

# STATES OF JERSEY



## DRAFT PUBLIC EMPLOYEES (PENSIONS) (JERSEY) LAW 201-

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Lodged au Greffe on 11th March 2014  
by the States Employment Board

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STATES GREFFE





Jersey

## **DRAFT PUBLIC EMPLOYEES (PENSIONS) (JERSEY) LAW 201-**

### **European Convention on Human Rights**

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Chief Minister, Chairman of the States Employment Board, has made the following statement –

In the view of the Chief Minister, Chairman of the States Employment Board, the provisions of the Draft Public Employees (Pensions) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator I.J. Gorst**

*Chief Minister, Chairman of the States Employment Board*

Dated: 4th March 2014

## REPORT

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### Introduction

The Public Employees (Pensions) (Jersey) Law 201- is proposed to provide the powers for establishing a reformed pension scheme for States employees. The existing Public Employees (Contributory Retirement Scheme) (Jersey) Law 1967 is not a satisfactory vehicle for the fundamental changes to public sector pensions that will be put to the States in due course, and are explained in outline here. As will be seen, the proposals are, except for those near to retirement, the existing Public Employees Contributory Retirement Scheme (“PECRS”) will close, subject to preservation of certain rights, and a new scheme will be established. The draft Law will deal with certain fundamental issues in this process, preserving accrued rights and the final salary link, as well as providing for the necessary Regulation-making powers for the new scheme.

As States members will be aware, the States Employment Board (“SEB”) is proposing that the States should adopt a new employee Career Average Revalued Earnings (“CARE”) occupational pension scheme for States employees in place of the existing final salary scheme under PECRS.

The decision to establish a new pension scheme for States employees arose primarily from the following factors –

- Most importantly, the present scheme was unaffordable and running at a deficit. Actuarial advice is that the combined contribution rate for new entrants to the Scheme (that is, the proportion of salary contributed by both employer and employee) had become insufficient to fund the benefits being promised.
- There was a need to consider the current PECRS in the light of wide-ranging debate in the UK and Europe about the long-term sustainability of final salary pension schemes, given the extent to which life expectancy has improved in recent times, leading to significant cost increases.
- For funded schemes like PECRS, estimates of reduced future investment returns has meant that the cost of current PECRS benefits has increased and might well increase further, but contribution rates have remained broadly unchanged since the mid-1980s.
- The pension Scheme Regulations, some of which came into force in 1967 and others in 1988, were outdated and no longer supported either organisational working practices or the way in which many people live their lives in a modern society.
- The pension benefit was disproportionate for various groups of employees, some receiving a far more valuable pension package than others. There were some significant cross-subsidies, leading to the majority of members subsidising the pensions of those on higher benefits.

### Background of the PECRS

PECRS is one of two principal ‘defined benefit’ pension schemes for public employees in Jersey. The other is the Jersey Teachers’ Superannuation Fund, which is not being considered at this stage. ‘Defined Benefit’ means that pensions are calculated by reference to a scheme member’s salary and length of service at retirement.

PECRS contains a number of distinct groups of members, each subject to a different set of Regulations and different pension benefits. PECRS has since the restructuring in 1988 been subdivided into –

- ❖ The 1967 Scheme Regulations
- ❖ The Former Hospital Scheme
- ❖ The Existing Members Scheme
- ❖ The New Members Scheme.

Three of the above sets of Regulations incorporate additional categories of benefits, which apply in the main to employees employed within the uniformed services groups. Over the 25 years since its restructure in 1988, it has become increasingly complex to administer. The benefit structure is unwieldy and outdated and there are a number of inequities affecting States employees.

PECRS currently has around 14,000 members, making it by far the largest pension scheme in Jersey and of major significance to the Island's economy. Of these members, at 31st December 2013, 7,493 were in active employment, either with the States itself or other bodies such as Parishes. Some 16% of Scheme members are employed by non-States organisations, known as Admitted Bodies (shown in **Appendix 2** to this report). On the same date, there were 2,485 members who had left employment with pension entitlement preserved in PECRS and deferred until retirement age. There were 4,115 individuals in receipt of a pension.

As at 31st December 2013, the median pension in PECRS is £8,773 a year (women £5,777 and men £14,529) and the mean pension is £13,603 (women £8,575 and men £18,987).

### **Committee of Management**

The Committee of Management (“CoM”) was established by the 1989 Regulations and comprises 12 members and an independent Chairman. Individuals are appointed to the CoM by the States on the recommendation of the Chief Minister, save for the independent Chairman, who is also appointed by the States on the recommendation of the Minister for Treasury and Resources.

Of the 12 CoM members (excluding the Chairman), 6 are nominated by the Joint Negotiating Group (“JNG”) and 6 by the employer. Of the 6 employer nominees, 3 are nominated by the Minister for Treasury and Resources and 3 are nominated by the Chief Minister.

The Scheme was established and is governed under Regulations, the fundamental duty of the CoM being to manage the Scheme in accordance with the Regulations.

### **Independent Reviews**

There have been 2 independent reviews of PECRS, one for the SEB, “*Review of the PECRS – Proposed High Level Scheme Design*”, prepared by Tim Lunn, F.I.A., of Aon Hewitt, Bristol, a leading UK firm of consulting actuaries; and Lane, Clark and Peacock's report for the Committee of Management prepared by Martin Slack, M.A., F.I.A., a former senior partner of Lane, Clark and Peacock and a consulting actuary.

Both reports concluded that action needed to be taken to address the fundamental funding issues within the Scheme.

In addition, the final report of the UK Independent Public Service Pensions Commission, chaired by Lord Hutton, was published in March 2011. This report has already led to some significant changes in the contributions and benefits structures of the UK public sector pensions schemes. Of particular interest to Jersey is the new Local Government Pension Scheme Regulations, as local government schemes in the United Kingdom are funded schemes, as are those for Jersey public employees.

For the purposes of this report it is worth outlining some of Lord Hutton's recommendations, which the UK Government has accepted.

- The primary purpose of public sector pension schemes was to ensure adequate levels of retirement income for public service pensioners and that pensions would continue to be an important element of remuneration. Employers should seek to maximise participation in the schemes where this was appropriate.
- The Government must honour in full pension promises that had been accrued by scheme members.
- The final salary link for past service for current members should be maintained.
- A new Career Average Revalued Earning ('CARE') scheme should be adopted for general use in public service schemes.
- Pension benefits should be uprated in line with average earnings during the accrual phase for active members. Pensions in payment should be indexed in line with prices to maintain their purchasing power.
- Normal pension age should be in line with the UK Government's State pension age.
- The UK Government should set out a ceiling for the proportion of pensionable pay that it would contribute, on average, to employees' pensions over the long term.

### **Technical Working Group**

The conclusions and recommendations of the 2 reports and of the Hutton report led to the setting up of the Technical Working Group ("TWG"). The TWG was charged with the task of developing, for wider discussion, a range of possible options for change to PECRS to help ensure its financial viability for the long term. Those options were then developed, according to the TWG's terms of reference, as agreed by the SEB and the CoM, with the aim that –

- The interests of current Scheme members were maintained including protection of their accrued rights.
- Public sector schemes in Jersey were affordable and sustainable.
- The potential impact of possible changes to benefits and contribution rates was assessed from the perspectives of affordability and sustainability.
- Future pension arrangements in Jersey had regard to Lord Hutton's recommendations and their final outcomes, so as to facilitate movement of staff to and from the UK through Jersey's continued membership of the Public Sector Transfer Club.
- There was clarity over future arrangements for contributions into the Scheme.

- There was clarity over the sharing of costs, risks and benefits between employer and employee.
- The governance of the Scheme met best practice.

The TWG established principles that would govern the options for change to be investigated. These were –

- Sustainability – for at least the next 25 years
- Affordability – for members, employers and taxpayers
- Fairness – for all members.

### **The need for change**

Many features of public service pensions in Jersey are historical legacies, including accrual rates, pension ages and final salary structures. The current PECRS structure was not designed in a way that accommodates modern working patterns, and has been unable to respond flexibly to changes in this area and to demographic change over the past few decades. This has led to –

- ❖ rising costs of benefits due to lack of flexibility to address increasing longevity;
- ❖ unequal treatment of members within the same organisation.

Some features, such as pension ages of 60, final salary structures and the accrual rates, derive from terms and conditions initially established in the 1960s. The current pension ages of 55 for the police, fire, and prison services also date from that time.

