



ST. HELENA

(Chapter No. not allocated yet)

PENSIONS ORDINANCE
and Subsidiary Legislation

Non-authoritative Consolidated Text

This is not an authoritative 'revised edition' for the purposes of the Revised Edition of the Laws Ordinance; it has been prepared under the supervision of the Attorney General for the purpose of enabling ready access to the current law, and specifically for the purpose of being made accessible via the internet.

Whilst it is intended that this version accurately reflects the current law, users should refer to the authoritative texts in case of doubt. Enquiries may be addressed to the Attorney General at Essex House, Jamestown
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Visit our [LAWS page](#) to understand the St. Helena legal system and the legal status of this version of the Ordinance.

This version contains a consolidation of the following laws—

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¹ These contact details may change during 2011 or early in 2012. In case of difficulty, email shgwebsite@sainthelena.gov.sh or telephone (+290) 2470.

PENSIONS ORDINANCE

(Ordinances 7 of 2012)

AN ORDINANCE TO REVIEW THE PROVISIONS RELATING TO THE GRANT OF PENSIONS, GRATUITIES AND OTHER ALLOWANCES IN RESPECT OF OFFICES HELD IN THE PUBLIC SERVICE IN ST. HELENA; AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

Commencement

[1 April 2012]

Citation and commencement

1. This Ordinance may be cited as the Pensions Ordinance, 2012, and shall come into force on 1 April 2012.

Interpretation

2. (1) In this Ordinance, unless the context otherwise requires, the following expressions have the meanings assigned to them, that is to say—

“house allowance” means the estimated value of free quarters as defined in regulations under this Ordinance;

“nonpensionable office” means an office held by a person—

- (a) before 1 April 2010 which constituted a nonpensionable office under this Ordinance at the time the office was so held;
- (b) on or after 1 April 2010, where such person held a nonpensionable office immediately before 1 April 2010 and such person under his employment contract retains a right to any gratuity or retiring allowance which existed as at that date;

“normal retirement age” means in respect of a person born—

- (a) in 1953 or earlier, the age of 60 years;
- (b) between 1 January 1954 and 30 June 1954, the age of 60 years and 6 months;
- (c) between 1 July 1954 and 31 December 1954, the age of 61 years;
- (d) between 1 January 1955 and 30 June 1955, the age of 61 years and 6 months;
- (e) between 1 July 1955 and 31 December 1955, the age of 62 years;
- (f) between 1 January 1956 and 30 June 1956, the age of 62 years and 6 months;
- (g) between 1 July 1956 and 31 December 1956, the age of 63 years;
- (h) between 1 January 1957 and 30 June 1957, the age of 63 years and 6 months;
- (i) between 1 July 1957 and 31 December 1957, the age of 64 years;
- (j) between 1 January 1958 and 30 June 1958, the age of 64 years and 6 months;
- (k) on or after 1 July 1958 or later, the age of 65 years;

Provided that for purposes of calculating any benefit in respect of a person referred to in section 7(1)(a), normal retirement age shall mean the age of 60 years;

“pensionable emoluments” in respect of public service under the Government of St. Helena include salary and all other emoluments and allowances stated in a person’s employment contract to be pensionable:

Provided that any emoluments payable in respect of part-time service shall be grossed up based on the number of hours of service to reflect the amount equivalent of the emoluments had such service been provided on a full time basis;

“pensionable office” means an office held by a person—

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- (a) before 1 April 2010 which constituted a pensionable office under this Ordinance at the time the office was so held; or
- (b) on or after 1 April 2010, where such person held a pensionable office immediately before 1 April 2010 and such person under his employment contract retains his pension entitlement which existed as at that date;

“public service” means service in a civil capacity under the Government of St. Helena;

“salary” means the salary as stated in a person’s contract of employment.

Pensions regulations

3. (1) Pensions, gratuities and other allowances may be granted by the Governor in accordance with the regulations contained in the First Schedule to this Ordinance to or in respect of officers who have been in public service under the Government of St. Helena.

(2) The Governor in Council may from time to time make regulations amending, adding to, or revoking the regulations contained in the First Schedule to this Ordinance, and all regulations so made shall be laid before the Legislative Council and published in the *Gazette*.

(3) Whenever the Governor in Council is satisfied that it is equitable that any regulation made under this section should have retrospective effect in order to confer a benefit upon or remove a disability attaching to any person, that regulation may be given retrospective effect for that purpose:

Provided that no such regulation shall have retrospective effect unless it has received, before being made, the approval of the Legislative Council signified by resolution.

(4) All regulations made under this Ordinance shall have the same force and effect as if they were contained in the First Schedule to this Ordinance and the expression **“this Ordinance”** shall, wherever it occurs in this Ordinance, be construed as including a reference to the said Schedule.

(5) Any pension, gratuity or other allowance granted under this Ordinance shall be computed in accordance with the provision in force or which, having been made in accordance with subsection (3) of this section, may be deemed to be in force at the actual date of an officer’s retirement or death while in the public service, as the case may be.

Pensions, etc, to be charged on revenues of St. Helena

4. There shall be charged and paid out of the revenues of St. Helena all such sums as may from time to time be granted by way of pensions, gratuity or other allowance in pursuance of this Ordinance.

Pensions, etc, not of right

5. (1) No officer shall have an absolute right to compensation for past services or to pension, gratuity, or other allowances; nor shall anything in this Ordinance 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

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

- (a) on or after he attains normal retirement age;
- (b) on reaching age 60, or such other age between 60 and the normal retirement age, where such officer so elects giving at least one month prior notice in writing;
- (c) at age 60, where such officer retires from the Police Force as required by section 10 of the Police Force Ordinance, Cap. 132;
- (d) at age 55 or older, where such officer retires due to the abolition of his office or for the purpose of facilitating improvement in the organisation of the department to which he belonged, by which greater efficiency or economy may be effected; or
- (e) at age 55 or older on medical evidence to the satisfaction of the Governor that he is incapable by reason of any infirmity of mind or body of discharging the duties of his office and that such infirmity is likely to be permanent;

(2) An officer not qualified for a pension, gratuity or other allowance under this Ordinance (other than a pension under regulation 14(4) of the regulations contained in the First Schedule to this Ordinance) may, on his retirement or removal from his employment after having served in public service under the Government of St. Helena for not less than five years, be granted a gratuity in accordance with the provisions of this Ordinance:

Provided that this subsection shall not apply to any officer serving on pensionable terms in the public service at the termination of his service.

