

STATES OF JERSEY



DRAFT PUBLIC EMPLOYEES (PENSION SCHEME) (MEMBERSHIP AND BENEFITS) (JERSEY) REGULATIONS 201-

**Lodged au Greffe on 18th August 2015
by the States Employment Board**

STATES GREFFE



Jersey

DRAFT PUBLIC EMPLOYEES (PENSION SCHEME) (MEMBERSHIP AND BENEFITS) (JERSEY) REGULATIONS 201-

REPORT

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 primarily deliver 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 benefits and membership of the PEPS, as well as the funding, actuarial valuations, administration and transitions of both the PEPS and the PECRS (“the respective schemes”).

The draft Regulations have been developed and refined following a sustained consultation 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 the consultations and the negotiations the draft Regulations are generally considered the best option for a sustainable, affordable and fair pension scheme for all 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 the States Members in the understanding of the Regulations, an individual report has been prepared for each set of Regulations. This report will focus on the Membership and Benefit Regulations

3. THE MEMBERSHIP AND BENEFIT REGULATIONS

The Membership and Benefit Regulations provide for the main benefit structure of the PEPS, and sets out the provisions for admitting other employers into the Scheme and includes provisions for the forfeiture of a member’s pension following conviction and sentencing for an offence committed in connection with his or her employment, etc.

The structure of the Membership and Benefit Regulations is set out so that it defines eligibility criteria for membership to the Scheme, then provides for payment of contributions and deals with the structure and management of pension records for all members of the Scheme. The Regulations outline the retirement and survivor benefits. The provisions for admitting other employers into scheme and for forfeiting a member’s pension are set out in Schedules 1 and 2 respectively.

It is proposed that the Membership and Benefit Regulations will apply to all new employees as at 1st January 2016. These Regulations will not apply to current active members of the PECRS until 1st January 2019, when most will be moved into the PEPS.

4. INTERPRETATION

Under the Interpretation Regulation of the Membership and Benefit Regulations, certain terms have been separated into their own provisions due to the nature of the provision.

Meaning of “eligible child”

For a child to be deemed eligible for benefits under these Regulations, there are specific criteria which have to be met. The criteria have not changed from those in the current PECRS Regulations, other than a child does not have to prove they are in full-time education until they reach the age of 18, currently this age is 16. The change was made so that the Regulations are in line with Article 1(1) of the Age of Majority (Jersey) Law 1999, which states that –

“As from 1st November 1999, a person shall attain full age on attaining the age of 18 years instead of on attaining the age of 20 years.”

In line with the current PECRS Regulations, a person can continue to receive a child’s pension after reaching the age of 18 where they remain in full-time education up to the age of 23.

The PEPS Regulations allow a person to remain eligible for a child’s pension beyond the age of 23 where the Committee of Management has determined that the person, due to severity of illness or injury, was solely dependent on the member prior to the

member's death and is unable to take up employment; this provision allows continued access to benefits from the scheme.

Meaning of “nominated cohabiting partner”

Under the current PECRS Regulations only legal spouses (including civil partners) and dependents are eligible for survivor's benefits in the event of a member's death.

In modernising the Regulations, members of PEPS will be able to nominate a co-habiting partner to receive survivor benefits. To qualify for benefits, a co-habiting partner has to satisfy strict eligibility criteria for at least 2 years. The eligibility criteria set out in the Regulations are essential so that member benefits are paid appropriately on the death of a member.

Meaning of “pensionable earnings”

Pensionable earnings are those which a member and employer pay pension contributions on. Benefits under a Career Average Revalued Earnings (“CARE”) scheme are calculated using pensionable earnings. Clarity is essential regarding which earnings are pensionable under the legislation and which are not.

This Regulation clarifies the elements of pay that are not pensionable, such as:

- any travelling or subsistence allowances,
- any overtime payments,
- any payment in respect of untaken annual leave,
- any payment in lieu of notice to terminate employment,
- the monetary value of a car or pay received in lieu of a car, and
- any payment in consideration of loss of future pensionable earnings or benefits.

Notional pensionable earnings

The term notional pensionable earnings is used where a member is not being paid their full contractual pensionable earnings, but the benefits require calculation using the full contractual earnings.

The use of notional pensionable earnings is to ensure that members' benefits are not affected by a reduction in pensionable earnings due to a period of absence for sickness or injury which has resulted in a reduced level of pay or zero pay.

Pensionable allowances

The provision for pensionable allowances is not changed from that in the PECRS Existing and New Members Regulations. A pensionable allowance is a payment or allowance over and above basic contractual pay that is routinely paid to a member in addition to their basic salary or wages, for example alternating or rotational shift pay.

Only the Employer, that is the States Employment Board, may declare a payment as a pensionable allowance. Any declaration made by the Employer must be confirmed by the Committee and the Chief Minister following consultation with the Scheme Actuary. This is to ensure that any pensionable allowance which results in a past service liability is funded by the relevant employer.

An employer may revoke an allowance by giving 6 months' notice to the Chief Minister and the Committee of Management.

5. MEMBERSHIP

Active membership

The PEPS will be compulsory for all eligible employees, so persons employed on a permanent contract (excluding zero-hours contracts) will automatically become a member of the PEPS. The Scheme offers benefits in retirement and to family and partners in the event of the death of the member.

Employees on a 'fixed term contract', regardless of length of contract, will be given the opportunity to join the scheme. Where a person on a fixed term contract has opted into the scheme, the membership is binding for the period of the contract.

This Regulation also makes provision for current employees who are on a fixed term contract, who to date have not opted into the scheme. These employees will also be given the option to join the PEPS.

Restrictions on active membership

There are 2 restrictions to membership in the PEPS. Firstly, membership is not available to employees on a zero-hours contract. A further restriction is based on a rule in the Income Tax (Jersey) Law 1961 ("the Tax Law"). Under Article 131CB, it states that the payment of a pension '*must commence before the pension holder attains age 75*'. Therefore, any person aged 75 or over is excluded.

A member who, with the agreement of their employer, is on a period of unpaid leave for a period not exceeding one year may remain an active member, but only in respect of death in service benefits. During unpaid leave, members do not receive pensionable earnings, nor pay contributions or accrue pension, but as they are on extended leave and liable to return, they would still receive the appropriate death in service benefits if they die whilst on unpaid leave.

Ending active membership

If a member leaves scheme employment, or their employment is terminated before benefits become payable, or they die or retire, they are no longer an active member of the scheme. Provisions stating when a person is no longer an active member are required to ensure that benefits attributed to that member are calculated accurately to the effective date.

Deferred membership

A person automatically becomes a deferred member of the scheme where their active membership has ended and they have not started to receive benefits from the scheme. Generally, where a deferred member returns to active membership, their deferred benefits are automatically merged with their active member benefits.

The exception is where an ordinary member joins/returns as a uniformed member and vice versa. The 2 categories of membership have different normal pension ages and pay different contributions rates, so where a member joins a different category the benefits from their previous employment are deferred.

Pensioner membership

A person is a pensioner member when they are in receipt of a pension.

Survivor membership

A person is a survivor member if they are in receipt of a benefit which is being paid as a result of the death of an active, deferred or pensioner member. A survivor member can be a spouse, a civil partner, a nominated cohabiting partner, dependent or a child of the member.

6. CONTRIBUTIONS

Compulsory contributions and recovery of contributions

An active member of the scheme and employer must pay contributions to the scheme as required under the Funding and Valuations Regulations. The amount of contributions that a member and employer must pay is not defined in these Regulations but is defined under Part 3 of, and Schedules 1, 2 or 4 of the Funding and Valuation Regulations.

Outstanding contributions may be recovered as a civil debt by the Committee.

Additional Voluntary Contributions

All active members may purchase additional pension through the payment of Additional Voluntary Contributions (“AVCs”). The purchase of AVCs can assist retirement planning or by offsetting any reduction they may receive by retiring early.

The amount of pension a member accrues by way of AVCs will be based on advice of the Scheme Actuary and will be ‘cost-neutral’ to the Fund. This means the cost of purchasing any additional pension through AVCs should not create a profit or loss in the Fund.

AVCs may only be paid via a member’s pensionable earnings, so the amount of AVCs a member can pay at any one time is limited to their monthly or weekly salary. The requirement for a member to pay AVCs through their weekly or monthly salary means that the member cannot purchase additional pension through any other means. AVCs may be paid in a single payment or through regular monthly payments, and payments can also be a fixed percentage of the member’s pensionable earnings or a specified amount.

Contributions during child-related leave

In this provision child-related leave relates to adoption leave and paternity leave as well as maternity leave.

A member who is on child-related leave where they are being paid any amount of pensionable earnings will continue to pay contributions based on 100% of their pensionable pay, as will their employer. Paying contributions at 100% of pensionable earnings will ensure that the member’s pension is not affected as a result of maternity or adoption leave.

A member who opts for additional unpaid child-related leave may request the period of leave to be pensionable. In this instance, the member and the employer will continue to pay contributions based on the member’s notional pensionable earnings.

Contributions during absence for ill-health, etc.

A member and the employer shall pay contributions based on the amount of pay the member is being paid whilst they are leave due to ill-health or injury (i.e. if they are on half-pay, they pay half of normal contributions, and if the member is on zero-pay, the member and the employer will pay no contributions).

Nonetheless, the member will continue to accrue benefits during periods of illness or injury which prevent them from working, so even though a member is not being paid full pensionable earnings, the member will continue to accrue pension based on their full earnings. Notional pensionable earnings will be used to calculate the accrued pension the member will accrue over the period of half or no pay.

Contributions in relation to reduced contractual salary

Members whose pensionable earnings are reduced through no fault of their own may request to continue to paying contributions based on the higher rate of pensionable

earnings. This will allow them to continue accruing a pension based on the higher rate of earnings. Any request made by the member will require the agreement of their employer, as the employer will also have to pay contributions at the higher rate.

Where agreement is reached, the employee and the employer will pay the higher rate of contributions until the member either no longer wishes to pay the higher rate, or the member's salary increases beyond the previous salary the contributions are based on, or the member leaves active service.

The payment of contributions at the higher level is automatically applied if a member's pay is reduced within 5 years of their normal pension age.

Deferred pension, refund of contributions or transfer value

If a member leaves active service before they are entitled to payment of their benefits, they may request a transfer of benefits from the scheme to another pension scheme, a deferred pension payable up to 10 years before their normal pension age (subject to a cost-neutral actuarial reduction) and, where the member has accrued less than 5 years' pensionable service, a refund of their own contributions.

The less than 5 years' service to qualify for a refund would include any aggregated service from a transfer in, service accrued under PECRS prior to being transitioned into the PEPS or service from a previously deferred benefit merged with their current pension record.

Therefore, if a member has been in the PEPS scheme for 2 years and transferred in an additional 4 years' pensionable service from another Scheme; they would be ineligible for a refund of contributions.

If a member makes a request for a refund of contributions, but dies before the refund is paid, the refund amount will be paid into the member's estate. At the point the member agrees to a refund of their contributions from the Fund, they forego any further entitlement to benefits in the scheme and any contingent rights as a result of the death of the member.

As with taking a refund of contributions, transferring benefits out of the scheme extinguishes any right or contingent right to benefits in the scheme.

7. PENSION RECORDS

Management of pension records

Every member of the scheme will have a pension record which will record all aspects of their membership in the PEPS. A pension record is opened the day a person becomes an active, pensioner, deferred or survivor member. Records will only be closed once there is no one eligible to draw benefits from that record.

Active member pension record

All employees who pay contributions into the PEPS will have an active member pension record. The active member pension record chronicles all the events affecting accrual of benefits that has taken place over the active member's time in the scheme.

Active member pension records will have an opening balance. At the end of each scheme year, the opening balance will be revalued in accordance with the Funding and Valuation Regulations, and any pension earned in that year along with the revalued opening balance will create a closing balance for that year. The closing balance becomes the new opening balance for that pension record the following year and the process repeats.

When a member leaves pensionable service and their active member record closes, the opening balance of that record, along with any accrued pension and adjustments, will be revalued to create the closing balance.

Active member pension records which close mid-year will receive a proportionate revaluation on their closing balance, using the revaluation rate of the previous year.

Members who leave active membership mid-way through a pay period (weekly or monthly) will not have their closing balance of their pension record calculated until the member has been paid for the period in which they left. The closing balance cannot be calculated until all the pensionable earnings have been paid to the member and recorded on the pension record.

The closing balance for an active member pension record is the amount of pension that a member has accrued over their membership in the scheme and therefore, will become the opening balance for the members deferred or pensioner record.

Deferred member pension record

A member who is no longer an active member and not in receipt of their benefits will become a deferred member.

A deferred member pension record will show the value of the member's deferred benefits and specify whether the member has taken a lump sum during employment. The Regulations only allow for one lump sum to be taken.

The closing balance of the deferred member pension record will receive increases in accordance with the Funding and Valuation Regulations and will become the new opening balance for the pension record.

A deferred member who begins active membership under a new membership category will continue to have their original benefits deferred and commence a new active membership under their new member category.

Pensioner member pension record – active member

Active members or deferred members who draw their benefits will have a pensioner member pension record. This record will show how much pension the member is entitled to receive annually. The annual pension a member receives will be based on the closing balance of the active or deferred member pension record.

As with all other pension records, the opening balance of the pensioner member pension record will receive an annual increase at the beginning of each year in accordance with the Funding and Valuation Regulations. If the pension record was opened mid-year, then the pension increase at the beginning of the first year may be applied proportionately where the member has retired from active service, due to the differences in the annual increases.

The deferred member pension record has to also specify the value of the opening balance, including any reduction applied due to taking the pension before the member's normal pension age, any reduction due to taking a lump sum, and any enhancement applied due to retiring after normal pension age or due to ill-health retirement. This then gives a clear record of the amount of pension the member is to receive. Furthermore, the record is to specify the amount of any reduction to the member pension as a result of early retirement.

Pensioner member pension record – deferred member

The Regulation relating to the pensioner member pension record for deferred members provides the same provisions as the pensioner member pension record for active members.

Survivor member pension record – deceased active member

Where a member of the scheme dies and a survivor is identified, a survivor member pension record will be opened.

On the date of the active member's death, their pension record will be closed. The closing balance of that pension record is then used in the calculation of the survivor pension. The survivor's pension entitlement will then create the opening balance of the survivor member pension record.

Where a member dies in active service, a lump sum is payable either to an individual nominated by the member or the member's estate.

The opening balance of the survivor member pension record will receive an annual increase at the beginning of each year in accordance with the Funding and Valuation Regulations. A provision to allow for the pension increase to be applied proportionately is included.

Survivor member pension record – deceased deferred member

The Regulation relating to the survivor member pension record – deceased deferred member – provides the same provisions as the survivor member pension record – deceased active members – the only difference being that there is no lump sum payment.

Survivor member pension record – deceased pensioner member

Essentially, this Regulation matches the survivor member pension record – deceased deferred member Regulation – the only difference being that the member's pension was in payment at the time they died.

8. RETIREMENT BENEFITS

Normal pension age – exception

The rule around a member's normal pension age is set out in Article 9(1) of the Law and stipulates that the normal pension age of an active member of the Scheme is linked to the Jersey State Pension Age as set out in the Social Security (Jersey) Law 1974 ("1974 Law"). This is dependent on when the member was born and varies between age 65 and 67.

Article 9(4) of the Law allows Regulations to not apply the link to the state pension age for certain categories of members. Uniformed members have a normal pension age of 60, in line with UK firefighters' pensions and the police pension scheme.

Retirement benefits

Members who reach their normal pension age will be able to receive payment of their benefits unreduced.

A person may also remain a member of the scheme past their normal pension age. The benefits paid to a member who draws their benefits after their normal pension age will receive an enhancement calculated on a cost-neutral basis by the scheme actuary; this is because the benefits remain in the Fund for longer and are potentially paid out for a shorter period of time. This provision allows flexibility for members who may wish to work beyond normal pension age (subject to the agreement of the Employer).

Members may also resign from the organisation and access their benefits up to 10 years earlier than their normal pension age. However, the benefits paid would attract an actuarial reduction based on a 'cost-neutral' basis. The actuarial reduction is applied as the pension is paid earlier and potentially for longer.

Voluntary Early Retirement

An employer may, with the consent of the Chief Minister, offer voluntary early retirement to an active member. To be eligible the employee must be at least age 55 (but not have attained normal pension age) and must volunteer to retire from their position due to redundancy or on grounds of business efficiency in order to receive payment of their pension benefits, subject to a cost-neutral actuarial reduction.

The scheme actuary calculates the pension, and a capital cost is then paid into the pension Fund to cover the early payment of the pension.

Conversion of retirement benefits into lump sum

When a member's benefits come into payment they will have the ability to exchange up to 30% of those benefits for a lump sum. Where a member exchanges a portion of their pension for a lump sum, they will receive £13.50 for every £1 of pension they give up.

This is a one-off lump sum, and once a person has exchanged their benefits there is no other opportunity to amend the amount exchanged or request a further lump sum.

Conversion of retirement benefits into lump sum whilst in employment

As an alternative to receiving a lump sum when pension benefits come into payment, members will also have the opportunity to receive a lump sum whilst continuing in their employment. However, this is also a one-off opportunity, and where a member takes a lump sum during employment, there will be no further opportunity to take a lump sum on retirement.

This provision is only available to ordinary members who are within 10 years of their normal pension age and uniformed members who are within 5 years of their normal pension age. If a member chooses to take a lump sum prior to retirement, the lump sum will be reduced by a cost-neutral amount as advised by the Scheme Actuary.

Once the lump sum has been taken, the member's pension record will be adjusted accordingly, and the member will continue to accrue benefits based on the reduced pension amount.

Conversion of retirement benefits into lump sum – terminal illness

Where a member has undergone a medical examination for ill-health retirement and they are certified by the Independent Occupational Health Advisor ("IOHA") as having a life expectancy of 12 months or less, they can apply to convert their retirement benefits into a lump sum.

The lump sum payment the member will receive will consist of the full lump sum commutation (i.e. 30% of pension at a rate of £13.50 for each £1 pension given up) and the remaining 70% of benefits multiplied by £5 per £1. Effectively, the member will receive the full commutation of benefits and 5 years of benefits as a lump sum.

This provision gives members who may not have any survivors an opportunity to receive benefits prior to their death. Exchanging benefits for a lump sum under this provision will not remove the rights of any person eligible for a survivor benefit under the scheme. Effectively, the member will become a pensioner member, but they will not have a pensioner member pension record.

Conversion of retirement benefits into lump sum not exceeding £30,000

Article 131CF of the Tax Law allows a member to commute their benefits at retirement into a lump sum where the capital value of those benefits does not exceed £30,000. To enable an exchange of benefits to take place, the Tax Law requires a member to be aged 60, the benefits to be exchanged cannot be in payment, and the

capital value of £30,000 must include any previously taken lump sums under this Article 131CF. As the £30,000 limit includes any other conversions of benefits under Article 131CF, the administrator must ensure that the conversion of the benefits under this provision does not breach this limit.

If a member has transferred in any benefits from another pension scheme, then they will not be able to convert their benefits into a lump sum under this provision.

The member will lose any further rights under the scheme and contingent liabilities to survivor benefits under the scheme payable upon the member's death.

Conversion of retirement benefits into lump sum not exceeding £18,000

This Regulation reflects the provisions of Articles 131(13) and (14) of the Tax Law and allows a deferred member to convert their deferred benefits into a lump sum where the capital value of those benefits does not exceed £18,000.

A member can only convert their deferred benefits where they are no longer in scheme employment, and where the employer is not paying contributions into another approved Jersey scheme on behalf of that member, the member is not in receipt of any benefits under the scheme, and the capital value of the benefits does not include a transfer in from another pension scheme.

