ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER P20

PENSIONS ACT

Showing the Law as at 31 December 2022

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition consolidates—

Act 13/2003, in force 1 January 2004
Act 9/2008, in force 1 July 2006
Act 7/2010, in force 1 November 2010
Act 5/2014, in force 30 September 2014 (S. 5 in force 10 April 2012)
Act 15/2016, in force 23 December 2016
Act 24/2019, in force 18 December 2019

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PENSIONS ACT

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PENSIONS ACT

Interpretation

1. (1) In this Act—

"Commissioner" means Commissioner of Police;
(Act 9/2008, s. 71)

"Deputy Commissioner" means Deputy Commissioner of Police;
(Act 9/2008, s. 71)

"Fund" means the Fund established under section 28 of Part 2;
(Act 13/2003, s. 2)

"house allowance" includes the estimated value of free quarters as defined in the Pensions Regulations under this Act;

"inducement allowance" means the inducement allowance—

(a) referred to in paragraph (a) of clause 3 of the Overseas Service (Saint Christopher, Nevis and Anguilla) Agreement, 1961, contained in the Schedule to the Overseas Service Ordinance, 1964 (now repealed), which refers to an inducement allowance at such annual rate as may be specified by the Government of the United Kingdom; and

(b) paid before the repeal of the Overseas Service Ordinance, 1964;

"non-pensionable office" means an office which is not a pensionable office;

"normal retirement age" means—

(a) for officers in the public service on or before 1 January 2004—

(i) 55 years in the case of an officer having a pensionable service of 10 years or more and reaching 50 years on or before 1 January 2004 or within the next following 12 months after 1 January 2004, and

(ii) 60 years in the case of any other officer,

(b) 65 years for officers appointed to the public service on or after 1 January 2004;
(Act 13/2003, s. 2)

"other public service" means public service not under the Government of Anguilla;

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"pensionable emoluments"—

(a) in respect of service under the Government of Anguilla, includes salary, personal allowance, house allowance, inducement allowance, responsibility allowance and, in the case of a teacher, any charge pay that may be paid to such teacher when in charge of a government elementary school, but does not include duty allowance, entertainment allowance or any other emoluments whatever; and

(Act 13/2003, s. 2)

(b) in respect of other public service, means emoluments which count for pension in accordance with the law or regulations in force in such service;

"pensionable office" means—

(a) in respect of service under the Government of Anguilla, an office which, by virtue of the provision for the time being in force in an Order made by the Governor in Council and published in the *Gazette*, is declared to be a pensionable office; and any such Order may from time to time be amended, added to, or revoked by an Order so made and published; but where by virtue of any such amendment or revocation any office ceases to be a pensionable office, then so long as any person holding that office at the time of the amendment or revocation continues therein, the office shall, as respects that person, continue to be a pensionable office; and

(b) in respect of other public service, an office which is for the time being a pensionable office under the law or regulations in force in such service;

"Pensions Regulations" means the Pensions Regulations under this Act;

"personal allowance" means a special addition to salary granted personally to the holder for the time being of the office, but does not include such an addition if it is granted subject to the condition that it shall not be pensionable;

"public service" means service in a civil capacity under the Government of Anguilla or the Government of any other part of Her Majesty's dominions or of any British protectorate, protected state or mandated or trust territory administered by the Government of any part of Her Majesty's dominions, or of the New Hebrides or the Anglo-Egyptian Sudan, or service which is pensionable under the Teachers' (Superannuation) Act, 1925, 15 & 16 Geo. 5 c. 59, or any Act amending or replacing the same, or under the Colonial Superannuation Scheme, or in a Colonial University College or pensionable employment under a local authority in the United Kingdom, or in such other service as the Secretary of State may determine to be "public service" for the purpose of any provision of this Act and, except for the purposes of computation of pension or gratuity and of section 12, includes service as a Governor-General, Governor or High Commissioner in any part of Her Majesty's dominions, any British protected state or protectorate, any mandated or trust territory administered by the Government of any part of Her Majesty's dominions, or the Anglo-Egyptian Sudan;

"salary" means the salary attached to a pensionable office or, where provision is made for taking service in a non-pensionable office into account as pensionable service, the salary attached to that office;

"Superintendent" means a police officer of the rank of Superintendent.

(Act 9/2008, s. 71)

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(2) For the avoidance of doubts, it is hereby declared that, where an officer has been confirmed in a pensionable office and is thereafter appointed to another pensionable office, then, unless the terms of such appointment otherwise require, such last-mentioned office is, for the purposes of this Act, an office in which he has been confirmed.

Application of Act

2. (1) This Act applies to—

(a) every officer appointed to the public service of Anguilla; and

(b) every police officer who enters the force on or after 31 December 2019.

(2) For the avoidance of doubt, the Police Pensions Act, R.S.A. c. P52 does not apply to the police officers referred to in subsection (1)(b).

(3) For the purposes of this section, "police officer" includes the Commissioner, Deputy Commissioner, Superintendent and Deputy Superintendent.

(Act 24/2019, s. 2)

PART 1

PENSION GRANTS

Pensions Regulations

3. (1) Pensions, gratuities and other allowances may be granted by the Governor in accordance with the Pensions Regulations to officers who have been in service under the Government of Anguilla.

(2) Except as is otherwise provided in this section, the Pensions Regulations may from time to time be amended, added to, or revoked by regulations made by the Governor in Council with the sanction of the Secretary of State, and all regulations so made shall be laid before the House of Assembly and published in the *Gazette*.

(3) Whenever the Governor in Council is satisfied that it is equitable that any of the Pensions Regulations or any other regulations amending or adding to them should have retrospective effect in order to confer a benefit upon or remove a disability attaching to an officer that regulation may be given retrospective effect for that purpose but no such regulation shall have retrospective effect unless it has received the prior approval of the House of Assembly signified by resolution.

(4) All Pensions Regulations made under this section shall have the same force and effect as if they were contained in this Act and the expression "this Act" shall, wherever it occurs in this Act, be construed as including a reference to the Pensions Regulations.

(5) Any pension or gratuity granted under this Act shall be computed in accordance with the provisions in force at the actual date of an officer's retirement.

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Pensions, etc., to be charged and apportioned to Consolidated Fund

4. There shall be charged to and paid out of the Consolidated Fund as in this section provided all such sums of money as may from time to time be granted by way of pension, gratuity or other allowance in pursuance of this Act.

(Act 7/2010, s. 26)

Liability of Consolidated Fund

5. Notwithstanding anything to the contrary in any other provision of this Act, all sums of money, as may from time to time be paid by way of pension, gratuity, allowance or other refunds in pursuance of this Act, in respect of an officer who—

(a) was in the public service on or before 1 January 2004;

(b) has a pensionable service of 10 years or more on or before 1 January 2004; and

(c) reached his normal retirement age of 55 years on or before 31 December 2009;

shall be charged on and paid out of the Consolidated Fund.

(Act 5/2014, s. 2)

Pensions, etc., not of right

6. (1) No officer shall have an absolute right to compensation for past services or to pension, gratuity, or other allowance; nor shall anything in this Act affect the right of the Crown to dismiss any officer at any time and without compensation.

(2) Where 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

7. No pension, gratuity or other allowance shall be granted under this Act to any officer except on his retirement from the public service in one of the following cases—

(a) on or after attaining the normal retirement age or, in special cases with the approval of the Secretary of State, 5 years before the normal retirement age;

(Act 13/2003, s. 4)

(b) in the case of transfer to other public service, on or after attaining the age at which he is permitted by the law or regulations of the service in which he is last employed to retire on pension or gratuity, but, if his service in such other public service is superannuated under the Federated Superannuation System for Universities or a similar insurance scheme, he has retired on one of the grounds mentioned in paragraphs (a), (c), (d), (e) and (f);

(c) on the abolition of his office;

(d) on compulsory retirement for the purpose of facilitating improvement in the organisation of the department to which he belongs, by which greater efficiency or economy may be effected;

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(e) on medical evidence to the satisfaction of the Governor or the Secretary of State 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;

(f) in the case of termination of employment in the public interest as provided in this Act;

(g) on retirement in circumstances, not mentioned in the preceding paragraphs of this section, rendering him eligible for a pension under the Pensions (Governors of Dominions etc.) Acts, 1911 to 1936, or any Act amending or replacing those Acts.

