



STATUTORY INSTRUMENTS.

S.I. No. 527 of 2010



SOCIAL WELFARE (AGREEMENT WITH THE GOVERNMENT OF
JAPAN ON SOCIAL SECURITY) ORDER 2010

(Prn. A10/1647)

SOCIAL WELFARE (AGREEMENT WITH THE GOVERNMENT OF JAPAN ON SOCIAL SECURITY) ORDER 2010

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 Japan;

AND WHEREAS it is provided in Article 25 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 on the 9th day of September, 2010,

NOW THEREFORE the Minister for Social Protection, in exercise of the powers conferred on him 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 Government of Japan on Social Security) Order 2010.
2. This Order shall come into force on 1 December 2010.
3. On and from 1 December 2010 the Social Welfare Acts 2005 to 2010 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 9th November, 2010.

Schedule

AGREEMENT BETWEEN THE GOVERNMENT OF IRELAND AND
THE GOVERNMENT OF JAPAN ON SOCIAL SECURITY

The Government of Ireland and the Government of Japan, being desirous of regulating their mutual relations in the field of social security, have agreed as follows:

PART I

GENERAL PROVISIONS

Article 1
Definitions

1. For the purpose of this Agreement,
 - (a) “a Contracting State” and “the other Contracting State” mean Ireland or Japan, as the context requires;
 - (b) “national” means,
 - as regards Ireland,
a citizen of Ireland,
 - as regards Japan,
a Japanese national within the meaning of the law on nationality of Japan;
 - (c) “legislation” means,
 - as regards Ireland,
the laws and regulations specified in paragraph 1 of Article 2,
 - as regards Japan,
the laws and regulations of Japan concerning the Japanese pension systems specified in paragraph 2 of Article 2;
 - (d) “competent authority” means,
 - as regards Ireland,
the Minister for Social and Family Affairs,
 - as regards Japan,
any of the Governmental organisations competent for the Japanese pension systems specified in paragraph 2 of Article 2;

(e) “competent institution” means,

as regards Ireland,
the Department of Social and Family Affairs,

as regards Japan,
any of the insurance institutions, or any association thereof, responsible for the implementation of the Japanese pension systems specified in paragraph 2 of Article 2;

(f) “period of coverage” means a period of contribution under the legislation of a Contracting State and any other period taken into account under that legislation for establishing entitlement to benefits.

However, a period which shall be taken into account for the purpose of establishing entitlement to benefits under the legislation of a Contracting State pursuant to other agreements on social security comparable with this Agreement or the Regulations on Social Security for migrant workers of the European Union shall not be included;

(g) “benefit” means a pension or any other cash benefit under the legislation of a Contracting State.

2. For the purpose of this Agreement, any term not defined in this Agreement shall have the meaning assigned to it under the applicable legislation.

3. The headings of Parts, Chapters and Articles of this Agreement are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.

Article 2 Scope of this Agreement

This Agreement shall apply,

1. as regards Ireland, to

(a) the Social Welfare Acts and regulations made under those Acts as they relate to:

(i) state pension (contributory);

(ii) state pension (transition);

(iii) widow’s and widower’s (contributory) pension;

(iv) invalidity pension;

(v) guardian’s payment (contributory);

(vi) bereavement grant; and

- (vii) the liability for payment of employment and self-employment contributions; and
 - (b) future legislation which amends, supplements, consolidates or supersedes the legislation specified in subparagraph (a) of this paragraph. However, this Agreement shall not apply to future legislation which creates other types of benefits or new categories of beneficiaries.
2. as regards Japan, to the following Japanese pension systems:
- (a) the National Pension (except the National Pension Fund);
 - (b) the Employees' Pension Insurance (except the Employees' Pension Fund);
 - (c) the Mutual Aid Pension for National Public Officials;
 - (d) the Mutual Aid Pension for Local Public Officials and Personnel of Similar Status (except the pension system for members of local assemblies); and
 - (e) the Mutual Aid Pension for Private School Personnel;

(the Japanese pension systems specified in (b) to (e) shall hereinafter be referred to as the "Japanese pension systems for employees");

however, for the purpose of this Agreement, the National Pension shall not include the Old Age Welfare Pension or any other pensions which are granted on a transitional or complementary basis for the purpose of welfare and which are payable wholly or mainly out of national budgetary resources.

