



TRISTAN DA CUNHA

REVISED EDITION OF THE LAWS, 2017

FAMILY, EDUCATION AND WELFARE

PENSIONS AND BENEFITS (TRISTAN DA CUNHA) ORDINANCE, 2011¹

Ordinance T1 of 2011

In force 1 June 2011

Amended by Ordinance T1/2014

No subsidiary legislation to 1 November 2017

PENSIONS AND BENEFITS (TRISTAN DA CUNHA) ORDINANCE, 2011

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AN ORDINANCE to establish a Tristan da Cunha Pension and Benefit Fund and to provide for incidental and connected matters.

**PART I
PRELIMINARY**

Interpretation and commencement

1. This Ordinance may be cited as the Pensions and Benefits (Tristan da Cunha) Ordinance, 2011, and comes into force on 1st June 2011.

Interpretation

2. In this Ordinance, except where the context otherwise requires—
- “**Board**” means the Board of Management established under section 3;
- “**child**” means—
- (a) a person under the age of 16 years; or
 - (b) a person over the age of 16 years but under the age of 18 years and who is not in full time employment;
- “**employer**” in relation to any employee means the person with whom such employee has entered into a contract to perform labour and includes the Administration;
- “**financial year**” means the period of 12 months ending on 31st December each year;
- “**Fund**” means the Pension and Benefit Fund established under section 4;
- “**liable employee**” means a person who is liable to contribute to the Fund under section 5;
- “**notional wage**” in relation to a wage period means the wage determined for that period by applying the hourly rate gazetted as the Joint Agreed Casual Rate multiplied by a factor to be determined by the Board;
- “**orphan**” means a child who has no living mother or father;
- “**prescribed retirement age**” means—
- (a) 65 years; or
 - (b) in the case of a person aged 65 years or older who remains in employment or self-employed or who at any stage returns to employment or becomes self-employed, the date on which the person ceases to be so employed or self-employed and notifies the Board that he or she has retired;
- “**this Ordinance**” includes any regulations made hereunder;
- “**Tristanian**” means a person who—
- (a) was born in Tristan da Cunha; or
 - (b) is domiciled in Tristan da Cunha and has been resident there for a consecutive period of at least 5 years;
- “**wages**” includes—
- (a) payments in lieu of notice;
 - (b) leave pay;
 - (c) overtime or other additional payments or benefits;
 - (d) all emoluments which would be payable in cash to an employee under his or her contract if no deductions were made (whether pursuant to any law requiring or permitting any deductions or otherwise), but does not include any payments made to an employee to reimburse the employee any sums necessarily expended by the employee on behalf of his or her employer for the purposes of the employment;
 - (e) any amounts prescribed as representing the value of any free housing, meals or rations to which an employee is entitled.

PART II

ESTABLISHMENT OF BOARD OF MANAGEMENT AND PENSION AND BENEFIT FUND

Establishment of Board

3. (1) This section establishes a Board of Management consisting of the Administrator, who is to be Chair, and 2 persons appointed by the Administrator.
- (2) The Board is responsible for carrying out the provisions of this Ordinance.

Establishment of Pension and Benefit Fund

4. (1) This section establishes under the control and management of the Board, a Pension and Benefit Fund into which are to be paid all contributions and all other payments made under this Ordinance and out of which are to be met all benefits and other payments required to be paid out of the Fund under this Ordinance.

(2) The Board may invest any portion of the Fund in suitable trustee investments, having due regard to anticipated calls upon the Fund and the necessity of reasonable liquidity.

PART III CONTRIBUTIONS TO FUND

Contributors to Fund

5. (1) A person (a “**liable employee**”) is liable to contribute to the Fund, if he or she—

- (a)* is employed by an employer or is self-employed;
- (b)* is 16 years of age or older, but under the prescribed retirement age;
- (c)* in the opinion of the Board, is a Tristanian or has a parent who was born on Tristan da Cunha; and
- (d)* in the opinion of the Board, is permanently resident in Tristan da Cunha.

