

No. 31864

**NEW ZEALAND
and
NETHERLANDS**

Agreement on social security. Signed at Wellington on 8 October 1990

Authentic text: English.

Registered by New Zealand on 1 June 1995.

**NOUVELLE-ZÉLANDE
et
PAYS-BAS**

Accord en matière de sécurité sociale. Signé à Wellington le 8 octobre 1990

Texte authentique : anglais.

Enregistré par la Nouvelle-Zélande le 1^{er} juin 1995.

AGREEMENT¹ ON SOCIAL SECURITY BETWEEN THE GOVERNMENT OF NEW ZEALAND AND THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS

The Government of New Zealand

and

The Government of the Kingdom of The Netherlands,

WISHING to maintain and strengthen the warm and friendly relations existing between the two countries and allow the payment of pensions from The Netherlands in New Zealand and the payment of New Zealand benefits in The Netherlands in respect of citizens taking up permanent residence in the other country,

HAVE agreed upon the following:

PART I

DEFINITIONS AND SCOPE

ARTICLE 1

Definitions

1. In this Agreement unless the context otherwise requires:
 - a) "benefit" means a New Zealand benefit or pension payable in terms of the Social Security Act 1964 or

¹ Came into force on 1 February 1992, i.e., the first day of the third month following the date of the last of the notifications (of 8 October and 6 November 1991) by which the Contracting Parties had informed each other of the completion of the required statutory and constitutional procedures, in accordance with article 28 (1).

the Social Welfare (Transitional Provisions) Act 1990; and for The Netherlands means: any benefit or pension provided for in the laws of The Netherlands including any increase of, or additional amount payable with a benefit or pension;

- b) "competent authority" means in relation to New Zealand, the Director-General of Social Welfare or an authorised representative of the Director-General; and in relation to The Netherlands, the Minister of Social Affairs and Employment;
- c) "institution" in relation to a contracting party means, an institution which is responsible for the application of this agreement in respect of a contracting party;
- d) "social security laws" means in relation to a contracting party the laws specified in Article 2 in relation to that contracting party;
- e) "New Zealand" means New Zealand only and not the Cook Islands, Niue and Tokelau;

"The Netherlands" means, the Kingdom of The Netherlands in Europe;
- f) "national" means in relation to New Zealand, a New Zealand citizen or New Zealand national and in relation to The Netherlands, a person of Netherlands nationality.

2. In the application by a contracting party of this Agreement in relation to a person, any term not defined in this Article shall, unless the context otherwise requires, have the meaning assigned to it in the social security laws of either contracting party.

ARTICLE 2

Legislative Scope

1. The legislation within the scope of this agreement is:

a) in relation to New Zealand: the Social Security Act 1964 and the Social Welfare (Transitional Provisions) Act 1990 as amended at the date of signature of this Agreement and any legislation that subsequently amends, supplements or replaces that Act, in so far as that Act and that legislation provide for and for all matters in relation to the following benefits:

- i) guaranteed retirement income;
- ii) invalids benefits;
- iii) widows benefits;
- iv) domestic purposes benefits paid to widowers; and
- v) veterans pension

b) in relation to The Netherlands laws governing:

- i) general old age insurance;
- ii) invalidity insurance; and
- iii) general survivors insurance

and for the application of Article 5 also its laws on:

- iv) sickness insurance;
- v) unemployment insurance; and
- vi) childrens allowances

2. Notwithstanding the provisions of paragraph 1, the legislation within the scope of this Agreement shall not include any laws made, whether before or after the date of signature of this Agreement, for the purposes of giving effect

to any bilateral Agreement on social security entered into by either contracting party.

3. The competent authorities of the contracting parties shall notify each other of legislation that amends, supplements or replaces the laws within the scope of this Agreement promptly after the such mentioned laws are enacted.

4. In relation to The Netherlands, this Agreement shall not apply to any social and medical assistance schemes.

ARTICLE 3

Personal Scope

Unless otherwise provided this Agreement shall apply to all persons who are or have been subject to the laws of one or both of the contracting parties as well as, in the case of The Netherlands to people deriving their rights from such persons.

