CHAPTER 564

MEMBERS OF THE JUDICIARY (PENSIONS) ACT

To provide for pensions payable to members of the judiciary.

3rd October, 2016*

ACT XLIV of 2016.

1. The short title of this Act is the Members of the Judiciary (Pensions) Act. Short title.

2. In this Act and in the regulations made thereunder - Interpretation.

"Attorney General" means the person appointed in accordance with the provisions of Chapter VII of the Constitution of Malta, whether serving or in retirement, and who is not entitled to a pension under the Pensions Ordinance; Cap. 93.

"legal representative" means testate or intestate heir of the deceased member of the judiciary or of the deceased Attorney General, as the case may be;

"member of the judiciary" means the Chief Justice, judges and magistrates appointed in accordance with the provisions of Chapter VIII of the Constitution of Malta, whether serving or in retirement, and who are not entitled to a pension under the Pensions Ordinance; Cap. 93.

"month" means a calendar month;

"pensionable emoluments" means:

(i) in the case of a member of the judiciary or the Attorney General who has retired before the date of the coming into force of this Act who, however, was not entitled to a pension under the Pensions Ordinance, the salary that would be payable to the holder of such office on the date of the coming into force of this Act in accordance with the Judges and Magistrates (Salaries) Act and the President of Malta and other Officers (Salaries) Act respectively; and Cap. 175. Cap. 186.

(ii) in the case of a member of the judiciary or the Attorney General who has retired after the coming into force of this Act, the salary payable to him in accordance with the Acts mentioned in paragraph (i) immediately before his retirement;

"pensionable office" means the office of a member of the judiciary or of the Attorney General, as the case may be;

"pensionable service" in relation to a member of the judiciary or Attorney General means service performed by the member of the

* see article 1(2) of this Act as originally enacted, and Legal Notice 335 of 2016.

judiciary or Attorney General prior to his retirement:

Provided that:

(i) service performed by a member of the judiciary prior to his retirement in any court or tribunal of international jurisdiction constituted by virtue of any international or multilateral convention or treaty shall, for the purposes of calculating length of service, also be included as pensionable service except when that service gives a right to the member of the judiciary to a pension or other retirement benefit from an institution outside Malta; and

(ii) in the case of a member of the judiciary and the Attorney General service performed in the offices of Chief Justice, judge, magistrate, Attorney General, and as an advocate in the Office of the Attorney General, irrespective of how the office is referred to, before retirement shall qualify as pensionable service;

"public service" means service of a civil capacity under the Government of Malta or such other service as the President of Malta may determine to be public service for the purposes of any provision of this Act or any regulations made thereunder;

"retirement" means the date when a serving member of the judiciary vacates his office in accordance with the provisions of Chapter VIII of the Constitution of Malta, or a person occupying the post of Attorney General vacates his office in accordance with the provisions of Chapter VII of the Constitution of Malta, as the case may be, and includes the date when a serving member of the judiciary or a person occupying the post of Attorney General, as the case may be, resigns or is removed due to proved inability to perform the functions of his office due to infirmity of body or mind in accordance with the provisions of Chapter VIII of the Constitution of Malta, or Chapter VII of the Constitution of Malta, respectively;

"widow" has the same meaning as given to it in article 2 of the Social Security Act; Cap. 318

"year" means a calendar year.

President may make pension regulations.

3. (1) Without prejudice to article 113 of the Constitution of Malta it shall be lawful for the President of Malta, from time to time to make, and when made, to vary regulations for the granting of pensions, gratuities and other allowances to Members of the Judiciary and to the Attorney General.

(2) The said regulations and any regulations varying the same as aforesaid, shall have the same force and effect for all purposes as if they were contained in this Act, and the term "this Act" shall in the following articles be read and construed accordingly.

(3) Whenever the President of Malta is satisfied that any regulation made under this article should have retrospective effect in order to confer a benefit, that regulation may be given retrospective effect for that purpose.

(4) No regulation made under this article shall have effect unless it has received the prior approval of the House of Representatives signified by resolution.

(5) Any pension or gratuity granted under this Act shall be computed in accordance with the provisions in force at the actual date of retirement of a member of the judiciary or of the Attorney General, as the case may be.

Pensions, etc., to be charged on the revenues of Malta.

4. There shall be charged on and paid out of the Consolidated Fund all such sums of money as may from time to time be granted by the President of Malta by way of pension, gratuity or other allowance in accordance with this Act.

Pensions are a right.

5. A member of the judiciary, as well as the Attorney General, shall have the right to a pension, gratuity, or allowance under this Act or under any regulations made thereunder:

Provided that a member of the judiciary or the Attorney General, as the case may be, shall forfeit the right to a pension, gratuity or allowance under this Act or under any regulations made thereunder if he or she is removed from office in accordance with the provisions of Chapter VIII or Chapter VII, respectively, of the Constitution of Malta due to proved misbehaviour.

Circumstances in which pension may be granted.

