

STATES OF JERSEY

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DRAFT PUBLIC EMPLOYEES (RETIREMENT) (VALIDATION AND AMENDMENT) (JERSEY) LAW 200-

**Lodged au Greffe on 9th November 2004
by the Policy and Resources Committee**

STATES GREFFE



Jersey

DRAFT PUBLIC EMPLOYEES (RETIREMENT) (VALIDATION AND AMENDMENT) (JERSEY) LAW 200-

European Convention on Human Rights

The President of the Policy and Resources Committee has made the following statement –

In the view of the Policy and Resources Committee the provisions of the Draft Public Employees (Retirement) (Validation and Amendment) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator F.H. Walker**

REPORT

This draft Law is designed to address 2 issues connected with the Public Employees Pension Scheme. First, no trace can be found of an Appointed Day Act to bring the Public Employees (Retirement) (Jersey) Law 1967 into force. That is not to say that no Act was ever made, of course, but since none can be located, and although there are arguments capable of being run on both sides of the debate, there is at least a doubt about whether the 1967 Law is properly in force. This draft Law would resolve any doubt by providing that the Law is deemed to have come into force on 1st January 1968, the date when the pension scheme set up under the first set of Regulations made under the 1967 Law was to have taken effect, and would provide that subsequent amendments of the 1967 Law were also validly made.

The Policy and Resources Committee is advised that there is no current danger to the pension fund itself if the 1967 Law is not properly in force because the Committee of Management would be regarded as holding the fund as trustees for the pensioners and members of the pension scheme on the trusts which are in fact set out in the various regulations adopted by the States from time to time.

Second, there is doubt about whether some provisions in the Regulations purportedly made under the 1967 Law in 1989 would have been *intra vires* the Regulation making powers in the 1967 Law at that time. The draft Law would resolve this doubt by inserting, with effect from 1988, a wider Regulation-making power.

The draft Law would also validate the 1989 Regulations and all things done or believed to have been done under the 1967 Law and under the 1989 Regulations.

The Policy and Resources Committee promotes this validating legislation not because it is believed there is a significant underlying legal problem but because the Public Employees Pension Scheme is too important a part of the island's obligations to leave any lurking doubt at all as to its validity or as to the validity of any actions taken by the principal parties, in particular the Committee of Management, in good faith.

Financial/manpower implications

No additional financial or manpower resources will be required as a result of adopting the draft Law.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 will, when brought into force by Act of the States, require the Committee in charge of a *Projet de Loi* to make a statement about the compatibility of the provisions of the *Projet* with the Convention rights (as defined by Article 1 of the Law). Although the Human Rights (Jersey) Law 2000 is not yet in force, on 4th November 2004 the Policy and Resources Committee made the following statement before Second Reading of this *projet* in the States Assembly –

In the view of the Policy and Resources Committee the provisions of the Draft Public Employees (Retirement) (Validation and Amendment) (Jersey) Law 200- are compatible with the Convention Rights.

Re-issue Note

This *projet* is re-issued because it contained the wrong Committee name in the Human Rights statement on pages 3 and 4.

Explanatory Note

The purpose of this Law is to provide that the Public Employees (Retirement) (Jersey) Law 1967 is to be taken to have come into force on 1st January 1968.

It also validates certain acts and things done in the belief that the Law was coming into force on 1st January 1968 or in the belief that it came into force on that date.

It also amends the Law with effect from 1st January 1968.

Article 1 defines certain terms used in the Law.

Article 2 provides for the 1967 Law to be taken to have come into force on 1st January 1968.

Article 3 provides for certain amendments to be made to the 1967 Law on the day it is to be taken to have come into effect and subsequently. These amendments permit the validation of certain essential provisions of Regulations thought to have been made under the 1967 Law which may not have been permitted by that Law in its unamended form.

Article 4 validates things done in the belief that the 1967 Law was to come into force on 1st January 1968 or in the belief that it did come into force on that date. It validates both things that could have been done under the 1967 Law in its unamended form had it been brought into force on 1st January 1968 and things that could have been done under that Law as amended by this Law had it been brought into force as so amended on that date.

Article 5 revokes from the date this Law comes into effect most of the amendments made to the 1967 Law by subsequent amending Laws. This is done to avoid any problems between the amendments made to the 1967 Law by this Law and those made to the 1967 Law by the subsequent amending Laws.

