



TREATY SERIES 2000

NO. 6

**AGREEMENT BETWEEN IRELAND AND THE SWISS CONFEDERATION
ON SOCIAL SECURITY**

**Signed at Dublin on 11 December 1997
Exchange of letters re entry into force
dated 21 April 1999 and 28 April 1999 respectively**

ENTERED INTO FORCE ON 1 JULY 1999

**L Aid Before Dáil Éireann by
The Minister for Foreign Affairs**

PN. No. 8408

Price £2. 40

**Agreement between Ireland and the Swiss Confederation
on Social Security**

The Government of Ireland and the Swiss Federal Council guided by the wish to regulate relations between their two countries in the field of Social Security have agreed to conclude the following Agreement:

Part I

General Provisions

Article 1

1. In this Agreement the following definitions shall apply:

- a. "Contracting States"
Ireland and the Swiss Confederation;
- b. "national"
with reference to Ireland, an Irish national, with reference to Switzerland, a Swiss national ;
- c. "other persons"
with reference to Ireland, citizens of third States, who are insured persons as in (1);
- d. "legislation"
the laws and regulations of the Contracting States as listed in Article 2;
- e. "competent authority"
with reference to Ireland, the Department of Social, Community and Family Affairs,
with reference to Switzerland, the Federal Social Insurance Office;
- f. "competent institution"
the establishment or authority which has the task of implementing the legislation designated by Article 2;
- g. "insurance periods"
with reference to Switzerland, the contribution periods, periods of gainful activity or periods of domicile, as well as equivalent periods which are determined or recognized as insurance periods under Swiss legislation;

with reference to Ireland, a period in respect of which qualifying contributions have been paid or a period in respect of which qualifying contributions have been treated as paid or credited and which has been or can be used to acquire the right to benefit under the Irish legislation;

h. "cash benefit" or "pension"

a cash benefit or pension provided for in the laws specified in Article 2, including where appropriate, all supplements and increases;

i. "reside"

stay ordinarily;

j. "domicile"

within the meaning of the Swiss Civil Code, the place in which a person is staying with the intention of permanent stay;

k. "gainful activity"

with reference to Ireland, an insurable employment or insurable self-employment, within the meaning of the Social Welfare (Consolidation) Act 1993;

l. "insured person"

with reference to Ireland, a person who is in insurable employment or insurable self-employment or a voluntary contributor within the meaning of the Social Welfare (Consolidation) Act 1993;

m. "refugee"

a refugee as defined by the Convention on the Status of Refugees of 28 July 1951 and the Protocol of 31 January 1967 to that Convention;

n. "stateless person"

a stateless person as defined by the Convention on the Status of Stateless Persons of 28 September 1954;

o. "family members and survivors"

with reference to Switzerland, a family member and survivor, whose rights are derived from a national of one Contracting State, from a refugee or from a stateless person;

with reference to Ireland, a widow, a widower, a spouse, an adult dependant and a child dependant within the meaning of the applicable legislation;

p. "invalidity"

with reference to Switzerland, invalidity in the meaning of the Federal Act on invalidity insurance;

q. "sickness benefit"

with reference to Ireland, means disability benefit.

2. Any other expression used in this Agreement shall have the meaning assigned to it in the applicable legislation.

Article 2

1. This Agreement shall apply:

A. in Switzerland

- a. to the Federal Act on old-age and survivors' insurance,
- b. to the Federal Act on invalidity insurance,
- c. to the Federal Act on Sickness Insurance in relation to Articles 3, 11 and 18-32 of this Agreement;

B. in Ireland

to the Social Welfare (Consolidation) Acts 1993 to 1997 and the regulations made thereunder to the extent that they provide for and apply to:

- a. old-age (contributory) pension,
- b. retirement pension,
- c. survivors (contributory) pension,
- d. orphans' (contributory) allowance,
- e. invalidity pension and
- f. the liability to pay employment or self-employment contributions while employed or self-employed outside of the State.

2. This Agreement shall also apply to all laws and regulations which amend, supplement, consolidate or supersede, the legislation specified in paragraph 1.

