

**PUBLIC EMPLOYEES CONTRIBUTORY RETIREMENT SCHEME: PROPOSAL TO ESTABLISH THE
SCHEME
UNDER A TRUST DEED AND RULES**

**Lodged au Greffe on 28th September 1999
by the Establishment Committee**



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PROPOSITION

THE STATES are asked to decide whether they are of opinion -

- (a) to agree in principle that the Public Employees Contributory Retirement Scheme should be established as a Trust and administered under a Trust Deed and Rules, instead of the present Regulations;
- (b) to charge the Establishment Committee to prepare the necessary legislation to give effect to this proposal.

ESTABLISHMENT COMMITTEE

NOTES: This proposition is supported by -

- 1. the Finance and Economics Committee;
- 2. the Committee of Management of the Public Employees Contributory Retirement Scheme;
- 3. the Public Employees Pension Scheme Joint Negotiating Group.

REPORT

Background

1. The Public Employees Contributory Retirement Scheme (“the Scheme”) came into effect from 1st January 1968 under the Public Employees (Retirement) (Jersey) Law 1967 (L.11/67) (“the 1967 Law”) and the Public Employees (Contributory Retirement Scheme) (Jersey) Regulations 1967 (R & O 5010). It was set up to replace various non-contributory pension arrangements for public employees, and was administered by the States Treasury.
2. Until the late 1980s, the States Treasury reported in that respect to the Finance and Economics Committee, which was the Committee responsible for investment of the Scheme’s assets. The Establishment Committee was also involved, in two ways: firstly, it acted as principal employer on behalf of the States, and secondly it was responsible for matters which in most other schemes would be dealt with by trustees.
3. Significant changes were made to the Scheme with effect from 1st January 1988 by way of amendments to the existing legislation and promulgation of the following additional Regulations -
 - the Public Employees (Contributory Retirement Scheme) (General) (Jersey) Regulations 1989 (R & O 7956)
 - the Public Employees (Contributory Retirement Scheme) (Existing Members) (Jersey) Regulations 1989 (R & O 7954);
 - the Public Employees (Contributory Retirement Scheme) (New Members) (Jersey) Regulations 1989 (R & O 7955).
4. Designed primarily to implement modifications to the Scheme’s structure, funding and benefit provisions, these changes also introduced a requirement for the Scheme to be run by a Committee of Management. The States Treasury continued to administer the Scheme but reported to the Committee of Management. The investment of the Scheme’s assets became the responsibility of the Committee of Management, although the Finance and Economics Committee retained a role in approving investment managers and strategy. The Establishment Committee continued to act as principal employer but responsibility for other matters was passed to the Committee of Management.
5. Subsequently a further set of Regulations entitled the Public Employees (Contributory Retirement Scheme) (Former Hospital Scheme) (Jersey) Regulations 1992 (R & O 8443) were promulgated as part of the process of transferring the assets and liabilities of a pension arrangement for medical and auxiliary staff to the Scheme. The current legislative structure of the Scheme is therefore complex due to the presence of five sets of Regulations in addition to the 1967 Law.

Membership of the Committee of Management

6. The current Committee of Management is comprised of seven member representatives and seven employer representatives, with an independent Chairman. They are all appointed by the States on the recommendation of the Establishment Committee.
7. The employer representatives are nominated by the Finance and Economics Committee and the Establishment Committee.
8. The member representatives are nominated by the Public Employees Pension Scheme Joint Negotiating Group. This was set up in 1976 at the request of the Establishment Committee as a co-ordinating panel of union and staff associations to represent the interests of all public employees in negotiations with the Establishment Committee concerning pension provisions.
9. Legal advice concerning the status of the Committee of Management confirmed that in effect it is a Board of Trustees holding the Scheme’s assets as a trust fund administered as set out in the Regulations.

Formally establishing a Trust Deed and Rules

10. Further consideration has now been given to the status of the Committee of Management, and it has been concluded that it would be beneficial to establish the Scheme formally as a Trust, with no change to the Scheme's commitments, operation, funding or benefits save that these would become administered under a Trust Deed and Rules rather than the present Regulations. The parties that came to this conclusion were the Committee of Management, Establishment Committee, Finance and Economics Committee and the Joint Negotiating Group, supported by the Scheme's legal advisers and actuaries. Such a change would be in line with modern best practice for large pension schemes. Appropriate high level safeguards and the proper input of the States would be retained.
11. One of the substantial advantages would be removal of the need to compete with other States Committee projects for law drafting resources. The existing legislative process is a less than ideal structure within which to administer the Scheme. Modifying the structure would speed up the process of implementing agreed changes to the Scheme's provisions as the need arises and greatly improve the flexibility of its administration.
12. The Establishment Committee therefore intends to promote amendments of the 1967 Law which will enable the Scheme to be established as a Trust and administered under a Trust Deed and Rules.

Key principles

13. In the following paragraphs of this report some key principles are outlined which would form the basis of establishing the Scheme under a Trust Deed and Rules.
14. The Committee of Management would, as individuals, be appointed as the initial trustees. The enabling Law (and the Trust Deed and Rules) would allow for trusteeship either through individuals or through a trust corporation, with the power to appoint any such trustees or trustee being retained by the States in the same manner as at present for the appointment of members of the Committee of Management.
15. Under the proposal the Trusts (Jersey) Law 1984 (L.11/84) ("the Trusts Law") would apply. This would bring many advantages. For example, currently the Regulations specify that the States shall indemnify each member of the Committee of Management against all personal liabilities incurred by him in the management and administration of the Scheme, other than those incurred by his own wilful misconduct. It is intended that the Trustees would continue to be indemnified. However, having regard to Article 26(9) of the Trusts Law which states that "nothing on the terms of a trust shall relieve, release or exonerate a trustee from liability for breach of trust arising from his own fraud, wilful misconduct or gross negligence", it will be necessary to refer to fraud and gross negligence, as well as wilful misconduct, as being excluded from the indemnity. This will tend to emphasise the responsibilities of those discharging the role of Trustee. In addition, the Trustees will be able to draw upon a large body of authority as to the role and responsibility of pension fund trustees.
16. In order that the Scheme's life shall continue to be unlimited, it is the intention that it will be established under an *indefinite* Trust. However, under Article 11 of the Trusts Law, the maximum duration of a Trust is 100 years. To enable the trust-based Scheme to exist indefinitely it will be necessary for the legislation enabling its establishment to provide that, as is the case now for charitable trusts, the hundred year limitation does not apply to the Scheme.
17. As at present the Establishment Committee would carry out all the functions of the principal employer on behalf of the States. In particular, the Trustees and Establishment Committee would agree any necessary changes to the Trust Deed and Rules. The Establishment Committee would keep the States informed of such changes and any States Member could request that they are debated.
18. The Trustees would be fully responsible for the investment strategy and appointment of the Scheme's investment managers. This is in line with best practice for pension schemes. The Finance and Economics Committee would no longer have any direct involvement with the Scheme's investments.
19. Further details of the proposal will be provided at the time of promoting the amendments of the 1967 Law. The Committee plans to present the amendments to the States during 2000 (they are included in the States' Legislation Programme for that year) and set up the Trust Deed and Rules for 2001.