

Social Welfare (Reciprocity with the Netherlands) Order 2003

(SR 2003/216)

Pursuant to section 19 of the Social Welfare (Transitional Provisions) Act 1990, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister for Social Development and Employment (made after the Privacy Commissioner had presented to the Minister for Social Development and Employment and the Minister of Justice a report on the matters referred to in subsection (2A) of that section), makes the following order.

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Note

This order is administered in the Ministry of Social Development.

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- 1 Title**
This order is the Social Welfare (Reciprocity with the Netherlands) Order 2003.
- 2 Commencement**
This order comes into force on 1 November 2003.
- 3 Agreement, notes, and protocol adopted**
- (1) The provisions contained in the Agreement on Social Security between the Government of New Zealand and the Government of the Kingdom of the Netherlands (which was done at The Hague on 30 June 2000 and is set out in Schedule 1), as amended by the notes and protocol referred to in subclauses (2) and (3), have force and effect so far as they relate to New Zealand.
- (2) The provisions contained in the diplomatic notes between the Government of New Zealand and the Government of the Kingdom of the Netherlands (which amend the agreement referred to in subclause (1) and are set out in Schedule 2), as amended by the protocol referred to in subclause (3), have force and effect so far as they relate to New Zealand.
- (3) The provisions contained in the Protocol to the Agreement on Social Security between the Government of New Zealand and the Government of the Kingdom of the Netherlands (which

was done at Wellington on 10 March 2003, amends the agreement referred to in subclause (1), and is set out in Schedule 3), have force and effect so far as they relate to New Zealand.

4 Modification of enactments

The provisions of the following enactments have effect subject to such modifications as may be required for the purpose of giving effect to the agreement, notes, and protocol referred to in clause 3:

- (a) the Social Welfare (Transitional Provisions) Act 1990:
- (b) the Social Security Act 1964:
- (c) Part 1 of the New Zealand Superannuation and Retirement Income Act 2001:
- (d) the regulations and orders in force under those Acts.

Paragraph (c) was amended, as from 21 April 2005, by section 9(2) New Zealand Superannuation and Retirement Income Amendment Act 2005 (2005 No 42) by substituting the words “New Zealand Superannuation and Retirement Income Act 2001” for the words “New Zealand Superannuation Act 2001”.

5 Consequential revocation

The Social Welfare (Reciprocity with The Netherlands) Order 1990 (SR 1990/359) is revoked.

Schedule 1

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**Agreement on Social Security between
the Government of New Zealand and
the Government of the Kingdom of the
Netherlands**

Preamble

The Government of New Zealand

and

The Government of the Kingdom of the Netherlands,

WISHING to extend and modify the Agreement on Social Security between the Government of New Zealand and the Government of the Kingdom of the Netherlands done at Wellington on 8 October 1990; and

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:

I

DEFINITIONS AND SCOPE

ARTICLE 1 Definitions

- 1 In this Agreement unless the context otherwise requires:
- (a) **benefit**, for New Zealand means a New Zealand benefit or pension payable in terms of the Social Security Act 1964 or 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 by virtue of these laws;
 - (b) **competent authority** means in relation to New Zealand, the chief executive of the Department of Social Welfare or an authorised representative of the chief executive; and in relation to the Netherlands, the Minister of Social Affairs and Employment;
 - (c) **institution** in relation to a Contracting Party means, the institution or institutions that are responsible for the application of this Agreement in respect of that Contracting Party;
 - (d) **month** means a calendar month, but where fractions of a month are aggregated, a month means 30 days;
 - (e) **social security laws** means in relation to a Contracting Party the laws specified in Article 2 in relation to that Contracting Party;
 - (f) **New Zealand** means New Zealand only (and not the Cook Islands, Niue and Tokelau); “The Netherlands” means the Kingdom of the Netherlands in Europe;
 - (g) **national** means in relation to New Zealand, a New Zealand citizen and in relation to the Netherlands, a person of Netherlands nationality;

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- (h) **1990 Agreement** means the Agreement on Social Security between the Government of New Zealand and the Government of the Kingdom of the Netherlands done at Wellington on 8 October 1990.
- 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) New Zealand superannuation;
 - (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) sickness insurance;
 - (ii) general old age insurance;
 - (iii) invalidity insurance for employed and self employed persons;
 - (iv) general survivors insurance; and
 - (v) children's allowances and for the application of Article 5 also its laws on:
 - (vi) unemployment insurance; and
 - (vii) children's allowances.
- 2 The Agreement shall only apply to legislation specified in paragraph 1. This Agreement shall not apply to any agreement

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on social security that either Contracting Party has concluded with a third Party or to any laws or regulations that amend the legislation specified in paragraph 1 of this Article for the purpose of giving effect to such an agreement.

- 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 the nationality of a Contracting Party, a person who is a national of the other Contracting Party shall, for the purposes of 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 regards 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 or she were employed in the territory of the Netherlands.

