



Social Security (International Agreements) Act 1999 Amendment Regulations 2000 (No. 2)

Statutory Rules 2000 No. 105

I, WILLIAM PATRICK DEANE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Social Security (International Agreements) Act 1999*.

Dated 7 June 2000

WILLIAM DEANE
Governor-General

By His Excellency's Command

JOCELYN NEWMAN
Minister for Family and Community Services



Social Security (International Agreements) Act 1999 Amendment Regulations 2000 (No. 2)

Statutory Rules 2000 No. 105¹

made under the

Social Security (International Agreements) Act 1999

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1 Name of Regulations

These Regulations are the *Social Security (International Agreements) Act 1999 Amendment Regulations 2000 (No. 2)*.

2 Commencement

These Regulations commence on 1 January 2001.

3 Amendment of *Social Security (International Agreements) Act 1999*

Schedule 1 amends the *Social Security (International Agreements) Act 1999*.

Schedule 1 Amendment

(regulation 3)

[1] After Schedule 11

insert

Schedule 12 — Denmark

Note: See section 5.

AGREEMENT BETWEEN AUSTRALIA AND THE KINGDOM OF DENMARK ON SOCIAL SECURITY

AUSTRALIA AND THE KINGDOM OF DENMARK,

WISHING to strengthen the existing friendly relations between the two
countries, and

RESOLVED to co-ordinate their social security systems;

HAVE AGREED as follows:

PART I—GENERAL PROVISIONS

ARTICLE 1

Definitions

1. In this Agreement, unless the context otherwise requires:

(a) “territory” means:

in relation to Australia:

Australia as defined in the legislation of Australia; and

in relation to the Kingdom of Denmark:

its national territory, with the exception of Greenland
and the Faroe Islands;

(b) “legislation” means:

in relation to Australia:

the laws specified in subparagraph 1(a) of Article 2;
and

in relation to Denmark:

the laws specified in subparagraph 1(b) of Article 2;

(c) “benefit” means in relation to a Party, a benefit, pension or allowance for which provision is made in the legislation of that Party, and includes any additional amount, increase or supplement that is payable in addition to that benefit, pension or allowance to or in respect of a person who qualifies for that additional amount, increase or supplement under the legislation of that Party;

(d) “Competent Authority” means;

in relation to Australia:

the Secretary to the Department responsible for the application of the legislation in subparagraph 1(a) of Article 2; and

in relation to Denmark:

the Minister of Social Affairs;

(e) “Competent Institution” means;

in relation to Australia:

the institution responsible for the administration of the legislation; and

in relation to Denmark:

the institution responsible for providing benefits;

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- (f) “period of Australian working life residence” means, in relation to a person, a period defined as such in the legislation of Australia, but does not include any period deemed pursuant to Article 7 to be a period in which that person was an Australian resident;
 - (g) “residence” means, as regards Denmark, habitual residence which is lawfully established; and
 - (h) “widowed person” means, in relation to Australia, a person who stops being a member of a couple because of the death of the person’s partner but does not include a person who has a new partner.

2. Any term not defined in this Article has the meaning assigned to it in the applicable legislation.

ARTICLE 2 Legislative Scope

1. Subject to paragraph 2, this Agreement shall apply to the following laws, as amended at the date of signature of this Agreement, and to any laws that subsequently amend, supplement or replace them:

- (a) in relation to Australia: the *Social Security Act 1991* in so far as the Act provides for, applies to or affects the following benefits:
 - (i) age pension;
 - (ii) disability support pension for severely disabled persons; and
 - (iii) parenting payment for widowed persons; and
- (b) in relation to Denmark:
 - (i) *the Social Pensions Act* and the regulations made thereunder; and

- (ii) *the Labour Market Supplementary Pension (ATP) Act* and the regulations made thereunder.

2. Notwithstanding the provisions of paragraph 1, the legislation of Australia shall not include any laws made at any time for the purpose of giving effect to any agreement on Social Security.

