



Isle of Man

Ellan Vannin

AT 18 of 2011

PUBLIC SECTOR PENSIONS ACT 2011



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**Isle of Man***Ellan Vannin*

PUBLIC SECTOR PENSIONS ACT 2011

Signed in Tynwald: 12 July 2011
Received Royal Assent: 11 November 2011
Announced to Tynwald: 15 November 2011

AN ACT to establish the Public Sector Pensions Authority; to make new provision for the superannuation of persons in the public service; and for connected purposes.

BE IT ENACTED by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

1 Short title

The short title of this Act is the Public Sector Pensions Act 2011.

2 Commencement

- (1) This Act (apart from this section and section 1) comes into operation on such day or days as the Council of Ministers may by order appoint and different days may be appointed for different purposes of the Act.¹
- (2) An Order under subsection (1) may make such transitional and saving provision as the Council of Ministers considers necessary or expedient.

3 Application

[1984/8/1]

- (1) This Act applies in respect of the superannuation of the following public sector office holders and employees (to be known in this Act as “public sector employees”)¹ —
 - (a) judges of the High Court (within the meaning of section 3(1) of the *High Court Act 1991*);

¹ By Art 4 of SD2016/0132 Members of Tynwald are added to section 3(1) with effect from 11/04/2016. See Art 3 of SD2016/0132 for the interpretation relevant to this addition.

- (b) the Attorney General and Her Majesty's Solicitor General for the Island;²
 - (c) persons employed by, or holding office within, a Department, Statutory Board, office of Government or other public sector entity other than Ministers or members of Departments;³
 - (d) [Repealed]⁴
 - (e) the holder of the office of Clerk of Tynwald;
 - (f) a person employed in the Office of the Clerk of Tynwald;
 - (g) the Tynwald Commissioner for Administration and the staff of the Commissioner; and⁵
 - (h) the Tynwald Auditor General and the staff of the Auditor General.⁶
- (2) However, a scheme may be made under this Act in respect of —
- (a) [Repealed]⁷
 - (b) a person mentioned in subsection (1)(e), (f), (g) or (h) only if, after consultation with such person or body as Tynwald may by resolution designate for the purposes of this section, the President of Tynwald and the Speaker so determine and such determination is laid before Tynwald as soon as practicable after it is made.⁸
- (3) The following persons are treated for the purposes of this Act as falling within subsection (1)(c)² —
- (a) any persons engaged in any of the services mentioned in section 15 of the *National Health Service Act 2001* ;
 - (b) Coroners;
 - (c) the Isle of Man Information Commissioner appointed under section 52 of the *Freedom of Information Act 2015*;⁹
 - (d) the Industrial Relations Officers appointed under section 5(1) of the *Trade Disputes Act 1985* ;
 - (e) persons employed on a full-time basis by the governing body of a maintained school (within the meaning of the *Education Act 2001*) if the Department of Education, Sport and Culture, with the consent of the PSPA, so resolves;¹⁰
 - (f) officers and employees of any local authority and other persons for whom the Department of Infrastructure considers it appropriate to provide superannuation;
 - (g) persons employed by Radio Manx Limited;
 - (h) persons employed by Hospice Care Limited; and

² By Art 4 of SD2014/0248 persons who have been transferred from an Employing Authority to an organisation outside of the Public Sector under the terms of an Admission Arrangement are added to section 3(3) with effect from 18/07/2014. See Art 3 of SD2014/0248 for the interpretation relevant to this addition.

