



BERMUDA

NATIONAL PENSION SCHEME (OCCUPATIONAL PENSIONS) ACT 1998

1998 : 36

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FIRST SCHEDULE

CONTRIBUTION SCHEDULE

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WHEREAS it is expedient to make provision for a mandatory pensions system for Bermuda:

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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:—

PART I PRELIMINARY

Citation and commencement

1 This Act may be cited as the National Pension Scheme (Occupational Pensions) Act 1998 and shall come into operation on such date as the Minister may, by Notice published in the Gazette, appoint; and the Minister may appoint different days for the coming into operation of different provisions of this Act.

Interpretation

2 (1) In this Act, unless the context otherwise requires—

“account balance” in respect of a member means the market value of all employer contributions and member contributions, if any, plus earnings thereon;

“actuary” means a person who has qualified as an actuary by examination of the Institute of Actuaries in England, the Faculty of Actuaries in Scotland, the Societies of Actuaries in the United States of America or the Canadian Institute of Actuaries, and who is a current member in good standing of one of those professional associations;

“additional voluntary contribution” means a contribution to the pension fund by a member of the pension plan beyond any amount that the member is required to contribute;

“administrator” means the person or persons that administer the pension plan;

“affiliated employer” has the meaning given in subsection (2).

“Bermudian” means having Bermuda Status within the meaning of the Bermuda Immigration and Protection Act 1956;

“Commission” means the Pension Commission established by section 54;

“commuted value” for the purpose of determining the lump sum amount that is equivalent to a pension or a benefit, means the value of the pension or benefit calculated in the prescribed manner and as of a fixed date;

“contributory benefit” means a pension benefit or part of a pension benefit to which a member is required to make contributions under the terms of the pension plan;

“deferred pension” means a pension benefit, payment of which is deferred until the beneficiary reaches normal retirement age under the pension plan;

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“defined benefit” means a benefit determined in advance with reference to various factors including level of earnings and length of employment and a “defined benefit pension plan” means a plan providing such a benefit;

“defined contribution benefit” means a benefit that is determined solely with reference to, and is provided by, accumulated contributions made by or for the credit of a member together with the investment yield of such accumulated contributions and that is determined on an individual account basis; and “defined contribution pension plan” means a pension plan providing a defined contribution benefit;

“disabled” in relation to a member means unable because of a physical or mental condition to perform most or all of the tasks related to that member’s employment;

“document” includes any information held or kept by electronic means;

“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;

“financial institution” means—

- (a) a bank licensed under the Banks Act 1969 or the Banks and Deposit Companies Act 1999;
- (b) an insurer registered under the Insurance Act 1978;
- (c) a local trust company holding an unlimited trust licence issued under the Trusts (Regulation of Trust Business) Act 2001; or
- (d) any other company which is approved by the Commission for the purposes of this Act;

“financial institution pension plan” means a pension plan established by a financial institution and approved by the Commission to offer a defined-contribution pension plan for individuals, whether employees or self-employed;

“financial year” in relation to the Commission, means, in respect of the first accounting period of the Commission, a period starting from the date that this Act comes into operation and ending on the thirty-first day of December of the same year, and for any subsequent accounting period, the period of twelve months ending on the thirty-first day of December;

“fiscal year” in relation to a pension plan or a pension fund means the fiscal year of that pension plan or, as the case may be, that pension fund;

“former member” means a person who has terminated employment or membership in a pension plan and—

- (a) is entitled to a deferred pension payable from the pension fund;

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(b) is in receipt of a pension payable from the pension fund; or

(c) is entitled to receive any other payment from the pension fund;

“member” means a member of a pension plan;

“multi-employer pension plan” means a pension plan established and maintained for employees of two or more employers who contribute or on whose behalf contributions are made to a pension fund in accordance with an agreement between the employers, but does not include a pension plan where such employers are affiliated or a financial institution pension plan;

“Minister” means the Minister of Finance;

“normal retirement age” means the normal retirement age specified in section 20;

“pension” means a pension benefit that is in payment;

“pension benefit” means the periodic payment due to a person in accordance with the rules of a pension plan;

“pension fund” means the fund maintained to provide benefits under or related to the pension plan;

“pension plan” means an occupational retirement scheme organized and administered to provide pensions for employees, or a financial institution pension plan;

