

STATUTORY INSTRUMENTS.

S.I. No. 223 of 2010

LAW REFORM COMMISSIONER SUPERANNUATION SCHEME 2010

(Prn. A10/0702)

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Preamble

By virtue of section 11(1) of the Law Reform Commission Act, 1975, I, Paul Gallagher, Attorney General, with the concurrence of the Minister for Finance, hereby approve the following Scheme.

Short Title

1. This Scheme may be cited as the Law Reform Commissioner Superannuation Scheme, 2009

Commencement

2. This Scheme shall be deemed to have come into operation on the 1st October 2001 which shall be known as the commencement date.

Interpretation

3. In this Scheme, save where the context otherwise requires:

"the Act" means the Public Service Superannuation (Miscellaneous Provisions) Act of 2004 (No. 7 of 2004);

"actual pensionable service" means service as defined in sub-paragraphs 6.1 (a), (b) and (c);

"the Commission" means the Law Reform Commission;

"fully insured member" means a member who is, or was during membership of this scheme, insured for State Pension (Contributory) under the Social Welfare Acts;

"member" means a Commissioner appointed in accordance with the provisions of Section 4 of the Law Reform Commission Act, 1975;

"Minister" means the Minister for Finance;

"new entrant" shall be construed in accordance with section 2 of the Act;

"part-time member" means a member who works less than the standard hours of a member in a whole-time post;

"Pensions Ombudsman Regulations" means the Pensions Ombudsman Regulations 2003 to 2007 including any enactment which amends or extends any or all of those Regulations;

Notice of the making of this Statutory Instrument was published in "Iris Oifigiúil" of 25th May, 2010.

"personal rate", in relation to any Social Welfare benefit, means the rate of such benefit which is payable under the Social Welfare Acts to a single person excluding any increase that is payable on age grounds, or by virtue of the recipient living alone, or in respect of a qualified adult or child dependant, and "maximum personal rate" shall be construed accordingly;

"public service pension scheme" has the meaning assigned thereto in subsection 1(1) of the Act;

"reduced rate" in relation to any Social Welfare benefit, means the personal rate of such benefit if that rate is less than the maximum personal rate of State Pension (Contributory);

"Social Welfare Acts" means the Social Welfare Acts 1981 to 2008 including any enactment which amends or extends any or all of those Acts and any regulation, warrant or order made thereunder.

"Social Welfare Benefit" means State Pension (Contributory), State Pension (Transition), Invalidity Pension, Illness Benefit or Jobseeker's Benefit payable under the Social Welfare Acts;

"State Pension (Contributory)" means the State Pension (Contributory) payable under the Social Welfare Acts;

"transfer value payment" means a payment calculated in accordance with such tables as are approved and in such manner as is determined by the Minister for Finance, or the Minister for the Environment, Heritage and Local Government under the Local Government Superannuation Code;

"years" means a figure determined by the formula A + B/365 where A is the number of completed years in the period in question and B is any number of days additional to a completed year or a number of completed years in that period, and "year" shall be construed accordingly;

Membership

- 4.1 Membership of this Scheme shall not apply to
 - (a) civil servants
 - (b) members to whom or in respect of whom an award under the Courts Supplemental Provisions) Act 1961 has been or may be made.
- 4.2 A member who is not a new entrant may not remain in membership of this scheme after the age of 65.

Pensionable remuneration

5.1 Salary

"Salary" means the annual basic rate (or the weekly basic rate multiplied by 52.18) of remuneration payable from time to time as determined by the Government excluding any sums paid in respect of overtime, commission, gratuity, special fees, travelling allowance, subsistence allowance and the like, the money equivalent of any emolument or benefit in kind (including motor car or other vehicle) or any payment toward or in respect of such emoluments.

5.2 Retiring salary

"Retiring salary" means

- (a) in the case of a member whose actual service and potential service to the end of his or her term of office is less than 1 year, the rate of salary multiplied by the number of days in the contract divided by 365;
- (b) where a member has had the same scale of salary and has been a member for last three years of his or her pensionable service, the salary of the member at the date of retirement or death;
- (c) where a member under 62 years of age dies in office, the salary of the member at the date of death;
- (d) where a member retires or is retired on medical grounds before 60 years of age with sufficient potential service to age 60 to avoid averaging the salary of the member at the date of retirement.

