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LEGISLATION

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SOCIAL INSURANCE (FACILITATION OF REPUBLICAN SOCIAL INSURANCE SCHEME) ORDINANCE 2013

An Ordinance to amend and consolidate the law relating to the payment of social insurance contributions into the social insurance scheme of the Republic of Cyprus

J. S. WRIGHT
DEPUTY ADMINISTRATOR

18th July 2013.

BE it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

PART 1
PRELIMINARY

1. Short title and commencement

This Ordinance may be cited as the Social Insurance (Facilitation of Republican Social Insurance Scheme) Ordinance 2013 and comes into force on 1 September 2013.

2. Interpretation

In this Ordinance—

“basic insurable earnings” means the weekly or annual amount of earnings prescribed under section 20 of the corresponding Republican law;

“benefit” means a benefit payable under the corresponding Republican law, except in sections 34 to 36, where it means a benefit payable by a provident fund or an occupational pension scheme;

“calendar week” means a week beginning on a Monday and ending on the following Sunday;

“ceiling of insurable earnings” means the maximum amount of earnings on which contributions are payable prescribed in regulations;

“claimant” means a person claiming a benefit;
“contribution” means a contribution payable to the Fund determined by a person’s insurable earnings;

“contribution period” means, in relation to an employed person whose earnings are paid on a monthly basis, the calendar month, and in relation to any other insured person, the calendar week;

“contribution year” means, in relation to an employed person paid on a monthly basis, a calendar year, and in relation to any other insured person a period of 52 or 53 calendar weeks beginning on the first Monday of a calendar year and ending on the Sunday before the first Monday of the following year;

“corresponding Republican law” means law number 59(I)/2010(a) (Social Insurance Law 2010) and includes—

(a) amendments to that law, whether made before or after the coming into force of this Ordinance;

(b) public instruments of the Republic made under that law, whether made before or after the coming into force of this Ordinance;

“the Crown” means Her Majesty in right of Her Government in the United Kingdom and in right of Her Administration in the Areas;

“earnings” is to be construed in accordance with section 3;

“employed person” means a person employed in an insurable occupation as specified in Part 1 of Schedule 1;

“Fund” means the Social Insurance Fund established under the corresponding Republican law;

“inspector” means a person appointed under section 20;

“insurable earnings” means the amount of earnings of an insured person on which contributions are payable and is subject to the ceiling of insurable earnings;

“insured person” means a person insured under this Ordinance;

“negligible earnings” means earnings of an employed person below a weekly or monthly amount prescribed in regulations;

“occupational category” means 1 of the occupational categories of a self-employed person prescribed in regulations;

“pensionable age” means 65, except in the case of a person—

(a) entitled to a pension under section 36 (reduction in pensionable age for miners) of the corresponding Republican law where it is 63; or

(b) to whom section 14(2) applies;

“provident fund” means a fund or other arrangement operated by or on behalf of an employer providing for a lump sum payment on termination of employment, retirement or death in relation to an employed person;

“recipient” means a person in receipt of a benefit;

“regulations” means regulations made under section 22;

“self-employed person” means a person gainfully occupied in an insurable occupation as specified in Part 1 of Schedule 2.

3. Meaning of earnings

(1) Earnings of an employed person include—

(a) remuneration in cash or in kind which a person receives from an employer in respect of employment; and

(b) the contribution of the employer in respect of the employed person to the Central Holiday Fund of the Republic in accordance with the Annual Holidays with Pay Ordinance 1973(b).

(2) Earnings of an employed person do not include occasional commission or ex-gratia payments.
3. Earnings of a self-employed person include all gain and profit from the person’s occupation.

4. Earnings of person who is voluntarily insured under section 13 means the earnings the person opts to insure in accordance with the corresponding Republican law.

4. Application to the Crown and authorised service organisations

1. Subject to the provisions of this section, this Ordinance binds the Crown.

2. This Ordinance does not apply to the Crown in relation to—
   (a) service of a member of Her Majesty’s Forces;
   (b) its employment of a member of the civilian component;
   (c) a person enjoying the rights and facilities of members of Her Majesty’s Forces by virtue of paragraph 3 of section 9 of Part II of Annex B to the Treaty of Establishment, other than as a dependent.

3. A fixed penalty notice under section 28 may not be issued to, or proceedings for a criminal offence may not be brought against,—
   (a) the Crown;
   (b) an employee of the Crown acting in the course of employment of the Crown;
   (c) a member of Her Majesty’s Forces acting in the course of service of the Crown.

4. Administrative penalties do not apply to the Crown.

5. This Ordinance does not apply to an authorised service organisation in relation to its employment of a member of the civilian component.

