisions of this Article shall apply for the purpose of determining entitlement to old age pension in respect of a person under the legislation of a Contracting Party or the legislation of any one part of the territory of a Contracting Party under which there is no entitlement in respect of that person in accordance with the provisions of Article 15 of this Convention.

(2) The insurance authority of that Party or of that one part of the territory of a Contracting Party shall determine:

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

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

The proportionate amount thus calculated shall be the rate of pension actually payable to that person by the competent institution.

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

(*a*) either the United Kingdom or the Isle of Man amount to less than one reckonable or, as the case may be, qualifying year, or relate only to periods before 6 April 1975 and in aggregate amount to less than 50 weeks;

(*b*) Jersey, Guernsey or Portugal in aggregate amount to less than 12 months in any one country,

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

(4) For the purpose of applying the provisions of paragraph (2) of this Article:

(*a*) the insurance authority of the territory of the United Kingdom shall take account only of insurance periods which are taken into account for the determination of pensions under the legislation of that Party;

(*b*) where a person satisfies the conditions required by Portuguese legislation to be entitled to an old age pension solely by virtue of the provisions of paragraphs (1) to (3) of this Article, the competent Portuguese institution shall calculate the amount of the benefit to which the beneficiary is entitled, only on the basis of insurance periods or equivalent periods completed in accordance with the applicable Portuguese legislation;

(*c*) no account shall be taken of any graduated contributions paid under the legislation of the territory of the United Kingdom and the amount of any graduated benefit payable by virtue of such contributions shall be added to the amount of any pension payable in accordance with paragraph (2) of this Article under that legislation;

(*d*) subject to sub-paragraph (*e*) of this paragraph where a compulsory insurance period completed under the legislation of one Party coincides with a voluntary insurance period completed under the legislation of the other Party only the compulsory insurance period shall be taken into account; provided that the amount of pension payable under the legislation of the territory of the United Kingdom under the provisions of paragraph (2) of this Article 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;

(*e*) where a voluntary insurance period completed under the legislation of Portugal coincides with a compulsory insurance period completed under the legislation of the territory of the United Kingdom, the insurance authority of Portugal shall only take into account the period completed under its own legislation;

(*f*) 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;

(*g*) 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;

(*h*) 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, where advantageous, be taken into account.

(5) Where the total amount of the benefits granted by the competent institution of both Parties to a person who has his residence in Portugal, is less than the minimum amount fixed by the Portuguese legislation, the competent Portuguese institution shall pay the difference between the two amounts to the person concerned.

ARTICLE 17

Where a person does not simultaneously satisfy the conditions for entitlement to an old age pension under the legislation of both Contracting Parties, his entitlement under the legislation of one Party shall be established as and when he satisfies the conditions laid down by the legislation of that Party. The provisions of Article 16 of this Convention shall be applied where there is no entitlement under the provisions of Article 15 of this Convention to an old age pension under the legislation of that Party and his entitlement shall be determined afresh under those provisions when the conditions under 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 specified in paragraph (1)(*a*)(i), (ii) or (iv) of Article 2 of this Convention in respect of a dependent child or children.

(2) Where a person is entitled to an old age pension only under the legislation specified in paragraph (1)(*a*)(i), (ii) or (iv) of Article 2 of this Convention the increase or supplement shall be payable only under that legislation.

ARTICLE 19

The provisions contained in Articles 15 to 18 of this Convention shall apply, with such modifications as the differing nature of the benefits shall require, to survivors' benefits.

SECTION VI

Benefits for Industrial Injuries and Diseases

ARTICLE 20

(1) Where a person 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 5 to 9 of this Convention he shall be treated under that legislation 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.

(2) Where a person sustains an accident 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 for 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 applies 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 person would be entitled to receive an allowance in respect of incapacity for work as the result of an industrial accident or disease 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*) he is temporarily resident in the territory of the latter Party; or

(*b*) having become entitled to such benefit he is authorised by the competent institution 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 institution 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.

