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## STATUTORY INSTRUMENTS

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# 1992 No. 1312

## SOCIAL SECURITY

### The Social Security (Australia) Order 1992

*Made* - - - - *4th June 1992*

*Coming into force* - - *29th June 1992*

At the Court at Buckingham Palace, the 4th day of June 1992

Present,

The Queen's Most Excellent Majesty in Council

Whereas at London on 1st October 1990 an Agreement on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Australia (which Agreement is set out in Schedule 1 to this Order and is hereinafter referred to as "the Agreement")<sup>M1</sup> was signed on behalf of those Governments:

And Whereas by Article 25(1) of the Agreement it is provided that the Agreement shall enter into force on a date to be specified in Notes exchanged through the Diplomatic Channel by the Parties to the Agreement notifying each other that all matters as are necessary to give effect to the Agreement have been finalised:

And Whereas at Canberra on 22nd April 1992 Notes were exchanged on behalf of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Australia (which Notes are set out in Schedule 2 to this Order) specifying that the Agreement shall enter into force on 29th June 1992:

And Whereas the provisions in the said Agreement were modified by an Exchange of Notes<sup>M2</sup> (which Notes are set out in Schedule 3 to this Order) which specify that the amendments to the Agreement shall enter into force on 29th June 1992:

And Whereas by section 143 of the Social Security Act 1975<sup>M3</sup> and section 15(1) of the Child Benefit Act 1975<sup>M4</sup> it is provided that Her Majesty may by Order in Council make provision for modifying or adapting the said Social Security Act and for modifying the provisions of Part I of the said Child Benefit Act and regulations made under it in their application to cases affected by agreements with other Governments providing for reciprocity in matters specified in those sections:

And Whereas by virtue of section 166(4) of the Social Security Act 1975 any Order in Council made under the said section 143 may be varied by a subsequent Order in Council made under that section:

Now, therefore, Her Majesty in pursuance of the powers conferred by the said section 143 and the said section 15(1), and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

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#### Modifications etc. (not altering text)

- C1** This order was revoked (01.03.2001) by S.I. 2000/3255, arts. 1, 3, but is continued to be reproduced for modifications still in force as per art. 2 of this S.I.

#### Marginal Citations

- M1** see Cmnd. 1589.  
**M2** see Cmnd. 1955.  
**M3** 1975 c.14. Section 143 was amended by section 20(1) of the [Social Security \(Miscellaneous Provisions\) Act 1977 \(c.5\)](#) and by section 65(2) of and Schedule 11 to the [Social Security Act 1986 \(c.50\)](#). Subsection (1A) was inserted by section 6(1) of the [Social Security Act 1981 \(c.33\)](#).  
**M4** 1975 c.61. Section 15(1) was amended by section 20(2) of the [Social Security \(Miscellaneous Provisions\) Act 1977](#) and by Section 65(3) of and Schedule 11 to the [Social Security Act 1986](#). Subsection (1A) was inserted by section 6(2) of the [Social Security Act 1981](#).

#### Citation and commencement

1. This Order may be cited as the [Social Security \(Australia\) Order 1992](#) and shall come into force on 29th June 1992.

#### Modification of Acts

2. The [Social Security Act 1975](#) and Part I of the [Child Benefit Act 1975](#) 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 Agreement so far as the same relate to England, Wales and Scotland.

#### Revocation and variation of Orders

- 3.—(1) The [Family Allowances and National Insurance \(Australia\) Order 1958](#)<sup>M5</sup>, the [Family Allowances and National Insurance \(Australia\) Order 1962](#)<sup>M6</sup>, the [Social Security \(Australia\) Order 1975](#)<sup>M7</sup>, and the [Social Security \(Australia\) Order 1987](#)<sup>M8</sup> are hereby revoked.

- (2) The [National Insurance \(Australia and New Zealand\) Order 1964](#)<sup>M9</sup> is hereby revoked insofar as it relates to Australia.