Article 6 limits any action that may be taken against, and provides an indemnity for, those persons who have carried out functions and duties under the 1967 Law in the belief that the Law was in force but who now find their actions open to challenge on the grounds that they were possibly acting without lawful authority.

Article 7 provides for the citation and commencement of this Law.



Jersey

DRAFT PUBLIC EMPLOYEES (RETIREMENT) (VALIDATION AND AMENDMENT) (JERSEY) LAW 200-

Arrangement

Article

<u>1</u>	<u>Interpretation</u>
<u>2</u>	<u>Public Employees (Retirement) (Jersey) Law 1967 brought into force</u>
<u>3</u>	<u>Amendments</u>
<u>4</u>	<u>Validation</u>
<u>5</u>	<u>Revocation</u>
<u>6</u>	<u>Limitation on action and indemnity</u>
<u>7</u>	<u>Citation and commencement</u>



Jersey

DRAFT PUBLIC EMPLOYEES (RETIREMENT) (VALIDATION AND AMENDMENT) (JERSEY) LAW 200-

A LAW to provide that the Public Employees (Retirement) (Jersey) Law 1967 is to be taken to have come into force on 1st January 1968, to validate certain acts and things done in the belief that the Law was coming into force on that date or came into force on that date, to indemnify certain persons in respect of acts and things done by them in the belief that the Law came into force on that date and to amend the Law with effect from that date and subsequently.

Adopted by the States [date to be inserted]

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

Registered by the Royal Court [date to be inserted]

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

1 Interpretation

In this Law –

“1967 Law” means the Public Employees (Retirement) (Jersey) Law 1967,^[1]

“1967 Law, as amended,” means the 1967 Law as amended at the relevant time in the manner set out in Article 3;

“1967 Law, as unamended,” means the 1967 Law as unamended in the manner set out in Article 3.

2 Public Employees (Retirement) (Jersey) Law 1967 brought into force

It is declared that for all purposes the 1967 Law is to be taken to have been brought into force on 1st January 1968.

3 Amendments

- (1) The 1967 Law is to be taken to have been amended on 1st January 1968 by substituting for Articles 1, 2 and 3 the following Articles –

“1 Interpretation

- (1) In this Law, unless the context otherwise requires –
‘Committee’ means the Establishment Committee;

‘fund’ means the pension fund established by Regulations made under Article 2(1);

‘scheme’ means the scheme established by Regulations made under Article 2(1).

- (2) For the purposes of this Law the following are to be taken to be employed by the States, namely –
- (a) officers referred to in Article 1(a) to (e) of the Departments of the Judiciary and the Legislature (Jersey) Law 1965;^[2]
 - (b) the Magistrate and Assistant Magistrate;
 - (c) a “*délegué*” as defined by Article 1(2) of the Loi (1937) sur l’atténuation des peines et sur la mise en liberté surveillée^[3] (a probation officer).

2 States to establish pension scheme

- (1) The States shall by Regulations establish a scheme to provide for the payment of pensions and other benefits to persons who retire from employment with the States, their widows or widowers, children and dependants.
- (2) The Regulations –
- (a) shall establish a pension fund;
 - (b) shall prescribe the terms and conditions on which a person is to be admitted to the scheme as a contributory member;
 - (c) shall provide for the contributions to be made to the fund by the States and by contributory members;
 - (d) shall provide for the pensions and other benefits contributory members of the scheme, their widow or widowers, children and dependents are to receive under the scheme;
 - (e) shall make proper provision for persons who cease to be contributory members of the scheme before they become entitled to receive a pension or other benefit under the scheme;
 - (f) may make provision for entering into reciprocal arrangements with other employers;
 - (g) may make different provisions for different classes of contributory members;
 - (h) may provide generally for the administration of the scheme.
- (3) The Regulations may provide for specified matters to be determined by the actuary for the time being appointed under Article 3(2).

3 Management of the fund

- (1) Regulations made under Article 2(1) shall prescribe –
- (a) what money must be paid into the fund;
 - (b) how money in the fund is to be applied in payment of pensions and other benefits under the scheme, for meeting the expenses of administering the scheme and for other purposes relevant to the scheme; and
 - (c) how money in the fund that is not for the time being required for the purposes mentioned in sub-paragraph (b) may be invested by the Treasurer of the States in accordance with the directions of the Finance and Economics Committee.
- (2) The Committee shall appoint an actuary for the Scheme, being a person who is a Fellow of the Institute of Actuaries or of the Faculty of Actuaries in Scotland.

