

## MINISTRY PAPER No. 54

### THE JAMAICA (CONSTITUTION) (RETIREMENT OF ENTITLED OFFICERS) (VARIATION)

ORDER 1962

The attention of the Honourable House of Representatives is directed to the Jamaica (Constitution) (Retirement of Entitled Officers) (Variation) Order, 1962, which has been made in exercise of the powers conferred upon the Governor-General by Section 4 of the Jamaica (Constitution) Order-in-Council, 1962. A copy of the Variation Order is attached.

2. On the 18th of July 1961, the former House of Representatives approved a proposal in Ministry Paper No. 19 of the 4th of July, 1961, for the commitment of funds for the payment of compensation to officers appointed by a Secretary of State to the Jamaica Civil Service if they could satisfy the Secretary of State that their careers had been or was likely to be affected by constitutional change. The House was informed that the compensation would be paid under a scheme embodied in the Jamaica (Constitution) (Retirement of Entitled Officers) Regulations, 1961, which had been made in exercise of the powers conferred upon the Governor by Section 114 of the Jamaica (Constitution) Order-in-Council 1959, with the concurrence of the Secretary of State. The main features of the scheme were:—

- (a) the retirement of an officer who owed his appointment to a Secretary of State if the Secretary of State is satisfied that the officer's appointment has been or is likely to be prejudiced by the constitutional change;
- (b) the retirement of an officer not ordinarily domiciled in any territory of the Federation of the West Indies for the purpose of facilitating the appointment or promotion of a person domiciled in the West Indies;
- (c) the payment of retiring benefits related to an officer's length of service under the Law governing the grant of his pension notwithstanding the fact that he has not been in qualifying service for such period as is required to render him eligible for the grant of a pension;
- (d) the payment in addition to the award at (c) above of compensation equivalent either to—
  - (i) additional pension payable under the Pensions Law in cases of abolition of office; or
  - (ii) a gratuity calculated on his age and salary on retirement; or
  - (iii) a "compensatory" pension calculated on the basis of the gratuity that would be payable at (ii) above.
- (e) the payment of an award to an officer who accepts, in lieu of retirement, a transfer to an office in other public service if the initial emoluments of his new office are lower than the pensionable emoluments last drawn in Jamaica.

3. As explained in Ministry Paper No. 19, the Compensation Scheme was approved on the understanding that the whole scheme or the particular extension under which expatriates may be allowed to retire to make way for West Indians should be reviewed either at the end of five years or when Jamaica participated in Independence, whichever was the earlier. The scheme has therefore been reviewed in the light of Jamaica's Independence and secession from the Federation of the West Indies and certain consequential changes have been introduced into the scheme by means of the provisions under Part I of the Variation Order at Annex I. Part II of the Variation Order includes special provisions whereby non-Jamaican members of Her Majesty's Overseas Civil Service will be free to retire voluntarily and receive compensation without being required to satisfy anyone that his career is prejudiced or likely to be prejudiced by constitutional change. There are approximately twenty such officers in the Jamaica pensionable establishment. The Secretary of State has explained that it has been the practice for territories attaining independence to provide voluntary retirement terms with compensation for pensionable expatriate staff who are members of H.M.O.C.S. The United Kingdom Government will meet half of the cost of any compensation payable under the Voluntary Retirement Scheme.

4. The principal modifications introduced by the Variation Order are as follows:—

#### PART I

- (a) Application for retirement will not be referred to the Secretary of State but will be disposed of by the Governor-General acting on the recommendation of the appropriate Service Commission.
- (b) Applications will be considered on any of the following grounds:—
  - (i) that as a consequence of constitutional changes the career of the officer in the public service of Jamaica has been adversely affected or there are reasonable grounds for believing that they will be so affected;
  - (ii) the officer, being an officer whose appointment or appointment on transfer is pursuant to the Jamaica Constitution to be made on the recommendation of the Prime Minister, has not been assigned to perform the duties of his office or any other office approved by the Governor-General as one in which he could reasonably and properly be required to serve;
  - (iii) the officer is a West Indian, and there are grounds for believing that because of his expatriate status his career has been affected or is likely to be affected through no fault of his own.

