



## MINISTRY OF SOCIAL DEVELOPMENT

*Te Manatū Whakahiato Ora*

22 AUG 2014

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22 AUG 2014

Mr Robert Latimer  
[fyi-request-1761-8e764ec2@requests.fyi.org.nz](mailto:fyi-request-1761-8e764ec2@requests.fyi.org.nz)

Dear Mr Latimer

Thank you for your email of 25 July 2014 requesting, under the Official Information Act 1982, the following information:

*At a Benefits Review Committee hearing today in Orewa, Margaret Denton of your International Services Division made the statement that the Ministry had the right, under the legislation, to deduct from New Zealand Superannuation payments the amount of any pension coming from a UK Company plan that was a "contracting out" plan under the UK Supplementary Earnings Related Plan (SERPS), even though that plan was, by definition, a private plan and not a Government plan. She said that, as a matter of policy, the Ministry did not deduct these pensions from NZ Super.*

*Please tell me what section of the legislation would allow this deduction.*

I apologise for any misunderstanding that has occurred during the Benefit Review Committee hearing you attended. I can confirm that legislation does not entitle the Ministry to deduct from United Kingdom "contracted out" pensions.

### **United Kingdom State-Administered Pensions**

United Kingdom pensions arising from the State Earnings Related Pension Scheme (SERPS) and its successor scheme State Second Pension (or S2P) are deducted from New Zealand Superannuation under Article 15.1 of the United Kingdom/New Zealand Social Security Agreement (a full copy of this Agreement is enclosed) which states:

*"Subject to the provisions of paragraphs (3) and (4) of this Article, for the purpose of any claim to receive benefit under the legislation of New Zealand, whether by virtue of the provisions of this Convention, the former Agreements, or otherwise, the amount of any benefit which the claimant is entitled to receive under the legislation of the United Kingdom shall be disregarded in the computation of his income and shall be deducted from the amount of benefit which would otherwise have been payable to him under the legislation of New Zealand.*

*Provided that, in the case of a married claimant, the amount to be deducted shall be the aggregate amount of any benefit which the claimant and the claimant's wife or husband are entitled to receive under the legislation of the United Kingdom, or such part of that aggregate amount as may be determined by the competent authority of New Zealand."*

However, the Ministry does not deduct from United Kingdom "contracted out" pensions because these are neither "received under the legislation of the United Kingdom" (as required by Article 15 above) nor are they "administered by or on behalf of the overseas Government" (as required by section 70 of the Social Security Act 1964).

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### Information about “contracted out” pensions

United Kingdom legislation allows a person to contract out of SERPS and S2P and opt for a private pension scheme instead. These private schemes must provide benefits as good as or better than those provided under the SERPS or S2P schemes. Contracted out pensions allow for early retirement as a person can start drawing on these schemes at 50 years of age (or earlier if allowed for by the scheme).

Contracted out pensions come in three forms:

- Occupation pensions
- Stakeholder pensions
- Personal pensions.

Contracted out pensions allow for early retirement as a person can start drawing on these schemes at 50 years of age (or earlier if allows for by the scheme). More information regarding private pension schemes can be found on the OECD website at the following link:

<http://www.oecd.org/finance/private-pensions/>

I hope you find this information helpful. You have the right to seek an investigation and review of my response by the Ombudsman, whose address for contact purposes is:

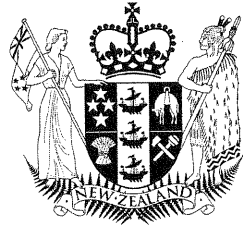
The Ombudsman  
Office of the Ombudsman  
PO Box 10-152  
WELLINGTON 6143

Yours sincerely



Sacha O'Dea  
**General Manager, Ageing, Disability and International**

Reprint  
as at 15 July 2013



**Social Welfare (Reciprocity with  
the United Kingdom) Order 1990**  
(SR 1990/85)

Paul Reeves, Governor-General

**Order in Council**

At Wellington this 9th day of April 1990

Present:  
The Right Hon G W R Palmer presiding in Council

Pursuant to section 19 of the Social Welfare (Transitional Provisions) Act 1990, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following order.

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**Note**

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

**This order is administered by the Ministry of Social Development.**

**Schedule**  
**Convention on Social Security between the  
Government of the United Kingdom of Great Britain  
and Northern Ireland and the Government of New  
Zealand**

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**Order**

**1 Title and commencement**

- (1) This order may be cited as the Social Welfare (Reciprocity with the United Kingdom) Order 1990.
- (2) This order shall be deemed to have come into force on 1 April 1990.

