STATES OF JERSEY

r

DRAFT PUBLIC EMPLOYEES (RETIREMENT) (ADDITIONAL CONTRIBUTIONS – AMENDMENTS) (JERSEY) REGULATIONS 200-

---

Lodged au Greffe on 6th September 2005
by the Policy and Resources Committee

STATES GREFFE

Jersey

DRAFT PUBLIC EMPLOYEES (RETIREMENT) (ADDITIONAL CONTRIBUTIONS – AMENDMENTS) (JERSEY) REGULATIONS 200-

REPORT

Public Employees Contributory Retirement Scheme

Amendments for addressing the pre-1987 debt

1. The Public Employees (Contributory Retirement Scheme) (General) (Jersey) Regulations 1989, made in accordance with the Public Employees (Retirement) (Jersey) Law 1967, require an actuarial valuation to be undertaken at least every 5 years. It is the policy of the PECRS Committee of Management (COM) tc have such valuations once every 3 years in order to keep the finances of the Scheme under more frequen scrutiny.

   The most recent valuation was signed off by the Scheme Actuary on 15th December 2003 and laid befor the States on 27th January 2004. It showed the Scheme as having a deficiency of£78.1 million a 31st December 2001. This valuation took account of the framework agreed in 2003 between the Policy and Resources Committee (PRC) as Principal Employer under the Scheme and the COM, to be endorsed by the States, dealing with the pre-1987 debt as described in the valuation concerned.

2. Passing the following Regulations will implement the 2003 agreement between the PRC and the COM for dealing with the pre-1987 debt and give it legal effect.

   - The Public Employees (Retirement) (Additional Contributions – Amendments) (Jersey) Regulations 200-

3. Failure to pass these Regulations would mean that the shortfall in the Scheme at 31st December 2001 ha not been fully dealt with, imposing a deterioration in the Scheme’s financial position which the States would have to address urgently.

4. The next actuarial valuation of the Scheme, as at 31st December 2004 is already in progress. The outcom of that valuation is expected to be advised to the States by mid-2006.

5. The Regulations submitted by the PRC as Principal Employer of the Scheme have the support of the Finance and Economics Committee. They also have the agreement of the COM and the Public Employees Pension Scheme Joint Negotiating Group (JNG).

Background to the development of the pre-1987 debt

6. The PECRS was created under the Public Employees (Retirement) (Jersey) Law 1967 to provide contributory pensions for members of the Jersey public services, replacing various earlier non-contributory arrangements.

7. In 1972 the States, following the example of the United Kingdom, decided to put the payment of an increase of pensions (popularly known as “index-linking”) on a permanent basis. Until that year the States had from time to time, both before and after the commencement of PECRS in 1968, passed Acts increasing public service pensions that were already in payment. In 1972, the States by Act declared that all public service pensions should henceforth be increased on 1st January each year by the amount of the change in the Jersey Cost of Living Index from that of the previous January. The States was committed to meeting the costs of such increases from general revenues rather than from the funds of PECRS. Initially the annual sums involved were modest, but they would increase enormously as more and more employees

came to retire. This decision of the States in 1972 represented a major increase in the States' liability for public service pensions.

8. The next major changes to PECRS took place in the late 1980s. Agreement to the changes was reached with staff representatives in 1986, was presented to the States as a Report and Proposition in 1987 and was given effect through the passing of Regulations in 1989. Among many important changes, it was decided that the full cost of pension increases referred to above was henceforth to be met from PECRS funds, not from States revenues, i.e. there was a liability ("debt") transferred from the States to PECRS. It was also decided that future index-linking was no longer to be guaranteed (other than for pensioners and other members who left service before 1st January 1988, and for those employees in post at 1st January 1988 who opted to retain entirely unchanged benefits).

9. At the same time as these changes to PECRS were introduced, the employers' contribution rate was increased to 15.6% of pay with effect from 1st January 1988. This was the cost advised by the Actuary as being sufficient over the long term to meet the Scheme's liabilities, including the new one for index-linking. There was for the first time, a reliance upon internal funding for the costs of index-linking but there was no immediate capital payment into PECRS. It is this transfer of liability, without a corresponding upfront capital payment, which led to the creation in PECRS of what has subsequently come to be called the "pre-1987 debt".