Providing good quality pensions is becoming a far more challenging task given the increasing length of time that most people will live after retirement. The cost of providing current pension benefits has been increasing, and it is not sustainable for members to spend more and more years in retirement without the increased cost being fully reflected in the contributions to, and benefit structure of the Scheme.

The Scheme Actuary has confirmed that based on the assumptions adopted for the 2010 valuation –

- ❖ a man aged 60 at 2010 can expect to live for a further 27 years;
- ❖ a woman aged 60 at 2010 can expect to live for a further 29 years;
- ❖ a man currently aged 40 years can expect to live for a further 29 years from age 60; and
- ❖ a woman currently aged 40 years can expect to live for a further 31 years from age 60.

On this basis, life expectancy is still on the increase.

PECRS is paying pensions for much longer than was expected when the Scheme was designed and restructured in 1988 and, as a consequence, pensions are now far more expensive. It is, therefore, not just fair but essential, that Scheme members who are still working contribute sufficiently to fund the pension that they can expect to receive for longer, for example, by working longer as life expectancy increases or by being prepared to accept a lower pension should they not wish to do so.

PECRS is a funded scheme. Employers and employees pay their contributions into a fund and these contributions are invested in assets that produce investment returns. However, it has become, and is likely to remain, increasingly difficult to generate the investment returns that were expected when the Scheme was set up in 1988.

The design of PECRS is outdated and inflexible and no longer wholly reflects the way the modern labour force lives and works. For example, there is no pension provision for non-married partners, and a final salary scheme means that employees who switch to less demanding roles later in their careers lose the benefit of having paid in contribution based on their earlier, higher salary. Employee contracts are now very different from those issued even 10 years ago – they now incorporate various options such as term-time-only working and other flexible working choices. The current Scheme makes such arrangements very difficult to administer and the outcome can be unfair to members.

Lord Hutton's interim report showed that the final salary design of most current schemes tends to be much more beneficial to those who see significant promotions during the course of their career, compared to those with slower salary growth. This applies to the final salary schemes currently in place in Jersey. Lord Hutton reported that 'high-flyers' (i.e. people who have been promoted several times over the course of their careers) can receive almost twice as much pension for every £100 of contributions than people on more modest salaries. In other words, it tends to favour the higher-paid over the lower-paid.

Under the current arrangements, PECRS is not sustainable in the long term. The existing contribution rate does not support the current benefit structure. In addition the continued admission of new entrants results in a strain on the finances of the Scheme.

## **Recruitment**

The Jersey public service is full of people with a wide range of skills and experience who undertake tasks of importance across a wide range of services upon which the community depends.

PECRS has been an important tool in attracting key public sector workers, and this will remain the case for any successor scheme. A wide range of professions are covered within the Scheme, for instance: doctors, nurses, allied health professionals and others.

The States of Jersey competes for some of its talent with the UK public sector. Benchmarking against UK public sector pension provision is therefore very important. Jersey must continue to be able to recruit and retain high quality people for many important jobs.

To move away from offering similar pension provision to that available in the UK public sector could be damaging for Jersey. The UK Government has, as a result of the Hutton report, accepted that defined benefit will continue across the public sector. It would be harmful if Jersey offered a lesser pension.

It is also worth noting that PECRS is a participant in the UK Public Sector Transfer Club ("PSTC"). The PSTC is a group of some 120 salary-related occupational pension schemes. Participating schemes in the PSTC agree that their members can transfer benefits on standard terms with the intention that there is no loss of value to the member.

Membership of the PSTC allows easier movement of staff within the public sector. This is vital in helping Jersey attract public sector employees to transfer from the UK.



## **Options for change**

The TWG report set out various options for change. Any changes proposed have been part of a fairly lengthy ongoing consultation and negotiation process with the Public Employees' Pension Scheme Joint Negotiating Group (JNG). The JNG negotiates pension provision for the majority of States employees and in the main is supportive of the proposed changes.

The TWG, during the course of meetings, carefully examined a wide range of relevant factors, including –

Types of pension schemes:

- defined benefit schemes – Final Salary
- defined contribution schemes
- defined benefit schemes – Career Average Revalued Earnings.

Particular issues relevant to design and choice of scheme:

- retirement age
- protection for current members
- contribution rates
- accrual rates
- indexation
- risk-sharing approaches for employer and employees
- risk-sharing – pre-2015 scheme
- risk-sharing – post-2015 scheme
- actuarial valuation methodology
- governance of the scheme.

## **Defined Benefit Scheme – Final Salary**

The pension at retirement is defined, based on the number of years of service and the member's final salary at retirement. However, this type of system is unfair, as final salary schemes reward workers that move up the career ladder faster than those that don't. A high-flying employee could receive almost twice as much in pension payments per £100 of contributions than a low-flyer.

In addition, we are on average living longer than when the scheme was originally set up in the 1980s. Someone retiring now at age 60 can expect to spend around 40 to 45% of their adult life drawing a pension, compared to around a third in the 1980s.

The increased cost of longevity is significant. In 1980, a 60 year-old male retiring was expected to live to age 76. Based on a pension of £8,500 (excluding any pension increases) he would draw around £136,000 from the scheme in retirement.

A 60 year-old male retiring in 2012 is now expected to live to age 87. Based on the same pension of £8,500, he will take out £229,500 from the scheme in retirement. Nearly £100,000 more than anticipated when the scheme was designed.

This has made Final Salary Defined Benefit schemes unaffordable for the future.

## **Defined Contribution Schemes**

Defined Contribution Schemes have the advantage of fixing the cost for the employer and the member. There are, however, some significant disadvantages.

A Defined Contribution Scheme is basically a scheme where contributions from both the individual member, and usually the employer, are paid into a fund which is converted into a pension on retirement by the purchase of a contract to provide a specified level of income for life on prescribed terms (commonly known as an “annuity”).

Although the contribution rate is fixed for the employer and the member, the benefit outcome for members is highly uncertain. The pension is whatever the invested funds will buy, which can vary dramatically depending on investment choices, investment experience and the cost of buying a pension at retirement. It is possible that 2 members, with similar career patterns, retiring a few years apart, could have pension outcomes where one is double the other, even if they had made similar investment choices.

It is also the case that compared with Defined Benefit Schemes, there is significant inefficiency in Defined Contribution Schemes. The cost of investment management reduces the value of a member’s fund. Evidence from the USA suggests that the cost of administering defined contribution schemes, and poor decision-making by individuals, can in some cases reduce the pension outcome by up to 40% compared to defined benefit schemes.

The lack of certainty of outcome is unfair to members, and the inherent inefficiency of the system in terms of pension outcomes has the potential to be a waste of members’ and taxpayers’ money. For these reasons, Lord Hutton came to the conclusion that defined contribution arrangements are not suitable for public service schemes. The TWG agrees with this conclusion in respect of the situation in Jersey.

## **Defined Benefit Scheme – Career Average Revalued Earnings (CARE)**

All categories of members of PECSRS have final salary benefits. In other words, pensions are calculated based on the number of years of pensionable service, the accrual rate for the particular category, and pensionable salary close to retirement.

As explained earlier, in final salary schemes, members who experience relatively fast wage growth benefit compared to those who do not. Higher benefits for high-flyers, relative to their contributions, are an inherent feature of final salary pension schemes. This increase in pension is a significant hidden cost inherent in promotions close to retirement. Lord Hutton concluded that ‘final salary does not provide the right design for future public service schemes’.

What then is the appropriate defined benefit design for the future? A key feature of final salary schemes is that each salary increase elevates the pension entitlement for all past service.

An alternative design, known as Career Average Revalued Earnings (“CARE”), addresses this issue. Under a CARE scheme, contributions are made each year out of pensionable earnings, and the scheme administrators calculate how much pension entitlement has been acquired. This is done by multiplying the pensionable earnings against something called the accrual rate. At the end of each year, the pension entitlements acquired in previous years are revalued by an amount linked to inflation.

At retirement, all of the revalued pensions for each year of service are added up to build the member’s pension entitlement. A salary increase late in a member’s career

only affects future pension entitlement; it has no effect on pension benefits accrued in the past.

Hence, pension entitlement is accrued according to what is paid in for each year. An increase or decrease in salary does not, unlike a final salary scheme, affect the value of pension entitlement arising out of previous years' salary. It does not favour high-flyers; it does not disadvantage those who seek flexible working in the last years of a long career.

For these reasons, Lord Hutton recommended CARE schemes for the UK public service.

### **TWG Recommendations**

The TWG recommended that a new CARE scheme could provide the most appropriate option for sustainable, affordable and fair pension for public employees in Jersey.

