



Social Security (International Agreements) Amendment (Republic of Estonia) Regulation 2016

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation.

Dated 24 November 2016

Peter Cosgrove
Governor-General

By His Excellency's Command

Christian Porter
Minister for Social Services

Contents

1	Name.....	1
2	Commencement	1
3	Authority.....	1
4	Repeal of this instrument	1
5	Schedules	1
	Schedule 1—Amendments	2
	<i>Social Security (International Agreements) Act 1999</i>	2

1 Name

This is the *Social Security (International Agreements) Amendment (Republic of Estonia) Regulation 2016*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 5 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.	30 November 2016
2. Schedule 1	A single day to be fixed by the Minister by notifiable instrument.	1 January 2018 (F2017N00099)

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under subsection 8(1) of the *Social Security (International Agreements) Act 1999*.

4 Repeal of this instrument

This instrument is repealed on the day after Schedule 1 commences.

5 Schedules

Legislation that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Social Security (International Agreements) Act 1999

1 At the end of the Act

Add:

Schedule 32—Republic of Estonia

Note: See sections 5 and 8.

AGREEMENT BETWEEN
AUSTRALIA
AND
THE REPUBLIC OF ESTONIA
ON SOCIAL SECURITY

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

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

and

resolved to coordinate their social security systems and to eliminate double coverage for seconded workers;

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 Contracting Party, a pension for which provision is made in the legislation of that Contracting Party, and includes any additional amount,

increase or supplement that is payable but, for Australia, does not include any benefit, payment or entitlement under the law concerning the superannuation guarantee;

(b) “**Competent Authority**” means,

in relation to Australia, the Secretary of the Commonwealth Department responsible for the legislation specified in sub-paragraph 1(a)(i) of Article 2 of this Agreement, except in relation to the application of Part II of the Agreement (including the application of other Parts of the Agreement as they affect that Part) where it means the Commissioner of Taxation or an authorised representative of the Commissioner; and,

in relation to the Republic of Estonia, the Ministry of Social Affairs, except in relation to the application of Part II of the Agreement (including the application of other Parts of the Agreement as they affect that Part) where it means the Ministry of Finance;

(c) “**Competent Institution**” means the institution or agency which has the task of implementing the applicable legislation;

(d) “**insurance period**” under the legislation of the Republic of Estonia means a period of payment of social tax, residence or employment and periods deemed as such according to the legislation;

(e) “**legislation**” means,

in relation to Australia, the laws specified in sub-paragraph 1(a)(i) of Article 2 of this Agreement except in relation to the application of Part II of the Agreement (including the application of other Parts of the Agreement as they affect that Part) where it means the laws specified in sub-paragraph 1(a)(ii) of Article 2 of this Agreement; and,

in relation to the Republic of Estonia, the laws specified in sub-paragraph 1(b)(i) of Article 2 of this Agreement except in relation to the application of Part II of this Agreement (including the application of other Parts of the Agreement as they affect that Part) where it means the laws specified in sub-paragraph 1(b)(ii) of Article 2 of this Agreement;

(f) “**period of Australian working life residence**” means a period defined as such in the legislation of Australia but does not include any period deemed pursuant to Article 11 of this Agreement to be a period in which that person was an Australian resident.

2. Unless the context otherwise requires, any term not defined in this Agreement shall have the meaning assigned to it in the applicable legislation and national laws.

Article 2 **Legislative Scope**

1. This Agreement shall apply to the following laws, as amended at the date of signature of this Agreement, and to any laws that 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 age pension;
 - (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 the Republic of Estonia:
- (i) the legislation governing mandatory state pension insurance in case of old-age and loss of provider except pension rights provided to persons repressed and payment of mandatory funded pensions;
 - (ii) legislation governing the payment of social tax, the contributions of mandatory funded pensions and the unemployment insurance premiums;
 - (iii) notwithstanding sub-paragraph 1(b)(ii) of this Article, this Agreement shall not apply to the unemployment benefits.
2. Unless otherwise provided in this Agreement, the legislation of either Contracting Party shall not include any other agreement on social security entered into by either Contracting Party with a third party.
3. This Agreement shall apply to future legislation which extends the existing legislation of either Contracting Party to new categories of beneficiaries only if the Competent Authorities so agree in writing.

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 an Estonian resident and subject to the legislation of the Republic of Estonia.

