



ST HELENA

REVISED EDITION OF THE LAWS, 2017

CONSTITUTIONAL AND ADMINISTRATIVE LAW

PENSIONS ORDINANCE, 2012¹

Ordinance 7 of 2012

In force 1 April 2012

Subsidiary legislation:

PENSIONS REGULATIONS, 2012

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Incorporated as a Schedule to the Ordinance

Amended by L.N. 4/2014, L.N. 7/2018

PENSIONS ORDINANCE, 2012

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¹ Under section 10 of the Revised Edition of the Laws Ordinance, 1999 this text is authoritative and is the sole authentic edition in respect of the law contained in it as at 23 March 2018.

AN ORDINANCE to review the provisions relating to the grant of pensions, gratuities and other allowances in respect of offices held in the public service in St Helena; and for connected or incidental matters.

Short title and commencement

1. This Ordinance may be cited as the Pensions Ordinance, 2012 and comes into force on 1 April 2012.

Interpretation

2. (1) In this Ordinance—

“**Government**” means the Government of St Helena;

“**house allowance**” means the estimated value of free quarters as defined in regulations under this Ordinance

“**non-pensionable office**” means an office held by a person—

- (a) before 1st April 2010 which constituted a non-pensionable office under this Ordinance at the time the office was so held;
- (b) on or after 1st April 2010, if the person held a non-pensionable office immediately before 1st April 2010 under his or her employment contract retains a right to any gratuity or retiring allowance which existed at that date;

“**normal retirement age**” means in respect of a person born—

- (a) in 1953 or earlier - the age of 60 years;
- (b) between 1st January 1954 and 30th June 1954 - the age of 60 years and 6 months;
- (c) between 1st July 1954 and 31st December 1954 - the age of 61 years;
- (d) between 1st January 1955 and 30th June 1955 - the age of 61 years and 6 months;
- (e) between 1st July 1955 and 31st December 1955 - the age of 62 years;
- (f) between 1st January 1956 and 30th June 1956 - the age of 62 years and 6 months;
- (g) between 1st July 1956 and 31st December 1956 - the age of 63 years;
- (h) between 1st January 1957 and 30th June 1957 - the age of 63 years and 6 months;
- (i) between 1st July 1957 and 31st December 1957 - the age of 64 years;
- (j) between 1st January 1958 and 30th June 1958 - the age of 64 years and 6 months;
- (k) on or after 1st July 1958 - the age of 65 years;

Provided that for purposes of calculating any benefit in respect of a person referred to in section 7(1)(a), normal retirement age means the age of 60 years;

“**pensionable emoluments**” in respect of public service under the Government include salary and all other emoluments and allowances stated in a person’s employment contract to be pensionable:

Provided that any emoluments payable in respect of part-time service are to be grossed up based on the number of hours of service to reflect the amount equivalent of the emoluments had such service been provided on a full time basis;

“**pensionable office**” means an office held by a person—

- (a) before 1st April 2010 which constituted a pensionable office under this Ordinance at the time the office was so held; or

- (b) on or after 1st April 2010 if the person held a pensionable office immediately before 1st April 2010 and under his or her employment contract retains his or her pension entitlement which existed at that date;

“**public service**” means service in a civil capacity under the Government;

“**regulation**” means a regulation contained in the Schedule;

“**salary**” means the salary as stated in a person’s contract of employment.

Pensions regulations

3. (1) Pensions, gratuities and other allowances may be granted by the Governor in accordance with the regulations contained in the Schedule or in respect of officers who have been in public service under the Government.

(2) The Governor in Council may from time to time make regulations amending, adding to, or revoking the regulations contained in the Schedule. All regulations so made must be laid before the Legislative Council and published in the *Gazette*.

(3) Subject to subsection (3A), whenever the Governor in Council is satisfied that it is equitable that any regulation made under this section should have retrospective effect in order to confer a benefit upon or remove a disability attaching to any person, that regulation may be given retrospective effect for that purpose:

(3A) No such regulation is to have retrospective effect unless it has received, before being made, the approval of the Legislative Council signified by resolution.

(4) All regulations made under this Ordinance have the same force and effect as if they were contained in the Schedule and the expression “**this Ordinance**”, wherever it occurs in this Ordinance, is to be construed as including a reference to the Schedule.

(5) Any pension, gratuity or other allowance granted under this Ordinance must be computed in accordance with the provision in force or which, having been made in accordance with subsection (3) of this section, may be deemed to be in force at the actual date of an officer’s retirement or death while in the public service, as the case may be.

Pensions, etc. to be charged on revenues of St Helena

4. There are to be charged and paid out of the revenues of St Helena all sums that are from time to time be granted by way of pensions, gratuity or other allowance pursuant to this Ordinance.

Pensions, etc. not of right

5. (1) No officer has an absolute right to compensation for past services or to pension, gratuity, or other allowances; nor does anything in this Ordinance affect the right of the Crown to dismiss any officer at any time and without compensation.

(2) If it is established to the satisfaction of the Governor that an officer has been guilty of negligence, irregularity or misconduct, the pension, gratuity or other allowance may be reduced or altogether withheld.

Circumstances in which pension may be granted

6. (1) No pension, gratuity or other allowance may be granted under this Ordinance to any officer except on his or her retirement from the public service—

- (a) on or after the officer attains normal retirement age;
- (b) on reaching age 60, or such other age between 60 and the normal retirement age, if the officer so elects giving at least one month prior notice in writing;
- (c) at age 60, if the officer retires from the Police Service as required by section 10 of the Police Service Ordinance, 1975;
- (d) at age 55 or older, if the officer retires due to the abolition of his or her office or for the purpose of facilitating improvement in the organisation of the department to which the officer belonged, by which greater efficiency or economy may be effected; or
- (e) at age 55 or older on medical evidence to the satisfaction of the Governor that the officer is incapable by reason of any infirmity of mind or body of discharging the duties of the office and that such infirmity is likely to be permanent;

(2) An officer not qualified for a pension, gratuity or other allowance under this Ordinance (other than a pension under regulation 14(4)) may, on retirement or removal from employment after having served in public service under the Government for not less than 5 years, be granted a gratuity in accordance with this Ordinance.

(3) Subsection (2) does not apply to any officer serving on pensionable terms in the public service at the termination of his or her service.

