

# STATES OF JERSEY



## **DRAFT PUBLIC EMPLOYEES (PENSION SCHEME) (ADMINISTRATION) (JERSEY) REGULATIONS 201-**

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**Lodged au Greffe on 17th August 2015  
by the States Employment Board**

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**STATES GREFFE**





Jersey

# **DRAFT PUBLIC EMPLOYEES (PENSION SCHEME) (ADMINISTRATION) (JERSEY) REGULATIONS 201-**

## **REPORT**

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### **1. BACKGROUND**

The States Employment Board, at its meeting on 13th July 2015, agreed to lodge the following draft Regulations under the Public Employees (Pensions) (Jersey) Law 2014.

Following States approval of [P.28/2014](#) – the Public Employees (Pensions) (Jersey) Law 2014 (“the Law”) – on 21st May 2014, it was referred to H.M. Privy Council, where it received Royal Assent on 16th July 2014, and was subsequently registered in the Royal Court on 25th July 2014. The Law provides the powers for establishing, by Regulations, a reformed pension scheme for States employees (excluding teachers at this time).

### **2. THE DRAFT REGULATIONS**

The draft Regulations provide the detail regarding the provisions of the new Public Employees Pension Scheme (“PEPS”), as well as the governance and administration across both the PEPS and the Public Employees Contributory Retirement Scheme (“PECRS”). The main focus is on the administration, benefits and membership of the PEPS, as well as the funding, actuarial valuations and transitions of both the PEPS and the PECRS (“the respective schemes”).

The draft Regulations have been developed and refined following a sustained consultation period with the Committee of Management (“the Committee”) and their professional advisors during 2014 and 2015 and also following an extensive negotiation process involving members of the Joint Negotiation Group (“JNG”) who negotiate pension provision for the majority of States employees. Following consultation and negotiation the draft Regulations are generally considered the best option for a sustainable, affordable and fair pension scheme for States employees.

In order for the new PEPS to commence for all new employees on 1st January 2016, Regulations pursuant to the Law need to be agreed by the States.

The Regulations that have been drafted are as follows –

- Public Employees (Pension Scheme) (Administration) (Jersey) Regulations 201- (“the Administration Regulations”) (P.96/2015)
- Public Employees (Pension Scheme) (Funding and Valuation) (Jersey) Regulations 201- (“the Funding and Valuation Regulations”) (P.97/2015)

- Public Employees (Pension Scheme) (Membership and Benefits) (Jersey) Regulations 201- (“the Membership and Benefit Regulations”) (P.98/2015)
- Public Employees (Pension Scheme) (Transitional Provisions, Savings and Consequential Amendments) (Jersey) Regulations 201- (“the Transitional Regulations”) (P.99/2015).

To assist States Members, an individual report has been prepared for each set of Regulations. This report will focus on the Administration Regulations.

### **3. THE ADMINISTRATION REGULATIONS**

The Administration Regulations provide for the governance of the respective schemes. This includes the appointment and composition of the Committee of Management, the appointment of the Scheme Actuary, Investment Managers and other advisors and the development of a Pension Administration Strategy document in addition to other aspects relating to the administration of both pension schemes. These Regulations will effectively replace the current Public Employees (Contributory Retirement Scheme) (General) (Jersey) Regulations 1989 (“the General Regulations”).

The structure of the Administration Regulations establishes the governing body of the pension scheme and then allows for that body to appoint advisers. The Regulations then deal with the Fund itself and the investment of the assets of the Fund, before finally dealing with aspects of the administration of both the respective schemes, including the appointment of an external administrator.

### **4. THE COMMITTEE OF MANAGEMENT**

#### **The Committee of Management**

The Committee of Management is the governing body of the respective schemes and oversees the governance and management of the Fund.

The current composition of the Committee is made up of 6 employer representatives, 3 of whom are nominated by the Minister for Treasury and Resources, 3 are nominated by the Chief Minister and 6 member representatives who are nominated by the JNG. All are appointed by the States Assembly. In addition, there is an independent Chairman.

The composition of the Committee in its current form does not wholly reflect the membership of the respective schemes, as there are no formal ‘pensioner’ members or members appointed from Admitted Bodies. The Administration Regulations bring about a change to the Committee’s composition which will ensure representation for all interested parties. There will remain 12 members on the Committee, but the membership will be divided into 4 representative categories as follows:

- 4 Member representatives of the respective schemes (nominated by the JNG)
- 5 Employer representatives (nominated by the Minister for Treasury and Resources and the Chief Minister)
- 2 Pensioner member representatives (advertised in line with best practice)
- 1 Admitted Body employer representative (advertised within the Admitted Bodies).

However, this change will not be fully effective at the point at which the PEPS is established, but will be achieved as and when current members resign or vacate their position after January 2016. The Committee, in its current form, will be re-appointed

as at 31st December 2015 for a further period of 3 years under Regulation 3 of the General Regulations.

There is scope in the Regulations to alter the total number of members on the Committee. The Regulations allow for the Committee to be reduced to a minimum of 8 members (not including the Chairman). Any reduction to the size of the Committee is made with the agreement of the Committee and the Chief Minister. Where a reduction takes place, the composition of the Committee is to remain as follows –

<b>Total number of Committee members</b>	<b>Employer representatives</b>	<b>Member representatives</b>
10	4 Employer representatives 1 Admitted employer representative = 5	3 Member representatives 2 Pensioner representatives = 5
8	3 Employer representatives 1 Admitted employer representative = 4	2 Member representatives 2 Pensioner representatives = 4

The general rule is that the number of employer representatives (including the one admitted employer representative) and the member representatives (including the 2 pensioner representatives) must always be equal. However, that rule will not apply during any period where there is a vacancy on the Committee awaiting appointment, or where a vacancy is not filled because the Minister and the Committee have agreed to reduce the number of members serving on the Committee.

#### **Appointment to the Committee of Management**

The Regulations will also change the appointment process for the Chairman and the members of the Committee. Whereas members are currently appointed to the Committee by the States Assembly, on the recommendation of the Chief Minister, in future they will be appointed by the Chief Minister and the appointments will be overseen by the Jersey Appointments Commission. The use of the Appointments Commission is to provide greater governance and oversight to appointments made to the Committee, and brings the appointments in line with other quasi-autonomous non-governmental organisations.

These Regulations will ensure that all Committee Members are appointed appropriately and in line with the Appointments Commission's "Code of Practice for Appointments to Autonomous & Quasi-Autonomous Public Bodies and Tribunals". Under the Employment of States of Jersey Employees (Jersey) Law 2005, the role of the Appointments Commission is to "oversee the recruitment of Senior Officials to the

public service and to independent Public Bodies”<sup>1</sup>. All appointments to quangos and similar bodies are made with the involvement of the Appointments Commission.

There will be a different application process for each member group, though once the application has been made, the same recruitment and selection process will apply. The following applications processes are as follows:

- A position for an Employer Representative on the Committee will be advertised in the media and a person would have to apply for that position.
- The appointment process for the Member Representatives will mean they are nominated by the representative associations to apply for appointment as a member of the Committee.
- Pensioner representative vacancies will be advertised locally and information included in general pension circulars in order to ensure that all pensioners know that they can apply to become a member of the Committee.
- The advertisement for the position of Admitted Body representative will go out to all Heads, Chairmen or Chief Executives of those bodies, requesting for them to nominate people to apply to become a member of the Committee.

The new process will allow appropriate representation to be put forward for each position on the Committee.

The position of the Chairman will be advertised nationally as well as locally, as this position requires a high level of knowledge, expertise and experience which may not be found locally.

The Minister for Treasury and Resources will recommend to the Chief Minister all appointments of the members to the Committee. The appointment of the Chairman will also be recommended by the Minister for Treasury and Resources, but will also require the agreement of a majority of member and employer representatives of the Committee.

The Regulations also stipulate that a person may not return to the Committee once they have served 2 terms of office, and no person who is or has been a member of the Committee can be appointed to the position of Chairman; this is to ensure that the Chairman is at all times impartial and independent.

Further to the appointments being made, the Regulations require that all potential appointees must ensure that they have no conflict of interest prior to their appointment being confirmed by the Chief Minister. This is to ensure that the Chief Minister has oversight of the members and that there is nothing that could prejudice their appointment. A conflict of interest does not include the Committee member also being a member of the respective schemes in any form.

### **Terms of office**

Committee members will be appointed to serve a term of up to 5 years and may be appointed for a further term, and no Committee member shall be able to serve more than 2 terms. The restriction on the length of membership to the Committee is in keeping with the recommendation made under point 5.2.1 of the Appointments Commission’s Code of Practice<sup>2</sup>. The Chairman of the Committee is the only person who can be appointed for more than 2 terms due to the nature of the position and the level of knowledge, expertise and experience required.

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<sup>1</sup> Jersey Appointments Commission, *Code of Practice for Appointments to Autonomous & Quasi-Autonomous Public Bodies & Tribunals*. (Version 3. Nov. 2013), Page 4.

<sup>2</sup> Jersey Appointments Commission, *Code of Practice for Appointments to Autonomous & Quasi-Autonomous Public Bodies & Tribunals*. (Version 3. Nov. 2013), Page 13.

Where members are to be re-appointed, and in order to maintain knowledge and experience within the Committee, members may be appointed on terms of 1, 2, 3, 4 or 5 years. This will enable a staggered re-appointment process.

### **Appointment and termination of the Chairman's Term of Office**

Previously the Chairman was appointed by the States Assembly following a recommendation by the Minister for Treasury and Resources and that recommendation supported by a majority of member and employer representatives.

Under the Administration Regulations the Chairman will be a States Appointee, as provided for under Article 15(3) of the Employment of States of Jersey Employees (Jersey) Law 2005 ("the 2005 Law"). By making the Chairman a States Appointee for the purpose of the 2005 Law, oversight is by the Appointments Committee for all aspects of the appointment process.

As the Chairman is not a States Employee, for the purposes of the 2005 Law, he/she will have a contract for services with the States Employment Board, which will detail his/her role and state the fee that will be paid to him/her. The fee for the Chairman will continue to be paid out of the Fund, and as such the Committee will retain input through a consultation process with the Minister for Treasury and Resources.

Only the Chief Minister will have the power to remove the Chairman of the Committee. However, any such removal will require the support of a majority of member representatives and a majority of employer representatives. The Regulations do not specify reasons for removal, but where this matter arises, the removal will be based on a decision of the Chief Minister.

### **Members of the Committee – Term of Office termination**

Members may resign from their post giving 3 months' notice to the Chairman, or they can be removed by the Chief Minister where there has been a vote of no confidence in that member which is supported by a majority of member representatives and a majority of employer representatives. No member can be forcibly removed from the Committee through any other means.

### **Committee Meetings**

No changes have been made regarding how the Committee conducts its meetings, what is included in the Regulations is clarity on high-level aspects of how the meetings should proceed.

- Where there is no Chairman the Committee can appoint someone from their number to act in the Chairman's place.
- To be quorate the Committee must have no less than half of the member representatives and half of the employer representatives present.
- Most business, unless otherwise stated, can only be decided by a majority of members present.
- The Chairman can only have a casting vote. If a member has been elected as the Chairman for a meeting then they can either have a casting vote or a members vote but cannot use both.
- The Committee can invite any person to their meetings, as they determine.

The above is a non-exhaustive list which the Committee must take into account when setting their meetings. Further to the above, the Treasurer may also attend any meeting with the agreement of the Committee.

The Committee also retain their indemnification by the States Assembly against any personal liabilities they incur during the exercise of their functions under the Law and the respective scheme Regulations. The only time the members will not be indemnified is when the liability was deliberately incurred by the Chairman or the Committee members.

### **Delegation of Committee functions**

The Committee may delegate any of its functions to any person it deems appropriate and it can revoke that delegation at any time. The Committee delegates most of its functions under the Regulations to various sub-committees. The sub-committees are made up of members of the Committee who report back to the full Committee in the quarterly meetings. The only duties that the Committee cannot delegate are ones that require the agreement of a majority of member representatives and a majority of employer representatives.

Where the Committee is required to pay towards any delegated duties, they must ensure that the cost is met within their agreed budget.

