



Social Security (International Agreements) Act 1999 Amendment Regulations 2001 (No. 2)¹

Statutory Rules 2001 No. 245²

I, PETER JOHN HOLLINGWORTH, 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 13 September 2001

PETER HOLLINGWORTH
Governor-General

By His Excellency's Command

AMANDA VANSTONE
Minister for Family and Community Services

1 Name of Regulations

These Regulations are the *Social Security (International Agreements) Act 1999 Amendment Regulations 2001 (No. 2)*.

2 Commencement

These Regulations commence on 1 January 2002.

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] Schedule 9

substitute

Schedule 9 — Portugal

Note: See section 5.

AGREEMENT BETWEEN AUSTRALIA AND THE REPUBLIC OF
PORTUGAL ON SOCIAL SECURITY

Australia and the Republic of Portugal (hereinafter “the Parties”),

Wishing to strengthen the existing friendly relations between the two countries,

Desiring to review the Agreement between Australia and the Republic of Portugal on Social Security signed on 30 April 1991, and

Acknowledging the need to coordinate further the operation of their respective social security systems so as to ensure access by people who move between Australia and Portugal and to eliminate double coverage;

Have agreed as follows:

PART I - GENERAL PROVISIONS

ARTICLE 1

Definitions

1. In this Agreement, unless the context otherwise requires:
 - (a) "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 but, for Australia, does not include any benefit, payment or entitlement under the law concerning the superannuation guarantee;
 - (b) "carer payment" means a carer payment for a person in Portugal who is caring for a partner who is in receipt of an Australian age pension or disability support pension for the severely disabled and who is also in Portugal;
 - (c) "Competent Authority" means:

in relation to Australia: the Secretary to the Department responsible for the application of the legislation in subparagraph 1 (a) (i) of Article 2 except in relation to the application of Part III of the Agreement (including the application of other Parts of the Agreement as they affect the application of that Part) where it means the Commissioner of Taxation or an authorised representative of the Commissioner; and,
in relation to Portugal: the Minister or other corresponding authority responsible for the social

security schemes in all or any part of the territory of Portugal;

(d) "Competent Institution" means:

in relation to Australia: the institution or agency responsible for the administration of the legislation; and,

in relation to Portugal:

- (i) the institution with which the person concerned is insured at the time of the application for benefit; or
- (ii) the institution from which the person concerned is entitled or would be entitled to benefits if he or she or a member or members of his or her family were resident in the territory of the Party in which the institution is situated; or
- (iii) the institution designated by the Competent Authority of Portugal;

(e) "Government employment" in relation to Australia includes employment by a political subdivision or local authority of Australia";

(f) "legislation" means, in relation to Australia, the law specified in subparagraph 1 (a) (i) of Article 2 except in relation to the application of Part III of the Agreement (including the application of other Parts of the Agreement as they affect the application of that Part) where it means the law specified in subparagraph 1 (a) (ii) of Article 2; and in relation to Portugal, any laws, regulations and other statutory instruments which are in force in the whole or any part of its territory and which relate to the social security schemes specified in Article 2;

(g) "period of Australian working life residence", in relation to a person, means a period defined as such in the legislation of Australia, but does not include any period deemed pursuant to Article 16 to be a period in which that person was an Australian resident;

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- (h) "Portuguese insurance period" means the period of contributions or any equivalent period which has been or can be used to acquire the right to a benefit under Portuguese legislation, but does not include any period considered under paragraph 1 of Article 18 as a Portuguese insurance period;
- (i) "previous Agreement" means the Agreement between the Government of Australia and the Government of the Republic of Portugal on Social Security signed on 30 April 1991;
- (j) "territory" means, in relation to Australia, Australia as defined in the legislation of Australia; and, in relation to Portugal, the territory of the Republic of Portugal on the European continent and the archipelagos of the Azores and Madeira;
- (k) "widow" means:
- in relation to Australia:
- a de jure widow; or
 - a woman who was a member of a couple for 3 years immediately before her partner died and was wholly or mainly financially maintained by him;
 - but does not include a woman who has a partner;
- and in relation to Portugal:
- a de jure widow; or
 - a legally separated woman or divorced woman entitled to alimony; or
 - a person covered by paragraph 1 of Article 2020 of the Civil Law Code.

