

**NATIONAL PENSION SCHEME (OCCUPATIONAL PENSIONS)
AMENDMENT ACT 1999**



**BERMUDA
1999 : 49**

**NATIONAL PENSION SCHEME (OCCUPATIONAL PENSIONS)
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[Date of Assent: 23 December 1999]

[Operative Date: 1 January 2000]

WHEREAS it is expedient to amend the National Pension Scheme (Occupational Pensions) Act 1998 and to provide for connected matters:

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 and commencement

1 (1) This Act, which amends the National Pension Scheme (Occupational Pensions) Act 1998 ("the principal Act"), may be cited as the National Pension Scheme (Occupational Pensions) Amendment Act 1999.

(2) This Act shall come into operation on such date as the Minister of Finance may appoint by notice published in the Gazette; and the Minister may appoint different days for the coming into operation of different provisions of this Act.

Amends section 2 of principal Act

2 (1) For the definitions of "employee" and "employer" in section 2 of the principal Act there shall be substituted—

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"employee" means a Bermudian or the husband or wife of a Bermudian who is employed in Bermuda by an employer;

"employer" means a person in Bermuda who employs employees, and includes a self-employed person;".

(2) For the definition of "pensionable earnings" in that section there shall be substituted—

"pensionable earnings" means—

(a) in the case of an employee, any of the following payments expressed in monetary terms and paid (directly or indirectly) to the employee by the employer up to a maximum of \$200,000 per year—

- (i) any wages, salary or leave pay;
- (ii) any fee or commission;
- (iii) any bonus, including payments from a profit-sharing scheme, which exceeds ten per cent of the employee's basic salary or wage for the period in question;

but does not include overtime payments in respect of hours worked in excess of 35 hours in any week, severance payments, retirement or long-service recognition payments or health insurance premiums;

(b) in the case of a self-employed person, his earnings as prescribed and calculated in accordance with the regulations;".

(3) The definition of "spouse" in that section shall be omitted.

Amends section 3 of principal Act

3 For section 3(1) of the principal Act there shall be substituted—

"(1) This Act does not require a pension plan to be provided in respect of—

- (a) employment or service with the Government of Bermuda; or
- (b) employment or service for which a benefit accrues under—

- (i) the Public Service Superannuation Fund established by section 10A of the Public

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Treasury (Administration and Payments)
Act 1969; or

- (ii) the Ministers and Members of the
Legislature Pensions Fund established
under section 8 of the Ministers and
Members of the Legislature (Salaries and
Pensions) Act 1975.

(1A) This Act does not apply to the Pension Fund
established under section 3 of the Contributory Pensions Act
1967 and continued under section 3 of the Contributory
Pensions Act 1970."

Amends section 11 of principal Act

4 For section 11(1) of the principal Act there shall be substituted—

"(1) An amendment to a pension plan is void if the
amendment purports to reduce—

- (a) the amount or the commuted value of a pension
benefit accrued under the pension plan with
respect to employment before the effective date
of the amendment;
- (b) the amount or the commuted value of a pension
or deferred pension accrued under the pension
plan; or
- (c) the amount or the commuted value of an
ancillary benefit for which a member or former
member has met all eligibility requirements
under the pension plan necessary to exercise the
right to receive payment of the benefit.

(1A) Subsection (1) does not apply in respect of a multi-
employer pension plan established—

- (a) prior to the date on which this Act comes into
operation; and
- (b) pursuant to a collective agreement,

if the obligation of the employer to contribute to the pension
fund is limited to a fixed amount as set out in the collective
agreement."

Amends section 19 of principal Act and First Schedule

5 (1) For subsection 19(1) of the principal Act there shall be
substituted—

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"(1) Subject to subsections (2) to (5)—

- (a) a member of a defined contribution pension plan and his employer shall both contribute equally to the pension fund of the pension plan for the benefit of that member;
- (b) a member of a multi-employer pension plan, established pursuant to a collective agreement under which the obligation of the member's employer to contribute is limited to a fixed amount set out in a collective agreement, and his employer shall both contribute equally to the pension fund of the pension plan for the benefit of that member; and
- (c) a member of a defined benefit plan and his employer shall contribute in accordance with the provisions of the pension plan and the regulations such amounts as are required to fund the benefits accruing under the pension plan,

from the date of membership in the pension plan at the rates and dates specified in the First Schedule and thereafter at such intervals as may be prescribed in the regulations."