In any other case retiring salary shall be averaged by taking the total calculated by multiplying by 1/1095 the annual rate of salary appropriate on the last day of pensionable service for each grade in which the member served during the last three years of pensionable service, and multiplying the result by the number of days of his or her employment in each grade during those years, subject to the retiring salary so taken not exceeding the annual basic rate of salary payable at the time of retirement or death. Where the pensionable service of the member is less than three years, the number of days of pensionable service should be substituted for 1095.

5.3 Allowances

"Allowances" means such allowances in the nature of pay as are designated as pensionable by the Government, but excluding any sums paid in respect of overtime, commission, gratuity, special fees, travelling allowance, subsistence allowance and the like, the money equivalent of any emolument or benefit in kind (including motor car or other vehicle) or any payment toward or in respect of such emoluments.

"Pensionable allowances" means the average of any allowances paid to the member calculated in accordance with the provisions of Department of Finance Circular 10/2008.

5.5 **Remuneration**

"Remuneration" means the aggregate of salary and allowances (multiplied by 52.18 in the case of weekly allowances).

5.6 Pensionable Remuneration

- (a) "Pensionable remuneration" means the aggregate of retiring salary and pensionable allowances.
- (b) In the calculation of benefits payable on retirement to a member who, at retirement, works part-time or is a work-sharer, pensionable remuneration shall be deemed to be the pensionable remuneration applicable if he or she were working in a whole-time capacity.

Pensionable service

- 6.1 For the purpose of calculating benefits under this scheme, pensionable service is the aggregate of—
 - (a) (i) in the case of members who are new entrants, paid service as a member, other than service in respect of which, in accordance with the provisions of paragraph 7, the member has opted to retain entitlement to preserved benefits provided that any period during which a member was or is a part-time member or a worksharer shall be reckonable in the proportion which the hours worked bear to comparable whole-time service;
 - (ii) in the case of members who are not new entrants, paid service as member (other than service in respect of which, in accordance with the provisions of paragraph 7, the member has opted to retain entitlement to preserved benefits) given while the member was under 65 years of age, provided that any period during which a member was or is a part-time worker or a work-sharer shall be reckonable in the proportion which the hours worked bear to comparable whole-time service;
 - (b) periods of pensionable service with the Commission prior to becoming a member;
 - (c) actual service transferred in accordance with arrangements approved by the Minister and/or the Minister for the Environment, Heritage and Local Government.

- (d) notional service purchased by a member and transferred in accordance with arrangements approved by the Minister and/or the Minister for the Environment, Heritage and Local Government.
- (e) notional service purchased by a member in accordance with provisions determined by the Commission with the approval of the Attorney General and the consent of the Minister.
- (f) in the case of a member in respect of whom a transfer value in respect of superannuation benefits in a former employment other than employment referred to in subparagraphs 6.1(b) is received by the Commission, such additional service as the amount of the transfer value will purchase on the basis of actuarial tables approved by the Minister.
- (g) such additional period of notional service (to be referred to as "professional added years") as may be granted by the Attorney General with the consent of the Minister.
- 6.2 (a) A member who has completed 5 or more years of actual pensionable service and who retires, or is retired, on grounds of ill health that, in the opinion of the Minister is likely to be permanent, may, at the discretion of the Minister have a period of notional service (to be referred to as "ill-health notional service") added to his or her pensionable service, provided that the aggregate of pensionable service and ill-health notional service does not exceed 40 years.
 - (b) The ill-health notional service shall be calculated on the following basis:
 - (i) members whose actual pensionable service is between 5 and 10 years will be allowed an equivalent amount of ill-health notional service, such amount of notional service not to exceed the amount of additional actual pensionable service he or she would have had if he or she served to age 65 or, if earlier, to the date on which his or her term of office would expire;
 - (ii) members whose actual pensionable service is between 10 and 20 years will be allowed the more favourable of:
 - (a) an amount of service equal to the period by which 20 years exceeds the said actual pensionable service, the added service not to exceed the amount of additional actual pensionable service he or she would have had if he or she served to age 65 or, if earlier, to the date on which his or her term of office would expire, or
 - (b) 6 years and 243 days, the ill-health notional service not to exceed the amount of additional actual pensionable service he or she would have had if he or she had served to age 60

or, if earlier, to the date on which his or her term of office would expire;