Early retirement

7. (1) Notwithstanding anything to the contrary in section 6, where any officer, who, having held a pensionable office under the Government of St. Helena for ten years or more resigns from service after the 1st day of April 1999, such officer shall—

- (a) if his service terminates on or before 31 March 2012, be deemed to have retired from the public service on the day he attains the age of 60 years; or
- (b) if his service terminates on or after 1 April 2012, be deemed to have retired from the public service at the age referred to in section 6(1)(a) or (b),

and may be granted a pension in respect of his service in accordance with the regulations contained in the First Schedule to this Ordinance.

Provided that no pension, gratuity or other allowance shall be so granted unless the officer, prior to his resignation, shall have given previous notice in writing of his intention to resign as required under his contract of employment.

(2) Where the employment of an officer is terminated before age 55 in the circumstances referred to in section 6(1)(d), such officer shall, notwithstanding anything to the contrary in section 6, be deemed to have retired from the public service at the age referred to in section 6(1)(a) or (b), and may be granted a benefit in respect of his service in the public service in accordance with the regulations contained in the First Schedule.

(3) Notwithstanding anything to the contrary in section 6, where the employment of an officer is terminated before age 55 in the circumstances referred to in section 6(1)(e) and—

- (a) such officer held a pensionable office under the Government of St. Helena for ten years or more, such officer shall be deemed to have retired from the public service at the age referred to in section 6(1)(a) or (b); or
- (b) such officer held a pensionable office under the Government of St. Helena for less than ten years, such officer shall be deemed to have retired from the public service at the time that such employment is terminated; or
- (c) the infirmity referred to in that section arises from an injury sustained or disease contracted in the circumstances specified in section 15(1)(a) or (b), such officer shall be deemed to have retired from the public service at the time such employment is terminated,

and may be granted a benefit in respect of his service in the public service in accordance with the regulations contained in the First Schedule.

(4) Where an officer, who is employed in a department of the Government of St Helena, is transferred by the Government to any other entity due to the divestment by the Government to such other entity of any service provided by such department, such officer shall, notwithstanding anything to the contrary in section 6, be deemed to have retired from the public service at the age referred to in section 6(1)(a) or (b) and may be granted a benefit in respect of his service in the public service in accordance with the regulations contained in the First Schedule.

(5) Where the employment of an officer is terminated as a result of the dismissal of such officer, he shall for purposes of subsection (1) be deemed to have resigned from the public service on the date of such dismissal.

(6) Where any person to whom subsection (1), (2), (3) or (4) would have applied dies before any benefit has been granted to him, such person shall, for the purposes of section 13(1), be deemed to have died while in public service under the Government of St. Helena and his heirs or legal personal representative may be granted a gratuity in accordance with the provisions of that section.

Compulsory retirement

8. The Governor may require an officer to retire from public service under the Government of St. Helena at any time after he attains normal retirement age.

Maximum pension

9. (1) A pension granted to an officer under this Ordinance shall not exceed two-thirds of his highest pensionable emoluments at any time while in public service or the increased amount of such emoluments as provided for in section 17.

(2) For the purpose of subsection (1)—

- (a) an additional pension granted in respect of injury shall not be taken into account; but where the officer is granted such additional pension under this Ordinance, the amount thereof together with the remainder of his pension or pensions shall not exceed five-sixths of the highest pensionable emoluments enjoyed by him at any time during his pensionable service; and
- (b) where any increase in pension is granted to or in respect of a pension or allowance granted under this Ordinance and the grant of the increase is subsequent to the date of the grant of the pension or allowance, whether or not that increase is governed by any instrument having the force of law, such increase granted or drawn shall not be taken into account.

Pensions, etc, not to be assignable

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

- (a) a debt due to the Government of St. Helena; 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 person to whom the pension, gratuity or other allowance has been granted,

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.

Pensions, etc, to cease on bankruptcy

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

(2) Where any officer is adjudicated bankrupt or declared insolvent by judgment of any competent court either—

- (a)** after retirement in circumstances in which he is eligible for pension, gratuity or other allowance, under this Ordinance, but before the pension, gratuity or other allowance is granted; or
- (b)** before such retirement, and he has not obtained his discharge from bankruptcy or insolvency at the date of retirement,

then, in the former case, any pension or other allowance eventually granted to him shall cease as from the date of adjudication or declaration (as the case may be) and, in the latter case, the pension or other allowance may be granted, but shall cease forthwith and not become payable, and in either case any gratuity for which the officer is eligible may be granted but shall not be paid to him.

(3) Where a pension or other allowance ceases, or where any gratuity is not paid, by reason of this section, it shall be lawful for the Governor, as he thinks fit, from time to time during the remainder of such person's life, or during such shorter period or periods, either continuous or discontinuous, to direct all or any part of the moneys to which such person would have been entitled by way of pension, gratuity, or other allowance, had he or she 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 his or her spouse, child, or children, or such other dependants as the Governor may determine, in such proportion and manner as he thinks proper; and such moneys shall be paid or applied accordingly.

(4) Moneys applied for the discharge of the debts of the person whose pension or other allowance has ceased, or whose gratuity has not been paid, by reason of this section shall, for the purposes of this section, be regarded as applied for his benefit.