As there will be no further monies in the Fund related to the member's deferred pension record following the use of this provision, the member will also lose any rights under the scheme and the rights of any person contingently entitled to any survivor benefits under the scheme payable upon the member death.

Ill-health Retirement

Early payment of retirement benefits on ill-health grounds

Under the PEPS Regulations the Ill-health retirement provision will be based on a two-tier approach.

A 'standard' level pension will be available to a member who is deemed permanently incapable of efficiently performing their duties as a result of ill-health, or mental or physical impairment, and the payment of a pension does not disbar them from working in another role or profession. A member who has been awarded a standard level ill-health pension will receive benefits based on their current accrued pension with no enhancement.

An 'enhanced' level pension is available to a member who is deemed permanently incapable of efficiently performing their duties as a result of ill-health, or mental or physical impairment, and who is unlikely to be able to engage in any further employment prior to their normal pension age. A member who has been awarded an enhanced level pension will receive benefits based on their accrued pension and the current enhancement arrangements under the PECRS Regulations.

Members must have completed at least 2 years' pensionable service to be eligible for ill-health retirement benefits; the 2 years can be made up of transfers in or merging of deferred records.

Role of the Independent Occupational Health Advisor (IOHA)

It is an employer decision to award ill-health retirement and to agree the level of the ill-health retirement pension. The employer will make the decision to terminate a member's employment on grounds of ill-health based on advice and certification from the IOHA.

The IOHA will determine whether the member is incapable of efficiently performing the duties of their employment as a result of ill-health, or mental or physical impairment. The IOHA will also determine if the member is likely to be able to take

up any other employment before they reach their normal pension age. The IOHA will make these determinations following a medical examination of the member, and will record their determinations in a certificate issued to the employer.

The IOHA cannot have previously advised or given an opinion on or been involved with the ill-health case to which a certificate is required. This eliminates any potential bias that may arise due to any previous involvement with the member.

Pension records and calculations of ill-health pension

A member who is awarded an ill-health pension would receive unreduced benefits accrued to the date of medical retirement, with the possibility of an enhancement dependent on the level awarded.

On the award of an ill-health pension, the member's active member pension record will be closed and a pensioner member pension record will be opened. For members who have been awarded the standard level ill-health pension, the closing balance of the active member pension record will become the opening balance pensioner member pension record, as they will not receive any enhancement.

For members who have been awarded the enhanced ill-health pension, the closing balance of the active member pension record will also become the opening balance pensioner member pension record, but may have an enhancement added to that opening balance. The level of enhancement will depend on the amount of pensionable service the member has built up in the scheme.

The level of enhancement for an enhanced ill-health pension will be calculated using additional notional service as shown below, and the member's notional pensionable earnings. The additional service is based on the current levels of ill-health enhancement as found in the PECS Existing Members and New Members Regulations, which are as follows:

- If a member has less than 5 years' pensionable service in the scheme they will not receive any enhancement.
- If a member has between 5 and 10 years' pensionable service in the scheme their service will be doubled.
- If a member has between 10 years and 13 $\frac{1}{3}$ years' pensionable service then their service will increase to 20 years.
- If a member has more than 13 $\frac{1}{3}$ years' pensionable service in the scheme they will receive an additional 6 $\frac{2}{3}$ years' service.

The only condition regarding the enhancement is that any additional pensionable service shall be limited so that the additional pensionable service does not increase the member's service beyond their normal pension age.

Review of entitlement to ill-health pension

The Committee of Management may review any ill-health pension that has been awarded.

The Committee may request any medical retiree to undergo a medical examination to ensure they continue to meet the criteria of their ill-health pension. Where the member refuses to undergo an examination, the Committee have the authority to withhold some or all of the member's pension.

Following a review of an ill-health retirement, where a member has been awarded an enhanced benefit, if the member is found to be working or capable of undertaking other employment, the pension will be reduced to a 'standard' level as the enhancement is no longer appropriate.

If a member is found capable of performing the duties of the role from which they were ill-health retired, then the member's pension will cease. As the member could potentially return to the position from which they were retired on medical grounds, there is no rationale to continue paying an ill-health pension.

Inappropriate award of ill-health pension

The cost of awarding an ill-health pension is met by the Fund, so where the Committee has found that an employer has awarded an ill-health pension to a member who does not fit the required criteria, the Committee can request that employer to pay the cost themselves.

Increased retirement benefits at request of employer

This provision reflects that in Regulation 17 (Augmentation) in the PECRS Existing Members and New Members Regulations.

This provision may be used where an employer chooses to purchase additional pensionable service for an employee or to pay a pension with no actuarial reduction applied. The payment of the additional pension may not be adversely affected by any limits in the Tax Law, and may not be offered to a member who has been employed for more than 12 months without the express agreement of the Chief Minister. This type of arrangement is generally agreed in conjunction with remuneration and is normally agreed within the first year of employment.

The employer may purchase additional pension via a single cash payment, a series of cash payments, or a combination of both.

The Scheme Actuary produces an annual report certifying the cost to the employer of using this provision.

Commencement of retirement benefits

Payment of benefits may only be made where all the pensionable earnings have been received and accounted for. Active members who leave scheme employment in the middle of a month will receive their benefits at the end of the following month. Once all pensionable earnings have been recorded, a closing balance can be calculated creating the member's final accrued pension.

All pensions in PEPS will be paid monthly. Therefore, an active member will be paid their benefits at the end of the month following the last month in which they left scheme employment. Alternatively, deferred members will be able to receive their benefits as soon as administratively possible. Pensions will be paid at the end of the month; however, deferred benefits are effectively finalised so there is no requirement to wait until the following month for payment to be made.

9. SURVIVOR BENEFITS

Death in scheme employment – lump sum benefit

In the event of the death of an active member, a lump sum will be paid to a person who has been identified as a lump sum recipient. A lump sum recipient is defined as anyone who is a relative of the member, a person who has been nominated by the member or the member's estate.

The amount of lump sum that can be awarded has been increased from that payable under the PECRS Regulations. The death-in-service lump sum will be 3 times the member's notional pensionable earnings. The use of notional pensionable earnings to calculate the lump sum means the lump sum would be based on what the member had earned in the 3 years prior to their death. So where a member is not receiving the full

amount of pensionable earnings due to illness, unpaid maternity leave, etc. the lump sum payment would be calculated based on the notional pensionable earnings.

The provision also sets out what is meant by the term 'relative' with regard to a lump sum recipient. This sets out who may claim the lump sum where there is no nominee.

Survivor pension – partners and dependants of deceased active members

The benefit a survivor can receive has not altered from that currently in the PECRS Regulations. A survivor will receive 50% of the active member's accrued pension at date of death, and if the member has died in service the pension calculation is to normal pension age.

The calculation of the survivor pension disregards any lump sum the active member took whilst in employment. This provision follows the current PECRS Regulations regarding survivor pensions where a pensioner dies. The lump sum taken at retirement is disregarded for the calculation of survivor benefits. Effectively, the survivor will get 50% of the pension the member would have received had they not commuted any of the pension for a lump sum.

An addition to the PEPS Regulations is an actuarial reduction to the survivor pension where the survivor is more than 20 years younger than the member who has died. This detail of this provision is dealt with under the Regulation titled 'Amount of survivor pension – reduction in specific cases'.

As with the PECRS Regulations, a pension is payable to one or more persons who can prove to the Committee they were dependent on the member. However, a pension to a dependant may only be paid where no surviving partner has been identified.

Survivor's pension – partners and dependants of deceased deferred or pensioner members

Benefits payable to a survivor of a deferred member or a pensioner also remains as that in the current PECRS Regulations. A survivor receives 50% of benefits payable to the deferred or pensioner member at the date of their death.

Amount of survivor's pension – reduction in specific cases

In the event that a member dies and their surviving partner or a dependent, who is either financially dependent on the member or in a mutually financial relationship, is 20 or more years younger than the member, the survivor pension will be reduced.

The reduction to the pension follows that currently in the Firefighters' Pension Scheme (England) Order 2006 (S.I. 2006/3432). The reduction is 2.5% a year for each year the deceased member's age is 20 years or more than that of the surviving partner or dependent. This is not a cost-neutral amount, but it does equate to a saving to the Fund. The Regulations ensure a survivor pension would not be less than 50% of the survivor's pension after the actuarial reduction. Whilst unlikely, a member who is more than 40 years older than their surviving partner or dependant, the *de minimis* amount in the Regulations ensure that the survivor has a fair pension from the Scheme.

Children's pension – children of deceased active, deferred or pensioner members

A child's pension will normally be paid to age 18; however, if the child is in full-time education the pension may be paid until age 23. The provisions around children's pensions are also the same as that in the current PECRS Existing Members and New Members Regulations. The principle provision is that where a member dies leaving a surviving partner and a single child, then the child will receive a pension based on half of the survivor's pension. Where a member dies and there is no surviving partner, only

a child, the child will receive a pension equal to what would have been paid to a surviving partner.

If, at any point, a child ceases to meet the eligibility criteria, then the Committee has the power to suspend payment of their pension; only when the child can prove eligibility will the payment of the pension recommence. The Committee also retains the right to request evidence of eligibility from a child. Where the child does not supply the required evidence, then the pension may be suspended.

10. MISCELLANEOUS AND CLOSING PROVISIONS

Interest on late payment of scheme benefits

If, for any reason, the administrator or the Committee fail to pay any benefits which they are duty-bound to pay under the Regulations, for more than one year following the date from which the payment was due, then interest on those benefits would have to be paid to the member. The interest will be based on the Bank of England base rate on a day-to-day basis.

Bankruptcy and non-assignment of Scheme benefits

This provision is to ensure that where a member of the scheme goes into bankruptcy, no creditor shall be able to access their benefits. When the benefits under the scheme become payable, they shall be vested with the Committee. The Committee will have the discretion to pay benefits as they see fit, and will determine the need of the member, their partner, their dependants or their children in relation to who should receive the benefits.

This provision also goes on to define the term dependant to include an eligible child, in relation to a member of the scheme who has not died. The definition for an eligible child is only used in its own right with regard to survivor benefits.

Forfeiture of benefits

This Regulation refers to the fact that Schedule 2 allows for accrued pension and pension in payment to be forfeited.

11. SCHEDULE 1: EXTENSION OF SCHEME – ADMITTED EMPLOYERS

Participation of certain employer and employees

The main purpose of Schedule 1 is to allow for employers other than the States of Jersey to enter the scheme and allow their employees to become members of the scheme. For any employer to become a member of the Scheme, they first have to make an application to the Chief Minister. The Chief Minister will first consult the Committee and the Scheme Actuary to ensure there are no financial implications to the Fund.

Any employer who is admitted to the Scheme must enter into an admission agreement with the Chief Minister and the Committee. Where an employer is admitted to the Scheme and at the date of admission they have employees who are members of PECRS, those members may retain that membership.

An employer who is admitted to the Scheme after the PEPS Regulations come into force and has employees who are also members of the PECRS, shall be treated as being admitted to the Scheme under the PECRS. The member will remain a member of PECRS, but as the employer was admitted under the PEPS Regulations, the employer will be notionally admitted under PECRS for the purposes of the PECRS member employees.

Pre-admission requirements

Any employer who applies to be admitted into the PEPS will undergo a risk assessment to identify if there is any risk which may necessitate leaving the scheme prematurely due to insolvency, liquidation, and/or winding-up. The risk assessment will involve an evaluation of the prospective admitted employer by the scheme Actuary.

The Committee has a responsibility towards the solvency of the Fund, and will require certain assurances before an employer may be admitted to the Scheme. The Committee will require the Actuary to certify the level of contributions to be paid by the employer. The employer will have to prove they have the ability to pay contributions long-term as certified by the Scheme actuary.

The Committee has to be confident that the amount of contributions paid by the admitted employer is sufficient. Therefore, any certificate produced by the actuary is reviewed after every valuation and a new certificate is issued to the admitted employer.

Admission Agreement Requirements

This provision sets out obligations which are required for inclusion in the admitted employer's admission agreement, and where any of those obligations are breached the provision allows for the Chief Minister to terminate that employer's admitted status.

The admission agreement sets out the terms and conditions of the admitted employer's membership in the scheme, and also ensures that the employer does not do anything that may jeopardise the status of the pension scheme or the pension Fund under Jersey tax law or UK tax law.

Indemnities and bonds

If, following a risk assessment prior to the employer being admitted to the Scheme, a level of risk has been identified, the Chief Minister may determine what if any action needs to be taken. The Chief Minister must have advice from the Actuary and will be required to consult the Committee.

Where it is not desirable for the employer to enter into an indemnity or bond, then the Chief Minister may decide that the employer is to pay additional contributions into a separate admission agreement Fund which may only be used in the event that the employer prematurely leaves the Scheme.

Where the Chief Minister deems it appropriate, he or she can also request the employer secures some form of guarantee.

Where a risk assessment has taken place after the employer has been admitted to the scheme and a risk has been identified, it may similarly be necessary for the Scheme to be protected. As such, the Chief Minister, with the advice of the Actuary and the Committee, may require the employer again to enter into an indemnity, a bond, pay additional contributions or secure a guarantee.

As this is part of the admission agreement, if an employer does not take action against their perceived risk, then they will be in breach of that agreement and, therefore, can have their admitted employer status revoked by the Chief Minister.

Contributions and other payments

At present most admitted bodies pay contributions into the Fund on a half-year basis, this means that the Fund loses an opportunity for investment return on those contributions. To rectify this, admitted employers are to pay any contributions

certified by the Actuary into the Fund within one month from the month in which those contributions were deducted.

As the contributions are currently paid on a half-year basis, this also means that any information on their membership is also sent every 6 months. This means that the Scheme administrator may not know who has started or left the Scheme or any other administrative matters until up to 6 months after the occurrence. As the administrator must be kept up-to-date on matters that affect a person's membership in the Scheme, the employer is to send all information relating to the member's pensionable earnings, any AVCs, and also any changes to the active member's employment status, along with the contributions.

Additional costs arising from the admitted employer's level of performance

If the actions of an admitted employer have caused a financial impact on the Fund, or the admitted employer's level of performance has incurred additional cost to the Fund, the Committee has the ability to demand recompense from the admitted employer. Any costs requested from the employer will be determined by the Scheme actuary and sent to the employer in writing by the Committee.

Ending of participation

This provision deals with managing an admitted employer's exit from the Scheme. The admitted employer may give notice to exit the Scheme or the Chief Minister can terminate an employer's admitted body status. Where either of these actions occurs, the party instigating the termination must give 6 months' notice to the other party.

Employees of the admitted employer will have built up benefits in the scheme and retain a right to those benefits or to the capital value of those benefits. On the expiry of the notice, the Committee shall set aside assets from the Fund which relate to the benefits of the employees who are leaving the scheme.

When calculating the value of the assets to be set aside, the actuary also has to take into account the value of any past service liabilities attributable to the employees who are to cease to participate in the Scheme. In the event that the value of the past service liabilities is higher than the assets set aside, then the employer will have to pay a 'termination contribution'. The payment of this termination contribution must be made before the 6 month notice has expired. If no payment is made, then the Committee can use part of the assets set aside for the employees to fund the unpaid contribution.

Application or disposal of assets for benefit of employees

When an admitted employer leaves the Scheme, the accrued benefits that employees have built up under PEPS will be used in accordance with this provision. The member has the option to defer the benefits in the scheme, transfer them to another pension scheme or purchase an annuity. The decision is solely for the employee, as it relates to their benefits and is allocated accordingly.

12. SCHEDULE 2: FORFEITURE OF SCHEME BENEFITS

Forfeiture of Scheme benefits allows for some or all of a member's benefits under the Scheme to be forfeited based on certain circumstances set out in this provision. Advice and guidance was obtained from the Law Officers' Department to ensure compliance with human rights issues, and also to United Kingdom practice in this area.

Circumstances leading to forfeiture

The forfeiture of a member's benefits cannot be made without good reason, and this provision specifies the circumstances which may lead to forfeiture of the pension. There are various conditions in this provision that may lead to a member's benefits

being forfeited. Most are based around the member committing a criminal act in connection to their employment, being convicted of a crime, and following conviction being sentenced to a specific term in prison.

Application of forfeiture

Only the Chief Minister may agree to an application for forfeiture. Most applications for forfeiture have to be made to the Chief Minister within 6 months following the date of a person's conviction or order of a competent court.

There is only one circumstance which is not based around a criminal act but which can lead to member's benefits being forfeited. Benefits can be forfeited where no claim has been made on those benefits following a period of 7 years from the date on which the benefits became payable. The basis for using this time limit is that under Jersey customary law, there is a presumption of death 7 years after the last contact with the person has been established.

A precedent for this can be found under Article 19 of the Matrimonial Causes (Jersey) Law 1949. A marriage can be dissolved where one party to that marriage has been continually absent from the relationship for a period of 7 years or more and there is no reason to believe the person has been living in that time.

This is also the only condition in the forfeiture provisions which does not have a time limit for making an application to forfeit the benefits.

Certificate and extent of forfeiture

In the event that the Chief Minister agrees to an application for forfeiture of a member's pension, he will issue a forfeiture certificate. Where a forfeiture certificate has been issued, it will detail the amount that the member's pension is forfeit and the remaining pension.

There are caveats to this provision to determine what benefits or contributions can be forfeit. The caveats are in place to ensure that the forfeiture of the benefits is reasonably applied and in line with the circumstances which have caused the benefits to be forfeit.

An example is where a member is convicted of a crime in connection with his or her employment and been sentenced to more than 5 years in prison. Before the application of the forfeiture certificate can proceed, the Chief Minister must confirm that the offence committed by the member has been gravely injurious to the States of Jersey or liable to lead to a serious loss of confidence in the public service.

Effect of forfeiture

Members who are issued with a certificate of forfeiture need to know how much of their benefits they may lose. Therefore, the employer must send the member a statement outlining the effects of the certificate.

Essentially, a member will lose all or part of their benefits if they are affected by the forfeiture provision. The benefits which are forfeit will either be kept within the Fund or could be paid to the employer to recover any financial loss incurred by the member.

Where the member has all their benefits forfeit, they effectively lose their membership in the Scheme and extinguish their rights to any benefits in the Fund and any contingent rights of any person who may receive benefits in the event of their death.

Appeals

All members subject to the forfeiture provision have a right of appeal against a decision of the Chief Minister. A person will have 28 days from the date the determination of their forfeiture to appeal; 28 days has been chosen as this is a

standard deadline for appeals in that this is the time limit for planning appeals under Article 113(2) of the Planning and Building (Jersey) Law 2002.

The administrator will delay the implementation of the forfeiture certificate until such time as any rights of appeal have been exhausted in respect of the conviction, decision or judgment, as the case may be. Only once an appeal has been decided by the Royal Court (which is the process for hearing appeals), should a forfeiture of the benefits go ahead where necessary.

13. PREPARING FOR IMPLEMENTATION

The draft Regulations would come into force as 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 2014, 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.

14. FINANCIAL AND MANPOWER IMPLICATIONS

There are no financial or manpower implications for the States of Jersey arising from the adoption of these draft Regulations.

These Regulations set out the Membership and Benefits of the Scheme, 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 as set out in the Administration Regulations.

Explanatory Note

These draft Regulations are divided into 7 Parts and 2 Schedules as follows –

Part 1 (Regulations 1 to 6) contains the interpretation provisions;

Part 2 (Regulations 7 to 13) provides for membership of the Public Employees Pension Scheme (the “Scheme”);

Part 3 (Regulations 14 to 19) provides for the payment of contributions under the Scheme;

Part 4 (Regulations 20 to 27) provides for the management of pension records in relation to members of the Scheme;

Part 5 (Regulations 28 to 42) provides for the payment of retirement benefits, including early retirement benefits on ill-health grounds;

Part 6 (Regulations 43 to 47) provides for the payment of benefits to partners, children or dependants of deceased members - i.e. “survivor” benefits;

Part 7 (Regulations 48 to 51) contains miscellaneous general provisions;

Schedule 1 contains provisions concerning the admission to the Scheme of employers by reason of the public service nature of their undertakings or by reason of assuming responsibility for the discharge of former States functions;

Schedule 2 contains provisions concerning the forfeiture of retirement benefits.

