

# **STATES OF JERSEY**

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## **DRAFT SOCIAL SECURITY (RECIPROCAL AGREEMENT WITH THE NETHERLANDS) (JERSEY) ACT 200**

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**Lodged au Greffe on 11th August 2006  
by the Chief Minister**

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**STATES GREFFE**





Jersey

## **DRAFT SOCIAL SECURITY (RECIPROCAL AGREEMENT WITH THE NETHERLANDS) (JERSEY) ACT 2006**

### **REPORT OF THE MINISTER FOR SOCIAL SECURITY**

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Negotiations with the Netherlands authorities have been protracted and, despite meetings in London, Guernsey, Newcastle and the Hague over the past 15 years, changes in the Netherlands system of Social Security has caused delay in reaching any agreement. However, the Netherlands domestic arrangements for exporting pensions changed in January 2006 to limit the payments of its pensioners residing in countries without a reciprocal agreement with the Netherlands. As Jersey and Guernsey have no such agreement with the Netherlands, Channel Island pensioners would have been adversely affected and the authorities in the Netherlands agreed to push forward quickly with legal measures to prevent this. The draft Agreement was amended to allow unilateral export of pensions by the Netherlands prior to the whole Agreement coming into force, and with signature taking place in December, this was only just done in time to beat the Provisions of the new Netherlands Law which was implemented on 1st January 2006.

Having safeguarded the position of Dutch pensioners resident in the Islands, it is now appropriate to ratify the rest of the Agreement, which will come into force 3 months following the completion of legal procedures of the last Part to the Agreement to do so. In the past this was done by an Act of the States agreeing the text of the Agreement.

The Agreement follows a model bilateral Agreement that has been used and tested many times. There are no new provisions to the Agreement which means that there is no difference in the treatment of a Dutch national to any other EEC national including a British national. The only unusual provision is contained in Article 34, which unilaterally allows the Netherlands authorities to export benefits from 1st January 2006, prior to the Agreement coming into force.

The text of the Agreement conforms to the usual pattern –

- Article 1 – the interpretation Article which defines the terms used in the Agreement
- Article 2 – describes the people covered and excludes those covered by EEC Regulations
- Article 3 – describes the legislation covered
- Article 4 – is the main reciprocity or equal treatment Article
- Article 5 – includes refugees or stateless people
- Article 6 – is the principal provision for the export of benefits
- Articles 7 to 13 – these Articles determine where contributions should be paid as workers move between the countries
- Article 14 – describes how the contribution calculation systems are co-ordinated
- Articles 15 to 19 – relate to specific provisions for particular benefits
- Articles 20 to 23 – are specific provisions to avoid duplicate periods of benefit entitlement under Articles 15 to 19
- Articles 24 to 26 – further specific benefit provisions
- Articles 27 to 31 – deal with administrative issues including claims and appeals
- Articles 32 and 33 – preserve existing rights and rights in course of acquisition

- Articles 34 to 36 – are the implementation, duration and termination provisions

There are no financial or manpower implications for the States. Payments to beneficiaries from the Social Security system are based on the contributions paid into the system.

## **Explanatory Note**

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Article 48 of the Social Security (Jersey) Law 1974 enables the States, for the purpose of giving effect to a reciprocal agreement with respect to certain matters relating to social security, to make provision by Act for modifying or adapting the 1974 Law in its application to cases affected by the agreement. This Act enables that Law to be construed as being modified or adapted as required to give effect to the Convention on Social Security between the U.K. and the Kingdom of the Netherlands signed on 21st December 2005, in its application to cases affected by the Convention.





Jersey

# DRAFT SOCIAL SECURITY (RECIPROCAL AGREEMENT WITH THE NETHERLANDS) (JERSEY) ACT 200

## Arrangement

### Article

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- 1        Interpretation
- 2        Modification or adaptation of Social Security (Jersey) Law 1974
- 3        Citation

### SCHEDULE

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Jersey

# **DRAFT SOCIAL SECURITY (RECIPROCAL AGREEMENT WITH THE NETHERLANDS) (JERSEY) ACT 200-**

*Made*

*[date to be inserted]*

*Coming into force*

*[date to be inserted]*

**THE STATES**, in pursuance of Article 48 of the Social Security (Jersey) Law 1974<sup>[1]</sup> and of all other powers enabling them in that behalf, have made the following Act—

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## **1 Interpretation**

In this Act “Convention” means the Convention on Social Security between the United Kingdom of Great Britain and Northern Ireland and the Kingdom of the Netherlands signed on behalf of the respective Governments of those countries at The Hague on 21st December 2005, the text of which is set out in the Schedule to this Act.

## **2 Modification or adaptation of Social Security (Jersey) Law 1974**

In its application to cases affected by the Convention, the Social Security (Jersey) Law 1974 shall be construed as being modified or adapted to the extent required to give effect to the Convention.

## **3 Citation**

This Act may be cited as the Social Security (Reciprocal Agreement with the Netherlands) (Jersey) Act 200-.

## SCHEDULE

(Article 1)

### CONVENTION ON SOCIAL SECURITY BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE KINGDOM OF THE NETHERLANDS

The United Kingdom of Great Britain and Northern Ireland and the Kingdom of the Netherlands having established reciprocity in the field of social security by means of the Convention on Social Security between the United Kingdom and the Kingdom of the Netherlands, signed at The Hague on 11 August 1954;

Wishing to consolidate the above Convention and its extension and modification into a single document;

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

Have agreed as follows:

#### PART 1

#### GENERAL PROVISIONS

##### Article 1 Definitions

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

(a) Countries

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

“Jersey” means the Island of Jersey;

“Netherlands” means the Kingdom of the Netherlands;

“territory” means –

- (i) in relation to the United Kingdom, Great Britain, Northern Ireland and also the Isle of Man, Jersey and Guernsey, and references to the “United Kingdom” or to “territory” in relation to the United Kingdom shall include the Isle of Man, Jersey and Guernsey, where appropriate, or
- (ii) in relation to the Netherlands, the territory in Europe.

