

JAMAICA

No. 8 - 2005

I assent,

[L.S.]

(Sgd) HF Cooke
Governor-General.

15th March 2005

AN ACT to Make provision for the establishment and implementation of retiring allowances for Parish Councillors and for connected matters.

[1st day of January, 1986]

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the Authority of the same, as follows:—

1. This Act may be cited as the Retiring Allowances (Parish Councillors) Act, 2005, and shall be deemed to have come into operation on the 1st day of January, 1986.

Short title,
citation and
commence-
ment.
Interpretation.

2.—(1) In this Act, unless the context otherwise requires—

“appropriate Minister” means the Minister responsible for the public service;

“award” means any amount payable to any person pursuant to this Act;

“contributions” includes any special contributions paid pursuant to this Act;

“contributor” means any councillor who by virtue of section 3 becomes a contributor under this Act;

“councillor” means a person who—

- (a) is an elected member of a parish council; or
- (b) not being an elected member of a parish council, is the holder of a specified office;

“full parish council term” means the period commencing on the date of the first sitting of the parish council after a local government election and expiring at the date of the next ensuing dissolution of that parish council;

“house allowance” means—

- (a) any house allowance paid to a councillor by virtue of his office; or
- (b) in the case of a councillor who is provided with quarters, the amount referred to in paragraph (a);

“legislator” means a person who is a member of the House of Representatives or of the Senate and includes the holder of a specified office;

“normal retiring allowance” has the meaning assigned to it by section 6;

“one year’s salary” for the purposes of an award under section 11 or 12 means the highest annual salary paid to the councillor in respect of whom the award is payable;

“parish council” means the parish council of any parish of this Island and includes the Council of the Kingston and Saint Andrew Corporation;

“recalculated retiring allowance” means a retiring allowance which is recalculated in accordance with section 9;

“reduced retiring allowance” has the meaning assigned to it by section 7;

“retiring allowance” means a retiring allowance payable pursuant to section 5;

“salary” means—

(a) the basic salary payable to a person by virtue of his being a member of the parish council during the period of such service or, where during that period, any such person held a specified office, the basic salary payable in respect of that office;

(b) the basic salary paid to a person not falling within paragraph (a), by virtue of his being a member of the parish council or the holder of a specified office, as the case may be, during the period of such service,

and for the purposes of this definition, “basic salary” means the emoluments, including house allowance, provided in the Estimates of Revenue and Expenditure of the Island, but does not include duty allowance, entertainment allowance or any other allowance or emoluments whatever or any amount provided as a contribution to office or any other expenses;

“specified office” means any of the offices specified in the Schedule or any office prescribed as such by the Minister responsible for the public service by notice in the *Gazette*. Schedule.

(2) Any reference in this Act to a widow shall be construed to include a reference to a widower.

3. The following persons shall become contributors under this Act Contributor.
namely, every person who—

(a) was a councillor on the 1st January, 1986; or

(b) becomes a councillor after that date.

Contributions. **4.** Every contributor shall, subject to such terms and conditions as may be prescribed, contribute to the Consolidated Fund, a prescribed percentage of the salary payable to him.

Circumstances in which retiring allowances paid. **5.—(1)** Subject to the provisions of this Act, a retiring allowance shall be paid to a person who—

- (a) has served as a councillor—
 - (i) for three full terms;
 - (ii) for periods equal in the aggregate to not less than eight years;
 - (iii) for periods which together with that person's service as a legislator amount in the aggregate to not less than eight years; or
 - (iv) in a specified office, for periods which, when added together total not less than eight years, so, however, that, the aggregate period of service as a councillor shall not be less than three years;
- (b) has attained the age of—
 - (i) fifty-five years; or
 - (ii) fifty years and has produced medical evidence, to the satisfaction of the appropriate Minister, that he is incapable by reason of infirmity of mind or body of discharging the duties of a councillor or legislator, as the case may be, and that such infirmity is likely to be permanent; and
- (c) has ceased to be a councillor or legislator.

(2) For the purposes of this section—

- (a) a person does not cease to be a councillor by reason only of the dissolution of the parish council;
- (b) a person who immediately before the dissolution of the parish council was a member of that parish council and is not elected as a member of that parish council at the local

government election next following the dissolution, shall be deemed to have ceased to be a councillor upon the dissolution aforesaid;

- (c) “Parish Council service” means service as an elected member in the parish council for the parish, consequent on an election in a local government election from a constituency in Jamaica.

(3) No computation of a retiring allowance under this Act shall be made after a local government election until thirty days (or such longer period not exceeding three months as may be prescribed) has elapsed after the election.

6. The normal retiring allowance payable to any person—

Normal rate of allowance.

- (a) shall, subject to section 7, be at an annual rate equivalent to two-thirds of the highest annual rate of salary payable to that person at any time as a councillor or as the holder of a specified office;
- (b) shall be paid with effect from the date on which that person becomes entitled thereto pursuant to section 5 and, subject to the provisions of this Act, shall continue to be paid during the lifetime of that person; and
- (c) shall be paid monthly in arrears in equal instalments as far as possible.