- (3) The reference to the [Family Allowance and National Insurance \(Australia\) Order 1958](#) and to the [Family Allowances and National Insurance \(Australia\) Order 1962](#) shall be omitted in the Schedule to the [Social Security \(Reciprocal Agreements\) Order 1979](#)<sup>M10</sup> and the reference to all the Orders set out in paragraph (1) of this Article shall be omitted in the Schedule to the [Social Security \(Reciprocal Agreements\) Order 1988](#)<sup>M11</sup>.

#### Marginal Citations

- M5** S.I. 1958/422.  
**M6** S.I. 1962/1869.  
**M7** S.I. 1975/812.  
**M8** S.I. 1987/935.  
**M9** S.I. 1964/495.  
**M10** S.I. 1979/290.  
**M11** S.I. 1988/591.

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G. I. de Deney  
Clerk of the Privy Council

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## SCHEDULE 1

Article 2

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

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Australia,

Wishing to strengthen the existing friendly relations between the two countries;

Having established reciprocity in the field of social security by means of an Agreement signed by the Parties at Canberra on 29 January 1958, which was amended by a further Agreement signed at Canberra on 16 August 1962 and by other Agreements set out in Exchanges of Notes at Canberra on 6 March 1975 and at London on 29 and 31 December 1986;

Wishing to consolidate the above Agreements and their extensions and modifications into a single document; and

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

Have agreed as follows:

## PART I

### GENERAL PROVISIONS

#### *ARTICLE 1*

#### *DEFINITIONS*

(1) For the purpose of this Agreement, unless the context otherwise requires:

“benefit” means pension, allowance or benefit payable under the legislation of one (or the other) Party and includes any increase payable for a dependant;

“competent authority” means, in relation to the territory of the United Kingdom, the Secretary of State for Social Security for Great Britain, the Department of Health and Social Services for Northern Ireland, the Department of Health and Social Security of the Isle of Man, the Social Security Committee of the States of the Island of Jersey or the States of Guernsey Insurance Authority, as the case may require, and, in relation to Australia the Secretary to the Department of Social Security;

“competent institution” means the institution 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 institution is situated;

“contribution”, in relation to the legislation of the United Kingdom, does not include a reduced rate contribution payable by a married woman or a widow, or a graduated contribution within the meaning of that legislation;

“employed person” means a person who, in the applicable legislation, comes within the definition of an employed earner or of an employed person or is treated as such and the words “person is employed” shall be construed accordingly;

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

“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 that Party;

“family allowance”, in relation to the United Kingdom, includes child benefit payable under the legislation of the United Kingdom, and, in relation to Australia means family allowance payable under the legislation of Australia;

“former Agreement” means the Agreement on Social Security signed at Canberra on 29 January 1958, on behalf of the Parties, as amended by the Agreement on Social Security signed at Canberra on 16 August 1962 and by the Agreements set out in the Exchanges of Notes at Canberra on 6 March 1975 and at London on 29 and 31 December 1986;

“full standard rate” means, in relation to any benefit payable under the legislation of the United Kingdom, the rate at which the beneficiary would be qualified to receive that benefit if the relevant contribution conditions were fully satisfied;

“gainfully occupied” means employed or self-employed;

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

“income support” means income support payable under the legislation of Great Britain and Northern Ireland and supplementary benefit payable under the legislation of the Isle of Man;

“legislation” means the legislation specified in Article 2 which, in relation to the United Kingdom, is in force in any part of the territory of the United Kingdom and, in relation to Australia, is in force in Australia;

“means test” means any provision of the legislation of Australia which affects the payment or rate of a benefit on account of income or property;

“qualified to receive” means, in relation to the United Kingdom, entitled to receive subject to any disqualification or any provision about claiming, hospital treatment or overlapping benefits which may be appropriate;

“retirement pension” means retirement pension or old age pension payable under the legislation of the United Kingdom and includes a contributory old age pension under that legislation and any graduated retirement benefit constituted by an increase in the weekly rate of retirement pension under that legislation, but excludes additional (earnings-related) pension payable under that legislation;

