
STATUTORY INSTRUMENTS

1995 No. 2699

SOCIAL SECURITY

The Social Security (Canada) Order 1995

Made - - - - *18th October 1995*

Coming into force - - *1st December 1995*

At the Court at Buckingham Palace, the 18th day of October 1995

Present,

The Queen's Most Excellent Majesty in Council

Whereas on 11th and 18th October 1994 letters were exchanged between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Canada providing for arrangements concerning social security agreed in former exchanges of letters to be consolidated into a single document, with modifications where necessary to take account of changes in legislation, which arrangements (hereinafter referred to as "the consolidated arrangements") are set out in a schedule to the exchange of letters of 11th and 18th October 1994 in Schedule 1 to this Order⁽¹⁾:

And Whereas by that exchange of letters it is provided that the consolidated arrangements shall enter into force on a date to be specified in Notes exchanged between the two Governments through the Diplomatic Channel, notifying each other that all matters as are necessary to give effect to the consolidated arrangements have been finalised:

And Whereas at Ottawa on 29th September 1995 Notes were exchanged on behalf of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Canada (which Notes are set out in Schedule 2 to this Order) specifying that the consolidated arrangements shall enter into force on 1st December 1995:

And Whereas by section 179(1)(a) and (2) of the Social Security Administration Act 1992⁽²⁾ it is provided that Her Majesty may by Order in Council make provision for modifying or adapting that Act and the Social Security Contributions and Benefits Act 1992⁽³⁾ and regulations made or having effect thereunder⁽⁴⁾ in their application to cases affected by agreements with the Governments of countries outside the United Kingdom providing for reciprocity in matters specified in the said section:

Now, therefore, Her Majesty, in pursuance of section 179(1)(a) and (2) of the Social Security Administration Act 1992 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:—

(1) See Cm 2859.

(2) 1992 c. 5.

(3) 1992 c. 4.

(4) See section 179(5) of the Social Security Administration Act 1992.

Citation and commencement

1. This Order may be cited as the Social Security (Canada) Order 1995 and shall come into force on 1st December 1995.

Modification of the Social Security Administration Act 1992 and the Social Security Contributions and Benefits Act 1992

2. The Social Security Administration Act 1992 and the Social Security Contributions and Benefits Act 1992 and any regulations made or having effect thereunder shall be modified to such an extent as may be required to give effect to the provisions contained in the consolidated arrangements so far as the same relate to England, Wales and Scotland.

Revocation and Amendment of Orders and Regulations

3.—(1) The Family Allowances and National Insurance (Canada) Order 1959⁽⁵⁾, the National Insurance (Canada) Order 1962⁽⁶⁾, the National Insurance (Canada) Order 1973⁽⁷⁾ and the Social Security (Canada) Order 1977⁽⁸⁾ are hereby revoked.

(2) The references to the Family Allowances and National Insurance (Canada) Order 1959, to the National Insurance (Canada) Order 1962 and to the National Insurance (Canada) Order 1973 shall be omitted in Schedule 1 to the Social Security (Reciprocal Agreements) Order 1976⁽⁹⁾ and the reference to the Family Allowances and National Insurance (Canada) Order 1959 shall be omitted in the Schedule to the Child Benefit (Residence and Persons Abroad) Regulations 1976⁽¹⁰⁾.

N. H. Nicholls
Clerk of the Privy Council

(5) S.I.1959/2216.
(6) S.I. 1962/173.
(7) S.I. 1973/763.
(8) S.I. 1977/1873.
(9) S.I. 1976/225.
(10) S.I. 1976/963.