7.—(1) Any person to whom a normal retiring allowance is payable under section 6 may, at his election exercisable at the time when the award is being determined, be paid in lieu of the normal retiring allowance, a reduced retiring allowance at an annual rate equivalent to three-fourths of the normal retiring allowance together with a gratuity equal to twelve and one-half times the amount of the reduction so made in the normal retiring allowance.

Reduced retiring allowance.

(2) An election pursuant to subsection (1) shall be made by memorandum in writing to the appropriate Minister and shall be irrevocable unless the appropriate Minister on such terms as he considers reasonable, otherwise permits.

Election of
entitlement.

8.—(1) If a councillor—

- (a) retires in pensionable circumstances; and
- (b) is eligible for a pension under this Act or under any other law dealing with pensions with respect to that same period,

he shall elect, at the time the pensionable sum is to be determined, which of the pension entitlements to take.

Cessation of
retiring
allowance if
person in
receipt
thereof again
becomes a
councillor.

9.—(1) If the person in receipt of a retiring allowance under this Act again becomes a councillor, legislator, or the holder of a specified office, that allowance shall cease to be payable during the period in respect of which that person is in receipt of salary as a councillor, legislator or the holder of a specified office (hereinafter referred to as the “additional service period”):

Provided that where the rate of such retiring allowance exceeds the rate of such salary, nothing in this subsection shall prevent the payment of a retiring allowance to the extent of such excess.

(2) Upon the expiration of the additional service period referred to in subsection (1), the rate of retiring allowance shall, subject to subsection (4), be recalculated in accordance with the principles set out in section 6(1)(a) as applicable in relation to the person to whom it is payable at the expiration of such period.

(3) A recalculated retiring allowance shall be paid at the recalculated rate with effect from the date of cessation of the additional service period giving rise to the recalculation.

(4) Subject to subsection (5), a person to whom a recalculated retiring allowance is payable may, at his election in accordance with section 7, exercisable at the time when the award is being recalculated, be paid in lieu of the recalculated retiring allowance, a reduced retiring allowance at an annual rate equivalent to three-fourths of the recalculated retiring allowance together with a gratuity equal to twelve and one-half times the amount of the reduction so made in the recalculated retiring allowance.

(5) For the purposes of subsection (4)—

- (a) where a person entitled to a recalculated retiring allowance had elected under section 7 to receive a reduced retiring

allowance in respect of his period of service as a councillor prior to the period of service giving rise to the recalculation, that person shall, for the purpose of an award under this section, be deemed to have so elected under section 7;

- (b) there shall be deducted from the amount of any gratuity payable to any person in accordance with section 7, the amount of any gratuity previously paid to that person under that section.

10.—(1) Where any person who has made contributions pursuant to this Act ceases to be a councillor and is not eligible for a retiring allowance he may, if he so desires, apply to the appropriate Minister for a refund of his contributions and, on such application, he shall be refunded an amount equal to the total amount of the contributions paid by him pursuant to this Act.

Refund of Contributions.

(2) Where the Minister is satisfied that—

- (a) a contributor has ceased to be qualified to be a councillor; and
- (b) at the date of the disqualification that contributor was not entitled pursuant to section 5 to a retiring allowance,

he shall direct that the total amount of the contributions paid by that contributor be refunded to him and, upon such direction, the refund shall be made accordingly.

(3) Where a refund has been made to any person under this section, no other award shall be made under this Act to, or in respect of, that person in relation to the service of that person as a councillor prior to the date of the refund.

11.—(1) Subject to the provisions of this Act, where a person who—

Awards to widows.

- (a) is in receipt of a retiring allowance;
- (b) has served as a councillor for three full parish council terms or for periods equal in the aggregate to not less than eight years; or

(c) being a councillor, and having served as a councillor for periods equal in the aggregate to not less than four years, dies leaving a widow, there shall be paid to the widow during her lifetime, a widow's allowance in accordance with subsection (2).

(2) The widow's allowance shall be paid—

- (a) in the case of a person mentioned in subsection (1) (a), at an annual rate equivalent to two-thirds of the retiring allowance being paid to that person, so however, that, if, pursuant to an election under section 7(2) or 9(4), as the case may be, the person received a reduced retiring allowance, the widow's allowance shall be two-thirds of the retiring allowance which would have been payable if there had been no such election; or
- (b) in the case of a person mentioned in subsection 1(b) or (c), at an annual rate equivalent to two-thirds of the retiring allowance which would have been payable to him with effect from the date of his death if—
 - (i) he had not died but had satisfied the requirements of section 5 for the award of a retiring allowance; and
 - (ii) had been awarded a retiring allowance computed in accordance with section 6(a).

(3) A widow's allowance under this section shall—

- (a) be paid monthly in arrears in equal instalments as far as possible;
- (b) subject to subsection (4), cease to be payable if the widow is in receipt of a retiring allowance by virtue of having been herself a contributor under this Act;
- (c) subject to subsection (4), if the widow is in receipt of salary as a councillor, cease to be payable during the period in respect of which the widow is in receipt of such salary.