10. The contribution rate of 15.6% (later reduced to 15.16% following the disclosure of surplus at the 1992 actuarial valuation) was estimated at the time to be sufficient to fund the Scheme's overall liabilities over the very long term. What began to be better appreciated by the COM and by certain States Committees in the mid-1990s and onwards was that this financing approach, of a stable contribution rate payable indefinitely, meant not only that the pre-1987 debt would never be paid off by the States (i.e. made good within the PECRS fund) without further action, but that it would grow if ever there was a reduction in total membership numbers, also that with changing circumstances it was no longer being serviced so as not to increase.

11. At the most recent actuarial valuation, the Actuary placed a value on the pre-1987 debt outstanding at 31st December 2001 to be £192.1 million for the Scheme as a whole. Further details were provided in the Actuary's report on the valuation as at 31st December 2001. This value placed on the pre-1987 debt was confirmed as appropriate by an independent actuary.

12. The continued existence of the pre-1987 debt had 2 particular disadvantages –

(a) The method of linking contributions wholly to payroll meant that any material reduction in the size of the States workforce worsened the financial position of the Scheme. A practical example is that when Jersey Telecom was incorporated with effect from 1st January 2003, a capital payment of £14.3 million (plus interest) had to be made in order to ensure that the pension position of JTL and other members of PECRS was not adversely affected.

(b) When the Scheme was restructured in 1987, it was envisaged that it would remain open to new public servants for the foreseeable future. That remains the position of the Principal Employer. If, however, the States were ever minded to close the Scheme to new entrants in future, there would be very high financial demands on the States to honour existing pension entitlements.

13. For several years therefore, the need has been recognised for a more robust arrangement for financing the pre-1987 debt, which mitigates the disadvantages above but which will not adversely impact on Scheme members' interests.

14. An overriding principle underlying the new framework is that the Scheme's members should not be adversely affected by the continued existence of pre-1987 debt. It has never been intended that the approach the States has adopted to financing this debt should be in any way detrimental to the membership.

Having said that, it is important to appreciate that the Scheme's present procedures for addressing future valuation surpluses and deficiencies that arise as a result of Scheme experience (e.g. poor investment returns or increased life expectancy) must not be affected by the existence of the pre-1987 debt. In particular, any deficiencies that arise due to adverse Scheme experience will not automatically lead to an increase in the employers' contribution rate and will only do so where the agreement of the States has been obtained. The default position where the Principal Employer and COM cannot agree on proposals for dealing with a valuation deficiency is that future index-linking is scaled back (for those members where index-linking is not guaranteed). In this, the Scheme will continue to differ from the majority of final salary schemes, such as those operated in the U.K., where the requirement on the employer to meet the “balance of cost” – whatever the cost may be – is open-ended.

Agreement for meeting the pre-1987 debt

15. The framework agreed between the Policy and Resources Committee and the Committee of Management for dealing with the pre-1987 debt was documented in a 10-point agreement approved by Act of the Policy and Resources Committee dated 20th November 2003. The text of the agreement is reproduce below.

"1. The States confirms responsibility for the Pre-1987 Debt of £192.1 million as at 31 Decembe 2001 and for its servicing and repayment with effect from that date on the basis that neither the existence of any part of the outstanding Debt nor the agreed method of servicing and repayment shall adversely affect the benefits or contribution rates of any person who has at any time become a member of the Scheme.

2. At the start of the servicing and repayment period, calculated to be 82 years with effect from 1st January 2002, the Employer's Contribution rate will be increased by 0.44% to the equivalent of 15.6%. These contributions will be split into 2 parts, namely a contribution rate of 13.6% of annual pensionable salary and an annual debt repayment. The Employer’s Contribution rate will revert to 15.16% after repayment in full of the Debt.

3. During the repayment period the annual Debt repayment will comprise a sum initially equivalent to 2% of the Employers’ total pensionable payroll, re-expressed as a cash amount and increasing each year in line with the average pay increase of Scheme members.