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

“spouse carer’s pension” means a carer’s pension payable to a husband under the legislation of Australia;

“territory” means in relation to the United Kingdom, Great Britain, Northern Ireland and also the Isle of Man, the Island of Jersey and Guernsey;

“widow” means, in relation to Australia, *ade jure* widow but does not include a woman who is *de facto* spouse of a man;

“widow’s benefit” means, in relation to the United Kingdom, widow’s allowance, widow’s payment, widowed mother’s allowance (including any graduated retirement benefit constituted by an increase in the weekly rate of widowed mother’s allowance), widowed father’s allowance or widow’s pension under the legislation of any part of the United Kingdom.

(2) In the application by a Party of this Agreement in relation to a person, any term not defined in this Article shall, unless the context otherwise requires, have the meaning ascribed to it in the

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legislation of the Parties or, in the event of a conflict of meaning, by whichever of the legislation of the Parties is the more applicable to the circumstances of that person.

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

## ARTICLE 2

### SCOPE OF LEGISLATION

(1) The provisions of this Agreement shall apply:

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

- (i) the Social Security Acts 1975 to 1989 and the Social Security (Northern Ireland) Acts 1975 to 1989;
- (ii) the Social Security Acts 1975 to 1989 (Acts of Parliament) as those Acts apply to the Isle of Man by virtue of Orders made, or having effect as if made, under the Social Security Act 1982 (an Act of Tynwald);
- (iii) the Social Security (Jersey) Law, 1974;
- (iv) the Social Insurance (Guernsey) Law, 1978;
- (v) the Child Benefit Act 1975, the Child Benefit (Northern Ireland) Order 1975 and the Child Benefit Act 1975 (an Act of Parliament) as that Act applies to the Isle of Man by virtue of Orders made, or having effect as if made, under the Social Security Act 1982 (an Act of Tynwald); the Family Allowances (Jersey) Law, 1972 and the Family Allowances (Guernsey) Law, 1950;

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

(b) in relation to Australia, to the Social Security Act 1947.

(2) Subject to the provisions of paragraphs (3) and (4) this Agreement shall apply also to any laws, orders and regulations which supersede, replace, amend, supplement or consolidate the legislation specified in paragraph (1).

(3) This Agreement shall not affect any benefits payable under the legislation of either Party except in the manner set out in this Agreement.

(4) This Agreement shall not apply to legislation on social security of the Institutions of the European Communities or to any convention or agreement on social security which either Party has concluded with a third party or to any laws, orders or regulations which amend the legislation specified in paragraph (1) for the purpose of giving effect to such a convention or agreement but shall not prevent either Party from taking into account under its legislation the provisions of any other convention or agreement which that Party has concluded with a third party.

(5) Subject to the provisions of paragraph (2), this Agreement shall apply, unless the Parties agree otherwise, only to benefits described in the legislation specified in paragraph (1) at the date of coming into force of this Agreement and for which specific provision is made in this Agreement.

## 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 subparagraph (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).

#### ARTICLE 4

##### AGE PENSIONS

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(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
- (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



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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 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.

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(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:

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- (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
- (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.

### PART III

#### UK FAMILY ALLOWANCE AND GUARDIAN ALLOWANCE

##### ARTICLE 10

##### FAMILY ALLOWANCE

(1) Where a person who has been resident in Australia becomes permanently resident in the territory of the United Kingdom, the period during which that person was resident in Australia shall be treated, for the purpose of a claim by the person for family allowance under the legislation of the United Kingdom, as a period during which that person was resident in that territory.

(2) For the purpose of any claim to family allowance under the legislation of Guernsey, a person whose place of birth is in Australia shall be treated as if his or her place of birth was in Guernsey.

(3) In the case of Jersey, family allowance shall only be paid in respect of a child who is ordinarily resident in Jersey.