(4) Where the rate of widow's allowance exceeds the rate of retiring allowance or the rate of salary, as the case may be, nothing in subsection (3)(b) or (c) shall prevent the payment of the widow's allowance to the extent of such excess.

(5) Where a person who is serving as a councillor dies before he has served the required minimum period specified in subsection (1), there shall be paid to the widow a gratuity equal in amount to the total contributions paid by that person plus an amount equivalent to one year's salary of that person.

(6) Where a widow entitled to an award under this section dies before receiving an amount equivalent to the gratuity payable pursuant to subsection (5), there shall be paid to her legal personal representative the amount of such gratuity less—

- (a) the amount of widow's allowance paid to her and, for the purposes of this subsection, she shall be deemed to have been in receipt of the full amount of such widow's allowance notwithstanding any cessation or reduction thereof pursuant to subsection (3); and
- (b) amount of any retiring allowance paid to the person in respect of whose service as a councillor the widow's allowance is payable.

12.—(1) Subject to subsection (2), where a councillor dies and leaves no widow, there shall be paid to the legal personal representative of such councillor—

Award to
legal
representatives.

- (a) in the case of a person who has served as a councillor for periods equal in the aggregate to less than four years, a gratuity equal to the amount of contributions paid by that person; or
- (b) in the case of a person who has served as a councillor for periods equal in the aggregate to four years or more, a gratuity equal to the contributions paid by that person plus an amount equivalent to one year's salary of that person.

(2) There shall be deducted from any gratuity payable pursuant to subsection (1) the amount of any retiring allowance paid to

the person in respect of whose service as a councillor the gratuity is payable.

(3) Where a person who would, on application pursuant to section 10(1), be entitled to a refund of contributions, dies without making such application as aforesaid (or, having made such an application, dies before the refund of contributions is made), and leaves no widow entitled to an award under this Act, there shall be paid to the legal personal representative of such person a gratuity equal to the amount of contributions paid by that person.

Awards to be paid out of the Consolidated Fund.

13. Any retiring allowance, widow's allowance or gratuity payable under this Act shall be charged on and paid out of the Consolidated Fund.

Award not to be assignable.

14. Any retiring allowance, widow's allowance or gratuity payable under this Act shall not be assignable or transferable except for the purpose of satisfying—

- (a) a debt due to the Government; or
- (b) an order of any court for the payment of periodical sums of money towards the maintenance of the spouse, former spouse or child being a minor, of the person to whom the award is payable,

and shall not be liable to be attached, sequestered or levied upon, for or in respect of any debt or claim whatever other than as provided in paragraph (a) or (b).

Power to make regulations.

15.—(1) The appropriate Minister may make regulations—

- (a) prescribing the days on which the payments of an allowance payable under this Act shall be made;
- (b) providing for payment of an allowance under this Act to another person on behalf of a recipient who is incapable of managing his affairs;
- (c) prescribing anything which may be required by this Act to be prescribed, including such forms as may be necessary for the administration of this Act;

- (d) prescribing the manner in which, and the persons by whom, accounts of contributions and awards under this Act shall be kept and recorded.

(2) Until varied or revoked by regulations made by the Minister pursuant to this Act, the Regulations contained in the Second Schedule shall be in force.

Second
Schedule.

(3) All regulations made by the appropriate Minister pursuant to this Act shall be subject to affirmative resolution and shall have the same force and effect as if they were contained in the Second Schedule.

FIRST SCHEDULE

(Section 2)

Specified Offices

President of the Senate

The Mayor of a Municipality

SECOND SCHEDULE

(Section 15)

*The Retiring Allowances (Parish Councillors)
Regulations, 2005*

- Short title. 1. These Regulations may be cited as the Retiring Allowances (Parish Councillors) Regulations, 2005.
- Contributions 2.—(1) Contributions payable by a contributor pursuant to section 4 of this Act shall be at the rate of 6 *per centum* of the salary payable to the contributor and such contributions shall accrue daily and shall be deducted from the salary of each contributor on the occasion of each payment of such salary and shall be paid to the Accountant General.
- (2) All contributions made pursuant to this regulation shall be paid into the Consolidated Fund.
- Recovery of contributions from awards. 3. Where a person becomes entitled to an award other than a refund of contributions under this Act and any part of the contributions payable by the person to, or in relation to, whom the award is made remains unpaid, the balance of such contributions shall be recovered by deduction from the amount of the award and when necessary the full amount of the award may be withheld until the whole amount due as contributions is paid.

Passed in the House of Representatives this 25th day of January, 2005.

MICHAEL PEART
Speaker.

Passed in the Senate this 25th day of February, 2005.

NAVEL CLARKE
Deputy President.

This printed impression has been carefully compared by me with the authenticated impression of the foregoing Act, and has been found by me to be a true and correct printed copy of the said Act.

Clerk to the Houses of Parliament.