2. In the application of this Agreement by a Party, any term not defined in it shall, unless the context otherwise requires, have the meaning which it has under the legislation of that Party.

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:
 - (i) the Acts forming the social security law in so far as the law provides for, applies to or affects the following benefits:
 - age pension;
 - disability support pension for the severely disabled;
 - wife pension;
 - carer payment;
 - pensions payable to widows;
 - bereavement allowance;
 - additional child amount;
 - double orphan pension; and
 - (ii) the law concerning the superannuation guarantee (which at the time of signature of this Agreement is contained in the Superannuation Guarantee (Administration) Act 1992, the Superannuation Guarantee Charge Act 1992 and the Superannuation Guarantee (Administration) Regulations);
 - (b) in relation to Portugal:
 - (i) the legislation relating to the general scheme (including the voluntary social insurance scheme) and the special schemes (excluding provisions for civil servants or persons treated as such) of the social security system in respect of the following benefits:
 - old age pension;
 - invalidity pension;
 - survivors' pension and death grant;

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- supplement for care;
 - sickness and maternity benefits;
 - unemployment benefit;
 - funeral grant; and
 - family allowance for children and young people of pensioners;
- (ii) the legislation relating to work injuries and occupational diseases pensions; and
 - (iii) the legislation relating to the non-contributory scheme in respect of old age, invalidity and survivors' pensions and supplement for care.
2. Unless otherwise provided in this Agreement, the laws referred to in paragraph 1 shall not include any treaty or other international Agreement or supra-national legislation on social security which may be in force between either Party and a third State or third States, or laws or regulations promulgated for their specific implementation.
 3. This Agreement shall also apply to any laws and regulations which extend the existing legislation to new categories of beneficiaries if the Government of the Party concerned does not notify of an objection in writing to the Government of the other Party within 6 months from the official publication of those laws and regulations.

ARTICLE 3

Personal Scope

This Agreement shall apply to any person who:

- (a) is or has been an Australian resident; or
- (b) is or has been subject to the legislation of Portugal;

and, where applicable, to other persons in regard to the rights they derive from the person described in this Article.

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 regarding eligibility for and payment of benefits which arise whether directly under the legislation of that Party or by virtue of this Agreement.

ARTICLE 5

Voluntary Social Insurance

As soon as an Australian citizen is deemed to be a resident in Portugal that person shall be entitled to register with the voluntary social insurance scheme under the legislation of Portugal on the same basis as a national of Portugal.

ARTICLE 6

Export of Benefits

1. Subject to paragraph 4, benefits of one Party are also payable in the territory of the other Party.
2. Where the legislation of a Party provides that a benefit is payable outside the territory of that Party, then that benefit, when payable by virtue of this Agreement, is also payable outside the territories of both Parties.
3. 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.
4. Notwithstanding any provision of this Agreement, unemployment benefit under the legislation of Portugal and Portuguese pensions specified in subparagraph 1 (b) (iii) of Article 2 shall not be paid outside the territory of Portugal.

PART II – COMMON PROVISIONS ON COVERAGE

ARTICLE 7

Application of Legislation

1. Except as otherwise provided in this Agreement, the persons to whom this Agreement applies shall be covered by:
 - (a) Portuguese legislation if they are employed or resident in Portugal; or
 - (b) Australian legislation if they are Australian residents.
2. Where a person is entitled to claim a benefit under the legislation of a Party that legislation shall also apply to that person.

ARTICLE 8

Decisions on Social Security Coverage

The Competent Authorities will, in accordance with their countries' respective legislation, decide on the social security coverage to be applied in the best interests of a person.

PART III

PROVISIONS FOR AVOIDING DOUBLE COVERAGE

ARTICLE 9

Purpose of Part

The purpose of this Part is to ensure that employers and employees who are subject to the legislation of Portugal or Australia do not have a double liability under the legislation of Portugal and Australia, in respect of the same work of an employee.

ARTICLE 10

Application of Part

This Part only applies if an employee and/or the employer of the employee would, apart from this Part, be subject to the legislation of both Parties in respect of work of the employee or remuneration paid for the work.

ARTICLE 11

Diplomatic and Consular Relations

This Agreement shall not affect the provisions of the Vienna Convention on Diplomatic Relations of 18 April 1961, or the Vienna Convention on Consular Relations of 24 April 1963.