(b) General definitions

“competent authority” means –

- (i) in relation to the territory of the United Kingdom, the Department for Work and Pensions for Great Britain, the Commissioners of the Inland Revenue, or their authorized representative, the Department for Social Development 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 Social Security Department of the States of Guernsey as the case may require, and
- (ii) in relation to the Netherlands, the Minister for Social Affairs and Employment;

“competent institution” means, in relation to the Netherlands, any institution or authority responsible for administering all or part of the legislation specified in Article 3(1)(b);

“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 concerned;

“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 concerned;

“employed person” means –

- (i) except for the purposes of Article 25, a person who, under the applicable legislation, comes within the definition of an employed earner or of an employed person or is treated as such, and the words “person is employed” shall be construed accordingly, or
- (ii) or the purposes of Article 25, a person who, under the legislation of Great Britain, Northern Ireland or the Isle of Man, comes within the definition of an employed earner or of an employed person or is treated as such, or an employed or self-employed person under the legislation of Jersey or Guernsey, 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;

“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;

“former Convention” means the Convention on Social Security between the Kingdom of the Netherlands and the United Kingdom of 11 August 1954;

“gainfully employed” means employed or self-employed;

“Implementing Regulation” means the Regulation (EEC) No 574/72 of the Council laying down the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, including its application to the European Economic Area, and includes amendments and adaptations from time to time applicable thereto;

“income tax year” means, in relation to the United Kingdom, the twelve months beginning with 6 April in any year;

“insurance authority” means the authority competent to decide entitlement to the benefit in question;

“insurance period” means, in relation to the United Kingdom, a contribution period or an equivalent period and, in relation to the Netherlands, an insurance period completed under the legislation of the Netherlands;

“insured” means, 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;

“legislation” means, in relation to a Party, such of the legislation specified in Article 3 as applies in the territory of a Party, or in any part of the territory of that Party;

“Party” means, unless otherwise defined in the Convention, the United Kingdom or the Netherlands;

“pension”, “allowance” or “benefit” includes any increases of, or any additional amount payable with, a pension, allowance or benefit respectively, by virtue of the legislation as defined in Article 3;

“qualifying year” means –

- (i) in relation to Great Britain, Northern Ireland or the Isle of Man, at least fifty weeks of insurance for periods before 6 April 1975, or that the person has received, or been treated as having received, earnings of at least fifty-two times the lower earnings limit in an income tax year after 5 April 1978 under the legislation of Great Britain, Northern Ireland or the Isle of Man, or
- (ii) in relation to Jersey, an annual contribution factor of 1.00 under the legislation of Jersey, or
- (iii) in relation to Guernsey, an insurance period of not less than fifty weeks under the legislation of Guernsey;

“reckonable year” means, in relation to Great Britain, Northern Ireland or the Isle of Man, an income tax year between 6 April 1975 and 5 April 1978 during which contributions have been paid on earnings received, or treated as received, of at least fifty times the lower earnings limit for that year;

“refugee” means a person as referred to in Article 1 of the Convention on the Status of Refugees, done at Geneva on 28 July 1951 and the Protocol relating to the Status of Refugees, done at New York on 31 January 1967;

“Regulation EEC 1408/71” means the Regulation (EEC) No 1408/71 of the Council on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, including its application to the European Economic Area, and includes amendments and adaptations from time to time applicable thereto;

“seasonal worker” means a person subject to the legislation of Jersey or Guernsey who goes to the Netherlands after carrying out in the former territory for an employer or undertaking with a place of business there, employment of a seasonal character which depends on the cycle of the seasons and which recurs automatically each year, and the duration of which cannot in any case exceed eight months, and who remains in that territory for the duration of that employment;

“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 or vessel” means any ship or vessel 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;

“stateless person” means a person as referred to in Article 1 of the Convention relating to the Status of Stateless Persons, done at New York on 28 September 1954;

(c) Old Age, Death, Survivors and Invalidity Pensions or Benefits

“additional pension” payable under the legislation of Great Britain, Northern Ireland or the Isle of Man means any additional pension based on the payment of insurance contributions above the level required for entitlement to basic pension;

“Category A retirement pension” means either, or both, a basic retirement pension and an additional pension based on a person's own insurance contributions or, for certain persons whose marriages have ended by divorce or widowhood, or for certain persons whose civil partnerships have ended by dissolution or by the death of a civil partner, a basic retirement pension based on the former spouse's or civil partner's insurance contributions, payable under the legislation of Great Britain, Northern Ireland or the Isle of Man, and an old age pension based on a person's own contributions or, for certain persons whose marriages have ended by divorce or widowhood, based on the former spouse's contributions, payable under the legislation of Jersey or Guernsey;

“Category B retirement pension” means a basic retirement pension payable to a married person or civil partner on the spouse's or civil partner's contributions or, for a widow, widower or surviving civil partner, either, or both, a basic retirement pension and an additional pension based on the late spouse's or civil partner's contributions, payable under the legislation of Great Britain, Northern Ireland or the Isle of Man, and an old age pension payable under the legislation of Jersey or Guernsey to a married woman by virtue of her husband's contributions while he is alive;

“survivor's benefit” means –

- (i) bereavement payment, bereavement allowance, and widowed parent's allowance payable under the legislation of Great Britain, Northern Ireland, or the Isle of Man, or
- (ii) widow's payment, widowed mother's allowance and widow's pension payable under the legislation of Great Britain, Northern Ireland or the Isle of Man, or
- (iii) survivor's allowance, and survivor's pension payable under the legislation of Jersey, or
- (iv) bereavement payment, widowed parent's allowance and bereavement allowance payable under the legislation of Guernsey, or
- (v) widow's or widower's pension payable under the legislation of the Netherlands.

“invalidity benefit” means –

- (i) long-term incapacity benefit, additional pension, invalidity allowance and incapacity age addition payable under the legislation of Great Britain, Northern Ireland or the Isle of Man, or
- (ii) invalidity benefit payable under the legislation of Guernsey, or
- (iii) invalidity benefit, long term incapacity allowance or invalidity pension payable under the legislation of Jersey, or
- (iv) invalidity pension payable under the legislation of the Netherlands;

“retirement pension” means retirement pension or old age pension payable under the legislation of either Party;

(d) Employment accidents and diseases

“benefits for industrial accidents and industrial diseases” means –

- (i) a pension or benefit payable to a person for loss of physical or mental faculty as a result of an industrial accident or an industrial disease arising out of, and in the course of, employed earner’s employment under the legislation of Great Britain, Northern Ireland or the Isle of Man, or
- (ii) a benefit payable to a person for personal injury or for loss of physical or mental faculty as a result of an accident arising out of, and in the course of, an insured person’s employment or self-employment, or an industrial disease under the legislation of Jersey or Guernsey.

(e) Sickness insurance and maternity benefits

“maternity allowance” means maternity allowance payable under the legislation of either Party;

“sickness benefit” means –

- (i) short-term incapacity benefit at the lower, higher or long-term rate payable under the legislation of Great Britain, Northern Ireland or the Isle of Man, or
- (ii) sickness benefit and industrial injury benefit payable under the legislation of Guernsey, or
- (iii) short term incapacity allowance payable under the legislation of Jersey, or
- (iv) sickness benefit payable under the legislation of the Netherlands.

(f) Unemployment

“unemployment benefit” means unemployment benefit or contribution-based jobseeker’s allowance payable under the legislation of Great Britain, Northern Ireland or the Isle of Man, or unemployment benefit payable under the legislation of Guernsey or the Netherlands.

(g) Child benefits

“child benefits” means child benefit or family allowance payable under the legislation of either Party.

(h) Social assistance

“social assistance” means income support and income-based jobseeker’s allowance payable under the legislation of Great Britain, Northern Ireland or the Isle of Man and social assistance payable under the legislation of the Netherlands.