- (3) The actuary shall review the operation of the fund at least once in any period of 5 years and report to the Committee –
 - (a) on the financial condition of the fund; and
 - (b) on the adequacy or otherwise of the contributions payable by virtue of this Law to support the pensions and other benefits payable under the scheme.
 - (4) The Committee may at any time direct the actuary to review the operation of the fund and to report on the review to the Committee.
 - (5) The Committee shall lay a copy of every report under paragraph (3) or paragraph (4) before the States as soon as may be after it is made.
 - (6) Regulations made under Article 2(1) shall prescribe what is to happen if a review and report under paragraph (3) or paragraph (4) show a deficiency or disposable surplus in the fund.”.
- (2) The 1967 Law, as amended by paragraph (1), is to be taken to have been amended on 12th February 1988 by substituting for Articles 1, 2 and 3 the following Articles –

“1 Interpretation

- (1) In this Law, unless the context otherwise requires –
 - ‘Committee’ means the Establishment Committee;
 - ‘Committee of Management’ means the Committee of Management established to manage the scheme by Regulations made under Article 2(1);
 - ‘fund’ means the pension fund established by Regulations made under Article 2(1);
 - ‘scheme’ means the scheme established by Regulations made under Article 2(1).
- (2) For the purposes of this Law the following are to be taken to be employed by the States, namely –
 - (a) officers referred to in Article 1(a) to (e) of the Departments of the Judiciary and the Legislature (Jersey) Law 1965;^[4]
 - (b) the Magistrate and Assistant Magistrate;
 - (c) a “*délegué*” as defined by Article 1(2) of the Loi (1937) sur l’atténuation des peines et sur la mise en liberté surveillée^[5] (a probation officer).

2 States to establish pension scheme

- (1) The States shall by Regulations establish a scheme to provide for the payment of pensions and other benefits to persons who retire from employment with the States, their widows or widowers, children and dependants.
- (2) The Regulations –
 - (a) shall establish a pension fund;
 - (b) shall prescribe the terms and conditions on which a person is to be admitted to the scheme as a contributory member;
 - (c) shall provide for the contributions to be made to the fund by the States and by contributory members;
 - (d) shall provide for the pensions and other benefits contributory members of the scheme, their widow or widowers, children and dependants are to receive under the scheme;

- (e) shall make proper provision for persons who cease to be contributory members of the scheme before they become entitled to receive a pension or other benefit under the scheme;
 - (f) shall provide for the setting up of a Committee of Management to manage the scheme;
 - (g) may make provision for entering into reciprocal arrangements with other employers;
 - (h) may make different provisions for different classes of contributory members;
 - (i) may provide generally for the administration of the scheme.
- (3) The Regulations may provide that where a lump sum becomes payable under the scheme on the death of a contributory member, the Committee of Management is 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.
- (4) The Regulations may also provide for specified matters to be determined by the Committee of Management or the actuary for the time being appointed under Article 3 (2).
- (5) The Committee of Management may delegate all or any of the powers, authorities or discretions conferred upon it by this Law or by Regulations made under this Article.
- (6) However the Committee of Management shall not delegate any power, authority or discretion relating to the investment of money in the fund without the consent of the Finance and Economics Committee.

3 Management of the fund

- (1) Regulations made under Article 2(1) shall prescribe –
- (a) what money must be paid into the fund;
 - (b) how money in the fund is to be applied in payment of pensions and other benefits under the scheme, for meeting the expenses of administering the scheme and for other purposes relevant to the scheme;
 - (c) 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 Finance and Economics Committee, be invested by the Committee of Management.
- (2) The Committee of Management shall, with the approval of the Committee, appoint an actuary for the Scheme, being a person who is a Fellow of the Institute of Actuaries or of the Faculty of Actuaries in Scotland.
- (3) The Committee of Management shall direct the actuary to review the operation of the fund at least once in any period of 5 years and to make a report to the Committee –
- (a) on the financial condition of the fund; and
 - (b) on the adequacy or otherwise of the contributions payable by virtue of this Law to support the pensions and other benefits payable under the scheme.
- (4) The Committee may at any time require the Committee of Management to direct the actuary to review the operation of the fund and to make a report on the review to the Committee.
- (5) The Committee shall lay a copy of every report under paragraph (3) or paragraph (4) before the States as soon as may be after it is made.

