



Social Security (International Agreements) Amendment Regulation 2012 (No. 1)

Select Legislative Instrument 2012 No. 54

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation under the *Social Security (International Agreements) Act 1999* and the *Legislative Instruments Act 2003*.

Dated 19 April 2012

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

JENNY MACKLIN
Minister for Families, Community Services and Indigenous Affairs

1 Name of regulation

This regulation is the *Social Security (International Agreements) Amendment Regulation 2012 (No. 1)*.

2 Commencement

- (1) This Regulation commences as follows:
 - (a) on the day after it is registered—sections 1 to 3;
 - (b) on a day to be fixed by legislative instrument made by the Minister—Schedule 1.
- (2) A legislative instrument made under paragraph (1) (b) is:
 - (a) prescribed for the table in subsection 44 (2) of the *Legislative Instruments Act 2003* (so that it is not subject to disallowance); and
 - (b) prescribed for the table in subsection 54 (2) of the *Legislative Instruments Act 2003* (so that it is not subject to sunseting).

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

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

Schedule 1 Amendment

(section 3)

[1] After Schedule 29
insert

Schedule 30—Republic of Latvia

Note: See sections 5 and 8.

AGREEMENT BETWEEN AUSTRALIA AND THE REPUBLIC OF LATVIA ON SOCIAL SECURITY

PREAMBLE

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

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

and

Being desirous of regulating the relationship between their two countries with respect to social security benefits and coverage,

Have agreed as follows:

PART I**GENERAL PROVISIONS****Article 1****Definitions**

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

“benefit” means:

as regards Australia,
a pension or any other benefit under the Acts specified in subparagraph 1(a)(i) of Article 2, including any additional amount, increase or supplement, which is payable to a person under those Acts;

as regards the Republic of Latvia,
a pension or any other benefit under the Acts specified in subparagraph 1(b) of Article 2, including any additional amount, increase or supplement, which is payable to a person under those Acts.

“Competent Authority” means, in relation to Australia, the Secretary of the Commonwealth Department responsible for the legislation specified in subparagraph 1(a)(i) of Article 2, except in relation to the application of Part II 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 the Republic of Latvia, the Ministry of Welfare;

“Competent Institution” means, in relation to Australia, the institution or agency which has the task of implementing the applicable Australian legislation; and, in relation to the Republic of Latvia, the institution which is responsible for providing benefits under the legislation of the Republic of Latvia;

“insurance period” means, in relation to the Republic of Latvia, a period of contributions used to acquire the right to a benefit under the legislation of the Republic of Latvia, including a period deemed as equivalent to an insurance period;

“legislation” means:

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

in relation to the Republic of Latvia, the laws specified in subparagraph 1(b) of Article 2.

“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 to be a period in which a person was an Australian resident;

“residence” and **“resides”** mean, in relation to the Republic of Latvia, that a person has his or her place of actual residence in the territory of the Republic of Latvia, including a person who has a temporary or permanent residence permit to stay in the Republic of Latvia.

2. In the application of this Agreement by a Party, any term not defined 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 legislation:
 - (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;
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 the Republic of Latvia:
 - (i) the Law on State Social Insurance, but only to the extent that it applies to the pension insurance;
 - (ii) the Law on State Pensions, but only to the extent that it applies to the old age pension and the survivor's pension, death grant and allowance for the deceased's spouse;
 - (iii) the Law on State Funded Pensions, but only to the extent that it applies to the old age pension and the survivor's pension; and
 - (iv) the Law on State Social Allowances, but only to the extent that it applies to the state social security benefit in cases of old age and the survivors.

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2. Subject to paragraphs 4 and 5, this Agreement shall also apply to laws and regulations which amend, supplement, consolidate or supersede the legislation specified in paragraph 1.
 3. Notwithstanding the provisions of subparagraph 1(a), this Agreement shall apply to women who are receiving an Australian wife pension at the date this Agreement comes into force and are the wives of persons receiving an Australian age pension.
 4. Notwithstanding the provisions of paragraph 1, the legislation referred to in this Article shall not include treaties or other international agreements on social security that may be concluded between one Party and a third party.
 5. This Agreement shall not apply to future legislation which extends the existing legislation of either Party to new categories of beneficiaries unless both Parties agree otherwise.

Article 3

Personal Scope

This Agreement shall apply to any person residing in the territory of either Party who:

- (a) is or has been an Australian resident; or
- (b) is or has been subject to the legislation of the Republic of Latvia that is specified in subparagraph 1(b) of Article 2;

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

Article 4
Equality of Treatment

1. Subject to this Agreement and unless otherwise provided, 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 under the legislation of that Party or by virtue of this Agreement.
2. Paragraph 1 shall not apply to the transitional provisions of the Law on State Pensions of the Republic of Latvia regarding insurance periods accumulated prior to 1 January 1991 outside the Republic of Latvia.