“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;

“prescribed” means prescribed by regulations;

“registration” means registration under this Act;

“regulations” means regulations made under this Act;

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“retirement product” means such pension plan other than a pension plan referred to in this Act as may from time to time be prescribed;

“self-employed person” means a Bermudian over school leaving age, or the spouse of a Bermudian, whose earnings (otherwise than in the capacity of an employee) derive from his production (in all or part) of goods or services in Bermuda, or his trade in goods or services in or from Bermuda;

“statutory contribution rate” means the contribution rate set out in the First Schedule to this Act;

“surplus” means the excess of assets over liabilities in a pension fund both calculated in the prescribed manner;

“termination” in relation to employment, includes retirement and death;

“trade union” has the same meaning as in the Trade Union Act 1965;

“trustee” means a trustee of a pension plan;

“wind up” means in relation to a pension plan, the termination of a pension plan and the distribution of the assets of the pension fund.

(2) For the purposes of this Act, one employer is affiliated with another employer only if both employers are companies and—

- (a) one of them is the subsidiary of the other; or
- (b) both are subsidiaries of the same company; or
- (c) each of them is controlled by the same person.

[section 2 “employee”, “financial institution”, “employer” and “pensionable earnings” amended by 1999:49 s.2 and Sch para 2 effective 1 January 2000; “financial institution” para (c) substituted by 2001:22 Sch 2 para 8 effective 25 January 2002]

Restrictions on application of Act

3 (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 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.

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(2) The requirements of this Act and the regulations shall not be construed to prevent the registration or administration of a pension plan and related pension fund that provide pension benefits or ancillary benefits more advantageous to members and former members than those required by this Act and the regulations.

[section 3(1) substituted by subsection (1) and (1A) by 1999:49 s.3 effective 1 January 2000]

PART II

ESTABLISHMENT, REGISTRATION, ADMINISTRATION, AND MEMBERSHIP, OF PENSION PLANS

Obligation of employers to establish and maintain pension plans

4 (1) Subject to the provisions of this Act, every employer shall, in relation to his employees—

- (a) if, immediately before the commencement of this Act there is in existence a pension plan, continue and maintain the plan in accordance with this Act;
- (b) if, immediately before the commencement of this Act there is no pension plan in existence—
 - (i) establish and maintain a pension plan in accordance with this Act; or
 - (ii) participate in a financial institution pension plan;
- (c) where he is so required under the provisions of this Act, make contributions to a pension fund of the pension plan;
- (d) in any case referred to in paragraph (a) or (b)(i), apply to the Commission for the registration of the plan under this Act within the relevant period specified in subsection (2).

(2) An employer shall apply for the registration of a pension plan—

- (a) in respect of a plan established on or after the date that this Act comes into operation, within the period of one hundred and eighty days after the establishment of the plan; or
- (b) in respect of a plan in existence immediately before the date that this Act comes into operation, within one year after such date.

(3) An employer who provides a pension plan by participating in a financial institution pension plan shall, within the period of ninety days after the date on which this Act comes into operation, file with the Commission, in the prescribed form, proof of such participation.

(4) Where—

- (a) an application for the registration of a pension plan has been made within the relevant period specified in subsection (2); or

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(b) a pension plan is in the process of being wound up,

subsection (1) shall not be construed as prohibiting the administration of a pension plan before the application is finally determined by the Commission or, on appeal from the decision of the Commission, by the Supreme Court or for the purpose of winding up the plan, as the case may be.

Applications for registration

5 An application for registration of a pension plan shall be made to the Commission in the prescribed form and shall be accompanied by—

- (a) the documents establishing the pension plan and the related pension fund, as provided for in section 9;
- (b) the name, occupation, qualification and address of each person constituting the board of trustees or the name and address of the employer or other body that administers the pension plan;
- (c) the name and address of each person responsible for holding the assets of the pension fund;
- (d) such other document or information relating to the pension plan as the Commission may require;
- (e) the prescribed fee.