Part 1: Interpretation

Regulation 1 defines words and expressions routinely used throughout the draft 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”).

Regulation 2 defines the expression “eligible child” for the purposes of entitlement to a children’s pension under *Regulation 47*. Essentially an eligible child includes a natural, adopted or dependent step-child under the age of 18, or aged 18 but under the age of 23 in full-time education or vocational training, or under the age of 23 but unable to undertake paid employment of at least 30 hours per week for at least 12 months (i.e. “gainful employment” as defined in *Regulation 1*) because of physical or mental impairment, or aged 18 or over who is unable to undertake gainful employment by reason of permanent physical or mental impairment and who is dependent on the member at the date of the member’s death.

Regulation 3 defines the expression “nominated-cohabiting partner” by reference to a nomination process which would entitle such a person to receive survivor benefits under *Part 6*.

Regulation 4 defines the expression “pensionable earnings” which is in effect an active member’s total annual salary including pensionable allowances (defined in *Regulation 6*) for the purpose of accruing retirement benefits under the Scheme. This provision also lists earnings which are specifically treated as being non-pensionable.

Regulation 5 defines the expression “notional pensionable earnings” by reference to certain absences from employment when an active member is on reduced contractual pay or no pay but is treated as having been paid pensionable earnings for the purposes of accruing retirement benefits under the Scheme. Under this provision, notional pensionable earnings are calculated by reference to the best 365 consecutive days of

pensionable earnings paid before the member's absence, or whole year of pensionable earnings if the member has been employed for a year or less.

Regulation 6 defines the expression "pensionable allowances" which are routine payments to an active member (defined in *Regulation 8*) in addition to that member's salary. In order for such payments to be subject to the deduction of pension contributions and thus accrue benefits under the Scheme, the member's employer must make a formal declaration that such payments are treated as pensionable. A declaration must only be made with the consent of the Chief Minister ("Minister") and the Committee of Management ("Committee") and may apply retrospectively in respect of payments made before the date of the declaration. This Regulation also sets out how and in what amounts pension contributions are payable in respect of pensionable allowances. An employer may revoke a pensionable allowance declaration on giving at least 6 months' notice to the Minister and the Committee.

Part 2: Membership

Regulation 7 introduces *Schedule 1* which contains the Scheme employer admission provisions.

Regulation 8 defines the expression "active member" for the purposes of entitlement to retirement benefits under *Regulation 29*. Essentially, active membership begins on the first day of a person's employment. A person employed on a fixed term contract has the option as to whether or not to become a member of the Scheme. Transitional provision is made to cover persons on fixed term contracts entered into before the coming into force of these Regulations. Employees of employers who are admitted to the Scheme by reason of the provisions set out in *Schedule 1* ("admitted employer"), are active members if the terms of employer's admission agreement so provides, or if such employees are existing members by reason of the transfer of their States employment to an admitted employer. Certain employees who are members of the 1967 Scheme established by the Public Employees (Contributory Retirement Scheme) (Jersey) Regulations 1967 would, if the States so approve, automatically become active members of the Scheme on 1st January 2019 by reason of provisions contained in the Public Employees (Pension Scheme) (Transitional Provisions, Savings and Consequential Amendments) (Jersey) Regulations 201-.

Regulation 9 sets out the categories of persons in respect of whom there are restrictions as to membership of the Scheme; i.e. persons employed on zero-hours contracts or persons aged 75 or over. An active member who takes an approved sabbatical from work for up to one year will remain an active member but will not be able to make any pension contributions or accrue pensionable service during his or her period of absence. The payment of survivor benefits is unaffected should a member die whilst absent on a sabbatical.

Regulation 10 sets out the circumstances in which active membership ceases; i.e. on the day after a member ceases employment; on the member's 75th birthday; on the day a member's fixed term contract terminates or 6 months after the day a member's employer gives notice that some of that employer's employees (including that employee) or the employer is to cease participating in the Scheme.

Regulation 11 defines the expression "deferred member" for the purposes of entitlement to retirement benefits under *Regulation 29*. Essentially a deferred member is a person who has ceased making pension contributions in respect of an employment, that person's retirement benefits are not in payment and he or she is under the age of 75. This Regulation also provides for the circumstances in which it is possible to be a deferred member in respect of an employment whilst at the same time being an active or pensioner member in respect of another employment.

Regulation 12 defines the expression “pensioner member” for the purposes of entitlement to retirement benefits under *Regulation 29*. Essentially a pensioner member is a person who is in receipt of retirement benefits accrued in relation to a period of active membership.

Regulation 13 defines the expression “survivor member” by reference to a person described in Regulations 44 to 46 who is entitled to a survivor pension under those Regulations.

Part 3: Contributions

Regulation 14 would require an active member and his or her employer to make pension contributions (“contributions”) of such an amount as is required under the Public Employees (Pension Scheme) (Funding and Valuation) (Jersey) Regulations 201- (the “Funding and Valuation Regulations”). Provision is also made regarding the recovery of outstanding contributions.

Regulation 15 would provide for the arrangements for making additional voluntary contributions (“AVCs”) so as to increase the amount of retirement benefits or survivor pension payable upon that member’s retirement or death.

Regulation 16 would require an active member and his or her employer to make pension contributions when that member is on paid child-related leave, i.e. on adoption leave, compulsory or ordinary maternity leave or parental leave as provided under the Employment (Jersey) Law 2005, or when that member takes any paid time off in relation to the birth or adoption of a child as otherwise may be provided under that member’s contract of employment. If a member’s pensionable earnings are reduced during that period of absence, the member’s contributions would be based on notional pensionable earnings calculated in accordance with *Regulation 5*. An active member may elect to continue to pay contributions in relation to a period of unpaid child-related leave, but in the case of a member employed by an admitted employer, he or she must obtain the employer’s agreement to that arrangement.

Regulation 17 would require an active member and his or her employer to make pension contributions when that member is on paid sick leave. If the member is absent on sick leave for up to 2 years and during that period his or her pensionable earnings are reduced, member and employer contributions would be based on the earnings as reduced, and would cease if pensionable earnings stopped being paid. Where pensionable earnings are reduced or have ceased during the period of sick leave, retirement benefits would be calculated as having accrued based on the member and employer being treated as having paid contributions based on notional pensionable earnings calculated in accordance with *Regulation 5*.

Regulation 18 would provide that where an active member’s contractual salary is reduced in relation to an employment or where the member is redeployed to a different employment on a reduced contractual salary, the member may, subject to his or her employer’s agreement (agreement is not required if the member is within 5 years of his or her normal pension age), elect to continue to pay contributions based upon the member’s salary immediately before the date of the reduction and the member’s retirement benefits would be treated as accruing on the basis of the member’s unreduced salary.

Regulation 19 would provide that where an active member who has accrued less than 5 years pensionable service, but is not yet eligible to receive his or her retirement pension under *Regulation 29(5)*, he or she is entitled to a deferred pension, to a refund of contributions (including AVCs) or to a transfer payment out of the fund. If an active member has accrued 5 years or more pensionable service, he or she is not entitled to a

refund of his or her contributions, but is entitled to a deferred pension or to a transfer payment out of the fund.

Part 4: Pension records

Regulation 20 provides for the establishment and maintenance of individual pension records showing the up-to-date membership status of each member of the Scheme, and the annual balance of retirement benefits accrued in relation to each member.

Regulation 21 sets out detailed provision regarding the opening (and closing) of an active member's pension record and the calculation of the opening balance for that record as at 1st January of each year. Essentially the opening balance held in the pension record is made up of pension accrued in respect of pensionable earnings paid in the previous scheme year or credited to the record in relation to a transfer payment to the fund received from another pension scheme in relation to which the active member was formerly a member ("earned pension"), pension accrued as a result of AVCs, or sums resulting from any other permitted adjustment made under *Regulation 20*. The opening balance as it stands at 1st January of each year is revalued in accordance with Regulation 9 of the Funding and Valuation Regulations and at the end of the year that revalued balance together with earned pension, etc. accrued during the course of that year becomes the closing balance for that year and that in turn becomes the new opening balance for the next scheme year. Under *Regulation 21(5)*, when an active member becomes a deferred or pensioner member a closing balance must be calculated for that record as at the end of the calendar month in which the active member becomes a deferred or pensioner member, and the revaluation rate to be applied must be the revaluation rate as at 31st December of the scheme year preceding the year in which the member became a deferred or pensioner member, applied pro-rata according to the number of days pensionable service accrued by that member in the scheme year in which he or she becomes a deferred or pensioner member.

Regulation 22 sets out detailed provision regarding the opening (and closing) of a deferred member's pension record and the calculation of the opening balance for that record as at 1st January of each year. A deferred member pension record must specify an opening balance as calculated under *Regulation 21(5)*. A pension increase is applied to the opening balance on 1st January each year in accordance with Regulation 8 of the Funding and Valuation Regulations, and that increase is, if required, applied pro-rata in the first year in which that record is opened. This Regulation also sets out the process for the closing of a deferred member pension record and the opening of an active member pension record, and the calculation of the respective opening and closing balances where a deferred member re-enters scheme employment. In the case of a deferred "ordinary member" (defined in *Regulation 1*) who re-enters Scheme employment as a "uniformed member" (defined in *Regulation 1*), and vice versa, the respective deferred member pension records will remain open and operate concurrently with the member's active member pension record.

Regulations 23 and 24 set out detailed provision regarding the opening of a pensioner member's pension record when an active or deferred member becomes a pensioner member and the closing of those respective records. As with *Regulation 22* these Regulations provide for the calculation of the opening balance for the pensioner member record as at 1st January of each year and the application of the annual pension increase (pro-rated where required) in accordance with the Funding and Valuation Regulations.

Regulations 25, 26 and 27 set out detailed provision regarding the opening of a survivor member's pension record when an active, deferred or pensioner member dies and the closing of those respective records. The closing balance for each such record is the amount of pension payable to the deceased member's survivor(s) calculated under the relevant provisions of *Part 6*. These Regulations make analogous provision (as provided for in *Regulations 22 to 24*) for the calculation of the opening balance for the survivor member pension record as at 1st January of each year and the application of the annual pension increase (pro-rated where required) in accordance with the Funding and Valuation Regulations.

Part 5: Retirement benefits

Regulation 28 specifies age 60 as the normal pension age for uniformed members of the Scheme. Article 9(1) of the Law provides that the normal pension age of a person entitled to a pension or other benefits under the Scheme must be the same as the person's pensionable age. "Pensionable age" in relation to a person, means the pensionable age of the person as specified from time to time in the Social Security (Jersey) Law 1974 (the "1974 Law"). Presently, depending upon when a member was born, pensionable age is from age 65 to age 67 (see Schedule 1AA to the 1974 Law). This Regulation would give effect to Article 9(4) of the Law which enables Scheme Regulations to specify, in relation to certain classes or descriptions of persons, a pension age which is not linked to pensionable age.

Regulation 29 sets out when an active or a deferred member would be eligible to receive his or her retirement benefits. Full retirement benefits are payable when such members attain their normal pension age. An eligible active member may defer payment of his or her retirement benefits for so long as he or she continues in Scheme employment and continues (together with his or her employer) paying pension contributions, but no later than age 75. Such deferred retirement benefits are payable with a cost neutral enhancement. Actuarially reduced retirement benefits are payable from between 5 years (uniformed member) to 10 years (ordinary member) before an active or deferred member attains normal pension age.

Regulation 30 would provide for the payment of actuarially reduced retirement benefits from age 55 where an active member has volunteered to retire because of redundancy or by mutual consent on the grounds of business efficiency. For the purposes of purchasing additional pension, a member may request that his or her employer pay into the fund a lump sum of such an amount as the member requires from the amount of any redundancy payment or other award that member has received on the termination of his or her employment.

Regulation 31 would enable a member to exchange up to 30% of his or her retirement benefits for a lump sum payment payable, in the case of an active or deferred member, on attaining normal pension age, or in the case of an active member, on voluntary early retirement or on ill-health retirement. Every £1.00 of benefit exchanged would provide £13.50 of lump sum.

Regulation 32 would enable an active ordinary member (within 10 years of retirement) or a uniformed member (within 5 years of retirement) to exchange up to 30% of his or her retirement benefits for a lump sum payment payable whilst that member is in Scheme employment. Every £1.00 of benefit exchanged would provide £13.50 of lump sum. The member's retirement benefits would be reduced by the amount of lump sum paid and the member's pension record balance would be adjusted accordingly. A member who effects an exchange under this Regulation cannot exchange the balance of his or her retirement benefits under *Regulation 31*.

Regulation 33 would enable an active member who is eligible to receive an ill-health pension under *Regulation 36* and who is certified as having less than 12 months to live, to exchange the whole of his or her accrued retirement benefits for a lump sum equal to the maximum amount payable had he or she made an exchange under *Regulation 31*, plus the remaining balance of his or her retirement benefits multiplied by 5. Such an exchange would extinguish the member's entitlement to any other benefits under the Scheme, but would not affect the rights of any person contingently entitled to any survivor benefits under the Scheme.

Regulation 34 would, in line with Article 131CF of Income Tax (Jersey) Law 1961 (the "Income Tax Law"), enable an active or deferred member who has only accrued a small amount of retirement benefits, to exchange the whole of that amount for a lump sum payment not exceeding £30,000. For income tax purposes, 30% of the lump sum would be tax free and 70% would be taxable at 10%. The exchange is subject to the member being at least age 60, his or her retirement benefits not being in payment under *Regulation 29*, and the value of those benefits when aggregated with any other lump sum that the person may have previously received by way of exchange not exceeding £30,000. Payment of the lump sum would become payable on the member ceasing Scheme employment and would extinguish the member's rights as well as the rights of any person contingently entitled to any survivor benefits under the Scheme.

Regulation 35 mirrors the provisions of Article 131(13) and (14) of the Income Tax Law and would enable a deferred member who has left Scheme employment and whose accrued retirement benefits are not in payment under *Regulation 29*, to exchange the whole of those benefits for a lump sum payment. This is provided the member's former employer is not making pension contributions on his or her behalf to another pension scheme and that the value of the exchanged retirement benefits does not exceed £18,000. Payment of the lump sum would extinguish the member's rights as well as the rights of any person contingently entitled to any survivor benefits under the Scheme. The effect of this Regulation would ensure that the Scheme complies with the Jersey occupational pension scheme approval requirements for the purposes of Article 131 of the Income Tax Law.

Regulation 36 sets out the circumstances in which an active member would be entitled to the payment of a pension on the termination of his or her employment before normal pension age, on the grounds of ill-health ("ill-health pension"). The member must have completed at least 2 years pensionable service and the member's employer must be satisfied the member is, as a result of ill-health or mental or physical impairment, permanently incapable of efficiently performing the duties assigned to that member's employment. A standard level ill-health pension would be awarded if the employer is satisfied that the member is likely to be able to engage in any other employment before reaching normal pension age. An enhanced level ill-health pension would be awarded if the employer is satisfied that the member is unlikely to be able to engage in any form of employment before reaching his or her normal pension age.

Regulation 37 would provide that an employer's decision as to whether or not to award an ill-health pension, and the level at which it should be awarded, is informed by a certificate obtained from the Independent Occupational Health Adviser ("IOHA"). The IOHA is the person appointed by the States Employment Board ("SEB") to enable the SEB to discharge its legal function of ensuring the health, safety and well-being of States employees. An admitted employer would, under paragraph 4(2)(d) of Schedule 1, also be required to obtain a certificate from the IOHA and pay for the costs of obtaining that certificate.

Regulation 38 would provide that an ill-health pension is payable as if the member had reached his or her normal pension age on the date that member's employment is

terminated on the grounds of ill-health. The active member's pension record would be closed and a pensioner member record would be opened. The opening balance for that record calculated in accordance with *Regulation 23(1)* would represent the amount of standard level ill-health pension to which that member is entitled. If a member is awarded an enhanced level ill-health pension the enhancement is calculated by awarding a notional period of additional service according to the number of years of pensionable service the member has accrued and applying the amount of notional pensionable earnings (calculated under *Regulation 5*) the member would have earned over the additional notional period.

Regulation 39 would enable the Committee to undertake a periodic review of a person's continued entitlement to an ill-health pension and to require the person to undertake a medical examination for the purposes of the review. The Committee may suspend the payment of pension should the person refuse an examination. Should the examination disclose that a person in receipt of an enhanced level ill-health pension is capable of some form of employment before reaching normal pension age, the Committee would be required, from such date as it determines, to substitute that pension with a standard level ill-health pension. If the examination discloses that a person in receipt of either the enhanced or standard level ill-health pension would be able to perform efficiently the duties of his or her former employment, the Committee must terminate payment of the ill-health pension.

Regulation 40 would enable the Committee to require an employer to pay the costs of an ill-health pension which the employer should not have awarded. The Committee would require medical evidence following a review under *Regulation 39* to the effect that the condition for receipt of an ill-health pension under *Regulation 36(3)* was not satisfied at the time the employer decided to award that pension.

Regulation 41 would provide for the payment of increased retirement benefits under the Scheme in respect of a former or current employee, or a description or class of employees in respect of whom an employer has agreed increased retirement benefits should be awarded. The Actuary would calculate the amount of increased benefits awarded and the amount of additional contributions the employer is required to pay into the fund to support the value of the increased benefits awarded.

Regulation 42 sets out the time at which retirement benefits would come into payment.

Part 6: Survivor benefits

Regulation 43 would provide, should an active member die before the age of 75, for the payment of lump sum to any of that member's dependants, relatives (including partner), nominated person or estate. The amount of the lump sum would be equivalent to 3 times the member's notional pensionable earnings calculated under *Regulation 5*.

Regulation 44 would provide for the payment of a pension to an active member's surviving partner (i.e. spouse, civil partner or nominated co-habiting partner), or dependant(s). The "survivor pension" would consist of 50% of the retirement benefits that member had accrued up to the date of death and 50% of those benefits which the member would have notionally accrued from the date of his or her death until reaching normal pension age, calculated under *Regulation 5*. This Regulation would also provide for the equal distribution of the pension if there is more than one surviving dependant.

Regulation 45 would provide for the payment of a pension to a deferred or pensioner member's surviving partner or dependant(s). The survivor pension would consist of

50% of the retirement benefits that member had accrued up to the date of death, and would be equally distributed if there is more than one surviving dependant.

Regulation 46 would provide for a reduction in the amount of survivor pension if as at the date the member dies, his or her surviving partner or dependant is 20 years or more younger than the member. The reduction would be 2.5% for each year by which the survivor is younger than the deceased member, but the reduction would not operate so as to reduce the survivor pension by more than 50%.

Regulation 47 would provide for the payment of a children's pension on the death of an active, deferred or pensioner member. If the member leaves a surviving partner (or dependant(s)) and one eligible child (as defined in *Regulation 2*), the child would receive an amount equal to 50% of the surviving partner's pension. If there is more than one eligible child, they would receive an amount equal to 100% of the surviving partner's pension divided equally. If there is no surviving partner or dependant(s), or if all such survivors die after a survivor pension has come into payment, the eligible child or children would have their pension doubled. The Committee may temporarily suspend a children's pension if an eligible child over the age of 18 but under the age of 23 is not in full-time education or training, provided the Committee is satisfied that the child is likely to take-up or resume education/training before the age of 23. The Committee may periodically review a children's pension and seek evidence of full-time education/training, or physical or mental impairment, and may temporarily suspend payment of the pension if the evidence is not supplied.