- (2) Other words and expressions, which are used in this Convention, have the meaning 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      Persons covered**

Subject to Article 33, this Convention shall apply:

- (a) as regards relations between Great Britain, Northern Ireland and the Netherlands, only to persons to whom, in relation to a specific event or circumstance, Regulation EEC 1408/71 and the Implementing Regulation do not apply, or do not become applicable, and who are, or have been subject to the legislation of one or both Parties, to members of their families and to their survivors, and
- (b) as regards relations between Jersey, Guernsey, the Isle of Man and the Netherlands, to persons who are, or have been, subject to the legislation of one or both Parties, to members of their families and to their survivors.

### **Article 3      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, the Social Security (Consequential Provisions) Act 1992, the Social Security (Incapacity for Work) Act 1994, the Jobseekers Act 1995, the Social Security Act 1998, the Social Security Contributions (Transfer of Functions, etc.) Act 1999 and the Welfare Reform and Pensions Act 1999,
- (ii) the Social Security Administration (Northern Ireland) Act 1992, the Social Security Contributions and Benefits (Northern Ireland) Act 1992, the Social Security (Consequential Provisions) (Northern Ireland) Act 1992, the Social Security (Incapacity for Work) (Northern Ireland) Order 1994, the Jobseekers (Northern Ireland) Order 1995, the Social Security (Northern Ireland) Order 1998, the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 and the Welfare Reform and Pensions (Northern Ireland) Order 1999,
- (iii) the Social Security Administration Act 1992, the Social Security Contributions and Benefits Act 1992, the Social Security (Consequential Provisions) Act 1992, the Social Security (Incapacity for Work) Act 1994, the Jobseekers Act 1995, the Social Security Act 1998 and the Welfare Reform and Pensions Act 1999 (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 2000 (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 Netherlands, to:

- (i) the legislation concerning sickness insurance providing for benefits in cash, including maternity,
- (ii) the legislation concerning the liability of an employer in respect of sickness benefits,
- (iii) the legislation concerning old age, invalidity and survivor's insurance,
- (iv) the legislation concerning unemployment insurance,
- (v) the legislation concerning child benefits;

and for the application of Articles 8 and 9 also the legislation on sickness insurance providing for benefits in kind.

- (2) Subject to paragraphs (3) and (4), 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 apply, unless the Parties agree otherwise, only to benefits under the legislation

specified in paragraph (1) at the date of entry into force of this Convention and for which specific provision is made in this Convention.

- (4) This Convention shall not affect rights and obligations created by legislation on social security adopted on the basis of the Treaty establishing the European Economic Community done at Rome on 25 March 1957, as amended, the Agreement on establishing the European Economic Area done at Oporto on 2 May 1992 and made between the European Community, its Member States and the Member States of the European Free Trade Association, and any amendments or modifications thereto, or apply 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) for the purpose of giving effect to such a convention, but shall not prevent either Party taking into account under its legislation the provision of any other convention which that Party has concluded with a third party.

#### **Article 4 Equal treatment**

A person to whom this Convention applies, while he is in the territory of one Party, shall enjoy the provisions of the legislation of the other Party under the same conditions as a national of that Party, subject to the special provisions of this Convention.

#### **Article 5 Refugees and stateless persons**

This Convention shall apply to refugees and stateless persons who are residing in the territory of either Party. It shall apply under the same conditions to members of their families, and to their survivors, with respect to the rights they derive from those refugees or stateless persons.

#### **Article 6 Provisions for the export of benefit**

- (1) Subject to Articles 16, 18 to 25 and Article 30 a person who would be entitled to receive a retirement pension, survivor's benefit, invalidity benefit or any pension or benefit payable in respect of an industrial accident or industrial disease under the legislation of one Party if he were in the territory of that Party shall be entitled to receive that pension or benefit while he is in the territory of the other Party, as if he were in the territory of the former Party.
- (2) Subject to Article 15(3) and (5), a person who continues to be entitled to receive sickness benefit under the legislation of Great Britain, Northern Ireland or the Isle of Man while he is in the Netherlands may, after having received, or been deemed to have received, 364 days sickness benefit, become entitled to receive invalidity benefit under the legislation of Great Britain, Northern Ireland or the Isle of Man while he is in the Netherlands, provided that he continues to satisfy the insurance authority of the former Party that he remains incapable of work.
- (3) Subject to Article 15(3) to (5), a person who continues to be entitled to receive sickness benefit under the legislation of Jersey while he is in the Netherlands may, after having received, or been deemed to have received, 364 days sickness benefit, become entitled to receive long term incapacity allowance under the legislation of Jersey provided that he continues to satisfy the insurance authority of Jersey of a loss of physical or mental faculty.
- (4) Subject to Article 15(3) to (5), a person who continues to be entitled to receive sickness benefit or industrial injury benefit under the legislation of Guernsey while he is in the Netherlands may, after having received, or been deemed to have received, 156 days sickness benefit or industrial injury benefit, become entitled to receive invalidity benefit under the legislation of Guernsey while he is in the Netherlands, provided that he continues to satisfy the insurance authority of Guernsey that he remains incapable of work.
- (5) Where, under the legislation of one Party, an increase of any of the benefits for which specific provision is made in this Convention would be payable for a dependant if he were in the territory of that Party, it shall be payable while he is in the territory of the other Party.



- (6) Paragraph 1 does not apply to the Netherlands' Supplementary Benefits Act of 6 November 1987 or the Netherlands' Disablement Assistance Act for Handicapped Young Persons of 24 April 1997.

## **PART II**

### **PROVISIONS WHICH DETERMINE THE LEGISLATION APPLICABLE CONCERNING CONTRIBUTION LIABILITY**

#### **Article 7      General provisions**

- (1) Subject to paragraphs (2) to (11) and Articles 8 to 13, where a person is gainfully employed, he shall be subject only to the legislation of the Party in whose territory he is so employed.
- (2) Where a person is employed in the territory of both Parties for the same period, he shall be subject only to the legislation of the Party in whose territory he is ordinarily resident.
- (3) Where a person is self-employed in the territory of both Parties for the same period, he shall be subject only to the legislation of the Party in whose territory he is ordinarily resident.
- (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, he shall be subject only to the legislation of the former Party.
- (5) No provision of this Article shall affect a person's liability to pay a Class 4 contribution under the legislation of Great Britain, Northern Ireland or the Isle of Man.
- (6) Where a person is not gainfully employed, he shall be subject only to the legislation of the Party in whose territory he is ordinarily resident.
- (7) Where, but for this paragraph, a person would be entitled to pay contributions voluntarily under the legislation of both Parties for the same period, he shall be entitled to pay contributions only under the legislation of one Party according to his choice.
- (8) Where, under Articles 8, 9(a) or (b), or 10(2), a person is employed in the territory of one Party while remaining subject to the legislation of the other Party, he shall not be subject to the legislation of the former Party.
- (9) A person who is entitled to receive sickness benefit, maternity allowance, invalidity benefit or injury benefit for any period under the legislation of the Netherlands 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.
- (10) A person who is entitled to receive survivor's benefit under the legislation of Jersey shall be awarded credits only for periods during which that person is ordinarily resident in Jersey.
- (11) For the purpose of determining whether a person is entitled to be credited with a Class 1 contribution under the legislation of Guernsey in respect of any week of unemployment, any insurance period, or any period of employment, completed by him under the legislation of the Netherlands, shall be treated as an insurance period or period of employment, as the case may be, under the legislation of Guernsey.