3. This Agreement shall apply to laws or regulations which extend the existing legislation to other categories of beneficiaries only if no objection on the part of either Party has been communicated to the other Party within three months of notification of such laws or regulations.

ARTICLE 3 Personal Scope

This Agreement shall apply to any person who:

- (a) in the case of Australia:
- (i) is or has been an Australian resident; or
 - (ii) is or has been a Danish resident;
- (b) in the case of Denmark is an Australian or Danish national,

and, where applicable, to other persons in regard to the rights derived from the persons referred to in paragraphs (a) and (b) above.

PART II—EQUALITY OF TREATMENT AND EXPORT OF BENEFITS

ARTICLE 4 Equality of Treatment

Subject to this Agreement, all persons to whom this Agreement applies shall be treated equally by a Party in regard to rights and obligations which arise whether directly under the legislation of that Party or by virtue of this Agreement.

ARTICLE 5
Payment of Benefits Abroad

1. Subject to other provisions of this Agreement, benefits of one Party are also payable in the territory of the other Party.

2. Where qualification for a benefit of one Party is subject to limitations as to time, then reference to that Party in those limitations shall be read also as references to the territory of the other Party.

3. If a Party imposes legal or administrative restrictions on the transfer of its currency abroad, both Parties shall adopt measures as soon as practicable to guarantee the rights to payment of benefits derived under this Agreement. Those measures shall operate retrospectively to the time the restrictions were imposed.

4. A benefit payable by a Party by virtue of this Agreement shall be paid by that Party without deduction for government administrative fees and charges for processing and paying that benefit whether the beneficiary is in the territory of the other Party or outside the respective territories of both Parties.

5. Any exemption granted in the territory of one of the Parties from stamp duty, notarial or registration fees in respect of certificates and documents required to be submitted to the Competent Authorities and Competent Institutions in the same territory shall also apply to certificates and documents which, for the purposes of this Agreement, have to be submitted to the Competent Authorities and Competent Institutions in the territory of the other Party. Documents and certificates required to be produced for the purpose of this Agreement shall be exempt from authentication by diplomatic and consular authorities.

6. A pension under the *Social Pensions Act* shall be payable to an Australian national resident in the territory of Australia only if the person concerned has been an employed or self-employed person in the territory of Denmark for a total of not less than 12 months of the qualifying period provided for in the *Social Pensions Act*.

7 . For the purpose of paragraph 6 of this article, the following provisions shall apply:

- (a) where membership contributions have been paid for one year in respect of a person covered by the *Labour Market Supplementary Pension (ATP) Act* as a result of pursuing an activity as an employed person, the person concerned shall be regarded as having completed a period of employment of 12 months in the territory of Denmark;
- (b) where a person establishes that he or she was employed in the territory of Denmark for any period before 1 April 1964, that period shall also be accepted; and
- (c) where a person establishes that he or she was self-employed in the territory of Denmark for any period, that period shall also be accepted.

8. Where the conditions specified in paragraph 6 of this Article have not been met, a pension awarded to an Australian national residing in the territory of Denmark shall nevertheless continue to be payable in the territory of Australia if, during the qualifying period prescribed in the *Social Pensions Act*, that person has resided in the territory of Denmark for not less than ten years, of which at least five years are immediately preceding application for the pension.

9 . The following supplements, allowances and benefits under the *Social Pensions Act*, shall be payable to a national of a Party resident outside the territory of Denmark only according to the provisions of that Act:

- (a) pensions supplement
- (b) personal allowance
- (c) outside assistance allowance

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- (d) constant attendance allowance
 - (e) disability benefit.

10 . Notwithstanding any other provision of this Agreement, periods of residence in the territory of Denmark prior to April 1, 1957 shall not be taken into account in the calculation of a benefit under the *Social Pensions Act* payable to an Australian national resident outside the territory of Denmark.

11 . The rights under this Article shall not apply to rent assistance or pharmaceutical allowance.