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- 2 If the duration of the work is expected to exceed beyond the
aforementioned duration, a person, who is subject to the legis-
lation 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 or
she were employed in the territory of the Netherlands.
- 3 If the actual duration of work of the person described in para-
graph 1 exceeds the expected period of work owing to unfore-
seeable circumstances, that person may remain subject to the
legislation of the Netherlands as if he or she 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.

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A. PROVISIONS RELATING TO NEW
ZEALAND BENEFITS

ARTICLE 6 Residence in the Netherlands

- 1 If a person would be entitled to receive a benefit under the
legislation of New Zealand (including a person who would be
entitled under Article 7) except that he or she is not ordinarily
resident in New Zealand on the date of application for that
benefit, that person shall be deemed, for the purposes of that
application, to be ordinarily resident in New Zealand on that
date, provided that he or she:

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- (a) is ordinarily resident in the Netherlands, and present either in the Netherlands or New Zealand, on that date;
 - (b) has the intention of remaining ordinarily resident in the Netherlands for at least 26 weeks; and
 - (c) has resided in New Zealand at any time in his or her life for a continuous period of at least 10 years since attaining the age of 20 years.
- 2 Subject to this Agreement, if a person is entitled to receive a benefit under the legislation of New Zealand (including a person who is entitled under paragraph 1, or under Article 7, or both) but payment of that benefit is conditional on presence in New Zealand, that person shall be deemed, for the purpose of the payment of that benefit, to be present in New Zealand, provided that he or she:
- (a) is ordinarily resident in the Netherlands, and present either in the Netherlands or New Zealand and;
 - (b) has resided in New Zealand at any time in his or her life for a continuous period of at least 10 years since attaining the age of 20 years.
- 3 For the purposes of this Part:
- (a) if a person who is ordinarily resident in the Netherlands is temporarily absent from the Netherlands for a period which does not exceed 26 weeks, the period of temporary absence from the Netherlands shall not be considered as interrupting that person's ordinary residence in the Netherlands;
 - (b) if a person who has been ordinarily resident in the Netherlands is absent from the Netherlands for a period which exceeds 26 weeks, that person shall cease to be considered ordinarily resident in the Netherlands on the date of his or her departure from the Netherlands; and
 - (c) if a person leaves New Zealand with the intention of becoming ordinarily resident in the Netherlands for at least 26 weeks, and if that person begins to be ordinarily resident in the Netherlands within 26 weeks of his or her departure from New Zealand, that person shall be deemed to have become ordinarily resident in the

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Netherlands on the date of his or her departure from New Zealand.

- 4 If a person who is ordinarily resident in the Netherlands reaches the age of entitlement to New Zealand superannuation or a veteran's pension, that person shall not be entitled to receive, or shall no longer be entitled to receive, as the case may be, an invalids benefit, widows benefit or domestic purposes benefit paid to a widower, if that person is qualified to receive New Zealand superannuation or a veteran's pension.
- 5 For the purposes of this Agreement, a person who has not reached the age of entitlement for New Zealand superannuation or a veteran's pension by virtue of the fact that his or her spouse is in receipt of New Zealand superannuation or a veteran's pension.

ARTICLE 7 Totalisation

- 1 In determining whether a person meets the residential qualifications for a benefit specified in the legislation of New Zealand, the institution of New Zealand shall:
 - (a) in the case of New Zealand superannuation or a veteran's pension, for a person who is over the age of 65 years, deem a Netherlands period of insurance accumulated by that person after attaining the age of 20 years to be a period during which that person was both resident and present in New Zealand, but only periods of insurance relating to periods over the age of 50 years shall be taken into account to meet the residential requirements for New Zealand superannuation which state that a person must be resident in New Zealand for 5 years over age 50;
 - (b) in the case of any other benefit, deem a Netherlands period of insurance accumulated by that person after attaining the age of 20 years to be a period during which that person was both resident and present in New Zealand.

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- 2 For purposes of paragraph 1, if a period of residence in New Zealand and a Netherlands period of insurance coincide, the period of coincidence shall be taken into account only once as a period of residence in New Zealand.
- 3 In determining whether a person who is ordinarily resident in New Zealand or the Netherlands is entitled to receive a widows benefit or a domestic purposes benefit paid to a widower, a dependent child of that person born in the Netherlands shall be treated as though that child was born in New Zealand provided that:
- (a) in the case of a widow, the child was conceived before the death of the person's last deceased spouse; and
 - (b) the case of a widower, the child was born before the death of the person's last deceased spouse.
- 4 In determining whether a widow who is ordinarily resident in New Zealand or the Netherlands is entitled to receive a widow's benefit:
- (a) that widow shall be deemed to have accumulated a period of New Zealand residence for any period during which her last deceased spouse accumulated a period of insurance under Netherlands social security laws;
 - (b) any period during which that widow and her last deceased spouse both accumulated a Netherlands period of insurance under the Netherlands social security laws shall be taken into account once only; and
 - (c) a Netherlands period of insurance accumulated under the Netherlands social security laws by that widow's last deceased spouse shall be deemed to be a period during which that spouse was ordinarily resident in New Zealand for the purposes of determining the ordinary residence of that spouse; and
 - (d) if the death of the last deceased spouse of a widow occurs in the Netherlands, he shall be deemed to have died in New Zealand.