#### **Article 8      Detached workers**

Subject to Articles 9 and 10, where a person subject to 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, either from the territory of that Party, or from a third country not party to this Convention, to work in the territory of the other Party, he shall continue to be subject only to the legislation of the former Party as if he were employed in the territory of that Party, provided that the employment in the territory of the other Party is not expected to last for more than three years.

## **Article 9 Travelling personnel**

Subject to Article 10, the following provisions shall apply to any person employed as a member of the travelling personnel of an undertaking engaged in the transport of passengers or goods whether for another undertaking or on its own account:

- (a) subject to sub-paragraphs (b) and (c), where a person is employed by an undertaking which has its principal place of business in the territory of one Party, he shall be subject only to the legislation of that Party as if he were employed in its territory even if he is employed in the territory of the other Party;
- (b) subject to sub-paragraph (c), where the undertaking has a branch or agency in the territory of one Party and a person is employed by that branch or agency, he shall be subject only to the legislation of that Party;
- (c) where a person is ordinarily resident in the territory of one Party and is employed wholly or mainly in that territory, he shall be subject only to the legislation of that Party, even if the undertaking which employs him does not have a place of business or branch or any agency in that territory.

## **Article 10 Mariners and others employed on board a ship or vessel**

- (1) Subject to paragraphs (2) to (4), where a person is employed on board any ship or vessel of one Party, he shall be subject only to the legislation of that Party as if any conditions relating to residence were satisfied in his case, provided that he is ordinarily resident in the territory of either Party.
- (2) Where a person who is subject to the legislation of one Party and employed either in the territory of that Party or on board any ship or vessel of that Party, is sent by his employer in the territory of that Party to work on board a ship or vessel of the other Party, he shall continue to be subject only to the legislation of the former Party provided that his employment on board the ship or vessel of the latter Party is not expected to last for a period of more than one year. Where his employment on board the ship or vessel of the latter Party continues after such period of one year, he shall continue to be subject only to the legislation of the former Party for any further period of not more than one year, provided that the competent authority of the latter Party agrees thereto before the end of the first period of one year.
- (3) Where a person who is not normally employed at sea is employed other than as a member of the crew, on board a ship or vessel of one Party, in the territorial waters of, or at a port of, the other Party, he shall be subject only to the legislation of the Party in whose territory he is ordinarily resident as if any conditions relating to residence were satisfied in his case.
- (4) Where a person who is ordinarily resident in the territory of one Party and employed on board any ship or vessel of the other Party is paid remuneration in respect of that employment by a person who is ordinarily resident in, or by an undertaking having a place of business in, the territory of the former Party, he shall be subject only to the legislation of the former Party as if the ship or vessel were a ship or vessel of the former Party, and the person or undertaking by whom the remuneration is paid shall be treated as the employer for the purpose of such legislation.

## **Article 11 Diplomats, government servants and consular employees**

- (1) This Convention shall not affect the application to persons in the territory of either Party of the provisions of the Vienna Conventions on Diplomatic Relations of April 18, 1961 and the Vienna Convention on Consular Relations of April 24, 1963.
- (2) Subject to paragraph (1), where any person who is employed in the Government Service of one Party or treated as such is sent to work in the territory of the other Party, he shall be subject only to the legislation of the former Party as if he were employed in its territory.

- (3) Paragraph (2) shall apply by analogy to the members of the family accompanying the persons referred to in that paragraph, unless these family members themselves are gainfully employed in the territory of the other Party.

#### **Article 12 Treated as ordinarily resident**

Where a person is gainfully employed in the territory of a Party and the legislation of the other Party does not apply to him in accordance with Article 7(1) or (4) or ceases to apply to him under Articles 8, 9(a) or (b), or 10(2), the legislation of the former Party shall apply to him as if he were ordinarily resident in the territory of that Party.

#### **Article 13 Modification provisions**

Exceptionally, the competent authorities or the competent institutions of the Parties may agree to modify the application of Articles 7 to 12 in respect of particular persons or categories of persons.

### **PART III**

#### **SPECIAL PROVISIONS FOR THE UNITED KINGDOM**

#### **Article 14 Conversion formulae**

- (1) For the purpose of calculating entitlement to any benefit under the legislation of Great Britain, Northern Ireland or the Isle of Man in accordance with Articles 18 to 24, insurance periods completed under the legislation of the Netherlands before 6 April 1975 shall be treated as if they had been insurance periods completed under the legislation of Great Britain, Northern Ireland or the Isle of Man.
- (2) Subject to paragraph (3), for the purpose of calculating an earnings factor for assessing entitlement to any benefit under the legislation of Great Britain, Northern Ireland or the Isle of Man in accordance with Articles 15, and 17 to 24, a person shall be treated for each week beginning in a relevant income tax year commencing after 5 April 1975, the whole or any part of which week is an insurance period completed under the legislation of the Netherlands, as having paid a contribution [as an employed earner, or having earnings on which primary Class 1 contributions have been paid,] on earnings equivalent to two-thirds of that year's upper earnings limit.
- (3) For the purpose of calculating entitlement to additional pension under the legislation of Great Britain, Northern Ireland or the Isle of Man, no account shall be taken of any insurance period completed under the legislation of the Netherlands.
- (4) For the purposes of the calculation in Article 19(2), where:
  - (a) in any income tax year commencing after 5 April 1975, an employed person has completed insurance periods exclusively in the Netherlands and the application of paragraph (2) results in that year being a qualifying year under the legislation of Great Britain, Northern Ireland or the Isle of Man, he shall be deemed to have been insured for fifty-two weeks in that year;
  - (b) any income tax year commencing after 5 April 1975 does not count as a qualifying year under the legislation of Great Britain, Northern Ireland or the Isle of Man, any insurance periods completed in that year shall be disregarded.
- (5) For the purpose of calculating the appropriate contribution factor to establish entitlement to any benefit under the legislation of Jersey in accordance with Articles 15 to 16 and 18 to 25, a person shall be treated:
  - (a) for each week in an insurance period completed under the legislation of the Netherlands, being a week in the relevant quarter, as having paid contributions, which derive a quarterly contribution factor of 0.077 for that quarter;