ARTICLE 21

(1) Where a person has sustained an industrial injury or contracted an industrial disease, in respect of which the legislation of one Contracting Party applies, and later sustains an industrial injury or contracts an industrial disease in respect of 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 person contracts an industrial disease, after having been employed in the territory of only one Party in occupations to which, under the legislation of that Party, the disease may be attributed, 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 person has not in the meantime been further exposed to the same risk in the territory of the latter Party.

(3) Where a person contracts an industrial disease, after having been employed in the territories of both Parties in an occupation to which the disease may be attributed, under the legislation of both Parties, 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.

(4) Where a person has suffered an aggravation of an industrial disease for which benefit has been paid in accordance with the provisions of paragraphs (2) and (3) of this Article, the following provisions shall apply:

(*a*) if the person 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, 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 grounds 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 institution of that Party shall be liable to pay benefit only in respect of the aggravation as determined under the legislation of that Party.

ARTICLE 22

Where, but for the provisions of this Article, and subject to the provisions of Article 21(4)(*b*) of this Convention, a person would have been entitled to any benefit payable in respect of an industrial injury or disease under the legislation of both Contracting Parties, that benefit shall be granted exclusively under the legislation of the territory in which the person was last employed.

SECTION VII

Death Grant

ARTICLE 23

For the purpose of any claim for death grant under the legislation of one Contracting Party any insurance period completed under the legislation of the other Party shall be treated as if it were an insurance period completed under the legislation of the former Party.

ARTICLE 24

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

(2) Where there would be entitlement to death grant under the legislation of both Parties in respect of the same death, 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, a grant shall be paid 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.

SECTION VIII

Guardian's Allowance Payable under the Legislation of the Territory of the United Kingdom

ARTICLE 25

(1) For the purpose of any claim for guardian's allowance under the legislation of the territory of the United Kingdom any insurance period or period of presence completed under the legislation of or in the territory of Portugal, as the case may be, shall be treated as if it were respectively an insurance period or period of presence completed under the legislation of, or in the territory of, the United Kingdom.

(2) Where a person would be entitled to receive guardian's allowance under the legislation of the territory of the United Kingdom if that person or the orphan for whom the benefit is claimed was resident in the territory of that Party, it shall be paid while that person, or the orphan, is resident in the territory of Portugal.

(3) Where, but for the provisions of this paragraph, a person would be entitled to receive guardian's allowance under the legislation of the territory of the United Kingdom and survivor's benefit for a child payable under the legislation of Portugal in respect of the same orphan, whether by virtue of this Convention or otherwise, he shall be entitled to receive the allowance or benefit, as the case may be, only under the legislation of the Party in whose territory the orphan is ordinarily resident.

SECTION IX

Family Allowance

ARTICLE 26

(1) Where a person is resident 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 5 to 9 of this Convention, he or his spouse residing with him shall be treated for the purpose of any claim for family allowance under the legislation of the latter Party:

(*a*) as if he were present or resident, as the case may be, in the territory of the latter Party, and

(*b*) as if any child of his family or any child for whom he is responsible were present or resident, as the case may be, in the territory of the latter Party, provided that the child is present or resident, as the case may be, in the territory of the former Party.

(2) Where a person is resident in the territory of one Party together with any child of his family or any child for whom he is responsible and the provisions of Articles 5 to 9 of this Convention do not apply to him, then for the purpose of entitlement to family allowance under the legislation of that Party in respect of that child, any insurance period or any period of presence or residence, as the case may be, completed in the territory of the other Party, shall be treated as if it were an insurance period or a period of presence or residence respectively completed by that person in the territory of the former Party.

(3) Where a person is resident in the territory of one Party and his family is resident in the territory of the other Party and the provisions of Articles 5 to 9 of this Convention do not apply to him, his entitlement to family allowance shall only be determined under the legislation of the latter Party. For the purpose of determining that entitlement, any insurance period or period of presence or residence, as the case may be, completed in the territory of the former Party shall be treated as if it were an insurance period or period of presence or residence respectively completed in the territory of the latter Party.

(4) Where, but for the provisions of this paragraph, family allowance would be payable under the legislation of both Parties for the same period in respect of the same child, whether by virtue of this Convention or otherwise, family allowance shall be paid only under the legislation of the Party in whose territory that child is ordinarily resident.