The Committee also has many functions throughout the Regulations which are solely administrative. The Committee does not have the capacity to deal with all administrative duties required in the Regulations, and so delegate those duties to the Administrator of the Scheme.

### **Budget of the Committee**

The Committee has always set its budget on a year-by-year basis and have not previously been required to seek approval. To ensure good governance, the Committee must now seek the approval of the Minister for Treasury and Resources prior to having its budget confirmed.

The Regulations establish a requirement for the Minister for Treasury and Resources to approve the Committee's budget by 31st December of the year preceding the year of the budget. The Committee will be expected to ensure that the Minister for Treasury and Resources receives the budget in sufficient time for there to be deliberation between the 2 parties before approval is given.

For the first year under the new scheme (2016), the Committee will run their budget as they have previously, as it will have been determined prior to these Regulations coming into force.

Where the Committee exceed any amount allocated in its budget, it will have 3 months from the date it exceeds the amount to send a report to the Minister for Treasury and Resources explaining the overspend and reasons for such expenditure.

## **5. THE SCHEME ACTUARY**

### **Appointment of the Scheme Actuary**

The appointment of the Scheme Actuary remains with the Committee. The Actuary is appointed by the Committee as an adviser on all actuarial matters and to provide funding advice. The Actuary will continue to have a contract for services with the Committee, which will outline their terms and conditions of appointment as well as their fee.

Any appointment made by the Committee can be terminated as long as the Committee consults with the Treasurer of the States and has the support of a majority of a majority of member representatives and a majority of employer representatives.

## **Duties of the Scheme Actuary**

The Scheme Actuary is unable to advise both the employer and the Committee on funding matters, as this may result in a conflict of interest and contravene their professional standards. The Regulations are compatible with these requirements. At all times the Actuary has to be mindful of the rules of professional conduct contained in APS P1: Duties and Responsibilities of Members Undertaking Work in Relation to Pension Schemes<sup>3</sup>. The Actuary has advised that there is nothing in this Regulation which would lead to an infringement of their professional standards.

The Regulations set out that the main duty of the Actuary is to advise the Committee on the funding of the scheme. Their other duty under Regulations is to provide the Administrator with information and advice regarding the administration of the respective schemes as the Administrator requires.

The information provided to the Administrator in order to perform its function includes actuarial factors for dealing with transfers in and out of the scheme, actuarial tables for dealing with Additional Voluntary Contributions (AVCs), and actuarial factors for dealing with early retirement reductions and late retirement enhancements. These tables and factors are approved by the Committee, who in turn allow the Actuary to provide this information directly to the Administrator, thus allowing the administration of the scheme to be efficient.

## **6. INVESTMENT MANAGERS**

### **Appointment of the Investment Manager**

One of the main functions of the Committee is the investment of the Fund's assets. To enable it to perform this function, it has responsibility for appointing and terminating the Fund's investment managers. All investment managers are appointed on terms and conditions as agreed by the Committee.

Prior to appointing any investment manager, the Committee must consider the value of the Fund's assets which are to be managed by the investment manager, and to ensure that the value of those assets is not excessive with regard to certain factors, including the total value of the assets of the Fund and obtaining advice from the Fund's investment advisers. The total of the Fund's assets should be spread amongst the Fund's investment managers appropriately.

The Committee can terminate any appointment of an investment manager with immediate effect if there is a significant issue with that investment manager, or the company and/or the assets held if they need to be withdrawn with immediate effect. The Minister for Treasury and Resources may also request the Committee terminate the appointment with immediate effect if made aware of any significant issue regarding an investment manager.

### **Function of the Investment Manager**

The functions of the Investment Manager were previously embedded in Regulation 5 of the General Regulations, titled: "The appointment of Actuary, investment manager and other advisers, and professional advice". Separating the functions of the Investment Manager from other Regulations determines the role and the responsibilities.

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<sup>3</sup> The Pensions Standards Committee, *APS P1: Duties and Responsibilities of Members Undertaking Work in Relation to Pension Schemes*. (Institute and Faculty of Actuaries: Version 2, effective 1st July 2013).

A main function is to invest assets as the Committee advises. The investment managers must comply with the investment mandate agreed by the Committee. They are required to produce a quarterly report on the performance of the assets under their management and present the report to the Committee and the Treasurer of the States.

#### **Duties of Committee in relation to investment managers**

The Committee sets the policies by which the investment managers invest the funds. The Committee will agree with each investment manager a mandate on what, where and how they can invest the assets. The Committee will also be obliged to review the mandates quarterly.

### **7. INVESTMENT ADVISER AND CUSTODIANS**

#### **Appointment and duties of an investment adviser**

It is the Committee's role to appoint investment advisers who will advise them on the overall investment strategy of the Fund. The investment advisers will also advise the Committee on which investment managers would suit the investment strategy and which managers are best to invest the assets in line with the strategic objectives of the Fund. The investment advisers will also give advice on the diversity of the allocation of assets to suit the investment strategy.

#### **Appointment and duties of custodians**

The Custodian of the Scheme holds and safeguards assets of the Scheme on behalf of the Treasurer of the States. Therefore, this appointment is made by the Minister for Treasury and Resources in consultation with the Treasurer of the States and the Committee.

### **8. MANAGEMENT OF ASSETS OF THE FUND**

#### **Statement of Investment Principles**

The Statement of Investment Principles ("SIP") sets out the principles governing decisions about the investment of the assets of the Fund. When preparing this document, the Committee must consult with the Treasurer of the States to ensure that the SIP is aligned with the investment objectives of the Fund.

The Regulations also specify what the Committee must consider when creating the SIP, as this is an integral document and will guide the investment strategy for the respective schemes.

#### **Assets of the Fund and investments**

This Regulation is relatively unchanged from the previous Regulation 4 of the Public Employees (Contributory Retirement Scheme) (General) (Jersey) Regulations 1989. The Regulation provides for the payment of contributions, returns on investments and other sums to be paid into the Fund. It confers functions on the Treasurer of the States in relation to the use of the Fund's assets for payment of pensions or other benefits under the respective schemes, and for the investment of assets under the direction of the Committee, with the approval of the Minister for Treasury and Resources. This Regulation also sets out further powers of the Committee with regard to the investment and management of the Scheme Funds.

## **9. FUNCTIONS OF ADMINISTRATOR AND COMMITTEE**

### **Administration of the Scheme and the 1967 Scheme**

Under the current Regulations it is the duty of the Treasurer of the States to administer the Scheme in accordance with the Regulations governing the scheme. This position remains relatively unchanged under these Regulations. The only addition is that following consultation with the Committee, there is scope in the Regulations to allow for an administrator other than the Treasurer of the States to be appointed.

For this to occur, the request must come from the Committee and the Minister for Treasury and Resources, who would jointly prepare a report for the Chief Minister giving reasons why a new Scheme Administrator should be appointed. The Chief Minister, if in agreement with the report, would then present a proposition to the States Assembly for approval to begin a tendering process. The Treasurer of the States would remain the Scheme Administrator whilst there is no other appointed administrator.

### **Pension administration strategy**

The Pension Administration Strategy will specify what is required for the administration of the Scheme and what is required of the parties involved. The document sets out the policies and procedures for governing the administration of the PEPS and the PECRS. The responsibility for preparing this document lies with the Committee. If the Committee wishes to amend this document, they must do so in consultation with the Administrator.

The policies and procedures set out in the Pension Administration Strategy must be adhered to by the Employer (i.e. the States Employment Board and other employers admitted to the Scheme under the respective Laws or the subsequent Regulations) and the Administrator. Where any changes are to be made to the document, then the Committee must consult with employers and the Administrator.

### **Annual report and accounts, etc.**

The annual report gives a compendium of information relating to the performance of the Pension Fund and outlines the activities of the Scheme over the previous year. It is the Committee's responsibility to manage the Fund; therefore they have responsibility for preparing the annual report. Included in this report is:

- A statement on the management and financial performance of the Fund during the previous year;
- A statement explaining the investment policy in respect of the Fund and a review of the investment performance during the year;
- A statement from the Actuary regarding the assets and liabilities of the Fund and the level of valuation disclosed at the last valuation of the Fund;
- A report dealing with the extent to which the Administrator and employers have met administration targets; performance standards set out in the published administration strategy; and
- The Fund accounts.

The only element of the annual report which is not prepared by the Committee is the Fund accounts; these are prepared by the Treasurer of the States and audited by external auditors appointed by the Comptroller and Auditor General. This remains with the Treasurer, as it is the responsibility of the Treasury and Resources Department of the States of Jersey to prepare the annual accounts.

## **10. TRANSFERS**

### **Transfers out of the Fund**

Where a member of the Scheme ceases employment with the States of Jersey or an Admitted Body employer and the pension is not in payment, this Regulation allows them an option to transfer their accrued benefits to another pension scheme as long as it complies with the Income Tax (Jersey) Law 1961. If a member transfers out their accrued benefits, they forfeit the right to any further claim on the Scheme, as well as any contingent right payable upon the ex-member's death.

### **Transfers into the Fund**

Where a person (subject to the eligibility criteria) commences employment with the States of Jersey or an Admitted Body employer, they become a member of the Scheme, this Regulation gives them the ability to transfer in any pension rights they may have accrued in another pension scheme.

There are 2 forms of transfers that can be accepted, a "Club" transfer and a "Non-Club" transfer.

A Club transfer is made through the Public Sector Transfer Club ("the Club"). The Club is a group of around 120 salary-related occupational pension schemes. If a member has accrued benefits in another Club scheme and they wish to transfer their benefits through the Club, they must agree to transfer their benefits within one calendar year of joining their new scheme in order to gain the benefit under the Club membership.

Where a pension provider is not a member of the Club, the member can make the transfer at any point in their active membership. All Non-Club transfers take place on a cash equivalent transfer basis, meaning the amount of pension a person would receive would be based on the cash value of their accrued benefits in the previous scheme.

Any benefits that the member transfers in will be added to their pension record and will effectively increase the pension which they are accruing in the Scheme.

The Regulations cover both PEPS and PECRS, and continue to allow members of PECRS to transfer in pension rights that they may have with another pension provider.

### **Transfers – supplementary**

To enable transfers to be accepted from UK schemes, both the PEPS and the PECRS must remain compliant with UK Tax legislation. This means that Scheme Regulations need to comply with requirements set out in UK legislation.

An important aspect of the UK legislation is Pension Scheme (Categories of Country and Requirements for Overseas Pension Scheme and Recognised Overseas Pension Schemes) Regulations 2006 (S.I. 2006/206). The respective Schemes also have a regulatory requirement to ensure that they meet the terms of being a qualifying recognized overseas pension scheme ("QROPS") as set out in the above legislation.

To be recognised as being QROPS-compliant, the Scheme Regulations need to confirm that at least 70% of transferred accrued benefits from the member's previous pension arrangement have to be designated by the receiving scheme as a pension for life. Also, a member must be a minimum age of 55 to be able to receive the pension which they have transferred in, unless they have left early due to ill-health retirement.

This Regulation also deals with matters in relation to restrictions to a refund of contributions and minimum payments in respect of transfers in from UK pension arrangements. These Regulations ensure that where a transfer into the Fund is made through a UK transferring arrangement, that pension derived from that transfer in will

not result in an amount that would not meet the minimum guaranteed payable under the UK Pensions Schemes Act 1993.

## **11. GENERAL**

### **Interest on late payments by employers**

The Regulations make provision where an employer makes a late payment into the Fund or where they are late in paying employer contributions, in which case the Committee may charge interest on those payments. For the Committee to be able to charge interest, the payment has to be overdue by at least one month following the date of payment as specified in the Regulations.

The ability to charge interest on late payments ensures that any monies owed to the Fund is paid in at the appropriate time. A late payment means the possibility of a loss of investment returns on those monies. To make up for the loss, the Committee may charge interest at a rate as determined by the Scheme Actuary.

### **Production of information for the purposes of the respective schemes**

In order for a member to receive benefits from the respective Schemes, the Committee may obtain certain information as they see fit. For example, if a member dies and a person identifies themselves as being a dependent of the member, the Committee will require evidence of the dependency prior to any benefits being paid.