Article 3 Persons Covered

This Agreement shall apply to a person who is or has been subject to the legislation of a Contracting State, as well as family members or survivors who derive rights from such person.

Article 4 Equality of Treatment

Unless otherwise provided in this Agreement, the persons specified in Article 3 who ordinarily reside in the territory of a Contracting State shall receive equal treatment with nationals of that Contracting State in the application of the legislation of that Contracting State.

However, the foregoing shall not affect the provisions on complementary periods for Japanese nationals on the basis of ordinary residence outside the territory of Japan under the legislation of Japan.

Article 5
Payment of Benefits Abroad

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

However, the foregoing shall not affect the provisions of the legislation of Japan which require a person who is aged 60 or over but under 65 on the date of the first medical examination or of death to reside ordinarily in the territory of Japan for the acquisition of entitlement to the Disability Basic Pension or the Survivors' Basic Pension.

2. Benefits under the legislation of a Contracting State shall be paid to nationals of the other Contracting State who ordinarily reside in the territory of a third country, under the same conditions as if they were nationals of the first Contracting State.

PART II

PROVISIONS CONCERNING THE APPLICABLE LEGISLATION

Article 6
General Provisions

Unless otherwise provided in this Agreement, a person who works as an employee or a self-employed person in the territory of a Contracting State shall, with respect to that employment or self-employment, be subject only to the legislation of that Contracting State.

Article 7
Special Provisions

1. Where a person who is covered under the legislation of a Contracting State and employed in the territory of that Contracting State by an employer with a place of business in that territory is sent by that employer, either from that territory or from a territory of a third country, to work on that employer's behalf in the territory of the other Contracting State, the employee shall be subject only to the legislation of the first Contracting State as if that employee were working in the territory of the first Contracting State, provided that the period of such detachment is not expected to exceed five years.

2. If the detachment referred to in paragraph 1 of this Article continues beyond five years, the competent authorities or the competent institutions of both Contracting States may agree that the employee remains subject only to the legislation of the first Contracting State.

3. Where a person who is covered under the legislation of a Contracting State and who ordinarily works as a self-employed person in the territory of that

Contracting State works temporarily as a self-employed person only in the territory of the other Contracting State, that person shall be subject only to the legislation of the first Contracting State as if that person were working in the territory of the first Contracting State, provided that the period of the self-employed activity in the territory of the other Contracting State is not expected to exceed five years.

4. If the self-employed activity in the territory of the other Contracting State referred to in paragraph 3 of this Article continues beyond five years, the competent authorities or the competent institutions of both Contracting States may agree that the self-employed person remains subject only to the legislation of the first Contracting State.

Article 8

Employees on Board a Sea-Going Vessel or on an Aircraft

1. Where the legislation of both Contracting States would otherwise apply to a person who works as an employee on board a sea-going vessel flying the flag of a Contracting State, that person shall be subject only to the legislation of that Contracting State.

Notwithstanding the foregoing, that person shall be subject only to the legislation of the other Contracting State if that person is employed by an employer with a place of business in the territory of the other Contracting State, provided that that person is not a resident of the first Contracting State.

2. A person who works as an employee on an aircraft in international traffic shall, with respect to that employment, be subject only to the legislation of the Contracting State in whose territory the employer is located.

Article 9

Members of Diplomatic Missions, Members of Consular Posts and Civil Servants

1. This Agreement shall not affect the provisions of the Vienna Convention on Diplomatic Relations of April 18, 1961, or the Vienna Convention on Consular Relations of April 24, 1963.

2. Subject to paragraph 1 of this Article, where any civil servant of a Contracting State or any person treated as such in the legislation of that Contracting State is sent to work in the territory of the other Contracting State, that person shall be subject only to the legislation of the first Contracting State as if that person were working in the territory of the first Contracting State.

Article 10

Exceptions to Articles 6 to 9

At the request of an employee and an employer or a self-employed person, the competent authorities or the competent institutions of both Contracting States may agree to grant an exception to Articles 6 to 9 in the interest of particular persons or categories of persons, provided that such persons or

categories of persons shall be subject to the legislation of one of the Contracting States.

