

**THIRD SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3,881 of 6th October, 2011

B. 25/11

BILL

FOR

AN ACT to amend the Pensions Act and related legislation.

ENACTED by the Legislature of Gibraltar.

Title and commencement.

1.(1) This Act may be cited as the Pensions (Miscellaneous Amendments) Act 2011.

(2) Sections 1, 2(1), and 2(3) (except for section 2(3)(d)(i) and section 2(3)(d)(ii)) come into operation on the date of publication.

(3) Section 2(2) shall be deemed to have come into operation on 23 March 2010.

(4) Section 2(3)(d)(i) shall be deemed to have come into operation on 1 April 2010.

(5) Section 2(3)(d)(ii) shall be deemed to have come into operation on 3 March 2007.

(6) Sections 2(4) and 2(6) shall be deemed to have come into operation on 1 June 2009.

(7) Section 2(5) shall be deemed to have come into operation on 1 July 2008.

(8) Section 2(7) shall be deemed to have come into operation on 1 November 2007.

(9) Section 3 shall be deemed to have come into operation on 1 January 2009.

(10) Section 4 shall be deemed to have come into operation on 1 July 2007.

Amendment of the Pensions Act.

2.(1) The Pensions Act is amended as follows.

(2) In section 2 in the definition of “fire officer” delete “and the assistant Chief Fire Officer”.

(3) In section 6(1)–

(a) after paragraph (a) insert–

“Provided that in the case of a person who retires in accordance with subparagraph (i) before attaining the age of fifty-five years–

(A) any pension, gratuity or other allowance under this Act (other than a payment under section 17 or 17A) in respect of that person may be deferred until such time as the person attains the age of fifty-five;

(B) such person shall be deemed to have renounced any right to pursue any claim to such pension, gratuity or allowance under this Act until such time as the person attains the age of fifty-five regardless of any change in his personal circumstance which may occur during that period.”;

(b) in paragraph (c) after “Technical Services Department” insert “, and at the time of the transfer such person was entitled to a pension, gratuity or allowance under this Act.”;

(c) in paragraph (d)–

- (i) after “service under the Government” insert “, and at the time of the transfer such person was entitled to a pension, gratuity or allowance under this Act,”;
 - (ii) after “Gazette” insert “in which case paragraph (a) shall apply to him as if he was still in the public service”.
- (d) (i) after paragraph (d) insert–
- “(e) if he was transferred from service under the Government, and at the time of the transfer such person was entitled to a pension, gratuity or allowance under this Act, to any wholly owned Government company provided that the names of any companies are prescribed for the purposes of this section by the Government by notice in the Gazette in which case paragraph (a) shall apply to him as if he was still in the public service;”;
- (ii) after paragraph (e) insert–
- “(f) if he resigned from service under the Government to join a company which took over the functions of a Government Department and his accrued pension rights at the time of resignation were preserved, provided that–
 - (i) he was a member of a pension scheme that provided pension benefits that are the same to the pension benefits that would have been payable under this Act on the basis of the combined years of service in such company and his Government pensionable service;
 - (ii) the name of the pension scheme is prescribed for the purposes of this section by the Government by notice in the Gazette and that the accumulated pension fund held in such scheme is transferred to the Government;

(iii) the value of any existing accrued pension rights referred to above and the value of any pension benefits under the pension scheme referred to in (i) above is transferred to the Government (the calculation of the transfer payment to the Government is subject to approval by the Government); and

(iv) payments of 25% of his basic pay (or such other amount as may be agreed by the Government) are made on his behalf to the Government by the company on a monthly basis up to the date of his retirement,

in which case paragraph (a) shall apply to him as if he was still in the public service;”.

(4) After section 6(1) insert—

“(1A) An officer who is granted a pension under the provisions of subsection (1)(a)(iv) and who takes up employment in any capacity between the date of his retirement from public service under the Government and his attaining the age of fifty-five years shall notify the Government in writing that he has taken up further employment, whereupon the payment of his pension may be suspended in whole or in part until—

- (a) he attains the age of fifty-five years, or
- (b) he ceases his further employment,

whichever is the earlier.

(1B) If it comes to the notice of the Government that an officer to whom subsection (1A) applies has taken up further employment, the officer shall be informed that the payment of his pension will be suspended in whole or in part in accordance with the provisions of subsection (1A), unless the officer can show cause to the satisfaction of the Government why payments should not be so suspended.

(1C) A suspension under subsection (1A) or (1B) may have retrospective effect and be deemed to have commenced on the date on which the officer first took up further employment.

(1D) Nothing in this section shall be construed as preventing the Government from recovering by means of civil proceedings any payments made to the officer while the officer was in further employment.

(1E) A person to whom subsection (1A) applies who fails to inform the Government that he has taken further employment shall be guilty of an offence and liable on summary conviction to a fine at level 2 on the standard scale.”.

(5) For section 8 substitute–

“Compulsory retirement.

8.(1) Subject to subsections (2) and (3), the Governor, on the advice of the Government, may require an officer to retire from the public service under the Government–

- (a) at any time after he attains the age of fifty-five years;
or
- (b) in special cases at any time after he attains the age of fifty years.

(2) In the case of any fire officer or police officer the Governor, on the advice of the Government, may require such officer to retire from the public service under the Government at any time after he has attained the age of fifty years and retirement shall be compulsory for every such officer on attaining the age of fifty-five years.

