No. 51849*

New Zealand
and
Malta

Agreement on social security between New Zealand and Malta. Malta, 8 July 2013

Entry into force: *1 December 2013, in accordance with article 22*

Authentic text: *English*

Registration with the Secretariat of the United Nations: *New Zealand, 25 April 2014*

*No UNTS volume number has yet been determined for this record. The Text(s) reproduced below, if attached, are the authentic texts of the agreement /action attachment as submitted for registration and publication to the Secretariat. For ease of reference they were sequentially paginated. Translations, if attached, are not final and are provided for information only.

Nouvelle-Zélande
et
Malte

Accord sur la sécurité sociale entre la Nouvelle-Zélande et Malte. Malte, 8 juillet 2013

Entrée en vigueur : *1er décembre 2013, conformément à l'article 22*

Texte authentique : *anglais*

Enregistrement auprès du Secrétariat des Nations Unies : *Nouvelle-Zélande, 25 avril 2014*

* *Numéro de volume RTNU n'a pas encore été établie pour ce dossier. Les textes reproduits ci-dessous, s'ils sont disponibles, sont les textes authentiques de l'accord/pièce jointe d'action tel que soumises pour l'enregistrement et publication au Secrétariat. Pour référence, ils ont été présentés sous forme de la pagination consécutive. Les traductions, s'ils sont inclus, ne sont pas en form finale et sont fournies uniquement à titre d'information.*

[ENGLISH TEXT – TEXTE ANGLAIS]

Agreement on Social Security

between

New Zealand and Malta

The Government of New Zealand

And

The Government of Malta

Hereinafter referred to as "the Parties"

RESOLVING to co-operate in the field of Social Security and wishing to coordinate the operation of their respective social security systems and to enhance the equitable access by people covered by this Agreement to specified social security benefits provided under the laws of both countries

HAVE agreed as follows:

PART 1 - GENERAL PROVISIONS

Article 1

Definitions

1. For the purpose of this Agreement unless the context otherwise requires:

   absence, in relation to a country, means not being physically present in that country or in the territorial sea or internal waters of that country for a period of 24 hours or more; and **absent** has a corresponding meaning

age of entitlement to New Zealand superannuation means the age specified under the legislation of New Zealand for eligibility for New Zealand superannuation (being, at the date of this Agreement, 65 years)

benefit for New Zealand means a New Zealand benefit as defined in this article; and for Malta means a Maltese benefit as defined in this article

competent authority means:

(a) for New Zealand, the chief executive of the department for the time being responsible for the administration of the Social Security Act 1964; and

(b) for Malta, the department for the time being responsible for the administration of Social Security Act (Cap 318) in Malta

competent institution means:

(a) for New Zealand, the department that is responsible for the implementation of this Agreement on behalf of the competent authority of New Zealand; and

(b) for Malta, the Social Security Division

contribution in relation to Malta means a Social Security contribution in terms of the Social Security Act (Chapter 318 of the Laws of Malta)

day means a calendar day

deduction, in relation to a New Zealand benefit, includes a reduction of the rate of the benefit under the legislation of New Zealand

legislation, in relation to a Party, means the laws, orders, and regulations of that Party specified in Article 2 of this Agreement

Maltese benefit means either of the following benefits:

(a) pensions in respect of retirement;

(b) pensions in respect of widowhood

month means a calendar month, but for the purpose of aggregating periods of New Zealand working age residence or periods of Maltese contributions, if an aggregated period exceeds a whole number of months by at least 15 days, the number of months in that period shall be rounded up to the next whole number

New Zealand has the meaning given to it by the legislation of New Zealand

New Zealand benefit means either of the following benefits:

(a) New Zealand superannuation;

(b) veteran's pension

New Zealand working age residence, in relation to a person:

(a) means a period when the person was both resident and present in
New Zealand after the person attains age 20 and before the person attains age 65:

(b) includes a period after the person attains age 20 and before the person attains age 65 when the person was employed outside New Zealand and while so employed was liable for the payment of New Zealand income tax on earnings from that employment if the person returned to
New Zealand on or after 23 June 1987

