



Social Welfare (Transitional Provisions— Overseas Pensions) Amendment Act 2002

Public Act 2002 No 8
Date of assent 26 April 2002
Commencement see section 2

Contents

<p>1 Title</p> <p style="text-align: center;">Part 1</p> <p style="text-align: center;">Preliminary provisions</p> <p>2 Commencement</p> <p>3 Purpose</p> <p style="text-align: center;">Part 2</p> <p style="text-align: center;">Amendments to principal Act and other Acts</p> <p style="text-align: center;"><i>Amendments to principal Act</i></p> <p>4 Inclusion of mutual assistance provisions in reciprocity agreement</p> <p>5 Terms and conditions for recovery of social security debts</p> <p>6 Terms and conditions for exchange of information for social security purposes</p> <p>7 Actions by chief executive under mutual assistance provisions</p>	<p style="text-align: right;"><i>Amendment to Customs and Excise Act 1996</i></p> <p>8 New sections 280A and 280B inserted in Customs and Excise Act 1996</p> <p style="padding-left: 20px;">280A Interpretation</p> <p style="padding-left: 20px;">280B Disclosure of arrival and departure information for purposes of mutual assistance provision contained in social security agreement</p> <p style="text-align: right;"><i>Amendment to Privacy Act 1993</i></p> <p>9 Privacy Act 1993 consequentially amended</p> <p style="text-align: right;"><i>Amendment to Social Security Act 1964</i></p> <p>10 Interpretation</p>
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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Social Welfare (Transitional Provisions—Overseas Pensions) Amendment Act 2002.
- (2) In this Act, the Social Welfare (Transitional Provisions) Act 1990 is called “the principal Act”.

Part 1

Preliminary provisions

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Purpose

The purpose of this Act is—

- (a) to amend the principal Act, the Customs and Excise Act 1996, and the Privacy Act 1993 to enable a social security agreement with Australia to be given effect:
- (b) to give the amendments referred to in paragraph (a) effect in relation to any other country with which New Zealand enters into a social security agreement containing mutual assistance provisions:
- (c) to make a minor amendment to the Social Security Act 1964 relating to overseas pensions.

Part 2

Amendments to principal Act and other Acts

Amendments to principal Act

4 Inclusion of mutual assistance provisions in reciprocity agreement

Section 19A of the principal Act is amended by omitting from subsections (3) and (4) the word “contains”, and substituting in each case the words “is subject to”.

5 Terms and conditions for recovery of social security debts

- (1) Section 19B(1)(a) of the principal Act is amended by repealing subparagraph (ii), and substituting the following subparagraph:

“(ii) in respect of which any right of review or appeal of the determination of the debt, under the law under which the debt was determined (other than a right of judicial review or complaint under laws relating to administrative decisions generally, or under human rights laws),—

- “(A) has been exhausted or has expired; or
“(B) if there is no time limit for the exercise of any such right, has not been exercised, or has been exercised and the review or appeal has been finally determined; and”.
- (2) Section 19B(1) of the principal Act is amended by inserting, after paragraph (f), the following paragraph:
- “(fa) if a party gives assistance in respect of any social security debt for which there is no time limit for exercising any right of review or appeal of the determination of the debt under the law under which the debt was determined, or for which there is a time limit but a right of review or appeal may be exercised after its expiry in the discretion of the court or tribunal or body or person concerned, or in the discretion of any other person,—
- “(i) the requesting institution must immediately advise the requested institution if any such right is exercised; and
- “(ii) the requested institution must defer recovery of the debt until notified by the requesting institution that the review or appeal is finally determined:”.
- (3) Section 19B of the principal Act is amended by inserting, after subsection (1), the following subsection:
- “(1A) For the purposes of subsection (1)(a)(ii), a right of review or appeal under the law under which a debt was determined has expired—
- “(a) if the right has not been exercised within the time limit provided for its exercise; and
- “(b) irrespective of whether the court or tribunal or body or person that would have jurisdiction in respect of the review or appeal, or any other person, retains a discretion (however expressed in that law) to allow the right of review or appeal to be exercised after that time.”

6 Terms and conditions for exchange of information for social security purposes

Section 19C(1) of the principal Act is amended by omitting paragraph (b), and substituting the following paragraph:

“(b) the requested institution of a party may supply to the requesting institution any information about the person to whom the request relates that it holds or is lawfully able to obtain:”.

7 Actions by chief executive under mutual assistance provisions

(1) Section 19D of the principal Act is amended by inserting, after subsection (4), the following subsections:

“(4A) Subsection (4B) applies if—

“(a) an agreement contains a provision of the kind referred to in section 19A(2)(b); and

“(b) the social security purposes concerned are wholly or principally the administration of the agreement itself; and

“(c) the parties to the agreement are likely to frequently exchange information about individuals for the purposes of granting or paying benefits under the agreement, calculating the rates of benefits payable under the agreement, or calculating the rates of other benefits that are affected by the rates of benefits payable under the agreement.