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**ARTICLE 8 Rate of New Zealand Superannuation and
Veterans' Pensions in the Netherlands**

If a person who is ordinarily resident in the Netherlands is entitled to receive New Zealand superannuation or a veteran's pension under Article 6, the amount of that benefit shall be calculated in accordance with the following formula:

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

where "Y" equals:

- 480 if the person was born before 1 April 1932;
- 492 if the person was born between 1 April 1932 and 30 June 1932;
- 495 if the person was born between 1 July 1932 and 30 September 1932;
- 498 if the person was born between 1 October 1932 and 31 December 1932;
- 501 if the person was born between 1 January 1933 and 31 March 1933;
- 504 if the person was born between 1 April 1933 and 30 June 1933;
- 507 if the person was born between 1 July 1933 and 30 September 1933;
- 510 if the person was born between 1 October 1933 and 31 December 1933;
- 513 if the person was born between 1 January 1934 and 31 March 1934;
- 516 if the person was born between 1 April 1934 and 30 June 1934;
- 519 if the person was born between 1 July 1934 and 30 September 1934;
- 522 if the person was born between 1 October 1934 and 30 December 1934;

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- 525 if the person was born between 1 January 1935 and 31 March 1935;
- 528 if the person was born between 1 April 1935 and 30 June 1935;
- 531 if the person was born between 1 July 1935 and 30 September 1935;
- 534 if the person was born between 1 October 1935 and 31 December 1935;
- 537 if the person was born between 1 January 1936 and 31 March 1936;
- 540 if the person was born after 31 March 1936;

subject to the following provisions:

- (a) in determining the number of whole months residence in New Zealand, only residence after attaining the age of 20 years shall be taken into account;
- (b) all periods of residence in New Zealand since attaining the age of 20 years shall be aggregated;
- (c) the maximum benefit rate shall be:
 - (i) in the case of a single person, the maximum rate of benefit payable under the legislation of New Zealand to a single person who is not living alone; and
 - (ii) in the case of a married person, the maximum rate of benefit payable under the legislation of New Zealand to a married person whose spouse also qualifies for New Zealand superannuation or a veteran's pension;
- (d) in relation to a person who reached the age of 65 prior to the date that this Agreement came into force, that person has resided in New Zealand, at any time, for at least 10 years;
- (e) if a person who became or becomes ordinarily resident in the Netherlands after 1 April 1990 was entitled to receive New Zealand superannuation or a Veteran's pension at the date of departure from New Zealand and is entitled to receive that benefit as a result of Article 6,

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but not as a result of Article 7, the amount of that benefit shall be not less than the amount that would be paid in the absence of this Agreement;

- (f) in no case shall the rate of benefit exceed 100% of the maximum benefit rate;
- (g) no account shall be taken of any benefit which is also payable under the Netherlands social security laws or any benefit or pension payable under the social security laws of a third country.

ARTICLE 9 Rate of New Zealand Widows' Benefits, Domestic Purposes Benefits Paid to Widowers and Invalids' Benefits in the Netherlands

If a person who is ordinarily resident in the Netherlands is entitled to receive a widow's benefit, a domestic purposes benefit paid to a widower or an invalid's benefit as a result of Article 6, the amount of that benefit shall be calculated in accordance with the following formula:

$$\frac{\text{the number of whole months resident in New Zealand}}{300 \text{ months}} \times \text{maximum benefit rate}$$

subject to the following provisions:

- (a) in determining the number of whole months residence in New Zealand, only residence in New Zealand since attaining the age of 20 years shall be taken into account;
- (b) all periods of residence in New Zealand since attaining the age of 20 years shall be aggregated;
- (c) the maximum amount of benefit payable shall be the maximum rate of benefit which that person would be entitled to receive under the legislation of New Zealand;
- (d) in no case shall the rate of benefit exceed 100% of the maximum benefit rate; and
- (e) no account shall be taken of any benefit which is also payable under the Netherlands social security laws, the Disablement Assistance Act for Handicapped Young

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Persons, or any pension or benefit payable under the social security laws of a third party.

ARTICLE 10 Payment of Supplementary Benefits and Allowances

- 1 If a person who is ordinarily resident in New Zealand becomes entitled to receive a New Zealand benefit under Article 7, the institution of New Zealand shall also pay to that person any supplementary benefit or allowance under the legislation of New Zealand for which that person is qualified.
- 2 If a person who is ordinarily resident in the Netherlands becomes entitled to receive a New Zealand benefit under this Agreement, the amount of that benefit shall not include any supplementary benefit or allowance which would be payable under the legislation of New Zealand if that person were ordinarily resident in New Zealand.