Article 11
Accompanying Spouse and Children

As regards the accompanying spouse or children of a person who works in the territory of Japan and who is subject to the legislation of Ireland in accordance with Article 7 or paragraph 2 of Article 9 or Article 10,

- (a) in cases in which the accompanying spouse or children are persons other than Japanese nationals, the legislation of Japan shall not apply to them. However, when the accompanying spouse or children so request, the foregoing shall not apply; and
- (b) in cases in which the accompanying spouse or children are Japanese nationals, the exemption from the legislation of Japan shall be determined in accordance with the legislation of Japan.

Article 12
Compulsory Coverage

Articles 6 to 8, paragraph 2 of Article 9 and Article 11 shall apply only to compulsory coverage under the legislation of each Contracting State.

PART III

PROVISIONS CONCERNING BENEFITS

Chapter 1

Provisions concerning Irish Benefits

Article 13
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 satisfy the contribution conditions for entitlement to benefit, the competent institution 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 Japan insofar as they do not coincide with periods of coverage under the legislation of Ireland as if such periods were completed under the legislation of Ireland and shall totalise such periods with periods of coverage completed under the legislation of Ireland. The competent institution of Ireland shall determine entitlement to benefit on the basis of the totalised periods in accordance with the relevant statutory contribution conditions under the legislation of Ireland.

2. The competent institution 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 States 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 States 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 amount of benefit payable to that person by the competent institution 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 determining the eligibility of a person for a benefit under paragraph 1 of this Article, 1 month of coverage under the legislation of Japan will be treated as equivalent to 4.33 weeks of contribution under the legislation of Ireland. A fraction of a week which results from such calculation will be rounded up to the next whole number, provided that the total number of contribution weeks of coverage in any one contribution year shall not exceed 52.

Chapter 2

Provisions concerning Japanese Benefits

Article 14 Totalisation

1. Where a person does not have sufficient periods of coverage to fulfil the requirement for entitlement to Japanese benefits, the competent institution of Japan shall take into account, for the purpose of establishing entitlement to those benefits under this Article, the periods of coverage under the legislation of Ireland insofar as they do not coincide with the periods of coverage under the legislation of Japan.

However, the foregoing shall not apply to the additional pension for specified occupations under the mutual aid pensions and the lump-sum payments equivalent to the refund of contributions.

2. In applying paragraph 1 of this Article,

- (a) the competent institutions of Japan shall credit, in each calendar year, one month of periods of coverage for every 4.33 weeks which is credited in that year under the legislation of Ireland and certified by the competent institution of Ireland and any remaining fractions shall be rounded up to the next whole number. Periods of coverage to be credited by the competent institutions of Japan, the unit of which is a month, shall be allocated in chronological order starting with the first month of the calendar year, except for the months that are already credited as periods of coverage under the legislation of Japan. However, the months of periods of coverage shall be allocated in the reverse order starting with the last month of the calendar year if this is necessary to establish entitlement to a benefit under the legislation of Japan. The total number of months of periods of coverage to be allocated under the provision of this subparagraph and the months that are already credited as periods of coverage under the legislation of Japan shall not exceed twelve in a calendar year; and
- (b) the periods of coverage under the legislation of Ireland shall be taken into account as periods of coverage under the Japanese pension systems for employees and as corresponding periods of coverage under the National Pension.

Article 15

Special Provisions concerning Disability Benefits and Survivors' Benefits

1. Where the legislation of Japan requires for entitlement to disability benefits or survivors' benefits (except the lump-sum payments equivalent to the refund of contributions) that the date of the first medical examination or of death lies within specified periods of coverage, this requirement shall be deemed to be fulfilled for the purpose of establishing entitlement to those benefits if such a date lies within the periods of coverage under the legislation of Ireland.

However, if entitlement to disability benefits or survivors' benefits (except the lump-sum payments equivalent to the refund of contributions) under the National Pension is established without applying this Article, this Article shall not be applied for the purpose of establishing entitlement to disability benefits or survivors' benefits (except the lump-sum payments equivalent to the refund of contributions) based on the same insured event under the Japanese pension systems for employees.

2. In applying paragraph 1 of this Article, as regards a person who possesses periods of coverage under two or more Japanese pension systems for employees, the requirement referred to in that paragraph shall be deemed to be fulfilled for one of those pension systems in accordance with the legislation of Japan.