Provided that the Governor shall–

- (a) in exceptional circumstances and on the recommendation of the Government, disapply the compulsory retirement age in this subsection with respect to a particular police officer or police officers;

(b) in exceptional circumstances and on the recommendation of the Government, disapply the compulsory retirement age in this subsection with respect to a particular fire officer or fire officers.

(3) A prison officer who was in post on 10 July 1998 shall remain subject to the provisions of subsection (2) as it was in force immediately prior to the date of entry into operation of this Act unless he elects to be subject to the provisions of this Act as amended by the Pensions (Miscellaneous Amendments) Act 2011 and such election is made by the prison officer in writing and delivered by him to the Superintendent of the Prison for forwarding to the Human Resources Manager at least 60 days before the prison officer attains age fifty.”.

(6) For section 12 substitute–

“12.(1) Subject to subsection (2) if a person not being a person to whom section 11 applies to whom a pension has been granted under this Act is appointed to an office in the public service, the payment of his pension may, with his consent, if the Government thinks fit, be suspended during the period of his re-employment.

(2) Where the pension granted under this Act was granted in accordance with section 6(1)(a)(iv) the person’s consent is not required in order to suspend the pension during the period of his re-employment.”.

(7) After section 17(6) insert–

“(7) Where an officer dies whilst in the service of the Electricity Authority, a statutory authority prescribed for the purposes of section 6(1)(d) or a wholly owned Government company prescribed for the purposes of section 6(1)(e), further to his transfer to such Authority or company in the circumstances set out in section 6(1)(c), 6(1)(d), 6(1)(e) or 6(1)(f), he shall be deemed, for the purposes of this section, to have died while in public service under the Government.”

Amendment of the Pensions Regulations.

3.(1) The Pensions Regulations are amended as follows.

- (2) For regulation 4 substitute–

“Pension to whom and at what rates to be granted.

4.(1) Subject to the provisions of the Act and of these regulations, every public officer holding a pensionable office under the Government who has been in service under the Government for ten years or more may be granted on his retirement a pension at the rate of one six-hundredth of his pensionable emoluments in respect of each completed month of pensionable service:

Provided that in respect of each month of pensionable service completed by a police officer, a prison officer or a fire officer as a police officer, prison officer or fire officer after his twentieth and before his twenty-seventh year of service as one or more of such officers the rate shall be two six-hundredths of his pensionable emoluments.

(1A) As from 10 July 1998, any prison officer who elects in accordance with subsection (3) of section 8 of the Act (compulsory retirement), shall not be entitled to benefit from the provisions of the proviso to regulation 4(1) as it was in force immediately before the entry into operation of this sub-regulation.

(3) An officer who actually retires from the public service in the circumstances mentioned in section 6(1)(a)(iv) of the Act, and at an age of less than fifty-five years, and who has completed more than ten years but less than twenty years pensionable service, may be granted an additional pension at the annual rate of one six-hundredth of his pensionable emoluments for each month by which his pensionable service falls short of twenty years:

Provided that in the case of an officer whose pensionable service would, if he had continued to hold until he attained the age of fifty-five the office which he held at the date of his retirement, have been a period shorter than twenty years, this paragraph shall have effect as if for the last reference therein to twenty years there were substituted a reference to that shorter period.

- (4) The Government may in special cases direct that–

- (a) where an officer has retired in accordance with a Government early exit scheme (as contained in a collective agreement or otherwise) his pensionable service shall be deemed to be increased for the purposes of this Act in such manner as set out in that scheme;
 - (b) where an officer falls within section 6(1)(f) of the Act service in the company may be deemed to be pensionable service.”.
- (3) In regulation 5–
- (a) in paragraph (2) for “This regulation” substitute “Subject to paragraph (6), this regulation”;
 - (b) in paragraph (2)(d) for the full-stop substitute “; or”;
 - (c) after paragraph (2)(d) insert–
 - “(e) has attained the age of fifty-two and has retired in accordance with a Government early exit scheme (as contained in a collective agreement or otherwise).”;
 - (d) after paragraph (3) insert–
 - “(5) Provided that in the case of a person who retires in accordance with this regulation before attaining the age of sixty years–
 - (a) any pension, gratuity or other allowance under this Act (other than a payment under section 17 or 17A) in respect of that person shall be deferred until such time as the person attains the age of sixty;
 - (b) such person shall be deemed to have renounced any right to pursue any claim to such pension, gratuity or allowance under this Act until such time as the person attains the age of sixty regardless of any change in his personal circumstance which may occur during that period.

(6) Where an officer to whom this regulation applies has retired in accordance with a Government early exit scheme (as contained in a collective agreement or otherwise) his pensionable service shall be deemed to be increased for the purposes of this Act in such manner as set out in that scheme.”.

Amendment of the Income Tax (Allowances, Deductions and Exemptions) Rules, 1992.

4. In rules 3A and 3B of the Income Tax (Allowances, Deductions and Exemptions) Rules, 1992 for sub-rule (1)(b) substitute–

“(b) compulsorily retired at age fifty-five or over by operation of section 8 of the Pensions Act.”.

EXPLANATORY MEMORANDUM

This Bill amends the Pensions Act and related legislation.

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