(2) In the First Schedule—

- (a) the following shall be inserted in the Table as the third column—

**"Annual Defined Benefit Accrual Rate
(% of final average earnings)**

0.25%
0.50%
0.75%
1.00%
1.25%"; and

- (b) at the end of the Table there shall be added—

"For the purposes of calculating the annual defined benefit accrual rate of a member, "final average earnings" means—

- (a) the annual average of the member's highest consecutive 60 months of pensionable earnings during the 120 months immediately before the date the calculation is required; or

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(b) where he has less than 60 months of pensionable earnings, the member's average pensionable earnings calculated over his actual period of active membership in the pension plan."

Amends section 22 of principal Act

6 Section 22 shall be renumbered as subsection (1) of that section, and after that subsection there shall be inserted—

"(2) Notwithstanding subsection (1), the accrued benefits of a member of a pension plan which is in existence immediately prior to the date on which this Act comes into operation, shall be fully vested on the date determined in accordance with the provisions of the plan or by 1st January 2002, whichever is earlier."

Amends section 24 of principal Act

7 At the end of section 24 there shall be added—

"(8) A former member whose benefits have not vested under the terms of a pension plan shall receive an amount that is not less than—

- (a) in the case of a defined contribution provision of a pension plan, the portion of the former member's account balance attributable to his contributions; or
- (b) in the case of a defined benefit provision of a pension plan, the former member's contributions made to the pension plan together with interest at the prescribed rate."

Substitutes sections 30 and 31 of principal Act

8 For sections 30 and 31 of the principal Act (survivor benefits on death) there shall be substituted—

"Survivor benefit on death after pension commences

30 (1) If a former member dies after payment of his pension benefit is due to commence, the benefit ("survivor benefit") shall be paid to his beneficiary in accordance with the form of pension benefit provided for under the terms of the pension plan.

(2) The commuted value of the survivor benefit payable under subsection (1) shall be not less than the aggregate of—

- (a) the value of the former member's defined contribution account balance, including

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accumulated additional voluntary contributions,
if any; and

(b) the commuted value of the former member's
defined benefit and the former member's
entitlement to excess contributions under
section 32, if any.

(3) Where no beneficiary has been appointed, or where
the beneficiary predeceases the member, the survivor benefit
shall be paid to the estate of the member.

(4) In this section "beneficiary" means the person who
has been appointed in writing by the member as his beneficiary
for the purposes of the pension plan.

Survivor benefits on death before pension commences

31 (1) If a member dies before payment of his pension is
due to commence, his beneficiary shall receive a lump sum
payment equal to the aggregate of—

(a) the value of the member's vested defined
contribution account balance, including
accumulated additional voluntary contributions,
if any; and

(b) the commuted value of the member's vested
defined benefit entitlement and the member's
entitlement to excess contributions under
section 32, if any,

unless the beneficiary elects in the form and manner determined
by the Commission to receive an immediate or deferred pension
of an actuarially equivalent value in the form provided under the
pension plan.

(2) Where no beneficiary has been appointed, or where
the beneficiary predeceases the member, the benefit described in
subsection (1) shall be paid to the estate of the member.

(3) If a member dies before completion of two years of
membership in the pension plan, his beneficiary shall receive a
lump sum payment equal to the member's contributions, if any,
plus earnings thereon.

(4) In this section "beneficiary" means the person who
has been appointed in writing by the member as his beneficiary
for the purposes of the pension plan."

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Substitutes section 33 of principal Act

9 For section 33 of the principal Act (effect of remarriage of surviving spouse) there shall be substituted—

"Effect of remarriage of widow or widower

33 Where the beneficiary of a deceased member of a pension plan who is receiving a pension under the plan is his widow or her widower, the beneficiary remains entitled to such pension notwithstanding his or her subsequent remarriage."

Substitutes section 71 and inserts section 72 into principal Act

10 For section 71 of the principal Act (which repealed the Pension Trust Funds Act 1966 subject to certain savings) there shall be substituted—

"Rule against perpetuities

71 The rule of law relating to perpetuities shall not apply, and shall be deemed never to have applied, to the trusts of any pension fund held under a pension plan registered under this Act.

Application of Pension Trust Funds Act 1966

72 The Pension Trust Funds Act 1966 shall cease to apply to any pension fund which relates to a pension plan registered under this Act as from the date of the registration of the plan, and the registration of the fund under the 1966 Act shall be cancelled as from that date."