Early retirement

7. (1) Notwithstanding anything to the contrary in section 6, an officer, who, having held a pensionable office under the Government for 10 years or more resigns from service after the 1st day of April 1999 is—

- (a) if the service terminates on or before 31 March 2012 - deemed to have retired from the public service on the day the officer attains the age of 60 years;
- (b) if the service terminates on or after 1 April 2012 - deemed to have retired from the public service at the age referred to in section 6(1)(a) or (b),

and may be granted a pension in respect of his or her service in accordance with the Schedule .

(1A) No pension, gratuity or other allowance is to be granted under subsection (1) unless the officer, prior to his or her resignation, has given previous notice in writing of the intention to resign as required by his or her contract of employment.

(2) An officer whose employment is terminated before age 55 in the circumstances referred to in section 6(1)(d) is, notwithstanding anything to the contrary in section 6, deemed to have retired from the public service at the age referred to in section 6(1)(a) or (b), and may be granted a benefit in respect of his or her service in the public service in accordance with the Schedule.

(3) Notwithstanding anything to the contrary in section 6, if the employment of an officer is terminated before age 55 in the circumstances referred to in section 6(1)(e) and—

- (a) the officer held a pensionable office under the Government for 10 years or more - the officer is deemed to have retired from the public service at the age referred to in section 6(1)(a) or (b);
- (b) the officer held a pensionable office under the Government for less than 10 years - the officer is deemed to have retired from the public service at the time that such employment is terminated;
- (c) the infirmity referred to in that section arises from an injury sustained or disease contracted in the circumstances specified in section 15(1)(a) or (b) - the officer is deemed to have retired from the public service at the time such employment is terminated,

and the officer may be granted a benefit in respect of his or her service in the public service in accordance with the Schedule.

(4) If an officer, who is employed in a department of the Government, is transferred by the Government to any other entity due to the divestment by the Government to such other entity of any service provided by such department, the officer is, notwithstanding anything to the contrary in section 6, deemed to have retired from the public service at the age referred to in section 6(1)(a) or (b) and may be granted a benefit in respect of his or her service in the public service in accordance with the Schedule.

(5) An officer whose employment is terminated as a result of dismissal is for the purposes of subsection (1) deemed to have resigned from the public service on the date of the dismissal.

(6) A person to whom subsection (1), (2), (3) or (4) would have applied and who dies before any benefit has been granted to him or her is, for the purposes of section 13(1), deemed to have died while in public service under the Government and his or her heirs or legal personal representative may be granted a gratuity in accordance with the provisions of that section.

Compulsory retirement

8. The Governor may require an officer to retire from public service under the Government at any time after the officer attains normal retirement age.

Maximum pension

9. (1) A pension granted to an officer under this Ordinance must not exceed $\frac{2}{3}$ of the officer's highest pensionable emoluments at any time while in public service or the increased amount of such emoluments as provided for in section 17.

- (2) For the purpose of subsection (1)—
 - (a) an additional pension granted in respect of injury is not to be taken into account; but if the officer is granted such additional pension under this Ordinance, the amount of it together with the remainder of his or her pension or pensions must not exceed $\frac{5}{6}$ ths of the highest pensionable emoluments enjoyed by the officer at any time during his or her pensionable service; and
 - (b) if any increase in pension is granted to or in respect of a pension or allowance granted under this Ordinance and the grant of the increase is subsequent to the date of the grant of the pension or allowance, whether or not that increase is

governed by any instrument having the force of law, the increase granted or drawn is not to be taken into account.

Pensions, etc, not to be assignable

10. A pension, gratuity, or other allowance granted under this Ordinance is not be assignable or transferable except for the purpose of satisfying—

- (a) a debt due to the Government; or
- (b) an order of any court for the payment of periodical sums of money towards the maintenance of the spouse or former spouse or minor child of the person to whom the pension, gratuity or other allowance has been granted,

and is not liable to be attached, sequestered or levied upon for or in respect of any debt or claim whatever except a debt due to the Government.

Pensions, etc, to cease on bankruptcy

11. (1) If any person to whom a pension or other allowance has been granted under this Ordinance is adjudicated bankrupt or is declared insolvent by judgment of any competent court, the pension or allowance forthwith ceases.

(2) If any officer is adjudicated bankrupt or declared insolvent by judgment of any competent court either—

- (a) after retirement in circumstances in which the officer is eligible for pension, gratuity or other allowance, under this Ordinance, but before the pension, gratuity or other allowance is granted; or
- (b) before such retirement, and the officer has not obtained a discharge from bankruptcy or insolvency at the date of retirement,

then, in the former case, any pension or other allowance eventually granted to the officer ceases as from the date of adjudication or declaration (as the case may be) and, in the latter case, the pension or other allowance may be granted, but ceases forthwith and not become payable, and in either case any gratuity for which the officer is eligible may be granted but must not be paid to the officer.

(3) If by reason of this section a pension or other allowance otherwise payable to a person ceases, or if any gratuity so payable is not paid, the Governor, during the remainder of the person's life, or during such shorter period or periods, either continuous or discontinuous, as the Governor thinks fit, may in his or her discretion direct all or any part of the moneys to which the person would have been entitled by way of pension, gratuity, or other allowance, had he or she not become bankrupt or insolvent, to be paid to, or applied for, the maintenance or benefit of all or any, to the exclusion of the other or others, of –

- (a) the person and his or her spouse, child, or children; or
- (b) such other dependants as the Governor may determine,

in a proportion and manner the Governor thinks proper; and such moneys must be paid or applied accordingly.

(4) Moneys applied for the discharge of the debts of the person whose pension or other allowance has ceased, or whose gratuity has not been paid, by reason of this section are, for the purposes of this section, to be regarded as applied for the person's benefit.

(5) If a person whose pension or other allowance has ceased, or whose gratuity has

not been paid, by reason of this section obtains his or her discharge from bankruptcy or insolvency, the Governor may direct that the pension or other allowance are to be restored and the gratuity, or any of it that remains after deducting any payments made under subsection (3), to be paid as from the date of such discharge or any later date; and the pension or other allowance must be restored, and the gratuity or any remainder of it paid, accordingly.

(6) For the purposes of this section “**child**” includes an illegitimate child, a stepchild and an adopted child, adopted in a manner prescribed by law, but does not include a child who has attained the age of 18 years or has married.