(c) includes a period after the person attains age 20 and before the person attains age 65 when the person was with a spouse or partner who was employed outside New Zealand and while so employed was liable for the payment of New Zealand income tax on earnings from that employment if the person returned to New Zealand on or after 23 June 1987

period of Maltese contributions means a period of insurance in terms of the Social Security Act (Cap 318)

presence, in relation to a country, means being physically present in that country and not absent; and **present** has a corresponding meaning

residence, in relation to New Zealand, means a period of residence (and, if applicable, presence) that would qualify a person for a New Zealand benefit

social security purposes include:

(a) the administration of the social security laws of a Party;

(b) the collection of the social security debts of a Party;

(c) the maintenance of the social security laws of a Party, including the prevention, detection, prosecution, and punishment of offences under those laws;

(d) the enforcement of any social security laws of a Party imposing a pecuniary penalty; and

(e) the conduct of any proceedings under the social security laws of a Party before any court or tribunal

third country means a country other than Malta or New Zealand

widow in relation to a Maltese benefit, shall have the meaning assigned to it by the Social Security Act (Cap 318)

widower in relation to a Maltese benefit, shall have the meaning assigned to a "widow" by the Social Security Act (Cap 318) .

2. In relation to the English text of this Agreement, words in the singular include the plural and words in the plural include the singular.

3. Any term not defined in paragraph 1 has, unless the context otherwise requires, the meaning assigned to it by the legislation of the Parties, but if there is a conflict of meanings the competent

institutions of the Parties shall determine which meaning is more applicable in the circumstances by mutual agreement.

Article 2

Legislation to which this Agreement applies

1. For New Zealand, this Agreement applies to the following legislation insofar as it provides for or applies to New Zealand benefits:

   (a) the New Zealand Superannuation and Retirement Income Act 2001;

   (b) the Social Security Act 1964;

   (c) the Social Welfare (Transitional Provisions) Act 1990;

   (d) the War Pensions Act 1954;

   (e) section 5 of the Civil Union Act 2004;

   (f) sections 29 and 29A of the Interpretation Act 1999; and

   (g) the Orders in Council and Regulations made under those Acts.

2. For Malta, this Agreement applies to the Social Security Act (Cap 318) insofar as it provides for or applies to Maltese benefits.

3. Subject to paragraph 4 of this Article, this Agreement also applies to domestic laws, orders, and regulations that amend, supplement, consolidate, or supersede the legislation referred to in paragraph 1 or paragraph 2 of this Article (including laws, orders, or regulations that

change the name of or conditions of eligibility or receipt of particular benefits).

4. This Agreement also applies to any domestic law, order, or regulation that extends the legislation of a Party to new benefits or new categories of beneficiaries unless a reservation in writing by the Party that is extending the legislation is communicated to the other Party within 3 months from the date on which the law, order, or regulation enters into force.

5. The Parties shall advise each other promptly, of the enactment of laws, orders or regulations of the kind referred to in paragraph 3 and 4 of this Article.

Article 3

Persons to whom this Agreement applies

This Agreement applies to any person who:

(a) has completed a period of Maltese contributions; or

(b) has completed a period of New Zealand working age residence; or

(c) is a dependent or survivor of a person referred to in paragraph (a) or paragraph (b) of this Article on whom the legislation of Malta confers eligibility to Maltese benefits.

Article 4

Equality of Treatment

All persons to whom this Agreement applies shall be treated equally by a Party in regard to the rights and obligations that arise under the legislation of that Party or as a result of this Agreement.

PART 2 - PROVISIONS RELATING TO NEW ZEALAND BENEFITS

Article 5

Effect of residence in Malta

1. A person shall be considered, for the purpose of an application, to be ordinarily resident and present in New Zealand on the date that he or she applies for a New Zealand benefit under this Agreement if, on that date, he or she:

   (a) is ordinarily resident in Malta, and present in either Malta or New Zealand; and

   (b) has the intention of remaining resident in Malta for at least 26 weeks; and

   (c) has had a continuous period of New Zealand working age residence of at least 1 year.

2. For the purpose of payment of any New Zealand benefit under this Agreement, a person shall be considered to be ordinarily resident in, and not absent from, New Zealand, if he or she:

(a) is ordinarily resident in Malta, and present in Malta or New Zealand; and

(b) has had a continuous period of New Zealand working age residence of at least 1 year.

