

Proactive Release

Date: 19 September 2022

The following Cabinet paper and related Cabinet minute have been proactively released by the Minister of Foreign Affairs

Title	Reference
<i>Cabinet Minute of Decision – Report of the Cabinet External Relations and Security Committee: Period Ended 5 August 2022</i>	CAB-21-MIN-0301
<i>Cabinet External Relations and Security Committee – Minute of Decision</i>	ERS-22-MIN-0034
<i>Approval for Signature of the Dependent Employment Agreement between Turkey and New Zealand</i>	

Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the OIA). Where this is the case, the relevant sections of the OIA that would apply have been identified. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Key to OIA redaction codes:

- 6(a): to avoid prejudicing the international relations of the New Zealand Government.



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Report of the Cabinet External Relations and Security Committee: Period Ended 5 August 2022

On 8 August 2022, Cabinet made the following decisions on the work of the Cabinet External Relations and Security Committee for the period ended 5 August 2022:

ERS-22-MIN-0034 **Dependant Employment Agreement between
Turkey and New Zealand: Approval for
Signature**
Portfolio: Foreign Affairs

CONFIRMED

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by the Minister of Foreign Affairs

CONFIRMED

Rachel Hayward
Acting Secretary of the Cabinet

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Cabinet External Relations and Security Committee

Minute of Decision

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Dependant Employment Agreement between Turkey and New Zealand: Approval for Signature

Portfolio Foreign Affairs

On 3 August 2022, the Cabinet External Relations and Security Committee:

- 1 **noted** that there is currently no Dependant Employment Agreement between New Zealand and Turkey, meaning that the spouses and dependants of New Zealand diplomats serving Turkey, and of Turkish diplomats serving in New Zealand, have no employment rights under a diplomatic visa;
- 2 **noted** that negotiations have now been completed, and officials have agreed a final text of the *Agreement between the Government of the Republic of Turkey and the Government of New Zealand on the Gainful Occupation of Dependants of Members of Diplomatic Missions and Consular Posts* (the Agreement);
- 3 **noted** that the text of the Agreement is in line with New Zealand's policy settings on Dependant Employment Agreements;
- 4 **noted** that the text has been concluded in the English and Turkish languages and will be equally authentic in both, although the English text will prevail in the case of any differences of interpretation;
- 5 **approved** the text of Agreement, attached to the paper as Annex I to the paper under ERS-22-SUB-0034, subject to any minor or technical changes arising from translation and verification;
- 6 **agreed** that New Zealand sign the Agreement;
- 7 **noted** that the Agreement will be brought into force by the exchange of written notifications via diplomatic channels in accordance with Article 9 of the Agreement;
- 8 **noted** that no changes to legislation are required in order to bring the Agreement into force;
- 9 **noted** that there are no financial implications arising from the Agreement;
- 10 **noted** that on 11 February 2021, the Minister of Foreign Affairs determined that the Agreement is not a bilateral treaty of particular significance, and that therefore it does not need to be presented to Parliament for treaty examination;

- 11 **authorised** officials to bring the Agreement into force through an exchange of diplomatic notifications.

Janine Harvey
Committee Secretary

Present:

Rt Hon Jacinda Ardern (Chair)
Hon Kelvin Davis
Hon Chris Hipkins
Hon Andrew Little
Hon David Parker
Hon Damien O'Connor
Hon Peeni Henare
Hon Michael Wood
Hon Dr David Clark
Hon Kieran McAnulty

Officials present from:

Office of the Prime Minister
Officials Committee for ERS

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[In Confidence]

Office of the Minister of Foreign Affairs

Chair, External Relations and Security Committee

Approval for Signature of the *Dependant Employment Agreement between Turkey and New Zealand*

Proposal

- 1 This paper proposes that Cabinet approve the text, authorise the signature, and entry into force of the *Agreement between the Government of the Republic of Turkey and the Government of New Zealand on the Gainful Occupation of Dependants of Members of Diplomatic Missions and Consular Posts* ("Turkey DEA").

Relation to government priorities

- 2 The approval of the Turkey DEA is an operational decision that requires Cabinet approval.

Background

- 3 Dependant Employment Agreements (DEAs) provide employment rights to spouses, partners and dependants of diplomats serving at foreign missions. Without one, spouses and dependants have no employment rights under a diplomatic visa. New Zealand has DEAs with 24 countries.