ARTICLE 11 Residence in a Third State

A person who:

- (a) is ordinarily resident in New Zealand;
- (b) is entitled to receive a benefit solely through the application of the totalising provisions of Article 7; and
- (c) either:
 - (i) departs New Zealand with the intention of residing in a third State for a period which exceeds 26 weeks, or;
 - (ii) resides in a third State for a period which exceeds 26 weeks;

shall not be entitled to receive New Zealand superannuation or a veteran's pension while outside New Zealand or the Netherlands unless he or she is entitled to receive that benefit under a Social Security Agreement which New Zealand has entered into with that third State.

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ARTICLE 12 Effect of Netherlands Taxation of Netherlands Pensions

If a person who is ordinarily resident in New Zealand, is receiving a Netherlands pension and a New Zealand benefit, for the purposes of calculating the New Zealand benefit rate, any taxes levied under Netherlands tax legislation shall be excluded from the amount of the Netherlands pension to be deducted from the New Zealand benefit, unless that person elects otherwise.

ARTICLE 13 Treatment of Netherlands Voluntary Insurance

Netherlands benefits based on periods of voluntary insurance under the social security laws of the Netherlands shall not be directly deductible from New Zealand benefits under the social security laws of New Zealand.

B. PROVISIONS RELATING TO THE NETHERLANDS BENEFITS

ARTICLE 14 Sickness Insurance

- 1 The Netherlands institution shall determine the sickness benefit in accordance with the Netherlands Sickness Benefits Act (ZW).
- 2 A New Zealand resident who would be entitled to receive a Netherlands sickness benefit if he or she was resident in the territory of the Netherlands, shall be entitled to receive a Netherlands sickness benefit at the same rate as he or she would be entitled to receive if he or she was resident in the Netherlands.

ARTICLE 15 Old Age Benefits

- 1 The Netherlands institution shall determine the old age benefit on the basis of periods of insurance completed under the Netherlands General Old Age Pensions Act and of this Agreement.
- 2 Subject to paragraphs 3 and 4, periods before 1 January 1957, during which a national of a Contracting Party resided in the territory of the Netherlands after reaching the age of fifteen

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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 1 January 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, exclusive of income-related supplementary allowance and holiday allowance as defined in Article 8, section 1 or Article 28 of that Act respectively, and the amount of the New Zealand superannuation 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 General Old Age Pensions Act, exclusive of income related supplementary allowance and holiday allowance as defined in Article 8, section 1 or Article 28 of that Act respectively, the Netherlands institution shall adjust its benefit by an amount equal to the excess amount.
- 5 Changes in the exchange rate shall not affect the amount calculated according to the previous section, provided that a conversion takes place at least once a year, using the exchange rate parity as advised by the Bank of the Netherlands (De Nederlandsche Bank NV) on the day of the payment of the New

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Zealand benefit for the month in which the recalculation takes place.

- 6 The reduction referred to in paragraph 4 shall not affect the amount that is based on periods of insurance after 1 January 1957, according to the Netherlands General Old Age Pensions Act.
- 7 A New Zealand resident who would be entitled to receive a Netherlands old age benefit if he or she was resident in the territory of the Netherlands, shall be entitled to receive a Netherlands old age benefit at the same rate as he or she would be entitled to receive if he or she was resident in the Netherlands.

ARTICLE 16 Survivors Benefits

- 1 The Netherlands institution shall determine the survivors benefit on the basis of the Netherlands General Survivors Insurance Act and this Agreement.
- 2 A New Zealand resident who would be entitled to receive a Netherlands survivor's benefit if he or she was resident in the territory of the Netherlands, shall be entitled to receive a Netherlands survivor's benefit at the same rate as he or she would be entitled to receive if he or she was resident in the Netherlands.
- 3 A person who is resident in the territory of the Netherlands shall be entitled, in respect of his or her children who stay or reside in the territory of New Zealand, to the orphans' pension of the Netherlands as if those children live in the territory of the Netherlands.

ARTICLE 17 Invalidity Benefits

- 1 The Netherlands institution shall determine the invalidity benefit in accordance with the Netherlands Disablement Insurance Act and this Agreement.
- 2 A New Zealand resident who would be entitled to receive a Netherlands invalidity benefit if he or she was resident in the territory of the Netherlands, shall be entitled to receive a Netherlands invalidity benefit at the same rate as he or she

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would be entitled to receive if he or she was resident in the Netherlands.

ARTICLE 18 Children's Allowances

- 1 The Netherlands institution shall determine the children's allowances in accordance with the Netherlands General Child Benefits Act and this Agreement.
- 2 A person who is resident in the territory of New Zealand shall be entitled, in respect of his or her children who stay or reside in the territory of the Netherlands or New Zealand, to the children's allowances of the Netherlands as if that person and those children all resided in the Netherlands.
- 3 A person who is resident in the territory of the Netherlands shall be entitled, in respect of his or her children who stay or reside in the territory of New Zealand, to the children's allowances of the Netherlands as if those children resided in the territory of the Netherlands.

