



BERMUDA

PENSIONS AND GRATUITIES (WAR SERVICE) ACT 1947

1947 : 2

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*[Preamble repealed by 2007:20 s.2 effective 26 June 2007]*

*[Words of enactment omitted]*

Interpretation

1 In this Act, unless the context otherwise requires—

“benefit” means a monetary benefit awarded or paid under this Act, other than a pension, and includes the defrayal of costs of medical and surgical treatment in hospitals and other places, defrayal of costs of palliative and hospice care, defrayal of costs of burial expenses, special allowances under section 32 and defrayal of costs of respite care under section 33A;

“Bermudian” means any person—

- (i) who was born in Bermuda and has resided in Bermuda for a period of not less than seven years; or
- (ii) who has resided in Bermuda for a period of not less than seven years immediately prior to the beginning of the person’s war service; or
- (iii) who has resided in Bermuda for a period of not less than four years, and one of whose parents has resided in Bermuda for a period of not less than seven years immediately prior to the beginning of the person’s war service, or if both the person’s parents are dead, one of whom was resident in Bermuda for a period of seven years immediately prior to such parent’s death;

“British sea-going merchant ship”, in relation to a mercantile mariner, means any sea-going ship which was, at the time of his war service, under the control of His Majesty’s Government in the United Kingdom or of the Government of any Dominion;

“the Commissioners” has the meaning given in section 2;

“died” or “death” include death presumed for official purposes;

“disablement” means physical or mental injury or damage, or loss of physical or mental capacity; and “disabled” shall be construed accordingly;

“member of the armed forces” means a Bermudian holding a commission as an officer in, or being a sailor, soldier or airman of--

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- (i) the naval, military or air forces of the United Kingdom or of any Dominion,
- (ii) the Bermuda Militia Artillery or the Bermuda Militia Infantry, including members of those units who served with the Bermuda Militia Contingent as part of the Caribbean Regiment,
- (iii) the Bermuda Volunteer Engineers or the Bermuda Volunteer Rifle Corps, including members of those units who served with the Lincolnshire Regiment, or
- (iv) the Bermuda Volunteer Force or Home Guard;

“mercantile mariner” or “mariner” mean any person who, being a Bermudian, performed war service as a mariner during the Second World War;

“Minister” means the Minister responsible for defence;

“pension” means a pension awarded under this Act;

“pensioner” means any person who has been awarded and is being paid a pension;

“prescribed” means prescribed by any regulations made under this Act;

“the Second World War” means the war waged by His Majesty during the period beginning on the third day of September, 1939, and ending on the fifteenth day of August, 1945;

“war service” means—

- (i) in relation to a member of the armed forces, service as such a member during the whole or any part of the period of the Second World War; and
- (ii) in relation to a mercantile mariner, service during the whole or any part of the Second World War; and such service as a mariner shall be deemed to include any periods hereinafter specified, but no other periods, that is to say, any period while the mariner was in the service of a British sea-going merchant ship by virtue of being a member of the crew of that ship and was outside the territorial waters of Bermuda; any period while the mariner was proceeding by sea, land or air outside Bermuda to a British merchant ship for the purpose of being in the service thereof; any period while the mariner was returning by sea, land or air outside Bermuda to Bermuda from a British merchant ship after being in the service thereof; any period while the mariner was out of Bermuda on leave from a British merchant ship which for the time being was in a port outside Bermuda, and any period while the mariner was detained by an enemy or neutral Power as a result of capture whilst in the service of a British merchant ship;

*[Section 1 amended by 2007:20 s.3 effective 26 June 2007; amended by 2009:11 s.2 effective 25 March 2009; "Minister" amended by BR 5 / 2011 para. 5 effective 25 February 2011]*

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Commissioners established; meetings

2 (1) For the purpose of this Act there shall be established a body of commissioners who shall have the powers and perform the duties conferred or imposed upon them by or under this Act.

(2) The Commissioners shall be a body corporate under the name of "The Bermuda War Pension Commissioners," with the exclusive right to use that name in Bermuda and with perpetual succession under that name, and with power to sue and liability to be sued in their corporate capacity by that name in all courts, and with power to have and use a common seal and to renew or vary the same at pleasure.