**2 Adoption of Convention and modification of Acts**

- (1) The provisions contained in the Convention set out in the Schedule shall have force and effect so far as they relate to New Zealand.
- (2) The provisions of the Social Welfare (Transitional Provisions) Act 1990 and of the Social Security Act 1964 and of Part 6 of the War Pensions Act 1954 and of the regulations and orders in force under those Acts shall have effect subject to such modifications as may be required for the purpose of giving effect to the said Convention.
- (3) A reference (however expressed) in either of the following to a widow's benefit under the Social Security Act 1964 in relation to New Zealand must on and after 15 July 2013 (unless the savings provisions in clause 3 of Schedule 32 of the Social Security Act 1964 apply) be read as a reference to sole parent support under the Social Security Act 1964 for a woman whose spouse or partner has died:
  - (a) a provision of the Convention set out in the Schedule:
  - (b) a provision of a document related to the operation on or after 15 July 2013 of this order.
- (4) A reference (however expressed) in either of the following to an invalid's benefit under the Social Security Act 1964 in relation to New Zealand must on and after 15 July 2013 be read as a reference to a supported living payment on the ground of

sickness, injury, disability, or total blindness under the Social Security Act 1964:

- (a) a provision of the Convention set out in the Schedule:
  - (b) a provision of a document related to the operation on or after 15 July 2013 of this order.
- (5) A reference (however expressed) in either of the following to a sickness benefit under the legislation of New Zealand must on and after 15 July 2013 be read as a reference to jobseeker support on the ground of sickness, injury, or disability under the legislation of New Zealand:
- (a) a provision of the Convention set out in the Schedule:
  - (b) a provision of a document related to the operation on or after 15 July 2013 of this order.
- (6) A reference (however expressed) in either of the following to an unemployment benefit under the legislation of New Zealand must on and after 15 July 2013 be read as a reference to jobseeker support under the legislation of New Zealand:
- (a) a provision of the Convention set out in the Schedule:
  - (b) a provision of a document related to the operation on or after 15 July 2013 of this order.

Clause 2(2): amended, on 15 April 2003, by section 12(2) of the War Pensions Amendment Act 2003 (2003 No 18).

Clause 2(3): inserted, on 15 July 2013, by section 86 of the Social Security (Benefit Categories and Work Focus) Amendment Act 2013 (2013 No 13).

Clause 2(4): inserted, on 15 July 2013, by section 97 of the Social Security (Benefit Categories and Work Focus) Amendment Act 2013 (2013 No 13).

Clause 2(5): inserted, on 15 July 2013, by section 114 of the Social Security (Benefit Categories and Work Focus) Amendment Act 2013 (2013 No 13).

Clause 2(6): inserted, on 15 July 2013, by section 129 of the Social Security (Benefit Categories and Work Focus) Amendment Act 2013 (2013 No 13).

**Schedule**

cl 2

**Convention on Social Security between  
the Government of the United Kingdom  
of Great Britain and Northern Ireland  
and the Government of New Zealand**

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of New Zealand;

Having established reciprocity in the field of social security by means of the Agreement on Social Security which was signed on their behalf at Wellington on 19 June 1969;

Desiring to extend and modify the scope of that reciprocity and to take account of changes in their legislation;

Have agreed as follows:

**Part I****General provisions*****Article 1***

- (1) For the purpose of this Convention:
  - (a) “legislation” means, in relation to a Party, such of the legislation specified in Article 2 of this Convention as applies in the territory of that Party or in any part thereof;
  - (b) “competent authority” means the authority responsible for the social security schemes in all or part of the territory of each Party; that is to say, in relation to the United Kingdom, the Secretary of State for Social Services, the Department of Health and Social Services for Northern Ireland, the Isle of Man Board of Social Security as the case may require, and, in relation to New Zealand, the Social Security Commission;
  - (c) “insurance authority” means, in relation to the United Kingdom, the authority competent to decide entitlement to the benefit in question;
  - (d) “competent institution” means the authority from which the person concerned is entitled to receive benefit or would be entitled to receive benefit if he were resident in the territory of the Party where that authority is situated;

Part I—*continued*

- (e) “a credit” means, in relation to the United Kingdom, that a contribution has been credited under the legislation of that Party;
- (f) “dependant” means a person who would be treated as such for the purpose of any claim for an increase of benefit in respect of a dependant under the legislation of the United Kingdom or New Zealand;
- (g) “child” means, in relation to any person, a child as defined in the legislation which is being applied who would be treated under that legislation as being a child of that person or included in his family;
- (h) “entitled to receive” means entitled to receive subject to any condition about giving notice or making a claim and to any earnings rule, retirement rule, means test or disqualification which may be appropriate;
- (i) “widow’s benefit” means, in relation to the United Kingdom, widow’s allowance, widowed mother’s allowance and widow’s pension payable under the legislation of that Party and, in relation to New Zealand, has the same meaning as in the legislation of that Party, and includes a child supplement payable under that legislation;
- (j) “orphan’s benefit” means, in relation to the United Kingdom, guardian’s allowance payable under the legislation of that Party;
- (k) “family allowance” means, in relation to the United Kingdom, child benefit payable under the legislation of that Party and, in relation to New Zealand, it means family benefit payable under the legislation of New Zealand;
- (l) “gainfully occupied” means being an employed or self-employed person;
- (m) “usually gainfully occupied” means that the person concerned is in, or resident in, the territory of the Party concerned and usually gainfully occupied there, or would be so occupied but for the fact that he is incapacitated for work, or is unemployed;

