
STATUTORY INSTRUMENTS

1996 No. 1927

SOCIAL SECURITY

The Social Security (Malta) Order 1996

Made - - - - *23rd July 1996*

Coming into force - - *1st September 1996*

Whereas at London on 19th October 1995 a Convention on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Malta providing for the earlier Conventions between them concerning social security to be consolidated into a single document with modifications where necessary to take account of changes in legislation (which Convention is set out in the Schedule to this Order and is hereinafter referred to as “the Convention”)(1) was signed on behalf of those Governments:

And Whereas by Article 36 of the Convention it is provided that the Convention shall enter into force on the first day of the third month following the month in which the instruments of ratification were exchanged:

And Whereas the Convention has been ratified by the said Governments and the instruments of ratification were exchanged on the 20th June 1996 and, accordingly, the Convention shall enter into force on 1st September 1996:

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, the Social Security Contributions and Benefits Act 1992(3) and the Jobseekers Act 1995(4) and regulations made or having effect thereunder(5) 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 3074.

(2) 1992 c. 5. Section 179 was amended by the Jobseekers Act 1995 (c. 18), section 41(4), Schedule 2, paragraph 70.

(3) 1992 c. 4.

(4) 1995 c. 18.

(5) See section 179(5) of the Social Security Administration Act 1992, as amended by the Jobseekers Act 1995 (c. 18), section 41(4), Schedule 2, paragraph 70.

Citation and commencement

1. This Order may be cited as the Social Security (Malta) Order 1996 and shall come into force on 1st September 1996.

Modification of the Social Security Administration Act 1992, the Social Security Contributions and Benefits Act 1992 and the Jobseekers Act 1995

2. The Social Security Administration Act 1992, the Social Security Contributions and Benefits Act 1992 and the Jobseekers Act 1995 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 Convention set out in the Schedule to this Order so far as the same relate to England, Wales and Scotland.

Revocation and Variation of Orders

3.—(1) The National Insurance and Industrial Injuries (Malta) Order 1956⁽⁶⁾ and the National Insurance and Industrial Injuries (Malta) Order 1958⁽⁷⁾ are hereby revoked.

(2) The references to the National Insurance and Industrial Injuries (Malta) Order 1956 and the National Insurance and Industrial Injuries (Malta) Order 1958 shall be omitted in Schedule 1 to the Social Security (Reciprocal Agreements) Order 1976⁽⁸⁾, the Schedule to the Social Security (Reciprocal Agreements) Order 1979⁽⁹⁾, the Schedule to the Social Security (Reciprocal Agreements) Order 1988⁽¹⁰⁾ and Schedule 2 to the Social Security (Reciprocal Agreements) Order 1995⁽¹¹⁾.

N.H. Nicholls
Clerk of the Privy Council

⁽⁶⁾ S.I.1956/1897.
⁽⁷⁾ S.I. 1958/772.
⁽⁸⁾ S.I. 1976/225
⁽⁹⁾ S.I. 1979/290.
⁽¹⁰⁾ S.I. 1988/591.
⁽¹¹⁾ S.I. 1995/767.

SCHEDULE

Article 2

CONVENTION ON SOCIAL SECURITY BETWEEN THE
GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND AND THE GOVERNMENT OF MALTA

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

Having established reciprocity in the field of social security by means of the Conventions which were signed on their behalf at Valetta on 26th October 1956 and 21st March 1958;

Wishing to consolidate the above Conventions 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 Convention, except where the context otherwise requires:

“additional pension” payable under the legislation of Great Britain, Northern Ireland or the Isle of Man means any additional pension based on the payment of insurance contributions above the level required for entitlement to basic pension;

“benefits for industrial accidents and industrial diseases” means—

- (a) a pension or benefit payable to a person for loss of physical or mental faculty as a result of an industrial accident or an industrial disease arising out of, and in the course of, employed earner’s employment under the legislation of Great Britain, Northern Ireland or the Isle of Man, or
- (b) a pension or benefit payable to a person for personal injury or for loss of physical or mental faculty as a result of an accident arising out of, and in the course of, an insured person’s employment or self-employment or an industrial disease under the legislation of Guernsey, or
- (c) a pension or benefit payable to a person for the permanent loss of physical or mental faculty as a result of an industrial accident or an industrial disease arising out of, and in the course of, a person’s employment or self-occupation as construed under the legislation of Malta;

“Category A retirement pension” means either, or both, a basic retirement pension and an additional pension based on a person’s own insurance contributions or, for certain persons whose marriages have ended by divorce or widowhood, a basic retirement pension based on the former spouse’s insurance contributions, payable under the legislation of Great Britain, Northern Ireland or the Isle of Man, and an old age pension based on a person’s own contributions or, for certain persons whose marriages have ended by divorce or widowhood, based on the former spouse’s contributions, payable under the legislation of Guernsey;

“Category B retirement pension” means a basic retirement pension payable to a married woman on her husband’s contributions, or, for a widow or widower, either, or both, a basic retirement pension and an additional pension based on the late spouse’s contributions, payable under the legislation of Great Britain, Northern Ireland or the Isle of Man, and an old age pension payable

under the legislation of Guernsey, to a married woman by virtue of the contributions of her husband while he is alive;

“competent authority” means in relation to the territory of the United Kingdom, the Department of 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, or the Guernsey Social Security Authority as the case may require, and in relation to Malta, the Department of Social Security in Malta;

“contribution period” means a period in respect of which contributions appropriate to the benefit in question are payable, have been paid or treated as paid under the legislation in question;

“dependant” means a person who would be treated as such for the purpose of any claim for an increase of benefit in respect of a dependant under the legislation in question;

“employed person” means—

- (i) except for the purposes of Articles 26 to 28, 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, or
- (ii) for the purposes of Articles 26 to 28, a person who is, or who is treated as being, an employed earner or an employed person under the legislation of Great Britain, Northern Ireland or the Isle of Man, or an employed or self-employed person under the legislation of Guernsey;

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

“equivalent period” means a period for which contributions appropriate to the benefit in question have been credited under the legislation of the Party in question;

“first contribution condition” means, for sickness benefit—

- (i) in relation to Great Britain, Northern Ireland or the Isle of Man, that a person has paid fifty-two Class I or Class II contributions at any time before 6th April 1975, or has paid, in an income tax year beginning on or after 6th April 1975, Class I or Class II contributions producing an earnings factor of at least fifty times that year’s lower earnings limit, or
- (ii) in relation to Guernsey, that a person has paid at least twenty-six reckonable contributions since 4th January 1965;

“former Conventions” means the Conventions signed at Valletta on 26th October 1956 and 21st March 1958;

“gainfully employed” means, in relation to the United Kingdom, employed or self-employed and in relation to Malta, employed or self-occupied;

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

“income tax year” means, in relation to the United Kingdom, the twelve months beginning with 6th April in any year;

“insurance authority” means the authority competent to decide entitlement to the benefit in question;

“insurance period” means a contribution period or an equivalent period;

“insured” means, in relation to both Parties, that contributions have been paid by, or are payable by, or in respect of, or have been credited in respect of, the person concerned;

“invalidity benefit” means,

(i) long-term incapacity benefit, additional pension, invalidity allowance and incapacity age addition payable under the legislation of Great Britain, Northern Ireland or the Isle of Man, or

(ii) invalidity benefit payable under the legislation of Guernsey, or

(iii) a pension in respect of invalidity payable under the legislation of Malta;

“legislation” means, in relation to a Party, such of the legislation specified in Article 2 as applies in the territory of a Party, or in any part of the territory of that Party;

“Malta” has the same meaning as that assigned to it in the Constitution of Malta;