[section 5 amended by 1999:49 Sch para 3 effective 1 January 2000]

Pension plans to be administered by administrators

6 A pension plan is not eligible for registration unless it is administered by an administrator, and such administrator shall be—

- (a) the employer, whether an individual or a body corporate or unincorporate;
- (b) a joint committee composed of one or more representatives of the employer or employers participating in the pension plan and one or more representatives of the members or former members of the pension plan;
- (c) a committee wholly consisting of members or former members of the pension plan;
- (d) a person or group of persons or entity which by virtue of this Act or any other law, is vested with responsibility for the administration of a pension plan or pension fund;
- (e) a financial institution; or
- (f) any other person approved by the Commission.

General responsibilities of administrator

7 (1) The administrator of a pension plan shall ensure that the pension plan and the pension fund are, at all times, administered in accordance with—

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- (a) the documents establishing the pension plan and the pension fund as approved by the Commission for the registration or the continued registration of the pension plan;
 - (b) this Act and the regulations; and
 - (c) the best standards of management designed to protect and promote the interests of the members and of any other person eligible for, or entitled to, receive payments from the pension plan.
- (2) The administrator shall exercise the care, diligence and skill in the administration and investment of the pension plan and the pension fund that a person of ordinary prudence would exercise in dealing with the property of another person.
- (3) The administrator of a pension plan shall—
- (a) within six months after the end of a fiscal year of a pension plan, submit to the Commission, an annual information report on the pension plan in the form prescribed by regulations;
 - (b) within six months after the end of a fiscal year of a pension fund, submit to the Commission, the financial statements of the pension fund as prescribed by regulations; and
 - (c) in relation to—
 - (i) a pension plan which provides defined benefits, within six months after the expiration of every three fiscal years of the pension plan, submit to the Commission a report prepared by an actuary; or
 - (ii) a pension plan which provides defined contribution benefits, within six months after the expiration of every three fiscal years of the pension fund, submit to the Commission a report prepared by an accountant, an actuary, or a person who is authorized by a financial institution and who is independent of the administrator.
- (4) The administrator of a pension plan may appoint an agent to perform any function on his behalf.
- (5) The provisions of this Act and of the regulations relating to the duties and responsibilities of an administrator shall apply to any other person authorised by or under this Act to perform any of the duties or to discharge any responsibility of an administrator in the same manner as they apply to an administrator; and an administrator shall take such steps as he considers appropriate to ensure that, in respect of such other person, those provisions are complied with.

Duty of employer to provide information to administrator

8 An employer shall provide the administrator of a pension plan with any information required by the administrator for the purpose of complying with the terms of the pension plan or this Act or the regulations.

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Contents of documents establishing pension plan and pension fund

9 The documents establishing a pension plan and its related pension fund, shall set out the following information—

- (a) the objects for which the pension plan is established, and the rules governing the administration of the pension plan and the pension fund;
- (b) the method by which the documents establishing the pension plan and pension fund may be amended;
- (c) the method of appointment and removal of the administrator and the holder of the pension fund;
- (d) the powers and duties of the administrator, including the power to delegate the administration of the pension plan to another person;
- (e) the conditions for membership in the pension plan;
- (f) the benefits and rights that are to accrue upon disability, termination of employment, termination of membership, retirement or death;
- (g) the normal retirement age under the pension plan;
- (h) the requirements for entitlement under the pension plan to any pension benefit and ancillary benefit including the vesting schedule for the pension plan;
- (i) the contributions or the method of calculating contributions under the pension plan;
- (j) the method of determining benefits payable under the pension plan;
- (k) the method of calculating interest or earnings to be credited to contributions or benefits payable under the pension plan;
- (l) the mechanism for payment of the cost of administration of the pension plan and the pension fund;
- (m) the mechanism for establishing and maintaining the pension fund;
- (n) the circumstances in which the pension plan may be wound up and the method by which the assets of the pension fund are to be allocated consequent on such winding up;
- (o) the method for allocation of gains and losses in a defined contribution plan;
- (p) the types of investments to be made and the allocation of investment income;
- (q) the obligation of the administrator to provide members with information, and documents required by or under this Act, to be disclosed;
- (r) the method of receiving or transferring a member's accrued pension benefit from or to other pension plans;

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- (s) the treatment of surplus during the existence of the pension plan and on the winding up of the pension plan;
- (t) particulars of any predecessor pension plan under which members of the pension plan may be entitled to benefits; and
- (u) such other information as may be prescribed by regulations or required by the Commission.

