

Social Welfare (Reciprocity with Republic of Korea) Order 2021

Order in Council

At Wellington this day of 2021

Present:
in Council

This order is made under section 380 of the Social Security Act 2018—

- (a) 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 section 381(2) of the Social Security Act 2018); and
- (b) on the advice and with the consent of the Executive Council.

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Order

1 Title

This order is the Social Welfare (Reciprocity with Republic of Korea) Order 2021.

2 Commencement

This order comes into force on 3 December 2021.

3 Transitional, savings, and related provisions

The transitional, savings, and related provisions (if any) set out in Schedule 1 have effect according to their terms.

4 Agreement adopted

When the Agreement on Social Security between the Government of New Zealand and the Government of the Republic of Korea, signed at Seoul on 29 October 2019 and set out in Schedule 2 (the **Agreement**), enters into force, its provisions have force and effect so far as they relate to New Zealand.

5 Modification of enactments

The provisions of the following enactments have effect subject to the modifications that may be required for the purpose of giving effect to the Agreement:

- (a) the Social Security Act 2018:
- (b) Part 6 of the Veterans' Support Act 2014:
- (c) Part 1 of the New Zealand Superannuation and Retirement Income Act 2001:
- (d) the regulations and orders in force under the Acts specified in paragraphs (a) to (c).

**Schedule 1
Transitional, savings, and related provisions**

cl 3

**Part 1
Provisions relating to this order as made**

There are no transitional, savings, or related provisions relating to this order as made.

Schedule 2
Agreement on Social Security between the Government of New Zealand and the Government of the Republic of Korea entered into at Seoul on 29 October 2019

cl 4

The Government of New Zealand and the Government of the Republic of Korea (hereinafter referred to as the “Contracting Parties”),

Being desirous of regulating the relationship between their two countries in the field of social security,

Have agreed as follows:

Part I
General Provisions

Article 1—Definitions

1. For the purpose of this Agreement:
 - (a) “national” means, as regards the Republic of Korea (hereinafter referred to as “Korea”), a national of Korea as defined in the Nationality Law, and as regards New Zealand, a citizen of New Zealand;
 - (b) “legislation” means the laws and regulations specified in Article 2 of this Agreement;
 - (c) “competent authority” means, as regards Korea, the ministry in charge of enforcing the legislation mentioned in Article 2 of this Agreement, and as regards New Zealand, the department for the time being responsible for administration of the Social Security Act 2018;
 - (d) “competent institution” means, as regards Korea, the National Pension Service, and as regards New Zealand, the institution of the Government of New Zealand that is responsible for the implementation of this Agreement;
 - (e) “period of coverage” in relation to Korea means any period of contributions that has been recognised and completed under the legislation of Korea, and any other period recognised as equivalent to a period of contribution under that legislation;
 - (f) “benefit” means, as regards Korea, the old age benefit under the National Pension Act, and as regards New Zealand, either of the following benefits:
 - (i) New Zealand superannuation;
 - (ii) veteran’s pension;
 - (g) “day” means a calendar day;

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- (h) “month” means a calendar month, but for the purpose of aggregating periods of New Zealand working age residence, if an aggregated period exceeds a whole number of months by at least 15 days, the number of months in that period shall be rounded up to the next whole number;
- (i) “New Zealand” means the islands and territories within the Realm of New Zealand; but does not include the self-governing state of the Cook Islands, the self-governing state of Niue, or Tokelau, or the Ross Dependency;
- (j) “residence” in relation to New Zealand means a period of residence (and, if applicable, presence) that would qualify a person for a New Zealand benefit;
- (k) “social security purposes” means the administration of the legislation as set out in Article 2 of this Agreement;
- (l) “New Zealand working age residence”, in relation to a person:
- (i) means a period when the person had residence in New Zealand after the person attains age 20 and before the person attains age 65;
 - (ii) includes a period after the person attains age 20 and before the person attains age 65 when the person was employed outside New Zealand and while so employed the person’s employer made respective Income Payments;
 - (iii) includes a period after the person attains age 20 and before the person attains age 65 when the person was with a spouse or partner who was employed outside New Zealand and that spouse or partner’s employer made respective income payments;
 - (iv) includes a period when the person, after the person attains age 20 and before the person attains age 65 where the person was deemed by New Zealand’s competent institution to meet the criteria set out in section 16 of the Social Security Act 2018 and Regulation 7 of the Social Security Regulations 2018; and
 - (v) for a Korean national, includes any periods of lawful residence in New Zealand;
- (m) “income payments” in relation to New Zealand means:
- (i) PAYE income payments, as that term is used in the Income Tax Act 2007;
 - (ii) source deduction payments, as that term is used in the:
 - A. Income Tax Act 2004, from which the person, employer, or other relevant person must withhold an amount of tax under the PAYE rules as defined in that Act;