For current scheme members, the impact of a change to career average would be mitigated by the maintenance of the final salary link for those benefits built up before they moved to the new provisions. This means that the benefits they receive at retirement under their current arrangements would be based on their salary at the point they retire or leave the organisation, not when they moved to a new CARE scheme.

A move to a career average scheme from a final salary one would mean that benefits earned under a new CARE scheme would be calculated in a different way. The pension would be based on an average of earnings for each year of work until the member leaves or retires, rather than the last year's salary.

### **The Law**

The draft Law does not of itself design the CARE Scheme. As with the existing 1967 Law for PECRS, it is an enabling Law, although one that goes into an appropriate level of detail for providing the necessary statutory powers for the eventual Regulations. The detail of this is explained in the Explanatory Note, and it would not assist to go over the same ground here. What should be emphasized is that the draft Law upholds the principle that entitlement to pension accrued under PECRS will not be altered by the pension reforms to be undertaken under the draft Law.

If the Law is approved by the States Assembly, it would be referred to Privy Council for Royal Assent. Once Royal Assent is given, the Law would not come into force until such time as the draft Regulations (which cover the detail of the Scheme and how it will operate), and the Law's Appointed Day Act are debated and agreed by the States Assembly.

Members of both the TWG and the Joint Negotiating Group, who negotiate pension provision for the majority of States employees, support the lodging of this enabling Law and look forward to playing a full role in reviewing the draft Regulations where the detail of the new arrangements will be set out.

### **Secondary legislation**

Secondary legislation will follow by way of Regulations. The Regulations will cover the detailed design of the scheme and how it will operate, including aspects such as –

- Protection of accrued rights
- Scheme design

- Eligibility for membership
- Accrual rates
- Employee contribution rates
- Employer contribution rates
- Contribution cap
- Additional voluntary contributions
- Pension increases during employment
- Normal retirement ages
- Optional retirement ages
- Ill-health retirement arrangements
- Optional lump-sum
- Death-in-service benefits
- Benefits for widows/widowers/children/dependents/civil partners/  
co-habiting partners
- Pension increases for deferred pensions
- Pension increases for pension in payment
- Actuarial reductions
- Methodology for dealing with surpluses and deficiencies
- Risk sharing
- Transitional arrangements.

### **Financial and manpower implications**

The draft Law in itself does not result in any additional financial costs to the States. The details of the CARE scheme design will be specified in the Regulations. The Law is an enabling Law, and it will be the details contained within the Regulations that determine any financial implications for the States. It is planned that the scheme design, to be specified in the Regulations, will provide a range of options which will enable scheme costs to be managed. It is also intended that the scheme Regulations will introduce an overall contribution cost cap. The final details of the scheme design, and therefore any financial implications for the States, will be agreed when finalising negotiations.

The manpower and system design costs of implementing the new pension administration arrangements, once agreed, will be met by PECRS.

### **Human Rights**

The notes on the human rights aspects of the draft Law in **Appendix 1** to this Report have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

**HUMAN RIGHTS NOTES ON THE DRAFT PUBLIC EMPLOYEES  
(PENSIONS) (JERSEY) LAW 201-**

These notes have been prepared in respect of the Draft Public Employees (Pensions) (Jersey) Law 201- by the Law Officers' Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers' opinion, the draft Law is compatible with the European Convention on Human Rights ("ECHR") as implemented under the Human Rights (Jersey) Law 2000.

**These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.**

The draft Law primarily contains Regulation-making powers with respect to the pension scheme that it establishes, and therefore there is little direct interference with the ECHR provided for in its provisions. Strictly speaking, as the Law requires Regulations to take effect, it is impossible for the Law to violate rights established under the Human Rights (Jersey) Law 2000, as any Regulations and any action taken under those Regulations will be subject to annulment under the 2000 Law, unless the Law of itself requires a human rights infringement. There are 2 possible scenarios which can be considered, but both are easily dealt with.

Firstly, Article 2(3)(d) provides for the ability to make Regulations for retrospective provisions; and secondly, Article 2 read in the light of paragraph 8 of Schedule 1 makes clear that Regulations may provide for forfeiture and suspension of pensions or benefits. Such Regulations have the potential to engage Article 1 of the First Protocol of the ECHR ("A1P1"). Therefore, the draft Law has been considered as to whether the power to allow such provisions to be made by Regulations is, in and of itself, contrary to A1P1.

A1P1 provides that –

*“Every natural and legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*

*The preceding provisions shall not, however, in any way impair the right of the State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”*

The position of pensions as possessions within the European Convention is not definitive and is case-specific. It seems very clear that a pension will be seen as a possession, insofar as it represents contributions made by the member from his salary; it is less clear that it would be viewed as a possession in respect of employer contributions. The distinction between what is attributable to employee and employer contributions is doubtless important in terms of justifying particular infringements of pension rights – as has been the case with forfeiture of pensions before British courts. For present purposes, we treat both employee and employer contributions as giving rise to a pension. Both the retrospective and forfeiture provisions may allow a person

to be “deprived” of pension they have accrued. Therefore, this may constitute a potential interference with the ECHR if in all circumstances such Regulations would contravene A1P1.

However, A1P1 is a qualified right, and therefore the draft Law may be considered compliant with the ECHR if its provisions are in the public interest and are subject to conditions laid down by the Law as well as general principles of international law. It is considered, in this case, that the Regulation-making powers contained in the draft Law are in the public interest, as they can be justified on economic and moral grounds. They are also subject to conditions laid down by the Law, as further Regulations, and therefore scrutiny by the legislature, is required before any deprivation of a pension can arise under the draft Law. Further, the retrospective provisions are subject to specific safeguards set out in Article 8, which includes the need for consent from affected member representatives before any retrospective change which has a significant adverse effect can be made. Finally, the provisions are considered to be proportionate to the aims that they are seeking to achieve. They provide the basis for dealing with pensions issues which justifiably can arise, and do not of themselves require any incompatibility either in future Regulations to be passed by the States, or of a court adjudicating any disputes.

Therefore, the draft Law is considered to be compatible with the ECHR

**LIST OF ADMITTED BODIES IN PECRS**

Beaulieu Convent School  
Brig-y-Don  
Comité des Connétables  
Family Nursing and Home Care (FNHC)  
Jersey Advisory and Conciliation Services (JACS)  
Jersey Competition Regulatory Authority (JCRA)  
Jersey Data Protection Commission (JDPC)  
Jersey Development Company Ltd. (ex-WEB)  
Jersey Employment Trust/Workforce Solutions (JET)  
Jersey Financial Services Commission (JFSC)  
Jersey Gambling Commission  
Jersey Heritage Trust  
Jersey Overseas Aid Commission (JOAC)  
Jersey Post  
Jersey Telecom  
Les Amis Incorporated (Including Maison Variety)  
Parish of St. Brelade (including Maison St. Brelade)  
Parish of St. Clement  
Parish of Grouville  
Parish of St. Helier  
Parish of St. Lawrence  
Parish of St. Martin  
Parish of St. Ouen  
Parish of St. Saviour

## Explanatory Note

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The Public Employees (Retirement) (Jersey) Law 1967 (the “1967 Law”) established by Regulations, the existing final salary pension scheme (the “1967 Scheme”) in respect of which States of Jersey employees and certain other employees (whose employers are permitted to participate in this scheme) are eligible to become members.

This proposed draft Law would enable the States to establish, by Regulations, a new defined benefits employee career average revalued earnings (“CARE”) occupational pension scheme.

The draft Law sets out the Regulatory framework powers under which the proposed new Public Employees Pension Scheme (“PEPS”) would operate. The draft Law also provides for certain transitional arrangements to be put in place to enable the transfer of membership of the 1967 Scheme to membership of PEPS. The 1967 Scheme would be closed to new members but would continue to operate for the purposes of certain members who, it is proposed under transitional Regulations, may have the option of whether or not to remain in that scheme.

*Article 1* defines words and expressions used throughout the draft Law. In particular, “respective schemes” means the 1967 Scheme and PEPS.

*Article 2* contains the main enabling power for the proposed new pension scheme. PEPS would be established under Regulations, known as “Scheme Regulations” which would contain the provisions detailing the design of the scheme for the payment of pensions or other benefits to States employees or other persons in respect of whom the States consider it appropriate to provide pensions.

