

No. 1573/1993

Act on the Application of Residence-Based Social Security Legislation

Issued in Helsinki on 30 December 1993.

Chapter 1
General Provisions

Section 1 (9.7.2004/635)

Scope of application

Unless otherwise provided in the international treaties or agreements binding on Finland or in the Regulation (EEC) No. 1408/71 of the Council on the application of social security schemes to employed persons, to self-employed persons and to their family members moving within the Community, hereinafter *the Regulation on social security*, it is decided according to this Act if the following Finnish social security legislation¹ shall be applied to a person:

1) the National Pensions Act (347/1956), the Survivors Pensions Act (38/1969), the Child Allowances Act (796/1992), the Maternity Grants Act (477/1993) and the Housing Allowances Act; and

2) the Act on Housing Allowance for Pensioners (591/1978), the Act on Care Allowance for Children (444/1969), the Services and Assistance for the Disabled Act (124/1988), the Front Veterans Pensions Act (119/1977) and the Act on Special Support for Immigrants (1192/2002), as far as it is question of the application of provisions of sections 3, 3 a and 4 and of Chapters 3 and 4 of this Act.

Section 2 (9.7.2004/635)

Enforcement

The enforcement of this Act is a responsibility of the Social Insurance Institution (in Finnish: Kansaneläkelaitos, Kela), as provided in the Act on the Social Insurance Institution (731/2001).

Section 2 a (9.7.2004/635)

Definitions

For the purposes of this Act

1) *employee* means a person in a contractual employment relationship, public service employment relationship or other employment relationship and a person referred to in section 1 d of the Employees Pensions Act whose working time and earnings meet the conditions laid down in Chapter 5, section 4, of the Unemployment Allowances Act (1290/2002);

2) *employment* means work in a contractual, public service or other employment relationship referred to in subparagraph 1;

3) *self-employed person* means a person who is according to the Self-Employed Persons Pensions Act (468/1969) or the Farmers Pensions Act (467/1969) obliged to take out an insurance policy as laid down in the said Acts;

4) *posted worker* means an employee referred to in subparagraph 1 whose employer has sent him/her to work in another country and who is in the employment of the sending employer or of a parent

¹ Hereinafter: social security legislation

undertaking, subsidiary or affiliate or other such undertaking belonging to the same financial entity as the employer in which the sending employer has controlling interest;

5) *researcher* means a person with a doctor's degree who is carrying out scientific research;

6) *student* means a person who is participating in vocational education or in education for a degree;

7) *missionary employee* means an employee sent by a missionary organisation registered in Finland, an Evangelical-Lutheran or Orthodox parish or a registered religious community to carry out missionary work in a foreign country who is in the employment of the employer in question for the period of the missionary work and is insured under the earnings-related pension scheme in Finland;

8) *development co-operation employee* means a person who is employed in a development co-operation project, if the project is partly financed from the development co-operation funds included in the State Budget or if the State of Finland otherwise takes part in the project through the operations of an internationally established organisation;

9) *family member* means the spouse of the person and the person's or the spouse's child(ren) under the age of 18 years; as spouses are also regarded a woman and man continuously living in a shared household in marriage-like circumstances;

10) *person of Finnish origin* means an alien who has been granted a residence permit on the basis of section 47 (1) 1 or section 48 of the Aliens Act (301/2004);

11) *refugee* means an alien who has been granted asylum in Finland or who has been granted within the refugee quota a residence permit in Finland by reason of his/her being a refugee, or who is a family member of those aliens who is considered to be a refugee and has been granted a residence permit on the basis of family relationships; and

12) *stateless person* means a person referred to in the Convention relating to the Status of Stateless Persons (Treaty Series of the Statute Book 80/1968).

Chapter 2

Application of social security legislation (9.7.2004/635)

Section 3 (9.7.2004/635)

Residence in Finland

Social security legislation applies to persons permanently resident in Finland who have their actual place of residence and home in Finland and who principally reside here on a continuous basis.

Section 3 a (9.7.2004/635)

Moving to Finland

Social security legislation is applied to persons moving to Finland from the date of arrival in the country, if the person, taking into account his/her circumstances as a whole, is considered to move to Finland to reside in the country on a permanent basis.

As circumstances indicating the permanence of residence of the person moving to Finland are taken into account, among others, that the person:

- 1) has been previously permanently resident in Finland or is of Finnish origin;
- 2) is a refugee or has been granted a residence permit in Finland based on the need for protection;
- 3) is a family member of a person who is permanently resident in Finland;

- 4) has an employment contract for at least two years or a comparable contract for work in Finland; or
- 5) has other links with Finland.

A person is not considered to move to Finland to reside in the country permanently if he/she moves to the country exclusively for the purpose of studies.