(5) Where a person whose pension or other allowance has ceased, or whose gratuity has not been paid, by reason of this section obtains his discharge from bankruptcy or insolvency, it shall be lawful for the Governor to direct that the pension or other allowance shall be restored and the gratuity, or so much thereof (if any) as remains after deducting any payments made under subsection (3), paid as from the date of such discharge or any later date; and the pension or other allowance shall be restored, and the gratuity or such remainder thereof (if any) paid, accordingly.

(6) For the purposes of this section the word “**child**” shall include an illegitimate child, a stepchild and an adopted child, adopted in a manner prescribed by law, but shall not include a child who has attained the age of 18 years or has married.

Pensions, etc, may cease on imprisonment

12. (1) Where any person to whom a pension or other allowance has been granted under this Ordinance is sentenced to death or a term of imprisonment by any competent court for any offence, such pension or allowance shall, if the Governor so directs, cease as from such date as he determines.

(2) Where any officer is sentenced to death or to a term of imprisonment by any competent court for any offence after retirement in circumstances in which he is eligible for

pension, gratuity, or other allowance under this Ordinance but before the pension, gratuity, or other allowance is granted, then—

- (a) the provisions of subsection (1) shall apply as respects any pension or other allowance which may be granted to him; and
- (b) the Governor may direct that any gratuity which may be granted to him shall not be paid.

(3) Where a pension or other allowance ceases, or a gratuity is not paid, by reason of this section, it shall be lawful for the Governor to direct all or any part of the moneys to which such person would have been entitled by way of pension, gratuity, or other allowance, but for the provisions of this section, to be paid or applied in the same manner in all respects as provided in section 14; and such moneys shall be paid or applied accordingly.

(4) Where any person whose pension or other allowance ceases or whose gratuity is not paid, by reason of this section, after conviction at any time receives a free pardon, the pension or allowance shall be restored with retrospective effect, or his gratuity shall be paid, but in determining whether arrears of such pension or allowance are payable to such person and in computing the amount thereof and the amount of any gratuity, account shall be taken of all moneys paid or applied under subsection (3).

(5) Where any pension or other allowance ceases or a gratuity is not paid by reason of this section it shall be lawful for the Governor at any time, and upon such terms and from such date (including any past date) as he thinks fit to restore, either in whole or in part, such pension or allowance or to direct the payment of such gratuity or any part thereof, but in determining whether arrears of such pension or allowance are payable and in computing the amount thereof and the amount of any gratuity, account shall be taken of all moneys paid or applied under subsection (3).

Gratuity where officer dies in the service or after retirement

13. (1) Where an officer holding a pensionable office who is not on probation or agreement, or an officer holding a nonpensionable office to which he has been transferred from a pensionable office in which he has been confirmed, dies while in public service under the Government of St. Helena the Governor may grant to his heirs or legal personal representative a gratuity of an amount not exceeding his annual pensionable emoluments or his commuted pension gratuity, if any, whichever is the greater:

Provided that for the purposes of this section an officer who is holding a pensionable office and is on probation and who dies in the circumstances mentioned in section 15(1) of this Ordinance shall be deemed to have been confirmed in his office.

(2) Where an officer dies after retirement from public service under the Government of St. Helena having been granted, or having become eligible for, a pension under this Ordinance and the sums paid or payable to him at the date of his death on account of such pension including any sum awarded by way of gratuity under regulation 15 of the Regulations contained in the First Schedule to this Ordinance, but excluding any additional pensions awarded in accordance with the provisions of regulation 14(3)(b) contained in the First Schedule to this Ordinance, are less in total than the amount of his annual pensionable emoluments, the Governor may grant a gratuity equal to the deficiency to his legal personal representative.

(3) In this section—

- (a) “**annual pensionable emoluments**” means the emoluments taken for the purpose of computing any pension or gratuity granted to the officer under this Ordinance or, in the case of such officer as is described in subsection (1) of this section, the emoluments which would have been taken in accordance with regulation 9 of the

Regulations contained in the First Schedule to this Ordinance, for the purpose of computing the pension or gratuity that would have been granted to the officer if, on the day following the date of his death, he had retired from the public service in circumstances which enabled such grant to be made;

- (b) **“commuted pension gratuity”** means the gratuity, if any, which might have been granted to the officer under regulation 15 of the Regulations contained in the First Schedule to this Ordinance if the pensionable service which would be taken for the purpose of computing any pension or gratuity granted to him under this Ordinance had been wholly under the Government of St. Helena and if, in the case of such officer as is described in subsection (1) of this section, on the date of his death he had retired from the public service in circumstances which enabled the grant of a pension to be made and had elected to receive a gratuity and reduced pension.

Gratuities to dependants when a nonpensionable officer dies in service or as a result of injuries received in the discharge of his duties

14. (1) Where an officer to whom this section applies dies while in public service under the Government of St. Helena after serving in that public office for not less than five years, it shall be lawful for the Governor to grant to his legal personal representative a gratuity at the rate herein specified for each complete year of that public service, that is to say—

- (a) for each of the first five years, one week’s pay;
(b) for each of the next five years, two weeks’ pay;
(c) for each additional year, four weeks’ pay:

Provided that the total amount of the gratuity shall not exceed the amount of one year’s pay.

(2) Where an officer to whom this section applies dies as a result of injuries received in public service under the Government of St. Helena in the circumstances specified in section 15(1)(a) and (b) of this Ordinance before completing five years’ public service under that Government, it shall be lawful for the Governor to grant to his legal personal representative a gratuity not exceeding five week’s pay.

(3) This section applies to an officer who holds—

- (a) a nonpensionable office; or
(b) a pensionable office in which he is not serving on probation and (if his appointment to that office is subject to confirmation) in which he has not been confirmed, and who is not eligible for the grant of a pension, gratuity or other allowance under this Ordinance (other than a pension under regulation 14(4) of the Regulations contained in the First Schedule to this Ordinance) or for the grant, under his terms of service, of a gratuity or benefit under any other scheme of superannuation.

