

**DRAFT SOCIAL SECURITY (RECIPROCAL AGREEMENT WITH THE REPUBLIC OF KOREA) (JERSEY)
ACT 200-**

**Lodged au Greffe on 25th January 2000
by the Employment and Social Security Committee**



STATES OF JERSEY

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Report

The States approved a Proposition on 21st April 1998, that Jersey should be party to the Double Contribution Convention with the Republic of Korea. A Double Contribution Convention is a limited agreement which avoids contributions being paid in two countries at the same time. In this Convention, there are no benefit provisions and the Articles are based on the model articles relating to liability and contributions devised over many years in normal conventions. The main Articles are -

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|-----------|-----------------------------|---|--|
| Article 1 | Definitions | - | describes the terms used in the Convention. |
| Article 2 | Scope of Legislation | - | defines the legislation to which the Convention applies. |
| Article 3 | Equal Treatment | - | sets out the equal treatment provision which is the basis of the Convention. |
| Article 4 | General Provisions | - | describes in more detail how |

contribution liability will be determined.

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| Article 5, 6, 7 | Special Conditions | - describe the way in which detached workers, travelling personnel and Government Servants are handled. |
| Article 8 | Modification Provisions | - allows the Parties to the convention to vary Articles 4 to 7 in exceptional circumstances by agreement. |
| Article 9 | Arrangements for Administration and Co-operation | - explains the basic mechanisms for liaison and administration. |

Explanatory Note

The purpose of this Act is to make provision for modifying or adapting the Social Security (Jersey) Law 1974, as amended, in its application to cases affected by the Convention on Social Security between the Government of the United Kingdom and the Government of the Republic of Korea signed on 20th April 1999.

Social Security (Jersey) Law 1974

SOCIAL SECURITY (RECIPROCAL AGREEMENT WITH THE REPUBLIC OF KOREA) (JERSEY) ACT 200-

(Promulgated on the _____ day of _____ 200-)

STATES OF JERSEY

The _____ day of _____ 200-

WHEREAS -

A. a Convention on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Korea (which Convention is set out in the Schedule to this Act and is hereinafter called “the Convention”) was signed on behalf of those Governments at Seoul on the 20th day of April 1999;

B. by Article 12 of the Convention it is provided that the Convention shall enter into force on the first day of the third month following the month in which each Government shall have received from the other Government written notification that it has complied with all statutory and constitutional requirements for the entry in force of the Convention;

C. by Article 48 of the Social Security (Jersey) Law 1974,^[1] as amended, it is provided that the States may by Act make provision for modifying or adapting the Law in its application to cases affected by agreements with other governments providing for reciprocity in matters specified in that Article -

NOW THEREFORE, THE STATES, in pursuance of that Article and of all other powers enabling them in that behalf have made the following Act -

1.-(1) The provisions of the Convention shall have full force and effect so far as the same relate to the Bailiwick and provide for reciprocity with the Government of the Republic of Korea in any matter referred to in that Article.

(2) The Social Security (Jersey) Law 1974,^[2] as amended,^[3] shall have effect subject to such modifications or adaptations as may be required for the purpose of giving effect to the provisions of the Convention so far as they apply to the Bailiwick.

2. This Act may be cited as the Social Security (Reciprocal Agreement with the Republic of Korea) (Jersey) Act 200-.

SCHEDULE

CONVENTION ON SOCIAL SECURITY BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE REPUBLIC OF KOREA

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Korea;

Being resolved to co-operate in the field of social affairs and, in particular, as regards liability for social security contributions;

Wishing to promote the welfare of persons moving between, or working in, their respective territories;

Wishing to ensure that persons from both countries shall enjoy equal rights in respect of matters covered by this Convention under their respective social security legislation;

Have agreed as follows:

PART I

GENERAL PROVISIONS

ARTICLE 1

Definitions

(1) For the purpose of this Convention the following definitions apply, except where the text provides otherwise:

“competent authority” means -

(i) in relation to the territory of the United Kingdom, the Department of Social Security for Great Britain, the Commissioners of Inland Revenue or their authorized representative, the Department of Health and Social Services for Northern Ireland, the Department of Health and Social Security of the Isle of Man, the Employment and Social Security Committee of the States of Jersey or the Guernsey Social Security Authority as the case may require, and

(ii) in relation to the Republic of Korea, the Ministry of Health and Welfare;

“employed person” means -

(i) in relation to Great Britain, Northern Ireland or the Isle of Man, a person who, in the applicable legislation, comes within the definition of an employed earner or of an employed person, or is treated as such, and

(ii) in relation to Jersey and Guernsey, a person who, in the applicable legislation, comes within the definition of an employed or self-employed person, and

(iii) in relation to the Republic of Korea, a person who, in the applicable legislation, comes within the definition of an employed person,

and the words “person is employed” shall be construed accordingly;

“employment” means employment as an employed person and the words “employ”, “employed” or “employer” shall be construed accordingly;

“Guernsey” means the Islands of Guernsey, Alderney, Herm and Jethou;

“insured” means -

(i) in relation to the United Kingdom, that contributions have been paid by, or are payable by, or in respect of, or have been credited in respect of, the person concerned, and

- (ii) in relation to the Republic of Korea, that contributions have been paid by, or are payable by, the person concerned, or have been exempted from payment in respect of the person concerned;

“Jersey” means the Island of Jersey;

“legislation” means, in relation to a Party, such of the legislation specified in Article 2 as applies in the territory of a Party or, in relation to the United Kingdom, in any part of the territory of the United Kingdom;

“Party” means -

- (i) the United Kingdom, and
- (ii) the Republic of Korea;

“self-employed person” means a person who, in the applicable legislation, comes within the definition of a self-employed earner or of a self-employed person or is treated as such, and the words “person is self-employed” shall be construed accordingly;

“ship” means any ship whose port of registry is a port in either territory, or a hovercraft which is registered in either territory, and whose owner (or managing owner if there is more than one owner) resides in, or has a place of business in, either territory;

“United Kingdom” means Great Britain and Northern Ireland, and, where the context of this Convention requires, also the Isle of Man, Jersey and Guernsey and, similarly, references to “territory” in relation to the United Kingdom shall, where the context requires, mean also the Isle of Man, Jersey and Guernsey.

(2) Other words and expressions which are used in this Convention have the meanings respectively assigned to them in the legislation concerned.

(3) Any reference in this Convention to an “Article” means an Article of this Convention, and any reference to a “paragraph” is a reference to a paragraph of the Article in which the reference is made, unless it is stated to the contrary.

ARTICLE 2

Scope of Legislation

(1) This Convention shall apply,

(a) in relation to the territory of the United Kingdom, to:

- (i) the Social Security Administration Act 1992, the Social Security Contributions and Benefits Act 1992 and the Social Security (Consequential Provisions) Act 1992;
- (ii) the Social Security Administration (Northern Ireland) Act 1992, the Social Security Contributions and Benefits (Northern Ireland) Act 1992 and the Social Security (Consequential Provisions) (Northern Ireland) Act 1992;
- (iii) the Social Security Administration Act 1992, the Social Security Contributions and Benefits Act 1992 and the Social Security (Consequential Provisions) Act 1992 (Acts of Parliament) as those Acts apply to the Isle of Man by virtue of Orders made, or having effect as if made, under the Social Security Act 1982 (an Act of Tynwald);
- (iv) the Social Insurance (Guernsey) Law, 1978;
- (v) the Social Security (Jersey) Law, 1974,

and the legislation which was repealed or consolidated by those Acts, Laws or Orders or repealed by legislation consolidated by them.

(b) in relation to the Republic of Korea, to the National Pension Act 1986 and its enforcement rules and regulations;

(2) This Convention shall apply also to any legislation which supersedes, replaces, amends, supplements or consolidates the legislation specified in paragraph (1).