Under this Act, a person applying for asylum in Finland is not considered to be permanently resident in Finland during the period of time under which he/she stays in the country without a legally valid decision on his/her asylum application or on a matter concerning his/her deportation from the country. Neither is a person who has obtained a residence permit on the basis of temporary need for protection considered to move to Finland on a permanent basis.

If a person is not considered to move to Finland permanently when arriving in the country but the condition can be considered to be met later, social security legislation is applied to the person from the date when the condition is met.

Section 3 b (9.7.2004/635)

Employment and self-employment

An employee or a self-employed person whose entitlement to Finnish social security is determined according to the Regulation on social security is subject to the social security legislation under this Act from the date of starting the employment or self-employment in Finland, if the person is employed uninterruptedly for at least four months or, respectively, when the person has uninterruptedly been self-employed for at least four months.

Section 3 c (9.7.2004/635)

Legality requirement

The condition for application of this Act is that the temporary residence, residence and employment in the country is lawful. It is required, furthermore, that the person moving to Finland has a residence permit entitling to at least one year's residence in the country in case the person is required to have such as permit. For particular reasons also a residence permit granted for a shorter period than one year meets the condition, if there are no obstacles to extending the residence permit.

Section 4 (9.7.2004/635)

Residence abroad

Social security legislation does not apply to persons moving abroad on a permanent basis. Social security legislation however applies to persons further resident in Finland if the duration of the temporary residence abroad is estimated to be no more than one year.

Social security legislation is applied to a person who repeatedly on a temporary basis resides abroad so that the length of an uninterrupted temporary residence abroad does not exceed one year only if the person is, despite the temporary residence abroad, considered to be permanently resident in Finland and has close links with Finland.

Section 5 (23.12.1998/1128)

Certain employment relationships

Finnish social security legislation is applied to a Finnish national employed abroad if he/she:

- 1) works as a member of the posted personnel at a Finnish representation abroad and is in an employment relationship to the Finnish State;

- 2) is in the employment of the Finnish State abroad or is a private servant of a person referred to in subparagraph 1, if social security legislation was applied to the former immediately before the start of the employment relationship;
- 3) has a job comparable to that referred to in subparagraph 1 and enjoys the same privileges and immunities as diplomatic representatives and is in an employment relationship to a Finnish employer; or
- 4) has been sent from Finland as a missionary employee or development co-operation employee if social security legislation was applied to the employee immediately before the start of the employment relationship. (9.7.2004/635)

Section 6 (9.7.2004/635)

Employment on board a Finnish vessel

The social security legislation in accordance with this Act applies to persons working on board a Finnish vessel in an employment relationship according to the Seamen's Act (423/1978).

Social security legislation does not apply to persons employed on board a Finnish vessel entered into the list of merchant vessels according to the Act on the Register of Merchant Vessels Engaged on International Voyages (1707/1991) in an employment relationship other than that referred to in paragraph 1, unless the person has been resident in Finland during the year preceding the start of the employment relationship as laid down in section 3.

Section 7 (9.7.2004/635)

Employment and studies abroad

On application, social security legislation is further applied to a person with close links with Finland who is temporarily resident abroad for a longer time than one year and who is:

- 1) a posted worker sent abroad by a Finnish employer from Finland;
- 2) an employee hired by a Finnish employer abroad; or
- 3) a full-time student or researcher.

Section 7 a (9.7.2004/635)

Close links

The consideration of whether a person referred to in sections 4, 7 and 8 has close links with Finland is based on an overall examination of the person's situation. The examination takes account of the duration and continuity of the temporary residence and residence in Finland and in the other country as well as the person's family relationships. As an indication of close links can be regarded repeated temporary residence, home, employment relationship, nature of the work, registered place of business of the employer, and provision of earnings-related pension in Finland, as well as other comparable circumstances.

Section 8 (9.7.2004/635)

Family members

On application, Finnish social security legislation is further applied to a family member accompanying the person temporarily resident abroad referred to in sections 5 and 7 who is living in the same household with the person, provided that the family member is not subject to the legislation of the foreign country on the basis of his/her own employment lasting for more than four months or that the family member cannot otherwise, based on his/her circumstances, be deemed to have closer links with the foreign state than with Finland.

The same applies to a family member accompanying the person temporarily resident abroad and living in the same household with the person, if Finnish social security legislation applies to the person

referred to in paragraph 1 on the basis of the Regulation on social security or an agreement on social security binding on Finland, unless otherwise provided in the Regulation or the agreement concerned.

Chapter 3

Co-ordination of Legislation on Social Security and International Treaties and Agreements

Section 9 (9.7.2004/635)

Community legislation on social security and international treaties and agreements

If a person is on the basis of the Regulation on social security or an international treaty or agreement binding on Finland subject to the social security legislation of a foreign state, the social security legislation referred to in this Act shall not apply to the person in regard to the scope of application of the Regulation or the treaty or agreement.

