



STATUTORY INSTRUMENTS.

**S.I. No. 588 of 2010**



NATIONAL MILK AGENCY STAFF SUPERANNUATION SCHEME  
2010

**(Prn. A10/1816)**

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I, BRENDAN SMITH, Minister for Agriculture, Fisheries and Food, in accordance with Paragraph 14 of the Schedule to the Milk (Regulation of Supply) Act 1994 (No. 25 of 1994) and with the consent of the Minister for Finance, hereby approve of the National Milk Agency Staff Superannuation Scheme as set out herewith.

**1. SHORT TITLE**

This Scheme may be cited as the National Milk Agency Staff Superannuation Scheme 2010.

**2. COMMENCEMENT**

The Scheme will commence with effect from the 30th day of December 1994, which shall be known as the date of commencement.

**3. DEFINITIONS**

In this Scheme save where the context otherwise requires:

3.1 “Act” means the Superannuation (Miscellaneous Provisions) Act of 2004 (No. 7 of 2004);

3.2 “Agency” means the National Milk Agency;

3.3 “actual pensionable service” means service as defined in subparagraph 6.1 of this scheme but excluding service which is reckonable under Clauses (c), (e), (f) and (i) or any notional service transferred under Clause (d) of that subparagraph;

3.4 “fully insured member” means a member of this Scheme who is, or was before attaining the age of 66, insured for State Pension (Contributory) under the Social Welfare Acts;

3.5 “ill-health vesting period” means a period of at least five years actual pensionable service;

3.6 “Knock-for-Knock Agreement” under the Local Government Superannuation Code means an agreement under articles 279(8) and 280 of the Local Government (Superannuation) (Consolidation) Scheme, 1998;

*Notice of the making of this Statutory Instrument was published in  
“Iris Oifigiúil” of 10th December, 2010.*

3.7 “Local Government Superannuation Code” means any scheme or regulation made under the Local Government (Superannuation) Act, 1980 (No. 8 of 1980) other than the Local Government (Superannuation) (Gratuities) Regulations, 1984 (as amended) or the conditions laid down in Part V of the Local Government (Superannuation) (Consolidation) Scheme, 1998;

3.8 “member” means a pensionable employee to whom this Scheme applies;

3.9 “Minister” means the Minister for Agriculture Fisheries and Food;

3.10 “new entrant” shall be construed in accordance with section 2 of the Act;

3.11 “part-time employee” means an employee who works less than the standard hours of a comparable employee in a whole-time post;

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

3.13 “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;

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

3.15 “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);

3.16 “Social Welfare Acts” means the Social Welfare Acts 1981 to 2010 including any enactment which amends or extends any or all of those Acts and any regulation, warrant or order made thereunder;

3.17 “Social Welfare Benefit” means State Pension (Contributory), State Pension (Transition), Invalidity Pension, Illness Benefit or Jobseeker’s Benefit payable under the Social Welfare Acts;

3.18 “State Pension (Contributory)” means the State Pension (Contributory) payable under the Social Welfare Acts;

3.19 “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 under this scheme, or the Minister for the Environment, Heritage and Local Government under the Local Government Code;

3.20 “vesting period” means a period of at least two years actual pensionable service except that for any period during which a member was or is a part-time

employee the service shall be reckonable in the same way as if they had worked whole-time;

3.21 “work-sharing” means any arrangement which has been approved by the Minister under which a whole-time employee works less than the standard hours of the whole-time post;

3.22 “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;

#### **4. MEMBERSHIP**

4.1 For the purposes of this Scheme

(a) “pensionable employee” means—

- (i) all employees appointed to pensionable posts on or after the commencement date;
- (ii) all pensionable staff designated by the Minister for employment by the Agency under Paragraph 12 (2)(a) of the Schedule to the Milk (Regulation of Supply) Act 1994;

(b) “pensionable post” means a post with the Agency which, with the approval of the Minister and the consent of the Minister for Finance, is declared in the Conditions of Service attaching to it to be a pensionable post.