ARTICLE 12

Application of legislation

1. Unless otherwise provided in paragraphs 2, 4 and 5, if an employee works in the territory of one Party, the employer of the employee and the employee shall in respect of the work and the remuneration paid for the work be subject only to the legislation of that Party.
2. If an employee:
 - (a) is covered by the legislation of one Party ('the first Party'); and
 - (b) was sent, whether before, on or after the commencement of this Part, by an employer who is subject to the legislation of the first Party to work in the territory of the other Party ('the second Party'); and
 - (c) is working in the territory of the second Party in the employment of the employer or a related entity of that employer of the employee; and
 - (d) was sent to work in the territory of the second Party and a period of 4 years has not elapsed from that time; and
 - (e) is not working permanently in the territory of the second Party;the employer and employee shall be subject only to the legislation of the first Party in respect of that work occurring after the commencement of this Part and the remuneration paid for such work.
3. For the purposes of subparagraph 2 (c), an entity is a related entity of an employer if the entity and the employer are members of the same wholly or majority owned group.

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4. Despite anything in paragraph 2:
 - (a) where an employee is employed in an official administrative service in respect of Portugal and is seconded in the course of that employment to the territory of Australia, the legislation of Australia shall not apply to the employee and the employer in respect of that employment and the employee and employer shall remain subject to the legislation of Portugal in respect of that employment;
 - (b) where an employee is employed in the Government employment in respect of Australia and is seconded in the course of that employment to the territory of Portugal, the legislation of Portugal shall not apply to the employee and the employer in respect of that employment and the employee and the employer shall remain subject to the legislation of Australia in respect of that employment.
 5. If an employee is working in the employment of an employer on a ship or aircraft in international traffic, the employer of the employee shall in respect of the employment and the remuneration paid for that employment be subject only to the legislation of the Party of which the employee is resident.

ARTICLE 13

Exception agreements

1. The competent authorities for Australia and Portugal may for the purposes of this Part by agreement in writing:
 - (a) extend the period of 4 years referred to in subparagraph 2 (d) of Article 12 for any employee; or
 - (b) provide that an employee is taken to work in the territory of a particular Party or to work on a ship or aircraft in international traffic under the legislation of a particular Party and is subject only to the legislation of that Party.
2. Any agreement made under paragraph 1 may apply to:
 - (a) a class of employees; and/or
 - (b) particular work or particular type of work (including work that has not occurred at the time the agreement is made).

PART IV- PROVISIONS RELATING TO BENEFITS

SECTION I - AUSTRALIAN BENEFITS

ARTICLE 14

Residence or Presence in Portugal or a Third State

1. Where a person would not qualify for a benefit under the legislation of Australia or by virtue of this Agreement only because he or she was not an Australian resident and present in Australia on the date on which the claim for that benefit would be lodged but that person:
 - (a) is an Australian resident or a resident of Portugal (or a third country with which Australia has implemented an agreement on social security that includes provision for cooperation in the lodgement and determination of claims for benefits); and
 - (b) is physically in Australia, or in Portugal or that third State; 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 claimant for a carer payment who has never been an Australian resident.
3. For the purposes of qualification for a carer payment as defined in this Agreement, which is payable by virtue of this Agreement, a person who is in Portugal shall be regarded as being in Australia.

ARTICLE 15

Partner Related Australian Benefits

For the purposes of this Agreement, a person who receives an Australian benefit due to the fact that the partner of that person receives, by virtue of this Agreement, another Australian benefit shall be deemed to receive that first-mentioned benefit by virtue of this Agreement.

ARTICLE 16

Totalisation for Australia

1. 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 4; and
 - (c) a Portuguese insurance period,
 then that Portuguese insurance period shall be deemed to be a period in which that person was an Australian resident
 - only if that Portuguese insurance period has already been used or can be used at the time of totalisation, to obtain a Portuguese benefit, and
 - only for the purposes of meeting any minimum qualifying periods for that benefit set out in the legislation of Australia.
2. For the purposes of paragraph 1, where a person:
 - (a) has been an Australian resident for a continuous period which is less than the minimum continuous period required by the legislation of Australia for entitlement of that person to a benefit; and
 - (b) has accumulated a Portuguese insurance period in two or more separate periods that equals or exceeds in total the minimum period referred to in subparagraph (a);
 the total of the Portuguese insurance periods shall be deemed to be one continuous period.
3. Where a period by a person as an Australian resident and a Portuguese insurance period coincide, the period of coincidence shall be taken into account once only by Australia for the purposes of this Article as a period as an Australian resident.