PART III—PROVISIONS RELATING TO AUSTRALIAN BENEFITS

ARTICLE 6

Residence or Presence in the Territory of Denmark

1. Where a person would be qualified under the legislation of Australia or by virtue of this Agreement for a benefit except for not being an Australian resident and in Australia on the date on which the claim for that benefit is lodged, but:

- (a) is an Australian resident or residing in the territory of Denmark; and
- (b) is in Australia, or the territory of Denmark,

that person shall be deemed, for the purposes of lodging that claim, to be an Australian resident and in Australia on that date.

2. Paragraph 1 shall not apply to a person who is a claimant for a parenting payment.

ARTICLE 7
Totalisation for Australia

1. Subject to paragraph 3, where a person to whom this Agreement applies has claimed an Australian benefit under this Agreement and has accumulated:

- (a) a period as an Australian resident that is less than the period required to qualify that person, on that ground, under the legislation of Australia for a benefit; and
- (b) a period of Australian working life residence equal to or greater than the period identified in accordance with paragraph 2 for that person;

and has accumulated a period of residence in Denmark, within the qualifying period specified in the *Social Pensions Act*, then for the purposes of a claim for that Australian benefit, that period of residence in Denmark shall be deemed, only for the purposes of meeting any minimum qualifying periods for that benefit set out in the legislation of Australia, to be a period in which that person was an Australian resident.

2. The minimum period to be taken into account for the purposes of subparagraph 1(b) shall be as follows:

- (a) for the purposes of an Australian benefit that is payable to a person who is not an Australian resident, the minimum period of Australian working life residence required shall be 1 year, of which at least 6 months shall be continuous; and
- (b) for the purposes of an Australian benefit that is payable to an Australian resident, no minimum is required.

3. Periods of Australian working life residence prior to April 1, 1957 and periods of residence in the territory of Denmark prior to April 1, 1957 shall not be taken into account for the purposes of this Article.

ARTICLE 8
Calculation of Australian Benefit

1. Subject to paragraph 2, where an Australian benefit is payable, whether by virtue of this Agreement or otherwise, to a person who is outside Australia, the rate of that benefit shall be determined according to the legislation of Australia, but when assessing the income of that person for the purposes of calculating the rate of the Australian benefit, only a proportion of any Danish benefit which is received by that person shall be regarded as income. That proportion shall be calculated by multiplying the number of whole months accumulated by that person in a period of Australian working life residence (not exceeding 300) by the amount of that Danish benefit and dividing that product by 300.
2. A person referred to in paragraph 1 shall only be entitled to receive the assessment of income described in that paragraph for any period during which the rate of that person's Australian benefit is proportionalised under the legislation of Australia.
3. Where an Australian benefit is payable, whether by virtue of this Agreement or otherwise, to a person who is residing in Denmark, Australia shall disregard, when assessing the income of that person, any personal allowance paid to that person under the *Social Pensions Act* of Denmark, and any other payments of a similar nature as mutually determined from time to time in letters exchanged between the Ministers respectively administering the legislation of Australia and Denmark.
4. As soon as it is practicable after the exchange of letters in which Danish payments are mutually determined for the purposes of paragraph 3, the Minister administering the legislation of Australia shall cause to be published in the Commonwealth of Australia Gazette a notice specifying such Danish payments.

5. Subject to the provisions of paragraph 6, where an Australian benefit is payable only by virtue of this Agreement to a person who is in Australia, the rate of that benefit shall be determined by:

- (a) calculating that person's income according to the legislation of Australia but disregarding in that calculation the Danish benefit received by that person;
- (b) deducting the amount of the Danish benefit received by that person from the maximum rate of that Australian benefit; and
- (c) applying to the remaining benefit obtained under subparagraph (b) the relevant rate calculation set out in the legislation of Australia, using as the person's income the amount calculated under subparagraph (a).