3. This Agreement shall also apply to any laws and regulations which provide for additional schemes of Social Security only where such application is expressly agreed by the Contracting States.

4. Subject to paragraph 3 this Agreement shall apply to laws and regulations which extend the legislation of one Contracting State to new categories of beneficiaries only if, following written notification of same, no objection on the part of the other Contracting State has been communicated to the former Contracting State within six months from the coming into force of the said laws or regulations.

5. This Agreement shall not affect the Regulations on Social Security of the European Union or any other treaties or other international agreements concluded between a Contracting State and a third State, or laws or regulations promulgated for their specific implementation.

Article 3

1. Subject to the following paragraphs, this Agreement shall apply to the nationals of the Contracting States as well as to their family members and their survivors.

2. This Agreement shall also apply to refugees, to stateless persons and to

- a. their family members,
- b. their survivors

who reside in the territory of a Contracting State. More favourable national provisions shall not be affected.

3. As regards Switzerland, with reference to Articles 5, 6 paragraphs 1-3, 7 paragraphs 3 and 4, 8 paragraph 2, 9-11 and 17-27, this Agreement shall also apply to persons other than those specified in paragraphs 1 and 2.

4. As regards Ireland, this Agreement shall also apply to persons other than those specified in paragraphs 1 and 2.

Article 4

1. Unless provided otherwise by this Agreement, nationals of one Contracting State as well as their family members and survivors shall, in the application of the legislation of the other Contracting State, receive equal treatment with the nationals of that State or their family members or survivors, as the case may be.

2. Paragraph 1 shall not apply to Swiss legislation,

a. on the voluntary old age, survivors' and invalidity insurance of Swiss nationals residing abroad;

b. on old-age, survivors' and invalidity insurance of Swiss nationals who are gainfully occupied abroad (excluding Ireland) in the service of the Swiss Confederation or of institutions designated by the Federal Council;

c. on assistance benefits for Swiss nationals resident abroad.

Part II

Legislation applicable

Article 5

Unless provided otherwise by Articles 6-9, the applicable legislation is that of the Contracting State in which the gainful activity takes place.

Article 6

1. The employees of an undertaking registered in the territory of one Contracting State who are temporarily posted by that undertaking to the territory of the other Contracting State, shall for the first 24 months remain subject to the legislation of the Contracting State in whose territory the undertaking is registered. However, if the time required to complete the work exceeds 24 months, the legislation of the first Contracting State may continue to apply provided that the competent authorities of both Contracting States give their approval.
2. The employees of a transport undertaking registered in the territory of one Contracting State who are employed in the territory of both Contracting States shall be subject to the legislation of the Contracting State in whose territory the undertaking is registered, as if they were employed only there. If, however, such an employee resides in the territory of the other Contracting State and is not subject to paragraph 1, or if he is permanently employed there by a branch or permanent representation of that undertaking, he shall be subject to the legislation of that Contracting State.
3. The employees of a public service or public corporation who are posted by one Contracting State to the territory of the other Contracting State shall be subject to the legislation of the Contracting State which posted them.
4. Nationals of one of the Contracting States who are members of the crew of a sea-going vessel flying the flag of a Contracting State shall be insured in accordance with the legislation of that Contracting State.

Article 7

1. Nationals of one Contracting State who are posted by that State to the territory of the other Contracting State as members of a diplomatic mission or a consular post shall be subject to the legislation of the first Contracting State.
2. The Nationals of one Contracting State who are appointed in the territory of the other Contracting State to provide services at a diplomatic mission or a consular post of the first Contracting State shall be insured in accordance with the legislation of the second Contracting State. Within three months after the commencement of their employment or after the entry into force of this Agreement they may opt for the legislation of the first Contracting State to be applicable.
3. Paragraph 2 applies accordingly to:
 - a. nationals of third States being employed in the territory of one Contracting State by a diplomatic mission or a consular post of the other Contracting State;
 - b. nationals of one Contracting State and nationals of third States being employed in the territory of the other Contracting State in the private service of a national of the first Contracting State referred to in paragraphs 1 and 2.
4. If a diplomatic mission or a consular post of one Contracting State employs in the territory of the other Contracting State persons who are insured in accordance with the legislation of the latter Contracting State, it shall perform the obligations which are generally imposed on employers by the legislation of the latter Contracting State. This applies accordingly to nationals mentioned in paragraph 1 or 2 employing persons in their personal service.
5. Paragraphs 1-4 shall not apply to the honorary members of consular posts or their employees.