- (b) for each week in an insurance period completed under the legislation of the Netherlands, being a week in a relevant year, as having paid contributions, which derive an annual contribution factor of 0.0193 for that year.
- (6) For the purpose of calculating entitlement to any benefit under the legislation of Guernsey in accordance with Articles 15 to 25, insurance periods completed under the legislation of the Netherlands shall be treated as if they had been insurance periods completed under the legislation of Guernsey.
- (7) For the purpose of calculating entitlement to any benefit under the legislation of the Netherlands in accordance with Articles 17 to 24 and 26, each contribution period or equivalent period completed under the legislation of Great Britain, Northern Ireland or the Isle of Man before 6 April 1975, shall be treated as if it had been an insurance period completed under the legislation of the Netherlands, or as a period of residence in the Netherlands, as appropriate.
- (8) For the purpose of converting to an insurance period any earnings factor achieved in any income tax year commencing after 5 April 1975 under the legislation of Great Britain, Northern Ireland or the Isle of Man, the competent authority of Great Britain, Northern Ireland or the Isle of Man, shall divide the earnings factor achieved under its legislation by that year's lower earnings limit. The result shall be expressed as a whole number, any remaining fraction being ignored. The figure so calculated, subject to a maximum of the number of weeks during which the person was subject to that legislation in that year, shall be treated as representing the number of weeks in the insurance period completed under that legislation and shall be treated as if it had been an insurance period completed under the legislation of the Netherlands, or as a period of residence in the Netherlands, as appropriate.
- (9) For the purpose of converting to an insurance period any contribution factor achieved under the legislation of Jersey, the competent authority of Jersey shall:
- (a) in the case of a quarterly contribution factor, multiply the factor achieved by a person in a quarter by thirteen; and
- (b) in the case of an annual contribution factor, multiply the factor achieved by a person in a year by fifty-two.
- The result shall be expressed as a whole number, any remaining fraction being ignored. The figure so calculated, subject to a maximum of the number of weeks during which the person was subject to that legislation in a quarter or in a year, as the case may be, shall be treated as representing the number of weeks in the insurance period completed under that legislation and shall be treated as if it had been an insurance period completed under the legislation of the Netherlands, or as a period of residence in the Netherlands, as appropriate.
- (10) For the purpose of converting insurance periods completed under the legislation of Guernsey, each insurance period or equivalent period completed under that legislation shall be treated as if it had been an insurance period completed under the legislation of the Netherlands, or as a period of residence in the Netherlands, as appropriate.

#### **PART IV**

#### **BENEFIT PROVISIONS**

#### **SECTION 1**

#### **PROVISIONS FOR SICKNESS, MATERNITY, INVALIDITY AND UNEMPLOYMENT**

##### **Article 15      Sickness benefit and maternity allowance**

- (1) Where a person has, since his last arrival in the territory of the United Kingdom, completed a contribution period under the legislation of that Party, then for the purpose of any claim to sickness

benefit or maternity allowance made under the legislation of that Party, any insurance period completed under the legislation of the Netherlands shall be treated in accordance with Article 14 as if it were an insurance period completed under the legislation of the United Kingdom.

- (2) Where a person is employed in the territory of one Party and the legislation of the other Party applies to him in accordance with any of the provisions of Articles 7 to 13, he shall be treated under that legislation for the purpose of any claim to sickness benefit or maternity allowance as if he were in the territory of the latter Party.
- (3) Subject to paragraphs (4) and (5) and Article 30, where a person would be entitled to receive sickness benefit or maternity allowance under the legislation of the United Kingdom if he were in the territory of that Party, he shall be entitled to receive that sickness benefit or maternity allowance while he is in the territory of the Netherlands if:
  - (a) his condition necessitates immediate treatment during a stay in the territory of the Netherlands and, within six days of commencement of incapacity for work or such longer period as the competent authority may allow, he submits to the competent authority of the United Kingdom a claim to benefit and documentary evidence of incapacity for work; or
  - (b) having claimed and become entitled to sickness benefit or maternity allowance under the legislation of the United Kingdom he is authorised by the competent authority of that Party to return to the territory of the Netherlands where he resides, or to transfer his residence to the territory of the Netherlands; or
  - (c) having claimed and become entitled to sickness benefit or maternity allowance under the legislation of the United Kingdom, he is authorised by the competent authority of that Party to go to the territory of the Netherlands to receive there treatment for his condition.

The authorisation required in accordance with sub-paragraph (b) may be refused only if it is established that movement of the person concerned would be prejudicial to his state of health, or to the receipt of medical treatment.

- (4) Where a seasonal worker, who is entitled to sickness benefit under the legislation of Jersey or Guernsey, goes to the Netherlands, he shall be entitled to continue to receive such benefit for a period of not more than thirteen weeks from the date of his departure from Jersey or Guernsey, as the case may be.
- (5) Where a person who is resident in the territory of one Party would be entitled to receive sickness benefit or maternity allowance under the legislation of the other Party if he were in the territory of that Party, he shall be entitled to receive that sickness benefit or maternity allowance while he is in the territory of the former Party provided that, since his last arrival in the territory of that Party, he has not completed a contribution period under its legislation.
- (6) Where a person would be entitled to receive sickness benefit under the legislation of the Netherlands if he were in the territory of that Party, he shall be entitled to receive that sickness benefit while he is in the territory of the United Kingdom.
- (7) Where, but for this paragraph, a person would be entitled to receive, for the same period, whether by virtue of this Convention, or otherwise, sickness benefit under the legislation of both Parties, including industrial injury benefit under the legislation of Guernsey, or maternity allowance under the legislation of the United Kingdom, that benefit, allowance or payment shall be granted only under the legislation under which the person was last insured before entitlement arose.

## **Article 16      Invalidation benefit**

- (1) Where a person has been subject to the legislation of both Parties, the competent authority or the competent institution in the territory of the Party whose legislation was applicable when incapacity for work followed by invalidity began shall determine, in accordance with its legislation, whether the person concerned satisfied the conditions for entitlement to invalidity benefit taking account, where appropriate, of any insurance period which that person has completed under the legislation of the other Party as if it were an insurance period completed under its legislation.

- (2) Where a person would be entitled to receive for the same incapacity and for the same period invalidity benefit under the legislation of both Parties, or invalidity benefit under the legislation of one Party and sickness benefit under the legislation of the other Party, including industrial injury benefit under the legislation of Guernsey, whether by virtue of this Convention or otherwise, he shall be entitled to receive only the invalidity benefit, sickness benefit, or industrial injury benefit, as the case may be, under the legislation of the Party in whose territory the incapacity began.
- (3) Where a person is entitled to incapacity pension under the legislation of Jersey, only contribution periods completed, or deemed to be completed, under the legislation of Jersey shall be taken into consideration in the calculation of the rate of incapacity pension.