6. In this section “civilian component” has the meaning given in paragraph 1(b) of section 1 of Annex C to the Treaty of Establishment.

PART 2

CONTRIBUTIONS

5. Employed persons: requirement to pay contributions

1. An employed person (“P”) and the person’s employer (“E”) must pay contributions to the Fund in respect of P’s insurable earnings for each contribution period.

2. The amount of contributions to be paid by P and E is to be determined by the rates prescribed in section 5 of the corresponding Republican law.

3. P and E are not required to pay contributions for a contribution period if P’s earnings in that period are negligible earnings.

4. Subsection (3) does not apply if —
   (a) P is an apprentice; or
   (b) P is serving a term of imprisonment and engages in paid work.

6. Payment of contributions: further provisions

1. For the purpose of determining the amount of contributions payable under section 5—
   (a) an apprentice who is not paid, or who earns less than 50% of basic insurable earnings, is deemed to receive 50% of basic insurable earnings;
   (b) a prisoner engaged in paid work who earns less than basic insurable earnings is deemed to receive basic insurable earnings.

2. Subject to subsection (3) and section 10,—
   (a) E must deduct P’s contributions from P’s earnings and pay both E’s and P’s contributions to the Fund; and
   (b) E’s contribution is deemed to be paid by P.
(3) If P has 2 or more employers, regulations may make provision for the payment of contributions to the Fund under subsection (2), and the respective obligations of P and E.

(4) In this section, “P” and “E” are to be construed in accordance with section 5.

7. Refund: retrospective membership of non-contributory occupational pension scheme

(1) This section applies where—

(a) P retrospectively joins a non-contributory occupational pension scheme (a “scheme”); and

(b) the amount of contributions paid by P has been determined at the rates in the corresponding Republic law for persons who are not members of a scheme.

(2) For each period of employment which is reckonable for the purposes of calculating the amount of P’s pension under the scheme, E must refund to P an amount determined in accordance with the rates prescribed in section 6 of the corresponding Republican law.

(3) In this section, “P” and “E” are to be construed in accordance with section 5.

8. Employment by 2 or more employers

Where an employed person is employed by 2 or more employers in the same contribution period, each employer must pay a contribution.

9. Employment and self-employment in same contribution period

Where an insured person is an employed person and a self-employed person in the same contribution period, the person must pay contributions in respect of earnings from both occupations.

10. Employers’ obligations etc.

(1) An employer must not withhold or claim the amount of the employer’s contribution from the earnings of an employed person.

(2) An employer must deduct an employed person’s contribution only from the earnings of the person during the contribution period for which the contribution is payable.

(3) Despite subsection (2), an employer of an apprentice may not withhold from or claim from the apprentice (“A”) A’s contribution which is payable on the difference between A’s actual earnings and A’s deemed earnings under section 6(1)(a).

(4) A contract or agreement which purports to vary the provisions in subsection (1), (2) or (3) is void.

(5) Regulations may provide that the Crown may withhold from a prisoner’s earnings the whole or part of a contribution payable in respect of a prisoner.

(6) A person who contravenes subsections (1), (2) or (3) commits an offence and is liable, on conviction, to a fine not exceeding €1,300.

11. Self-employed persons: requirement to pay contributions

(1) A self-employed person (“S”) must pay contributions on S’s earnings for each contribution period

(2) The amount of contributions to be paid by S is to be determined by the rates prescribed in section 12 of the corresponding Republican law.

12. Time limit for retrospective payments

Contributions for an employed person or a self-employed person may not be paid after a period of 6 years, starting from the end of the contribution period for which the contribution is due.

13. Voluntary insurance

(1) A person may apply to the Chief Officer to be voluntarily insured where —

(a) the person’s basic insurance equals at least 1 insurance unit; and
(b) the person’s usual residence is in the Areas, but the person is employed outside the island of Cyprus by a Cypriot employer in the territory of a third country.

(2) A person who is voluntarily insured may pay a contribution for each contribution period.

(3) Voluntary insurance under this section commences on the specified date.

(4) The amount of contributions paid by the person who is voluntarily insured under this section is determined in accordance with the rates in section 15 of the corresponding Republican law.

(5) In this section—
   (a) “basic insurance” and “insurance unit” are to be construed and determined in accordance with the corresponding Republican law;
   (b) “Cypriot employer” means an employer—
      (i) whose usual residence is on the island of Cyprus; or
      (ii) if a body corporate, which is registered on the island of Cyprus and controlled by a national of the Republic or another body corporate registered on the island of Cyprus;
   (c) “specified date” means—
      (i) the date an application for voluntary insurance is submitted; or
      (ii) another date requested by the applicant which may not be earlier than the first day of the contribution year which precedes the year when the application is submitted;
   (d) “third country” means a country other than a member State(c).