(4) For the purposes of this section—

- (a) **“pay”** means pay as provided for under a person’s contract of employment as at the date of the officer’s death;
(b) an officer who, having held a nonpensionable office, holds a pensionable office in which he is serving on probation shall be deemed to hold a nonpensionable office and his pay shall be deemed to be the pay last received by him in respect of the nonpensionable office he previously held or the pensionable emoluments of the pensionable office held by him, whichever is the greater;
(c) in calculating the period in which any officer has served in public service under the Government of St. Helena—

- (i) subject to any general or special directions to the contrary that may be given by the Governor only continuous service terminating at his retirement or death shall be taken into account;
- (ii) no regard shall be had to any period of service for which he is eligible for the grant of or has been granted a pension, gratuity or other allowance under this Ordinance (other than a pension under regulation 14(4) of the Regulations contained in the First Schedule to this Ordinance) or, as provided under his terms of service, a gratuity or benefit under any other scheme of superannuation.

Pensions to dependants when an officer dies in service

15. (1) Where an officer while in public service under the Government of St. Helena—

- (a) is injured 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
- (b) contracts a disease to which he is 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,

and dies as a result thereof, and such death occurs within seven years of the date when he was injured or contracted the disease, the Governor may grant, in addition to the grant, if any, made to his legal personal representative under section 13 of this Ordinance—

- (i) if the deceased officer leaves a surviving spouse, a pension to such spouse at a rate not exceeding ten-sixtieths of his annual pensionable emoluments at the date of the injury;
- (ii) if the deceased officer leaves a surviving spouse to whom a pension is granted under the preceding paragraph and a child or children, a pension in respect of each child, until such child attains the age of 18 years of an amount not exceeding one-eighth of the pension prescribed under paragraph (i);
- (iii) if the deceased officer leaves a child or children, but does not leave a surviving spouse, or no pension is granted to the surviving spouse, a pension in respect of each child, until such child attains the age of 18 years, of double the amount prescribed by paragraph (ii);
- (iv) if the deceased officer leaves a child or children and a surviving spouse to whom a pension is granted under paragraph (i) of this subsection and the surviving spouse subsequently dies, a pension in respect of each child as from the date of the death of the surviving spouse until such child attains the age of 18 years, of double the amount prescribed in paragraph (ii);
- (v) if the deceased officer does not leave a surviving spouse or if no pension is granted to his surviving spouse and if either or both of his or her parents were wholly or mainly dependent on him for support, a pension to such parent or parents of an amount not exceeding in total the pension which might have been granted to his surviving spouse;
- (vii) 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 was wholly or mainly dependent on him for support, a pension to any brother or sister until he or she attains the age of 18 years, of the same amount and subject to the same conditions as the pension which might have been granted under paragraph (ii), (iii) or (iv), as the case may be:

Provided that—

- (A) 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 has attained the age of 18 years, a pension for such period as the Governor may determine, of an amount not exceeding the pension which may be granted under paragraph (ii), (iii) or (iv), as the case may be;
- (B) 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 paragraph (ii), (iii) or (iv) of this subsection grant an additional pension in respect of such incapacitated child after he has attained the age of 18 years and so long as his incapacity shall continue, of an amount not exceeding one-half the pension which might have been granted under paragraph (ii), (iii) or (iv), as the case may be;
- (C) where compensation in respect of the death is payable under any law in force in St. Helena which provides for the payment of workmen's compensation, in respect of death, the Governor may reduce or withhold any pension which may be payable under this section in such manner as he may consider reasonable;
- (D) no pension shall be payable under this subsection at any time in respect of more than six children exclusive of incapacitated children, and where there are more than six such children, in respect of whom, but for this proviso, a pension would be payable, then the amount payable in respect of six children shall be divided equally among all such children during the period in which there are more than six children of pensionable age;
- (E) in the case of a pension granted under paragraph (v), (vi) or (vii), if it appears to the Governor at any time that the mother or father, or any brother or sister, is adequately provided with other means of support, such pension shall cease as from such date as the Governor may determine.

(2) No pension shall be granted to the surviving spouse of the deceased officer if he or she was not married to the deceased at the date of injury.

(3) If an officer proceeding by a route approved by the Governor to or from St. Helena at the commencement or termination of his service in the public service of the Government of St. Helena or for a period of secondment, duty leave or leave therefrom, dies as a 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 as a result of the circumstances described in subsection (1)(a).

(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 purpose of this section to have died in the circumstances described in subsection (1)(a):

Provided that in such a case the rates of pension prescribed in subsection (1)(b)(i) and (ii) shall be fifteen-sixtieths and one-sixth respectively.

(5) (a) Where the Governor is satisfied that damages have been or will be recovered in respect of the death for which a pension may be granted under subsection (1), the Governor may take these damages into account against such pension in such manner and to such extent that he may think fit and may withhold or reduce the pension accordingly.

(b) For the purposes of this subsection an officer shall be deemed 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.

(6) For the purposes of this section the following words have, in relation to an officer, the meanings hereby respectively assigned to them—

“brother” includes, in relation to a person, every male child of his father or his mother;

“child” includes—

(a) a posthumous child;

(b) a stepchild 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

(c) 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;

“father” includes, in relation to a person, his stepfather and a male person by whom he has been adopted;

“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;

“mother” includes, in relation to a person, a step-mother and a female person by whom he has been adopted;

“sister” includes, in relation to a person every female child of his father or his mother.