*Article 2(3)* provides that Scheme Regulations can make such provision as the States consider expedient, subject to the requirements set out in the rest of the draft Law. For examples of Articles which limit the type of provision that may be made, or which require the Regulations to include a specific kind of provision, see –

- *Article 4* which requires the Regulations to make provision about the terms and conditions on which members of the Committee of Management are appointed;
- *Article 5* which requires the Regulations to make provision about how money in the pension fund is to be used or invested;
- *Articles 6 and 7* which require the Regulations to contain a mechanism for regular valuations of the fund and to provide for a cap on the cost of providing pensions and other benefits;
- *Article 9* which contains requirements relating to the normal pension age under PEPS.

The provisions which can be made include in particular, as *Article 2(3)(a)* says, any matter set out in Schedule 1. This Schedule sets out a non-exhaustive list of matters which can be included in Scheme Regulations. If a matter is not mentioned in Schedule 1, this does not prevent it from being included in PEPS provided it is within the powers given by *Article 2(3)*.

*Article 2(3)(b)* provides that Scheme Regulations may also include consequential, supplementary, incidental or transitional provisions in relation to PEPS, the 1967 Scheme or any provision of the Law. *Article 2(3)(c)* allows Scheme Regulations



to make different provision for different purposes or different cases, including different provision for different descriptions of persons. This is a common provision in Regulation-making powers to ensure that they are appropriately flexible. *Article 2(3)(d)* allows Scheme Regulations to include provisions that have retrospective effect (in relation to a period that precedes the Regulations coming into force), subject to *Article 8* (which sets out procedural requirements that apply to the exercise of the power to make retrospective provision). For example, it may be necessary to adjust PEPS to accommodate changes in other legislation or where the States do not want to delay the benefit of a particular change but need time to consider the consequences and appropriate method of making the change. (The Teachers' Superannuation (Jersey) Law 1979 contains an equivalent power.) *Article 2(3)(e)* allows Scheme Regulations to confer such functions, i.e. discretionary powers or duties (see definition of "functions" in *Article 1(1)*) as the States consider necessary on such persons as may be specified in the Regulations. This would permit the Chief Minister or Treasurer of the States, for example, to make their own decisions within a framework set by Scheme Regulations.

*Article 2(4)* allows Scheme Regulations to amend principal and subordinate legislation for consequential purposes. This power may be necessary where legislation is inconsistent with, or requires modification as a consequence of, Scheme Regulations or any provision of this Law. Consequential amendments may also be made to the 1967 Scheme Regulations as a consequence of any Scheme Regulations that concern provisions in this draft Law connected to the 1967 Scheme (see *Articles 4* and *5*).

*Article 3* enables Scheme Regulations to include provision concerning the admission of certain employers to participate in PEPS. The effect of an employer's admission will mean that the employer's employees may be eligible to remain or become members of PEPS. An example might be where a public function of the States is incorporated and becomes independent of direct States control. The newly incorporated employer could be admitted to PEPS and any former States employees who are transferred to the new employer would remain members of PEPS. Scheme Regulations could include provisions as to the terms and conditions of admission including measures to protect the fund in the event of an employer being wound up. The Regulations may also provide for employees to become members of PEPS on an "open" or "closed" basis. That is to say, PEPS could be open to all employees, or only open to certain description or categories of employees (i.e. closed to others).

*Article 4* provides that the Scheme is managed by a Committee of Management which will be the same Committee of Management as that established for the purposes of managing the 1967 Scheme. From the day the Law comes into force, the Committee of Management would be responsible for managing both the 1967 Scheme and PEPS in accordance with the provisions of Scheme Regulations under *Article 2*. Where the 1967 Scheme Regulations make specific provision concerning the functions of the Committee of Management, those provisions could be amended under *Article 2* Scheme Regulations (see *Article 4(3)*). *Article 4(4)* requires that Scheme Regulations provide for the appointment of the Chairman and members of the Committee by the Chief Minister on such terms and conditions as are prescribed in the Regulations. The transitional provisions contained in *Article 10* state that the persons who constitute the Committee for the purposes of the 1967 Scheme, shall continue to constitute the Committee for the respective schemes. Scheme Regulations must ensure that no conflict of interest exists at the time of appointment and while the Chairman or member continues to serve. This provision would not prevent a person who is a member of the 1967 Scheme or PEPS from being a member of the Committee. *Article 4(5)* explains that a conflict of interest means a financial or other interest which

is likely to prejudice how a member carries out his or her duties (but not a financial or other interest arising merely from membership of PEPS).

Under *Article 4(4)(d)*, equal numbers of employer and member representatives must be appointed to the Committee. Each category is defined in *Article 4(6)*, which provides that employer representatives are persons appointed on behalf of employers for the respective schemes, while member representatives are persons appointed on behalf of members of the respective schemes. The provision does not mean that the Committee will necessarily consist only of these 2 groups. Other persons may be appointed such as independent members, for example.

*Article 5(1)* declares that PEPS would be a funded scheme and *Article 5(2)* provides that the fund established for the purposes of the 1967 Scheme will also be the fund for PEPS. Effectively there will be one fund into which, and out of which, money will be paid in respect of the 1967 Scheme and PEPS. Where the 1967 Scheme Regulations make specific provision concerning the operation of the fund, those provisions could be amended under *Article 2* Scheme Regulations (see *Article 5(3)*). *Article 5(4)* prescribes the matters which must be contained in Scheme Regulations concerning how money in the fund is to be applied in payment of pensions and expenses under the respective schemes, and what is to be done with money for the purposes of investment. Scheme Regulations may provide that the prior approval of the Minister for Treasury and Resources is required before money in the fund is paid to meet expenses (see *Article 5(5)*). *Article 5(6)* provides that, if the Regulations require that any money in the fund is paid over to the Treasurer of the States for the purpose of investment, that money shall be taken to be money which can be invested by the States pursuant to Article 6 of the Public Finances (Jersey) Law 2005. Scheme Regulations must also provide for the appointment of an actuary for the fund, investment managers and custodians.

*Article 6* would require Scheme Regulations to provide for regular actuarial valuations of the fund. The Regulations would specify key details on how valuations should be carried out, including –

- how and when the valuation is to be carried out;
- the time periods over which a valuation will measure the fund's assets and liabilities;
- the determination of data, methodology and assumptions which may be applied in respect of the valuation;
- the matters that must be covered by the valuations (which may relate to the outputs that must be produced).

*Article 7* would require Scheme Regulations to set an employer and member contribution cost cap so as to maintain the cost of providing pensions and other benefits under the respective schemes within the prescribed caps. The caps would be a rate expressed as a percentage of the pensionable earnings of the members who are contributing into the respective schemes.

*Article 8* provides a procedure to be followed when retrospective provisions are included within Scheme Regulations. *Article 8(1)(a)* provides that where such retrospective provisions appear to the Chief Minister to have significant adverse effects in relation to pensions in payment to, or in respect of, members of the scheme or other persons in receipt of Scheme benefits, or in respect of a member's entitlement to a pension, the Minister must first obtain the consent of those who appear likely to be affected, either directly or through their representatives (see *Article 8(2)*). *Article 8(1)(b)* provides that where the retrospective provisions appear to the Minister

not to have significant adverse effects, but nonetheless may have unfavourable effects, the Minister must first consult those who appear likely to be affected, either directly or through their representatives, with a view to reaching agreement.

*Article 9* provides that the normal pension age under PEPS would change in line with any change to the Jersey pensionable age. So, where pensionable age increases by one year the relevant normal pension age would automatically increase by one year. The increase would apply to all relevant benefits earned in PEPS where the normal pension age has been linked to pensionable age. This will mean that if the Jersey pensionable age changes, a member of PEPS will take their entire relevant pension entitlements in that scheme at the new normal pension age, including those earned before the change to pensionable age. It will not affect pension benefits that were accrued before the member transferred into PEPS from the 1967 Scheme. Those pension benefits may be taken at the normal retiring age that applies to that member under the 1967 Scheme (see further *Article 11(2)(a) and (b)(i)*). “Normal pension age” is defined in *Article 9(3)(a)* as the age at which a person is entitled to receive unreduced benefits upon retirement. “Pensionable age” is defined in *Article 9(3)(b)* by reference to a person’s pensionable age as set out in the Social Security (Jersey) Law 1974. *Article 2* Scheme Regulations may disapply the normal pension age link to pensionable age in respect of certain members of the Scheme, and specify a different normal pension age that is to apply in their case.