4.2 Membership of this Scheme shall not apply to persons—

- (a) in the case of an employee who is not a new entrant, whose actual pensionable service on attaining age 65 would be less than the vesting period,
- (b) who are under 16 years of age.

4.3 Membership shall be compulsory for all pensionable employees, other than those referred to in subparagraph 4.2.

4.4 The Agency shall decide upon the eligibility for membership of the Scheme. The Agency shall notify an employee of his or her admission to membership of the Scheme and shall furnish him or her with a copy of the terms of the Scheme.

4.5 A member who is not a new entrant may not continue in membership after he or she has attained the age of 65.

## 5. 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 lawfully determined or lawfully approved by the Agency, 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 Allowances

“Allowances” means such allowances in the nature of pay lawfully determined or lawfully approved by the Agency, which are designated as pensionable by the Agency, 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.

### 5.3 Remuneration

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

### 5.4 Net remuneration

“Net remuneration” means the amount by which remuneration exceeds twice the annual maximum personal rate of State Pension (Contributory) payable from time to time to a person who has no adult dependent or qualified children.

### 5.5 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 contract of employment 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 in the same grade for the 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 service, the salary of the member at the date of death;
- (d) where a member retires or is retired on medical grounds before age 60 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 shall be substituted for 1095.

#### 5.6 Pensionable allowances

“Pensionable allowances” means the annual average of any allowances paid to the member calculated in accordance with the provisions of Department of Finance Circular 10/2008 and future amending circulars.

#### 5.7 Pensionable remuneration

“Pensionable remuneration” means the aggregate of retiring salary and pensionable allowances.

### 6. PENSIONABLE SERVICE

6.1 Pensionable service shall, subject to a maximum of 40 years, be the aggregate of—

- (a) (i) in the case of members who are new entrants, paid service as a pensionable employee given on or after the date of commencement, in respect of which contributions have been paid provided that any period during which a member was or is work-sharing 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 a pensionable employee given on and from the date of commencement, and while the member was under 65 years of age, and in respect of which contributions have been paid provided that any period during which a member was or is work-sharing shall be reckonable in the proportion which the hours worked bear to comparable whole-time;
- (b) actual service transferred in accordance with arrangements approved by the Minister for Finance and/or the Minister for Environment, Heritage and Local Government;
- (c) notional service purchased by a member and transferred in accordance with arrangements approved by the Minister for Finance and/or the Minister for Environment, Heritage and Local Government;
- (d) service reckonable in accordance with section 4 of the Superannuation and Pensions Act 1963;

- (e) in the case of a member whose pensionable service by age 65 would be less than 40 years, extra years of pension credit, subject to limits to be determined by the Agency, with the approval of the Minister and in consultation with the Minister for Finance, which he or she opts to purchase at full cost to himself or herself on the basis of actuarial tables approved by the Minister for Finance;
  - (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) and 6.1(c) of this Scheme is received by the Agency, such additional service as the amount of the transfer value will purchase on the basis of actuarial tables approved by the Minister for Finance;
  - (g) any periods of paid part-time service equal to 20% or more of the time worked by an equivalent whole-time employee given with the Agency prior to becoming a pensionable employee reckonable in the proportion which the hours worked bear to comparable whole-time service and in respect of which appropriate contributions have been paid;
  - (h) any periods of whole-time temporary service with the Dublin District Milk Board prior to the date of commencement in respect of which contributions have been paid;
  - (i) such additional period of notional service (to be referred to as “professional added years”) as may be granted by the Agency in accordance with conditions determined by the Agency with the approval of the Minister and the consent of the Minister for Finance.
- 6.2 (a) A member who has completed the ill-health vesting period and who retires, or is retired, on medical grounds in accordance with the conditions laid down in paragraph 8.1 of this scheme, may, at the discretion of the Agency, 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 by which the pensionable service he or she would have had if he or she served to age 65 exceeds his or her pensionable service at retirement or, if earlier, to the date on which his or her contract of employment would expire;
  - (ii) members whose actual pensionable service is between 10 and 20 years will be allowed the more favourable of:

- (I) 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 by which the pensionable service he or she would have had if he or she served to age 65 exceeds his or her actual pensionable service at retirement, or, if earlier, to the date on which his or her contract of employment would expire, or
  - (II) 6 years and 243 days, the ill-health notional service not to exceed the amount by which the actual pensionable service he or she would have had if he or she had served to age 60 exceeds his or her actual pensionable service at retirement or, if earlier, to the date on which his or her contract of employment 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 amount by which the pensionable service he or she would have had if he or she had served to age 60 exceeds his or her pensionable service at retirement or, if earlier, to the date on which his or her contract of employment would expire.