- (6) Regulations made under Article 2(1) shall prescribe what is to happen if a review and report under paragraph (3) or paragraph (4) show a deficiency or disposable surplus in the fund.”.
- (3) Article 1(1) of the 1967 Law, as amended by paragraph (2), is to be taken to have been amended on 12th December 2002 by substituting for the definition “Committee” the following definition –
“ ‘Committee’ means the Policy and Resources Committee;”.

4 Validation

- (1) This Article applies to –
 - (a) acts and things done under the 1967 Law in the belief that it was to come into force on 1st January 1968; and
 - (b) acts and things thought to have been done under the 1967 Law in the belief that it came into force on that date.
- (2) Those acts and things done that would have been lawfully done if the 1967 Law had come into force on 1st January 1968 are validated and declared to have been lawfully done and to have had the same force and effect as if the 1967 Law had come into force on 1st January 1968.
- (3) The references in this Article to the 1967 Law include both –
 - (a) the 1967 Law, as amended; and
 - (b) the 1967 Law, as unamended, but as it was amended for the time being by the Laws repealed by Article 5(3).

5 Revocation

- (1) Except as provided by paragraph (2), the amendments made to the 1967 Law, as unamended, by the Laws repealed by paragraph (3) shall be taken as having ceased to have had effect immediately before the commencement of this Law.
- (2) Paragraph (1) does not apply to the repeal and replacement of Article 4 of the 1967 Law by Article 1 (4) of the Public Employees (Retirement) (Amendment No. 3) (Jersey) Law 1988.^[6]
- (3) The following Laws are repealed –
 - (a) Public Employees (Retirement) (Amendment) (Jersey) Law 1973;^[7]
 - (b) Public Employees (Retirement) (Amendment No. 2) (Jersey) Law 1987;^[8]
 - (c) Public Employees (Retirement) (Amendment No. 3) (Jersey) Law 1988^[9]
 - (d) Public Employees (Retirement) (Amendment No. 4) (Jersey) Law 1994^[10]
 - (e) Public Employees (Retirement) (Amendment No. 5) (Jersey) Law 1995^[11]

6 Limitation on action and indemnity

- (1) This Article applies to –
 - (a) a person who before this Law came into force purported to discharge a function or perform a duty under the 1967 Law; and
 - (b) a person who was, or was acting as, an officer, employee or agent of a person mentioned in sub-paragraph (a) or who was performing a duty or exercising a power on behalf of such a person.

- (2) No action shall lie against a person to whom this Article applies for an act done in the purported discharge of a function or the purported performance of a duty under the 1967 Law before this Law came into force unless it is shown that the act was done in bad faith.
- (3) Any action brought against a person to whom this Article applies before this Law came into force –
 - (a) that could not have been brought after that time by virtue of paragraph (2); and
 - (b) that was not settled or otherwise determined before this Law came into force,is stayed.
- (4) If –
 - (a) before this Law came into force an action was brought against a person to whom this Article applies that, by virtue of paragraph (2), could not have been brought after that time; and
 - (b) the action was settled or otherwise determined before this Law came into force,then, whether or not the action was settled or otherwise determined in favour of the person to whom this Article applies, the Policy and Resources Committee shall pay to the person an amount equal to all expenses and other outgoings the person has expended, and any damages paid by the person, as a result of the action.
- (5) Paragraph (2) shall not prohibit any action that might have been taken if the 1967 Law had come into force on 1st January 1968.
- (6) The references in this Article to the 1967 Law include both –
 - (a) the 1967 Law, as amended; and
 - (b) the 1967 Law, as unamended, but as it was amended for the time being by the Laws repealed by Article 5(3).

7 Citation and commencement

- (1) This Law may be cited as the Public Employees (Retirement) (Validation and Amendment) (Jersey) Law 200-.
- (2) It shall come into force 7 days after it is registered.

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- [1] *Volume 1966-1967, page 527, Volume 1973-1974, page 3, Volume 1986-1987, page 239, Volume 1988-1989, page 25, and Volume 1994-1995, pages 121 and 427.*
- [2] *Volume 1963-1965, pages 551 and 552 and Volume 1992-1993, page 439.*
- [3] *Tome VII, page 188.*
- [4] *Volume 1963-1965, pages 551 and 552 and Volume 1992-1993, page 439.*
- [5] *Tome VII, page 188.*
- [6] *Volume 1988-1989, page 26.*
- [7] *Volume 1973-1974, page 3.*
- [8] *Volume 1986-1987, page 239.*
- [9] *Volume 1988-1989, page 25.*
- [10] *Volume 1994-1995, page 121.*
- [11] *Volume 1994-1995, page 427.*