C. COMMON PROVISIONS RELATING TO BENEFIT PAYMENTS**ARTICLE 19 Assessment of Income Tests**

- 1 Where a Contracting Party pays a benefit to a person residing in the territory of the other Contracting Party, that Contracting Party will disregard any income tested benefit paid to that person by the other Contracting Party.
- 2 Where a person has incurred social security debts in both the Netherlands and New Zealand by virtue of the fact that the 1990 Agreement conferred on that person an entitlement to a higher rate of Netherlands old age benefit than would otherwise be payable, and the Netherlands company pension fund reimburses New Zealand for half of the debt incurred in respect of overpayments to the Netherlands company pension fund, the Government of New Zealand shall write off the remainder of that debt and pay to the debtor any amount that exceeds the difference between the half the original New Zealand

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debt and the amount either reimbursed by the Netherlands company pension fund or repaid by the debtor.

III
MUTUAL ASSISTANCE

ARTICLE 20 Exchange of Information

- 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 on request:
 - (a) provided each other with any information in their possession and other assistance required for the determination or payment of any benefit or pension under this Agreement or any other entitlement under their respective social security laws;
 - (b) provide each other with any information in their possession and other assistance required for the recovery of any social security debt under this Agreement or relating to any other entitlement under their respective social security laws;
 - (c) provide each other with any information or assistance required for the determination or recovery of any taxes or contributions levied in relation to social security.
- 3 If an institution does not hold information requested by the other institution but that information is held by the tax authorities in the State of the institution receiving the request, the latter institution shall obtain the information from the tax authorities for the requesting institution.
- 4 An institution that receives information under paragraphs 2 or 3 may provide that information to the tax authorities of that Party for the purposes of making an assessment of the tax due by any person under the laws of the requesting Party relating to taxation or detecting tax fraud or tax under the laws of the requesting Party.

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- 5 An institution, if so requested, shall supply the institution of the other Party with any information required by that institution to answer any questions or to make any report or return required by a person or body authorised to monitor compliance with that Party's privacy laws.
- 6 The administrative arrangements referred to in Article 29 shall specify the conditions and procedures for determining the arrangement that the parties shall comply with when requesting or supplying information under this Article. The administrative arrangements shall:
- (a) include provisions that ensure, in relation to New Zealand, that the safeguards that are required under New Zealand privacy laws in information matching agreements are complied with and that the arrangements are consistent with the information matching rules under New Zealand privacy laws;
 - (b) list the items of information that each Party may request under this Article.
- 7 The assistance referred to in paragraph 2 or 3 shall be provided free of charge.
- 8 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.

ARTICLE 21 Administrative Checks and Medical Examinations

- 1 On request, the institution of a Contracting Party, within the limits laid down by their legislation, shall provide the liaison body or the institution of the other Contracting Party with any available medical information and documentary evidence of a claimant or recipient's sickness, injury or disability.
- 2 The institutions may request each other to carry out administrative checks and medical examinations of claimants or recipients of their respective benefits to ascertain their eligibility for a benefit.

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ARTICLE 22 Assistance in Recovery

- 1 For the purposes of this Article:
requesting institution means an institution requesting assistance in the recovery of a social security debt;
requested institution means an institution requested to assist in the recovery of a social security debt; and
social security debt means a debt incurred under the social security laws of a Contracting Party and includes a debt relating to taxes or contributions levied for social security purposes as well as any related interest and costs.
- 2 At the request of the requesting institution, the requested institution shall recover social security debts of the requesting institution in accordance with the law and administrative practice for the recovery of its own social security debts. However such claims for social security debts do not enjoy any priority in the State of the requested institution and cannot be recovered by imprisonment for debt of the debtor. Nor is the requested institution obliged to take any executory measures that are not provided for in the laws of the State of the requesting institution.
- 3 Except where Article 22 applies, the provisions of paragraph 1 shall apply only to a social security debt where the chief executive officer of the requesting institution issues a certificate that certifies that:
 - (a) the amount of the debt in the currency of both the State of the requesting institution and of the requested institution;
 - (b) the debt is a social security debt;
 - (c) the provisions of paragraph 5(a) have been complied with;
 - (d) the provisions of paragraph 6 have been complied with;
 - (e) that the enforcement of the social security debt is permitted in the State of the requesting institution and citing the relevant legislation authorising its enforcement;
 - (f) the request does not contravene the provisions of paragraph 7; and

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- (g) unless otherwise agreed between the institutions, the debt may no longer be contested under the social security laws of the requesting State;
- 4 The obligation to provide assistance in the recovery of social security claims concerning a deceased person or that person's estate is limited to the value of the estate or the property acquired by each beneficiary of the estate, according to whether the claim is to be recovered from the estate or from the beneficiaries thereof.
- 5 Except where Article 22 applies, the requested institution shall not be obliged to take action with respect to the request:
- (a) if the requesting institution has not pursued all means available in its own territory, except where recourse to those means would give rise to disproportionate difficulty; or
- (b) if and insofar as it considers the claim for the social security debt to be contrary to the provisions of this Agreement or of any other Agreement to which both the Contracting Parties are parties.
- 6 The institutions may specify a minimum amount of social security debt that may be recovered under the provisions of this Article in the administrative arrangements made in accordance with Article 29.
- 7 Issues concerning any period limiting the time in which a social security debt can be enforced shall be governed by the law of the requesting State but the requested country shall not commence action to recover a social security debt if more than 5 years have passed since the debt was first assessed.
- 8 Except where Article 22 applies, the request for administrative assistance in the recovery of a social security debt shall be accompanied by:
- (a) a certification under paragraph 3;
- (b) any other document required for recovery;
- (c) where appropriate a certified copy of any related decision issued by a court or an administrative body.
- 9 The rate of exchange to be used for determining the amount of a social security debt in the currency of the State of the