“orphan’s benefit” means guardian’s allowance payable under the legislation of the United Kingdom, and orphan’s allowance and orphan’s supplementary allowance payable under the legislation of Malta;

“Party” means the United Kingdom, including any part of the United Kingdom, or Malta;

“pension”, “allowance” or “benefit” includes any increases of, or any additional amount payable with, a pension, allowance or benefit respectively;

“prescribed period” means, in relation to Guernsey, the period commencing on the same date under the legislation of Guernsey as the relevant period for the purposes of old age pension and ending on 31st December next preceding the date on which entitlement to invalidity benefit first arose;

“qualifying period” means, for invalidity benefit—

(i) in relation to Great Britain, Northern Ireland, or the Isle of Man, a period of incapacity of 364 days under the legislation of Great Britain, Northern Ireland or the Isle of Man, or

(ii) in relation to Guernsey, a period of incapacity of 156 days, excluding Sundays, under the legislation of Guernsey;

“qualifying year” means—

(i) in relation to Great Britain, Northern Ireland or the Isle of Man, at least fifty weeks of insurance for periods before 6th April 1975, or that the person has received, or been treated as having received, earnings of at least fifty-two times the lower earnings limit in an income tax year after 5th April 1978 under the legislation of Great Britain, Northern Ireland and the Isle of Man, or

(ii) in relation to Guernsey or Malta, an insurance period of not less than fifty weeks under the relevant legislation;

“reckonable year” means, in relation to the United Kingdom, an income tax year between 6th April 1975 and 5th April 1978 during which contributions have been paid on earnings received, or treated as received, of at least fifty times the lower earnings limit for that year;

“retirement pension” means retirement pension or old age pension payable under the legislation of the United Kingdom, and a pension in respect of retirement payable under the legislation of Malta, excluding a Two-Thirds Pension;

“seasonal worker” means a person subject to the legislation of Guernsey or Malta, who goes to the territory of Guernsey or Malta (not being the one in which he ordinarily resides) in order to carry out in that territory for an employer or undertaking with a place of business there, employment of a seasonal character which depends on the cycle of the seasons and which recurs automatically each year, and the duration of which cannot in any case exceed eight months, and who remains in that territory for the duration of his employment;

“second contribution condition” means, for sickness benefit—

(i) in relation to Great Britain, Northern Ireland or the Isle of Man, that a person has either paid or has been credited with Class I or Class II contributions producing an earnings

factor of at least fifty times the lower earnings limit in each of the last two income tax years before the relevant benefit year, or

- (ii) in relation to Guernsey, that a person has paid or been credited with at least twenty-six contributions in the relevant contribution year;

“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 of a self-occupied person or is treated as such, and the words “person is self-employed” shall be construed accordingly;

“ship or vessel” means any ship or vessel whose port of registry is a port in either territory, or a hovercraft which is registered in that territory, and whose owner (or managing owner if there is more than one owner) resides in, or has a place of business in, that territory;

“sickness benefit” means,

- (i) short-term incapacity benefit at the lower, higher or long-term rate payable under the legislation of Great Britain, Northern Ireland or the Isle of Man, or
- (ii) sickness benefit payable under the legislation of Guernsey or Malta;

“social assistance” means income support payable under the legislation of Great Britain or Northern Ireland, or supplementary benefit payable under the legislation of the Isle of Man, and any non-contributory assistance or non-contributory pension or any non-contributory allowance in lieu of such assistance or pensions payable under the legislation of Malta;

“statutory sick pay” means a payment which an employer must make under the legislation of Great Britain or Northern Ireland in respect of sickness;

“territory” means,

- (i) in relation to the United Kingdom, Great Britain, Northern Ireland and also the Isle of Man and Guernsey, and references to the “United Kingdom” or to “territory” in relation to the United Kingdom shall include the Isle of Man and Guernsey, where appropriate, or
- (ii) in relation to Malta, the Island of Malta, the Island of Gozo and other islands of the Maltese Archipelago, including the territorial waters thereof;

“unemployment benefit” means unemployment benefit or contribution-based jobseeker’s allowance payable under the legislation of Great Britain or Northern Ireland, or unemployment benefit payable under the legislation of the Isle of Man, Guernsey or Malta, including special unemployment benefit payable under the legislation of Malta;

“widow’s benefit” means—

- (i) widow’s payment, widowed mother’s allowance and widow’s pension payable under the legislation of Great Britain, Northern Ireland or the Isle of Man, or
- (ii) widow’s allowance, widowed mother’s allowance and widow’s pension payable under the legislation of Guernsey, or
- (iii) a pension in respect of widowhood payable under the legislation of Malta, excluding a Survivor’s Pension.

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

(3) Any reference in this Convention to “Article” means an Article of this Convention, 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) This Convention shall apply,

- (a) in relation to the territory of the United Kingdom, to:
- (i) the Social Security Administration Act 1992, the Social Security Contributions and Benefits Act 1992, the Social Security (Consequential Provisions) Act 1992, the Social Security (Incapacity for Work) Act 1994 and the Jobseekers Act 1995;
 - (ii) the Social Security Administration (Northern Ireland) Act 1992, the Social Security Contributions and Benefits (Northern Ireland) Act 1992, the Social Security (Consequential Provisions) (Northern Ireland) Act 1992, the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 and the Jobseekers (Northern Ireland) Order 1995;
 - (iii) the Social Security Administration Act 1992, the Social Security Contributions and Benefits Act 1992, the Social Security (Consequential Provisions) Act 1992 and the Social Security (Incapacity for Work) Act 1994 (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);
 - (iv) the Social Insurance (Guernsey) Law, 1978;
- and the legislation which was repealed or consolidated by those Acts, Laws or Orders or repealed by legislation consolidated by them;
- (b) in relation to Malta, to the Social Security Act, (Cap 318).

(2) Subject to paragraphs (3) and (4), this Convention shall apply also to any legislation which supersedes, replaces, amends, supplements or consolidates the legislation specified in paragraph (1).

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

(4) This Convention 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 (1) 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.

Article 3 Equal Treatment

A person, together with his dependants and survivors who is, or has been, subject to the legislation of one Party shall, while he is in the territory of the other Party, enjoy the provisions of the legislation of the other Party under the same conditions as a national of that Party, subject to the special provisions of this Convention.

Article 4 Provisions for the Export of Benefits

(1) Subject to Articles 13 to 16, 18 to 28 and 33—

- (a) a person who would be entitled to receive a retirement pension, widow's benefit, invalidity benefit or any pension or benefit payable in respect of an industrial accident or an industrial disease under the legislation of the United Kingdom, if he were in the United Kingdom, shall be entitled to receive that pension or benefit while he is in Malta, as if he were in the United Kingdom, and
- (b) a person who would be entitled to receive a pension in respect of retirement, widowhood or invalidity or any pension or benefit payable in respect of an industrial accident or an industrial disease under the legislation of Malta if he were in Malta, shall be entitled to receive that pension or benefit while he is in the United Kingdom, as if he were in Malta.

(2) Subject to Article 12(3),(4) and (7), and Articles 13 to 15, a person who continues to be entitled to receive sickness benefit under the legislation of Great Britain, Northern Ireland or the Isle of Man while he is in Malta may, after having received, or been deemed to have received, 364 days sickness benefit, become entitled to receive invalidity benefit under the legislation of Great Britain, Northern Ireland or the Isle of Man while he is in Malta, provided that he continues to satisfy the insurance authority of the former Party that he remains incapable of work.

(3) Subject to Article 12(3), (6) and (7), a person who continues to be entitled to receive sickness benefit or industrial injury benefit under the legislation of Guernsey while he is in Malta may, after having received, or been deemed to have received, 156 days sickness benefit or industrial injury benefit, become entitled to receive invalidity benefit under the legislation of Guernsey while he is in Malta, provided that he continues to satisfy the insurance authority of Guernsey that he remains incapable of work.