(3) The Commissioners shall consist of not less than three and of not more than seven persons, each of whom shall be appointed by the Governor to hold office at pleasure.

(4) There shall be a Chairman and a Deputy Chairman of the Commissioners, each of whom shall, subject as hereinafter provided, be appointed annually by the Governor from among the Commissioners to hold office until the thirty-first day of December of the year for which he was appointed, and each of whom shall be eligible for re-appointment:

Provided that if at any time a person appointed to be Chairman or Deputy Chairman ceases to be a commissioner, or for any other reason ceases to hold office as such, the Governor shall, as soon as may be, appoint from among the Commissioners another person to be Chairman or Deputy Chairman (as the case may be) in his stead.

(5) If at any meeting of the Commissioners the Chairman is absent, the Deputy Chairman shall preside over the meeting, and if both the Chairman and the Deputy Chairman are absent then the Commissioners present shall elect one of their number to act as chairman at that meeting.

(6) A majority of the Commissioners in Bermuda at the time of any meeting of the Commissioners shall form a quorum at that meeting.

(7) Every question or matter to be determined by the Commissioners at any meeting shall be decided by a majority of the Commissioners present and voting on the question or matter:

Provided that in the event of an equal division of votes the chairman of the meeting may, if he thinks fit, give a second or casting vote.

(8) Fees shall be paid to the Commissioners in accordance with the Government Authorities (Fees) Act 1971 [*title 14 item 6*].

(9) The Commissioners may call upon the Director of Social Insurance for the Ministry of Finance, for such advice and assistance as they consider desirable for the proper discharge of their functions under this Act and any other enactment and the Director of Social Insurance shall provide such advice and assistance.

(10) In the exercise of his powers under this section the Governor shall act on the advice of the Minister.

*[Section 2(9) amended by 2009:11 s.3 effective 25 March 2009]*

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### Powers of commissioners

3 Subject to this Act, the Commissioners may—

- (a) deal with and adjudicate on all matters and questions relating to the award, payment, increase, decrease, suspension, cancellation or administration of any pension, or benefit, or otherwise relating to any pension or benefit; and
- (b) pay such pensions or benefits as are authorized by this Act from funds appropriated from time to time for the purpose by the Legislature.

*[Section 3 amended by 2009:11 s.4 effective 25 March 2009]*

### Regulations

4 (1) The Minister may make regulations in respect of any matter to be prescribed under this Act, and for incidental matters arising out of this Act, and generally for carrying out the purposes of this Act.

(2) *[omitted] [covered by Interpretation Act 1951 section 35]*

(3) Regulations made under subsection (1) shall be published in the Gazette, and shall come into operation on the date of such publication or on such later date as may be specified in the regulations.

(4) The negative resolution procedure applies to regulations made under subsection (1).

*[Section 4 amended by 2009:11 s.5 effective 25 March 2009]*

### Witnesses; evidence

5 (1) The Commissioners shall have all the powers of a court of summary jurisdiction in relation to the summoning and examination on oath of any medical practitioner or other person whom they consider expedient to be heard for the purpose of determining any matter relating to the award or payment of any pension or benefit.

(2) A witness summoned by the Commissioners and duly attending before them shall be entitled to be paid the sum of one dollar and eighty cents, or, where the witness is a specially qualified person summoned to give professional evidence, a sum not less than two dollars and forty cents nor more than seven dollars and twenty cents as the Chairman of the Commissioners may decide.

(3) Any such sum shall be paid to a witness out of the Consolidated Fund on the certificate of the Chairman of the Commissioners.

*[Section 5 amended by 2009:11 s.5A effective 25 March 2009]*

### Evidence of entitlement to pension or benefit

6 The Commissioners may require an applicant for an award of a pension or benefit to submit such information and documentation as the Commissioners see fit in support of

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their entitlement to the pension or benefit, including service records, medical reports and affidavits.

*[Section 6 repealed and replaced by 2009:11 s.6 effective 25 March 2009]*

### Notification of decisions

- 7 (1) Where the Commissioners have decided to—
- (a) refuse the award of any pension or benefit; or
  - (b) reduce or terminate any benefit,

then the applicant for the pension or benefit shall be notified by the Commissioners in writing in accordance with subsection (2).