Permission to continue service after 55 years

8. Any officer whose normal retirement age is 55 years may, within 12 months from 1 January 2004, apply to the Governor to continue his services until 60 years and having regard to the conditions of the public service and all other circumstances of the case, if the Governor considers that the service of any such officer should be retained, the Governor in consultation with the Public Service Commission may permit him to continue in service until 60 years.

(Act 13/2003, s. 5)

Pensions of certain persons in pensionable offices who resign within 12 months after 1 January 2004

9. (1) Where any officer, who, having held a pensionable office under the Government of Anguilla for 20 years or more and, having been confirmed in the pensionable office, resigns from service and his resignation becomes effective at any time within the next following 12 months after 1 January 2004, notwithstanding anything to the contrary in section 7, such officer shall, on the day he attains the age of 55 years, be deemed to have retired from the public service and may be granted a pension in respect of his service in accordance with the Pensions Regulations.

(2) Where the resignation of an officer becomes effective under subsection (1), the total amount of his contributions in the Fund together with interest thereon shall be refunded to him immediately upon his resignation.

(Act 13/2003, s. 6)

Pensions of certain persons in pensionable offices who resign after 1 January 2004

10. (1) Where any officer, who, having held a pensionable office under the Government of Anguilla for 10 years or more and, having been confirmed in the pensionable office, resigns from service at any time after 1 January 2004, notwithstanding anything to the contrary in section 7, such officer shall, on the day he attains the age of 60 years, be deemed to have retired from the public service and be paid a pension in respect of his service in accordance with Part 2 and Part 3.

(2) Every officer who becomes entitled to a pension under subsection (1) may, at his option exercisable as provided in subsection (3), be paid in lieu of such pension a pension at the rate of 3/4ths of such pension together with a gratuity equal to 12 ½ times the amount of the reduction so made in the pension. The lump-sum gratuity shall be paid immediately upon his resignation and the reduced pension on his normal date of retirement, in which case the gratuity shall be discounted at the rate of interest to be decided by the Board; but in no case shall the discounted gratuity be less than the amount equal to his total contributions in the Fund together with interest thereon.

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(3) Subsections (2) to (5) of section 57 shall apply *mutatis mutandis* to an option exercisable under subsection (2).

(Act 13/2003, s. 7)

Termination of service

11. Where an officer's service is terminated on the ground that, having regard to the conditions of the public service, the usefulness of the officer thereto and all the other circumstances of the case, such termination is desirable in the public interest, and a pension, gratuity or other allowance cannot otherwise be granted to him under the provisions of this Act, the Governor may, if he thinks fit, grant such pension, gratuity or other allowance as he thinks just and proper, not exceeding in amount that for which the officer would be eligible if he retired from the public service in the circumstances described in section 7(e).

Compulsory retirement

12. It shall be lawful for the Governor to require an officer to retire from service under the Government of Anguilla—

(a) at any time after he attains the age of 55 years; or

(b) in special cases, with the approval of the Secretary of State, at any time after he attains the age of 50 years.

Maximum pension

13. (1) Except in cases provided for by subsection (2), a pension granted to an officer under this Act shall not exceed 2/3 of the highest pensionable emoluments drawn by him at any time in the course of his service under the Government of Anguilla.

(2) An officer who shall have been granted a pension in respect of other public service shall not at any time draw from the funds of Anguilla an amount of pension which, when added to the amount of any pension or pensions drawn in respect of other public service, exceeds two-thirds of the highest pensionable emoluments drawn by him at any time in the course of his public service, but, where an officer receives in respect of some period of public service both a gratuity and a pension, the amount of such pension shall be deemed for the purposes of this subsection to be four-thirds of its actual amount.

(3) Where the limitation prescribed by subsection (2) operates, the amount of pension to be drawn from the funds of Anguilla shall be subject to the approval of the Secretary of State in order that it may be determined with due regard to the amount of any pension or pensions to be drawn in respect of other public service.

(4) For the purposes of this section, an additional pension granted in respect of injury shall not be taken into account; but where the officer is granted such an additional pension under this Act, the amount thereof together with the remainder of his pension or pensions shall not exceed five-sixths of his highest pensionable emoluments at any time in the course of his public service.

Increase in pension of those retiring for ill health with more than 10 but less than 20 years' service

14. Subject to the provisions of this Act and of the Pensions Regulations, every officer holding a pensionable office in Anguilla who has been in service under the Government of Anguilla in a civil capacity for more than 10 but less than 20 years, and who retires from the service in the circumstances

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mentioned in section 7(e) may, on retirement, be granted a pension as if his pensionable service had been 20 years.

Liability of pensioners to be called upon to take further employment

15. (1) Every pension granted under this Act shall be subject to the condition that unless or until the officer shall have attained the age of 50 years, he may, if physically fit for service, be called upon by the Secretary of State to accept, in lieu of his pension, an office, whether in Anguilla or in other public service, not less in value, due regard being had to circumstances of climate, than the office which he held at the date of his retirement. If a pensioner so called upon declines to accept such office, the payment of his pension may be suspended until he has attained the age of 50 years.

(2) The provisions of the foregoing subsection shall not apply in any case where the Governor, being of opinion that the officer is not qualified for other employment in the public service or that there is no reason to expect that he can be shortly re-employed therein, otherwise directs.

Suspension of pension on re-employment

16. If an officer to whom a pension has been granted under this Act is appointed to any office in the public service, the payment of his pension may, if the Governor thinks fit, be suspended during the period of his re-employment.

(Act 13/2003, s. 8)

Pensions, etc., not to be assignable or attachable

17. A pension, gratuity or other allowance granted or paid under this Act shall not be assignable or transferable except for the purpose of satisfying—

(a) a debt due to the Government of Anguilla; or

(b) an order of any Court for the payment of periodical sums of money towards the maintenance of the wife or former wife or minor child of the officer to whom the pension, gratuity or other allowance has been granted or paid;

and shall not be 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 as aforesaid.

(Act 13/2003, s. 9)

Pensions, etc., to cease on bankruptcy

18. (1) If any person to whom a pension or other allowance has been granted under this Act is adjudicated bankrupt or is declared insolvent by judgment of any competent Court, then such pension or allowance shall forthwith cease.

(2) If any person is adjudicated bankrupt or is declared insolvent as aforesaid either—

(a) after retirement in circumstances in which he is eligible for pension or allowance under this Act but before the pension or allowance is granted; or

(b) before such retirement, and he shall not have obtained his discharge from bankruptcy or insolvency at the date of his retirement;

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then, in the former case, any pension or allowance eventually granted to him shall cease as from the date of the adjudication or declaration, as the case may be, and, in the latter case, the pension or allowance may be granted, but shall cease forthwith and not become payable.

(3) Where a pension or allowance ceases by reason of this section, it shall be lawful for the Secretary of State or, if the person in question is resident in Anguilla, the Governor, from time to time during the remainder of such person's life, or during such shorter period or periods, either continuous or discontinuous, as the Secretary of State or the Governor, as the case may be, shall think fit, to direct all or any part of the money to which such person would have been entitled by way of pension or allowance, 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, of the following, that is to say, such person and any wife, child or children of his, in such proportions and manner as the Secretary of State or the Governor, as the case may be, thinks proper, and such money shall be paid or applied accordingly.

