



Isle of Man

Ellan Vannin

**PUBLIC SECTOR PENSIONS
(AMENDMENT) BILL 2019**

PUBLIC SECTOR PENSIONS (AMENDMENT) BILL 2019

Explanatory Memorandum

1. This Bill is promoted by Mr Henderson MLC.
2. Part 1 (*clauses 1-2*) deals with introductory matters, *clause 1* giving the resulting Act its short title, *clause 2* providing for its commencement.
3. Part 2 (*clauses 3 to 7*) deals with amendments to the *Public Sector Pensions Act 2011* (the “2011 Act”).
4. *Clause 3* provides that the 2011 Act is to be amended in accordance with the following clauses.
5. *Clause 4(1)* repeals section 3(2)(a) of the 2011 Act. That section provides that the consent of the judges of the High Court (within the meaning of section 3(1) of the *High Court Act 1991*) and the Attorney General and the Solicitor General for the Island is required for the making of a superannuation scheme in respect of those persons. With the repeal of this provision, such consent will not be required.
6. *Clause 4(2)* inserts a new section 3A into the 2011 Act to provide that, despite the repeal of section 3(2)(a), the consent of a person described in paragraph 5 above is required to amend a scheme in existence immediately before the repeal if the person was at that time a member of such a scheme and the amendment would adversely affect the person’s rights under the scheme.
7. *Clause 5* amends section 4 of the 2011 Act to clarify the definition of “scheme” to include superannuation provisions originally made by order or regulations before the 2011 Act was in operation, and which are treated as a scheme validly made under the 2011 Act.
8. *Clause 6* amends section 6 of the 2011 Act. It omits the reference to the approval of Tynwald in section 6(1)(c). The procedure for the making of schemes, orders or regulations is set out in section 15 of the 2011 Act, so the reference to the approval of Tynwald in section 6(1)(c) is superfluous.
9. *Clause 6* also inserts into section 6 of the 2011 Act a new subsection (1A) to clarify that the Public Sector Pensions Authority is able to amend existing schemes, which are treated as schemes made under the 2011 Act and which were originally made by order or regulations, by making amending orders or regulations, rather than schemes.
10. *Clause 7* substitutes section 15 of the 2011 Act with a revised section 15, to provide that the Tynwald procedure for the making of schemes, orders or regulations under the 2011 Act is the affirmative procedure, but that purely administrative amendments may be made under the negative procedure.

11. If approved, the resulting Act is not expected to have any significant financial or human resource implications, given that it does not amend any of the provisions of the current pension and superannuation schemes, but rather the primary legislation that underpins them.
12. In the opinion of the member moving the Bill its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.



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Index

Section	Page
PART 1 – INTRODUCTORY	
<hr/>	
1 Short title.....	7
2 Commencement	7
 PART 2 – AMENDMENT OF THE PUBLIC SECTOR PENSIONS ACT 2011	
<hr/>	
3 Amendment of the Public Sector Pensions Act 2011	7
4 Consent to making schemes: section 3 amended and section 3A inserted.....	8
5 Definition of “scheme”: section 4 amended.....	8
6 Amending existing schemes: section 6 amended.....	8
7 Statutory documents: section 15 amended	8



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PUBLIC SECTOR PENSIONS (AMENDMENT) BILL 2019

- 1 **A BILL** to amend the Public Sector Pensions Act 2011 to remove the
 2 requirement to obtain consent for the making of certain schemes; to extend the
 3 definition of schemes and to provide for the amendment of existing schemes; to
 4 amend the Tynwald procedures for making orders, regulations and schemes;
 5 and for connected purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

6 **PART 1 – INTRODUCTORY**

7 **1 Short title**

8 The short title of this Act is the Public Sector Pensions (Amendment) Act 2019.

9 **2 Commencement**

- 10 (1) This Act (apart from section 1 and this section) comes into operation on
 11 such day or days as the Public Sector Pensions Authority may by order
 12 appoint and different days may be appointed for different provisions
 13 and for different purposes.
- 14 (2) An order under subsection (1) may include such consequential,
 15 incidental, supplemental, transitional, transitory or saving provisions as
 16 the Public Sector Pensions Authority considers necessary or expedient in
 17 connection with the coming into operation of any provision of this Act.