- (i) persons —
 - (i) who have been transferred from a relevant employing authority to an employer not falling within subsection (1) or any of the preceding paragraphs of this section; and
 - (ii) in respect of those whose transfer an admission agreement has been made.^{11 12}

(3A) In this section —

“admission agreement” means an agreement permitting a public sector employee whose employment is transferred to an external provider of the services for the purposes of which the public sector employee served (before the transfer) with the relevant employing authority, to remain a member of the scheme relating to his or her former employment for so long as he or she is wholly or mainly employed in connection with the delivery of the service which is the subject of the transfer;

“relevant employing authority” means a Department or Statutory Board or any of the bodies referred to in subsection (3)(a), (e) or (f).¹³

- (4) The PSPA may by regulations amend this section so as to —
 - (a) apply or disapply this Act in respect of the superannuation of any person or class of persons; or
 - (b) impose any requirements or conditions that must be fulfilled in order for a scheme to be made under this Act in respect of any person or class of persons.

3A Saving provision for existing members of judicial schemes

Despite the repeal of section 3(2)(a) (which required the consent of a person mentioned in section 3(1)(a) or (b) for schemes), the consent of a person mentioned in section 3(1)(a) or (b) (as appropriate) is required to amend a scheme where —

- (a) the scheme was in existence immediately before the repeal of section 3(2)(a);
- (b) at that time the person was a member of the scheme; and
- (c) the amendment would adversely affect the rights of the person in question under the scheme.¹⁴

4 Interpretation

[1984/8/13]

In this Act —

“**1984 Act**” means the *Superannuation Act 1984* ;

“**enactment**” includes any provision —

- (a) contained in an Act of Parliament; or

- (b) contained in an instrument of a legislative character made under any such provision;

“**modifications**” includes adaptations, variations and exceptions of whatever extent;

“**pensionable service**” means service to be taken into account under this Act for the purpose of determining whether a person is entitled to any, and if so what, superannuation on leaving that service, and includes all such service irrespective of whether the period is sufficient to entitle the person to such superannuation;

“**PSPA**” means the Public Sector Pensions Authority established by section 5(1);

“**public sector employee**” means a person in respect of whose superannuation this Act applies in accordance with section 3;

“**scheme**” means a superannuation scheme made, or treated by this Act as made, under this Act and includes any superannuation provisions originally made by order or regulations and treated as a scheme validly made by the PSPA under this Act in accordance with paragraph 1 of Schedule 1;¹⁵

“**superannuation**” means pensions (whether contributory or not), allowances and gratuities, and includes the return of contributions (with or without interest or any other addition) paid in respect of superannuation and compensation for those who suffer loss of office.

5 Public Sector Pensions Authority

- (1) The Public Sector Pensions Authority is established as the body responsible for the administration and management of schemes in accordance with this Act.
- (2) The PSPA —
- (a) is a Statutory Board; and
 - (b) has the functions given to it by section 6.
- (3) The Council of Ministers must appoint the following members of the PSPA —
- (a) a chairman with such legal qualifications or experience as the Council of Ministers considers appropriate, and who is neither a public sector employee nor an employer of such an employee (and does not represent the interests of either);
 - (b) the chairperson of the Public Services Commission to be vice-chairman and one of 2 persons representing the interests of employers of public sector employees;¹⁶
 - (c) 3 other members, one of whom is to be the other person representing the interests of employers of public sector employees, one member nominated by the Isle of Man Trades Council and one

nominated by any other Isle of Man trade union body representing the interests of public sector employees.

- (4) In the event of either or both nominations referred to in subsection (3)(c) not being made the Council of Ministers may appoint persons it considers appropriate to represent the interests of public sector employees.
- (5) In appointing members of the PSPA the Council of Ministers must have regard to the need for the PSPA to have members who are appropriately qualified (whether by experience or otherwise) to participate in the functions of the PSPA.
- (6) The Council of Ministers may remove any member of the PSPA whom it considers for whatever reason is unable to undertake his or her duties or who fails to do so in a fair and impartial manner.
- (7) Paragraph 1 (vice chairman) of Schedule 2 to the *Statutory Boards Act 1987* does not apply to the PSPA.
- (8) The PSPA must appoint, on such terms as have been approved by the Treasury —
 - (a) a Chief Executive Officer; and
 - (b) such other officers and employees as it considers necessary for carrying out its functions.