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4. The period of Australian working life residence (as defined in Article 1) to be taken into account for the purposes of subparagraph 1 (b) shall be as follows:
- (a) for the purposes of an Australian benefit claimed by a person who is not an Australian resident, the minimum period required shall be 12 months, of which at least 6 months must be continuous; and
 - (b) for the purposes of an Australian benefit claimed by an Australian resident, there shall be no minimum period of residence in Australia required.

ARTICLE 17

Calculation of Australian Benefits

- 1. Subject to paragraphs 2 and 4, 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 Portuguese benefit paid to that person under the legislation specified in subparagraphs 1 (b) (i) or (ii) of Article 2 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 residence in Australia (not exceeding 300) by the amount of that Portuguese benefit and dividing that product by 300.
- 2. A person referred to in paragraph 1 shall be entitled to receive the concessional assessment of income described in that paragraph only for any period during which the rate of that person's Australian benefit is proportionalised under the legislation of Australia.
- 3. The provisions in paragraphs 1 and 2 shall continue to apply for 26 weeks where a person comes temporarily to Australia.
- 4. When an Australian benefit is payable whether by virtue of this Agreement or otherwise to a person who is resident in the

territory of Portugal, Australia shall disregard, when assessing the income of that person:

- (a) any benefit paid to that person under the legislation specified in subparagraph 1 (b) (iii) of Article 2; and
 - (b) any non-contributory supplement paid to that person by Portugal to bring the amount of that person's Portuguese benefit to the minimum level guaranteed under the legislation of Portugal.
5. Subject to 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 Portuguese benefit or benefits received by that person;
 - (b) deducting the amount of the Portuguese benefit or benefits 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, entitled to a Portuguese benefit or benefits, each of them shall be deemed, for the purpose of paragraph 5 and for the legislation of Australia, to receive one half of either the amount of that benefit or the total of both of those benefits, as the case may be.
7. The provisions in paragraph 5 shall continue to apply for 26 weeks where a person departs temporarily from Australia.

SECTION II – PORTUGUESE BENEFITS

SUB-SECTION I – OLD-AGE, INVALIDITY AND SURVIVORS’ PENSIONS

ARTICLE 18

Totalisation for Portugal

1. For the purposes of this Agreement, when insurance periods completed under the Portuguese legislation are:
 - (a) less than the period required for the acquisition, retention or recovery of the right to benefits under that legislation, and
 - (b) have the duration of at least one calendar yearthen the periods of Australian working life residence shall be deemed as Portuguese insurance periods provided that they do not coincide.
2. For the purposes of this Article the upper age limit for a woman, set in the definition of a period of Australian working life residence in the legislation of Australia, shall be raised to the age pension age for a woman for the purposes of claiming an old age pension under the legislation of Portugal.

ARTICLE 19

Rules for the Granting of Portuguese Pensions

1. Subject to paragraph 3, the Portuguese Competent Institution shall determine the rate of Portuguese benefits in accordance with Portuguese legislation and, in relation to old age pension, invalidity pension and survivors’ pension, the calculation shall be based directly and exclusively on Portuguese insurance periods and equivalents completed under Portuguese legislation.
2. If the total of any pensions paid by both Parties to a person residing in Portugal is less than the minimum pension fixed by Portuguese legislation, the Competent Institution of Portugal will pay to that person an amount equal to that difference.
3. For the purposes of calculating any supplement to be paid by Portugal to an Australian resident to bring Portuguese benefit

paid, other than by virtue of this Agreement, to that person to the minimum level fixed by Portuguese legislation, any Australian benefit paid to that person by virtue of this Agreement shall not be taken into account.

4. Entitlement to Portuguese pensions paid by virtue of this Agreement shall have regard to occupational activity carried out in the territory of Australia as if that activity was carried out in the territory of Portugal.
5. In the assessment of income for the calculation of the rate of a spouse's supplement under the legislation of Portugal, wife pension payable under the legislation of Australia shall not be taken into account.