(2) The notice referred to in subsection (1) shall contain the following particulars—

- (a) the decision of the Commissioners; and
- (b) the ground upon which such decision is based; and
- (c) a notification of the right of the applicant for, or person already in receipt of, the pension or benefit—
  - (i) to appear before and be heard by the Commissioners; and
  - (ii) to appeal under section 9 to the Minister.

*[Section 7 amended by 2009:11 s.7 effective 25 March 2009]*

### Objection

8 Where any person who has received a notice as provided in section 7 objects to the decision of the Commissioners he may within one month of the date of the receipt of the notice apply to the Commissioners for a revision of the decision and the Commissioners shall, if he so requires, afford him an opportunity to appear before them and to be heard with respect to his objection; and if the Commissioners are satisfied that the grounds of the objection are established wholly or in part they shall amend or modify their decision accordingly.

### Appeal to Minister

9 (1) Subject to this section, any person aggrieved by a decision of the Commissioners on an application for revision may appeal to the Minister.

- (2) No appeal shall lie to the Minister unless—
- (a) the appellant has availed himself of an opportunity to appear and be heard by the Commissioners as provided in section 8;
  - (b) the grounds of appeal are set out in writing and are lodged with the Minister; and

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(c) the appeal is so lodged within two months after the appearance of the appellant before the Commissioners.

(3) The Minister after considering the grounds of any appeal may, subject to this Act, make such order as appears to him to be just and equitable, and any order so made by the Minister shall be final and conclusive, and shall be binding upon the Commissioners.

### Representation

10 (1) Where the Commissioners or the Minister, as the case may be, are satisfied that the person concerned is prevented owing to absence from Bermuda, sickness, infirmity or other reasonable cause from himself making an application for revision under section 8 or preferring an appeal under section 9, then the Commissioners or the Minister may allow any other person to act on behalf of the persons concerned in any proceedings under sections 8 or 9.

(2) In this section "person concerned" means the person to whom a notice has been sent under section 7.

### Award of pension for war service

11 Subject to this Act, a pension in respect of war service may be awarded to any person who was a member of the armed forces or a mercantile mariner and who performed war service.

*[Section 11 subsection (1) paragraphs (a) and (b) deleted and paragraphs (c) and (d) relettered as (a) and (b), and subsection (2) inserted, by 2007:20 s.4 effective 26 June 2007; section 11 repealed and replaced by 2009:11 s.8 effective 25 March 2009]*

### Amount of pension

12 Subject to this Act, the amount to be paid in respect of a pension awarded under section 11 is the amount fixed by the Minister by order under section 16A.

*[Section 12 repealed and replaced by 2007:20 s.5 effective 26 June 2007; amended by 2009:11 s.9 effective 25 March 2009]*

### Award of pension to surviving spouse

13 Subject to this Act, a pension may be awarded to the surviving spouse of a person who was in receipt of a pension under section 11 at the time of their death.

*[Section 13 subsection (1) paragraphs (a) and (b) deleted and paragraphs (c) and (d) relettered as (a) and (b), and subsection (2) inserted, by 2007:20 s.6 effective 26 June 2007; section 13 repealed and replaced by 2009:11 s.10 effective 25 March 2009]*

### Amount of pension

14 Subject to this Act, the amount to be paid in respect of a pension awarded under section 13 is the amount fixed by the Minister by order under section 16A.

*[Section 14 repealed and replaced by 2007:20 s.7 effective 26 June 2007; headnote amended by 2009:11 s.11 effective 25 March 2009]*

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15 *Repealed by 2007:20 s.8 effective 26 June 2007*

16 *Repealed by 2007:20 s.9 effective 26 June 2007*

Review and fixing of pension amounts

16A (1) The Commissioners shall, as soon as may be after 1 April 1976 and every second year thereafter, review the amounts to be paid in respect of pensions under sections 11 and 13 and shall report their recommendations to the Minister.

(2) The Minister may, upon completion of a review under subsection (1) or at such other time as the Minister may determine, fix by an order under this section the amounts to be paid in respect of pensions under sections 11 and 13.