#### **Article 17      Unemployment benefit**

- (1) In this Article “Party” means Great Britain, Northern Ireland, the Isle of Man, Guernsey or the Netherlands, as the case may be.
- (2) Subject to paragraphs (4) to (8), where a person has, since his last arrival in the territory of one Party, completed a contribution period under the legislation of that Party, then for the purpose of any claim to unemployment benefit made under the legislation of that Party, any insurance period, or period of employment, completed under the legislation of the other Party shall be treated in accordance with Article 14 as if it were an insurance period, or period of employment, completed under the legislation of the former Party, in so far as those periods do not coincide.
- (3) Periods of employment in the Netherlands shall be taken into account for the purpose of determining whether a person who has previously exhausted his right to unemployment benefit under the legislation of Guernsey requalifies for it.
- (4) Where a person is entitled to unemployment benefit under the legislation of Great Britain, Northern Ireland or the Isle of Man in accordance with paragraph (2), any unemployment benefit paid to that person for any period under the legislation of the Netherlands during the last six months before the day for which his claim is made shall be treated, for the purpose of determining the duration of the payment, as if it were unemployment benefit paid for the same period under the legislation of Great Britain, Northern Ireland or the Isle of Man, as the case may be.
- (5) Where a person is entitled to unemployment benefit under the legislation of Guernsey in accordance with paragraph (2), any unemployment benefit paid to that person for any period under the legislation of the Netherlands during the last twelve months before the day for which his claim is made shall be treated, for the purpose of determining the duration of the payment, as if it were unemployment benefit paid for the same period under the legislation of Guernsey.
- (6) Where a person is entitled to unemployment benefit under the legislation of the Netherlands in accordance with paragraph (2), any unemployment benefit paid to that person for any period under the legislation of any other Party during the last twelve months before the day for which his claim is made shall be treated, for the purpose of determining the duration of the payment, as if it were unemployment benefit paid for the same period under the legislation of the Netherlands.
- (7) Periods of insurance or periods of employment completed under the legislation of Jersey shall not be taken into account for the purpose of determining entitlement to unemployment benefit under the legislation of the Netherlands.
- (8) This Article shall not apply to a person who claims unemployment benefit under the legislation of Guernsey and who has not paid twenty-six contributions as an employed person under the legislation of Guernsey.

### **SECTION 2**

#### **RETIREMENT PENSION AND SURVIVOR’S BENEFIT**

## **Article 18      General provisions**

- (1) Subject to paragraphs (2) to (4), where a person is entitled to a basic retirement pension under the legislation of any part of either Party otherwise than by virtue of this Convention, that pension shall be payable and Article 19 shall not apply under that legislation.
- (2) Notwithstanding paragraph (1), a person entitled to a Category B retirement pension under the legislation of Great Britain, Northern Ireland, or the Isle of Man shall also be entitled to have any Category A retirement pension entitlement determined in accordance with Article 19.
- (3) Notwithstanding paragraph (1), a married woman entitled to a retirement pension solely on her husband's contributions under the legislation of Jersey or Guernsey shall also be entitled to have any pension entitlement based entirely on her own insurance determined in accordance with Article 19. Such a married woman shall be entitled to receive only the benefit of her choice.
- (4) Entitlement to a retirement pension in the circumstances referred to in paragraph (1) shall not preclude the competent authority of any part of either Party from taking into account in accordance with paragraphs (3) to (6) of Article 19 insurance periods completed under the legislation of any part of either Party.
- (5) By applying paragraph (1) the Netherlands competent institution shall determine the amount of the old age pension directly and exclusively on the basis of the insurance periods completed under the Netherlands General Old Age Pensions Act. Notwithstanding this paragraph, paragraph (4) will apply where appropriate.
- (6) Subject to paragraph (7), periods before 1 January 1957 during which a person resided in the territory of the Netherlands after reaching the age of fifteen years or during which, while residing in the United Kingdom, the person was employed in the territory of the Netherlands shall also be considered as insurance periods if the person does not satisfy the conditions of the Netherlands legislation permitting such periods to be treated for that person as insurance periods.
- (7) The periods referred to in paragraph (6) shall be taken into consideration in the calculation of the old-age pension only if the person concerned has been insured within the meaning of Article 6 of the Netherlands General Old Age Pension Act and the person has resided for at least six years in the territory of one or both Parties after reaching the age of fifty-nine years and only while the person is residing in the territory of either Party. However, these periods shall not be taken into consideration if they coincide with periods taken into consideration for the calculation of an old age pension under the legislation of a country other than the Netherlands.

## **Article 19      Pro-rata pensions**

- (1) Subject to Articles 18 and 20 to 23, this Article shall apply to determine a person's entitlement to retirement pension, including any increase for dependants, under the legislation of any part of either Party.
- (2) In accordance with Article 14, the competent authority or the competent institution of any part of either Party shall determine:
  - (a) the amount of the theoretical pension which would be payable if all the relevant insurance periods completed under the legislation of both Parties had been completed under its own legislation;
  - (b) the proportion of such theoretical pension which bears the same relation to the whole as the total of the insurance periods completed under the legislation of that part of either Party bears to the total of all the relevant insurance periods completed under the legislation of both Parties.

The proportionate amount thus calculated shall be the rate of pension actually payable by the competent authority or the competent institution.

- (3) For the purpose of the calculation in paragraph (2), where all the insurance periods completed by any

person under the legislation of:

- (a) Great Britain, Northern Ireland and the Isle of Man amount to less than one reckonable year or, as the case may be, one qualifying year, or relate only to periods before 6 April 1975 and in aggregate amount to less than fifty weeks, or
  - (b) Jersey amount to less than an annual contribution factor of 1.00, or
  - (c) Guernsey amount to less than fifty weeks,
- those periods shall be treated in accordance with paragraph (4) or (5).
- (4) Insurance periods under paragraph (3) and (6) shall be treated as follows:
- (a) as if they had been completed under the legislation of any part of the United Kingdom under which a pension is, or if such periods are taken into account, would be, payable, or
  - (b) where a pension is, or would be, payable under the legislation of two or more parts of the United Kingdom as if they had been completed under the legislation of that part which, at the date on which entitlement first arose or arises, is paying, or would pay, the greater, or greatest, amount.
- (5) Where no pension is, or would be, payable under paragraph (4), insurance periods under paragraph (3) shall be treated as if they had been completed under the legislation of the Netherlands.
- (6) Where all the insurance periods completed by a person under the legislation of the Netherlands amount to less than one year those periods shall be treated as if they had been completed under the legislation of the United Kingdom in accordance with paragraph (4).
- (7) Any increase of benefit payable under the legislation of Great Britain, Northern Ireland or the Isle of Man because of deferred retirement or deferred entitlement, shall be based on the amount of the pro-rata pension calculated in accordance with this Article.

## **Article 20 Insurance periods to be taken into account**

For the purpose of applying Article 19 the competent authority of the United Kingdom shall take account only of insurance periods completed under the legislation of either Party which would be taken into account for the determination of pensions under the legislation of the United Kingdom if they had been completed under its legislation, and shall, where appropriate, take into account in accordance with its legislation insurance periods completed by a spouse or civil partner, or former spouse or former civil partner, as the case may be.