(4) Where, under the legislation of one Party, an increase of any of the benefits for which specific provision is made in this Convention would be payable for a dependant if he were in the territory of that Party, it shall be payable while he is in the territory of the other Party.

PART II

PROVISIONS WHICH DETERMINE THE LEGISLATION APPLICABLE CONCERNING CONTRIBUTIONS LIABILITY

Article 5 General Provisions

(1) Subject to paragraphs (2) to (12) and Articles 6 to 10, where a person is gainfully employed, liability for contributions for him shall be determined under the legislation of the Party in whose territory he is so employed.

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

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

(4) Where a person is employed in the territory of one Party and self-employed in the territory of the other Party for the same period, liability for contributions for him shall be determined only under the legislation of the former Party.

(5) No provision of this Article shall affect a person's liability to pay a Class 4 contribution under the legislation of the United Kingdom.

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

(7) Where, but for this paragraph, a person would be entitled to pay contributions voluntarily under the legislation of both Parties for the same period, he shall be entitled to pay contributions only under the legislation of one Party according to his choice.

(8) Where under Articles 6, 7(a) or (b) or 8(2) a person is employed in the territory of one Party whilst remaining liable for contributions under the legislation of the other Party, the legislation of the former Party shall not apply to him and he shall not be liable, nor entitled, to pay contributions under the legislation of the former Party.

(9) Where a person is gainfully employed in the territory of one Party and the legislation of the other Party does not apply to him in accordance with paragraphs (1) and (4), or ceases to apply to

him under Articles 6, 7(a) or (b) or 8(2), the legislation of the former Party shall apply to him as if he were ordinarily resident in the territory of that Party.

(10) A person who is entitled to receive sickness benefit, maternity allowance, invalidity benefit or injury benefit for any period under the legislation of Malta while he is in Guernsey, shall be excepted from liability to pay a contribution in respect of that period, other than as an employed or self-employed person, under the legislation of Guernsey.

(11) A woman who is entitled to receive widow's benefit under the legislation of Guernsey while she is in Malta, shall not be credited with a Class 3 contribution in respect of every week during which that benefit is payable to her, but shall be credited, for the purposes of entitlement to retirement pension or death grant, in respect of each year during the whole or part of which such benefit is payable, with a number of Class 3 contributions equal to her husband's yearly average of reckonable contributions at the date of his death. If the rate of retirement pension payable to such a woman would be less than the rate of widow's benefit formerly payable it shall be increased to that of the widow's benefit.

(12) For the purpose of determining, whether a person is entitled to be credited with a Class 1 contribution under the legislation of Guernsey in respect of any week of unemployment, any insurance period, or any period of employment, completed by him under the legislation of Malta, shall be treated as an insurance period or period of employment, as the case may be, under the legislation of Guernsey.

Article 6 Detached Workers

Subject to Articles 7 and 8, where a person insured under the legislation of one Party and employed by an employer with a place of business in the territory of that Party, is sent by that employer, either from the territory of that Party, or from a third country not party to this Convention, to work in the territory of the other Party, the legislation of the former Party concerning liability for contributions shall continue to apply to him as if he were employed in the territory of that Party, provided that the employment in the territory of the other Party is not expected to last for more than three years, and the legislation of the latter Party shall not apply to him.

Article 7 Travelling Personnel

Subject to Article 8, the following provisions shall apply to any person employed as a member of the travelling personnel of an undertaking engaged in the transport of passengers or goods whether for another undertaking or on its own account:

- (a) subject to sub-paragraphs (b) and (c), where a person is employed by an undertaking which has its principal place of business in the territory of one Party, the legislation of that Party concerning liability for contributions shall apply to him as if he were employed in its territory even if he is employed in the territory of the other Party;
- (b) subject to sub-paragraph (c), where the undertaking has a branch or agency in the territory of one Party and a person is employed by that branch or agency, the legislation of that Party concerning liability for contributions shall apply to him;
- (c) where a person is ordinarily resident in the territory of one Party and is employed wholly or mainly in that territory, the legislation of that Party concerning liability for contributions shall apply to him, even if the undertaking which employs him does not have a place of business or branch or any agency in that territory.

Article 8 Mariners and Others Employed on board a Ship or Vessel

(1) Subject to paragraphs (2) to (4), where a person is employed on board any ship or vessel of one Party, the legislation of that Party concerning liability for contributions shall apply to him as if

any conditions relating to residence were satisfied in his case, provided that he is ordinarily resident in the territory of either Party.

(2) Where a person who is insured under the legislation of one Party and employed either in the territory of that Party or on board any ship or vessel of that Party, is sent by his employer in the territory of that Party to work on board a ship or vessel of the other Party, the legislation of the former Party concerning liability for contributions shall continue to apply to him provided that his employment on board the ship or vessel of the latter Party is not expected to last for a period of more than one year. Where his employment on board the ship or vessel of the latter Party continues after such a period of one year, the legislation of the former Party shall continue to apply to him for any further period of not more than one year, provided that the competent authority of the latter Party agrees thereto before the end of the first period of one year.

(3) Where a person who is not normally employed at sea is employed other than as a member of the crew, on board a ship or vessel of one Party, in the territorial waters of, or at a port of, the other Party, the legislation concerning liability for contributions of the Party in whose territory he is ordinarily resident shall apply to him as if any conditions relating to residence were satisfied in his case.

(4) Where a person who is ordinarily resident in the territory of one Party and employed on board any ship or vessel of the other Party is paid remuneration in respect of that employment by a person who is ordinarily resident in, or by an undertaking having a place of business in, the territory of the former Party, the legislation of the former Party concerning liability for contributions shall apply to him as if the ship or vessel were a ship or vessel of the former Party, and the person or undertaking by whom the remuneration is paid shall be treated as the employer for the purpose of such legislation.

Article 9 Diplomats, Government Servants and Consular Employees

(1) This Convention shall not apply to persons who are exempted from the social security law of the Party in whose territory they are present or resident by virtue of the Vienna Conventions on Diplomatic or Consular Relations.

(2) Subject to paragraph (1), where any person who is in the Government Service of one Party or in the service of any public corporation of that Party is employed in the territory of the other Party, the legislation of the former Party concerning liability for contributions shall apply to him as if he were employed in its territory.

(3) Subject to paragraphs (1) and (2), where a person is employed in a diplomatic mission or consular post of one Party in the territory of the other Party, or in the private service of an official of such a mission or post, the legislation of the latter Party concerning liability for contributions shall apply to him as if he were employed in its territory, unless within three months of the entry into force of this Convention, or within three months of the beginning of the employment in the territory of the latter Party, whichever is later, he chooses to be insured under the legislation of the former Party, provided that he was so insured within the period of one month immediately before the commencement of the employment at that mission or post. Where, under this paragraph, a person has the right to choose to be insured under the legislation of the former Party but does not choose to do so, he shall not be liable, nor entitled, to pay contributions under the legislation of the former Party.

Article 10 Modification Provisions

Exceptionally, the competent authorities of the Parties may agree to modify the application of Articles 5 to 9 in respect of particular persons or categories of persons.

PART III

SPECIAL PROVISIONS

Article 11 Conversion formulae for contributions

(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 13 and 18 to 25, contribution periods or equivalent periods completed under the legislation of Malta before 6th April 1975 shall be treated as if they had been contribution periods or equivalent periods completed under the legislation of Great Britain, Northern Ireland or the Isle of Man, as the case may be.