War service to count for pension purposes

16. Where an officer has served with Her Majesty’s Forces in time of war, with the approval of the Governor of the territory in the service of which he was last employed before so serving, the following provisions shall have effect—

(a) during the period of such service in Her Majesty’s Forces, including any period after the termination of the war (in this section referred to as “military service”), he shall be deemed, for the purposes of this Ordinance, to have been on leave on full salary from the public service in which he was last employed, and to have held the substantive office last held by him in that service prior to military service;

(b) during any period between his leaving the public service for the purpose of serving in Her Majesty’s forces and the date of his commencing military service, he shall, for the purposes of this Ordinance, be deemed to be on leave without pay, not granted on grounds of public policy, from the public service in which he was last employed, and to have held the substantive office last held by him in that service, prior to military service and during any period between the termination of his military service and the date of his re-entering the public service he shall, for the said purposes, be deemed to be on leave as aforesaid from the service, and to have held the substantive office, in which he is re-employed:

Provided that—

- (i) this section shall not apply when either period mentioned in paragraph (b) of this section exceeds three months, or such longer period as the Governor may in any special case determine; or if the officer fails, after serving with Her Majesty's Forces, to re-enter the public service otherwise than in circumstances in which he would be permitted, under the law applicable to the public service in which he is last employed prior to military service, to retire on pension or gratuity, such circumstances arising not later than the expiration of three months, or such longer period as may be determined as aforesaid, after the termination of his military service;
- (ii) if during any period mentioned in paragraph (a) of this section the officer qualifies for pension, or receives emoluments *in lieu* of pension rights, actually in respect of military service, paragraph (a) shall, as respects that period, have effect as if the words "leave without salary not granted on grounds of public policy" were substituted for the words "leave on full salary";
- (iii) if during his military service the officer is injured or killed, he shall not, for the purposes of this Ordinance, be deemed to have been injured or killed in the discharge of his duty;
- (iv) the provisions of this section which require that the officer shall be deemed to have held a specified office and to have been on leave from a specified service shall not apply in respect of any period during which he has actually held any other substantive office and has been on leave from any public service;
- (v) save where in any particular case the Governor otherwise directs, this section shall not apply where the office in the public service last held by the officer prior to military service was not a pensionable office.

Increasing pensions

17. Whenever it appears to the Governor to be equitable so to do, having regard to changes in the wages and salaries paid to serving public officers and employees, the Governor may order that the benefits payable to any person under this Ordinance or the emoluments or pay to be taken into account in determining the amount of any benefit, shall be increased by such amount as to the Governor shall seem equitable.

Repeal of legislation and savings

18. (1) The Pensions Ordinance, Cap. 150, is repealed.

(2) Notwithstanding the repeal of the Pensions Ordinance, Cap. 150 by subsection (1), any benefit which may have been awarded under such Ordinance with respect to any person who retired before 1 April 2012, shall remain in force and have effect in the manner prescribed in such Ordinance and may be enforced as if such Ordinance had not been repealed.

FIRST SCHEDULE**PENSIONS REGULATIONS***(Section 3)***PART I****PRELIMINARY****Citation**

1. These regulations may be cited as the Pensions Regulations, 2012.

Interpretation

2. In these regulations, unless the context otherwise requires—
“**the Ordinance**” means the Pensions Ordinance;
“**pensionable service**” means service which may be taken into account in computing pension under these regulations;
“**qualifying service**” means service which may be taken into account in determining whether an officer is eligible by length of service for pension, gratuity, or other allowance.

PART II**DETERMINATION OF PENALTIES AND GRATUITIES****Pension to whom and at what rates to be granted**

3. (1) Subject to the provisions of the Ordinance and of these regulations, every public officer holding a pensionable office under the Government of St. Helena who has been in public service under the Government of St. Helena for ten years or more may be granted on his retirement—

- (a) at normal retirement age, a pension at the rate of—
 - (i) one six-hundredth of his pensionable emoluments in respect of each completed month of pensionable service ending before or on 31 March 2012; and
 - (ii) one eight-hundredth of his pensionable emoluments in respect of each completed month of pensionable service after 1 April 2012:Provided that in the case of an officer referred to in Regulation 19(2), the rate in subparagraph (ii) shall apply in respect of the periods of service completed before and after 1 April 2012;
- (b) at age 60 or older as referred to in section 6(1)(b) of the Ordinance, a pension determined at the rate in paragraph (a) reduced by six per cent for each year that such pension is received before he reaches normal retirement age;
- (c) at age 60 as referred to in section 6(1)(c) of the Ordinance, a pension determined at the rate in paragraph (a) reduced by two per cent for each year that such pension is received before he reaches normal retirement age;
- (d) in the case of an officer referred to in section 6(1)(d) or 7(2)—
 - (i) a pension under paragraph (a) or (b); or
 - (ii) if he is aged 55 or older at time of termination of employment, and he so elects, a pension at time of termination of employment which shall be an

- amount determined under paragraph (a) reduced by two per cent for each year that such pension is received before he reaches normal retirement age
- (e) in the case of an officer referred to in section 6(1)(e) or 7(3)(a)—
- (i) a pension under paragraph (a) or (b); or
 - (ii) if he is aged 55 or older at time of termination of employment, and he so elects, a pension at time of termination of employment which shall be an amount determined under paragraph (a) reduced by two per cent for each year that such pension is received before he reaches normal retirement age:

Provided that the amount of pension determined under paragraph (b) or (c) shall not be less than the pension which may have been granted to such officer had he retired on 31 March 2012.

(2) An officer referred to in section 6(1)(d) or section 7(2) or section 7(4) of the Ordinance may be granted a pension under paragraph (1)(a) or (b) as if the words “for ten years or more” were omitted.

Gratuities where length of service does not qualify for pension

4. Every officer, otherwise qualified for a pension, who has not completed the minimum period of service qualifying for a pension, may be granted on retirement a gratuity not exceeding five times the annual amount of the pension which, if there had been no qualifying period, might have been granted to the officer under regulation 3 of these regulations.

PART III GENERAL

General rules as to qualifying service and pensionable service

5. (1) Subject to the provisions of these regulations, qualifying service shall be the inclusive period between the date on which an officer begins to draw salary in respect of public service (including service provided on a part-time basis) and the date of his leaving the public service without deduction of any period during which he has been absent on leave:

Provided that any such service provided on a part-time basis shall be adjusted proportionally based on the number of hours to reflect a full time period of service for purposes of determining the period of qualifying service.

