OPINION OF MR ADVOCATE GENERAL MAYRAS DELIVERED ON 14 FEBRUARY 1980 [1]

Mr President,
Members of the Court,

I — This case, which has been assigned to the Third Chamber, is concerned with only a small amount of money but it may have an effect on certain categories of migrant workers which goes beyond its specific issues. It raises difficult questions which will make it necessary for me to give quite involved explanations and I regret that the Irish Government whose legislation is also at issue has not submitted observations. Moreover, no one has appeared for the claimant, Mrs Coonan.

Mrs Coonan was what it has been agreed to call an "elderly Irishwoman". Born on 30 April 1911 in Ireland, she had paid national insurance contributions under the Social Welfare Acts of that country at the full rate as an employed worker from 1963 to 1972. She did not arrive in the United Kindgom until 17 March 1972 when she was nearly 62 years old and she worked there as an employed earner. On that date she had not reached normal retirement age, which in Ireland is 65, but she was over the legal pensionable age in the United Kingdom, which is 60 for women.

The local social security office in the United Kingdom nevertheless took the view that Mrs Coonan was entitled to elect to pay the full flat-rate contributions under the National Insurance Scheme (National Insurance Act 1965). She was therefore registered under that Scheme and given a national registration number and, in so far as the amount of her earnings made it compulsory to do so, paid from 16 April 1973 to 29 September 1974 Class I contributions amounting altogether to £51.16 and, in 1975-76, pursuant to the Social Security Act 1975, contributions based on the Class I earnings limit amounting to £16.74. She was also insured against industrial injuries and paid contributions in that connexion.

The file shows that in February 1974 Mrs Coonan applied for her entitlement to retirement pension to be determined. But the Insurance Officer's answer, dated 12 July 1974, was that she was not entitled to a pension because she had not paid at least 104 contributions before attaining the age of 60.

On 14 November 1975 Mrs Coonan produced to the local social security office of the Department of Health and Social Security, for the purpose of obtaining sickness benefit, a medical certificate of the same date certifying that because of myocardial insufficiency she had been incapable of working since 12 November 1975 and would remain in the same condition until 21 November.

That incapacity lasted until 7 April 1976 and beyond, and Mrs Coonan again claimed cash sickness benefit but her principle claim does not cover those latter claims. However, the decision relating to the principle claim will have an effect on the outcome of her subsequent claims.

1 — Translated from the French.

In fact on 21 November 1975 the Insurance Officer disallowed the claim made by Mrs Coonan on 14 November on the ground that she was over the age of 60 at the date when she became subject to the United Kingdom national insurance scheme and that she was not entitled to a Category A pension on the basis of her own insurance. She was therefore deemed to have ceased to be an employed earner and to have retired when she left Ireland.

The outcome of Mrs Coonan's appeal to the local national insurance tribunal at Bristol on 13 September 1976 was the same.

She appealed from the ruling of that tribunal to the National Insurance Commissioner who by his decision of 10 July 1979 has referred to the Court for a preliminary ruling the *seven questions* reproduced in the Report for the Hearing on the interpretation of Regulation (EEC) No 1408/71 of the Council on the application of social security schemes to employed persons and their families moving within the Community. The National Insurance Commissioner considers that an answer to the questions which he has referred to the Court is necessary to enable him to make his decision, even though Mrs Coonan died on 8 September 1979.

II — Those questions may be reduced in substance to the one question whether a person, who was fully insured by way of social security in Ireland and who went to the United Kingdom in order to work there regularly as an employed earner after attaining the age of 60 and paid in that country sickness and industrial injuries insurance contributions in connexion with that work, is to be regarded as an insured person in the United Kingdom within the meaning of Article 1 (a) of Regulation No 1408/71 for the purpose of qualifying for cash sickness benefit, such benefit being conditional on entitlement to a retirement pension in the United Kingdom. The National Insurance Commissioner would then like to know which is the competent institution for the purpose of determining Mrs Coonan's entitlement to sickness benefit and which Community provisions are applicable.

In order to understand the reason why those questions have been asked it is necessary to throw some light on the general scheme for retirement pensions in the United Kingdom at the relevant time, because the scheme for sickness benefit was closely linked to it. The situation is somewhat complicated owing to the changes which took place on 5 April 1975.