- B. Income Tax Act 1994, from which the person, employer, or other relevant person must make a tax deduction under the PAYE rules as defined in that Act;
 - C. Income Tax Act 1976, from which the person, employer, or other relevant person must make a tax deduction under Part 11 of that Act; and
 - D. Income Tax Assessment Act 1957, from which the person, employer, or other relevant person must make a tax deduction under Part 2 of that Act;
- (n) “third country” means a country other than Korea or New Zealand.
2. Any term not defined in this Article shall have the meaning assigned to it in the applicable legislation.

Article 2—Applicable Legislation

1. This Agreement shall apply to the following legislation:
- (a) as regards Korea, the National Pension Act;
 - (b) as regards New Zealand:
 - (i) Part 1 of the New Zealand Superannuation and Retirement Income Act 2001;
 - (ii) the Social Security Act 2018;
 - (iii) the Social Security Regulations 2018;
 - (iv) the Veterans’ Support Act 2014;
 - (v) section 5 of the Civil Union Act 2004; sections 29 and 29A of the Interpretation Act 1999; and;
 - (vi) the Orders in Council and Regulations made under those Acts.
2. Unless otherwise provided in this Agreement, the legislation referred to in paragraph 1 of this Article shall not include treaties or other international agreements on social security that may be concluded between one Contracting Party and a third country, or legislation promulgated for their specific implementation.
3. This Agreement shall also apply to future legislation which amends, supplements, consolidates or supersedes the legislation specified in paragraph 1 of this Article.
4. Notwithstanding paragraph 3 of this Article, this Agreement shall not apply to the laws or regulations which extend existing legislation of one Contracting Party to new categories of beneficiaries, if the competent authority of that Contracting Party notifies the competent authority of the other Contracting Party in writing, within six months from the date of the entry into force of such laws or regulations, that no such extension to the Agreement is intended.

Article 3—Personal Scope

This Agreement applies to any national of either Contracting Party who:

- (a) is or has been subject to the legislation of Korea; or
- (b) has a period of New Zealand working age residence; and, where applicable, to other persons in regard to the rights derived from the person described above; and
- (c) in the case of New Zealand benefits only, is a resident or a former resident of New Zealand.

Article 4—Equal Treatment

Unless otherwise provided in this Agreement, in accordance with Article 3, all persons to whom this Agreement applies shall be treated equally by a Contracting Party in regard to the rights and obligations that arise under the legislation of that Contracting Party or as a result of this Agreement.

Part II

Special Provisions relating to Korean Benefits

Article 5—Totalisation and Benefits

1. Where a person has completed at least 12 months of coverage under the legislation of Korea, but does not have sufficient periods of coverage to satisfy the requirements for entitlement to old-age benefits under the legislation of Korea, the competent institution of Korea shall take into account, for the purpose of establishing entitlement to benefits under this Article, periods of New Zealand working age residence which do not coincide with periods of coverage already credited under the legislation of Korea.
2. Where periods of New Zealand working age residence are taken into account to establish eligibility for benefits under the legislation of Korea in accordance with paragraph 1 of the Article, the benefits due shall be determined as follows:
 - (a) the competent institution of Korea shall first calculate the pension amount equal to the amount that would have been payable to the person if all the periods of coverage credited under the legislation of Korea and periods of New Zealand working age residence had been completed under the legislation of Korea. To determine the pension amount, the competent institution of Korea shall take into account the person's average standard monthly income while covered under the legislation of Korea;
 - (b) the competent institution of Korea shall then calculate the partial benefit to be paid in accordance with the legislation of Korea based on the pension amount calculated according to the preceding subparagraph, in proportion to the ratio between the duration of the periods of Korean cover-

age and the total duration of the periods of Korean coverage and New Zealand working age residence.

3. Notwithstanding Article 4 of this Agreement, lump-sum refunds shall be decided in accordance with the legislation of Korea.