Part 7: Miscellaneous and closing provisions

Regulation 48 would provide for the payment of interest out of the fund on any outstanding amount of retirement or survivor benefits where such an amount is overdue by a year from the date the payment fell due. The Bank of England base rate would be applied on a daily basis.

Regulation 49 would provide for the protection of an active, deferred or pensioner member's retirement benefits in the event that member became bankrupt. Those benefits would not be available to be discharged against that member's or any other person's debts or liabilities, but would vest in the Committee who would assume responsibility for paying the benefits over to the member or his or her partner, children or dependants.

Regulation 50 introduces *Schedule 2* which contains the forfeiture provisions.

Regulation 51 sets out the title of these Regulations and, subject to the States approval, provides for their coming into force on 1st January 2016.

Schedule 1 : Extension of Scheme – admitted employers

Paragraph 1 defines certain words and expressions used in *Schedule 1*.

Paragraph 2 describes the types of employers who the Chief Minister may, after consulting the Committee and the Actuary, accept into the Scheme. Such employers would include employers who have replaced an administration of the States, or have taken over the employment of employees who are existing members of the Scheme or the 1967 Scheme. Under this paragraph, an employer who is accepted must enter into an admission agreement which sets out the terms of the employer's admission to the Scheme. The paragraph includes provision for the protection of employees' continued membership of the Scheme or the 1967 Scheme, where their employment with the States is transferred to that of the admitted employer.

Paragraph 3 sets out the pre-admission "due diligence" checks which the Minister and the Committee must undertake to assess the employer's level of risk to the fund if that employer is to be accepted for participation in the Scheme.

Paragraph 4 lists all the terms and conditions which must be included in the admission agreement and with which the admitted employer must comply. The conditions include a right for the Minister to undertake a review risk assessment, to terminate the agreement in the event of the employer being wound up, or where there has been a material breach of the agreement by the employer which has not been remedied.

Paragraph 5 sets out additional conditions which may be included in the admission agreement if the level of risk posed by the employer is such as to require such conditions. The employer may be required to enter into an indemnity or bond, pay additional contributions by way of an “insurance” into a separate admission agreement fund, or secure a 3rd party guarantor.

Paragraph 6 sets out the arrangements for the payment of contributions and other amounts required under the Scheme Regulations and for the provision of specified information.

Paragraph 7 provides for the recovery of costs from the employer where that employer has incurred additional costs to the fund as a result of the employer’s level of performance in the discharge of its functions under the Scheme or the 1967 Scheme (the “respective schemes”).

Paragraph 8 sets out the process for an employer’s exit from the either one or both of the respective schemes. An employer is required to give 6 months’ notice to the Committee and the Minister of its intention to cease participation. The Minister with the agreement of the Committee may give the employer 6 months’ notice to cease participation. This paragraph provides for the setting aside of the relevant attributable employer assets of the fund to be applied for the benefit of such of the employer’s employees who are members of the respective schemes, and for the Actuary to calculate the amount of the termination contribution the employer is required to pay into the fund.

Paragraph 9 sets out how the assets of the fund which are attributable to an exiting employer may be applied or disposed of for the benefit of members. This may include the transfer of assets to another pension scheme or the purchase of annuities.

Schedule 2: Forfeiture of Scheme benefits

Paragraph 1 defines certain words and expressions used in *Schedule 2*.

Paragraph 2 sets out the circumstances in which a person’s benefits under the Scheme may be forfeited. This provision would apply to an active member who commits an offence whilst in Scheme employment, of which he or she is later convicted. The offence must be one which is committed in connection with that member’s employment or office and in respect of which the member receives a sentence of at least 5 years. Forfeiture may also apply in relation to a conviction for treason or an offence under the Official Secrets (Jersey) Law 1952, or where a person has not made a claim for benefits under the Scheme within 7 years of the benefits falling due, or where a member’s surviving partner, dependant or eligible child is convicted of the member’s murder or manslaughter.

Paragraph 3 provides that where one of the circumstances applies under *paragraph 2*, an employer may request the Minister to issue a forfeiture certificate in relation to a member’s accrued retirement benefits, or benefits in payment. The employer must apply to the Minister for forfeiture of benefits within 6 months of the date of the person’s conviction or the appeal decision.

Paragraph 4 provides that before issuing a forfeiture certificate, the Minister must certify that the offence has been gravely injurious to the States or is liable to lead to a

serious loss of confidence in the public service. The Minister may determine the amount of benefits to be forfeited but that amount, apart from where the member has caused financial loss to an employer or the fund, the benefits have not been claimed under the 7 year rule, or the member's survivor(s) have been convicted of the member's murder or manslaughter, must not include the member's own contributions.

Paragraph 5 provides that where a forfeiture certificate is issued, a copy of it must be provided to the person concerned and it must contain a statement setting out the amount of benefits forfeited. Subject to any appeal which may be pending against the Minister's decision, the Scheme Administrator must transfer from the person's pension record an amount to the value of the benefits forfeited, to the fund or the person's employer (as the case may be). The effect of forfeiture extinguishes the persons' rights or benefits under the Scheme and discharges the fund of any actual or contingent liabilities in respect of those forfeited benefits.

Paragraph 6 provides for a person aggrieved by the Minister's decision to grant a forfeiture certificate, to appeal to the Royal Court within 28 days of receipt of the certificate.



Jersey

DRAFT PUBLIC EMPLOYEES (PENSION SCHEME) (MEMBERSHIP AND BENEFITS) (JERSEY) REGULATIONS 201-

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Jersey

DRAFT PUBLIC EMPLOYEES (PENSION SCHEME) (MEMBERSHIP AND BENEFITS) (JERSEY) REGULATIONS 201-

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

THE STATES, in pursuance of Articles 2, 4, 5, and 9 of, and Schedule 1 to the Public Employees (Pensions) (Jersey) Law 2014¹ and Articles 2 and 4 of the Public Employees (Retirement) (Jersey) Law 1967², have made the following Regulations –

PART 1

INTERPRETATION

1 Interpretation

In these Regulations, unless the context indicates otherwise –

“accrual rate” shall be construed in accordance with Regulation 7 of the Funding and Valuation Regulations;

“active member” means a person who is in Scheme employment and is eligible to be an active member of the Scheme under Regulation 8;

“active member pension record” shall be construed in accordance with Regulation 21;

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

“Administration Regulations” means the Public Employees (Pension Scheme) (Administration) (Jersey) Regulations 201-³;

“Administrator” shall be construed in accordance with Regulation 19 of the Administration Regulations;

“admission agreement” has the meaning given in paragraph 1 of Schedule 1;

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

- (a) admitted to the Scheme under –
 - (i) Regulation 7 and paragraph 2(1) of Schedule 1 to these Regulations,
 - (ii) Regulation 16(1) of the Transitional Regulations, or
 - (iii) Article 10(5) of the Law; or
- (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;

“air traffic control unit” has the meaning given in Article 1(1) of the Air Navigation (Jersey) Law 2014⁴;

“annual pension increase” shall be construed in accordance with Regulation 8 of the Funding and Valuation Regulations;

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

“child-related leave” means “adoption leave”, “compulsory maternity leave”, “ordinary maternity leave” and “parental leave” construed in accordance with Part 5A of the Employment (Jersey) Law 2003⁵ and includes any paid or unpaid time off in relation to the birth or adoption of a child, permitted under the terms of an active member’s contract of employment;

“children’s pension” means a pension payable to an eligible child under Regulation 47;

“civil partnership” and “civil partners” shall be construed in accordance with Article 2 of the Civil Partnership (Jersey) Law 2012⁶;

“Committee” means the “Committee of Management” construed in accordance with Article 4 of the Law and Regulation 2 of the Administration Regulations;

“continuing member of the 1967 Scheme” means a contributing member of that scheme 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 Public Employees (Contributory Retirement Scheme) (Jersey) Regulations 1967⁷;
- (b) a “category A member” and a “category B member” within the meaning of Regulation 1 of the Existing Members Regulations and Regulation 1 of the New Members Regulations;
- (c) a “category C” member within the meaning of Regulation 1 of the New Members Regulations;
- (d) a “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) a “member” within the meaning of Regulation 1 of the Public Employees (Contributory Retirement Scheme) (Former Hospital Scheme) (Jersey) Regulations 1992⁸;

“contributions” shall be construed in accordance with Regulation 14;

“cost neutral amount” means such amount as is calculated by the Actuary so as to produce an amount which is not expected to result in additional cost to the fund or a net contribution to the fund;

“death in Scheme employment lump sum” means a lump sum payable under Regulation 43;

“deferred member” has the meaning given in Regulation 11;

“deferred member pension record” shall be construed in accordance with Regulation 22;

“dependant” in relation to a deceased member of the Scheme, means any one or more persons other than an eligible child, who in the opinion of the Committee was at the time of the member’s death –

- (a) financially dependent on the member for the provision of all or most of the ordinary necessities of life;
- (b) in a mutually dependent financial relationship with the member; or
- (c) dependent on the member because of physical or mental impairment which, subject to such medical examination of the person as the Committee requires, the Committee determines is likely to be permanent;

“earned pension” means pension –

- (a) accrued at the accrual rate under Regulation 7 of the Funding and Valuation Regulations, in respect of pensionable earnings paid in a scheme year (irrespective of whether those earnings relate to work carried out in that year); or
- (b) credited to a person’s pension record in accordance with Regulation 23(4)(b)(i) of the Administration Regulations;

“eligible child” has the meaning given in Regulation 2;

“employee” means –

- (a) a person employed by an employer who the employer certifies is –
 - (i) a full-time or part-time employee, and
 - (ii) employed on a permanent or fixed-term contract of employment; or
- (b) a person referred to in Article 1(2) of the Law;

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

“enhanced level ill-health pension” shall be construed in accordance with Regulation 36(4)(b);

“Existing Members Regulations” means the Public Employees (Contributory Retirement Scheme) (Existing Members) (Jersey) Regulations 1989⁹;

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

“Funding and Valuation Regulations” means the Public Employees (Pension Scheme) (Funding and Valuation) (Jersey) Regulations 201-¹⁰;

“former member” means a deferred member or a pensioner member;

“General Regulations” means the Public Employees (Contributory Retirement Scheme) (General) (Jersey) Regulations 1989¹¹;

“gainful employment” means paid employment for not less than 30 hours in each week for a period of not less than 12 months;

“ill-health pension” shall be construed in accordance with Regulation 36;

“Income Tax Law” means the Income Tax (Jersey) Law 1961¹²;

“Independent Occupational Health Adviser” means a person who is appointed by the States Employment Board (the “Board”) for the purpose of enabling the Board to discharge its function of ensuring the health, safety and well-being of States’ employees under Article 8(1)(c) of the Employment of States of Jersey Employees (Jersey) Law 2005¹³;

“Law” means the Public Employees (Pensions) (Jersey) Law 2014¹⁴;

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

“Minister” means the Chief Minister;

“New Members Regulations” means the Public Employees (Contributory Retirement Scheme) (New Members) (Jersey) Regulations 1989¹⁵;

“nominated cohabiting partner” has the meaning given in Regulation 3;

“normal pension age” shall be construed in accordance with Article 9 of the Law;

“notional pensionable earnings” shall be construed in accordance with Regulation 5;

“opening balance” means the amount of benefits accrued under a pension record as at the beginning of the scheme year;

“ordinary member” means an active member of the Scheme who is not a uniformed member;

“pension administration strategy” means a written statement of policies, procedures and obligations governing the administration of the respective schemes, prepared under Regulation 20 of the Administration Regulations;

“pensionable allowances” shall be construed in accordance with Regulation 6;

“pensionable earnings” has the meaning given in Regulation 4;

“pensioner member” shall be construed in accordance with Regulation 12;

“pensioner member pension record” is a pension record opened in the circumstances set out in Regulations 23 and 24;

“pension record” is a record established and maintained in accordance with Regulation 20;

“pensionable service” in relation to the Scheme, means a period of Scheme employment computed in years and complete days;

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

“revaluation rate” shall be construed in accordance with Regulation 9(3) of the Funding and Valuation Regulations;

“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;

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

“spouse” means a widow or a widower;

“standard level ill-health pension” shall be construed in accordance with Regulation 36(4)(a);

“survivor member” means a person entitled to a survivor pension or a children’s pension;

“surviving partner” in relation to a deceased active, deferred or pensioner member of the Scheme, means a spouse, surviving civil partner or surviving nominated co-habiting partner;

“survivor pension” means a pension payable under Regulations 44 or 45;

“Transitional Regulations” means the Public Employees (Pension Scheme) (Transitional Provisions, Savings and Consequential Amendments) (Jersey) Regulations 201-¹⁶;

“Treasurer” means the Treasurer of the States;

“UK Finance Act” means the Finance Act 2004 (c. 12) of the United Kingdom;

“uniformed member” means an active member employed –

- (a) as an air traffic control officer in the air traffic control unit maintained at Jersey Airport (who for the purposes of the Scheme, shall be taken to be serving in uniform);
- (b) as the chief ambulance officer or assistant chief ambulance officer, or an emergency ambulance officer for the purposes of discharging the States of Jersey’s ambulance service;
- (c) as the Chief Officer or Deputy Chief Officer of, or a police officer in the States Police Force within the meaning of Article 1 of the States of Jersey Police Force Law 2012¹⁷;

- (d) as a firefighter within the meaning of Article 1 of the Fire and Rescue Service (Jersey) Law 2011¹⁸;
- (e) as an officer in the Airport Rescue and Firefighting Service within the meaning of Article 1 of the Fire and Rescue Service (Jersey) Law 2011;
- (f) as the prison Governor or a prison officer within the meaning of Article 1(1) of the Prison (Jersey) Law 1957¹⁹.

2 Meaning of “eligible child”

- (1) An “eligible child”, in relation to a deceased active, deferred or pensioner member, means –
 - (a) a natural or adopted child of a member who meets any of the conditions in paragraph (2), and who was born before, on or in the case of a natural child, within 12 months of the member’s death; or
 - (b) a step-child or child accepted by the deceased member as a member of the family who –
 - (i) meets any of the conditions in paragraph (2), and
 - (ii) was dependent on the member at the date of death.
- (2) The conditions referred to in paragraph (1) are that –
 - (a) the person is under the age of 18;
 - (b) the person is in full-time education or vocational training and has not reached the age of 23 (but the Committee may continue to treat a person as fulfilling this condition notwithstanding any break in a course of education or vocational training, although the person does not fulfil the condition during such a break);
 - (c) the person is unable to engage in gainful employment because of physical or mental impairment and either –
 - (i) has not reached the age of 23, or
 - (ii) the impairment is, subject to such medical examination of the person as the Committee requires, in the opinion of the Committee likely to be permanent, and the person was dependent on the member at the date of the member’s death because of that physical or mental impairment.

3 Meaning of “nominated cohabiting partner”

- (1) “Nominated cohabiting partner” means a person nominated by an active, deferred or pensioner member in accordance with this Regulation.
- (2) A member referred to in paragraph (1) (“M”) may nominate another person (“P”) to receive benefits under the Scheme by giving to the Administrator a declaration signed by both M and P that the condition in paragraph (3) has been satisfied for a continuous period of at least 2 years which includes the day on which the declaration is signed.
- (3) The condition is that –
 - (a) M is able to marry, or form a civil partnership with, P;

-
- (b) M and P are living together as if they were husband and wife or as if they were civil partners;
 - (c) neither M nor P is living with a third person as if they were husband and wife or as if they were civil partners; and
 - (d) either P is financially dependent on M or M and P are financially interdependent.
- (4) A nomination has no effect if the condition in paragraph (3) has not been satisfied for a continuous period of at least 2 years which includes the day on which the declaration is signed.
- (5) A nomination ceases to have effect if –
- (a) either M or P gives written notice of revocation to the Administrator;
 - (b) M makes a subsequent nomination under this Regulation;
 - (c) either M or P marries, forms a civil partnership or lives with a third person as if they were husband and wife or as if they were civil partners; or
 - (d) P dies.
- (6) P is M's surviving nominated partner if –
- (a) the nomination has effect at the date of M's death; and
 - (b) P satisfies the Committee that the condition in paragraph (3) was satisfied for a continuous period of at least 2 years immediately prior to M's death.
- (7) For the purposes of this Regulation, 2 people of the same sex are to be regarded as living together as if they were civil partners if they would be regarded as living together as husband and wife if they were not of the same sex.

4 Meaning of “pensionable earnings”

- (1) Subject to paragraph (2) and Regulation 5, an active member's pensionable earnings is the total of all the salary or wages, and pensionable allowances paid by an employer in a scheme year.
- (2) An active member's pensionable earnings do not include –
 - (a) any sum which has not had any income tax liability determined on it;
 - (b) any travelling, subsistence or other allowance paid in respect of expenses incurred in relation to an employment;
 - (c) any overtime payments;
 - (d) any payment in respect of untaken annual leave;
 - (e) any payment in lieu of notice to terminate a contract of employment;
 - (f) any amount treated as the money value to the person of the provision of a motor vehicle or any amount paid in lieu of such provision; or

-
- (g) any payment in consideration of loss of future pensionable earnings or benefits.

5 Notional pensionable earnings

- (1) This Regulation applies to an active member under the circumstances set out in paragraph (2), in relation to a period where such a member is notionally taken as being paid pensionable earnings (“notional pensionable earnings”) in respect of an employment, calculated in accordance with paragraph (3).
- (2) The circumstances referred to in paragraph (1) are where the member –
 - (a) commences a period of –
 - (i) child-related leave, or
 - (ii) leave due to ill-health or injury,and is on reduced contractual pay or no pay;
 - (b) dies; or
 - (c) under Regulation 36, retires before normal pension age with payment of the enhanced level ill-health pension.
- (3) A member’s notional pensionable earnings for the purposes of accruing benefits under the Scheme shall be calculated by reference to the best 365 consecutive days of pensionable earnings paid by an employer in respect of that member in the 3 years before the day on which any of the circumstances referred to in paragraph (2)(a) to (c) occur.
- (4) Where the member has been employed for less than 3 years but more than one year before the day on which any of the circumstances referred to in paragraph (2)(a) and (b) occur, the member’s notional pensionable earnings shall be calculated by reference to the best 365 consecutive days of pensionable earnings paid by an employer in respect of that member’s actual period of employment.
- (5) Where the member has been employed for one year or less before the day on which any of the circumstances referred to in paragraph (2)(a) and (b) occur, the member’s notional pensionable earnings shall be calculated by reference to the whole year equivalent of pensionable earnings that would have been paid by an employer in respect of that member’s actual period of employment.

6 Pensionable allowances

- (1) Subject to paragraph (2), an employer may from time to time declare to be a pensionable allowance any payment or allowance which is routinely paid to an active member in addition to that member’s basic salary or wages.
- (2) A pensionable allowance shall not include any of the items listed in Regulation 4(2).
- (3) A declaration may only be made with the consent of the Committee and the Minister in consultation with the Actuary.