6 Functions of the PSPA

- (1) The PSPA —
 - (a) is responsible for advising the Council of Ministers on policy relating to the superannuation of public sector employees;
 - (b) must keep under review the implementation and administration of this Act;
 - (c) must make schemes providing for the superannuation of public sector employees;¹⁷
 - (d) must ensure that any scheme is properly maintained and administered, whether by the PSPA itself or on its behalf;
 - (e) is responsible for the preparation of the annual accounts relating to those schemes; and
 - (f) has any other responsibility that the Council of Ministers considers necessary or desirable, subject to the approval of Tynwald.
- (1A) The PSPA may by order or regulations (as appropriate) amend a scheme originally made by order or regulations and treated as a scheme validly made by the PSPA under this Act in accordance with paragraph 1 of Schedule 1.¹⁸
- (2) In carrying out its functions the PSPA may take such independent professional advice as it considers appropriate.

- (3) The PSPA may do anything incidental to the carrying out of any of its functions.

7 Schemes

- (1) In making any scheme under this Act the PSPA must —
 - (a) monitor changes in public sector pension schemes in the United Kingdom; and
 - (b) monitor changes to pensions legislation as it affects the Island.
- (2) Before making any scheme the PSPA must consult the members or proposed members of the scheme, their representatives, their employers and the Treasury.
- (3) A scheme may apply, with such modifications as may be specified in the scheme, any provision of an enactment of any part of the United Kingdom or any scheme made under it relating to the superannuation of persons of a similar class to those in respect of which the scheme made under this Act relates.
- (4) A scheme may contain retrospective provision if —
 - (a) it is the type of scheme mentioned in subsection (3) and the date from which the provision has effect is not earlier than the date from which the provision had effect in the relevant part of the United Kingdom;
 - (b) the provision does not reduce the amount of any pension, allowance or gratuity in so far as that amount is directly or indirectly referable to any rights that accrued (whether by virtue of service rendered, contributions paid or any other thing done) before the scheme containing the provision is made;
 - (c) all the members of the scheme have agreed to the provision in writing; or
 - (d) the provision is required in order for the scheme to comply with the law of the Island.
- (5) For the purposes of this section, a provision is retrospective if it —
 - (a) has effect from a date earlier than the date on which the scheme containing it is made; or
 - (b) applies in relation to, or requires or authorises the payment of, pensions, allowances or gratuities due to or in respect of persons who have died or ceased to be public sector employees before the scheme containing it is made.

8 Superannuation funds

The PSPA may, after consulting the Treasury, make regulations —

- (a) for the establishment and administration of separate funds to be allocated to particular schemes;
- (b) for the management and application of the assets of such funds;
- (c) for the amalgamation of all or any such funds; and
- (d) for the winding up of, or other dealing with, any such fund.

9 Contributions and payments

[1984/8/6]

- (1) Any contribution payable by a member of a scheme must be deducted from the member's remuneration.
- (2) If a separate fund is established in respect of a scheme —
 - (a) all contributions payable under the scheme must be paid into that fund; and
 - (b) any sum required for the payment of superannuation under the scheme, including any sum required for its administration and maintenance, must be paid out of the fund.
- (3) If no separate fund is established in respect of a scheme —
 - (a) all contributions payable under the scheme must be paid into the general revenue of the Island;
 - (b) any sum required for the payment of superannuation under such a scheme must be paid out of moneys provided by Tynwald;
 - (c) any sum required for the administration and maintenance of the scheme must be paid out of moneys provided by Tynwald or from such other source of funding as is approved by Tynwald; and
 - (d) the Treasury must keep a separate account of receipts and payments under any such scheme.

10 Accounts and reports

- (1) The PSPA must arrange for annual audited accounts to be drawn up in respect of any scheme for which it is responsible.
- (2) As soon as reasonably practicable after the end of each year ending on 31 March the PSPA must send the most recent audited accounts for each scheme, together with a report for each scheme, to the Council of Ministers which must lay the accounts and reports before Tynwald.