[section 9(j) amended by 1999:49 Sch para 4 effective 1 January 2000]

Accrual of pension benefits

10 The Commission shall not register a pension plan where—

- (a) the pension plan does not provide for the accrual of pension benefits in a gradual and uniform manner; or
- (b) the formula for computation of the employer's contributions to the pension fund or, in the case of a defined benefit pension plan, the benefits provided under the pension plan, are variable at the discretion of the employer.

Amendment of pension plan and registration of amendments

11 (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.

(2) Where a pension plan is amended, the administrator shall, within ninety days after the date on which the pension plan was amended, and in the prescribed manner, apply to the Commission for registration of the amendment.

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(3) If the amendment is in conformity with the provisions of the pension plan, this Act and the regulations, the Commission shall, upon payment of the prescribed fee, register the amendment.

(4) An amendment to a pension plan which is registered under subsection (3), may be given effect from a date earlier than the date of its registration but the amendment shall not have any effect until an application for registration has been filed.

[section 11(1) substituted by subsections (1) and (1A) by 1999:49 effective 1 January 2000]

Power of Commission to refuse to register or to cancel registration, etc.

12 (1) Subject to the provisions of this Act relating to hearings and appeals, the Commission may—

- (a) refuse to register a pension plan that does not comply with this Act and the regulations made thereunder;
- (b) cancel the registration of a pension plan if at any time after registration, the plan does not comply or is not administered in accordance with this Act and the regulations;
- (c) refuse to register an amendment to a pension plan if the amendment or the pension plan as sought to be amended would result in the pension plan ceasing to comply with this Act and the regulations.

(2) A refusal of the Commission to register a pension plan or a decision of the Commission to cancel the registration of a pension plan terminates the pension plan with effect from the date specified by the Commission and where the registration of a pension plan is refused or cancelled, the pension plan shall be wound up in accordance with this Act and the regulations.

Duty of administrator to provide information to members, etc.

13 Subject to any regulations for the purposes of this section, the administrator of a pension plan shall provide in writing to each person who is eligible or is required to become a member of the pension plan—

- (a) an explanation of the provisions of the pension plan that apply to that person;
- (b) an explanation of the person's rights and obligations in respect of the pension plan; and
- (c) any other information prescribed by the regulations.

Annual statement of pension benefits

14 The administrator of a pension plan shall provide annually or at such shorter periods as are specified in a pension plan, to each member, a written statement containing the prescribed information in respect of the pension plan, the member's pension benefits or account balance and any ancillary benefits.

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Statement of benefits on termination of employment or on ceasing to be a member

15 Where a member of a pension plan terminates employment with his employer or otherwise ceases to be a member, the administrator shall give to the member, or to any other person who as a result becomes entitled to a payment under the pension plan, a written statement setting out—

- (a) the prescribed information in respect of the pension plan;
- (b) in the case of a defined benefit plan, the member's expected benefits at his normal retirement date;
- (c) in the case of a defined contribution plan, the amount of money standing to the member's account;
- (d) in the case of a defined benefit plan, the commuted value of the expected benefits as determined by an actuary;
- (e) any ancillary benefits.

Access to documents in custody of administrator

16 (1) If any of the following persons makes a written request to the administrator for the inspection of any documents and information relating to a pension plan and the pension fund, namely—

- (a) a member;
- (b) a former member;
- (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,

the administrator shall make those documents and information available to him without charge and permit that person to make extracts or to copy them at his own expense or, if a copy is made available to him by the administrator, upon the payment of such reasonable fee as the administrator may determine.

(2) A person mentioned in subsection (1) is entitled to inspect, at the offices of the Commission during business hours of the Commission, the documents that comprise the pension plan and the pension fund and other documents relating to the pension plan or the pension fund and, upon payment of the prescribed fee, to copies of those documents.

(3) The administrator may, before making available the requested information, require the person to provide information establishing his entitlement to see the information.

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(4) Notwithstanding subsection (1), the administrator shall not make available personal information that relates to a member or former member without the consent of that member or former member, or that member's or former member's legal representative.

(5) Notwithstanding subsection (2), a person shall not be permitted to inspect documents or personal information that relates to a member or former member without the consent of that member or former member, or that member's or former member's legal representative.