- (iii) members with more than 20 years of actual pensionable service at retirement will be allowed to add whichever is the lesser of:
 - (a) 6 years and 243 days, or
 - (b) the additional actual pensionable service he or she would have had if he or she had served to age 60 or, if earlier, to the date on which his or her term of office would expire.
- 6.3 The maximum service reckonable for benefits under this scheme is 40 years, subject in the case of
 - (a) members who have retained an entitlement to benefit under the provisions of Article 7
 - (b) members whose pensions were suspended under the provisions of Article 11

maximum service not exceeding the amount arrived at by the formula 40 — PBS, where PBS is the amount of the reckonable service by reference to which the original benefits, whether preserved or in payment, are calculated.

Optional retention of preserved benefits

- 7.1 A member who is a new entrant with an entitlement to preserved benefits payable at age 60 arising from earlier membership of this Scheme may opt to retain entitlement to the said preserved benefits, subject to
 - (a) payment of the preserved pension not commencing before the date on which membership of this scheme ceases
 - (b) in the event of death in service, the deduction of the preserved death gratuity from any gratuity payable under Article 8.
- 7.2 A member whose pension was cancelled under the provisions of paragraph 11.1 may opt for entitlement to a preserved pension based on the actual pensionable service on which the cancelled pension was based in lieu of aggregation of service subject to payment of the preserved pension not commencing before the date on which membership of this scheme ceases.

Benefits

8.1 **Pension**

(a) A member who is a new entrant and has completed 2 years' actual pensionable service who retires, or is retired, after attaining the age of 65 years shall be eligible to receive a pension of an amount per annum calculated in accordance with the formula $[A \times C \div 200] + [B]$ $x C \div 80$], where

- (I) if the member's pensionable remuneration is less than or equal to 3 and 1/3rd times the annual maximum personal rate of State Pension (Contributory) payable on the last day of the member's pensionable service, the amount of the member's pensionable remuneration; or
- (II) if the member's pensionable remuneration exceeds 3 and 1/3rd times the annual maximum personal rate of State Pension (Contributory) payable on the last day of the member's pensionable service, that part of the member's pensionable remuneration which equals 3 and 1/3rd times the said rate of State Pension (Contributory);

B is that part (if any) of the member's pensionable remuneration which exceeds 3 and 1/3rd times the annual maximum personal rate of State Pension (Contributory) payable on the last day of the member's pensionable service; and

C is the amount of the member's pensionable service, subject to a maximum of 40 years.

(b) A member who is not a new entrant and who has completed 2 years' actual pensionable service and who retires, or is retired, after attaining the age of 60 years shall be eligible to receive a pension of an amount per annum calculated in accordance with the formula [A x C ÷ 200] + [B x C ÷ 80], where

A is

- (I) if the member's pensionable remuneration is less than or equal to 3 and 1/3rd times the annual maximum personal rate of State Pension (Contributory) payable on the last day of the member's pensionable service, the amount of the member's pensionable remuneration; or
- (II) if the member's pensionable remuneration exceeds 3 and 1/3rd times the annual maximum personal rate of State Pension (Contributory) payable on the last day of the member's pensionable service, that part of the member's pensionable remuneration which equals 3 and 1/3rd times the said rate of State Pension (Contributory);

B is that part (if any) of the member's pensionable remuneration which exceeds 3 and 1/3rd times the annual maximum personal rate of State Pension (Contributory) Payable on the last day of the member's pensionable service;

C is the amount of the member's pensionable service, subject to a maximum of 40 years.

(c) A member who has completed 5 years' actual pensionable service and who retires, or is retired on grounds of ill-health that, in the opinion of the Commission is likely to be permanent, shall be eligible to receive a pension of an amount per annum calculated in accordance with the formula $[A \times C \div 200] + [B \times C \div 80]$, where

A is

- (I) if the member's pensionable remuneration is less than or equal to 3 and 1/3rd times the annual maximum personal rate of State Pension (Contributory) payable on the last day of the member's pensionable service, the amount of the member's pensionable remuneration; or
- (II) if the member's pensionable remuneration exceeds 3 and 1/3rd times the annual maximum personal rate of State Pension (Contributory) payable on the last day of the member's pensionable service, that part of the member's pensionable remuneration which equals 3 and 1/3rd times the said rate of State Pension (Contributory);

B is that part (if any) of the member's pensionable remuneration which exceeds 3 and 1/3rd times the annual maximum personal rate of State Pension (Contributory) payable on the last day of the member's pensionable service; and

C is the amount of the member's pensionable service, subject to a maximum of 40 years.