Part I—*continued*

- (n) “employed person” means a person who comes within the definition of an employed person or of an employed earner or a person who is treated as such in the applicable legislation and the words “person is employed” shall be construed accordingly;
  - (o) “employment” means employment as an employed person and the words “employ”, “employed” or “employer” shall be construed accordingly;
  - (p) “self-employed person” means a person who comes within the definition of a self-employed person or of a self-employed earner or a person who is treated as such in the applicable legislation and the words “person is self-employed” shall be construed accordingly;
  - (q) “contribution period” means a period in respect of which contributions appropriate to the benefit in question are payable, have been paid or treated as paid under the legislation in question;
  - (r) “equivalent period” means, in relation to the United Kingdom, a period for which contributions appropriate to the benefit in question have been credited under the legislation of that Party;
  - (s) “usually resident” means, in relation to the United Kingdom, ordinarily resident and, in relation to New Zealand, it means permanently resident;
  - (t) “the former Agreements” means the Agreement between the United Kingdom and New Zealand on Social Security signed at Wellington on 20 December 1955, and the Agreement between the United Kingdom and New Zealand on Social Security signed at Wellington on 19 June 1969.
- (2) Other words and expressions which are used in this Convention have the meanings respectively assigned to them in the legislation concerned.
- (3) The present Convention applies:
- (a) on the part of the United Kingdom, to the United Kingdom of Great Britain and Northern Ireland and to the Isle of Man;



Part I—*continued*

- (b) on the part of New Zealand, to New Zealand only (and not to the Cook Islands, Niue, or Tokelau); and references to “the United Kingdom”, to “New Zealand” or “territory” in relation to either of them shall be construed accordingly.

*Article 2*

- (1) The provisions of this Convention shall apply,
- (a) in relation to the United Kingdom, to:
- (i) the Social Security Acts 1975 to 1982 and the Social Security (Northern Ireland) Acts 1975 to 1982;
- (ii) the Social Security Acts 1975 to 1982 (Acts of Parliament) as applied to the Isle of Man by orders made under the provisions of the Social Security Legislation (Application) Act 1974 (an Act of Tynwald);
- (iii) the Child Benefit Act 1975, the Child Benefit (Northern Ireland) Order 1975 and the Child Benefit Act 1975 (an Act of Parliament) as applied to the Isle of Man by orders made under the provisions of the Social Security Legislation (Application) Act 1974 (an Act of Tynwald);
- and the legislation which was consolidated by those Acts or Orders or repealed by legislation consolidated by them;
- (b) in relation to New Zealand, to the Social Security Act 1964.
- (2) Subject to the provisions of paragraphs (3), (4), and (5) of this Article, this Convention shall apply also to any legislation which supersedes, replaces, amends, supplements, or consolidates the legislation specified in paragraph (1) of this Article.
- (3) The Convention shall apply, unless the Parties agree otherwise, only to benefits described in the legislation specified in paragraph (1) of this Article at the date of coming into force of this Convention and for which specific provision is made in this Convention.

Part I—*continued*

- (4) The Convention shall apply to any legislation which relates to a branch of social security not covered by the legislation specified in paragraph (1) of this Article, only if the two Parties make an agreement to that effect.
- (5) This Convention shall not apply to Regulations on social security of the Council of the European Communities or to any convention on social security which either Party has concluded with a third party or to any laws or regulations which amend the legislation specified in paragraph (1) of this Article for the purpose of giving effect to such a convention but shall not prevent either Party from taking into account under its legislation the provisions of any other convention which that Party has concluded with a third party.

## Benefit for dependants

*Article 3*

Where a person who is qualified to receive any benefit under the legislation of the United Kingdom would be qualified also to receive an increase of that benefit for a dependant if the dependant were in the United Kingdom, he shall be qualified to receive that increase while the dependant is in New Zealand, provided that he shall not be qualified to receive any increase of benefit in respect of a child who is usually resident in New Zealand, other than in the case provided for in Article 12(2).

## Part II

*Section 1*

## Sickness benefit

*Article 4*

- (1) Subject to the provisions of Article 7 of this Convention, the provisions of paragraphs (1) and (2) of this Article shall apply for the purposes of a claim for sickness benefit under the legislation of the United Kingdom by a person who is usually gainfully occupied in the United Kingdom, or would but for his incapacity for work be so occupied:

- (a) each week during which that person was employed in New Zealand shall be treated under the legislation of the United Kingdom as a week for which he paid under that legislation an employed earner's contribution on earnings equivalent to two-thirds of that year's upper earnings level;
  - (b) each week during which that person was self-employed in New Zealand shall be treated as a week for which he paid a Class 2 contribution under the legislation of the United Kingdom;
  - (c) each week during which that person was unemployed in New Zealand and available for work, and each week during which a person was in New Zealand and was incapable of work, may, where necessary, be treated as a week for which he received a credit under the legislation of the United Kingdom, provided that that week was part of a period during which he was usually gainfully occupied.
- (2) Where a person was receiving sickness benefit or invalid's benefit under the legislation of New Zealand when he was last in that country and is incapable of work at the time when he arrives in the United Kingdom, he shall be treated under the legislation of the United Kingdom as if at that time, and for so long as he continues from that time to be incapable of work, he satisfied the contribution conditions for sickness benefit under that legislation.
- (3) For the purpose of a claim to receive sickness benefit under the legislation of New Zealand by a person who is usually gainfully occupied in that country, or would but for his incapacity for work be so occupied, each week during which that person was resident in the United Kingdom shall be treated as if it were a week during which he was resident in New Zealand.
- (4) Where, but for the provisions of this Article, a person would be entitled to receive sickness benefit under the legislation of both Parties for the same period, whether by virtue of the provisions of this Convention or otherwise, that benefit shall be granted only under the legislation of the country in which he is usually resident.

*Section 2*

## Invalid's benefit

*Article 5*

Where a person who is usually resident in New Zealand claims invalid's benefit under the legislation of that Party, he shall be treated for the purpose of that claim as if:

- (a) he had been resident in New Zealand during any period during which he was resident in the United Kingdom;
- (b) any blindness or permanent incapacity for work originating in the United Kingdom had originated in New Zealand.

*Section 3*

## Unemployment benefit

*Article 6*

- (1) Subject to the provisions of Article 7 of this Convention, the provisions of paragraph (1)(a) and (1)(c) of Article 4 of this Convention shall apply to a person for the purposes of a claim for unemployment benefit under the legislation of the United Kingdom at a time when he would usually be gainfully occupied as an employed person in the territory of the United Kingdom.
- (2) Where a person claims unemployment benefit under the legislation of New Zealand at a time when he would usually be gainfully occupied in that country, any period during which he was resident in the United Kingdom shall be treated as a period during which he was resident in New Zealand.
- (3) Where a person claims unemployment benefit under the legislation of the United Kingdom by virtue of paragraph (1) of this Article, any period for which he received such benefit under the legislation of New Zealand shall be taken into account as if it were a period during which he had received unemployment benefit under the legislation of the United Kingdom.

*Section 4*

*Article 7*

- (1) Nothing in Articles 4 or 6 of this Convention shall diminish any right to receive sickness benefit or unemployment benefit under the legislation of the United Kingdom which a person has otherwise than by virtue of the provisions of this Convention.
- (2) Any claim to benefit by a person to whom the provisions of Article 4(1) or Article 6(1) apply shall take account also of contribution periods and equivalent periods completed under the legislation of the United Kingdom.

*Section 5*

Orphan's benefit

*Article 8*

- (1) Where a person who is usually resident in the United Kingdom claims orphan's benefit under the legislation of the United Kingdom in respect of a child who is also usually resident there, each week of residence completed in New Zealand by either parent of the child shall be treated as if it had been a week of residence completed in the United Kingdom and if either parent of the child was born in New Zealand, that parent shall be treated as if he had been born in the United Kingdom.
- (2) Where a person who is usually resident in New Zealand claims orphan's benefit under the legislation of New Zealand in respect of a child who is also usually resident there, that child shall be treated as if it had been born in New Zealand if it was born in the United Kingdom and any period during which that child's last surviving parent was usually resident in the United Kingdom shall be treated as if it were a period during which that parent was usually resident in New Zealand.
- (3) Any benefit which has become payable by virtue of the provisions of paragraph (1) or paragraph (2) of this Article shall cease to be payable if and when the person in receipt of the benefit, or the child in respect of whom the benefit is payable, ceases to be usually resident in the territory of the Party under whose legislation the benefit is being paid.

*Section 6*

## Benefit for old age

*Article 9**United Kingdom retirement pension by virtue  
of residence in New Zealand*

- (1) The provisions of this Article shall apply to persons in the United Kingdom who have been resident in New Zealand.
- (2) Where a person is in, or resident in, the United Kingdom and at the time when he was last in New Zealand he was receiving national superannuation under the legislation of New Zealand, otherwise than by virtue of this Convention or the former Agreements, provided that he is over pensionable age as defined under the legislation of the United Kingdom he shall be entitled, subject to the provisions of paragraph (6) of this Article, to receive a basic retirement pension at the full standard rate under the legislation of the United Kingdom as if he satisfied the contribution conditions for such a pension. Provided that, if the claimant is a married woman who does not satisfy either of the conditions specified in paragraph (4) of this Article, shall be treated as if her husband and not she satisfied the said contribution conditions.
- (3) Subject to the provisions of paragraphs (4) and (6) of this Article, for the purpose of a claim for basic retirement pension under the legislation of the United Kingdom by a person to whom the provisions of paragraph (2) of this Article do not apply, a person in, or resident in, the United Kingdom shall be treated as if he, or in the case of a claim made by a married woman or widow by virtue of her husband's insurance, her husband, had paid a Class 3 contribution under the legislation of the United Kingdom for each week during which he was resident in New Zealand.
- (4) Where the person claiming a basic retirement pension under the legislation of the United Kingdom is a married woman and she is claiming by virtue of her own insurance, the provisions of paragraph (3) of this Article shall not apply to her in respect of any period during which she was a married woman unless—