(2) No period which is not qualifying service by virtue of subregulation (1) shall be taken into account as pensionable service.

(3) No period during which the officer was not in public service shall be taken into account as qualifying service or as pensionable service.

Continuity of service

6. (1) Except as otherwise provided in these regulations, only continuous public service (including service provided on a part-time basis) shall be taken into account as qualifying service or as pensionable service:

Provided that any break in service caused by temporary suspension of employment in the public service not arising from misconduct or voluntary resignation shall be disregarded for the purposes of this subregulation:

(2) An officer who has retired from the public service without pension on account of ill health, abolition of office, or reorganisation designed to effect greater efficiency or economy,

and has subsequently been re-employed in the public service may, if the Governor thinks fit, be granted the pension or gratuity for which he would have been eligible if any break in his public service immediately prior to such suspension, re-employment or employment had not occurred, such pension to be *in lieu* of—

- (a) any pension previously granted to him from the funds of St. Helena; and
- (b) any gratuity so granted which is required to be refunded as a condition of the application to the officer of this regulation,

but additional to any gratuity so granted which is not required to be refunded as aforesaid.

(3) Where an officer, who, having held a pensionable office under the Government of St. Helena and having been confirmed in the pensionable office resigns from the public service and has been, or is subsequently re-employed in the public service, notwithstanding anything to the contrary in subregulation (1), his period of service under the Government of St. Helena prior to such re-employment shall be taken into account in computing his qualifying service or pensionable service:

Provided that this paragraph shall not apply to any officer who retired from service prior to the 1st of April, 1999, or to any continuous period of service commencing on or after 1 April 2010.

Leave without salary

7. No period during which an officer has been absent from duty on leave without salary shall be taken into account as pensionable service unless such leave has been granted on grounds of public policy with the approval of the Governor.

Service in Her Majesty's Forces

8. Where an officer, during some period of his service, has been on the active list of the Royal Navy, the Army or the Royal Air Force, and pension contributions have been paid in respect of that period from the funds of St. Helena or of any scheduled administration and have not been refunded, such period shall not be taken into account as pensionable service.

Emoluments to be taken for computation of pensions, etc

9. (1) For the purpose of computing the amount of the pension or gratuity of an officer who has had a period of not less than three years' pensionable service before his retirement—

- (a) in the case of an officer who has held the same office for a period of three years immediately preceding the date of his retirement, the full annual pensionable emoluments enjoyed by him at that date in respect of that office shall be taken;
- (b) in the case of an officer who at any time during such period of three years has been transferred from one office to another, but whose pensionable emoluments have not been changed by reason of such transfer or transfers, otherwise than by the grant of any scale increment, the full annual pensionable emoluments enjoyed by him at the date of his retirement in respect of the office then held by him shall be taken;
- (c) in other cases one-third of the aggregate pensionable emoluments enjoyed by the officer in respect of his service during the three years of his service immediately preceding the date of his retirement shall be taken:

Provided that—

- (i) if such one-third is less than the highest annual pensionable emoluments enjoyed by him at the date of any transfer within such period of three years those annual pensionable emoluments shall be taken; and
- (ii) if such one-third is less than the annual pensionable emoluments which would have been enjoyed by him at the date of his retirement, if he had continued to hold any office from which he has been transferred at any time during such period of three years, and had received all scale increments which, in the opinion of the Governor, would have been granted to him, the annual pensionable emoluments which would have been so enjoyed shall be taken.

(2) For the purpose of determining under subregulation (1) the pensionable emoluments that an officer has enjoyed or would have enjoyed, as the case may be, he shall be deemed—

- (a) to have been on duty on full pensionable emoluments throughout the period of three years immediately preceding the date of his retirement; and
- (b) to have enjoyed the benefit of any increase due to a general revision of the pensionable emoluments of any office held by him as if such increase had been payable throughout such period of three years:

Provided that if he has been transferred from an office which has been abolished and for this reason the pensionable emoluments of that office have not been considered in a general revision of pensionable emoluments, then, for the purposes of this regulation, the pensionable emoluments attached to the abolished office shall be equated with those of such office or offices as are certified by the Governor in his discretion as having enjoyed the same pensionable emoluments as the abolished office at the time of the said revision.

(3) For the purpose of computing the amount of the pension or gratuity of an officer who has had a period of less than three years' pensionable service before his retirement—

- (a) the average annual pensionable emoluments enjoyed by him during such period shall be taken;
- (b) he shall be deemed to have been on duty on full pensionable emoluments throughout such period; and
- (c) he shall be deemed to have enjoyed the benefit of any increase due to a general revision of the pensionable emoluments of any office held by him as if such increase had been payable throughout such period.

(4) The estimated value of free quarters in respect of public service under the Government of St. Helena shall be such as shall be taken as fifteen *per centum* of the minimum of the officer's salary scale, but not exceeding £150 per annum.

(5) Subject to paragraph (6), in no circumstances shall the pensionable emoluments taken for the purpose of computing the pension or gratuity of any officer exceed the full annual pensionable emoluments enjoyed by the officer at the date of his retirement in respect of the office then held by him.

(6) For the purposes of computing the pension or gratuity of an officer retiring in the circumstances referred to in section 7, the pensionable emoluments shall be the pensionable emoluments of such officer at the time of the termination of such an officer's employment increased by such amount as the Governor may order under section 17.