Part III

Special Provisions relating to New Zealand Benefits

Article 6—Totalisation for New Zealand Benefits

1. Where this Agreement applies to a person and there is a period of New Zealand residence that is:
 - (a) less than the period necessary to give a person entitlement to the benefit claimed under the legislation of New Zealand; and
 - (b) equal to or greater than one continuous year of New Zealand working age residence,then the period of Korean coverage for that person shall be deemed to be a period of New Zealand residence.
2. For the purpose of determining entitlement to a New Zealand benefit under paragraph 1 of this Article, the competent institution of New Zealand shall, subject to paragraph 3 of this Article:
 - (a) consider a period of Korean contributions after reaching age 20 to be a period when the person had residence in New Zealand; but
 - (b) shall only consider periods of Korean contributions after reaching age 50 for the purpose of satisfying the requirement that a person had residence in New Zealand for five years after reaching that age.
3. If a period of New Zealand working age residence and a period of Korean coverage overlap, only the period of New Zealand working age residence shall be taken into account.

Article 7—Effect of Residence in Korea

1. A person shall be considered, for the purpose of an application, to be ordinarily resident and present in New Zealand on the date that he or she applies for a New Zealand benefit under this Agreement if, on that date, he or she:
 - (a) is ordinarily resident in Korea, and present in either Korea or New Zealand; and
 - (b) has the intention of remaining resident in Korea for at least 26 weeks; and
 - (c) has had a continuous period of New Zealand working age residence of at least one year.

2. For the purpose of the payment of any New Zealand benefit under this Agreement, a person shall be considered to be ordinarily resident in, and not absent from, New Zealand, if he or she:
 - (a) is ordinarily resident in Korea, and present in Korea or New Zealand; and
 - (b) has had a continuous period of New Zealand working age residence of at least one year.
3. For the purposes of this Article:
 - (a) if a person who is ordinarily resident in Korea is temporarily absent from Korea for a period that does not exceed 26 weeks, that absence shall be considered as not interrupting the person's ordinary residence or presence in Korea;
 - (b) if a person who is ordinarily resident in Korea is absent from Korea for a period that exceeds 26 weeks, that person's ordinary residence in Korea shall be considered to have ceased on the date of departure from Korea;
 - (c) a person is considered to be ordinarily resident in Korea on the date of the person's departure from New Zealand if:
 - (i) the person leaves New Zealand with the intention of becoming and remaining resident in Korea for at least 26 weeks; and
 - (ii) the person begins to be resident in Korea within 26 weeks of that departure.
4. For the purposes of subparagraphs (a) and (b) of paragraph 3 of this Article, a period when a person is temporarily in New Zealand shall not be considered a period when the person is temporarily absent from Korea.
5. A person who is ordinarily resident in Korea who has not reached the age of entitlement to New Zealand superannuation shall be considered not qualified for or entitled to receive a veteran's pension.

Article 8—Rates of New Zealand Superannuation and Veteran's Pensions Payable in Korea

1. Subject to paragraphs 3 and 4 of this Article, the rate of New Zealand superannuation or veteran's pension payable to a person ordinarily resident in Korea who is entitled to receive it under Article 6 of this Agreement shall be calculated according to the following formula:

$$\text{Amount payable} = \frac{\text{Number of whole months of New Zealand working age residence} \times \text{maximum benefit rate}}{\text{Number of whole months in 45 years}}$$

2. For the purposes of paragraph 1 of this Article:

- (a) all periods of New Zealand working age residence shall be aggregated; and
 - (b) the maximum benefit rate is:
 - (i) for a single person, the weekly rate before the deduction of income tax of New Zealand superannuation or veteran's pension payable to a single person who is not living alone; or
 - (ii) for a person who is married, in a civil union, or in a de facto relationship, the weekly rate before the deduction of income tax of New Zealand superannuation or veteran's pension payable to a person whose spouse or partner is also entitled to New Zealand superannuation or a veteran's pension.
3. In calculating the amount of benefit payable under this Article, no account shall be taken of any benefit payable under Korea's social security scheme or under the social security laws of a third country.
 4. A person who is entitled to receive New Zealand superannuation or a veteran's pension under Article 6 of this Agreement whose spouse or partner has not reached the age of entitlement for New Zealand superannuation is not entitled to elect to receive the alternative rate of New Zealand superannuation or veteran's pension payable to a person who is married, in a civil union, or in a de facto relationship whose spouse or partner is not entitled to receive New Zealand superannuation or a veteran's pension.