Pensions, etc. may cease on imprisonment

12. (1) If any person to whom a pension or other allowance has been granted under this Ordinance is sentenced to death or a term of imprisonment by any competent court for any offence, the pension or allowance, if the Governor so directs, ceases as from a date the Governor decides.

(2) If any officer is sentenced to death or to a term of imprisonment by any competent court for any offence after retirement in circumstances in which the officer is eligible for pension, gratuity, or other allowance under this Ordinance but before the pension, gratuity, or other allowance is granted, then—

- (a) subsection (1) applies as respects any pension or other allowance which may be granted to the officer; and
- (b) the Governor may direct that any gratuity which may be granted to the officer is not to be paid.

(3) If a pension or other allowance payable to a person ceases, or a gratuity is not paid, by reason of this section, the Governor may direct all or any part of the money to which such person would have been entitled by way of pension, gratuity, or other allowance, but for this section, to be paid or applied in the same manner in all respects as provided in section 14; and such money must be paid or applied accordingly.

(4) If any person whose pension or other allowance ceases or whose gratuity is not paid, by reason of this section, after conviction at any time receives a free pardon, the pension or allowance must be restored with retrospective effect, or his or her gratuity must be paid; but in determining whether arrears of such pension or allowance are payable to the person and in computing the amount of the arrears and the amount of any gratuity, account must be taken of all money paid or applied under subsection (3).

(5) If any pension or other allowance ceases or a gratuity is not paid by reason of this section the Governor may at any time, upon terms and from a date (including any past date) the Governor thinks fit, restore, either in whole or in part, such pension or allowance or direct the payment of such gratuity or any part of it; but in determining whether arrears of such pension or allowance are payable and in computing the amount of them and the amount of any gratuity, account must be taken of all moneys paid or applied under subsection (3).

Gratuity where officer dies in the service or after retirement

13. (1) Subject to subsection (1A), if an officer holding a pensionable office who is not on probation or agreement, or an officer holding a non-pensionable office to which he or

she has been transferred from a pensionable office in which he or she has been confirmed, dies while in public service under the Government the Governor may grant to the officer's heirs or legal personal representative a gratuity of an amount not exceeding his or her annual pensionable emoluments or his or her commuted pension gratuity, if any, whichever is the greater.

(1A) For the purposes of this section an officer who is holding a pensionable office and is on probation and who dies in the circumstances mentioned in section 15(1) is deemed to have been confirmed in office.

(2) If an officer dies after retirement from public service under the Government having been granted, or having become eligible for, a pension under this Ordinance and the sums paid or payable to the officer at the date of death on account of such pension including any sum awarded by way of gratuity under regulation 15, but excluding any additional pensions awarded in accordance with regulation 14(3)(b), are less in total than the amount of the officer's annual pensionable emoluments, the Governor may grant a gratuity equal to the deficiency to the officer's legal personal representative.

(3) In this section—

- (a)** “**annual pensionable emoluments**” means the emoluments taken for the purpose of computing any pension or gratuity granted to the officer under this Ordinance or, in the case of an officer as described in subsection (1), the emoluments which would have been taken in accordance with regulation 9, for the purpose of computing the pension or gratuity that would have been granted to the officer if, on the day following the date of death, he or she had retired from the public service in circumstances which enabled such grant to be made;
- (b)** “**commuted pension gratuity**” means the gratuity, if any, which might have been granted to the officer under regulation 15 if the pensionable service which would be taken for the purpose of computing any pension or gratuity granted to the officer under this Ordinance had been wholly under the Government and if, in the case of an officer as described in subsection (1), on the date of death he or she had retired from the public service in circumstances which enabled the grant of a pension to be made and had elected to receive a gratuity and reduced pension.

Gratuities to dependants of a non-pensionable officer

14. (1) If an officer to whom this section applies dies while in public service under the Government after serving in that public office for not less than 5 years, the Governor may grant to the officer's legal personal representative a gratuity at the rate herein specified for each complete year of that public service, that is to say—

- (a)** for each of the first 5 years - one week's pay;
- (b)** for each of the next 5 years - 2 weeks' pay;
- (c)** for each additional year - 4 weeks' pay:

But the total amount of the gratuity must not exceed the amount of one year's pay.

(2) If an officer to whom this section applies dies as a result of injuries received in public service under the Government in the circumstances specified in section 15(1)(a) and (b) before completing 5 years' public service under the Government, the Governor may grant to the officer's legal personal representative a gratuity not exceeding 5 week's pay.

- (3) This section applies to an officer who holds—
- (a) a non-pensionable office; or
 - (b) a pensionable office in which the officer is not serving on probation and (if his or her appointment to that office is subject to confirmation) in which the officer has not been confirmed, and who is not eligible for the grant of a pension, gratuity or other allowance under this Ordinance (other than a pension under regulation 14(4)) or for the grant, under his or her terms of service, of a gratuity or benefit under any other scheme of superannuation.
- (4) For the purposes of this section—
- (a) “**pay**” means pay as provided for under a person’s contract of employment as at the date of the officer’s death;
 - (b) an officer who, having held a non-pensionable office, holds a pensionable office in which the officer is serving on probation is deemed to hold a non-pensionable office and the officer’s pay is deemed to be the pay last received by him or her in respect of the non-pensionable office he or she previously held or the pensionable emoluments of the pensionable office held by him or her, whichever is the greater;
 - (c) in calculating the period in which any officer has served in public service under the Government—
 - (i) subject to any general or special directions to the contrary given by the Governor only continuous service terminating at the officer’s retirement or death is to be taken into account;
 - (ii) no regard is to be had to any period of service for which the officer is eligible for the grant of or has been granted a pension, gratuity or other allowance under this Ordinance (other than a pension under regulation 14(4)) or, as provided under his or her terms of service, a gratuity or benefit under any other scheme of superannuation.