## **Article 21 Overlapping periods**

For the purpose of applying Article 19:

- (a) where a compulsory insurance period completed under the legislation of one Party coincides with a voluntary insurance period completed under the legislation of the other Party, only the compulsory insurance period shall be taken into account, provided that the amount of pension payable under the legislation of the latter Party under Article 19(2) shall be increased by the amount by which the pension payable under the legislation of that Party would have been increased if all voluntary contributions paid under that legislation had been taken into account;
- (b) where a contribution period completed under the legislation of one Party coincides with an equivalent period completed under the legislation of the other Party, only the contribution period shall be taken into account;
- (c) where an equivalent period completed under the legislation of one Party coincides with an equivalent period completed under the legislation of the other Party, account shall be taken only of the equivalent period completed under the legislation under which the insured person was last insured before the day when the periods in question began or, if he was never insured before that day, under the legislation under which he first became insured after the day when the periods in question ended;



- (d) where a compulsory contribution period completed under the legislation of one Party coincides with a compulsory contribution period completed under the legislation of the other Party, each Party shall take into account only the compulsory contribution period completed under its own legislation;
- (e) where a voluntary contribution period completed under the legislation of one Party coincides with a voluntary contribution period completed under the legislation of the other Party, each Party shall take into account only the voluntary contribution period completed under its own legislation;
- (f) where it is not possible to determine accurately the period of time in which certain insurance periods were completed under the legislation of one Party, such insurance periods shall be treated as if they did not overlap with insurance periods completed under the legislation of the other Party and shall be taken into account to the best advantage of the beneficiary.

**Article 22      Benefits to be excluded**

For the purpose of applying Article 19 no account shall be taken of the following benefits payable under the legislation of Great Britain, Northern Ireland or the Isle of Man:

- (a) any additional pension payable;
- (b) any graduated retirement benefit payable by virtue of any graduated contributions paid before 6 April 1975;
- (c) any invalidity allowance or incapacity age addition payable;

but any such benefit shall be added to the amount of any benefit payable under that legislation in accordance with Article 19(2).

**Article 23      Non-simultaneous entitlement**

Where a person does not simultaneously satisfy the conditions for entitlement to a retirement pension under the legislation of both Parties, his entitlement from each Party shall be established as and when he satisfies the conditions applicable under the legislation of that Party, taking account, where appropriate, of Article 19.

**Article 24      Survivor's benefit**

- (1) Articles 18 to 23 shall also apply, with such modifications as the differing nature of the benefits shall require, to survivor's benefit.
- (2) Where survivor's benefit would be payable under the legislation of one Party if a child were in the territory of that Party, it shall be payable while the child is in the territory of the other Party.

**SECTION 3**

**BENEFITS FOR INDUSTRIAL ACCIDENTS AND INDUSTRIAL DISEASES**

**Article 25      General provisions**

- (1) Where a person is employed in the territory of one Party and the legislation of the other Party applies to him in accordance with any of the provisions of Articles 8 to 13, he shall be treated under the legislation of the latter Party for the purpose of any claim to benefit in respect of an industrial accident or an industrial disease contracted during that employment, as if the accident had occurred or the disease had been contracted in the territory of the latter Party. Where benefit would be payable in respect of that claim if the person were in the territory of the latter Party, it shall be payable while he is in the territory of the former Party.

- (2) Where a person leaves the territory of one Party to go in the course of his employment to the territory of the other Party, but before he arrives in the latter territory sustains an accident, then, for the purpose of any claim to benefit in respect of that accident:
  - (a) the accident shall be treated as if it had occurred in the territory of the Party whose legislation applied to him at the time the accident occurred; and
  - (b) his absence from the territory of that Party shall be disregarded in determining whether his employment was as an employed person under that legislation.
- (3) Where a seasonal worker who is entitled to industrial injury benefit under the legislation of Guernsey goes to the Netherlands, he shall be entitled to continue to receive such benefit for a period not more than thirteen weeks from the date of departure from Guernsey.
- (4) Where, because of a death resulting from an industrial accident or an industrial disease, a benefit would be payable under the legislation of one Party in respect of a child if that child were in the territory of that Party, that benefit shall be payable while the child is in the territory of the other Party.

#### **SECTION 4**

##### **Article 26 Child benefits**

- (1) A person covered under the legislation on child benefits of the Netherlands shall be entitled to child benefits under its legislation even if the beneficiary or the child is in the territory of the United Kingdom.
- (2) Where, but for this paragraph, child benefit would be payable under the legislation of both Parties for the same period in respect of the same child, whether by virtue of this Convention or otherwise child benefit shall be paid only under the legislation of the Party in whose territory that child is ordinarily resident.

#### **PART V**

#### **MISCELLANEOUS PROVISIONS**

##### **Article 27 Recovery of advance payments and overpayments of benefit**

- (1) Where a competent authority or competent institution of one Party has made a payment of any benefit to a person for any period, or event, in advance of the period, or event, to which it relates or has paid him any benefit for a period, or event, whether by virtue of this Convention or otherwise, and the competent authority or the competent institution of the other Party afterwards decides that the person is entitled to benefit for that period, or event, under its legislation, the competent authority or the competent institution of the latter Party, at the request of the competent authority or the competent institution of the former Party, shall deduct from the benefit due for that period, or event, under its legislation any overpayment which, by virtue of this Convention, results from the advance payment of benefit, or from the benefit paid, by the competent authority or the competent institution of the former Party and shall, where appropriate, transmit this sum to the competent authority or the competent institution of the former Party.
- (2) When the competent authority or the competent institution of a Party has paid to a recipient of benefits a sum in excess of that to which he is entitled that competent authority or competent institution may, within the conditions and limits laid down by the legislation which it administers, request the competent authority or the competent institution of any other Party responsible for the payment of benefits to that recipient to deduct the amount overpaid from the amounts which it pays to the said recipient. The latter competent authority or competent institution shall make the deduction under the conditions and within the limits provided for such setting-off by the legislation which it administers, as if the sums had been overpaid by itself, and shall transfer the amounts deducted to the

creditor authority or institution.

- (3) Where a person has received social assistance under the legislation of one Party for a period for which that person subsequently becomes entitled to any benefit under the legislation of the other Party, the competent authority or the competent institution of the latter Party, at the request of and on behalf of the competent authority or the competent institution of the former Party, shall withhold the benefit due for that period and shall transmit the amount withheld to the competent authority or the competent institution of the former Party. The competent authority or the competent institution of the former Party shall deduct from the benefit due under the legislation of the other Party the amount by which the social assistance paid exceeded what would have been paid had the benefit under the legislation of the latter Party been paid before the amount of social assistance was determined. Any benefit not so deducted shall be transmitted to the person.