Article 16

Calculation of the Amount of Benefits

1. Where entitlement to a Japanese benefit is established by virtue of paragraph 1 of Article 14 or paragraph 1 of Article 15, the competent institution of

Japan shall calculate the amount of that benefit in accordance with the legislation of Japan, subject to paragraphs 2 to 5 of this Article.

2. With regard to the Disability Basic Pension and other benefits, the amount of which is a fixed sum granted regardless of the period of coverage, if the requirements for receiving such benefits are fulfilled by virtue of paragraph 1 of Article 14 or paragraph 1 of Article 15, the amount to be granted shall be calculated according to the proportion of the sum of the periods of contribution and the premium-exempted periods under the pension system from which such benefits will be paid to the sum of those periods of contribution, those premium-exempted periods and the periods of coverage under the legislation of Ireland.

3. With regard to disability benefits and survivors' benefits under the Japanese pension systems for employees, insofar as the amount of those benefits to be granted is calculated on the basis of the specified period determined by the legislation of Japan when the periods of coverage under those systems are less than that specified period, if the requirements for receiving such benefits are fulfilled by virtue of paragraph 1 of Article 14 or paragraph 1 of Article 15, the amount to be granted shall be calculated according to the proportion of the periods of coverage under the Japanese pension systems for employees to the sum of the periods of coverage and the periods of coverage under the legislation of Ireland. However, when the sum of the periods of coverage exceeds that specified period, that sum of the periods of coverage shall be regarded as equal to that specified period.

4. With regard to the calculation of the amount of benefits under the Japanese pension systems for employees in accordance with paragraphs 2 and 3 of this Article, if the person entitled to the benefits possesses periods of coverage under two or more such pension systems, the periods of contribution under the pension system from which such benefits will be paid referred to in paragraph 2 of this Article or the periods of coverage under the Japanese pension systems for employees referred to in paragraph 3 of this Article shall be the sum of the periods of coverage under all such pension systems. However, when the sum of the periods of coverage equals or exceeds the specified period determined by the legislation of Japan within the meaning of paragraph 3 of this Article, the method of calculation stipulated in paragraph 3 of this Article and this paragraph shall not apply.

5. With regard to the Additional Pension for Spouses which is included in the Old-age Employees' Pension and any other benefits that may be granted as a fixed sum in cases where the periods of coverage under the Japanese pension systems for employees equal or exceed the specified period determined by the legislation of Japan, if the requirements for receiving such benefits are fulfilled by virtue of paragraph 1 of Article 14, the amount to be granted shall be calculated according to the proportion of the periods of coverage under the Japanese pension systems for employees from which such benefits will be paid to that specified period.

PART IV

MISCELLANEOUS PROVISIONS

Article 17

Administrative Collaboration

1. The competent authorities of both Contracting States shall:
 - (a) agree on the administrative arrangements necessary for the implementation of this Agreement;
 - (b) designate liaison agencies for the implementation of this Agreement; and
 - (c) communicate to each other, as soon as possible, all information about changes to their respective legislation insofar as those changes affect the implementation of this Agreement.
2. The competent authorities and competent institutions of both Contracting States, within the scope of their respective authorities, shall provide any assistance necessary for the implementation of this Agreement. This assistance shall be provided free of charge.

Article 18

Transmission and Confidentiality of Information

1. The competent authorities or competent institutions of a Contracting State shall, in accordance with its laws and regulations, transmit to the competent authorities or competent institutions of the other Contracting State information about an individual collected under the legislation of that Contracting State insofar as that information is necessary for the implementation of this Agreement. Unless otherwise required by the laws and regulations of that other Contracting State, that information shall be used exclusively for the purpose of implementing this Agreement.
2. Upon the request of a competent authority or competent institution of a Contracting State, the competent authorities or competent institutions of the other Contracting State may transmit, in accordance with the legislation and other relevant laws and regulations of that Contracting State, information about an individual other than that referred to in paragraph 1 of this Article collected under the legislation of that Contracting State to the competent authorities or competent institutions of the first Contracting State insofar as it is necessary for the implementation of the legislation of that Contracting State. Unless otherwise required by the laws and regulations of the first Contracting State, that information shall be used exclusively for the purpose of implementing that legislation of that Contracting State.
3. Information referred to in paragraph 1 and 2 of this Article received by a Contracting State shall be governed by the laws and regulations of that Contracting State for the protection of confidentiality of personal data.