[section 16(1)(c) to (e) substituted by 1999:49 Sch para 5 effective 1 January 2000]

Eligibility for membership

17 (1) Subject to subsections (2) and (3), every employee of a category of employees for whom a pension plan is established or is on the date that this Act comes into operation, in existence, shall be eligible to be a member of the pension plan.

(2) Except as otherwise provided by or under this Act, an eligible employee shall, by virtue of this section alone, be a member in a pension plan if—

- (a) he is twenty-three years old or more; and
- (b) he has completed seven hundred and twenty or more hours of employment with the employer to whom the pension plan relates in any given calendar year prior to membership in the pension plan,

and, subject to the provisions of this Act, his membership in the pension plan shall continue until he attains the normal retirement age.

(3) Where a person is employed by more than one employer, he shall be enrolled as a member of each pension plan for which he has met the criteria set out in subsection (2).

(4) A member of a pension plan does not cease to be a member by reason only that he is employed for fewer than seven hundred and twenty hours in a calendar year.

[section 17(2) amended by 1999:49 Sch para 6 effective 1 January 2000]

PART III

FUNDING AND CONTRIBUTIONS

Funding

18 (1) A pension plan shall not be eligible for registration under this Act unless it provides for funding sufficient, on the date of its registration or on some other future date as may be determined by the Commission in each particular case, to provide the benefits and rights under the pension plan in accordance with this Act and the regulations.

(2) The administrator of a pension plan shall, if so required by the Commission, submit to the Commission information in writing to show either that the pension plan has sufficient funding or that it has in force a programme which, when implemented, will enable it to provide sufficient funding as required under subsection (1).

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(3) All assets of a pension plan shall be received and held in a distinct fund, separate from the assets of the employer by—

- (a) a financial institution;
- (b) a trust in Bermuda governed by a written trust agreement under which the trustees are—
 - (i) a financial institution; or
 - (ii) three or more individuals approved by the Commission to be trustees, either for a particular pension fund or generally for pension funds established or maintained under this Act, such persons being persons who, in the opinion of the Commission, have the necessary experience and expertise to be pension fund trustees;
- (c) a person, or group of persons, or an entity, which under or by virtue of any other law is made responsible for holding the assets of a pension fund; or
- (d) any two or more of the institution, trustees, persons or entity, as the case may be, referred to in paragraphs (a) to (c).

[section 18(1) amended by 1999:49 Sch para 7 effective 1 January 2000]

Contributions

19 (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) Notwithstanding subsection (1), an employer may, in respect of any or all of his employees, contribute to the pension fund amounts representing both the amount required to be contributed by the employer and a part or the whole of the amount required to be contributed by the employee.

(3) Notwithstanding the rates prescribed in the First Schedule, a member may make additional voluntary contributions to the pension fund in accordance with the rules of the pension plan but no such additional contribution shall be construed as imposing an

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obligation on the employer to contribute to the pension fund an amount exceeding the amount specified in that Schedule in respect of the employer's contribution.

(4) Notwithstanding the rates prescribed in the First Schedule, an employer may make contributions in respect of a member to the pension fund in accordance with the rules of the pension plan that exceed the contributions required to be made in the First Schedule, but no such additional contribution shall be construed as imposing an obligation on the member to contribute to the pension fund an amount exceeding the amount specified in that Schedule in respect of the member's contribution.

(5) The employer shall, at least once in every month, withhold from the member's earnings the relevant amount of the member's contribution and pay the same within thirty days following the month in which the amount was withheld, together with the employer's contribution, directly into the pension fund.

(6) The administrator and any person authorized by subsection 18(3) to receive contributions under a pension plan shall immediately give written notice to the employer and to the Commission of any contribution that is not paid to the pension fund when due.

(7) No administrator or person authorized by subsection 18(3) or an agent of such person is in breach of any duty to which he is otherwise subject by reason of his communicating in good faith to the Commission, whether or not in response to a request made by it, or by reason of any obligation under subsection (6), any information or opinion on any matter of which he becomes aware and which may affect the fair and proper administration of a pension plan or pension fund.

(8) The Minister may, from time to time, by order subject to the affirmative resolution procedure vary the rates specified in the First Schedule.