## 7. BENEFITS

### 7.1 Pension

- (a) Where a member, at retirement, is a part-time employee or a work-sharer, pensionable remuneration for the purposes of this subparagraph shall be deemed to be the pensionable remuneration applicable if he or she were working in a whole-time capacity.
- (b) A new entrant who has completed the vesting period and 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 at the rate of 1/80th of his or her pensionable remuneration for each year of pensionable service or, in the case of a fully insured member, a pension calculated in accordance with the formula

$$[A \times C \div 200] + [B \times C \div 80], \text{ where}$$

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.

- (c) A member who is not a new entrant and who has completed the vesting period 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 at the rate of 1/80th of his or her pensionable remuneration for each year of pensionable service or, in the case of a fully insured member, a pension calculated in accordance with the formula

$$[A \times C \div 200] + [B \times C \div 80], \text{ where}$$

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.

- (d) A member who has completed the ill-health vesting period and who retires, or is retired, on medical grounds in accordance with the conditions laid down in paragraph 8.1 of this scheme shall be eligible to receive a pension of an amount per annum calculated at the rate of

1/80th of his or her pensionable remuneration or, in the case of a fully insured member, a pension calculated in accordance with the formula

$$[A \times C \div 200] + [B \times C \div 80], \text{ where}$$

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.

## 7.2 Gratuities

- (a) A member who has completed at least one year's actual pensionable service and less than the vesting period who retires or is retired on medical grounds in accordance with the conditions laid down in paragraph 8.1 shall be eligible to receive a gratuity of 1/12th of pensionable remuneration for each year of pensionable service. Where a member, at retirement, is a part-time employee or 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.
- (b) A member who has completed the vesting period but not the ill-health vesting period who retires or is retired on medical grounds in accordance with the conditions laid down in paragraph 8.1, 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. Where a member, at retirement, is a part-time employee or 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.

- (c) A new entrant who has completed the vesting period and who retires or is retired after attaining the age of 65 shall be eligible to receive a lump sum at the rate of 3/80ths of pensionable remuneration for each year of pensionable service subject to a maximum of 120/80ths. Where a member, at retirement, is a part-time employee or 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.
- (d) A member who is not a new entrant and has completed the vesting period and who retires or is retired after attaining the age of 60 shall be eligible to receive a lump sum at the rate of 3/80ths of pensionable remuneration for each year of pensionable service subject to a maximum of 120/80ths. Where a member, at retirement, is a part-time employee or 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.
- (e) A member who has completed the ill-health vesting period and retires or is retired on medical grounds in accordance with the conditions laid down in paragraph 8.1, shall be eligible to receive a lump sum at the rate of 3/80ths for each year of pensionable service subject to a maximum of 120/80ths. Where a member, at retirement, is a part-time employee or 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.
- (f) (i) If a member dies while serving, his or her legal personal representative shall be eligible to receive the greater of—
  - (A) his or her pensionable remuneration, or
  - (B) the lump sum that would have been payable had the member retired on medical grounds on the date of his or her death.
- (ii) If a former member who has been granted a pension and a lump sum 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 12.4 not applied in his or her case) and lump sum (including any deductions made in respect of non-periodic contributions under the National Milk Agency Spouses and Children's Scheme) 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.