That date is important for two reasons: on the one hand, it coincides with the commencement of the financial year; on the other hand, it is the date of the entry into force of certain provisions of the Social Security Act 1975, which consolidated and amended the previous Acts on certain points. While that Act retains the essence of the previous schemes it introduced an important innovation as far as concerns persons in Mrs Coonan's situation: as from the date in question the obligation to pay insurance contributions in respect of industrial accidents has been abolished, but employed earners retain the right to industrial injuries benefit, as distinct from cash sickness benefit, in the event of the accident risk materializing. The industrial injuries scheme, which until then had been a separate scheme, was put on the same footing as the national insurance scheme. The existing unitary

nature of the British social security scheme was thereby strengthened.

In the United Kingdom the pensionable age at which employed earners qualify for a flat-rate pension is 65 for men and 60 for women. In Ireland the normal retirement age is 65.

Retirement pensions were divided into two kinds: a flat-rate pension and a graduated pension. Before the National Insurance Commissioner it is a pension of the first kind only (a Category A pension within the meaning of Section 28 (1) (b) and Schedule 3, Part I, paragraph 5 of the Social Security Act 1975) which is under consideration.

Apart from satisfying the age qualification, it was necessary that the person concerned, in order to be entitled to such a pension:

1. Should in fact have paid in the United Kingdom at least 156 flat-rate contributions, and that 50 contributions on average each year could be credited to him, whether actually or notionally (in the latter case they are referred to as "stagger credits"); if the person concerned could only be credited with less than 50 but more than 13 contributions on average each year he was entitled to a reduced pension;

2. Should in fact have retired, that is to say have ceased to be regularly employed. The fact that a man over 65 and a woman over 60 earn less than a certain amount per week as employed earners did not prevent them from drawing a retirement pension; but in any case that condition was deemed to have been fulfilled at the age of 70 for men and the age of 65 for women.

If any person who had already reached retirement age and was entitled to a flat-rate pension continued to work and pay sickness insurance contributions, he obviously did so because he thereby expected a deferred benefit, the latter being that when that person finally retired the pension which he expected to receive at that date would be increased by an amount varying according to the period during which he had continued to pay contributions (Section 31 of National Insurance Act 1965). Therefore the fact that the insured person continued to pay sickness insurance contributions did not have as its principal aim and effect the maintenance, by means of cash benefits, of the earning capacity which he would have been guaranteed if he had ceased to work on reaching retirement age. The purpose of these considerations is to answer the question raised by the Court which was answered during the oral procedure.

I now return to the cash sickness benefit.

Under the combined provisions of Section 14 (1) and (2) of the Social Security Act 1975 the person concerned, in order to be entitled to such benefit, must satisfy the conditions required for entitlement to a Category A retirement pension.

According to the Insurance Officer Mrs Coonan did not satisfy the conditions

required of a person over 60: she would only have qualified for a Category A retirement pension, based on her own insurance, if she had "retired from regular employment" and made the necessary claim. The contributions which she paid in the United Kingdom were no help to her because she had never in law been registered under the National Insurance Scheme. Under Sections 4, 6, 14 and 28 of Schedule 3, read together, of the Social Security Act 1975 a woman over pensionable age may not and must not continue to pay sickness insurance contributions if she is gainfully employed after reaching the age of 60 unless she was already registered in the United Kingdom under the National Insurance Scheme before attaining that age.

Moreover, Mrs Coonan had been repaid the £16.74 which she paid by mistake in 1975-76 by virtue of the Social Security Act 1975, and when the National Commissioner made his decision negotiations were in progress for refunding the £51.61 which she had wrongly paid by way of contributions for flat-rate benefit and we were assured at the sitting that since then the contributions have been repaid.

On the other hand, she has not been refunded the industrial injuries insurance contributions paid in 1973/74 and 1974/75, which moreover were very small, because she was bound to pay them under the National Insurance (Industrial Injuries) Act 1965.

III — The Insurance Officer, at least in his written observations, and more especially the Commission are of the opinion that most of the questions referred to the Court are neither relevant nor necessary for settling the dispute. It is somewhat surprising to encounter that attitude on the part of the Insurance Officer, who had been consulted by the National Insurance Commissioner before the latter drew up the questions which he intended to refer to the Court, and above all on the part of the Commission, which to a great extent is alone able to enlighten us.

1. As the representative of the Insurance Officer pointed out in her oral submissions, the crucial issue of the problem is whether a person in Mrs Coonan's situation is to be regarded as a "worker" within the meaning of Article 1 (a) of the regulation for the purpose applying the provisions relating to cash sickness benefit.