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- (4) A declaration shall –
- (a) define the payment or allowance;
 - (b) specify the date from which the declaration takes effect, which may include a date preceding the date of consent given under paragraph (3) (“date of consent”), so as to apply in relation to any payment or allowance made before the date of consent;
 - (c) subject to paragraph (5), specify whether or not any such payment or allowance received by an active member or former member before the date of consent, shall count towards the computation of benefits payable under these Regulations; and
 - (d) specify whether or not by virtue of the declaration, a pensioner member or survivor member shall be entitled to additional payments in respect of benefits paid before the date of consent.
- (5) If in accordance with paragraph (4)(c) the employer’s declaration specifies that the pensionable allowance received by an active or former member before the date of consent shall count towards the computation of benefits –
- (a) the Actuary shall calculate and advise the Committee and the Minister of the sum of the total for all members and former members of the value of the additional benefits and costs to the fund arising from any pensionable allowance paid before the date of consent, including the value and cost of any additional payments in respect of any benefits under paragraph (4)(d);
 - (b) additional contributions shall be payable by –
 - (i) employers of any such active or former members who receive improved benefits as a result of the declaration, and
 - (ii) any such active or former members who receive improved benefits as a result of the declaration,of such an amount as the Minister and the Committee shall determine having taken the Actuary’s advice;
 - (c) the value of the additional contributions under sub-paragraph (b) shall be equal to the value of the additional benefits arising as calculated by the Actuary under sub-paragraph (a);
 - (d) the additional contributions payable under sub-paragraph (b) may consist of –
 - (i) a single cash payment to the fund,
 - (ii) a series of equal cash payments to the fund over a period determined by the Minister on the advice of the Actuary, having regard to the additional benefits arising, or
 - (iii) any combination of payments described in clauses (i) and (ii) as the Minister may determine in consultation with the employer and the Committee.
- (6) Contributions deducted from an active member’s pensionable earnings under Regulation 11(8) of the Funding and Valuation Regulations –

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- (a) where they are due before the date the declaration takes effect, shall be based on the member's salary excluding the pensionable allowance; and
 - (b) where they are due on or after the date the declaration takes effect, shall be based on the member's salary including the pensionable allowance.
- (7) Contributions payable by employers under Regulation 11(7) of the Funding and Valuation Regulations –
- (a) where they are due before the date the declaration takes effect, shall be based on members' salaries excluding the pensionable allowance; and
 - (b) where they are due on or after the date the declaration takes effect, shall be based on members' salaries including the pensionable allowance.
- (8) Subject to paragraph (9), an employer may revoke a pensionable allowance declaration on giving the Minister and the Committee at least 6 months notice of the intention to do so.
- (9) The revocation of a pensionable allowance declaration shall take effect upon the expiry of 6 months beginning with the date the employer gives notice under paragraph (8).

PART 2

MEMBERSHIP

7 Power to extend application of Scheme – admitted employers

Schedule 1 sets out the provisions which shall apply in respect of the admission of certain employers and their employees to the Scheme and provisions in respect of any such employers who employ members of the 1967 Scheme, and for the admission of such employers to the 1967 Scheme.

8 Active membership

- (1) Subject to Regulation 9(1) and (2), and the provisions of this Regulation, a person becomes an active member of the Scheme on the day that person's Scheme employment begins.
- (2) In the case of a person employed under a fixed-term contract of employment entered into on or after the coming into force of these Regulations –
 - (a) he or she must before that employment commences, give such notification as the Administrator requires as to whether or not he or she wishes to become an active member;
 - (b) who under sub-paragraph (a) notifies the Administrator that he or she wishes to become an active member, that notification shall apply to any subsequent renewal of the fixed-term contract unless,

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- before that renewal, the person notifies the Administrator that he or she no longer wishes to be an active member;
- (c) a notification given under sub-paragraph (a) is binding for the duration of the contract;
 - (d) who upon the expiry of that contract enters into a permanent contract of employment and –
 - (i) is an active member (by virtue of a notification under sub-paragraph (a)), that person shall remain an active member,
 - (ii) is not an active member (by virtue of a notification under sub-paragraph (a)), that person shall automatically become an active member.
- (3) This paragraph applies to a person employed under a fixed-term contract of employment –
- (a) entered into before the date of the coming into force of these Regulations and which continues after that date; and
 - (b) who on the day before the day these Regulations come into force, is not a contributing member of the 1967 Scheme under the New Members Regulations.
- (4) If the contract in relation to a person to whom paragraph (3) applies is renewed, that person shall before the date of renewal give such notification as the Administrator requires as to whether or not he or she wishes to become an active member of the Scheme, and paragraph (2)(b) to (d) shall apply as if that person is employed under a fixed-term contract of employment entered into on or after the coming into force of these Regulations.
- (5) In the case of an employer admitted under paragraph 2 of Schedule 1, an employee of that employer is, subject to the terms of the admission agreement, entitled to become an active member.
- (6) A contributing member of the 1967 Scheme shall become an active member of the Scheme in accordance with Regulation 2, 3(2)(a) or (c), or 4 of the Transitional Regulations.

9 Restrictions on active membership

- (1) An employee employed by an employer under a contract of employment which does not require the employer to provide the employee with any minimum working hours and does not require the employee to accept any of the working hours offered, is not eligible to become an active member of the Scheme.
- (2) A person aged 75 or over is not eligible to become an active member of the Scheme.
- (3) An active member of the Scheme who with the agreement of his or her employer is absent from his or her employment (other than by reason of child-related leave, ill-health, or injury) for a period not exceeding one year shall, during his or her period of absence, continue to be an active member but shall not be entitled –

- (a) to make any contributions to the fund; or
- (b) to accrue any pensionable service in respect of that period of absence,

but, notwithstanding sub-paragraphs (a) and (b), a death in Scheme employment lump sum and a survivor pension shall (if applicable) be payable, should that member die during his or her period of absence.

10 Ending active membership

A person ceases to be an active member of the Scheme –

- (a) on the day after he or she leaves Scheme employment;
- (b) notwithstanding that he or she has not left Scheme employment, on the day he or she attains the age of 75;
- (c) in the case of a person employed on a fixed-term contract of employment –
 - (i) on the day after the contract ends, or if the person is employed concurrently on more than one such contract, on the day after the last of the concurrent contracts ends,
 - (ii) who in accordance with Regulation 8(2)(b), notifies the Administrator that he or she no longer wishes to be an active member, on the day the contract is renewed, or if the person is employed concurrently on more than one such contract, on the day the last of the concurrent contracts is renewed; or
- (d) on the day the 6 months' notice referred to in paragraph 8 of Schedule 1, expires.

11 Deferred membership

- (1) A person is a deferred member of the Scheme in relation to a period of active membership if –
 - (a) the person is no longer an active member of the Scheme;
 - (b) the person has not started to receive any retirement benefits under the Scheme in relation to that period of active membership; and
 - (c) the person has not reached the age of 75.
- (2) A person may be a deferred member of the Scheme –
 - (a) in respect of benefits accrued in relation to a period of active membership as an ordinary member of the Scheme, notwithstanding the fact that the same person is also concurrently an active uniformed member of the Scheme;
 - (b) in respect of benefits accrued in relation to a period of active membership as a uniformed member of the Scheme, notwithstanding the fact that the same person is also concurrently an active ordinary member of the Scheme; or
 - (c) in respect of benefits accrued in relation to a period of active membership, notwithstanding the fact that the same person is also concurrently a pensioner member of the Scheme in respect of

benefits accrued in relation to another period of active membership.

12 Pensioner membership

- (1) A person is a pensioner member of the Scheme if that person was formerly an active or deferred member of the Scheme and is in receipt of retirement benefits under the Scheme.
- (2) A person may be a pensioner member of the Scheme in respect of benefits accrued in relation to one period of active membership notwithstanding the fact that the same person is also concurrently an active or deferred member of the Scheme in respect of benefits accrued in relation to another period of active membership.

13 Survivor membership

A person is a survivor member of the Scheme if that person is entitled to a survivor pension under any of Regulations 44 to 45.

PART 3

CONTRIBUTIONS

14 Compulsory contributions and recovery of member contributions

- (1) An active member and that member's employer must pay such contributions to the fund as are required under Part 3 of, and Schedules 1, 2 or 4 to the Funding and Valuation Regulations.
- (2) The recovery of any contributions or sum remaining due and not deducted under Regulation 11(8) of the Funding and Valuation Regulations may be effected as set out in paragraph (3).
- (3) Where the recovery of contributions or sum referred to in paragraph (2) concerns –
 - (a) an active member, his or her employer may deduct any outstanding amount due (in addition to the contributions deductible under Regulation 11(8) of the Funding and Valuation Regulations) from that member's pensionable pay; or
 - (b) an active, deferred, pensioner or deceased member, the Committee may make such recovery as a civil debt; or
 - (c) a deferred, pensioner or deceased member, the Administrator may make such recovery by deducting any outstanding amount due from any payment by way of benefits to or in respect of a person entitled to a pension or other benefits under the Scheme.

15 Additional voluntary contributions

- (1) An active member may apply to the Administrator to enter into an arrangement to pay additional voluntary contributions (“AVCs”) to the fund so as to increase the amount of –
 - (a) annual retirement benefits to which that member is entitled upon retirement; and
 - (b) survivor pension to which a survivor member is entitled upon the death of that active member.
- (2) The amount by which an annual pension is increased through an AVC arrangement under paragraph (1) shall be determined by the Committee –
 - (a) upon the advice of the Actuary; and
 - (b) upon the basis that such an amount is not expected to incur any additional cost to the fund.
- (3) The payment of AVCs is subject to the allowable pension contribution deduction provisions under Article 13II of the Income Tax Law.
- (4) An application under paragraph (1) must be made in such manner as the Administrator requires and must specify whether the AVCs will be by way of –
 - (a) a single payment deducted from the member’s weekly or monthly pensionable earnings (as the case may be) by a specified amount; or
 - (b) a regular contribution of a fixed percentage of, or specified amount of pensionable earnings deducted from the member’s weekly or monthly pensionable earnings (as the case may be).
- (5) If at any time, as a result of actuarial advice, any change occurs or is likely to occur in respect of the amount referred to in paragraph (2), the Committee shall notify the member accordingly.
- (6) An active member may at any time apply to the Administrator to –
 - (a) enter into more arrangements under paragraph (1); or
 - (b) reduce or cancel the amount of AVCs deducted under an AVC arrangement.

16 Contributions during child-related leave

- (1) An active member on child-related leave and that member’s employer must pay contributions on pensionable earnings paid during that period of leave.
- (2) Where, during the period of child-related leave an active member’s pensionable earnings are reduced, the member and that member’s employer must pay contributions based upon the member’s notional pensionable earnings in respect of the period of leave where the member’s pensionable earnings are reduced.
- (3) This paragraph applies to an active member who intends to pay contributions in respect of child related leave in relation to which that member is not entitled to the payment of pensionable earnings.

- (4) Where paragraph (3) applies, and subject to paragraph (5), the active member must, before taking child-related leave, give notice in writing to the Administrator of the member's intention.
- (5) Where paragraph (3) applies and the active member is employed by an admitted employer, that member must, before giving notice under paragraph (4), obtain that employer's agreement to the payment of contributions in respect of unpaid child-related leave.
- (6) Where an active member and that member's employer are paying contributions in respect of unpaid child-related leave, those contributions shall be based upon the member's notional pensionable earnings in respect of that unpaid period of leave.

17 Contributions during absence for ill-health etc.

- (1) Where an active member is absent from his or her employment by reason of ill-health or injury, that member and his or her employer must pay contributions on pensionable earnings paid during that period of absence.
- (2) If an active member's absence under this Regulation is for a period of up to 2 years and during that period –
 - (a) the member's pensionable earnings are reduced, the contributions payable by that member and his or her employer shall be based on the reduced amount of pensionable earnings paid in respect of that member; or
 - (b) the member is no longer entitled to the payment of pensionable earnings, that member and his or her employer shall cease to pay contributions.
- (3) For the purposes of calculating benefits accrued in respect of an active member to whom paragraph (2)(a) or (b) applies, that member shall be treated as if he or she, and his or her employer had paid contributions based upon the member's notional pensionable earnings in respect of the period of absence where the member's pensionable earnings were reduced or not paid.

18 Contributions in relation to reduced contractual salary

- (1) This Regulation applies to an active member –
 - (a) who has had his or her contractual salary reduced because the nature of the member's employment or the skills or duties required in that employment have changed; or
 - (b) who has been re-deployed to a different employment in consequence of which that member's salary is reduced in relation to that employment.
- (2) Subject to paragraph (3) or (5), a member to whom this Regulation applies may within 3 months before the date on which the reduction takes effect, give notice in writing to the Administrator that the member wishes to continue to pay contributions based on the salary which the employer

is paying to that member immediately before the date the reduction takes effect (the “accustomed salary rate”).

- (3) A member must, before giving notice under paragraph (2), obtain his or her employer’s agreement to the payment of contributions at the accustomed salary rate.
- (4) If an employer agrees to a member’s request under paragraph (3) or if paragraph (5) applies, the employer must continue to pay contributions based on that member’s salary immediately before the date the reduction takes effect.
- (5) Paragraph (3) does not apply to a member who is within 5 years of his or her normal pension age.
- (6) For the purposes of calculating benefits accrued in respect of a member who is paying contributions at the accustomed salary rate, that member shall be treated as if he or she is being paid a salary equal to the salary the member was being paid immediately before the date the reduction takes effect.
- (7) Contributions at the accustomed salary rate shall cease upon –
 - (a) the member giving notice in writing to the Administrator that he or she no longer wishes to pay contributions at that rate;
 - (b) the member being paid a salary in that employment in excess of the salary the member was being paid immediately before the date the reduction took effect; or
 - (c) the member ceasing active membership of the Scheme.

19 Deferred pension, refund of contributions or transfer value

- (1) This paragraph applies to an active member who leaves Scheme employment –
 - (a) having completed less than 5 years pensionable service including any earlier aggregated periods of service recorded within that member’s active member pension record; and
 - (b) without being entitled to the payment of retirement benefits under Regulation 29(1).
- (2) A member to whom paragraph (1) applies shall be entitled –
 - (a) to a deferred pension once that member attains normal pension age under Regulation 29(5) or is otherwise eligible to receive an actuarially reduced deferred pension under Regulation 29(7);
 - (b) to apply to the Administrator for a refund of –
 - (i) his or her contributions (under Regulation 14) in relation to that member’s active membership,
 - (ii) AVCs under an arrangement in accordance with Regulation 15, or
 - (iii) subject to Regulation 24(4) of the Administration Regulations, any contributions included in a transfer payment received under Regulation 23 of the Administration Regulations; or

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- (c) to apply to the Administrator for a transfer payment out of the fund in accordance with Regulation 22 of the Administration Regulations.
 - (3) If a member who has applied for a refund under paragraph (2)(b) dies before the payment is made, the Administrator must pay the sum due to the member's estate.
 - (4) This paragraph applies to an active member who leaves Scheme employment –
 - (a) having completed at least 5 years pensionable service including any earlier aggregated periods of service recorded within that member's active member record; and
 - (b) without being entitled to the payment of retirement benefits under Regulation 29(1).
 - (5) A member to whom paragraph (4) applies shall be entitled to a deferred pension once that member becomes so eligible under Regulation 29(5) or (6), or to apply to the Administrator for a transfer payment out of the fund in accordance with Regulation 22 of the Administration Regulations.
 - (6) A refund of contributions or a transfer payment under this Regulation shall –
 - (a) not be made until the former active member's employer has –
 - (i) paid the relevant amount of pensionable earnings due to that member, and
 - (ii) in accordance with the Funding and Valuation Regulations, paid into the fund the relevant amount of employer contributions;
 - (b) extinguish a former active member's rights to any other benefits under the Scheme, as well as the rights of any person contingently entitled to any benefit payable upon that former active member's death.
 - (7) Any application referred to under this Regulation shall be made in such manner as the Administrator requires.

PART 4

PENSION RECORDS

20 Management of pension records

- (1) The Administrator shall establish and maintain one or more pension records for each active, deferred, pensioner or survivor member of the Scheme and a new record must be established on each occasion any active, deferred or pensioner member changes his or her membership of the Scheme.

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- (2) A pension record may be kept in any form the Administrator considers appropriate and must contain such matters as are required by these Regulations.
 - (3) A pension record must be closed if –
 - (a) a transfer payment out of the fund is made in accordance with Regulation 22 of the Administration Regulations, the effect of which is that the member is no longer entitled to any benefits from the Scheme in relation to that record;
 - (b) a refund of contributions is made following an application under Regulation 19(2)(b);
 - (c) a lump sum payment is made under any of Regulations 33 to 35;
 - (d) the member dies;
 - (e) the last survivor member entitled to a benefit under a survivor member's pension record ceases to be entitled to a benefit under that record (by reason of death or upon ceasing to be an eligible child);
 - (f) due to the aggregation of the benefits under the record with a different record, it is no longer required; or
 - (g) all the benefits under the record are forfeited under Schedule 2.
 - (4) Other than to correct an administrative error, a pension record can only be adjusted as a consequence of –
 - (a) a transfer payment out of or into the fund in accordance with Regulations 22 and 23 of the Administration Regulations;
 - (b) a payment or allowance declared from a date earlier than consent is given under Regulation 6(3) and (4)(b);
 - (c) an award of increased retirement benefits under Regulation 41;
 - (d) a transfer into an active member's pension record from a deferred member pension record upon the merging of those records;
 - (e) the conversion of retirement benefits into a lump sum under Regulation 31 or 32;
 - (f) the payment of pensionable earnings received after the closure of a pension record;
 - (g) the Minister's determination to issue a forfeiture certificate under paragraph 4(1) of Schedule 2.

21 Active member pension record

- (1) On 1st January of each scheme year, an active member's pension record must specify the opening balance for that year calculated in accordance with this Regulation.
- (2) At the end of each scheme year the opening balance mentioned in paragraph (1) shall be revalued in accordance with Regulation 9 of the Funding and Valuation Regulations.
- (3) At the end of each scheme year, the closing balance for an active member's pension record shall be calculated by taking the revalued opening balance mentioned in paragraph (2) and adding –

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- (a) the amount of earned pension (if any) for that scheme year;
 - (b) the amount of pension accrued during that scheme year attributable to the payment of AVCs under an arrangement in accordance with Regulation 15; and
 - (c) the sum resulting from any pension record adjustment referred to in Regulation 20(4) arising during that scheme year.
 - (4) The closing balance calculated under paragraph (3) becomes the new opening balance for the next scheme year.
 - (5) When an active member becomes a deferred or pensioner member or dies, a closing balance for that member's pension record shall, at the end of the calendar month in which that member ceases to be an active member, be calculated by adding the sum of –
 - (a) the opening balance for the scheme year in which the active member becomes a deferred or pensioner member;
 - (b) the amount of earned pension (if any) for that scheme year;
 - (c) the amount of pension accrued during that scheme year attributable to the payment of AVCs under an arrangement in accordance with Regulation 15;
 - (d) the sum resulting from any pension record adjustment referred to in Regulation 20(4) arising during that scheme year,and applying the relevant revaluation rate or the revaluation rate as at 31st December of that scheme year (whichever is applicable).
 - (6) In paragraph (5), the “relevant revaluation rate” means in respect of an active member who becomes a deferred or pensioner member, or dies before 31st December in a scheme year, the revaluation rate as at 31st December of the preceding year, applied pro-rata according to the number of days of pensionable service accrued by that member in the scheme year in which he or she becomes a deferred or pensioner member.
 - (7) The closing balance calculated under paragraph (5) becomes the new opening balance for that member's deferred or pensioner member pension record.

22 Deferred member pension record

- (1) When an active member becomes a deferred member of the Scheme, the active member's pension record must be closed and a deferred member pension record must be opened.
- (2) On the day the deferred member pension record is opened, the record must –
 - (a) specify an opening balance which is comprised of the closing balance calculated under Regulation 21(5); and
 - (b) specify the amount of any lump sum which that member has taken in accordance with Regulation 32.
- (3) Subject to paragraph (4), on 1st January of the scheme year following the scheme year in which the deferred member pension record is first opened

(the “first scheme year”), the opening balance (referred to in paragraph (2)(a)) for the first scheme year shall have an annual pension increase applied in accordance with Regulation 8 of the Funding and Valuation Regulations.