(3) This Convention shall not apply to:

- (a) the legislation on social security adopted by the Council, or the Council and the Parliament, of the European Community, or
- (b) legally binding provisions on social security contained in agreements between the European Community, its Member States and a third country, or adopted pursuant to such an agreement, or
- (c) 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) 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 social security convention which that Party has concluded with a third country.

ARTICLE 3

Equal Treatment

(1) A person who is, or has been, subject to the legislation of one Party shall, while he is in the territory of the other Party, have the same rights and obligations under the legislation of the other Party as a national of that Party.

(2) Paragraph (1) shall not apply to lump sums refunds of contributions which would otherwise be paid in accordance with Article 102 of the National Pension Act of the Republic of Korea.

PART II

PROVISIONS WHICH DETERMINE THE LEGISLATION APPLICABLE CONCERNING CONTRIBUTION LIABILITY

ARTICLE 4

General Provisions

(1) Subject to paragraphs (2) to (4) and Articles 5 to 8, where a person is employed in the territory of one Party, liability for contributions for him shall be determined under the legislation of that Party, and that legislation shall apply to him as if he were ordinarily resident in the territory of that Party.

(2) Where a person is employed in the territory of both Parties for the same period, liability for contributions for him shall be determined only under the legislation of the Party in whose territory he is ordinarily resident.

(3) Where a person is ordinarily resident in the territory of one Party and is self-employed in the territory of the other Party, or in the territory of both Parties, liability for contributions for him shall be determined only under the legislation of the Party in whose territory he ordinarily resides and that legislation shall apply to him as if he were self-employed in the territory of that Party.

(4) Where a person is employed in the territory of one Party and self-employed in the territory of the other Party for the same period, liability for contributions for him shall be determined only under the legislation of the Party in whose territory he ordinarily resides.

(5) Where, under Articles 5 and 6, a person is employed in the territory of one Party while remaining liable for contributions under the legislation of the other Party, the legislation of the former Party shall not apply to him and he shall not be liable, nor entitled, to pay contributions under the legislation of the former Party.

(6) Where a person is not gainfully employed and is ordinarily resident in Jersey or Guernsey, any liability for contributions shall be determined under the legislation of Jersey or Guernsey, as the case may be.

(7) A person who is entitled to receive disability pension for any period under the legislation of the Republic of Korea while he is in Jersey or Guernsey, shall be excepted from liability to pay a contribution in respect of that period, other than as an employed or self-employed person, under the legislation of Jersey or Guernsey.

(8) A person who is entitled to receive widow's benefit under the legislation of Jersey or Guernsey shall be awarded credits only for periods during which that person is ordinarily resident in Jersey or Guernsey, as the case may be.

ARTICLE 5

Detached Workers

(1) Subject to Articles 6 and 7, where a person who is insured under the legislation of one Party, and employed by an employer with a place of business in the territory of that Party, is sent by that employer to work in the territory of the other Party, the legislation of the former Party concerning liability for contributions shall continue to apply to him as if he were employed in the territory of that Party, and the legislation of the latter Party shall not apply to him, provided that the employment in the territory of the other Party is not expected to last for more than five years.

(2) In relation to the Republic of Korea, for the purposes of applying paragraph (1), an employer and an affiliated or subsidiary company of the employer (as defined under the legislation of the Republic of Korea) shall be considered one and the same.

ARTICLE 6

Mariners and Aircraft Crew

A person who, but for the provisions of this Convention, would be subject to the legislation of both Parties in respect of employment as an officer or member of a crew on a ship or aircraft shall, in respect of that employment, be subject only to the legislation of the Party in whose territory he ordinarily resides.

ARTICLE 7

Diplomats, Government Servants and Consular Employees

(1) This Convention shall not apply to persons who are exempt from the social security law of the Party in whose territory they are present or resident by virtue of the Vienna Convention on Diplomatic Relations of April 18, 1961, or of the Vienna Convention on Consular Relations on April 24, 1963.