SUB-SECTION II - OTHER PORTUGUESE BENEFITS

ARTICLE 20

Sickness and Maternity Benefits

Where a person, after his or her last arrival in the territory of Portugal, has accomplished a contribution period under Portuguese legislation for the purposes of eligibility for a sickness or maternity benefit under that legislation, the periods of Australian working life residence shall be deemed as periods accomplished under Portuguese legislation, provided that they do not coincide.

ARTICLE 21

Unemployment Benefit

Where a person, after his or her last arrival in the territory of Portugal, has accomplished a contribution period of at least four weeks under Portuguese legislation for the purposes of eligibility for unemployment benefit under that legislation, the periods of Australian working life residence, during which an occupational activity has been pursued as an employee or Australian newstart allowance has been awarded as a result of no longer being an employee, shall be deemed as periods accomplished under Portuguese legislation, provided that they do not coincide.

ARTICLE 22

Family benefits for pensioners

Family allowances for children and young people payable under the legislation of Portugal shall be payable by virtue of this Agreement to pensioners who are residing in Australia and receiving a pension under the legislation of Portugal be they Australian citizens or Portuguese nationals and those family allowances shall for the purposes of reciprocity in relation to this Agreement be regarded as the Portuguese benefit equivalent to Australian additional child amount.

ARTICLE 23

Pensions for Accidents at Work and Occupational Diseases

1. Pensions related to incapacity due to work-related accidents or occupational diseases according to Portuguese legislation shall be paid by the competent Portuguese institution whenever a person is subject to the legislation applied by it at the time the accident occurred or at the date the occupational disease has been contracted if that person has been pursuing an occupational activity likely to cause that disease according to the legislation of Portugal.
2. In order to determine the permanent incapacity rate for work-related accidents or occupational diseases under Portuguese legislation, work-related accidents or occupational diseases which qualified a person for a benefit under Australian legislation shall be deemed to have occurred under Portuguese legislation.

PART V- MISCELLANEOUS PROVISIONS

ARTICLE 24

Lodgement of Documents

1. A claim, notice or appeal concerning a benefit, whether payable by virtue of this Agreement or otherwise, may be lodged in the territory of either Party in accordance with administrative arrangements made pursuant to Article 28 at any time after the Agreement enters into force.

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2. For the purpose of determining the right to a benefit, the date on which a claim, notice or appeal referred to in paragraph 1 is lodged with the Competent Institution of one Party shall be considered as the date of lodgement of that document with the Competent Institution of the other Party. The Competent Institution with which a claim, notice or appeal is lodged shall refer it without delay to the Competent Institution of the other Party.
 3. The reference in paragraph 2 to an appeal document is a reference to a document concerning an appeal that may be made to an administrative body established by, or administratively for the purposes of, the respective legislation.

ARTICLE 25

Determination of Claims

1. 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 Portuguese insurance period; and
 - (b) any event or fact which is relevant to that entitlement, shall, subject to this Agreement, 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 in no case shall that date be a date earlier than the date on which this Agreement enters into force.
3. Where:
 - (a) a benefit is paid or payable 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 or payable by the first Party been paid during that period;

then:

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.

4. Where the first Party has not yet paid the arrears of benefit described in paragraph 3 to the person:
 - (a) that Party shall, at the request of the other Party, pay the amount of the debt described in paragraph 3 to the other Party and shall pay any excess to the person in line with the provisions set out in administrative arrangements made in accordance with Article 28; and
 - (b) any shortfall in those arrears may be recovered by the other Party.
5. A reference in paragraph 3 or 4 to a benefit, in relation to Australia, means a pension, benefit or allowance that is payable under the Acts forming the social security law of Australia as amended from time to time, and in relation to Portugal means any pension, benefit, allowance or advance made by a Competent Institution including overpayments which arise because of the payment of Portuguese and Australian benefits.

ARTICLE 26

Payment of Benefits

1. 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 from the time the restrictions were imposed.
2. A Party that imposes restrictions described in paragraph 1 shall inform the other Party of those restrictions within one calendar month of their imposition and shall adopt the measures described

in paragraph 1 within three months of the imposition of those restrictions. If the other Party is not so informed or if the necessary measures are not adopted within the set time, the other Party may treat such a failure as a material breach of the Agreement and as sufficient justification for termination or suspension of the Agreement between the Parties.

