

ORDINANCE

OF THE STATES OF DELIBERATION

ENTITLED

The Social Insurance (Reciprocal Agreement with Bermuda) (Guernsey) Ordinance, 1970 *

[CONSOLIDATED TEXT]

NOTE

This consolidated version of the enactment incorporates all amendments listed in the footnote below. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.

© States of Guernsey

* Recueil d'Ordonnances Tome XVI, p. 399. See also the Guernsey Social Security Authority (Transfer of Functions) Ordinance, 1993 (Recueil d'Ordonnances Tome XXVI, p. 177); the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016).

**ORDINANCE
OF THE STATES OF DELIBERATION**

ENTITLED

**The Social Insurance (Reciprocal Agreement with
Bermuda) (Guernsey) Ordinance, 1970**

ARRANGEMENT OF SECTIONS

1. Modification of Law.
2. Citation, extent and commencement.

SCHEDULE Agreement on Social Insurance between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Bermuda.

(Made on the 29th April, 1970.)

The Social Insurance (Reciprocal Agreement with Bermuda) (Guernsey) Ordinance, 1970

THE STATES, in exercise of the powers conferred upon them by section sixty-eight of the Social Insurance (Guernsey) Law, 1964, as amended^a, and of all other powers enabling them in that behalf, hereby order: –

Modification of Law.

1. The provisions contained in the Agreement on Social Insurance set out in the Schedule to this Ordinance (which extends to the Islands of Guernsey, Alderney, Herm and Jethou) shall have full force and effect, and the Social Insurance (Guernsey) Law, 1964, as amended, shall have effect subject to such modifications as may be required therein for the purpose of giving effect to the provisions contained in the said Agreement.

NOTE

The Social Insurance (Guernsey) Law, 1964 has since been repealed by the Social Insurance (Guernsey) Law, 1978, section 118, Fourth Schedule, Part I, with effect from 1st January, 1979, subject to the transitional provisions and savings in section 119 of, and Part II of the Fourth Schedule to, the 1978 Law.

Citation, extent and commencement.

2. (1) This Ordinance may be cited as the Social Insurance (Reciprocal Agreement with Bermuda) (Guernsey) Ordinance, 1970.

(2) This Ordinance shall have effect in the Islands of Guernsey,

^a Ordres en Conseil Vol. XIX, p. 286; Vol. XX, p. 126; No. VII of 1967.

Alderney, Herm and Jethou.

(3) This Ordinance shall be deemed to have come into force on the first day of November, nineteen hundred and sixty-nine.

SCHEDULE
AGREEMENT ON SOCIAL INSURANCE BETWEEN THE GOVERNMENT OF
THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
AND THE GOVERNMENT OF BERMUDA

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Bermuda have agreed as follows:

PART I—DEFINITIONS AND SCOPE

ARTICLE 1

For the purposes of this Agreement, unless the context otherwise requires –

- (a) **"benefit"** means any pension, allowance, or other benefit payable under the legislation of one (or the other) Contracting Party, and includes any increase payable for a dependant;
- (b) **"competent authority"** means, in relation to the United Kingdom, the Secretary of State for Social Services, the Ministry of Health and Social Services for Northern Ireland, the Isle of Man Board of Social Services, the Social Security Committee of the States of Jersey or the States of Guernsey [Insurance Authority], as the case may require, and, in relation to Bermuda, the Insurance Officer of Bermuda;
- (c) **"dependant"** means a person for whom an increase of benefit is payable under the legislation which is being

applied;

- (d) **"legislation"** means, according to the context, the legislation specified in Article 2 in force in any part of the territory of one (or the other) Party;
- (e) **"old age pension"** means, in relation to the United Kingdom, a retirement pension or old age pension payable under the legislation of the United Kingdom, and, in relation to Bermuda, a contributory old age pension payable under the legislation of Bermuda;
- (f) **"territory"** means, in relation to the United Kingdom, England, Scotland, Wales, Northern Ireland, the Isle of Man, and the Islands of Jersey, Guernsey, Alderney, Herm and Jethou, and, in relation to Bermuda, the Bermudas or Somers Islands;
- (g) **"widow's benefit"** means, in relation to the United Kingdom, widow's benefit payable under the legislation of the United Kingdom, and, in relation to Bermuda, a widow's allowance payable under the legislation of Bermuda.

