

A BILL

entitled

PUBLIC SERVICE SUPERANNUATION AMENDMENT ACT 2012

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WHEREAS it is expedient to amend the Public Service Superannuation Act 1981 to permit a limited refund of contributions to a contributor in certain circumstances of financial hardship;

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 which amends the Public Service Superannuation Act 1981 ("the principal Act") may be cited as the Public Service Superannuation Amendment Act 2012.

Amends section 2

2 Section 2 of the principal Act is amended by inserting immediately after the definition of "child" the following definition—

“Commission” means the Pension Commission established under section 54 of the National Pension Scheme (Occupational Pensions) Act 1998;”.

Amends section 26

3 Section 26 of the principal Act is amended in subsection (1) by inserting, immediately after the words "subsection (3)", the words ", section 40A".

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Inserts Part VA

4 The principal Act is amended by inserting after section 40 the following—

“PART VA

PARTIAL REFUND OF CONTRIBUTIONS

Partial refund of contributions in circumstances of financial hardship

40A (1) A contributor may, prior to his retirement, make application to the Commission for a refund in circumstances of financial hardship in accordance with Schedule 2.

(2) A contributor whose application has been approved by the Commission, shall receive payment in accordance with Schedule 2.

(3) A contributor who has contributed to the Fund continuously for eight years or more, whose employment is terminated and whose application has been approved by the Commission, shall receive payment in accordance with Schedule 2.

(4) Where a contributor’s application is approved by the Commission and payment is made under subsection (2) or (3), the contributor’s contributions to the Fund plus the interest accrued thereon shall be reduced at the time payment is made by the amount of that payment.

(5) Subject to subsection (6), a reduced pension shall be paid to or in respect of a contributor to whom payment was made under subsection (2) or (3), in accordance with the provisions of this Act (in particular the commutation calculation provided for in section 40(1) with the necessary modifications).

(6) A contributor seeking to repay, in full or part, the refund approved by the Commission together with interest accruing from the date the payment was made up to the date of repayment of any amount, shall make repayment to the Accountant General not later than 90 days preceding the date of his retirement, and such repayment shall restore in full or part the reduced pension.

(7) Where a contributor who, having received payment under subsection (2) or (3) had his contributions reduced under subsection (4), makes repayment to the Accountant General in full or part, together with interest accruing from the date the payment was made up to the date of repayment of any amount, such repayment shall restore in full or part, that contributor’s contributions.

(8) Schedule 2 has effect with respect to the circumstances of financial hardship, the application for refund and the payment process.”.

Inserts Schedule 2

5 The principal Act is amended by inserting immediately after the Schedule, the following—

“SCHEDULE 2

(section 40A)

CIRCUMSTANCES OF FINANCIAL HARDSHIP

Interpretation

1 In this Schedule—

“applicant” means a contributor who makes an application, but does not include a pensioner;

“application” means an application to the Commission under this Schedule for a refund from the Fund to pay expenses or arrears falling within paragraph 2;

“application date” means the date the application form was signed;

“child” means a child, step-child or adopted child of the applicant, and includes a child of a male applicant who is the registered father of the child or has been adjudged by a court to be the father of the child;

“dependant ” means—

- (a) the husband or wife of the applicant; or
- (b) a child or sibling of the applicant who is in fact dependant on the financial support of the applicant or the applicant’s husband or wife on the application date;

“landlord” in relation to a particular tenant, means the person entitled to receive rent from the tenant;

“tenant” means the person who, as between himself and the landlord, is entitled to exclusive possession of the premises in question;

“third party” means anyone other than the applicant or a dependant of the applicant, including—

- (a) an employer;
- (b) an insurer;
- (c) the Government of Bermuda and its agencies;
- (d) a charitable or philanthropic organisation; and
- (e) a relative or friend of the applicant;

“working day” does not include a Saturday, Sunday or other public holiday within the meaning of the Public Holidays Act 1947.

Circumstances of financial hardship

2 (1) An applicant may only make an application to cover—

- (a) eligible medical expenses (in accordance with paragraph 3);
- (b) arrears of mortgage or other payments relating to a debt secured on the applicant's principal residence, the non-payment of which has resulted in the threat of loss of the principal residence (in accordance with paragraph 4);
- (c) arrears of rent on the applicant's home, the non-payment of which has resulted in the imminent threat of the applicant's eviction from the home (in accordance with paragraph 5); or
- (d) eligible educational expenses (in accordance with paragraph 6).