Service in nonpensionable office

10. (1) Only service in a pensionable office (not being service in respect of which the officer is entitled to a gratuity *in lieu* of pension or to benefit under any other scheme of superannuation) shall be taken into account as pensionable service:

Provided that—

- (a) where a period of service in a civil capacity otherwise than in a pensionable office (not being service in respect of which the officer is entitled to a gratuity *in lieu* of pension or to benefit under any other scheme of superannuation) is immediately followed by service in a pensionable office and the officer is confirmed therein, such period may with the approval of the Governor be so taken into account;
 - (b) any break in service which may be disregarded under the provisions of regulation 6 of these Regulations may likewise be disregarded in determining for the purpose of the preceding provisions of this regulation whether one period of service immediately follows another period of service;
 - (c)
 - (i) where an officer has been transferred from a pensionable office in which he had been confirmed to an office which is not pensionable and subsequently retires either from a pensionable office or an office which is not pensionable his service in the office which is not pensionable may, with the approval of the Governor, be taken into account as though it were service in the pensionable office which he held immediately prior to such transfer and at the pensionable emoluments which were payable to him at the date of transfer;
 - (ii) where a period of service in an office which is not pensionable is taken into account under this regulation, the officer shall, during that period, be deemed for the purpose of regulations 6, 22 and 23 of these Regulations to be holding a pensionable office, and where that period is taken into account under the preceding subparagraph to have been confirmed therein.
- (2) The Governor may, in the case of an officer who has served in a non-pensionable office for a period of at least ten years, determine that such officer shall be deemed to be serving in a pensionable office and such past service shall also be regarded as having been served in a pensionable office:
- Provided that—
- (a) this paragraph applies only if such officer applies for such determination within 12 months from the date that he first became eligible for such determination under this paragraph;
 - (b) the Governor may give written notice to such officer that he intends making such determination and, unless such officer objects within a period of three months, he shall be deemed to have applied for such determination under this paragraph on the date of such written notice.

Acting service

11. Any period during which an officer has performed only acting service in an office may be taken into account as pensionable service (subject, if the office is a nonpensionable office, to the provisions of the preceding regulation) if the period of such acting service is immediately preceded or followed by service in a substantive capacity in a pensionable office in the public service.

Service under age of 20 or on probation or agreement

12. Save as otherwise provided in these regulations, there shall not be taken into account as pensionable service—

- (a) any period of service performed before 1 April 2012 while the officer was under the age of 20 years; or

- (b) any period of service while he was on probation or agreement, unless without break of service he is confirmed in a pensionable office in the public service:

Provided that any break of service which may be disregarded under the provisions of regulation 6 of these regulations may likewise be disregarded in determining whether the officer is confirmed in a pensionable office without break of service.

PART IV SUPPLEMENTARY

Abolition of office, reorganisation and divestment

13. (1) An officer referred to in section 6(1)(d) or 7(2) of the Ordinance may be granted at the time that his service is terminated, a lump sum at the following rate for each complete year of service—

- (a) for each of the first five years, a half a week's pay;
- (b) for each of the next five years, one weeks' pay; and
- (c) for each additional year, two weeks' pay.

(2) If an officer is transferred to a new employer as referred to in section 7(4) and such officer is made redundant by such new employer within a period of five years from the date of such transfer, he may be granted a lump sum under paragraph (1) as if he had been made redundant on the date of such transfer.

Officers injured or contracting diseases in the discharge of their duties

14. (1) This regulation shall apply to an officer who—

- (a) is injured 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
- (b) contracts a disease to which he is 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.

(2) In this regulation unless the contrary intention appears, references to an officer being injured and to the date on which an injury is sustained shall respectively be construed as including references to him contracting such a disease as is mentioned in subregulation (1) and to the date on which such disease is contracted.

(3) Where an officer to whom this regulation applies is holding a pensionable office, he may—

- (a) if his retirement is necessitated or materially accelerated by his injury and he has been in the public service for less than ten years, be granted, *in lieu* of any gratuity under regulation 4, a pension under regulation 3(1)(a) or (b) as if the words “for ten years or more” were omitted from regulation 3;
- (b) if he was injured while in public service under the Government of St. Helena be granted on retirement an additional pension, at the annual rate of the proportion of his actual pensionable emoluments at the date of his injury appropriate to his case as shown in the following table—

When his capacity to contribute to his own support is—

Slightly impaired	five-sixtieths;
Impaired	ten-sixtieths;
Materially impaired	fifteen-sixtieths;
Totally destroyed	twenty-sixtieths:

Provided that the amount of the additional pension may be reduced to such an extent as the Governor shall think reasonable where the injury is not the cause or the sole cause of retirement.

(4) (a) An officer to whom this regulation applies who is injured while in public service under the Government of St. Helena and who holds a nonpensionable office, or who holds a pensionable office in which he has not been confirmed, may be granted on retirement, a pension of the same amount as the additional pension which may be granted to him under subregulation (3) as if his office were a pensionable office and he had been confirmed therein.

(b) The provisions of regulation 15 of these regulations shall not apply to a pension granted under this subregulation.

(5) (a) If, for the purpose of assessing the amount of any additional pension or pension to be granted under subregulation (3)(b) or (4) of this regulation to any officer to whom this regulation applies, the degree of permanent impairment of his capacity to contribute to his support is in doubt he may be granted a provisional award to have effect until such time as his degree of permanent impairment can be determined.

(b) The provisions of regulation 15 of these regulations shall not apply to an award made under this subregulation.

(6) If an officer proceeding by a route approved by the Governor to or from St. Helena at the commencement or termination of his public service under the Government of St. Helena, or of a period of secondment, duty leave or leave therefrom, is injured as a result of damage to the vessel, aircraft or vehicle in which he is travelling, or of any act of violence directed against any such vessel, aircraft or vehicle, and the Governor is satisfied that such damage or act is attributable to circumstances arising out of any war in which Her Majesty may be engaged, such officer shall be deemed for the purpose of this regulation to have been injured in the circumstances described in subregulation (1).

(7) An officer who is injured while travelling by air in pursuance of official instructions, and whose 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 purpose of this regulation to have been injured in the circumstances described in subregulation (1):

Provided that in such a case the rates of pension prescribed in subregulation (3)(b) shall be seven-and-a-half sixtieths, fifteen sixtieths, twenty-two-and-a-half sixtieths and thirty sixtieths respectively.