SCHEDULE 1

EXCHANGE OF LETTERS BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF CANADA CONCERNING CONSOLIDATED ARRANGEMENTS ON SOCIAL SECURITY

No. 1

*The United Kingdom High Commissioner at Ottawa to the Minister of Employment and Immigration
of Canada*

British High Commission Ottawa

11 October 1994

Dear Minister:

As you know, our officials have been considering whether the arrangements concerning social security agreed in the letters which passed between the Governments of the United Kingdom and Canada on 8 and 10 December 1959, as amended by the exchanges of letters of 7 and 30 November 1961, 9 March 1973 and 10 November 1977 (henceforth referred to as “the former exchanges of letters”) require to be consolidated into a single document, with modifications where necessary to take account of changes in legislation.

The Government of the United Kingdom now proposes that:

- (i) the consolidated arrangements shall be in the form as set out in the Schedule to this letter;
- (ii) the consolidated arrangements shall enter into force on a date to be specified in Notes exchanged between our two Governments, through the Diplomatic Channel, notifying each other that all matters as are necessary to give effect to these consolidated arrangements have been finalised, from which date the arrangements set out in the former exchanges of letters shall cease to have effect, except in respect of claims for benefit approved under those arrangements prior to that date;
- (iii) the consolidated arrangements shall remain in force until the two Governments agree to terminate them or either Government gives at least six months' notice of termination of them to the other.

If these proposals are acceptable to the Government of Canada, I have the honour to suggest that this letter and its Schedule, and your reply to that effect, shall constitute an Agreement between the two Governments on this matter which shall enter into force as in (ii) above.

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

Nicholas P. Bayne

Schedule to the letter of 11 October 1994 from the High Commissioner for the United Kingdom in Canada to the Minister of Employment and Immigration

PART I

general provisions

Definitions

(1) For the purposes of these arrangements, except where the context otherwise requires:

“available for work” means seeking employment as an employed earner;

“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;

“former exchanges of letters” means the letters which were exchanged between the Governments of the United Kingdom and Canada on 8 and 10 December 1959, as amended by the letters of 7 and 30 November 1961, 9 March 1973 and 10 November 1977;

“gainfully occupied in employment” means employed as an employed earner or treated as such, in the applicable legislation;

“incapable of work” means incapable of work as an employed earner due to illness;

“legislation” means the legislation specified in paragraph (3);

“Party” means the United Kingdom or Canada;

“pension age” means, in relation to any person, the age at which that person is treated as reaching pensionable age under the legislation of the United Kingdom;

“United Kingdom” means the United Kingdom of Great Britain and Northern Ireland, and also the Isle of Man.

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

Scope of Legislation

(3) The provisions of these arrangements shall apply, in relation to the United Kingdom, to:

(a) the Social Security Administration Act 1992, the Social Security Contributions and Benefits Act 1992 and the Social Security (Consequential Provisions) Act 1992;

(b) the Social Security Administration (Northern Ireland) Act 1992, the Social Security Contributions and Benefits (Northern Ireland) Act 1992 and the Social Security (Consequential Provisions) (Northern Ireland) Act 1992;

(c) the Social Security Acts 1975 to 1991 (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);

(d) 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);

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

(4) Subject to the provisions of paragraphs (5) and (6), these arrangements shall apply also to any legislation which supersedes, replaces, amends, supplements or consolidates the legislation specified in paragraph (3).

(5) These arrangements shall apply, unless the Parties agree otherwise, only to benefits under the legislation specified in paragraph (3) at the date of coming into force of these arrangements and for which specific provision is made in these arrangements.

(6) These arrangements shall not apply to legislation on social security of the Institutions of the European Community or to any convention 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 (3) for the purpose of giving effect to such a convention, but shall not prevent either Party taking into account under its legislation the provisions of any other convention which that Party has concluded with a third party.