6. Where a member of a couple is, or both that person and his or her partner are, in receipt of a Danish benefit or benefits, each of them shall be deemed, for the purpose of paragraph 5 and for the legislation of Australia, to be in receipt of one half of either the amount of that benefit or total of both of those benefits, as the case may be.

7. If a person would receive an Australian benefit except for the operation of paragraph 5 or except for that person's failure to claim the benefit, then for the purposes of a claim by that person's partner for a payment under the legislation of Australia that person shall be deemed to receive that benefit.

PART IV—PROVISIONS RELATING TO DANISH BENEFITS

ARTICLE 9

General Provisions Governing Residence

1. For the purposes of this Article, the provisions of the Danish legislation that require a person to be permanently resident in the territory of Denmark before that person can be entitled to benefits shall not apply to an Australian resident unless he or she is claiming an anticipatory pension for social reasons.

2. Australian nationals shall be entitled to an anticipatory pension provided that in the qualifying period laid down in the *Social Pensions Act* they have been physically and mentally capable of carrying on their normal occupation for a continuous period of residence of not less than 12 months in the territory of Denmark.

3. Entitlement to anticipatory pension awarded for social reasons in respect of Australian nationals shall be subject to the additional condition that they have been permanently resident in the territory of Denmark for a period of not less than 12 months immediately before the time of submission of the claim for pension and that the need for pension arose while they were resident in the territory of Denmark.

4. Notwithstanding Article 4 of this Agreement, a Danish national resident in the territory of Australia shall not be entitled to the award of an anticipatory pension for social reasons.

ARTICLE 10 Special Residence Requirements

The provisions laid down in the *Social Pensions Act* making periods of residence outside Denmark, for the purpose of training, equivalent to residence in the territory of Denmark in the calculation of the period of residence, shall, notwithstanding the provisions of Article 4, apply only to Danish nationals.

PART V—MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

ARTICLE 11 Lodgement of Documents

1. A claim, notice or appeal concerning a benefit, whether payable by a Party by virtue of this Agreement or otherwise, may be lodged in the territory of the other Party in accordance with the Administrative Arrangement made pursuant to Article 14 at any time after the Agreement enters into force.

2. For the purposes of assessing entitlement to a benefit, the date on which a claim, notice or appeal referred to in paragraph 1 is lodged with the Competent Institution of the other Party shall be treated as the date of lodgement of that document with the Competent Institution of the first Party.

3. In relation to Australia, the reference in this Article to an appeal document is a reference to a document concerning an appeal that may be made to an administrative body established by the social security laws of Australia.

ARTICLE 12 Determination of Claims

1. Subject to this Agreement, in determining the eligibility or entitlement of a person to a benefit by virtue of this Agreement:

- (a) a period as an Australian resident and a period of residence in Denmark; and
- (b) any event or fact which is relevant to that entitlement,

shall be taken into account in so far as those periods or those events are applicable in regard to that person no matter when they were accumulated or occurred.

2. The commencement date for payment of a benefit payable by virtue of this Agreement shall be determined in accordance with the legislation of the Party concerned but shall never be earlier than the date on which this Agreement enters into force.

3. Where:

- (a) a benefit is paid by a Party to a person in respect of a past period;
- (b) for all or part of that period, the other Party has paid to that person a benefit under its legislation; and

- (c) the amount of the benefit paid by that other Party would have been reduced had the benefit paid by the first Party been paid during that period;

then

- (d) the amount that would not have been paid by the other Party had the benefit described in subparagraph (a) been paid on a periodical basis throughout that past period, shall be a debt due by that person to the other Party; and
- (e) the other Party may determine that the amount or any part of that debt may be deducted from future payments of a benefit payable by that Party to that person.

4. A reference in paragraph 3 to a benefit, in relation to Australia, means a pension, benefit or allowance that is payable under the social security laws of Australia and, in relation to Denmark, means any benefit as defined under the legislation of Denmark specified in subparagraph 1(b) of Article 2.