### **Annual benefit statements**

All active and deferred members of the respective Schemes receive an annual statement outlining the benefits accrued to date. In practice, this already happens; however, there was no requirement under the General Regulations, and this omission has now been rectified.

### **Payments due in respect of deceased persons**

Where a member dies and the member's benefits do not exceed £5,000, the Committee may pay out all or some of those benefits. The benefits can be payable to either the executor or administrator of the member's estate, or to a person who appears to the Committee to be a beneficiary of the estate. The payment can be made without the requirement to produce probate or letter of administration, and where the benefits have been paid, it extinguishes the Committee's need to account for the amount paid.

Effectively, where there is a small amount of benefits payable after a member's death, the Committee has the right to give those benefits to a person who can prove they have an entitlement to it. Once paid, all further entitlement to any other benefit from the fund is extinguished.

### **Payments in respect of persons incapable of managing their affairs**

This Regulation allows the Committee to pay the benefits due in respect of persons (other than children) who by reason of physical or mental impairment are not able to manage their affairs, to any person the Committee deems as having care for that person. The benefit being paid to the person caring for the member has to be applied for the benefit of that member.

If the Committee are unable to identify a person who is responsible for caring for the member, then the Committee has the ability to apply the benefit as they see fit, to ensure that the care of the member is dealt with appropriately.

Where the Committee pays those benefits, they relinquish any further responsibility as to how those benefits are used. The Committee's role is to pay the benefits and not oversee how the benefits are used following payment.

## **Tax deductions**

This Regulation is to ensure that the Administrator of the Scheme deducts tax accordingly from any payment where tax is due.

## **Amendment of Regulations**

The Committee have the ability to propose, to the Chief Minister, amendments to any of the respective Scheme's Regulations. Any proposal must be supported by a majority of member representatives and a majority of employer representatives, and final agreement to the proposal to amend the Regulations is by the Chief Minister.

## **12. PREPARING FOR IMPLEMENTATION**

The draft Regulations would come into force as set out below –

- (a) 1 to 12, 16 and 17, 19 to 21 and Schedules 1 and 5 shall come into force on the 1st commencement date, 1st January 2016 on the same date as the Public Employees (Pensions) (Jersey) Law and the same date as the new PEPS Scheme commences; and
- (b) 13 to 15 and 18, and Schedules 2 to 4 shall come into force on the 2nd commencement date, 1st January 2019).

## **13. FINANCIAL AND MANPOWER IMPLICATIONS**

The only financial implication that may arise as a result of these Regulations is where an employer is late paying monies into the Fund, and the Committee chooses to charge interest on those late payments.

These Regulations set out the governance behind the administration of the respective Schemes, and as such there are no direct financial or manpower implications. The respective Schemes will continue to be administered by the Dedicated Pensions Unit which is funded by the Fund; if the cost of administration increases, this will be met by the Fund and detailed within the Committee's budget.

## **14. HUMAN RIGHTS IMPLICATIONS**

A Human Rights Note from the Law Officers' Department, supplied for the information of States Members, which covers the 4 sets of draft Regulations as listed below, is attached at the **Appendix** to this report –

- Public Employees (Pension Scheme) (Administration) (Jersey) Regulations 201- ("the Administration Regulations") (P.96/2015)
- Public Employees (Pension Scheme) (Funding and Valuation) (Jersey) Regulations 201- ("the Funding and Valuation Regulations") (P.97/2015)
- Public Employees (Pension Scheme) (Membership and Benefits) (Jersey) Regulations 201- ("the Membership and Benefit Regulations") (P.98/2015)
- Public Employees (Pension Scheme) (Transitional Provisions, Savings and Consequential Amendments) (Jersey) Regulations 201- ("the Transitional Regulations") (P.99/2015).

**HUMAN RIGHTS AND PENSIONS REFORM:  
NOTE ON THE DRAFT REGULATIONS**

1. This Note concerns the following draft Regulations proposed to be made under the Public Employees (Pensions) (Jersey) Law 2014, namely –
  - Public Employees (Pension Scheme) (Administration) (Jersey) Regulations 201- (“**Administration Regulations**”)
  - Public Employees (Pension Scheme) (Funding and Valuation) (Jersey) Regulations 201- (“**Funding and Valuation Regulations**”)
  - Public Employees (Pension Scheme) (Membership and Benefits) (Jersey) Regulations 201- (“**Members and Benefits Regulations**”)
  - Public Employees (Pension Scheme) (Transitional Provisions, Savings and Consequential Amendments) (Jersey) Regulations 201- (“**Transitional Regulations**”).
2. The fundamental point to note is that the proposed Regulations will not remove any accrued rights, with the exception of the forfeiture provisions in the Members and Benefits Regulations. All provisions that may affect future entitlements exist as part of a process to respond to funding deficiencies within the Scheme. The general principle of a funded scheme is that the expected (not actual) capital value of entitlements to be drawn out is equal to the capital value of the amount paid in, but solvency issues may arise requiring present day contributors to subsidise the accrued benefits.

*Overview*

3. Pension rights are possessions for the purposes of Article 1 of Protocol 1 of the European Convention, which opens the door to Article 14 of the Convention (non-discrimination) applying.
4. There is a broad margin of appreciation for states in respect of pensions. The aim is to be fair to members, to taxpayers, and to maintain that fairness across generations. That fairness is achieved through actuarial processes which identify shortfalls, then to identify the methods for bringing back solvency, and implementing such a method. These are matters of “economic and social strategy”, where the European Court of Human Rights will respect the decisions of national legislatures unless they are:<sup>4</sup>

*“manifestly without reasonable foundation”.*

It follows, setting forfeiture to one side for a moment, that nothing will be held to be incompatible with the European Convention if it is done for a plausible and genuinely held reason. There will be no time spent by a court trawling through alternatives to find the most rights-friendly approach – although the courts may be more interventional where general rules through up cases of acute hardship.<sup>5</sup> It thus follows, if the States can identify a provision that manifestly lacks a reasonable foundation, then it does not need human rights advice to decide that the provision must be amended or voted down.

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<sup>4</sup> *Stec v UK* (2006) 43 EHRR 1017, paragraph 52.

<sup>5</sup> e.g. *R (Tigere) v Secretary of State for Business Innovation and Skills* [2015] UKSC.

5. It may be that, after economic and social legislation is passed, particular cases will reveal difficulties in legislation. However, insofar as there have been problems which the Law Officers (and everyone else involved) could identify in advance, this has already been done. Insofar as those problems showed that earlier proposals were “manifestly without reasonable foundation”, the matter has been put right.
6. In pensions matters, human rights legal advice is just a prediction as to whether a court will decide that the proposals satisfy the minimal requirement of not being “manifestly without reasonable foundation”. This means that it is possible to have aspects with which many would disagree with, or even feel was unjust, yet a court would not be able to say that they are “wholly without reasonable foundation”. For example, in a recent case on social security provisioning, Lord Carnwath plainly doubted the wisdom of certain parts of the UK’s benefit cap system yet believed it was not “manifestly without reasonable foundation”.<sup>6</sup>
7. In other words, it is doubtful if human rights advice will be of any assistance above and beyond the States Members’ ordinary considerations of how it sees the rights and wrongs of the provisions.

#### ***Administration Regulations***

8. Generally, these Regulations relate to administrative matters and so do not engage human rights.

#### ***Requirement for information***

9. Article 26 allows the Committee to ask for personal information that is reasonably required for the purpose of the scheme. The making of payments may be conditional on the production of information, see Article 26(4). This could be seen as a matter falling with Article 8 of the Convention (privacy).
10. However, making requests within the provision would plainly be justified for the purpose of establishing entitlements. The provision does not allow for breaches of the right to privacy.

#### ***Article 28 – payments to deceased persons***

11. This deals with when a person dies and money is due from the Scheme to the person’s executor or administrator. A special regime is created for payments of small sums of money. There is plainly a rational foundation for this, even though it may be lead to thwarting *prima facie* property rights.<sup>7</sup> It allows for an efficient administration of small sums of money.

#### ***Payments in respect of those incapable***

12. Article 29 allows for payments to be made to those unable to handle their own affairs. The rights of the physically or mentally disabled is always a sensitive area, and the broadness of the power will allow the Committee to handle the matters sensitively and appropriately. It is inflexible provisions that tend to create difficulties.

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<sup>6</sup> *R (SG) Secretary of State for work and Pensions* [2015] UKSC 16.

<sup>7</sup> Although a better view is that there is no right to anything which by a proper application of the Pensions Regulations may be paid to someone else.

## Membership and Benefit Regulations

### *Generally*

13. None of the ordinary rules as regards entitlement to benefits give rise to issues that can sensibly be analysed in human rights terms.

### *Contract employees*

14. Under Regulation 8, contract employees have the opportunity not to join PEPS. The general rule is that the States wants its employees to have adequate pension provision for their old age. This is a legitimate aim. Requiring its employees to be within the employees' pension scheme is rationally linked to that aim. Given the "manifestly without reasonable foundation" test, a court would not spend time considering whether there are less intrusive alternatives. Compulsory scheme membership is perfectly proportionate.
15. There is a rational reason for making a distinction with contract employees: as contract employees will be in States employment for only a short period of time – or at least they should not spend years and years as contract. If someone has a 2 year contract, the expectation is that they will leave after 2 years, and only a trivial pension will have been accrued. Hence, it is perfectly with a "reasonable foundation" to conclude that the aim of securing adequate pension provision will not be greatly help by making contract employees join the scheme – there would simply be a lot of administration for little gain.

### *Forfeiture*

16. Forfeiture involves a loss of accrued rights. The question is whether the provisions are justified – in this case, meaning that they clear the not "manifestly without reasonable foundation" hurdle.
17. It will be seen that all heads of forfeiture incorporated into the pre-lodging draft follow a well-established paths. They all have existing Jersey or United Kingdom equivalents. To state the heads of forfeiture in the now revised Regulations is to answer the question on justification, and the relevant precedents are given in footnotes –
  - (a) 5 years' imprisonment for a work-related offence;<sup>8</sup>
  - (b) Treason;<sup>9</sup>
  - (c) 10 years sentence for breaching the Official Secrets Law;<sup>10</sup>
  - (d) Recovery of monetary loss caused by crime against employer;<sup>11</sup>

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<sup>8</sup> A precedent for this is in Article 77(c) of the Teachers' Superannuation (Existing Members) (Jersey) Order 1986, and Regulation 91 of the UK's Local Government Pension Schemes Regulation 2014. It is worth noting that neither precedent includes a threshold as to sentencing levels.

<sup>9</sup> Precedents are found at Article 77(a) of the Teachers' Superannuation (Existing Members) (Jersey) Order 1986; and section 92(4)(b)(i) of the Pensions Act 1995.

<sup>10</sup> Precedents are found at Article 77(b) of the Teachers' Superannuation (Existing Members) (Jersey) Order 1986; and section 92(4)(b)(ii) of the Pensions Act 1995.

<sup>11</sup> Precedents are found at Regulation 92(3) of the United Kingdom's Local Government Pension Scheme Regulations 2014; and section 91(5)(e) of the Pensions Act 1995. The draft provision is more restriction in that applies only to loss caused by criminal offences, and not to loss caused by negligence.