(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 12, 13 and 18 to 25, contribution periods completed as a self-employed person or as a non-employed person or equivalent periods completed under the legislation of Malta after 5th April 1975 shall be treated as if they had been contribution periods completed as a self-employed person or as a non-employed person or equivalent periods completed under the legislation of Great Britain, Northern Ireland or the Isle of Man, as the case may be.

(3) Subject to paragraph (4) for the purpose of calculating an earnings factor for assessing entitlement to any benefit in accordance with Articles 12, 13 and 17 to 25 under the legislation of Great Britain, Northern Ireland or the Isle of Man, as the case may be, a person shall be treated for each week beginning in a relevant income tax year commencing after 5th April 1975, the whole or any part of which week is a contribution period completed as an employed person under the legislation of Malta, as having paid a contribution 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.

(4) For the purpose of calculating entitlement to additional pension under the legislation of Great Britain, Northern Ireland or the Isle of Man, no account shall be taken of any contribution period completed under the legislation of Malta.

(5) For the purpose of the calculation in Articles 13(2) and (4) and 19(2), where:

- (a) in any income tax year commencing after 5th April 1975, an employed person has completed periods of insurance exclusively in Malta and the application of paragraph (3) results in that year being a qualifying year under the legislation of Great Britain, Northern Ireland or the Isle of Man, he shall be deemed to have been insured for fifty-two weeks in that year;
- (b) any income tax year commencing after 5th April 1975 does not count as a qualifying year under the legislation of Great Britain, Northern Ireland or the Isle of Man, any periods of insurance completed in that year shall be disregarded.

(6) For the purpose of calculating entitlement to any benefit in accordance with Articles 12, 14 and 18 to 28 under the legislation of Guernsey, contribution periods or equivalent periods completed under the legislation of Malta shall be treated as if they had been contribution periods or equivalent periods completed under the legislation of Guernsey.

(7) For the purpose of calculating entitlement to any benefit in accordance with Articles 12 to 27 under the legislation of Malta each contribution period or equivalent period completed under the legislation of Great Britain, Northern Ireland or the Isle of Man before 6th April 1975, shall be treated as if it had been a contribution period or an equivalent period completed under the legislation of Malta.

(8) For the purpose of converting to an insurance period any earnings factor achieved in any income tax year commencing after 5th April 1975 under the legislation of Great Britain, Northern Ireland or the Isle of Man, the competent authority of Great Britain, Northern Ireland or the Isle

of Man, as the case may be, shall divide the earnings factor achieved under its legislation by that year's lower earnings limit. The result shall be expressed as a whole number, any remaining fraction being ignored. The figure so calculated, subject to a maximum of the number of weeks during which the person was subject to that legislation in that year, shall be treated as representing the number of weeks in the insurance period completed under that legislation.

(9) For the purpose of converting insurance periods completed under the legislation of Guernsey, each contribution period or equivalent period completed under that legislation shall be treated as if it had been an insurance period completed under the legislation of Malta.

PART IV

BENEFIT PROVISIONS

SECTION 1

PROVISIONS FOR SICKNESS, INVALIDITY AND UNEMPLOYMENT

Article 12 Sickness Benefit

(1) Where a person has, since his last arrival in the territory of one Party, completed a contribution period under the legislation of that Party, then for the purpose of any claim to sickness benefit made under the legislation of that Party, any insurance period completed under the legislation of the other Party shall be treated in accordance with Article 11 as if it were an insurance period completed under the legislation of the former Party.

(2) 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 10, he shall be treated under that legislation for the purpose of any claim to sickness benefit as if he were in the territory of the latter Party.

(3) Subject to paragraphs (5) and (6) and Article 32, where a person would be entitled to receive sickness benefit under the legislation of the United Kingdom if he were in the territory of that Party, he shall be entitled to receive that sickness benefit while he is in Malta if:

- (a) his condition necessitates immediate treatment during a stay in Malta and, within six days of commencement of incapacity for work or such longer period as the competent authority may allow, he submits to the competent authority of the United Kingdom a claim to benefit and documentary evidence of incapacity for work issued by the doctor treating him; or
- (b) having claimed and become entitled to sickness benefit under the legislation of the United Kingdom, he is authorised by the competent authority of that Party to return to Malta where he resides, or to transfer his residence to Malta; or
- (c) having claimed and become entitled to sickness benefit under the legislation of the United Kingdom, he is authorised by the competent authority of that Party to go to Malta to receive there treatment for his condition.

The authorisation required in accordance with sub-paragraph (b) may be refused only if it is established that movement of the person concerned would be prejudicial to his state of health or the receipt of medical treatment.

(4) Subject to paragraph (5) and Article 32, where a person would, if he were in Great Britain or Northern Ireland, be entitled to statutory sick pay under the legislation of Great Britain or Northern Ireland, he shall, provided that he satisfies all the conditions for entitlement to, and payment of, sickness benefit under the legislation of Great Britain or Northern Ireland, with the exception of any

conditions as to residence and presence in Great Britain or Northern Ireland, be entitled to receive that sickness benefit while he is in Malta if:

- (a) his condition necessitates immediate treatment during a stay in Malta and within six days of commencement of incapacity for work, or such longer period as the competent authority or insurance authority may allow, he submits to the competent authority or insurance authority of Great Britain or Northern Ireland a claim to benefit and documentary evidence of incapacity for work issued by the doctor treating him; or
- (b) having become entitled to statutory sick pay under the legislation of Great Britain or Northern Ireland, he is authorised by the competent authority of Great Britain or Northern Ireland to return to Malta, where he resides, or to transfer his residence to Malta; or
- (c) having become entitled to statutory sick pay under the legislation of Great Britain or Northern Ireland, he is authorised by the competent authority of Great Britain or Northern Ireland to go to Malta, to receive there treatment for his condition.

The authorisation required in accordance with sub-paragraph (b) may be refused only if it is established that movement of the person concerned would be prejudicial to his state of health, or to the receipt of medical treatment.

(5) Nothing in this Article shall permit the payment of statutory sick pay outside Great Britain or Northern Ireland.

(6) Where a seasonal worker, who is entitled to sickness benefit in Malta by virtue of this Article, goes to Guernsey, or where a seasonal worker, who is entitled to sickness benefit under the legislation of Guernsey, goes to Malta, he shall be entitled to continue to receive such benefit for a period of not more than thirteen weeks from the date of his departure from Malta, or from Guernsey, as the case may be.

(7) Where a person who is resident in the territory of one Party claims but is not entitled to receive sickness benefit under the legislation of that Party but would be entitled to receive sickness benefit under the legislation of the other Party if he were in the territory of that Party, he shall be entitled to receive that sickness benefit while he is in the territory of the former Party provided that, since his last arrival in the territory of that Party, he has not completed a contribution period under its legislation.

(8) Where a person would be entitled to receive sickness benefit under the legislation of Malta if he were in the territory of that Party, he shall be entitled to receive that sickness benefit while he is in the territory of the United Kingdom.

(9) Where, but for this paragraph, a person would be entitled to receive for the same period, whether by virtue of this Convention or otherwise:

- (a) sickness benefit, including industrial injury benefit under the legislation of Guernsey, under the legislation of both Parties, or
- (b) statutory sick pay under the legislation of Great Britain or Northern Ireland, and sickness benefit under the legislation of Malta,

that benefit or payment shall be granted only under the legislation under which the person was last insured before entitlement arose.

Article 13 Invalidity Benefit under the legislation of Great Britain, Northern Ireland or the Isle of Man

(1) Claims to invalidity benefit under the legislation of Great Britain, Northern Ireland or the Isle of Man shall be determined only in accordance with this Article and Article 15.