(4) Money applied for the discharge of the debts of the person whose pension or allowance has so ceased shall, for the purposes of this section, be regarded as applied for his benefit.

(5) When a person whose pension or allowance has so ceased obtains his discharge from bankruptcy or insolvency, it shall be lawful for the Secretary of State or, if such person is resident in Anguilla, the Governor, to direct that the pension or allowance shall be restored as from the date of such discharge or any later date, and the pension or allowance shall be restored accordingly.

Pensions, etc., may cease on conviction

19. (1) If any person to whom a pension or other allowance has been granted under this Act is sentenced to a term of imprisonment by any competent Court for any offence, such pension or allowance shall, if the Secretary of State or, if such person is resident in Anguilla, the Governor, so directs, cease as from such date as the Secretary of State or the Governor, as the case may be, determines.

(2) If any person is sentenced as aforesaid after retirement in circumstances in which he is eligible for pension or allowance under this Act but before the pension or allowance is granted, then the provisions of subsection (1) shall apply as respects any pension or allowance which may be granted to him.

(3) Where a pension or allowance ceases by reason of this section, it shall be lawful for the Secretary of State or the Governor, as the case may be, to direct all or any part of the money to which such person would have been entitled by way of pension or allowance had he not been sentenced as aforesaid to be paid, or applied, in the same manner in all respects as prescribed in section 18, and such money shall be paid or applied accordingly.

(4) If such person after conviction at any time receives a free pardon, the pension or allowance shall be restored with retrospective effect; but in determining whether arrears of such pension or allowance are payable to such person and in computing the amount thereof, account shall be taken of all money paid or applied under subsection (3).

Pensions, etc., may cease on accepting certain appointments

20. If any person to whom a pension or other allowance has been granted under this Act, otherwise than under section 22, becomes either a director of any company the principal part of whose business is in any way directly concerned with Anguilla, or an officer or servant employed in Anguilla by any such company, without the prior permission of the Governor in writing, such pension or allowance shall

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cease if the Governor so directs, but it shall be lawful for the Governor, on being satisfied that the person in respect of whose pension or allowance any such direction shall have been given has ceased to be a director of such company or to be employed as an officer or servant of such company in Anguilla, as the case may be, to give directions for the restoration of such pension or allowance, with retrospective effect, if he shall see fit, to such a date as he shall specify, and the pension or allowance shall be restored in accordance with any such directions.

Gratuity where officer dies in the service or after retirement

21. (1) Where an officer holding a pensionable office who is not on probation or agreement, or an officer holding a non-pensionable office to which he has been transferred from a pensionable office in which he has been confirmed, dies while in service under the Government of Anguilla, it shall be lawful for the Governor to grant to his legal personal representative a gratuity of an amount not exceeding either his annual pensionable emoluments, or his commuted pension gratuity, if any, whichever is the greater. For the purposes of this section—

"annual 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 in the circumstances described in section 7(e);

"commuted pension gratuity" means the gratuity, if any, which might have been granted to the officer under section 24 of the Pensions Regulations if his public service had been wholly in Anguilla and if he had retired at the date of his death in the circumstances described in section 7(e) and had elected to receive a gratuity and reduced pension.

(2) Where any such officer to whom a pension, gratuity or other allowance has been granted under this Act dies after retirement from service under the Government of Anguilla, and the sums paid or payable to him at his death on account of any pension, gratuity or other allowance in respect of any public service are less than the amount of the annual pensionable emoluments enjoyed by him at the date of his retirement, it shall be lawful for the Governor to grant to his legal personal representative a gratuity equal to the deficiency.

(3) The provisions of this section shall not apply in the case of the death of any officer where benefits corresponding to the benefits which may be granted under this section are payable under the Colonial Superannuation Scheme in respect of such death.

(4) Notwithstanding the provisions contained in subsections (1) and (2), the Governor may in any case where the amount of the gratuity payable thereunder does not exceed the sum of $480, dispense with the production of probate or letters of administration and cause the gratuity to be paid to the dependant or dependants 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.

Pensions to dependants when an officer dies in the discharge of his duties

22. (1) Where an officer dies—

(a) in the actual discharge of his duty by some injury 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

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(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 Anguilla, and such death occurs within 7 years of the date of the injury or contracting the disease, it shall be lawful for the Governor to grant, in addition to the grant, if any, made to his legal personal representative or in addition to the payment, if any, made to his dependant or dependants under section 21—

(c) if the deceased officer leaves a widow, a pension to her, while unmarried, at a rate not exceeding ten-sixtieths of his annual pensionable emoluments at the date of the injury or $96 a year, whichever is the greater;

(d) if the deceased officer leaves a widow to whom a pension is granted under paragraph (c) and a child or children, a pension in respect of each child, until such child attains the age of 19 years, of an amount not exceeding one-eighth of the pension prescribed under paragraph (c);

(e) if the deceased officer leaves a child or children, but does not leave a widow, or no pension is granted to the widow, a pension in respect of each child, until such child attains the age of 19 years, of double the amount prescribed by paragraph (d);

(f) if the deceased officer leaves a child or children and a widow to whom a pension is granted under paragraph (c) and the widow subsequently dies, a pension in respect of each child as from the date of the death of the widow until such child attains the age of 19 years, of double the amount prescribed in paragraph (d);

(g) if the deceased officer does not leave a widow, or if no pension is granted to his widow, and if his mother were wholly or mainly dependent on him for her support, a pension to the mother, while without adequate means of support, of an amount not exceeding the pension which might have been granted to his widow;

(h) if the deceased officer does not leave a widow or mother, or if no pension is granted to his widow or mother, and if his father were wholly or mainly dependent on him for his support, a pension to the father while without adequate means of support, of an amount not exceeding the pension which might have been granted to his widow;

(i) 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 were wholly or mainly dependent on him for support, a pension to any such brother or sister until he or she attains the age of 19 years while without adequate means of support, of an amount not exceeding the pension which might have been granted under paragraphs (d), (e) or (f);

but—

(j) if in the opinion of the Governor there are compassionate grounds for so doing, he 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 for support and who had attained the age of 19 years, a pension for such period as the Governor may determine, of an amount not exceeding the pension which may be granted under paragraphs (d), (e) or (f);

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(k) where 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 paragraphs (d), (e) or (f), grant an additional pension in respect of such incapacitated child after he has attained the age of 19 years and so long as his incapacity shall continue, of an amount not exceeding one-half of the pension which may be granted under paragraph (d) or paragraph (e) aforesaid;

(l) where compensation in respect of the death is payable under the Workmen's Compensation Act, or where benefits corresponding to benefits granted under this section are payable under the Colonial Superannuation Scheme in respect of death, the Governor may reduce the pension which may be payable under this section to such extent as he may consider reasonable;

(m) no pension shall be payable under this subsection at any time in respect of more than 6 children exclusive of incapacitated children;

(n) in the case of a pension granted under paragraph (g), if the mother is a widow at the time of the grant of the pension and subsequently remarries, such pension shall cease as from the date of remarriage; and if it appears to the Governor at any time that the mother is adequately provided with other means of support, such pension shall cease as from such date as the Governor may determine;

(o) a pension granted to a female child under this section shall cease upon the marriage of such child under the age of 19 years.

(2) In the case of an officer not holding a pensionable office, the expression "pensionable emoluments" in subsection (1) shall mean the emoluments enjoyed by him which would have been pensionable emoluments if the office held by him had been a pensionable office.