New Zealand-Turkey Dependant Employment Agreement:

- 4 New Zealand and Turkey have finalised negotiations on a *New Zealand - Turkey Dependant Employment Agreement*. The Turkey DEA is a reciprocal Agreement that would enable the dependants of both countries' diplomatic/seconded staff to work without having to fully relinquish their diplomatic immunity. The final text of the Turkey DEA is **attached** at Annex I.
- 5 s6(a)
- 6 New Zealand's preference is for DEAs to be finalised at a non-binding level as this allows for simpler process requirements in the New Zealand domestic system and we do not require DEA obligations to be binding. The Turkey DEA was negotiated as a binding international treaty as this is a requirement in the Turkish system.
- 7 The Turkey DEA will be brought into force by the exchange of written notifications via diplomatic channels in accordance with Article 9 of the DEA.

Comment

- 8 On 11 February 2021 the Minister of Foreign Affairs determined that the Turkey DEA is not a “bilateral treaty of particular significance”¹ and therefore it does not need to undergo Parliamentary Treaty Examination, as set out in Standing Order 405. This Cabinet Paper now seeks approval of the text, authority to sign and authority for the agreement to enter into force.
- 9 An operational DEA will enable dependants of seconded staff to engage in gainful employment in Ankara and make an offshore posting to Ankara a more attractive option for staff from varying family configurations. This is aligned with the Ministry of Foreign Affairs’ values, especially “Kotahitanga (we draw strength from our diversity)”.
- 10 There are currently four seconded staff employed at our post in Ankara, with a fifth soon to be added to the mission’s establishment: the Ambassador, the Deputy Head of Mission, one Second Secretary, an Attaché, and a new seconded Administration Manager role. There will be similar potential benefits for Turkey in terms of its postings to New Zealand. The Turkish Embassy currently has four diplomatic staff: the Ambassador, Counsellor and two Second Secretary positions.

Financial implications

- 11 There are no financial implications.

Legislative implications

- 12 No legislative or regulatory change is required to implement this amendment.

Consultation

- 13 The Department of Prime Minister and Cabinet has been informed.

Human rights

- 14 There are no Human Rights Act 1993 or New Zealand Bill of Rights Act 1990 implications. The establishment of a DEA with Turkey would facilitate the capacity to deploy abroad a more diverse range of diplomatic officers.

Impact analysis

- 15 A Regulatory Impact Statement is not required. A National Interest Analysis is not required as the Turkey DEA will not be subject to Parliamentary Treaty Examination.

Publicity

- 16 No steps to publicise the agreement of the Turkey DEA, are needed.

Recommendations

The Minister of Foreign Affairs recommends that the Committee:

¹ Ministry of Foreign Affairs and Trade submission to Minister of Foreign Affairs, signed 11 February 2021.

- 1 **Note** that there is currently no Dependant Employment Agreement between New Zealand and Turkey, meaning that the spouses and dependants of New Zealand diplomats serving Turkey, and of Turkish diplomats serving in New Zealand, have no employment rights under a diplomatic visa;
- 2 **Note** that the negotiations have now been completed and officials have agreed a final text of the *Agreement between the Government of the Republic of Turkey and the Government of New Zealand on the Gainful Occupation of Dependants of Members of Diplomatic Missions and Consular Posts*;
- 3 **Note** that the text is in line with New Zealand's policy settings on Dependant Employment Agreements;
- 4 **Note** that the text has been concluded in the English and Turkish languages and will be equally authentic in both, although the English text will prevail in case of any differences of interpretation;
- 5 **Approve** the text of the *Agreement between the Government of the Republic of Turkey and the Government of New Zealand on the Gainful Occupation of Dependants of Members of Diplomatic Missions and Consular Posts*, attached to the paper as Annex I, subject to any minor or technical changes arising from translation and verification;
- 6 **Agree** that New Zealand sign the *Agreement between the Government of the Republic of Turkey and the Government of New Zealand on the Gainful Occupation of Dependants of Members of Diplomatic Missions and Consular Posts*.;
- 7 **Note** that the New Zealand - Turkey DEA will be brought into force by the exchange of written notifications via diplomatic channels in accordance with Article 9 of the Agreement;
- 8 **Note** that no changes to legislation are required in order to bring the New Zealand - Turkey DEA into force;
- 9 **Note** that there are no financial implications arising from the New Zealand - Turkey DEA;
- 10 **Note** that on 11 February 2021 the Minister of Foreign Affairs determined that the New Zealand - Turkey DEA is not a "bilateral treaty of particular significance" and that therefore it does not need to be presented to Parliament; and
- 11 **Authorise** officials to bring the New Zealand - Turkey DEA into force through an exchange of diplomatic notifications.