III—*continued*

requested institution shall be the telegraphic transfer selling rate settled in the State of the requesting institution on the date the certification is made.

- 10 If, notwithstanding paragraph 2, the debtor contests a social security debt after a request for its recovery is made under paragraph 1, with the agreement of both institutions and insofar as the laws and administrative practice of the State of the requested institution permit, the requested institution shall take measures to conserve any funds that it holds that are attributable to the debtor with a view to the recovery of the amount of the social security debt.
- 11 Acts of recovery carried out by the requesting institution, pursuant to a request for assistance that would have the effect of suspending or interrupting any period referred to in paragraph 7 shall also have this effect under the laws of the State of the requesting institution. The requested institution shall inform the requesting institution of any instances where this situation occurs.
- 12 The requesting institution or the courts or administrative bodies of the State of the requested institution may allow for payments to be deferred or made by instalments if permitted in similar circumstances under the laws or administrative practices of that institution or State. The requested institution shall inform the requesting institution of any such decision.
- 13 Except where Article 22 applies, the requesting institution shall pay the reasonable costs of any acts of recovery and the requested institution shall advise the requesting institution of the estimated costs on receiving a request and before taking any action for the recovery of the social security debt.
- 14 The requesting institution shall be responsible for any pecuniary consequences incurred as a consequence of acts of recovery that are found to be unjustified with regard to the validity of the social security debt.
- 15 Except where Article 22 applies, an amount recovered by the requested institution under the provisions of this Article, less any amounts deductible under paragraphs 13 or 14 shall be

III—*continued*

transferred to the requesting institution in the currency of the State of the requested institution.

ARTICLE 23 Recovery of Overpayments

- 1 Where an amount paid by one of the Contracting 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 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 above 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 administrative practice of that Contracting Party.
- 4 Any amount deducted by the institution of one of the Contracting Parties in accordance with paragraph 1 and any amounts received by that institution under paragraph 3 shall be remitted to the other institution as agreed between the institutions or in administrative arrangements made pursuant to Article 27.

ARTICLE 24 Limitations

In no case shall the provisions of this Part be construed so as to impose on the institution of a Contracting Party the obligation to carry out administrative measures at variance with the laws or the administrative practices of that or the other Contracting Party; or supply particulars which are not obtainable under the laws or in the normal course of operations of that or the other Contracting Party.

III—*continued*

ARTICLE 25 Refusal to Pay, Suspension or Termination of a Benefit

An institution of a Contracting Party may refuse to pay, suspend or terminate a benefit otherwise payable if that institution considers that a claimant or a recipient or the institution of the other Contracting Party fails to provide sufficient information promptly or to undergo, or as the case may be, carry out, any examination as required under this Agreement.

IV

MISCELLANEOUS PROVISIONS

ARTICLE 26 Lodgment 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 27 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.

IV—*continued***ARTICLE 28 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 the other Contracting Party which govern the appeal concerned.

ARTICLE 29 Administrative Arrangements

The competent authorities of the Contracting Parties shall establish by means of an administrative arrangement the measures necessary for the implementation of this Agreement.

ARTICLE 30 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 English or the Netherlands language.

ARTICLE 31 Currency

- 1 Payments under this Agreement may be made validly in the currency of the Contracting Party making the payment.

IV—*continued*

- 2 Money transfers made under this Agreement shall be made in accordance with any relevant arrangements in force between the Contracting Parties at the time of transfer.
- 3 In the event that 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 32 Settlement of Disputes

- 1 The competent authorities of the Contracting Parties shall settle, to the extent possible, any disputes that 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 by majority vote and shall be final and binding upon the Contracting Parties.

ARTICLE 33 Review of the Agreement

The Contracting Parties may agree at any time to review any of the provisions of this Agreement to review and report to the competent authorities on the operation and effectiveness of the Agreement.

IV—*continued***ARTICLE 34 Transitional Provisions**

Any person who is in receipt of a New Zealand benefit by virtue of Article 7, Article 8 or Article 9 of the 1990 Agreement at the date of termination of that Agreement, shall continue to be entitled to receive that benefit at the rate provided under the 1990 Agreement but a person who is in receipt of New Zealand superannuation at the rate payable to a person who has a spouse who does not qualify for New Zealand superannuation in his or her own right, shall cease to be entitled to that rate when his or her spouse reaches the age of 65 years.