#### PART II

- (c) Non-Jamaican members of Her Majesty's Overseas Civil Service who are on the pensionable establishment will be able to retire under a Voluntary Retirement Scheme commencing on the 1st of April 1963.
- (d) with the consent of the appropriate Service Commission individual officers may be permitted to retire at any date before the 1st of April 1963. Similarly, individual officers may be allowed to continue and keep their entitlement to compensation for further periods not exceeding five years from the 1st of April, 1963.
- (e) Officers who retire will be eligible for compensation, not in a lump sum but in six instalments spread over a period of five years. Based on actuarial advice the maximum compensation has been increased

from £8,000 to £9,500 in the case of non-Jamaican members of Her Majesty's Overseas Civil Service. (The maximum compensation in the case of Jamaican officers and of West Indian officers who are not members of H.M.O.C.S. will remain at £8,000).

- (f) Non-Jamaican members of Her Majesty's Overseas Civil Service who do not wish to retire under the Voluntary scheme should indicate whether they desire to become ordinary members of the Jamaica Civil Service.

5. The amended Regulations have been approved on the understanding that they will be reviewed not later than five years after the date of Independence in order to determine whether they should continue in force.

6. The expenditure from Government funds over the five-year period commencing on the 1st April, 1963, is estimated to be £73,000. The amended Regulations impose a further commitment on the funds of this Government and a Resolution will be moved by me in due course seeking approval of this commitment. The expenditure entailed will be chargeable on and payable out of the Consolidated Fund in accordance with Section 114 of the Jamaica (Constitution) Order in Council, 1959, under which the principal regulations were made.

D. B. SANGSTER,  
Minister of Finance,  
5th November 1962.

M.P. No. C11098/V

### THE JAMAICA (CONSTITUTION) ORDER IN COUNCIL, 1962

#### THE JAMAICA (CONSTITUTION) (RETIREMENT OF ENTITLED OFFICERS) (VARIATION) ORDER, 1962

In exercise of the powers conferred upon the Governor-General by section 4 of the Jamaica (Constitution) Order in Council, 1962, the following Order is hereby made:—

Short title, construction and commencement. 1. This Order may be cited as the Jamaica (Constitution) (Retirement of Entitled Officers) (Variation) Order, 1962, and shall be read and construed as one with the Jamaica (Constitution) (Retirement of Entitled Officers) Regulations, 1961, hereinafter referred to as the principal Regulations, and shall have effect as from the 6th day of August, 1962.

Insertion of heading in principal Regulations. 2. The principal Regulations are hereby amended by inserting therein next before regulation 1 the heading "Part I—General".

Amendment of Regulation 2 of principal Regulations. 3. Regulation 2 of the principal Regulations is hereby amended—  
(a) by inserting in paragraph (1) next after the definition of "appropriate Law" the following definition—  
" "appropriate Service Commission" means—  
(a) in relation to an entitled officer who—  
(i) is a Judge of the Court of Appeal;  
(ii) is a Judge of the Supreme Court;  
(iii) holds any office in relation to which appointments are made on the advice of the Judicial Service Commission,  
the Judicial Service Commission;  
(b) in relation to an entitled officer serving as a police officer, the Police Service Commission; and  
(c) in relation to any other entitled officer, the Public-Service Commission;"  
(b) by inserting in paragraph (1) next after the definition of "entitled officer" the following definition—  
" "operative date" means the 1st day of April 1963;"  
(c) by inserting in the definition of "pensionable age" immediately after the word "Court" the words "or of the Court of Appeal";  
(d) by substituting in paragraph (2) a full-stop for the colon appearing after the word "Law" and deleting the proviso to the paragraph;  
(e) by adding to the regulation next after paragraph (3) the following as paragraph (4)—  
"(4) In the exercise of his functions under these Regulations the Governor-General shall act on the recommendation of the appropriate Service Commission."

Revocation and replacement of regulation 3 of principal Regulations. 4. Regulation 3 of the principal Regulations is hereby revoked and the following substituted therefor—

- "3. (1) If, on the application of an entitled officer made before he attains pensionable age, the Governor-General is satisfied that—  
(a) as a consequence of constitutional changes, the career of the officer in the public service of the Government of Jamaica has been adversely affected, or there are reasonable grounds for believing that the officer's career in the public service of the Government of Jamaica will be adversely affected; or  
(b) the officer, being a Permanent Secretary or Financial Secretary or other officer whose appointment or appointment on transfer is, pursuant to the Constitution of Jamaica, to be made on the recommendation of the Prime Minister, is not assigned to perform the duties of his office or of an office approved by the Governor-General in writing as one in which the officer could reasonably and properly be required to serve; or  
(c) the officer is a West Indian and his career in the public service of the Government of Jamaica has been adversely affected, or there are reasonable grounds for believing that

his career in the public service of the Government of Jamaica will be adversely affected because of circumstances arising from his expatriate status without his own default; the Governor-General may permit the officer to retire forthwith or on such date as may be specified by the Governor-General and the officer shall be entitled to retire accordingly.