The Commission maintains that, since the conditions for affiliation to social security schemes in the various Member States have not been harmonized, this question comes exclusively within the jurisdiction of the national authorities. It recalls that the sole aim of Regulation No 1408/71 is to co-ordinate the national social security schemes and the free movement of benefits, not to harmonize the conditions for affiliation.

As far as concerns Regulation No 1408/71, the importance is said to lie not so much in the fact of being gainfully employed, with the general or special risks inherent in such employment, (sickness, accidents at work, etc.) but in

the fact of being validly affiliated or of paying contributions.

Although that statement was true of Regulation No 3, the first Council regulation on social security for migrant workers, it is certainly no longer true in such an unqualified form in relation to Regulation No 1408/71. Some of the provisions of that regulation go further than mere co-ordination and the Government of the Federal Republic of Germany in its observations on Joined Cases 41 and 121/79, *Testa and Maggio,* referred in this connexion in Article 69 in relation to unemployment.

At all events, that restrictive view can be maintained only if Regulation No 1408/71 correctly effected the requisite co-ordination and if it does not in the end confer upon the persons concerned lesser rights than those which they derive from international agreements or bilateral conventions binding the Member States before its entry into force.

I in fact share the view of First Advocate General J.-P. Warner, put forward in his opinion in Case 112/76, judgment of the Court of 13 October 1977, *Manzoni* [1977] ECR 1647 at p. 1669, that the judgment of 10 December 1969 in Case 34/69, *Duffy* [1969] ECR 597, to the effect that the Community regulations cannot reduce the rights which workers have acquired under national legislation, must be applied notwithstanding the judgment of 7 June 1973 in Case 82/72, *Walder* [1973] ECR 599, which states in paragraph 8 of the grounds of judgment (at p. 604) that Regulation No 1408/71 "replaces, in respect of the persons covered by it, social security Conventions concluded between Member States which are not mentioned in Article 6 or in Annex D [of Regulation No 3], (the corresponding provisions of Regulation No 1408/71 are in Article 7 and Annex II), even if the application of the Conventions is more advantageous to persons entitled to benefits than the said regulation".

If that regulation does not permit account to be taken of periods of affiliation to a social security scheme in another Member State (in this particular case Ireland) in order to allow a woman to continue after the age of 60, by virtue of gainful employment, to be insured against the risk of sickness in another Member State (in this case the United Kingdom), unless she had already been registered and had paid contributions in that latter State before attaining that age, even though she has in fact paid contributions — albeit "by mistake" — in respect of that insurance as well as industrial injuries insurance, then it must be stated, to repeat the words of First Advocate General J.-P. Warner in his opinion in Case 41/77, *Warry,* judgment of 9 November 1977, [1977] ECR 2085 at p. 2102, that the regulation "has glaringly failed in its purpose."

The fact of paying social security contributions for the purpose of obtaining cash benefits is, if not an obligation, at least a right as from the date when a worker continues to be an employed person in a regular manner and for that reason chooses not to draw the pension to which he is in principle entitled. In that case the cash benefits merely offset the loss of earnings resulting from the workers's deferring the drawing of his pension.

The principal objection which was raised before the National Insurance Commissioner and which the Commission developed extensively is that to grant Mrs Coonan's claim would involve *inverted discrimination* against British nationals who have worked in a Member State and return to the United Kingdom under the same conditions as she did: it appears that in that case their claims like hers would be disallowed.

It may first be asked whether it is not unusual for a British citizen to become an employed earner again, after having worked in another Member State or a non-member State, after the age of 65 in the case of a man and of 60 in the case of a woman and whether this apparent absence of discrimination does not in fact place Irish citizens in particular at a disadvantage because most of the employed earners who were nationals of the Member States and likely to go and work in the United Kingdom in these circumstances were Irish.

Assuming that such a claim by a British citizen was disallowed it would still be necessary for the rejection to comply with the Community rules. To my knowledge this point has not yet been raised in or brought before this Court.

Finally, assuming that inverted discrimination in fact results from the application of Community law in the case of British nationals, such discrimination would remain the concern of the Member States and would not preclude nationals of the other States being — ostensibly — better treated (cf. the decision of the National Insurance Commissioner of 14 December 1978 in the light of the judgment of the Court of 28 June 1978 in Case 1/78, *Kenny* [1978] ECR 1489).