*Article 10* provides for the making of transitional arrangements which would be contained in Scheme Regulations, to deal with the transition between the 1967 Scheme and PEPS on the coming into force of this Law. The 1967 Scheme would, on commencement of this Law, be closed to new members. However, that scheme would continue to operate for the purposes of certain specified members for whom it is proposed would be able to exercise an option under transitional Scheme Regulations, as to whether or not to remain in the 1967 Scheme. The transitional Scheme Regulations would also, it is proposed, provide for the automatic transfer of the majority of 1967 Scheme members to PEPS. The Regulations would contain provisions protecting the accrued pension rights of all 1967 scheme members who transfer to PEPS, and may make further provision concerning the meaning of accrued pension rights.

This Article also confirms that -

- (a) members of the Committee of Management for the 1967 Scheme will continue to serve their term of appointment for the purposes of constituting the Committee of Management for the respective schemes; and
- (b) employers admitted to the 1967 Scheme will be deemed to be employers admitted to PEPS for the purposes of any of their employees who are members of the 1967 Scheme who transfer to PEPS.

*Article 11* would apply to all members of the 1967 Scheme who transfer to PEPS on the commencement of this Law. The effect is to protect pensions accrued under the 1967 Scheme so that when such a pension falls due when a member reaches normal retiring age under the terms of the 1967 Scheme, the value of the pension would be based on the member’s earnings at the date that pension comes into payment. Accordingly the members’ accrued 1967 Scheme pension rights will not be subject to a CARE calculation. This Article also sets out other circumstances in which 1967 Scheme benefits would be based upon a person’s earnings at the point he or she leaves PEPS. Scheme Regulations may make further provision concerning the final earnings protection link.

*Article 12* gives effect to Schedule 2 which would amend the 1967 Law and other enactments as a consequence of this Law.

*Article 13* provides for the title of the draft Law and for it to come into force on such day or days as are to be appointed by Act of the States. Such an Act may appoint different days for different provisions or purposes.

*Schedule 1* This schedule contains a list of the type of provision that may, in particular, be included in Scheme Regulations made under *Article 2*. It is not an exhaustive list, but an indication of what can be included in Scheme Regulations.

Paragraph 1 allows for Regulations to set out details of the persons who are eligible for membership of the Scheme and the conditions that apply to eligibility.

Paragraph 2 provides a non-exhaustive list of some of the benefits payable under PEPS, including pensions and benefits payable on death (including death in service).

Paragraph 3 provides a non-exhaustive list of some of the types of people to whom benefits can be paid under Scheme Regulations. These could include: active, deferred and pensioner members and their surviving spouses, civil partners and dependants.

Paragraph 4 allows for Regulations to specify the conditions which must be fulfilled before making payments to members or other persons.

Paragraph 5 allows for Regulations to set out the circumstances in which benefits can be assigned to other persons and any restrictions on such assignment.

Paragraph 6 allows for Regulations to set out the procedure for determining the payment of lump sums on the death of a member.

Paragraph 7 allows for Regulations to specify certain matters which the Committee of Management, the actuary for the fund or the investment manager can make decisions about.

Paragraph 8 allows for Regulations to set out how and when accrued rights to a pension, or a pension in payment can be forfeited or suspended.

Paragraph 9 allows for Regulations to set out how any overpaid benefits may be recovered.

Paragraph 10 allows for Regulations to set out provisions for the making of contributions by employers and employees, including contribution rates. Interest may be charged on the late payment of contributions, whether by employees or employers.

Paragraph 11 allows for Regulations to set out the procedure for revaluing the earnings of active members of PEPS, where those earnings are used to accrue pension benefits until those members leave pensionable service. The revaluation could be by reference to changes in prices or earnings over a period specified in the Regulations.

Paragraph 12 allows for Regulations to set out how transfers of accrued pension "pots" will work and also any lump sum payments that can be made, in order to enable pension benefits to be transferred into, out of, or between schemes.

Paragraph 13 allows for Regulations to detail how the fund will be administered and managed, including investment arrangements and strategy, and how the fund would be wound up.

Paragraph 14 provides a non-exhaustive list of the provisions that may be included in Regulations that relate to the administration and management of the respective schemes, including the giving of advice and directions by specified persons and the provision and publication of specified information.

Paragraph 15 allows for Regulations to provide for the functions of the Committee of Management to be delegated, and for further delegation of such functions.

Paragraph 16 allows for Regulations to provide for employers to make payments to the respective schemes. This includes contributions to the administrative cost of the respective schemes and additional payments where a failure by the employer to comply with obligations under the respective schemes has increased those administrative costs. Interest can also be applied under the Regulations.

Paragraph 17 allows for Regulations to provide for increases to pensions and a mechanism for the calculation of such increases.

Paragraph 18 allows for Regulations to provide that arrangements may be entered into between the States Employment Board and other employers recognizing the pension schemes provided by such employers as being equivalent to PEPS, and vice versa.

Paragraph 19 allows for Regulations to set out the steps to be taken for resolving disputes and appeals. Scheme Regulations may provide for questions of law to be determined by the Royal Court.

*Schedule 2* would make a number of consequential amendments to the 1967 Law and other enactments as a result of the provisions of this draft Law.

Paragraph 1 sets out various amendments to the 1967 Law as follows –

- (a) Article 1 of the 1967 Law would be amended so as to insert a new definition to deal with the coming into force of this Law, by Appointed Day Act;
- (b) Article 2 of the 1967 Law would be amended so that Regulations under that Article –
  - would only apply to members of the 1967 Scheme who are members of that Scheme immediately before the commencement of this Law (because the 1967 scheme would be closed to new members by virtue of *Article 10* of this Law), and who do not transfer to PEPS;
  - could no longer make any provision concerning reciprocal arrangements (because the 1967 Scheme will be closed) or in relation to the administration of the 1967 Scheme because it will be administered in accordance with Scheme Regulations under *Article 2* of this Law. Any such provision may be made under the powers contained in *Article 2(3)(b)(ii)*.
- (c) Article 3 of the 1967 Law would be substituted so that the Committee of Management established for the 1967 Scheme and the fund for that Scheme, would continue as the Committee of Management and the fund in respect of the 1967 Scheme and PEPS by virtue of *Articles 4* and *5* of this Law. Accordingly, Regulations under Article 2 of the 1967 Law and the provisions of Article 3 governing the management of the 1967 Scheme and fund would no longer apply, as all matters concerning the management of the joint fund for the purposes of the respective schemes would be governed by Scheme Regulations under *Article 2* of this Law. Substituted *Article 3(2)* confirms that anything done under the 1967 Scheme Regulations in respect of the management of that Scheme immediately before the commencement of this Law will not be affected.
- (d) Article 4 of the 1967 Law would be amended so as to prescribe under Article 2 Regulations of that Law, the persons upon whom additional obligations may be imposed. Notwithstanding that the 1967 Scheme

would be closed to new members, there may be circumstances where that Scheme has to be extended to the admission of a new employer who is taking on former States functions. Some States employees may, as a consequence, transfer to the new employer and if any of those employees have remained members of the 1967 Scheme, then the continued operation of Article 4 would enable the new employer to be admitted to that Scheme for the purposes of continuing to provide 1967 Scheme benefits to those employees.

Paragraph 2 would repeal the Public Employees (Investment of Fund) (Jersey) Act 1972 as the provisions concerning the investments of the fund would be set out in Scheme Regulations made under *Article 2*.

The amendments set out in –

- (a) paragraph 3 would amend the Telecommunications (Jersey) Law 2002;
- (b) paragraph 4 would amend the Employment of States of Jersey Employees (Jersey) Law 2005; and
- (c) paragraph 5 would amend the Goods and Services Tax (Jersey) Regulations 2007,

by inserting references to the Public Employees (Pensions) (Jersey) Law 201-.



Jersey

## DRAFT PUBLIC EMPLOYEES (PENSIONS) (JERSEY) LAW 201-

### Arrangement

Article		
	<i>Introduction</i>	25
1	Interpretation .....	25
	<i>Provision of pensions</i>	27
2	Pension Scheme.....	27
3	Power to extend application of Scheme .....	28
	<i>Governance and administration</i>	28
4	Management of Scheme .....	28
5	Pension fund.....	29
	<i>Cost control</i>	30
6	Valuations .....	30
7	Contributions cost cap.....	30
	<i>Supplementary</i>	31
8	Procedure for retrospective provision .....	31
9	Normal pension age – link to pensionable age.....	31
	<i>Closing and transitional provisions</i>	32
10	Closure of the 1967 Scheme and transitional provisions .....	32
11	1967 Scheme – protection of link to final earnings.....	33
12	Amendment of enactments.....	34
13	Citation and commencement.....	34
 <b>SCHEDULE 1</b>		 <b>35</b>
SCOPE OF SCHEME REGULATIONS: SUPPLEMENTARY MATTERS		35
 <b>SCHEDULE 2</b>		 <b>37</b>
AMENDMENT OF ENACTMENTS		37
1	Public Employees (Retirement) (Jersey) Law 1967.....	37
2	Public Employees (Investment of Fund) (Jersey) Act 1972.....	38
3	Telecommunications (Jersey) Law 2002.....	38
4	Employment of States of Jersey Employees (Jersey) Law 2005.....	38
5	Goods and Services Tax (Jersey) Regulations 2007 .....	38







Jersey

## **DRAFT PUBLIC EMPLOYEES (PENSIONS) (JERSEY) LAW 201-**

**A LAW** to make new provision in relation to pensions and other benefits payable to or in respect of, certain employees and for connected purposes.

