

STATES OF JERSEY



DRAFT PUBLIC EMPLOYEES (RETIREMENT) (AMENDMENT AND VALIDATION) (JERSEY) LAW 201-

**Lodged au Greffe on 10th December 2013
by the States Employment Board**

STATES GREFFE



Jersey

**DRAFT PUBLIC EMPLOYEES (RETIREMENT)
(AMENDMENT AND VALIDATION) (JERSEY)
LAW 201-**

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Deputy Chief Minister has made the following statement –

In the view of the Deputy Chief Minister the provisions of the Draft Public Employees (Retirement) (Amendment and Validation) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator B.I. Le Marquand**

Deputy Chief Minister

Dated: 9th December 2013

REPORT

This draft Law deals with the position of certain office-holders with regard to membership of the Public Employees Contributory Retirement Scheme (PECRS). Under the Public Employees (Retirement) (Jersey) Law 1967, those in public service are entitled to be Members of PECRS normally by virtue of employment with the States Employment Board. Certain office-holders are expressly not employees of the States, and special provision is required under the 1967 Law.

It has been discovered that the special provision for PECRS membership in respect of certain office-holders is either clearly or potentially irregular. The purpose of the draft Law is to regularise their position, both retrospectively from the date when the uncertainty arose, and also for the future. This means that all contributions made to the scheme will be treated as valid, and the corresponding rights to benefits under the scheme will have been validly accrued, and they will continue as members.

In respect of the Data Protection Commissioner, the position is that the *employees* of the Data Protection Commission were admitted to PECRS upon the Data Protection (Jersey) Law 2005 coming into force on 1st December 2005. However, it was not appreciated that the Data Protection Commissioner herself is specifically under that Law not an *employee*, although it was always understood that the Commissioner was being admitted. The proposed amendments will regularise the position retrospectively from 1st December 2005.

The Greffier of the States and the Deputy Greffier of the States are expressly not employees of the States of Jersey. The office-holders have always been entitled to membership of PECRS. Until 9th December 2005, this was provided for by a cross-reference from the 1967 Law to the Departments of the Judiciary and the Legislature (Jersey) Law 1965. However, under the 2005 constitutional reforms, the 1965 Law ceased to provide for the Greffier of the States and the Deputy Greffier, as their offices came to be governed under the States of Jersey Law 2005. It follows that the cross-reference in the Public Employees (Retirement) (Jersey) Law 1967 which until then provided for the Greffier and the Deputy Greffier to be members of PECRS became arguably invalid. This was not realised at the time and not intended. Both office-holders have continued to make contributions. The proposed amendments will regularise the position retrospectively from 9th December 2005.

The Master of the Royal Court is expressly excluded from being a States employee under the Employment of States of Jersey Employees (Jersey) Law 2005. The former Master was not a member of PECRS, having been appointed on a contract for services which did not make provision for pension entitlement. However, the recently appointed Master of the Royal Court has to date been treated as member of PECRS, and this position needs to be regularised. The proposed amendments will regularise the position retrospectively from 1st September 2013.

Financial and manpower implications

There are no new financial or manpower implications arising from the adoption of this draft Law. The Law provides for a continuation of the pension provision that is currently being provided for the relevant office-holders.

Human Rights

The Law Officers' Department has indicated that the draft Law does not give rise to any human rights issues.

Explanatory Note

Article 1 provides that where the Law refers to the “1967 Law”, this is a reference to the Public Employees (Retirement) (Jersey) Law 1967.

Article 2 would retrospectively amend Article 1(2) of the 1967 Law so as to include –

- (a) the holder of the office of Data Protection Commissioner (with effect from 1st December 2005);
- (b) the Greffier of the States and the Deputy Greffier of the States (both with effect from 9th December 2005); and
- (c) the Master of the Royal Court (with effect from 1st September 2013),
within the list of persons who are deemed to be employed by the States Employment Board (“SEB”) for the purposes of the 1967 Law.

Article 3 is a validation provision which would give effect to the employment of the persons listed above with retrospective effect from the dates specified above. Accordingly, those persons are retrospectively treated as eligible members of the pension scheme established under the 1967 Law. Therefore, any pension contributions made by, or in respect of those persons since the respective dates of their deemed employment, and any corresponding pension which has accrued since those dates shall be taken to have been validly made and accrued.

Article 4 provides for the title of this Law and for it to come into force on the date it is registered in the Royal Court.



Jersey

**DRAFT PUBLIC EMPLOYEES (RETIREMENT)
(AMENDMENT AND VALIDATION) (JERSEY)
LAW 201-**

Arrangement

Article

1	Interpretation	9
2	1967 Law amended	9
3	Validation	10
4	Citation and commencement	10



Jersey

DRAFT PUBLIC EMPLOYEES (RETIREMENT) (AMENDMENT AND VALIDATION) (JERSEY) LAW 201-

A LAW to amend the Public Employees (Retirement) (Jersey) Law 1967 with effect from 1st and 9th December 2005 and 1st September 2013, and to validate the employment of certain persons by the States Employment Board for the purposes of the provision and payment of a pension under that Law.

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Interpretation

In this Law, “1967 Law” means the Public Employees (Retirement) (Jersey) Law 1967¹.

2 1967 Law amended

Article 1(2) of the 1967 Law is to be taken to have been amended –

(a) on 1st December 2005 by inserting after sub-paragraph (a), the following sub-paragraph –

“(aa) the holder of the office of Data Protection Commissioner (within the meaning of Article 6 of the Data Protection (Jersey) Law 2005²);”;

(b) on 9th December 2005 –

(i) by substituting for sub-paragraph (a), the following sub-paragraph –

“(a) officers referred to in Article 1(1)(a) to (d) of the Departments of the Judiciary and the Legislature (Jersey) Law 1965³;”, and

-
- (ii) by inserting after sub-paragraph (aa), the following sub-paragraph –
 - “(ab) the Greffier of the States and Deputy Greffier of the States (within the meaning of Article 41 of the States of Jersey Law 2005⁴);” and
 - (c) on 1st September 2013 by substituting for sub-paragraph (c), the following sub-paragraphs –
 - “(c) the Master of the Royal Court;
 - (d) a “*délegué*” as defined by Article 1(2) of the Loi (1937) sur l’atténuation des peines et sur la mise en liberté surveillée⁵ (a probation officer).”.

3 Validation

- (1) This Article applies to –
 - (a) the holder of the office of Data Protection Commissioner;
 - (b) the Greffier of the States and Deputy Greffier of the States; and
 - (c) the Master of the Royal Court,referred to in Article 1(2) of the 1967 Law, as amended by Article 2 of this Law.
- (2) In respect of the persons to whom this Article applies –
 - (a) such persons are taken to have been validly employed by the States Employment Board for the purposes of the 1967 Law; and
 - (b) any pension contributions made by, or in respect of such persons, and any pension or other benefits accrued by, or in respect of those persons, shall be taken to have been validly made and accrued, from the effective date.
- (3) “effective date” means –
 - (a) 1st December 2005 in respect of the holder of the office of Data protection Commissioner;
 - (b) 9th December 2005 in respect of the Greffier of the States and the Deputy Greffier of the States; and
 - (c) 1st September 2013 in respect of the Master of the Royal Court.

4 Citation and commencement

This Law may be cited as the Public Employees (Retirement) (Amendment and Validation) (Jersey) Law 201- and shall come into force upon registration.

-
- ¹ *chapter 16.650*
 - ² *chapter 15.240*
 - ³ *chapter 16.300*
 - ⁴ *chapter 16.800*
 - ⁵ *chapter 08.020*