14. Age limit for payment of contributions

   (1) Contributions are not payable—
      (a) by or in respect of a person of pensionable age or above, where no contributions have been paid by or in respect of the person prior to reaching that age;
      (b) subject to subsection (2), by or in respect of an insured person for any contribution period after the date the person reaches pensionable age.

   (2) For the purpose of subsection (1)(b), in the case of an insured person who does not meet the relevant insurance conditions at pensionable age, pensionable age is extended until which ever is the later of the date on which the person—
      (a) meets the relevant insurance conditions; or
      (b) attains the age of 68.

   (3) In this section “relevant insurance conditions” means the conditions for payment of old age pension in the corresponding Republican law(d).

PART 3

GENERAL PROVISIONS RELATING TO BENEFITS

15. Accidents and posting of information

   (1) An employed person, who is injured in an occupational accident in respect of which benefits are or may be payable under the corresponding Republican law, must notify the employer of the accident as soon as reasonably practicable after it occurs.

   (2) An employer must post information in a conspicuous place or places which informs employees of—
      (a) the obligations under subsection (1); and
      (b) provisions relating to the submission of claims under the corresponding Republican law.
16. Benefits for injury or disability

(1) This section applies to a claimant for a benefit relating to injury or disability, and a recipient of such a benefit.

(2) The Chief Officer may notify a claimant or a recipient of a requirement to—
   (a) attend a medical examination;
   (b) receive appropriate medical treatment recommended by a medical practitioner or the Medical Board constituted under the corresponding Republican law;
   (c) participate in an occupational training or readjustment programme.

(3) A notification under subsection (2) must be in writing.

(4) The claimant or recipient must comply with the notification.

(5) A recipient must notify the Chief Officer of a change in medical condition which may affect the recipient’s entitlement to a benefit.

17. Representation for deceased persons or persons unable to act

Where a claimant or recipient dies or is unable to act, the Chief Officer may appoint another person to proceed with the claim or receive a benefit on the recipient’s behalf.

18. Benefits are non-transferable

(1) An assignment or charge of a benefit, or an agreement to assign or charge a benefit, is void.

(2) Where a recipient is declared bankrupt, a benefit does not pass to the trustee in bankruptcy or any other person acting on behalf of the bankrupt’s creditors.

(3) Benefit is not liable to forfeiture under the Civil Procedure Ordinance(e).

19. Repayment of benefits improperly received

(1) Where a benefit is paid due to non-disclosure or misrepresentation of a material fact (whether or not fraudulent), the recipient must repay the amount received.

(2) Without limiting any other remedy, the Chief Officer may recover the amount owed under subsection (1) by deduction from future payments of benefit.

(3) Despite subsection (1), where a recipient proves that a benefit was received in good faith any amount received may be deducted only from future payment of benefit.

PART 4

ADMINISTRATIVE ARRANGEMENTS

20. Appointment of inspectors

The Chief Officer may appoint inspectors to exercise any function in connection with this Ordinance, including, but not limited to, functions placed on the Chief Officer.

21. Powers of inspectors

(1) An inspector may—
   (a) enter at a reasonable time any premises or place, except a private dwelling house, where the inspector has reasonable grounds to believe that an employed person or a self-employed person works;
   (b) carry out such checks and investigations as are required to establish there is compliance with this Ordinance;
   (c) examine, either alone or in the presence of another person, any person whom the inspector has reasonable grounds for believing is an employer, an employed person or a self-employed person in order to obtain information about compliance with this Ordinance; and
   (d) exercise any other power required to ensure compliance with this Ordinance.
(2) A person examined under subsection (1) must supply the inspector with any information or document reasonably required.

(3) A person commits an offence if the person—

(a) intentionally delays or obstructs an inspector;

(b) without reasonable cause, refuses or fails to provide information or a document; or

(c) conceals, or attempts to conceal, or obstructs, or attempts to obstruct, a person from appearing before an inspector or being examined by an inspector.

(4) A person who commits an offence under subsection (3) is liable, on conviction, to a term of imprisonment not exceeding 1 year or a fine not exceeding €1,700, or to both.

(5) An inspector must produce evidence of appointment, if requested to do so, when exercising powers under this section.

22. Power to make regulations

(1) The Administrator may make regulations about any matter connected with the implementation and better functioning of this Ordinance.