(3) The affirmative resolution procedure shall apply to an order made under this section.

(4) An order under this section may be made with retroactive effect, including with effect from April 1, 2007.

*[Section 16A subsections (1) and (2) substituted, and (4) inserted, by 2007:20 s.10 effective 26 June 2007]*

17 *[Repealed]*

*[Section 17 subsections (1), (3), (5) and (6) amended by 2007:20 s.11 effective 26 June 2007; section 17 repealed by 2009:11 s.12 effective 25 March 2009]*

18 *[Repealed]*

*[Section 18 repealed by 2009:11 s.12 effective 25 March 2009]*

19 *[Repealed]*

*[Section 19 repealed by 2009:11 s.12 effective 25 March 2009]*

20 *[Repealed]*

*[Section 20 subsection (5) amended by 2007:20 s.12 effective 26 June 2007; section 20 repealed by 2009:11 s.12 effective 25 March 2009]*

21 *[Repealed]*

*[Section 21 subsection (1) amended by 2007:20 s.13 effective 26 June 2007; section 21 repealed by 2009:11 s.12 effective 25 March 2009]*

Death of pensioner

22 (1) Where a pensioner dies, any pension or balance of pension for which he was eligible immediately before his death, and which is either unpaid or is being administered by the Commissioners, shall not form part of the estate of the deceased pensioner.

(2) The Commissioners may pay any pension or balance of pension as aforesaid—

(a) to the widow or widower of the pensioner; or



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- (b) to any child or children of the pensioner; or
- (c) to any person who has maintained the pensioner; or
- (d) to any person who has paid the expenses of the pensioner's last illness or of his burial; or
- (e) to any other person whom the Commissioners consider is legally, equitably or morally entitled to the pension or balance of pension; or
- (f) to any or all of such persons mentioned in this subsection,

in such manner as to the Commissioners appears just and equitable, or the Commissioners may cancel all or part of such pension or balance of pension where it appears to them inexpedient to make any such payment as aforesaid.

(3) Where any person is aggrieved by any decision of the Commissioners in the exercise of their powers under this section, he may appeal to the Minister and section 9 shall apply in relation to any such appeal as it applies in relation to an appeal under section 9.

(4) *[Repealed]*

*[Section 22 subsection (2)(a) amended, and (4) repealed, by 2007:20 s.14 effective 26 June 2007]*

23 *[Repealed]*

*[Section 23 repealed by 2009:11 s.13 effective 25 March 2009]*

24 *[Repealed]*

*[Section 24 repealed by 2009:11 s.13 effective 25 March 2009]*

25 *[Repealed]*

*[Section 25 amended by 2001:29 effective 29 October 2001; repealed by 2009:11 s.13 effective 25 March 2009]*

26 *[Repealed]*

*[Section 26 repealed by 2009:11 s.13 effective 25 March 2009]*

27 *Repealed by 2007:20 s.15 effective 26 June 2007*

Hospital costs may be defrayed

28 (1) Where any person who was a member of the armed forces or a mercantile mariner and who performed war service suffers any illness or other disablement which, in the opinion of the Commissioners, necessitates medical or surgical treatment or palliative or hospice care,

then, subject to this Act, the Commissioners may defray the cost of such treatment in any hospital or other institution in Bermuda and of any other costs incidental thereto:

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Provided that in exceptional circumstances the Commissioners may defray such costs in respect of treatment in any hospital or institution approved by the Commissioners outside Bermuda, or in respect of treatment in any place in Bermuda other than in a hospital or institution.

(2) Where accommodation in any hospital or institution—

- (a) is in a public ward, then the Commissioners shall defray the entire cost thereof;
- (b) is in a private room or other place where the cost of accommodation is greater than a public ward, then the Commissioners shall defray the cost thereof only to the extent of the cost of accommodation in a public ward.

*[Section 28 subsection (1) amended by 2007:20 s.16 effective 26 June 2007; amended by 2009:11 s.14 effective 25 March 2009]*

Hospital costs for surviving spouse

29 The surviving spouse of a person who was a member of the armed forces or a mercantile mariner and who performed war service shall be entitled to the same defrayal of costs as that person was entitled to under section 28.