ARTICLE 4

Equality of Treatment

1. In any case in which entitlement to a benefit under the social security laws of New Zealand and of The Netherlands depends, in whole or in part, on nationality of a contracting party, a person who is a national of the other contracting party shall, for the purposes for a claim for that benefit, be deemed to be a national of the first mentioned contracting party.

2. The persons to whom this Agreement applies shall be treated equally by each of the contracting parties in regard to rights and obligations which arise by virtue of this Agreement in relation to each contracting party.

ARTICLE 5

Secondment

1. Where a person, who is subject to the legislation of The Netherlands, in the service of an employer having its place of business in the territory of The Netherlands is sent from that territory by that employer to work in the territory of New Zealand for a period not expected to exceed 5 years, the person may remain subject to the legislation of The Netherlands as if he were employed in the territory of The Netherlands.

2. If the duration of the work is expected to exceed beyond the afore-mentioned duration, a person, who is subject to the legislation of The Netherlands in the service of an employer having his place of business in the territory of The Netherlands, is sent from that territory by that employer to work in the territory of New Zealand, the person may, if justified by special reasons, remain subject to the legislation of The Netherlands as if he were employed in the territory of The Netherlands.

3. If the actual duration of work of the person described in paragraph 1 exceeds the expected period of work owing to unforeseeable circumstances that person may remain subject to the legislation of The Netherlands as if he were employed in the territory of The Netherlands.

4. For the purposes of the Netherlands legislation, a person who was subject to the Netherlands legislation in accordance with the provisions of this article shall be considered to be resident in the territory of The Netherlands.

5. According to the provisions of this article the Netherlands legislation shall be applicable if the employer or the employee has applied for a certificate of secondment within three months after the first day of secondment or as expressed in paragraph 3 before the end of the expected period of secondment and this certificate has been issued to the person concerned.

PART II

A. PROVISIONS RELATING TO NEW ZEALAND BENEFITS

ARTICLE 6

Totalisation of Periods of Residence and Periods of Insurance

Where a person having reached the age of 65 and residing in New Zealand cannot claim the periods of residence in New Zealand under New Zealand social security laws in order to be entitled to New Zealand guaranteed retirement income, the New Zealand institution will take into account the periods of residence and/or insurance in The Netherlands as if they were periods of residence in New Zealand.

ARTICLE 7

New Zealand Guaranteed Retirement Income and Veterans Pension Outside New Zealand

1. Subject to paragraphs 3 and 4 a person receiving or qualified to receive New Zealand guaranteed retirement income or veterans pension shall be entitled to receive the payment of that benefit while residing in The Netherlands.

2. Subject to paragraphs 3 and 4 a person over pension age under the Netherlands social security laws who is residing in The Netherlands and who has had previous residence in New Zealand after the age of 20, shall be entitled to receive payment of New Zealand guaranteed retirement income.

3. The amount of the benefit referred to in paragraphs 1 and 2 shall be calculated in accordance with the following formula:

$$\frac{\text{number of whole years residence in New Zealand}}{30 \text{ years}} \times \text{maximum benefit rate}$$

subject to the following provisions:

- i) all periods of residence in New Zealand shall be aggregated;
- ii) no payment shall be made where accumulated residence in New Zealand is less than 10 years;
- iii) for periods of residence in New Zealand between 10 and 15 years, payment shall be made at a rate of 50% of guaranteed retirement income or veterans pension;
- iv) for periods of residence in New Zealand in excess of 30 years, payment shall be made at a rate of 100% of guaranteed retirement income or veterans pension.

4. The amount of the benefit referred to in paragraphs 1 and 2 shall be payable without regard to the Netherlands old age benefit.

ARTICLE 8**Widows Benefit and Domestic Purposes Benefit for Widowers
Outside New Zealand**

1. A person receiving or qualified to receive a New Zealand widows benefit, or domestic purposes benefit, in the case of a widower, shall be entitled to receive payment of that benefit while residing in The Netherlands.
2. The rate of any widows benefit payable in accordance with paragraph 1 of this Article shall be the appropriate amount specified in the Third Schedule to the Social Security Act 1964.
3. The rate of any domestic purposes benefit payable in accordance with paragraph 1 of this Article shall be the appropriate rate specified in Clause 1 of the Sixteenth Schedule to the Social Security Act 1964.

