

STATES OF JERSEY



DRAFT PUBLIC EMPLOYEES (PENSION SCHEME) (TRANSITIONAL PROVISIONS, SAVINGS AND CONSEQUENTIAL AMENDMENTS) (AMENDMENT) (JERSEY) REGULATIONS 201-

**Lodged au Greffe on 1st April 2019
by the States Employment Board**

STATES GREFFE



Jersey

DRAFT PUBLIC EMPLOYEES (PENSION SCHEME) (TRANSITIONAL PROVISIONS, SAVINGS AND CONSEQUENTIAL AMENDMENTS) (AMENDMENT) (JERSEY) REGULATIONS 201-

REPORT

1. Background

The States Employment Board, at its meeting on 25th March 2019, agreed to lodge the Draft Public Employees (Contributory Retirement Scheme) (Compensatory Added Years) (Amendments) (Jersey) Regulations 201-; along with the Draft Public Employees (Pension Scheme) (Transitional Provisions, Savings and Consequential Amendments) (Amendment) (Jersey) Regulations 201- (“the draft Regulations”). The draft Regulations affect provisions for members who have moved into the Career Average Scheme of the Public Employees Pension Fund (“PEPF”) and who have retained a link to their pension in the Final Salary Scheme. These members are known as ‘transitional members’.

The draft Regulations allow the administrator to give a transitional member additional pensionable service, in the Final Salary Scheme of the PEPF, where they have suffered a reduction in their salary as a result of workforce or other organisational restructure, or a re-evaluation of their role by their employer.

The Final Salary Pension Scheme calculates retirement benefits based on the length of a member’s pensionable service and their final salary upon leaving or retiring from the scheme. The final salary calculation is based on the best 365 consecutive days in the 10 years prior to leaving or retiring, although some members have a 3 year look-back period.

Transitional members who have had to move from the Final Salary Scheme to the Career Average Scheme retain a link to their final salary benefits through their salary. If a transitional member were to have their salary reduced prior to leaving or retiring, this could have a detrimental effect on the value of their final salary pension. Furthermore, the value of the pension would not match the level of pension contributions previously paid into the scheme before the salary reduction.

To counteract a reduction to a transitional member’s salary, the draft Regulations allow the administrator to give the member additional pensionable service linked to their final salary pension. The additional service would be calculated by the independent Scheme Actuary to ensure cost neutrality for the scheme. This would mean that there would be no additional cost to the employer or the Pension Fund for applying the added years.

The draft amendment legislation also provides that where a transitional member has received additional pensionable service in the above circumstance, any salary received prior to the additional service being applied will not be taken into account when calculating the member's pension.

The draft Regulations have been developed in consultation with the Scheme Actuary and the Committee of Management, who are the governing body of the PEPF. The draft Regulations are determined to be the best approach to ensure a member's final-salary pension is not adversely affected by a reduction to their salary which has been initiated by their employer.

2. Draft amending Regulations

Detailed below are the draft Regulations which are to amend the Regulations relating to members who have moved from the Final Salary Scheme into the Career Average Scheme of the PEPF on or after 1st January 2019.

3. Public Employees (Pension Scheme) (Transitional Provisions, Savings and Consequential Amendments) (Amendment) (Jersey) Regulations 201-

Regulation 1 – Interpretation

Defines the term “principle Regulations” as meaning the Public Employees (Pension Scheme) (Transitional Provisions, Savings and Consequential Amendments) (Jersey) Regulations 2015.

Regulation 2 – Regulation 1 (interpretation) amended

Introduces the terms “employer-initiated pensionable earnings reduction”, “pensionable earnings reduction date” and “added years”. These amendments will help facilitate the application of additional service following an employer initiated pensionable earnings reduction.

Regulation 3 – Regulation 4 (change of category of membership by a continuing member of the 1967 Scheme) amended

Where a member has chosen to remain a member of the Final Salary Scheme from 1st January 2019 and subsequently changes their scheme category, they lose their right to remain a member of the Final Salary Scheme and would have to move into the Career Average Scheme. The member becomes a transition member.

Where the above scenario occurs and the member subsequently has an employer-initiated pensionable earnings reduction applied to their pensionable earnings, this proposed amendment ensures that the member's final salary pension would be calculated on the pensionable earnings following the reduction.

Regulation 4 – Regulation 7 (retirement benefits) amended

Where a transition member has an employer-initiated pensionable earnings reduction applied to their pensionable earnings, this proposed amendment ensures that the member's final salary pension would be calculated using pensionable earnings following the reduction. This amendment covers all the various scenarios where a final salary pension can be paid to a transition member.

Regulation 5 – Regulation 9 (calculation of final pensionable earnings) amended

Disapplies Regulation 9 where a member has been awarded added years as a consequence of an employer-initiated salary reduction and the proposed new Regulation 9A is to be used to calculate the member's final salary.