- (4) The first annual pension increase shall, if required, be applied pro-rata to the opening balance according to the number of days in respect of which the deferred member pension record is open in the first scheme year.
- (5) The balance with the increase applied under paragraph (3) or (4) becomes the closing balance for that same scheme year, and that closing balance becomes the new opening balance for the next scheme year and thereafter on 1st January of each subsequent scheme year, the deferred member pension record opening balance for the previous scheme year shall be increased in accordance with Regulation 8 of the Funding and Valuation Regulations.
- (6) Subject to paragraphs (7) and (8), if a deferred member re-enters Scheme employment –
 - (a) the deferred member’s pension record must be closed and an active member pension record must be opened;
 - (b) the closing balance for that member’s deferred member pension record shall –
 - (i) be calculated by applying the annual pension increase as at 1st January of the scheme year in which that member re-enters Scheme employment, pro-rata to the opening balance for that deferred member pension record, according to the number of days in respect of which that pension record was open in that scheme year, and
 - (ii) become the new opening balance for that member’s active member pension record;
 - (c) the new opening balance referred to in sub-paragraph (b)(ii) shall be revalued in accordance with Regulation 21(2) and if required, by the relevant revaluation rate (construed in accordance with Regulation 21(6)) applied pro-rata according to the number of days of pensionable service accrued by that member in the scheme year in which he or she becomes an active member.
- (7) This paragraph applies to –
 - (a) a deferred ordinary member who re-enters Scheme employment as a uniformed member; and
 - (b) a deferred uniformed member who re-enters Scheme employment as an ordinary member.
- (8) Where paragraph (7) applies, on re-entering Scheme employment, an active member pension record must be opened in respect of the person concerned, but that person’s deferred member pension record shall, notwithstanding paragraph (6)(a), remain open and operate concurrently with that person’s active member pension record.
- (9) The closing and opening balance for an active member pension record opened under paragraph (8) shall be calculated in accordance with Regulation 21, and the closing and opening balance for the concurrent

deferred member pension record referred to in paragraph (8) shall continue to be calculated in accordance with paragraph (5).

23 Pensioner member pension record – active member

- (1) When an active member becomes a pensioner member of the Scheme, the active member's pension record must be closed and a pensioner member pension record must be opened.
- (2) On the day the pensioner member pension record is opened, the record must –
 - (a) specify an opening balance which is comprised of the closing balance referred to in Regulation 21(7) –
 - (i) less any reduction applied under Regulation 29(7),
 - (ii) less any amount of retirement benefits exchanged in accordance with Regulation 31,
 - (iii) plus any enhancement applied as a result of –
 - (A) enhanced retirement benefits under Regulation 29(4), or
 - (B) an enhanced level ill-health pension under Regulation 38; and
 - (b) specify the amount of any –
 - (i) reduction applied under Regulation 29(7),
 - (ii) benefits exchanged in accordance with Regulation 31 or 32, or
 - (iii) enhancement referred to in sub-paragraph (a)(iii).
- (3) Subject to paragraph (4), on 1st January of the scheme year following the scheme year in which the pensioner member pension record is first opened (the “first scheme year”), the opening balance (referred to in paragraph (2)(a)) for the first scheme year shall have an annual pension increase applied in accordance with Regulation 8 of the Funding and Valuation Regulations.
- (4) The annual pension increase shall, if required, be applied pro-rata to the opening balance according to the number of days in respect of which the pensioner member pension record is open in the first scheme year.
- (5) The balance with the increase applied under paragraph (3) or (4) becomes the closing balance for that same scheme year, and that closing balance becomes the new opening balance for the next scheme year and thereafter on 1st January of each subsequent scheme year, the pensioner member pension record opening balance for the previous scheme year shall be increased in accordance with Regulation 8 of the Funding and Valuation Regulations.

24 Pensioner member pension record – deferred member

- (1) When a deferred member becomes a pensioner member of the Scheme, the deferred member's pension record must be closed and a pensioner member pension record must be opened.
- (2) On the day the pensioner member pension record is opened, the record must –
 - (a) specify an opening balance which is comprised of the closing balance referred to in Regulation 22(5) –
 - (i) less any reduction applied under Regulation 29(7),
 - (ii) less any amount of retirement benefits exchanged in accordance with Regulation 31; and
 - (b) specify the amount of any –
 - (i) reduction applied under Regulation 29(7), or
 - (ii) benefits exchanged in accordance with Regulation 31 or 32.
- (3) Subject to paragraph (4), on 1st January of the scheme year following the scheme year in which the pensioner member pension record is first opened (the "first scheme year"), the opening balance (referred to in paragraph (2)(a)) for the first scheme year shall have an annual pension increase applied in accordance with Regulation 8 of the Funding and Valuation Regulations.
- (4) The annual pension increase shall, if required, be applied pro-rata to the opening balance according to the number of days in respect of which the pensioner member pension record is open in the first scheme year.
- (5) The balance with the increase applied under paragraph (3) or (4) becomes the closing balance for that same scheme year and that closing balance becomes the new opening balance for the next scheme year and thereafter on 1st January of each subsequent scheme year, the pensioner member pension record opening balance for the previous scheme year shall be increased in accordance with Regulation 8 of the Funding and Valuation Regulations.
- (6) Where, before 31st December in a scheme year, a deferred member becomes a pensioner member or dies, the pension increase in respect of that year shall be applied pro-rata to the closing balance of that deferred member pension record, according to the number of days in respect of which the deferred member pension record was open in that scheme year.

25 Survivor member pension record – deceased active member

- (1) In accordance with Regulation 20(3)(d), on the death of an active member, his or her active member pension record shall be closed and one or more survivor member pension records shall be opened from the day following the member's death.
- (2) The closing balance of the deceased member's active member pension record is the amount of pension accrued up to date of death.
- (3) On the day the survivor member pension record is opened, the record must specify –

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- (a) an opening balance which shall be comprised of the amount of pension calculated under Regulation 44(2) or (5) or Regulation 47 payable to the deceased active member's surviving partner, dependant or eligible child, minus any reduction applied under Regulation 46;
 - (b) the amount of any death in Scheme employment lump sum paid under Regulation 43; and
 - (c) the date from which the pension is to be paid.
- (4) Subject to paragraph (5), on 1st January of the scheme year following the scheme year in which the survivor member pension record is first opened (the "first scheme year"), the opening balance (referred to in paragraph (3)(a)) for the first scheme year shall have an annual pension increase applied in accordance with Regulation 8 of the Funding and Valuation Regulations.
 - (5) The annual pension increase shall, if required, be applied pro-rata to the opening balance according to the number of days in respect of which the survivor member pension record is open in the first scheme year.
 - (6) The opening balance with the increase applied under paragraph (4) or (5) becomes the closing balance for that same scheme year and that closing balance becomes the new opening balance for the next scheme year and thereafter on 1st January of each subsequent scheme year, the survivor member pension record opening balance for the previous scheme year shall be increased in accordance with Regulation 8 of the Funding and Valuation Regulations.

26 Survivor member pension record – deceased deferred member

- (1) In accordance with Regulation 20(3)(d), on the death of a deferred member, his or her deferred member pension record shall be closed and one or more survivor member pension records shall be opened from the day following the member's death.
- (2) The closing balance of the deceased member's deferred member pension record is the amount of pension accrued up to date of death with the pension increase applied pro-rata to that closing balance, according to the number of days in respect of which the deferred member pension record was open in that scheme year.
- (3) On the day the survivor member pension record is opened, the record must specify –
 - (a) an opening balance which shall be comprised of the amount of pension calculated under Regulation 45(2) or (4) or Regulation 47 payable to the deceased deferred member's surviving partner, dependant or eligible child, minus any reduction applied under Regulation 46; and
 - (b) the date from which the pension is to be paid.
- (4) Subject to paragraph (5), on 1st January of the scheme year following the scheme year in which the survivor member pension record is first opened (the "first scheme year"), the opening balance (referred to in

paragraph (3)(a)) for the first scheme year shall have an annual pension increase applied in accordance with Regulation 8 of the Funding and Valuation Regulations.

- (5) The annual pension increase shall, if required, be applied pro-rata to the opening balance according to the number of days in respect of which the survivor member pension record is open in the first scheme year.
- (6) The balance with the increase applied under paragraph (4) or (5) becomes the closing balance for that same scheme year and that closing balance becomes the new opening balance for the next scheme year and thereafter on 1st January of each subsequent scheme year, the survivor member pension record opening balance for the previous scheme year shall be increased in accordance with Regulation 8 of the Funding and Valuation Regulations.

27 Survivor member pension record – deceased pensioner member

- (1) In accordance with Regulation 20(3)(d), on the death of a pensioner member, his or her pensioner member pension record shall be closed and one or more survivor member pension records shall be opened from the day following the member's death.
- (2) The closing balance of the deceased member's pensioner member pension record is the amount of pension which would have been payable to that member on the day following his or her death.
- (3) On the day the survivor member pension record is opened, the record must specify –
 - (a) an opening balance which shall be comprised of the amount of pension calculated under Regulation 45(2) or (4) or Regulation 47 payable to the deceased pensioner member's surviving partner, dependant or eligible child, minus any reduction applied under Regulation 46; and
 - (b) the date from which the pension is to be paid.
- (4) Subject to paragraph (5), on 1st January of the scheme year following the scheme year in which the survivor member pension record is first opened (the "first scheme year"), the opening balance (referred to in paragraph (3)(a)) for the first scheme year shall have an annual pension increase applied in accordance with Regulation 8 of the Funding and Valuation Regulations.
- (5) The annual pension increase shall, if required, be applied pro-rata to the opening balance according to the number of days in respect of which the survivor member pension record is open in the first scheme year.
- (6) The balance with the increase applied under paragraph (4) or (5) becomes the closing balance for that same scheme year and that closing balance becomes the new opening balance for the next scheme year and thereafter on 1st January of each subsequent scheme year, the survivor member pension record opening balance for the previous scheme year shall be increased in accordance with Regulation 8 of the Funding and Valuation Regulations.

- (7) Where, before 31st December in a scheme year, a pensioner member dies, the pension increase in respect of that year shall be applied pro-rata to the closing balance of that pensioner member pension record, according to the number of days in respect of which the pensioner member pension record was open in that scheme year.

PART 5

RETIREMENT BENEFITS

Retirement at, before or after normal pension age

28 Normal pension age – exception

The normal pension age of a person referred to in Article 9(1) of the Law shall not apply to a uniformed member of the Scheme and the normal pension age for such a person shall be 60.

29 Retirement benefits

- (1) An active member who attains normal pension age shall, upon leaving Scheme employment, be entitled to the payment of retirement benefits without actuarial reduction.
- (2) An active member who attains normal pension age, but who does not leave Scheme employment, may defer payment of his or her retirement benefits to any date after that member's normal pension age up to the date when that member attains the age of 75.
- (3) Where paragraph (2) applies, the member and his or her employer must continue to pay their respective contributions as required under the Funding and Valuation Regulations.
- (4) A member who under paragraph (2) starts to receive payment of retirement benefits from a date after his or her normal pension age is entitled to enhancement of those benefits by a cost neutral amount.
- (5) A deferred member who attains normal pension age shall be entitled to the payment of retirement benefits without actuarial reduction.
- (6) Subject to paragraph (7) –
 - (a) an active or deferred ordinary member who is within 10 years of, but has not attained, his or her normal pension age; or
 - (b) an active or deferred uniformed member who is within 5 years of, but has not attained, his or her normal pension age,may request the Administrator to arrange the payment of that member's retirement benefits.
- (7) Retirement benefits paid under paragraph (6) shall be actuarially reduced by a cost neutral amount and in the case of an active member, that member is not entitled to those benefits until he or she has left Scheme employment.

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- (8) Regulation 42 applies for the purposes of the payment of retirement benefits under this Regulation.

30 Voluntary early retirement

- (1) An employer, with the consent of the Minister, may subject to paragraph (2) offer voluntary early retirement to an active member.
- (2) To be eligible for voluntary early retirement a member to whom paragraph (1) applies must –
- (a) have attained at least age 55 but not have attained normal pension age; and
 - (b) have volunteered to retire in consequence of the termination of his or her employment –
 - (i) by reason of redundancy, or
 - (ii) by mutual consent on the grounds of business efficiency.
- (3) An eligible member under paragraph (2) shall be entitled to receive payment of retirement benefits calculated as at the date he or she leaves Scheme employment, actuarially reduced by a cost neutral amount.
- (4) An employer may, at the request of an eligible member, pay into the fund from the moneys awarded to that member as a consequence of the termination of his or her employment, a lump sum of such an amount as the member requires, for the purchase of additional pension.
- (5) The Actuary shall advise the Committee on the amount of additional pension purchased under paragraph (4).
- (6) The Committee shall notify the Administrator of the amount so advised under paragraph (4) and which must be credited to the opening balance of the eligible member's pensioner member pension record in the year in which that record is opened.
- (7) The Actuary shall, before the end of every financial year provide a report to the Committee certifying the costs to the fund arising in the previous financial year which are attributable to the employer, as a consequence of an eligible member's retirement under this Regulation.
- (8) Where, under paragraph (7) the Actuary has certified an amount of additional costs to the fund, the Committee shall require the employer to pay the whole of that amount into the fund.

Alteration of how and when benefits may be taken

31 Conversion of retirement benefits into lump sum

- (1) Subject to Regulation 32(6) –
- (a) an active or deferred member who is entitled to the payment of his or her accrued retirement benefits under Regulation 29 (with or without actuarial reduction);
 - (b) an active member who is offered voluntary retirement under Regulation 30; or

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- (c) an active member who is eligible to receive an ill-health pension, may apply to the Administrator to exchange up to 30% of the amount of those benefits for a lump sum payment.
 - (2) If a member makes an application under paragraph (1), when those benefits become payable, the sum of £13.50 shall be paid per £1.00 of retirement benefits exchanged, so as to produce the lump sum payment.
 - (3) The amount of retirement benefits once exchanged, may not be varied.
 - (4) An application under this Regulation, Regulation 32 or 33 shall be made in such manner as the Administrator requires.

32 Conversion of retirement benefits into lump sum whilst in Scheme employment

- (1) This Regulation applies to –
 - (a) an active ordinary member of the Scheme who is within 10 years of, but has not attained, his or her normal pension age; or
 - (b) an active uniformed member of the Scheme who is within 5 years of, but has not attained, his or her normal pension age.
- (2) A member to whom this Regulation applies may apply to the Administrator to exchange up to 30% of the amount of his or her retirement benefits accrued as at the date of the application, for a lump sum payment payable whilst that member remains in Scheme employment.
- (3) If a member makes an application under paragraph (2), the sum of £13.50 shall be paid per £1.00 of retirement benefits exchanged, so as to produce the lump sum payment which shall be actuarially reduced by a cost neutral amount.
- (4) The amount of retirement benefits once exchanged, may not be varied.
- (5) The amount of retirement benefits accrued as at the date of the application shall be reduced by the percentage amount that the member has applied to exchange; and –
 - (a) the remaining balance of accrued benefits; and
 - (b) the amount of the lump sum payment,shall be recorded in that member's active member pension record.
- (6) A member who has received a lump sum payment under this Regulation is not entitled to make an application under Regulation 31.

33 Conversion of retirement benefits into lump sum – terminal illness

- (1) This Regulation applies to an active member who is eligible to payment of an ill-health pension under Regulation 36 and who the Independent Occupational Health Adviser certifies as having a life expectancy of 12 months or less.

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- (2) A member to whom this Regulation applies may apply to the Administrator to exchange the whole of his or her retirement benefits accrued as at the date of the application, for a lump sum payment equal to –
- (a) the maximum lump sum to which the member could have become entitled had he or she made an application under Regulation 31(1)(c) as soon as the member's employer decided that he or she was eligible to an ill-health pension; and
 - (b) the remaining balance of accrued retirement benefits after the exchange effected under paragraph (a), multiplied by 5,
- which shall be payable immediately the member leaves Scheme employment.
- (3) A lump sum payment under this Regulation shall extinguish a former active member's rights to any other benefits under the Scheme, but shall not extinguish the rights of any person contingently entitled to any benefit payable upon that former active member's death.

34 Conversion of retirement benefits into lump sum not exceeding £30,000

- (1) An active or deferred member may apply to the Administrator to receive a lump sum by way of exchange of the capital value of all his or her retirement benefits accrued under the Scheme provided that at the time the application is made –
- (a) the member has attained the age of 60;
 - (b) the member's accrued retirement benefits under Regulation 29 are not in payment; and
 - (c) the aggregate of the following amounts does not exceed £30,000 –
 - (i) the capital value of the member's benefits accrued under the Scheme,
 - (ii) all lump sums that the member has previously exchanged –
 - (A) under Article 131CE of the Income Tax Law, or
 - (B) before the commencement of the Income Tax (Amendment No. 44) (Jersey) Law 2014²⁰, under any of the previous trivial commutation provisions referred to in Article 131CE(2) of the Income Tax Law.
- (2) An exchange under paragraph (1) is not permitted where the capital value of the member's accrued benefits includes any amount transferred from another scheme, trust or contract (however called and whether approved under any Article of the Income Tax Law or under the jurisdiction of a country or territory outside Jersey).
- (3) An application under paragraph (1) shall be made in such form and manner as the Administrator may specify.
- (4) The calculation of the lump sum payable under this Regulation shall be determined by the Committee after consulting the Actuary.
- (5) Payment of the lump sum shall –

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- (a) in the case of –
 - (i) an active member, be made on the day after the member ceases Scheme employment, or
 - (ii) a deferred member, be made within 3 months of the date of the application under paragraph (1); and
 - (b) extinguish the member's rights to any other benefits under the Scheme, as well as the rights of any person contingently entitled to any benefit payable upon that member's death.

35 Conversion of retirement benefits into lump sum not exceeding £18,000

- (1) A deferred member may apply to the Administrator to receive a lump sum by way of exchange of the capital value of all his or her retirement benefits accrued under the Scheme provided that at the time the application is made –
 - (a) the member has ceased Scheme employment;
 - (b) the member's accrued retirement benefits under Regulation 29 are not in payment;
 - (c) the member's former employer is not making any contributions on the member's behalf to another approved Jersey scheme; and
 - (d) the value of the member's benefits accrued under the Scheme do not exceed £18,000.
- (2) An exchange under paragraph (1) is not permitted where the capital value of the member's accrued benefits includes any amount transferred from another scheme, trust or contract (however called and whether approved under any Article of the Income Tax Law or under the jurisdiction of a country or territory outside Jersey).
- (3) An application under paragraph (1) shall be made in such form and manner as the Administrator may specify.
- (4) The calculation of the lump sum payable under this Regulation shall be determined by the Committee after consulting the Actuary.
- (5) Payment of the lump sum shall extinguish the member's rights to any other benefits under the Scheme, as well as the rights of any person contingently entitled to any benefit payable upon the member's death.

Ill-health retirement

36 Early payment of retirement benefits on ill-health grounds

- (1) Retirement benefits payable under this Regulation shall be known as an ill-health pension and may be paid at 2 different levels –
 - (a) the standard level; or
 - (b) the enhanced level.
- (2) An ill-health pension under paragraph (1) is payable to an active member –

- (a) who has completed 2 or more years pensionable service; and
 - (b) whose employment is terminated on the grounds of ill-health, or mental or physical impairment, before that member attains normal pension age,
- provided that member's employer is satisfied that he or she meets the condition set out in paragraph (3).
- (3) The condition is that the member, as a result of ill-health, or mental or physical impairment is permanently incapable of efficiently performing the duties of the Scheme employment in which he or she is engaged.
 - (4) A member who meets the condition in paragraph (3) is eligible to receive –
 - (a) the standard level ill-health pension if his or her employer is satisfied that the member is likely to be able to engage in any other employment (whether Scheme employment or otherwise) before he or she attains normal pension age;
 - (b) the enhanced level ill-health pension if his or her employer is satisfied that the member is unlikely to be able to engage in any employment before he or she attains normal pension age.

