

Montserrat
Pensions Act, 2011
No. 3 of 2011

M O N T S E R R A T

PENSIONS ACT

No. 3 of 2011

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I ASSENT

Governor

DATE:

M O N T S E R R A T

No. 3 of 2011

AN ACT TO REPEAL AND REPLACE THE PENSIONS ACT (CAP. 06.07).

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council of Montserrat and by the Authority of the same as follows—

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the Pensions Act, 2011.

2 Interpretation

In this Act—

“**average pensionable emolument**” means $\frac{1}{3}$ of the sum of the highest 3 pensionable emoluments of the pensionable officer;

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“commuted gratuity” means the gratuity prescribed to be paid to a pensionable officer who elects to receive, instead of pension, a gratuity and a reduced pension;

“commuted pension” means the reduced pension prescribed to be paid to a pensionable officer who elects to receive, instead of pension, a gratuity and a reduced pension;

“death benefits” means the benefits contained in Part 4;

“early exit benefit” means a benefit under section 13;

“early retirement” means retirement under section 8;

“early retirement age” in respect of—

- (a) an existing officer—means the age referred to in subparagraph 8(1)(a)(ii); and
- (b) a new officer— means the age referred to in subparagraph 8(1)(b)(ii);

“existing officer” means a person who held a pensionable office on or before 31 December 2010, and includes a person whose office was non-pensionable before the commencement of this Act, but which became a pensionable office under this Act;

“minor child” means a child who has not yet attained the age of 18;

“new officer” means a person who first assumed a pensionable office after 31 December 2010;

“non-pensionable office” means an office which is not a pensionable office;

“normal retirement” means retirement under section 7;

“normal retirement age” in respect of—

- (a) existing officers—means the age referred to in paragraph 7(1)(a); and

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(b) new officers— means the age referred to in paragraph 7(1)(b);

“pension benefits” means the benefits prescribed under section 4;

“pensionable emoluments”—

- (a) in respect of a police officer of the rank of Sergeant or Constable—means his annual salary and all allowances, including the estimated value of free quarters up to a maximum of $\frac{1}{6}$ of the total pensionable emolument, but excluding transport and entertainment allowance; and
- (b) in respect of any other pensionable officer—means annual salary and any allowance for which income tax is payable under the Income and Corporation Tax Act (Cap. 17.07);

“pensionable office” means an office prescribed by Order of the Governor to be a pensionable office;

“pensionable officer” means a person who holds a pensionable office;

“prescribed” means prescribed by regulations under this Act;

“public officer” has the same meaning as in the Public Administration Act, 2011;

“public service” has the same meaning as in the Public Administration Act, 2011;

“retirement on medical grounds” means retirement under section 9;

“social security benefit” means any age benefit and invalidity benefit payable under the Social Security Act (Cap. 18.09); and

“Social Security Board” means the Social Security Board established under section 4 of the Social Security Act (Cap. 18.09).

3. Application of Act

This Act applies to retirement benefits to be awarded after the commencement of this Act.

PART 2--PENSION BENEFITS

4. Pension Benefits

Subject to section 22, the Governor in Council may, by regulations, establish the pension, gratuity or other allowance that may be awarded to a pensionable officer who is eligible under section 6.

5. Entitlement

- (1) This Act does not confer on a pensionable officer the right to compensation for past services.
- (2) The entitlement, if any, to compensation for past services, and the circumstances in which any such compensation may be reduced, suspended or withheld is determined under the Public Administration Act, 2011.

6. Eligibility

A pensionable officer is eligible for pension benefits upon—

- (a) normal retirement;
- (b) early retirement;
- (c) retirement on medical grounds;
- (d) termination of employment, to the extent that the Public Administration Act provides that he is so eligible.

7. Normal Retirement

- (1) A pensionable officer may take normal retirement if he has 10 years or more service and—

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- (a) is an existing officer who—
 - (i) was born in a year set out in Column 1 of the Schedule; and
 - (ii) has attained the corresponding age set out in Column 2 of the Schedule; or
 - (b) is a new officer who has attained the age of 65.
- (2) For the purpose of this section, a person does not have the required years of service unless he served consecutively at least 5 of the required number of years.