8.2 Gratuities

- (a) A member who has completed at least one year and less than two years' actual pensionable service who retires or is retired on grounds of ill-health that, in the opinion of the Commission is likely to be permanent, shall be eligible to receive a gratuity of 1/12th of pensionable remuneration for each year of pensionable service.
- (b) A member who has completed between two and five years' actual pensionable service who retires or is retired on grounds of ill-health that, in the opinion of the Commission is likely to be permanent, shall be eligible to receive a gratuity at the rate of 1/12th of pensionable remuneration for each year of pensionable service and, in addition, a gratuity equal to 3/80ths of his or her pensionable remuneration for each year of pensionable service, provided he or she opts in writing to accept such gratuities in lieu of any other benefits for which he or she may be eligible under this scheme.
- (c) A member who is a new entrant and has completed two years' actual pensionable service who retires or is retired after attaining the age of

- 65 shall be eligible to receive a gratuity at the rate of 3/80ths of pensionable remuneration for each year of pensionable service subject to a maximum of 120/80ths.
- (d) A member who is not a new entrant and has completed two years' actual pensionable service who retires or is retired after attaining the age of 60 shall be eligible to receive a gratuity at the rate of 3/80ths of pensionable remuneration for each year of pensionable service subject to a maximum of 120/80ths.
- (e) A member who has completed at least five years' actual pensionable and retires or is retired on grounds of ill-health that, in the opinion of the Commission is likely to be permanent, shall be eligible to receive a gratuity at the rate of 3/80ths of for each year of pensionable service subject to a maximum of 120/80ths.
- (f) (i) Where a member dies during his or her term of office his or her legal personal representatives shall be eligible to receive—
 - (a) his or her pensionable remuneration, or
 - (b) the gratuity that would have been payable to him or her had he or she or retired on the grounds of ill-health on the date of his or her death, whichever is the greater.
 - (ii) If a pensioner who has been granted a pension and a gratuity dies and the total paid or payable on foot of the pension (including any amount which would have been payable had the provisions of paragraph 11.2 not applied in his or her case) and gratuity (including any deductions made in respect of non-periodic contributions under the any scheme for the award of Spouses and Children's made under Section 11 of the Law Reform Commission Act, 1975 is less than the gratuity which could have been granted to his or her legal personal representative if he or she had died on the date of his or her retirement, his or her legal personal representative shall be eligible to receive a gratuity equal to the deficiency.

8.3 Preservation of Benefits — New Entrants.

- (a) Where a member who is a new entrant
 - (i) ceases to be a member before age 65 other than on grounds of illhealth that, in the opinion of the Minister is likely to be permanent, after at least two years' actual pensionable service or
 - (ii) ceases to be a member before age 65 on grounds of ill-health that, in the opinion of the Minister is likely to be permanent, after at least two years and less than five years' actual pensionable service and does not opt, in writing, for the benefits of subparagraph 9.1 (b)

he or she will, on attaining the age of 65, qualify under this subparagraph for a pension and lump sum payment (which pension and lump sum are in this Scheme referred to as a "preserved pension" and "preserved lump sum" respectively), provided