### 7.3 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 in accordance with the conditions laid down in paragraph 8.1 after completing the vesting period, or
- (ii) ceases to be a member before age 65 in accordance with the provisions of paragraph 8.1 after completing the vesting period but not the ill-health vesting period and does not opt, in writing, for the benefits of paragraph 7.2 (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 person concerned on and from his or her attaining the age of 65 on an application being made by him or her in that behalf or, in case he or she dies before reaching that age, to his or her legal 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 7.1 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 person referred to in paragraph 7.3 (a) dies before attaining age 65, a sum (in this scheme referred to as a “*preserved death gratuity*”) shall be payable to the person’s legal personal representative by the Agency 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 7.2 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 person concerned on an application being made to the Agency by him or her 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. Where the person concerned dies on or after attaining age 65 without applying for the preserved lump sum, an amount equal to the preserved lump sum shall be payable to the legal personal representative of the person concerned on application being made.
- (g) A member to whom this subparagraph applies who, on the date of his or her resignation, is aged 55 or over may apply in writing before the date of resignation to have his or her preserved pension and lump sum benefits paid with effect from the date of resignation and if the Agency agrees, those benefits shall be calculated by reference to the member's pensionable remuneration at the date of resignation and shall be payable as and from that date, but the amount of each benefit shall be reduced by reference to the member's age at date of resignation in accordance with actuarial tables approved by the Minister for Finance.
- (h) The Agency may at its discretion pay a supplementary pension on the terms and conditions set out in subparagraph 7.5 of this scheme.

#### 7.4 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 in accordance with the provisions of paragraph 8.1 after completing the vesting period or
  - (ii) ceases to be a member before age 60 in accordance with the conditions laid down in paragraph 8.1 after completing the vesting period but not the ill-health vesting period and does not opt, in writing, for the benefits of paragraph 7.2 (b),

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 person concerned on and from his or her attaining the age of 60 on an application being made by him or her in that behalf. Where the person 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 death of the person concerned shall be payable to the legal personal representative of the person concerned on 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 7.1 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 person referred to in paragraph 7.3(a) dies before attaining the age of 60, a sum (in this scheme referred to as a “*preserved death gratuity*”) shall be payable to the person’s legal personal representative by the Agency 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 7.2 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 person concerned on an application being made to the Agency 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. Where the person concerned dies on or after attaining age 60 without applying for the preserved lump sum, an amount equal to the preserved lump sum shall be payable to the legal personal representative of the person concerned on application being made.
- (g) A member to whom this subparagraph applies who, on the date of his or her resignation, is aged 50 or over may apply in writing before the date of resignation to have his or her preserved pension and lump sum benefits paid with effect from the date of resignation and if the Agency agrees, those benefits shall be calculated by reference to the member’s pensionable remuneration at the date of resignation and shall be payable as and from that date, but the amount of each benefit

shall be reduced by reference to the member's age at date of resignation in accordance with actuarial tables approved by the Minister for Finance.

- (h) The Agency may at its discretion pay a supplementary pension on the terms and conditions set out in subparagraph 7.5 of this Scheme.

### 7.5 Supplementary Pension

- (a) Where a person who is in receipt of a pension under this Scheme 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, and
  - (iii) in the case of a person mentioned in subparagraph 7.3(g) has attained the age of 65 years, or
  - (iv) in the case of a person mentioned in subparagraph 7.4(g) has attained the age of 60 years

then for so long as the Agency is satisfied that the preconditions set out in this subparagraph are met, the person concerned may, at the discretion of the Agency, be paid a supplementary pension under this Scheme.

- (b) The amount of a supplementary pension payable pursuant to subparagraph (a) of this paragraph shall be the amount, if any, arrived at by the formula

$A - (B + C)$ , where

A is the amount of the pension or preserved pension which would be payable to the former member if he or she had not been fully insured,

B is the amount of the pension actually payable to the former member under the said paragraph 7.1, and

C is the annual amount of the reduced rate of the Social Welfare benefit, if any, which is payable to the former member.

### 7.6 Return of contributions

In the case of a member who has completed less than two years actual pensionable service

- (i) whose membership ceases otherwise than on medical grounds or death, and
- (ii) who does not transfer his or her pensionable service under this scheme to another organisation in accordance with arrangements approved

by the Minister for Finance and/or the Minister for the Environment, Heritage and Local Government

his or her contributions shall be returned to him or her less an amount equal to any income tax liability deducted by the Agency in respect of such contributions.