ARTICLE 2

- (1) The provisions of this Agreement shall apply –
 - (a) in relation to the United Kingdom, to –
 - (i) the National Insurance Act 1965, the National

Consolidated text

Insurance Act (Northern Ireland) 1966, the National Insurance (Isle of Man) Act 1948, and the legislation which was consolidated by, or repealed by legislation consolidated by, those Acts;

- (ii) the National Insurance (Industrial Injuries) Act 1965, the National Insurance (Industrial Injuries) Act (Northern Ireland) 1966 and the National Insurance (Industrial Injuries) (Isle of Man) Act 1948;
 - (iii) the Insular Insurance (Jersey) Law 1950; and
 - (iv) the Social Insurance (Guernsey) Law, 1964;
- (b) in relation to Bermuda, to the Workmen's Compensation Act 1965 and the Contributory Pensions Act 1967.

(2) Subject to the provisions of paragraph (3) of this Article, the Agreement shall apply also to any law, order or regulation which amends, supplements or consolidates the legislation specified in paragraph (1) of this Article.

(3) The Agreement shall apply, only if the Contracting Parties so agree, to laws, orders or regulations, which amend or supplement the legislation specified in paragraph (1) of this Article for the purpose of giving effect to any reciprocal agreement on social security between one (or the other) Party and a third party.

PART II—CONTRIBUTIONS

ARTICLE 3

(1) An employed person shall be subject, in relation to his employment, to the legislation of only one Contracting Party.

(2) If an insured person is liable to pay contributions as an employed person for any period under the legislation of one Party, he shall not be liable to pay contributions as a self-employed person or as a non-employed person for that period under the legislation of the other Party.

ARTICLE 4

(1) Subject to the provisions of paragraphs (2) and (3) of this Article, where a person is employed in the territory of one Party, the legislation of that Party shall apply to him, even if he resides in the territory of the other Party or if his employer's principal place of business is in that territory.

(2) Where a person, who is insured under the legislation of one Party and is employed by an employer who has a place of business in the territory of that Party is sent by that employer to the territory of the other Party, that legislation shall continue to apply to him as if he were employed in the territory of the former Party, provided that his employment in the territory of the latter Party is not expected to last for more than twelve months or such longer period as may be agreed by the competent authorities of the two Parties in any particular case.

(3) The provisions of paragraphs (1) and (2) of this Article shall not apply to members of Her Majesty's regular forces or to any person to whom any of the provisions of Articles 5, 6 and 7 of this Agreement apply.

ARTICLE 5

Consolidated text

(1) Where a person, employed in the Government service of one Contracting Party and insured under the legislation of that Party, is sent to the territory of the other Party, the legislation of the former Party shall continue to apply to him as if he were employed in its territory.

(2) Where a person in the Government service of one Party is employed in the territory of the other Party, having been engaged for that employment in that territory, the legislation of the latter Party shall apply to him.

(3) The competent authorities of the Parties may provide by agreement that, where a person, employed by a public corporation or official body of one Party and insured under the legislation of that Party, is sent to the territory of the other Party, the legislation of the former Party shall apply to him as if he were employed in its territory.

ARTICLE 6

If a person is employed as master or a member of the crew of any ship or vessel belonging to Her Majesty which is stationed in Bermuda and he is not a member of any of the naval, military or air forces of the Crown, he shall be insured in relation to that employment –

- (a) under the legislation of the United Kingdom if he is ordinarily resident in the United Kingdom;
- (b) under the legislation of Bermuda if he is ordinarily resident in Bermuda.

ARTICLE 7

(1) For the purpose of this Article, "**ship**" means, in relation to a

Contracting Party, a ship or vessel (other than a ship or vessel belonging to Her Majesty) which is owned in the territory of that Party, or any other ship or vessel which is registered in that territory and not owned in the territory of the other Party; and a ship or vessel shall be deemed to be owned in one (or the other) territory if the owner or, where there is more than one owner, the managing owner or manager resides or has his principal place of business in that territory.

(2) Subject to the provisions of paragraphs (3) and (4) of this Article, if a person, ordinarily resident in the territory of one Party, is employed on board a ship of the other Party, then, in relation to that employment, the legislation of the latter Party shall apply to him as if he were ordinarily resident in the territory of that Party.

(3) If a person, ordinarily resident in the territory of one Party, is employed as master or a member of the crew of a ship of the other Party which is registered in the territory of the former Party or calls regularly at ports of that Party, then, in relation to that employment, the legislation of the former Party shall apply to him as if he were employed as master or a member of the crew of a ship of the former Party.

(4) If a person, ordinarily resident in the territory of one Party, is employed on board a ship of the other Party, and is in the service of an employer having a place of business in the territory of the former Party and not being the owner of the ship, then, in relation to that employment, the legislation of the former Party shall apply to him as if he were employed on board a ship of that Party.