3. A benefit payable by a Party by virtue of this Agreement to a person outside the territory of that Party shall be paid without deduction for government administrative fees and charges for processing and paying that benefit.

ARTICLE 27

Exchange of Information and Mutual Assistance

1. The Competent Authorities shall:
 - (a) advise each other of laws that amend, supplement or replace the legislation of their respective Parties for the application of this Agreement, promptly after the first-mentioned laws are made;
 - (b) advise each other directly of internal action to implement this Agreement and any Administrative Arrangement adopted for its implementation; and
 - (c) advise each other of any technical problems encountered when applying the provisions of this Agreement or of any Administrative Arrangement made for its implementation.
2. The Competent Institutions of both Parties shall:
 - (a) advise each other of any information necessary for the application of this Agreement or of the respective legislation of the Parties concerning all matters within their area of competence arising under this Agreement or under those laws;
 - (b) assist one another in relation to the determination of any benefit under this Agreement or the respective legislation within the limits of and according to their own laws; and
 - (c) 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 administrative arrangements made in accordance with Article 28.

3. The assistance referred to in paragraphs 1 and 2 shall be provided free of charge, subject to any Administrative Arrangement made pursuant to Article 28.
4. Any information about a person which is transmitted in accordance with this Agreement to a Competent Institution shall be protected in the same manner as information obtained under the legislation of that Party.
5. Notwithstanding any laws or administrative practices of a Party, no information concerning a person which is received by that Party from the other Party shall be transferred or disclosed to any other country or to any other organisation within that other country without the prior written consent of that other Party.
6. In no case shall the provisions of paragraphs 1, 2 and 3 be construed so as to impose on the Competent Authority or Competent 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.
7. In the application of this Agreement, the Competent Authority and the Competent Institutions of a Party may communicate with the other in the official language of that Party.
8. In this Article "legislation" means all the laws referred to in Article 2 without any of the restrictions contained in Article 2.

ARTICLE 28

Administrative Arrangements

The Competent Authorities of the Parties shall make whatever administrative arrangements are necessary in order to implement this Agreement.

ARTICLE 29**Resolution of difficulties**

1. The Competent Authorities of the Parties shall resolve, to the extent possible, any difficulties which arise in interpreting or applying this Agreement according to its spirit and fundamental principles.
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 30**Review of 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 31****Transitional Provisions**

Where, on the date on which this Agreement enters into force, a person:

- (a) is in receipt of a benefit by virtue of the previous Agreement; or
- (b) is qualified to receive a benefit by virtue of the previous Agreement and, where a claim for that benefit is required, has claimed that benefit,

no provision of this Agreement shall affect that person's qualification to receive that benefit.

ARTICLE 32**Entry into force**

1. This Agreement shall enter into force on the first day of the second month following that in which the Parties notify each other through the diplomatic channel that all constitutional or

legislative matters as are necessary to give effect to this Agreement have been finalised.

2. Subject to the provisions of Article 31, the previous Agreement shall terminate on entry into force of this Agreement.

ARTICLE 33

Termination

1. Subject to paragraph 2, 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 its intention to terminate this Agreement.
2. In the event of termination, this Agreement shall continue to have effect in relation to all persons who:
 - (a) at the date on which termination takes effect, are in receipt of benefits; or
 - (b) prior to that date have lodged claims for, and would be entitled to receive, benefits,
by virtue of this Agreement or the Agreement signed on 30 April 1991 or
 - (c) immediately before the date of termination are subject only to the legislation of one Party by virtue of paragraph 2 or 4 of Article 12 provided that the employee continues to satisfy the criteria of that paragraph.

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

DONE in 2 copies at LISBON this THIRD day of SEPTEMBER, TWO THOUSAND AND ONE in the English and Portuguese languages, both texts being equally authoritative.

FOR AUSTRALIA:

FOR THE REPUBLIC OF PORTUGAL:

JANET GARDINER

JOSÉ SIMÕES DE ALMEIDA

Notes

1. These Regulations amend Act No. 173, 1999, as amended by Act Nos. 45, 94 and 138, 2000; Statutory Rules 2000 Nos. 104, 105 and 165; 2001 No. 215.
2. Notified in the *Commonwealth of Australia Gazette* on 14 September 2001.