- (a) at the time she was last in New Zealand she was qualified to receive national superannuation otherwise than by virtue of the provisions of this Convention or the former Agreements and was, or could have been, treated as an unmarried woman for the purpose of that benefit; or
- (b) prior to 6 April 1975 she had paid one hundred and fifty-six contributions under the legislation of the United Kingdom for any period after the date of her marriage and before the date when she reaches pensionable age under that legislation; or
- (c) for any period after the date of her marriage and before the date when she reaches pensionable age under the legislation of the United Kingdom, she had paid contributions of the appropriate amount under the legislation of the United Kingdom:
  - (i) for each of three years since 6 April 1975; or
  - (ii) for each of two years since 6 April 1975 and in addition has paid fifty two contributions for periods prior to 6 April 1975; or
  - (iii) for any one year since 6 April 1975 and in addition has paid one hundred and four contributions for periods prior to 6 April 1975.

For the purposes of this paragraph, “contributions of the appropriate amount” means contributions the earnings-factor derived from which is not less than fifty two times the lower earnings limit for the year to which the contributions relate, and “contributions” means contributions other than contributions which would not be taken into account for the purpose of any claim for benefit under the legislation of the United Kingdom.

- (5) Where the person claiming a basic retirement pension under the legislation of the United Kingdom is a woman claiming by virtue of her own insurance, her marriage having been terminated by the death of her husband or otherwise, and her husband’s contributions are taken into account for the purpose of her claim, she shall be treated as if he had paid a Class 3 contribution under the legislation of the United Kingdom for each week during which he was resident in New Zealand.
- (6) Any basic retirement pension which has become payable under the legislation of the United Kingdom by virtue of the

provisions of this Convention or the former Agreements shall cease to be payable if and when the person to whom, or in respect of whom, the pension is payable leaves the United Kingdom, unless that person is usually resident in the United Kingdom and his absence from the United Kingdom is only temporary.

### *Article 10*

#### *New Zealand National Superannuation by virtue of residence in the United Kingdom*

- (1) The provisions of this Article shall apply to persons in New Zealand who have been resident in the United Kingdom.
- (2) Subject to the provisions of Article 15 of this Convention, for the purpose of any claim to receive National Superannuation under the legislation of New Zealand, a person who is usually resident in New Zealand shall be treated as if he had been resident there during any period when he was resident in the United Kingdom, provided that—
  - (a) this Article shall not apply to any man who has not reached the age of sixty five years or to any woman who has not reached the age of sixty years, and
  - (b) the person in respect of whom the claim for National Superannuation is made under the legislation of New Zealand has claimed any benefit to which he is entitled under the legislation of the United Kingdom, or would be entitled if he made a claim for that benefit.
- (3) National Superannuation which has become payable under the legislation of New Zealand by virtue of the provisions of this Convention, or the former Agreements, shall cease to be payable if and when the person to whom, or in respect of whom, the pension is payable ceases to be usually resident in New Zealand.



*Section 7*

Widow's benefit

*Article 11*

***United Kingdom widow's benefit by virtue of  
residence in New Zealand***

- (1) The provisions of this Article shall apply to persons in the United Kingdom who have been resident in New Zealand.
- (2) Where a widow is in, or resident in, the United Kingdom, and at the time when she was last in New Zealand she was receiving a widow's benefit under the legislation of New Zealand, otherwise than by virtue of this Convention or the former Agreements, she shall be entitled to receive at the standard rate under the legislation of the United Kingdom—
  - (a) a widow's allowance for any complete week since her arrival in the United Kingdom which begins before the end of the twenty-sixth week after the week in which her husband died; or
  - (b) a basic widowed mother's allowance if she has a child living with her for whom she is responsible and she has been a widow for more than twenty six weeks; or
  - (c) a basic widow's pension if she is not entitled to receive a widow's allowance or a widowed mother's allowance but she had reached the age of forty years either before she last left New Zealand or when she ceased to be qualified to receive a widowed mother's allowance; or
  - (d) a basic retirement pension if she has reached the age of sixty years—as if the contribution conditions for such a benefit were satisfied. For the purpose of this paragraph, a widow's benefit "at the standard rate" means the standard rate of widow's benefit appropriate to a widow according to her age at the time her husband died, or when she ceased to be qualified to receive widowed mother's allowance.
- (3) For the purpose of a claim for widow's benefit under the legislation of the United Kingdom by a widow who is in, or resident in, the United Kingdom to whom the provisions of paragraph (2) of this Article do not apply, each week of residence

in New Zealand completed by her husband shall be treated as if it were a week for which her husband paid a Class 3 contribution under the legislation of the United Kingdom.

- (4) Any widow's benefit or retirement pension to which a person has become entitled under the legislation of the United Kingdom by virtue of the provisions of this Convention or the former Agreements shall cease to be payable if and when the person leaves the United Kingdom, unless that person is usually resident in the United Kingdom and the absence of that person is only temporary.