ARTICLE 8

Where a person ordinarily resident in Bermuda is employed as a member of the crew of an aircraft registered in the United Kingdom, the legislation of the United Kingdom shall apply to him as if any conditions relating to residence or domicile in the United Kingdom were satisfied in his case.

PART III—BENEFIT

Benefit of one Contracting Party payable in the territory of the other

ARTICLE 9

(1) The provisions of this Article shall apply only to old age pensions and widow's benefit, payable under the legislation of one (or the other) Contracting Party.

(2) Where a person would be entitled to receive benefit under the legislation of one Party if he were in the territory of that Party, he shall be entitled to receive that benefit while he is in the territory of the other Party, provided that, if he is not ordinarily resident in the territory of the former Party, then, subject to the provisions of paragraph (3) of this Article, the rate of his benefit shall be determined in accordance with any provisions of that legislation which concern the payment of benefit to persons who are not ordinarily resident in the territory of the former Party.

(3) Any increase of benefit rates which, after the entry into force of this Agreement, is awarded under the legislation of one Party to beneficiaries in the territory of that Party shall apply also to beneficiaries who are ordinarily resident in the territory of the other Party.

(4) Where a person who is entitled to receive benefit under the legislation of one Party would be entitled to receive an increase of that benefit if a dependant of his were in the territory of that Party, he shall be entitled to receive that increase if the dependant is in the territory of the other Party.

ARTICLE 10

(1) Where a person would be entitled to receive any benefit under the

Consolidated text

legislation of one Contracting Party in respect of an industrial accident or an industrial disease if he were in the territory of that Party, he shall be entitled to receive that benefit while he is in the territory of the other Party.

(2) The provisions of paragraph (1) of this Article shall apply also to any increase of the benefit specified in that paragraph and any additional allowance payable therewith, other than a special hardship allowance payable under the legislation of the United Kingdom.

(3) Where a person who is entitled to receive benefit under the legislation of one Party in respect of an industrial accident or an industrial disease would be entitled to receive an increase of that benefit if a dependant of his were in the territory of that Party, he shall be entitled to receive that increase if the dependant is in the territory of the other Party.

Old Age Pensions

ARTICLE 11

(1) If a person has been insured under the legislation of both Contracting Parties, then –

- (a) for the purpose of determining whether he is entitled to receive an old age pension under the legislation of one Party, any contribution paid by him or credited to him under the legislation of the other Party shall be treated as if it were a contribution, respectively, paid by him or credited to him under the legislation of the former Party; and
- (b) if he is entitled to receive an old age pension under the

legislation of the former Party, the rate of that pension shall be a part of the rate of the pension which would have been payable to him under that legislation if every contribution paid by him or credited to him under the legislation of the latter Party had been a contribution, respectively, paid by him or credited to him under the legislation of the former Party, namely, that part which bears the same relation to the whole as the number of contributions paid by him or credited to him under the legislation of the former Party bears to the total number of contributions paid by him or credited to him under the legislation of both Parties.

(2) For the purpose of applying the provisions of paragraph (1) of this Article –

- (a) no account shall be taken of any graduated contributions paid under the legislation of the United Kingdom or of any graduated retirement benefit payable under that legislation, but any such benefit which is payable by virtue of such contributions shall be paid in addition to the old age pension which is calculated in accordance with those provisions;
- (b) in those cases where, under the legislation of one (or the other) Party, the person concerned is –
 - (i) a woman claiming an old age pension by virtue of her husband's insurance; or
 - (ii) a woman whose husband's contributions are

taken into account in determining her right to receive an old age pension by virtue of her own insurance, her marriage having been terminated by the death of her husband or otherwise;

any reference to a contribution paid by a person or credited to a person shall be construed, for the purpose of ascertaining her husband's yearly average of contributions, as including a reference to a contribution paid by her husband or credited to him;

- (c) where a person has reached pensionable age, as prescribed in his case under the legislation of the United Kingdom, no account shall be taken under that legislation of any subsequent contributions which he pays under the legislation of Bermuda or has credited to him under that legislation.

(3) For the purpose of determining, in accordance with the provisions of paragraph (1) of this Article, whether a person is entitled to receive benefit under the legislation of Bermuda and for the purpose of determining, in accordance with those provisions, what benefit would have been payable under that legislation if every contribution paid by a person or credited to him under the legislation of the United Kingdom had been a contribution respectively paid by him or credited to him under the legislation of Bermuda, no account shall be taken of any contribution paid or credited under the legislation of the United Kingdom for any week before the week beginning on 5th August 1968.

