

SCHEDULE 1

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

Part II

Retirement Pensions, Age Pensions and Benefits for Widows

ARTICLE 3

Retirement Pensions

(1) For the purpose of determining entitlement to retirement pension under the legislation of any part of the territory of the United Kingdom, a person who is permanently resident in that part of the territory shall be treated as if he or she, or, in the case of a claim made by a married woman or a widow by virtue of her husband's insurance, her husband, had paid contributions under the legislation of that part of the territory for any period during which that person or that person's husband, as the case may be:

- (a) was resident in Australia and had attained the age of sixteen years; and
- (b) being a woman had not attained the age of sixty years, or sixty-five years in the case of Guernsey or Jersey, or being a man had not attained the age of sixty-five years.

(2) Where:

- (a) a woman claiming retirement pension by virtue of her own insurance had been, but is not at the time of the claim, married, and chooses to have her former husband's contributions taken into account for the purpose of her claim; and
- (b) her former husband had been resident in Australia for any period between the ages of sixteen years and sixty-five years;

her former husband shall be treated, for the purpose of her claim, as if he had paid contributions under the legislation of the territory of the United Kingdom for any period referred to in sub-paragraph (b).

(3) Where a person who is permanently resident in any part of the territory of the United Kingdom was receiving an age pension, otherwise than by virtue of this Agreement or the former Agreement, at the time when he or she was last in Australia, and was over pensionable age at that time, he or she shall, if not qualified by virtue of the preceding paragraphs of this Article to receive retirement pension at the full standard rate under the legislation of that part of the territory of the United Kingdom, be treated as if he or she satisfied the contribution conditions for such a pension.

(4) Any pension which is awarded by virtue of this Article shall continue to be payable if the pensioner ceases to be permanently resident in one part of the territory of the United Kingdom and becomes permanently resident in another part of the territory of the United Kingdom, and the competent authority of the latter part of the territory of the United Kingdom shall not determine entitlement under this Article.

(5) Any pension which is awarded by virtue of this Article shall cease to be payable if the pensioner ceases to be permanently resident in the territory of the United Kingdom.

(6) Where a person is entitled to receive a benefit by virtue of the provisions of this Article, the rate of benefit which he or she would otherwise be entitled to receive, but for this paragraph, shall be reduced by the amount of benefit which is payable by virtue of the legislation of Australia in accordance with the provisions of Article 8(7).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

ARTICLE 4

Age Pensions

(1) Where a person is qualified to receive an age pension under the legislation of Australia otherwise than by virtue of the provisions of this Agreement, or the former Agreement, that pension shall be payable and the provisions of this Article shall not apply under that legislation.

(2) For the purpose of any claim by a person to receive an age pension under the legislation of Australia, that person shall be treated as an Australian resident for any period prior to that person's last arrival in Australia for which:

- (a) that person; or
- (b) if that person is a woman who is or has been married, her husband,

paid contributions, or had earnings or contributions credited, under the legislation of the United Kingdom.

(3) For the purpose of applying paragraph (2), any period during which the person (being a woman) and her husband both paid contributions or had earnings or contributions credited to them shall be counted only once.

(4) For the purpose of applying paragraph (2), a period when the person or, if the person is a woman who is or has been married, her husband paid contributions or had earnings or contributions credited, which coincided with a period in which that person was an Australian resident, shall be counted only once.

(5) A person who receives from Australia a wife's pension or a spouse carer's pension by virtue of the fact that the spouse of that person receives an age pension by virtue of this Article, shall, for the purpose of this Agreement, be deemed to receive that pension by virtue of this Agreement.

ARTICLE 5

UK Benefits for Widows

(1) For the purpose of determining entitlement to widow's benefit under the legislation of any part of the territory of the United Kingdom, a widow who is permanently resident in that part of the territory shall be treated as if her husband had paid contributions under the legislation of that part of the territory for any period during which he was resident in Australia between the ages of sixteen years and sixty-five years.