8. Early Retirement

- (1) Subject to subsection (2), a pensionable officer may take early retirement if—
- (a) he is an existing officer and—
 - (i) he has completed the years of service set out in Column 4 of the Schedule that corresponds to the year of his birth in Column 1; or
 - (ii) he has completed at least 10 years—but not the years required under (i)—and has attained the age set out in Column 3 of the Schedule that corresponds to the year of his birth in Column 1; or
 - (b) he is a new officer and—
 - (i) he has completed 35 years of service; or
 - (ii) he has completed 10 or more, but less than 35, years of service, and he has attained the age of 60.
- (2) For the purpose of this section, a person does not have the required years of service unless he served consecutively at least 5 of the required number of years.

9. Retirement on medical grounds

A pensionable officer must retire on medical grounds if the Governor is satisfied on medical evidence that the officer 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.

10. Time for payment

Subject to the regulations, the prescribed pension benefit is due and payable from the day after the date of retirement.

11. Suspension of pension

If a pensionable officer is granted a pension under this Part, and the officer subsequently assumes a pensionable office, the payment of his pension must be suspended while he holds the pensionable office.

12. Social Security Board reporting obligation

The Social Security Board must, as soon as possible after a claim is made for a social security benefit by a person in respect of whom the Government of Montserrat has paid a contribution, inform the Office of the Deputy Governor of the claim, the amount of social security benefit payable to the person, the date from which the benefit is to be paid and the total number of weeks contribution from the Government or other employer.

PART 3—OTHER BENEFITS

13. Early exit benefit for 10 years or more service

- (1) A pensionable officer with 10 years or more service may retire and opt to receive one of the following early exit benefits—
 - (a) a lump sum payment of the prescribed amount; or
 - (b) a deferred benefit of the prescribed amount, calculated at the date of retirement but starting no earlier than his early retirement age.
- (2) If a pensionable officer opts for the early exit benefit under—
 - (a) paragraph (1)(a) and subsequently assumes a pensionable office—

- (i) he must return the lump sum payment, with *interest*, in order for his prior years of service to be taken into consideration for any future pension benefits; and
 - (ii) his prior years of service must be excluded from the calculation of any future pension benefits unless he completes at least 3 years service consecutively upon his return to office; or
- (b) paragraph (1)(b) and subsequently assumes a pensionable office the aggregate of all previous and future years of service must be taken into consideration for future pension benefits, only if—
- (i) the officer has not received any pension payment for his prior years of service; and
 - (ii) he completes at least 3 years service consecutively upon his return to office.
- (3) In this section “**interest**” means the annual average of the discount rates declared by the Eastern Caribbean Central Bank for the year in which the repayment is made.

14. Suspension of early exit deferred benefit

If a pensionable officer retires and is granted an early exit benefit under paragraph 13(1)(b), and the officer subsequently assumes a pensionable office, the payment of the deferred benefit must be suspended while he holds the pensionable office.

15. Gratuity for less than 10 years service

A pensionable officer with less than 10 years service may retire and receive a gratuity of the prescribed amount.

PART 4--DEATH BENEFITS

16. Gratuity where officer dies in the service or after retirement

- (1) (a) If a pensionable officer dies while in the public service, the Governor may grant to his legal personal representative a gratuity of an amount not exceeding either his pensionable emoluments, or his commuted gratuity, if any, whichever is the greater.
- (b) For the purposes of this section—
- (i) **“pensionable emoluments”** means the emoluments which would be taken for the purpose of computing any pension or gratuity granted to the officer if he had retired at the date of his death on medical grounds;
- (ii) **“commuted gratuity”** means the gratuity, if any, which might have been granted to the officer under regulation 25 of the Pensions Regulations if his public service had been wholly in Montserrat and if he had retired at the date of his death on medical grounds and had elected to receive a gratuity and reduced pension.
- (2) If a person dies after retirement from the public service, and the sums paid or payable to him at his death on account of the pension benefit are less than the amount of the pensionable emoluments enjoyed by him at the date of his retirement, the Governor may grant to his legal personal representative a gratuity equal to the deficiency.
- (3) Despite subsections (1) and (2), the Governor may in any case where the amount of the gratuity payable does not exceed the sum of \$10,000, dispense with the production of probate or letters of administration and cause the gratuity to be paid to the dependant of the officer and, where there is more than one such dependant, may divide the gratuity among the dependants in such proportion as he may think fit.