Authorised for lodgement

Hon Nanaia Mahuta

Minister of Foreign Affairs

Annex I: New Zealand-Turkey DEA text

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF TURKEY AND THE GOVERNMENT OF NEW ZEALAND ON THE GAINFUL OCCUPATION OF DEPENDANTS OF MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

The Government of the Republic of Turkey

and

The Government of New Zealand

(hereinafter referred to as "Parties")

Considering the particularly advanced stage of understanding between the two countries; and

With the aim of establishing new mechanisms to strengthen their diplomatic relations;

Have agreed as follows:

ARTICLE 1

1. The dependants of employees of one of the Parties officially accredited to the other Party as a member of a diplomatic mission, consular post or as a member of a permanent mission of the sending State to an international organization recognized by and having its headquarters in the receiving State shall be authorized to engage in gainful occupation in the receiving State in conformity with this Agreement and on the basis of reciprocity.

2. For the purposes of this Agreement, "member of a diplomatic mission, consular post or permanent mission to an international organization" refers to an employee of the sending State, who is assigned to official duty in the receiving State in a diplomatic mission, consular post or permanent mission to an international organization and who is not a national of the receiving State.

3. For the purposes of this Agreement, "dependants" refers to:

- a) Spouse;
- b) Unmarried dependant children under the age of 21; and
- c) Unmarried children with physical or mental disabilities.

ARTICLE 2

1. Before a dependant may engage in gainful occupation in the receiving State, the Embassy of the sending State shall make, on behalf of the dependant, an official request to the Ministry of Foreign Affairs of the receiving State.
2. The request must include information providing that the person in question is a dependant and a brief explanation of the type of employment which is proposed to be undertaken.
3. Upon receipt of the relevant information the Ministry of Foreign Affairs of the receiving State shall immediately and officially notify the Embassy of the sending State that the dependant has been authorised to engage in gainful occupation, allowed by the legislation in force of the state.
4. Similarly, the Embassy of the sending State must inform the Ministry of Foreign Affairs of the receiving State of the termination of the gainful occupation undertaken by the dependant and must submit a new request in the event the dependant decides to accept any new employment.

ARTICLE 3

1. Authorization to engage in gainful occupation, in conformity with this Agreement, shall not give the right to continue to work or reside in the receiving State, by the termination of the assignment of the employee on whom the beneficiary is dependant.
2. Both Parties reserve the right to deny the authorization to engage in gainful occupation referred to in this Agreement, for reasons of national security or in case the requested employment is reserved exclusively for the nationals of the receiving State, in accordance with the national legislation of each Party.

ARTICLE 4

In case the dependant authorized to engage in gainful occupation has immunity from the jurisdiction of the receiving State in accordance with the Vienna Conventions on Diplomatic and Consular Relations or any other applicable international agreement:

- a) such a dependant shall not enjoy immunity from the civil or administrative jurisdiction in the receiving State in respect of acts related to the performance of such gainful occupation; and
- b) the sending State shall give serious consideration to any request from the receiving State to waive the immunity from criminal jurisdiction of a dependant accused of committing a criminal offence in the course of such gainful occupation. In the event that immunity is not waived and in the

view of the receiving State the matter is a serious one, the receiving State may request the withdrawal of the dependant from the country.

ARTICLE 5

1. Dependants who engage in gainful occupation must pay in the receiving State all taxes related to the income which they receive in the performance of their activities, according to the tax legislation of the receiving State, and having its source in that State.

2. Dependants who engage in gainful occupation under this Agreement shall be subject to the social security legislation of the receiving State.

ARTICLE 6

This Agreement shall not imply automatic recognition of titles or degrees obtained abroad. Such recognition can only be granted in conformity with the rules in force which regulate these matters in the receiving State. The authorization shall not imply exemption from any legal or other requirements relating to personal characteristics, professional or other qualifications that the individual concerned must demonstrate in engaging in a gainful occupation.

ARTICLE 7

1. Authorization to engage in gainful occupation shall terminate as soon as the beneficiary of the authorization ceases to have the status of dependant, or on the date of the completion of contractual obligations or, in any case, at the termination of the assignment of the employee on whom the beneficiary is dependant.

2. The cessation of the authorization shall provide the reasonable delay envisaged by the Vienna Conventions on Diplomatic and Consular Relations, not exceeding three months.

ARTICLE 8

Any controversy over the interpretation or application of this Agreement shall be resolved by the Parties through diplomatic means.

ARTICLE 9

This Agreement shall enter into force on the date of the receipt of the latest written notification by which the Parties inform each other through diplomatic channels that their national legal procedures necessary for its entry into force have been completed.

ARTICLE 10

1. This Agreement shall remain in force for an indefinite period and may be amended by mutual written consent of the Parties at any time. The

amendments shall enter into force in accordance with the same legal procedure prescribed under the Article 9.