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## ARTICLE 11

### GUARDIAN ALLOWANCE

(1) Where a person who is permanently resident in the territory of the United Kingdom claims guardian's allowance under the legislation of any part of that territory for a child who is permanently resident there, each complete week during which either parent of that child was resident in Australia after reaching sixteen years of age shall be treated as if that week had been a complete week of residence in that part of the territory of the United Kingdom or as if that parent had been an insured person under the legislation of Guernsey.

(2) If either parent of a child referred to in paragraph (1) was born in Australia, that parent shall be treated as if he or she had been born in the United Kingdom.

## PART IV

### SICKNESS BENEFITS AND INVALIDITY BENEFITS

#### ARTICLE 12

##### AUSTRALIAN SICKNESS BENEFIT

Where a person who is temporarily absent from any part of the territory of the United Kingdom and who is legally in Australia claims sickness benefit under the legislation of Australia, that person shall, for the purpose of that claim, be deemed to be an Australian resident.

#### ARTICLE 13

##### UK SICKNESS BENEFIT AND INVALIDITY BENEFIT

(1) Where a person who is permanently resident in the territory of the United Kingdom and is ordinarily gainfully occupied, or would be, but for his or her incapacity for work, claims sickness or invalidity benefit under the legislation of the relevant part of that territory, then, for the purpose of calculating entitlement to those benefits, periods during which that person was in Australia shall be treated in accordance with the provisions of this Article.

(2) For the purpose of calculating entitlement under the legislation of Great Britain, Northern Ireland or the Isle of Man to sickness or invalidity benefit:

- (a) periods of gainful occupation completed in Australia before 6 April 1975 shall be treated as if they had been contribution or equivalent periods completed under the legislation of Great Britain, Northern Ireland or the Isle of Man; and
- (b) periods completed as a self-employed person in Australia after 5 April 1975 shall be treated as if they had been contribution periods completed as a self-employed person or equivalent periods completed under the legislation of Great Britain, Northern Ireland or the Isle of Man.

(3) For the purpose of calculating an earnings factor for assessing entitlement to sickness or invalidity benefit under the legislation of Great Britain, Northern Ireland or the Isle of Man, a person shall be treated for each week beginning in a relevant tax year, during which he or she was an employed person in Australia, as follows:

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- (a) for each week commencing on or after 6 April 1975 and up to 5 April 1987, as having a contribution paid as an employed earner on earnings equivalent to two-thirds of that year's upper earnings limit; and
  - (b) for each week beginning in a relevant tax year commencing on or after 6 April 1987, as having earnings on which primary Class 1 contributions have been paid. 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 sickness or invalidity benefit:
- (a) periods during which a person was gainfully occupied as an employed person in Australia shall be treated as if they had been contribution or equivalent periods completed as an employed person under the legislation of Guernsey; and
  - (b) periods during which a person was gainfully occupied as a self-employed person in Australia shall be treated as if they had been contribution or equivalent periods completed as a self-employed person under the legislation of Guernsey.
- (5) For the purpose of calculating entitlement under the legislation of Jersey to any benefit in accordance with this Article, 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) For the purpose of calculating entitlement under the legislation of the relevant part of the territory of the United Kingdom to sickness or invalidity benefit, a person shall be treated as if he or she had had earnings or contributions credited to him or her:
- (a) as an employed person for any week during which he or she was in Australia and was unemployed and available for work or was incapable of work, if that week was part of a period during which he or she was or would ordinarily have been employed; and
  - (b) as a self-employed person for any other week during which he or she was in Australia and was incapable of work, if that week was part of a period during which he or she was or would ordinarily have been self-employed.
- (7) Where a person who is permanently resident in the territory of the United Kingdom was receiving a sickness benefit, an invalid pension, a sheltered employment allowance or a rehabilitation allowance under the legislation of Australia when he or she was last in Australia and is incapable of work at the time when he or she arrives in the territory of the United Kingdom, he or she shall be treated under the legislation of the United Kingdom as if, at that time and for so long as he or she continues from that time to be incapable of work, he or she satisfied the contribution conditions under which sickness or invalidity benefit is payable.
- (8) For the purpose of any claim to invalidity benefit under the legislation of the United Kingdom, any period in respect of which a person received sickness benefit or an invalid pension under the legislation of Australia shall be treated as if it were a period of entitlement to sickness benefit or invalidity benefit completed under the legislation of the United Kingdom.
- (9) Nothing in this Article shall diminish any right which a person has, apart from this Agreement, to receive sickness or invalidity benefit under the legislation of the United Kingdom.
- (10) 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).

