

Chair
Cabinet Legislation Committee

SOCIAL WELFARE (RECIPROCITY WITH THE REPUBLIC OF KOREA) ORDER 2021

Proposal

- 1 I propose that the Cabinet Legislation Committee authorise the submission to the Executive Council of the Social Welfare (Reciprocity with the Republic of Korea) Order 2021 (the Order).

Policy

- 2 The regulations to implement the social security agreement with South Korea are routine regulations for social security agreements and do not require any new policy decisions.

Social security agreements exist to help ensure people's access to social security, including pensions

- 3 Worldwide, people who have lived in more than one country often find that they do not fulfil residence requirements or have made enough contributions under a social security scheme to qualify for a pension payment. To help overcome this problem, a network of social security agreements has been set up within the international community. One of the key elements of social security agreements is that the partner countries broadly share the responsibility for social security coverage.
- 4 Social security agreements are bilateral treaties which provide for the reciprocal payment of social security benefits and pensions. They allow the costs of benefits and pensions to be shared by modifying barriers in domestic legislation, such as residence rules, that would otherwise prevent payment. They also allow qualifying periods in one agreement partner country to be counted as qualifying periods in the other agreement partner country.
- 5 Social security agreements typically cover old age pensions, invalidity benefits and survivor's benefits. However, benefit coverage under New Zealand's recent social security agreements is limited to New Zealand Superannuation and Veteran's Pension because:
 - under the welfare reform changes introduced in 2013, the New Zealand widow's, widower's and invalid's benefits ceased to exist. Payments for some of the circumstances these benefits covered were consolidated into wider benefit categories that go beyond normal benefit coverage contained in social security agreements
 - the number of people applying for payments other than New Zealand Superannuation and Veteran's Pension in existing agreements which provide for widows and invalids is very low.

- 6 New Zealand has nine social security agreements in force. These are with Australia; Canada; Denmark; Greece; Republic of Ireland; Jersey and Guernsey; Malta; the Netherlands; and the United Kingdom.

A social security agreement with South Korea has numerous benefits

- 7 The main advantage of the social security agreement with South Korea (the Agreement) is that it will help to facilitate ease of movement between South Korea and New Zealand. International mobility, as well as the provision of social security benefits, strengthens migrant communities, allowing them to better maintain ties to their home country. The increased access to benefits and pensions also fosters financial independence.
- 8 Social security agreements may complement diplomatic linkages and provide practical steps to further governmental and people-to-people connections. Social security agreements may also further enhance people-to-people links through removing barriers to the flow of ideas, skills and capital associated with the two-way movement of people. In terms of this Agreement, it could potentially:
 - increase work opportunities for New Zealanders by making it easier for people to move to South Korea in retirement or to move in and out of New Zealand during their working lives without compromising their future New Zealand Superannuation entitlement
 - enable the international flow of skills and entrepreneurship, as it may provide more incentive for New Zealanders to work in South Korea, gain further work skills, and then return to New Zealand
 - stimulate migration and labour movement to New Zealand.
- 9 Potential savings also arise as social security agreements allow people from agreement countries to access previously inaccessible pensions, the amounts of which New Zealand can directly deduct from New Zealand benefits and pensions (further explained in paragraph 14 below). Removing some of the financial barriers to international mobility also allows people to retire overseas, which can lead to reductions in New Zealand's health costs and the cost of New Zealand Superannuation which is paid at a proportional rate to overseas residents.

A social security agreement was signed with South Korea in 2019

- 10 In 2009, the Minister for Social Development approved negotiations seeking a Social Security Agreement with South Korea. Social security agreements typically take years to negotiate. On 8 April 2019, Cabinet approved the signing of the Agreement [SWC-19-MIN-0027 refers] (attached in Appendix One) following the completion of negotiations and on my recommendation. The Agreement was signed in Seoul on 29 October 2019 by the Minister of Foreign Affairs of New Zealand and the Minister of Foreign Affairs of the Republic of Korea.
- 11 Initially the agreement was scheduled to enter into force in 2021, allowing time for New Zealand and South Korea to comply with all requirements for the entry into force of the Agreement (also including time for necessary operational changes to be made). However, due to delays related to the translation of the corresponding Administrative Arrangements and Technical Specifications (which

operationalise the Agreement) and the COVID-19 pandemic, the agreement is now scheduled to enter into force on 1 March 2022.

- 12 The Agreement is limited to coverage of Korean National Pensions and New Zealand Superannuation and Veteran's Pension.
- 13 The main provisions of the Agreement set out the following:
 - the authority to pay pensions in partner countries
 - provisions for information sharing between the parties so that correct pension entitlement can be determined
 - the residency/contribution requirements of each country for pension entitlement
 - rules establishing how each country will consider residency or contributions in the other country to provide coverage to people who do not have sufficient residence or contributions to qualify for a pension
 - the formula for the proportional calculation that determines the pension rate each individual is to receive (the rate of payment of New Zealand Superannuation and Veteran's Pension in South Korea will be calculated on a proportional basis that depends on the length of residence in New Zealand between the ages of 20 and 65)
 - provisions by which each partner country can organise the implementation of the Agreement
 - provisions regarding the duration and termination of the Agreement.
- 14 The information sharing provisions will allow South Korean officials to provide New Zealand officials with information about South Korean benefits being paid to New Zealand residents. As the rate of New Zealand benefits is reduced by the rate of overseas state benefits, this will help New Zealand officials to determine the correct rate of payment for New Zealand residents receiving South Korean benefits. This information has the potential to generate savings to New Zealand because of our 'direct deduction' policy, under which the amount of any overseas benefit or pension a person receives is deducted from the amount of New Zealand benefit or pension on a dollar for dollar basis.
- 15 The corresponding Administrative Arrangements and Technical Specifications will be signed separately by the representative of each Competent Authority as specified by the Agreement. MSD Officials are working with South Korean Officials to arrange for this signing.