3. For the purposes of this Article:

(a) if a person who is ordinarily resident in Malta is temporarily absent from Malta for a period that does not exceed 26 weeks, that absence shall be considered as not interrupting the person's ordinary residence or presence in Malta;

(b) if a person who is ordinarily resident in Malta is temporarily absent from Malta for a period that exceeds 26 weeks, that person's ordinary residence in Malta shall be considered to have ceased on the date of departure from Malta:

(c) a person is considered to be ordinarily resident in Malta on the date of the person's departure from New Zealand if:

(i) the person leaves New Zealand with the intention of becoming and remaining resident in Malta for at least 26 weeks; and

(ii) the person begins to be resident in Malta within 26 weeks of that departure.

4. For the purposes of subparagraphs (a) and (b) of paragraph 3 of this Article, a period when a person is temporarily in New Zealand shall not be considered a period when the person is temporarily absent from Malta.

5. A person who is ordinarily resident in Malta who has not reached the age of entitlement to New Zealand superannuation shall be considered not qualified for or entitled to receive a veteran's pension.

Article 6

Totalisation for New Zealand Benefits

1. Where this Agreement applies to a person and there is a period of New Zealand residence or New Zealand residence and presence that is:

   (a) less than the period necessary to give a person entitlement to the benefit claimed under the legislation of New Zealand; and

   (b) equal to or greater than 1 continuous year of New Zealand working age residence,

   then the period of Maltese contributions by that person may be deemed to be a period of New Zealand residence or, as the case requires, New Zealand residence and presence.

2. For the purpose of determining entitlement to a New Zealand benefit under paragraph 1 of this Article, the competent institution of New Zealand may, subject to paragraph 3 of this Article:

   (a) consider a period of Maltese contributions after reaching age 20 to be a period when the person was both resident and present in New Zealand; but

   (b) may only consider periods of Maltese contributions after reaching age 50 for the purpose of satisfying the requirement that a person be resident and present in New Zealand for 5 years after reaching that age.

3. If a period of New Zealand working age residence and a period of Maltese contributions overlap, only the period of New Zealand working age residence shall be taken into account.

Article 7

Rates of New Zealand superannuation and veteran's pensions payable in Malta

1. Subject to paragraphs 3 and 4 of this Article, the rate of New Zealand superannuation or a veteran's pension payable to a person ordinarily resident in Malta who is entitled to receive it under Article 5 of this Agreement shall be calculated according to the following formula:

$$\text{Amount Payable} = \frac{\text{Number of whole months of New Zealand working age residence} \times \text{maximum benefit rate}}{\text{Number of whole months in 45 years}}$$

2. For the purposes of paragraph 1 of this Article:

(a) all periods of New Zealand working age residence shall be aggregated; and

(b) the maximum benefit rate is:

(i) for a single person, the weekly rate before the deduction of income tax of New Zealand superannuation or veteran's pension payable to a single person who is not living alone, after any deduction required to be made from a benefit under the legislation of New Zealand (not being a deduction on account of any debt, fine, reparation, penalty, or of the kind prohibited by paragraph 4 of this Article); or

(ii) for a person who is married, in a civil union, or in a de facto relationship, the weekly rate before the deduction of income tax of New Zealand superannuation or veteran's pension payable to a person whose spouse or partner is also entitled to New Zealand superannuation or a veteran's pension after any deduction required to be made from a benefit under the legislation of New Zealand (not being a deduction on account of any debt, fine, reparation, penalty, or of the kind prohibited by paragraph 4 of this Article).

3. Where a person:

(a) was ordinarily resident in Malta on the date that this Agreement enters into force; and

(b) is receiving New Zealand superannuation or a veteran's pension under the New Zealand Superannuation and Retirement Income Act 2001 or the War Pensions Act 1954; and

(c) becomes entitled to receive that benefit under Article 5 but not by application of Article 6

then the rate of New Zealand superannuation or veteran's pension payable to that person shall not be less than the amount that would be payable in the absence of this Agreement.