18 **PART 2 – AMENDMENT OF THE PUBLIC SECTOR PENSIONS** 19 **ACT 2011**

20 **3 Amendment of the Public Sector Pensions Act 2011**

21 The *Public Sector Pensions Act 2011* is amended as follows.

1 **4 Consent to making schemes: section 3 amended and section 3A**
 2 **inserted**

3 (1) Section 3(2)(a) (application) is repealed.

4 (2) After section 3 insert —

5 **“3A Saving provision for existing members of judicial schemes**

6 Despite the repeal of section 3(2)(a) (which required the consent of a
 7 person mentioned in section 3(1)(a) or (b) for schemes), the consent of a
 8 person mentioned in section 3(1)(a) or (b) (as appropriate) is required to
 9 amend a scheme where —

10 (a) the scheme was in existence immediately before the repeal
 11 of section 3(2)(a);

12 (b) at that time the person was a member of the scheme; and

13 (c) the amendment would adversely affect the rights of the
 14 person in question under the scheme.”.

15 **5 Definition of “scheme”: section 4 amended**

16 In section 4 (interpretation), in the definition of “scheme”, after “under this Act”
 17 insert —

18 “and includes any superannuation provisions originally made by order
 19 or regulations and treated as a scheme validly made by the PSPA under
 20 this Act in accordance with paragraph 1 of Schedule 1;”.

21 **6 Amending existing schemes: section 6 amended**

22 In section 6 (functions of the PSPA)—

23 (a) in subsection(1)(c), omit “, subject to the approval of Tynwald”;
 24 and

25 (b) after subsection (1) insert —

26 “(1A) The PSPA may by order or regulations (as appropriate) amend a
 27 scheme originally made by order or regulations and treated as a
 28 scheme validly made by the PSPA under this Act in accordance
 29 with paragraph 1 of Schedule 1.”

30 **7 Statutory documents: section 15 amended**

31 For section 15 (schemes and regulations), substitute —

32 **“15 Statutory documents**

33 (1) A scheme or regulations made under this Act, or an order made
 34 under section 6(1A), is subject to the negative procedure if —

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- (a) it does nothing more than amend an existing scheme; and
 - (b) the amendments are purely administrative and do not alter the level or rate of contributions payable by members of a scheme, or the rate at which any rights accrue under a scheme or affect, directly or indirectly, the amount of any pension, allowance or gratuity.
- (2) In any other case, a scheme or regulations made under this Act, or an order made under section 6(1A), is subject to the affirmative procedure.
- (3) If a provision of a scheme, regulations or an order otherwise subject to the negative procedure is combined with a scheme, regulations or an order subject to the affirmative procedure, the scheme, regulations or order is subject to the affirmative procedure.
- (4) A scheme or regulations made under this Act, or an order made under section 6(1A), may contain such transitional, incidental, consequential or supplemental provision as appears to the PSPA to be necessary or expedient for the purpose of giving effect to the scheme, regulations or order.
- (5) In this section —
- (a) a reference to the “affirmative procedure” is a reference to the procedure described in section 31 of the *Legislation Act 2015*; and
 - (b) a reference to the “negative procedure” is a reference to the procedure described in section 32 of that Act.”.

IN THE COUNCIL

PUBLIC SECTOR PENSIONS (AMENDMENT) BILL 2019

A **BILL** to amend the Public Sector Pensions Act 2011 to remove the requirement to obtain consent for the making of certain schemes; to extend the definition of schemes and to provide for the amendment of existing schemes; to amend the Tynwald procedures for making orders, regulations and schemes; and for connected purposes.

Brought from the Keys on 26 November 2019 and reprinted to incorporate amendments made by the Keys

MR HENDERSON

NOVEMBER 2019