11 Inter-scheme transfers

[1984/8/9]

The PSPA may, after consulting the Treasury, make regulations with respect to public sector employees who, being in pensionable service of one kind, enter into pensionable service of another kind, and may modify any scheme, in such circumstances as may be specified in the regulations —

- (a) so as to entitle those employees to receive superannuation in respect of the first-mentioned service;
- (b) with respect to the minimum period of service entitling those employees to superannuation in respect of the last-mentioned service;
- (c) so as to treat the first-mentioned service as pensionable service for the purpose of a scheme relating to the last-mentioned service; and
- (d) in any other respect appearing to the PSPA to be necessary or expedient for the purpose of giving effect to the regulations.

12 Interchange with other public sector schemes

[1984/8/10]

- (1) The PSPA may, after consulting the Treasury, make regulations with respect to —
 - (a) public sector employees who transfer to pensionable employment in the public sector in any other country or territory; or
 - (b) persons in pensionable employment in the public sector in any other country or territory who become public sector employees.
- (2) The regulations may provide that in such circumstances as may be specified in the regulations —
 - (a) in the situation mentioned in subsection (1)(a), for the PSPA to pay to the authority administering the scheme to which the person is transferring, an appropriate transfer value; and
 - (b) in the situation mentioned in subsection (1)(b), that where an appropriate transfer value is paid to the PSPA by the authority administering the scheme from which the person is transferring, for the value of the person's superannuation to be recalculated for the purposes of the appropriate scheme on the basis of the transfer value.
- (3) Regulations may provide for such other reciprocal arrangements with respect to superannuation with authorities administering public sector schemes in other countries or territories as the PSPA considers appropriate.
- (4) In this section —

“pensionable employment” means employment which is relevant to the superannuation rights of any person;

“transfer value” means a lump sum amount, representing the value of the person's pension benefits, including any fund, part of a fund or a policy of insurance, as determined in accordance with the regulations.

13 Dispute resolution

[P1995/26/50-50B]

- (1) The PSPA must make regulations establishing in, or in accordance with, the regulations, a procedure for the resolution of such disputes relating to a scheme, other than disputes mentioned in subsection (2), between the PSPA and such persons with an interest in the scheme as the regulations may specify.
- (2) The disputes are disputes in respect of which —
 - (a) proceedings have been commenced in any court or tribunal; or
 - (b) the Retirement Benefit Schemes Ombudsman appointed under section 39 of the *Retirement Benefits Schemes Act 2000* has started an investigation.
- (3) The procedure —
 - (a) must provide for the manner of making applications, the particulars to be included with them and the manner of making decisions;
 - (b) may include provision about time limits for making applications;
 - (c) may provide for a decision of the PSPA to be taken on its behalf by a person to whom it has validly delegated its functions.
- (4) The regulations may secure that an application may not be made to the PSPA unless —
 - (a) the matters in dispute have been previously referred to a person of a specified description to consider those matters, and
 - (b) that person has given a decision on those matters,and may enable the person's decision to be confirmed or replaced by the decision taken by the PSPA on the application, after reconsidering those matters.
- (5) Where a dispute resolution application is made in accordance with the regulations, the PSPA must —
 - (a) take the decision required on the matters in dispute within a reasonable period of the receipt of the application by it, and
 - (b) notify the applicant of the decision within a reasonable period of its having been taken.

14 Offences

- (1) A person who —
 - (a) with intent to obtain any superannuation, or any increase in superannuation, whether on behalf of himself or herself or any other person, furnishes any information that he or she knows to be false in a material particular, or recklessly furnishes any

information that is false in a material particular, or withholds any material information; or

- (b) obtains or receives any superannuation or increase in superannuation, whether on behalf of himself or herself or any other person, knowing that it was not properly payable to, or not properly receivable by, him or her or any other person; or

is guilty of an offence.