(4) For the purpose of applying the provisions of sub-paragraph (b) of paragraph (1) of this Article, no account shall be taken of any contribution which a person has paid or had credited to him under the legislation of the United Kingdom if,

in the calculation of the yearly average of contributions paid by him or credited to him under that legislation, no account is taken of that contribution.

(5) The provisions of the foregoing paragraphs of this Article shall not apply in relation to the legislation of one (or the other) Party in any case where a person qualifies for an old age pension under that legislation solely by virtue of contributions paid or credited under that legislation.

Widow's Benefit

ARTICLE 12

(1) The provisions concerning old age pensions contained in Article 11 of this Agreement shall apply (with such modifications as the differing nature of the benefit shall require) to claims for widow's benefit under the legislation of one (or the other) Contracting Party.

(2) Where, under the legislation of one Party, a woman would be entitled to receive widow's benefit if a child or young person were in the territory of that Party, she shall be entitled to receive that benefit while the child or young person is in the territory of the other Party.

(3) Where a woman is receiving widow's benefit for any period under the legislation of one (or the other) Party in accordance with the provisions of paragraph (1) of this Article and her benefit has been calculated under the provisions of paragraphs (1), (2) and (4) of Article 11 of the Agreement, contributions shall be credited to her under that legislation only for the part of that period which bears the same relation to the whole as that specified in respect of her claim under that legislation in sub-paragraph (b) of paragraph (1) of that Article.

Non-Contributory Old Age Pensions in Bermuda

ARTICLE 13

(1) Subject to the provisions of paragraphs (2) and (3) of this Article, where a person who is resident in Bermuda claims a non-contributory old age pension under the legislation of Bermuda, any period during which he has been ordinarily resident in the United Kingdom shall be treated, for the purposes of his claim, as a period during which he has been ordinarily resident in Bermuda.

(2) Where a person is entitled to receive a retirement pension under the legislation of the United Kingdom and would be entitled, but for the provisions of this paragraph, to receive also a non-contributory old age pension under the legislation of Bermuda, he shall not receive more by way of the latter pension than any amount by which the former pension is less than the standard rate of the latter pension.

(3) The provisions of paragraph (2) of this Article shall not apply to anyone who, before 5th August 1973, qualifies for a non-contributory old age pension under the legislation of Bermuda, otherwise than by virtue of the provisions of paragraph (1) of this Article.

Accidents outside the territory of the Contracting Party whose legislation is applicable

ARTICLE 14

(1) Where a person is employed in the territory of one Contracting Party and the legislation of the other Party applies to him in accordance with any of the provisions of Articles 4 and 5 of this Agreement, he shall be treated for the purpose of any right to receive benefit under that legislation for an accident happening or an industrial disease contracted in the course of that employment as if the accident had happened or the disease had been contracted in the territory of the latter Party.

Consolidated text

(2) If an accident happens to an employed person after he leaves the territory of one Party to go, in the course of his employment, to the territory of the other Party and before he arrives in the latter territory, then, for the purpose of any claim to receive benefit in respect of that accident –

- (a) the accident shall be treated as if it had happened in the territory of the Party whose legislation was expected to apply to him in the latter territory; and
- (b) his absence from the territory of either Party shall be disregarded in determining whether that legislation applied to him at the time of the accident.

Overlapping Benefits

ARTICLE 15

(1) Where, but for the provisions of this Article, a person would have been entitled to receive benefits under the legislation of both Contracting Parties for the same period, an adjustment shall be made, subject to the provisions of this Article, under the legislation of one Party, namely –

- (a) that Party –
 - (i) in whose territory he is at the beginning of the period; or
 - (ii) in whose territory he is ordinarily resident, if he is not in the territory of either Party at that time; or

(iii) in whose territory he was last ordinarily resident before that time, if at that time he is not in or ordinarily resident in the territory of either Party; or

(b) if the competent authorities so agree, the other Party.

(2) For the purpose of the adjustment specified in paragraph (1) of this Article, the benefit which would otherwise have been payable under the legislation of the Party specified in that paragraph shall be reduced by any amount by which the sum of the two benefits exceeds the amount which would have been payable under that legislation if the benefit payable under the legislation of the other Party had been the corresponding benefit payable under the legislation of the former Party.

(3) The provisions of paragraph (1) of this Article shall not apply in any case –

(a) where one of the benefits is a non-contributory old age pension payable under the legislation of Bermuda;

(b) where one of the benefits is an old age pension payable to a woman by virtue of her husband's insurance and the other is widow's benefit;

(c) where both the benefits are old age pensions payable to a man;

(d) where both the benefits are old age pensions payable to a woman by virtue of her own insurance; or

- (e) where both the benefits are widow's benefits.