(2) Subject to paragraphs (3) and (4), a person who has satisfied the first contribution condition for sickness benefit using contributions under the legislation of Great Britain, Northern Ireland or the Isle of Man only, and who is in Malta and not in receipt of sickness benefit under Article 12 or

subject to the legislation of Great Britain, Northern Ireland or the Isle of Man under any of Articles 6 to 10, shall be entitled to receive invalidity benefit under the legislation of Great Britain, Northern Ireland or the Isle of Man provided that:

- (a) the person satisfies the second contribution condition for sickness benefit under the legislation of Great Britain, Northern Ireland or the Isle of Man using relevant insurance periods completed under its legislation and, if necessary, under the legislation of any Party, and
- (b) the person is incapacitated for work and has been so incapacitated throughout the qualifying period for invalidity benefit,

in which case the person shall be treated as if sickness benefit followed, where appropriate, by invalidity benefit under the legislation of Great Britain, Northern Ireland or the Isle of Man, had been paid throughout that qualifying period.

(3) The right to invalidity benefit under paragraph (2) shall be acquired on the day following the end of the relevant qualifying period or the date of the acquisition of the right to invalidity benefit under the legislation of Malta, if later.

(4) The rate of invalidity benefit payable under paragraph (2) shall be that which would be payable under the legislation of Great Britain, Northern Ireland or the Isle of Man without the application of this Convention unless the person is entitled to an invalidity benefit under the legislation of Malta, whether or not under this Convention, in which case the rate of invalidity benefit payable shall be determined under paragraph (5).

(5) Taking account of Article 11 and sub-paragraphs (a) and (b), the competent authority of Great Britain, Northern Ireland or the Isle of Man shall determine the proportion of invalidity benefit provided under its legislation which bears the same relation to the whole as the total of the insurance periods completed under its legislation bears to the total of the insurance periods completed under the legislation of both Parties.

- (a) Articles 20 and 21 shall apply to insurance periods completed under the legislation of Malta as if the references in those Articles to a retirement pension were a reference to invalidity benefit.
- (b) For the purpose of calculating the proportion of invalidity benefit payable, no account shall be taken of any period of insurance completed after the day on which a person's incapacity commenced.

Subject to Article 22, the amount of benefit calculated in accordance with the above provisions of this paragraph shall be the amount actually payable to that person.

(6) Where a person in the territory of Great Britain, Northern Ireland or the Isle of Man, or a person outside the territory of Great Britain, Northern Ireland or the Isle of Man who is entitled to an invalidity benefit under the relevant legislation other than under paragraph (2), is entitled to an invalidity benefit under the legislation of Great Britain, Northern Ireland or the Isle of Man and also entitled to an invalidity benefit under the legislation of Malta, whether or not under this Convention, the rate of invalidity benefit payable under the legislation of Great Britain, Northern Ireland or the Isle of Man shall be determined in accordance with paragraphs (5) and (7).

(7) Where a person to whom paragraph (6) applies:

- (a) would have been entitled to receive invalidity benefit under the legislation of Great Britain, Northern Ireland or the Isle of Man, without recourse to this Convention; and
- (b) is entitled to receive both invalidity benefit under paragraph (5) and invalidity benefit under the legislation of Malta, whether or not under this Convention, and the sum of these two benefits is less than the amount of invalidity benefit to which the person would otherwise have been entitled under (a);

the competent authority of Great Britain, Northern Ireland or the Isle of Man shall calculate the difference between the amounts of benefit calculated in accordance with sub-paragraphs (a) and (b), on the date that entitlement to invalidity benefit payable under paragraph (5) first arose, and shall pay that amount in addition to the invalidity benefit payable. The additional sum will remain in payment under the same conditions as the invalidity benefit and subject to the equivalent increases in amount, as appropriate.

(8) No person in relation to whom invalidity benefit is payable under paragraph (5) shall receive a contribution credit under the legislation of Great Britain, Northern Ireland or the Isle of Man unless present in the territory of that part of the United Kingdom.

Article 14 Invalidity Benefit under the legislation of Guernsey

(1) Notwithstanding any other provision of this Convention, invalidity benefit shall be payable under the legislation of Guernsey only in accordance with paragraphs (2) to (6) and Article 15.

(2) For the purpose of qualifying for invalidity benefit, a person who is in Malta, and:

- (a) has satisfied the first contribution condition for sickness benefit using contributions under the legislation of Guernsey only; and
- (b) has satisfied the second contribution condition for sickness benefit using periods of insurance under the legislation of any Party; and
- (c) is incapable of work, and has been so incapable throughout the qualifying period for invalidity benefit,

shall be treated as if he had been entitled to sickness benefit throughout that period.

(3) Where a person has satisfied the conditions set out in paragraph (2) or (4), the competent authority of Guernsey shall:

- (a) deem the contribution conditions for the payment of invalidity benefit satisfied provided that the insurance period completed under the legislation of Guernsey amounts to one qualifying year; and
- (b) calculate the amount of invalidity benefit to be paid, subject to paragraph (5), as being the proportion, not exceeding 100%, of the standard rate which the total number of contributions paid or credited in Guernsey during the prescribed period bears to the product of the number of years in that period and fifty: save that if the amount so calculated is less than one-twentieth of the standard rate no benefit shall be payable.

(4) For the purpose of qualifying for invalidity benefit under the legislation of Guernsey, a person who is in Guernsey, and:

- (a) has satisfied the first contribution condition for sickness benefit using contributions under the legislation of Guernsey only; and
- (b) has satisfied the second contribution condition for sickness benefit using periods of insurance under the legislation of any Party; and
- (c) is incapable of work, and has been so incapable throughout the qualifying period for invalidity benefit,

shall be treated as if he had been entitled to sickness benefit throughout that period.

(5) Where a person is in Guernsey, and:

- (a) is entitled to invalidity benefit under the legislation of Guernsey solely through the application of paragraphs (2) and (3), or has been entitled to such a benefit in relation to the claim in question solely through the application of those paragraphs; and
- (b) is in receipt of invalidity benefit under the legislation of Malta, whether or not by virtue of this Convention,

the amount of the invalidity benefit payable under the legislation of Guernsey shall be reduced by the amount by which the aggregate of both benefits exceeds the standard rate of invalidity benefit under the legislation of Guernsey.

(6) No person in relation to whom invalidity benefit is payable under this Convention shall receive a contribution credit under the legislation of Guernsey unless present in Guernsey.

Article 15 Insurance periods of less than one qualifying or reckonable year

(1) Where all the insurance periods completed by a person under the legislation of any part of the United Kingdom total less than one qualifying year, or one reckonable year, those periods shall be treated in accordance with paragraph (2) or (3).

(2) Insurance periods under paragraph (1), or paragraph (5) of Article 16, shall be treated as follows:

- (a) as if they had been completed under the legislation of any part of the United Kingdom under which a benefit is, or if such periods are taken into account, would be, payable, or
- (b) where a benefit is, or would be, payable under the legislation of two or more parts of the United Kingdom as if they had been completed under the legislation of that part which, at the date on which entitlement first arose or arises, is paying, or would pay, the greater, or greatest, amount.

(3) Where no benefit is, or would be, payable under paragraph (2), insurance periods under paragraph (1) shall be treated as if they had been completed under the legislation of Malta.

Article 16 Invalidity Benefit under the legislation of Malta

(1) Subject to paragraphs (2) to (6), Articles 13 to 15 shall also apply, with such modifications as the differing nature of the benefits shall require, to invalidity benefit payable under the legislation of Malta.

