

## Open Agenda

Copy No:

No: 20/2020

### Memorandum for Executive Council

**SUBJECT** **Pensions (Amendment) Ordinance 2020 - Pension Entitlements for Divested Officers**

Memorandum by the Financial Secretary

**ADVICE SOUGHT** 1. **Executive Council is asked to consider and advise whether the attached Pensions (Amendment) Bill, 2020 (attached at Annex A) should be printed, published and presented as Government Business at the next formal meeting of Legislative Council to be held in March 2020.**

**BACKGROUND & CONSIDERATIONS** 2. The pension entitlements for officers who have been transferred to other entities as part of SHG's divestment strategy when medically boarded are currently inconsistent with the pension entitlements for officers employed by SHG.

3. Under the Pensions Ordinance 2012, officers employed by SHG may access pensionable entitlements immediately following termination of employment on the basis of medical boarding, section 6(1)(e) and regulation 3(1)(e) refers:

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

(e) at age 55 or older on medical evidence to the satisfaction of the Governor that he is incapable by reason of any infirmity of mind or body of discharging the duties of his office and that such infirmity is likely to be permanent;”

“3.1. (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 his employment is terminated, he had retired at his normal retirement age:”

4. The Pensions Ordinance 2012 and accompanying regulations do not provide for the award of pension entitlements to persons who have moved with a divested service, if they are medically boarded. Pension entitlements for these persons can only be accessed before normal retirement age if the officer opts to retire between the ages of 60 years and their normal retirement age.

5. The entitlements on medical boarding for officers who are employed by SHG are therefore considered to be better in

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## Open Agenda

comparison with those officers who have been transferred on divestment of services and therefore persons who have moved with the divested service are at a disadvantage to SHG officers in terms of pensionable entitlements.

6. The policy intention for differentiating between the award of pensionable entitlements for officers in employment with the Government and those who have transferred on divestment of services is unclear. However, this difference appears inequitable, particularly where officers have transferred to entities owned by the government.
7. The following two options were considered by the Economic Development Committee:

**Option 1** *Do nothing* – Accept the provisions of the Pensions Ordinance 2012 as currently provided; or

**Option 2** *Seek an amendment to the Pensions legislation* - Legislation to provide for the award of pensionable entitlements to qualifying officers who have been transferred on divestment and are medically boarded before their normal retirement age.

8. Option 1 -
  - a) The entitlements of persons who have transferred with a divested service will not change. They will remain at a financial disadvantage to Government employees.
  - b) Government employees will be eligible for pensionable entitlements on medical boarding whilst officers who have transferred with a divested service will not be eligible to receive entitlements until their normal or optional retirement age.
  - c) There are 31 employees who have transferred with a divested service and who may be affected by the decision to do nothing. They are still employed by Connect Saint Helena Ltd and Enterprise Saint Helena. There is one person who is already affected by the current situation and therefore is already at a financial disadvantage.
  - d) EDC did not support this option.
9. Option 2 -
  - a) Amend the Pensions legislation to provide for the award of pensionable entitlements to qualifying employees who transferred with the divested service, who are medically

## Open Agenda

boarded before their normal retirement age, which will place these persons on par with government employees.

- e) Payment will fall due immediately on implementation for the former employee who was transferred on divestment and who has been medically boarded and currently cannot access their pensionable benefits.
  - f) Retirement on medical grounds is fairly rare and infrequent for employees who have moved with the divested service and Government employees before normal retirement age. In view of historical data for retirement on the basis of medical boarding, the probability of retirement on medical boarding for officers who have moved with the divested service, is perceived to be low.
  - g) It is anticipated that the proposed change can be made by way of amendment to the Pensions Regulations.
10. Option 2 was supported by EDC, to make an amendment to the Pensions Ordinance on the basis that:
- a) employees who transferred with the divested service are considered to be at a disadvantage in comparison to SHG employees;
  - b) The existing employees who have moved with the divested service are employed by wholly owned entities of SHG;
  - c) Pensions entitlements are intended to provide financial support during retirement; and
  - d) Medical boarding is likely to result in limitation on the individual's ability to independently support themselves financially during retirement.
11. The change required to bring pension entitlements in respect of medical boarding for these former employees who were transferred through divestment in line with public officers has been drafted in the attached Pensions (Amendment) Bill 2020 (Annex A)