## **8. RETIREMENT ON MEDICAL GROUNDS**

8.1 Where a member retires or is retired on medical grounds, a benefit under subparagraph 7.1 and/or 7.2 of this scheme shall only be made where the following conditions are met:

- (a) Medical evidence must be supplied, having regard to which the Agency is satisfied that the member is incapable from infirmity of mind or body of discharging the duties of his or her post and that that infirmity is likely to be permanent. In this connection, the member must, if requested by the Agency, undergo medical examination by a registered medical practitioner nominated by the Agency;
- (b) The retirement must be wholly due to the infirmity;
- (c) The infirmity must not have been caused by the member's own fault or negligence;
- (d) The member must not—
  - (i) have made a false declaration about his or her health, or
  - (ii) have suppressed a material fact about his or her health when applying to take up his or her post in the Agency.

8.2 Where any or all of the above conditions are not met, subparagraphs 7.3 or 7.4 shall, as appropriate, apply in lieu of benefit under subparagraph 7.1 and/or 7.2.

## **9. PAYMENT OF PENSION OR PRESERVED PENSION**

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

## **10. PENSIONS INCREASES**

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

## 11. CONTRIBUTIONS

11.1 Every member shall pay a contribution as from the date of entry to the Scheme or from the date he or she took up employment with the Agency, in the case of a member in the service of the Agency on the commencement date.

11.2 The contribution shall comprise 5% of remuneration or, in the case of a fully insured member,

(a) 3.5% of net remuneration and

(b) 1.5% of remuneration

provided that in the case of a member who is a part-time employee or a work-sharer, the contributions under sub-clause (a) above shall be calculated in accordance with the formula

$A \times B \div C$ , where

A is the amount of the contribution which would be payable by an equivalent whole-time employee,

B is the number of hours (excluding overtime) worked by the member concerned, and

C is the standard number of hours applicable to an equivalent whole-time post.

11.3 Where a member is in receipt of a reduced rate of pay because of absence from employment, the contributions in respect of that period will be calculated by reference to the rate of pay that would be payable to him or her if he or she were not so absent.

## 12. EMPLOYMENT SUBSEQUENT TO RETIREMENT OR RESIGNATION

12.1 Where a member whose contributions have been returned to him or her under subparagraph 7.6 is re-employed by the Agency in a pensionable position, his or her previous pensionable service may be reckoned for the purpose of calculating superannuation subsequently, provided he or she refunds to the Agency the amount of the contributions including interest paid to him or her with compound interest on such amount at such rate per annum as may be specified by the Agency with approval of the Minister and the concurrence of the Minister for Finance, with half-yearly rests from the date of payment to him or her. The Agency may, at its discretion, agree to accept such refunds by instalments, provided interest on the basis outlined above continues to be paid on the outstanding balance.

12.2 Where a member whose contributions have been returned to him or her under subparagraph 7.6 subsequently becomes employed in a pensionable position in which his or her previous pensionable service is capable of being

reckoned under the Local Government Superannuation Code, his or her previous pensionable service may be reckoned for superannuation subsequently, provided he or she refunds the amount of the contributions including interest paid to him or her with compound interest on such amount at such rate per annum as may be specified by the Agency with approval of the Minister and the concurrence of the Minister for Finance, with half-yearly rests from the date of payment to him or her.

12.3 If a member who retires or is retired on medical grounds subsequently becomes a pensionable employee and has been awarded a pension and lump sum or gratuity only on initial retirement on medical grounds, pension, where payable, shall be cancelled on his or her re-entry to membership of the 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 lump sum or gratuity awarded on eventual retirement or death shall be reduced by the amount of the lump sum or gratuity paid to him or her on initial retirement.

12.4 If a pensioner under this Scheme receives payment in respect of employment by the Agency or by any person or firm resident in the Republic of Ireland and associated with or directly or indirectly controlled by the Agency 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 Agency than so much as, with the payment, equals the pay which the person 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 (including the money value of apartments, rations or other perquisites in kind), 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 Agency.

