

# STATES OF JERSEY



## **DRAFT PUBLIC EMPLOYEES (CONTRIBUTORY RETIREMENT SCHEME) (GENERAL) (AMENDMENT No. 10) (JERSEY) REGULATIONS 200-**

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**Lodged au Greffe on 11th August 2009  
by the Chief Minister**

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**STATES GREFFE**





Jersey

# **DRAFT PUBLIC EMPLOYEES (CONTRIBUTORY RETIREMENT SCHEME) (GENERAL) (AMENDMENT No. 10) (JERSEY) REGULATIONS 200-**

## **REPORT**

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The Chief Minister is promoting amendments to the Public Employees (Contributory Retirement Scheme) (General) (Jersey) Regulations 1989. The amendments relate to Regulation 9 which provides the Chief Minister with the power to extend membership of the Public Employees Contributory Retirement Scheme (PECRS) to employers other than the States, the Principal Employer.

The legislation provides that an employer who –

- is a parochial authority,
- is a statutory undertaking,
- is a public utility,
- has replaced a department or part of a department administered by a Minister,
- has otherwise taken over the employment of any employees who are members of the scheme, or
- not being one of the foregoing satisfies the Chief Minister that persons employed by the employer are employed in work of a nature which might properly be undertaken by a member,

may apply to the Chief Minister and be granted admitted body status under the Public Employees Contributory Retirement Scheme (PECRS).

The objective of these amendments is to clarify the obligations of admitted body employers to PECRS particularly in the areas of payment of contributions and provision of membership data to the Scheme's Administrator.

The Attorney General and the Committee of Management (CoM) of the PECRS support the need for more detailed Regulations in order to protect all parties concerned. The amendments strengthen the position of the CoM and that of the Principal Employer, and therefore the Scheme itself, should difficulties arise with any Admitted Body over contribution payments, incorrect membership data or administrative error. The Scheme's external auditors recommended some time ago,

that the obligations of Admitted Body employers be delineated more fully in the Regulations and this recommendation was reaffirmed by other independent advisors, Watson Wyatt, during their review of the Scheme's administration function, the Dedicated Pensions Unit.

Turning to the amendments themselves –

- (1) Regulation 2: the new legislation includes a definition of 'salary' (not previously defined under this legislation), as 'salary' is now referred to in new Regulation 9A(3)(a). The definition clearly identifies what is and what is not pensionable salary, and is consistent with the definition used in the Existing Members (Jersey) Regulations 1989 and New Member (Jersey) Regulations 1989.
- (2) Regulation 3(a): clarifies what will be regarded as valid admission documentation for an Admitted Body.
- (3) Regulation 3(b): makes it clear that the contributions for an Admitted Body certified by the Scheme's Actuary can include additional contributions required to repay its share of the Pre-1987 Debt.
- (4) Regulation 3(c): means that the Chief Minister cannot give notice to an Admitted Body to exit the Scheme without first having agreed with the CoM and allowed the CoM to consult with the Scheme's Actuary.
- (5) The new Regulations 9A and 9B set out the required written undertakings which are required from both new and existing Admitted Bodies.
- (6) An important undertaking is that paid contributions will be recoverable by the CoM as a civil debt of an Admitted Body which has not paid its contributions certified by the Scheme's Actuary.
- (7) Other written undertakings will include –
  - That membership data be provided to the Scheme Administrator based on timetables set by the CoM in order that contributions may be collected in a timely manner.
  - An Admitted Body will make good any contribution shortfall caused by its own administrative error.
  - Confirm in writing that it has paid all contributions due to the Scheme for a specific period; this may involve provision of a certificate from the Admitted Body's auditors if requested by the CoM.
  - Provide evidence (if requested by the CoM) of its continued ability to pay the required contributions to the Scheme.
  - Consult the Principal Employer in exercising its powers under the Regulations.

These amendments have been discussed and agreed with the PECRS Committee of Management and the Public Employees Pension Scheme Joint Negotiating Group.

### **Financial and manpower implications**

There are no financial or manpower implications for the States arising from the adoption of these Draft Regulations.

## Explanatory Note

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These draft Regulations clarify a number of provisions of the Public Employees (Contributory Retirement Scheme) (General) (Jersey) Regulations 1989. They also amend those Regulations to set out explicitly certain obligations of employers of employees who are admitted to the Public Employees Contributory Retirement Scheme under Regulation 9.

