

1998 No. 263

SOCIAL SECURITY

**The Social Security (Contributions and Industrial
Injuries) (Canada) Order 1998**

Made - - - - *11th February 1998*
Coming into force *1st April 1998*

At the court at Buckingham Palace, the 11th day of February 1998

Present,

The Queen's Most Excellent Majesty in Council

Whereas at London on 16th January 1997 a Convention on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Canada (which Convention is set out in the Schedule to this Order and is hereinafter referred to as "the Convention")(a) was signed on behalf of those Governments:

And Whereas by Article 16 of the Convention it is provided that the Convention shall enter into force on the first day of the fourth month following the month in which each Party to the Convention shall have received from the other Party written notification that it has complied with all statutory requirements for the entry into force of the Convention:

And Whereas written notification in accordance with Article 16 of the Convention was received by each Party on 29th December 1997 and accordingly the Convention enters into force on the 1st April 1998:

And Whereas by section 179(1)(a) and (2) of the Social Security Administration Act 1992(b) it is provided that Her Majesty may by Order in Council make provision for modifying or adapting that Act and the Social Security Contributions and Benefits Act 1992(c) 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: -

Citation and commencement

1. This Order may be cited as the Social Security (Contributions and Industrial Injuries) (Canada) Order 1998 and shall come into force on 1st April 1998.

(a) See Cm 3582.

(b) 1992 c.5.

(c) 1992 c.4.

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

2. The Social Security Administration Act 1992 and the Social Security Contributions and Benefits Act 1992 shall be modified to such an extent as may be required to give effect to the provisions contained in the Convention so far as the same relate to England, Wales and Scotland.

N. H. Nicholls
Clerk of the Privy Council

SCHEDULE

CONVENTION ON SOCIAL SECURITY

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

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

Being resolved to co-operate in the field of social security, in particular as regards liability for contributions,

Have agreed as follows:

PART I

GENERAL PROVISIONS

Article 1

Definitions

(1) For the purpose of this Convention, the following definitions apply: -

“benefits for industrial accidents and industrial diseases” means, in relation to the United Kingdom, 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;

“competent authority” means: -

(i) in relation to the United Kingdom, the Department of Social Security for Great Britain, the Department of Health and Social Services for Northern Ireland and the Department of Health and Social Security of the Isle of Man, as the case may require, and

(ii) in relation to Canada, the Minister or Ministers responsible for the application of the legislation of Canada;

“employed person” means: -

(i) in relation to the United Kingdom, a person who is, or who is treated as being, an employed earner or an employed person under the legislation of the United Kingdom, and

(ii) in relation to Canada, an employee, as defined in the Canada Pension Plan, and the words “person is employed” shall be construed accordingly;

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

“Government Service” means: -

(i) in relation to the United Kingdom, employment by the Government of the United Kingdom, and includes employment in the service of any public corporation of the United Kingdom, and

(ii) in relation to Canada,

(a) employment by the Government of Canada, including employment as a member of the Canadian Forces or the Royal Canadian Mounted Police,

but not including employment as an employee engaged locally outside Canada, and

- (b) employment by the government, agent or municipal corporation of a province of Canada;

“insured” means: -

- (i) in relation to the United Kingdom, that contributions have been paid by, or are payable by, or in respect of, or have been credited in respect of, the person concerned, and
- (ii) in relation to Canada, that contributions have been paid, or are payable, by the person concerned under the *Canada Pension Plan* or, as the case may require, the comprehensive pension plan of a province of Canada;

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

“Party” means the United Kingdom or Canada;

“self-employed person” means: -

- (i) in relation to the United Kingdom, a person who comes within the definition of a self-employed earner or of a self-employed person under the legislation of the United Kingdom, or is treated as such, and
- (ii) in relation to Canada, a person with self-employed earnings, as defined in the *Canada Pension Plan*,

and the words “person is self-employed” shall be construed accordingly;

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

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

(3) Any reference in this Convention to an “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 United Kingdom, to: -

- (i) the *Social Security Administration Act 1992*, the *Social Security Contributions and Benefits Act 1992* and the *Social Security (Consequential Provisions) Act 1992*,
- (ii) the *Social Security Administration (Northern Ireland) Act 1992*, the *Social Security Contributions and Benefits (Northern Ireland) Act 1992* and the *Social Security (Consequential Provisions) (Northern Ireland) Act 1992*,
- (iii) the *Social Security Administration Act 1992*, the *Social Security Contributions and Benefits Act 1992* and the *Social Security (Consequential Provisions) Act 1992 (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)*,

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

- (b) in relation to Canada, to: -

- (i) the *Old Age Security Act* and the regulations made thereunder, and
- (ii) the *Canada Pension Plan* and the regulations made thereunder.