5. A claim submitted to a Competent Institution of a Party for a benefit of that Party shall also be regarded as a claim for a benefit of the other Party. The date of receipt of the claim by the first institution shall be regarded as the date on which the claim was received by the second institution.

ARTICLE 13

Exchange of Information and Mutual Assistance

1. The Competent Authorities and Competent Institutions responsible for the application of this Agreement:

- (a) shall communicate to each other any information necessary for the application of this Agreement;
- (b) shall lend their good offices and furnish assistance to one another, including the communication to each other of any

necessary information, with regard to the determination or payment of any benefit under this Agreement or under the social security laws of either Party as if the matter involved the application of their own legislation;

- (c) shall communicate to each other, as soon as possible, all information about the measures taken by them for the application of this Agreement or about changes in their respective legislation in so far as these changes affect the application of this Agreement; and
- (d) at the request of one to the other, assist each other in relation to the implementation of agreements on social security entered into by either of the Parties with third States, to the extent and in the circumstances specified in the Administrative Arrangement made in accordance with Article 14.

2. The assistance referred to in paragraph 1 shall be provided free of charge, subject to any Administrative Arrangement made pursuant to Article 14.

3. Unless disclosure is required under the laws of a Party, any information about an individual which is transmitted in accordance with this Agreement to a Competent Authority or an Institution of that Party by a Competent Authority or an Institution of the other Party is confidential and shall be used only for purposes of implementing this Agreement and the social security laws of either Party.

4. In no case shall the provisions of paragraphs 1 and 3 be construed so as to impose on the Competent Authority or Institution of a Party the obligation:

- (a) to carry out administrative measures at variance with the laws or the administrative practice of that or the other Party;
or

- (b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Party.

5. In the application of this Agreement, the Competent Authority and the Institutions of a Party may communicate with the other in the official language of that Party.

ARTICLE 14 Administrative Arrangement

The Competent Authorities of the Parties shall make whatever Administrative Arrangement is necessary in order to implement this Agreement.

ARTICLE 15 Resolution of Difficulties

1. The Parties shall interpret this Agreement in good faith in accordance with the ordinary meaning to be given to the terms of the Agreement in their context and in the light of its object and purpose except where this meaning may have been modified by a definition set out in Article 1.

2. The Parties shall consult promptly at the request of either Party, concerning matters which have not been resolved by the Competent Authorities in accordance with paragraph 1.

ARTICLE 16 Review of the Agreement

Where a Party requests the other to meet to review this Agreement, the Parties shall meet for that purpose no later than 6 months after that request was made and, unless the Parties otherwise agree, their meeting shall be held in the territory of the Party to which that request was made.

PART VI—TRANSITIONAL AND FINAL PROVISIONS

ARTICLE 17

Entry into Force and Termination

1. Subject to the social security laws of either Party, this Agreement shall not result in any reduction in the amount of any benefit to which entitlement was established prior to its entry into force.
2. This Agreement shall enter into force two months after an exchange of notes by the Parties through the diplomatic channel notifying each other that all constitutional or legislative matters as are necessary to give effect to this Agreement have been finalised.
3. Subject to paragraph 4, this Agreement shall remain in force until the expiration of 12 months from the date on which either Party receives from the other a note through the diplomatic channel indicating the intention of the other Party to terminate this Agreement.
4. In the event that this Agreement is terminated in accordance with paragraph 3, the Agreement shall continue to have effect in relation to all persons who:
 - (a) at the date of termination, are in receipt of benefits; or
 - (b) prior to the expiry of the period referred to in that paragraph, have lodged claims for, and would be entitled to receive, benefits,

by virtue of this Agreement.

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

DONE in two copies at Canberra this first day of July, 1999, in the English and Danish languages, each text being equally authoritative.

FOR AUSTRALIA:

FOR THE KINGDOM OF
DENMARK:

Jocelyn Newman
[Signatures omitted]

Kris Lund-Jensen

Note

1. Made by the Governor-General on 7 June 2000, and notified in the *Commonwealth of Australia Gazette* on 15 June 2000.