(2) Where a widow who is permanently resident in any part of the territory of the United Kingdom was receiving a pension payable to widows under the legislation of Australia, otherwise than by virtue of this Agreement or the former Agreement, at the time when she was last in Australia, and is not qualified by virtue of paragraph (1) to receive widow's allowance, widowed mother's allowance or widow's pension at the full standard rate under the legislation of that part of the territory of the United Kingdom where she is permanently resident, she shall be qualified under that legislation to receive at the full standard rate:

- (a) widow's allowance if she had been receiving a pension payable to widows under the legislation of Australia for less than one year in the case of Jersey and 26 weeks in the case of Guernsey; or
- (b) widowed mother's allowance if she is not qualified to receive widow's allowance or if she has ceased to be qualified to receive widow's allowance, and if she has a child in her family or if she has residing with her a person under the age of nineteen years or sixteen years in the case of Jersey or eighteen years in the case of Guernsey, and the pension payable to widows which she was receiving at the time when she was last in Australia was being paid to her on the basis that that child or person was her dependent child; or

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(c) widow's pension or retirement pension, as the case may require, if she is not qualified to receive widow's allowance, or widowed mother's allowance but had reached the age of fifty-five years or forty years where that widow is permanently resident in Jersey or Guernsey, either before she last left Australia or when she ceased to be qualified to receive widow's allowance or widowed mother's allowance.

(3) Any pension which is awarded by virtue of this Article shall continue to be payable if the pensioner ceases to be permanently resident in one part of the territory of the United Kingdom and becomes permanently resident in another part of the territory of the United Kingdom, and the competent authority of the latter part of the territory of the United Kingdom shall not determine entitlement under this Article.

(4) Any widow's benefit which is awarded by virtue of this Article shall cease to be payable if the widow ceases to be permanently resident in the territory of the United Kingdom.

(5) Where a person is entitled to receive a benefit by virtue of the provisions of this Article, the rate of benefit which she would otherwise be entitled to receive, but for this paragraph, shall be reduced by the amount of benefit which is payable by virtue of the legislation of Australia in accordance with the provisions of Article 8(7).

(6) The provisions contained in this Article shall apply, in an equal and opposite way to widowed father's allowance under the legislation of Jersey.

(7) In the case of widows' benefits payable under the legislation of Jersey, contribution credits shall only be awarded to widows permanently resident in Jersey.

(8) In the case of widow's benefit payable under the legislation of Guernsey:

- (a) Class 3 contributions shall be credited only to a widow who is permanently resident in Guernsey;
- (b) where Class 3 contributions have not been credited to a widow under the provisions of sub-paragraph (a) above and the rate of old age pension which would be payable is less than the rate of widow's benefit payable immediately before pension age is attained the rate of old age pension shall be adjusted so that it is equal to the rate of widow's benefit which was payable, or which would be payable, if widow's benefit were payable beyond pension age.

ARTICLE 6

UK Widowed Mother's Allowance-Child in Australia

Where a woman would be qualified under the legislation of the United Kingdom, otherwise than by virtue of this Agreement or the former Agreement, to receive widowed mother's allowance, including an allowance for a child, if her child were in the territory of the United Kingdom, she shall be qualified to receive that allowance for any period during which the child is in Australia.

ARTICLE 7

Australian Benefits for Widows

(1) Where a person is qualified to receive a pension payable to widows under the legislation of Australia otherwise than by virtue of the provisions of this Agreement or the former Agreement, that pension shall be payable and the provisions of this Article shall not apply under that legislation.

(2) For the purpose of any claim to receive a pension payable to widows under the legislation of Australia, a widow shall be treated as if she had been an Australian resident during any period for which her husband (or her last husband if more than one) had paid contributions or had had earnings or contributions credited to him under the legislation of the United Kingdom.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(3) For the purpose of applying paragraph (2), any period when the widow was an Australian resident which coincided with a period when her husband (or her last husband if more than one) had paid contributions or had had earnings or contributions credited to him shall be counted only once.

