
STATUTORY INSTRUMENTS

1987 No. 1831

SOCIAL SECURITY

The Social Security (Portugal) Order 1987

Made - - - - - *21st October 1987*

Coming into force - - - - - *22nd October 1987*

At the Court of Saint James, the 21st day of October 1987

Present,

The Counsellors of State in Council

Whereas Her Majesty, in pursuance of the Regency Acts 1937 to 1953, was pleased, by Letters Patent dated the 17th day of September 1987, to delegate to the six Counsellors of State therein named or any two or more of them full power and authority during the period of Her Majesty's absence from the United Kingdom to summon and hold on Her Majesty's behalf Her Privy Council and to signify thereat Her Majesty's approval for anything for which Her Majesty's approval in Council is required:

And whereas at London on 15th November 1978 a Convention on social security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Portugal (hereinafter referred to as "the Convention") was signed on behalf of those Governments and effect was given thereto by the Social Security (Portugal) Order 1979 ^{M1}:

And Whereas at London on the 28th day of September 1987 Notes were exchanged on behalf of the said Governments amending the Convention and the terms of the Note from the Secretary of State for Foreign and Commonwealth Affairs were reproduced in the Note from the Portuguese Ambassador to the Court of St James' which is set out in the Schedule to this Order:

And Whereas by section 143 of the Social Security Act 1975 ^{M2} and section 15(1) of the Child Benefit Act 1975 ^{M3} 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:

And Whereas by virtue of section 22(8) of the Child Benefit Act 1975 any power conferred by that Act to make an Order in Council includes a power to vary or revoke a previous Order:

Now, therefore, His Royal Highness The Prince Andrew Duke of York and Her Royal Highness The Princess Royal, being authorised thereto by the said Letters Patent, and in pursuance of the powers conferred by the said section 143 and the said section 15(1), and of all other powers enabling

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Her Majesty, and by and with the advice of Her Majesty's Privy Council, do on Her Majesty's behalf order, and it is hereby ordered, as follows:

Modifications etc. (not altering text)

- C1** Order modified (11.04.1988) by The Social Security (Reciprocal Agreements) Order 1988, [S.I. 1988/591](#), (where references relating to the calculation of widow's allowance under the legislation of the United Kingdom such references shall be taken to include, subject to such modifications as may be required, a reference to a widow's payment under the legislation of the United Kingdom.)
- C2** Order modified (13.04.1995) by The Social Security (Reciprocal Agreements) Order 1995, [S.I. 1995/767](#), (where references to sickness benefit, invalidity benefit or invalidity pension under the legislation of the United Kingdom, such references shall be altered to include a reference to short-term incapacity benefit or long-term incapacity benefit, as the case may be, under the legislation of the United Kingdom)
- C3** Order modified (7.10.1996) by The Social Security (Reciprocal Agreements) Order 1996, [S.I. 1996/1928](#), (where references to unemployment benefit under the legislation of the United Kingdom, such references shall be altered to include a reference to contribution-based jobseeker's allowance, under the legislation of the United Kingdom)

Marginal Citations

- M1** [S.I. 1979/921](#).
- M2** [1975 c. 14](#); subsection (1A) of section 143 was inserted by section 6(1) of the [Social Security Act 1981 \(c. 33\)](#).
- M3** [1975 c. 61](#).

Citation and commencement

1. This Order may be cited as the Social Security (Portugal) Order 1987 and shall come into force on 22nd October 1987.

Modification of Acts and Variation of Order

2. The Social Security Act 1975 and the Child Benefit Act 1975 and any regulations made under it shall be modified and the Social Security (Portugal) Order 1979 shall be varied so as to give effect to the Agreement made on 28th September 1987 the terms of which are contained in the Note from the Portuguese Ambassador to the Court of St James to the Secretary of State for Foreign and Commonwealth Affairs which is set out in the Schedule to this Order, so far as the same relate to England, Wales and Scotland.

G. I. de Deney
Clerk of the Privy Council

SCHEDULE

Article 2

NOTE FROM THE PORTUGUESE AMBASSADOR TO THE COURT OF ST JAMES TO THE SECRETARY OF STATE FOR FOREIGN AND COMMONWEALTH AFFAIRS

28th September 1987

Sir,

I have the honour to acknowledge receipt of your Note of 14th August 1987 which reads as follows —

“I have the honour to refer to the Convention on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Portugal, which was signed at London on 15 November 1978 (hereinafter referred to as “the Convention”), and to recent correspondence between the Department of Health and Social Security of the United Kingdom and the Departamento de Relações Internacionais e Convenções de Segurança Social of Portugal concerning the need to amend the Convention to introduce revised family allowance provisions, to take account of changes made in United Kingdom social security legislation, and to make other minor modifications.