(2) Without limiting subsection (1), the power to make regulations includes a power to—

(a) prescribe—

(i) the amount of negligible earnings;

(ii) the calculation of insurable earnings of self-employed persons;

(iii) the ceiling of insurable earnings;

(iv) the minimum insurable earnings of each occupation category of self-employed persons;

(v) the occupational categories of self-employed persons;

(b) regulate the registration of employers and insured persons;

(c) regulate any matter in connection with the payment and collection of contributions;

(d) create criminal offences and prescribe penalties, including fixed penalties, subject to the maximum penalties specified in section 27 or 28, as the case may be;

(e) prescribe administrative penalties for late payment of contributions up to a maximum of 27% of contributions due;

(f) delegate functions to the Chief Officer.

(3) Regulations made under subsection (1) may include provisions about procedures for payment of contributions under the Annual Holidays with Pay Ordinance 1973 and the Employment (Termination) Ordinance 2010(f).

23. Chief Officer: power to determine specified matters

(1) The Chief Officer may determine a question which arises about any of the following matters—

(a) whether a person is employed in an insurable occupation within the meaning of Part 1 of Schedule 1 or Part 1 of Schedule 2;

(b) whether a person is an employed person or a self-employed person;

(c) the person who is the employer of an employed person;

(d) whether contributions are payable by or in relation to a person under section 5, 11 or 13;

(e) earnings to be taken into account to determine the amount of contributions payable;

(f) the amount of contributions which have been paid by or in respect of a person;

(g) the date of birth of a person;

(h) the occupational category of a self-employed person.
(2) The Chief Officer may appoint a person (an “investigator”) to investigate any of the matters specified in subsection (1).

(3) The investigator may require any person to accompany the investigator during the investigation, give a statement or produce a document.

(4) Where the Chief Officer or the investigator considers that a person has an interest in the matter under investigation that person may—
   (a) accompany the investigator during the investigation;
   (b) make a statement;

(5) The Chief Officer must send the decision and the reasons for the decision to all persons with an interest in the matter under investigation.

(6) The Chief Officer may rescind and remake a decision under this section if new information about a material fact comes to the attention of the Chief Officer.

24. Administrative appeal

(1) A person (the “appellant”) may appeal to the Administrator about a decision made under section 23.

(2) The appellant must set out the grounds of the appeal and send the grounds to the Administrator within 15 days of receiving the notice of decision under section 23.

(3) The Administrator may—
   (a) hear representations from the appellant;
   (b) delegate investigation of the appeal;
   (c) uphold, set-aside or vary the decision under appeal.

(4) The Administrator must send the decision, with reasons, to the appellant as soon as reasonably practicable.

25. Decision of Chief Officer or Administrator

(1) Subject to subsection (2), the decision of the Chief Officer under section 23 is final for the purpose of any court proceedings relating to—
   (a) prosecution for an offence;
   (b) payment of contributions;
   (c) recovery of amounts due to the Fund.

(2) A decision of the Chief Officer is not final until the time for an appeal under section 24 has expired, and, where an appeal is brought, the decision of the Administrator is final for the purpose of subsection (1).

PART 5

PENALTIES AND MISCELLANEOUS PROVISIONS

26. Reciprocal agreements

(1) For the purpose of giving effect to an agreement, which provides for reciprocity in social insurance or social security between the Government of the Republic and any other country, including the Government of the United Kingdom, the Administrator may, by order made as a public instrument, apply this Ordinance, with any necessary modification, to the cases affected by the agreement.

(2) For the purpose of application to cases affected by the agreement, any references to legislation of the Republic in the agreement are deemed to include a reference to this Ordinance, and any references to the Republic are deemed to include a reference to the Areas.

27. Offences and penalties

(1) An employer or self-employed person who does not pay contributions or an additional fee (determined under subsection (3)) commits an offence and is liable, on conviction—
(a) to a term of imprisonment not exceeding 1 year or to a fine not exceeding €3,400 or to both; and

(b) in case of a second or subsequent conviction for the same offence, to a term of imprisonment not exceeding 2 years or to a fine not exceeding €5,000 or to both.

(2) The court may order a person convicted under subsection (1) to pay the unpaid contributions and an additional fee in addition to the penalty imposed under that subsection.

(3) The additional fee is determined as follows—

(a) on first conviction, an amount not exceeding 25% of the contributions owed on the day of conviction;

(b) on a second or subsequent conviction for the same offence an amount not exceeding 50% of the contributions owed on the day of conviction.

(4) If notice is served with the summons for an offence under this Ordinance (or on execution of a warrant for the offence), evidence may be adduced about failure to pay contributions by an employer (“E”) in relation to any person employed by E for any period prior to the date of the offence for which E is prosecuted.

(5) If it is proved that the contributions referred to in subsection (4) were not paid, the Court may order the contributions to be paid.

(6) Any amount due to the Fund upon a court’s decision under this Ordinance may be collected as if it were a fine.