4. In calculating the amount of benefit payable under this Article, no account shall be taken of any benefit payable under Malta's social security scheme or under the social security laws of a third country.

5. For the avoidance of doubt, a person who is entitled to receive New Zealand superannuation or a veteran's pension under Article 6 of this Agreement whose spouse or partner has not reached the age of entitlement for New Zealand superannuation is not entitled to elect to receive the alternative rate of New Zealand superannuation or veteran's pension payable to a person who is married or in a civil union or a de facto relationship whose spouse or partner is not entitled to receive New Zealand superannuation or a veteran's pension.

Article 8

Advance payment of benefits and payment of supplementary benefits and allowances

1. If a person who is ordinarily resident in New Zealand becomes entitled to receive a New Zealand benefit under Article 6 of this Agreement, the competent institution of New Zealand shall also pay to that person any supplementary benefit or allowance under the legislation of New Zealand to which the person is qualified.

2. If a person who is ordinarily resident in Malta becomes entitled to receive a New Zealand benefit under this Agreement:

   (a) the person is not entitled to receive any supplementary benefit or allowance under the legislation of New Zealand; and

   (c) no payment shall be made in advance of any number of instalments of that New Zealand benefit, or part of it not yet due.

Article 9

Effect of Malta's taxation of Maltese benefits

1. Paragraph 2 of this Article applies to a person who:

   (a) is ordinarily resident in New Zealand;

(b) is receiving a Maltese benefit from which any tax is levied by Malta; and

(c) is also receiving a New Zealand benefit.

2. Where this Article applies, the amount of the person's Maltese benefit to be deducted from the person's New Zealand benefit is the amount of the Maltese benefit after it is reduced by the Maltese tax levied on it.

Article 10

Residence in a third country

1. Paragraph 2 of this Article applies to a person who:

(a) is ordinarily resident in New Zealand; and

(b) is entitled to receive a New Zealand benefit solely through the application of Article 6 of this Agreement; and

(c) either:

(i) departs from New Zealand with the intention of residing in a third country for a period of more than 26 weeks; or

(ii) resides in a third country for a period of more than 26 weeks.

2. A person referred to in paragraph 1 of this Article is not entitled to receive

New Zealand superannuation or a veteran's pension while absent from New Zealand or Malta unless that person is entitled to receive that benefit under a social security agreement between New Zealand and the third country.

PART 3 - PROVISIONS RELATING TO MALTESE BENEFITS

Article 11

Totalisation for Maltese Benefits

1. Where this Agreement applies to a person and there is a period of Maltese contributions that is:

   (a) less than the period necessary to give a person entitlement to the benefit claimed under the legislation of Malta; and

   (b) equal to or greater than the minimum period mentioned in paragraph 3 of this Article for that benefit;

   then any period of New Zealand working age residence by that person shall be deemed to be a period of Maltese contributions.

2. For the purposes of this Article, where a period of Maltese contributions and a period of New Zealand working age residence overlap, only the period of Maltese contributions shall be taken into account.

3. The minimum period of Maltese contributions to be taken into consideration for the purposes of paragraph 1 of this Article shall be 52 paid contributions valid for assessment of the contribution average assessment under the Social Security Act (Cap 318).

4. The provisions of this Article do not apply in the case of a Two-Thirds Pension (Retirement) or a Survivor's Pension (Widowhood) unless the person concerned (or the deceased spouse in the case of Survivor's Pension) has paid at least 156 contributions under the legislation of Malta after 22 January 1979.

5. For the purposes of this Article, where a claim by a person for a Maltese benefit in respect of widowhood is submitted, only the working age residence in New Zealand of the deceased spouse shall be taken into account.