(2) Subject to paragraph (1), where any person who is employed in the Government Service, or treated as such, or in the local Government Service of one Party is sent to work in the territory of the other Party, the legislation of the former Party concerning liability for contributions shall apply to him as if he were employed in its territory.

(3) Subject to paragraphs (1) and (2), where a person is employed in a diplomatic mission or consular post of one Party in the territory of the other Party, or in the private service of a member of such a mission or post, the legislation of the latter Party concerning liability for contributions shall apply to him as if he were employed in its territory, unless within three months of the entry into force of this Convention, or within three months of the beginning of the employment in the territory of the latter Party, whichever is the later, he chooses to be insured under the legislation of the former Party, provided that, in the case of the United Kingdom, he had been so insured previously. Where, under this paragraph, a person has the right to choose to be insured under the legislation of the former Party but does not choose to do so, he shall not be liable, nor entitled, to pay contributions under the legislation of the former Party.

ARTICLE 8

Modification Provisions

Exceptionally, the competent authorities of the Parties may agree to modify the application of Articles 4 to 7 in respect of particular persons or categories of persons, provided that the persons shall be subject to the legislation of one Party.

PART III

MISCELLANEOUS PROVISIONS

ARTICLE 9

Arrangements for Administration and Co-operation

- (1) The competent authorities of the two Parties shall:
 - (a) establish the administrative arrangements necessary for the application of this Convention;
 - (b) designate liaison agencies for the purpose of facilitating the implementation of this Convention;
 - (c) 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 to their national legislation in so far as these changes affect the application of this Convention;
 - (d) assist each other, within the scope of their respective legislations, on the application of this Convention. This assistance shall be free of charge.

(2) Where the legislation of one Party provides that any certificate or other document which is submitted under the legislation of that Party shall be exempt, wholly or partly, from any taxes, legal dues, consular fees or administrative charges, that exemption shall apply to any certificate or other document which is submitted under the legislation of the other Party or in accordance with this Convention.

(3) All statements, documents and certificates of any kind required to be produced for the purposes of this Convention shall be exempt from authentication by diplomatic or consular authorities.

(4) No certificate, document or statement of any kind written in an official language of either Party shall be rejected on the ground that it is written in a foreign language.

(5) Unless disclosure is required under the legislation of a Party, any information about an individual which is sent in accordance with, and for the purposes of, this Convention to that Party by the other Party is confidential and shall be used only for the purpose of implementing this Convention and the legislation to which this Convention applies.

ARTICLE 10

Resolution of Disputes

Any disagreement regarding the interpretation, or application, of this Convention shall be resolved by consultation between the competent authorities.

PART IV

TRANSITIONAL AND FINAL PROVISIONS

ARTICLE 11

Transitional Provisions

In applying Article 5 in the case of persons who were sent to the territory of a Party prior to the date of entry into force of this Convention, the period of employment referred to in that Article shall be considered to begin on that date.

ARTICLE 12

Entry into Force

This Convention shall enter into force on the first day of the third month following the month in which each Government shall have received from the other Government written notification that it has complied with all statutory and constitutional requirements for the entry into force of this Convention.

ARTICLE 13

Life of the Convention

This Convention shall remain in force and effect until the expiration of one calendar year following the year in which written notice of its termination is given by one of the Parties to the other Party.

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

Done in duplicate at Seoul this 20th day of April 1999, in the English and Korean languages, both texts being equally authentic.

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

For the Government of the
Republic of Korea

DEREK FATCHETT

HONG S.Y.

[1] Recueil des Lois, Volume 1973-1974, page 355.

[2] Recueil des Lois, Volume 1973-1974, page 319.

[3] Recueil des Lois, Volume 1982-1983, pages 51, 53 and 239, Volume 1986-1987, pages 149, 151 and 227, Volume 1990-1991, pages 467 and 1117, Volume 1992-1993, pages 3, 433 and 437, Volume 1994-1995, page 423, Volume 1996-1997, pages 7 and 1063, Volume 1998, page 722, Volume 1999, page 419 and Nos. 7640, 7666, 8602 and 9112.