I now have the honour to propose the following amendments to the said Convention:

- (a) in Article 11 the existing paragraph (4) shall be renumbered (5) and the following paragraph inserted after paragraph (3):

“(4) Where a person is employed in the territory of one Party and the legislation of the other Party applies to him in accordance with any of the provisions of Articles 5 to 9 of this Convention, he shall be treated under that legislation for the purpose of any claim to sickness benefit or maternity allowance as if he were in the territory of the latter Party.”

- (b) Article 12 shall be amended by inserting after paragraph (2) the following new paragraph (3):

“(3) Where a woman is confined on or after 4 July 1982 in Great Britain, Northern Ireland or the Isle of Man (other than a woman who is treated as having been confined there by virtue of Article 12(1)), periods during which she was present in the territory of Portugal shall be treated for the purpose of a claim by her for maternity grant under the legislation of the Party in whose territory the confinement occurred as if they were periods during which she was present in that territory.”

- (c) Article 26 shall be deleted and the following provision substituted —

“Article 26

(1) Subject to the provisions of paragraph (9) of this Article, where a person (other than a self-employed 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, for the purpose of any claim to receive family allowance under that legislation —

- (a) as if he were in the territory of the latter Party and employed in that territory;
(b) as if his children or other dependants were in the territory of the latter Party, if they are in the territory of the former Party.

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(2) Subject to the provisions of paragraphs (1), (3), (4) and (9) of this Article, a person (other than a self-employed person) subject to the legislation of one Party in respect of his employment shall be entitled to the family allowance provided for by the legislation of that Party for members of his family residing in the territory of the other Party, as though they were residing in the territory of the former Party.

(3) Subject to the provisions of paragraphs (4), (5) and (9) of this Article, a person resident in the territory of either Party (other than a self-employed person), who is in receipt of maternity allowance or benefit for unemployment, old age, total incapacity for work whether permanent or otherwise however caused, or survivor's benefit whether arising from industrial accident or industrial disease or otherwise under the legislation of one Party shall be entitled to the family allowance provided for by the legislation of that Party for members of his family residing in, or present in, as the case may be, the territory of the other Party, as though they were residing in, or present in, the territory of the former Party.

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

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

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

(7) For the purpose of any claim to family allowance under the legislation of Guernsey, a person whose place of birth is in the territory of Portugal shall be treated as if his place of birth were in the Islands of Guernsey, Alderney, Herm or Jethou.

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

(9) Entitlement to family allowance under the legislation of Jersey shall exist only if the children are ordinarily resident in Jersey.”

(d) Article 37 of the Convention shall be deleted.

If the foregoing proposals are acceptable to the Government of Portugal I have the honour to propose that this Note and Your Excellency's reply to that effect shall constitute an Agreement between our two Governments which shall enter into force on the date of your Excellency's reply.

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

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I have the honour to inform you that these proposals are acceptable to the Government of Portugal, and that they agree that Your Note and this reply shall constitute an Agreement between our two Governments which shall enter into force on the 1st October 1987.

I avail myself of this opportunity to renew to you, Sir, the assurance of my highest consideration.

I avail myself of this opportunity to renew to you, Sir, the assurance of my highest consideration.

Joao Hall Themido
for the Government of Portugal

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for the modification of the Social Security Act 1975 and the Child Benefit Act 1975 so as to give effect in England, Wales and Scotland to the agreement (set out in the Schedule) contained in Notes exchanged between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Portugal amending the Convention contained in the Social Security (Portugal) Order 1979.

The amendments relating to sickness and maternity benefit enable those benefits to be paid to persons who, whilst employed in one country, contribute to the social security scheme of the other country, and to take account of changes in the conditions for the award of maternity grant. The principal amendment relating to family allowances enables persons employed in one country to be paid benefit in respect of members of their family who are resident in the other country.

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Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

- Order modified by [S.I. 1988/591 art. 23Sch.](#)
- Order modified by [S.I. 1995/767 art. 2Sch. 12](#)
- Act modified by [S.I. 1996/1928 art.2Schs.12](#)
- Order modified by [S.I. 1996/1928 art. 2Sch. 12](#)