Article 12

Calculation of Maltese Benefits

1. Where a Maltese benefit is payable by Malta to a person by virtue of this Agreement the rate of that benefit shall be calculated as follows:

$$\text{Amount Payable} = \frac{\text{Theoretical Rate of Maltese Benefit (}\mathbf{TR}\text{) x Reckonable Contributions (}\mathbf{RC}\text{)}}{\text{Totalised Contributions (}\mathbf{TC}\text{)}}$$

2. For the purposes of paragraph 1 of this Article:

(a) the "Theoretical Rate of Maltese Benefit" (TR) is the applicable rate of Maltese benefit attributable to a person as assessed under the provisions of the Social Security Act (Cap 318) taking into consideration the Maltese contribution period and the New Zealand working age residence as totalised under Article 12 of this Agreement;

(b) the "Reckonable Contributions" (RC) is the number of Maltese contributions on which the Maltese benefit would have been calculated under the Social Security Act (Cap 318) in the absence of this Agreement; and

(c) the "Totalised Contributions" (TC) is the aggregate number of Maltese contributions and the New Zealand working age residence as totalised under Article 12 of this Agreement.

3. Any additional allowances or bonuses that are applicable to certain Maltese benefits covered by this Agreement that are payable under the legislation of Malta, shall be calculated in the same manner as that indicated in paragraph 1 of this Article, as the case may require.

4. Any amount of Maltese benefit payable calculated in accordance with paragraphs 1 and 2 of this Article shall be rounded up to the nearest whole euro cent.

PART 4 - MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

Article 13

Administrative Arrangements

1. The competent authorities of the Parties shall establish administrative arrangements necessary for the implementation of this Agreement.

2. The administrative arrangements shall designate the liaison agencies of the Parties.

Article 14

Mutual assistance provisions for the exchange of information

1. Subject to the laws of the Parties, the competent institutions of the Parties shall exchange information for social security purposes, including such information as is necessary for the competent institutions to give effect to the provisions of this Agreement, and such information will not be used for any other purpose.

2. Paragraph 1 is subject to the respective privacy laws of the Parties; in particular for New Zealand, the terms and conditions set out in section 19C of the Social Welfare (Transitional Provisions) Act 1990 of New Zealand and for Malta, Article 27 of the Data Protection Act 2001. To this effect both Parties agree that:

(a) In exchanging the personal data or personal information for the purposes of this agreement, the competent institutions of both Parties shall implement appropriate technical and organisational security measures to protect the personal data or personal information against accidental or unlawful destruction or loss, alteration, unauthorised disclosure or access;

(b) The competent institutions of both Parties shall have in place appropriate procedures and safeguards so that any person, including in respect of Malta a processor as defined in the Malta Data Protection Act 2001, who may be authorised by the respective privacy laws of the Parties to have access to the personal data or personal information exchanged, shall respect the confidentiality, privacy and security of such personal data or personal information;

(c) In the event that, for Malta, the Data Protection Commissioner or, for New Zealand, the Privacy Commissioner, requests information from the competent institution of that Party (the "First Party") to monitor the processing operation of the personal data or personal information being exchanged, the competent institution of the other Party shall assist the First Party by providing any relevant information, including any relevant documentation requested by the First Party; and

(d) Both competent institutions shall inform each other should there be changes to the Data Protection and/or Privacy laws, and/or Social Security laws of both parties, affecting the confidentiality, privacy and/or security of personal data or personal information.

3. The competent institution collecting the personal details shall inform the data subjects about the exchange of information with the other competent institution, as well as on their rights under the respective Data Protection and Privacy Acts of both parties, in particular the right of access and rectification .of their personal data in line with the respective laws of both Parties.

4. The administrative arrangements shall also contain the arrangements between the competent institutions of the Parties required by the terms and conditions referred to in paragraph 2 and 3.

Article 15

Language of Communication

For the purpose of implementing this Agreement, the competent authorities and competent institutions of the Parties shall communicate directly with one another in any official language of either Party.

Article 16

Applications, notices, reviews and appeals

1. An application for a New Zealand benefit or Maltese benefit under this Agreement shall be made in writing on the official application form, and shall be given to the competent institution of either Party.

2. Where a person applies to the competent institution of a Party (the "First Party") for a benefit payable under this Agreement:

(a) the application shall be considered as an application for the corresponding benefit under the legislation of the other Party if the person:

(i) so requests; or

(ii) provides information at the time of the application indicating that the person has a period of residence or contribution under the legislation of the other Party; and

(b) the date of that application is the date on which the application was made to the competent institution of the First Party, and that date shall be considered the date of first contact for the purposes of the legislation of New Zealand.

