

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 2006 Nr. 89

A. TITEL

*Verdrag tussen het Koninkrijk der Nederlanden en de Republiek
Botswana inzake de export en handhaving van socialezekerheids-
uitkeringen;
Gaborone, 24 februari 2006*

B. TEKST

**Agreement between the Kingdom of the Netherlands and the
Republic of Botswana on the export and enforcement of social
security benefits**

The Kingdom of the Netherlands

and

The Republic of Botswana,

(hereinafter referred to as “the Contracting Parties”, and singularly,
“the Contracting Party”)

Wishing to establish relations in the field of social security;

Desirous of regulating co-operation between the two States to ensure
the enforcement of one country’s Legislation in the other;

Have agreed as follows:

Article 1

Definitions

1. For the purposes of this Agreement:

a) “territory” means in relation to the Republic of Botswana the ter-
ritory of the Republic of Botswana; in relation to the Kingdom of the
Netherlands the territory of the Kingdom in Europe;

b) “agency” means any organisation that is involved in the implementation of this Agreement, and includes *inter alia* the population registers, registers of birth, death and marriages, tax authorities, employment offices and employment agencies, schools and other educational institutions, public registers on real estate, trade authorities, police, prison services and immigration offices;

c) “legislation” means the laws and regulations, on social security mentioned under Article 2.2(b), and the laws, regulations, policies and procedures mentioned under Article 2.2(a);

d) “benefit” means any cash benefit or pension under the legislation;

e) “beneficiary” means a person who applies for or who is entitled to a benefit;

f) “member of the family” means a person defined, or recognised as such by the legislation;

g) “to reside” means to ordinarily reside;

h) “to stay” means to temporarily reside.

2. Other terms used in this Agreement have the meaning given to them under the legislation being applied.

Article 2

Purpose and Scope

1. The Contracting Parties shall co-operate to ensure the enforcement of one Contracting Party’s Legislation, on the export of social security benefits to their Beneficiary as well as to a Member of the Family insofar as the Beneficiary or family member Resides or Stays in the Territory of one of the Contracting Parties.

2. This Agreement shall apply:

a) With respect to the Republic of Botswana to the Legislation, concerning the following branches of social security:

(i) Old Age Pension;

(ii) World War II Veteran Allowances.

b) With respect to the Kingdom of the Netherlands, to the Netherlands’ Legislation concerning social assistance and concerning the following branches of social insurance:

(i) sickness and maternity benefits;

(ii) disablement benefits for employed persons;

(iii) disablement benefits for self-employed persons;

(iv) old age pensions;

(v) survivors’ benefits;

(vi) child benefits.

Article 3

Competent Authorities

The Competent Authorities responsible for the implementation of this Agreement shall be:

- a) in relation to the Republic of Botswana, the Ministry of Local Government, represented by the Department of Social Services; and
- b) in relation to the Kingdom of the Netherlands, the Minister of Social Affairs and Employment of the Netherlands.

Article 4

Competent Institutions

The Competent Institutions responsible for the branches of social security shall be:

- a) in relation to the Republic of Botswana, the Department of Social Services in the Ministry of Local Government or any organisation authorised to perform any function at present exercised by the said institutions;
- b) in relation to the Kingdom of the Netherlands:
 - (i) regarding the branches of social insurance mentioned under Article 2, paragraph 2b) (i), (ii) and (iii), the “Uitvoeringsinstituut werknemersverzekeringen” the Institute for Employee Benefit Schemes;
 - (ii) regarding the branches of social insurance mentioned under Article 2, paragraph 2b) (iv) , (v) and (vi), the “Sociale verzekeringsbank” the Social Insurance Bank; and
 - (iii) regarding the Legislation concerning social assistance, the institution designated for this purpose by the Netherlands’ Competent Authority.

Article 5

Export of benefits

1. Unless otherwise provided in this Agreement, any provision of the legislation of a Contracting Party which restricts payment of a benefit solely because a beneficiary or a member of the family resides or stays outside the territory of that Contracting Party shall not be applicable with respect to a beneficiary or to a member of the family who resides or stays in the territory of the other Contracting Party.

2. Paragraph 1 does not apply to the Netherlands’ legislation concerning social assistance and to the Supplementary Benefits Act of 6 November 1986.