2. This Agreement may be terminated by providing six months' notice in writing.

Done in....., on.....,in duplicate, in the Turkish and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE
REPUBLIC OF TURKEY

FOR THE GOVERNMENT OF
NEW ZEALAND

Proactively Released
by the Minister of Foreign Affairs

**TÜRKİYE CUMHURİYETİ HÜKÜMETİ İLE YENİ ZELANDA HÜKÜMETİ
ARASINDA DİPLOMATİK MİSYON VE KONSOLOSLUK
MENSUPLARININ BAKMAKLA YÜKÜMLÜ OLDUKLARI KİŞİLERİN
KAZANÇ GETİRİCİ BİR İŞTE ÇALIŞMALARI HAKKINDA ANLAŞMA**

Türkiye Cumhuriyeti Hükümeti

ile

Yeni Zelanda Hükümeti

(bundan böyle "Taraflar" olarak anılacaktır)

İki ülke arasında bilhassa gelişmiş anlayışı göz önünde bulundurarak

ve

Diplomatik ilişkilerini güçlendirmek için yeni mekanizmalar kurma amacıyla;

Aşağıdaki hususlarda mutabık kalmışlardır:

MADDE 1

1. Gönderen Devlet'in bir diplomatik misyonunun, konsolosluğunun veya Kabul Eden Devlet'in tanıdığı ve merkezi Kabul Eden Devlet'te bulunan uluslararası bir örgüt nezdindeki daimi temsilciliğinin mensubu olarak diğer Tarafa resmen akredite olan çalışanlarının bakmakla yükümlü olduğu kişilerin, bu Anlaşmaya uygun olarak ve karşılıklılık temelinde, Kabul Eden Devlet'te kazanç getirici bir işte çalışmalarına izin verilir.

2. Bu Anlaşmanın amaçları çerçevesinde, "diplomatik misyon, konsolosluk veya uluslararası bir örgüt nezdinde daimi temsilcilik mensubu" kavramı, Gönderen Devlet'in Kabul Eden Devlet'teki bir diplomatik misyonuna, konsolosluğuna veya uluslararası bir örgütün daimi temsilciliğine resmi görevle atanmış olan ve Kabul Eden Devlet'in vatandaşı olmayan çalışanını ifade eder.

3. Bu Anlaşmanın amaçları çerçevesinde, "bakmakla yükümlü olunan kişiler" kavramı:

a) Eşleri;

b) 21 yaş altı evlenmemiş çocukları;

c) Fiziksel veya zihinsel engelli evlenmemiş çocukları ifade eder.

MADDE 2

1. Bakmakla yükümlü olunan bir kişinin Kabul Eden Devlet'te kazanç getirici bir işte çalışabilmesinden önce, Gönderen Devlet'in Büyükelçiliği, bakmakla

yükümlü olunan kişi adına, Kabul Eden Devlet'in Dışişleri Bakanlığına resmi bir talepte bulunur.

2. Talep, sözkonusu kişinin bakmakla yükümlü olunan bir kişi olduğu bilgisini ve çalışılması öngörülen işin türüne ilişkin kısa bir açıklamayı içermelidir.

3. İlgili bilgilerin alınmasını müteakip, Kabul Eden Devlet'in Dışişleri Bakanlığı, sözkonusu bakmakla yükümlü olunan kişinin, Kabul Eden Devlet'in mer'î mevzuatının cevaz verdiği kazanç getirici bir işte çalışmasına izin verildiğini Gönderen Devlet'in Büyükelçiliğine ivedilikle ve resmi olarak bildirir.

4. Aynı şekilde, Gönderen Devlet'in Büyükelçiliği, Kabul Eden Devlet'in Dışişleri Bakanlığına, bakmakla yükümlü olunan kişinin çalıştığı kazanç getirici işin sona erdiğini bildirmeli ve bakmakla yükümlü olunan kişinin yeni bir işte çalışmaya karar vermesi halinde yeni bir talepte bulunmalıdır.

MADDE 3

1. Bu Anlaşma uyarınca, kazanç getirici işte çalışma izni, bu izinden yararlanan kişiye bakmakla yükümlü olan çalışanın görevi sona erdiğinde, bakmakla yükümlü olunan kişiye, Kabul Eden Devlet'te çalışmayı veya ikamet etmeyi sürdürme hakkını vermez.

2. İki Taraf, bu Anlaşmada atıfta bulunulan kazanç getirici işte çalışma iznini, ulusal güvenlik sebeplerinden ötürü veya talepte bulunulan işin yalnızca Kabul Eden Devlet'in vatandaşlarına mahsus olması halinde, her bir Tarafın ulusal mevzuatına uygun olarak reddetme hakkını saklı tutar.