(7) Any amount paid by an employer or self-employed person under subsection (1), (2) or (5) is deemed to be payment of contributions due to the Fund.

(8) Subject to section 10(2), an employer may not recover contributions which an employed person is required to pay.

(9) A person commits an offence if, in order to obtain any benefit under corresponding Republican law, either for the person’s own account or another person’s account, the person—

(a) knowingly or by negligence makes a false statement or false representation;

(b) produces or provides, or causes or permits the production of, a document or information, which the person knows to be false as to a material fact.

(10) A person who commits an offence specified in subsection (9) is liable, on conviction, to a term of imprisonment not exceeding 3 years or to a fine not exceeding €8,500, or both.

(11) Where a person is convicted under subsection (9), the court may, in addition to imposing a penalty, order the refund into the Fund of the amount of benefit which was paid as a result of the convicted person’s false statement or other actions.

(12) A person who contravenes or fails to comply with any provision of this Ordinance for which no penalty is expressly provided is liable, on conviction, for each offence to a term of imprisonment not exceeding 1 year or to a fine not exceeding €1,700, or both.

(13) If an offence committed by a body corporate is committed with the consent of, or is attributable to the negligence of, an officer of that body corporate, the officer also commits an offence and is liable, on conviction, to the penalty for the offence.

(14) This section does not limit the Chief Officer’s power to take civil action to recover any amount due to the Fund.

28. Power to impose fixed penalty

(1) An inspector who believes that an employer, or a person acting on behalf of an employer, has committed an offence under this Ordinance may give the employer or the other person the opportunity to avoid prosecution for the offence by serving a fixed penalty notice imposing a fine of €200.

(2) If the act or omission for which a fixed penalty notice is served under subsection (1) continues for more than 48 hours, or is repeated by the same employer, an inspector may serve a second fixed penalty notice on the employer or the person acting on behalf of the employer imposing a fine of €400.

(3) Without limiting the discretion of the an inspector to serve a fixed penalty notice under subsection (1) or (2), an inspector may refer the case to the Attorney General and Legal Adviser to consider a prosecution.
(4) The fine is to be paid to an inspector within 14 days of service of the notice, who must give a receipt for the amount paid.

(5) If a fine is paid within 14 days a person may not be prosecuted for the offence for which the fixed penalty notice is served, and the amount paid is deemed to be imposed as a result of a conviction for the offence.

(6) Despite subsection (5), payment of a fine under a fixed penalty notice does not constitute a conviction, but where subsection (7) applies the court may take account of the payment in the assessment of a penalty.

(7) This subsection applies where a person who has paid a fine under a fixed penalty notice is subsequently convicted of an offence under this Ordinance.

(8) A fixed penalty notice served under this section must contain the following information—
   (a) the name of the person on whom it is served;
   (b) the employer’s social insurance registration number;
   (c) a summary of the offence;
   (d) the place and date of the offence;
   (e) the amount of the fine;
   (f) arrangements for payment of the fine;
   (g) the date by which the fine must be paid.

29. Prosecutions

Proceedings for an offence under this Ordinance may be instituted only by, or with the consent of, the Attorney General and Legal Adviser.

30. Civil proceedings

Without limit to any other remedy, amounts due to the Fund may be recovered by the Chief Officer as a civil debt.

31. Civil liability of employer for loss of benefit

(1) This section applies if a person is—
   (a) a recipient or a potential recipient; and
   (b) loses some or all of a benefit to which the person would otherwise have been entitled because an employer has not collected and paid contributions as required by this Ordinance in respect of an employed person.

(2) The person may take civil proceedings to recover the amount of benefit lost as a result of the acts or omissions of the employer.

(3) The person must institute proceedings within a period of 1 year, starting with the date on which—
   (a) a benefit which is not paid would have been payable; or
   (b) a reduced benefit is paid.

(4) A person may take proceedings under this section whether or not criminal proceedings have been taken for the same acts or omissions of the employer.

32. Fines and penalties due to the Fund

The Chief Officer is to pay fines, penalties and any other monies recovered under this Ordinance to the Fund.

33. Priority of contributions: bankruptcy and winding up

(1) This section applies where—
   (a) a person is a bankrupt within the meaning of the Bankruptcy Ordinance(g); or
   (b) a company is wound up under the Companies Ordinance 2007(h).
(2) Contributions due, or liability for contributions accrued, before the specified date take priority over all other debts.

(3) In this section the “specified date” is—
   (a) a decision to appoint a trustee in bankruptcy; or
   (b) the commencement of winding up.

34. Provident funds

(1) This section applies to contributions to and benefits payable by a provident fund in operation on 6 October 1980 in respect of any period of employment on or after that date.