### *Article 12*

#### *United Kingdom widow or widow's child in New Zealand*

- (1) Where a woman would be entitled to receive a widowed mother's allowance under the legislation of the United Kingdom if the child for whom she is responsible were in the United Kingdom, she shall be entitled to receive that allowance while the child is in New Zealand.
- (2) Where a woman entitled to receive a widow's allowance under the legislation of the United Kingdom otherwise than solely by virtue of Article 11 of this Convention, (or Article 8 of the Agreement signed on 19 June 1969 or Article 7 of the Agreement signed on 20 December 1955) would be entitled to receive also an increase of that benefit for an only, elder or eldest child if the child were in the United Kingdom she shall be entitled to receive that increase while the child is in New Zealand.

### *Article 13*

#### *New Zealand widow's benefit by virtue of residence in the United Kingdom*

- (1) The provisions of this Article shall apply to persons in New Zealand who have been resident in the United Kingdom.
- (2) Subject to the provisions of Article 15 of this Convention, for the purpose of a claim for widow's benefit under the legisla-

tion of New Zealand, a widow who is usually resident in New Zealand shall be treated as if—

- (a) her husband or she had been usually resident in New Zealand during any period during which he or she, as the case may be, was usually resident in the United Kingdom;
- (b) any child for whom she is responsible whose place of birth is in the United Kingdom had been born in New Zealand; and
- (c) her husband had died in New Zealand if he died in the United Kingdom,

provided that provisions of this paragraph shall not apply to any person who has failed to claim any benefit to which she is entitled under the legislation of the United Kingdom, or would be entitled if she made a claim for that benefit.

- (3) Widow's benefit which has become payable under the legislation of New Zealand by virtue of the provisions of this Convention or the former Agreements shall cease to be payable if and when the person in respect of whom the benefit is payable ceases to be usually resident in New Zealand.

### *Section 8*

#### Family allowance

#### *Article 14*

- (1) Where a person is in receipt of family allowance under the legislation of one Party, whether by virtue of the provisions of this Convention, the former Agreements, or otherwise, and that person or the child in respect of whom the allowance is payable ceases to be usually resident in the territory of the Party under whose legislation the allowance is payable, that allowance shall cease to be payable with the last payment made to him prior to his departure.
- (2) Where a person is usually resident in the territory of one Party together with any child of his family or any child for whom he is responsible, then for the purpose of any claim for family allowance under the legislation of that Party in respect of that child, any period of residence or presence completed by that person and/or the child in the territory of the other Party shall

- be treated as if it were, respectively, a period of residence or presence completed by that person and/or the child in the territory of the former Party.
- (3) Where family allowance is payable to a person under the legislation of the United Kingdom and that allowance would continue to be payable if that person and the child in respect of whom it is payable were in the United Kingdom, that allowance shall continue to be payable for the first twenty six weeks of absence of the person and/or the child in New Zealand, provided that such absence is only temporary.
- (4) Where family allowance has been payable under the legislation of the United Kingdom in respect of a child who is in New Zealand and that allowance has ceased to be payable because the child, or the person responsible for the child, has been absent from the United Kingdom for more than twenty six weeks, then for the purpose of any claim for family allowance under the legislation of New Zealand in respect of that child, that child shall be treated as if he were usually resident in New Zealand.
- (5) Where a person in the United Kingdom would be entitled to receive family allowance in respect of a child in the United Kingdom, no provision of any Order in Council, Statutory Notice or regulations made or given effect by virtue of the Taxes Act, section 497, shall have effect to disentitle that person from receiving that family allowance, provided that such Order in Council, Statutory Notice or regulation relates to persons moving between the United Kingdom and New Zealand and the person concerned is a person to whom the provisions of this Convention apply. Any family allowance payable by virtue of the provisions of this paragraph shall not cease to be payable because of the temporary absence from the United Kingdom of the beneficiary and/or the child in respect of whom the allowance is payable, and the provisions of paragraph (3) of this Article shall apply in such a case.
- (6) Where, but for the provisions of this paragraph, family allowance would be payable under the legislation of both Parties for the same period in respect of the same child, whether by virtue of the provisions of this Convention, the former Agreements, or otherwise, family allowance shall be payable in respect of

that child only under the legislation of the Party in whose territory the child is usually resident.

