

# STATES OF JERSEY



## **PUBLIC EMPLOYEES CONTRIBUTORY RETIREMENT SCHEME COMMITTEE OF MANAGEMENT: MEMBERSHIP**

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**Lodged au Greffe on 25th November 2009  
by the Chief Minister**

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**STATES GREFFE**

## **PROPOSITION**

**THE STATES are asked to decide whether they are of opinion –**

to approve, in accordance with Regulation 3(2) of the Public Employees (Contributory Retirement Scheme) (General) (Jersey) Regulations 1989, the appointment of the Committee of Management, for a period of 3 years commencing 1st January 2010, as follows –

### **Employer Representatives**

Mr. I. Black, Treasurer of the States  
Mr. M.J. Pinel, Head of Employee Relations  
Mr. S.M. Patidar  
Mr. J. Rosser  
Ms. L. Dennis

### **Employee Representatives**

Mr. G. Birbeck  
Mr. J.H. Lees  
Mr. J.T. Noel  
Mr. M.D. Orbell  
Mr. A. Tadier  
Miss B. Ward  
Mr. M. Johnson.

CHIEF MINISTER

## REPORT

The Regulations provide that a Committee of Management will be established, which shall have and exercise all such powers, authorities and discretion as are vested in it by the Regulations governing the scheme.

In previous years, 2 States members were nominated for membership of the Committee of Management. However, the Chief Minister recently asked the Comptroller and Auditor General whether it is wise to appoint members of the States Assembly to serve as members of the Committee of Management of PECRS.

In response, the Comptroller and Auditor General published a short report (available on the Comptroller and Auditor General's website), namely Public Employees Contributory retirement Scheme, Composition of the Committee of Management, 2009.

The report includes the following statements –

*“In practice, I understand that it has been normal practice for the people nominated by the Council of Ministers and the Treasury & Resources Department as “employer” nominees to include two members of the States Assembly.*

*Whether it is appropriate for members of the States Assembly to be nominated in this way as members of the Committee of Management must in large part depend upon whether the responsibilities of members of the States Assembly are in some way in conflict with responsibilities of members of the Committee of Management of PECRS.*

*In the late 1990s some question arose over the status of the Committee of Management. Whilst it is clear that the fund of PECRS was, and remains, a fund of the States, members of the Committee of Management were concerned about the status of the Committee and their obligations and liabilities of members of the Committee. Consequently, legal advice was sought from Olsen Backhurst Dorey. Advocates, legal advisers to PECRS, and the advice concluded in the following way:-*

*“We have reached the conclusion that, were the Royal Court ever to be the arbiter of the question of the Committee's legal status, it would hold that the Committee is in effect a Board of Trustees.”*

*The implication of this analysis is that, with the support of the 1997 advice, members of the Committee of Management properly regard themselves as being in the position of trustees of PECRS.*

*As such, it is their obligation under trust law to ensure that the affairs of PECRS are managed in accordance with the terms of the Trust (i.e. the scheme and regulations) in the interests of the beneficiaries (i.e. the members of the scheme).*

*This analysis of the responsibilities of members of the Committee of Management suggests that there may well be a conflict between the*

*responsibilities of the members of the States Assembly and the duties of a member of the Committee of Management.*

*I presume that members of the States Assembly have a duty to oversee the affairs of the States and make decisions according to their view of the interests of the people of the Island at large. This includes oversight of the decisions made by the States as employer in managing their relationship with employees and also oversight of the costs of employing people.*

*Prime facie this responsibility will conflict with the duty of a member of the Committee of Management to act according to the terms of the Trust in the interests of all the beneficiaries. Further, this conflict is direct and fundamental potentially affecting all the business of the Committee of Management.*

*In the particular circumstances of the PECRS Committee of Management, it is apparent that members of the States Assembly who are nominated to serve as members would face a conflict between their duties as members of the Assembly and their duties as members of the Committee of Management.*

*In my view it would be wise to avoid creating that conflict. In other words, it would be wise to regard members of the Assembly as ineligible for nomination as members of the PECRS Committee of Management.”*

Consequently, the Chief Minister has taken the decision to no longer nominate members of the States Assembly to the PECRS Committee of Management.

A similar question was asked of the Comptroller and Auditor General in relation to the Treasurer of the States. His response is shown below –

*“The growing practice in pension funds on the mainland is for the Finance Director of the sponsoring employer to be regarded as inappropriately conflicted for him to be a trustee of a pension fund. The reason is that the Financial Director has responsibility for the financial affairs of the employer which may well conflict with the interests of the trust and scheme members. This has become more important in recent years as the significance of scheme under-funding and its materiality to sponsoring employers has grown.*

*In the case of the States and PECRS, the question is more complicated.*

*PECRS is a fund of the States (i.e. not independent of the States) and is in this sense a part of the Treasurer’s responsibility. This would lead one to accept the Treasurer as a member of the Committee of Management.*

*However, I think it is clear that the Treasurer’s responsibility for the financial affairs of the States could well be at odds with the duty of members of the Committee of Management to act as quasi-trustees in managing the fund. For example, I think it is easy to see circumstances in which the States may take a view of investment policy which is inappropriate for the fund (e.g. the States may want a riskier investment policy to maximise the chance of long term capital growth while trustees may want to adopt a more cautious approach.*

*On this basis, I would be inclined to doubt the wisdom of the Treasurer being a member of the Committee of Management.”*

As a consequence of this advice, the Treasurer of the States has decided to stay on the Committee of Management for one more year only, until the Minister for Treasury and Resources can recommend a replacement.