But it is unnecessary to dwell on these remarks because the affiliation of the claimant seems to me to be completely in order until the contrary is proved. I apologize for possibly touching here on the application of Community law or on the interpretation of bilateral Conventions which the Court has held not to be within its jurisdiction, even though those Conventions form an integral part of the social security regulations (Article 95 of Regulation No 1408/71 and Article 11 of Regulation No 574/72). That position appears to me to be in keeping with the Court's unchanging concern to protect fundamental rights and with the precepts of President A. M. Donner according to whom the interpretation must be based to a greater extent on an analysis of the case in point in order to attain the objective of Article 177, which is to further uniformity in the application of Community law. The interpretation must be given with due regard to the circumstances for which it has been requested; otherwise it does not elucidate and is at best only a kind of explanation of Community provisions and gives the national court help of only uncertain value and is silent on the points actually at issue. The development of the case-law — again according to the former President — is clearly moving towards an interpretation of the specific issue.

In the light of the foregoing I would make the following observations:

It is true that neither joining a scheme of social protection, even in the absence of fraud, nor the payment of contributions

can confer upon an insured person an acquired right preventing his situation from being adjusted in accordance with the provisions defining his status. But a social security institution cannot call in question *retroactively* the registration under a scheme for employed persons of a person whose affiliation to that scheme was authorized by an individual administrative decision admitting him to membership.

I most certainly do not intend to prejudge the final decision of the Secretary of State, if he is the competent authority to determine this question to whom the National Insurance Commissioner reserves the right to refer the matter (Section 93 (1) (b) of the Social Security Act 1975). But as I have pointed out in my statement of the facts it has to be recorded that Mrs Coonan was registered on her arrival in the United Kingdom under the National Insurance Scheme, was given a registration number and paid contributions. It was only afterwards when she had claimed sickness benefit that it was realized that the contributions had been paid "in error" and that negotiations were opened for the purpose of refunding them to her. That was at all events a mistake of law and not a mistake of fact.

For my part I find that evidence that the claimant's affiliation was unquestionably the subject-matter of an administrative decision, which was not after all illegal, lies in the fact that that affiliation was made possible by the eighteen contributions with which she was credited as having notionally paid between the commencement of the contribution year and the actual commencement of compulsory insurance. This appears to be the effect of the provisions of the Reciprocal Agreement on Social Security, signed in London on 29 March 1960, between the Governments of the United Kingdom of Great Britain and Northern Ireland and the Republic of Ireland (SI 1960, No 707), to which the National Insurance Commissioner refers with caution in his decision but on which the Commission remains completely silent.

That Agreement is also relevant in Case 143/79, *Walsh*, which has been assigned to the Second Chamber and I take the liberty of quoting from it as published in the United Nations Treaty Series (Volume 371, pp. 5 *et seq.* for the French text):

"Being resolved to co-operate in the social field,

Desiring to make arrangements enabling persons, who go from one country to the other to receive social security benefits for sickness, maternity, unemployment, widowhood and orphanhood,"

the two governments agreed in particular, as regards sickness benefit, upon the following provision:

Article 7

"(1) ... where a person insured under the Act of one country is in the other country then ... for the purpose of sickness benefit and maternity allowance —

(a) the provisions of the Act of the first-mentioned country shall not apply in his case; and

(b) in the application to him of the provisions of the Act of the other country, as may yield the higher rate of benefit,

(i) ...

(ii) insurance contributions of the appropriate class paid or credited and sickness benefit or maternity allowance paid or claimed in the first-mentioned country shall be treated as if they had been respectively insurance contributions of the appropriate class paid or credited and sickness benefit or maternity allowance paid or claimed in that other country:

Provided that —

(aa) in the case of a person who has been insured under the Act of the Republic of Ireland and is in Great Britain, unless and until not less than thirteen such contributions have been paid by him under the Great Britain Act in respect of contribution weeks since he last arrived in Great Britain, or unless not less than twenty-six such contributions have been paid by or credited to him thereunder in respect of the relevant contribution year, or unless the day in respect of which the benefit or allowance is claimed is in a period of interruption of employment under the Great Britain Act and he was before he last arrived in Great Britain entitled to sickness benefit or maternity allowance under that Act in respect of a day in that period, the rate at which any such benefit or allowance (including any increase) shall be payable by virtue of subparagraph (b) (ii) of this paragraph shall not exceed the rate at which it would (apart from any provision as to overlapping benefits) have been payable to him under the provisions of the Act of the Republic of Ireland if he had remained in that country and had fully satisfied the contribution conditions of that Act."