(2) An applicant may only make an application if he, or the person for whom the application is being made, has no other reasonable way of raising money to pay those expenses or arrears.

(3) An application may be made to cover two or more of the circumstances mentioned in subparagraph (1).

Eligible medical expenses

3 (1) An application may be made in respect of eligible medical expenses of the applicant or a dependant or parent of the applicant.

(2) "Eligible medical expenses" means medically necessary goods or services of a medical or dental nature in respect of an illness or disability, recognised by the Commission for the purposes of this Schedule, and for which the applicant (or his dependant or parent, as the case may be) does not have medical insurance coverage, including—

- (a) medical or dental services provided by a hospital or a health care provider;
- (b) services provided by an attendant or a nursing home to a person suffering a severe and prolonged disability;
- (c) services provided by a caregiver;
- (d) ambulance services;
- (e) medical devices such as—
 - (i) wheelchairs;
 - (ii) artificial limbs; and
 - (iii) spectacles;
- (f) purchase, training and care of a guide dog;
- (g) dentures;
- (h) rehabilitative therapy;
- (i) prescription drugs; and

(j) diagnostic testing.

(3) An application under this paragraph shall include a certification by a registered health professional (as defined in section 2 of the Bermuda Health Council Act 2004), or a person with qualifications accepted as equivalent by the Commission, that the goods or services in question are medically necessary.

(4) An application shall include an invoice for, or estimate of, the expenses.

(5) Subject to paragraph 8 (maximum payment) the Commission may approve a payment of the full amount of the eligible medical expenses as indicated on the invoice or estimate.

(6) An application shall not be approved in respect of eligible medical expenses—

- (a) which have already been paid; or
- (b) which are due to be paid by a third party.

(7) “Third party” does not, in relation to an application made in respect of eligible medical expenses of a parent of the applicant, include that parent.

Imminent loss of principal residence - mortgage or debt arrears

4 (1) An application may be made in respect of the imminent loss of the applicant's principal residence due to arrears of mortgage or other payments relating to a debt secured on the principal residence.

(2) “Principal residence” means a housing unit located in Bermuda which is—

- (a) owned by the applicant or the husband or wife of the applicant; and
- (b) ordinarily inhabited by the applicant on the application date.

(3) An application shall be supported by a notice in writing from the mortgage provider or debt issuer which specifies—

- (a) the imminent threat of foreclosure on, or sale of, the principal residence if the arrears are not paid;
- (b) the amount of the arrears;
- (c) the amount of the monthly payments on the application date;
- (d) the names of the mortgagors or debtors.

(4) An application may not be approved if the names of the mortgagors or debtors specified under subparagraph (3)(d) do not include the applicant or husband or wife of the applicant.

(5) Subject to paragraph 8 (maximum payment), the Commission may approve a payment of—

- (a) the amount of the arrears of mortgage or other payments specified under subparagraph (3)(b); plus
- (b) up to an additional six months of payments calculated using the amount specified under subparagraph (3)(c).

Imminent threat of eviction from home - rent arrears

5 (1) An application may be made in respect of the imminent threat of eviction of the applicant from his home due to arrears of rent.

(2) This paragraph applies only in relation to a home in Bermuda that is—

- (a) rented by the applicant or the husband or wife of the applicant; and
- (b) ordinarily inhabited by the applicant on the application date,

regardless of whether anybody else is also renting or inhabiting the home or any part of the premises which contains the applicant's home.

(3) An application shall be supported by a notice in writing from the landlord which specifies—

- (a) the imminent threat of eviction from the home if the rental arrears are not paid;
- (b) the amount of the rental arrears;
- (c) the amount of the monthly rental payments on the application date; and
- (d) the names of all of the tenants.

(4) An application shall be accompanied by—

- (a) the rental agreement; and
- (b) a receipt for the most recent rental payment.

(5) An application may not be approved—

- (a) if the names of the tenants specified under subparagraph (3)(d) do not include the applicant or husband or wife of the applicant;
- (b) if the applicant or husband or wife of the applicant own or control, directly or indirectly (whether through a trust or otherwise) the home which is the subject of the application; or
- (c) if the application is made in respect of more than one home.

(6) Subject to paragraph 8 (maximum payment), the Commission may approve a payment of—

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- (a) the amount of the arrears of rent specified under subparagraph (3)(b); plus
- (b) up to an additional six months of rental payments calculated using the amount specified under subparagraph (3)(c).