(2) Where a person who is in Malta and who does not satisfy the relevant contribution conditions for sickness benefit or invalidity benefit in full using contributions under the legislation of Malta only, the competent authority of Malta may use contributions from any part of the United Kingdom to satisfy those conditions and shall award the appropriate amount of Maltese sickness or invalidity benefit for the first fifty-two weeks of incapacity. Thereafter, if invalidity benefit under the legislation of the United Kingdom is payable, invalidity benefit under the legislation of Malta will be payable using contributions under the legislation of Malta only.

(3) Where a person to whom paragraph (2) applies:

- (a) would have been entitled to receive invalidity benefit under the legislation of Malta, without recourse to this Convention after the first fifty-two weeks of incapacity; and
- (b) is entitled to receive both invalidity benefit under the legislation of Great Britain, Northern Ireland or the Isle of Man in accordance with paragraph (5) of Article 13, or invalidity benefit under the legislation of Guernsey in accordance with paragraph (3) (b) of Article 14, and invalidity benefit under the legislation of Malta, whether or not under this Convention, and the sum of these two benefits is less than the amount of invalidity benefit to which the person would otherwise have been entitled under (a);

the competent authority of Malta shall calculate the difference between the amounts of benefit calculated in accordance with sub-paragraphs (a) and (b), on the date that entitlement to invalidity benefit first arose after the first fifty-two weeks of incapacity, and shall pay that amount in addition to the invalidity benefit payable. The additional sum will remain in payment under the same conditions as the invalidity benefit and subject to the equivalent increases in amount, as appropriate.

(4) A person in the territory of Great Britain, Northern Ireland or the Isle of Man or Guernsey, who is entitled to sickness benefit under the legislation of Great Britain, Northern Ireland or the Isle of Man or Guernsey using contributions under the legislation of Malta in accordance with paragraph (1) of Article 12, shall not be entitled also to an invalidity benefit under the legislation of Malta. If invalidity benefit under the legislation of Great Britain, Northern Ireland or the Isle of Man or Guernsey is payable subsequently, invalidity benefit under the legislation of Malta shall be payable using contributions under the legislation of Malta only.

(5) Where all the insurance periods completed by a person under the legislation of Malta amount to less than fifty weeks, those periods shall be treated as if they had been completed under the legislation of the United Kingdom in accordance with Article 15(2).

(6) For the purpose of applying Articles 13 to 15 no account shall be taken under the legislation of Malta of any contributions paid or credited under the legislation of the United Kingdom for any period before 2nd February 1965.

Article 17 Unemployment Benefit

(1) Subject to paragraph (3), where a person has, since his last arrival in the territory of one Party, completed a contribution period under the legislation of that Party, then for the purpose of any claim to unemployment benefit made under the legislation of that Party, any insurance period, or period of employment, completed under the legislation of the other Party shall be treated in accordance with Article 11 as if it were an insurance period, or period of employment, completed under the legislation of the former Party, in so far as those periods do not coincide, and any unemployment benefit paid to that person for any period by the latter Party during the last twelve months before the day for which his claim is made shall be treated, for the purpose of determining the duration of the payment, as if it were unemployment benefit paid for the same period by the former Party.

(2) Periods of employment in the territory of either Party shall be taken into account for the purpose of determining whether a person who has previously exhausted his right to unemployment benefit under the legislation of either Party re-qualifies for it.

(3) This Article shall not apply to a person who claims unemployment benefit under the legislation of Guernsey and who has not paid twenty-six contributions as an employed person under the legislation of Guernsey.

SECTION 2

RETIREMENT PENSION AND WIDOW'S BENEFIT

Article 18 General Provisions

(1) Subject to paragraphs (2) to (4), where a person is entitled to a basic retirement pension under the legislation of either Party otherwise than by virtue of this Convention, that pension shall be payable and Article 19 shall not apply under that legislation.

(2) Notwithstanding paragraph (1), a person entitled to a Category B retirement pension under the legislation of Great Britain, Northern Ireland or the Isle of Man shall also be entitled to have any Category A pension entitlement determined in accordance with Article 19.

(3) Notwithstanding paragraph (1), a married woman entitled to a retirement pension solely on her husband's contributions under the legislation of Guernsey shall also be entitled to have any pension entitlement based entirely on her own insurance determined in accordance with Article 19. Such a married woman shall be entitled to receive only the benefit of her choice.

(4) For the purposes of determining entitlement to an earnings related retirement pension payable under the legislation of Malta, no account shall be taken of any contribution period completed under

the legislation of the United Kingdom, and for the purposes of this Article and Article 19, such an earnings related retirement pension shall be treated as a benefit to which Article 19 does not apply.

(5) Entitlement to a retirement pension in the circumstances referred to in paragraph (1) shall not preclude the competent authority of any part of either Party from taking into account in accordance with paragraphs (3) and (6) of Article 19 insurance periods completed under the legislation of any part of either Party.

SECTION 3

PRO-RATA PENSIONS

Article 19 General Provisions

(1) Subject to Articles 18 and 20 to 24, this Article shall apply to determine entitlement to retirement pension, including any increase for dependants, under the legislation of any part of either Party.

(2) In accordance with Article 11, the competent authority of any part of either Party shall determine:

- (a) the amount of the theoretical pension which would be payable if all the relevant insurance periods completed under the legislation of both Parties had been completed under its own legislation;
- (b) the proportion of such theoretical pension which bears the same relation to the whole as the total of the insurance periods completed under the legislation of that part of either Party bears to the total of all the relevant insurance periods completed under the legislation of both Parties.

The proportionate amount thus calculated shall be the rate of pension actually payable by the competent authority.

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

- (i) Great Britain, Northern Ireland and the Isle of Man amount to less than one reckonable year or, as the case may be, one qualifying year, or relate only to periods before 6th April 1975 and in aggregate amount to less than fifty weeks, or
- (ii) Guernsey amount to less than fifty weeks,

those periods shall be treated in accordance with paragraph (4) or (5).

(4) Insurance periods under paragraph (3) shall be treated as follows:

- (a) as if they had been completed under the legislation of any part of the United Kingdom under which a pension is, or if such periods are taken into account, would be, payable, or
- (b) where a pension is, or would be, payable under the legislation of two or more parts of the United Kingdom as if they had been completed under the legislation of that part which, at the date on which entitlement first arose or arises, is paying, or would pay, the greater, or greatest, amount.

(5) Where no pension is, or would be, payable under paragraph (4), insurance periods under paragraph (3) shall be treated as if they had been completed under the legislation of Malta.

(6) Where all the insurance periods completed by a person under the legislation of Malta amount to less than fifty weeks, those periods shall be treated as if they had been completed under the legislation of the United Kingdom in accordance with paragraph (4).

(7) Any increase of benefit payable under the legislation of Great Britain, Northern Ireland or the Isle of Man because of deferred retirement or deferred entitlement, shall be based on the amount of the pro-rata pension calculated in accordance with this Article.

Article 20 Insurance periods to be taken into account

(1) For the purpose of applying Article 19 the competent authority of the United Kingdom shall take account only of insurance periods completed under the legislation of either Party which would be taken into account for the determination of pensions under the legislation of the United Kingdom if they were completed under that legislation and shall, where appropriate, take into account in accordance with that legislation, insurance periods completed by a spouse or former spouse as the case may be.

(2) For the purpose of applying Article 19, and subject to paragraph (3), the competent authority of Malta shall take account of insurance periods completed under the legislation of the United Kingdom, only where they have been completed during the average test period or working life under that legislation.

(3) For the purpose of this Article, overlapping contributions under the legislation of one Party shall only be taken into account once.