Regulation 6 – Regulations 9A and 9B inserted

Regulation 9A: Award of compensatory added years

Inserts a new Regulation compelling the employer to award additional service to a member where the member has had an employer-initiated salary reduction applied to their salary. Any additional service will be calculated by the Scheme Actuary.

Regulation 9B: Calculation of final pensionable earnings where Regulation 9A applies

Inserts a new Regulation that determines how final pensionable earnings is to be calculated for a transition member's final salary pension following an award of added years under the proposed new Regulation 9A.

Regulation 7 – Regulation 10 (survivor benefits) amended

The proposed amendment ensures that in the event a transition member dies following the application of added years under the proposed new Regulation 9A, the final salary survivor benefits are calculated using the proposed new Regulation 9B.

Regulation 8 – Citation and commencement

States the name of the Regulations and when they would come into force.

Financial and manpower implications

These draft Regulations have no financial or manpower implications for the Government of Jersey and are not expected to create additional liabilities in the PEPF.

Explanatory Note

These draft Regulations, if made by the States, would amend the Public Employees (Pension Scheme) (Transitional Provisions, Savings and Consequential Amendments) (Jersey) Regulations 2015 (the “principal Regulations”). The effect of the proposed amendments would be to compensate a transition member for a reduction in his or her final salary retirement benefits under the Public Employees Contributory Retirement Scheme (“PECRS”), with an award of additional pensionable service i.e. “added years”. The reduction in final salary retirement benefits would occur where the member’s earnings are reduced because of a workforce restructure or because of a re-evaluation of that member’s job and pay. The amendments would have retrospective effect to 1st January 2019. Retrospective provision is permitted under Article 2(3)(d) of the Public Employees (Pensions) (Jersey) Law 2014 (the “Pensions Law”).

A transition member is a person who was a member of the PECRS and who, on 1st January 2019, transitioned to the new Public Employees Pension Scheme established under the Pensions Law.

Regulation 1 is the interpretation provision.

Regulation 2 inserts into Regulation 1 (interpretation) of the principal Regulations a definition for “added years”, “employer-initiated pensionable earnings reduction”, and “pensionable earnings reduction date”.

Regulations 3 and 4 make minor consequential amendment to Regulation 4 (change of category of membership by a continuing member of the 1967 Scheme), and Regulation 7 (retirement benefits) of the principal Regulations as a result of the insertion of new Regulation 9B (calculation of final pensionable earnings where Regulation 9A applies) by *Regulation 6*.

Regulation 5 amends Regulation 9 (calculation of final pensionable earnings) of the principal Regulations the effect of which is to introduce new Regulation 9B which, where a member has suffered a reduction in earnings, would replace the method of calculating final pensionable earnings under Regulation 9.

Regulation 6 inserts new Regulation 9A (award of compensatory added years) and Regulation 9B into the principal Regulations. Regulation 9A requires the member’s employer (i.e. the States Employment Board, or any other employer that participates in the Public Employees Pension Scheme) to award a member whose PECRS final salary benefits will be reduced as a result of a reduction in earnings, with an award of added years of pensionable service. The actual number of added years awarded is determined by the Actuary who will take into account the member’s total accrued pensionable service and the member’s earnings received before and after the reduction was applied.

Regulation 9B sets out how a transition member’s final salary retirement benefits under the PECRS must be calculated by reference to the member’s earnings received in the period after the reduction was applied and, in accordance with Article 11(2)(b) of the Pensions Law, ending on the date the member retires, receives his or her PECRS retirement benefits without leaving employment, or otherwise leaves employment.

Regulation 7 is a minor consequential amendment arising from the insertion of Regulation 9B.

Regulation 8 provides for the title by which these Regulations may be cited and for their coming into force immediately upon being made.



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Arrangement

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

THE STATES, make the following Regulations under Article 2 of the Public Employees (Pensions) (Jersey) Law 2014¹ –

1 Interpretation

In these Regulations “principal Regulations” means the Public Employees (Pension Scheme) (Transitional Provisions, Savings and Consequential Amendments) (Jersey) Regulations 2015².