4. A statement of the outstanding debt as certified by the Actuary to the Scheme is to be included each year as a note in the States Accounts.

5. In the event of any proposed discontinuance of the Scheme, repayment and servicing of the outstanding Debt shall first be rescheduled by the parties on the advice of the Actuary to ensure that paragraph (1) above (“Point 1”) continues to be fulfilled.

6. For each valuation the States Auditor shall confirm the ability of the States to pay off the Debt outstanding at that date.

7. If any decision or event causes the Actuary at the time of a valuation to be unable to continue acceptance of such servicing and repayment of the Debt as an asset of the Scheme, there shall be renegotiation in order to restore such acceptability.

8. In the event of a surplus being revealed by an Actuarial Valuation, negotiations for its disposal shall include consideration of using the employers’ share to reduce or pay off the Debt.

9. As and when the financial position of the States improves there shall be consideration of accelerating or completing repayment of the Debt.

10. The recent capital payment by JTL of £14.3m (plus interest) reduced the £192.1m total referred to in (1) by £14.3m and if any other capital payments are similarly made by other Admitted Bodies these shall similarly be taken into account.”

Amendments giving effect to the pre-1987 debt framework

16. The attached Regulations give legal effect to the pre-1987 debt framework. Each element of the 10-point agreement has been reflected in the Regulations except for points 4 and 6 – it is not possible, under the vires of the Public Employees (Retirement) (Jersey) Law 1967, to codify these 2 points within the Regulations of the Scheme, and they will be otherwise accommodated.

The key implications of the 10-point agreement and the Regulations that have been prepared to give it legal effect are summarised below.

17. Fundamental to the whole framework is that the States will be responsible for paying the “pre-1987 debt contributions” in their entirety. Provision is made that, if amendments are proposed to the Regulations in future they should not contravene this fundamental principle.

In accordance with the Actuary’s calculation referred to in paragraph 11 above, a figure of £192.1 million was included in Point 1 of the 10-point agreement. However, that figure included £14.6 million as the share of the pre-1987 debt attributable to the Admitted Bodies, i.e. the Parishes and other organisations associated with the States who have employees in the Scheme.

There is no liability on the States for the Admitted Bodies’ share of the pre-1987 debt. Therefore, the attached Regulations provide only for the arrangements for dealing with the £177.5 million portion of debt attributable to the States. This includes the portion of the debt attributable to Jersey Telecom Limited (JTL) of £14.3 million which was repaid in August 2003. The outstanding debt attributable to the States is therefore £163.2 million.

18. The States’ contributions will increase by the equivalent of 0.44% of members’ pay, restoring the overall employers’ contribution to the 15.6% level that applied to the scheme from 1st January 1988 to 31st December 1992, when it was reduced to the rate of 15.16% held ever since. Thus, the contribution at this stage will be no higher as a percentage of pay than after the restructuring of the scheme in the late 1980s.

Based on the States’ 2002 payroll, this figure of 0.44% of pay is equivalent to approximately £600,000 per annum (indexed as described in paragraph 19 below) as new outlay for the States, over and above the States’ current costs. To ensure there is no loss to the Scheme arising from the delay in reaching agreement with the COM and preparing the attached Regulations, the increase will be backdated (with interest) to take effect from 1st January 2002, the day after the latest valuation took place.

Of the 15.6%, an amount initially equivalent to 2% of members’ pay (£2,735,200 per annum) will be earmarked to pay off the pre-1987 debt. The pre-1987 debt contributions will be paid over an 82-year period, ending on 31st December 2083.

In addition to the pre-1987 debt contributions, employers’ contributions of 13.6% of pay will be payable. As from 1st January 2084, the employer’s contribution rate will revert to 15.16% of pay, and no further pre-1987 debt contributions will be payable.

