



STATUTORY INSTRUMENTS

**S.I. No. 552 of 2008**



SOCIAL WELFARE (AGREEMENT WITH THE REPUBLIC OF KOREA  
ON SOCIAL SECURITY) ORDER 2008

**(Prn. A8/2005)**

SOCIAL WELFARE (AGREEMENT WITH THE REPUBLIC OF KOREA  
ON SOCIAL SECURITY) ORDER 2008

**WHEREAS** the arrangements in respect of matters relating to social security set out in the Agreement in the Schedule to this Order (hereinafter called “the Agreement”) were made by the Government of Ireland with the Government of the Republic of Korea;

**AND WHEREAS** it is provided in Article 21 that the Agreement will come into force on the first day of the third month following the month in which each Contracting Party shall have received from the other Contracting Party written notification that it has fulfilled all requirements for the entry into force of this Agreement;

**AND WHEREAS** the aforesaid notifications were exchanged in Dublin and Seoul on the 7th and 23rd days of October, 2008 respectively,

**NOW THEREFORE** the Minister for Social and Family Affairs, in exercise of the powers conferred on her by Sections 4 and 287 of the Social Welfare Consolidation Act 2005 (No. 26 of 2005), hereby makes the following Order—

1. This Order may be cited as the Social Welfare (Agreement with the Republic of Korea on Social Security) Order 2008.
2. This Order shall come into force on 1 January 2009.
3. On and from 1 January 2009 the Social Welfare Acts 2005 to 2008 and the regulations made under those Acts insofar as they relate to State pension (contributory), State pension (transition), invalidity pension, widow’s and widower’s (contributory) pension, guardian’s payment (contributory), bereavement grant, and the liability of a person to the payment of employment and self-employment contributions shall be modified to the extent necessary to take account of and give effect to the provisions of the Agreement.

*Notice of the making of this Statutory Instrument was published in  
“Iris Oifigiúil” of 26th December, 2008.*

## SCHEDULE

## AGREEMENT ON SOCIAL SECURITY BETWEEN

## THE GOVERNMENT OF IRELAND

## AND THE GOVERNMENT OF THE REPUBLIC OF KOREA

THE GOVERNMENT OF IRELAND AND THE GOVERNMENT OF THE REPUBLIC OF KOREA (hereinafter referred to as “the Contracting Parties”),

DESIRING to regulate the relationship between their two countries in the field of social security,

HAVE AGREED AS FOLLOWS:

*PART I*

## GENERAL PROVISIONS

**Article 1**  
**Definitions**

1. For the purposes of this Agreement:
  - (a) “National” means, as regards Ireland, a citizen of Ireland, and as regards the Republic of Korea (hereinafter referred to as “Korea”), a national of Korea as defined in the Nationality Law, as amended;
  - (b) “Legislation” means, as regards a Contracting Party, the laws and regulations specified in Article 2 with respect to that Contracting Party;
  - (c) “Competent Authority” means, as regards Ireland, the Minister for Social and Family Affairs, and as regards Korea, the Minister of Health and Welfare;
  - (d) “Agency” means, as regards Ireland, the Department of Social and Family Affairs, and as regards Korea, the National Pension Service;
  - (e) “Period of coverage” means a period of contributions under the legislation of a Contracting Party and any other period taken into account under that legislation for establishing an entitlement to benefits or for calculating the amount of benefits, and
  - (f) “Benefit” means any benefit provided for in the legislation specified in Article 2 of this Agreement.
2. Any term not defined in this Article shall have the meaning assigned to it in the applicable legislation.

**Article 2**  
**Applicable Legislation**

1. This Agreement shall apply to the following legislation:
  - (a) As regards Korea, the National Pension Act and regulations thereto;
  - (b) As regards Ireland,
    - (i) the Social Welfare Acts and regulations made under those Acts as they relate to:
      - a) State pension (contributory)
      - b) State pension (transition)
      - c) widow's (contributory) pension
      - d) widower's (contributory) pension
      - e) invalidity pension
      - f) guardian's payment (contributory)
      - g) bereavement grant: and
      - h) the liability for payment of employment and self-employment contributions;  
and
    - (ii) with respect to Part II of this Agreement only, Section 4 of the Health Contributions Act, 1979.

2. This Agreement shall also apply to future legislation which amends, supplements, consolidates or supersedes the legislation specified in paragraph 1 of this Article. This Agreement shall not apply to future legislation which creates other types of benefits or new categories of beneficiaries, unless the Competent Authorities of the Contracting Parties agree on this application.