SECTION X

Recovery of Advance Payments and Overpayments of Benefit

ARTICLE 27

Where a competent institution of one Contracting Party has made an advance payment of any benefit 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, provided that the amount so withheld shall not exceed the amount of the advance payment. Where a competent institution of one Party has overpaid benefit for any period for which the competent institution of the other Party afterwards becomes liable to pay a corresponding benefit, the overpayment shall be regarded, for the purposes of the first sentence of this paragraph, as an advance payment.

PART IV

Miscellaneous Provisions

ARTICLE 28

(1) The competent authorities of the two Contracting 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 the provisions of this Convention.

(3) The competent authorities, insurance authorities or competent institutions of the two Parties may, for the purpose of applying the provisions of this Convention, correspond directly with one another, or with any person affected by this Convention, or with his legal representative.

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

ARTICLE 29

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

(2) Where any benefit is payable under the legislation of one Party to a person in the territory of the other Party, the payment may be made by the competent institution of the latter Party, at the request of the competent institution 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 institution of the former Party, at the request of the competent institution of the latter Party, shall arrange for this examination. The cost of such examination shall be met by the competent institution of the former Party.

ARTICLE 30

(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 the provisions of this Convention.

(2) 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.

ARTICLE 31

Where any certificate, document or written statement of any kind is submitted to a competent 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 32

(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 insurance authority or a Court of that Party, shall be treated as if it had been submitted to that authority or Court if it is submitted within the same period to an insurance authority or Court of the other Party.

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

(3) Any document submitted under the legislation of Portugal may, where appropriate, be treated as a notice of retirement given under the legislation of the territory 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 claim, notice, appeal or document has been submitted shall transmit it without delay to the insurance authority of the other Party.

ARTICLE 33

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

(2) Where the competent institution of one Party has made a payment of benefit on behalf of the competent institution of the other Party in accordance with the provisions of paragraph (2) of Article 29 of this Convention any reimbursement of the amounts paid by the former competent institution shall be in the currency of the latter Party.

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

ARTICLE 34

A person shall not be entitled, whether by virtue of this Convention or otherwise, to sickness benefit, invalidity pension or maternity allowance under the legislation of one Contracting Party for any period during which he is entitled to benefit, other than a pension or allowance except Injury Benefit or Unemployability Supplement payable under the legislation of the territory of the United Kingdom in respect of an industrial accident or disease under the legislation of the other Party.

ARTICLE 35

(1) Any dispute about the interpretation or application of this Convention shall be resolved through agreement between the competent authorities of each Contracting Party.

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

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

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

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

PART V

Transitional and Final Provisions

ARTICLE 36

(1) Benefit, other than lump sum payments, shall be payable in accordance with the provisions of this Convention in respect of events which happened before the date of its entry into force, 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 disease if it would not have been so treated under any legislation or Convention having effect at the time of its occurrence or development. For the purpose of determining claims in accordance with the provisions of this Convention, account shall be taken of insurance periods and periods of residence, employment or presence, completed before the date of its entry into force.

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

ARTICLE 37

Negotiations shall take place at a time determined by both Contracting Parties to be appropriate for the purpose of concluding a supplementary agreement which shall add to this Convention arrangements for the payment of child benefit.

ARTICLE 38

This Convention shall be ratified and the instruments of ratification shall be exchanged at Lisbon 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 39

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

ARTICLE 40

In the event of the termination of this Convention, any right to benefit acquired by a person in accordance with its provisions 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 London this 15th day of November 1978, in the English and Portuguese languages, both texts being equally authoritative.

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

David Owen

For the Government of Portugal:

C. Corréa Gago

EXPLANATORY NOTE

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

This order makes provision for modification of the Social Security (Northern Ireland) Act 1975 and Part II of the Child Benefit (Northern Ireland) Order 1975 (which relates to child benefit) so as to give effect to the Convention on Social Security (set out in the Schedule) made between the Governments of the United Kingdom and Portugal. The Convention relates to reciprocity in contributions, short-term benefits, invalidity benefit, retirement pensions, widow's benefit, industrial injuries benefits, death grant, guardian's allowance and child benefit.