Section 10

Staff of certain representations

The social security legislation according to this Act does not apply to a national of a foreign state if the person is in Finland: (9.7.2004/635)

- 1) a diplomatic representative or detached consular representative of a foreign state, or if the person is employed in the United Nations or a specialised agency linked to the UN or in another intergovernmental organisation;
- 2) a member of the administrative or technical staff or the domestic staff of the foreign representation of a foreign country;
- 3) a family member of a person referred to in subparagraph 1 or 2 living in the same household with the person, provided that the family member is not on the basis of his/her own gainful employment subject to the Finnish social security; or
- 4) a private servant of a person referred to in subparagraph 1 and subject to the social security legislation of another state.

The provisions of paragraph 1 (2) to (4) do not apply to a person who has been resident in Finland immediately before the start of the employment relationship.

Section 11 (9.7.2004/635)

Refugees and stateless persons

The provisions of this Act on Finnish nationals also apply to refugees and persons without nationality to whom the social security legislation under this Act is applied.

Chapter 4

Decision, appeal and nullification of decision

Section 12 (9.7.2004/635)

Issuing a decision

A person has the right to receive, on application, a decision regarding whether social security legislation is applied to him/her. The decision is applied for from the Social Insurance Institution.

The application regarding application of social security legislation to a person referred to in sections 7 and 8 shall be submitted to the Social Insurance Institution within one year from the date on which the person moved abroad or from the date of expiry of the validity of the previous decision. Exception from the defined time can be made for particular reasons. The defined time however does not apply to a family member of the person referred to in section 5.

The decision on application of social security legislation to a person referred to in sections 7 and 8 is issued for a defined period of time, at the most for five years from the date on which the person moved abroad. The application of social security legislation can continue for five years at the most, if the person still has close links with Finland. The decision to a family member of a person referred to in section 5 is however issued for the period of time the person referred to in section 5 is employed abroad.

A person to whom social security legislation has been applied during temporary residence abroad on the basis of sections 7 and 8 for ten years can be issued a new decision on the application of social security legislation, if the person has been resident in Finland for at least one year before submitting the new application.

The Social Insurance Institution issues, ex officio, decision on the application of social security legislation on the basis of sections 4 to 6 to a person regarding whose temporary residence abroad it is informed of.

Section 12 a (23.12.1998/1128)

Duty to inform

A person covered by the scope of application of social security legislation is obliged to inform the Social Insurance Institution without delay of any changes in his/her circumstances, such as moving from or returning to Finland, employment abroad, start and end of studies or research work, suspension of an activity, admission to the scope of the social security of the country of temporary residence and other changes in circumstances that can have consequences with regard to social security.

Section 12 b (23.12.1998/1128)

Amending a decision

If the circumstances after the issuing of the decision referred to in this Act have changed so that the preconditions for issuing the decision are no more met, the Social Insurance Institution can amend its decision from the date when the circumstances change. Decisions of the Social Insurance Institution referred to in this Act may be appealed as provided in section 13.

Section 13 (9.7.2004/635)

Appeal

Any person who is dissatisfied with the decision of the Social Insurance Institution may appeal it to the Appeal Tribunal and any person who is dissatisfied with the decision of the Appeal Tribunal to the Insurance Court. The decision of the Insurance Court may not be appealed.

The person concerned is considered to have been served the decision on the seventh day after the date on which the decision was mailed by letter to the address given by the person, unless otherwise indicated.

The appeal document shall be submitted to the Social Insurance Institution within 30 days from the date when the appellant was served the decision.

The decision of the Social Insurance Institution must be observed regardless of appeal until the matter has been solved by a legally valid decision.

As regards application of the above section see the provision on entry into force of Act 9.7.2004/635.

Section 13 a (9.7.2004/635)

Right to correct

If the Social Insurance Institution accepts the claims presented in the appeal submitted to it in all respects, it shall issue a rectification decision. The rectification decision may be appealed as provided in section 13.

If the Social Insurance Institution cannot rectify the decision subject to appeal as laid down in paragraph 1, it must within 30 days from the expiry of the appeal period forward the appeal document and its opinion to the appeal body concerned for consideration. In that case the Social Insurance Institution can rectify its previous decision by a temporary decision as far as it accepts the claim in the appeal. If the appeal has already been submitted to the appeal body, it shall be immediately informed of the temporary decision. A temporary decision may not be appealed.

Exception from the defined period of time referred to in paragraph 2 can be made if obtaining further information necessary on account of the appeal so requires. In that case the appellant shall be immediately informed about the request for further information. The appeal document and the opinion shall however always be forwarded to the appeal body concerned within 60 days from the expiry of the period of appeal.

Section 13 b (9.7.2004/635)

Delayed appeal

If the appeal submitted to the Appeal Tribunal or the Insurance Court arrives after the expiry of the defined time laid down in section 13, the appeal body concerned may nevertheless take the appeal up for consideration if there have been weighty reasons for the delay.