ARTICLE 9**Invalids Benefit Outside New Zealand**

1. A person receiving or qualified to receive a New Zealand invalids benefit shall be entitled to receive that benefit while residing in The Netherlands.
2. The rate of invalids benefit payable in accordance with paragraph 1 of this Article shall be the appropriate rate specified in the Sixth Schedule to the Social Security Act 1964. In the case of a married person with or without dependent children, the appropriate rate shall be specified in Clause 1 (g) of that Schedule.

ARTICLE 10

Determination of Entitlement to New Zealand Benefits

1. In determining entitlement to a New Zealand widows, invalids benefit or domestic purposes benefit for widowers, in respect of a person ordinarily resident in New Zealand, any period of residence and/or insurance in The Netherlands shall be regarded as a period of residence in New Zealand for the purposes of determining the residential qualifications specified in New Zealand laws.

2. In determining entitlement to a New Zealand widows benefit or domestic purposes benefit for widowers in respect of a person ordinarily resident in New Zealand any dependent child of that person born in The Netherlands shall be deemed to have been born in New Zealand. For the purposes of this paragraph the term "dependent child" means a child in respect of whom New Zealand family benefit is payable to the applicant.

ARTICLE 11

Treatment of Netherlands Voluntary Insurance

1. Netherlands benefits based on periods of voluntary insurance under the Netherlands Old Age Pensions Act will not be considered as benefits which are directly deductible under the social security laws of New Zealand, from New Zealand benefits.

2. Netherlands benefits based on voluntary insurance under the Netherlands General Survivors Insurance Act will not be considered as benefits that are directly deductible under the social security laws of New Zealand, from New Zealand benefits.

ARTICLE 12**Payment Overseas of New Zealand Totalised Benefits**

Where a benefit including guaranteed retirement income has been granted using the provisions of Articles 6 and 10 (1) no part of that benefit shall be paid outside New Zealand, except as is provided for by the social security laws of New Zealand as they affect temporary absence overseas.

ARTICLE 13**Payment of Supplementary Benefits**

Where a benefit according to this Agreement is being paid by the competent institution of New Zealand while the beneficiary is residing in New Zealand, there shall also be payable by that institution any supplement or additional amount that is provided for under the social security laws of New Zealand.

ARTICLE 14**Residence or Presence in a Third Country**

A person who is receiving a New Zealand benefit in The Netherlands by virtue of this Agreement shall continue to receive such New Zealand benefit if he or she transfers his or her residence to a third state, provided that New Zealand has a Social Security Reciprocal Agreement with that third state.

B. PROVISIONS RELATING TO THE NETHERLANDS BENEFITS**ARTICLE 15****Old Age Benefits**

1. The Netherlands institution shall determine the old age benefit directly and exclusively on the basis of periods of insurance completed under the Netherlands General Old Age Pensions Act.
2. Subject to paragraphs 3 and 4, periods before January 1, 1957 during which a national of a contracting party resided in the territory of The Netherlands after reaching the age of fifteen years or during which, while residing in another country the person was remuneratively employed in the territory of The Netherlands, shall also be considered as periods of insurance if the person does not satisfy the conditions of the Netherlands legislation permitting such periods to be treated for that person as periods of insurance.
3. The period referred to in paragraph 2 shall be taken into consideration in the calculation of the old age benefit only if the person concerned has been insured under the Netherlands General Old Age Pensions Act and has resided for at least six years in the territory of one or both contracting parties after reaching the age of fifty-nine years and only while the person is residing in the territory of either contracting party. However, the periods before January 1, 1957 shall not be taken into consideration if they coincide with periods taken into consideration for the calculation of an old age benefit under the legislation of a country other than The Netherlands.
4. Where the sum of the amount of the Netherlands old age benefit according to this Agreement or according to the Netherlands General Old Age Pensions Act and the amount of the New Zealand guaranteed retirement income or veterans pension

under this Agreement or New Zealand legislation for a person who resides in The Netherlands, exceeds the maximum amount according to the Netherlands Old Age Pensions Act, the Netherlands institution shall adjust its benefit by an amount equal to the excess amount.