Article 8

1. Irish nationals being employed in the territory of Switzerland by a diplomatic mission or a consular post of a third State, who are not insured either in accordance with the legislation of this State nor in accordance with the Irish legislation, shall be insured in the Swiss old-age, survivors' and invalidity insurance.
2. Paragraph 1 applies accordingly to the spouse and the children of the persons mentioned in that paragraph and residing with them in the territory of Switzerland, provided that they are not already insured in accordance with the Swiss legislation.

Article 9

The competent authorities of both Contracting States may, by mutual agreement, agree on derogations to Articles 5-7.

Article 10

1. Where in application of Articles 6, 7 or 9 a person remains subject to the legislation of one Contracting State while he is gainfully occupied in the territory of the other Contracting State, the same applies to the spouse and the children of this person residing with that person in the territory of the latter Contracting State, provided that they are not gainfully occupied themselves in the territory of this State.

2. Where in application of paragraph 1 the Swiss legislation applies to the spouse and the children, they are insured in the Swiss old-age, survivors' and invalidity insurance.

Part III

Special Provisions

Chapter 1

Sickness and maternity

Article 11

1. Where a person moves his residence or his gainful activity from Ireland to Switzerland and takes out an insurance with resultant daily sickness cash benefit with a Swiss insurer within a period not longer than three months after terminating his affiliation to the Irish insurance for sickness benefit, the periods completed in the said Irish insurance shall be taken into account for the acquirements of benefits.

2. As to daily cash benefits in the case of maternity, insurance periods shall be taken into account as mentioned in paragraph 1 on condition that the insured person has been affiliated to a Swiss insurer for at least three months.

Chapter 2

Invalidity, old-age and death

A. Application of Swiss legislation

Article 12

1. Irish nationals, who, immediately prior to eligibility for rehabilitation measures have been liable to pay contributions to the Swiss old-age, survivors' and invalidity insurance, shall be entitled to such measures as long as they stay in Switzerland. Article 13 paragraph 1 sub paragraph a applies by analogy.

2. Irish nationals, who, immediately prior to eligibility for rehabilitation measures have not been liable to pay contributions to the Swiss old age, survivors' and invalidity insurance, but nevertheless have been insured under this insurance, shall be entitled to such measures as long as they are domiciled in Switzerland, if, immediately prior to eligibility for the measures they have resided in Switzerland without interruption for at least one year. Minor children shall moreover also be entitled to such measures if they reside in Switzerland and if they have either been born disabled there or have resided there without interruption since birth.

3. Irish nationals residing in Switzerland who leave Switzerland for a period not exceeding three months shall not be deemed to have interrupted their residence in Switzerland within the meaning of paragraph 2.

4. A child born disabled in Ireland to a mother who stayed there for not more than two months before the birth shall be treated as a child born disabled in Switzerland. In the case of a congenitally handicapped child, Swiss invalidity insurance shall also be responsible for meeting expenses incurred in Ireland during the first three months after the birth to the same extent as it would have been required to meet these in Switzerland.

5. Paragraph 4 shall apply by analogy to a child born outside the territory of the Contracting States; in such a case, Swiss invalidity insurance shall be responsible for meeting expenses incurred in a third State only if the measures had to be awarded there on an emergency basis due to the state of health of the child.