19. The pre-1987 debt contributions determined at 2% of payroll for the first year of the 82-year period (i.e. £2,735,200) are indexed over the remainder of the 82-year period in line with the average pay increase of Scheme members. The key point is that there is no linkage with the number of States employees. So, if the States workforce grows or shrinks, there will be no impact on the States’ liability for making pre-1987 debt contributions. This will provide greater certainty for the States and for the PECRS, and will mitigate the disadvantages of the present financing arrangements referred to earlier in paragraph 12.

Note:

The details of the 10-point agreement on the past service debt was communicated to States Members in early 2004 when the December 2001 actuarial valuation was laid before the States.

Financial/manpower statement

There are no manpower implications for the States arising from these Regulations, and additional financial implications are addressed in the main body of the Report and Regulations.

Explanatory Note

These Regulations provide for the States to pay additional contributions to the public employees retirement scheme to enable the scheme to extinguish a debt transferred to it when the scheme was amended with effect from 1st January 1988.

The additional amount to be paid in respect of 2002 is an amount equivalent to 0.44% of the States' employees' salaries in 2001 (about £½m) so that, if these Regulations are made by the States, the total amount paid by the States in 2002 by way of contribution will be an amount equivalent to 15.6% of States' employees' salaries in 2001 - the level it was at prior to 1993.

In practice the debt transferred to the fund in 1988 was already being partially funded so the normal rate of contribution to be paid by the States is to be reduced from 15.16% to 13.6% of the salaries of States' employees while the additional contribution is being paid. It will then revert to 15.16%.

The additional contribution is indexed to increases in States employees' salaries.

The Actuary to the scheme calculated a while ago that if the additional contribution is paid with effect from 1st January 2002 the debt will be extinguished by 31st December 2083. It is for this reason that the amendment provides that the additional contribution is to be paid during that period.

These Regulations give effect to an agreement made between the Policy and Resources Committee and the Committee of Management of the scheme which provided that the debt is to be extinguished without imposing any obligation on members of the scheme, such as increased contributions, and without adversely effecting members' benefits.

Jersey

DRAFT PUBLIC EMPLOYEES (RETIREMENT) (ADDITIONAL CONTRIBUTIONS – AMENDMENTS) (JERSEY) REGULATIONS 200-

Arrangement

Regulation

DRAFT PUBLIC EMPLOYEES (RETIREMENT) (ADDITIONAL CONTRIBUTIONS – AMENDMENTS) (JERSEY) REGULATIONS 200-

Made	*[date to be inserted]*
Coming into force	*[date to be inserted]*

THE STATES, in pursuance of Article 2 of thePublic Employees (Retirement) (Jersey) Law 1967,[1] have made the following Regulations –

---

1 Regulation 4 of the Public Employees (Contributory Retirement Scheme) (General) (Jersey) Regulations 1989 amended

After Regulation 4(6) of the Public Employees (Contributory Retirement Scheme) (General) (Jersey) Regulations 1989[2] there shall be added the following paragraph –

"(7) If an employer delays paying into the scheme all or any part of a contribution mentioned in paragraph (1)(a) the employer shall pay interest on the amount of the delayed payment at such rate as the Committee determines on the advice of the Actuary.".

2 New Regulation 4A of the Public Employees (Contributory Retirement Scheme) (General) (Jersey) Regulations 1989

After Regulation 4 of the Public Employees (Contributory Retirement Scheme) (General) (Jersey) Regulations 1989 there shall be inserted the following Regulation –

"4A Debt payment contributions

(1) In this Regulation –

'1988 liability', in respect of the Policy and Resources Committee, means so much of the capitalised value from time to time of the debt transferred to the scheme when the scheme was amended with effect from 1st January 1988 that is attributable to the Policy and Resources Committee, being an amount calculated by the Actuary to be £177,500,000 as at 31st December 2001 (£14,300,000 of which was repaid in August 2003);

'debt payment period' means the period that starts on 1st January 2002 and ends on 31st December 2083 (both dates being part of the period);

'member' includes a former member, and the widow or widower, child or dependant of a member.

(2) The Policy and Resources Committee shall pay off its 1988 liability during the debt payment period.

(3) It shall do so without –

(a) the imposition of an obligation on members;

(b) an adverse effect on the benefits received or to be received by members; or

(c) an increase in the contributions paid or to be paid by members.