- (I) he or she does not receive any other benefit in respect of that service, and
- (II) that service is not reckoned for pension purposes by him or her in another employment under approved arrangements.
- (b) A preserved pension shall be awarded to the member concerned on his or her attaining the age of 65 on an application being made by him or her in that behalf. Where the member concerned dies on or after attaining age 60 without applying for the preserved pension, an amount equal to the preserved pension payable between age 65 and the date of death of the member concerned shall be payable to his or her legal personal representative on an application being made.
- (c) the amount of a preserved pension shall be the amount which would have been awarded to the member concerned under paragraph 8.1 of this scheme if he or she had attained age 65 on the date of resignation, as increased by reference to pensions increases granted under paragraph 10 of this Scheme in the interval between the date of resignation and the date on which the member attains age 65.
- (d) If a member referred to in subparagraph 8.3 dies before attaining the age of 65, a sum (in this Scheme referred to as a preserved death gratuity") shall be payable to his or her legal personal representative in respect of him or her.
- (e) The amount of a preserved lump sum or preserved death gratuity shall be the amount which would have been awarded to the member concerned under paragraph 9.1 of this scheme if he or she had attained age 65 on the date of resignation, as increased by reference to pensions increases granted under paragraph 10 of this Scheme in the interval between the date of resignation and the date
 - (i) on which he or she attains age 65, in the case of a preserved lump sum, or
 - (ii) of his or her death, in the case of a preserved death gratuity.
- (f) A preserved lump sum or preserved death gratuity shall be payable to or in respect of the member concerned on an application being made to the Commission at any time after he or she reaches the age of 65 or, in case he or she dies before reaching that age, by his or her legal personal representative on an application being made.
- (g) The Commission may at its discretion pay a supplementary pension on the terms and conditions set out in Article 20 of this scheme.

8.4 Preservation of Benefits — Members who are not new entrants.

- (a) Where a member who is not a new entrant
 - (i) ceases to be a member before age 60 other than on grounds of ill-health that, in the opinion of the Minister is likely to be permanent, after at least 2 years' actual pensionable service or
 - (ii) ceases to be a member before age 60 other than on grounds of ill-health that, in the opinion of the Minister is likely to be permanent, after at least two years' and less than five years' actual pensionable service and does not opt, in writing, for the benefits of paragraph 8.2(b),
 - (iii) he or she will, on attaining the age of 60, qualify under this paragraph for a pension and lump sum payment (which pension and lump sum are in this Scheme referred to as a "preserved pension" and "preserved lump sum" respectively), provided
 - (I) he or she does not receive any other benefit in respect of that service, and
 - (II) that service is not reckoned for pension purposes by him or her in another employment under approved arrangements.
- (b) A preserved pension shall be awarded to the member concerned on his or her attaining the age of 60 on an application being made by him or her in that behalf. Where the member concerned dies on or after attaining age 60 without applying for the preserved pension, an amount equal to the preserved pension payable between age 60 and the date of his or her death shall be payable to his or her legal personal representative.
- (c) The amount of a preserved pension shall be the amount which would have been awarded to the member concerned under paragraph 8.2 of this scheme if he or she had attained age 60 on the date of resignation, as increased by reference to pensions increases granted under paragraph 10 of this Scheme in the interval between the date of resignation and the date on which the member attains age 60.
- (d) If a member referred to in paragraph 8.4 dies before attaining the age of 60, a sum (in this Scheme referred to as a *preserved death gratuity*") shall be payable to his or her legal personal representative by the Commission.
- (e) The amount of a preserved lump sum or preserved gratuity shall be the amount which would have been awarded to the member concerned under paragraph 8.2 of this scheme if he or she had attained age 60 on the date of resignation, as increased by reference to pensions increases granted under paragraph 10 of this Scheme in the interval between the date of resignation and the date

- (i) on which he or she attains age 60, in the case of a preserved lump sum, or
- (ii) of his or her death, in the case of a preserved death gratuity.
- (f) A preserved lump sum or preserved death gratuity shall be payable to or in respect of the member concerned on an application being made to the Commission by him or her at any time after he or she reaches the age of 60 or, in case he or she dies before reaching that age, by his or her legal personal representative.
- (g) The Commission may at its discretion pay a supplementary pension on the terms and conditions set out in subparagraph 20 of this scheme.

8.5 **Supplementary Pension**

- (a) Where a pensioner is unemployed, and, due to causes outside his or her own control
 - (i) fails to qualify for Social Welfare benefit, or
 - (ii) qualifies for Social Welfare benefit at a reduced rate

the pensioner concerned may, at the discretion of the Commission, be paid a supplementary pension under this Scheme

- (b) The amount of a supplementary pension payable pursuant to paragraph of this Article shall be the amount, if any, arrived at by the formula A (B+C), where
 - A is the amount of the pension which would be payable to the former member under paragraph 8.1 of this Scheme if pension had been calculated by reference to pensionable remuneration instead of net pensionable remuneration,
 - B is the amount of the pension actually payable to the former member under the said paragraph, and
 - C is the annual amount of the reduced rate of the Social Welfare benefit, if any, which is payable to the former member.