12.5 If a member was awarded a pension and lump sum on retirement in accordance with the terms of Department of Finance Circular 12/09 no more of the pension shall be paid for any period of membership of this Scheme than so much as, with the remuneration payable during membership, equals the pay which the person would have received in respect of the period of membership 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 (including the money value of apartments, rations or other perquisites in kind), 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 Agency.

### **13. CESSER OR REDUCTION OF BENEFIT**

Where a member is dismissed or resigns or otherwise ceases to hold employment and has been guilty of misconduct involving a financial loss to the Agency or the State, the Agency may, at its discretion, refuse or reduce any award which might otherwise be payable under paragraph 7 of this Scheme (including a refund of contributions under subparagraph 7.6) in order to make good such a loss. The Agency may, at its discretion, reduce or cease paying a pension awarded under this Scheme if the pensioner has been guilty of misconduct involving a financial loss to the Agency or the State, in order to make good such a loss.

### **14. CONDITIONS GOVERNING AWARDS**

#### **14.1 Declarations**

Payments of pension or preserved pension under this Scheme shall be subject to the making by the pensioner of a relevant declaration in such form and at such time as the Agency may require.

#### **14.2 Proof of age**

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.

### **15. ASSIGNMENTS**

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 Agency 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 Agency thinks fit, and the Agency shall be discharged from all liability in respect of any sum so paid.

### **16. DUPLICATION OF BENEFIT NOT TO BE ALLOWED**

16.1 (a) A member shall not be entitled to reckon the same period of time more than once for the purposes of a pension 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 public service pension scheme.

16.2 Where a member's employment with the Agency ceases (whether on retirement, death or otherwise), benefit under this Scheme shall be reduced by reference to any sum, other than one to which the prior approval of the Minister for Finance had been obtained, which is payable to or in respect of him or her on such cesser, other than under this Scheme, by the Agency, or under any arrangement (whether by way of insurance or otherwise) to which the Agency has contributed.

## **17. CONTRIBUTIONS TO CERTAIN ORGANISATIONS**

17.1 Where a superannuation award is made by a Local Authority to any person under the conditions laid down in the Local Government Superannuation Code and in determining the amount of the award any period of pensionable service with the Agency has been reckoned, the Agency shall, in the absence of a Knock-for-Knock Agreement under the Local Government Superannuation Code, make a single transfer value payment or a series of contributions to the local authority, as may be agreed between the local authority and Agency, and such payment or contributions shall be in accordance with such tables or rates as may be approved by the Minister for the Environment, Heritage and Local Government.

17.2 Where under the Local Government Superannuation Code, superannuation contributions are returned by a Local Authority to a former member of this scheme, and the amount includes a sum in respect of contributions paid under this scheme, the Agency shall, in the absence of a Knock-for-Knock Agreement under the Local Government Superannuation Code, recoup such sum to the local authority.

## **18. APPEALS**

If a member or former member is aggrieved by the failure or refusal of the Agency 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 Minister 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).

## **19. TERMINATION OR AMENDMENT OF SCHEME**

The Agency reserves the right to amend or terminate the Scheme at any time, subject to the approval of the Minister and the concurrence of the Minister for Finance and subject to giving three months' notice of impending changes to members of the Scheme. Benefits secured for a member or former member prior to the date of amendment or termination will not be affected.



GIVEN under the seal of the National Milk Agency,  
30 November 2010.

DENIS MURPHY,  
Chairperson.

The Minister for Agriculture, Fisheries and Food hereby approves of  
the above Scheme.  
30 November 2010.

BRENDAN SMITH,  
Minister for Agriculture, Fisheries and Food.

The Minister for Finance hereby consents to the above Scheme.  
30 November 2010.

BRIAN LENIHAN,  
Minister for Finance.

EXPLANATORY NOTE

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

This scheme may be cited as the National Milk Agency Staff Superannuation Scheme 2010. It provides for superannuation benefits for scheme members in accordance with paragraph 14 of the Schedule to the Milk (Regulation of Supply) Act 1994.

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,  
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