*Section 9*

Duplicate rights to benefit in New Zealand

*Article 15*

- (1) Subject to the provisions of paragraphs (3) and (4) of this Article, for the purpose of any claim to receive benefit under the legislation of New Zealand, whether by virtue of the provisions of this Convention, the former Agreements, or otherwise, the amount of any benefit which the claimant is entitled to receive under the legislation of the United Kingdom shall be disregarded in the computation of his income and shall be deducted from the amount of benefit which would otherwise have been payable to him under the legislation of New Zealand. Provided that, in the case of a married claimant, the amount to be deducted shall be the aggregate amount of any benefit which the claimant and the claimant's wife or husband are entitled to receive under the legislation of the United Kingdom, or such part of that aggregate amount as may be determined by the competent authority of New Zealand.
- (2) For the purpose of applying the provisions of paragraph (1) of this Article, "benefit" under the legislation of the United Kingdom includes any increase of or additional amount payable therewith.
- (3) Notwithstanding any other provision of this Convention, a person—
  - (a) who is in receipt of New Zealand national superannuation otherwise than by virtue of this Convention or the former Agreements; and
  - (b) who was usually resident in New Zealand on 1 January 1970; and
  - (c) was, while so resident in New Zealand prior to that date, a contributor to National Insurance under the legislation of the United Kingdom,shall be entitled to receive that national superannuation without diminution, notwithstanding that he is also entitled to re-

ceive a retirement pension under the legislation of the United Kingdom.

- (4) For the purpose of any claim to receive benefit under the legislation of New Zealand, whether by virtue or the provisions of this Convention, the former Agreements or otherwise, an industrial disablement pension payable under the legislation of the United Kingdom shall be treated as if it were accident compensation payable under the legislation of New Zealand.

### *Section 10*

#### Arrears of benefit

#### *Article 16*

Where a person makes a claim—

- (a) for retirement pension, widow's benefit or orphan's benefit under the legislation of the United Kingdom within twenty six weeks after his last arrival in that country; or
- (b) for national superannuation, widow's benefit, invalid's benefit or orphan's benefit under the legislation of New Zealand within six months after his last arrival in that country,

and shows that, apart from satisfying the condition of making a claim, he was entitled, by virtue of the provisions of this Convention, to receive the benefit in question for any period between the date of his arrival and the date of his claim, arrears of benefit shall be payable for the period, subject to the provisions of Article 15 of this Convention.

### *Section 11*

#### *Article 17*

Where a person who is not resident in the United Kingdom is in New Zealand and is qualified to receive any benefit under the legislation of the United Kingdom, the rate of that benefit shall be determined in accordance with those provisions of that legislation which concern the payment of benefit to persons who are not resident in the United Kingdom.

*Section 12*

New Zealand beneficiaries temporarily in the  
United Kingdom

*Article 18*

- (1) The competent authority of New Zealand shall determine whether any New Zealand benefit shall be paid in respect of a period of absence from New Zealand spent wholly or partly in the United Kingdom, in accordance with the provisions in New Zealand legislation concerning payment for absence.
- (2) For the purpose of determining any sum due under paragraph (1) of this Article, the amount of any retirement pension, widow's benefit, orphan's benefit, sickness benefit, unemployment benefit or family allowance received under the legislation of the United Kingdom for the period of absence shall be disregarded in the computation of his income but shall be deducted from the sum that would otherwise be payable.

*Section 13*

Recovery of advanced payments and  
overpayments of benefit

*Article 19*

Where a competent institution of one Party has made a payment of any benefit to a person for any period in advance of the period to which it relates or has paid him any benefit for a period, whether by virtue of the provisions of this Convention or otherwise, and the insurance authority or competent institution of the other Party afterwards decides that the person is entitled to benefit for that period under its legislation, the competent institution of the latter Party, at the request of the competent institution of the former Party, shall deduct from the benefit due for that period under its legislation any overpayment which, by virtue of the provisions of this Convention, results from the advance payment or benefit paid by the competent institution of the former Party and shall transmit this sum to the competent institution of the former Party.

*Section 14*

## Miscellaneous provisions relating to residence

*Article 20*

For the purposes of applying the provisions of this Convention a person shall be treated—

- (a) as having been resident in the United Kingdom during any period of absence from that country during which he was not resident in New Zealand and for which he, or, if the person is a woman who is or had been married, her husband, has paid contributions voluntarily or compulsorily under the legislation of the United Kingdom, or for which he had credits awarded to him under that legislation, or for which he would have been entitled to receive a credit or credits but for the fact that his contribution earnings factor achieved for the year in question already amounted to a reckonable or qualifying year, and any other period during which he was absent from the United Kingdom in any circumstances may, at the discretion of the competent authority of New Zealand, be treated as if it were a period during which he was absent in similar circumstances from New Zealand;
- (b) as having been resident in New Zealand during any period of absence from that country during which he was not resident in the United Kingdom if he was employed outside New Zealand during that period and was liable to pay income tax under the legislation of New Zealand for that period on his earnings arising from that employment;
- (c) as having been resident in one country for any period during which he was travelling from that country to the other country, provided that he arrived in that other country within thirteen weeks of his departure from the former country.

## Part III

## Miscellaneous provisions

*Article 21*

- (1) The competent authorities of the two Parties shall establish the administrative measures necessary for the application of this Convention.



- (2) The competent authorities of the two Parties shall communicate to each other, as soon as possible, all information about the measures taken by them for the application of this Convention or about changes in their national legislation in so far as these changes affect the application of the provisions of this Convention.

#### *Article 22*

The competent authorities, insurance authorities and competent institutions of the two Parties shall assist one another on any matter relating to the application of this Convention as if the matter were one affecting the application of their own legislation. This assistance shall be free of charge.