(2) Subject to paragraph (3), 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 not apply to the legislation on social security adopted by the Council, or the Council and the Parliament, of the European Community, or to legally binding provisions on social security contained in agreements between the European Community, its Member States and a third country, or adopted pursuant to such an agreement, or to any convention on social security which the United Kingdom 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.

Article 3

Equal Treatment

A person who is or who has been subject to the legislation of a Party, and the dependants and survivors of such a person, shall be subject to the obligations of the legislation of the other Party and shall be eligible for the benefits of that legislation under the same conditions as nationals or citizens, as the case may be, of the latter Party.

PART II

PROVISIONS WHICH DETERMINE THE LEGISLATION APPLICABLE CONCERNING CONTRIBUTION LIABILITY

Article 4

General Provisions

(1) Subject to paragraphs (2) to (4) and Articles 5 to 7, where a person is employed, liability for contributions for him or her shall, in respect of that employment, be determined only under the legislation of the Party in whose territory he or she is so employed. Where a person is subject only to the legislation of the United Kingdom in accordance with this paragraph, that legislation shall apply to him or her as if he or she were ordinarily resident in the territory of the United Kingdom.

(2) Where a person is ordinarily resident in the territory of one Party and is self-employed in the territory of the other Party, or in the territory of both Parties, liability for contributions for him or her shall, in respect of that self-employment, be determined only under the legislation of the Party in whose territory he or she ordinarily resides. Where a person is subject only to the legislation of the United Kingdom in accordance with this paragraph, that legislation shall apply to him or her as if he or she were a self-employed earner in the territory of the United Kingdom but without imposing any liability in respect of profits or gains immediately derived from such employment in Canada.

(3) Where a person is employed in the territory of one Party and self-employed in the territory of the other Party for the same activity, liability for contributions for him or her shall, in respect of that activity, be determined only under the legislation of the Party in whose territory he or she ordinarily resides.

(4) Where, under Article 5, a person is employed in the territory of the United Kingdom while remaining liable for contributions under the legislation of Canada, the legislation of the United Kingdom shall not apply to him or her and he or she shall not be liable, nor entitled, to pay contributions under the legislation of the United Kingdom.

Article 5

Detached Workers

Subject to Articles 6 and 7, where a person compulsorily 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, in respect of that employment, continue to apply to him or her as if he or she 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 five years, and the legislation of the latter Party shall not apply to him or her.

Article 6

Government and Similar Employment

(1) This Convention shall not affect the provisions of the *Vienna Convention on Diplomatic Relations* of 18 April 1961 or the *Vienna Convention on Consular Relations* of 24 April 1963.

(2) Subject to paragraph (1), where any person who is in the Government Service of one Party is employed in the territory of the other Party, the legislation of the former Party concerning liability for contributions shall apply to him or her as if he or she 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 or her as if he or she 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 or she chooses to be insured under the legislation of the former Party, provided that he or she had been so insured at any time 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 United Kingdom but does not choose to do so, he or she shall not be liable, nor entitled, to pay contributions under that legislation.

Article 7

Modification Provisions

Exceptionally, the competent authorities of the Parties may agree to modify the application of Articles 4 to 6 in respect of particular persons or categories of persons.

Article 8

Provisions Applicable to Canada

For the purpose of calculating the amount of benefits under the *Old Age Security Act*: -

- (a) if a person is insured under the *Canada Pension Plan*, or under the comprehensive pension plan of a province of Canada, during any period of residence in the territory of the United Kingdom, that period shall be considered as a period of residence in Canada for that person as well as for that person's spouse and dependants who reside with him or her and who are not compulsorily insured under the legislation of the United Kingdom; and
- (b) if a person is insured under the legislation of the United Kingdom during any period of residence in the territory of Canada, that period shall not be considered as a period of residence in Canada for that person and for that person's spouse and dependants who reside with him or her and who are not insured under the *Canada Pension Plan* or the comprehensive pension plan of a province of Canada.