PART IV—MISCELLANEOUS PROVISIONS

ARTICLE 16

The competent authorities –

- (a) shall make such administrative arrangements as may be required for the application of this Agreement;
- (b) shall communicate to each other information regarding any measure taken by them for the application of the Agreement;
- (c) shall furnish assistance to one another with regard to any matter relating to the application of the Agreement;
- (d) shall communicate to each other, as soon as possible, information regarding any change in their legislation which may affect the application of the Agreement.

ARTICLE 17

Where, under the provisions of this Agreement, any benefit is payable by the competent authority of one Contracting Party to a person who is in the territory of the other Party, the payment may, at the request of that authority, be made by the competent authority of the latter Party as agent for the competent authority of the former Party.

ARTICLE 18

No benefit paid under the legislation of one Contracting Party by virtue of this Agreement shall be reimbursed out of any fund established under the legislation of the other Party.

ARTICLE 19

Where a person becomes entitled, under the legislation of one Contracting Party, to receive arrears of benefit for any period, the competent authority responsible for the payment of these arrears may, at the request of a competent authority of the other Party, deduct from these arrears any amount by which the latter authority has paid sums by way of benefit for that period under the legislation of the latter Party in excess of the benefit which was actually due to the person for that period under that legislation, and may transmit this amount to the latter authority.

ARTICLE 20

Any exemption from, or reduction of, legal dues, charges and fees, provided for in the legislation of one Contracting Party in connection with the issue of any certificate or document required to be produced for the purposes of that legislation, shall be extended to certificates and documents required to be produced for the purposes of the legislation of the other Party.

ARTICLE 21

Any claim, notice or appeal which should, for the purposes of the legislation of one Contracting Party, have been presented within a prescribed period to a competent authority of that Party, but which is in fact presented within the same period to the corresponding authority of the other Party, shall be treated as if it had been presented to the authority of the former Party. In such cases, the authority of the latter Party shall, as soon as possible, arrange for the claim, notice or appeal to be sent

to the competent authority of the former Party.

ARTICLE 22

In the event of the termination of this Agreement, any right acquired by a person in accordance with its provisions shall be maintained, and negotiations shall take place for the settlement of any rights then in course of acquisition by virtue of those provisions.

ARTICLE 23

(1) No provision of this Agreement shall diminish any rights which a person has acquired under the legislation of either Contracting Party before the date of the entry into force of the Agreement.

(2) The provisions of this Agreement, in so far as they modify the legislation of either Party concerning industrial injuries insurance or workmen's compensation, shall have effect only from a date to be agreed by the competent authorities of the two Parties after the entry into force of the Agreement.

(3) Subject to the provisions of paragraphs (1) and (2) of this Article, the Agreement shall enter into force on 1st November 1969 and shall remain in force for a period of one year from that date. Thereafter, it shall continue in force from year to year unless notice of termination is given in writing by either Party at least three months before the expiry of any such yearly period.

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

Done in duplicate and signed at London on the 13th day of October 1969 and

at Hamilton on the 23rd day of October 1969.

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

R. H. S. CROSSMAN

H. J. TUCKER

NOTES

In accordance with the provisions of the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 26, with effect from 6th May, 2004 the States of Guernsey Insurance Authority has since been replaced by the States of Guernsey Social Security Department. In accordance with the provisions of the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 13, with effect from 1st May, 2016, the States of Guernsey Social Security Department has since been replaced by the States of Guernsey Committee for Employment & Social Security; and the functions, rights and liabilities of the Social Security Department and of its Minister or Deputy Minister arising under or by virtue of this Ordinance were transferred to and vested in, respectively, the Committee for Employment & Social Security and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 13, with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.¹

The Social Insurance (Guernsey) Law, 1964 has since been repealed by the Social Insurance (Guernsey) Law, 1978, section 118, Fourth Schedule, Part I, with effect from 1st January, 1979, subject to the transitional provisions and savings in section 119 of, and Part II of the Fourth Schedule to, the 1978 Law.

¹ The functions, rights and liabilities of the Social Security Department and its Minister arising under or by virtue of this Ordinance were previously transferred to and vested in them, respectively, from the Social Security Authority and its President by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 26, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance; the

functions of the Guernsey Social Security Authority under this Ordinance were previously transferred to it from the States Insurance Authority by the Guernsey Social Security Authority (Transfer of Functions) Ordinance, 1993, section 1, Schedule 1, paragraph 3, with effect from 29th September, 1993, subject to the savings in section 2 of the 1993 Ordinance.