Section 14 (9.7.2004/635)

Nullification of decision

If the legally valid decision concerning a matter referred to in this Act is based on false or incomplete information or is apparently contrary to legislation, the Insurance Court may upon the submission of the Social Insurance Institution or upon application of the person concerned, after having given the other parties an opportunity to be heard, nullify the decision or order reconsideration of the matter. After having made the above submission the Social Insurance Institution may on a temporary basis apply social security legislation in accordance with its submission until a new decision has been issued on the matter.

Where new information is obtained in a matter regarding the application of social security legislation or the point of time relating to the application, the Social Insurance Institution shall reconsider the matter. The Social Insurance Institution may notwithstanding a previous legally valid decision apply social security legislation to the person to the person's benefit. Also the Appeal Tribunal and the Insurance Court can act correspondingly when considering an appeal. Their decisions may be appealed as provided in section 13.

Section 14 a (9.7.2004/635)

Rectifying an error

If the decision of the Social Insurance Institution is clearly based on false or incomplete information or on an apparently incorrect application of legislation or there has been a procedural fault in making the decision, the Social Insurance Institution may nullify its faulty decision and make a new decision on the matter.

A decision can be rectified either to the benefit or detriment of the person concerned. Rectification of the decision to the detriment of the person concerned requires that the person consent to its rectification.

Chapter 5

Miscellaneous provisions

Section 15 (9.8.2002/699)

Duty to provide information

The Social Insurance Institution and the appeal body in accordance with this Act are entitled, notwithstanding the provisions on confidentiality and other restrictions on access to information, to obtain on request and free of charge the information necessary for deciding on the matter under consideration, or otherwise for enforcement of a duty under this Act from:

- 1) state and local authorities and other public corporations; and
- 2) the Finnish Centre for Pensions, pension and insurance institutions and the employer.

The Social Insurance Institution has, in addition to what is provided in section 29 (3) of the Act on the Openness on Government Activities, the right of access to the confidential information referred to in this section by means of a technical connection on the conditions laid down in the said paragraph.

The technical connection established on the basis of this section may be used for searching also confidential information without the consent of the person for the protection of whose interests the confidentiality duty has been provided. Prior to establishing the technical connection the body requesting information must give an account that the protection of the information is ensured appropriately.

Section 15 a (9.8.2002/699)

Duty to inform the applicant

The Social Insurance Institution shall inform the applicant for a benefit in advance and in appropriate ways of the sources from which information on the applicant can be obtained and to which bodies it can be regularly supplied.

Section 16

Further provisions

Further provisions on the implementation of this Act are issued by Decree, as necessary.

Chapter 6

Entry into force and transitional provisions

Section 17

Entry into force

This Act enters into force on 1 January 1994.

Measures necessary for the implementation of this Act may be undertaken before its entry into force.

Section 18

Transitional provisions

When deciding if a person shall under this Act be considered to reside in Finland, also the period of time immediately preceding this Act's entry into force can be taken into account.

At the entry into force of this Act a person who according to an Act mentioned in section 1 of this Act resides in Finland, but who is at the entry into force of the Act temporarily residing abroad is, for the purpose of applying this Act, considered to have left the country at the entry into force of this Act.

A person temporarily residing abroad at the entry into force of this Act to whom the National Pensions Act is applied in accordance with the decision referred to in section 1 b of the National Pensions Act, which has been issued by the Social Insurance Institution prior to the entry into force of this Act, is considered, for the purpose of applying this Act, without separate application to be resident in Finland for the period of time specified in the decision.

Entry into force and application of amended statute

9.7.2004/635:

This Act enters into force on 1 January 2005; sections 2 a (1) to (3) and section 3 b however enter into force on 1 August 2004.

Measures necessary for the implementation of this Act may be undertaken before its entry into force.

When applying this Act also time before the entry into force of this Act is taken into account. At the entry into force of this Act a person temporarily resident abroad referred to in section 7 or 8 of this Act is however, for the purpose of applying section 12 (3), considered to have moved abroad at the entry into force of this Act.

Notwithstanding the provisions of this Act, a decision issued by the Social Insurance Institution in virtue of the Act on the Application of Residence-Based Social Security Legislation that is in force at the entry into force of this Act shall be in force for the period specified in the decision.

The Social Insurance Institution decides on application if social security legislation shall be applied to persons referred to in sections 7 and 8 of this Act to whom the social security legislation in force at the entry into force of this Act does not apply. The application must be submitted within six months from the entry into force of this Act. In that case social security legislation shall be applied from the date of submitting the application.

Section 13 of the Act on the Application of Residence-Based Social Security Legislation in force at the entry into force of this Act shall apply to matters regarding which the Social Insurance Institution has issued its decision prior to the entry into force of this Act.