3. Paragraph 1 is without prejudice to the Netherlands’ legislation introducing restrictions to the payment of child benefits with respect to children residing or staying outside the territory of the Kingdom of the Netherlands or precluding such payment.

Article 6

Identification

1. In order to determine entitlement to a benefit or the legitimacy of the payment of a benefit under Netherlands' or Botswana legislation, a beneficiary or a member of the family shall identify himself to the competent institution in whose territory the person concerned resides or stays by submitting an official proof of identity. Official proof of identity includes a passport or any other valid identity document issued in the territory where the person concerned resides or stays.

2. The competent institution concerned identifies the beneficiary or the member of the family on the basis of official proof of identity. The competent institution shall inform the competent institution of the other Contracting Party that the identity of the beneficiary or this member of the family has been verified by sending a certified copy of the official proof of identity.

Article 7

Verification of applications and payments

1. For the purpose of this article "information" means data regarding identity, address, household and family situation, work, education, income, assets, state of health, death and detention, or any other data relevant for the implementation of this Agreement.

2. With regard to the processing of an application for a benefit or the payment of a benefit, the competent institution of a Contracting Party shall, at the request of the competent institution of the other Contracting Party, verify the information regarding a beneficiary or a member of the family. If necessary, this verification shall be carried out together with the agencies. The competent institution shall forward a statement of verification along with authenticated copies of the relevant documents to the competent institution of the other Contracting Party.

3. Notwithstanding paragraph 2, the competent institution of a Contracting Party shall, without prior request and to the extent possible, inform the competent institution of the other Contracting Party of any changes in the said information regarding a beneficiary or a member of the family.

4. The competent institutions of the Contracting Parties may directly contact each other, as well as a beneficiary, a member of the family, or an authorised representative of the person concerned.

5. Notwithstanding paragraph 2, the diplomatic or consular representatives and the competent institutions of a Contracting Party shall be allowed to directly contact the agencies of the other Contracting Party in order to verify the entitlement to a benefit or the legitimacy of the payment of a benefit.

6. For the purposes of implementing this Agreement, the agencies shall lend their good offices and act as though implementing their own legislation. The administrative assistance provided by the agencies shall be free of charge. However, the competent authorities of the Contracting Parties may agree to some expenses being reimbursed.

Article 8

Medical examinations

1. At the request of the competent institution of a Contracting Party, the medical examination of a beneficiary or a member of the family residing or staying in the territory of the other Contracting Party shall be carried out by the competent institution of the latter Contracting Party.

2. In order to determine the extent of the ability to work of a beneficiary or a member of the family, the competent institution of a Contracting Party shall use the medical reports and the administrative data provided by the Competent Institution of the other Contracting Party. However, the competent institution of the former Contracting Party reserves the right to have a beneficiary or a member of the family undergo a medical examination by a doctor of its own choice or in the territory where the competent institution is situated.

3. The beneficiary or the member of the family shall comply with any request to present himself for medical examination. If the person concerned, for medical reasons, is unfit to travel to the territory of the other Contracting Party, he shall inform the competent institution of that Contracting Party immediately. He shall, in that case, submit a medical certificate issued by a doctor designated for this purpose by the competent institution in whose territory he resides or stays. This certificate shall prove the medical reasons for his unfitness to travel as well as its expected duration.

4. The costs of the examination and, as the case may be, the expenses for travel and accommodation shall be paid for by the competent institution at whose request the examination is carried out.

Article 9

Recognition and enforcement of decisions and judgements

1. Any decision regarding the recovery of undue payments or the collection of social insurance contributions and administrative penalties pursuant to the relevant legislation taken by a competent institution in one Contracting Party against which no further legal remedy is available, and any court judgement given in relation to such a decision and against which no further legal remedy is available, shall be recognised by the other Contracting Party.

2. A decision or judgement as referred to in paragraph 1 shall not be recognised if such recognition is contrary to public order in the State in which recognition is sought.

3. Enforceable decisions and judgements recognised pursuant to paragraph 1 shall be executed by the other Contracting Party in accordance with the statutory provisions in force in the territory of that State governing the enforcement of similar decisions and judgements. Confirmation that a decision is enforceable shall be stated on the authentic copy of that decision. The competent institution of the other Contracting Party shall be notified of the confirmation that the decision has been enforced.