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*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 –

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### *Introduction*

#### **1 Interpretation**

(1) In this Law, unless the context indicates otherwise –

“1967 Scheme” means the pension Scheme established by the Public Employees (Contributory Retirement Scheme) (Jersey) Regulations 1967<sup>1</sup>;

“1967 Scheme benefits” means a person’s pension rights accrued under the 1967 Scheme;

“1967 Scheme Regulations” means any of the following Regulations –

- (a) the Public Employees (Contributory Retirement Scheme) (Jersey) Regulations 1967<sup>2</sup>;
- (b) the Public Employees (Contributory Retirement Scheme) (Existing Members) (Jersey) Regulations 1989<sup>3</sup>;
- (c) the Public Employees (Contributory Retirement Scheme) (New Members) (Jersey) Regulations 1989<sup>4</sup>;
- (d) the Public Employees (Contributory Retirement Scheme) (General) (Jersey) Regulations 1989<sup>5</sup>; and
- (e) the Public Employees (Contributory Retirement Scheme) (Former Hospital Scheme) (Jersey) Regulations 1992<sup>6</sup>;

“2005 Law” means the Employment of States of Jersey Employees (Jersey) Law 2005<sup>7</sup>;

“appointed day” means such day or days as the States may by Act appoint for the coming into force of this Law or a provision of it;

“Committee of Management” shall be construed in accordance with Article 4;

“employer” means –

- (a) the States Employment Board;
- (b) any employer who is admitted to the Scheme pursuant to Scheme Regulations under Article 2; or
- (c) any employer who is admitted to the 1967 Scheme pursuant to Regulations under Article 4 of the Public Employees (Retirement) (Jersey) Law 1967<sup>8</sup>;

“functions” includes any powers or duties;

“fund” shall be construed in accordance with Article 5;

“Jersey Appointments Commission” means the Commission established by Article 17 of the 2005 Law;

“Minister” means the Chief Minister;

“normal pension age” has the meaning given in Article 9;

“pensionable earnings” means a person’s earnings by reference to which a pension or other benefits under the Scheme are calculated;

“pension rights accrued” shall be construed in accordance with Article 10(6);

“pensionable service” in relation to the Scheme, means service which qualifies a person to accrue a pension or other benefits under the Scheme;

“prescribed” means prescribed by Scheme Regulations under Article 2;

“respective schemes” means the 1967 Scheme and the Scheme;

“Scheme” means the Public Employees Pension Scheme established by Scheme Regulations under Article 2;

“Scheme Regulations” has the meaning given in Article 2(2);

“States Employment Board” means the States Employment Board established under Article 4 of the 2005 Law.

- (2) For the purposes of this Law the following are to be taken to be employed by the States Employment Board, namely –
- (a) officers referred to in Article 1(1)(a) to (d) of the Departments of the Judiciary and the Legislature (Jersey) Law 1965<sup>9</sup>;
  - (b) the holder of the office of Data Protection Commissioner (within the meaning of Article 6 of the Data Protection (Jersey) Law 2005<sup>10</sup>);
  - (c) the Greffier of the States and Deputy Greffier of the States (within the meaning of Article 41 of the States of Jersey Law 2005<sup>11</sup>);

- (d) the Magistrate (and Assistant Magistrate) (within the meaning of Article 1(1) of Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949<sup>12</sup>);
- (e) the Master of the Royal Court;
- (f) police officers in the States of Jersey Police Force;
- (g) a "délégué" as defined by Article 1(2) of the Loi (1937) sur l'atténuation des peines et sur la mise en liberté surveillée<sup>13</sup> (a probation officer).

*Provision of pensions*

## **2 Pension Scheme**

- (1) The States shall by Regulations establish a pension scheme which shall be known as the Public Employees Pension Scheme, for the payment of pensions and other benefits to or in respect of –
  - (a) persons or classes of persons who are employed by the States Employment Board;
  - (b) other persons, or classes of persons, for whom the States consider it appropriate to provide pensions or other benefits.
- (2) In this Law, Regulations under this Article are called "Scheme Regulations".
- (3) Without prejudice to the generality of paragraph (1), Scheme Regulations may, subject to this Law, make such provision as the States consider expedient including in particular –
  - (a) provision as to any of the matters specified in Schedule 1;
  - (b) consequential, supplementary, incidental, transitional or saving provision in relation to –
    - (i) the Scheme,
    - (ii) the 1967 Scheme, or
    - (iii) any provision of this Law;
  - (c) different provision for different purposes or cases (including different provision for different descriptions or classes of persons);
  - (d) retrospective provision, subject to Article 8;
  - (e) confer on such persons as may be specified, such functions as the States consider necessary or expedient for the purposes of the Regulations.
- (4) The consequential provision referred to in paragraph (3)(b) includes consequential provision amending any enactment –
  - (a) for the general purposes, or any particular purpose of this Law;
  - (b) in consequence of any provision made by or under this Law;
  - (c) for giving full effect to this Law or any provision of it.

### **3 Power to extend application of Scheme**

- (1) The States may make Scheme Regulations under Article 2 that make provision for the admission of certain employers to participate in the Scheme and for their employees to become members of the Scheme.
- (2) Without prejudice to the generality of paragraph (1), the Regulations may include provision –
  - (a) specifying a description, class or category of employer that the Minister considers is appropriate to admit to the Scheme;
  - (b) specifying the arrangements for admission to the Scheme;
  - (c) specifying the terms and conditions on which an employer and the employees respectively may participate in the Scheme, or specifying which terms and conditions must be contained in any contract or agreement relating to admission to the Scheme under this Article;
  - (d) so as to secure appropriate protection against additional costs or risks to the Scheme that might result from –
    - (i) the admission to the Scheme of an employer or his or her employees, or
    - (ii) the winding up or liquidation of the employer;
  - (e) imposing certain obligations on any person as may be prescribed.
- (3) A term and condition referred to in paragraph (2)(c) includes a provision specifying which of an employer's employees of a particular description, class or category are or are not eligible (as the case may be) to become members of the Scheme.

#### *Governance and administration*

### **4 Management of Scheme**

- (1) Subject to paragraph (2), a Committee of Management shall manage the Scheme.
- (2) The Committee of Management established for the purposes of managing the 1967 Scheme, shall, on the appointed day continue as the Committee of Management (the "Committee") for the purposes of managing the respective schemes.
- (3) Scheme Regulations under Article 2 –
  - (a) shall make provision concerning the discharge of the Committee's functions in relation to the management of the respective schemes; and
  - (b) may amend the 1967 Scheme Regulations for the purposes of the discharge of the Committee's functions in relation to the management of the 1967 Scheme.
- (4) Subject to Article 10, Scheme Regulations under Article 2 shall –
  - (a) provide for the recruitment of the Chairman of the Committee and members of the Committee;

- (b) provide for the Minister to appoint the Chairman of the Committee and members of the Committee on such terms and conditions as may be prescribed;
  - (c) make provision to ensure –
    - (i) that a person to be appointed as the Chairman or as a member of the Committee does not have a conflict of interest,
    - (ii) from time to time that none of the persons serving on the Committee has a conflict of interest;
  - (d) provide for the Committee's membership to include employer representatives and member representatives in equal numbers.
- (5) In this Law –
- “conflict of interest” in relation to a person, means a financial or other interest which is likely to prejudice the person's exercise of functions as a member of the Committee (but does not include a financial or other interest arising merely by virtue of membership of the 1967 Scheme, or the Scheme);
- “employer representatives” means persons appointed to the Committee on behalf of employers for the respective schemes;
- “member representatives” means persons appointed to the Committee on behalf of members of the respective schemes.