(3) If an officer proceeding by a route approved by the Governor to or from Anguilla, or from one Island in Anguilla to another, at the commencement or termination of his service in Anguilla, or of a period of leave therefrom, 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, such officer shall be deemed, for the purposes of this section, to have died in the circumstances described in paragraph (1)(a), but this subsection shall not apply in the case of an officer who 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, shall be deemed for the purposes of this section to have died in the circumstances described in paragraph (1)(a), but in such a case the rates of pension prescribed in paragraphs (1)(c) and (d) shall be fifteen-sixtieths and one-sixth respectively.

(5) Where the Governor is satisfied that damages have been or will be recovered in respect of the death for which an additional pension or pension 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. For the purposes of this subsection, an officer shall be deemed to recover damages whether

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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.

(6) For the purposes of this section—

(a) the word "brother" includes, in relation to a person, every male child of his father or his mother;

(b) the word "child" shall include—

(i) a posthumous child,

(ii) a step-child 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

(iii) 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;

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

(d) the word "father" includes, in relation to a person, his stepfather and a male person by whom he has been adopted;

(e) the word "mother" includes, in relation to a person, his stepmother and a female person by whom he has been adopted; and

(f) the word "sister" includes, in relation to a person, every female child of his father or his mother.

PART 2

PENSION FUND AND ADMINISTRATION

Applicability of this Part and Part 3

23. (1) This Part and Part 3 apply to—

(a) every officer appointed to the public service of Anguilla on or after 1 January 2004 and who contributes to the Fund; and

(b) every police officer who enters the force on or after 31 December 2019 and who contributes to the Fund.

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(2) For the purposes of this section "police officer" includes the Commissioner, Deputy Commissioner, Superintendent and Deputy Superintendent.

(Act 24/2019, s. 3)

Interpretation

24. In this Part, unless the context otherwise requires—

"Auditor" means the Chief Auditor as defined in the Financial Administration and Audit Act;

"contributor" means a person of the age of 17 years or over who contributes to the Fund pursuant to this Act;

"contributory service" means service in respect of which a contributor contributes to the Fund;

"deferred pensioner" means a person entitled to a pension by virtue of section 42;

"legal personal representative" means the executor, original or by representation, or administrator for the time being of a deceased person;

"Minister" means the Minister of Finance;

"pensionable service" means service which shall be taken into account in computing a pension under the Act.

Establishment of the Public Service Pension Board

25. (1) There is hereby established a body to be called the Public Service Pension Board which shall, subject to any general directions of the Minister, have the powers conferred, and discharge the duties imposed upon it by this Act and the Police Pensions Act.

(Act 9/2008, s. 71)

(2) Schedule 1 shall have effect with respect to the constitution and operation of the Board and otherwise in relation thereto.

Functions of the Board

26. The Board shall consider the claim of every contributor who retires from, or ceases to be employed in the public service in circumstances entitling him to a pension, gratuity or to a refund of his contributions under this Act or the Police Pensions Act, and shall be required to perform such other functions as may be assigned to it by or under any provision of this Act or the Police Pensions Act or, subject thereto, by the Minister.

(Act 9/2008, s. 71)

Report to be laid before the House of Assembly

27. (1) The Board shall make a report annually to the Minister containing such information as the Minister may require.

(2) The annual report of the Board shall be laid by the Minister before the House of Assembly if it is then in session or, if it is not then in session, at the next ensuing session.

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Pension Fund

28. (1) There is hereby established a Fund, to be called the Pension Fund, which shall be divided into two accounts, the Public Service Pensions Account and Police Pensions Account.

(2) The following shall be paid into the Pension Fund to the credit of the Public Service Pensions Account—

(a) all contributions under this Act;

(b) all interest, investments or other income derived from the assets of the Fund that relate to the Public Service Pensions Account;

(c) all sums properly accruing to the Fund under this Act that relate to the Public Service Pensions Account including the repayment of pensions, gratuities, refunds of contributions and interest thereon;

(d) such other sums as may be provided by the Consolidated Fund for the purposes of the Public Service Pensions Account or as may be received and accepted by the Board on behalf of the Fund for credit to the Public Service Pensions Account with the approval of the Governor.

(3) The following shall be paid into the Pension Fund to the credit of the Police Pensions Account—

(a) all contributions under the Police Pensions Act;

(b) all interest, investments or other income derived from the assets of the Fund that relate to the Police Pensions Account;

(c) all sums properly accruing to the Fund under the Police Pensions Act, including the repayment of pensions, gratuities, refunds of contributions and interest thereon;

(d) such other sums as may be provided by the Consolidated Fund for the purposes of the Police Pensions Account or as may be received and accepted by the Board on behalf of the Fund for credit to the Police Pensions Account with the approval of the Governor.

(4) There shall be paid out of the Fund and debited to the Public Service Pensions Account—

(a) all pensions and gratuities under this Act;

(b) refunds of contributions under this Act; and

(c) all expenses properly incurred in the administration of this Act under subsection (12).

(5) There shall be paid out of the Fund and debited to the Police Pensions Account—

(a) all pensions and gratuities under the Police Pensions Act;

(b) refunds of contributions under the Police Pensions Act; and

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(c) all expenses properly incurred in the administration of the Police Pensions Act under subsection (12).

(6) Subject to this Act, the administration of the Fund shall be the responsibility of the Board.

(7) The Board shall keep proper records showing the amount of contributions to the Fund by or on behalf of each contributor and whether the contribution was credited to the Public Service Pensions Account or Police Pensions Account.

(8) The money paid into the Fund shall be invested in accordance with the guidelines set out in Schedule 2 and the income from each investment shall be credited to the Public Service Pensions Account or to the Police Pensions Account in proportion to the amount invested from each account.

(9) If at any time the Public Service Pensions Account or the Police Pensions Account is insufficient to meet the payments chargeable against it under this Act or the Police Pensions Act, the deficiency shall be made up out of the Consolidated Fund.

(10) The financial year of the Fund shall be from 1 January to 31 December and the accounts of the Fund shall be submitted to the Auditor for audit not later than 30 June next following the end of the financial year.

(11) The accounts of the Fund shall be audited by the Auditor, and he shall make an annual report in respect of the preceding financial year to the Minister who shall then lay the report before the House of Assembly, if it is in session, or, if it is not then in session, at the next ensuing session.

(12) The costs, including costs of actuarial services and audit by the Auditor, incurred in the administration of this Act and the Police Pensions Act, shall be paid out of the Fund and charged against the Public Service Pensions Account and Police Pensions Account respectively in the proportion to the expenses reasonably attributable to the administration of those Acts as determined by the Governor in Council on the advice of the Pension Board.

(13) Without delay on or after 1 July 2006, the amount arrived at when the following formula is applied shall be debited to the Fund and credited to the Police Pensions Account—

$$A = [(C + S) – D] + [(C_1 + S_1) – D_1]$$

where—

A = the amount to be debited to the Fund and credited to the Police Pensions Account

C = the contributions of the Commissioner, Deputy Commissioner and Superintendents to the Fund from 1 January 2004 to 30 June 2006 (in this subsection referred to as the "first contributory period")

S = the total of the amounts referred to in section 27(1)(b), (c) and (d), as it read immediately before 1 July 2006, paid into the Fund in the first contributory period relative to the contributions of the Commissioner, the Deputy Commissioner and the Superintendents

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D = the total of the amounts referred to in section 27(2), as it read immediately before 1 July 2006, paid out of the Fund in the first contributory period relative to the contributions of the Commissioner, the Deputy Commissioner and the Superintendents

C_1 = the contributions of all the police officers to the Fund from 1 July 2006 to 20 June 2008 (in this subsection referred to as the "second contributory period")

S_1 = the total of the amounts referred to in section 27(1)(b), (c) and (d), as it read immediately before 1 July 2006, paid into the Fund in the second contributory period relative to the contributions of all police officers

D_1 = the total of the amounts referred to in section 27(2), as it read immediately before 1 July 2006, paid out of the Fund in the second contributory period relative to the contributions of all police officers.