- (e) Failing to claim within 7 years of benefits becoming payable;<sup>12</sup>
  - (f) Murder or manslaughter of the member by the *prima facie* eligible person.<sup>13</sup>
18. Forfeiture is in respect of pension attributable to the employer contributions in respect of (a)–(c), and need not be for the entirety of that. This follows United Kingdom case-law in limiting the effect of forfeiture on property rights under Article 1 of Protocol 1 of the European Convention. The pension attributable to salary deductions is seen as being very much the member’s own money, and to forfeit it for crime would amount to a further criminal penalty. It is more acceptable to forfeit employer contributions, as although part of an employee’s compensation package, they represent something additional to basic salary. Where forfeiture relates to employee contributions, the reasons are obvious:
- For the payment of a debt, albeit limited to where the debt has arisen out of crime against the employer;
  - Failure to claim – a file must be closed at one point; and
  - The removal of a beneficiary’s rights where that beneficiary has unlawfully killed the member – this would not affect the entitlement of other beneficiaries.
19. It is noted that under paragraph 4, the initial forfeiture decision is made by the Chief Minister. It is necessary to have a non-judicial decision-maker as to the issues of whether there should be forfeiture and as to what amount should be forfeited. The alternative would be to forfeiture a judicial process in all cases – whether by requiring the Chief Minister to apply for a judicial order or to make forfeiture *prima facie* automatic, but then subject to appeal to the court. The involvement of the court, with the costs that creates, would in many cases be inefficient and oppressive to the individuals involved.
20. In any case, any person subject to forfeiture proceedings will not have their rights determined by administrative action. Such a person has 28 days after receipt of the forfeiture certificate to appeal to the Royal Court. The grounds of appeal are not spelt out. This follows the most relevant United Kingdom precedent of the Police Pensions Act 1976.
21. Plainly this falls within the margin of appreciation, and clears the “manifestly without reasonable foundation” hurdle with considerable room to spare.

### **Funding and Valuation Regulations**

#### *Different contribution and accrual rates*

22. Contribution rates will differ depending on:
- Whether they are in PECRS or PEPS;
  - If in PECRS, which type of PECRS;
  - If in PEPS, whether they started in PECRS.
23. The rate at which pension entitlements accrue will vary according to similar factors. A pound paid into PECRS will generally be represented by a greater

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<sup>12</sup> This follows section 92(5)(b) of the Pensions Act 1995, except that the requirement is 7 years of absence.

<sup>13</sup> A precedent is found at Regulation 6(1) of the Occupational Pensions Schemes (Assignment, Forfeiture, Bankruptcy, etc.) Regulations 1997.

entitlement than one paid into PEPS; and accrual will be better in the 1967 and FHS versions of PECRS.

24. The variations are entirely attributable to the history of pensions provisions, the need to honour promises made in earlier reforms (e.g. the particular promises made to members of the 1967 and FHS variations of PECRS), and avoiding a sudden leap in pension contributions for existing members of PECRS.
25. Although this treatment tends to favour older employees over the young, this is simply because differences related to the history of public sector pensions will be correlated to how long an individual has been a public sector employee. The connection is quite rational. The States will move steadily towards a position where all public sector employees with pension rights will be accruing pension under the same scheme.
26. Even if we were to accept that an Article 14 (discrimination) argument could be based on differential pension scheme membership, it is accepted by the European Court of Human Rights that progressing towards equality in pension provisioning takes time, see *Stec v United Kingdom*.
27. There is thus no problem with the differences in contribution and accrual rates.

#### ***Transitional Regulations***

28. For the same reasons, there are no meaningful human rights issues around the existence in transitional provisions, and the differences in such provisions between the different forms of PECRS Schemes.
29. In particular, it is noted that the “Nominated Cohabiting Partners” (NCHP) provisions will not apply to the 1967 and FHS versions of PECRS. The reason for this is not without rational foundation. It would not be appropriate to apply NCHP provisions to these 2 schemes because the current 1967 Regulations and FHS Regulations do not allow for widowers pensions or civil partners pensions.
30. When the recent legislation for civil partnerships was agreed, the legal and actuarial advice was that the application of civil partnership provisions would be unfair to past, current and future widowers who are not beneficiaries under these schemes. On these matters, where pension provision reflects past social realities, reforms that reflect modern social reality need not be backdated (see *Stec v UK* and *Runkee v UK*). The line has to be drawn somewhere.
31. All members in these old schemes were given the option some 25 years ago to remain where they were, or to move into the Existing Members or New Members part of the Scheme. Those members that chose to remain as members of the 1967 and FHS Regulations were promised that their pensions would retain the guarantee of index-linking to their pension increase, and the benefits at that time would remain in place and not be subject to any ‘enhancement or diminishment’.
32. The schemes were effectively moth-balled and this is why there are no widowers’ or civil partners’ pensions. It is therefore appropriate not to extend the “nominated partners” provisions.

#### **Conclusion**

33. For the reasons given above, the Regulations give rise to no problems under the Human Rights (Jersey) Law 2000.

## Explanatory Note

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These draft Regulations are divided into 4 Parts and their purpose is to set out the governance and administration provisions which would apply in respect of both the new Public Employees Pension Scheme (career average revalued earnings scheme) (the “Scheme”) and the existing Public Employees Contributory Retirement Scheme (final salary scheme) (“PECRS”). It is proposed that the Scheme would be implemented in 2 phases. Phase 1 would, if the States agree, be implemented from 1st January 2016 and would apply to all new employees entering service. Phase 2 would be implemented from 1st January 2019 when the majority of members of the PECRS would transition to membership of the Scheme. These Regulations would replace almost all of the governance and administration provisions contained in the Public Employees (Contributory Retirement Scheme) (General) (Jersey) Regulations 1989, and would take effect on 1st January 2016.

### Part 1 – Interpretation

*Regulation 1* defines words and expressions used throughout the Regulations. In particular references to the “Scheme”, are references to the Public Employees Pension Scheme (referred to in Article 2(1) of the Public Employees (Pensions) (Jersey) Law 2014 (the “Law”)) and references to the “respective schemes” are references to the Scheme and the 1967 Scheme established by the Public Employees (Contributory Retirement Scheme) (Jersey) Regulations 1967. The “fund” is the pension fund established for the purposes of the 1967 Scheme and which by virtue of Article 5 of the Law will operate as the fund for both the Scheme and the 1967 Scheme. Article 4 of the Law provides for the establishment of a Committee of Management to manage the respective schemes and that the Committee established for the purposes of managing the 1967 Scheme shall also function as the Committee for the Scheme. “Minister” is a reference to the Chief Minister. The expression “Scheme Regulations” is defined in the Law and means Regulations made under Article 2 of the Law.

### Part 2 – Management of the fund: *Regulations 2 to 18*

*Regulation 2* would provide for the functions of the Committee and for it to be composed of one Chairman and a maximum of 12 members and a minimum of 8. The Committee’s membership is divided into 4 representative categories –

- (i) employer, meaning the States Employment Board (“SEB”),
- (ii) members of the respective schemes,
- (iii) pensioner members of the respective schemes,
- (iv) admitted employers, meaning employers other than the SEB who are permitted to participate in the respective schemes.

The general rule is that the number of employer representatives (including the one admitted employer representative) and the member representatives (including the pensioner representatives) must always be equal. However that rule does not apply during any period where there is a membership vacancy awaiting appointment or where a vacancy is not filled because the Minister and the Committee have agreed to reduce the number of members serving on the Committee.

*Regulation 3* would, subject to Article 10(2) of the Law (which provides for the continuation in office of the present Chairman and members of the Committee until their current terms of office expire), provide for the appointment of the Chairman and members which would be overseen by the Jersey Appointments Commission. Appointments would be made by the Minister subject to the Minister being satisfied that the appointees have no conflict of interest. This Regulation would also preclude a person from serving –

- (a) as the Chairman if he or she is already a serving member of the Committee, or has at any time in the past served as a member of the Committee;
- (b) as a member if he or she has served as a member of the Committee for the maximum period of 2 terms.

*Regulation 4* would provide for the Chairman and members' terms of office. In the case of a member, he or she may serve a maximum of 2 consecutive 5 year terms of office. In the case of the Chairman, he or she may serve unlimited renewable 5 year terms of office.

*Regulation 5* would provide for the Chairman's contract and remuneration and for the termination of his or her appointment. Termination other than by resignation would require the Minister to have secured the agreement of the majority of each of the employer and member representatives.

*Regulation 6* would provide for the termination of appointment of members of the Committee. Termination other than by resignation requires the agreement of the Minister subject to the passing of a vote of no confidence in a member supported by the majority of both the employer and member representatives.

*Regulation 7* would permit the Committee to regulate its meetings, including the appointment of an *ad hoc* chairman when the appointed Chairman is not present.

*Regulation 8* would permit the Committee to delegate its functions.

*Regulation 9* would require the Committee to determine an annual draft budget for approval by the Minister for Treasury and Resources. Any costs incurred which fall outside the agreed annual budget would have to be reported to the Minister for Treasury and Resources.

*Regulation 10* would provide for the appointment of the fund's Actuary, the terms of that appointment including remuneration and termination of appointment.

*Regulation 11* sets out the Actuary's duties in relation to the giving of advice to the Committee in respect of the funding of the respective schemes.

*Regulation 12* would provide for the appointment of the fund's investment managers, their terms of appointment including remuneration and termination of appointment. The Committee cannot appoint an investment manager unless it has considered the value of the fund's assets which are to be managed by the investment manager, and that the value is not excessive having regard to a number of factors, including the total value of the assets of the fund.

*Regulation 13* would set out the functions of the investment manager including the investment of such assets under the manager's control as the Committee authorizes.

*Regulation 14* sets out the duties of the Committee in relation to the fund's investment managers, including ensuring that the manager complies with instructions given by the Committee, and the agreement of an investment mandate for the fund which would be

approved by the Minister for Treasury and Resources. The Committee would also be required to review, on a quarterly basis, the investments the manager has made.

*Regulation 15* would provide for the appointment of the fund's investment advisers, their terms of appointment including remuneration and termination of appointment. It also sets out the functions of the investment adviser including the requirement to comply with instructions given by the Committee and to advise the Committee on the investment strategy for the fund.

*Regulation 16* would provide for the appointment of the fund's custodians, their terms of appointment including remuneration. The custodians would be required to hold and safeguard such assets of the fund as are determined by the Treasurer in consultation with the Committee.

*Regulation 17* would require the Committee to prepare and publish a written statement of the principles and policies governing the Committee's decisions in relation to the investment of the fund's assets. The statement of investment principles must be kept under annual review and revised as appropriate. The statement (including any revised statement) would be subject to the approval of the Minister for Treasury and Resources.

*Regulation 18* would provide for the payment of contributions, returns on investments and other sums to be paid into the fund and the functions of the Treasurer in relation to the use of the fund's assets for the payment of pensions or other benefits under the respective schemes, or for the investment of assets under the direction of the Committee, with the approval of the Minister for Treasury and Resources.

### **Part 3 – Administration of schemes: Regulations 19 to 31**

*Regulation 19* would provide for the administrative functions in relation to the management of the respective schemes to be carried out by the Administrator who would either be the Treasurer or, following a tendering process approved by a resolution of the States, an appointed person.

*Regulation 20* would require the Committee to prepare and publish a pension administration strategy (the "administration strategy") setting out the policies and procedures governing the administration of the respective schemes, and the obligations of the Administrator and employers admitted to the 1967 Scheme who were subject to certain admission requirements under the Public Employees (Contributory Retirement Scheme) (General) Regulations 1989. The Administrator and employers (i.e. admitted employers and the SEB) must follow the policies and procedures set out in the administration strategy when discharging their functions. The administration strategy may include matters relating to the exchange of information between the Administrator and employers and the setting of performance targets in relation to the performance of functions. The pension administration strategy must be kept under annual review and revised as appropriate.

*Regulation 21* would require the Committee to prepare and publish an annual report in respect of the fund. The annual report must contain statements of the Committee about its management of investments and financial performance, a statement of the Actuary about the fund's assets and liabilities and valuation levels, and the accounts of the fund. The Comptroller and Auditor General would be conferred with the function of appointing auditors to audit the fund accounts, and the fund accounts must contain the auditors' report. The fund accounts must be prepared by the Treasurer or such other person as may be appointed by the Minister for Treasury and Resources.

*Regulation 22* applies to members who are paying pension contributions under either of the respective schemes who upon ceasing membership make their own personal pension arrangements or join another pension scheme which is approved for tax purposes under the Income Tax (Jersey) Law 1961 (the “Income Tax Law”). Such members, provided they are not receiving any of their retirement benefits under the respective schemes, may apply to the Administrator to transfer their accrued retirement benefits out of the fund and have those accrued benefits paid over to the managers or trustees of their chosen new scheme.

*Regulation 23* provides the arrangements to enable active members of the Scheme or members of the 1967 Scheme who are paying contributions to that scheme, to transfer in to the fund any retirement benefits accrued under other pension schemes approved under the Income Tax Law. The value of those transferred benefits will be credited so as to provide an increase in the amount of accrued retirement benefits under the Scheme, or additional pensionable service by way of added years under the 1967 Scheme.