5. The reduction referred to in paragraph 4 shall not affect the amount that is based on periods of insurance after January 1, 1957 according to the Netherlands General Old Age Pensions Act.

ARTICLE 16

Survivors Benefits

1. The Netherlands institution shall determine the survivors benefit directly and exclusively on the basis of the Netherlands General Survivors Insurance Act.

2. A person receiving or qualified to receive a Netherlands survivors benefit shall be entitled to receive the payment of that benefit while residing in the territory of New Zealand.

ARTICLE 17

Invalidity Benefits

1. The Netherlands institution shall determine the invalidity benefit directly and exclusively on the basis of the Netherlands Disablement Insurance Act.

2. A person receiving or qualified to receive a Netherlands invalidity benefit shall be entitled to receive the payment of that benefit while residing in the territory of New Zealand.

PART III

MISCELLANEOUS PROVISIONS

ARTICLE 18

Lodgement of Claims

1. An application duly lodged for a benefit under the legislation of one of the contracting parties shall be regarded as an application duly lodged under the legislation of the other contracting party.

2. The date of receipt of any application or other document submitted to one competent authority or institution shall be regarded as the date of receipt of such application or other document by the other competent authority or institution. The application or document shall be transmitted without delay to the institution of the other contracting party.

ARTICLE 19

Determination and Commencement of Claims

1. The commencement date for payment of a benefit payable by virtue of this Agreement shall be determined in accordance with the social security laws of the contracting party concerned but in no case shall commence earlier than the date on which this Agreement enters into force.

2. Any period of insurance, residence or remunerative employment completed before the date of entry into force of this Agreement shall be taken into account for the purpose of determining the right to a benefit under this Agreement.

ARTICLE 20

Appeals

1. Any person affected by a decision of the competent authority or institution of a contracting party, in relation to a matter arising by virtue of this Agreement, shall have the same rights to a review by or appeal to, administrative or judicial bodies of that contracting party, as provided for under the domestic laws of the contracting party.

2. Documents relating to reviews or appeals that may be made to administrative or judicial bodies established by the social security laws of one of the contracting parties may be lodged in the territory of the other contracting party, and any documents duly lodged in that manner shall be regarded as duly lodged for the purposes of those laws.

3. The date on which a document is duly lodged in the territory of one of the contracting parties in accordance with paragraph 2 shall determine whether that document is lodged within any time limit specified by the laws or administrative practices of any other contracting party which govern the appeal concerned.

ARTICLE 21

Recovery of Overpayments

1. Where:

- a) an amount paid by one of the parties to a person in respect of a benefit exceeded the amount if any, that

was properly payable, whether by virtue of this Agreement or otherwise, in respect of that benefit; and

- b) a benefit of analogous type is payable by the other contracting party to that person, whether by virtue of this Agreement or otherwise,

the institution of that other contracting party shall, if requested by the other institution to do so, and in accordance with this Article, deduct the amount equivalent to the excess payment referred to in sub-paragraph (a) from the amount due in respect of the last mentioned benefit.

2. The amount of an excess payment referred to in paragraph 1 shall be the amount determined by the institution of the contracting party by whom the excess payment was made.

3. The rate of deductions made in accordance with paragraph 1 from amounts due in respect of a benefit, and any incidental or related matters, shall be determined by the institution of the contracting party by whom the benefit is payable, in accordance with the social security laws or practice of that contracting party.

4. Amounts deducted by the institution of one of the contracting parties in accordance with paragraph 1, and any amounts received by that institution pursuant to arrangements referred to in paragraph 3, shall be remitted to the other institution as agreed between the institutions or in administrative arrangements made pursuant to Article 23.

ARTICLE 22

Exchange of Information and Mutual Assistance

1. The competent authorities shall communicate to each other any information necessary for the application of this Agreement or of the respective social security laws of the contracting parties concerning all matters arising under this Agreement or under those laws.

2. The institutions shall:

- a) furnish assistance to one another with regard to the determination or payment of any benefit or pension under this Agreement or any other entitlement under the respective social security laws as if the matter involved the application of their own laws;
- b) at the request of one to the other, assist each other in relation to the implementation of Agreements on social security entered into by either of the two contracting parties with third states, to the extent and in the circumstances specified in administrative arrangements made in accordance with Article 23.