(14) The amount remaining in the Fund after the credit to the Police Pensions Account is made under subsection (13) shall be credited to the Public Service Pensions Account.

(Act 9/2008, s. 71)

Report of actuary

29. (1) The Minister shall cause an actuary to be appointed to review the operation of the Fund within one year after 1 January 2004 and not less frequently than every third year thereafter.

(2) An actuary on each review under subsection (1) shall make a report on the adequacy of the Fund generally or for the specific purpose of increasing pension payments or both, to the Minister who shall then lay the report before the House of Assembly, if it is in session, or, if it is not then in session, at the next following session.

(Act 9/2008, s. 71)

Interest Rate

30. (1) Except where otherwise specifically provided for by this Act, interest payable under this Act shall be at a rate to be prescribed by the Board.

(2) In determining the rate to be prescribed, the Board shall use the average of the interest rates payable by the banks on similar type of investments.

(3) For the purposes of this section "bank" has the same meaning as in the Banking Act[*].

(Act 5/2014, s. 3)

Contributions

Contributions to be deducted from salary

31. (1) Monthly deductions shall be made from the salary of every contributor holding an office in the public service of an amount equal to 3% of his pensionable emoluments and the amount so deducted shall be placed to the credit of the contributor in the Fund.

[*] Banking Act, 2015 (Act 6/2015) *repealed* the Banking Act, R.S.A. c. B11.

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(2) Deductions shall be made in relation to the full salary payable at the time the deduction is made whether or not the contributor is for any reason receiving less than that salary.

Government's contribution

32. Where an amount deducted under subsection (1) of section 31 is credited to the Fund, or where a contributor makes payment of contributions pursuant to any provision of this Act, the Accountant General shall in each case pay out of the Consolidated Fund into the Fund as Government's contribution to the Fund an amount not less than the contributions of the contributor.

Cessation of contributions

33. Subject to this Act every contributor shall cease to contribute to the Fund on the day on which he ceases to be employed in the public service, or upon attaining the normal retirement age, whichever is the earlier.

Contributions during leave of absence without salary

34. (1) A contributor who is granted leave of absence without salary for a period of one month or more because of illness or pregnancy, shall, within 6 months of the termination of the leave, contribute to the Fund an amount equal to the amount that would have been contributed if the leave had not been granted.

(2) A contributor who is granted leave of absence without salary for a period of one month or more for special or educational purposes may make contributions to the Fund for the period of leave, in which case he shall contribute an amount equal to the amount he would have contributed to the Fund if he had not been granted the leave, and payment of such contributions shall commence not later than one month after resumption of duty and may extend over a period of time not exceeding the period of leave; or he may elect not to make such contributions, in which case the period during which he did not contribute to the Fund shall not be counted as pensionable service.

(3) Where a contributor elects not to make such contributions the Government's contribution to the Fund shall not be made in respect of that period.

Contributions during leave of absence with bursary

35. (1) Where a contributor is granted leave of absence without salary for educational purposes and he receives a bursary or other financial assistance from the Government, the leave shall be deemed for the purposes of this Act to be educational leave of absence with pay, and he shall contribute to the Fund an amount equal to the amount he would have contributed if he had not been granted the leave, and the amount of the contribution shall be deducted from his bursary or other financial assistance.

(2) If the contributor does not resume his service at the end of the leave the period during which he was absent on leave shall not be counted as pensionable service.

Pensions

Entitlement to pension

36. Notwithstanding the provisions of section 6 of the Act and subject to section 42, every contributor who, on or after 1 January 2004, has satisfied the requirements of this Act relating to the qualifications for the payment of a pension shall be entitled as of right to a pension under this Part and

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Part 3 and, in calculating his pensionable service, any service rendering him eligible for a pension under the Act, shall be counted as pensionable service, but a person whose normal retirement age is 55 years and who contributes to the Fund shall be eligible to a pension grant under Part 1 and entitled to a pension payable to his dependants under Part 3 based on the total amount of his contributions to the Fund with interest thereon.

Circumstances entitling contributor to payment

37. (1) Subject to this Act every officer in the public service who has contributed continuously to the Fund for 10 years or more shall be entitled to a pension upon his retirement from the public service in the circumstances described in section 7(a) to (g).

(2) If after 1 January 2004 a contributor whose pensionable service commenced prior to that day ceases to be employed in the public service having satisfied any of the circumstances specified in section 7(a) to (g) but has contributed to the Fund for less than 10 years, he shall, notwithstanding that he has less than 10 years contributory service, be entitled to a pension under this Part and Part 3, but this subsection shall apply only where the total pensionable service of the contributor is not less than 10 years.

Service not qualifying for pension

38. No pension shall be certified or paid to a contributor under this Part and Part 3 in respect of any service rendered—

(a) while the contributor is on probation unless, without break of service, he is confirmed in the office; or

(b) while he is under the age of 17 years.

Refund of contributions where service terminated in the public interest

39. Where a contributor's service is terminated on the ground that, having regard to the conditions of the public service, the usefulness of the contributor thereto and all other circumstances of the case, it is desirable in the public interest to terminate his service, and a pension cannot lawfully be paid to him under this Act, the Board shall approve and certify the refund to him of the amount contributed by him to the Fund together with interest thereon and shall, if the Governor so directs, approve and certify the refund to him of the Government's contribution to his account in the Fund with interest thereon.

Age of compulsory retirement

40. (1) Subject to section 8, a contributor shall retire from the public service on attaining the normal retirement age, but having regard to the conditions of the public service, the usefulness of such contributor thereto, and all other circumstances of the case, it is desirable in the public interest that the service of any such contributor should be retained, he may be permitted by the Governor in consultation with the Public Service Commission, to continue in the public service until a later age.

(2) Where a contributor is permitted to continue in the public service after attaining the normal retirement age he shall not, after that age—

(a) contribute to the Fund; and

(b) earn any further benefits or acquire any further rights under this Act.

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(3) Subsection (2) shall not apply to any officer whose normal retirement age is 55 years and who is permitted to continue in service under the provisions of section 8.

Maximum pension

41. (1) A pension payable to a contributor under this Part or Part 3 shall not exceed 2/3 of his pensionable emoluments.

(2) An officer who shall have been awarded age pension under the Social Security Act shall not at any time draw from the Fund an amount of pension which, when added to the amount of age pension exceeds 80% of the highest pensionable emoluments drawn by him at any time in the course of his public service.

(3) Where the limitation prescribed by subsection (2) operates, the amount of pension to be drawn from the Fund shall be determined with due regard to the amount of age pension.

(4) For the purpose of subsection (1), an additional pension certified by the Board under section 56 in respect of injury shall not be taken into account.

Deferred pensions

42. (1) Subject to subsections (2) and (3) an officer who has contributed continuously to the Fund for a period of not less than 10 years and who is not otherwise entitled to a pension under this Part shall be entitled to a deferred pension payment which shall commence when he attains the normal retirement age.

(2) An officer who has contributed continuously to the Fund for a period of not less than 10 years and who ceases to be employed by reason of any of the circumstances contained in section 7(c) or (d), shall be entitled to a deferred pension payment which shall commence when he attains the normal retirement age. Provided that in lieu of such deferred pension, he may opt for the refund of an amount equal to his total contributions in the Fund together with interest thereon and the amount shall be refunded immediately upon the cessation of his service. Subsections (2) to (5) of section 58 shall apply *mutatis mutandis* to an option exercisable under this proviso.

(3) An officer who has contributed continuously to the Fund for a period of not less than 10 years and who is not otherwise entitled to a pension under this Part ceases to be employed by reason of the circumstance contained in section 7(e) he shall be entitled to payment of pension as from the date he ceases to be employed.