Pensions to dependants when an officer dies in service

15. (1) If an officer while in public service under the Government—
- (a) is injured in the actual discharge of the officer’s duty by some injury specifically attributable to the nature of that duty which is not wholly or mainly due to, or seriously aggravated by, the officer’s own serious and culpable negligence or misconduct; or
 - (b) contracts a disease to which the officer is exposed by the nature of his or her duty, not being a disease wholly or mainly due to, or seriously aggravated by, the officer’s own serious and culpable negligence or misconduct,
- and dies as a result of that injury or disease and the death occurs within 7 years after the date when the officer was injured or contracted the disease, the Governor may grant, in addition to the grant, if any, made to the officer’s legal personal representative under section 13—
- (i) if the deceased officer leaves a surviving spouse - a pension to such spouse at a rate not exceeding 10/60 of his or her annual pensionable emoluments at the date of the injury;
 - (ii) if the deceased officer leaves a surviving spouse to whom a pension is granted under the preceding paragraph and a child or children - a pension in respect of each child, until such child attains the age of 18 years of an amount not exceeding 1/8 of the pension prescribed under paragraph (i);
 - (iii) if the deceased officer leaves a child or children, but does not leave a surviving

- spouse, or no pension is granted to the surviving spouse - a pension in respect of each child, until such child attains the age of 18 years, of double the amount prescribed by paragraph (ii);
- (iv) if the deceased officer leaves a child or children and a surviving spouse to whom a pension is granted under paragraph (i) of this subsection and the surviving spouse subsequently dies - a pension in respect of each child as from the date of the death of the surviving spouse until such child attains the age of 18 years, of double the amount prescribed in paragraph (ii);
 - (v) if the deceased officer does not leave a surviving spouse or if no pension is granted to his or her surviving spouse and if either or both of the officer's parents were wholly or mainly dependent on him or her for support - a pension to such parent or parents of an amount not exceeding in total the pension which might have been granted to the officer's surviving spouse;
 - (vii) if the deceased officer does not leave a child or children who is or are eligible for a pension under the provisions of this section, and if any brother or sister was wholly or mainly dependent on the officer for support - a pension to any brother or sister until he or she attains the age of 18 years, of the same amount and subject to the same conditions as the pension which might have been granted under paragraph (ii), (iii) or (iv), as the case may be:

(1A) Subsection (1) is subject to the following provisos—

- (a) if in the opinion of the Governor there are compassionate grounds for so doing, the Governor may grant to any child of a deceased officer being a child who at the date of the death of the officer was wholly or mainly dependent on him or her for support and who has attained the age of 18 years, a pension for such period as the Governor may determine, of an amount not exceeding the pension which may be granted under paragraph (ii), (iii) or (iv) of subsection (1), as the case may be;
- (b) if a deceased officer leaves a child who was incapacitated at the time of the officer's death (hereinafter in this section referred to as an "incapacitated child") the Governor may, notwithstanding any pension which may have been granted under those paragraphs (ii), (iii) or (iv) grant an additional pension in respect of such incapacitated child after he or she has attained the age of 18 years and so long as the incapacity continues, of an amount not exceeding one-half the pension which might have been granted under paragraph (ii), (iii) or (iv), as the case may be;
- (c) if compensation in respect of the death is payable under any law in force in St Helena which provides for the payment of workmen's compensation, in respect of death, the Governor may reduce or withhold any pension which may be payable under this section in such manner as the Governor may consider reasonable;
- (d) no pension is payable under subsection (1) at any time in respect of more than 6 children exclusive of incapacitated children, and if there are more than 6 such children, in respect of whom, but for this proviso, a pension would be payable, then the amount payable in respect of 6 children is to be divided equally among all such children during the period in which there are more than 6 children of pensionable age;
- (e) in the case of a pension granted under paragraph (v), (vi) or (vii), if it appears to the Governor at any time that the mother or father, or any brother or sister, is adequately provided with other means of support, the pension ceases as from a date the Governor determines.

(2) No pension is to be granted to the surviving spouse of the deceased officer if he or she was not married to the deceased at the date of injury.

(3) If an officer proceeding by a route approved by the Governor to or from St Helena at the commencement or termination of his or her service in the public service of the Government or for a period of secondment, duty leave or leave from such service, dies as a result of damage to the vessel, aircraft or vehicle in which the officer is travelling, or of any act of violence directed against such vessel, aircraft or vehicle, and the Governor is satisfied that such damage or act is attributable to circumstances arising out of war in which Her Majesty may be engaged, the officer is deemed, for the purposes of this section, to have died as a result of the circumstances described in subsection (1)(a).

(4) An officer who dies as a result of an injury received while travelling by air in obedience to official instructions, which injury is not wholly or mainly due to, or seriously aggravated by, the officer's own serious and culpable negligence or misconduct, is deemed for the purpose of this section to have died in the circumstances described in subsection (1)(a): except that in such a case the rates of pension prescribed in subsection (1)(b)(i) and (ii) are to be read as $15/60$ and $1/6$ respectively.

(5) (a) If the Governor is satisfied that damages have been or will be recovered in respect of the death for which a pension may be granted under subsection (1), the Governor may take those damages into account against such pension in a manner and to an extent the Governor thinks fit and may withhold or reduce the pension accordingly.

(b) For the purposes of this subsection an officer is deemed to recover damages whether they are paid in pursuance of a judgment or order of a court or by way of settlement or compromise of his or her claim and whether or not proceedings are instituted to enforce that claim.

(6) For the purposes of this section the following words have, in relation to an officer, the following respective meanings—

“**brother**” includes, in relation to a person, every male child of his or her father or his mother;

“**child**” includes—

(a) a posthumous child;

(b) a stepchild or illegitimate child born before the date of the injury or contracting the disease, as the case may be, and wholly or mainly dependent upon the deceased officer for support; and

(c) an adopted child, adopted in a manner recognised by law, before the date of the injury or contracting the disease, as the case may be, and dependent as aforesaid;

“**father**” includes, in relation to a person, his or her stepfather and a male person by whom he or she has been adopted;

“**incapacitated**” means in relation to a child, incapable by reason of some specific bodily or mental disability of earning his or her own living, and a child, who is in any event too young to earn his or her own living, is to be treated as incapacitated for the purposes of this section if it appears that, by reason of any specific bodily or mental disability, he or she will be incapable of earning his or her own living when he or she attains the age at which he or she would otherwise be capable of doing so;

“**mother**” includes, in relation to a person, a step-mother and a female person by whom he or she has been adopted;

“**sister**” includes, in relation to a person every female child of his or her father or his or her

mother.