The Act of Accession (Article 29, Annex I, IX. Social Policy) contains in Item No 30. Ireland — United Kingdom under the heading "Provisions of social security conventions remaining applicable notwithstanding Article 6 of the Regulation" the word "None". Thus in principle the 1960 Reciprocal Agreement was no longer applicable. But the amendments made to Regulation No 1408/71 by the Act of Accession entered into force only on 1 April 1973. I do not know whether that Agreement has been terminated but it definitely still applied to Mrs Coonan when she arrived in the United Kingdom on 17 March 1973.

As far as concerns the period after 1 April 1973 the following should be borne in mind:

"Whereas the changes that have been made in United Kingdom legislation (this

is a reference to the Social Security Act 1975) call for special provisions to implement the rules relating to aggregation of periods so that, when determining the right to benefits provided for by this legislation, periods completed in the other Member States may be taken into account . . ."

Article 1 (2) (a) (ii) of Council Regulation (EEC) No 1209/76 of 30 April 1970 replaces Part A, Point 30, of Annex II to Regulation No 1408/71 (Provisions of social security conventions remaining applicable notwithstanding Article 6 of the Regulation) with the words: "Article 8 of the Agreement of 14 September 1971 on social security" so as to allow, for the purpose of calculating old-age or survivor's pension in one of the two countries, the use of notional contributions awarded in the other country in connexion with sickness insurance. The Community legislature thus filled a gap in the rules in respect of workers of those two Member States as far as concerns the use and transfer of notional contributions awarded in the context of sickness insurance for the calculation of old-age or survivor's pension. That provision entered into force *retroactively* as from 1 April 1973.

In the same connexion the recitals in the preamble to Council Regulation (EEC) No 2595/77 may be quoted, where they state that "a worker who is receiving a pension under the legislation of one Member State while working in the territory of another Member State should be allowed to be insured under the legislation of the latter Member State even if the legislation of that State exempts pensioners from compulsory insurance", and also that "workers should also be enabled to receive, without any restrictions, a pension acquired under the legislation of a Member State and to have a pension which was awarded under the legislation of a Member State postponed in order to receive the increase in pension due as a result of that postponement".

There has not therefore been any break in the period during which Mrs Coonan was subject to social security provisions and the reason why eighteen statutory contributions were awarded to her as stagger credits is that she was entitled and indeed required to be validly registered in the United Kingdom. It was only after she made her claim that it was realized that her registration had been undertaken "in error".

The representative of the Insurance Officer acknowledged during the oral procedure that Mrs Coonan was a worker for the purposes of industrial injuries insurance benefit and that consequently she was to be regarded as insured against all the risks covered by national insurance. However, the Commission considers that that point need not be argued. In my view the point on the contrary is decisive — the National Insurance Commissioner asked a specific question on it — and, even if the reasons which I have mentioned are not sufficient for Mrs Coonan to be treated as insured for the purposes of sickness benefit, the fact that she was entitled to industrial injuries benefit is sufficient for her to be regarded as being entitled to cash sickness benefit. Under the United Kingdom legislation an

employed earner who pays contributions is insured not for one particular benefit but for all the contributory benefits provided for by that legislation, although entitlement to a specific benefit is made subject to the fulfilment of the conditions for payment of contributions provided for in respect of that benefit. If Mrs Coonan, instead of falling ill, had been the victim of an accident at work she would have been entitled to higher compensation by way of industrial injuries benefit than by way of standard sickness benefit, in so far as the aim of industrial injuries and sickness benefits is to make good loss of wages resulting from incapacity for work, they are similar. The Insurance Officer added that this conclusion is in keeping with the opinion which I delivered on 13 July 1976 in Case 17/76, *Brack*, judgment of 29 September 1976 [1976] ECR 1429 at p. 1454.

I note that in the final analysis the Insurance Officer admitted, with laudable honesty, that he did not question the fact that Mrs Coonan was a worker for the purpose of cash sickness benefit and that he had himself conceded this point before the National Insurance Commissioner. I therefore start from the premise that a person in Mrs Coonan's situation was validly registered under the National Insurance Scheme in the United Kingdom and it is on this basis that I shall examine briefly the remainder of the questions which have been referred to the Court.

2. Those questions amount in substance to ascertaining whether in this case the competent institution for determining entitlement to sickness benefit is that of the United Kingdom, and if the answer to that question is in the affirmative, which are the provisions which have to be applied.

Since the question of Mrs Coonan's registration has been settled it seems to me to be clear that the "competent institution" in such a case is that of the United Kingdom, since Article 1 (o) (i) of Regulation No 1408/71 provides that that expression shall mean "the institution with which the person concerned *is* insured at the time of the application for benefit". By virtue of Article 4 (2) of Regulation (EEC) No 574/72 of the Council and Annex 2 thereto the competent institution in the United Kingdom for cash sickness benefit, as far as Great Britain is concerned, is the Department of Health and Social Security.