Article 21 Overlapping periods

For the purpose of applying Articles 13 to 16 or 19:

- (a) where a compulsory insurance period completed under the legislation of one Party coincides with a voluntary insurance period completed under the legislation of the other Party, only the compulsory insurance period shall be taken into account, provided that the amount of pension or benefit payable under the legislation of the latter Party under Articles 13 to 16, or paragraph (2) of Article 19, shall be increased by the amount by which the pension or benefit payable under the legislation of that Party would have been increased if all voluntary contributions paid under that legislation had been taken into account;
- (b) where a contribution period, other than a voluntary contribution period, completed under the legislation of one Party coincides with an equivalent period completed under the legislation of the other Party, only the contribution period shall be taken into account;
- (c) where an equivalent period completed under the legislation of one Party coincides with an equivalent period completed under the legislation of the other Party, account shall be taken only of the equivalent period completed under the legislation under which the insured person was last insured before the day when the periods in question began or, if he was never insured before that day, under the legislation under which he first became insured after the day when the periods in question ended;
- (d) where a compulsory contribution period completed under the legislation of one Party coincides with a compulsory contribution period completed under the legislation of the other Party, each Party shall take into account only the compulsory contribution period completed under its own legislation;
- (e) where a voluntary contribution period completed under the legislation of one Party coincides with a voluntary contribution period completed under the legislation of the other Party, each Party shall take into account only the voluntary contribution period completed under its own legislation;
- (f) where it is not possible to determine accurately the period of time in which certain insurance periods were completed under the legislation of one Party, such insurance periods shall be treated as if they did not overlap with insurance periods completed under

the legislation of the other Party and shall be taken into account to the best advantage of the beneficiary.

Article 22 Benefits to be excluded

(1) For the purpose of applying Article 19 and, subject to paragraph (2), Article 13, no account shall be taken of the following benefits payable under the legislation of Great Britain, Northern Ireland or the Isle of Man:

- (a) any additional pension payable;
- (b) any graduated retirement benefit payable by virtue of any graduated contributions paid before 6th April 1975;
- (c) any invalidity allowance or incapacity age addition payable;

but any such benefit shall be added to the amount of any benefit payable under that legislation in accordance with paragraph (5) of Article 13 or paragraph (2) of Article 19, as appropriate.

(2) For the purpose of applying Article 13 no account shall be taken of any increase for dependants payable under the legislation of Great Britain, Northern Ireland or the Isle of Man, but any such benefit shall be added to the amount of any benefit payable under that legislation in accordance with paragraph (5) of Article 13.

Article 23 Pre-Scheme Contributions

For the purpose of applying Articles 19 to 22 no account shall be taken under the legislation of Malta of any contribution paid or credited under the legislation of the United Kingdom for any period before 7th May 1956.

Article 24 Non-Simultaneous Entitlement

Where a person does not simultaneously satisfy the conditions for entitlement to a retirement pension under the legislation of both Parties, his entitlement from each Party shall be established as and when he satisfies the conditions applicable under the legislation of that Party, taking account, where appropriate, of Article 19.

Article 25 Widow's Benefit

(1) Articles 18 to 24 shall also apply, with such modifications as the differing nature of the benefits shall require, to widow's benefit.

(2) Where widow's benefit would be payable under the legislation of one Party if a child were in the territory of that Party, it shall be payable while the child is in the territory of the other Party.

SECTION 4

BENEFITS FOR INDUSTRIAL ACCIDENTS AND INDUSTRIAL DISEASES

Article 26 General Provisions

(1) 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 6 to 10, he shall be treated under that legislation for the purpose of any claim to benefit in respect of an industrial accident or an industrial disease contracted during that employment, as if the accident had occurred or the disease had been contracted in the territory of the latter Party. Where benefit would be payable in respect

of that claim if the person were in the territory of the latter Party, it shall be payable while he is in the territory of the former Party.

(2) Where a person leaves the territory of one Party to go in the course of his employment to the territory of the other Party, but before he arrives in the latter territory sustains an accident, then, for the purpose of any claim for benefit in respect of that accident:

- (a) the accident shall be treated as if it had occurred in the territory of the Party whose legislation applied to him at the time the accident occurred; and
- (b) his absence from the territory of that Party shall be disregarded in determining whether his employment was as an employed person under that legislation.

(3) Where a seasonal worker who is entitled to industrial injury benefit under the legislation of Guernsey goes to Malta, he shall be entitled to continue to receive such benefit for a period of not more than 13 weeks from the date of departure from Guernsey.

(4) Where, because of a death resulting from an industrial accident or an industrial disease, a benefit would be payable under the legislation of one Party in respect of a child if that child were in the territory of that Party, that benefit shall be payable while the child is in the territory of the other Party.

Article 27 Dual Attribution and Aggravation of an Industrial Disease

(1) Subject to paragraph (2), where a person contracts an industrial disease, after having been employed in the territories of both Parties in an occupation to which, under the legislation of both Parties, the disease may be attributed and he would be entitled to receive benefit in respect of that disease under the legislation of both Parties, whether by virtue of this Convention or otherwise, the benefit shall be payable only under the legislation of the Party in whose territory he was last employed in that occupation before the disease was diagnosed.

(2) Where a person has suffered an aggravation of an industrial disease for which benefit has been paid in accordance with paragraph (1), the following provisions shall apply:

- (a) if the person has not had further employment in an occupation to which the disease or the aggravation may be attributed, or has had such employment only in the territory of the Party under whose legislation benefit has been paid, any additional benefit to which he may become entitled as a result of such aggravation shall be payable only under that legislation;
- (b) if the person makes a claim under the legislation of the Party in whose territory he is employed on the ground that he has suffered an aggravation of the disease while he was employed in the territory of that Party in an occupation to which, under the legislation of that Party, the aggravation may be attributed, the competent authority of that Party shall be liable to pay benefit only in respect of the aggravation as determined under the legislation of that Party.

Article 28 Dual Entitlement

(1) Where, but for this Article, and subject to Article 27(2)(b), a person would have been entitled to any benefit payable in respect of an industrial accident or an industrial disease under the legislation of both Parties, that benefit shall be payable only under the legislation of the Party in whose territory the person was last employed.

(2) A person shall not be entitled, whether by virtue of this Convention or otherwise, to receive sickness benefit, including industrial injury benefit under the legislation of Guernsey, or invalidity benefit under the legislation of one Party for any period during which he is entitled to any benefit,

other than a pension, under the legislation of the other Party in respect of incapacity for work which results from an industrial accident or an industrial disease.

SECTION 5

Article 29 Orphan's Benefit

(1) Subject to paragraph (2), for the purpose of any claim for orphan's benefit under the legislation of one Party, any period of presence in the territory of the other Party shall be treated as if it were a period of presence in the territory of the former Party.

(2) For the purpose of any claim for orphan's benefit under the legislation of Guernsey, a person who has completed an insurance period under the legislation of Malta shall be treated as if he were an insured person under the legislation of Guernsey.

(3) Where, but for this paragraph, a person would be entitled to receive orphan's benefit under the legislation of both Parties in respect of the same orphan, whether by virtue of this Convention or otherwise, he shall be entitled to receive benefit only under the legislation of the Party in whose territory the orphan is ordinarily resident.

SECTION 6

Article 30 Recovery of advance payments and overpayments of benefit

(1) Where a competent authority of one Party has made a payment of any benefit to a person for any period, or event, in advance of the period, or event, to which it relates or has paid him any benefit for a period, or event, whether by virtue of this Convention or otherwise, and the competent authority of the other Party afterwards decides that the person is entitled to benefit for that period, or event, under its legislation, the competent authority of the latter Party, at the request of the competent authority of the former Party, shall deduct from the benefit due for that period, or event, under its legislation any overpayment which, by virtue of this Convention, results from the advance payment of benefit or from the benefit paid by the competent authority of the former Party and shall, where appropriate, transmit this sum to the competent authority of the former Party.