War service to count for pension purposes

16. (1) If an officer has served with Her Majesty's Forces in time of war, with the approval of the Governor of the territory in the service of which he or she was last employed before so serving, the following provisions have effect—

- (a) during the period of such service in Her Majesty's Forces, including any period after the termination of the war (in this section referred to as "**military service**"), the officer is deemed, for the purposes of this Ordinance, to have been on leave on full salary from the public service in which he or she was last employed, and to have held the substantive office last held by him or her in that service prior to military service;
 - (b) during any period between the officer leaving the public service for the purpose of serving in Her Majesty's forces and the date of his or her commencing military service, the officer is, for the purposes of this Ordinance, deemed to be on leave without pay, not granted on grounds of public policy, from the public service in which he or she was last employed, and to have held the substantive office last held by him or her in that service, prior to military service and during any period between the termination of his or her military service and the date of his or her re-entering the public service the officer is, for those purposes, deemed to be on leave as aforesaid from the service, and to have held the substantive office, in which he or she is re-employed.
- (2)** Subsection (1) is subject to the following provisos—
- (a) the subsection does not apply when either period mentioned in paragraph (b) of that subsection exceeds 3 months, or any longer period the Governor in any special case determines; or if the officer fails, after serving with Her Majesty's Forces, to re-enter the public service otherwise than in circumstances in which he or she would be permitted, under the law applicable to the public service in which he or she is last employed prior to military service, to retire on pension or gratuity, such circumstances arising not later than the expiration of 3 months, or any longer period determined as aforesaid, after the termination of his or her military service;
 - (b) if during any period mentioned in paragraph (a) of subsection (1) the officer qualifies for pension, or receives emoluments *in lieu* of pension rights, actually in respect of military service, paragraph (a), as respects that period, has effect as if the words "leave without salary not granted on grounds of public policy" were substituted for the words "leave on full salary";
 - (c) if during his or her military service the officer is injured or killed, he or she is not, for the purposes of this Ordinance, deemed to have been injured or killed in the discharge of his or her duty;
 - (d) the provisions of subsection (1) which require that the officer be deemed to have held a specified office and to have been on leave from a specified service do not apply in respect of any period during which he or she has actually held any other substantive office and has been on leave from any public service;
 - (e) unless in any particular case the Governor otherwise directs, subsection (1) does not apply if the office in the public service last held by the officer prior to military service was not a pensionable office.

Increasing pensions

17. Whenever it appears to the Governor to be equitable so to do, having regard to changes in the wages and salaries paid to serving public officers and employees, the Governor may order that the benefits payable to any person under this Ordinance or the emoluments or pay to be taken into account in determining the amount of any benefit, are to be increased by an amount that the Governor considers equitable.

Repeal and savings

18. (1) *Omitted*

(2) Notwithstanding the repeal of the Pensions Ordinance, Cap. 150, any benefit which may have been awarded under that Ordinance with respect to any person who retired before 1 April 2012 remains in force and has effect in the manner prescribed in that Ordinance and may be enforced as if that Ordinance had not been repealed.

SCHEDULE

(Section 3)

PENSIONS REGULATIONS, 2012

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Citation

1. These regulations may be cited as the Pensions Regulations, 2012.

Interpretation

2. In these regulations, unless the context otherwise requires—
“pensionable service” means service which may be taken into account in computing pension under these regulations;
“qualifying service” means service which may be taken into account in determining whether an officer is eligible by length of service for pension, gratuity, or other allowance.

**PART II
DETERMINATION OF PENSIONS AND GRATUITIES**

Pension to whom and at what rates to be granted

3. (1) Subject to the Ordinance and these Regulations, every public officer holding a pensionable office under the Government who has been in public service under the Government for 10 years or more may be granted on his or her retirement—
 - (a) at normal retirement age, a pension at the rate of—
 - (i) 1/600th of his or her pensionable emoluments in respect of each completed month of pensionable service ending before or on 31st March 2012; and
 - (ii) 1/800th of his or her pensionable emoluments in respect of each completed month of pensionable service after 1st April 2012:
 Provided that in the case of an officer referred to in regulation 10(2), the rate in sub-paragraph (ii) applies in respect of the periods of service completed before and after 1st April 2012;
 - (b) at age 60 or older as referred to in section 6(1)(b) of the Ordinance, a pension determined at the rate in paragraph (a) reduced by 6% for each year that such pension is received before the officer reaches normal retirement age;
 - (c) at age 60 as referred to in section 6(1)(c) of the Ordinance, a pension determined at the rate in paragraph (a) reduced by 2% for each year that such pension is received before the officer reaches normal retirement age;
 - (d) in the case of an officer referred to in section 6(1)(d) or 7(2)—
 - (i) a pension under paragraph (a) or (b); or
 - (ii) if the officer is aged 55 or older at time of termination of employment, and so elects, a pension at time of termination of employment of amount determined under paragraph (a) reduced by 2% for each year that such pension is received before the officer reaches normal retirement age;
 - (e) in the case of an officer referred to in section 6(1)(e) or 7(3)(a), a pension under paragraph (a) as if on the date the officer’s employment is terminated, he or she

had retired at his or her normal retirement age:
 Provided that the amount of pension determined under paragraph (b) or (c) must not be less than the pension which may have been granted to such officer had he or she retired on 31st March 2012.

(2) An officer referred to in section 6(1)(d) or section 7(2) or section 7(4) of the Ordinance may be granted a pension under paragraph (1)(a) or (b) as if the words “for 10 years or more” were omitted.

Gratuities where length of service does not qualify for pension

4. Every officer, otherwise qualified for a pension, who has not completed the minimum period of service qualifying for a pension, may be granted on retirement a gratuity not exceeding 5 times the annual amount of the pension which, if there had been no qualifying period, might have been granted to the officer under regulation 3.

PART III GENERAL

General rules as to qualifying service and pensionable service

5. (1) Subject to these Regulations, qualifying service is the inclusive period between the date on which an officer begins to draw salary in respect of public service (including service provided on a part-time basis) and the date of his or her leaving the public service without deduction of any period during which he or she has been absent on leave:

(1A) Any such service provided on a part-time basis must be adjusted proportionally based on the number of hours to reflect a full time period of service for purposes of determining the period of qualifying service.

(2) No period which is not qualifying service by virtue of sub-regulation (1) is to be taken into account as pensionable service.