Eligible educational expenses

6 (1) An application may be made in respect of eligible educational expenses on behalf of the applicant or a dependant of the applicant.

(2) "Eligible educational expenses" means the following expenses payable directly to a relevant educational establishment—

- (a) tuition fees;
- (b) expenses for residence halls and meal plans operated by the establishment; and
- (c) other expenses recognised by the Commission for the purposes of this Schedule.

(3) "Relevant educational establishment" means the Bermuda College and any other accredited overseas university, college or educational institution providing tertiary education, and recognised by the Commission for the purposes of this Schedule.

(4) The application shall be supported by a statement in writing from the relevant educational establishment which includes an invoice for, or estimate of, the expenses.

(5) Subject to paragraph 8 (maximum payment) the Commission may approve payment of the full amount indicated under subparagraph (4).

(6) An application shall not be approved in respect of eligible educational expenses—

- (a) which have already been paid; or
- (b) which are due to be paid by a third party.

LIMITATIONS

Minimum payment

7 An application which would result in a payment of less than \$1000 being made shall be rejected by the Commission.

Maximum payment

8 (1) The maximum refund which the Commission may approve per application is 25% of the applicant's contributions with interest on the application date.

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(2) The amount shown on a statement issued within 30 days of the application date shall, for the purposes of this Schedule, be deemed to be the balance of the applicant's contributions with interest on the application date.

(3) A person who intends to make an application may request the balance (with interest), of a contributor's contribution from the Accountant General who shall provide the information within 15 working days of receiving a written request from the applicant.

Permitted number of applications

9 (1) The Commission shall not approve more than two applications during the lifetime of an applicant.

(2) The Commission shall not approve an application made within five years of the date on which a previous application by the applicant was approved (whether in whole or in part).

APPLICATION

Manner of making application

10 (1) An application shall be made on a form distributed by the Commission for the purposes of this Schedule.

(2) The applicant shall submit with the application all the information required by this Schedule and the form, including the balance of the applicant's contributions with interest on the application date (see paragraph 8).

(3) The applicant shall certify—

- (a) that he has no other reasonable way of raising money to pay the expenses or arrears;
- (b) that he has not been required by any third party to make the application; and
- (c) that all the information supplied is accurate to the best of his belief.

(4) If the application relates to expenses of the applicant's dependant or parent, the applicant shall also certify that, to the best of his knowledge and belief, the dependant or parent (as the case may be) has no other way of raising money to pay the expenses.

(5) The applicant shall sign and date the form.

Application fee

11 An application shall be accompanied by a non-refundable fee of \$100.

Further information

12 (1) The applicant shall supply any further information required by the Commission to support the application.

(2) An application shall not be considered complete for the purposes of paragraph 13 until—

- (a) that further information has been supplied to the Commission in writing; or
- (b) the deadline set by the Commission for submitting the further information has passed.

DECISION, PAYMENT AND RECORD KEEPING

Decision of the Commission

13 (1) The Commission shall consider the completed application, make a decision and notify the applicant of its decision and, if the application is rejected, give the reasons for the rejection.

(2) The Commission shall not approve an application which does not meet the conditions set out in this Schedule.

(3) If the application is approved, the Commission shall send notification to the Accountant General—

- (a) of the amount to be refunded; and
- (b) directing the Accountant General to make the payment.

Duty of the Accountant General to make payment if application approved

14 (1) Unless requested otherwise by the applicant, the Accountant General shall make the payment within 15 working days of receiving the notification under paragraph 13(3).

(2) In the case of payments approved under paragraphs 4(5)(b) and 5(6)(b), the applicant may request that the Accountant General make the payments on a monthly basis.

(3) The Accountant General shall make the payment directly to—

- (a) the provider of the medical or dental goods or services which are the subject of an application under paragraph 3;
- (b) the relevant mortgage provider or debt issuer, if the application is made under paragraph 4;
- (c) the landlord of the applicant or the landlord of the applicant's husband or wife, if the application is made under paragraph 5; or
- (d) the relevant educational establishment, if the application is made under paragraph 6.

(4) The Accountant General shall not make a payment in relation to an application which has been rejected by the Commission.

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(5) The Accountant General shall not levy a fee against the applicant in relation to the provision of a statement or other information to support an application, or the making of a payment under this Schedule.