Article 13

1. For the purpose of entitlement to ordinary pensions under Swiss legislation on invalidity insurance, Irish nationals shall also be considered as insured within the meaning of this legislation:

- a. for one year after the interruption of work resulting in invalidity, and where they have given up their gainful activity in Switzerland due to an accident or illness and whose invalidity has been determined in Switzerland; these persons must continue to pay contributions to Swiss old-age, survivors' and invalidity insurance as if they had their domicile in Switzerland; or
 - b. if after having given up their gainful activity in Switzerland they receive rehabilitation measures provided by the Swiss invalidity insurance; they shall be subject to pay contributions to Swiss old-age, survivors' and invalidity insurance.
2. Where paragraph 1 is not applicable, Irish nationals shall also be considered as insured within the meaning of Swiss legislation if, on the date the insured event occurs they are insured by the Irish Social Welfare Acts.

Article 14

1. If an Irish national or his survivor who does not reside in Switzerland is entitled to an ordinary partial pension under the Swiss old-age and survivors' insurance which is equal to not more than one-tenth of the corresponding ordinary full pension, he shall be granted instead of the partial pension, a once-off indemnity equal to the cash equivalent of the pension payable under Swiss legislation when the insured event occurs. If an Irish national or his survivor, who received such a partial pension, permanently leaves Switzerland, he shall also be granted an appropriate indemnity which corresponds to the capitalised value of that pension at the time of departure.
2. If the ordinary partial pension is equivalent to more than one-tenth but not more than one fifth of the corresponding ordinary full pension, an Irish national or his survivor who does not reside in Switzerland or who is permanently leaving Switzerland may opt between having the pension paid or an indemnity. This option shall be made during the course of the procedure to determine the pension if the entitled person is staying outside Switzerland when the insured event occurs, or when leaving the country, if he already received a pension in Switzerland.
3. Once the once-off indemnity has been paid out by the Swiss insurance no further claims can be asserted against that insurance in respect of contributions paid to it before.
4. Paragraphs 1-3 shall apply by analogy to ordinary pensions of the Swiss invalidity insurance provided that the person, who has entitlement, has achieved the age of 55 years and the Swiss insurance doesn't provide for any further verification of the fulfilment of the conditions concerning the invalidity of that person.
5. Notwithstanding paragraphs 1-4, the competent Irish institution shall, for the purpose of applying Article 16, take into account insurance periods completed under Swiss legislation.

Article 15

1. Irish nationals shall be entitled to receive extraordinary pensions under Swiss old-age, survivors' and invalidity insurance under the same conditions as Swiss nationals as long as they are domiciled in Switzerland, and if, immediately before the date from which they claim the pension they have resided in Switzerland for a continuous period of not less than:
 - a. ten years in the case of an old-age pension;
 - b. five years in the case of a survivors' pension, an invalidity pension or an old-age pension which replaces an invalidity or survivors' pension.
2. For the purpose of paragraph 1:
 - a. no account shall be taken of any period during which the persons concerned were exempted of the Swiss old-age, survivors' and invalidity insurance;
 - b. a period of residence in Switzerland shall not be regarded as interrupted if the absence from Switzerland is not more than three months in any calendar year. The period of three months may be extended in exceptional cases.
3. Indemnities in accordance with Article 14 paragraphs 1, 2 or 4 shall not prevent the granting of extraordinary pensions in accordance with paragraph 1. However, in such cases, the indemnity paid out shall be deducted from the amount of pensions to be paid out.

B. Application of Irish legislation

Article 16

1. Where a person has completed at least fifty-two contribution weeks under Irish legislation but does not have sufficient qualifying contributions to satisfy the contribution conditions for entitlement to benefits under that legislation, the competent Irish institution shall take into account for the purpose of establishing entitlement to benefits insurance periods completed under Swiss legislation and shall determine:

a. the amount of the theoretical benefit which would be payable if all the periods of coverage completed under the legislation of both Contracting States had been completed under Irish legislation, and

b. the portion 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 Irish legislation bears to the total of all periods of coverage which the person has completed under the laws of both Contracting States.

The proportionate amount thus calculated shall be the rate of benefit actually payable by the competent Irish institution.