(3) No period during which the officer was not in public service is to be taken into account as qualifying service or as pensionable service.

Continuity of service

6. (1) Except as otherwise provided in these Regulations, only continuous public service (including service provided on a part-time basis) is to be taken into account as qualifying service or as pensionable service.

(1A) Any break in service caused by temporary suspension of employment in the public service not arising from misconduct or voluntary resignation is to be disregarded for the purposes of this sub-regulation:

(2) An officer who has retired from the public service without pension on account of ill health, abolition of office, or reorganisation designed to effect greater efficiency or economy, and has subsequently been re-employed in the public service may, if the Governor thinks fit, be granted the pension or gratuity for which the officer would have been eligible if

any break in his or her public service immediately prior to such suspension, re-employment or employment had not occurred. Such a pension is *in lieu of*—

- (a) any pension previously granted to the officer from the funds of St Helena; and
- (b) any gratuity so granted which is required to be refunded as a condition of the application to the officer of this regulation,

but additional to any gratuity so granted which is not required to be refunded as aforesaid.

(3) If an officer, who, having held a pensionable office under the Government and having been confirmed in the pensionable office resigns from the public service and has been, or is subsequently re-employed in the public service, notwithstanding anything to the contrary in sub-regulation (1), his or her period of service under the Government prior to such re-employment must be taken into account in computing his or her qualifying service or pensionable service.

(4) Sub-regulation (3) does not apply to any officer who retired from service prior to 1st April, 1999, or to any continuous period of service commencing on or after 1st April 2010.

Leave without salary

7.² (1) No period during which an officer has been absent from duty on leave without salary is to be taken into account as pensionable service unless such leave has been granted on grounds of public policy with the approval of the Governor.

(2) Sub-regulation (1) does not apply to any period during which a person was absent from duty on unpaid maternity leave, paternity leave or adoption leave and any such period of leave without salary must be taken into account as pensionable service.

Service in Her Majesty's Forces

8. If an officer, during some period of his or her service, has been on the active list of the Royal Navy, the Army or the Royal Air Force, and pension contributions have been paid in respect of that period from the funds of St Helena or of any scheduled administration and have not been refunded, such period is not to be taken into account as pensionable service.

Emoluments to be taken for computation of pensions, etc.

9. (1) For the purpose of computing the amount of the pension or gratuity of an officer who has had a period of not less than 3 years' pensionable service before his or her retirement—

- (a) in the case of an officer who has held the same office for a period of 3 years immediately preceding the date of his or her retirement, the full annual pensionable emoluments enjoyed by the officer at that date in respect of that office are to be taken;
- (b) in the case of an officer who at any time during such period of 3 years has been transferred from one office to another, but whose pensionable emoluments have not been changed by reason of such transfer or transfers, otherwise than by the

² Regulation 7 amended by L.N. 7 of 2018

grant of any scale increment, the full annual pensionable emoluments enjoyed by the officer at the date of his or her retirement in respect of the office then held by the officer are to be taken;

- (c) in other cases 1/3 of the aggregate pensionable emoluments enjoyed by the officer in respect of his or her service during the 3 years of his or her service immediately preceding the date of his or her retirement are to be taken.

(1A) Sub-regulation (1) is subject to the provisos that—

- (a) if such 1/3 is less than the highest annual pensionable emoluments enjoyed by the officer at the date of any transfer within such period of 3 years those annual pensionable emoluments are to be taken; and

- (b) if such 1/3 is less than the annual pensionable emoluments which would have been enjoyed by the officer at the date of his or her retirement, if the officer had continued to hold any office from which he or she has been transferred at any time during such period of 3 years, and had received all scale increments which, in the opinion of the Governor, would have been granted to the officer, the annual pensionable emoluments which would have been so enjoyed are to be taken.

(2) For the purpose of determining under sub-regulation (1) the pensionable emoluments that an officer has enjoyed or would have enjoyed, as the case may be, the officer is deemed—

- (a) to have been on duty on full pensionable emoluments throughout the period of 3 years immediately preceding the date of his or her retirement; and

- (b) to have enjoyed the benefit of any increase due to a general revision of the pensionable emoluments of any office held by the officer as if the increase had been payable throughout the period of 3 years.

(2A) If the officer has been transferred from an office which has been abolished and for this reason the pensionable emoluments of that office have not been considered in a general revision of pensionable emoluments, then, for the purposes of this regulation, the pensionable emoluments attached to the abolished office are to be equated with those of such office or offices as are certified by the Governor in his or her discretion as having enjoyed the same pensionable emoluments as the abolished office at the time of the said revision.

(3) For the purpose of computing the amount of the pension or gratuity of an officer who has had a period of less than 3 years' pensionable service before his or her retirement—

- (a) the average annual pensionable emoluments enjoyed by the officer during such period are to be taken;

- (b) the officer is deemed to have been on duty on full pensionable emoluments throughout such period; and

- (c) the officer is deemed to have enjoyed the benefit of any increase due to a general revision of the pensionable emoluments of any office held by him or her as if such increase had been payable throughout such period.

(4) The estimated value of free quarters in respect of public service under the Government is to be taken as 15% of the minimum of the officer's salary scale, but not exceeding £150 per annum.

(5) Subject to paragraph (6), in no circumstances are the pensionable emoluments taken for the purpose of computing the pension or gratuity of any officer to exceed the full

annual pensionable emoluments enjoyed by the officer at the date of his or her retirement in respect of the office then held by the officer.

(6) For the purposes of computing the pension or gratuity of an officer retiring in the circumstances referred to in section 7 of the Ordinance, the pensionable emoluments are the pensionable emoluments of the officer at the time of the termination of the officer's employment increased by any amount the Governor orders under section 17 of the Ordinance.

Service in non-pensionable office

10.³ (1) Only service in a pensionable office (not being service in respect of which the officer is entitled to a gratuity *in lieu* of pension or to benefit under any other scheme of superannuation) is to be taken into account as pensionable service.