I would only add that, if perchance the British institution entertained doubts about its competence it was under a duty, by virtue of Article 86 of that regulation, to send Mrs Coonan's claim forthwith to the competent institution, either directly or through the intermediary of the competent authorities of the Member States concerned.

If, as I propose, the Court answers these first two questions in the affirmative, the third question referring to the case of the worker who is insured only against industrial injuries need not be considered. On the other hand, it remains necessary for me to express an opinion on the last four questions; in fact those questions would be irrelevant only if the competent institution were to be that of Ireland.

As far as concerns sickness benefit Article 18 (1) of Regulation No 1408/71, as amended by Article 1 (3) of Regulation (EEC) No 2864/72 of the Council of 19 December 1972, provides that "The competent institution of a Member State whose legislation makes the acquisition, retention or recovery of the right to benefits conditional upon the

completion of insurance periods or periods of employment or residence shall, to the extent necessary, take account of insurance periods or periods of employment or residence completed under the legislation of any other Member State as if they were periods completed under the legislation which it administers".

With regard to persons in the same situation as Mrs Coonan, British legislation does not make the acquisition of the right to benefits conditional upon the completion of insurance periods, periods of employment or residence; the rate of sickness benefit is fixed at the rate at which the old-age pension would have been payable, provided that such persons were entitled to a flat-rate old-age pension, that is to say if they had paid thirteen weekly contributions pursuant to the law of Great Britain since the date of their last arrival in that country or if they had paid a minimum (or had been credited with a minimum) of twenty-six contributions pursuant to the said law in respect of the relevant contribution year.

With regard to old-age pensions Article 45 (1) of Regulation No 1408/71 (as amended by Article 1 (13) of the above-mentioned Regulation No 2864/71) provides that "An institution of a Member State whose legislation makes the acquisition, retention or recovery of the rights to benefits conditional upon the completion of insurance periods or periods of residence shall take into account, to the extent necessary, insurance periods or periods of residence completed under the legislation of any Member State as though they had been completed under the legislation which it administers".

On the basis of the combined provisions of paragraph 17, added to Annex V (b) "Point I. United Kingdom" of Regulation No 1408/71 by Article 1 (4) (b) (ii) of Council Regulation (EEC) No 1209/76, which has retroactive effect to 6 April 1975, and of Schedule 3, Part 1, paragraph 5 of the Social Security Act 1975 the competent institution in Great Britain takes into account insurance periods and periods of residence completed under the legislation of the other Member States for the purposes of entitlement to a pension under its own legislation.

As long as the Secretary of State has not set aside — if indeed that is lawful from the Community standpoint — the decision whereby Mrs Coonan was registered under the National Insurance Scheme in the United Kingdom the contributions which she paid in Ireland must be taken into account by the competent institution by virtue of Article 46 (2) for the purpose of calculating her pension.

However, if the amount obtained on the basis of Article 46 were the same as that obtained on the basis of the calculation provided for in Article 18 there would be no grounds for drawing a distinction betweeen the two cases.

Having come to the end of this analysis I confess that I find it difficult to formulate meaningful answers to the questions referred by the National Insurance Commissioner, since neither the Insurance Officer nor the Commission have made precise proposals.

My conclusions, however, are as follows:

1. As far as the United Kingdom is concerned, the provisions of Regulation (EEC) No 1408/71 of the Council entered into force on 1 April 1973.

2. A worker who, when he claims sickness benefit, is registered under the National Insurance Scheme of a Member State and who pays contributions at the full rate to the competent institution of that State is insured *with that institution* within the meaning of Article 1 (o) (i) of Regulation No 1408/71 pursuant to both Article 18 and Article 46 of that regulation, as long as his registration under the said scheme has not been validly set aside by the competent authority.

3. A worker who is insured with an institution of a Member State only in respect of industrial injuries must be regarded as insured with that institution within the meaning of Article 1 (o) (i) of the said regulation for the purposes of Article 18.

4. For the purpose of calculating in the United Kingdom the amount of old-age pension and also of sickness benefit account should have been taken of the provisions of Article 1 (3) and (13) of Regulation No 2864/72 of the Council and also of the provisions of Article 1 (2) (a) (ii) and (4) (b) (ii) of Council Regulation No 1209/76.