17. Death from injury or disease in the course of employment

- (1) If a public officer dies—
- (a) as a result of an injury sustained in the actual discharge of his duty, specifically attributable to the nature of his duty which is not wholly or mainly due to, or seriously aggravated by, his own serious and culpable negligence or misconduct; or
 - (b) as a result of contracting a disease to which he is specifically exposed by the nature of his duty, not being a disease wholly or mainly due to, or seriously aggravated by, his own serious and culpable negligence or misconduct—

while in service under the Government of Montserrat, and the death occurs within 7 years after the date of the injury or contracting the disease, the Governor may grant an award to his estate equal to twice the amount payable under section 16, in addition to any grant made under section 16.

- (2) If the officer—
- (a) dies after retiring from the public service, the expression **“pensionable emoluments”** in subsection (1) refers to the last pensionable emoluments before retirement; and
 - (b) is not a pensionable officer, the expression **“pensionable emoluments”** in subsection (1) means the emoluments enjoyed by him which would have been pensionable emoluments if he were a pensionable officer;
- (3) If a public officer proceeding by a route approved by the Governor to or from Montserrat, at the commencement or termination of his service in Montserrat, or of a period of leave, dies as the result of damage to the vessel, aircraft or vehicle in which he 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 considered, for the purposes of this section, to

have died in the circumstances described in paragraph (1)(a). However, this subsection does not apply if the officer is eligible to receive an award under subsection (4).

- (4) An officer who dies as a result of an injury received while travelling by air in pursuance of official instructions, which injury is not wholly or mainly due to, or seriously aggravated by, his own serious and culpable negligence or misconduct, is considered for the purposes of this section to have died in the circumstances described in paragraph (1)(a).
- (5) If the Governor is satisfied that damages have been or will be recovered in respect of the death for which an additional award may be granted under subsection (1), the Governor may take those damages into account against such additional pension or pension in such manner and to such extent as he may think fit and may withhold or reduce the additional pension or pension accordingly.
- (6) For the purposes of subsection (5) an officer is considered 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 claim and whether or not proceedings are instituted to enforce that claim.

PART 5—PROTECTION OF AWARDS

18. Pensions, etc., not to be assignable

A pension benefit, death benefit or other benefit under this Act granted under this Act is not be assignable or transferable except for the purpose of satisfying—

- (a) a debt due to the Government of Montserrat; 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 officer to whom the pension benefit, death benefit or other benefit is 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.

19. Power of Governor in case of bankruptcy

- (1) If a person to whom a pension benefit, death benefit or other benefit has been granted under this Act is adjudicated bankrupt or is declared insolvent by judgment of any competent Court, then a pension benefit, death benefit or other benefit must cease.
- (2) If the person is adjudicated bankrupt or is declared insolvent either—
 - (a) after retirement in circumstances in which he is eligible for a pension benefit, death benefit or other benefit under this Act but before the pension benefit, death benefit or other benefit is granted; or
 - (b) before such retirement, and he has not obtained his discharge from bankruptcy or insolvency at the date of his retirement—

then, in the former case any pension benefit, death benefit or other benefit eventually granted to him ceases from the date of the adjudication or declaration as the case may be and, in the latter case, the pension benefit, death benefit or other benefit may be granted, but must cease and not become payable.