3. Unless otherwise provided in this Agreement, the legislation referred to in paragraphs 1 and 2 of this Article shall not include the Regulations on Social Security of the institutions of the European Communities or any treaties or other international agreements on social security that may be concluded between a Contracting Party and a third Party, or legislation promulgated for their specific implementation.

**Article 3**  
**Personal Scope**

This Agreement shall apply to any person who is or who has been subject to the legislation of one or both of the Contracting Parties, and to the dependants and survivors of such a person within the meaning of the applicable legislation of either Contracting Party.

**Article 4**  
**Equality of Treatment**

Unless otherwise provided in this Agreement, nationals of either Contracting Party who reside in the territory of the other Contracting Party shall, in the

application of the legislation of the latter Contracting Party, receive equal treatment with the nationals of that Contracting Party. The foregoing shall also apply to persons deriving rights from those nationals.

**Article 5**  
**Export of Benefits**

1. Unless otherwise provided in this Agreement, any provision of the legislation of a Contracting Party which restricts entitlement to or payment of cash benefits solely because the person resides outside or is absent from the territory of that Contracting Party shall not be applicable to the persons who reside in the territory of the other Contracting Party.

2. Benefits under the legislation of one Contracting Party shall be granted to nationals of the other Contracting Party who ordinarily reside outside the territories of the Contracting Parties under the same conditions as they are granted to the nationals of the first Contracting Party who ordinarily reside outside the territories of the Contracting Parties.

*PART II*

PROVISIONS ON COVERAGE

**Article 6**  
**General Rules**

1. Except as otherwise provided in this Part, a person employed in the territory of a Contracting Party shall, with respect to that employment, be subject only to the legislation of that Contracting Party.

2. Where a person is employed in the territory of both Contracting Parties for the same period, the person shall be subject only to the legislation of the Contracting Party in whose territory the person ordinarily resides.

3. A person who ordinarily resides in the territory of a Contracting Party and who is engaged in self-employment in the territory of the other Contracting Party or in the territories of both Contracting Parties shall, in respect of that self-employment, be subject only to the legislation of the former Contracting Party.

**Article 7**  
**Detached Workers**

1. Where a person, who is normally employed in the territory of one Contracting Party by an employer in that territory, is sent by that employer to a company in the territory of the other Contracting Party, including the employer's affiliated or subsidiary companies, to work on that employer's behalf, only the legislation of the former Contracting Party shall continue to apply with regard to that employment for the first 5 years as though the employee were still employed in the territory of the first Contracting Party. An extension of this period may, however, be agreed upon by the Competent Authorities of both Contracting Parties or the Agencies designated by them.

2. Paragraph 1 of this Article shall apply where a person who has been sent by that person's employer from a Contracting Party to a third Party is subsequently sent by that employer from the third Party to the other Contracting Party.

### **Article 8**

#### **Diplomats, Government Servants and Consular Employees**

1. This Agreement shall not apply to persons who are exempted from the social security law of the Contracting Party in whose territory they are present or resident by virtue of the Vienna Convention on Diplomatic Relations of April 18, 1961, or of the Vienna Convention on Consular Relations of April 24, 1963.

2. Subject to paragraph 1 of this Article, where a person who is employed in the Government Service, or treated as such, or in the local Government Service of one Contracting Party is sent to work in the territory of the other Contracting Party, the legislation of the former Contracting Party shall apply to the person as if the person were employed in its territory.

3. Subject to paragraphs 1 and 2 of this Article, where a person is employed in a diplomatic mission or consular post of one Contracting Party in the territory of the other Contracting Party, or in the private service of a person employed in such a mission or post, the legislation of the former Contracting Party concerning liability for contributions shall apply to the person as if the person were employed in its territory, unless within 6 months of the entry into force of this Agreement, or within 6 months of the beginning of the employment in the territory of the latter Contracting Party, whichever is later, the person chooses with the consent of the person's employer to be insured under the legislation of the latter Contracting Party.

### **Article 9**

#### **Modification Provisions**

The Competent Authorities of the Contracting Parties may, by common agreement, grant an exception to the provisions of this Part with respect to any person or category of persons, provided that any affected person shall be subject to the legislation of one of the Contracting Parties.

### *PART III*

#### PROVISIONS ON BENEFITS

### **Chapter 1**

#### **Benefits under the Legislation of Korea**

### **Article 10**

#### **Totalising and Benefits**

1. If a person has completed a period of coverage of at least 12 months under the legislation of Korea but is not eligible for an old-age or survivors benefit based on periods of coverage credited exclusively under the legislation of Korea,

the Agency of Korea shall take into account the person's periods of coverage credited under the legislation of Ireland for the purpose of establishing the person's entitlement to a benefit under the legislation of Korea.