## **Article 28 Arrangements for administration and co-operation**

- (1) The competent authorities of the two Parties shall establish an administrative agreement 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 this Convention.
- (3) The competent authorities of the two Parties shall establish liaison offices for the purpose of facilitating the implementation of this Convention.
- (4) The competent authorities or the 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.
- (5) Where any benefit is payable under the legislation of one Party to a person in the territory of the other Party, arrangements for the payment may be made by the competent authority or the competent institution of the latter Party, at the request of the competent authority or the competent institution of the former Party, and the former Party shall reimburse the latter Party.
- (6) Where a person who is in the territory of one Party has claimed, or is receiving, benefit under the legislation of the other Party and a medical examination is necessary, the competent authority or the competent institution of the former Party, at the request of the competent authority or the competent institution of the latter Party, shall arrange for this examination. The cost of such examination shall be met by the competent authority or the competent institution of the former Party. The competent authority or the competent institution retains, however, the competency to call on the person in question for medical examination. In case the Netherlands' competent institution deems it necessary that certain medical tests in which it has an exclusive interest are carried out in the territory of the other Party, the procedure to be applied will be such as is provided for in the Netherlands' legislation.
- (7) A medical board appointed by the competent institution of the Netherlands, at the request of the competent authority of Guernsey, shall be treated as a medical board for determination of the disablement questions under the legislation of Guernsey.
- (8) 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.
- (9) 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.
- (10) 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.

- (11) 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 another Party is confidential and shall be used only for the purpose of implementing this Convention and the legislation to which this Convention applies.

**Article 29      Submission of claim or appeal**

- (1) Any claim or appeal which should, for the purposes of the legislation of one Party, have been submitted within a prescribed period to the competent authority or the competent institution of that Party, shall be treated as if it had been submitted to that competent authority or competent institution if it is submitted within the same period to the competent authority or competent institution of the other Party.
- (2) Any claim to benefit submitted under the legislation of one Party shall also be deemed to be a claim to the corresponding benefit under the legislation of the other Party in so far as this corresponding benefit is payable in accordance with this Convention.

**Article 30      Currency and method of payment**

- (1) Payment of any benefit in accordance with this Convention may be made in the currency of the Party whose competent authority or competent institution makes the payment and any such payment shall constitute a full discharge of the obligation in respect of which payment has been made.
- (2) Where the competent authority or the competent institution of one Party has made a payment of benefit on behalf of the competent authority or the competent institution of the other Party in accordance with Article 28 (5), any reimbursement of the amounts paid by the competent authority or the competent institution of the former Party shall be in the currency of the latter Party.
- (3) Where a person in the territory of one Party is receiving benefit under the legislation of the other Party, it shall be payable by whatever method the competent authority or the competent institution of the latter Party deems appropriate.

**Article 31      Resolution of disputes**

- (1) The competent authorities of the Parties to this Convention shall make all reasonable efforts to resolve through agreement between them any dispute about its interpretation or application.
- (2) If any dispute cannot be resolved as in paragraph (1) it shall be submitted, at the request of the competent authority of either Party, to an arbitration tribunal which shall be constituted 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, which shall be final and binding on both Parties, shall be by majority vote. The arbitration tribunal shall determine its own rules of procedure, and its costs shall be borne equally by the two Parties.

**PART VI**

## **TRANSITIONAL AND FINAL PROVISIONS**

### **Article 32     Prior acquisition of rights – old convention replaced by new convention – persons covered by this convention**

- (1) Upon the entry into force of this Convention the former Convention shall terminate and shall be replaced by this Convention.
- (2) Notwithstanding paragraph (1), any right to benefit acquired by a person in accordance with the former Convention shall be maintained. For the purposes of this paragraph "any right to benefit acquired" includes any right which a person would have had but for his failure to claim timeously where a late claim is allowed.
- (3) Notwithstanding paragraph (1), any rights in course of acquisition under the former Convention at the date of entry into force of this Convention shall be determined under the Convention in force at the date of entitlement.
- (4) Where, from the date of entry into force of this Convention, any claim to benefit has not been determined and entitlement arises before that date, the claim shall be determined under the former Convention and shall be determined afresh under this Convention from its date of entry into force. The rate determined under this Convention shall be awarded from the date of its entry into force if this is more favourable than the rate determined under the former Convention.
- (5) Benefit, other than lump sum payments, shall be payable in accordance with this Convention in respect of events which happened before the date of its entry into force, except that an accident which occurred or a disease which developed before that date shall not, solely by virtue of this Convention, be treated as an industrial accident or an industrial disease if it would not have been so treated under any legislation or Convention having effect at the time of its occurrence or development. For the purpose of determining claims under this Convention, account shall be taken, where appropriate, of insurance periods and periods of residence, employment or presence, completed before the date of its entry into force.
- (6) Paragraph (5) shall not confer any right to receive payment of benefit for any period before the date of entry into force of this Convention.
- (7) For the purposes of paragraph (2) and for applying the first sentence of paragraph (5):
  - (a) any right to benefit may, at the request of the person concerned, be determined afresh under this Convention with effect from the date of its entry into force provided that the request has been made within two years of that date and, if applicable, benefit awarded at the higher rate from that date;
  - (b) where the request for the benefit to be determined afresh is made more than two years after the date of entry into force of this Convention payment of benefit, and the payment of any arrears, shall be made in accordance with the legislation concerned.
- (8) No provision of this Convention shall diminish any rights or benefits which a person has properly acquired under the legislation of any part of either Party before the date of entry into force of this Convention.

### **Article 33     Prior acquisition of rights – old convention replaced by new convention – persons excluded from this convention**

As regards persons who, by virtue of Article 2, are not covered by this Convention, the following provisions shall apply:

- (a) any rights in course of acquisition under the former Convention before the date of entry into force of this Convention shall be determined in accordance with Regulation EEC 1408/71 and the Implementing Regulation;

- (b) notwithstanding Article 32(1), the former Convention shall remain applicable to any award of a benefit, pension or allowance which was made under it prior to the date of entry into force of this Convention.

**Article 34      Entry into force**

- (1) The Parties shall notify each other in writing of the completion of their respective constitutional or legal procedures required for the entry into force of this Convention. This Convention shall enter into force on the first day of the third month following the month after the date of the last notification.
- (2) The Kingdom of the Netherlands shall apply Article 6 provisionally as from 1 January 2006.

**Article 35      Duration of the convention**

This Convention shall remain in force for an indefinite period. The United Kingdom of Great Britain and Northern Ireland or the Kingdom of the Netherlands may denounce it at any time by giving six months' notice in writing to the other Party.

**Article 36      Rights on termination of this convention not replaced by another**

In the event of the termination of this Convention and unless a new Convention containing provisions regulating the matter is made, any right to benefit acquired by a person in accordance with this Convention 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 by their respective Governments, have signed this Convention only in the English language.

Done in duplicate at The Hague this twenty-first day of December 2005 in the English language only.

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

For the Government of the Kingdom  
of the Netherlands:

**LYN PARKER**

**B R BOT**