(2) The decision of the Governor-General on any question under this regulation shall be final but nothing herein shall prevent the Governor-General, on the application of the entitled officer concerned, from reconsidering any such question and changing his decision.

(3) For the purposes of this regulation "West Indian" means a person other than a citizen of Jamaica who was recruited to the public service of the Government of Jamaica from one of the territories which comprised the Federation of the West Indies or from British Guiana or British Honduras."

5. Regulation 4 of the principal Regulations is hereby amended by deleting from the proviso to paragraph (3) thereof the words "the Governor may, acting in his discretion," and substituting therefor the words "the Governor-General may".

Amendment of regulation 4 of principal Regulations.

6. Paragraph (1) of regulation 6 of the principal Regulations is hereby revoked and the following substituted therefor—

Revocation and replacement of paragraph (1) of regulation 6 of principal Regulations.

"(1) Where an entitled officer dies—

(a) after he has been granted permission to retire but before either retiring or taking up an appointment in lieu of retiring; or

(b) after making application to retire but before being granted permission to retire and the Governor-General would have if the officer had not died granted him permission to retire,

there may be paid to the legal personal representative of such officer or such of his dependants as the Governor-General may think fit either—

(i) the gratuity in accordance with the provisions of the First Schedule to these Regulations to which the officer would have been entitled if he had retired on the day of his death; or

(ii) a gratuity calculated in accordance with the provisions of section 16 of the Pensions Law of Jamaica,

whichever is the greater."

First Schedule.

7. The principal Regulations are hereby amended by inserting therein next after regulation 7 the following as Part II—

Addition of Part II to principal Regulations.

"PART II—*Her Majesty's Overseas Civil Service*

8. (1) This Part shall apply in relation to any entitled officer who is a member of Her Majesty's Overseas Civil Service and who satisfies the Governor-General that he is not domiciled in Jamaica, and who is not a person who—

Application of this Part.

(a) has attained pensionable age; or

(b) is seconded or temporarily transferred to the public service of the Government of Jamaica from other public service:

Provided that where disciplinary proceedings which may result in the dismissal of an officer are pending the provisions of this Part shall apply in relation to that officer only if the Governor-General so directs and subject to such conditions and modifications as the Governor-General may impose.

(2) Subject to paragraph (6) of regulation 9, no award shall be made after the operative date pursuant to Part I to any entitled officer to which this Part applies.

9. (1) On or before the 30th day of September, 1962, each entitled officer to whom this Part applies shall notify the Governor-General whether he wishes—

Retirement of entitled officers under this Part.

(a) to proceed on pre-retirement leave under the provisions of these Regulations with effect from the operative date and at the expiration thereof to retire; or

(b) to proceed on such leave before the operative date and at the expiration thereof to retire; or

(c) to continue in the public service of the Government of Jamaica for a specified period not exceeding five years from the operative date without prejudice to the right to retire under these Regulations; or

(d) to continue in the public service of the Government of Jamaica under the terms and conditions normally applicable to officers in that service,

and if an entitled officer does not notify his wishes in accordance with sub-paragraph (a), (b) or (c) he shall be deemed to have elected to continue in the public service of the Government of Jamaica pursuant to sub-paragraph (d).

(2) On or before the 30th day of November, 1962, the Governor-General shall, by notice in writing, either—

(a) if the officer wishes to retire, grant the officer permission to retire and—

(i) authorise him to proceed on pre-retirement leave with effect from the operative date; or

(ii) inform him that he may proceed on such leave before the operative date, specifying in the notice the date on which such leave shall commence; or

(b) if the officer wishes to continue in the public service of the Government of Jamaica for a specified period, inform him whether he may continue to serve accordingly while retaining entitlement to an award under these Regulations, and specify for what period; or

(c) if the officer wishes to continue in the public service of the Government of Jamaica under terms and conditions normally applicable to officers in that service, inform the officer whether he may so continue in that service.