(9) *[omitted]*

(10) The Minister may, by regulations, provide for—

- (a) the manner in which failure to comply with the provisions of this section is to be dealt with;
- (b) the procedure for the recovery of any contributions due under this section;
- (c) the rate of interest on contributions;
- (d) the recovery of contributions or other amounts erroneously paid, or paid in excess of or below the prescribed rates;
- (e) *[omitted]*

[section 19(1) substituted by 1999:49 s.5(1), and subsections (9) and (10)(e) omitted by 1999:49 Sch para 8, effective 1 January 2000]

Civil proceedings

19A (1) All contributions due to the pension fund of a pension plan by an employer, including members' contributions withheld under section 19(5), are recoverable as a debt due to the pension fund, and without prejudice to any other remedy, may be recovered

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summarily as a civil debt by the Commission, on behalf of the pension fund, or by a person, including an administrator, authorized in writing by the Commission.

(2) Without prejudice to any other remedy for recovery of contributions that are due to be paid to a pension fund by an employer, including members' contributions withheld under section 19(5), the directors and officers of a company or other body corporate that, as an employer, owes contributions are liable jointly and severally for contributions that became due while they were directors or officers, and proceedings may be taken under this section against all or any of them for recovery of those contributions.

(3) For greater certainty, proceedings may be taken under this section against persons who were directors or officers after they cease to be directors or officers, including persons who ceased to be directors or officers before the coming into force of this section.

(4) A director or officer who has paid contributions pursuant to proceedings under this section has a right of contribution against any other directors and officers of the company or other body corporate who are liable under this section for the contributions paid by that director or officer, and a right to be indemnified by the company or body corporate in respect of those contributions.

(5) For the purposes of subsections (2) to (4), "officer" means—

- (a) in the case of a company as defined in section 2 of the Companies Act 1981, an individual appointed as an officer of the company pursuant to section 91(4) of that Act; and
- (b) in the case of other companies and bodies corporate, an individual who performs functions for a company or other body corporate similar to those normally performed by an individual appointed as an officer of a company pursuant to section 91(4) of the Companies Act 1981.

[section 19A inserted by 2006:32 s.2 effective 7 December 2006]

PART IV

VESTING AND RETIREMENT

Normal retirement age

20 (1) The normal retirement date under a pension plan registered under this Act shall be not later than one year after a member of the pension plan has attained the age of sixty-five years unless the pension plan specifies an earlier normal retirement date.

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

- (a) his actual retirement, or

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- (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.

[section 20(2) to (4) substituted by 1999:49 Sch para 9 effective 1 January 2000]

Early retirement

21 (1) A member or former member of a pension plan may elect to receive an early retirement pension if he is within ten years of attaining the normal retirement date.

(2) The commuted value of a member's, or former member's, early retirement pension benefit must not be less than the commuted value of the member's, or former member's, deferred pension in the pension plan.

(3) An election under subsection (1) shall be made in writing, signed by the member or former member and delivered to the administrator of the pension plan.

[section 21(2) amended by 1999:49 Sch para 10 effective 1 January 2000]

Vesting

22 (1) Every pension plan which is to be registered shall provide for the full vesting of accrued benefits in each of its members within a period which does not exceed two years after the commencement of membership.

(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.

[section 22(2) inserted by 1999:49 s.6 effective 1 January 2000]

Portability

23 (1) A member of a pension plan who terminates employment shall be entitled to require the administrator to pay an amount equal to the commuted value of the member's benefits in the case of a defined benefit pension plan or the account balance in the case of a defined contribution pension plan—

- (a) to the pension fund of a new employer;
- (b) to a prescribed retirement product;
- (c) for the purchase for the member of a life annuity that will commence on a date not earlier than the earliest date on which the member would have been entitled to receive payment of pension benefits under the pension plan; or
- (d) to a financial institution pension plan.

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(2) A member may exercise his right under subsection (1) by delivering to the administrator within ninety days from his date of termination a direction in a form determined by the Commission.

(3) The administrator shall comply with the direction within thirty days after delivery of the direction.

(4) If a member who has a right under subsection (1) does not deliver a direction as required by subsection (2), the administrator may deal with the commuted value of the member's benefits or the member's account balance according to his fiduciary obligations or as otherwise required by law.

(5) The administrator is discharged on making the payment or transfer in accordance with subsection (2) if the payment or transfer complies with this Act and the regulations.