(2) Subject to subsection (3), the rates of contributions of both an employer and an employed person to the provident funds are reduced by 3% (a total reduction of 6%) from those contributions payable under the rules of the provident fund in force immediately before 6 October 1980.

(3) The reduction in subsection (2) applies only to earnings which are taken into account for the purpose of contribution to the provident fund, and does not apply to earnings above the ceiling of insurable earnings.

(4) Subsection (5) and (6) apply where, in accordance with a scheme, a collective agreement or any other agreement, an employer is required to pay a benefit from a provident fund which is greater than the amount a person has accumulated in the provident fund.

(5) The amount paid by the employer is reduced by—
   (a) the amount which would have accumulated in the provident fund if the reductions to the contributions of the employed person and the employer in subsection (2) had not applied; and
   (b) the interest which would have accumulated in the provident fund on the amount in paragraph (a).

(6) But, if cost of living allowance is not taken into account for contributions to a provident fund, the amount paid by the employer is reduced by—
   (a) the amount which would have accumulated in the provident fund if the reductions to the contributions of the employed person in subsection (2) had not applied;
   (b) an amount equal to 3% of the insurable earnings of the insured person in respect of which the employer paid contributions; and
   (c) the interest which would have accumulated in the provident fund on the amounts in paragraphs (a) and (b).

(7) Subsection (8) applies to benefits payable by a non-contributory provident fund.

(8) A benefit is reduced by an amount equal to 3% of an employed person’s insurable earnings in respect of which an employer paid contributions under this Ordinance, plus the interest which would have accumulated in the provident fund on the amount.

35. Occupational pension schemes

(1) This section applies to contributions to, and periodic payments of pension made, by an occupational pension scheme (a “scheme”) in respect of any period of employment on or after 6 October 1980.

(2) A periodic payment of pension made to or in respect of a member of a scheme is reduced by the amount of earnings related supplementary pension which the member receives under the corresponding Republican law.

(3) Subsection (4) applies to a scheme funded by an employer’s and an employed person’s contributions.

(4) The contributions to the scheme paid by both the employer and the employed person are reduced equally from the amount payable under the rules of the scheme in force immediately before 6 October 1980 to take into account the reduction in periodic payment of pension under subsection (2).

(5) Subsection (6) applies to contributions paid by an employed person who is a member of the scheme for persons employed by the Crown.
(6) Contributions to the scheme which are payable in relation to benefits for dependents, are reduced by 1% from those payable under the rules of the scheme in force immediately before 6 October 1980.

(7) The reduction under subsection (6) applies only to pensionable earnings up to the ceiling of insurable earnings.

36. Employed persons: benefit of sections 34 and 35

(1) Where an employed person is a member of a provident fund and an occupational pension scheme, section 34 or 35 or both sections may apply.

(2) If both sections apply, the total reduction in benefits from the provident fund or occupational pension scheme must not be greater than if only one section applied.

37. Legal proceedings: judicial notice of Republican law

(1) A court of the Areas may take judicial notice of Republican law and of any other Republican document of any description granted or otherwise made under Republican law.

(2) The production of a copy of any legislation of the Republic may be held by a court to be conclusive evidence for all purposes of the due and lawful making of that legislation if it is—
   (a) contained in a printed collection of legislation purporting to be printed and published by an authority of the Republic;
   (b) contained in either of the following publications—
      (i) a printed collection of legislation purporting to be printed and published by an authority of the Republic;
      (ii) an issue of the official Gazette of the Republic.

(3) For the purposes of this section, a version of Republican legislation in the English language may be held by the court to be conclusive evidence for all purposes that such version is the accurate English version of the Republican legislation, or part of the Republican legislation, in question if it —
   (a) purports to be produced by an authority of the Republic;
   (b) is certified as being accurate by an officer of the Administration considered by the court to have been, at the time of such certification, a competent and adequate translator into the English language from the language in which the Republican legislation was published in the Republic;
   (c) is given or produced in the course of oral evidence of a person whom the court considers to be a competent translator for the purpose; or
   (d) stated orally in court or produced in writing by a registrar or official court interpreter.

(4) For the purposes of this section, the production of the following documents may be held by the court to be conclusive evidence for all purposes of the content of the document—
   (a) a relevant document, the accuracy of which is certified in writing by a senior officer of the Government Department of the Republic responsible for relevant legislation under which the relevant document in question was made; or
   (b) an English translation of a relevant document, the accuracy of which is certified in writing by a translator of recognised competence.

38. Delegation of functions to the Republic

(1) The functions of the Administrator, the Chief Officer and an inspector, irrespective of whether an inspector is appointed under section 20, are general delegated functions for the purpose of the Delegation of Functions to the Republic Ordinance 2007(i).