Article 19
Charges or Fees and Legalisation

1. Insofar as the legislation and other relevant laws and regulations of a Contracting State contain provisions on an exemption or reduction of administrative charges or consular fees for documents to be submitted under the legislation of that Contracting State, those provisions shall also apply to documents to be submitted in the application of this Agreement and the legislation of the other Contracting State.
2. Documents which are presented for the purpose of this Agreement and the legislation of a Contracting State shall not require legalisation or any other similar formality by diplomatic or consular authorities.

Article 20
Communications between the Contracting States

1. The competent authorities and competent institutions of the Contracting States may communicate directly with each other and with any concerned person wherever the 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 communication may be in any of the respective languages of the Contracting States.
2. In implementing this Agreement, the competent authorities and competent institutions of a Contracting State may not reject applications or any other documents for the reason that they are written in any of the languages of the other Contracting State.

Article 21
Submission of Applications, Appeals and Declarations

1. When a written application for benefits, an appeal or any other declaration under the legislation of a Contracting State is submitted to a competent authority or competent institution of the other Contracting State which is competent to receive similar applications, appeals or declarations under the legislation of that other Contracting State, that application for benefits, appeal or declaration shall be deemed to be submitted on the same date to the competent authority or competent institution of the first Contracting State and shall be dealt with according to the procedure and legislation of the first Contracting State.
2. The competent authority or competent institution of a Contracting State shall send the application for benefits, appeal or any other declaration submitted in accordance with paragraph 1 of this Article to the competent authority or competent institution of the other Contracting State without delay.

Article 22
Payment of Benefits

Payments of benefits under this Agreement may be made in the currency of either Contracting State.

Article 23
Resolution of Disagreements

Any disagreement regarding the interpretation or application of this Agreement shall be resolved by consultation between the authorities concerned of the Contracting States.

PART V

TRANSITIONAL AND FINAL PROVISIONS

Article 24
Transitional Provisions

1. This Agreement shall not establish any entitlement to benefits for any period prior to its entry into force.
2. In the implementation of this Agreement, periods of coverage completed before its entry into force as well as other legally relevant events occurring before its entry into force shall also be taken into account.
3. In applying paragraph 1 or 3 of Article 7, in the case of a person who has been working in the territory of a Contracting State prior to the entry into force of this Agreement, the period of detachment or self-employed activity referred to in paragraph 1 or 3 of Article 7 shall be considered to begin on the date of entry into force of this Agreement.
4. Decisions made before the entry into force of this Agreement shall not affect any rights to be established by virtue of this Agreement.
5. The application of this Agreement shall not, for a beneficiary, result in any reduction in the amount of benefits to which entitlement was established before the entry into force of this Agreement.
6. Where an application for benefit, or for a revised determination in accordance with this Article, is made within two years from the date of entry into force of this Agreement, any right arising from the implementation of this Agreement shall be acquired on that date or on the earliest relevant date thereafter. If the application is made after two years from the date of entry into force of this Agreement, the date of effect of the determination will be subject to the legislation of the relevant Contracting State.

Article 25
Entry into Force

This Agreement shall enter into force on the first day of the third month following the month in which the Contracting States shall have completed an exchange of diplomatic notes informing each other that their respective constitutional requirements necessary for the entry into force of this Agreement have been fulfilled.

Article 26
Duration and Termination

1. This Agreement shall remain in force for an indefinite period. Either Contracting State may give to the other Contracting State, through diplomatic channels, written notice of termination of this Agreement. In that event, this Agreement shall remain in force until the last day of the twelfth month following the month in which the termination was notified.

2. If this Agreement is terminated in accordance with paragraph 1 of this Article, rights regarding entitlement to and payment of benefits acquired under this Agreement shall be retained, in respect of a person who submits an application for those benefits and who fulfils the requirements for entitlement to those benefits prior to the date of termination.

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

Done in duplicate at Dublin this 29th day of October 2009, in the English and Japanese languages, each text being equally authentic.

MARY HANAFIN T.D

URABE TOSHINAO

FOR THE GOVERNMENT OF
IRELAND

FOR THE GOVERNMENT OF
JAPAN



GIVEN under the Official Seal of the Minister for Social Protection,
5 November 2010.

ÉAMON Ó CUÍV,
Minister for Social Protection.

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 Japan which comes into effect from 1 December 2010. 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 Japan 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,
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