The attached Order in Council will bring the Agreement into force in New Zealand law

- 16 The Order, which is made under section 380 of the Social Security Act 2018, implements in New Zealand law the Social Security Agreement between the Republic of Korea (South Korea) and New Zealand, signed in Seoul on 29 October 2019 (the Agreement).
- 17 Once the Order has come into effect, New Zealand will have completed all domestic requirements for the entry into force of the Agreement.

Timing and 28-day rule

- 18 The Order will come into effect 28 days after its publication in the Gazette meeting the 28-day rule. New Zealand and South Korea are aiming to bring the Agreement into force on 1 March 2022. The Agreement provides that it will "come into effect on the first day of the third month following the month in which each Contracting Party has received from the other Contracting Party written notification¹ that it has complied with all requirements for the entry into force of this Agreement". For the Agreement to come into force on 1 March 2022, the Order would need to come into effect in December 2021, enabling South Korea and New Zealand to complete the exchange of diplomatic notes in December.²

Compliance

- 19 The Order complies (where applicable) with:
- the principles of the Treaty of Waitangi
 - rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993
 - principles and guidelines set out in the Privacy Act 1993
 - relevant international standards and obligations, and
 - LDAC Guidelines, a publication by the Legislation Design and Advisory Committee.

Statutory prerequisite in the Social Security Act 2018

- 20 Section 381 of the Social Security Act 2018 provides that an Order to bring a social security agreement which contains information sharing provisions into force cannot be made unless the Privacy Commissioner has first presented to the Minister for Social Development and the Minister for Justice a report on whether the information sharing provisions comply with the information privacy principles set out in section 22 of the Privacy Act 2020.
- 21 In September 2017 the Minister of Justice and I received a report and letter of support from the Privacy Commissioner for an Order in Council to bring the Social Security Agreement between New Zealand and the Republic of Korea into force. Therefore, I consider that the requirement in section 381 has been met.

Regulations Review Committee

- 22 There are no grounds for the Regulations Review Committee to draw the Order to the attention of the House under Standing Order 327.

Certification by Parliamentary Counsel

- 23 The Order in Council has been certified by Parliamentary Counsel as being in order for submission to Cabinet and the Executive Council.

¹ Written notification is undertaken through an exchange of diplomatic notes.

² Note that this is dependent on the timing of LEG and Cabinet consideration in November 2021. If the Order comes into effect in January rather than December, this will push the timeline out a month with the completion of the exchange of diplomatic notes in January and the Agreement coming into force on 1 April 2022.

Other matters

- 24 Major bilateral treaties of particular significance are presented to the House for Select Committee consideration in accordance with the procedures set out in Standing Orders (SO 405). On 19 February 2019, the Minister of Foreign Affairs decided that the Agreement need not be subject to the Parliamentary Treaty examination process as it is not a major bilateral treaty of particular significance.

Regulatory impact and compliance cost statement

- 25 The Regulatory Quality Team at the Treasury has determined that the regulatory proposals in this paper are exempt from the requirement to provide a Regulatory Impact Statement on the basis that they have no or minor impacts on businesses, individuals or not for profit entities.
- 26 No compliance costs are associated with the Agreement.

Publicity

- 27 The Ministry of Social Development will inform those people who have expressed an interest in the Agreement, and will work with the Ministry of Foreign Affairs and Trade to inform key stakeholders and those that may be impacted. There will also be information available on the Ministry's website.

Consultation

- 28 The Ministry of Foreign Affairs and Trade, Office for Seniors, the Treasury, Veterans' Affairs New Zealand, and the Department of the Prime Minister and Cabinet have been consulted.

Proactive Release

- 29 I intend to release this Cabinet paper within the standard 30 business days of decisions being confirmed by Cabinet.

Recommendations

- 30 I recommend that the Cabinet Legislation Committee:
- 1 **note** that an Order in Council under section 380 of the Social Security Act 2018 is required to give effect in New Zealand domestic law to the Social Security Agreement between the Republic of Korea and New Zealand, signed in Seoul on 29 October 2019 (the Agreement);
 - 2 **note** that section 381 of the Social Security Act 2018 requires that before recommending the making of an Order in Council under section 380, the Minister for Social Development and the Minister of Justice must have received a report from the Privacy Commissioner on whether the information sharing provisions in the agreement comply with the privacy principles set out in section 22 of the Privacy Act 2020;

- 3 **note** that the Minister for Social Development and the Minister of Justice received a report and letter of support from the Privacy Commissioner on 7 September 2017 for an Order in Council to bring the Social Security Agreement between New Zealand and the Republic of Korea into force;
- 4 **note** that the advice of the Minister for Social Development is that the requirement in section 381 of the Social Security Act has been met;
- 5 **authorise** the submission to the Executive Council of the Social Welfare (Reciprocity with the Republic of Korea) Order 2021 to give effect to the Agreement;
- 6 **note** that subject to the Order in Council coming into effect in December 2021, the Social Security Agreement between the Republic of Korea and New Zealand will enter into force on the first day of the third month following the date on which both Parties have notified the completion of their domestic procedures, and that the target date for bringing the Agreement into force is 1 March 2022;
- 7 **authorise** officials to exchange the diplomatic notes that bring the Agreement into force.

Authorised for lodgement

Hon Carmel Sepuloni
Minister for Social Development and Employment

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