ARTICLE 35 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 second month following the date of the last notification.
- 2 The Kingdom of the Netherlands shall apply this Agreement provisionally from the first day of the second month following signature and, for the Kingdom of the Netherlands, this Agreement shall enter into force on the understanding that Articles 2(1)(b), 14, 15(7), 16, 17 and 18 shall have retrospective effect to 1 January 2000.
- 3 Subject to paragraph 4, 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 the other Party to terminate the Agreement.
- 4 In the event that this Agreement is terminated in accordance with paragraph 3, the Agreement shall continue to have effect in relation to all persons whom 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, gave 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 The Hague, this 30th day of June 2000.

FOR THE GOVERNMENT
OF NEW ZEALAND

FOR THE GOVERNMENT
OF THE KINGDOM OF THE
NETHERLANDS

Steve Maharey

J F Hoogervorst

Schedule 2

cl 3(2)

Exchange of notes amending the Agreement on Social Security between the Government of New Zealand and the Government of the Kingdom of the Netherlands

The Ministry of Foreign Affairs and Trade presents its compliments to the Embassy of the Kingdom of the Netherlands and has the honour to confirm its receipt of the Embassy's Note of 7 May 2001, which reads as follows:

“The Royal Netherlands Embassy presents its compliments to the Ministry of Foreign Affairs and Trade of New Zealand and has the honour to draw the attention of the Ministry to a number of errors in the text of the Agreement on Social Security between the Government of New Zealand and the Government of the Kingdom of the Netherlands, which was signed at The Hague on 30 June 2000 (hereinafter referred to as the Agreement).

“The Embassy encloses hereby a text in which the following corrections agreed upon by the authorities of the Netherlands and New Zealand have been made.

“•- In sub-paragraph 1(b) of Article 2, the line ‘(vii) children’s allowances’ is deleted, leaving the preceding passage to read:

“(v) children’s allowances;

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

- “(vi) unemployment insurance.
- “- In sub-paragraphs 1(c) and 2(b) of Article 6, the phrase ‘period of at least 10 years’ is amended as ‘period of at least 12 months’.
- “- In paragraph 1 of Article 19, the phrase ‘or the spouse of that person’ is inserted between the words ‘person’ and ‘by’.
- “- In Article 19, second paragraph, the passage after the phrase ‘in respect of overpayments’ is replaced by the following text: ‘by that fund due to the same higher old age benefit entitlement, the Government of New Zealand shall write off the remainder of its debts to that person incurred by the same higher entitlement and pay the debtor any amount that exceeds the difference between half the original New Zealand debt due to that same higher entitlement and the amount reimbursed by the Netherlands company pension fund and/or the amount of that original debt already repaid by the debtor to the New Zealand Government.’
- “- In paragraphs 3, 5, 8, 13 and 15 of Article 22, the reference to ‘Article 22’ is corrected as ‘Article 23’.
- “- In paragraph 4 of Article 23, the reference to ‘Article 27’ is corrected as ‘Article 29’.

“The Embassy would appreciate it if the Ministry at its earliest convenience would confirm by Note that the Government of New Zealand agrees with the enclosed corrected text. If that is the case, it is assumed that upon receipt of the confirmation of the Ministry, the original text is to be considered as corrected as from the date of the signing of the above mentioned Agreement.

“The Royal Netherlands Embassy avails itself of this opportunity to renew to the Ministry of Foreign Affairs and Trade of New Zealand the assurances of its highest consideration.”

The Ministry has the honour to inform the Embassy that the corrections to the Agreement on Social Security between the Government of New Zealand and the Government of the Kingdom of the Netherlands, as incorporated in the corrected text enclosed with the Em-

bassy's Note of 7 May 2001, are acceptable to the Government of New Zealand. The Ministry furthermore agrees that upon receipt of this confirmation by the Embassy, the original text of the Agreement shall be considered corrected as from the date of the signing of the Agreement.

The Ministry of Foreign Affairs and Trade takes this opportunity to renew to the Embassy of the Kingdom of the Netherlands the assurances of its highest consideration.

Ministry of Foreign Affairs and Trade

WELLINGTON

21 May 2001

Schedule 3

cl 3(3)

Protocol to the Agreement on Social Security between the Government of New Zealand and the Government of the Kingdom of the Netherlands

Preamble

The Government of New Zealand

and

The Government of the Kingdom of the Netherlands

WISHING to amend and supplement the Agreement on Social Security between the two Governments signed at The Hague on the 30th day of June 2000, have agreed as follows:

Article 1

Article 1 of the Agreement is amended:

- (a) by inserting in paragraph 1(a), after the expression "1990", the words "or Part 1 of the New Zealand Superannuation Act 2001" ;
- (b) by deleting from paragraph 1(b) the words "Department of Social Welfare", and substituting the words "Ministry of Social Development (the Department of Work and Income)" ;
- (c) by inserting, after paragraph 1(b), the following subparagraph:

“(ba) **income tested benefit** means any benefit where eligibility for or the rate of it is dependent on the income of any person;”.