(4) Where a contributor is permitted to continue in any office in the public service after the age of retirement specified in section 40 payment of any pension to which he may be entitled at that age shall be deferred until he ceases to be employed in the public service.

Effect of re-employment of pensioner on amount of pension

43. (1) If a pensioner is re-employed in the public service, his pension shall cease on his beginning to receive the salary of the office in which he is re-employed if such salary is equal to or greater than the salary of the office formerly held by him at the date of retirement from or ceasing to be employed in such former office; and if it is less than the salary of such former office, then no more of such pension shall be paid to him than that which, together with the salary of his new office, is equal to the salary of his former office.

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(2) For the avoidance of doubt where a contributor is pursuant to section 42, entitled to a deferred pension, any period during which he is re-employed shall be counted as separate pensionable service.

Refunds

44. Where a contributor—

(a) ceases to be employed in the public service and is not entitled to a pension under this Part or Part 3; or

(b) dies before becoming entitled to a pension under this Part or Part 3,

an amount equal to the total of his contributions to the Fund with interest thereon shall be paid to him or to his legal personal representative, as the case may be.

Option to elect re-instatement in the Fund in certain circumstances

45. (1) Where a contributor ceases to be employed in the public service in the circumstances set out in section 44(a) then if within 4 years of his ceasing to be so employed he is re-employed in the public service he may, within 21 days of being so re-employed, elect either—

(a) to repay to the Fund the amount refunded to him together with interest thereon calculated from the date of the withdrawal from the Fund of his contributions to the date of repayment into the Fund; or

(b) to make repayment into the Fund as provided in paragraph (a), and to pay contributions for the period during which he was not employed in the public service, such contributions to be calculated upon the salary at which he is re-employed at the rate of 10% per annum or such other rate as may be prevailing at the date of such re-employment; or

(c) to retain the amount refunded to him and contribute to the Fund as from the date of his re-employment.

(2) If a person elects—

(a) only to repay the amount refunded to him as provided in paragraph (1)(a) the period during which he was not employed in the public service shall not be counted as pensionable;

(b) to reinstate his account in the Fund in accordance with paragraph (1)(b) his service shall not, for the purpose of calculating his pensionable service, be regarded as having been broken by the fact of his not having been employed in the public service for the period between his ceasing to be employed and his re-employment therein;

(c) to retain the amount refunded to him and contribute to the Fund as in paragraph (1)(c) his pensionable service shall commence as from the date when he is re-employed.

(3) Where a refund of his contributions has been made to a contributor pursuant to section 43 and he elects to retain the amount so refunded, the Government's contributions to the Fund in respect of that contributor shall remain therein.

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(4) The Board may allow a person who has elected to reinstate his account in the Fund under subsection (1) to repay the amounts mentioned in paragraph (1)(a) or (b) as the case may be, in monthly instalments with interest thereon calculated on the balance outstanding from month to month, over such period, not exceeding 4 years, as the Board may think fit.

(5) The purchase, under this section, of any period or periods of broken service shall not exceed in any case a total of 4 years.

Refund where there is no legal personal representative

46. Where a person dies in circumstances under which a refund under this Part is payable to his legal personal representative, if there is no such legal personal representative, the refund shall be paid to such person as the Board may, after consultation with the Attorney General, determine.

Proof that pensioner is alive

47. The Board may require such proof as it may think desirable, that any person claiming to be entitled to a pension, or on behalf of whom such claim is made, is alive and entitled to a pension; and the payment of any such pension may be refused until such proof is furnished to the Board.

Notification of certain particulars to Board

48. (1) Every person shall, within 3 months after 1 January 2004 or immediately upon his appointment to an established office, notify the Board in writing—

(a) of the date of his birth; and

(b) if he is a married man, or a widower with children who have not attained the age of 18 years, of the dates of his marriage and of the births of his children.

(2) Every pensioner or contributor shall notify the Board in writing, within 3 months of the event—

(a) of his marriage, with the name of his wife;

(b) of the birth of any child born to him;

(c) of the death of his wife or any of his children who have not attained the age of 18 years;

(d) of his bankruptcy;

(e) of the dissolution or annulment of his marriage.

(3) The widow of any pensioner shall notify the Board in writing, within 3 months of the event—

(a) of the birth of any posthumous child born to such pensioner;

(b) of the death of any child below the age of 18 years of such pensioner;

(c) of her re-marriage.

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(4) Any such notification as is mentioned in subsections (1), (2) and (3) shall be proved by the production of a certificate of birth, death, marriage or divorce (as the case may be) or by affidavit or otherwise to the satisfaction of the Board.

(5) Subsections (1) and (2) shall, *mutatis mutandis*, apply to every female person or pensioner and subsection (3) shall, in like manner, apply to widowers in respect of paragraph (3)(b) and (c).

Payment of pensions

49. A pension shall begin to accrue to a contributor on the day following the last day of his service and shall be paid to him in arrears in monthly instalments.

Pensionable Service and Computation of Pensions

Rate of pension

50. Subject to sections 54 and 55 any contributor who has been in the service of the Government for a period of 10 years or upwards and who retires in accordance with this Part shall be paid a pension at the rate of 1/960th of his pensionable emoluments for each complete month of his pensionable service.

Calculation of rate of Pensions

51. For the purpose of calculation of rates of pensions payable to officers who were in the public service on or before 1st January 2004 and who contributes to the Fund, section 3 of the Pensions Regulations and section 50 of the Pensions Act shall be applied respectively, in respect of the period of pensionable service prior to 1st January 2004 and after such date.

(Act 5/2014, s. 4)

Service qualifying for pension

52. Subject to section 38 (service not qualifying for pension) service qualifying for pension under this Part shall be the period during which a contributor was employed in the public service.

Periods which shall be taken into account as pensionable service

53. For the purpose of computing the amount of a contributor's pension the following periods during which he has paid his full contributions shall be taken into account as pensionable service, that is to say—

(a) any period during which he has been on duty;

(b) any period during which he has been absent from duty on leave with full or half salary; and

(c) subject to sections 34 and 35, any period during which he has been absent from duty on leave without salary.

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Retirement by reason of abolition of office

54. (1) If a contributor is compelled to retire from the public service in consequence of the abolition of his office, he shall be paid a pension at the rate specified in section 50, but in the case of a contributor who does not qualify for a pension under that section he shall be entitled to be refunded the amount of the Government's contributions to the Fund in respect of his service together with the amount of his own contributions, and interest thereon.

(2) A contributor who is compelled to retire from office by reason only of the abolition of his office, may also be paid an additional pension at the rate of 1/60th of his pensionable emoluments for each complete period of 3 years' pensionable service but—

(a) the addition shall in no case exceed 10/60th of his pensionable emoluments; and

(b) no addition shall be made so as to qualify a contributor for a pension of higher annual value than that for which he would have been qualified by length of service on reaching the age at which he could be required to retire under section 39 or for a pension of higher annual value than the maximum specified in section 41.

Reorganisation of office and compulsory retirement

55. (1) If a contributor is removed from the public service for the purpose of facilitating improvement in the administration of the public service by which greater efficiency can be effected, he shall be paid a pension at the rate specified in section 50, but in the case of a contributor who does not qualify for a pension under that section he shall be entitled to a refund of his contributions with interest thereon.

(2) It shall be lawful for the Board to certify the entitlement to an additional pension of a contributor removed from the public service under subsection (1) as though he had retired from the public service in consequence of the abolition of his office if it is considered by the Board that the circumstances of the case justify the payment of such an additional pension and in any such case section 54(2) shall have effect.