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## PART V

### UK UNEMPLOYMENT BENEFIT

#### ARTICLE 14

(1) Where a person who is permanently resident in the territory of the United Kingdom except for Jersey claims unemployment benefit under the legislation of any part of that territory, then, for the purpose of calculating entitlement to that benefit, periods during which that person was in Australia shall be treated in accordance with the provisions of this Article.

(2) Periods of gainful occupation as an employed person in Australia before 6 April 1975 shall be treated as if they had been contribution or equivalent periods completed under the legislation of Great Britain, Northern Ireland or the Isle of Man.

(3) For the purpose of calculating an earnings factor for assessing entitlement to unemployment benefit under the legislation of Great Britain, Northern Ireland or the Isle of Man, a person shall be treated for each week beginning in a relevant tax year, during which he or she was an employed person in Australia, as follows:

- (a) for each week commencing on or after 6 April 1975 and up to 5 April 1987, as having a contribution paid as an employed earner on earnings equivalent to two-thirds of that year's upper earnings limit; and
- (b) for each week beginning in a relevant tax year commencing on or after 6 April 1987, as having earnings on which primary Class 1 contributions have been paid. These earnings shall be treated as equivalent to two-thirds of that year's upper earnings limit.

(4) For the purpose of calculating entitlement to unemployment benefit under the legislation of Guernsey, periods during which a person was gainfully occupied as an employed person in Australia shall be treated as if they had been contribution or equivalent periods completed as an employed person under the legislation of Guernsey.

(5) A person shall be treated as if he or she had had earnings or contributions credited to him or her as an employed person for any week during which he or she was in Australia and was unemployed and available for work or was incapable of work, if that week was part of a period during which he or she was or would ordinarily have been gainfully occupied under a contract of service.

(6) Nothing in this Article shall diminish any right which a person has, apart from this Agreement, to receive unemployment benefit under the legislation of the United Kingdom.

(7) The provisions of this Article shall not apply to a person who claims unemployment benefit under the legislation of Guernsey and who has not paid 26 contributions as an employed person under that legislation.

## PART VI

### MISCELLANEOUS PROVISIONS

#### ARTICLE 15

##### TEMPORARY ABSENCES

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

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

## ARTICLE 16

### CALCULATION OF AUSTRALIAN BENEFITS

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

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

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

(3) Where a married person is, or both that person and his or her spouse are, in receipt of a United Kingdom benefit or benefits, each of them shall be deemed, for the purpose of paragraph (2) and for the legislation of Australia, to be in receipt of one half of either the amount of that benefit or the total of both of those benefits, as the case may be.

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

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

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

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

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

#### ARTICLE 17

##### DUAL ENTITLEMENT IN AUSTRALIA

Where:

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

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

#### ARTICLE 18

##### DUAL ENTITLEMENT IN UK

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

#### ARTICLE 19

##### RECOVERY OF BENEFIT

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

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

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

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

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

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



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

the competent authority of Australia may determine that:

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

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

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

#### *ARTICLE 20*

##### *MEANING OF PERMANENTLY RESIDENT*

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

#### *ARTICLE 21*

##### *GAINFUL OCCUPATION IN AUSTRALIA*

For the purpose of Articles 13 and 14, a person shall be treated as having been gainfully occupied in Australia during:

- (a) any period of service, whether in Australia or elsewhere, in the Defence Force of Australia; and
- (b) any period of absence from Australia during which that person was an employee and was treated as being a resident of Australia within the meaning of any Act relating to the imposition, assessment and collection of a tax upon incomes in force in Australia.