(2) Every employer is liable to contribute to the Fund in respect of each liable employee.

PART IV PAYMENT OF CONTRIBUTIONS

Payment of contributions to Fund

6. (1) Subject to this Part, every employer must, in respect of any wage period for which the employer pays any wages to a liable employee, pay to the Fund a contribution equal to 15% of all wages paid to such employee during such wage period.

(2) Subsection (1) does not apply in respect of any liable employee whose wages in respect of the relevant wage period are less than an amount prescribed by the Administrator.

(3) The contributions under subsection (1) must be paid by the employer within 15 days from the date of payment of the wages in the manner prescribed by the Administrator.

Employee’s share of contribution and deduction from wages

7. (1) The employee’s share of the contribution made by the employer under section 6 in respect of a wage period is one half of such contribution.

(2) Notwithstanding the provisions of any law or contract, the employee's share of the contribution is deductible from the wages payable by the employer to such employee during the relevant wage period and must, subject to subsection (3), be deducted by the employer at the time when such wages become due or are paid to the employee.

(3) If an employer has by error (not occasioned by the employer's) omitted to deduct from the wages paid to a liable employee any amount that the employer would have been entitled to deduct under subsection (2), such amount may be deducted from other wages payable by the employer to the employee in not less than 4 equal instalments extending over the period of 6 months after the payment of the wages in respect of which the amount was omitted to be deducted, unless the employee agrees in writing for the deduction to be made over a shorter period or in fewer instalments.

(4) If an employee leaves the employment of an employer before all amounts referred to in subsection (3) had been paid, the deduction of such amount must be made by the employer as directed by the Board.

Contribution by self-employed persons

8. A liable employee who is self-employed must pay to the Fund, in the manner prescribed by the Administrator, a contribution at the rate of 9% of the notional wage in respect of each week or part of a week in which he or she is so self-employed.

PART V BENEFITS

Entitlement to benefits

9. (1) Every person who complies with the requirements in section 10 is entitled to receive a benefit for as long as those conditions continue to be fulfilled and he or she is not disqualified under this Ordinance from the receipt of the pension.

(2) A benefit is to be determined at the rate set out in the Schedule.

(3) The receipt of a benefit does not deprive the recipient of it of any franchise right or privilege or subject him or her to any disability.

Eligibility for benefits

10. (1) Subject to the this Ordinance, a person is entitled to a benefit under this Ordinance if he or she—

- (a) has attained the prescribed retirement age;
- (b) is a widow or widower who has not remarried and is not in full-time employment;
- (c) is the child of a widow or widower (regardless of whether or not such widow or widower has remarried or whether or not he or she is in full-time employment); or
- (d) is an orphan.

(2) A person only qualifies for a benefit under subsection (1) if he or she, in the opinion of the Board, is—

- (a) a Tristanian or has a parent who was born in Tristan da Cunha; and

(b) a permanent resident of Tristan da Cunha.

Benefit not affected by earnings of spouse or partner

11. A person who is in receipt of a benefit (other than a benefit solely under an entitlement referred to in section 10(1)(b)) remains entitled to that pension whether or not he or she marries or lives with another pensioner or wage or income earner.

Payment of benefit

12. (1) Benefits must be paid weekly in arrears.

(2) Any benefit payable to an orphan or a child of a widow or widower must be paid to the guardian of the orphan or child.

PART VI CLAIMS AND ADMINISTRATION

Determination of liability and claims

13. (1) The Board must determine in the first instance—

- (a) every claim for benefit;
- (b) every question arising in relation to whether a person is a liable employee or as to the liability of an employer or self-employed person to pay contributions under this Ordinance;
- (c) whether a person is a permanently resident Tristanian; and
- (d) every other question arising from the application of this Ordinance.

(2) A final appeal lies from any decision of the Board under subsection (1) to the Governor.