## **5 Pension fund**

- (1) There shall be a pension fund for the Scheme which for the purposes of the Scheme, shall be the pension fund (“fund”) established for the purposes of the 1967 Scheme.
- (2) The fund shall, on the appointed day, operate as the fund for the purposes of the respective schemes.
- (3) Scheme Regulations under Article 2 –
  - (a) shall make provision concerning the management of the fund for the purposes of the respective schemes; and
  - (b) may amend the 1967 Scheme Regulations for the purposes of the management of the fund in so far as it operates for the purposes of the 1967 Scheme.
- (4) Scheme Regulations under Article 2 shall make provision –
  - (a) about what money must be paid into the fund;
  - (b) about how (including in what amounts) money in the fund is to be applied –
    - (i) in payment of pensions and other benefits under the respective schemes,
    - (ii) for meeting the expenses of administering the respective schemes, and
    - (iii) for other purposes relevant to the respective schemes;

- (c) about how money in the fund that is not for the time being required for the purposes mentioned in sub-paragraph (b) may, with the approval of the Minister for Treasury and Resources, be invested by the Committee of Management;
- (d) for the appointment of –
  - (i) an actuary for the fund,
  - (ii) one or more investment managers, for the purposes of managing and investing money in the fund, and
  - (iii) one or more custodians, for the purposes of storing and safeguarding the assets of the fund.
- (5) Scheme Regulations may further provide that any one or more of the matters referred to in paragraph (4)(b) shall be subject to the prior approval of the Minister for Treasury and Resources.
- (6) Without prejudice to the generality of paragraph (4)(c), where Scheme Regulations provide that money in the fund referred to in that paragraph, is paid over to the Treasurer of the States for the purposes of investment, that money shall be taken to be money to which Article 6(1)(b) of the Public Finances (Jersey) Law 2005<sup>14</sup> applies.

*Cost control*

## **6 Valuations**

- (1) Scheme Regulations under Article 2 shall provide for regular actuarial valuations of the fund.
- (2) The Regulations may in particular make provision about –
  - (a) how and when a valuation is to be carried out;
  - (b) the time in relation to which a valuation is to be carried out;
  - (c) the determination of data, methodology and assumptions which may be applied in respect of the valuation; and
  - (d) the matters to be covered by a valuation.

## **7 Contributions cost cap**

- (1) Scheme Regulations under Article 2 shall provide for –
  - (a) the setting of an employer contribution cost cap which shall operate as a cap on the cost of funding the pensions and other benefits granted under the respective schemes, attributable to the employer; and
  - (b) the setting of a member contribution cost cap which shall operate as a cap on the cost of funding the pensions and other benefits granted under the respective schemes, attributable to the contributing members of the respective schemes.
- (2) The caps referred to in paragraph (1) shall be rates expressed as a percentage of pensionable earnings of contributing members of the respective schemes.

- (3) The Regulations may make further provision about the action to be taken, or the procedures to be followed to keep the cost of funding the respective schemes within the prescribed caps.
- (4) The expression “contributing members” means members who are making payments towards the receipt of future pensions or other benefits and includes members of the Scheme who are entitled to receive 1967 Scheme benefits.

*Supplementary*

## **8 Procedure for retrospective provision**

- (1) Where Scheme Regulations under Article 2 propose making retrospective provision which appears to the Minister –
  - (a) to have significant adverse effects in relation to –
    - (i) the pension payable to or in respect of members of the Scheme or other persons in receipt of benefits under the Scheme, or
    - (ii) the entitlement to a pension in respect of members of the Scheme or other persons entitled to benefits under the Scheme,  
the Minister shall first obtain the consent of the persons specified in paragraph (2); or
  - (b) not to have significant adverse effects as specified in subparagraph (a), but to have effects which may be otherwise unfavourable, the Minister shall first consult with the persons specified in paragraph (2) with a view to reaching agreement with them.
- (2) The persons referred to in paragraph (1) are the persons (or representatives of the persons) in receipt of, or entitled to benefits under the Scheme who appear to the Minister to be likely to be affected if the provision were made.

## **9 Normal pension age – link to pensionable age**

- (1) Subject to paragraph (4), the normal pension age of a person entitled to a pension or other benefits under the Scheme must be the same as the person’s pensionable age.
- (2) Where a person’s pensionable age changes, the consequential change to the person’s normal pension age must, under the Scheme, apply in relation to all the benefits (including benefits already accrued under the Scheme) which may be paid to or in respect of the person under the Scheme and to which the normal pension age is relevant.
- (3) In this Law –
  - (a) “normal pension age” in relation to a person, means the age at which the person is entitled to receive a pension under the Scheme (without actuarial adjustment and disregarding any special

provision as to early payment of pension or other benefits on the grounds of ill-health or otherwise);

- (b) “pensionable age” in relation to a person, means the pensionable age of the person as specified from time to time in the Social Security (Jersey) Law 1974<sup>15</sup>.
- (4) Scheme Regulations under Article 2 may provide that paragraph (1) does not apply in relation to prescribed classes or description of person and shall specify the normal pension age that is to apply in relation to such a person.

*Closing and transitional provisions*

**10 Closure of the 1967 Scheme and transitional provisions**

- (1) On the appointed day, no person is eligible to become a member of the 1967 Scheme and that scheme shall be declared closed.
- (2) Notwithstanding Article 4(4), the persons who, immediately before the appointed day, constitute the Committee of Management established for the purposes of managing the 1967 Scheme, shall –
  - (a) constitute the Committee (within the meaning of this Law); and
  - (b) continue to serve their appointed term of office until –
    - (i) that period expires in accordance with Regulation 3(3) of the Public Employees (Contributory Retirement Scheme) (General) (Jersey) Regulations 1989<sup>16</sup>, or
    - (ii) they resign, are removed from office or die (if earlier).
- (3) The persons to whom paragraph (2) applies, shall –
  - (a) resign or be removed from office; or
  - (b) be eligible (or not, as the case may be) for re-appointment, in accordance with Scheme Regulation under Article 2.
- (4) Scheme Regulations under Article 2 may, in particular, provide –
  - (a) for the transfer of a person’s membership of the 1967 Scheme to membership of the Scheme on an automatic or optional basis; and
  - (b) in the case of a person whose membership is transferred under Scheme Regulations, for the protection of his or her –
    - (i) membership accrued in respect of service, and
    - (ii) pension rights accrued,under the 1967 Scheme up to and including the day before that scheme is declared closed under paragraph (1).
- (5) Any employer admitted to the 1967 Scheme who on the appointed day employs a person whose membership of the 1967 Scheme is transferred under Scheme Regulations under Article 2, shall be taken to be an employer admitted to the Scheme as if that employer had been admitted to the Scheme under Scheme Regulations.



- (6) The expression “pension rights accrued” includes any right to any pension, lump sum or other benefit due to or in respect of a person described in paragraph (4)(b), but excludes any special provision under the 1967 Scheme as to the early payment of benefits on the grounds of ill-health or otherwise.
- (7) Scheme Regulations under Article 2 may (without prejudice to paragraph (6)) make further provision in respect of the meaning of “pension rights accrued”.
- (8) Nothing in this Law shall be taken to affect the continued operation of the 1967 Scheme in respect of any person whose membership of that scheme is not transferred under Scheme Regulations under Article 2.

## **11 1967 Scheme – protection of link to final earnings**

- (1) This Article applies to a person who immediately before the appointed day is a member of the 1967 Scheme and who, on the appointed day, transfers to the Scheme.
- (2) A person’s 1967 Scheme benefits accrued immediately before the appointed day, shall be calculated by reference to the person’s –
  - (a) service accrued in respect of membership of the 1967 Scheme; and
  - (b) final pensionable earnings received at the point the person –
    - (i) reaches the normal retiring age at which he or she is entitled to receive his or her 1967 Scheme benefits, notwithstanding that he or she remains in Scheme employment but chooses to receive those benefits at that point,
    - (ii) leaves Scheme employment at any time after reaching the age referred to in paragraph (2)(b)(i), or leaves the Scheme on reaching normal pension age (if later), where he or she has decided to defer receiving his or her 1967 Scheme benefits until that point, or
    - (iii) leaves Scheme employment at any other time, regardless of whether or not he or she is entitled to receive his or her 1967 Scheme benefits (with or without the application of an actuarial reduction) at that point.
- (3) Scheme Regulations under Article 2 may make further provision about linking a person’s final pensionable earnings to past service in respect of the 1967 Scheme.
- (4) The expression –
  - (a) “final pensionable earnings” means the highest or average pensionable earnings in a prescribed period, ending at any of the points described in paragraph (2)(b);
  - (b) “normal retiring age” has the meaning given in whichever of the 1967 Scheme Regulations applies in relation to a member, or a particular category of member;
  - (c) “Scheme employment” means an employment by virtue of which a person is entitled to be a member of the Scheme.