[section 23(1) and (4) amended by 1999:49 Sch para 11 effective 1 January 2000]

PART V

LOCKING-IN OF CONTRIBUTIONS AND BENEFITS

Restrictions on refunds

24 (1) Except as otherwise provided under this Act, a member of a pension plan is not entitled to a refund from a pension fund of contributions made or any interest on such contributions.

(2) Subsection (1) does not prohibit the refund of any additional voluntary contributions and interest thereon to a member or former member in accordance with the provisions of the pension plan.

(3) Subsection (1) does not prohibit the refund of any contributions made and interest thereon to a member or former member in respect of his employment before the date that this Act comes into operation.

(4) Subsection (1) does not prohibit the payment of a commuted value set out in section 35(1) or account balance set out in section 35(2).

(5) Notwithstanding subsection (1), on application by the administrator of a pension plan to the Commission, the Commission may permit the refund of contributions and interest thereon if—

- (a) the pension plan provides for the refund; and
- (b) the employer has assumed responsibility for the funding of all pension benefits associated with the contributions.

(6) On application by the administrator to the Commission, if the pension plan provides, the Commission may permit payment out of a pension fund to an employer of an amount not in excess of the amount of an overpayment by an employer or of an amount paid by the employer that should have been paid out of the pension fund, but shall not

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consent unless the application is made within ninety days after the end of the fiscal year of the pension fund in which the overpayment occurred.

(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.

(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.

(9) Nothing in subsection (1) or the provisions of a pension plan or retirement product shall prohibit the refund to a member or former member—

- (a) of such amount of any contributions made, interest thereon or accrued benefits; and
- (b) in such circumstances of financial hardship,

as may be prescribed.

[Section 24 subsection (6) amended, and (7) substituted, by 1999:49 Sch para 12, and subsection (8) inserted by 1999:49 s.7, effective 1 January 2000; subsection (9) inserted by 2010 : 19 s. 2 effective 1 September 2010]

Void transactions

25 A transaction is void to the extent that it purports to convey, assign, charge, anticipate or give as security—

- (a) a right to receive money payable under a pension plan; or
- (b) assets being transferred from a pension fund.

Exemption from execution, seizure or attachment

26 (1) Money payable under a pension plan is exempt from execution, seizure or attachment or any other process taken by a creditor.

(2) Money transferred from a pension fund to a prescribed retirement product or for the purchase of a life annuity is exempt from execution, seizure, attachment or any other process taken by a creditor.

(3) Money payable from a prescribed retirement product or from a life annuity purchased with moneys transferred from a pension fund is exempt from execution, seizure, attachment or any other process taken by a creditor.

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Commutation or surrender

27 Except as provided under this Act a pension or a benefit of a person under a pension plan shall not be commuted or surrendered during that person's life and any commutation or surrender is void.

Exceptions to general restrictions

28 Sections 26 and 27 do not apply to a transfer required by a court order or pursuant to a property settlement agreement relating to the transfer of assets on a divorce or to an order or settlement agreement for the maintenance of a spouse, whether the order for the transfer of assets or for maintenance was made before or after the commencement of this Act.

PART VI BENEFITS

Ancillary benefits

29 A pension plan may provide the following ancillary benefits in relation to the pension benefit, that is to say,—

- (a) disability benefits;
- (b) survivor benefits;
- (c) supplemental benefits payable for a temporary period of time;
- (d) early retirement options and benefits in excess of those provided by this Act;
- (e) benefits arising from additional voluntary contributions; or
- (f) any other ancillary benefits prescribed by regulations.

[section 29 amended by 1999:49 Sch para 13 effective 1 January 2000]

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 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.

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(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.

[section 30 substituted by 1999:49 s.8 effective 1 January 2000]

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.

[section 31 substituted by 1999:49 s.8 effective 1 January 2000]

Minimum aggregate benefits

32 (1) In respect of employment before the date this Act comes into operation—

- (a) the aggregate of benefits payable under a pension plan to a member shall not be less than the market value of the member’s vested account balance under defined contribution plans or the commuted value of the member’s vested benefit under defined benefit plans;
- (b) if the aggregate of benefits in paragraph (a) is less than the member’s contributions plus interest credited to the contributions, the member is entitled to have the commuted value under a defined benefit provision increased so that the commuted value is equal to the value of the member’s contributions plus interest.

