

STATES OF JERSEY



STATES OF JERSEY POLICE NON-CONTRIBUTORY PENSION SCHEME: PAYMENT OF WIDOWS' PENSIONS

Lodged au Greffe on 25th May 2017
by the States Employment Board

STATES GREFFE

PROPOSITION

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

that, in respect of Police Officers who after 31st December 1967 remained members of the Police Non-Contributory Pension Scheme, the Chief Minister should be able to award a pension to widows of such Police Officers, taking account of practice existing in regard to the award of such pensions as of that date, and that payment of such pensions shall be made out of the Consolidated Fund.

STATES EMPLOYMENT BOARD

REPORT

Under the Police Non-Contributory Pension Scheme (which was closed to new members on 1st January 1968) there was no automatic right to a widow's pension. However, the widow of a deceased police officer could make an individual request for a pension which could be awarded at the discretion of the Defence Committee.

When the contributory pension scheme, the Public Employees Contributory Retirement Scheme ("PECRS") was introduced in 1968, a small number of police officers (believed to be 11 in number at the time that PECRS was introduced) were permitted to remain in the previous non-contributory pension arrangement. The legal basis for doing this at the time is unclear, but any doubts were removed by the Police Force (Jersey) Law 1974, which regularised the position.

The Proposition concerns the position of a small number of widows and future widows, and arises out of a legitimate expectation by the police officers concerned that the grant of a widow's pension would be considered, with this expectation continuing in respect of those who remained in the non-contributory scheme after 1st January 1968.

Background

The non-contributory pension arrangement did not include a provision for widows' pensions, but rather, the routine practice of the Defence Committee was to consider individual requests for the provision of a widow's pension and to generally maintain oversight of the payment of all such widows' pensions.

Payment of pensions was authorised by means of Acts of the States following recommendations of the Defence and Establishment Committees, with the formal Proposition to the States being made through the offices of the Establishment Committee. The possibility of creating a right to a widow's pension was considered in 1956 by the Defence Committee, but the Minutes of their meetings show that the Committee decided to continue with the approach set out above.

The right not to grant a pension was reserved, although the practice was to agree requests. It was kept as a matter of moral rather than legal responsibility, with the expectation that applications would be considered, but with no positive expectation of widows' pensions being granted. The inference is that the Defence Committee thought it best not to commit to the expense of paying pensions, but to continue to allow flexibility.

Following an Act of the States dated 11th September 1962, permission of the States ceased to be sought for the grant of widows' pensions, and the decision was taken by the Defence Committee and subsequently paid from the Establishment Committee's pension budget.

Under the non-contributory scheme there was no legal entitlement to a widow's pension, and this was understood by the officers concerned. There was, however, an expectation that the grant of a pension would be considered, and this expectation continued in respect of those who remained in the non-contributory scheme after 1st January 1968. These police officers and widows have a legitimate expectation that consideration will be given to the exercise of the discretion by whoever is legally capable of making the decision. Due to the rescindment of the Act of 11th September 1962, only the States Assembly may provide awards, and the Assembly cannot be subject to such an

expectation as to its proceedings. Such an expectation can apply to the Chief Minister as successor to the Establishment Committee. Now alerted to the issue by reason of a claim being made, the Chief Minister should be in a position to be able to consider whether or not to make a recommendation, being in the same position that the Establishment Committee was prior to 11th September 1962.

In recent years there have been no requests for a widow's pension under the Police Non-Contributory Pension Scheme, and so there is no established method or policy for awarding a widow's pension. However, it is now necessary to establish how a recent claim and any future claims should be considered.

Implications of Proposition as a precedent

It is common for historic pension schemes not to provide for benefits that would be considered routine today. Pension rights accrued prior to the 1990s, for example, would routinely make different provisions for men and women, widows and widowers. As pension benefits are funded from contributions, it is not possible to simply rewrite schemes in order to modernise them retrospectively so that contributions paid years ago can receive greater benefits.

The present case is unusual. Were it a matter of the injustice of the Police Non-Contributory Pension Scheme making no legal provision for widows' pensions, then there would be no basis for paying benefits beyond those for which the scheme provided. However, in the present case, it was settled administrative procedure to consider paying widows' pensions, and the grant of those pensions was the norm, although never guaranteed. On the best evidence available, the police officers who remained in the non-contributory scheme believed that this arrangement would continue. There is no evidence of them being told otherwise.

This Proposition would reinstate the former position to recognise their legitimate expectation that an application for a widow's pension would be given due consideration.

Requirement to take account of contemporary practice

As the purpose of this Proposition is to uphold a legitimate expectation that police officers had when they chose to remain in the non-contributory scheme as of 31st December 1967, it is appropriate that the Chief Minister should take account of the practice of the time when awarding pensions. The wording of the Proposition reflects this.

In respect of the legal consequences

There is no legitimate expectation that a pension will be paid. It is plain that there was never a representation as to a legal entitlement.

Nonetheless, those who remained in the non-contributory scheme had a legitimate expectation that a decision would be made – at whatever level was from time to time legally allowed to make the decision – as to whether a pension would or would not be granted.

The Chief Minister, as successor to the Establishment Committee, has a duty to consider making the recommendation.

The Chief Minister is entitled, as the Establishment Committee was always entitled, to take into account all relevant factors, this includes cost issues and includes a question of need.

Financial and manpower implications

The annual pensions of the remaining 6 former police officers are funded from a base budget within Treasury. Future costs regarding any subsequent claim for a widow's pension could be accommodated from within the existing base budget available for pensions payable to police officers in the non-contributory pension scheme (current budget £244,000 per annum). There is no requirement for additional base budget resulting from this proposition.