(4) To pay off its 1988 liability the Policy and Resources Committee shall during the debt payment period pay to the scheme by equal monthly contributions payable before the end of each month –

(a) for the year starting 1st January 2002, £2,735,200; and

(b) for each subsequent year, the amount payable during the previous year increased by the same percentage increase as the average percentage increase during that previous year in the salaries of those members who were employed with the States during the whole of that year.

(5) The Policy and Resources Committee may at any time –

(a) extinguish its liability to make contributions in accordance with paragraph (4) by paying to the scheme a contribution equal to the amount of its 1988 liability at that time, as determined by the Actuary; or

(b) pay any amount to the scheme, either as a lump sum contribution or by way of increased contributions, to reduce its 1988 liability.

(6) Where –

(a) a report under Regulation 6(1) discloses a surplus;

(b) a surplus continues to exist after the operation of Regulation 6(3)(a); and

(c) the Policy and Resources Committee and the Committee agree,

all or any part of that surplus may be used to extinguish or reduce the 1988 liability of the Policy and Resources Committee.

(7) Where –

(a) the Policy and Resources Committee makes a contribution to the scheme in accordance with paragraph (5)(b);

(b) the 1988 liability of the Policy and Resources Committee is reduced in accordance with paragraph (6);

(c) the scheme is amended to end or adjust any future benefit accrual for any members;

(d) the actuary determines that there has been a change of circumstances of the scheme or an event, which need not be connected with the scheme, that has made compliance by the Policy and Resources Committee with paragraph (4) inadequate to ensure that both paragraphs (2) and (3) are complied with; or

(e) the actuary determines that there has been a change that makes the provisions of this Regulation unacceptable as an asset of the scheme for the purposes of a review of the scheme in accordance with Regulation 6,

the Policy and Resources Committee shall, after receiving the comments of the Committee acting on the advice of the Actuary, recommend to the States amendments to this Regulation that are adequate to ensure that both paragraphs (2) and (3) are complied with.

(8) The recommendation –

(a) may, amongst other things, recommend a variation in the length of the debt payment period or a variation in the amount of the contributions to be paid by the Policy and Resources Committee; but

(b) shall not recommend an amendment of paragraph (3).”.

3 Regulation 6 of the Public Employees (Contributory Retirement Scheme) (General) (Jersey) Regulations 1989 amended

For Regulation 6(3)(c)(ii) of the Public Employees (Contributory Retirement Scheme) (General) (Jersey) Regulations 1989 there shall be substituted the following clause –

“(ii) two-thirds of the remaining surplus shall be applied to a reduction in the rate of contributions payable by the employers under the scheme (otherwise than under Regulation 4A) without the need for proposals or amendment of the Regulations governing the scheme;”.

4 Amendment of other relevant Regulations

(1) For Regulations 6(2) and (3) of the Public Employees (Contributory Retirement Scheme) (Jersey) Regulations 1967[3] there shall be substituted the following paragraph –

“(2) Except as may otherwise be provided in accordance with Regulations 6 and 9 of the General Regulations, each employer must, before the end of each month, pay to the scheme –

(a) during the period starting 31st January 2002 and ending 31st January 2084, an amount equivalent to 13.6%; and

(b) after that period, an amount equivalent to 15.16%,

of the salary earned during the previous month by each of its employees who was a contributory member during that month.”.

(2) For Regulations 4(1) and (2) of the Public Employees (Contributory Retirement Scheme) (Existing Members) (Jersey) Regulations 1989,[4] of the Public Employees (Contributory Retirement Scheme) (New Members) (Jersey) Regulations 1989[5] and of the Public Employees (Contributory Retirement Scheme) (Former Hospital Scheme) (Jersey) Regulations 1992[6] there shall be substituted, in each case, the following paragraph –

“(1) Except as may otherwise be provided in accordance with Regulations 6 and 9 of the General Regulations, each employer must, before the end of each month, pay to the scheme –

(a) during the period starting 31st January 2002 and ending 31st January 2084, an amount equivalent to 13.6%; and

(b) after that period, an amount equivalent to 15.16%,

of the salary earned during the previous month by each of its employees who was a member during that month.”.