Article 5
Export of Benefits

1. Benefits of one Party, when payable by virtue of this Agreement, shall be payable to persons who are residents of, or in, the territory of either Party.
2. In relation to Australia, for the purposes of paragraph 1, any additional amount, increase or supplement that is payable under this Agreement, shall be payable to a person outside Australia only for the period specified in the provisions of the Social Security Act 1991. The reference to the Social Security Act 1991 includes any laws that subsequently amend, supplement or replace that Act.
3. In relation to Latvia, notwithstanding any other provision in this Agreement, state social security benefit and supplement to the old age pension shall be paid to a person who is outside the Republic of Latvia only to the extent permitted by the legislation of the Republic of Latvia.

PART II**PROVISIONS ON APPLICABLE LEGISLATION****Article 6****Application of this Part**

This Part only applies if:

- (a) an employee and/or their employer 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;
- (b) an employee or self-employed person from the Republic of Latvia is sent to work in Australia and would otherwise come to be covered by the legislation of Australia and not remain covered by the legislation of the Republic of Latvia; or
- (c) a self-employed person in the Republic of Latvia is simultaneously employed in Australia.

Article 7**Diplomatic and Consular Relations**

This Agreement shall not affect the application of 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**Applicable Legislation**

1. Unless otherwise provided in paragraphs 2 or 3, 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');
 - (b) was sent 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');
 - (c) is working in the territory of the second Party in the employment of the employer or a related entity of that employer;
 - (d) a period of 4 years from the time the employee was sent to work in the territory of the second Party has not elapsed; and
 - (e) the employee is not working permanently in the territory of the second Party;

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

3. If an employee:

- (a) is covered by the legislation of one Party ('the first Party');
- (b) was sent by the Government of the first Party to work in the territory of the other Party ('the second Party');
- (c) is working in the territory of the second Party in the employment of the Government of the first Party; and
- (d) is not working permanently in the territory of the second Party;

then the employer and employee shall be subject only to the legislation of the first 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.

4. For the Republic of Latvia, if a self-employed person:

- (a) is covered by the legislation of the Republic of Latvia;
- (b) is working in the territory of Australia;
- (c) a period of four years from the time the self-employed person commenced working in Australia has not elapsed; and
- (d) is not working permanently in the territory of Australia,

then the self-employed person shall be subject only to the legislation of the Republic of Latvia in respect of the work performed and the remuneration paid for that work after the commencement of this Part.

5. 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.

Article 9

Exception agreements

1. The Competent Institutions of the Parties 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 8 for any employee; or
 - (b) provide that an employee is deemed 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 covered only by 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 III

PROVISIONS RELATING TO BENEFITS UNDER THE LEGISLATION OF AUSTRALIA

Article 10

Residence or Presence in the Republic of Latvia

1. 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 resident or resides in the Republic of Latvia; and

(b) is in Australia or the Republic of Latvia,

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.

2. For the purpose of subparagraph 1(a), a person who resides in the Republic of Latvia shall be limited to persons who permanently reside in the Republic of Latvia.

Article 11

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

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

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 an insurance period under the legislation of the Republic of Latvia in two or more separate periods that equals or exceeds in total the minimum period referred to in subparagraph (a);

the total of the insurance periods under the legislation of the Republic of Latvia 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 Latvia coincide, then this period 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 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 required shall be 12 months, of which at least six months must be continuous; and
 - (b) for the purposes of an Australian benefit that is payable to an Australian resident, there shall be no minimum period.
- 5. For the purposes of this Article, an insurance period under the legislation of the Republic of Latvia shall be deemed to be a period as an Australian resident only if that insurance period is certified by the Competent Institution of the Republic of Latvia.

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, but on the basis that the additional child amount is nil.
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 amount 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 Latvia 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 Latvia which that person is entitled to receive from the maximum amount of that Australian benefit; and
 - (c) applying to the remaining benefit obtained under subparagraph (b) the relevant calculation method set out in the legislation of Australia, using as the person's income the amount calculated under subparagraph (a).
4. Where a person departs temporarily from Australia, paragraph 3 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 his or her partner are, entitled to a benefit or benefits under the legislation of the Republic of Latvia, 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 either the amount of that benefit or the total of both of those benefits, as the case may be.

PART IV

PROVISIONS RELATING TO BENEFITS UNDER THE LEGISLATION OF THE REPUBLIC OF LATVIA

Article 13

Totalisation

1. Unless otherwise provided in this Agreement, if a person is not eligible for a benefit because he or she has not accumulated sufficient insurance periods under the legislation of the Republic of Latvia, the eligibility of that person for that benefit shall be determined by totalising these periods and those specified in paragraphs 2 and 3, provided the periods do not overlap.
2. For the purpose of determining eligibility for an old age pension or survivor's pension under the Law on State Pensions, a period of Australian working life residence shall be considered as an insurance period under the legislation of the Republic of Latvia only if that period is certified by the Competent Institution of Australia.