Article 4 Equality of Treatment

Unless otherwise provided in this Agreement, all persons to whom this Agreement applies shall be treated equally by a Contracting Party in regard to rights and obligations regarding eligibility for and payment of benefits, irrespective of whether such rights and obligations arise directly under the legislation of that Contracting Party or by virtue of this Agreement.

Article 5
Export of Benefits

1. Unless otherwise provided in this Agreement, benefits of one Contracting Party shall be payable to persons who are residents of, and physically present in, the territory of either Contracting Party.
2. In relation to Australia, any additional amount, increase or supplement that is payable in addition to a benefit under this Agreement, shall be payable to a person outside Australia only for the period specified in the *Social Security Act 1991*.
3. In relation to the Republic of Estonia, the national pension shall be awarded and paid only to persons residing in the territory of the Republic of Estonia.

PART II

PROVISIONS ON COVERAGE

Article 6
Application of this Part

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

Article 7
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 8
Avoidance of Double Coverage

1. Unless otherwise provided in this Part, if an employee works in the territory of one Contracting Party, the employee and their employer shall in respect of the work and the remuneration paid for the work be subject only to the legislation of that Contracting Party.
2. If an employee:
 - (a) is covered by the legislation of one Contracting Party ('the first Contracting Party'); and
 - (b) was sent, whether before, on or after the commencement of this Part, by the Government of the first Contracting Party to work in the territory of the other Contracting Party ('the second Contracting Party'); and

- (c) is working in the territory of the second Contracting Party in the employment of the Government of the first Contracting Party; and
- (d) is not working permanently in the territory of the second Contracting Party;

the employee and employer shall be subject only to the legislation of the first Contracting Party in respect of the work performed after the commencement of this Part and the remuneration paid for that work. For the purposes of this paragraph, "Government" includes in relation to Australia a political subdivision or local authority of Australia and in relation to the Republic of Estonia, a government authority as defined in the Government of the Republic Act or a local government as defined in the Local Government Organisation Act.

3. If an employee:

- (a) is covered by the legislation of one Contracting Party ('the first Contracting 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 Contracting Party to work in the territory of the other Contracting Party ('the second Contracting Party'); and
- (c) is working in the territory of the second Contracting Party in the employment of the employer or a related entity of that employer; and
- (d) is not working permanently in the territory of the second Contracting Party and a period of 4 years from the time the employee was sent to work in the territory of the second Contracting Party has not elapsed;

the employee and employer shall be subject only to the legislation of the first Contracting Party in respect of the work performed and the remuneration paid for that work after the commencement of this Part.

4. For the purposes of sub-paragraph 3(c) of Article 8 of this Agreement 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.

Article 9 Exception Agreements

The Competent Authorities or the Competent Institutions designated by them may agree in writing to modify the application of the provisions of this Part in respect to a particular person or particular category of persons.

PART III

PROVISIONS RELATING TO AUSTRALIAN BENEFITS

Article 10
Residence or Presence in the Republic of Estonia

Where a person would be qualified under the legislation of Australia or by virtue of this Agreement for an Australian 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 or an Estonian resident; and
- (b) is in Australia, or in the Republic of Estonia,

that person, so long as he or she has been an Australian resident at some time, shall be deemed, for the purpose of lodging that claim, to be an Australian resident and in Australia on that date.

Article 11
Totalisation for Australian Benefits

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 that benefit; and
- (b) a period of Australian working life residence equal to or greater than the period identified in accordance with paragraph 4 of this Article for that person; and
- (c) an insurance period under the legislation of the Republic of Estonia;

then, for the purposes of a claim for that Australian benefit, that insurance period under the legislation of the Republic of Estonia shall be deemed, only for the purpose of meeting any minimum qualifying periods for that benefit set out in the relevant legislation of Australia, to be a period in which that person was an Australian resident.

2. For the purposes of paragraph 1 of this Article, 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 an insurance period under the legislation of the Republic of Estonia in two or more separate periods that equals or exceeds in total the minimum period referred to in sub-paragraph 2(a) of this Article;

then the total of the insurance periods under the legislation of the Republic of Estonia shall be deemed to be one continuous period.

3. For the purposes of this Article, where a period by a person as an Australian resident and an insurance period under the legislation of the Republic of Estonia coincide, the period of coincidence shall be taken into account once only by Australia as a period as an Australian resident.