Regulation 9 allows persons who are employed in certain positions (by the parishes or statutory undertakings for example) but not employed by the States to be admitted to the Scheme, together with their employer. The admission can occur only if the Chief Minister accepts an application from the employer after consulting the Scheme's Committee of Management and the Scheme Actuary. An admitted employer (and its employees) may exit the Scheme and the Chief Minister may indeed require an admitted employer (and its employees) to exit the Scheme.

*Regulation 2* of the draft amending Regulations inserts a definition of "salary" for the purposes of Regulation 8 (about voluntary early retirement), Regulation 9 (referred to above) and Regulation 9A (inserted by the amending Regulations). The definition follows the definition used in the Public Employees (Contributory Retirement Scheme) (Existing Members) (Jersey) Regulations 1989 and again in the Public Employees (Contributory Retirement Scheme) (New Members) (Jersey) Regulations 1989.

*Regulation 3(b)* of the draft amending Regulations inserts explicit provision that the contributions that an admitted employer may be required to make to the Scheme may include a proportion of the debt transferred to the Scheme in 1988.

The draft amendments go on to provide that before the Chief Minister may require an admitted employer (and its employees) to exit the Scheme, the Committee of Management of the Scheme must be in agreement and that Committee must have sought advice from the Scheme Actuary (*Regulation 3(c)*).

An admitted employer's obligations as set out in the amendments include acknowledging and paying the contributions certified from time to time by the Scheme Actuary as due from such an employer as well as providing to the Committee of Management information required by that Committee as to the relevant employees and their salaries and the employer's ability to pay contributions (*Regulation 4*).

The amendments made by *Regulation 4* apply to past, present and future admitted employers.





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(AMENDMENT No. 10) (JERSEY)  
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**Arrangement**

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**Regulation**

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*Made* [date to be inserted]

*Coming into force* [date to be inserted]

**THE STATES**, in pursuance of Articles 2, 3 and 4 of the Public Employees (Retirement) (Jersey) Law 1967<sup>1</sup>, have made the following Regulations –

**1 Interpretation**

In these Regulations, “principal Regulations” means the Public Employees (Contributory Retirement Scheme) (General) (Jersey) Regulations 1989<sup>2</sup>.

**2 Regulation 1 amended**

In Regulation 1 of the principal Regulations after the definition “1967 Regulations” there shall be inserted the following definition –

“ ‘salary’ means the basic salary or wage of a member, together with the member’s pensionable allowances, if any, but does not include –

- (a) overtime payments;
- (b) payments of a temporary nature;
- (c) payments in respect of untaken leave; or
- (d) extra hours payments, stand-by payments, call-out payments, or any other payment, unless the employer has declared the payments to be a pensionable allowance under Regulation 18(1) of the 1989 Existing Members Regulations or Regulation 18(1) of the 1989 New Members Regulations;”.

**3 Regulation 9 amended**

In Regulation 9 of the principal Regulations –

- (a) in paragraph (1)(b) before the words “such document or documents” there shall be inserted the words “a written statement, and written undertaking, in accordance with Regulation 9A and”;
- (b) after paragraph (1) there shall be inserted the following paragraph –
  - “(1A) The amounts to be contributed to the scheme by a person who is the employer (as referred to in paragraph (1)) may include (but are not restricted to) such amounts as the Actuary may determine as being reasonably attributable to the person in respect of the capitalized value from time to time of the debt transferred to the scheme when the scheme was amended with effect from 1st January 1988 –
    - (a) in the case of an amount certified in accordance with paragraph (1)(c)(i) or (ii), whether or not the person was in existence before that date; and
    - (b) in the case of an amount certified in accordance with paragraph (1)(c)(ii), whether the person was admitted as an employer to the scheme before or after the date on which this paragraph came into force and whether or not the person is for the time being an admitted employer.”;
- (c) in paragraph (4), for the words “(subject, if paragraph (2) applies, to the agreement of the Committee)” there shall be substituted the words “(if the Committee agrees after the Committee has obtained the advice of the Actuary)”.

#### 4 New Regulations inserted

After Regulation 9 of the principal Regulations there shall be inserted the following Regulations –

##### “9A Undertakings concerning admission to scheme

- (1) A person who as an employer makes an application referred to in Regulation 9(1)(b) shall, having regard to the relevant certificate obtained from the Actuary under Regulation 9(1)(c)(i), provide the Chief Minister with a written statement that the person acknowledges that, if the application is accepted, the contributions certified by the Actuary as payable from time to time to the scheme will be due from the person and will be recoverable as a civil debt due to the Committee.
- (2) A person who has been admitted to the scheme as an employer shall, if the person has not already provided a written statement under paragraph (1) in respect of the admission, and having regard to such certificates as have been obtained from the Actuary under Regulation 9(1)(c)(i) and (ii) in respect of the person, provide the Chief Minister with a written statement that the person acknowledges that the contributions certified by the Actuary as payable from time to time to the scheme are or will be due from the person and are or will be recoverable as a civil debt due to the Committee.