3. Paragraph 4 of this Article applies to any application or notice concerning the determination or payment of a benefit under this Agreement (including an application or notice given to review or appeal against a decision of a competent institution).

4. If an application or notice referred to in paragraph 3 is given to the competent institution of either Party within the time provided for it to be given under the legislation of the Party responsible for the determination or payment, it shall be considered to have been given:

(a) to the appropriate institution of that Party; and

(b) within that time.

5. The competent institution of a Party that receives an application or notice of the kind referred to in paragraph 1 or paragraph 2 or paragraph 4 of this Article shall transmit it without delay to the appropriate institution of the other Party.

6. In this Article, appropriate institution includes a court, tribunal, or authority with jurisdiction to consider appeals or reviews in relation to benefits under the legislation of a Party, a benefits review committee (in relation to New Zealand), and a competent institution.

7. In relation to Malta, the reference in paragraph 3 of this Article to an appeal is a reference to a document concerning an appeal that may be made to the Umpire according to the Social Security Act (Cap 318) as amended from time to time.

8. The date on which an application, notice or appeal referred to in paragraphs 3 to 7 of this Article is lodged with the competent institution of a Party shall be treated, for all purposes concerning the matter to which it relates, as the date of lodgement of that document with the competent institution of the other Party.

Article 17

Determination of Claims

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

   (a) a period of New Zealand working age residence and a period of Maltese contributions; 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.

Article 18

Payment of Benefits

1. The benefits payable by virtue of this Agreement are also payable in the territory of the other Party.

2. The competent institution of a Party shall pay benefits in the currency of that Party or in any other freely convertible currency as agreed between the Parties from time to time.

3. If either Party imposes foreign currency exchange restrictions, both Parties shall immediately adopt measures to ensure that the payments required under this Agreement are able to continue to be made. Those measures shall operate retrospectively to the time the restrictions were imposed.

4. A Party that imposes restrictions described in paragraph 3 of this Article shall inform the other Party of those restrictions within one

month of their imposition and shall adopt the measures described in paragraph 3 of this Article within 3 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 that Party may treat such a failure as a material breach of the Agreement for the purposes of Article 60 of the Vienna Convention on the Law of Treaties.

5. A benefit payable by a Party by virtue of this Agreement to a person shall be paid without deduction for administrative expenses incurred by either Party for paying that benefit.

Article 19

Review of the Agreement

1. The Parties may agree at any time to review any of the provisions of this Agreement.

2. If a Party amends, supplements or replaces its legislation, in a way that would affect the provisions of this Agreement, it shall seek the agreement of the other Party to amend this Agreement as may be necessary to maintain consistency between that Party's legislation and the provisions of this Agreement.

3. This Agreement may be amended by written agreement between the Parties through an exchange of diplomatic Notes. Amendments shall enter into force on the date specified in the Notes.

Article 20

Resolution of difficulties

1. The competent authorities of the Parties shall resolve, to the extent possible, any difficulties which arise in interpreting or implementing this Agreement according to the spirit and fundamental principles of the Agreement.

2. The Parties shall consult promptly on any request in writing of either Party concerning matters that have not been resolved by the competent authorities of the Parties in accordance with paragraph 1 of this Article, in order to resolve those matters by mutual agreement.

Article 21

Duration and termination

1. Subject to paragraph 2 of this Article, this Agreement shall remain in force until the expiration of 12 months from the date on which a Party receives from the other Party written notice through the diplomatic channel of the intention of that Party to terminate the Agreement.

2. In the event that this Agreement is terminated in accordance with paragraph 1 of this Article, the Agreement shall continue to be in force in relation to all persons who as a result of this Agreement:

   (a) at the date of termination, are in receipt of benefits; or

(b) prior to the expiry of the period referred to in paragraph 1, have made an application for, and would be entitled to receive, benefits.

Article 22

Entry into force

The Parties shall notify each other in writing of the completion of their respective domestic procedures required for the entry into force of this Agreement. The Agreement shall enter into force on the first day of the second month following the date of the last notification.

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

Done in duplicate at Malta on this 8th day of July, 2013, in the English language.

For the Government of New Zealand

For the Government of Malta