“(4B) If this subsection applies, if any information received from the competent institution of the other country under the provision contains identifying information about any individual (including the unique identifier assigned to that individual by that institution) who has applied for a benefit payable under the agreement in either country and produces a discrepancy with information already held about that person by the chief executive, and the chief executive has not previously given notice under this subsection, the chief executive must give that individual written notice—

“(a) specifying particulars of the discrepancy and of the action the chief executive proposes to take as a result of that discrepancy; and

“(b) specifying the unique identifiers assigned to that individual by the competent institutions of both countries; and

“(c) informing him or her that information received from the other country about that individual will be matched

- with information in the department’s possession using those unique identifiers; and
- “(d) specifying the kinds of information about the individual that the chief executive is likely to receive from the other country under the agreement; and
- “(e) specifying the kinds of actions that the chief executive may take as a result of information about that individual received at any subsequent time from the other country under the agreement; and
- “(f) specifying the likely consequences of those actions for any benefit payable to that individual under the agreement or otherwise; and
- “(g) stating that the individual has 5 working days from the receipt of the notice to show cause why the chief executive should not take the action referred to in paragraph (a) or actions of the kinds referred to in paragraph (e).
- “(4C) Despite subsections (3)(c) to (e) and (6), if subsection (4B) applies, after the expiration of the 5 working days referred to in subsection (4B)(g), the chief executive is not obliged to comply with subsection (3)(c) and (d) in respect of any information that is—
- “(a) subsequently received from the other country under the provision; and
- “(b) received for a purpose set out in subsection (4A)(c); and
- “(c) matched against information held by the chief executive using the unique identifiers assigned to the individual concerned by the competent institutions of both countries.”
- (2) Section 19D(5) of the principal Act is amended by adding the words “or subsection (4B)”.

Amendment to Customs and Excise Act 1996

8 New sections 280A and 280B inserted in Customs and Excise Act 1996

The Customs and Excise Act 1996 (1996 No 27) is amended by inserting, after section 280, the following sections:

“280A Interpretation

In section 280B, unless the context otherwise requires,—

“**authorised officer** means any officer, employee, or agent of the department who, with the approval of the chief executive

of the Customs, is authorised by the chief executive of the department to supply information or receive information from the chief executive of the Customs under section 280B

“**department** means the department for the time being responsible for the administration of the Social Security Act 1964

“**identifying information** means personal information that identifies an individual, which may include the individual’s passport number

“**social security agreement** means an agreement or convention, or alteration to an agreement or convention, in respect of which an Order in Council has been made under section 19 of the Social Welfare (Transitional Provisions) Act 1990.

Compare: 1994 No 166 ss 85B and 85C

“280B **Disclosure of arrival and departure information for purposes of mutual assistance provision contained in social security agreement**

- “(1) The purpose of this section is to facilitate the exchange of information between the Customs and the department for the purpose of giving assistance to the Government of a country with which New Zealand has a social security agreement that contains a mutual assistance provision of the kind referred to in section 19A(2)(b) of the Social Welfare (Transitional Provisions) Act 1990, to enable compliance with that agreement.
- “(2) For the purpose of this section, the chief executive of the department may supply to the chief executive of Customs—
- “(a) any identifying information supplied to the department by the Government of that country; and
- “(b) any identifying information obtained by the department about a person who has applied for a benefit to which that social security agreement applies.
- “(3) If, in relation to any person, identifying information is supplied in accordance with subsection (2), the chief executive of the Customs may compare that information with any arrival and departure information held by the Customs that relates to that person.
- “(4) If the Customs has arrival or departure information relating to a person, the chief executive of the Customs may, for the purpose of this section, supply to an authorised officer any of

the following information held by the Customs if that information is of a type specified in an agreement made under section 19C(1)(d) of the Social Welfare (Transitional Provisions) Act 1990:

- “(a) the person’s full name:
 - “(b) the person’s date of birth:
 - “(c) the person’s sex:
 - “(d) the person’s passport number:
 - “(e) the person’s nationality:
 - “(f) if the person arrived or, as the case may be, departed by aircraft, the flight number:
 - “(g) if the person arrived or, as the case may be, departed by ship, the name of the ship:
 - “(h) the date on which the person arrived in, or, as the case may be, departed from, New Zealand.
- “(5) If the chief executive of the Customs has supplied information under subsection (4) to an authorised officer, the department may supply that information to the competent institution of the Government of the other country in accordance with the mutual assistance provision of the social security agreement.
- “(6) If information is supplied to the chief executive of the Customs under subsection (2), that chief executive—
- “(a) may use that information for the purposes set out in subsections (3) and (4):
 - “(b) may not supply that information to any other country without the prior written consent of the chief executive of the department, and that supply or consent may be subject to any conditions that the chief executive of the department considers appropriate to impose.”

Amendment to Privacy Act 1993

9 Privacy Act 1993 consequentially amended

The Third Schedule of the Privacy Act 1993 (1993 No 28) is amended by omitting from the item relating to the Customs and Excise Act 1996 the expression “Section 280”, and substituting the words “Sections 280 and 280B”.

*Amendment to Social Security Act 1964***10 Interpretation**

The definition of **Government occupational pension** in section 3(1) of the Social Security Act 1964 (1964 No 136) is amended by adding the word “; but” and also by adding the following paragraph:

- “(d) does not include a benefit, pension, or periodical allowance of the kind set out in paragraph (a) if the person would have been entitled to receive a similar benefit, pension, or periodical allowance paid by, or on behalf of, the Government of that country under a scheme or other arrangement in respect of persons who were not employees or in the service of that Government.”

Legislative history

31 October 2001	Introduction (Bill 165-1)
13 November 2001	First reading and referral to Social Services Committee
28 February 2002	Report from Social Services Committee (Bill 165-2)
16 March 2002	Second reading
18 April 2002	Committee of the whole House
23 April 2002	Third reading
26 April 2002	Royal assent

This Act is administered in the Ministry of Social Development.