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## PART VII ADMINISTRATION

### ARTICLE 22

#### ADMINISTRATIVE ARRANGEMENTS

The competent authorities of the United Kingdom of Great Britain and Northern Ireland and the Secretary to the Department of Social Security for the Government of Australia shall make whatever administrative arrangements are necessary from time to time in order to implement this Agreement.

### ARTICLE 23

#### DISCLOSURE OF INFORMATION

(1) The competent authorities may supply to each other such information as is necessary for the operation of this Agreement or of the legislation of each territory to which this Agreement applies as if the matter involved the application of their own legislation.

(2) Any information received by a competent authority pursuant to paragraph (1) shall be protected in the same manner as information obtained under the legislation of that territory and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with matters, including the determination of appeals, arising under the provisions of this Agreement and of the legislation to which this Agreement applies and shall be used only for those purposes.

(3) In no case shall the provisions of paragraphs (1) and (2) be construed so as to impose on the competent authority of either Party the obligation:

- (a) to carry out administrative measures which are at variance with the laws or the administrative practice of either Party; or
- (b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of either Party.

(4) The competent authorities shall notify each other of legislation that supersedes, amends, supplements or replaces the legislation within the scope of this Agreement in relation to their respective Parties, promptly after the first-mentioned legislation is enacted.

(5) The appropriate competent authority shall also provide copies of the relevant legislation and of related explanatory material and any further amplification or clarification that the other competent authority may request.

## PART VIII TRANSITIONAL AND FINAL PROVISIONS

### ARTICLE 24

#### TRANSITIONAL PROVISIONS

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(1) No provision of this Agreement shall confer any right to receive any payment of a benefit for a period before the date of the entry into force of this Agreement.

(2) Any contribution which a person has paid or earnings or contributions credited under the legislation of the United Kingdom before the date of the entry into force of this Agreement, and any period during which a person was resident in Australia before that date, shall be taken into account for the purpose of determining the right to receive a benefit in accordance with the provisions of this Agreement under the legislation of Australia and under the legislation of the United Kingdom respectively.

(3) Subject to paragraph (4), where, on the date on which this Agreement enters into force, a person:

- (a) is in receipt of a benefit under the legislation of either Party by virtue of the former Agreement; or
- (b) is qualified to receive a benefit referred to in sub-paragraph (a) and, where a claim for that benefit is required, has claimed that benefit,

no provision of this Agreement shall affect the entitlement to receive that benefit.

(4) The rate of a benefit which is payable by virtue of paragraph (3) shall, subject to this Agreement, be assessed in accordance with the provisions of the legislation of the relevant Party.

#### ARTICLE 25

##### ENTRY INTO FORCE

(1) The Agreement shall enter into force on a date to be specified in Notes exchanged by the Parties through the Diplomatic Channel notifying each other that all matters as are necessary to give effect to this Agreement have been finalised.

(2) Subject to the provisions of Article 24, the former Agreement shall terminate on the date of entry into force of this Agreement.

#### ARTICLE 26

##### TERMINATION PROVISIONS

(1) Subject to paragraph (2), this Agreement shall remain in force until the expiration of twelve months from the date on which either Party receives from the other written notice through the diplomatic channel of the intention of the other Party to terminate this Agreement.

(2) In the event that this Agreement is terminated in accordance with paragraph (1), the Agreement shall continue to have effect in relation to all persons who by virtue of this Agreement:

- (a) at the date of termination, are in receipt of benefits; or
- (b) prior to the expiry of the period referred to in that paragraph, have lodged claims for, and would be entitled to receive, benefits.