(2) Subsection (1) does not apply to the following functions of the Administrator—
   (i) the power to make regulations under section 22; and
   (ii) the power to make an order under section 26 relating to a reciprocal agreement.
39. Repeals and revocations

(1) The Ordinances set out in Part 1 of Schedule 3 are repealed.
(2) The Public Instruments set out in Part 2 of Schedule 3 are revoked.

40. Transitional provision

A person who was an insured person under the Ordinances repealed by section 39(1) is an insured person under this Ordinance and subject to the provisions of this Ordinance.

SCHEDULE 1

EMPLOYED PERSONS

PART 1

Insurable occupations

1. Subject to the exceptions in Part 2, a person is an employed person if the person is—
   (a) employed in the Areas under a contract of employment or apprenticeship, or under such circumstances from which the existence of the relationship of employer and employee may be inferred, including employment by the Crown or the Republic;
   (b) employed by any person while serving a term of imprisonment in the Areas;
   (c) training in the Areas pursuant to an occupational training programme applied by the Authority which is recognised under the Human Resource Development Authority (Republic of Cyprus) (Recognition) Ordinance 2001(j);
   (d) employed in a private company, within the meaning of the Companies Ordinance 2007, in which the person is a shareholder;
   (e) exercising the office of clergy.

2. For the purpose of paragraph 1(a), a person holding personal or public office is an employee and the person responsible for paying the person is an employer.

PART 2

Excepted occupations

3. Service as a member of the naval, military and air forces of the Government of a country other than the Government of the Republic.

4. Employment in the civil or diplomatic service of the Government of a country other than the Government of the Republic where the person was engaged outside the island of Cyprus.

5. Employment in the service of the spouse of the person to be employed.

6. Employment of a person who is not ordinarily resident on the island of Cyprus if the employer of that person is not ordinarily resident on the island and has no place of business on the island.

7. Employment in agriculture in the service of a parent.

8. Employment of a person who is a dependent by virtue of section 1(d)(iii) of Annex C to the Treaty of Establishment.
SCHEDULE 2

SELF-EMPLOYED PERSONS

PART 1
Insurable occupations

1. Subject to the exception in Part 2, employment in the Areas of a person gainfully occupied for profit, providing that the occupation is not an insurable occupation under Schedule 1.

PART 2
Excepted occupations

2. Employment in agriculture where the person employed is under the age of 16.

SCHEDULE 3

REPEALS AND REVOCATIONS

PART 1
Repeals

3. Social Insurance (Facilitation of Republican Social Insurance Scheme) (Amendment) Ordinance 1984(m).
5. Social Insurance (Facilitation of Republican Social Insurance Scheme) (Amendment) Ordinance 1985(o).
7. Social Insurance (Facilitation of Republican Social Insurance Scheme) (Amendment) Ordinance 1987(q).
10. Social Insurance (Facilitation of Republican Social Insurance Scheme) (Amendment) Ordinance 1993(t).
PART 2
Revocations


Notes

(a) Republic of Cyprus Gazette No. 4248 of 2 July 2010.
(b) Ordinance 10/73, to which there are amendments which are not relevant to this reference. Regulation 5 of the Annual Holiday with Pay Regulations 1980 (P.I. 101/80) make provision for payment of contributions employers to the Central Holiday Fund of the Republic.
(c) “Member State” is defined in Schedule 1 to the Interpretation Ordinance 2012 (Ord. 8/2012) as a “state that is a member of the European Union”.
(d) The relevant insurance conditions for payment of old age pension are set out in Schedule 3 of Law 59(I)/2010, amended by Law 193(I)/2012.
(e) Cap 6, Statute Laws of Cyprus revised edition 1959, as applied in the Areas by the Sovereign Base Areas of Akrotiri and Dhekelia Order in Council 1960 (S.I. 1960/1369, United Kingdom). Schedule 2 to the Interpretation Ordinance 2012 (Ordinance 8/12) provides for the interpretation of such legislation.
(f) Ordinance 3/10; section 20 makes provision for payment of contributions by employers to the Redundancy Fund of the Republic.
(g) Cap 5, Statute Laws of Cyprus revised edition 1959, as applied in the Areas by the Sovereign Base Areas of Akrotiri and Dhekelia Order in Council 1960 (S.I. 1960/1369, United Kingdom). Schedule 2 to the Interpretation Ordinance 2012 (Ordinance 8/12) provides for the interpretation of such legislation.
(h) Ordinance 2/07.
(i) Ordinance 17/07.
(j) Ordinance 22/01.
(k) Ordinance 16/80.
(l) Ordinance 5/83.
(m) Ordinance 1/84.
(n) Ordinance 5/85.
(o) Ordinance 17/85.
(p) Ordinance 6/87.
(q) Ordinance 24/87.
(r) Ordinance 14/88.
(s) Ordinance 4/90.
(t) Ordinance 1/93.
(u) Ordinance 27/02.
(v) Ordinance 33/03.
(w) Ordinance 23/04.
(x) Ordinance 6/09.
(ab) P.I. 46/1983.
EXPLANATORY NOTE