- (2) A person guilty of an offence under this section is liable —
 - (a) on conviction on information, to custody for a term not exceeding 2 years or to a fine, or to both; or
 - (b) on summary conviction, to custody for a term not exceeding 12 months or to a fine not exceeding £5,000, or to both.

15 Statutory documents

- (1) A scheme or regulations made under this Act, or an order made under section 6(1A), is subject to the negative procedure if —
 - (a) it does nothing more than amend an existing scheme; and
 - (b) the amendments are purely administrative and do not alter the level or rate of contributions payable by members of a scheme, or the rate at which any rights accrue under a scheme or affect, directly or indirectly, the amount of any pension, allowance or gratuity.
- (2) In any other case, a scheme or regulations made under this Act, or an order made under section 6(1A), is subject to the affirmative procedure.
- (3) If a provision of a scheme, regulations or an order otherwise subject to the negative procedure is combined with a scheme, regulations or an order subject to the affirmative procedure, the scheme, regulations or order is subject to the affirmative procedure.
- (4) A scheme or regulations made under this Act, or an order made under section 6(1A), may contain such transitional, incidental, consequential or supplemental provision as appears to the PSPA to be necessary or expedient for the purpose of giving effect to the scheme, regulations or order.
- (5) In this section —
 - (a) a reference to the “affirmative procedure” is a reference to the procedure described in section 31 of the *Legislation Act 2015*; and
 - (b) a reference to the “negative procedure” is a reference to the procedure described in section 32 of that Act.¹⁹

16 Financial provision

Expenses incurred under this Act by the PSPA are to be defrayed out of money provided by Tynwald.

17 Transitional provisions, amendments and repeals

- (1) The transitional provisions contained in Schedule 1 have effect.
- (2) The *Pensions (Increase) Act 1974* is amended as set out in Schedule 2.
- (3) The 1984 Act is to be taken as having been amended from the date on which it came into operation so that at the end of section 1(3) there is inserted “and may so apply those provisions as from time to time amended”.
- (4) [Amended Schedule 1 to the *Statutory Boards Act 1987* by inserting at the end “The Public Sector Pensions Authority”.]
- (5) The enactments specified in Schedule 3 are repealed to the extent specified in column 3 of that Schedule.

SCHEDULE 1

(Section 17(1))

TRANSITIONAL PROVISIONS

Existing schemes treated as made under Act

1. (1) A scheme to which this paragraph applies shall, on and after the commencement of Schedule 3, be treated as a scheme validly made by the PSPA under this Act.
- (2) This paragraph applies to —
 - (a) any scheme made (or deemed to be made) under the 1984 Act by the Civil Service Commission, the Department of Home Affairs or the Department of Education, Sport and Culture; and²⁰
 - (b) any scheme under section 1 of the Superannuation Act 1972 (of Parliament) and applied by analogy in the Island.
- (3) This paragraph does not limit the application of Part 4 Division 4 of the *Legislation Act 2015* (default savings and transitional provisions) to any public document made under the 1984 Act.²¹

Existing schemes to remain under former arrangements

2. (1) A scheme to which this paragraph applies shall, until the PSPA makes an Order treating the scheme as validly made by the PSPA under this Act, continue in force and be capable of being amended or replaced as if the 1984 Act (as it applied immediately before the commencement of Schedule 3) were in operation.
- (2) This paragraph applies to any scheme made (or deemed to be made) under the 1984 Act by the Department of Infrastructure or the Isle of Man Post Office Authority.
- (3) An Order under this paragraph shall not come into operation unless it is approved by Tynwald.

Dispute resolution

3. Any application for the resolution of a dispute with regard to a scheme to which paragraph 1 applies made before the commencement of Schedule 3 shall be determined as if this Act was not in operation.

SCHEDULE 2

(Section 17(2))

AMENDMENTS TO PENSIONS (INCREASE) ACT 1974

1. [In section 4(4) for “pensions specified in paragraphs 1, 2 and 5 of Schedule 2 to this Act” substituted “any scheme within the meaning of section 4 of the *Public Sector Pensions Act 2011*”.]
2. [Substituted section 5(1) and (2) of the Act.]