Pensions to contributors injured in discharge of duty

56. Where a contributor has been permanently injured while in the public service—

(a) in the actual discharge of his duty; and

(b) without his own default; and

(c) by some injury specifically attributable to the nature of his duty,

and his retirement is thereby necessitated or materially accelerated, the Board shall, if he is qualified for a pension under section 50, certify his entitlement, in addition to the pension payable to him under that section, to an additional pension at the rate of the proportion of his actual salary at the date of his injury appropriate to his case as shown in the following table—

TABLE

When his capacity to contribute to his own support is—

slightly impaired ..... five-sixtieths;

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impaired ..... ten-sixtieths;

materially impaired ..... fifteen-sixtieths;

totally destroyed ..... twenty-sixtieths:

But—

(a) the amount of the additional pension shall be reduced to such an extent as the Board may think reasonable in the following cases—

(i) where the injured contributor has continued to actively serve for not less than 1 year after the injury in respect of which he retires;

(ii) where the injured contributor is at the date of the injury within 10 years of the age at which he could be required to retire; or

(iii) where the injury is not the sole cause of retirement, but the retirement is caused partly by age or infirmity not due to the injury;

(b) where in the opinion of the Board, the capacity of a contributor in respect of whom an additional pension has been certified under this section to contribute to his own support has altered sufficiently to justify his inclusion in a category of disability as set out in the table different from that on which his rate of additional pension was granted, his additional pension may be altered to the rate then appropriate to his case.

Payment to injured contributor where service is less than 10 years

57. Notwithstanding any other provision of this Part a contributor injured in the circumstances mentioned in section 56 who has not qualified for a pension under section 50, upon the termination of his employment due to such circumstances, shall be paid a pension, together with additional pension, as if he were a contributor provided for in section 56.

Commutation of pension and reduced pension

58. (1) Subject to this Act a contributor to whom a pension is payable under this Part shall, if he has exercised his option as hereinafter provided, but not otherwise, be paid in lieu of such pension a pension at the rate of 75% of such pension, as specified in the exercise of his option, together with a lump sum payment equal to 12 ½ times the amount of the annual reduction so made in the pension.

(2) The option referred to in subsection (1) shall be exercisable, and if it has been exercised may be revoked, not later than 30 days preceding the date of such contributor's retirement, but the Board may, if it appears equitable in all the circumstances so to do, allow him to exercise the option or revoke an option previously exercised at any time between that date and the date of certification of the pension under this Part.

(3) Subject to subsection (2), if a contributor has exercised the option his decision shall be irrevocable so far as concerns any pension paid or payable to him under this Part.

(4) If a contributor who has not exercised the option dies after he has retired but before a pension has been paid or certified for payment under this Act, it shall be lawful for the Board to certify the payment of a lump sum to his legal personal representative and a reduced pension as provided in

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subsection (1), as if the contributor before his death had exercised his option to receive a lump sum payment and 75% of the pension granted to him.

(5) The date of the exercise of the option by a contributor shall be deemed to be the date of the receipt by the Board of his written notification of the exercise of the option.

(6) A re-employed contributor or re-employed pensioner shall be deemed to have exercised, or not to have exercised, in respect of his service subsequent to re-employment or retirement as the case may be, the said option, according as he exercised, or did not exercise, such option in respect of his previous service even if, in respect of such previous service, the option was not available to him.

(Act 13/2003, s. 10)

PART 3

WIDOWS', WIDOWERS', AND CHILDREN'S PENSIONS

Interpretation

59. In this Part—

"child" shall include—

(a) a posthumous child,

(b) a step-child, and

(c) an adopted child, adopted in a manner recognised by law;

"pensioner" means a person who has retired from the public service and is in receipt of a pension under Part 1 by virtue of the proviso to section 36 or Part 2 and includes a deferred pensioner as well as a person who has satisfied the conditions required for the payment of a pension under Part 2 although no payment has been actually made to him.

Application of Part 3

60. The provisions of this Part shall, *mutatis mutandis*, apply—

(a) to the death of a female pensioner or contributor;

(b) to the case of a deferred pensioner who dies before attaining the age at which the pension to which he is entitled would be payable.

Pensions payable to widow, widower and children of pensioner or contributor

61. (1) On the death of a male pensioner or contributor (hereafter in this Part called "the deceased") who has completed 10 years' pensionable service, there shall be paid to his dependants (if any) a pension as set out in subsections (2), (3) and (4) based on the amount of the pension he was drawing at the date of his death, or, as the case may be, to which he would have been entitled at the date of his death had he then retired in circumstances in which he would have been entitled to retire with a pension.

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(2) If the deceased leaves a widow but no children, the widow shall be entitled to one-half of his pension or, as the case may be, one-half of the pension to which he would have been entitled, until her re-marriage or death if she is a widow who has reached the age of 50 years on the date of death of the pensioner. Where the widow is below the age of 50 years she shall be entitled to the payment of pension for 5 years from the date of death of the pensioner or until she remarries. Where the widow reaches the age of 50 years while drawing the pension, the Board shall if it thinks fit, recommend that the payment of pension be continued until her death or until she remarries.

(3) If the deceased leaves a widow and children by such widow or by any other relationship, the widow shall be entitled until her re-marriage or death to one-half of the amount of his pension or, as the case may be, one-half of the pension to which he would have been entitled, and the children shall, subject to section 63(2), be entitled to the other one-half of such pension in equal shares, but where the deceased dies leaving a widow and children by the widow or by any other relationship, it shall be lawful for the Board either in the first instance or at any time while pensions are payable to the children, to direct the payment to the widow of part only of such pension and to direct the payment of the balance of such pensions for or towards the maintenance or education of the children in such manner as the Board may think fit.

(4) If the deceased leaves children but no widow such children shall, subject to section 63(2), be entitled to one-half of his pension, or as the case may be, one-half of the pension to which he would have been entitled, in equal shares.

(5) For the avoidance of doubt it is hereby declared that if the deceased is survived by only one child that child shall take one-fourth of either the pension payable or the pension to which the deceased would have been entitled, as the case may be.

(6) Where a contributor dies before payment of a pension has been made to him, the amounts payable to his widow or children shall be calculated upon the pension which would have been payable to him had he not exercised the option referred to in section 59(1).

(7) Where a contributor dies before payment of a pension has been made to him and leaves no widow, or no child under the age of 18 years, the total amount of his contributions together with interest thereon shall be paid to his legal personal representative.

(8) Where a widow to whom a pension is being paid under this Part remarries a widower who is also being paid a pension under this Part, the pension shall be payable to one such spouse only, and shall cease to be payable in respect of the other. The spouse who elects to take the pension shall inform the Board within a month of remarriage.

Gratuity to a Contributor

[†]**62.** (1) Notwithstanding the provisions of section 44 or 61(7), where a pensionable officer who contributes to the Fund dies before payment of a pension has been made to him and leaves no widow or child under the age of 18 years, a gratuity of an amount not less than his annual pensionable emolument shall be paid to his legal personal representative.

[†] In force 10 April 2012

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(2) For the purposes of this section "annual pensionable emolument" means the emoluments which would have been taken for the purpose of computing the pension or gratuity payable to such officer if he had retired at the date of his death.

(Act 5/2014, s. 5)

Payment and administration of children's pensions

63. (1) In all cases of children's pension under this Part, the whole or any part of such pension may be paid either to the mother, father, or legal guardian of such children, or to the children, or to such person or persons as the Board may in its discretion consider to be fit and proper persons to apply the same for the benefit of such children, and after such payment the Board shall be free of all liability in respect of such payment.

(2) Any pension payable to or for a child shall cease on that child attaining the age of 18 years, but such payment shall continue to be made to or for a child over the age of 18 and under 21 years if that child is wholly or mainly dependent and continuously receiving full-time instructions at any University, College, school or other educational establishment.

Adjustments to pensions

64. Pension awarded upon retirement to officers whose normal retirement age shall be 60 years or 65 years, as the case may be, shall be adjusted whenever a general increase in salaries is applied to pensionable public officers, and such adjustment shall be made as recommended by the Board.