(2) Where a person has received social assistance under the legislation of Great Britain, Northern Ireland or the Isle of Man or Malta for a period for which that person subsequently becomes entitled to any benefit under the legislation of the other Party, the competent authority of the latter Party, at the request of and on behalf of the competent authority of the former Party, shall withhold from the benefit due for that period the amount by which the social assistance paid exceeded what would have been paid had the benefit under the legislation of the latter Party been paid before the amount of social assistance was determined, and shall transmit the amount withheld to the competent authority of the former Party.

PART V

MISCELLANEOUS PROVISIONS

Article 31 Arrangements for administration and co-operation

(1) The competent authorities of the two Parties shall establish the administrative measures necessary for the application of this Convention.

(2) The competent authorities of the two Parties shall communicate to each other, as soon as possible, all information about the measures taken by them for the application of this Convention or about changes in their national legislation in so far as these changes affect the application of this Convention.

(3) The competent authorities of the two Parties shall establish liaison offices for the purpose of facilitating the implementation of this Convention.

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

(5) Where any benefit is payable under the legislation of one Party to a person in the territory of the other Party, the payment may be made by the competent authority of the latter Party, at the request of the competent authority of the former Party, and the former Party shall reimburse the latter Party.

(6) Where a person who is in the territory of one Party has claimed, or is receiving, benefit under the legislation of the other Party and a medical examination is necessary, the competent authority of the former Party, at the request of the competent authority of the latter Party, shall arrange for this examination. The cost of such examination shall be met by the competent authority of the former Party.

(7) A medical board appointed by the competent authority of Malta, at the request of the competent authority of Guernsey, shall be treated as a medical board for determination of the disablement questions under the legislation of Guernsey.

(8) Where the legislation of one Party provides that any certificate or other document which is submitted under the legislation of that Party shall be exempt, wholly or partly, from any taxes, legal dues, consular fees or administrative charges, that exemption shall apply to any certificate or other document which is submitted under the legislation of the other Party or in accordance with this Convention.

(9) All statements, documents and certificates of any kind required to be produced for the purposes of this Convention shall be exempt from authentication by diplomatic or consular authorities.

(10) No certificate, document or statement of any kind written in an official language of either Party shall be rejected on the ground that it is written in a foreign language.

(11) 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, this Convention to that Party by another Party is confidential and shall be used only for the purpose of implementing this Convention and the legislation to which this Convention applies.

Article 32 Submission of Claim or Appeal

(1) Any claim or appeal which should, for the purposes of the legislation of one Party, have been submitted within a prescribed period to the competent authority of that Party, shall be treated as if it had been submitted to that competent authority if it is submitted within the same period to the competent authority of the other Party.

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

Article 33 Currency and Method of Payment

(1) Payment of any benefit in accordance with this Convention may be made in the currency of the Party whose competent authority makes the payment and any such payment shall constitute a full discharge of the obligation in respect of which payment has been made.

(2) Where the competent authority of one Party has made a payment of benefit on behalf of the competent authority of the other Party in accordance with Article 31(5), any reimbursement of the

amounts paid by the competent authority of the former Party shall be in the currency of the latter Party.

(3) Where a person in the territory of one Party is receiving benefit under the legislation of the other Party, it shall be payable by whatever method the competent authority of the latter Party deems appropriate.

Article 34 Resolution of Disputes

(1) Competent authorities of the Parties to this Convention shall make all reasonable efforts to resolve through agreement between them any dispute about its interpretation or application.

(2) If any dispute cannot be resolved as in paragraph (1) it shall be submitted, at the request of the competent authority of either Party, to an arbitration tribunal which shall be composed in the following manner:

- (a) each Party shall appoint an arbitrator within one month from receipt of the demand for arbitration. The two arbitrators shall appoint a third arbitrator, who shall not be a national of either Party, within two months from the date on which the Party which was the last to appoint its arbitrator has notified the other Party of the appointment;
- (b) if within the prescribed period either Party should fail to appoint an arbitrator, the other Party may request the President of the International Court of Justice or, in the event of his having the nationality of one of the Parties, the Vice-President or next senior judge of that Court not having the nationality of either Party, to make the appointment. A similar procedure shall be adopted at the request of either Party if the two arbitrators cannot agree on the appointment of the third arbitrator.

(3) The decision of the arbitration tribunal, which shall be binding on both Parties, shall be by majority vote. The arbitration tribunal shall determine its own rules of procedure, and its costs shall be borne equally by the two Parties.

PART VI

TRANSITIONAL AND FINAL PROVISIONS

Article 35 Prior Acquisition of Rights—Old Convention Replaced by New Convention

(1) Upon the entry into force of this Convention the former Conventions shall terminate and shall be replaced by this Convention.

(2) Any right to benefit acquired by a person in accordance with the former Conventions shall be maintained. For the purposes of this paragraph “any right to benefit acquired” includes any right which a person would have had but for his failure to claim timeously where a late claim is allowed.

(3) Any rights in course of acquisition under the former Conventions at the date of entry into force of this Convention shall be settled in accordance with the Convention in force at the date of entitlement.

(4) Where, from the date of entry into force of this Convention, any claim to benefit has not been determined and entitlement arises before that date, the claim shall be determined in accordance with the former Conventions and shall be determined afresh in accordance with this Convention from its date of entry into force. The rate determined under this Convention shall be awarded from the date of its entry into force if this is more favourable than the rate determined under the former Conventions.

(5) Benefit, other than lump sum payments, shall be payable in accordance with this Convention in respect of events which happened before the date of its entry into force, except that an accident

which occurred or a disease which developed before that date shall not, solely by virtue of this Convention, be treated as an industrial accident or an industrial disease if it would not have been so treated under any legislation or Convention having effect at the time of its occurrence or development. For the purpose of determining claims in accordance with this Convention, account shall be taken, where appropriate, of insurance periods and periods of residence, employment or presence, completed before the date of its entry into force.

(6) Paragraph (5) shall not confer any right to receive payment of benefit for any period before the date of entry into force of this Convention.

(7) For the purpose of paragraph (2) and for applying the first sentence of paragraph (5):

- (a) any right to benefit may, at the request of the person concerned, be determined afresh under this Convention with effect from its date of entry into force provided that the request has been made within two years of that date and, if applicable, benefit awarded at the higher rate from the latter date;
- (b) where the request for the benefit to be determined afresh is made more than two years after the date of entry into force of this Convention payment of benefit, and the payment of any arrears, shall be made in accordance with the legislation concerned.

(8) No provision of this Convention shall diminish any rights or benefits which a person has properly acquired under the legislation of any part of either Party before the date of entry into force of this Convention.

Article 36 Ratification

This Convention shall be ratified and the instruments of ratification shall be exchanged in London as soon as possible. The Convention shall enter into force on the first day of the third month following the month in which the instruments of ratification are exchanged.

Article 37 Life of the Convention

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

Article 38 Rights on termination of this Convention not replaced by another

In the event of the termination of this Convention and unless a new Convention containing provisions regulating the matter is made, any right to benefit acquired by a person in accordance with this Convention shall be maintained and negotiations shall take place for the settlement of any other rights then in course of acquisition by virtue of its provisions.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for the modification of the Social Security Administration Act 1992, the Social Security Contributions and Benefits Act 1992 and the Jobseekers Act 1995 and regulations made or having effect thereunder so as to give effect to the Convention on social security (set out in the Schedule to this Order) made between the Government of the United Kingdom of Great

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Britain and Northern Ireland and the Government of Malta. The provisions relate to sickness and invalidity benefit, unemployment benefit, retirement pension and widow's benefit, orphan's benefit and benefits for industrial accidents and industrial diseases.

This Order does not impose any costs on business.