15. (1) Where a gratuity is payable to an entitled officer pursuant to this Part in accordance with the provisions of the First Schedule or the Third Schedule, the following provisions shall apply—
- Mode of  
payment  
of gratuity.  
First  
Schedule.  
Third  
Schedule.
- (a) subject to the succeeding sub-paragraphs, the gratuity shall be payable over a period of five years from the operative date, in six instalments of which the first shall be paid on retirement, or in the case of a transfer, on transfer, and subsequent instalments of equal amounts plus interest which has accrued in the preceding year shall be paid on the 1st day of April in each of the succeeding five years or until all instalments have been paid;
  - (b) the initial instalment shall be £1,000 or one-sixth of the total gratuity payable, whichever is the greater;
  - (c) if on the date on which any instalment is due, that instalment does not exceed four hundred pounds then—
    - (i) if the total amount of the balance of the gratuity payable exceeds four hundred pounds, an instalment of four hundred pounds shall be paid;
    - (ii) if the total amount of the balance of the gratuity payable does not exceed four hundred pounds then such total amount shall be paid forthwith:

Provided that if when any instalment is paid the balance of the gratuity after payment of the instalment would be less than one hundred pounds that balance shall be paid in full forthwith;

- (d) in the case of an officer who is permitted to continue in the public service of the Government of Jamaica for a period beyond the operative date, pursuant to sub-paragraph (b) of paragraph (2) of regulation 9, the initial instalment payable on retirement shall be the equivalent of the total of the instalments that would have been paid had he proceeded on retirement leave on the operative date, and the balance of the gratuity shall be paid in instalments over a period equivalent to the period by which five years exceeds the period of years served subsequent to the operative date, such instalments to be determined in accordance with the principles set out in the preceding sub-paragraphs hereof;
- (e) if the entitled officer, having been awarded the gratuity aforesaid, attains the age of fifty-five years, or, in the case of a Judge, the age of sixty years, the balance of such gratuity then due to him shall be paid forthwith

(2) The provisions of paragraph (1) requiring payment of a gratuity to be made in instalments shall not apply to an entitled officer who continues in the public service of the Government of Jamaica pursuant to sub-paragraph (b) of paragraph (2) of regulation 9, if, prior to the date of his retirement, he attains pensionable age and, accordingly such gratuity shall be paid in full forthwith on his retirement.

(3) Interest at 5 per cent per annum based on the previously assessed balance of gratuity due under this regulation shall be paid at the time of payment of each instalment other than the first instalment.

(4) Where any such gratuity as aforesaid is being paid to an entitled officer and he dies before the full amount has been paid, the balance outstanding shall be paid forthwith to his legal personal representative or to such of his dependants as the Governor-General thinks fit.

16. A gratuity payable pursuant to this Part shall, (whether paid in one lump sum or by instalments) be exempt from income tax:

Exemption  
from in-  
come tax.

Provided that nothing herein shall be construed as exempting from income tax any interest paid on any outstanding balance of such gratuity."

8. The First Schedule to the principal Regulations is hereby amended—

- (a) by substituting a semicolon for the fullstop at the end of paragraph 1 thereof and adding next thereafter the following further proviso—

"Provided further that in relation to an award pursuant to Part II where a date other than the date of retirement (being a date subsequent to the 5th of August, 1962 and prior to the date of retirement) would result in a higher award than an award based on the date of retirement, that other date shall be taken in lieu of the date of retirement and the award shall be calculated accordingly on the officer's annual pensionable emoluments at that other date."; and

- (b) by deleting paragraph 2 and substituting therefor the following—

"2. In no case shall a gratuity payable under these Regulations exceed—

- (a) in the case of an award pursuant to Part I, £8,000;
- (b) in the case of an award pursuant to Part II, £9,500."

Amendment  
of First  
Schedule  
to princi-  
pal Regula-  
tions.

9. The principal Regulations are hereby amended by adding thereto next after the Third Schedule the following as the Fourth Schedule—

“FOURTH SCHEDULE

*Commutation of pension granted pursuant to Part II*

Table showing the lump sum to be paid for the commutation of each £1 per annum of pension

Age of Officer	Factor	Age of Officer	Factor
25	17.08	40	15.07
26	16.97	41	14.90
27	16.86	42	14.73
28	16.74	43	14.55
29	16.62	44	14.36
30	16.50	45	14.17
31	16.38	46	13.97
32	16.25	47	13.76
33	16.12	48	13.54
34	15.98	49	13.32
35	15.84	50	13.08
36	15.70	51	12.84
37	15.55	52	12.59
38	15.40	53	12.50
39	15.24	54	12.50

NOTE.—The factor corresponding to the officer's age in years and completed months should be obtained by interpolation.”.

Transitional.

10. The amendments of the principal Regulations effected by this Order shall be without prejudice to any application of an entitled officer made prior to the 6th day of August, 1962 or to any matter under the principal Regulations pending before the Secretary of State; and accordingly the principal Regulations as in force immediately prior to the commencement of this Order shall, for the purpose of giving effect to this paragraph, be deemed to continue in force in relation to the application of that matter.

Dated at King's House this 23rd day of August, 1962

K. W. BLACKBURNE,  
Governor-General