SCHEDULE 3

(Section 17(5))

REPEAL OF ENACTMENTS

| Reference | Short title | Extent of repeal |
|------------------|----------------------------------|-------------------------------|
| 1974 c.27 | Pensions (Increase) Act 1974 | Schedule 2. |
| 1984 c.8 | Superannuation Act 1984 | The whole Act. |
| 1984 c.19 | Fire Services Act 1984 | In Schedule 2, paragraph 5. |
| 1985 c.25 | Treasury Act 1985 | In Schedule 2, paragraph 368. |
| 1993 c.11 | Police Act 1993 | In Schedule 2, paragraph 2. |
| 1997 c.4 | Statute Law Revision Act 1997 | In Schedule 1, paragraph 53. |
| 2001 c.14 | National Health Service Act 2001 | In Schedule 4, paragraph 7. |
| 2001 c.33 | Education Act 2001 | In Schedule 10, paragraph 14. |
| 2002 c.2 | Data Protection Act 2002 | In Schedule 12, paragraph 1. |

ENDNOTES

Table of Endnote References

- ¹ Sections 1 and 2 came into operation on Assent and the remainder on 17/1/2012: see SD 1084/11.
- ² Para (b) amended by Law Officers Act 2014 s 5.
- ³ Para (c) substituted by Public Services Commission Act 2015 Sch.
- ⁴ Para (d) repealed by Public Services Commission Act 2015 Sch.
- ⁵ Para (g) inserted by Tynwald Commissioner for Administration Act 2011 s 30. [Editorial Note: This paragraph was originally intended to be para (h) and to be inserted after para (g). The insertion of para (g) by the Tynwald Auditor General Act 2011 was not in operation at the time that this para was inserted and so this para was renumbered.]
- ⁶ Para (h) inserted by Tynwald Auditor General Act 2011 Sch 2. [Editorial note: This paragraph was originally intended to be para (g) and to be inserted after para (f). The para inserted by the Tynwald Commissioner for Administration Act 2011 was editorially renumbered as para (g) and so this para was renumbered as para (h).]
- ⁷ Para (a) repealed by Public Sector Pensions (Amendment) Act 2020 s 4.
- ⁸ Para (b) amended by Tynwald Commissioner for Administration Act 2011 s 30 and by Tynwald Auditor General Act 2011 Sch 2. [Editorial Note: In consequence of the renumbering of s 3(1)(g) and (h), the amendments made by the Tynwald Commissioner for Administration Act 2011 and the Tynwald Auditor General Act 2011 were editorially corrected to refer to paras (g) and (h).]
- ⁹ Para (c) substituted by Freedom of Information Act 2015 Sch 4.
- ¹⁰ Para (e) amended by SD2017/0325.
- ¹¹ Para (i) inserted by Public Services Commission Act 2015 Sch.
- ¹² Subs (3) amended by Public Services Commission Act 2015 Sch.
- ¹³ Subs (3A) inserted by Public Services Commission Act 2015 Sch.
- ¹⁴ S 3A inserted by Public Sector Pensions (Amendment) Act 2020 s 4.
- ¹⁵ Definition of “scheme” amended by Public Sector Pensions (Amendment) Act 2020 s 5.
- ¹⁶ Para (b) amended by Public Services Commission Act 2015 Sch.
- ¹⁷ Para (c) amended by Public Sector Pensions (Amendment) Act 2020 s 6.
- ¹⁸ Subs (1A) inserted by Public Sector Pensions (Amendment) Act 2020 s 6.
- ¹⁹ S 15 substituted by Public Sector Pensions (Amendment) Act 2020 s 7.
- ²⁰ Item (a) amended by SD2017/0325.
- ²¹ Subpara (3) amended by Interpretation Act 2015 s 107.