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- (3) A person who as an employer makes an application referred to in Regulation 9(1)(b) shall, having regard to the relevant certificate obtained from the Actuary under Regulation 9(1)(c)(i), also provide the Chief Minister with a written undertaking that, if the application is accepted, the person will –
- (a) provide to the Committee, within the period specified by the Committee, such information as the Committee requires relating to the person and to the employees that are to be admitted, including information on the salaries of the employees;
  - (b) provide, from time to time on demand by the Committee, whether before or after the admission occurs, such evidence as the Committee requires of the person's ability to pay contributions to the scheme and of the person's ability to continue to pay them in the future;
  - (c) pay, within the period specified by the Committee, the contributions to the scheme that are required to be paid from time to time by the terms of admission, including the contributions that the Actuary certifies in accordance with Regulation 9(1)(c)(i) and (ii);
  - (d) make good any shortfall in the person's contributions that arises from the person's error, from a change in the salaries of the employees or from any other cause; and
  - (e) in general, fulfil all the person's obligations arising out of the admission, including any obligations that arise after the admission occurs.
- (4) A person who has been admitted to the scheme as an employer shall, if the person has not already provided an undertaking under paragraph (3) in respect of the admission, and having regard to such certificates as have been obtained from the Actuary under Regulation 9(1)(c)(i) and (ii) in respect of the person, provide the Chief Minister with a written undertaking that the person will –
- (a) provide to the Committee, within the period specified by the Committee, such information as the Committee requires relating to the person and to the employees that have been or are to be admitted, including information on the salaries of the employees;
  - (b) provide, from time to time on demand by the Committee, such evidence as the Committee requires of the person's ability to pay contributions to the scheme and of the person's ability to continue to pay them in the future;
  - (c) pay, within the period specified by the Committee, the contributions to the scheme that are required to be paid from time to time by the terms of admission, including the contributions that the Actuary certifies in accordance with Regulation 9(1)(c)(i) and (ii);

- (d) make good any shortfall in the person's contributions that arises from the person's error, from a change in the salaries of the employees or from any other cause; and
- (e) in general, fulfil all the person's obligations arising out of the admission, including any obligations that arise after the admission occurs.

#### **9B Duty to fulfil employer undertaking**

If, pursuant to an application referred to in Regulation 9(1)(b), a person as an employer, and some or all of the person's employees, have been admitted to the scheme –

- (a) the contributions certified by the Actuary as payable by the person to the scheme, and any other amounts required to be paid by the person under these Regulations, shall be due from the person and shall be recoverable as a civil debt due to the Committee;
- (b) the person shall comply, and continue to comply, with any undertaking that is in force, being an undertaking that the person has given under Regulation 9A(3) or (4);
- (c) the person shall on demand by the Committee from time to time while any undertaking given by the person under Regulation 9A(3) or (4) is in force, and within the period specified by the Committee, confirm to the Committee in writing that the person has complied with the undertaking; and
- (d) the person shall on demand by the Committee from time to time, and within the period specified by the Committee, provide a certificate from the person's auditors that the person has paid all the contributions to the scheme that are required to be paid by the person, and any other amounts required to be paid by the person under these Regulations.

#### **9C Application to existing and past admitted employers**

- (1) Regulations 9A(2) and (4) and 9B shall apply to and in respect of –
  - (a) a person admitted as an employer at any time; and
  - (b) contributions, information, shortfalls, and obligations, that arose at, or relate to, any time,  
including a time before the date on which those Regulations came into force.
- (2) Regulations 9A(2) and (4) and 9B shall apply to and in respect of –
  - (a) a person who was at any time an admitted employer; and
  - (b) contributions, information, shortfalls, and obligations, in relation to the person,  
whether or not the person has for the time being any admitted employees and whether or not the person is for the time being an admitted employer.”.

**5 Citation and commencement**

These Regulations may be cited as the Public Employees (Contributory Retirement Scheme) (General) (Amendment No. 10) (Jersey) Regulations 200- and shall come into force 7 days after they are made.

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- <sup>1</sup> *chapter 16.650*  
<sup>2</sup> *chapter 16.650.36*