*Regulation 24* makes provision to ensure that the respective schemes comply with the requirements of UK tax legislation concerning the transfer of individual pension benefits from UK pension schemes, and will also for the purposes of meeting HMRC reporting requirements, retain qualifying recognized overseas pension scheme (“QROPS”) status.

The Finance Act 2004 (c.12) of the United Kingdom (the “2004 Act”) specifies which transfers may be made without adverse tax consequences. These transfers are known as “recognized transfers” and are what is known as a type of “authorized member payment”. To be an authorized member payment, transfers must be made to either a registered pension scheme or a QROPS.

Under the 2004 Act, a recognized overseas pension scheme is an overseas pension scheme that meets the requirements prescribed under the Pension Schemes (Categories of Country and Requirements for Overseas Pension Schemes) Regulations 2006 of the United Kingdom (S.I. 2006/206). The main requirements which must be satisfied are that –

- (a) at the time of the transfer, the rules of the receiving scheme must provide that at least 70% of the transferred sum representing the value of the member’s accrued pension benefits in the ceding pension fund will be designated by the receiving scheme manager for the purpose of providing the member with an income for life; and
- (b) the pension benefits in respect of the designated sum transferred cannot be paid until the member –
  - is at least 55 years old, or
  - has left employment and retired early because of ill-health (this is known as “pension rule 1” which is set out in section 165 of the 2004 Act. Paragraph 1 of Schedule 28 to that Act sets out the requirements concerning retirement on the grounds of ill-health (the “ill-health condition test”).

The Chief Minister is required to give an undertaking that the value of a transfer into the fund under this Regulation will not result in benefits of an amount less than would be guaranteed as the minimum payable under the Pensions Schemes Act 1993 of the United Kingdom. This Regulation also provides for the giving of undertakings in

relation to any restrictions on the refund of member contributions relating to transferred in retirement benefits.

*Regulation 25* would provide for the payment of interest by an employer where any employer payments into the fund required under these Regulations, or employer contributions required under the Public Employees (Pension Scheme) (Funding and Valuation) (Jersey) Regulations) 201-, are overdue by one month from the date on which the payment fell due. The Committee would, on the advice of the Scheme Actuary, set the applicable rate of interest.

*Regulation 26* would require the Committee to obtain certain information from a person entering Scheme employment for the purposes of that person's membership of the Scheme, and may make membership of the Scheme or the payment of retirement benefits or survivor benefits, conditional upon such information as it requires being produced.

*Regulation 27* would require the Administrator to issue an annual benefit statement to members of the respective schemes who are not yet in receipt of their retirement benefits. The statement must set out the description of benefits which have accrued in respect of members' pensionable service. A request may be made in writing to the Administrator for an additional up to date annual benefit statement and one must be supplied unless there is no further up-to date information available.

*Regulation 28* would provide for the payment of sums not exceeding £5000 due under the respective schemes in respect of a deceased person. The Committee may pay such amounts over to the person's executor or administrator or to a person who appears to be a beneficiary of the person's estate without the need the Committee to produce probate or letters of administration in respect of the person's estate.

*Regulation 29* would provide for the arrangements to pay benefits due under the respective schemes in respect of persons (other than children) who by reason of physical or mental impairment are not able to manage their affairs. In such cases the Committee may pay the benefits over to that person's carer to apply for the benefit of the person concerned or the Committee may determine how the benefits should be applied.

*Regulation 30* would require the Administrator to deduct any tax due as a result of the payment of any pension or other benefits under the respective schemes.

*Regulation 31* would enable the Committee to propose to the Chief Minister amendments to the Regulations under the respective Schemes, provided that any proposal is supported by a majority of each of the employer and member representatives.

#### **Part 4 – Closing**

*Regulation 32* sets out the title of these Regulations and, subject to the States approval, for their coming into force on 1st January 2016.



Jersey

## DRAFT PUBLIC EMPLOYEES (PENSION SCHEME) (ADMINISTRATION) (JERSEY) REGULATIONS 201-

### Arrangement

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Jersey

## **DRAFT PUBLIC EMPLOYEES (PENSION SCHEME) (ADMINISTRATION) (JERSEY) REGULATIONS 201-**

*Made*

*[date to be inserted]*

*Coming into force*

*[date to be inserted]*

**THE STATES**, in pursuance of Articles 2, 4, and 5 of, and Schedule 1 to the Public Employees (Pensions) (Jersey) Law 2014<sup>1</sup> and Article 3 of the Public Employees (Retirement) (Jersey) Law 1967<sup>2</sup>, have made the following Regulations –

### **PART 1**

#### **INTERPRETATION**

##### **1 Interpretation**

(1) In these Regulations, unless the context indicates otherwise –

“1967 Regulations” means the Public Employees (Contributory Retirement Scheme) (Jersey) Regulations 1967<sup>3</sup>;

“1967 Scheme employer” means an employer –

- (a) who, before the commencement of these Regulations, was admitted to the 1967 Scheme under repealed Regulation 9 of the General Regulations;
- (b) who, before the commencement of these Regulations, was treated as if admitted to the 1967 Scheme under any enactment which provided for that employer to become an employer for the purposes of that scheme in respect of members of that scheme whose employment with the States Employment Board was transferred to that employer; or
- (c) who is treated as if admitted to the 1967 Scheme under Regulation 7 of, and paragraph 2(5) of Schedule 1 to, the Membership and Benefits Regulations;

“1967 Scheme Regulations” has the meaning given in Article 1(1) of the Law;

“1967 Scheme survivor benefits” has the meaning given in Regulation 10 of the Transitional Regulations;

“1992 Regulations” means the Public Employees (Contributory Retirement Scheme) (Former Hospital Scheme) (Jersey) Regulations 1992<sup>4</sup>;

“active member” has the meaning given in Regulation 1 of the Membership and Benefits Regulations and “active membership” shall be construed accordingly;

“active member pension record” shall be construed in accordance with Regulation 21 of the Membership and Benefits Regulations;

“Actuary” means a person appointed in accordance with Regulation 10 to give actuarial advice in respect of the fund;

“Administrator” shall be construed in accordance with Regulation 19;

“admitted employer” means an employer other than the States Employment Board –

- (a) admitted to the Scheme under –
  - (i) Regulation 7 of, and paragraph 2(1) of Schedule 1 to, the Membership and Benefits Regulations,
  - (ii) Regulation 16(1) of the Transitional Regulations, or
  - (iii) Article 10(5) of the Law;
- (b) treated as if admitted to the Scheme under any enactment which provides for that employer to become an employer for the purposes of the Scheme in respect of members of the Scheme whose employment with the States Employment Board is transferred to that employer; or
- (c) who is a 1967 Scheme Employer;

“admitted employer representative” means a person appointed to the Committee on behalf of an admitted employer;

“approved drawdown contract” means a contract approved under Article 131D of the Income Tax Law;

“approved Jersey scheme” has the meaning given in Article 130 of the Income Tax Law;

“assets” means anything tangible or intangible that is owned or controlled and which may or may not produce an economic value (such as investments, debts or cash);

“budget” shall be construed in accordance with Regulation 9;

“civil partnership” shall be construed in accordance with Article 2 of the Civil Partnership (Jersey) Law 2012<sup>5</sup>;

“Committee” and “Committee of Management” shall be construed in accordance with Article 4 of the Law and Regulation 2;

“conflict of interest” has the meaning given in Article 4(5) of the Law;

“continuing member of the 1967 Scheme” shall be construed in accordance with Regulation 3(2)(b) of the Transitional Regulations;

“contributing member of the 1967 Scheme” means a –

- (a) “contributory member” within the meaning of Regulation 4 of the 1967 Regulations;
- (b) “category A member” and “category B member” within the meaning of Regulation 1 of the Existing Members Regulations and Regulation 1 of the New Members Regulations;
- (c) “category C” member within the meaning of Regulation 1 of the New Members Regulations;
- (d) “member” within the meaning of Regulation 1 of the Existing Members Regulations and Regulation 1 of the New Members Regulations, who is not a category A, category B or category C member (within the meaning of those Regulations); and
- (e) “member” within the meaning of Regulation 1 of the 1992 Regulations;

“deferred member” has the meaning given in Regulation 11 of the Membership and Benefits Regulations;

“eligible child” has the meaning given in Regulation 2 of the Membership and Benefits Regulations;

“employer” means an admitted employer or the States Employment Board;

“employer representatives” means persons appointed to the Committee on behalf of the States Employment Board;

“Existing Members Regulations” means the Public Employees (Contributory Retirement Scheme) (Existing Members) (Jersey) Regulations 1989<sup>6</sup>;

“equivalent scheme established outside Jersey” shall be construed in accordance with Article 131CG of the Income Tax Law;

“financial year” means a period of 12 months beginning on 1st January and ending on 31st December;

“functions” has the meaning given in Article 1(1) of the Law;

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

“Funding and Valuation Regulations” means the Public Employees (Pension Scheme) (Funding and Valuation) (Jersey) Regulations 201-<sup>7</sup>;

“Income Tax Law” means the Income Tax (Jersey) Law 1961<sup>8</sup>;

“investment manager” means a person appointed in accordance with Regulation 12;

“Law” means the Public Employees (Pensions) (Jersey) Law 2014<sup>9</sup>;

“member of the 1967 Scheme” means a continuing member of the 1967 Scheme or a contributing member of the 1967 Scheme;

“Membership and Benefits Regulations” means the Public Employees (Pension Scheme) (Membership and Benefits) (Jersey) Regulations 201-<sup>10</sup>;

“member representatives” has the meaning given in Article 4(5) of the Law”;

“Minister” means the Chief Minister;

New Members Regulations means the Public Employees (Contributory Retirement Scheme) (New Members) (Jersey) Regulations 1989<sup>11</sup>;

“pensioner representatives” means persons appointed to the Committee on behalf of pensioner members of the Scheme (within the meaning of Regulation 12 of the Membership and Benefits Regulations) and pensioners (within the meaning of the 1967 Scheme Regulations);

“proper advice” means advice received from an investment adviser appointed under Regulation 15;

“repealed Regulation 9 of the General Regulations” means Regulation 9 of the Public Employees (Contributory Retirement Scheme) (General) (Jersey) Regulations 1989<sup>12</sup> as it was in force immediately prior to its repeal by the Transitional Regulations;

“retirement benefits” means any annual pension, lump sum or other benefit due to, or in respect of a person which has accrued under the Scheme, the 1967 Scheme, another approved Jersey scheme, an approved drawdown contract, a personal pension scheme or an equivalent scheme established outside Jersey;

“relevant actuarial transfer factors” means factors based on actuarial assumptions which have been set according to the principles set out in the funding strategy statement prepared under Regulation 2 of the Funding and Valuation Regulations, for the purposes of calculating transfer payments under Regulations 22 or 23 and which are approved by the Committee;

“relevant transferee” and “relevant transferor” means the managers or trustees of an approved Jersey scheme, an approved drawdown contract, a personal pension scheme or an equivalent scheme established outside Jersey;

“respective schemes” has the meaning given in Article 1(1) of the Law, and “schemes” shall be construed accordingly;

“Scheme” means the Public Employees Pension Scheme referred to in Article 2(1) of the Law;

“Scheme employment” means employment by virtue of which a person is eligible to be an active member of the Scheme;

“statement of investment principles” shall be construed in accordance with Regulation 17;

“Transitional Regulations” means the Public Employees (Pension Scheme) (Transitional Provisions, Savings and Consequential Amendments) (Jersey) Regulations 201-<sup>13</sup>;

“Treasurer” means the Treasurer of the States;

“United Kingdom transferring arrangement” means a registered pension scheme within the meaning of section 150(2) of the Finance Act 2004 (c.12) of the United Kingdom;

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“valuation of the fund” means an actuarial valuation of the fund by reference to the assets and liabilities of the respective schemes.

- (2) In these Regulations, unless the context indicates otherwise, where a word or expression is used in relation to the 1967 Scheme Regulations, that word or expression is to be construed in accordance with the meaning given to it in those Regulations.