6. (1) A member of the judiciary or a person who formerly occupied the post of Attorney General, who is retired on the date of coming into force of this Act, shall be entitled to a pension, gratuity or other allowance as prescribed by regulations made under this Act.

(2) A member of the judiciary or the Attorney General, as the case may be, who is in office on the date of coming into force of this Act will be entitled on retirement to a pension, gratuity or other allowance being granted by virtue of this Act.

Maximum pension.

7. A pension granted to a member of the judiciary or to the Attorney General, as the case may be, under this Act shall not exceed two-thirds of his pensionable emoluments.

Pensions affected by re-employment following retirement.

Cap. 93.

8. If any member of the judiciary or the Attorney General, as the case may be, to whom a pension has been granted under his Act is appointed to a full time office in the public service, or is or was after his retirement appointed to an office established by the Constitution, also being a pensionable office under the Pensions Ordinance, and subsequently retires in circumstances in which he may be granted a pension, or leaves office at the end of his appointment or re- appointment, as the case may be, he may be granted, in lieu of his previous pension, a pension computed as if the periods of his service had been continuous, and such pension may be based on his pensionable emoluments on his previous or final retirement from the service of Malta, or from the said office established by the Constitution, whichever are the greater:

Provided that if, on his previous retirement, he was paid a gratuity and reduced pension, the gratuity, if any, to be paid to him on final retirement shall be reduced by the amount of the gratuity

already paid.

Pensions, etc., not to be assignable, etc.

9. No pension, gratuity, or allowance granted under this Act shall be assignable, transferable or liable to be attached, sequestered, or levied upon, for or in respect of any debt or claim whatever, except in so far as is provided in article 381(3) of the Code of Organization and Civil Procedure.

Cap. 12.

Pensions, etc., to cease on bankruptcy.

10. If any member of the judiciary or the Attorney General, as the case may be, to whom a pension or allowance has been granted under this Act becomes a bankrupt, then such pension or allowance shall forthwith cease:

Provided always that in any such case where a pension or allowance ceases by reason of the bankruptcy of the pensioner, it shall be lawful for the President of Malta, from time to time, during the remainder of such pensioner's life or during such shorter period or periods, either continuous or discontinuous, as the President of Malta shall think fit, to cause all or any of the moneys to which such pensioner would have been entitled by way of pension or allowance had he not become a bankrupt, to be paid to or applied for the maintenance and personal support or benefit of all or any, exclusive of the other or others, of the following, namely, such pensioner himself and any wife, child or children of his, in such proportion and manner as the President of Malta thinks proper and such moneys shall be paid or applied accordingly.

Pensions, etc., to cease on conviction.

11. If any member of the judiciary or the Attorney General, as the case may be, to whom a pension has been granted under this Act is sentenced to a term of imprisonment by a competent court in Malta or abroad for any crime or offence, then it shall be lawful for the President of Malta to direct that such pension or allowance shall forthwith cease:

Provided that, where a pension or allowance ceases for the reason aforesaid, it shall be lawful for the President of Malta to cause all or any part of the moneys to which the member of the judiciary or Attorney General concerned, as the case may be, would have been entitled by way of pension or allowance, to be paid to or applied for the benefit of his or her surviving spouse or surviving partner in a civil union, child or children.

Widow's pension.

12. (1) Subject to the provisions of this article, a widow or widower or the survivor of a civil union of a member of the judiciary or of an Attorney General who was at the time of his death entitled to a pension under this Act, shall be entitled to receive a pension:

Provided that where there are one or more widows or widowers or survivors of a civil union who had been married to or had been in a civil union with a member of the judiciary or an Attorney General at any time during his tenure of office, such widow's pension shall be apportioned in the manner provided in article 42A of the Social Security Act:

Cap. 318.

Provided further that a person entitled to a pension under this article who is also entitled to a pension under any other

provision of this Act shall only be entitled to receive the higher of such pensions.

(2) The provisions of sub-article (1) shall also apply to a widow or widower of or to the survivor of a civil union with a member of the judiciary or Attorney General who has not yet attained pensionable age at the time of his death but who, before such death, satisfied the requirements of pensionable service under this Act.

(3) The rate of pension payable under this article shall be equivalent to five-sixths of the pension to which the member of the judiciary or the Attorney General was entitled, in accordance with the current pensionable emoluments that would have been applicable to the member of the judiciary or Attorney General but for his death.

(4) No pension shall be payable to a widow under the age of sixty-five years during any time in which she is in receipt of earnings from a gainful occupation exceeding the amount specified under article 32 of the Social Security Act in respect of any period of four weeks. Cap. 318.

Application of Act.

13. The provisions of this Act and any regulations made thereunder shall apply to all members of the judiciary and to persons occupying the post of Attorney General appointed after the 15th January, 1979, and no pension, gratuity or other allowance shall be payable under this Act, nor shall any other payment be made thereunder, to any person who was a member of the judiciary or a person occupying the post of Attorney General before the 16th January, 1979, or to the surviving spouse or surviving partner in a civil union, child or other relative of any such person.