2. For purpose of paragraph 1:

a. where a compulsory or voluntary insurance period completed under Irish legislation coincides with an insurance period based on gainful activity completed under Swiss legislation, only insurance periods under Irish legislation shall be taken into account; and

b. where a period in respect of which contributions have been credited under Irish legislation coincides with an insurance period based on gainful activity completed under Swiss legislation, the credited period under Irish legislation shall not be taken into account.

Article 17

For the application of Article 16 the following rules shall apply:

where insurance periods under Swiss legislation expressed in months are being converted into insurance periods under Irish legislation expressed in weeks, one month shall be the equivalent of 26 days and each six days shall be the equivalent of one week.

Part IV

Miscellaneous Provisions

Article 18

The competent authorities:

- a. shall make the necessary administrative arrangements required to apply this Agreement;
- b. shall notify each other about the measures taken to implement this Agreement;
- c. shall notify each other about all changes to their legislation which may effect the scope and application of this Agreement;
- d. shall designate liaison bodies to facilitate the application of this Agreement.

Article 19

1. When implementing this Agreement, the competent authorities, courts and institutions of the Contracting States shall assist each other as if they were applying their own legislation. Assistance shall as a rule be free of charge; the competent authorities may, however, mutually agree to reimburse certain costs.
2. When assessing the degree of invalidity the institutions of each Contracting State may, where appropriate, take account of information and medical reports provided by the institutions of the other Contracting State. They shall, however, retain the right to have the insured person examined by a doctor of their choice.

Article 20

1. In no case shall the provisions of this Agreement be construed so as to impose on the competent institution of a Contracting State the obligation:
 - a. to carry out administrative measures at variance with the laws or administrative practice of that Contracting State or the other Contracting State; or
 - b. to supply details which are not obtainable under its laws.

2. Unless disclosure is required under the laws of a Contracting State, any information about an individual which is transmitted in accordance with this Agreement to the competent authority or an institution of that Contracting State by the competent authority or an institution of the other Contracting State is confidential and shall be used only for the purposes of implementing the Agreement and the legislations to which the Agreement applies.

Article 21

1. Any reduction in or exemption from fees or stamp duties for certificates and documents provided for in the legislation of one Contracting State with respect to the issuing of a certificate or document required in accordance with that legislation, shall be extended to the correspondent certificates or documents required in accordance with the legislation of the other Contracting State or pursuant to this Agreement.

2. Certificates and documents which are to be produced for the purposes of applying this Agreement shall not require diplomatic or consular authentication.

Article 22

1. The competent authorities, courts and institutions of a Contracting State may not refuse to deal with requests or take account of other documents because they have been drawn up in an official language of the other Contracting State.

2. When applying this Agreement the authorities, courts and institutions of the Contracting States may correspond directly with each other and with the persons affected by this Agreement or their representatives in their official languages.

Article 23

1. A claim submitted to a competent institution in the territory of a Contracting State for a benefit in accordance with the legislation of that Contracting State shall also be deemed to be an application for a corresponding benefit in accordance with the legislation of the other Contracting State. This shall not apply if the claimant declares that the determination of a benefit pursuant to the legislation of a Contracting State is deferred in the case of age.

2. The date of receipt of a claim in accordance with paragraph 1 shall be deemed to be the date on which the claim was recorded under the legislation of the first Contracting State.

Article 24

Petitions, declarations and appeals which are, in accordance with the legislation of a Contracting State, to be submitted to an appeals officer, an administrative authority, a court or a social insurance institution of that Contracting State by a prescribed period shall be deemed to have been submitted on time if they are submitted to a corresponding appeals officer, authority, court or institution or appeals officer of the other Contracting State by that period.

Article 25

1. Payments of cash benefits under this Agreement shall be made in the currency of the Contracting State whose institutions have to make the payments.
2. If a competent institution has to make payments to a competent institution of the other Contracting State, such payments shall be made in the currency of the latter Contracting State.
3. Should a Contracting State make provisions to restrict foreign exchange operations, that Contracting State shall immediately adopt measures forthwith to secure the transfer of amounts owed by both sides pursuant to this Agreement.