ARTICLE 8

Conversion of Australian Residence

(1) For the purpose of calculating entitlement under the legislation of Great Britain, Northern Ireland or the Isle of Man, to any benefit in accordance with Articles 3 and 5, periods of residence in Australia before 6 April 1975 shall be treated as if they had been contribution or equivalent periods completed under that legislation.

(2) For the purpose of calculating entitlement under the legislation of Great Britain, Northern Ireland or the Isle of Man, to any benefit in accordance with Articles 3 and 5, periods of residence in Australia on or after 6 April 1975 shall be treated as if a Class 3 contribution had been paid under that legislation for each week of residence.

(3) Notwithstanding the provisions of paragraph (2), where residence in Australia during any tax year beginning on or after 6 April 1975 is for a period of less than the complete tax year then for each week of that period during which a person satisfies the competent authority that he or she was employed in Australia:

- (a) for each week up to 5 April 1987, a person shall be treated as having paid a contribution as an employed earner on earnings equivalent to two-thirds of that year's upper earnings limit under the legislation of Great Britain, Northern Ireland or the Isle of Man;
- (b) for each week commencing on or after 6 April 1987, a person shall be treated as having earnings on which primary Class 1 contributions have been paid under the legislation of Great Britain, Northern Ireland or the Isle of Man; these earnings shall be treated as equivalent to two-thirds of that year's upper earnings limit.

(4) For the purpose of calculating entitlement under the legislation of Guernsey to any benefit in accordance with Articles 3 and 5, residence in Australia between the ages of sixteen years and sixty-five years shall be treated as if a Class 3 contribution had been paid under the legislation of Guernsey for each week of residence.

(5) For the purpose of calculating entitlement under the legislation of Jersey to any benefit in accordance with Articles 3 and 5, a person shall be treated:

- (a) for each week completed during residence in Australia between the ages of sixteen years and sixty-five years, being a week in the relevant quarter, as having paid contributions which derive a quarterly contribution factor of 0.077 for that quarter;
- (b) for each week completed during residence in Australia between the ages of sixteen years and sixty-five years, being a week in a relevant year, as having paid contributions which derive an annual contribution factor of 0.0193 for that year.

(6) Where it is not possible to determine accurately the periods of time in which certain insurance periods were completed under the legislation of the United Kingdom, such periods shall be treated as if they did not overlap with periods of residence in Australia, and they shall be taken into account to the best advantage of the beneficiary.

(7) For the purpose of calculating the rate of any benefit payable to a person under the legislation of the United Kingdom in accordance with the provisions of Articles 3, 5 or 13, the amount of any Australian benefit to be taken into account shall be initially the rate which that person is receiving at the date of entitlement to the United Kingdom benefit, and thereafter the rate which that person is receiving:

- (a) on the date on which the latest uprating order, made by the Secretary of State for Social Security under section 63 of the Social Security Act 1986, came into effect; or

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (b) in respect of Guernsey, on the date on which the latest Ordinance made under Section 19 of the Social Insurance (Guernsey) Law, 1978 came into effect; or
- (c) in respect of Jersey, annually on 1 October in accordance with Article 13 of the Social Security (Jersey) Law 1974.

(8) Notwithstanding the provisions of paragraph (7), where a person referred to in that paragraph has the rate of that Australian benefit reduced under the legislation of Australia upon being absent from Australia for 12 months, the benefit payable to that person under the legislation of the United Kingdom shall be adjusted upon that reduction occurring.

ARTICLE 9

Conversion of UK Earnings Factors or Contribution Factors

In order to convert to a period of contributions or credits for the purposes of Articles 4 and 7:

- (a) the competent authority of Great Britain, Northern Ireland or the Isle of Man shall divide any earnings factor achieved in any tax year commencing after 5 April 1975 under its legislation, by that years lower earnings limit;
- (b) the competent authority of Jersey shall multiply any contribution factor achieved by a person under its legislation:
 - (i) by thirteen in the case of a quarterly contribution factor; and
 - (ii) by fifty-two in the case of an annual contribution factor.

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 a quarter or in a year, shall be treated as representing the number of weeks of contributions or credits completed under that legislation.