## **PART 2**

### **MANAGEMENT OF FUND**

#### *Committee of Management*

#### **2 Committee of Management**

- (1) The Committee shall have and exercise all the functions that are vested in it by the Law, under Scheme Regulations or under the 1967 Scheme Regulations, and must secure compliance with that legislation.
- (2) The Committee must be comprised of –
- (a) a Chairman; and
  - (b) subject to paragraph (6), 12 members of the Committee (excluding the Chairman) divided into each of the following categories –
    - (i) 5 employer representatives,
    - (ii) 4 member representatives,
    - (iii) 2 pensioner representatives, and
    - (iv) 1 admitted employer representative.
- (3) Unless indicated otherwise, a reference in these Regulations to “employer representatives” is taken to include the admitted employer representative, and a reference to “member representatives” is taken to include the pensioner representatives.
- (4) Except in the circumstances described in paragraphs (5) and (9), the number of employer representatives must always be equal to the number of member representatives.
- (5) If a vacancy arises on either the employer representative side, or on the member representative side, the equal representation requirement in paragraph (4) shall not apply until such time as the vacancy is filled by a member of the same category as that of the member who is no longer on the Committee.
- (6) This paragraph applies where a vacancy occurs under any category described in paragraph (2)(b)(i) to (iii), and the Minister, with the agreement of the Chairman and a majority of the employer representatives and a majority of the member representatives, determines that in the light of that vacancy, the Committee may thereafter be comprised of fewer than 12 members.

- (7) Where paragraph (6) applies, and for the purposes of securing that the number of employer representatives must always be equal to the number of member representatives, subject to paragraph (9), the table in paragraph (8), applies as follows –
- (a) columns 1 and 2 of the table set out the ratio of members within each of the employer and member representative sides that must be maintained; and
  - (b) column 3 sets out the total number of Committee members that must be maintained.
- (8) For the purpose of the table –
- (a) “ER” means employer representatives;
  - (b) “AER” means admitted employer representative;
  - (c) “MR” means member representatives;
  - (d) “PR” means pensioner representatives.

<b>1</b> <b>Employer representatives</b>	<b>2</b> <b>Member representatives</b>	<b>3</b> <b>Total number of Committee members</b>
4 ER : 1 AER = 5	3 MR : 2 PR = 5	10
3 ER : 1 AER = 4	2 MR : 2 PR = 4	8

- (9) Where paragraph (6) applies, the equal representation requirement in paragraph (4) shall not apply until such time as the appropriate ratios set out in columns 1 or 2 of the table in paragraph (8) are attained.

### **3 Appointment of Chairman and members of the Committee**

- (1) Subject to the provisions of this Regulation, the recruitment of the Chairman and members of the Committee must be overseen by the Jersey Appointments Commission, and conducted in accordance with the guidelines produced by the Commission under Article 24 of the Employment of States of Jersey Employees (Jersey) Law 2005<sup>14</sup>.
- (2) The Chairman and members of the Committee must be appointed by the Minister on the recommendation of the Minister for Treasury and Resources, and in the case of the Chairman, his or her recommendation for appointment must be agreed by a majority of the employer representatives and a majority of the member representatives.
- (3) A person may not –
  - (a) be recommended for appointment under paragraph (2) to be the Chairman of the Committee, if he or she is a member of the Committee or has at any time served as a member of the Committee;
  - (b) having already served the maximum term of office permitted under Regulation 4(2), be nominated to apply for appointment as a member of the Committee under paragraph (4) or (5), or apply for appointment as an employer or a pensioner representative.

- (4) In the case of a proposed appointment in respect of an admitted employer representative, the Minister for Treasury and Resources may only recommend a person for appointment where that person has been nominated by an admitted employer, to apply for appointment as a member of the Committee.
- (5) In the case of proposed appointments in respect of member representatives, the Minister for Treasury and Resources may only recommend a person for appointment where that person has been nominated by a representative association of members of the respective schemes, to apply for appointment as a member of the Committee.
- (6) In paragraph (5), the reference to “member representatives” does not include pensioner representatives.
- (7) Before appointing a person as the Chairman or a member of the Committee, the Minister must be satisfied that the person to be appointed does not have a conflict of interest.
- (8) For the purposes of paragraph (7), the person must produce promptly such information as the Minister reasonably requires for the purpose of satisfying himself or herself that the person has no conflict of interest.

#### **4 Term of office of Chairman and members**

- (1) The Chairman and members of the Committee must be appointed for such period not exceeding 5 years as the Minister specifies at the time of making the appointment.
- (2) In the case of a member of the Committee, the Minister may extend the member’s initial term of office by re-appointing the member for a second but final term of office not exceeding 5 years.
- (3) In the case of the Chairman, the Minister may extend the Chairman’s –
  - (a) initial term of office by re-appointing the Chairman for a second term of office not exceeding 5 years;
  - (b) second and any subsequent term of office thereafter, by re-appointing the Chairman for a further term of office not exceeding 5 years.
- (4) Regulation 3 shall not apply in respect of a re-appointment under paragraph (2) or (3) but, nothing in those paragraphs prevents a re-appointment from being made in accordance with that Regulation.
- (5) The Minister must from time to time satisfy himself or herself that none of the members of the Committee, including the Chairman, has a conflict of interest, by requiring any member or the Chairman (as the case may be) to produce promptly, such information as the Minister reasonably requires for the purpose of satisfying himself or herself that the member or the Chairman has no conflict of interest.

#### **5 Chairman – terms of appointment and termination of office**

- (1) The Chairman must on appointment (or re-appointment, as the case may be), enter into a contract for services with the States Employment Board

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which must specify such fee and reasonable expenses to be paid to the Chairman out of the fund, as is determined by the Minister for Treasury and Resources in consultation with the Committee.

- (2) The Chairman must cease to hold office on resigning, by giving such period of written notice as is specified in his or her contract for services, to the Minister.
- (3) Subject to paragraph (4), the Chairman must cease to hold office (other than by resignation) upon the determination of the Minister.
- (4) The Minister may only determine the Chairman's termination of office under paragraph (3) where the Minister has secured the agreement to that termination by a majority of the employer representatives and a majority of the member representatives.

## **6 Termination of office of members**

- (1) A member of the Committee must cease to hold office on resigning by giving a period of 3 months written notice to the Chairman.
- (2) With the agreement of the Minister, a member of the Committee must cease to hold office where the Committee has passed a vote of no confidence in that member supported by a majority of the employer representatives and a majority of the member representatives.
- (3) Termination of office under paragraph (2) must take effect as soon as the Chairman receives the Minister's written agreement.

## **7 Meetings of the Committee**

- (1) The Committee may meet for the conduct of business, adjourn and otherwise regulate its meetings as it thinks fit, but subject to the following provisions –
  - (a) if the Chairman is not present at any meeting, those present must elect a chairman from their number for that meeting;
  - (b) a quorum must be formed by not less than half of the employer representatives and half of the member representatives;
  - (c) save as provided in Regulation 2(6), 3(2), 5(4), 6(2), 10(1)(b), 12(1)(b), 15(1)(b) and 31(2), all business brought before a meeting must be decided by a majority of the members present;
  - (d) a Chairman appointed under Regulation 3 or re-appointed under Regulation 4 must not have a vote other than a casting vote;
  - (e) a chairman elected under sub-paragraph (a) may exercise a casting vote, or exercise the right to vote that he or she has as a member of the Committee, but must not exercise both votes in relation to the same matter;
  - (f) invite the attendance of any person at any meeting of the Committee, as the Committee determines.
- (2) If the Committee so agrees, the Treasurer is permitted to attend any meeting of the Committee.

- (3) The Chairman and each member of the Committee must be indemnified by the States against all personal liabilities incurred by them in the exercise of their functions under the Law, Scheme Regulations and the 1967 Scheme Regulations (other than those incurred by the Chairman's or the member's own wilful default).

## **8 Delegation of Committee's functions**

- (1) Subject to paragraph (2), the Committee may delegate its functions to such persons as the Committee considers appropriate, on such terms as to remuneration or otherwise as the Committee must agree within the budget approved under Regulation 9.
- (2) The Committee may delegate such of its administrative functions to the Administrator as it considers appropriate.
- (3) Any decision of the Committee which under these Regulations requires the support of a majority of the employer representatives and a majority of the member representatives, must not be delegated.
- (4) The Committee may revoke any delegation made under this Regulation.

## **9 Budget**

- (1) The Committee must, in every financial year –
  - (a) determine a draft budget in respect of the costs of discharging the Committee's functions in relation to the fund, for the following financial year; and
  - (b) submit the draft budget determined under sub-paragraph (a) for approval by the Minister for Treasury and Resources.
- (2) The costs referred to in paragraph (1)(a) may include the costs of legal advice or such other advice as is required to facilitate, or is conducive or incidental to the discharge of the Committee's functions.
- (3) Where the costs of any advice exceeds the amount approved in the Committee's budget under paragraph (4), the Committee must, before the expiry of 3 months from the date those costs are incurred, submit a report to the Minister for Treasury and Resources with an explanation for the level of, and reasons for, such expenditure.
- (4) The Minister for Treasury and Resources must approve the draft budget under paragraph (1)(a) by no later than the end of the financial year preceding the financial year to which the draft budget relates.

*Actuary*

## **10 Appointment of Actuary**

- (1) Subject to the approval of the Minister, the Committee –
  - (a) must, having consulted the Treasurer, appoint a person to give actuarial advice in respect of the fund (the "Actuary"), such person

being a fellow of the Institute and Faculty of Actuaries (the “Institute”), or if that person is a firm, any actuary employed by that firm to advise in respect of the fund who is a fellow of the Institute;

- (b) may terminate an appointment under paragraph (1)(a), provided that the Committee has first consulted with the Treasurer, and has the support of a majority of the employer representatives and a majority of the member representatives.
- (2) The Actuary must on appointment enter into a contract for services with the Committee which must specify –
- (a) the Actuary’s terms of remuneration; and
  - (b) such other terms and conditions of the Actuary’s appointment, as the Committee determines.

## **11 Duties of Actuary**

The Actuary must discharge such functions as are vested in that person under Scheme Regulations or under the 1967 Scheme Regulations, such functions to include –

- (a) a duty to give such advice in relation to the funding of the respective schemes as the Committee requires; and
- (b) a duty to provide such information and advice in relation to the administration of the respective schemes as the Administrator requires.

### *Investment managers*

## **12 Appointment of investment managers**

- (1) Subject to the provisions of this Regulation and with the approval of the Minister for Treasury and Resources, the Committee –
  - (a) must appoint one or more investment managers;
  - (b) may terminate without notice an appointment under paragraph (1)(a), provided that the Committee has the support of a majority of the employer representatives and a majority of member representatives.
- (2) Notwithstanding paragraph (1)(b), the Minister for Treasury and Resources may require the Committee to terminate without notice an appointment under paragraph (1)(a).
- (3) The Committee must not appoint an investment manager unless it has considered the value of the assets of the fund which are to be managed by the investment manager, or as the case may be, by each of the investment managers to be appointed, and it is satisfied that the value of those assets is not excessive, having regard to –
  - (a) proper advice;
  - (b) the desirability of securing diversification of the assets of the fund; and

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- (c) the total value of the assets of the fund.
  - (4) The Committee must not appoint a person to be an investment manager unless the Committee reasonably believes the person to be suitably qualified by ability in, and practical experience of, financial matters, to make investment decisions on the Committee's behalf.
  - (5) The investment manager must on appointment enter into a contract for services with the Committee which must specify –
    - (a) the investment manager's terms of remuneration; and
    - (b) such other terms and conditions of the investment manager's appointment,as are determined by the Committee and the Minister for Treasury and Resources.

### **13 Functions of investment managers**

- (1) Each investment manager must provide to the Committee and the Treasurer, quarterly reports on the assets under the investment manager's control.
- (2) An investment manager must exercise the powers of investment in relation to the assets of the fund that the Committee authorizes the manager to perform.
- (3) The Committee may authorize an investment manager to delegate to such other person, as the investment manager thinks fit, the powers of investment that the Committee has authorized the manager to perform.