Article 26

If a competent institution of a Contracting State has overpaid cash benefits to any person under this Agreement the amount of the overpayment may be deducted in favour of that competent institution from a corresponding benefit to which there is entitlement under the legislation of the other Contracting State, in so far as this is permitted by the legislation of the second Contracting State.

Article 27

1. Difficulties arising from the implementation of this Agreement shall be resolved by mutual agreement by the competent authorities of the Contracting States.
2. If a solution cannot be found in this way, the matter in dispute shall be referred to an arbitration court which shall settle it within the meaning and spirit of this Agreement. The Contracting States shall provide for the composition and procedure of that court by mutual agreement.

Part V

Transitional and Final Provisions

Article 28

1. This Agreement should also apply to risks which materialised before the date of its coming into force.
2. This Agreement shall not confer any rights to the payment of benefit in respect of periods before its entry into force.
3. For the purposes of determining entitlement to benefit pursuant to this Agreement, account shall also be taken of all insurance periods completed under the legislation of a Contracting State before the entry into force of this Agreement.
4. This Agreement shall not apply to claims which have been settled by an indemnity or the refund of contributions.

Article 29

1. Decisions made before the entry into force of this Agreement shall not prevent the application of this Agreement.
2. Claims which were determined before the entry into force of this Agreement shall on request be re-examined in accordance with this Agreement.
3. The revision carried out by virtue of this Article shall not result in a reduction in the amount of benefit being paid before.

Article 30

In the case of claims which are being examined under Article 29 paragraph 2 the prescribed time limits for enforcement and periods of statute-barring in accordance with the legislations of the Contracting States shall not commence before this Agreement enters into force.

Article 31

This Agreement shall enter into force on the first day of the third month following the month in which each Government shall have received from the other Government written notification that it has complied with all statutory and constitutional requirements for the entry into force of this Agreement.

Article 32

1. This Agreement shall remain in force for an indefinite period. It may be terminated by one of the Contracting States notifying the other, in which case the Agreement shall expire three calendar months following the month in which written notice has been given.
2. If this Agreement is terminated, the entitlements acquired by a person pursuant to its provisions shall be retained. Entitlements in the process of being acquired pursuant to these provisions shall be settled by agreement.

In witness whereof the undersigned, being duly authorised thereto, have signed and sealed this Agreement.

Done in Dublin, on 11 DECEMBER, 1997 in two originals, one in English, the other in German; both texts being equally authentic.



For the Government of Ireland



For the Swiss Federal Council



AN ROINN GNÓTHAÍ EACHTRACHA
DEPARTMENT OF FOREIGN AFFAIRS

BAILE ÁTHA CLIATH 2

DUBLIN 2

Ref: 600/1409

The Department of Foreign Affairs presents its compliments to the Embassy of Switzerland and has the honour to inform the Embassy, pursuant to Article 31 of the Agreement between the Ireland and the Swiss Confederation on Social Security, signed in Dublin on 11 December 1997, that Ireland has complied with all statutory and constitutional requirements for the entry into force of the Agreement.

Pursuant to the said Article, it is intended that the Agreement will enter into force on the first day of July, 1999.

The Department of Foreign Affairs avails itself of this opportunity to renew to the Embassy of Switzerland the assurance of its highest consideration.



Dublin, 21 April 1999



EMBASSY OF SWITZERLAND

The Embassy of Switzerland presents its compliments to the Department of Foreign Affairs and has the honour of acknowledging its Note of 21st April 1999 concerning the compliance of Ireland with all statutory and constitutional requirements for the entry into force of the Agreement between Ireland and the Swiss Confederation on Social Security, signed in Dublin on 11 December 1997.

Pursuant to Article 31 of the Agreement, the Agreement will enter into force on the first day of July, 1999.

The Embassy of Switzerland avails itself of this opportunity to renew to the Department of Foreign Affairs the assurance of its highest consideration. 4

Dublin, 28 April 1999



Department of Foreign Affairs
DUBLIN