37 Role of Independent Occupational Health Adviser

- (1) A decision as to whether a member is eligible under Regulation 36 to payment of an ill-health pension, and if so whether it should be at the standard level or enhanced level, shall be made by the member's employer after that employer has obtained a certificate from the Independent Occupational Health Adviser as to –
 - (a) whether the member satisfies the condition set out in Regulation 36(3); and
 - (b) the likelihood or not (as the case may be) of the member being capable of engaging in an employment before he or she attains normal pension age.
- (2) The Independent Occupational Health Adviser from whom the certificate is obtained under paragraph (1) must not have previously advised, or given an opinion on, or otherwise been involved in the particular case for which the certificate has been requested.

38 Pension records and calculation of ill-health pension

- (1) When an ill-health pension becomes payable under Regulation 36 –
 - (a) it shall be payable to the member as if he or she had attained normal pension age on the date the member's employment is terminated on the grounds of ill-health, or mental or physical impairment;
 - (b) the member's active member pension record shall be closed and a pensioner member pension record shall be opened in accordance with Regulation 23(1); and

- (c) the amount of standard level ill-health pension payable shall be calculated by reference to the pensioner member pension record opening balance required under Regulation 23(2).
- (2) If a member is eligible to receive the enhanced level ill-health pension, the amount of pension he or she receives shall be enhanced in accordance with paragraph (3).
- (3) The amount of enhancement is calculated by –
- (i) awarding an additional period of notional service specified in column 2 of the table by reference to the number of years of pensionable service accrued by the eligible member, specified in column 1 of the table, and
- (ii) applying the amount of notional pensionable earnings that member would have been paid over the additional period specified in column 2 of the table (calculated in accordance with Regulation 5), at the accrual rate applicable as at the date member’s employment is terminated as described in Regulation 36(2) –

1	2
Pensionable service accrued in last continuous period of Scheme employment	Additional period of notional service
Not exceeding 5 years	nil
Exceeding 5 years but not exceeding 10 years	a period of the same length as in column 1
Exceeding 10 years but not exceeding 13½ years	a period that increases the period in column 1 to 20 years
Exceeding 13½ years	6⅔ years

- (4) The additional period referred to in column 2 of the table shall be limited so that the member’s pensionable service (as notionally increased by the additional period) does not exceed the period of pensionable service which would have applied if the member had remained in Scheme employment until normal pension age.

39 Review of entitlement to ill-health pension

- (1) The Committee may, from time to time, require a person in receipt of an ill-health pension and who has not attained normal pension age, to undergo such medical examination as the Committee determines and in any case where the person refuses to undergo an examination the person’s pension or such part of it as the Committee deems appropriate shall be suspended until such time as the person undertakes that examination.

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- (2) If as a result of a medical examination carried out under paragraph (1), the Committee is advised that a person in receipt of –
 - (a) the enhanced level ill-health pension, is capable of engaging in any employment before he or she attains normal pension age, that person's enhanced level ill-health pension shall, from such date as the Committee determines, be substituted with the standard level ill-health pension the amount of which shall be calculated in accordance with Regulation 38(1)(c) as if the person had at the date of his or her ill-health retirement been awarded the standard level ill-health pension; or
 - (b) either the standard level ill-health pension or the enhanced level ill-health pension, is capable of efficiently performing the duties of the Scheme employment in which he or she was formerly engaged, that person shall, from such date as the Committee determines, cease to receive an ill-health pension.
 - (3) Where paragraph (2)(b) applies –
 - (a) the person's pensioner member pension record shall be closed and a deferred member pension record shall be opened; and
 - (b) the closing balance for the pensioner member pension record shall be calculated as if it were a closing balance referred to in Regulation 23(5) with the deduction of any enhancement applied under Regulation 38(2), and that balance shall become the opening balance for that person's deferred member pension record.

40 Inappropriate award of ill-health pension

- (1) This Regulation applies if as a result of a medical examination carried out under Regulation 39(1), the Committee is advised that a person in receipt of an ill-health pension should not have been determined by that person's former employer as satisfying the condition set out in Regulation 36(3).
- (2) The Committee may after –
 - (a) considering such medical reports as the Committee deems necessary; and
 - (b) consulting the Actuary,require that person's former employer to meet such costs as are attributable to the payment of that ill-health pension, as determined by the Actuary.

Increased retirement benefits and commencement of retirement benefits

41 Increased retirement benefits at request of employer

- (1) Subject to paragraph (2), the Administrator shall, at the request of an employer, increase the amount of retirement benefits payable under the Scheme in respect of –
 - (a) an employee or former employee; or

-
- (b) any specified class, category or description of such an employer's employees or former employees,
in accordance with this Regulation.
 - (2) An increase referred to in paragraph (1) shall only be applied if the Administrator is satisfied that –
 - (a) the request is the result of an agreement between the employer and any of the employees described in paragraph (1); and
 - (b) in the case of a former employee, the agreement applies retrospectively, and in the case of more than one employee described under paragraph (1)(b), the agreement applies to some or all of them.
 - (3) Retirement benefits shall –
 - (a) be increased by such an amount as the employer determines as representing an increase to the accrual of benefits under the Scheme;
 - (b) not be increased in any case where the total benefits that would result, would be more than any limits imposed by the Comptroller of Taxes under the Income Tax Law;
 - (c) not be increased more than 12 months after an employee enters or re-enters Scheme employment, unless the Minister in any particular case agrees to extend that period.
 - (4) If increased retirement benefits are payable under this Regulation, the employer shall pay to the fund the additional contributions that the Committee, after receiving the advice of the Actuary, determines is equal to the value of the increased benefits paid.
 - (5) The additional contributions shall be paid in full by the time the increased benefits under this Regulation become payable and may consist of –
 - (a) a single cash payment to the fund;
 - (b) a series of cash payments to the fund over a period; or
 - (c) a combination of the payments referred to in sub-paragraphs (a) and (b),
as determined by Committee after receiving the advice of the Actuary.
 - (6) The Actuary shall, before the end of every financial year provide a report to the Committee certifying the costs to the fund arising in the previous financial year which are attributable to the employer as a consequence of the operation of this Regulation, such costs being calculated as the aggregate of the additional contributions required under paragraphs (4) and (5).

42 Commencement of retirement benefits

- (1) In relation to an active member, retirement benefits under Regulation 29(1), (2) and (6), Regulation 30 and Regulation 36 shall be paid at the end of the month following the month in which the member leaves Scheme employment or attains age 75 (as the case may be), and

thereafter shall be paid at the end of each month until the relevant pensioner member pension record is closed.

- (2) In relation to a deferred member, retirement benefits under Regulation 29(5) and (6) shall, in respect of the first payment, be payable as soon as administratively possible and thereafter at the end of each month until the relevant pensioner member pension record is closed.

PART 6

SURVIVOR BENEFITS

Partners' and dependants' benefits

43 Death in Scheme employment – lump sum benefit

- (1) In this Regulation “lump sum recipients” in relation to a deceased active member, means –
 - (a) any of that member’s dependants or relatives;
 - (b) any individual or person (including a person referred to in subparagraph (a)) nominated by that member, on such form as the Administrator requires, to receive the whole or any part of a death in Scheme employment lump sum; or
 - (c) that member’s estate.
- (2) If an active member dies before attaining the age of 75, the Committee shall pay a death in Scheme employment lump sum to or for the benefit of one or more of that member’s lump sum recipients.
- (3) If, other than the deceased active member’s estate, there is more than one lump sum recipient, the Committee shall at its absolute discretion determine which of those lump sum recipients and in what proportions the lump sum shall be payable.
- (4) The death in Scheme employment lump sum shall be of an amount equal to 3 times the deceased active member’s notional pensionable earnings calculated in accordance with Regulation 5.
- (5) Where an active member dies whilst absent –
 - (a) on leave due to ill-health or injury; or
 - (b) under Regulation 9(3),that member shall be taken to have been paid notional pensionable earnings equivalent to the annual pensionable earnings he or she would have been paid (calculated in accordance with Regulation 5) had that member not otherwise been absent.
- (6) If the Committee has not made payments under paragraphs (2) and (3) equalling in aggregate the full amount of the death in Scheme employment lump sum before the expiry of –
 - (a) 2 years beginning with the date of the member’s death; or

- (b) 2 years beginning with the date on which the Committee could reasonably be expected to have become aware of the member's death,

it must pay an amount equal to the shortfall to the member's estate.

- (7) In paragraph (1)(a) "relatives" means any of the following persons –
 - (a) spouse;
 - (b) surviving civil partner or surviving nominated co-habiting partner;
 - (c) son or daughter;
 - (d) brother or sister;
 - (e) grandparent;
 - (f) grandchild;
 - (g) uncle or aunt;
 - (h) nephew or niece.

44 Survivor pension – partners and dependants of deceased active members

- (1) If an active member dies leaving a surviving partner, that partner is entitled to a pension which shall come into payment on the day following the member's death.
- (2) A pension payable under paragraph (1) shall consist of 50% of the retirement benefits the deceased active member –
 - (a) had accrued up to the date of death (disregarding any amount by which those benefits have been reduced if any exchange has been effected under Regulation 32); and
 - (b) would have accrued from the date of death until attaining normal pension age at the accrual rate applicable as at the date of the member's death, calculated in accordance with Regulation 5, butsubject to any reduction applied under Regulation 46.
- (3) Where, for the purposes of calculating the amount of benefits accrued up to the date of death, an active member died whilst absent –
 - (a) on leave due to ill-health or injury; or
 - (b) from employment under Regulation 9(3),that member shall be taken to have been paid notional pensionable earnings equivalent to the annual pensionable earnings he or she would have been paid (calculated in accordance with Regulation 5) had that member not otherwise been absent.
- (4) If a deceased active member leaves no surviving partner, a pension shall be payable to any person who satisfies the Committee that he or she is a dependant of that member.
- (5) A pension payable under paragraph (4) shall –
 - (a) if there is only one dependant, be of an amount equal to that which would have been payable in respect of a surviving partner calculated under paragraph (2); or

- (b) if there is more than one dependant, be of an amount equal to that which would have been payable in respect of a surviving partner calculated under paragraph (2), divided into 2 equal parts with –
 - (i) the first part being distributed equally amongst the dependants, and
 - (ii) the second part being distributed to one or more of the dependants in such proportions as the Committee determines, andon the death of any such dependant, each part shall be redistributed amongst the remaining dependants accordingly.

45 Survivor pension – partners and dependants of deceased deferred or pensioner members

- (1) If a deferred or pensioner member dies leaving a surviving partner, that partner is entitled to a pension which shall come into payment on the day following the member's death.
- (2) A pension payable under paragraph (1) shall consist of 50% of the retirement benefits (disregarding any amount by which those benefits have been reduced if any exchange has been effected under Regulation 31 or 32, as the case may be) the deceased deferred or pensioner member would, subject to any reduction applied under Regulation 46, have received on the day following his or her death.
- (3) If a deceased deferred or pensioner member leaves no surviving partner, a pension shall be payable to any person who satisfies the Committee that he or she is a dependant of that member.
- (4) A pension payable under paragraph (3) shall –
 - (a) if there is only one dependant, be of an amount equal to that which would have been payable in respect of a surviving partner calculated under paragraph (2); or
 - (b) if there is more than one dependant, be of an amount equal to that which would have been payable in respect of a surviving partner calculated under paragraph (2), divided into 2 equal parts with –
 - (i) the first part being distributed equally amongst the dependants, and
 - (ii) the second part being distributed to one or more of the dependants in such proportions as the Committee determines, andon the death of any such dependant, each part shall be redistributed amongst the remaining dependants accordingly.

46 Amount of survivor pension – reduction in specific cases

- (1) In this Regulation “dependant” means a person falling under paragraph (a) or (b) of the definition “dependant” under Regulation 1.
- (2) Subject to paragraph (3), where a surviving partner or dependant entitled to a pension under Regulation 44 or 45 is younger than the deceased

member by 20 years or more on the day on which he or she dies, a reduction of 2.5% for each year by which the deceased member's age is 20 years or more than that of the surviving partner or dependant, shall be applied to the amount of pension that would otherwise be payable to that surviving partner or dependant.

- (3) The application of a reduction under paragraph (2) shall not operate so as to reduce a surviving partner's or dependant's pension by more than 50%.
- (4) For the purposes of paragraph (2), a part of a year shall be treated as a whole year.

Children's pensions

47 Children's pension – children of deceased active, deferred or pensioner members

- (1) If an active, deferred or pensioner member ("member") dies leaving one or more eligible children, those children shall be entitled to a children's pension which shall come into payment on the day following the member's death.
- (2) If a member dies leaving a surviving partner or a dependant, a pension payable under paragraph (1) shall be payable to that partner or dependant in respect of, and to be applied for the benefit of an eligible child, consisting of an amount equal to 50% of the retirement benefits payable to that surviving partner or dependant in accordance with Regulation 44(2) or 45(2) (as the case may be).
- (3) If a member dies leaving a surviving partner or dependant and 2 or more eligible children the pension payable in respect of those children shall consist of an amount equal to 100% of the retirement benefits payable to that surviving partner or dependant divided equally by the number of children.
- (4) The Committee, if it is satisfied that an eligible child is in the care of, or is being maintained by a person other than the surviving partner, may at its absolute discretion pay the children's pension to that other person to be applied for the benefit of that child.
- (5) If a member dies leaving no surviving partner or dependant, or if a surviving partner or all of that member's dependants die after a survivor pension has come into payment, the amount of children's pension shall be doubled.
- (6) When an eligible child ceases to be eligible to receive a pension or if an eligible child has his or her pension temporarily suspended under paragraph (8), the amount payable –
 - (a) in respect of any other eligible child, shall be equal to the amount payable under paragraph (2) or (5) (as the case may be); or
 - (b) if there is more than one eligible child, shall be of an amount equal to the amount payable under paragraph (3) or (5) (as the case may be).

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- (7) This paragraph applies in relation to an eligible child aged 18 or over but under the age of 23 who is not for the time being in full-time education or vocational training.
 - (8) Where paragraph (7) applies, the Committee may temporarily suspend payment of a children's pension, if, having considered such evidence as is provided on behalf of the child, it is satisfied that the child is expected to engage in, or resume full-time education or vocational training before the age of 23.
 - (9) A decision under paragraph (8) may be varied in the light of further evidence.
 - (10) When payment of a children's pension resumes following temporary suspension under paragraph (8) –
 - (a) that pension shall have such annual pension increase applied in accordance with Regulation 8 of the Funding and Valuation Regulations, as if it had continued to be a pension in payment; and
 - (b) the amount payable in respect of any other eligible child as increased under paragraph (6) shall be decreased accordingly.
 - (11) The Committee may from time to time request in respect of an eligible child who is aged 18 or over (but under the age of 23), such evidence as the Committee requires –
 - (a) regarding that child's full-time education or vocational training; or
 - (b) regarding that child's physical or mental impairment, if he or she is not otherwise engaged in gainful employment because of physical or mental impairment, and

if such evidence is not supplied or is not in the opinion of the Committee satisfactory, the children's pension may be suspended until such evidence is supplied or satisfies the Committee.

PART 7

MISCELLANEOUS AND CLOSING PROVISIONS

General matters

48 Interest on late payment of Scheme benefits

- (1) Where the Administrator has failed to pay some or all of any retirement benefits under Part 5 within one year of the date those benefits became payable, the Committee shall pay out of the fund, interest on the unpaid amount to the person in respect of whom those benefits are payable.
- (2) Where the Committee has failed to pay some or all of any survivor benefits under Part 6 within one year of the date on which the Committee has determined to pay those benefits, the Committee shall pay out of the fund, interest on the unpaid amount to the person in respect of whom those benefits are payable.

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- (3) Interest payable under this Regulation is calculated at the Bank of England base rate on a day to day basis from the date on which the benefits were payable, and compounded with yearly rests.

49 Bankruptcy and non-assignment of Scheme benefits

- (1) If an active, deferred or pensioner member becomes bankrupt, no part of his or her retirement benefits under the Scheme are assignable or chargeable with that member's or any other person's debts or liabilities, but at the date such benefits become payable under these Regulations, those benefits –
- (a) shall vest in the Committee who may at its absolute discretion pay such benefits –
- (i) to the member, or
- (ii) to that member's husband or wife, nominated cohabiting partner, civil partner or dependant; or
- (b) shall, where the member has died, vest in the Committee, who may at its absolute discretion pay such benefits to the member's surviving partner, eligible child or dependant in accordance with Part 6.
- (2) For the purposes of paragraph (1)(a)(ii), "dependant" means in relation to an active, deferred or pensioner member who has not died –
- (a) a child, if that child is a natural or adopted child of that member, or is a step-child or child accepted by that member as a member of the family and is dependent on that member, and –
- (i) is under the age of 18,
- (ii) is under the age of 23 and is in full-time education or vocational training, or
- (iii) is under the age of 23 and, in the opinion of the Committee, is not otherwise able to engage in gainful employment because of physical or mental impairment; or
- (b) a person other than a child referred to in sub-paragraph (a), if, in the opinion of the Committee –
- (i) the person is financially dependent on that member for the provision of most of the ordinary necessities of life,
- (ii) the person is in a mutually dependent financial relationship with that member, or
- (iii) the person is dependent on that member because of physical or mental impairment which, subject to such medical examination of the person as the Committee requires, the Committee determines is likely to be permanent.

Forfeiture

50 Forfeiture of Scheme benefits

Schedule 2 makes provision as to the forfeiture of accrued retirement benefits and benefits in payment in respect of persons entitled to retirement benefits or other benefits under the Scheme.

Closing

51 Citation and commencement

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

SCHEDULE 1

(Regulation 7)

EXTENSION OF SCHEME - ADMITTED EMPLOYERS

1 Interpretation

In this Schedule –

“admission agreement” means an agreement between the Minister and an employer described in paragraph 2(1) and (4)(b), which sets out the terms upon which the employer is admitted to the Scheme;

“public utility undertaking” means any legal person authorized by or under any enactment to carry on an electricity, or a gas, postal services, telecommunications or water undertaking;

“statutory undertaking” means an undertaking established under an enactment;

“valuation” has the meaning given in Regulation 3(1) of the Funding and Valuation Regulations.

2 Participation of certain employers and employees

(1) Subject to paragraph 3, the Minister on the application of an employer who –

- (a) is a parish;
- (b) is a public utility undertaking;
- (c) is a statutory undertaking;
- (d) has replaced an administration of the States (within the meaning of Article 1 of the Employment of States of Jersey Employees (Jersey) Law 2005²¹);
- (e) has otherwise taken over the employment of any employees who are members of the Scheme or the 1967 Scheme; or
- (f) not being one of the foregoing, satisfies the Minister that persons employed by the employer are employed in work of a nature which might properly be undertaken by a member,

may, after consulting the Committee and the Actuary, admit the employer to the Scheme.

(2) If, following consultation under sub-paragraph (1), an employer is accepted for admission to the Scheme, the employer shall enter into an admission agreement with the Minister, in accordance with paragraph 4.

(3) If –

- (a) an employer described in sub-paragraph (1)(d) is accepted for admission to the Scheme under sub-paragraph (2), and on the date of admission employs any person who immediately before the date of replacement of an administration of the States by that employer

was an employee of that administration, that employee shall continue to be a member of the Scheme, or the 1967 Scheme (as the case may be) notwithstanding the replacement of that administration; or

- (b) an employer described in sub-paragraph (1)(e) is accepted for admission to the Scheme under sub-paragraph (2) and on the date of admission employs any person who immediately before the date of the taking over of his or her employment is a member of the Scheme or the 1967 Scheme (as the case may be), that person shall continue to be a member of the Scheme, or the 1967 Scheme (as the case may be) notwithstanding the taking over of his or her employment.
- (4) This sub-paragraph applies to –
 - (a) an employer described in sub-paragraph (3); or
 - (b) an employer 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,
and who employs any person who is a member of the 1967 Scheme.
- (5) An employer to whom sub-paragraph (4) applies, shall be taken to be an employer admitted in respect of the 1967 Scheme, and the 1967 Scheme Regulations shall apply to the extent that the employer exercises any functions under those Regulations in respect of any employees who are members of that scheme.
- (6) An employer referred to in sub-paragraph (4)(b) shall, for the purposes of the Scheme, enter into an admission agreement with the Minister, in accordance with paragraph 4.