(1A) Sub-regulation (1) is subject to the provisos that—

- (a) if a period of service in a civil capacity otherwise than in a pensionable office (not being service in respect of which the officer is entitled to a gratuity *in lieu* of pension or to benefit under any other scheme of superannuation) is immediately followed by service in a pensionable office and the officer is confirmed therein, such period may with the approval of the Governor be so taken into account;
- (b) any break in service which may be disregarded under the provisions of regulation 6 may likewise be disregarded in determining for the purpose of the preceding provisions of this regulation whether one period of service immediately follows another period of service;
- (c) (i) if an officer has been transferred from a pensionable office in which he or she had been confirmed to an office which is not pensionable and subsequently retires either from a pensionable office or an office which is not pensionable, his or her service in the office which is not pensionable may, with the approval of the Governor, be taken into account as though it were service in the pensionable office which he or she held immediately prior to such transfer and at the pensionable emoluments which were payable to the officer at the date of transfer;
- (ii) if a period of service in an office which is not pensionable is taken into account under this regulation, the officer is, during that period, deemed for the purpose of regulations 6, 13 and 14 to be holding a pensionable office, and if that period is taken into account under the preceding sub-paragraph, to have been confirmed in it.

(2) The Governor may, in the case of an officer who has served in a non-pensionable office for a period of at least 10 years, determine that the officer is to be deemed to be serving in a pensionable office and such past service is also to be regarded as having been served in a pensionable office.

(2A) Subsection (2) is subject to the provisos that—

- (a) the sub-regulation applies only if the officer applies for such determination within 12 months from the date that he or she first became eligible for such determination under that sub-regulation;
- (b) the Governor may give written notice to the officer that the Governor

³ Regulation 10 amended by L.N. 7 of 2018

intends making such determination and, unless the officer objects within a period of 3 months, he or she is deemed to have applied for such determination under this paragraph on the date of the written notice.

Acting service

11. Any period during which an officer has performed only acting service in an office may be taken into account as pensionable service (subject, if the office is a non-pensionable office, to the provisions of the preceding regulation) if the period of such acting service is immediately preceded or followed by service in a substantive capacity in a pensionable office in the public service.

Service under age of 20 or on probation or agreement

12. (1) Except as otherwise provided in these Regulations, there is not to be taken into account as pensionable service—

- (a) any period of service performed before 1st April 2012 while the officer was under the age of 20 years; or
- (b) any period of service while the officer was on probation or agreement, unless without break of service he or she is confirmed in a pensionable office in the public service.

(2) Any break of service which may be disregarded under regulation 6 may likewise be disregarded in determining whether the officer is confirmed in a pensionable office without break of service.

PART IV SUPPLEMENTARY

Abolition of office, reorganisation and divestment

13. (1) An officer referred to in section 6(1)(d) or 7(2) of the Ordinance may be granted at the time that his or her service is terminated, a lump sum at the following rate for each complete year of service—

- (a) for each of the first 5 years - a half a week's pay;
- (b) for each of the next 5 years - one weeks' pay; and
- (c) for each additional year - 2 weeks' pay.

(2) If an officer is transferred to a new employer as referred to in section 7(4) and such officer is made redundant by such new employer within a period of 5 years from the date of such transfer, the officer may be granted a lump sum under sub-regulation (1) as if he or she had been made redundant on the date of such transfer.

Officers injured or contracting diseases in the discharge of their duties

14. (1) This regulation applies to an officer who—

- (a) is injured in the actual discharge of his or her duty by some injury specifically attributable to the nature of that duty which is not wholly or mainly due to, or seriously aggravated by, the officer's own serious and culpable negligence or misconduct; or

- (b) contracts a disease to which he or she is exposed by the nature of his or her duty, not being a disease wholly or mainly due to, or seriously aggravated by, the officer's own serious and culpable negligence or misconduct.

(2) In this regulation, unless the contrary intention appears, references to an officer being injured and to the date on which an injury is sustained are respectively to be construed as including references to the officer contracting such a disease as is mentioned in sub-regulation (1) and to the date on which such disease is contracted.

(3) If an officer to whom this regulation applies is holding a pensionable office, the officer may—

- (a) if his or her retirement is necessitated or materially accelerated by injury and he or she has been in the public service for less than 10 years, be granted, *in lieu* of any gratuity under regulation 4, a pension under regulation 3(1)(a) or (b) as if the words “for 10 years or more” were omitted from regulation 3;
- (b) if the officer was injured while in public service under the Government be granted on retirement an additional pension, at the annual rate of the proportion of his actual pensionable emoluments at the date of the injury appropriate to his or her case as shown in the following table—

When the officer's capacity to contribute to his or her own support is—

| | |
|---------------------|-----------|
| Slightly impaired | 5/60ths; |
| Impaired | 10/60ths; |
| Materially impaired | 15/60ths; |
| Totally destroyed | 20/60ths: |

The amount of the additional pension may be reduced to an extent the Governor thinks reasonable if the injury is not the cause or the sole cause of retirement.

(4) (a) An officer to whom this regulation applies who is injured while in public service under the Government and who holds a non-pensionable office, or who holds a pensionable office in which he or she has not been confirmed, may be granted on retirement a pension of the same amount as the additional pension which may be granted to the officer under sub-regulation (3) as if his or her office were a pensionable office and he or she had been confirmed in it.

- (b) Regulation 15 does not apply to a pension granted under this sub-regulation.

(5) (a) If, for the purpose of assessing the amount of any additional pension or pension to be granted under sub-regulation (3)(b) or (4) to any officer to whom this regulation applies, the degree of permanent impairment of his or her capacity to contribute to his or her support is in doubt, the officer may be granted a provisional award to have effect until such time as the degree of permanent impairment can be determined.

- (b) Regulation 15 does not apply to an award made under this sub-regulation.

(6) If an officer proceeding by a route approved by the Governor to or from St Helena at the commencement or termination of his or her public service under the Government, or of a period of secondment, duty leave or leave from the public service, is injured as a result of -

- (a) damage to the vessel, aircraft or vehicle in which the officer is travelling; or
 (b) any act of violence directed against any such vessel, aircraft or vehicle,

and the Governor is satisfied that such damage or act is attributable to circumstances arising

out of any war in which Her Majesty may be engaged, the officer is deemed for the purpose of this regulation to have been injured in the circumstances described in sub-regulation (1).

(7) An officer who is injured while travelling by air in obedience to official instructions, and whose injury is not wholly or mainly due to or seriously aggravated by his or her own serious and culpable negligence or misconduct is deemed for the purpose of this regulation to have been injured in the circumstances described in sub-regulation (1). In such a case the rates of pension prescribed in sub-regulation (3)(b) are to be read as 7.5/60, 15/60, 22.5/60 and 30/60 respectively.