2. To qualify for a disability or survivors benefit, the requirement of the legislation of Korea that a person be covered when the insured event occurs shall be considered to have been met if the person is insured for a benefit under the legislation of Ireland during a period in which the insured event occurs according to the legislation of Korea. The preceding sentence shall not apply for purposes of establishing entitlement to a disability or survivors benefit unless the person has completed a period of coverage of at least 12 months under the legislation of Korea.

3. In determining eligibility for benefits under this Article, the Agency of Korea shall credit one month of coverage for 4.33 contribution weeks of coverage certified by the Agency of Ireland and any remaining fractions shall be rounded off to the nearest whole number, using only the first decimal. However, no month of coverage shall be credited for any month already credited as a month of coverage under the legislation of Korea. The total number of months of coverage in any one year shall not exceed 12.

4. Where periods of coverage under the legislation of Ireland are taken into account to establish eligibility for an old-age, survivors or disability benefit under the legislation of Korea in accordance with paragraphs 1 and 2 of this Article, the benefit due shall be determined as follows:

- (a) The Agency of Korea shall first compute a theoretical pension amount equal to the amount that would have been payable to the person if all the periods of coverage credited under the legislation of both Contracting Parties had been completed under the legislation of Korea. To determine the theoretical pension amount, the Agency of Korea shall take into account the person's average standard monthly income while covered under the legislation of Korea.
- (b) The Agency of Korea shall calculate the partial benefit to be paid in accordance with the legislation of Korea based on the theoretical pension amount calculated according to the preceding sub-paragraph, in proportion to the ratio between the duration of the periods of coverage taken into consideration under its own legislation and the total duration of the periods of coverage taken into consideration under the legislation of both Contracting Parties.

5. Notwithstanding Article 4, payment of lump-sum refunds to Irish nationals shall be decided in accordance with the legislation of Korea.

6. Provisions of the legislation of Korea restricting the entitlement to the disability or survivors benefit due to unpaid contributions at the time when the person has otherwise qualified for the benefit shall apply to the period covered under the legislation of Korea.

7. For the purposes of the application of paragraphs 1, 2 and 4 of this Article, where a period of coverage completed under the legislation of Korea coincides with a period of coverage under the legislation of Ireland, only the period of coverage under the legislation of Korea shall be taken into account.

## **Chapter 2** **Benefits under the Legislation of Ireland**

### **Article 11** **Totalising and Benefits**

1. Where a person has completed at least 52 contribution weeks of coverage since his or her entry into insurance under the legislation of Ireland but does not have sufficient periods of coverage to satisfy the contribution conditions for entitlement to benefit, the Agency of Ireland shall take into account for the purpose of establishing entitlement to benefit under this Article periods of coverage completed under the legislation of Korea and shall totalise such periods with periods of coverage completed under the legislation of Ireland. The Agency of Ireland shall determine entitlement to benefit on the basis of the totalised periods in accordance with the relevant statutory contribution conditions provided for under the legislation of Ireland.

2. The Agency of Ireland shall calculate the amounts of Irish benefit payable, other than bereavement grant and guardian's payment (contributory), in accordance with the following formula:

- (a) the amount of the theoretical benefit, exclusive of any additional amount or supplement or any increase other than an increase for a qualified adult, which would be payable if all the periods of coverage completed under the legislation of both Contracting Parties had been completed under its own legislation shall be calculated; and
- (b) the proportion of such theoretical benefit which bears the same relation to the whole as the total of the periods of coverage completed by such person under the legislation of Ireland bears to the total of all periods of coverage which the person has completed under the legislation of both Contracting Parties shall then be calculated.

The proportionate amount thus calculated plus any additional amount or supplement or any increase other than an increase for a qualified adult shall be the rate of benefit actually payable to that person by the Agency of Ireland.

3. In the case of bereavement grant and guardian's payment (contributory), the amount of benefit payable shall be determined in accordance with the relevant statutory contribution conditions under the legislation of Ireland.

4. For the purposes of the application of paragraphs 1 and 2 of this Article, where a period of coverage completed under the legislation of Ireland coincides with a period of coverage under the legislation of Korea, only the period of coverage under the legislation of Ireland shall be taken into account.

5. For the purposes of determining the eligibility of a person for a benefit under paragraph 1 of this Article, each month of coverage completed by the person under the legislation of Korea in any contribution year shall be regarded as being the equivalent of 4.33 contribution weeks of coverage and any remaining fractions shall be rounded off to the nearest whole number, using only the first decimal. The total number of contribution weeks of coverage in any one contribution year shall not exceed 52.