5 Regulation 4A of

the Public Employees (Contributory Retirement Scheme) (General) (Jersey) Regulations 1989 substituted

For Regulation 4A of thePublic Employees (Contributory Retirement Scheme) (General) (Jersey) Regulations 1989 there shall be substituted the following Regulation –

“4A Debt payment contributions

(1) In this Regulation –

‘1988 liability’, in respect of the Chief Minister, means so much of the capitalised value from time to time of the debt transferred to the scheme when the scheme was amended with effect from 1st January 1988 that is attributable to the Chief Minister, being an amount calculated by the Actuary to be £177,500,000 as at 31st December 2001 (£14,300,000 of which was repaid in August 2003);

‘debt payment period’ means the period that starts on 1st January 2002 and ends on 31st December 2083 (both dates being part of the period);

‘member’ includes a former member, and the widow or widower, child or dependant of a member.

(2) The Chief Minister shall pay off his or her 1988 liability during the debt payment period.

(3) The Chief Minister shall do so without –

(a) the imposition of an obligation on members;

(b) an adverse effect on the benefits received or to be received by members; or

(c) an increase in the contributions paid or to be paid by members.

(4) To pay off his or her 1988 liability the Chief Minister shall during the debt payment period pay to the scheme by equal monthly contributions payable before the end of each month –

(a) for the year starting 1st January 2002, £2,735,200; and

(b) for each subsequent year, the amount payable during the previous year increased by the same percentage increase as the average percentage increase during that previous year in the salaries of those members who were employed with the States during the whole of that year.

(5) The Chief Minister may at any time –

(a) extinguish his or her liability to make contributions in accordance with paragraph (4) by paying to the scheme a contribution equal to the amount of his or her 1988 liability at that time, as determined by the Actuary; or

(b) pay any amount to the scheme, either as a lump sum contribution or by way of increased contributions, to reduce his or her 1988 liability.

(6) Where –

(a) a report under Regulation 6(1) discloses a surplus;

(b) a surplus continues to exist after the operation of Regulation 6(3)(a); and

(c) the Chief Minister and the Committee agree,

all or any part of that surplus may be used to extinguish or reduce the 1988 liability of the Chief Minister.

(7) Where –

(a) the Chief Minister makes a contribution to the scheme in accordance with paragraph (5)(b);

(b) the 1988 liability of the Chief Minister is reduced in accordance with paragraph (6);

(c) the scheme is amended to end or adjust any future benefit accrual for any members;

(d) the actuary determines that there has been a change of circumstances of the scheme or an event, which need not be connected with the scheme, that has made compliance by the Chief Minister with paragraph (4) inadequate to ensure that both paragraphs (2) and (3) are complied with; or

(e) the actuary determines that there has been a change that makes the provisions of this Regulation unacceptable as an asset of the scheme for the purposes of a review of the scheme in accordance with Regulation 6,

the Chief Minister shall, after receiving the comments of the Committee acting on the advice of the Actuary, recommend to the States amendments to this Regulation that are adequate to ensure that both paragraphs (2) and (3) are complied with.

(8) The recommendation –

(a) may, amongst other things, recommend a variation in the length of the debt payment period or a variation in the amount of the contributions to be paid by the Chief Minister; but

(b) shall not recommend an amendment of paragraph (3).".

6 Citation and commencement

(1) These Regulations may be cited as the Public Employees (Retirement) (Additional Contributions – Amendments) (Jersey) Regulations 200-.

(2) Except as provided by paragraph (3), these Regulations shall be taken to have come into force on 1st January 2002.

(3) Regulation 5 shall come into force on the same day as Article 42(3) of the States of Jersey Law 2005. [7]

[1] *Chapter 16.650.*

[2] *Chapter 16.650.36.*

[3] *Chapter 16.650.48.*

[4] *Chapter 16.650.12.*

[5] *Chapter 16.650.60.*

[6] *Chapter 16.650.24.*

[7] *L.8/2005.*