#### *Article 23*

- (1) Any claim, notice or appeal which should, for the purposes of the legislation of one Party, have been submitted within a prescribed period to the insurance authority or the competent authority of that Party, shall be treated as if it had been submitted to that insurance authority or competent authority if it is submitted within the same period to an insurance authority or competent authority of the other Party.
- (2) Any claim for benefit submitted under the legislation of one Party shall be deemed to be a claim for the corresponding benefit under the legislation of the other Party in so far as this corresponding benefit is payable in accordance with the provisions of this Convention.
- (3) Any document submitted under the legislation of New Zealand may, where appropriate, be treated as a notice of retirement given under the legislation of the territory of the United Kingdom.
- (4) In any case to which the provisions of paragraph (1), (2) or (3) of this Article apply, the authority to which the claim, notice, appeal or document has been submitted shall transmit it without delay to the competent authority or insurance authority of the other Party.

*Article 24*

- (1) Where any benefit is payable under the legislation of one Party to a person in the territory of the other Party, the payment may be made by the competent institution of the latter Party, at the request of the competent institution of the former Party.
- (2) Where any retirement or widows pension is payable under the legislation of the United Kingdom to a person who is residing in New Zealand, the payment of that pension shall be made by the competent institution of New Zealand, at the request of the competent institution of the United Kingdom.
- (3) Any payment made by the competent institution of New Zealand in terms of paragraph (1) of this Article shall be free of any charge.

*Article 25*

- (1) Any dispute between the competent authorities of the two Parties about the interpretation or application of this Convention shall be resolved through agreement between the competent authorities of each Party.
- (2) If any such dispute cannot be resolved in this manner, it shall be submitted, at the request of either Party, to an arbitration tribunal which shall be composed in the following manner:
  - (a) each Party shall appoint an arbitrator within one month from receipt of the demand for arbitration. The two arbitrators shall appoint a third arbitrator, who shall not be a national of either Party, within two months from the date on which the Party which was the last to appoint its arbitrator has notified the other Party of the appointment;
  - (b) if within the prescribed period either Party should fail to appoint an arbitrator, the other Party may request the President of the International Court of Justice or, in the event of his having the nationality of one of the Parties, the Vice President or next senior judge of that Court not having the nationality of either Party, to make the appointment. A similar procedure shall be adopted at the request of either Party if the two arbitrators cannot agree on the appointment of the third arbitrator.

- (3) The decision of the arbitration tribunal shall be by majority vote. Its decision shall be binding on both Parties. The costs of the arbitration tribunal should be borne equally by the two Parties. The arbitration tribunal shall determine its own rules of procedure.

#### Part IV

##### Transitional and final provisions

###### *Article 26*

- (1) Upon entry into force of this Convention the Agreement on Social Security signed at Wellington on 19 June 1969 shall terminate.
- (2) Any right to benefit acquired by a person in accordance with the provisions of the Agreement signed at Wellington on 19 June 1969 shall be maintained, and any rights in course of acquisition under that Agreement at the date of the entry into force of this Convention shall be settled in accordance with the provisions of this Convention.
- (3) Benefit, other than lump sum payments, shall be payable in accordance with the provisions of this Convention in respect of events which happened before the date of its entry into force. For the purpose of determining claims in accordance with the provisions of this Convention, account shall be taken of insurance periods and periods of residence, employment or presence, completed before the date of its entry into force.
- (4) Paragraph (3) of this Article shall not confer any right to receive payment of benefit for any period before the date of the entry into force of this Convention.

###### *Article 27*

Unless on or before 14 December 1983 either of the Parties shall have given to the other written notification to the contrary, this Convention shall enter into force on 1 January 1984. In the event of such a contrary notification being given, each of the Parties shall notify the other in writing when all of the measures necessary to give effect to this Convention in its internal law have been completed, and this Convention shall enter into force on the 30th day after the date of the later of these notifications.

*Article 28*

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

*Article 29*

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

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

Done in duplicate at London this 1st day of November 1983.

For the Government of New  
Zealand:

W L Young

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

Timothy Raison

Marie Shroff,  
Chief of the Executive Council.

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Issued under the authority of the Acts and Regulations Publication Act 1989.  
Date of notification in *Gazette*: 12 April 1990

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## **Contents**

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## **Notes**

### **1 *General***

This is a reprint of the Social Welfare (Reciprocity with the United Kingdom) Order 1990. The reprint incorporates all the amendments to the order as at 15 July 2013, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, *see* <http://www.pco.parliament.govt.nz/reprints/>.

### **2 *Status of reprints***

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

### **3 *How reprints are prepared***

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked

are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

#### **4 Changes made under section 17C of the Acts and Regulations Publication Act 1989**

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
  - indentation
  - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
  - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
  - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

**5** *List of amendments incorporated in this reprint  
(most recent first)*

Social Security (Benefit Categories and Work Focus) Amendment Act 2013  
(2013 No 13): sections 86, 97, 114, 129

War Pensions Amendment Act 2003 (2003 No 18): section 12(2)

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