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## SCHEDULE 2

### EXCHANGE OF NOTES BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF AUSTRALIA No. 29

#### [No. 1]

The British High Commission present their compliments to the Department of Foreign Affairs and Trade and have the honour to refer to the Agreement on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Australia signed at London on 1 October 1990 and, in accordance with Article 25(1) of that Agreement, to notify the Department of Foreign Affairs and Trade that the Government of the United Kingdom has completed the constitutional and administrative requirements necessary for its implementation.

The High Commission have the honour to propose that, if the Government of Australia has similarly completed its constitutional and administrative requirements, the Agreement shall enter into force on 29 June 1992.

The High Commission avail themselves of this opportunity to renew to the Department of Foreign Affairs and Trade the assurance of their highest consideration.

22 April 1992

British High Commission

CANBERRA

#### [No. 2]

The Department of Foreign Affairs and Trade presents its compliments to the British High Commission and has the honour to refer to the High Commission's Note No. 29 of 22 April 1992, which reads as follows:

(the Note here sets out the text of No. 1)

The Department has the honour to advise that the constitutional and administrative arrangements necessary for the implementation of the said Agreement by the Government of Australia have been completed. The Department further has the honour to confirm that the foregoing is acceptable to the Government of Australia and that the Agreement shall enter into force on 29 June 1992.

CANBERRA

23 April 1992

## SCHEDULE 3

### EXCHANGE OF NOTES BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF AUSTRALIA No. 30

[No. 1]

The British High Commission present their compliments to the Department of Foreign Affairs and Trade and have the honour to refer to the Agreement on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Australia signed at London on 1 October 1990 (which in this letter is referred to as “the Agreement”) and to recent discussions between the Departments of Social Security of the United Kingdom and Australia concerning the need to amend the Agreement, so as to make provision for increases of United Kingdom benefits in respect of dependants to be paid in certain circumstances, for any period during which such dependant is in Australia.

The British High Commission now have the honour to propose the following amendments to the Agreement:

- (a) Articles 6 and 15(2) of the Agreement shall be deleted;
- (b) The following shall be inserted after Article 15 of the Agreement.

*“ARTICLE 15A*

*UK INCREASES FOR DEPENDANTS*

Where a person who is qualified to receive any benefit under the legislation of the United Kingdom, other than a retirement pension or a widowed mother’s allowance payable by virtue of this or the former Agreement, would be qualified to receive also an increase of that benefit for a dependant if the dependant were in that territory, he or she shall be qualified to receive that increase while the dependant is in Australia.”

If the foregoing proposals are acceptable to the Government of Australia, the High Commission have the honour to propose that this Note and the Department of Foreign Affairs and Trade’s reply to that effect, shall constitute an Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Australia which shall enter into force on 29 June 1992.

The British High Commission avail themselves of this opportunity to renew to the Department of Foreign Affairs and Trade the assurance of their highest consideration.

22 April 1992

British High Commission

CANBERRA

[No. 2]

The Department of Foreign Affairs and Trade presents its compliments to the British High Commission and has the honour to refer to the High Commission’s Note No. 30 of 22 April 1992, which reads as follows:

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(the Note here sets out the text for No. 1)

The Department has the honour to confirm that the foregoing is acceptable to the Government of Australia and that the High Commission's Note and this reply shall together constitute an Agreement between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland which shall enter into force on 29 June 1992.

CANBERRA

22 April 1992

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

Done in duplicate at London this 1st day of October 1990.

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

*Caithness*

For the Government of Australia:

*Graham Richardson*

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#### EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for the modification of the Social Security Act 1975 and Part I of the Child Benefit Act 1975 so as to give effect to the Agreement on Social Security (set out in Schedule 1), as modified by the provisions contained in Schedule 3 to the Order, made between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Australia. The Agreement relates to reciprocity in contributions, old age pensions, widow's benefit, family allowance, guardian's allowance, sickness benefit, invalidity benefit and unemployment benefit.

**Status:**

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**Changes to legislation:**

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