3. The assistance referred to in paragraph 2 shall be provided free of charge.

4. Any information transmitted in accordance with this Agreement to an institution shall be protected in the same manner as information obtained under the social security laws of the receiving party.

5. In no case shall the provisions of paragraphs 2 and 4 be construed so as to impose on the institution of a contracting party the obligation to:

- a) carry out administrative measures at variance with the laws or the administrative practices of that or the other contracting party; or
- b) supply particulars which are not obtainable under the laws or in the normal course of that or the other contracting party.

ARTICLE 23

Administrative Arrangements

1. The competent authorities of the contracting parties shall establish by means of an administrative arrangement the measures necessary for the implementation of this Agreement.
2. Liaison bodies shall be designated to facilitate the implementation of this Agreement.

ARTICLE 24

Language of Communication

The competent authorities and institutions may correspond directly with the other and with any person wherever that person may reside whenever it is necessary for the application of this Agreement. The correspondence may be in the New Zealand or the Netherlands language.

ARTICLE 25**Currency**

1. Payments under this Agreement may be validly made in the currency of the contracting party making the payment.
2. Money transfers effected under this Agreement shall be made in accordance with any relevant agreements in force between contracting parties at the time of transfer.
3. In case provisions designed to restrict the exchange or exportation of currencies are introduced by either contracting party, the Governments of both contracting parties shall immediately decide on the measures necessary to ensure the transfer of sums owed by either contracting party or institution under this Agreement.

ARTICLE 26**Settlement of Disputes**

1. The competent authorities of the contracting parties shall settle, to the extent possible, any disputes which arise in interpreting or applying this Agreement according to its spirit and fundamental principles.
2. The contracting parties shall consult promptly at the request of either concerning matters which have not been settled by the competent authorities in accordance with paragraph 1.
3. If the dispute has not been settled within six months following the first consultation prescribed in paragraph 2 of

this Article, it shall be submitted to an arbitral tribunal whose composition and procedure shall be agreed upon by the contracting parties. The arbitral tribunal shall settle the dispute according to the fundamental principles and in the spirit of the present Agreement. The decision by the arbitral tribunal shall be final and binding upon the contracting parties.

ARTICLE 27

Review of the Agreement

The contracting parties may agree at any time to review any of the provisions of this Agreement and, in any case, shall, within the period of 1 year commencing on the date on which this Agreement enters into force, appoint a committee of experts to review and report to the competent authorities on the operation and effectiveness of the Agreement.

ARTICLE 28

Entry into Force and Termination

1. Both contracting parties shall notify each other in writing of the completion of their respective statutory and constitutional procedures required for the entry into force of this Agreement. The Agreement shall enter into force on the first day of the third month following the date of the last notification.

2. Subject to paragraph 3, this Agreement shall remain in force until the expiration of 12 months from the date on which either contracting party receives from the other written notice

through the diplomatic channel of the intention of either party to terminate the Agreement.

3. In the event that this Agreement is terminated in accordance with paragraph 2, the Agreement shall continue to have effect in relation to all persons who by virtue of this Agreement:

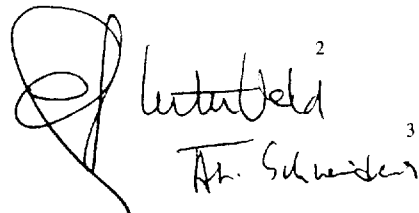
- a) at the date of termination, are in receipt of benefits or pensions; or
- b) prior to the expiry of the period referred to in that paragraph, have lodged claims for, and would be entitled to receive benefits or pensions.

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

DONE in two copies in the English language at Wellington, New Zealand this *eight* day of October 1990.

A handwritten signature in black ink, appearing to read "Michael Cullen", with a small superscript "1" to its right.

For the Government
of the New Zealand

A handwritten signature in black ink, appearing to read "W. R. Verhoeven", with a small superscript "2" to its right. Below it, the name "Th. Schwaninger" is written in a smaller, less legible hand, with a small superscript "3" to its right.

For the Government
of the Kingdom of the Netherlands

¹ Michael Cullen.

² W. R. Verhoeven.

³ Illegible.