3 Pre-admission requirements

- (1) Before the Minister admits an employer under paragraph 2(1) –
 - (a) the Minister shall carry out an assessment taking account of actuarial advice, of the level of risk arising on the premature ending of participation by reason of insolvency, winding up or liquidation of the employer;
 - (b) the Committee shall cause to be obtained –
 - (i) from the Actuary, notwithstanding Regulation 3 of the Funding and Valuation Regulations, a certificate as to the amounts to be contributed to the fund by the employer, and
 - (ii) from the employer –
 - (A) such evidence as the Committee requires of the employer's actual and long-term ability to pay the contributions certified by the Actuary, and
 - (B) such information as the Committee requires relating to the employer and the employees that are to be admitted.

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- (2) the Actuary shall review any certificate obtained under sub-paragraph (1)(b)(i) before the expiry of 3 months after the date at which the valuation is presented under Regulation 3(3) of the Funding and Valuation Regulations, and following each review shall issue a new certificate as to the amounts to be contributed.

4 Admission agreement requirements

- (1) Where an employer is admitted to the Scheme, the employer shall, on entering into an admission agreement comply with –
- (a) the terms and conditions specified in sub-paragraph (2); and
 - (b) such other terms and conditions as the Minister may determine, which shall be also be set out in that admission agreement.
- (2) An admission agreement must include –
- (a) where the employer is not one in respect of whom paragraph 2(3) or (4)(b) applies, provision as to whether any named individual, class or category or description of employee is, or is not eligible to become an active member of the Scheme on the day his or her employment with an admitted employer begins;
 - (b) a requirement that the employer will make good any shortfall in contributions that arises from the employer's error in respect of a change in the salaries of the employees or from any other cause;
 - (c) a requirement that the employer will not do anything to prejudice the status of the Scheme as a recognized overseas pension scheme within the meaning of section 150(8) of the UK Finance Act;
 - (d) a requirement that where the employer is to make a decision under Regulation 37 as to an active member's eligibility for, and level of ill-health pension, that the employer must obtain a certificate from no person other than the Independent Occupational Health Adviser, and that the employer shall pay the costs of obtaining that certificate;
 - (e) a requirement that the employer provide from time to time, on demand by the Committee, such evidence as the Committee requires of the employer's actual and long-term ability to pay the contributions certified by the Actuary;
 - (f) a requirement that the employer provide from time to time on demand by the Committee, a certificate from the employer's auditor certifying that the employer has paid all contributions due to the fund and any other amounts required to be paid by the employer under Scheme Regulations or the 1967 Scheme Regulations;
 - (g) a requirement that the employer provide all information that may reasonably be required by the Actuary, Administrator, Committee or Minister in the exercise of their functions under Scheme Regulations or the 1967 Scheme Regulations;
 - (h) a requirement that the employer notify the Minister of any matter which may affect the employer's participation in the Scheme;

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- (i) a requirement that the employer notify the Minister of any actual or proposed change in its status, including an amalgamation, reconstruction or take-over, bankruptcy, insolvency, liquidation, receivership or winding up, or a material change to the employer's business or constitution;
 - (j) provision for it to terminate in the event that an employer ceases to be an employer of a description set out in paragraph 2(1);
 - (k) provision as to the payment of a termination contribution in the event of an employer being unable to give notice of termination in accordance with paragraph 8;
 - (l) a right for the Minister to carry out from time to time a review risk assessment, being an assessment described in paragraph 3(1)(a);
 - (m) a right for the Minister to terminate the agreement in the event of –
 - (i) any of the circumstances set out in clause (i),
 - (ii) a material breach by the employer of any of the employer's obligations under the admission agreement or these Regulations which has not been remedied within a reasonable time,
 - (iii) a failure by the employer to pay any sums due to the fund within a reasonable period after receipt of a notice from the Minister requiring the employer to do so.

5 Indemnities and bonds etc.

- (1) Where the level of risk identified by the assessment carried out under paragraph 3(1)(a) is such as to require it, the Minister in consultation with the Committee and on taking actuarial advice, may determine that the admission agreement include one of the following requirements –
 - (a) that the employer enter into an indemnity or bond in a form approved by the Minister, with a person who is registered under Article 9 of the Financial Services (Jersey) Law 1998²² to carry on financial service business within the meaning of Article 2 of that Law;
 - (b) that the employer shall pay into a separate admission agreement fund, contributions of such an amount as certified by the Actuary which are in addition to those certified payable to the fund under paragraph 3(1)(b)(i); or
 - (c) that the employer secures a guarantee in a form satisfactory to the Committee, from –
 - (i) a person who funds the employer, in whole or in part,
 - (ii) a person who owns or controls the exercise of the functions of the employer, or
 - (iii) the States of Jersey, where the employer is –
 - (A) an employer falling under paragraph 2(1)(d), and
 - (B) established by or under any enactment which makes provision for that employer to be funded in whole or in part, by the States of Jersey.

- (2) Where at any time after an employer has entered into an admission agreement, a level of risk identified by a review risk assessment described under paragraph 4(2)(1) is such as to require it, the Minister on taking actuarial advice, may determine that the employer enter into a supplementary agreement with the Minister which shall include one or more of the requirements set out under sub-paragraph (1)(a) to (c).
- (3) Failure by an employer to enter into a supplementary agreement may be taken to amount to a material breach of the employer's obligations such as to result in the termination of the admission agreement, as described in paragraph 4(2)(m)(ii).

6 Contributions and other payments

- (1) The contributions certified by the Actuary as payable by an admitted employer to the fund, the admission agreement fund, and any other amounts required to be paid by the employer under –
 - (a) Regulation 11(7) and (8) of the Funding and Valuation Regulations;
 - (b) Regulation 14(3)(a); or
 - (c) a notice given by the Committee under paragraph 7(2)(b),shall be paid by that employer on or before the expiry of one month following the end of the month in which those contributions or other amounts fall due, and any outstanding amounts due from that employer shall be recoverable as a civil debt to the Committee.
- (2) Every payment referred to in sub-paragraph (1)(a) and (b) must be accompanied by a statement showing –
 - (a) the total pensionable earnings paid to active members during the period covered by the statement (including any notional pensionable earnings members were treated as being paid during that period);
 - (b) the total member contributions deducted from the pensionable earnings referred to in clause (a);
 - (c) the total employer contributions in respect of the pensionable earnings referred to in clause (a);
 - (d) the total additional voluntary contributions paid by active members under Regulation 15, during the period covered by the statement; and
 - (e) any changes to an active member's employment status.
- (3) The Administrator may direct that the information required under sub-paragraph (2) shall be given in such form, and at such intervals (not exceeding 12 months) as the Administrator specifies in the direction.
- (4) The Actuary shall also certify such other amount of contributions as the Actuary may determine –
 - (a) as being reasonably attributable to the employer in respect of the capitalized value, from time to time, of the debt transferred to the

fund in respect of the 1967 Scheme when that scheme was amended with effect from 1st January 1988; or

- (b) are required from the employer so as to address any shortfall in assets attributable to that employer, arising from any cause.
- (5) Sub-paragraph (4)(a) applies regardless of whether or not an employer employs a continuing member of the 1967 Scheme.

7 Additional costs arising from admitted employer's level of performance

- (1) This paragraph applies where, in the opinion of the Committee, the fund has incurred additional costs which should be recovered from an admitted employer because of that employer's level of performance in carrying out its functions under Scheme Regulations or the 1967 Scheme Regulations.
- (2) The Committee may give written notice to the admitted employer –
 - (a) stating the Committee's reasons for forming the opinion mentioned in sub-paragraph (1);
 - (b) stating the amount the Committee has determined the admitted employer should pay in respect of those costs and the basis on which the specified amount is calculated;
 - (c) stating, where the Committee has prepared a pension administration strategy under Regulation 20 of the Administration Regulations, the provisions of the strategy which are relevant to the decision to give the notice and to the matters in clauses (a) and (b); and
 - (d) requiring payment of the additional costs.

8 Ending of participation

- (1) An admitted employer shall give 6 months' notice to the Committee and the Minister that –
 - (a) some of the employer's employees; or
 - (b) all of the employer's employees and the employer,participating in the respective schemes, intend to cease participating in either one of or both of those schemes on the date the notice expires.
- (2) The Minister may, provided the Committee so agrees having obtained the advice of the Actuary, give an employer 6 months' notice to cease participating in either one of or both of the respective schemes.
- (3) Upon expiry of the notice given under sub-paragraph (1) or (2), the Committee shall arrange for such part of the assets of the fund as are certified by the Actuary to be appropriate to be set aside, to be applied or disposed of in accordance with paragraph 9, for the benefit of such of those employees who cease to participate in the respective schemes.
- (4) Before the Actuary certifies the assets to be set aside under sub-paragraph (3), the Actuary shall issue a termination contribution as described in sub-paragraph (5) –

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- (a) in respect of whichever of the schemes the notice under sub-paragraph (1) or (2) applies; or
 - (b) for each of the respective schemes if the notice under sub-paragraph (1) or (2) applies to both schemes.
- (5) Subject to sub-paragraph (6), the termination contribution shall be –
- (a) the past service liabilities of the respective schemes attributable to the employees who are to cease their participation in the Scheme, or the 1967 Scheme, as the case may be; minus
 - (b) the part of the assets that would be appropriate to be set aside and applied in accordance with sub-paragraph (3), if no amount were paid in respect of those assets under sub-paragraph (8).
- (6) The termination contribution in sub-paragraph (5) shall be zero if that part of the assets mentioned in sub-paragraph (5)(b) exceeds the past service liabilities mentioned in sub-paragraph (5)(a).
- (7) The past service liabilities shall be calculated on the actuarial assumptions used in respect of the most recent valuation of the fund undertaken in accordance with Regulation 3 of the Funding and Valuation Regulations, and shall include allowances for projected salary and pension increases applied in accordance with those assumptions.
- (8) The employer shall, before the expiry of the 6 months' notice period, pay into the fund the amount of the termination contribution and that amount shall be included in the part of the assets to be set aside as certified by the Actuary under sub-paragraph (3).
- (9) If any part of a termination contribution is left unpaid, the Committee is not required under sub-paragraph (3) to apply or otherwise dispose of such of those assets which correspond to the part of the contribution left unpaid.

9 Application or disposal of assets for benefit of employees

- (1) The assets set aside under paragraph 8(3) may be applied or disposed of in any of the ways described in this paragraph.
- (2) Subject to sub-paragraph (3), where an employer to whom paragraph 8 applies, has established a pension scheme, such part of the assets of the fund as in the opinion of the Actuary relate to any of those employees who becomes a member of such a pension scheme, may be transferred to that scheme.
- (3) A transfer under sub-paragraph (2) shall occur provided that –
 - (a) by a date specified by the Committee, the employer and employee both request such a transfer of assets; and
 - (b) the Committee is satisfied that the terms of the transfer are fair in all the circumstances.
- (4) Where –
 - (a) sub-paragraph (2) does not apply; or

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- (b) an employee becomes a member of his or her employer's pension scheme referred to in sub-paragraph (2), but no transfer of assets occurs in respect of that employee,
- the Committee shall apply or dispose of the assets set aside, in accordance with sub-paragraphs (5) or (8).
- (5) An employee may, by a date specified by the Committee, request that the Committee –
- (a) purchase annuities in accordance with sub-paragraph (6) from an insurance company or office of good repute, for the purpose of satisfying any pension or other benefits which may in future become payable under the respective schemes by virtue of the employee's membership; or
- (b) pay a transfer value to the trustees or managers of –
- (i) any other pension scheme of which the employee becomes a member, or
- (ii) the employee's personal pension scheme.
- (6) Where annuities are to be purchased under sub-paragraph (5)(a) –
- (a) any increase on pensions in payment and on deferred pensions shall (instead of being as provided by Regulations 8 or 12 of the Funding and Valuation Regulations) be as determined by the Committee on the advice of the Actuary, having regard to the proportion of the assets of the fund which are to be set aside; and
- (b) any annuity so purchased shall be purchased in the name of the employee or in the name of a trustee or trustees for the employee's benefit.
- (7) The purchase of an annuity in respect of an employee, or the payment of a transfer value under this paragraph shall extinguish the employee's rights to any pension or other benefits under the Scheme, or the 1967 Scheme (as the case may be), as well as the rights of any person contingently entitled to any benefit upon the employee's death.
- (8) Where the Committee receives no request under sub-paragraph (5), the employee shall be entitled to a deferred pension under Regulation 29 or, where applicable, under equivalent provisions of the 1967 Scheme Regulations, subject to such adjustment (if any) as the Actuary thinks fit on taking into account the value of the part of the assets certified under paragraph 8(3).

SCHEDULE 2

(Regulation 50)

FORFEITURE OF SCHEME BENEFITS

1 Interpretation

In this Schedule –

- (a) “competent court” means the Royal Court, Petty Debts Court, or Magistrate’s Court;
- (b) “judgment of the court” includes a judgment of a superior court of any country outside Jersey in respect of which an Act under Article 3 of the Judgments (Reciprocal Enforcement) (Jersey) Law 1960²³ applies, provided such judgment has been registered in accordance with Article 4 of that Law.

2 Circumstances leading to forfeiture of benefits

- (1) This Schedule applies to –
 - (a) an active member who is in Scheme employment at the time –
 - (i) an offence described in sub-paragraph (4)(a) to (c) is committed (of which the member is later convicted), or
 - (ii) monetary loss occurs to an employer or the fund under sub-paragraph (4)(d);
 - (b) a person described in sub-paragraph (4)(e) or (f).
- (2) Subject to sub-paragraph (3), a person to whom this Schedule applies may have his or her accrued retirement benefits or benefits in payment forfeited in any of the circumstances set out in sub-paragraph (4).
- (3) The reference to “accrued retirement benefits” in sub-paragraph (2), shall not include any retirement benefits transferred into the fund under Regulation 23 of the Administration Regulations in relation to forfeiture of accrued benefits in the circumstances set out in sub-paragraph (4)(a) to (c).
- (4) The circumstances referred to in sub-paragraph (2) are –
 - (a) where the member is convicted of an offence committed in connection with his or her employment or office for which –
 - (i) in the case of one offence, the member is sentenced to a term of imprisonment of at least 5 years, or
 - (ii) in the case of more than one offence, the member is sentenced on the same occasion to 2 or more consecutive terms of imprisonment amounting in aggregate to at least 5 years;
 - (b) where the member is convicted of treason;

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- (c) where the member is convicted of an offence under the Official Secrets (Jersey) Law 1952²⁴ for which –
 - (i) in the case of one offence, the member is sentenced to a term of imprisonment of at least 10 years, or
 - (ii) in the case of more than one offence, the member is sentenced on the same occasion to 2 or more consecutive terms of imprisonment amounting in aggregate to at least 10 years;
 - (d) where the member has caused a monetary loss to an employer or the fund as a result of a criminal act by him or her;
 - (e) where a person entitled to receive retirement benefits or other benefits under the Scheme fails to make a claim before the expiry of 7 years from the date upon which the retirement benefits or other benefits become payable;
 - (f) where the member's surviving partner, dependant or eligible child is convicted of the offence of murder or manslaughter of that member.

3 Application for forfeiture certificate

- (1) An employer may, in the circumstances described in paragraph 2(4), apply to the Minister for forfeiture of a person's accrued retirement benefits or benefits in payment, and a copy of the application must be provided to the person concerned.
- (2) An application for forfeiture must be made before the expiry of 6 months beginning with –
 - (a) the date of the person's conviction, or if later, the date at which any right of appeal in relation to the conviction is finally determined; or
 - (b) the date of any order or judgment of a competent court against, or in respect of the person concerned, that requires a person to make good any monetary loss to the employer or the fund or, if later, the date at which any right of appeal against the order or judgment is finally determined.
- (3) An application for a forfeiture certificate in the circumstances described in paragraph 2(4)(e) may be made at any time after the expiry the 7 year period referred to in that paragraph.

4 Certificate and extent of forfeiture

- (1) Subject to the provisions of this paragraph, the Minister may, in respect of an application under paragraph 3, determine to issue a forfeiture certificate in respect of a specified amount or percentage of benefits.
- (2) In respect of an application for forfeiture concerning conviction for an offence falling under paragraph 2(4)(a), the Minister must certify that the commission of that offence has been gravely injurious to the States of Jersey or is liable to lead to a serious loss of confidence in the public service.

- (3) In respect of an application for forfeiture concerning conviction for an offence falling under paragraph 2(4)(a) or (c), where the commission of the offence in question is not discovered until after the member has left Scheme employment, the Minister may in determining whether to issue a certificate and its amount, take into account the period which has elapsed between the date of the commission of the offence and the date of conviction.
- (4) The member's accrued retirement benefits or benefits in payment under the Scheme may be forfeited under paragraph 2(4)(d) only to the extent that those benefits do not exceed the amount of the monetary loss in question, or (if less), the value of the member's accrued retirement benefits or benefits in payment as determined by the Administrator upon the advice of the Actuary.
- (5) Except in a case falling under paragraph 2(4)(d), (e) or (f), the amount forfeited must not include any amount representing the member's own contributions.

5 Effect of forfeiture

- (1) Where a person to whom this Schedule applies has had his or her retirement benefits or benefits in payment forfeited in whole, or in part, a copy of the forfeiture certificate issued under paragraph 4 must be provided to the person concerned, and contain a statement showing the amount forfeited and the effect of the forfeiture on the person's future benefits under the Scheme.
- (2) Where a forfeiture certificate is issued under paragraph 4, the Administrator must, subject to any appeal against the Minister's determination under that paragraph, transfer out of the person's pension record, an amount representing the value of the benefits to be forfeited and pay that amount to the person's employer, or the fund in a case falling under paragraph 2(4)(d).
- (3) If the effect of forfeiture is to extinguish the person's entitlement to any rights or benefits under the Scheme, the Administrator must close the person's pension record.
- (4) Where a person's accrued retirement benefits or benefits in payment are forfeited in whole, or in part, the fund shall be discharged of any actual or contingent liability in respect of those forfeited rights or benefits.

6 Appeals

- (1) This paragraph applies where a person is aggrieved by the Minister's determination under paragraph 4.
- (2) A person may give notice of appeal to the Royal Court before the expiry of 28 days beginning with the day of receipt of the forfeiture certificate provided under paragraph 5 and the Court may, after considering the case, make such order as appears to it to be just.

1	<i>L.18/2014</i>
2	<i>chapter 16.650</i>
3	<i>P.96/2015</i>
4	<i>chapter 03.250</i>
5	<i>chapter 05.255</i>
6	<i>chapter 12.260</i>
7	<i>chapter 16.650.48</i>
8	<i>chapter 16.650.24</i>
9	<i>chapter 16.650.12</i>
10	<i>P.97/2015</i>
11	<i>chapter 16.650.36</i>
12	<i>chapter 24.750</i>
13	<i>chapter 16.325</i>
14	<i>L.18/2014</i>
15	<i>chapter 16.650.60</i>
16	<i>P.99/2015</i>
17	<i>chapter 23.820</i>
18	<i>chapter 23.175</i>
19	<i>chapter 23.775</i>
20	<i>L.48/2014</i>
21	<i>chapter 16.325</i>
22	<i>chapter 13.225</i>
23	<i>chapter 04.480</i>
24	<i>chapter 16.450</i>