

A BILL

entitled

NATIONAL PENSION SCHEME (OCCUPATIONAL PENSIONS)
TEMPORARY AMENDMENT ACT 2012

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WHEREAS it is expedient to make temporary modifications to the requirements of the National Pension Scheme (Occupational Pensions) Act 1998 to allow for the suspension of employee and employer contributions in respect of the suspension period;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act may be cited as the National Pension Scheme (Occupational Pensions) Temporary Amendment Act 2012.

Construction and application

2 (1) This Act shall be construed as one with the National Pension Scheme (Occupational Pensions) Act 1998 ("the principal Act").

(2) This Act applies notwithstanding anything to the contrary in—

- (a) the principal Act or any other Act; or
- (b) the pension plan or contract of employment of a member.

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Interpretation

3 (1) In this Act—

“agreement” means agreement in writing;

“normal cost” has the meaning given in section 39 of the National Pension Scheme (General) Regulations 1999;

“notice” means notice in writing;

“special payment” has the meaning given in section 39 of the National Pension Scheme (General) Regulations 1999;

“suspension period” means the period of 12 months beginning with the commencement date appointed under section 10.

(2) References to the suspension of contributions in respect of the suspension period means contributions which, but for this Act, would be required under the principal Act to be paid in respect of the suspension period.

Suspension of contributions: defined contribution benefits

4 (1) This section applies to a defined contribution pension plan.

(2) A member may suspend his contributions in respect of the suspension period, with the agreement of his employer.

(3) An employer may suspend his contributions as they relate to a member in respect of the suspension period, with the agreement of the member.

(4) In a case where an employer pays all or part of a member’s contributions, the employer may suspend those contributions in respect of the suspension period, with the agreement of the member.

(5) In a case where—

(a) a member is represented by a collective bargaining agent; and

(b) the collective bargaining agreement addresses the pension plan,

then there must in addition be an agreement between the employer and the collective bargaining agent before any contributions relating to that member can be suspended under subsections (2) to (4).

(6) A member’s membership in the plan shall continue for the purpose of calculating the member’s pension benefit and for all other purposes, notwithstanding any suspension of contributions in respect of the suspension period.

Suspension of contributions: defined benefits

5 (1) This section applies to a defined benefit pension plan.

(2) An employer may either—

(a) suspend all employer normal cost and member contributions in respect of the suspension period; or

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- (b) continue to make all employer normal cost contributions and require employees to continue to make member contributions in respect of the suspension period.
- (3) An employer may not suspend special payments in respect of the suspension period.
- (4) Subject to subsection (5), no agreement is needed between the employer and member in relation to the suspension of contributions in respect of the suspension period.
- (5) In a case where—
 - (a) a member is represented by a collective bargaining agent; and
 - (b) the collective bargaining agreement addresses the pension plan,then there must be an agreement between the employer and the collective bargaining agent before the employer can suspend contributions under subsection (2)(a).
- (6) A member's accrual of service and membership in the plan shall continue for the purpose of calculating the member's pension benefit and for all other purposes, notwithstanding any suspension of contributions in respect of the suspension period.

Notice to employer and administrator

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- (1) If a member decides to suspend his contributions under section 4(2), the member must give notice to his employer, within the time period notified to him by his employer.
 - (2) An employer must give written notice to the administrator of a plan of any proposed suspension of contributions under section 4 or 5.
 - (3) Section 19(6) of the principal Act (administrator to give notice to employer and Commission regarding unpaid contributions) does not apply when a notice has been given under subsection (2).

No suspension if employer in arrears

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- An employer shall not suspend any employer contributions under section 4 or 5 if he has any outstanding employer contributions due and in arrears, or member contributions deducted but not paid into the fund, in respect of any period of service before the suspension period, whether—
- (a) employer contributions, or member contributions in cases in which the employer pays all or part of the member's contribution, in the case of a defined contribution plan; or
 - (b) normal cost or special payments, or member contributions in cases in which the employer pays all or part of the member's contribution, in the case of a defined benefit plan.

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Contributions during suspension period not voluntary contributions

8 For the avoidance of doubt, where a member continues to make contributions in respect of the suspension period which would, but for this Act, be contributions which he is required to make under the principal Act, these shall not be treated as voluntary contributions.

Offence if employer deducts contributions where notice given

9 (1) This section applies where a member gives notice to his employer, in accordance with section 6(1), that he has decided to suspend his contributions during the suspension period.

(2) An employer who continues to deduct contributions from the member's salary or wages in respect of the suspension period commits an offence.

(3) Section 67 of the principal Act (offences, penalties and orders for payment) applies to an offence under this section.

Commencement

10 This Act shall come into operation on such date as the Minister of Finance may appoint by notice in the Gazette.

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EXPLANATORY MEMORANDUM

This Bill seeks to make temporary amendments to the requirements of the National Pension Scheme (Occupational Pensions) Act 1998 (“the principal Act”) to allow for suspension of employee and employer contributions in respect of the suspension period.

Clause 1 is self-explanatory.

Clause 2 subsection (1) provides that this Bill will be construed as one with the principal Act. Accordingly, definitions used in the principal Act apply (such as employer including a self-employed person, and the meaning of defined benefit and defined contribution benefit). Subsection (2) provides that this Bill “trumps” anything to the contrary in the principal Act, any other Act and any pension plan or contract of employment.

Clause 3 provides definitions for certain expressions used in the Bill.

Clause 4 applies to defined contribution plans and provides for suspension of contributions by members and employers in respect of the suspension period, with the agreement of employer, the member and his union. Subsection (6) provides that a member’s membership in the plan continues in respect of calculation of the member’s benefit and for all other purposes, notwithstanding any suspension of contributions in respect of the suspension period.

Clause 5 applies to defined benefit plans and provides that the employer may suspend all employer normal cost and employee contributions in respect of the suspension period. No agreement is required unless the member is a member of a union. Subsection (6) provides that a member’s accrual of service and membership in the plan continues in respect of calculation of the member’s benefit and for all other purposes, notwithstanding any suspension of contributions in respect of the suspension period.

Clause 6 requires a member to give notice of his decision to suspend contributions. Subsection (2) requires the employer to notify the administrator of any proposed suspension of contributions. Subsection (3) provides that section 19(6) of the principal Act (administrator to give notice to employer and Commission regarding unpaid contributions) does not apply when a notice has been given under subsection (2).

Clause 7 prohibits suspension of contributions by an employer if the employer is in arrears.

Clause 8 clarifies that if a member continues to make contributions in respect of the suspension period these are not to be treated as voluntary contributions.

Clause 9 creates an offence if an employer continues to deduct contributions from a member’s salary or wages when the member has given a notice of suspension of contributions under section 6(1).

Clause 10 provides for commencement.