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3. For the purpose of determining eligibility for a state social security benefit under the Law on State Social Allowances, Australian residence periods shall be considered as insurance periods under the legislation of the Republic of Latvia provided that in the case of a benefit for old age, the person concerned has resided in the Republic of Latvia for the 12 continuous months immediately before claiming the benefit.
 4. For the purposes of this Article, where an insurance period under the legislation of the Republic of Latvia and a period by a person as an Australian resident coincide, then this period shall be taken into account once only by the Republic of Latvia as a period of Latvian insurance.
 5. Notwithstanding any other provision in this Agreement, if the total duration of the insurance periods accumulated by a person under the legislation of the Republic of Latvia is less than one year and if, taking into account only those periods, no right to a benefit exists under the legislation of the Republic of Latvia, the Competent Institution of the Republic of Latvia shall not be required to pay a benefit to that person in respect of those periods by virtue of this Agreement.

Article 14

Calculation of the amount of Benefit Payable

1. If, under the legislation of the Republic of Latvia, the conditions of eligibility for a benefit are met without the need for the totalisation provisions in Article 13, the Competent Institution of the Republic of Latvia shall determine the amount of that benefit exclusively on the basis of the insurance periods accumulated under its legislation.

2. If, under the legislation of the Republic of Latvia, eligibility for a benefit can be established only through the application of the totalisation provisions in Article 13, the Competent Institution of the Republic of Latvia shall establish eligibility for the benefit but grant the benefit only on the basis of insurance periods accumulated in the Republic of Latvia.
3. Death grant and allowance for the deceased's spouse shall be calculated according to the legislation of the Republic of Latvia.

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 Party in accordance with the Administrative Arrangement made pursuant to Article 18 at any time after the Agreement enters into force.
2. For the purposes 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. A claim for a benefit from one Party shall be considered as a claim for the corresponding benefit from the other Party so long as the claimant has indicated in that claim that there is, or there was, an affiliation with the social security system of that other Party and provided the Competent Institution of the other Party receives the claim within 12 months of the lodgement of the original claim.
4. The reference in paragraph 1 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 respective legislation.

Article 16

Payment of Benefits

1. 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.
2. The Parties will prevent any legal or administrative restrictions on the transfer of currency outside their territory to guarantee the rights to payment and delivery of benefits payable under their legislation or by virtue of this Agreement.
3. A benefit payable by a Party by virtue of this Agreement shall be paid without deduction for government administrative fees and government charges for processing and paying that benefit.

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 all available information necessary for the application of this Agreement or the social security laws of Australia and the Republic of Latvia;
 - (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 or under the legislation to which this Agreement applies, as if applying their own legislation;
 - (c) 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 to the extent that these changes affect the application of this Agreement.
2. The assistance referred to in paragraph 1 shall be provided free of charge, subject to any arrangement reached between the Competent Authorities and Competent Institutions for the reimbursement of certain types of expenses.
3. 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, need 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.

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4. 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 a Competent Institution of that Party by a Competent Authority or a Competent Institution of the other Party is confidential and shall be used only for the purposes of implementing this Agreement and the legislation to which this Agreement applies.
 5. In no case shall the provisions of paragraphs 1 and 4 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 the other Party.
 6. 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 organisation within any other country without the prior written consent of that other Party.
 7. In the application of this Agreement, the Competent Authority and the Competent Institution of a Party may communicate with the other Party in any of the official languages of the Parties.
 8. An application or document may not be rejected by a Competent Authority or Competent Institution solely because it is in an official language of the other Party.

Article 18

Administrative Arrangement

1. The Competent Authorities of the 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 bodies which are to be listed in the Administrative Arrangement.

Article 19

Dispute Settlement

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, whether through diplomatic channels or otherwise, at the request of either Party concerning matters which have not been resolved by the Competent Authorities in accordance with paragraph 1.

Article 20

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 six months after that request was made and, unless the Parties otherwise arrange, their meeting shall be held in the territory of the Party to which that request was made.

PART VI
TRANSITIONAL AND FINAL PROVISIONS

Article 21

Transitional Provisions

1. 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 Latvia, and any fact or event relevant to that entitlement completed before the entry into force of this Agreement shall also be taken into consideration.
2. In relation to the Republic of Latvia, paragraph 1 shall not apply where a benefit has already been awarded under the legislation of the Republic of Latvia for periods prior to the commencement of this Agreement.
3. Subject to the legislation 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.
4. Article 8, paragraphs 2, 3 and 4 shall apply from the date of entry into force of this Agreement, notwithstanding that the work undertaken by reference to these paragraphs may have commenced before this Agreement entered into force.

Article 22

Entry into Force

This Agreement is concluded for an indefinite period and shall enter into force on the first day of the second month following the month in which the last written notification is exchanged by the Parties through the diplomatic channel notifying each other that all matters as are necessary to give effect to this Agreement have been finalised.

Article 23**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 written notice through the diplomatic channel giving notice of termination of this Agreement.

2. In the event of termination, this Agreement shall continue to apply 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 only to the legislation of one Party by virtue of paragraph 2, 3 or 4 of Article 8 or Article 9 of Part II of the Agreement, provided the employee or self-employed person 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 two originals at RIGA this 7th day of September, two thousand and eleven in the English and Latvian languages, each text being equally authoritative.

Signed by Dr Russel Trood
Special Envoy to Eastern Europe

Iļona Jursevska
Minister of Welfare

FOR AUSTRALIA

FOR THE REPUBLIC OF LATVIA