2 Regulation 1 (interpretation) amended

In Regulation 1(1) of the principal Regulations –

(a) after the definition “Actuary” there is inserted –

““added years” means, with effect from 1st January 2019, such period of additional pensionable service as may be granted to a member on account of an employer-initiated pensionable earnings reduction and awarded by way of compensation under Regulation 9A;”;

(b) after the definition “contributing member of the 1967 Scheme” there is inserted –

““employer-initiated pensionable earnings reduction” means, with effect from 1st January 2019, in relation to a transition member’s pensionable earnings, the application of a reduction to those earnings on or after the transition date by an employer as a result of –

(a) a workforce or other organisational restructure affecting that member’s employment; or

- (b) a re-evaluation of any salary scale or structure that may apply in respect of that member's employment;"
- (c) after the definition "pensioner member" there is inserted –
 - "pensionable earnings reduction date" means, with effect from 1st January 2019, the date an employer-initiated pensionable earnings reduction is applied;"

3 Regulation 4 (change of category of membership by a continuing member of the 1967 Scheme) amended

In Regulation 4(5) of the principal Regulations, after "Regulation 9", there is inserted "or, with effect from 1st January 2019, Regulation 9B".

4 Regulation 7 (retirement benefits) amended

In Regulation 7(2)(b), (4)(b), (6)(b), (9)(b), (10)(b) and (11)(a) of the principal Regulations, after "Regulation 9", there is inserted "or, with effect from 1st January 2019, Regulation 9B".

5 Regulation 9 (calculation of final pensionable earnings) amended

In Regulation 9 of the principal Regulations –

- (a) in paragraph (1), after "In this Regulation" there is inserted "and, with effect from 1st January 2019, Regulation 9B";
- (b) after paragraph (1) there is inserted –
 - "(1A) With effect from 1st January 2019, this Regulation does not apply to a transition member awarded added years under Regulation 9A, and Regulation 9B is to apply instead for the purposes of calculating the member's final pensionable earnings by reference to the relevant date."

6 Regulations 9A and 9B inserted

After Regulation 9 of the principal Regulations there is inserted –

"9A Award of compensatory added years

- (1) With effect from 1st January 2019, this Regulation has effect where an employer-initiated pensionable earnings reduction is applied.
- (2) The employer must, by way of compensation for the detriment caused to that member's 1967 Scheme retirement benefits as a result of the reduction, award the member with such added years of pensionable service as is determined by the Actuary having regard, amongst other things, to –

- (a) the amount of pensionable service accrued by the member, under the respective schemes; and
- (b) the member's pensionable earnings received before the pensionable earnings reduction date, and on and after that date.

9B Calculation of final pensionable earnings where Regulation 9A applies

- (1) With effect from 1st January 2019, this Regulation applies where a transition member is awarded added years under Regulation 9A.
- (2) This paragraph applies to a transition member who was a member of the 1967 Scheme under the Existing Members Regulations or New Members Regulations.
- (3) Where paragraph (2) applies, a transition member's final pensionable earnings for the purposes of Article 11(2)(b), (3) and (4)(a) of the Law, must be calculated by reference to –
 - (a) in the case of a transition member who has had an employer-initiated pensionable earnings reduction applied 10 or more years before the relevant date, the highest of that member's pensionable earnings received over 365 consecutive days in the 10 years prior to, and ending on the relevant date;
 - (b) in the case of a transition member who has had an employer-initiated pensionable earnings reduction applied less than 10 years, but more than one year before the relevant date the highest of that member's pensionable earnings received over 365 consecutive days in the period commencing on the pensionable earnings reduction date, and ending on the relevant date; or
 - (c) in the case of a transition member who has had an employer-initiated pensionable earnings reduction applied one year or less before the relevant date, the whole year equivalent of that member's pensionable earnings received on and after the pensionable earnings reduction date, and ending on the relevant date.
- (4) This paragraph applies to a transition member who was a member of the 1967 Scheme under the 1967 Regulations or 1992 Regulations.
- (5) Where paragraph (4) applies, a transition member's final pensionable earnings for the purposes of Article 11(2)(b), (3) and (4)(a) of the Law, must be calculated by reference to –
 - (a) in the case of a transition member who has had an employer-initiated pensionable earnings reduction applied 3 or more years' before the relevant date, the average of that member's pensionable earnings received over the 3 years prior to, and ending on the relevant date;

- (b) in the case of a transition member who has had an employer-initiated pensionable earnings reduction applied less than 3 years', but more than one year before the relevant date, the average of that member's pensionable earnings received in the period commencing on the pensionable earnings reduction date, and ending on the relevant date; or
- (c) in the case of a transition member who has had an employer-initiated pensionable earnings reduction applied one year or less before the relevant date, the whole year equivalent of that member's pensionable earnings received on and after the pensionable earnings reduction date, and ending on the relevant date."

7 Regulation 10 (survivor benefits) amended

In Regulation 10(2)(b) of the principal Regulations, after "Regulation 9" there is inserted "or, with effect from 1st January 2019, Regulation 9B".

8 Citation and commencement

These Regulations may be cited as the Public Employees (Pension Scheme) (Transitional Provisions, Savings and Consequential Amendments) (Amendment) (Jersey) Regulations 201- and come into force immediately upon being made.

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- ¹ *chapter 16.640*
² *chapter 16.640.70*