### **14 Duties of Committee in relation to investment managers**

The Committee must –

- (a) ensure that each investment manager –
  - (i) complies with such instructions as the Committee, subject to the statement of investment principles, may give, and
  - (ii) has regard to the suitability of investments of any description which the investment manager proposes to make, and of any investment proposed as an investment of that description;
- (b) agree with each investment manager, an investment mandate for the fund which is a document which –
  - (i) specifies the proposed class of investments, geographic area of investments and restrictions on investments in relation to the assets of the fund,
  - (ii) may include such other matters as the Committee requires,
  - (iii) meets the requirements of the statement of investment principles under Regulation 17, and
  - (iv) is approved by the Minister for Treasury and Resources;
- (c) after it has appointed an investment manager, review quarterly the investments made by that investment manager; and

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- (d) from time to time consider the desirability of continuing or revoking the appointment of an investment manager.

*Investment advisers and custodians*

**15 Appointment and duties of investment advisers**

- (1) Subject to the provisions of this Regulation and with the approval of the Minister for Treasury and Resources, the Committee –
- (a) must appoint one or more investment advisers; and
  - (b) may terminate without notice an appointment under paragraph (1)(a), provided that the Committee has the support of a majority of the employer representatives and a majority of the member representatives.
- (2) The Committee must not appoint a person to be an investment adviser unless the Committee reasonably believes the person to be suitably qualified by ability in, and practical experience of, financial matters, to offer advice in respect of the investment strategy for the fund and the statement of investment principles, and to advise on investments generally.
- (3) The investment adviser must on appointment enter into a contract for services with the Committee which must specify –
- (a) the investment adviser's terms of remuneration; and
  - (b) such other terms and conditions of the investment adviser's appointment,
- as are determined by the Committee and the Minister for Treasury and Resources.
- (4) Each investment adviser must –
- (a) comply with such instructions as the Committee may give; and
  - (b) having regard to the need for diversification of investment of the assets of the fund, advise the Committee on the investment strategy for the fund, including –
    - (i) the suitability of investments to meet the fund's investment objectives,
    - (ii) the suitability of proposed investment managers to manage and invest the assets of the fund, and
    - (iii) the decisions made by, or proposed decisions of the fund's investment managers on behalf of the Committee.

**16 Appointment and duties of custodians**

- (1) One or more custodians for the fund must be appointed by the Minister for Treasury and Resources in consultation with the Committee and the Treasurer.
- (2) A custodian must on appointment enter into a contract for services with the Minister for Treasury and Resources which must specify –

- 
- (a) the custodian's terms of remuneration; and
  - (b) such other terms and conditions of the custodian's appointment,  
as are determined by the Minister for Treasury and Resources after  
consultation with the Committee and the Treasurer.
- (3) A custodian must hold and safeguard such assets of the fund as may from  
time to time be determined by the Treasurer, in consultation with the  
Committee.

*Management of assets of the fund*

**17 Statement of investment principles**

- (1) The Committee must prepare a written statement setting out the policies  
and principles governing the Committee's decisions in relation to the  
investment of the assets of the fund (the "statement of investment  
principles"), which may contain any of the matters set out in  
paragraph (2).
- (2) The matters are –
  - (a) the descriptions of investments to be held;
  - (b) the balance between different descriptions of investments;
  - (c) risk, including the ways in which risks are to be measured and  
managed;
  - (d) the expected return on investments;
  - (e) the realization of investments;
  - (f) the approach taken and the extent (if at all) to which social,  
environment or ethical considerations are taken into account in the  
selection, retention and realization of investments;
  - (g) the approach taken on the exercising of any rights (including  
voting rights) attaching to investments, if the Committee has any  
such policy; and
  - (h) the approach taken on stock lending.
- (3) The Committee must –
  - (a) keep the statement of investment principles under annual review;  
and
  - (b) make such revisions as are appropriate following a material change  
to its policies and principles in relation to any of the matters  
contained in the statement.
- (4) In preparing or reviewing and making revisions to the statement of  
investment principles, the Committee must consult with the Treasurer.
- (5) The Committee must, subject to the approval of the Minister for Treasury  
and Resources, publish –
  - (a) the statement of investment principles; and

- (b) where revisions are made to it, the statement of investment principles as revised, before the expiry of 3 months from the date of those revisions.

## **18 Assets of the fund and investments**

- (1) The following must be paid into the fund –
  - (a) contributions paid under the respective schemes by members and employers;
  - (b) any dividends or interest or other returns arising out of the investment of the assets of the fund or any part thereof, and any capital sums resulting from the realization of any such investments;
  - (c) any other sums which may be paid into the fund under Scheme Regulations or otherwise.
- (2) If an employer delays paying into the fund all or any part of a contribution mentioned in paragraph (1)(a) the employer must pay interest on the amount of the delayed payment in accordance with Regulation 25.
- (3) Except as provided in Regulation 13(1) and 16(3), the assets of the fund must be held by the Treasurer on behalf of the Committee, in accordance with the provisions of these Regulations.
- (4) The Treasurer must receive amounts paid into the fund under paragraph (1) and from the assets of the fund must pay pensions and other benefits under the respective schemes, pay refunds under the schemes, meet any reasonable expenses of administering the fund (including those of the Treasurer) and pay any remuneration which becomes due under these Regulations.
- (5) Any assets which are not for the time being required for the purpose of paragraph (4), or are not otherwise being invested in accordance with Regulation 13(2) or (3), must be invested by the Treasurer on the direction of the Committee in accordance with paragraph (6), provided that the Minister for Treasury and Resources so approves.
- (6) The Committee has the same full and unrestricted powers of investing, transposing and varying of investments, contracts, policies or deposits in all respects as if the Committee were absolutely and beneficially entitled to such investments, contracts, policies or deposits, and accordingly the assets of the fund may be invested or applied in whole or in part –
  - (a) in the purchase of or at interest upon, the security of such funds, securities, bonds, debentures, stocks, shares or property (including any interest in land) or other investments of any kind, that the Committee thinks fit, wherever the investments are situated and whether or not they –
    - (i) involve liability,
    - (ii) are income producing, or
    - (iii) are held in possession or reversion,

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and the funds, securities, bonds, debentures, stocks, shares and other investments may be underwritten or sub-underwritten and their subscription guaranteed;

- (b) in or towards effecting and maintaining with any insurance company or insurance office of good repute any annuity contracts, or annuity policies or life assurance policies;
- (c) by placing part or all of the assets of the fund on deposit at interest with any company or mutual institution or other society or body of good repute, incorporated or carrying on business within the United Kingdom or the Channel Islands which carries on the business of banking or insurance or bill discounting;
- (d) by entering into any contract for the purpose of stock lending or dealing in financial futures and traded options;
- (e) without prejudice to the generality of sub-paragraphs (a) to (d), in or towards subscribing for –
  - (i) units in a unit trust, mutual fund or policy linked unit trust scheme, and
  - (ii) units or other interest offered by an insurance company of good repute in a managed fund,

and the Committee is expressly authorized to commingle the assets of the fund or any part of the assets of the fund with other funds upon the terms as to sharing, division, valuation, apportionment and administration and otherwise that may be contained from time to time in the trust deed, declaration of trust policy or contract governing investment in such commingled assets.

- (7) The Committee in the exercise of its functions in relation to the investment of the assets of the fund under paragraph (6) must have regard to –
  - (a) the need for diversification of investments of the assets of the fund;
  - (b) the suitability of the investment it proposes to make; and
  - (c) proper advice obtained at reasonable intervals.

### **PART 3**

#### **ADMINISTRATION OF SCHEMES**

##### *Functions of Administrator and Committee*

#### **19 Administration of Scheme and 1967 Scheme**

- (1) The administration of the respective schemes must be carried out by –
  - (a) the Treasurer; or
  - (b) an appointed administrator being a person appointed pursuant to the adoption by the States of a proposition referred to in paragraph (2),

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and any reference to “Administrator” in the Scheme Regulations or the 1967 Regulations, unless indicated otherwise, means the Treasurer or the appointed administrator, as the case may be.

- (2) The Chief Minister may, with the agreement of the Committee, lodge a proposition before the States setting out proposals as to the appointment by tender of a person (including the Treasurer) to carry out the administration of the respective schemes.
- (3) The Treasurer must be the Administrator –
  - (a) pending the appointment of an appointed administrator; or
  - (b) on the termination of an appointed administrator’s appointment where no further such appointment is pending.
- (4) Subject to paragraph (5), the Administrator may, subject to the agreement of the Committee, delegate such administrative functions as may be conferred under the Scheme Regulations or the 1967 Scheme Regulations, or delegated under Regulation 8, to such persons as the Administrator considers appropriate.
- (5) If the Treasurer is the Administrator, the agreement of the Committee under paragraph (4) is not required where under Article 31(1) of the Public Finances (Jersey) Law 2005<sup>15</sup>, the Treasurer authorizes people employed in the Treasury to carry out any of the Treasurer’s administrative functions conferred under the Scheme Regulations or the 1967 Scheme Regulations.

## **20 Pension administration strategy**

- (1) The Committee must, in consultation with the Administrator, prepare a pension administration strategy which must be comprised of a written statement of –
  - (a) policies and procedures governing the administration of the respective schemes, which may contain the matters set out in paragraph (3); and
  - (b) obligations which may be required of 1967 Scheme employers –
    - (i) admitted to the Scheme under Regulation 16(1) of the Transitional Regulations in respect of whom there is no requirement to enter into an admission agreement under Regulation 16(3) of those Regulations; and
    - (ii) in respect of whom Regulations 9A and 9B of the Public Employees (Contributory Retirement Scheme) (General) (Jersey) Regulations 1989<sup>16</sup> applied immediately before those Regulations were repealed by the Transitional Regulations.
- (2) The Administrator and employers must, when carrying out their functions under the Scheme Regulations or the 1967 Scheme Regulations, discharge those functions in accordance with the policies, procedures and obligations set out in the pension administration strategy.
- (3) The matters referred to in paragraph (1) are –

- 
- (a) procedures for liaison and communication between the Administrator and employers, including communication about their functions under the respective schemes;
  - (b) the establishment of levels of performance which the Administrator and employers are expected to achieve in carrying out their functions under the respective schemes by –
    - (i) the setting of performance targets,
    - (ii) the making of agreements about levels of performance and associated matters, or
    - (iii) such other matters the Committee considers appropriate;
  - (c) procedures which aim to secure that the Administrator and employers comply with their functions under the respective schemes, and with any agreement about levels of performance;
  - (d) the circumstances in which the Committee may require the Administrator or any employer who in the opinion of the Committee has caused additional costs to the fund on account of the Administrator's or that employer's unsatisfactory performance in the discharge of their functions under the respective schemes when measured against levels of performance established under sub-paragraph (b), to refund the costs so incurred;
  - (e) the publication by the Committee of annual reports dealing with –
    - (i) the extent to which the Administrator and employers have achieved the levels of performance established under sub-paragraph (b), and
    - (ii) such other matters arising from its pension administration strategy as it considers appropriate; and
  - (f) such other matters as appear to the Committee after consulting the employers and such other persons as the Committee considers appropriate, to be suitable for inclusion in that strategy.
- (4) The Committee must –
- (a) keep the pension administration strategy under annual review; and
  - (b) make such revisions as are appropriate following a material change to its policies in relation to any of the matters contained in the strategy.
- (5) In preparing or reviewing and making revisions to the pension administration strategy, the Committee must consult with the Administrator, employers and such other persons as the Committee considers appropriate.
- (6) The Committee must publish in such manner as it thinks fit –
- (a) the pension administration strategy; and
  - (b) where revisions are made to it, the strategy as revised, and send a copy of it to every employer and the Administrator.