PART II

special provisions

Unemployment Benefit

(7) For the purpose of any claim to receive unemployment benefit under the legislation of the United Kingdom, a person who has at any time before 6 April 1975 paid at least twenty-six weekly contributions as an employed person under the legislation of the United Kingdom, or in any year since 6 April 1975 has paid contributions as an employed earner on earnings of at least twenty-five times that year's weekly lower earnings limit, shall be treated, for the purpose of any such claim, as if:

- (a) he had paid, under that legislation, an employed earner's contribution on earnings equivalent to two-thirds of that year's upper earnings limit, for each week during which he was gainfully occupied in employment in Canada;
- (b) he had had a contribution credited to him under that legislation as an employed person for any week during which he was resident in Canada and was unemployed and available for work or was incapable of work, if that week was part of a period during which he was ordinarily gainfully occupied in employment in Canada.

(8) Nothing in paragraph (7) shall diminish any right which a person has, apart from these arrangements, to receive unemployment benefit under the legislation of the United Kingdom.

Retirement Pension

(9) Subject to the provisions of paragraphs (10) and (12) to (14):

- (a) for the purpose of any claim to receive a retirement pension under the legislation of the United Kingdom, a person aged sixty-five or over who has been resident in the United Kingdom:
 - (i) throughout the period of ten years immediately before his claim; or
 - (ii) throughout the last year of that ten-year period and throughout earlier periods after attaining the age of eighteen which in the aggregate are at least three times as long as any parts of that ten-year period during which he has not been resident in the United Kingdom;

shall be treated as if he, or in the case of a claim made by a married woman or widow by virtue of her husband's insurance, her husband, had paid a contribution under the legislation of the United Kingdom for every week during which he was resident in Canada;

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- (b) where the person claiming a retirement pension under the provisions of this paragraph is a woman:
- (i) whose marriage has been terminated by the death of her husband or otherwise;
 - (ii) who satisfies one or other of the conditions set out in sub-paragraph (9)(a); and
 - (iii) who claims a pension by virtue of her own insurance and has chosen to have her husband's contributions taken into account;
- she shall be treated as if she or her husband had paid a contribution under the legislation of the United Kingdom for every week during which she or her husband, as the case may be, was resident in Canada;
- (c) for the purposes of applying the provisions of sub-paragraphs (9)(a) and (9)(b), no account shall be taken of any period during which a person was resident in Canada before he reached the age of fifteen years or after he reached pension age;
- (d) any person who has been awarded a United Kingdom retirement pension under the former exchanges of letters, which commenced before 1 July 1977 and who on or after 1 July 1977 is in receipt of a Canadian old age security pension solely under the Old Age Security Act shall, with effect from 15 November 1977 or the first day of payment of the old age security pension, whichever is later, have his weekly retirement pension reduced by a sum equal to the weekly rate of his old age security pension. The amount of this reduction shall be reviewed each year from the week when the retirement pension is increased by any uprating order. The amount of reduction shall be a sum equal to the weekly rate of the old age security pension for the week in which the uprating falls. These provisions shall not reduce the amount of any United Kingdom retirement pension to less than the amount which would otherwise have been payable without reliance on the former exchanges of letters.

(10) Paragraph (9) shall not apply in respect of any person who is awarded a United Kingdom retirement pension on or after 1 July 1977, and who on or after that date is also in receipt of an old age security pension solely under the Old Age Security Act, or who has lived in Canada for twenty or more years in aggregate since age eighteen.

(11) Any benefit which is awarded by virtue of paragraph (9) shall be payable only for periods during which the beneficiary is ordinarily resident in the United Kingdom.

Conversion Formulae

(12) For the purposes of calculating entitlement under the legislation of the United Kingdom to retirement pension in accordance with paragraph (9), periods of residence in Canada before 6 April 1975 shall be treated as if a Class 3 contribution had been paid under the legislation of the United Kingdom for each week of such residence.

(13) For the purpose of calculating an earnings factor for assessing entitlement under the legislation of the United Kingdom to retirement pension in accordance with paragraph (9), a person shall be treated for each week beginning in a relevant tax year commencing after 5 April 1975, as having paid a contribution under the legislation of the United Kingdom as an employed earner, or having earnings on which primary Class 1 contributions have been paid, on earnings equivalent to two-thirds of that year's upper earnings limit, for any week during which he was gainfully occupied in employment in Canada.