## FINANCIAL IMPLICATIONS

12. Option 1 will not cost SHG any more than what it already payable as this option is to do nothing.
13. Option 2 will increase costs to SHG immediately, due to the one person who is currently affected. This amounts to £4,000 one-off lump sum payment in the form of a gratuity and a pension of approximately £1,000 per annum. In this one instance it is estimated that this payment of the pension before normal retirement age will result in additional pension payments totalling approximately £20,000 over a period of approximately

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## Open Agenda

20 years, assuming payments continue annually until normal retirement age after which SHG already has an obligation.

14. Further costs associated with option 2 cannot be reliably forecasted on the basis of the uncertainty over any of the remaining 31 officers who have moved with the divested services being medically boarded.
15. Should one divested officer from each age group be medically boarded before normal retirement age, approximately £1,000 to £2,000 would be required per person per year to fund pension payments. The approximate gratuity payment per person ranges from £2,000 to £10,000.
16. In view of historical data for retirement on the basis of medical boarding, the probability of retirement on medical boarding for divested officers is perceived to be low and the funding requirement per year could be in the region of £1,000 - £10,000.
17. The financial implications of a decision to grant pensionable entitlements for former officers who were transferred on divestment on the basis of being medically boarded will be limited to the existing number of persons i.e. 31 because the eligibility to join the defined benefits scheme closed on 31 March 2010 therefore the number of persons eligible for pensionable entitlements in accordance with the Pensions Ordinance 2012 will not increase.

### **ECONOMIC IMPLICATIONS**

18. The Labour Market Strategy, endorsed by Executive Council in January 2020, states that we will create a better working environment for employees while levelling the playing field for employers. In this sense it means that SHG employees should not receive unfair advantages relative to their private sector counterparts. Option 2 allows the principle of fairness across the board to occur in practice.

### **CONSISTENCY WITH INVESTMENT POLICY PRINCIPLES**

19. N/a

### **PUBLIC / SOCIAL IMPACT**

20. There will be no major public impact resulting from this paper.
21. From a social perspective this provision will benefit those who have been medically boarded in being able to provide financially for their post-employment cost of living. It will also provide a greater level of assurance to employees who have moved with the divested service in the event of their being medically boarded in the future that there is provision for them to access funds for post-employment cost of living.

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## Open Agenda

**ENVIRONMENTAL IMPACT** 22. There will be no direct environmental impacts resulting from this paper.

**PREVIOUS CONSULTATION/ COMMITTEE INPUT** 23. The Economic Development Committee endorsed the proposed changes on 23 January 2020 and gave instructions for the necessary changes to be drafted. Following the drafting the Committee endorsed the draft Pensions (Amendment) Bill 2020 on 27 February 2020.

**PUBLIC REACTION** 24. Public reaction is expected to be minimal as there are minimal financial implications and no major economic, social or environmental impacts resulting from this.

25. However, for those who have moved with divested services, this change is expected to be positively received knowing that provision is made for them to be able to access their pension entitlement before normal retirement age if they are medically boarded in the future. Communication will be made with these persons to keep them informed and up to date with the proposed changes.

**PUBLICITY** 26. It is proposed that this should be included in the radio briefing following the ExCo meeting. The Bill will be published as part of the legislative process before the formal Legislative Council meeting in March 2020.

27. Persons affected will be informed and kept up to date with the proposed changes.

**SUPPORT TO STRATEGIC OBJECTIVES** 28. This paper supports the Effective, Efficient and Accountable Public Sector goal and Strategic Objective 6.1 Ensure effective governance through efficient and effective systems and processes.

**LINK TO SUSTAINABLE ECONOMIC DEVELOPMENT PLAN GOALS** 29. This amendment to the Pensions Ordinance deals with pension rights and is an administrative amendment and is not linked directly to a specific national goal under the SEDP.

**OPEN/CLOSED AGENDA ITEM** 30. It is recommended that this is held in open session.

DLR

Corporate Support  
Corporate Services

03<sup>rd</sup> March 2020

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