Consequential amendment

11 After section 1 of the Pension Trust Funds Act 1966 there shall be inserted—

"Application where 1998 Act applies to pension plan

1A This Act shall not require the registration of any pension fund which relates to a pension plan which must be registered under the National Pension Scheme (Occupational Pensions) Act 1998."

Minor amendments of principal Act

12 The Schedule shall have effect to make miscellaneous minor amendments to the principal Act.

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SCHEDULE

(section 12)

MINOR AMENDMENTS

- 1 In this Schedule, "section" means section of the principal Act.
- 2 In section 2, in the definition of "financial institution", at the end of paragraph (a) there shall be added "or the Banks and Deposit Companies Act 1999".
- 3 In section 5, after the word "registration" there shall be added "of a pension plan".
- 4 In section 9(j), the words "and ancillary benefits" shall be omitted.
- 5 In section 16(1), for paragraphs (c) to (f) there shall be substituted—
- (c) any other person entitled to benefits under the pension plan;
 - (d) an agent authorised in writing by a person mentioned in paragraph (a), (b) or (c);
 - (e) a representative of a trade union which represents members of the pension plan;
 - (f) an employer who participates in the pension plan,".
- 6 In section 17(2), for the words "membership of" there shall be substituted "membership in".
- 7 In section 18(1), for the words "by Commission" there shall be substituted "by the Commission".
- 8 In section 19, subsection (9) and subsection (10)(e) shall be omitted.
- 9 In section 20, for subsections (2) to (4) there shall be substituted—
- (2) Subject to subsection (3), a member of a pension plan shall receive the first instalment of his pension on the first day of the month following his normal retirement date, and subsequent instalments on the first day of each succeeding month.
 - (3) A member of a pension plan who, after his normal retirement date, continues in employment may elect to continue accruing benefits under the pension plan, and shall receive the

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first instalment of his pension on the first day of the month following—

- (a) his actual retirement, or
- (b) the date of his electing to receive his pension, rather than continue to accrue benefits under the pension plan,

whichever is earlier, and subsequent instalments on the first day of each succeeding month.

(4) An election under subsection (3) shall be made in writing, signed by the member and delivered to the administrator of the pension plan."

10 In section 21(2), after the words "retirement pension" there shall be added "benefit", and for the words "pension benefit" there shall be substituted "deferred pension".

11 (1) In section 23(1), after the words "commuted value" there shall be added "of the member's benefits".

(2) In section 23(4), for the words "value or" there shall be substituted "value of the member's benefits or the member's".

12 (1) In section 24(6), the words "Notwithstanding subsection (1)" shall be omitted.

(2) For section 24(7) there shall be substituted—

"(7) If a pension plan so provides, an employer may receive an amount under a defined contribution pension plan that is not in excess of his non-vested contributions in the account balance of a former member."

13 In section 29, for the words "retirement benefit" there shall be substituted "pension benefit".

14 (1) In section 32(1)(a), for the words "account balance under defined contribution plans or the commuted value" there shall be substituted "vested account balance under defined contribution plans or the commuted value of the member's vested benefit".

(2) In section 32(1)(b), for the word "increased" there shall be substituted "under a defined benefit provision increased".

(3) In section 32(3) and (4), the words "in respect" shall in each place be omitted.

(4) In section 32(6)(b), for the word "operation" there shall be substituted "value".

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15 For section 34 there shall be substituted—

"34 A pension plan may permit variation in the terms of payment of a pension or other benefit under the pension plan to a member or former member by reason of his having a mental or physical disability which is likely to reduce considerably his life expectancy."

16 In section 35(1), for the words "former member's commuted value" there shall be substituted "commuted value of the former member's benefits".

17 In section 36(2)(b), for the words "subsection (2)" there shall be substituted "subsection (1)".

18 In section 39(3), for the word "an" there shall be substituted "the".

19 In section 40(1), section 41(a) and section 42, for the words "appointed to wind" there shall in each place be substituted "winding".

20 In section 44(3)—

(a) in paragraph (b), for the word "sold" there shall be substituted "seized or sold"; and

(b) for the full-out words following section 44(3)(b) there shall be substituted—

"the property or the proceeds of sale of the property shall not be distributed to any person entitled thereto until the court ordering the seizure or sale has made provision for the payment into a pension fund of any amount payable by the employer."

21 In section 45(2) (first place) and section 47(2), for the words "pension benefits" there shall be substituted "benefits".