(8) If compensation in consequence of the injury is payable under any law in force in St Helena which provides for the payment of workmen's compensation, the Governor may reduce or withhold any additional pension or pension payable under either sub-regulation (3) or (4) in any manner the Governor considers reasonable.

(9) (a) If the Governor is satisfied that damages have been or will be recovered by an officer in respect of an injury for which an additional pension or pension may be granted under sub-regulation (3)(b) or (4), the Governor may take those damages into account against such additional pension or pension in a manner and to an extent the Governor thinks fit and may withhold or reduce the additional pension or pension accordingly.

(b) For the purpose of this sub-regulation an officer is deemed to recover damages whether they are paid pursuant to a judgment or order of the court or by way of settlement or compromise of his or her claim and whether or not proceedings are instituted to enforce that claim.

Gratuity and reduced pension

15. (1) Any officer to whom a pension is granted under the Ordinance may at his or her option, exercisable as in this regulation provided, be paid *in lieu* of such pension a pension at the rate of 3/4 of such pension together with a gratuity equal to 12 1/2 times the amount by which such pension is reduced.

(2) An option exercisable in accordance with this regulation—

(a) is exercisable, and if exercised, may be revoked, on or before the date of the officer's retirement or, with the permission of the Governor, at any time between that date and the date of the final award of the pension granted to the officer under the Ordinance;

(b) must be exercised or revoked by notice in writing addressed to the Chief Secretary;

(c) is deemed to have been exercised or revoked on the date on which the notice is received.

(3) If an officer who has not exercised an option in accordance with this regulation dies after he or she has retired but before a pension has been granted to him or her under the Ordinance, the Governor may, if the Governor thinks fit, grant to the officer's legal personal representatives a gratuity and a reduced pension as provided in sub-regulation (1), as if the officer had exercised the option before his or her death.

Allowances or gratuities for officers who have served in non-pensionable offices

16. (1) An officer to whom this regulation applies who retires or resigns from public service under the Government after serving in that public service for not less than 5 years may be granted by the Governor a gratuity at the rate herein specified for each complete year of service, that is to say—

- (a) for each of the first 5 years - one week's pay;
- (b) for each of the next 5 years - 2 weeks' pay;
- (c) for each additional year - 4 weeks' pay:

But the total amount of the gratuity must not exceed the amount of one year's pay.

(2) If the employment of an officer is terminated as a result of the dismissal of the officer, he or she is for purposes of paragraph (1) deemed to have resigned from the public service on the date of such dismissal.

(3) If an officer to whom this regulation applies has been in the public service for not less than 20 years, and retires in any of the circumstances set out in section 6 of the Ordinance, the officer may be granted *in lieu* of a gratuity under this regulation, if the Governor thinks fit, a retiring allowance—

- (a) at normal retirement age, at the rate of 1/800th of his or her pay at the date of his or her retirement for each complete month of service in St Helena: but the annual amount of such allowance must not exceed 2/3 of the highest rate of pay received while in the service; or
- (b) if the officer so elects, at age 60 or older, in which case the allowance is determined at the rate in item (a) reduced by 6% for each year that the pension is received before the officer reaches normal retirement age: but the amount of pension determined under this paragraph must not be less than the retirement allowance which might have been granted to the officer had he or she retired on 31st March 2012 (without having regard to the 20-year qualifying period).

(4) An officer taking early retirement in accordance with this regulation is eligible for a retiring allowance under paragraph (3) if he or she has served in the public service for a period of not less than 10 years.

(5) If the officer is aged 55 years or older at the time of early retirement as referred to in section 6(1)(d) or 6(1)(e) of the Ordinance, he or she may -

- (a) elect to take a retiring allowance from the date of such early retirement; and
- (b) be granted an amount determined under paragraph (3)(a) reduced by 2% for each year that such retiring allowance is received before the officer reaches normal retirement age.

(6) An officer referred to in section 7(4) of the Ordinance who retires or resigns from the entity to which he or she was transferred as referred to in that section, may be granted a benefit under—

- (a) sub-regulation (1) as if the words “for 5 years or more” were omitted; or
- (b) sub-regulation (3) as if the words “20 years” read “10 years”,

and as if the officer had resigned or retired from the public service on the date of transfer to such new entity.

(7) This regulation applies to an officer who holds—

- (a) a non-pensionable office; or
 - (b) a pensionable office in which the officer is not serving on probation and (if his or her appointment to that office is subject to confirmation) in which the officer has not been confirmed and who is not eligible for the grant of a pension, gratuity or other allowance under the Ordinance (other than a pension under regulation 14(4)) or for the grant, under the terms of service, of a gratuity or a benefit under any other scheme of superannuation.
- (8) For the purpose of this regulation—
- (a) **“pay”** means pay at the date of the officer’s retirement or resignation (or the increased amount of such pay as provided for in section 17 of the Ordinance) and includes personal allowance and house allowance and any other allowance that the Governor thinks fit to include:
 - Provided that any pay in respect of part-time service must be grossed up based on the number of hours of service to reflect the amount equivalent of the pay had such service been provided on a full time basis;
 - (b) an officer who having held a non-pensionable office holds a pensionable office in which the officer is serving on probation is deemed to hold a non-pensionable office and his or her pay is deemed to be the pay last received by him or her in respect of the non-pensionable office he or she previously held or the pensionable emoluments of the pensionable office held by him or her, whichever is the greater;
 - (c) in calculating the period in which any officer has served in public service under the Government—
 - (i) subject to any general or special directions given by the Governor, only continuous service terminating at the officer’s retirement or resignation is to be taken into account;
 - (ii) no regard is to be had to any period of service for which the officer is eligible for the grant of or has been granted a pension, gratuity or other allowance under the Ordinance (other than a pension under regulation 14(4)) or, as provided under the officer’s terms of service, a gratuity or a benefit under any other scheme of superannuation;
 - (iii) any such service provided on a part-time basis must be adjusted proportionally based on the number of hours to reflect a full time period of service for purposes of determining the period of qualifying service;
 - (d) **“early retirement”** means retirement from the public service in any of the circumstances set out in section 6(1)(d) or (e) or section 7(2) or (3)(a) or (b) of the Ordinance.
-