Article 2

Article 2 of the Agreement is amended:

- (a) by inserting in paragraph 1(a), after the word “Agreement”, the words “and Part 1 of the New Zealand Superannuation Act 2001,” ;
- (b) by deleting from paragraph 1(a) the words “that Act, in so far as that Act”, and substituting the words “any of those Acts, in so far as those Acts”.

Article 3

Article 19 of the Agreement is amended by deleting from paragraph 2 the words “its debts to that person incurred by the”, and substituting the words “its debts of that person incurred by reason of that”.

Article 4

Article 20 of the Agreement is amended:

- (a) by deleting from each of subparagraphs (a) and (b) of paragraph 2 the words “and other assistance”, and substituting in each case “or that they are lawfully able to obtain” ;
- (b) by deleting from paragraph 2(c) the words “or assistance”, and substituting the words “in their possession or that they are lawfully able to obtain” ;
- (c) by inserting in paragraph 4, after the word “tax” where it appears for the fourth time, the word “evasion” ;
- (d) by deleting from paragraph 6(b) the word “Article.” and substituting the word “Article;” ;
- (e) by adding to paragraph 6 the following subparagraph: “(c) limit the supply of information to the items listed in accordance with subparagraph (b)”;
- (f) by deleting from paragraph 8 the word “protected”, and substituting the words “given the same protections (including privacy protection)” ;
- (g) by adding the following paragraph:
“9 A Party that receives, under this Article, personal information about an individual from the other Party may not supply that

information to any other country without the consent of the competent institution that supplied the information or the individual concerned.”

Article 5

Article 21 of the Agreement is amended:

- (a) by inserting in paragraph 1, after the word “request”, the words “in accordance with Article 20” ;
- (b) by deleting from paragraph 1 the words “a claimant or recipient’s sickness, injury or disability”, and substituting the words “the sickness, injury, or disability of a person claiming or receiving a benefit payable on the grounds of sickness, injury, or disability under this Agreement”.

Article 6

Article 22 of the Agreement is amended:

- (a) by inserting in the definition of “social security debt” in paragraph 1, after the word “and”, the words “, in relation to the Netherlands,” ;
- (b) by deleting from that definition the words “as well as any related interest and costs” ;
- (c) by deleting from paragraphs 3, 5, 8, and 13 the words “Except where Article 23 applies, the”, and substituting in each case the word “The” ;
- (d) by deleting in paragraph 3 the word “paragraph 1”, and substituting the word “paragraph 2” ;
- (e) by deleting paragraph 3(g), and substituting the following subparagraph:
 - “(g) any right of review or appeal of the debt under the social security laws of the requesting Party has been exhausted or has expired. For the purposes of this subparagraph a right of review or appeal has expired:
 - “(i) if the right has not been exercised within the time limit provided for its exercise; and
 - “(ii) irrespective of whether the court or tribunal or body or person that would have jurisdiction in respect of the review or appeal, or any other person, retains a discretion (however expressed in those laws) to allow the right of review or appeal to be exercised after that time.”

- (f) by deleting paragraph 10, and substituting the following paragraph:
- “ 10 If the debtor exercises a right or review or appeal of a debt after a request for its recovery is made under paragraph 2:
- “(a) the requesting institution shall immediately advise the requested institution of the exercise of the right; and
- “(b) the requested institution shall:
- “(i) defer recovery of the debt until notified by the requesting institution that the review or appeal is finally determined; and
- “(ii) take measures to conserve any funds it holds that are attributable to the debtor with a view to recovery of the debt after such notification is received.”
- (g) by deleting from paragraph 11 the word “requesting” where it first appears, and substituting the word “requested” ;
- (h) by deleting from paragraph 15 the words “Except where Article 23 applies, an”, and substituting the word “An”.

Article 7

Article 23 of the Agreement is amended:

- (a) by inserting in paragraph 1, after the words “if requested”, the words “in accordance with Article 22” ;
- (b) by inserting in paragraph 1, after the words “this Article”, the words “and Article 22”.

Article 8

The Agreement is amended by deleting Article 24, and no substitution for it is made.

Article 9

This Protocol shall enter into force on the same date as the Agreement.

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

DONE in two copies in the English language at Wellington this
20th day of March 2003.

FOR THE GOVERNMENT
OF NEW ZEALAND

FOR THE GOVERNMENT
OF THE KINGDOM OF THE
NETHERLANDS

Steve Maharey

A E de Bijl Nachenius

Marie Shroff,
Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order, which comes into force on 1 November 2003, gives effect to an agreement between the governments of New Zealand and the Kingdom of the Netherlands relating to social welfare reciprocity. The agreement was made on 30 June 2000, and was later amended by an exchange of diplomatic notes and an amending protocol. The order therefore gives effect both to the agreement and to the notes and protocol that amended it.

The order also revokes the Social Welfare (Reciprocity with The Netherlands) Order 1990, which gave effect to an earlier agreement with the Government of the Kingdom of the Netherlands.