Payment of expenses

14. All expenses incurred in giving effect to the provisions of this Ordinance and in connection with the administration of the Fund are to be paid primarily from the Fund itself:

But if in any year the Board certifies that the Fund is not able to meet such expenses, there must be paid from the general revenue of the Government an amount sufficient to meet the shortfall in the Fund.

PART VII FINANCIAL PROVISIONS AND REASSESSMENT OF RATES

Audit

15. Accounts of the monies in the Fund must be prepared in a form and in a manner the Board approves and such accounts must be examined and certified by a qualified Auditor nominated by the Governor.

Assessment of contributions

16. (1) Within the last 3 months of each financial year the Board of Management must reassess the rate of contributions to be levied in the following year and the Administrator may thereafter by regulation under section 18 amend the rates of contributions under Part IV and the benefits under the Schedule.

(2) The Board must set contribution rates at such a level as to meet expected expenses of the Fund in the following year.

PART VIII MISCELLANEOUS

Offences

- 17. (1)** It is an offence for a person —
- (a)* for any purpose connected with this Ordinance—
 - (i)* knowingly to make any false statement or false representation;
 - (ii)* to produce, or cause or allow to be produced, any document which the person knows to be false in a material particular; or
 - (iii)* knowingly to misrepresent or fail to disclose any material fact;
 - (b)* to fail to pay at or within the time allowed by this Ordinance any contribution which the person is liable under this Ordinance to pay;
 - (c)* to contravene or fail to comply with any provision of this Ordinance in such manner or to such extent that, as a consequence of such contravention or failure, there is a loss to the Fund or a member's account cannot be credited with any contribution.,

Penalty: A fine of £250.

(2) A person who has made any deduction from the wages of any employee and who fails without proper cause to pay to the Fund at or within the time allowed by this Ordinance the contribution in respect of which such deduction has been made commits an offence.

Penalty: A fine of £250.

(3) If an offence under this Ordinance which has been committed by a body corporate is committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the body corporate, that person as well as the body corporate commits the offence and is liable to be proceeded against and punished accordingly.

Regulations

18. The Administrator may, in addition to any other matter which may be prescribed under this Ordinance, after consultation with the Board and the Island Council, make regulations for the better carrying into effect of the principles and provisions of this Ordinance.

SCHEDULE (Sections 9(2), 16(1))

RATES OF BENEFITS

1. Full benefits

Subject to paragraph 2, the following benefits are:

	Beneficiary	Amount of Benefit
(1)	A married person who has attained prescribed retirement age who normally lives with his or her spouse who is below the prescribed retirement age:	
	(a) where his or her spouse is employed	36.5% of the notional wage per week
	(b) where his or her spouse is not employed	55% of the notional wage per week
(2)	A married couple, both of whom have attained prescribed retirement age	36.5% of the notional wage per week shall be payable to each spouse
(3)	A single person (including a widow or widower) who has attained prescribed retirement age	36.5% of the notional wage
(4)	A widow or widower who has not attained prescribed retirement age and who has not remarried and is not in full-time employment	36.5% of the notional wage
(5)	Each child of a widow or widower (regardless of whether such widow or widower has remarried and whether or not he or she is in full-time employment)	16.5% of the notional wage
(6)	An orphan	16.5% of the notional wage

2. Reduced benefits

If any person entitled to a benefit under paragraph 1(1), (2) or (3) has made no contributions under this Ordinance or has made contributions for a period of less than 30 years, the Board may reduce the amount of the benefit payable having regard to the financial position of such person and the number of years that such person contributed to the Fund:

Provided that the reduced amount of the benefit of such person must not be less than 30% of the notional wage, or in the case of a married couple the combined amount of their benefits must not be less than 60% of the notional wage.

3. Discretionary additional payment by Board

The Board may award in respect of each beneficiary in Paragraph 1, an amount equal to such beneficiary's weekly entitlement under this Schedule, to be paid to such beneficiary in addition to the payment falling due for the week in which Christmas falls, provided that the

total amount available in the Fund is equal to at least 10 times the total of the additional payments so to be made.