- (3) If a pension benefit, death benefit or other benefit ceases under this section, the Governor may direct all or any part of the pension benefit to which the person would have been entitled had he 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, in the proportion that the Governor considers just, of the following—
 - (a) the person;
 - (b) the person's spouse;
 - (c) the person's child;
 - (d) others related to the person by blood or marriage and dependent on the person.
- (4) Moneys applied for the discharge of the debts of the person whose pension benefit has so ceased must, for the purposes of this section, be regarded as applied for his benefit.

- (5) When a person whose benefit has ceased obtains his discharge from bankruptcy or insolvency, the Governor may direct that it be restored from the date of the discharge or a later date, and the pension benefit is restored accordingly.

20. Power of Governor in case of conviction

- (1) If a person to whom a pension benefit, death benefit or other benefit is granted under this Act is sentenced to a term of imprisonment by a competent Court for an offence, the pension benefit, death benefit or other benefit must, if the Governor, so directs, cease from the date that the Governor determines.
- (2) If the person is sentenced after retirement in circumstances in which he is eligible for a pension benefit, death benefit or other benefit the under this Act but before it is granted, then subsection (1) applies as respects any pension benefit, death benefit or other benefit which may be granted to him.
- (3) If a pension benefit, death benefit or other benefit ceases by reason of this section the Governor may direct all or any part of the pension benefit to which the person would have been entitled had he not been sentenced to be paid in the same manner as set out in section 19.
- (4) If the person after conviction at any time receives a free pardon, the pension benefit, death benefit or other benefit must be restored with retrospective effect; but in determining whether arrears of pensionable benefit are payable and in computing the amount, account must be taken of the moneys paid under the subsection (3).

PART 6—TRANSITIONAL PROVISIONS

21. Protection of persons with 20 years of service

A pensionable officer with 20 or more years continuous service (within the meaning of the Pensions Act, Cap. 6.07 repealed by section 23) at the date of commencement of this Act, at any time after the commencement of this Act may elect to receive pension

benefits under Part 3 as if they were an existing officer born in 1961.

PART 7—MISCELLANEOUS

22. Regulations

- (1) The Governor in Council may make regulations, published in the Gazette, for carrying out the purposes and provisions of this Act.
- (2) Subject to subsection (3), regulations made under subsection (1) may be amended, added to or revoked by regulations made by the Governor in Council.
- (3) If the Governor in Council is satisfied that it is equitable that any regulation has retrospective effect in order to confer a benefit upon, or remove a disability attaching to, a public officer the regulation may be given retrospective effect for that purpose.
- (4) However, the regulation does not have retrospective effect unless it receives the prior approval of the Legislative Council signified by resolution.

23. References to Public Administration Act

Until the Public Administration Act comes into force, references in this Act to the Public Administration Act must be read as references to the Constitution of Montserrat (Cap. 1.01).

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24. Repeal

The following are hereby repealed—

- (a) The Pensions Act, Cap. 6.07, including Act 9 of 1960 incorporated in Cap. 6.07; and
- (b) Part V of the Police Act (Cap 10.01).

SCHEDULE

(Section 7 and 8)

**Retirement Age and Years of Service Requirements
for existing officers**

Column 1	Column 2	Column 3	Column 4
Birth year	Normal* Retirement Age	Early Retirement	
		Age*	Years of* Service
Before 1961	55	N/A	N/A
1961	60	55	30
1962	60	55	31
1963	60	55	31
1964	61	56	32
1965	61	56	32
1966	61	56	33
1967	62	57	33
1968	62	57	34
1969	62	57	34
1970	63	58	35
1971	63	58	35

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Column 1	Column 2	Column 3	Column 4
Birth year	Normal* Retirement Age	Early Retirement	
		Age*	Years of* Service
1972	63	58	35
1973	64	59	35
1974	64	59	35
1975	64	59	35
After 1975	65	60	35

*If the pensionable officer is a police officer below the rank of Inspector, the values in these columns must be reduced by 5.

SPEAKER

Passed the Legislative Council this 5th day of May, 2011.

CLERK OF COUNCIL