6. A period of continuous incapacity for work in accordance with the legislation of Ireland which occurs while the person is resident in Korea shall be deemed to be a continuous period of incapacity for work under the legislation of Ireland for the purpose of determining if a person is permanently incapable of work.

7. In the case of persons who are or have been subject to the legislation of Ireland, the Agency of Ireland shall take into account any periods of coverage of less than 12 months in total completed by such persons under the legislation of Korea—

- (a) for the purposes of applying paragraph 2 of this Article, excepting sub-paragraph (b), or,
- (b) for the purposes of applying paragraph 3 of this Article, notwithstanding the condition for totalisation in paragraph 1 of completion of at least 52 contribution weeks of coverage under the legislation of Ireland,

provided no right to benefit is acquired taking into account these periods by virtue of the provisions of the legislation of Korea.

#### *PART IV*

### MISCELLANEOUS PROVISIONS

#### **Article 12**

##### **Administrative Arrangement**

1. The Competent Authorities of the Contracting Parties shall conclude an Administrative Arrangement that sets out the measures necessary for the implementation of this Agreement.

2. The liaison agencies of each Contracting Party shall be designated in the Administrative Arrangement.

#### **Article 13**

##### **Exchange of Information and Mutual Assistance**

1. The Competent Authorities and Agencies of the Contracting Parties shall, within the scope of their respective authorities:

- (a) communicate to each other, to the extent permitted by the legislation which they administer, any information necessary for the application of this Agreement;
- (b) assist each other with regard to the determination of entitlement to, or payment of, any benefit under this Agreement, or the legislation to which this Agreement applies; and
- (c) communicate to each other, as soon as possible, information concerning the measures taken by them for the application of this Agreement and of any changes in their respective legislation which may affect the application of this Agreement.

2. The assistance referred to in sub-paragraph 1 (b) shall be provided free of charge, subject to any exceptions to be agreed upon by the Competent Authorities of the Contracting Parties in the Administrative Arrangement concluded pursuant to paragraph 1 of Article 12.

#### **Article 14** **Confidentiality of Information**

Unless otherwise required by the national statutes of a Contracting Party, information about an individual which is transmitted in accordance with this Agreement to the Competent Authority or Agency of that Contracting Party by the Competent Authority or Agency of the other Contracting Party shall be used exclusively for purposes of implementing this Agreement and the legislation to which this Agreement applies. Such information received by a Competent Authority or Agency of a Contracting Party shall be governed by the national statutes of that Contracting Party for the protection of privacy and confidentiality of personal data.

#### **Article 15** **Exemption from Fees and Certification of Documents**

1. Where the legislation of a Contracting Party provides that any document which is submitted to the Competent Authority or Agency of that Contracting Party shall be exempted, wholly or partly, from fees or charges, including consular and administrative fees, the exemption shall also apply to corresponding documents which are submitted to the Competent Authority or Agency of the other Contracting Party in the application of this Agreement.

2. Documents and certificates which are presented for purposes of this Agreement may be exempted from requirements for authentication by diplomatic or consular authorities.

3. Copies of documents which are certified as true and exact copies by an Agency of one Contracting Party shall be accepted as true and exact copies by an Agency of the other Contracting Party, without further certification.

**Article 16**  
**Language of Communications**

1. The Competent Authorities and Agencies of the Contracting Parties may correspond directly with each other and with any person, wherever that person may reside, whenever it is necessary to do so for the application of this Agreement or the legislation to which this Agreement applies. The correspondence may be in any official language of either Contracting Party.

2. An application or document may not be rejected by a Competent Authority or an Agency of a Contracting Party solely because it is in an official language of the other Contracting Party.

**Article 17**  
**Submission of Claims, Notices or Appeals**

1. Any claim, notice or appeal concerning the determination or payment of a benefit under the legislation of a Contracting Party which should, for the purposes of that legislation, have been presented within a prescribed period to a Competent Authority or an Agency of that Contracting Party, but which is presented within the same period to the Competent Authority or Agency of the other Contracting Party, shall be treated as if it had been presented to the Competent Authority or Agency of the former Contracting Party.

2. An application for benefit under the legislation of one Contracting Party shall be deemed to be also an application for a corresponding benefit under the legislation of the other Contracting Party provided that the applicant provides information indicating that periods of coverage have been completed under the legislation of the other Contracting Party. The foregoing shall not apply if the applicant explicitly requests that the determination of entitlement to old-age benefit acquired under the legislation of the other Contracting Party be deferred.