Article 9—Advance Payment of Benefits and 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 6 of this Agreement, the competent institution of New Zealand shall also pay to that person any supplementary benefit or allowance under the legislation of New Zealand to which the person is qualified.
2. If a person who is ordinarily resident in Korea becomes entitled to receive a New Zealand benefit under this Agreement:
 - (a) the person is not entitled to receive any supplementary benefit or allowance under the legislation of New Zealand; and
 - (b) no payment shall be made in advance of any number of installments of that New Zealand benefit, or part of it not yet due.

Article 10—Effect of Korea's Taxation of Korean Benefits

1. Paragraph 2 of this Article applies to a person who:
 - (a) is ordinarily resident in New Zealand;
 - (b) is receiving a Korean benefit from which any tax is levied by Korea; and
 - (c) is also receiving a New Zealand benefit.

2. Where this Article applies, the amount of the person's Korean benefit to be deducted from the person's New Zealand benefit is the amount of the Korean benefit after it is reduced by the Korean tax levied on it.

Article 11—Residence in a Third Country

1. Paragraph 2 of this Article applies to a person who:
 - (a) is ordinarily resident in New Zealand; and
 - (b) is entitled to receive a New Zealand benefit solely through the application of Article 6 of this Agreement; and
 - (c) either:
 - (i) departs from New Zealand with the intention of residing in a third country for a period of more than 26 weeks; or
 - (ii) resides in a third country for a period of more than 26 weeks.
2. A person referred to in paragraph 1 of this Article is not entitled to receive New Zealand superannuation or a veteran's pension while absent from New Zealand or Korea unless that person is entitled to receive that benefit under a social security agreement between New Zealand and the third country.

Part IV

Miscellaneous Provisions

Article 12—Administrative Arrangement

1. The competent authorities of the Contracting Parties shall conclude an Administrative Arrangement that sets out the measures necessary for the implementation of this Agreement.
2. The competent institutions shall agree to technical specifications for the operation of this Agreement.

Article 13—Exchange of Information and Mutual Assistance

1. Subject to the respective laws of the Contracting Parties, the competent institutions shall exchange information for social security purposes, including such information as is necessary for the competent institutions to give effect to the provisions of this Agreement. Such information will not be used for any other purpose.
2. Paragraph 1 is subject to the respective privacy laws of the Contracting Parties, in particular, for New Zealand, the terms and conditions set out in section 383 of the Social Security Act 2018 and Regulation 242 of the Social Security Regulations 2018. To this effect both Contracting Parties agree that:
 - (a) in exchanging personal data or personal information for the purposes of this Agreement, the competent institutions of both Contracting Parties shall implement appropriate technical and organisational security meas-

- ures to protect the personal data or personal information against accidental or unlawful destruction or loss, alteration, unauthorised disclosure or access;
- (b) the competent institutions of both Contracting Parties shall have in place appropriate procedures and safeguards so that any person who may be authorised by the respective laws of the Contracting Parties to have access to the personal data or personal information exchanged, shall respect the confidentiality, privacy and security of such personal data or personal information;
 - (c) in the event that one Contracting Party requests the other Contracting Party to provide information on the management of the personal data or personal information being exchanged, the other Contracting Party shall assist the first Contracting Party by providing the relevant information; and
 - (d) both competent institutions shall inform each other should there be changes to the data protection and/or privacy laws, and/or social security laws of the Contracting Parties affecting the confidentiality, privacy and/or security of personal data or personal information.
3. The competent institution collecting the personal details shall inform the data subjects about the exchange of information with the other competent institution, as well as of their rights under the respective privacy laws of both Contracting Parties.

Article 14—Exemption from Fees and Certification of Documents

1. Where the legislation of a Contracting Party provides that any document which is submitted to the competent authority or competent institution of that Contracting Party shall be exempted, wholly or partly, from fees or charges, including consular and administrative fees, the exemption shall also apply to corresponding documents which are submitted to the competent authority or competent institution of the other Contracting Party in the application of this Agreement or of the legislation of the other Contracting Party.
2. Documents and certificates which are presented by the competent authority or competent institution of either Contracting Party for the application of this Agreement or of the legislation of the other Contracting Party shall be exempted from the requirements for authentication by diplomatic or consular authorities or any other similar formalities.
3. Copies of documents which are certified as true and exact copies by the competent authority or competent institution of one Contracting Party shall be accepted as true and exact copies by the competent authority or competent institution of the other Contracting Party, without further certification.

Article 15—Language of Communications

1. The competent authorities and competent institutions of the Contracting Parties may correspond directly with one another as well as with any person, wherever that person may reside, whenever it is necessary to do so for the application of this Agreement or the legislation to which this Agreement applies. The correspondence may be made in any official language of either Contracting Party.
2. An application or document may not be rejected by a competent authority or competent institution of a Contracting Party solely because it is in an official language of the other Contracting Party.