**12 Amendment of enactments**

The enactments specified in Schedule 2 are amended in the manner specified in that Schedule.

**13 Citation and commencement**

This Law shall be cited as the Public Employees (Pensions) (Jersey) Law 201- and shall come into force on such day or days as the States may by Act appoint, and different days may be appointed for different provisions and for different purposes.

**SCHEDULE 1**

(Article 2(3)(a))

**SCOPE OF SCHEME REGULATIONS: SUPPLEMENTARY MATTERS**

Scheme Regulations under Article 2 may make provision for –

- 1 the eligibility and admission to membership of the Scheme, which includes –
  - (a) specifying who, of the persons in relation to whom the Scheme Regulations may be made, is eligible for membership;
  - (b) conditions of eligibility;
- 2 the benefits which must or may be paid under the Scheme, which may include –
  - (a) pensions and other benefits on leaving service to which the Scheme relates (whether before, at or after normal pension age);
  - (b) pensions and other benefits payable on death (in service or otherwise);
  - (c) discretionary payments and concessions;
- 3 the persons to whom pensions or other benefits under the Scheme may be payable;
- 4 the conditions subject to which pensions or other benefits are payable;
- 5 the assignment of pensions or benefits, including restrictions on assignment;
- 6 where a lump sum becomes payable on the death of a member, to determine –
  - (a) the recipients (whether individuals or persons);
  - (b) whether the lump sum is to be paid wholly to one recipient or in parts to more than one recipient;
  - (c) whether the lump sum is to be paid in full, partially or not at all;
- 7 specified matters to be determined by the Committee of Management, the actuary for the fund or any investment managers;
- 8 the forfeiture or suspension of pensions or benefits, whether accrued or in payment;
- 9 the recovery of overpaid pensions or benefits;
- 10 contributions, including –
  - (a) the making of contributions by employers and members of the Scheme towards the cost of funding the pensions and other benefits granted under the respective schemes;
  - (b) contribution rates;
  - (c) interest on late payment of contributions;
  - (d) the return of contributions (with or without interest);

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- 11 the determination of the amounts of pension accrued each year by reference to the member's pensionable earnings in that year of service, and the revaluation each year of the amounts thus accrued until the member leaves pensionable service;
  - 12 the payment or receipt of transfer values or other lump sum payments for the purpose of creating or restoring rights to pensions or other benefits (under the Scheme or otherwise);
  - 13 the administration, management and winding-up of the fund;
  - 14 the administration and management of the respective schemes, including –
    - (a) the giving of advice or the issuing of guidance by the Minister, the Minister for Treasury and Resources or the Treasurer of the States to the Committee of Management or to the States Employment Board;
    - (b) the giving of advice by the Treasurer of the States to the Minister, or the Minister for Treasury and Resources;
    - (c) the appointment of professional advisers;
    - (d) the provision of individual pension or other benefit information to members of the respective schemes or other persons in receipt of a pension or other benefits under the respective schemes;
    - (e) the publication of information about the respective schemes, including –
      - (i) accounts,
      - (ii) funding, assets and liabilities,
      - (iii) membership,
      - (iv) employer and member contributions,
      - (v) administration and governance;
  - 15 the delegation of functions, including –
    - (a) delegation of functions by the Committee of Management, the Minister, the Minister for Treasury and Resources and the Treasurer of the States;
    - (b) further delegation of functions by any delegatee;
  - 16 the payment by an employer of –
    - (a) any costs relating to the administration of the Scheme;
    - (b) any costs incurred because of a failure by the employer to comply with the employer's obligations under the Scheme;
    - (c) interest relating to payments to be made by virtue of this paragraph;
  - 17 pension increases which may be payable out of the fund, including the criteria upon which such increases are calculated, and the arrangements for defraying the costs of such increases;
  - 18 the entering into reciprocal arrangements with other employers;
  - 19 the resolution of disputes and appeals (including the referral to the Royal Court of questions of law).

**SCHEDULE 2**

(Article 12)

**AMENDMENT OF ENACTMENTS****1 Public Employees (Retirement) (Jersey) Law 1967**

- (1) In this paragraph, “Law” means the Public Employees (Retirement) (Jersey) Law 1967<sup>17</sup>.
- (2) In Article 1(1) of the Law, before the definition “Committee of Management” there shall be inserted the following definition –  
“ ‘appointed day’ means such day or days as the States may by Act appoint for the coming into force of the Public Employees (Pensions) (Jersey) Law 201-<sup>18</sup>, or a provision of it; and”.
- (3) In Article 2 of the Law –
  - (a) in paragraph (2) –
    - (i) in sub-paragraph (b), the words “to be” shall be deleted, and
    - (ii) sub-paragraphs (g) and (i) shall be deleted; and
  - (b) paragraphs (3) to (6) shall be deleted.
- (4) For Article 3 of the Law, there shall be substituted the following Article –

**“3 Management of fund and scheme**

- (1) The fund and the scheme established by the Public Employees (Contributory Retirement Scheme) (Jersey) Regulations 1967<sup>19</sup> pursuant to the powers conferred under Article 2, shall on the appointed day, be managed in accordance with Regulations made under Article 2 of the Public Employees (Pensions) (Jersey) Law 201-<sup>20</sup>.
- (2) Nothing in this Article shall be taken to affect anything done by the Committee of Management or the Minister under Regulations made under Article 2, in respect of the management of the fund and the scheme immediately before the appointed day.”.
- (5) In Article 4 of the Law –
  - (a) in paragraph (2), for sub-paragraph (b) there shall be substituted the following sub-paragraph –  
“(b) impose additional obligations on any person as may be specified, or specify any other manner in which such additional obligations shall be imposed on any such person.”; and
  - (b) paragraph (4) shall be deleted.

**2 Public Employees (Investment of Fund) (Jersey) Act 1972**

The Public Employees (Investment of Fund) (Jersey) Act 1972<sup>21</sup> shall be repealed.

**3 Telecommunications (Jersey) Law 2002**

In Article 46(1), (2), (3), (4)(a) and (6) of the Telecommunications (Jersey) Law 2002<sup>22</sup>, after the words “Public Employees (Retirement) (Jersey) Law 1967<sup>23</sup>”, there shall be inserted the words “or the Public Employees (Pensions) (Jersey) Law 201-<sup>24</sup>”.

**4 Employment of States of Jersey Employees (Jersey) Law 2005**

In Article 36(3) of the Employment of States of Jersey Employees (Jersey) Law 2005<sup>25</sup>, after the words “Public Employees (Retirement) (Jersey) Law 1967<sup>26</sup>” there shall be inserted the words “, the Public Employees (Pensions) (Jersey) Law 201-<sup>27</sup>”.

**5 Goods and Services Tax (Jersey) Regulations 2007**

In Regulation 6(3) of the Goods and Services Tax (Jersey) Regulations 2007<sup>28</sup>, for sub-paragraph (a) there shall be substituted the following sub-paragraph –

- “(a) the Committee of Management established under the Public Employees (Retirement) (Jersey) Law 1967<sup>29</sup> for the purposes of managing the scheme established under that Law and the scheme established under the Public Employees (Pensions) (Jersey) Law 201-<sup>30</sup>”.

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- 1 *chapter 16.650.48*
  - 2 *chapter 16.650.48*
  - 3 *chapter 16.650.12*
  - 4 *chapter 16.650.60*
  - 5 *chapter 16.650.36*
  - 6 *chapter 16.650.24*
  - 7 *chapter 16.325*
  - 8 *chapter 16.650*
  - 9 *chapter 16.300*
  - 10 *chapter 15.240*
  - 11 *chapter 16.800*
  - 12 *chapter 07.595*
  - 13 *chapter 08.020*
  - 14 *chapter 24.900*
  - 15 *chapter 26.900*
  - 16 *chapter 16.650.36*
  - 17 *chapter 16.650*
  - 18 *P.28/2014*
  - 19 *chapter 16.650.48*
  - 20 *P.28/2014*
  - 21 *R&O.5728 (chapter 16.650.84)*
  - 22 *chapter 06.288*
  - 23 *chapter 16.650*
  - 24 *P.28/2014*
  - 25 *chapter 16.325*
  - 26 *chapter 16.650*
  - 27 *P.28/2014*
  - 28 *chapter 24.700.30*
  - 29 *chapter 16.650*
  - 30 *P.28/2014*