(Act 13/2003, s. 10)

PART 4

APPLICATION OF ACT TO GOVERNMENT AGENCIES

Definition

65. In this Part, "government agency" has the same meaning as in the Financial Administration and Audit Act.

Regulations respecting public officers transferred to Government Agency

66. (1) Subject to subsection (2), the Governor in Council may by regulation transfer, on an appointed day, specified public officers employed by the government to the service of a government agency at a remuneration and on terms and conditions of service that are not less favourable than the remuneration and terms and conditions of service that were enjoyed by the public officer immediately before the appointed date.

(2) The rights of a public officer referred to in subsection (1) to a pension, allowance or gratuity for which he would have been eligible had he remained in the public service are preserved, and his service with the government agency shall be pensionable under the Pensions Act as if the public officer had not been so transferred.

(3) Notwithstanding the provisions of section 2, Parts 1 to 3 of this Act and the regulations apply, after 1 January 2004, *mutatis mutandis* to the public officers transferred to the service of the government agency and to the government agency as they apply to public officers and to the Governor and government.

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(4) For greater certainty and for ease of administration, the Governor in Council may by regulation adapt this Act and the relevant regulations so as to give effect to subsection (3).

Pension rights of transferred non-pensionable officers and of new employees of government agency

67. (1) This section does not apply to those public officers who—

(a) were transferred by regulation made under section 63(1) or under section 26 of the Health Authority of Anguilla Act; and

(b) are pensionable under this Act as if they had not been so transferred.

(2) The Governor in Council may by regulation provide that employees or classes of employees of a government agency may contribute to the Fund.

(3) Notwithstanding the provisions of section 2, Parts 1 to 3 of this Act and the regulations apply *mutatis mutandis* to such employees or classes of employees and to the government agency as they apply to public officers and to the Governor and government.

(4) For greater certainty and for ease of administration, the Governor in Council may by regulation adapt Parts 1 to 3 of this Act and the relevant regulations so as to give effect to subsection (3).

(Act 13/2003, s. 10)

Transitional

68. (1) Where at 1 January 2004, any rights, benefits or privileges have accrued or been earned, or any payments made under Part 1, such rights, benefits, privileges or payments (as the case may be) shall continue as if this Part had not come into force.

(Am. in L.R. 31/12/2022)

(2) Nothing in this Act shall be construed so as to affect adversely anything done, or the calculation of any amount payable to—

(a) any person in receipt of or eligible for a pension, in accordance with the provisions of Part 1; or

(b) any person in respect of the period of pensionable service in which he or she was engaged prior to 1 January 2004.

(3) Subject to this Act, where after 1 January 2004 a contributor retires or otherwise ceases to be employed—

(a) having pensionable service prior to that day as well as service entitling him to a pension under this Act; or

(b) having pensionable service prior to that day and has contributed to the Fund for less than 10 years after 1 January 2004;

the whole of his service before and after 1 January 2004 shall be taken into consideration in the computation of his pensionable service.

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(4) Notwithstanding anything to the contrary in any other provisions of this Act, all such sums of money, as may from time to time be paid within the next following 5 years from the appointed date, by way of pension, gratuity, allowance or other refunds in pursuance of this Act, shall be charged on and paid out of the Consolidated Fund.

(Act 13/2003, s. 11)

PART 5

MISCELLANEOUS

Regulations

69. (1) The Governor in Council may make regulations for carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), regulations may be made providing for—

(a) matters pertaining to the granting of loans to contributors of the Fund; and

(b) the duties and responsibilities of Board members.

(Act 15/2016, s. 3)

Validation

70. (1) Where any payment of a benefit has been made prior to 30 September 2014, and in particular, a payment made—

(a) in relation to a payment charged against the Consolidated Fund;

(b) by virtue of the calculation of that payment based on an interest rate other than 4%; or

(c) using the calculation as provided for in section 30;

the payment shall be deemed to have been validly and lawfully made.

(2) This section does not affect any order or determination made by a court prior to 30 September 2014.

(Act 5/2014, s. 6)

Citation

71. This Act may be cited as the Pensions Act, Revised Statutes of Anguilla, Chapter P20.

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SCHEDULE 1

(Section 24)

THE BOARD

1. The Board shall consist of 5 members of whom—

(a) one shall be the Permanent Secretary to the Public Administration, who shall be an *ex officio* member and shall be the chairman;

(b) one shall be the Permanent Secretary to the Ministry of Finance who shall be an *ex officio* member;

(c) one shall be the Director of Social Security who shall be an *ex officio* member; and

(d) two members shall be appointed by the Governor from nominees of the associations or unions recognised by the Government as representing public officers and other employees of the Government.

2. Subject to this Schedule any member appointed under paragraph 1(d), shall hold office at the Governor's pleasure and, unless his appointment is sooner terminated, it shall terminate three years from the date on which it took effect, but he shall be eligible for re-appointment upon the expiration of his term of office.

3. In the case of the absence or inability of any member to act the Governor may appoint a person to act temporarily in his place from the nominee of the representative associations or unions as the case may be.

4. The Governor, after consultation with the association or union may at any time revoke the appointment of any member appointed under paragraph 1(d), if he considers it expedient to do so.

5. Subject to this Schedule the Board shall be deemed to be properly constituted notwithstanding that there is a vacancy in the office of chairman or any other member.

6. (1) The Board shall meet at such times and on such days as may be necessary or expedient for the transaction of its business.

(2) Minutes of each meeting of the Board shall be kept in proper form.

(3) The chairman may at any time call a meeting of the Board and shall call a meeting to be held within five days of a written request for that purpose addressed to him by any four members.

(4) The chairman shall preside at all meetings of the Board at which he is present and, in the case of the chairman's absence from any meeting, the members present and constituting a quorum shall elect a chairman from among their own number to preside at that meeting.

(5) Every member shall have one vote. The chairman shall not have an original vote but in the event of an equality of votes he shall have a casting vote only.

(6) Subject to subsection (5) the decisions of the Board shall be by a majority vote.

(7) The quorum of the Board shall be 3.

(8) Subject to this Schedule the Board may regulate its own proceedings.

(9) (a) The Board may appoint from among its members such committees as it may think fit and may delegate to any such committee the power and authority to carry out on its behalf such duties as the Board may consider necessary.

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(b) The constitution of each such committee shall be determined by the Board.

(c) The validity of any proceedings of the Board shall not be affected by any defect in the appointment of a member.

7. Notwithstanding anything to the contrary no act done or proceeding taken under this Act by the Board shall be questioned on the ground of any omission, defect, or irregularity not affecting the merits of the case.

8. No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Board in respect of any act done *bona fide* in pursuance or execution or intended execution of this Act.

9. The office of Chairman or member of the Board shall not, by virtue of this Act alone, be a public office.

10. No decision or act of the Board or act done under the authority of the Board shall be invalid by reason of the fact that—

(a) the full number of members for which provision is made in section 1 was not appointed or there was a vacancy or vacancies among such members; or

(b) a disqualified person acted as a member of the Board at the time the decision was taken or the act was done or authorised;

if the decision was taken or the act was done or authorised by a majority vote of the persons who at the time were entitled to act as members.

SCHEDULE 2

(Section 28(8))

INVESTMENT OF THE FUND

1. The money in the Fund which is not immediately required for any purpose may—

(a) be invested by the Board in certificates of deposits or related obligations in domestic financial entities, on terms not less favourable than those provided to institutional investors in Anguilla, according to sound principles of diversification; and

(b) be used to grant loans to contributors.

2. The money in the Fund shall not be invested by the Board in property, securities or offshore ventures until the Fund is adequately capitalised, based on actuarial advice.

(Act 15/2016, s. 2)

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