PART III

BENEFITS

UNDER THE LEGISLATION OF THE UNITED KINGDOM

Article 9

Benefits for Industrial Accidents and Industrial Diseases

Where a person is employed in Canada and the legislation of the United Kingdom applies to him or her in accordance with any of the provisions of Articles 5 to 7, he or she shall be treated under that legislation for the purposes of any claim to benefit in respect of an industrial accident occurring or an industrial disease contracted during that employment, as if the accident had occurred, or the disease had been contracted, in the United Kingdom. Any benefit which would be payable in respect of that claim if the person were in the United Kingdom shall be payable from the date of his or her return to the United Kingdom.

Article 10

Submission of Claim or Appeal

Any claim or appeal which should, for the purposes of Article 9, have been submitted within a prescribed period to the competent authority of the United Kingdom, 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 Canada.

PART IV

MISCELLANEOUS PROVISIONS

Article 11**Arrangements for Administration and Co-operation**

- (1) The competent authorities of the two Parties shall: -
- (a) establish the administrative measures necessary for the application of this Convention;
 - (b) establish liaison offices for the purpose of facilitating the implementation of this Convention;
 - (c) 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;
 - (d) to the extent permitted by the legislation which they administer, communicate to each other any information necessary for the application of this Convention;
 - (e) 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.
- (2) 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.
- (3) 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.
- (4) 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.
- (5) Unless disclosure is required under the laws 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 the other Party is confidential and shall be used only for the purpose of implementing this Convention and the legislation to which this Convention applies.

Article 12**Resolution of Disagreements**

- (1) The competent authorities of the Parties shall make all reasonable efforts to resolve through agreement between them any disagreement about the interpretation or application of this Convention.
- (2) If any disagreement 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 constituted 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 or citizen, as the case may be, 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 or her having the nationality or citizenship, as the case may be, of one of the Parties, the Vice-President or next senior judge of that Court not having the nationality or citizenship, as the case may be, 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 by the two Parties.

Article 13

Understandings with a Province of Canada

The Government of the United Kingdom of Great Britain and Northern Ireland and a province of Canada may conclude understandings concerning any social security matter within provincial jurisdiction in Canada in so far as those understandings are not inconsistent with the provisions of this Convention.

PART V

TRANSITIONAL AND FINAL PROVISIONS

Article 14

Transitional Provisions

(1) A person employed by an employer with a place of business in the territory of one Party, who, at the date of entry into force of this Convention has been 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, and who was subject to the legislation of the other Party, may, upon application by his or her employer, be subject to Article 5 from the date of entry into force of this Convention provided that the employment in the territory of the other Party is not expected to last for more than 5 years from that date. If no application is made, or an application is unsuccessful, he or she shall remain subject to the legislation of the other Party.

(2) Where a person becomes subject to the legislation of Canada in accordance with paragraph (1), he or she shall, notwithstanding Article 4(4), be entitled to pay voluntary contributions under the legislation of the United Kingdom as long as he or she had been insured under that legislation immediately preceding the date of entry into force of this Convention.

Article 15

Life of the Convention

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

(2) The Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Canada for including in pensionable employment, under the *Canada Pension Plan*, certain employment in Canada by the Government of the United Kingdom signed at Ottawa on 13 December 1966 shall terminate on the date of entry into force of this Convention.

Article 16

Entry into Force

This Convention shall enter into force on the first day of the fourth month following the month in which each Party shall have received from the other Party written notification that it has complied with all statutory requirements for the entry into force of this Convention.

IN WITNESS WHEREOF, the undersigned, duly authorised by their respective Governments, have signed this Convention.

DONE in duplicate at London this 16th day of January 1997, in the English and French languages, both texts being equally authoritative.

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

For the Government of Canada;

Nic Bonsor

Pierre S. Pettigrew

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for the modification of the Social Security Administration Act 1992 and the Social Security Contributions and Benefits Act 1992 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 Britain and Northern Ireland and the Government of Canada. The Convention relates to liability for social security insurance contributions arising in respect of employment, and to benefits for industrial accidents and industrial diseases.

A compliance cost assessment of the effect that this instrument would have on the cost of business is available from the Department of Social Security, Better Regulation Unit, 11th Floor, The Adelphi, 1-11 John Adam Street, London WC2N 6HT.