

GUERNSEY STATUTORY INSTRUMENT

ENTITLED

The Income Tax (Guernsey) (Limit of Retirement and other Benefits) Regulations, 1977 *

[CONSOLIDATED TEXT]

NOTE

This consolidated version of the enactment incorporates all amendments listed in the footnote below. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.

© States of Guernsey

* G.S.I. No. 7 of 1977; as amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406); the Administrator of Income Tax (Guernsey) (Transfer of Functions) Ordinance, 2009 (No. VII of 2009, Recueil d'Ordonnances Tome XXXIII, p. 472); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016); the Director of Income Tax (Transfer of Functions) (Guernsey) Ordinance, 2018 (No. ** of 2018); the Income Tax (Guernsey) (Limit of Retirement and Other Benefits) (Amendment) Regulations, 1991 (G.S.I. No. 5 of 1991); the Income Tax (Guernsey) (Limit of Retirement and other Benefits) (Amendment) Regulations, 1997 (G.S.I. No. 13 of 1997); the Income Tax (Pensions) (Amendments and Miscellaneous Provisions) Regulations, 2011 (G.S.I. No. 6 of 2011).

GUERNSEY STATUTORY INSTRUMENT

ENTITLED

The Income Tax (Guernsey) (Limit of Retirement and other Benefits) Regulations, 1977

ARRANGEMENT OF REGULATIONS

1. Regulation 1.
2. Regulation 2.
3. Regulation 3.
4. Regulation 4.
5. Regulation 5.
6. Regulation 6.
7. Regulation 7.

(Made on 20th January, 1977.)

The Income Tax (Guernsey) (Limit of Retirement and other Benefits) Regulations, 1977

THE INCOME TAX AUTHORITY, in exercise of the powers conferred upon it by paragraph (k) of sub-section (2) of section one hundred and fifty and section one hundred and fifty-nine of the Income Tax (Guernsey) Law, 1975, as amended^a, hereby makes the following regulations: –

Regulation 1.

1. These Regulations may be cited as the Income Tax (Guernsey) (Limit of Retirement and Other Benefits) Regulations, 1977, and shall be deemed to have come into operation on the first day of January, nineteen hundred and seventy-seven.

Regulation 2.

2. In these Regulations, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say –

"the [Director]" means the [Director of the Revenue Service] referred to in section two hundred and five of the Law,

"[the Committee]" means the [Policy & Resources Committee],

"final remuneration" means, in relation to any employee –

- (a) the highest annual remuneration for any year during the last five years of his service with the employer, or

^a Ordre en Conseil No. IX of 1975, No. X of 1976.

- (b) the highest basic remuneration for any year during the last five years of such service plus the average of any fluctuating emoluments for any two or more years during the said five years, or
- (c) the average of his total remuneration for any three or more consecutive years during the last ten years of such service,

"the Law" means the Income Tax (Guernsey) Law, 1975, as amended,

and any other expression shall have the same meaning as in the Law.

NOTES

In regulation 2,

the words "Director" and "Director of the Revenue Service" in square brackets, wherever occurring, were substituted by the Director of Income Tax (Transfer of Functions) (Guernsey) Ordinance, 2018, section 1, with effect from 1st November, 2018, subject to the savings and transitional provisions in section 2 of the 2018 Ordinance;¹

the words in the first and second pairs of square brackets in the definition of the expression "the Committee" were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 5(1), Schedule 3, paragraph 1, and section 2, Schedule 1, paragraph 15(a) and section 4, with effect from 1st May, 2016.²

The functions, rights and liabilities of the Treasury and Resources Department and of its Minister or Deputy Minister arising under or by virtue of these Regulations were transferred to and vested in, respectively, the Policy & Resources Committee and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 15(a) and section 4, with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.³

Regulation 3.

3. The Interpretation (Guernsey) Law, 1948, shall apply to the interpretation of these Regulations as it applies to the interpretation of an enactment.

NOTE

The Interpretation (Guernsey) Law, 1948 has since been repealed by the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016, section 28(a), with effect from 1st October, 2018.

Regulation 4.

4. (1) The retirement or other benefits provided by a pension scheme approved under the provisions of section one hundred and fifty of the Law shall not exceed the limits contained in the subsequent [paragraphs of this regulation:]

[Provided that if [the Committee] so resolves in relation to any particular scheme, and subject to any conditions specified in [the Committee]'s resolution, the [Director] may approve the scheme, and the scheme may provide retirement and other benefits, notwithstanding that those retirement or other benefits may exceed any one or more of the limits contained in this regulation.]

(2) (a) Any pension (including the equivalent in terms of pension of any lump sum benefit) payable to an employee on or after retirement [shall not exceed such amount (whether calculated by reference to the employee's years of service and final remuneration, or a percentage of the value of the fund accumulated under the scheme and attributable to the employee, or otherwise) as the trustees or other persons having the management of the scheme think fit, any necessary valuation of the fund being made immediately before

the time of the making of the first payment],

- (b) where a scheme provides for the payment of a lump sum in lieu of, or in addition to, a pension, or permits a part of a pension to be commuted, such lump sum, or the lump sum representing the part of the pension so commuted, [shall not exceed 30% of the value of the fund accumulated under the scheme and attributable to the employee, the valuation being made immediately before the time of the making of the payment]:

PROVIDED that these limits may, with the consent of the [Director] and subject to such conditions as he may think proper to impose, be exceeded –

- (i) by virtue of an employee's late entry into the employment to which the scheme relates, and
- (ii) by virtue of an employee continuing in the employment to which the scheme relates after reaching the date specified in such scheme as his normal retirement date for a period not exceeding five years.