(14) For the purpose of calculating entitlement under the legislation of the United Kingdom, to retirement pension in accordance with paragraph (9), periods of residence in Canada as a self-employed person or as a non-employed person after 5 April 1975 shall be treated as if a Class 3 contribution had been paid under the legislation of the United Kingdom for each week of such residence.

Child Benefit

(15) Where a person is ordinarily resident in the United Kingdom he shall, for the purpose of any claim to receive child benefit under the legislation of the United Kingdom, be treated:

- (a) as if he had been resident or present in the United Kingdom during any period during which he was, respectively, resident or present in Canada; and
- (b) as if any child of his family, or any child for whom he is claiming child benefit, had been resident or present in the United Kingdom during any period during which that child was, respectively, resident or present in Canada.

Disclosure of Information

- (a) (16) (a) Where required for the application of these arrangements, the Government of Canada, at the request of the Government of the United Kingdom, shall provide information as to claimants in the United Kingdom in receipt of benefits under the Old Age Security Act of Canada.
- (b) Unless disclosure is required under the legislation of a Party, any information about an individual which is sent in accordance with and for the purposes of these arrangements to that Party by the other Party is confidential and shall be used only for the purpose of implementing these arrangements and the legislation to which these arrangements apply.

Mutual Assistance

(17) The two Parties shall assist one another on any matter relating to the application of these arrangements as if the matter were one affecting the application of their own legislation.

No. 2

The Minister of Employment and Immigration of Canada to the United Kingdom High Commissioner at Ottawa

Ministry of Employment and Immigration Ottawa

8 October 1994

Excellency:

I have the honour to acknowledge receipt of your letter of October 11, 1994 which reads as follows:

[As in No. 1]

I have the honour to confirm that the proposals set out in your letter and its Schedule are acceptable to the Government of Canada, and that your letter and its Schedule, and this letter in reply, which is equally authentic in English and French, shall constitute an Agreement between our two Governments on this matter which shall enter into force as in (ii) above.

I have the honour to convey to Your Excellency the assurance of my highest consideration.

Lloyd Axworthy

SCHEDULE 2

EXCHANGE OF NOTES BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF CANADA

No. 1

Note No: 102

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The British High Commission present their compliments to the Department of Foreign Affairs and International Trade and has the honour to refer to the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Canada concerning Consolidated Arrangements on Social Security concluded by an Exchange of Letters on the 11th and 18th October 1994 and in accordance with paragraph (ii) of those Letters to notify the Department of Foreign Affairs and International Trade that the Government of the United Kingdom of Great Britain and Northern Ireland has completed the constitutional and administrative requirements necessary for its implementation.

The British High Commission also has the honour to propose that, if the Government of Canada has similarly completed its constitutional and administrative requirements the Agreement shall enter into force on 1st December 1995.

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

British High Commission

Ottawa

29th September 1995

No. 2

Note No. JLAB-0344

The Department of Foreign Affairs and International Trade presents its compliments to the British High Commission and has the honour to refer to the High Commission's Note No. 102 of 29 September 1995 which reads as follows:

[As in 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 Canada have been completed. The Department further has the honour to confirm that the foregoing is acceptable to the Government of Canada and that the Agreement shall enter into force on 1 December 1995.

The Department of Foreign Affairs and International Trade avails itself of this opportunity to renew to the British High Commission the assurances of its highest consideration.

OTTAWA, September 29, 1995

EXPLANATORY NOTE

(This Note is not part of the Order)

This Order makes provision for the modification of the Social Security Administration Act 1992 and the Social Security Contributions and Benefits Act 1992 and regulations made or having effect thereunder so as to give effect to the consolidated arrangements contained in the letters (set out in Schedule 1 to the Order) exchanged between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Canada. The provisions relate to child benefit, unemployment benefit and retirement pension.

This Order does not impose any costs on business.

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