*[Section 29 amended by 2007:20 s.17 effective 26 June 2007; repealed and replaced by 2009:11 s.15 effective 25 March 2009]*

Discretionary payment of hospital costs

30 Notwithstanding anything in sections 28 and 29, where it appears to the Commissioners that any person mentioned in those sections—

- (a) is in necessitous circumstances; and
- (b) requires, by reason of the nature of the illness or disablement from which he is suffering, accommodation in a hospital or institution other than accommodation in a public ward,

then in any such case the Commissioners may defray the whole or such part of the cost of such accommodation as may seem to them in the circumstances just and equitable.

31 *[Repealed]*

*[Section 31 subsection (1) amended by 2007:20 s.18 effective 26 June 2007; section 31 repealed by 2009:11 s.16 effective 25 March 2009]*

Special allowances

32 (1) *[Repealed]*

(2) Where it is made to appear to the Commissioners that a pensioner is by reason of accident, illness, physical infirmity or old age incapable of supporting himself in a reasonable degree of comfort, then in any such case the Commissioners may, if they think fit and subject to such conditions as they think expedient to impose, make such provisions for them as they consider sufficient for their adequate relief and support.

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- (3) Where it is made to appear to the Commissioners—
- (a) that a pensioner is in need of medical or surgical treatment; and
  - (b) that their means of support are such that they cannot, or cannot without undue hardship, defray the expenses connected with the medical or surgical treatment required; and
  - (c) that the case is such that it cannot be dealt with under section 28,

then in any such case the Commissioners may, if they think fit and subject to such conditions as they think expedient to impose, defray the whole or any part of the expenses connected with the medical or surgical treatment required.

(4) *[Repealed]*

(5) *[Repealed]*

*[Section 32 subsections (1)-(4) amended, and (5) repealed, by 2007:20 s.19 effective 26 June 2007; subsections (1) and (4) repealed, and (2) and (3) amended, by 2009:11 s.17 effective 25 March 2009]*

### Burial expenses

33 The Commissioners may defray all or part of the burial expenses for a pensioner up to a maximum of \$5,000.

*[Section 33 amended by 2007:20 s.20 effective 26 June 2007; repealed and replaced by 2009:11 s.18 effective 25 March 2009]*

### Respite care

33A (1) The Commissioners may defray all or part of the cost of respite care for a pensioner, subject to such terms and conditions as may be prescribed.

(2) In this section, “respite care” means the provision of alternative care arrangements for a pensioner in order to provide short term temporary relief to a person who cares for the pensioner at home.

*[Section 33A inserted by 2009:11 s.18 effective 25 March 2009]*

### Fraud

34 Any person who by any false representation, impersonation or fraud obtains or attempts to obtain, any pension or benefit commits an offence against this Act:

Punishment on conviction on indictment: imprisonment for 2 years or a fine of \$5,000 or both such imprisonment and fine.

*[Section 34 amended by 2009:11 s.19 effective 25 March 2009]*

### False statements

35 Any person who, in connection with any pension or benefit in connection with any application for pension or benefit, makes under oath any statement which he knows or has reason to believe to be false in a material particular, commits an offence against this Act:

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Punishment on summary conviction: imprisonment for 6 months or a fine of \$2,500 or both such imprisonment and fine.

*[Section 35 amended by 2009:11 s.19 effective 25 March 2009]*

Transitional

36 *[omitted]*

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FIRST SCHEDULE

*[Schedule repealed by 2007:20 s.21 effective 26 June 2007]*

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SECOND SCHEDULE

*[Schedule amended by 1991:9 effective 1 January 1991, and repealed by 2007:20 s.21 effective 26 June 2007]*

[Assent Date: 15 January 1947]

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*[Amended by*

1947 13  
1948 59  
1949 65  
1950 81  
1951 78  
1951 93  
1952 11  
1969 673  
1970 384  
1971 43  
1971 45  
1974 77  
1977 35  
1977 55  
1980 46  
1983 4  
1984 48  
BR 15 / 79  
BR 33 / 81  
1987 34  
1991 9  
2001 29  
2007 20  
2009 11  
BR 5 / 2011]