3. In any case to which paragraph 1 or 2 of this Article applies, the Competent Authority or Agency to which the claim, notice or appeal has been submitted shall indicate the date of receipt of the document and transmit it without delay to the Competent Authority or Agency of the other Contracting Party.

**Article 18**  
**Payment of Benefits**

1. Cash benefits may be validly paid by an Agency of one Contracting Party to a person residing in the territory of the other Contracting Party in the currency of the former Contracting Party. If cash benefits are paid in the currency of the other Contracting Party, the conversion rate shall be the rate of exchange in effect on the day when cash benefits are paid.

2. In the event that a Contracting Party imposes currency controls or other similar measures that restrict payments, remittance or transfers of funds or financial instruments to persons who are outside that Contracting Party, it shall,

without delay, take appropriate measures to ensure the payment of any amount that must be paid in accordance with this Agreement to persons described in Article 3 who reside in the other Contracting Party.

**Article 19**  
**Resolution of Disagreements**

Any disagreements regarding the interpretation or application of this Agreement shall be resolved, to the extent possible, by consultation between the Competent Authorities of the Contracting Parties.

*PART V*

TRANSITIONAL AND FINAL PROVISIONS

**Article 20**  
**Transitional Provisions**

1. This Agreement shall not establish any right to payment of a benefit for any period before the date of the entry into force of this Agreement.
2. Subject to paragraph 1 of this Article, in determining the right to a benefit under this Agreement, any period of coverage completed before the date of entry into force of this Agreement, and any other relevant events that occurred before that date, shall be taken into consideration. However, the Agency of neither Contracting Party shall be required to take into account periods of coverage which occurred prior to the earliest date for which periods of coverage may be credited under its legislation.
3. Determinations concerning entitlement to benefits which were made before the entry into force of this Agreement shall not affect rights arising under it.
4. Benefits determined before the entry into force of this Agreement may be newly determined upon application if a change results solely from the provisions of this Agreement. If the new determination under the preceding sentence of this paragraph results in no entitlement or in an entitlement to a lesser amount of benefits than that paid for the last period prior to the entry into force of this Agreement, the same amount of benefits as previously paid shall continue to be paid.
5. In applying Article 7 in case of persons who were sent to a Contracting Party prior to the date of entry into force of this Agreement, the periods of employment referred to in that Article shall be considered to begin on that date.

**Article 21**  
**Entry into Force**

This Agreement shall enter into force on the first day of the third month following the month in which each Contracting Party shall have received from

the other Contracting Party written notification that it has fulfilled all requirements for the entry into force of this Agreement.

**Article 22**  
**Period of Duration and Termination**

1. This Agreement shall remain in force and effect until the expiration of one calendar year following the year in which written notice of its termination is given by one Contracting Party to the other Contracting Party.

2. If this Agreement is terminated, rights regarding entitlement to or payment of benefits acquired under it shall be retained. The Contracting Parties shall make arrangements dealing with rights in the process of being acquired.

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

Done in duplicate at Dublin this 31st day of October 2007, in the English and Korean languages, each text being equally authentic.

**Martin Cullen**  
**FOR THE GOVERNMENT OF**  
**IRELAND**

**Taeyong Cho**  
**FOR THE GOVERNMENT OF THE**  
**REPUBLIC OF KOREA**



GIVEN under the Official Seal of the Minister for Social and Family  
Affairs  
16 December 2008

MARY HANAFIN.  
Minister for Social and Family Affairs.

EXPLANATORY NOTE

*(This note is not part of the Instrument and does not purport to be a legal interpretation).*

This Order gives effect to the bilateral Agreement on Social Security made between Ireland and the Republic of Korea which comes into effect from 1 January 2009. The Order provides that the Social Welfare Acts and relevant Regulations will be modified to take account of the provisions of the Agreement.

The Agreement provides that periods of insurance in Ireland and in the Republic of Korea may be taken into account, where necessary, by either State in order to qualify for certain benefits and pensions.

In the case of Ireland the Agreement covers State pension (contributory), State pension (transition), widow's and widower's (contributory) pension, guardian's payment (contributory), invalidity pension and bereavement grant.

The Agreement also contains provisions which allow workers in one State, who are sent temporarily by an employer to work in the territory of the other State, to remain attached to the social security system of the first State for a period up to 5 years.

BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
Le ceannach díreach ón  
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,  
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,  
nó tríd an bpost ó  
FOILSEACHÁIN RIALTAIS, AN RANNÓG POST-TRÁCHTA,  
AONAD 20 PÁIRC MIONDÍOLA COIS LOCHA, CLÁR CHLAINNE MHUIRIS,  
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nó trí aon díoltóir leabhar.

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