[(2A) For the purposes of regulation 4(2)(a) and (2)(b) –

- (a) the value of the fund accumulated under the approved scheme and attributable to the employee, and
- (b) in respect of regulation 4(2)(a), the amount which the employee's pension (including the equivalent in terms

of pension of any lump sum benefit) may not exceed, shall be calculated by the trustees or other persons having the management of the scheme on the advice of a Fellow of the Institute and Faculty of Actuaries or a person holding other actuarial qualifications approved by the [Director of the Revenue Service], the trustees or other persons having management of the scheme having had regard to (without limitation) the formula used to calculate the value of a transfer payment (within the meaning of section 150(2A) of the Law) out of the scheme into another pension scheme approved by the [Director of the Revenue Service] in accordance with the provisions of section 150 of the Law.]

- (3) On the death in service of an employee –
- (a) any lump sum payable shall not exceed four times the employee's final remuneration (exclusive of any refunds of contributions and any interest thereon),
 - (b) any pension payable shall be for the benefit of the employee's spouse, children or dependants and any such pension shall not exceed two-thirds of the pension (hereinafter referred to as "**the employee's potential maximum pension**") which would have been provided for the employee at the date specified in the scheme as his normal retirement date if he had continued to serve until that date at an annual rate of remuneration equal to his final remuneration:

PROVIDED that –

- (i) where the scheme provides for the payment of a lump sum in lieu of, or in addition to, a pension, the employee's maximum potential pension includes the equivalent in terms of pension of such lump sum, and
 - (ii) the total of all such pensions shall not exceed the amount of the employee's maximum potential pension.
- (4) On the death after retirement of an employee –
- (a) the annual amount of any pension payable to his spouse or dependants shall not exceed two-thirds of the maximum pension which could have been provided for the employee without regard to any pension surrendered by him in accordance with the provisions of regulation five of these Regulations:

[Provided that –

- (i) where the scheme provides for the payment of a lump sum in lieu of or in addition to a pension, the employee's maximum pension shall be deemed to include the equivalent in terms of pension of any lump sum which has been so paid, and
- (ii) the total of all such pensions shall not exceed the amount of the said maximum pension,]

- (b) where less than five years' pension has become payable to the said employee, an amount not exceeding in all the value of the pension for the remaining part of the five years may be paid.

NOTES

In regulation 4,

the words in the first and second pairs of square brackets in paragraph (1) were, respectively, substituted and inserted by the Income Tax (Guernsey) (Limit of Retirement and Other Benefits) (Amendment) Regulations, 1991, regulation 1(a), with effect from 22nd May, 1991;

the words "the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 1, with effect from 1st May, 2016;

the words "Director" and "Director of the Revenue Service" in square brackets, wherever occurring, were substituted by the Director of Income Tax (Transfer of Functions) (Guernsey) Ordinance, 2018, section 1, with effect from 1st November, 2018, subject to the savings and transitional provisions in section 2 of the 2018 Ordinance;⁴

the words in the first and second pairs of square brackets in paragraph (2) were substituted and paragraph (2A) was inserted by the Income Tax (Pensions) (Amendments and Miscellaneous Provisions) Regulations, 2011, regulation 1, respectively paragraph (2), paragraph (3) and paragraph (4), with effect from 27th April, 2011, and these amendments shall have effect in respect of any year of charge after 2010;

the proviso to paragraph (4)(a) was substituted by the Income Tax (Guernsey) (Limit of Retirement and other Benefits) (Amendment) Regulations, 1997, regulation 1, with effect from 11th April, 1997.

Regulation 5.

5. Where an employee has surrendered part of his pension to provide a pension for his spouse or for a dependant, the pension so provided shall not exceed the reduced pension retained by the employee.

Regulation 6.

[6. (1) Notwithstanding anything in these Regulations, pension benefits, whether deferred benefits or benefits in payment, may be augmented from time to time by an amount not exceeding whichever is the greater of –

(a) 5 per centum per annum, or

(b) any increase in the Guernsey Index of Retail Prices.

(2) For the purposes of this regulation "**deferred benefits**" has the meaning given in section 150(2A)(b) of the Law.]

NOTE

Regulation 6 was substituted by the Income Tax (Guernsey) (Limit of Retirement and Other Benefits) (Amendment) Regulations, 1991, regulation 1(b), with effect from 22nd May, 1991.

Regulation 7.

7. The Income Tax (Guernsey) (Limit of Retirement and Other Benefits) Regulations, 1975^b, are hereby revoked.

^b S.I. 1975 No. 43.

1 These words were previously substituted by the Administrator of Income Tax (Guernsey) (Transfer of Functions) Ordinance, 2009, section 1, with effect from 25th February, 2009, subject to the savings and transitional provisions in section 2 of the 2009 Ordinance.

2 The words "Policy & Resources Committee" were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 18 and section 5, with effect from 6th May, 2004.

3 The functions, rights and liabilities of the Treasury and Resources Department and its Minister arising under or by virtue of these Regulations were previously transferred to and vested in them, respectively, from the Income Tax Authority and its President by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 18 and section 5, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.

4 The word "Director" was previously substituted by the Administrator of Income Tax (Guernsey) (Transfer of Functions) Ordinance, 2009, section 1, with effect from 25th February, 2009, subject to the savings and transitional provisions in section 2 of the 2009 Ordinance.