Article 10

Recovery of undue payments and administrative penalties

If a competent institution has issued an enforceable decision within the meaning of Article 9 and the beneficiary concerned receives a benefit from a competent institution of the other Contracting Party, the former competent institution may request that the payment in question or the administrative penalty be balanced against the arrears or amounts still due to the beneficiary in that Contracting Party.

The latter competent institution shall deduct the amount within the limits of the law applied by that competent institution governing the execution of similar decisions, and will remit the amount to the former competent institution entitled to reimbursement.

Article 11

Data protection

1. Where, under this Agreement, the competent authorities, the competent institutions or the agencies of a Contracting Party communicate personal data to the competent authorities, the competent institutions of the other Contracting Party, or the diplomatic or consular representatives of the other Contracting Party, that communication shall be subject to the legal provisions governing protection of data laid down by the Contracting Party providing the data. Any subsequent transmission as well as storage, alteration and destruction of the data shall be subject to the provisions of the legislation on data protection of the receiving Contracting Party.

2. The use of personal data for purposes other than those of social security shall be subject to the approval of the person concerned or in accordance with other guarantees provided for by national legislation.

Article 12

Implementation of the Agreement

The competent institutions of both Contracting Parties may, by means of supplementary arrangements, establish measures for the application of this Agreement.

Article 13

Language

For the purpose of applying this Agreement, the Competent Authorities, the Competent Institutions and the Agencies of the Contracting Parties may communicate directly with one another in the English language.

Article 14

Settlement of disputes

The competent authorities of both Contracting Parties shall make all reasonable efforts to resolve through mutual agreement any dispute arising from the interpretation or application of this Agreement.

Article 15

Amendment

Amendments to this Agreement shall be effected on the expressed consent of both Contracting Parties, through the exchange of diplomatic notes, and shall be without prejudice to any right or obligation accruing to a Contracting Party upon their entry into force.

Article 16

Entry into force

1. The Contracting Parties shall notify each other in writing of the completion of their respective legal or constitutional procedures required for the entry into force of this Agreement.

2. This Agreement shall enter into force on the first day of the second month following the date of the later notification by either Contracting Party, on the understanding that the Kingdom of the Netherlands shall apply Article 5 provisionally from the first day of the second month following the date on which the Agreement was signed.

Article 17

Territorial application

In relation to the Kingdom of the Netherlands, this Agreement shall apply only to the territory of the Kingdom in Europe.

Article 18

Termination

This Agreement may be terminated at any time by notification in writing to the other Contracting Party. In the event of termination, this Agreement shall remain in force until the end of the calendar year following the year in which the notification of termination was received by the other Contracting Party.

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

DONE in duplicate at Gaborone, on this 24th day of February 2006, in the English language.

For the Kingdom of the Netherlands

LEONI CUELENAERE

For the Republic of Botswana

M. NASHA

D. PARLEMENT

Het Verdrag behoeft ingevolge artikel 91 van de Grondwet de goedkeuring van de Staten-Generaal, alvorens het Koninkrijk aan het Verdrag kan worden gebonden.

F. VOORLOPIGE TOEPASSING

Artikel 5 van het Verdrag wordt ingevolge artikel 16, tweede lid, vanaf 1 april 2006 voorlopig toegepast door het Koninkrijk der Nederlanden.

Wat het Koninkrijk der Nederlanden betreft, geldt de voorlopige toepassing ingevolge artikel 17 alleen voor Nederland.

G. INWERKINGTREDING

De bepalingen van het Verdrag zullen ingevolge artikel 16, eerste en tweede lid, in werking treden op de eerste dag van de tweede maand volgend op de datum van de laatste schriftelijke kennisgeving door de partijen dat hun respectieve wettelijke of grondwettelijke procedures voor inwerkingtreding zijn voltooid.

In overeenstemming met artikel 19, tweede lid, van de Rijkswet goedkeuring en bekendmaking verdragen heeft de Minister van Buitenlandse Zaken bepaald dat het Verdrag zal zijn bekendgemaakt in Nederland op de dag na de datum van uitgifte van dit Tractatenblad.

Uitgegeven de *vierentwintigste* april 2006.

De Minister van Buitenlandse Zaken,

B. R. BOT