4. The minimum period of Australian working life residence to be taken into account for the purposes of paragraph 1 of this Article shall be 12 months, of which at least six months must be continuous.

Article 12

Calculation of Australian Benefits

1. Subject to paragraph 2, where an Australian benefit is payable only by virtue of this Agreement to a person who is outside Australia, the amount of that benefit shall be determined according to the legislation of Australia.
2. Where a person comes temporarily to Australia, paragraph 1 shall continue to apply for 26 weeks from the date of their arrival in Australia.
3. Subject to paragraph 4, 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 any benefit under the legislation of the Republic of Estonia which that person or the partner of that person is entitled to receive if applicable; and
 - (b) deducting the amount of the benefit under the legislation of the Republic of Estonia which that person is entitled to receive from the maximum rate of that Australian benefit; and
 - (c) applying to the remaining benefit obtained under sub-paragraph 3(b) of this Article the relevant rate calculation set out in the legislation of Australia, using as the person's income the amount calculated under sub-paragraph 3(a) of this Article.
4. Where a person departs temporarily from Australia, paragraph 3 of this Article shall continue to apply for 26 weeks from the date of their departure from Australia.
5. Where a member of a couple is, or both that person and the person's partner are, entitled to a benefit or benefits under the legislation of the Republic of Estonia, each of them shall be deemed, for the purposes of this Article and of the legislation of Australia, to be in receipt of one half of that benefit or one half of the total of both benefits, as the case may be.
6. For the purposes of paragraph 1, a benefit shall not include additional child amount.

PART IV

PROVISIONS RELATING TO ESTONIAN BENEFITS

Article 13
Totalisation for Estonian Benefits

1. If entitlement to a benefit under the legislation of the Republic of Estonia arises without taking into account a period of Australian working life residence, the Republic of Estonia shall award the benefit only for insurance periods taken into account under its own legislation.
2. If a person is not entitled to a benefit on the basis of insurance periods under the legislation of the Republic of Estonia, then the Estonian insurance periods shall be totalised with periods of Australian working life residence to determine entitlement to Estonian benefits on the condition that these periods do not overlap in part or in full. The Republic of Estonia shall calculate the amount of a benefit and pay it in accordance with Estonian insurance periods completed on its own territory.
3. If a person is not entitled to a benefit under a specific law applying to work in a certain area of speciality, in certain conditions, or in special services, these insurance periods shall be taken into account as general insurance periods.
4. If the total insurance period under the legislation of the Republic of Estonia is less than 12 months, the Competent Institution of the Republic of Estonia shall disregard this period in awarding and paying a benefit.

Article 14
Payment of Survivor's Pension

1. The Republic of Estonia shall award a survivor's pension only for insurance periods completed under its own legislation.
2. The Republic of Estonia shall not award a survivor's pension to a person who receives an old-age pension or pension for incapacity for work from another Contracting Party. If the other Contracting Party awards an old-age pension or pension for incapacity for work, the awarded Estonian survivor's pension shall be discontinued.

PART V

MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

Article 15
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 Contracting Party, in accordance with the Administrative Arrangement made pursuant to Article 18 of this Agreement, at any time after the Agreement enters into force.
2. The date on which a claim, notice or appeal referred to in paragraph 1 is lodged with the Competent Institution of one Contracting Party shall be considered as the date of lodgement of that document with the Competent Institution of the other Contracting 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 Contracting Party.

3. In relation to Australia, the reference in paragraphs 1 and 2 to an appeal is a reference to an appeal that may be made to an administrative body established by, or administratively for the purposes of, the social security laws of Australia.

Article 16 **Payment of Benefits**

1. The Competent Institutions of each Contracting Party shall pay benefits by virtue of this Agreement directly to entitled persons residing in the territory of the other Contracting Party in the official currency of that Contracting Party or in another internationally convertible currency.

2. A benefit payable by a Contracting Party by virtue of this Agreement shall be paid by that Contracting Party, whether the beneficiary is in the territory of that Contracting Party or the other Contracting Party, without deduction for government administrative fees and charges for processing and paying that benefit.

3. Any exemption granted in the territory of one of the Contracting 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, need to be submitted to the Competent Authorities and Competent Institutions in the territory of the other Contracting Party. Documents and certificates required to be produced for the purpose of this Agreement shall be exempt from authentication by diplomatic and consular authorities.