(8) Where compensation in consequence of the injury is payable under any law in force in St. Helena which provides for the payment of workmen's compensation, the Governor may reduce or withhold any additional pension or pension payable under either subregulation (3) or (4) aforesaid in such manner as he may consider reasonable.

(9) (a) Where the Governor is satisfied that damages have been or will be recovered by an officer in respect of an injury for which an additional pension or pension may be granted under subregulation (3)(b) or (4) of this regulation, 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.

(b) For the purpose of this subregulation an officer shall be deemed to recover damages whether they are paid in pursuance of a judgment or order of the court or by way of settlement or compromise of his claim and whether or not proceedings are instituted to enforce that claim.

Gratuity and reduced pension

15. (1) Any officer to whom a pension is granted under the Ordinance may at his option exercisable as in this regulation provided, be paid *in lieu* of such pension a pension at

the rate of three-fourths of such pension together with a gratuity equal to twelve-and-a-half times the amount by which such pension is reduced.

(2) An option exercisable in accordance with this regulation—

- (a) shall be exercisable, and if exercised, may be revoked, on or before the date of the officer's retirement or, with the permission of the Governor, at any time between that date and the date of the final award of the pension granted to him under the Ordinance;
- (b) shall be exercised or revoked by notice in writing addressed to the Chief Secretary;
- (c) shall be deemed to have been exercised or revoked on the date on which such notice is received.

(3) If an officer who has not exercised an option in accordance with this regulation dies after he has retired but before a pension has been granted to him under the Ordinance, the Governor may, if he thinks fit, grant to his legal personal representatives a gratuity and a reduced pension as provided in subregulation (1), as if the officer had exercised the option before his death.

Allowances or gratuities for officers who have served in nonpensionable offices

16. (1) Where an officer to whom this regulation applies retires or resigns from public service under the Government of St. Helena after serving in that public service for not less than five years, he may be granted by the Governor a gratuity at the rate herein specified for each complete year of service, that is to say—

- (a) for each of the first five years, one week's pay;
- (b) for each of the next five years, two weeks' pay;
- (c) for each additional year, four weeks' pay:

Provided that the total amount of the gratuity shall not exceed the amount of one year's pay.

(2) Where the employment of an officer is terminated as a result of the dismissal of such officer, such officer shall for purposes of paragraph (1) be deemed to have resigned from the public service on the date of such dismissal.

(3) Where an officer to whom this regulation applies has been in the public service for not less than 20 years, and retires in any of the circumstances set out in section 6 of the Ordinance he may be granted *in lieu* of a gratuity under this regulation, if the Governor thinks fit, a retiring allowance—

- (a) at normal retirement age, at the rate of one eight-hundredth of his pay at the date of his retirement for each complete month of his service in St. Helena:
Provided that the annual amount of such allowance shall not exceed two-thirds of the highest rate of pay received while in the service; or
- (b) if such officer so elects, at age 60 or older, in which case such allowance shall be determined at the rate in item (a) reduced by six per cent for each year that such pension is received before he reaches normal retirement age:

Provided that the amount of pension determined under this paragraph shall not be less than the retirement allowance which may have been granted to such officer had he retired on 31 March 2012 (without having regard to such 20 year qualifying period).

(4) An officer taking early retirement in accordance with the provisions of this regulation shall be eligible for a retiring allowance under paragraph (3) if he has served in the public service for a period of not less than ten years:

Provided that where such officer is aged 55 years or older at time of early retirement as referred to in section 6(1)(d) or 6(1)(e) of the Ordinance, he may elect to take such retiring allowance from the date of such termination and may be granted an amount

determined under paragraph (3)(a) reduced by two per cent for each year that such retiring is received before he reaches normal retirement age.

(6) An officer referred to in section 7(4) of the Ordinance who retires or resigns from the entity to which he was transferred as referred to in that section, may be granted a benefit under—

(a) paragraph (1) as if the words “for five years or more” were omitted; or

(b) paragraph (3) as if the words “20 years” read “10 years”,

and as if he had resigned or retired from the public service on the date of transfer to such new entity.

(7) This regulation applies to an officer who holds—

(a) a nonpensionable office;

(b) a pensionable office in which he is not serving on probation and (if his appointment to that office is subject to confirmation) in which he has not been confirmed and who is not eligible for the grant of a pension, gratuity or other allowance under the Ordinance (other than a pension under regulation 14(4) of these Regulations) or for the grant, under the terms of service, of a gratuity or a benefit under any other scheme of superannuation.

(8) For the purpose of this regulation—

(a) “**pay**” means pay at the date of the officer’s retirement or resignation (or the increased amount of such pay as provided for in section 17) and includes personal allowance and house allowance and any other allowance that the Governor may think fit to include:

Provided that any pay in respect of part-time service shall be grossed up based on the number of hours of service to reflect the amount equivalent of the pay had such service been provided on a full time basis;

(b) an officer who having held a nonpensionable office holds a pensionable office in which he is serving on probation shall be deemed to hold a nonpensionable office and his pay shall be deemed to be the pay last received by him in respect of the nonpensionable office he previously held or the pensionable emoluments of the pensionable office held by him, whichever is the greater;

(c) in calculating the period in which any officer has served in public service under the Government of St. Helena—

(i) subject to any general or special directions that may be given by the Governor, only continuous service terminating at his retirement or resignation shall be taken into account;

(ii) no regard shall be had to any period of service for which he is eligible for the grant of or has been granted a pension, gratuity or other allowance under the Ordinance (other than a pension under regulation 14(4) of these Regulations) or, as provided under his terms of service, a gratuity or a benefit under any other scheme of superannuation;

(iii) any such service provided on a part-time basis shall be adjusted proportionally based on the number of hours to reflect a full time period of service for purposes of determining the period of qualifying service.

(d) “**early retirement**” means retirement from the public service in any of the circumstances set out in section 6(1)(d) or (e) or section 7(2) or (3)(a) or (b) of the Ordinance.