**21 Annual report and accounts etc.**

- (1) The Committee must –
  - (a) before the end of the 3rd month following the end of every financial year, prepare an annual report in respect of the fund (the “annual report”); and
  - (b) before the end of the 5th month following the end of every financial year, publish the annual report.
- (2) The annual report must contain –
  - (a) a statement of the Committee about the management and financial performance of the fund during the year;
  - (b) a statement of the Committee explaining the investment policy in respect of the fund and reviewing investment performance during the year;
  - (c) a statement of the Actuary of the assets and liabilities of the fund and the level of valuation disclosed at the last valuation of the fund performed in accordance with Regulation 3 of the Funding and Valuation Regulations;
  - (d) a report dealing with the extent to which the Administrator and employers have met administration performance standards set out in the published pension administration strategy referred to in Regulation 20;
  - (e) the fund accounts; and
  - (f) any other material concerning the respective schemes and the fund, as the Committee considers appropriate.
- (3) The Treasurer, or such other person as may be appointed by the Minister for Treasury and Resources after consultation with the Committee must –
  - (a) prepare the fund accounts; and
  - (b) keep all the records necessary for the proper working of the fund and the respective schemes.
- (4) The Comptroller and Auditor General (within the meaning of Article 1(1) of the Comptroller and Auditor General (Jersey) Law 2014<sup>17</sup>), must appoint auditors to audit the fund accounts.
- (5) The fund accounts must contain –
  - (a) the balance sheet and profit and loss account with supporting notes and disclosures prepared in accordance with generally accepted accounting practices; and
  - (b) a report of the auditors in relation to the fund accounts.

*Transfers***22 Transfers out of fund**

- (1) Where a person ceases active membership of the Scheme or ceases to be a member of the 1967 Scheme and –
  - (a) subscribes to a personal pension scheme;

- (b) becomes a member of another approved Jersey scheme;
- (c) on ceasing to be resident in Jersey, becomes a member of an equivalent scheme established outside Jersey; or
- (d) enters into an approved drawdown contract,

provided that person's retirement benefits under the respective schemes have not come into payment, he or she may, at any time, apply to the Administrator for a transfer payment out of the fund of his or her accrued retirement benefits.

- (2) Subject to Regulation 15(1) of the Transitional Regulations, the transfer payment under paragraph (1) must –
  - (a) be of such amount as is calculated by the Administrator using the relevant actuarial transfer factors; and
  - (b) be payable to the relevant transferees.
- (3) Where a transfer payment is paid out of the fund under this Regulation, that payment extinguishes the person's rights to any other benefits under the respective schemes, as well as the rights of any person contingently entitled to any benefit payable upon that person's death.

### **23 Transfers in to fund**

- (1) Subject to paragraph (2), an active member of the Scheme may at any time request the Administrator to accept a transfer payment from the relevant transferors, in respect of some or all of that person's retirement benefits accrued under any scheme or contract referred to in Regulation 22(1).
- (2) For the purposes of paragraph (1), retirement benefits accrued under an approved Jersey scheme must not include any retirement benefits accrued under the 1967 Scheme.
- (3) A member of the 1967 Scheme may at any time request the Administrator to accept a transfer payment from the relevant transferors, in respect of some or all of that member's retirement benefits accrued under any scheme or contract referred to in Regulation 22(1).
- (4) Where a request is made under paragraph (1) or (3) and the Administrator agrees to accept the transfer payment –
  - (a) that payment must be credited to the fund; and
  - (b) the value of the retirement benefits accrued –
    - (i) by an active member of the Scheme in respect of that transfer payment, must be –
      - (A) calculated by the Administrator using the relevant actuarial transfer factors, and
      - (B) credited to that member's active member pension record as required under Regulation 20(4)(a) of the Membership and Benefits Regulations, or
    - (ii) by a member of the 1967 Scheme in respect of that transfer payment, must be awarded in accordance with paragraph (5).

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- (5) In the case of a member of the 1967 Scheme in respect of whom paragraph (4)(b)(ii) and –
- (a) the 1967 Regulations apply, the Committee may, on the advice of the Actuary, declare the member to have become a contributory member of the 1967 Scheme on such date as the Committee determines;
  - (b) the Existing Members Regulations or New Members Regulations apply, such a member is entitled to such added years as the Committee, on the advice of the Actuary, determines;
  - (c) the 1992 Regulations apply, such a member is entitled to such notional period of pensionable service as the Committee, on the advice of the Actuary, determines,

having regard to the amount credited to the fund in respect of the value of the transfer payment attributable to the member concerned.

## **24 Transfers - supplementary**

- (1) In this Regulation “UK tax-relieved scheme funds” has the meaning given in regulation 2(5) of the Pension Schemes (Categories of Country and Requirements for Overseas Pension Schemes and Recognised Overseas Pension Schemes) Regulations 2006 (S.I. 2006/206) of the United Kingdom.
- (2) The Minister may, after consulting the Actuary, undertake to the trustees or managers of a United Kingdom transferring arrangement, that the benefits to be provided in respect of a transfer payment under Regulation 23 must not be less than those specified in relation to guaranteed minimum pensions for the purposes of the Pensions Schemes Act 1993 (c.48) of the United Kingdom.
- (3) If the Minister gives an undertaking in accordance with paragraph (2) in relation to a person (“transferred person”), the benefits shall, if necessary so as to comply with the undertaking –
  - (a) be augmented by the Committee on the advice of the Actuary, and added to the Scheme member’s active member pension record as required under Regulation 20(4)(a) of the Membership and Benefits Regulations; or
  - (b) in respect of a member of the 1967 Scheme, be awarded in accordance with Regulation 23(5).
- (4) In relation to a United Kingdom transferring arrangement –
  - (a) at least 70% of a transferred person’s UK tax-relieved scheme funds must be designated by the Administrator for the purposes of providing that person with an income for life;
  - (b) no payment of a pension (including any lump sum) in respect of the funds designated under sub-paragraph (a), must be made before the day on which a transferred person reaches the age of 55, unless, immediately before he or she becomes entitled to a pension under Regulation 29 of the Membership and Benefits Regulations or under equivalent provisions of the 1967 Scheme Regulations, that person ceases employment by reason of –

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- (i) ill-health retirement under Regulation 36 of the Membership and Benefits Regulations, or
    - (ii) ill-health retirement under the equivalent ill-health retirement provisions of the 1967 Scheme Regulations;
  - (c) the Minister must ascertain whether, under that transferring arrangement, a restriction applies to the refund of the transferred person's contributions, and if so, a similar restriction must apply under the respective schemes in relation to that person in respect of those contributions;
  - (d) the Minister must ensure that an undertaking to maintain any restriction on the refund of a transferred person's contributions, is given by the trustees or managers of any arrangement to which a subsequent transfer is made under Regulation 22.
- (5) The Minister may give such undertakings to the taxation authorities of the United Kingdom or elsewhere, as he or she considers appropriate, in connection with transfer payments received under Regulation 23 or the maintenance of any restrictions in relation to the refund of a transferred person's contributions.
- (6) The Minister may make reciprocal arrangements with other pension schemes for transfers of members to and from the respective schemes, and the benefits to be provided in respect of a transfer payment received and a transfer payment paid shall, if necessary to comply with such arrangements, be adjusted by the Committee on the advice of the Actuary.

*General*

**25 Interest on late payments by employers**

- (1) The Committee may require an employer or former employer from which any payment under –
  - (a) Regulation 6(5)(b)(i), 30(4), 41(4) of, or paragraph 7 of Schedule 1 to the Membership and Benefits Regulations; or
  - (b) Regulation 11(7) and (8) of, or Schedule 5 to the Funding and Valuation Regulations,is overdue, to pay interest on that amount.
- (2) The date on which any amount due under the Regulations referred to in paragraph (1) is overdue, is one month after the date of payment specified in those Regulations.
- (3) Interest payable under paragraph (1) must be paid at such rate as is determined by the Committee, on the advice of the Actuary.

**26 Production of information for the purposes of the respective schemes**

- (1) Subject to paragraph (2), before the expiry of 3 months beginning with the date on which a person enters Scheme employment, the Committee must ask the person in writing for evidence relating to the age, marriage,

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civil partnership, health or such other evidence as the Committee may reasonably require for the purposes of the Scheme.

- (2) The Committee may dispense with making a request under paragraph (1) where the Committee is satisfied that it already has all material information.
- (3) A request under paragraph (1) must contain a conspicuous statement that it is important that the person gives full and accurate information for ascertaining the person's rights under the Scheme.
- (4) The Committee may make –
  - (a) membership of the Scheme;
  - (b) the payment of retirement benefits under Part 5 or the payment of survivor benefits under Part 6 of the Membership and Benefits Regulations;
  - (c) the payment of retirement benefits accrued under the 1967 Scheme; or
  - (d) the payment of 1967 Scheme survivor benefits,conditional upon the production of such evidence as the Committee may reasonably require.

## **27 Annual benefit statements**

- (1) The Administrator must issue an annual benefit statement to every member of the respective schemes who is not in receipt of retirement benefits.
- (2) A statement under this Regulation must include –
  - (a) a description of the retirement benefits accrued by a member in respect of his or her pensionable service;
  - (b) such other information as the Administrator may specify.
- (3) The first annual benefit statements to be issued after the commencement of these Regulations must be issued before 31st May 2017 and thereafter such statements must be issued no later than 6 months after the end of the scheme year to which they relate.
- (4) Subject to paragraph (5), where a person referred to paragraph (1) makes a written request to the Administrator for an additional annual benefit statement, one must be issued showing such up to date information as set out in paragraph (2), as the Administrator has available.
- (5) The Administrator is not required to issue a statement under paragraph (4) if the relevant data is not available.

## **28 Payments due in respect of deceased persons**

- (1) Paragraph (2) applies if, when a person dies, the total amount due to that person's executor or administrator under either of the respective schemes (including anything due at that person's death) does not exceed £5,000 (or such higher amount as the Minister for Treasury and Resources may by instrument in writing direct).

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- (2) The Committee may pay the whole or part of the amount due from the fund to –
    - (a) the person's executor or administrator; or
    - (b) any person or person appearing to the Committee to be beneficially entitled to the estate, without the production of probate or letters of administration of the person's estate.
  - (3) A payment under paragraph (2) discharges the Committee from accounting for the amount paid.
  - (4) A receipt given by a person to whom a payment is made under paragraph (2)(b) shall be a valid discharge as though it had been given by an executor or administrator.

### **29 Payments in respect of persons incapable of managing their affairs**

- (1) If it appears to the Committee that a person other than a child (within the meaning of the 1967 Scheme Regulations) or an eligible child is entitled to the payment of benefits under either of the respective schemes, but is by reason of physical or mental impairment incapable of managing his or her affairs or of giving proper receipt of a benefit –
  - (a) the Committee may pay the benefits or any part of them to a person having the care of the person entitled, or such other person as the Committee may determine, to be applied for the benefit of the person so entitled; and
  - (b) in so far as the Committee does not pay the benefits in the manner described in sub-paragraph (a), the Committee may apply them in such manner as the Committee may determine, for the benefit of the person entitled, or any beneficiaries of the person entitled.
- (2) If a person receives payment of benefits under paragraph (1)(a), the Committee is discharged from accounting for the benefits paid and is under no liability to see to the application of the benefits in respect of the person so entitled.

### **30 Tax deductions**

The Administrator must deduct from any payment of any pension or other benefit under the respective schemes, any tax for which the Administrator or the respective schemes may be liable in respect of that payment.

### **31 Amendment of Regulations**

- (1) The Committee may, from time to time, propose to the Minister such amendments as may be required to the Scheme Regulations or the 1967 Scheme Regulations.
- (2) Any proposal under paragraph (1) must be supported by a majority of the employer representatives and a majority of the member representatives.

**PART 4**  
**CLOSING**

**32 Citation and commencement**

These Regulations may be cited as the Public Employees (Pension Scheme) (Administration) (Jersey) Regulations 201- and shall come into force on 1st January 2016.

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- 1 *L.18/2014*
  - 2 *chapter 16.650*
  - 3 *chapter 16.650.48*
  - 4 *chapter 16.650.24*
  - 5 *chapter 12.260*
  - 6 *chapter 16.650.12*
  - 7 *P.97/2015*
  - 8 *chapter 24.750*
  - 9 *L.18/2014*
  - 10 *P.98/2015*
  - 11 *chapter 16.650.60*
  - 12 *chapter 16.650.36*
  - 13 *P.99/2015*
  - 14 *chapter 16.325*
  - 15 *chapter 24.900*
  - 16 *chapter 16.650.36*
  - 17 *chapter 24.140*