Commission to keep records

15 For the purposes in particular of paragraph 9 (permitted number of applications) the Commission shall keep a copy of each application with the following information relating to it—

- (a) whether it was approved or rejected;
- (b) the amount (if any) permitted to be refunded to the applicant; and
- (c) the reasons given if the application was rejected,

and the Commission may keep copies of documentation submitted in support of an application.”.

Consequential amendments

6 (1) Section 4(2) of the principal Act is amended by deleting the words “The Schedule” and substituting the words “Schedule 1”.

(2) The title to the Schedule to the principal Act is amended by inserting “1” after the word “Schedule”.

(3) Section 56 of the National Pension Scheme (Occupational Pensions) Act 1998 is amended by inserting immediately after paragraph (j) the following—

- “(k) to carry out functions under section 40A and Schedule 2 of the Public Service Superannuation Act 1981.”.

Commencement

7 This Act shall come into operation on 1 April 2012.

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EXPLANATORY MEMORANDUM

This Bill seeks to amend the Public Service Superannuation Act 1981 (“the principal Act”) to enable persons to access a portion of their pension contributions by permitting a limited refund of contributions in circumstances of financial hardship so that such persons may meet certain financial obligations.

Clause 1 provides the citation for the Bill.

Clause 2 inserts the definition of “Commission”. The Commission is the same body established under the National Pension Scheme (Occupational Pensions) Act 1998 which deals with financial hardship applications in the private sector.

Clause 3 amends section 26 of the principal Act by including a reference to new section 40A. This amendment links the provisions relating to a refund made before retirement to the provisions relating to refunds in circumstances of financial hardship.

Clause 4 inserts new section 40A into the principal Act to provide for the partial refund of contributions from the Fund in circumstances of financial hardship. Subsections (1) and (2) enable a contributor prior to retirement and in accordance with Schedule 2, to apply to the Commission for a refund and if approved, to receive payment of that refund in accordance with Schedule 2. Subsection (3) provides that where the Commission approves the application of a contributor who has contributed to the Fund continuously for 8 years or more but whose employment terminated prior to retirement, that refund is also paid in accordance with Schedule 2. Subsection (4) provides that where a refund is paid, that contributor’s contributions plus interest shall be reduced by the amount of the refund at the time the refund is paid. Subsection (5) provides that where a pension is payable in respect of a contributor to whom a refund was previously paid, that pension will be a reduced pension. Subsection (6) provides that a contributor may repay the refund in full or part together with interest, but must do so no later than 90 days before his retirement in order to restore in full or part the reduced pension. Subsection (7) provides that where a contributor receives a refund and makes repayment in full or part together with interest, then the repayment will restore his contributions in full or part. Subsection (8) provides that Schedule 2 has effect with respect to the circumstances of financial hardship and the processes for application and payment of a refund.

Clause 5 inserts Schedule 2 into the principal Act and is modelled on the National Pension Scheme (Financial Hardship) Regulations 2010. Paragraph 1 provides definitions relevant to Schedule 2. Paragraph 2 sets out the circumstances for financial hardship. Paragraphs 3 to 6 set out the requirements to be met with respect to each circumstance of financial hardship. Paragraph 7 provides that the minimum payment that can be requested on an application is \$1,000. Paragraph 8 provides that the maximum payment that may be approved is 25% of that contributor’s contributions to the Fund with interest on the application date. Paragraph 9 prevents the Commission from approving more than two applications for a contributor during his lifetime and prevents the Commission from approving the application of a contributor made within 5 years of a previous successful

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application for that contributor. Paragraph 10 sets out the manner in which applications are made. Paragraph 11 makes provision for a non-refundable application fee of \$100. Paragraph 12 requires an applicant to provide any further information necessary to complete the application process. Paragraph 13 enables the Commission to consider, reject or approve applications and where approved, to notify and direct the Accountant General to make payment. Paragraph 14 requires the Accountant General to make payment within 15 working days of receiving notification from the Commission. Paragraph 15 requires the Commission to keep records of its decisions.

Clause 6 sets out consequential amendments to be made to number the Schedules to the principal Act, and to amend section 56 of the National Pension Scheme (Occupational Pensions) Act 1998, by inserting a new paragraph (k) which enables the Commission to carry out functions under section 40A and Schedule 2 of the principal Act.

Clause 7 sets out the commencement provision.