Article 16—Submission of Claims, Notices or Appeals

1. Any claim, notice or appeal concerning the determination or payment of a benefit under the legislation of a Contracting Party which should, for the purposes of that legislation, have been filed within a prescribed period with a competent authority or competent institution of that Contracting Party, but which is instead filed within the same period to a competent authority or competent institution of the other Contracting Party, shall be considered to have been filed on time with the competent authority or competent institution of the first Contracting Party.
2. If, after the entry into force of this Agreement, a person files a written application for benefits with the competent institution of a Contracting Party under the legislation of that Contracting Party, the application shall also protect the rights of that person to corresponding benefits under the legislation of the other Contracting Party, provided that the person at the time of application:
 - (a) requests that it be considered as an application under the legislation of the other Contracting Party, or
 - (b) provides information indicating that periods of coverage or working age residence in New Zealand have been completed under the legislation of the other Contracting Party.
3. In any case to which paragraph 1 or 2 of this Article applies, the competent authority or competent institution to which the claim, notice or appeal has been submitted shall indicate the date of receipt of the document and forward it without delay to the competent authority or competent institution of the other Contracting Party.

Article 17—Payment of Benefits

1. The competent institution of a Contracting Party may pay benefits in accordance with this Agreement in the currency of that Contracting Party.
2. In the event that a Contracting Party imposes currency controls or other similar measures that restrict payments, remittances or transfers of funds or financial instruments to persons who are outside the territory of that Contracting Party, it shall, without delay, take appropriate measures to ensure the payment of any

amount that must be paid in accordance with this Agreement to persons described in Article 3.

Article 18—Resolution of Disagreements

Any disagreement regarding the interpretation or application of this Agreement shall be resolved by consultation between the competent authorities or the Contracting Parties.

Part V

Transitional and Final Provisions

Article 19—Transitional Provisions

1. Any period of coverage or period of New Zealand working age residence completed before the date of entry into force of this Agreement, and any other relevant events that occurred before that date, shall be taken into consideration in determining the right to a benefit under this Agreement. The competent institution of Korea shall only take into account periods of New Zealand working age residence which occurred after the establishment of the Korean National Pension scheme.
2. This Agreement shall not establish any right to receive payment of a benefit for any period before the date of the entry into force of this Agreement.
3. Determinations concerning entitlement to benefits which were made before the entry into force of this Agreement shall not affect rights arising under it.
4. Benefits determined before the entry into force of this Agreement may be newly determined upon application if a change in such benefits results solely from the provisions of this Agreement. If the new determination under the preceding sentence of this paragraph results in no entitlement or entitlement to a lesser amount of pension that paid for the last period prior to the entry into force of this Agreement, the same amount of pension as previously paid shall continue to be paid.
5. The provisions of Part II and Part III shall apply only to benefits for which an application is filed on or after the date this Agreement enters into force.

Article 20—Entry into Force

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

Article 21—Period of Duration and Termination

1. This Agreement shall remain in force and effect until the last day of the twelfth month following the month in which written notice of its termination is given by either Contracting Party to the other Contracting Party.
2. If this Agreement is terminated, rights regarding entitlement to or payment of benefits acquired under it shall be retained. The Contracting Parties shall make arrangements dealing with rights in the process of being acquired.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto, have signed this Agreement.

DONE in duplicate at Seoul on this 29th day of October 2019 in the Korean and English languages, both texts being equally authentic.

For the Government of New Zealand
Deputy Prime Minister and Minister of Foreign Affairs of New Zealand
The Rt Hon Winston Peters

For the Government of the Republic of Korea
Minister of Foreign Affairs of the Republic of Korea
H. E. Kang, Kyung-wha

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 3 December 2021, gives effect to the Agreement on Social Security between the Government of New Zealand and the Government of the Republic of Korea entered into at Seoul on 29 October 2019 (the **Agreement**).

The Agreement deals with matters relating to the payment of superannuation and veterans' pensions to people who move between New Zealand and the Republic of Korea.

The Agreement will come into force on the first day of the third month following the month in which both parties have notified each other of the completion of the necessary domestic procedures (which, for New Zealand, means bringing this order into force).

**Social Welfare (Reciprocity with Republic of Korea)
Order 2021**

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*:

This order is administered by the Ministry of Social Development.