Payment of Pension or Preserved Pension

9 Save as is otherwise provided in the scheme, pensions and preserved pensions payable under this scheme shall be paid monthly in arrears and shall continue throughout the life of the member.

Pensions Increases

10 The Attorney General may grant such increases in such pensions and preserved pensions under this Scheme as may be authorised from time to time with the consent of the Minister for Finance.

Employment subsequent to Retirement or Resignation

- 11.1 If a member was awarded a pension and gratuity or gratuity only on initial retirement on medical grounds pension, where payable, shall be suspended on his or her re-entry to this scheme and, on subsequent retirement, the actual pensionable service on which the pension was based may, if the member so opts, be aggregated with subsequent pensionable service for the purposes of this scheme. The amount of any gratuity awarded on eventual retirement or death shall be reduced by the amount of the gratuity paid to him or her on initial retirement.
- 11.2 If a pensioner under this Scheme receives payment in respect of employment by the Commission no more of the pension or preserved pension shall be paid for any period of receipt of the payment as may be specified by the Commission than so much as, with the payment, equals the pay which the pensioner would have received in respect of that period if during it he or she
 - (a) held the position in which he or she served on the last day of his or her pensionable service, but
 - (b) was remunerated at the rate of pay of which he or she was in receipt on that date subject, however, in case changes have taken place, (or, if the position has ceased to exist would have taken place if it had not ceased to exist), in that rate, to treating that rate as being varied by taking account of so much of those changes as may be specified by the Commission.

Assignments

12 A pension or preserved pension under this Scheme may not be assigned or charged. If the pensioner becomes incapable of giving a receipt for payments due, the Commission shall have discretion to make such payments in whole or in part to such persons, including the authorities of any institution having care of the pensioner, as the Commission thinks fit, and the Commission shall be discharged from all liability in respect of any sum so paid.

Declarations

13. Payments of pensions under this Scheme shall be subject to the making by the pensioner of a relevant declaration in such form and at such time or times as the Commission may require.

Proof of Age

14. A member must submit evidence of his or her date of birth on entry into the Scheme or before any payment of benefit can be made.

Cesser or Reduction of Benefit

15.1 Where a member is dismissed or resigns or otherwise ceases to hold office and has been guilty of misconduct involving a financial loss to the State, the Minister may, at his or her discretion, refuse or reduce any award which might otherwise be payable under paragraphs 8 or 10 of this Scheme in order to make good such a loss.

15.2 The Minister may, at his or her discretion, direct that payment of pension should cease or be reduced if the pensioner has been guilty of misconduct involving a financial loss to the State, in order to make good such a loss.

Duplication of Benefit not to be allowed

- 16 (a) A member shall not be entitled to reckon the same period of service more than once for the purposes of a pension, lump sum or gratuity, unless in the case of a gratuity, having been entitled to repay such gratuity, he or she has done so.
 - (b) A member shall not be entitled to reckon the same period of time both for the purposes of this scheme and also for the purposes of any pension scheme wholly or partly funded out of moneys provided by the Oireachtas or from the Central Fund or the growing produce of that Fund.

Appeals

17 If a member or pensioner is aggrieved by the failure or refusal of the Commission to make an award under this Scheme or by the amount of any award (including the award of pension increases) made, he or she may appeal to the Attorney General who shall refer the dispute to the Minister for Finance who shall, within three months of the dispute being referred to him or her, issue a determination in accordance with Article 5.1 of the Pensions Ombudsman Regulations 2003 (S.I. No. 397 of 2003).

Termination or amendment of Scheme

18 The Attorney General reserves the right to amend or terminate the Scheme at any time, subject to the concurrence of the Minister for Finance and subject to giving three months notice of amendment or termination to the members of the Scheme. Benefits secured for a member prior to the date of amendment or termination will not be affected save by agreement between the Attorney General and the member.

Given under my hand, 13 May 2010.

PAUL GALLAGHER, Attorney General.

Given under my hand, 13 May 2010.

BRIAN LENIHAN, Minister for Finance.

BAILE ÁTHA CLIATH ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR

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