MADDE 4

Kazanç getirici işte çalışmasına izin verilen bakmakla yükümlü olunan kişinin, Diplomatik İlişkiler ve Konsolosluk İlişkileri Hakkında Viyana Sözleşmeleri ya da başka uygulanabilir uluslararası anlaşmalara uygun olarak, Kabul Eden Devlet'in yargısına bağışık olması durumunda:

a) Bakmakla yükümlü olunan bu kişi, kazanç getirici işte çalışmasına ilişkin eylemlerle ilgili olarak, Kabul Eden Devlet'te hukuki veya idari yargıdan bağışık olamaz ve

b) Gönderen Devlet, kazanç getirici iş esnasında ceza gerektiren bir suç işlemekle suçlanan bakmakla yükümlü olunan kişinin cezai yargıdan bağışıklığının kaldırılması hususunda, Kabul Eden Devlet'in iletceği tüm talepleri ciddi bir biçimde değerlendirir. Bağışıklıktan feragat edilmediği takdirde ve konunun Kabul Eden Devlet açısından ciddiyeti göz önüne alındığında, Kabul Eden Devlet bakmakla yükümlü olunan ilgili kişinin ülkeyi terk etmesini talep edebilir.

MADDE 5

1. Kazanç getirici işte çalışan bakmakla yükümlü olunan kişiler, Kabul Eden Devlet'te gerçekleştirdikleri faaliyetleri sonucu elde ettikleri ve kaynağı bu Devlet'te bulunan gelir ile ilgili olarak Kabul Eden Devlet'in vergi mevzuatına göre tüm vergileri Kabul Eden Devlet'te ödemelidir.

2. Bu Anlaşma çerçevesinde, Kabul Eden Devlet'te kazanç getirici işte çalışan bakmakla yükümlü olunan kişiler, Kabul Eden Devlet'in sosyal güvenlik mevzuatına tabi olur.

MADDE 6

Bu Anlaşma, yurt dışında alınan unvan ve derecelerin doğrudan tanınması anlamına gelmez. Sözkonusu tanıma ancak Kabul Eden Devlet'in bu hususları düzenleyen yürürlükteki kurallarına uygun olarak sağlanabilir. İzin, sözkonusu bireyin kazanç getirici bir işe kabul edilmesi için ispatlamak durumunda olduğu kişisel özellikler, mesleki veya diğer niteliklere ilişkin yasal veya diğer gerekliliklerden muafiyet anlamına gelmeyecektir.

MADDE 7

1. Kazanç getirici işte çalışma izni, izinden faydalanan kişinin bakmakla yükümlü olunan kişi statüsünü kaybetmesi durumunda veya sözleşmeden kaynaklanan yükümlülüklerin tamamlandığı tarihte veya her halükarda izinden faydalanan kişinin bağlı olduğu çalışanın görevinin sona ermesi durumunda hemen sona erer.

2. İznin sona ermesi, Diplomatik İlişkiler ve Konsolosluk İlişkiler Hakkında Viyana Sözleşmeleri tarafından öngörülen üç ayı aşmayan makul tehiri temin eder.

MADDE 8

Bu Anlaşma'nın yorumu veya uygulanması esnasında ortaya çıkabilecek herhangi bir ihtilaf, Taraflarca diplomatik yöntemler aracılığıyla çözümlenir.

MADDE 9

Bu Anlaşma, yürürlüğe girmesi için gerekli ulusal yasal usullerin tamamlandığının Tarafların birbirlerine diplomatik yollarla bildirdikleri son yazılı bildirim alındığı tarihte yürürlüğe girer.

MADDE 10

1. Bu Anlaşma, süresiz olarak yürürlükte kalır ve Tarafların karşılıklı yazılı onay bildiriyle her zaman değiştirilebilir. Değişiklikler 9. maddede belirtilen aynı yasal usul uyarınca yürürlüğe girer.

2. Bu Anlaşma, 6 ay önce yazılı olarak yapılacak bir ihbarla feshedilebilir.

.....'da.....tarihinde Türkçe ve İngilizce dillerinde, ikişer nüsha halinde ve tüm metinler eşit derecede geçerli olmak üzere imzalanmıştır. Yorumda farklılık olması halinde İngilizce metin esas alınır.

TÜRKİYE CUMHURİYETİ
HÜKÜMETİ ADINA
HÜKÜMETİ ADINA

YENİ ZELANDA

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by the Minister of Foreign Affairs