Article 17 **Exchange of Information and Mutual Assistance**

1. The Competent Authorities and Competent Institutions responsible for the application of this Agreement shall to the extent permitted by their national laws:

- (a) communicate to each other any information necessary for the application of this Agreement and the social security law of Australia or the legislation of the Republic of Estonia;
- (b) provide 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 as if the matter involved the application of their own legislation; and
- (c) communicate to each other, as soon as possible, all information about the measures taken by them for the implementation of this Agreement or about changes in their respective legislation insofar as the changes affect the application of this Agreement.

2. The assistance referred to in paragraph 1 shall be provided free of charge, unless otherwise provided for in the Administrative Arrangement made pursuant to Article 18.

-
3. Unless disclosure is required under the legislation of a Contracting Party, any information about an individual which is transmitted in accordance with this Agreement to a Competent Authority or a Competent Institution of that Contracting Party is confidential and shall be used only for the purposes of implementing this Agreement and the legislation to which this Agreement applies.
4. In no case shall the provisions of paragraphs 1 and 3 of this Article be construed so as to impose on the Competent Authority or Competent Institution of a Contracting Party the obligation:
- (a) to carry out administrative measures at variance with the laws or the administrative practice of either Contracting Party; or
 - (b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of either Contracting Party.
5. In the application of this Agreement, the Competent Authority and the Competent Institution of a Contracting Party may communicate with the other in any of the official languages of the Contracting Parties.
6. The Competent Institutions of the Contracting Parties will supply to each other, according to an agreed schedule and format, relevant information including, but not limited to, death, change of address, change of relationship status and changes in the amount of benefits for mutual beneficiaries.

Article 18 **Administrative Arrangement**

1. The Competent Authorities of the Contracting Parties shall establish, by means of an Administrative Arrangement, the measures necessary for the implementation of this Agreement.
2. The Competent Authorities shall appoint liaison agencies which are to be listed in the Administrative Arrangement to facilitate the implementation of this Agreement.

Article 19 **Resolution of Disputes**

The Competent Authorities of the Contracting Parties shall resolve, to the extent possible, any difficulties which arise in interpreting or applying this Agreement according to its spirit and fundamental principles.

Article 20 **Review of Agreement**

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

PART VI

TRANSITIONAL AND FINAL PROVISIONS

Article 21 Transitional Provisions

1. This Agreement shall not establish any right to a benefit for any period prior to the date of its entry into force.
2. In determining entitlement to a benefit under this Agreement, periods as an Australian resident, periods of Australian working life residence and insurance periods under the legislation of the Republic of Estonia completed before the entry into force of this Agreement shall also be taken into consideration.
3. Paragraphs 2 and 3 of Article 8 apply from the date of entry into force of this Agreement, even if the person was sent by his or her employer before this date. For this purpose, the period of secondment is taken to start on the date of the entry into force of this Agreement.
4. If a person who was awarded the pension for incapacity for work by the Republic of Estonia when he or she was residing in the territory of the Republic of Estonia moves his or her place of residence to the territory of Australia, the Republic of Estonia shall continue to pay the pension for incapacity for work until the expiry of the determined term of the permanent incapacity for work or, if the person's category of disability or permanent incapacity for work has been determined for an unspecified term, until the person reaches the national pensionable age of the Republic of Estonia.

Article 22 Entry into Force

This Agreement shall enter into force on the first day of the third month following the month in which the last written notification is exchanged by the Contracting Parties through the diplomatic channel notifying each other that all conditions as are necessary for the entry into force of this Agreement have been fulfilled.

Article 23 Duration, Modification and Termination

1. This Agreement is concluded for an indefinite period and can be modified by agreement in writing between the Contracting Parties.
2. Subject to paragraph 3 of this Article, this Agreement shall remain in force until the expiration of 12 months from the date on which either Contracting Party receives from the other a note through the diplomatic channel giving notice of termination of this Agreement.
3. 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
- (c) immediately before the date of termination are subject to the legislation of only one Contracting Party by virtue of Articles 8 or 9 of Part II of this Agreement, provided the employee continues to satisfy the criteria of these Articles.

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

DONE in two originals at Tallinn on this 14th day of September 2015 in the English and Estonian languages, each text being equally authoritative.

FOR AUSTRALIA
Gerald Thomson
Australian Ambassador to Sweden

FOR THE REPUBLIC OF ESTONIA
Margus Tsahkna
Minister for Social Protection