Under the Regulations, the membership comprises 6 employer representatives and 6 member representatives, or such greater equal number as may be determined from time to time by agreement between the Chief Minister and the representative associations. However, the proposed membership is to be 5 on the employer side and 7 on the employee side.

Two of the employer representatives are chosen by the Chief Minister and these are –

- Mr. M.J. Pinel, Head of Employee Relations
- Ms. L. Dennis.

The remaining three of the employer representatives are chosen by the Minister for Treasury and Resources and these are –

- Mr. I. Black, Treasurer of the States
- Mr. S.M. Patidar
- Mr. J. Rosser.

The member representative nominations have been submitted by the Public Employees Pension Scheme Joint Negotiating Group.

### **Financial and manpower implications**

There are no financial or manpower implications for the States arising from this proposition.

## APPENDIX

### EMPLOYER NOMINEES

#### Mr. Ian Black

Mr. I. Black, Treasurer of the States, Treasury and Resources Department, senior civil servant. 25 years' service as a senior manager in the States and a member of the Committee of Management since 1999.

#### Mr. Michael John Pinel

Mr. M. Pinel, Head of Employee Relations, Chief Minister's Department, senior civil servant. 30 years' service as a senior manager in the States and a member of the Committee of Management since 1995.

#### Mr. Sachin Meeku Patidar

Mr. Patidar is a Principal and Director of Jeffrey & Co Ltd., Jersey with a background mainly in the investment arena and more latterly with a local pension and investment focus. Mr. Patidar is also Chairman of the Institute of Financial Planning for the Channel Islands. Mr. Patidar has been a member of the PECRS Committee of Management since 2007 to date.

#### Mr. John Rosser

Mr. Rosser retired from a senior position in the local insurance industry which he held for 15 years, having previously worked in Bristol and London. He spent several years as a council member of the Insurance Institute of Jersey, including a year as President, and several years on the committee of the Jersey Life and Pensions Society, including 2 years as Chairman. Member of the Social Security Advisory Council. Mr. Rosser has been a member of the PECRS Committee of Management since 2001 to date.

#### Ms. Laura Dennis

Ms. Dennis is a corporate pensions manager and has a diverse role providing consultancy to a wide range of businesses on all aspects of local and international employee benefits. The role requires an understanding and experience of all aspects of pensions business transactions. Ms. Dennis possesses excellent technical knowledge and relevant pensions experience, covering both final salary and money purchase schemes. This will be Ms. Dennis' first appointment to the Committee of Management.

### EMPLOYEE NOMINEES

#### Mr. Gary Birbeck

Product Research Manager employed by Jersey Telecoms since 1978. Pension representative for Amicus – EESA (Electrical and Engineering Staff Association). A member of the Public Employees Pension Scheme Joint Negotiating Group (JNG). Mr. Birbeck has been a member of the PECRS Committee of Management since 2003 to date.

**Mr. John H. Lees**

Mr. Lees worked for the States from 1965 retiring in 1993 from his position as Chief Officer of the Social Security Department. A member of the Public Employees Pension Scheme Joint Negotiating Group (JNG). Mr. Lees has been a member of the PECS Committee of Management since 1990 to date.

**Mr. John T. Noel**

Mr. Noel worked for the States from 1966 retiring in 2008 from his position as Chief Officer of the Customs and Immigration Service. Former Chairman of the 2/300 Branch, Association of Clerical, Technical and Supervisory Staffs (ACTSS). A member of the Public Employees Pension Scheme Joint Negotiating Group (JNG). Mr. Noel has been a member of the PECS Committee of Management since 2000 to date.

**Mr. Michael D. Orbell**

Mr. Orbell worked for the States from 1949 retiring in 1989 from his position as Chief Officer of Jersey Post. Life Vice-President Emeritus, Jersey Civil Service Association (JCSA); Chairman, Public Employees Pension Scheme Joint Negotiating Group (JNG). Mr. Orbell has been a member of the PECS Committee of Management since 1990 to date.

**Mr. Alan Tadier**

Mr. Tadier served as a prison officer employed by the Prison Service from 1981 to 2007 and was a Member of the Prison Officers' Association (POA). A member of the Public Employees Pension Scheme Joint Negotiating Group (JNG) Mr. Tadier has been a member of the PECS Committee of Management since 2006 to date.

**Ms. Barbara Ward**

Ms. Ward was originally involved with the Federated Pension Scheme, prior to that scheme becoming a part of the PECS. First appointed to the Committee of Management in 1990 Ms. Ward is a long-serving employee of over 30 years, employed in the Health and Social Services Department, originally as a nursing professional and latterly as a civil servant. Ms. Ward is a staff representative in the Civil Service Staff Association.

**Mr. Mark Johnson**

Employed by the Fire and Rescue Service for some 24 years, Mr. Johnson is a Principal Officer currently responsible for Emergency Response. A former member of the Fire and Rescue Service Association and current member of the Public Employees Pension Scheme Joint Negotiating Group (JNG) for the last 9 years, Mr. Johnson was first appointed to the Committee of Management in 2009.

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**Re-issue Note**

This projet is re-issued because the Appendix was inadvertently omitted from the original publication.