(This note is not part of the Ordinance)

Introduction

1. This explanatory note relates to the Social Insurance (Facilitation of Republican Social Insurance Scheme) Ordinance 2013 (the “Ordinance”). It has been prepared by the Office of the Attorney General and Legal Adviser in order to assist the reader of the Ordinance.

2. This note should be read in conjunction with the Ordinance. It is not, and is not meant to be, a comprehensive description of the Ordinance. So, when a section or part of a section does not seem to require any explanation or comment, none is given.

Particular points

3. The purpose of the Ordinance is to facilitate the Republic’s social insurance scheme in the Sovereign Base Areas by making provision for payment of social insurance contributions by employers, employees and self-employed persons employed or resident in the Areas. The Ordinance mirrors relevant provisions in the Republic’s Social Insurance Law (Law 59(I)/2010), and the table at paragraph 9 lists the provisions in the Ordinance which correspond to sections in Republican law. Social insurance benefits are payable under Republican law so this Ordinance does not include provisions in Republican law relating to entitlement to and payment of benefits. The Ordinance, repeals and re-enacts, with minor amendments, the Social Insurance (Facilitation of Republican Social Insurance Scheme) Ordinance 1980 (the “1980 Ordinance”).

4. Part 1 contains various preliminary provisions including definitions of “employed person”, “self-employed person”, “earnings” and other terms used in the Ordinance. Insurable occupations for employed persons and self-employed persons are specified in Schedules 1 and 2. Section 4 (application to the Crown and authorised service organisations) provides that the Ordinance binds the Crown, except in relation to members of HM forces, the civilian component and persons on the island of Cyprus performing official duties. These categories of persons pay national insurance under the law of the United Kingdom in respect of service under or employment by the Crown. In addition members of the civilian component employed by authorised service organisations are exempt from social insurance contributions. Employees of the Crown and authorised service organisations engaged on the island of Cyprus are required contribute to the Republic’s social insurance fund.

5. Part 2 contains provisions related to payment of contributions. The amount of contribution is by reference to the rates in Republican law (section 5). An employer is to deduct an employed person’s contributions from earnings (section 10). With a limited exception for miners, contributions are payable until a person reaches the age of 65, and in the case of an insured person who does not meet the conditions in Republican law for payment of old age pension at age 65 are payable until age 68 (section 14).

6. Part 3 replicates relevant provisions in Republican law relating to benefits. It imposes notification requirements in respect of accidents at work (section 15), and in respect of persons claiming or in receipt of benefits for injury or disability (section 16). It provides a power for the Chief Officer to appoint a person to proceed with a claim where a recipient dies or is unable to act (section 17), makes an assignment to transfer a benefit void (section 18), and requires benefit paid due to non-disclosure or misrepresentation to be repaid (section 19).

7. Part 4 sets out administrative arrangements. These include the appointment of inspectors to enforce the Ordinance (section 20), the powers of the inspectors (section 21), a power for the Chief Officer to determine specified matters such as whether a person is employed or self-employed and the identity of an employer (section 23), and provisions relating to administrative appeals (section 24).

8. Part 5 contains penalties for offences and miscellaneous provisions. Failure to comply with the obligation to pay social insurance is a criminal offence (section 27), and irrespective of whether a prosecution is brought, a person who loses benefit as a result of an employer’s failure to pay contributions may take civil proceedings against the employer (section 31). Where an employer has not paid social insurance contributions, there is a new power (section 28) for an inspector to serve a fixed penalty notice imposing a fine of €200 for the first offence and €400 for a second offence. This Part also includes a continuation of existing transitional provisions relating to provident funds and occupational pension schemes (sections 34 to 36), provides for judicial notice to be taken of Republican law (section 37), and delegates the functions of the Administrator, the Chief Officer and an inspector to the Republic by reference to the Delegation of Functions to the Republic.
Ordinance 2007 (section 38). The power to make orders and regulations is not delegated. Section 39 repeals the 1980 Ordinance, subsequent amendments to it and public instruments made under it. Part 1 of Schedule 3 lists the Ordinances which are repealed and Part 2 the public instruments which are revoked.

9. The sections in this Ordinance which correspond to sections in the Republic’s Social Insurance Law 2010 are as follows:

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(1) section 85A was inserted by Law 2(I)/2012.