(2) An increase in the value of the vested pension benefit in respect of employment before the date this Act comes into operation that results from an amendment to the pension plan on or after that date may be included in calculating the commuted value.

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(3) A member's contributions to a pension plan made on or after the date this Act comes into operation and the interest on the contributions shall not be used to provide more than 50% of the commuted value of contributory benefits accrued after that date to which the former member is entitled under the pension plan on termination of membership or employment.

(4) A member who is entitled to a vested pension benefit on termination of employment or membership is entitled to payment from the pension fund of a lump sum payment equal to the amount by which the member's contributions under the pension plan made on or after the date this Act comes into operation and the interest on the contributions exceeds one-half of the commuted value of the contributory benefit accrued after the date this Act comes into operation.

(5) The following may be excluded in determining that part of the commuted value to which subsections (3) and (4) apply, that is to say,—

- (a) defined contribution benefits;
- (b) benefits that result from additional voluntary contributions;
- (c) in the case of a multi-employer pension plan that permits a member who has not accrued maximum pension benefits permitted under the pension plan in a fiscal year of the pension plan to make contributions to increase the member's pension benefit to the maximum permitted for the fiscal year, benefits resulting from such contributions; and
- (d) any other benefits prescribed in the regulations for the purposes of this subsection.

(6) The following may be included by the administrator in calculating a member's contributory benefit for the purposes of subsection (3), that is to say,—

- (a) ancillary benefits related to employment on or after the date that this Act comes into operation;
- (b) increases to pension benefits and ancillary benefits related to employment before the date of the amendment resulting from an amendment to the pension plan made on or after the date that this Act comes into operation but which are not included in calculating the commuted value under subsection (3);
- (c) pension benefits and ancillary benefits related to employment before the date of the establishment of the pension plan, in the case of a pension plan established on or after the date that this Act comes into operation.

[section 32 amended by 1999:49 Sch para 14 effective 1 January 2000]

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.

[section 33 substituted by 1999:49 s.9 effective 1 January 2000]

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Variation of payment to disabled persons

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.

[Section 34 substituted by 1999:49 Sch para 15 effective 1 January 2000]

Small pensions

35 (1) A pension plan that provides defined benefits may provide for payment of the commuted value of the former member's benefits to the former member if the commuted value is not more than 5% of the average employment income as prescribed in the regulations in the year that the former member terminated his employment.

(2) A defined contribution pension plan may provide for payment of the former member's account balance to the former member if the account balance is not more than 5% of the average employment income as prescribed in the regulations in the year that the former member terminated his employment.

[section 35(1) amended by 1999:49 Sch para 16 effective 1 January 2000]

Information for payment of pension

36 (1) The administrator of a pension plan may, before paying a pension or other benefit, or the commuted value of such pension or other benefit, require the person entitled to such pension, benefit or commuted value, to provide any necessary or relevant information regarding the amount to be paid.

(2) The administrator of a pension plan is not liable in connection with the amount payable—

- (a) to the extent of his reasonable reliance on the information provided by the person entitled pursuant to subsection (1); or
- (b) where the person entitled fails to provide the information required pursuant to subsection (1), to the extent of his reliance on the information available in the records regarding the pension or benefit.

[section 36 amended by 1999:49 Sch para 17 effective 1 January 2000]

Prohibition of discrimination on the basis of sex

37 (1) The sex of a member, former member or other beneficiary under a pension plan shall not be taken into account in—

- (a) determining the amount of contributions required to be made by a member of the plan;
- (b) determining the defined benefits to which a member, former member or other beneficiary is or may become entitled;
- (c) the provision of eligibility conditions for membership; or
- (d) the provision of ancillary benefits.

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(2) This section applies in respect of contributions, benefits and conditions in relation to—

- (a) employment after the date that this Act comes into operation; and
- (b) employment before the date that this Act comes into operation in so far as it is dealt with in an amendment made to the pension plan after that date.

PART VII WINDING UP

Winding up

38 (1) The administrator may wind up a pension plan in whole or in part.

(2) Where the administrator proposes to wind up a pension plan, he shall give written notice of that proposal to—

- (a) the Commission;
- (b) each member of the pension plan;
- (c) each former member of the pension plan;
- (d) each trade union that represents members of the pension plan; and
- (e) any other person entitled to a payment from the pension fund.

(3) The notice of a proposal to wind up shall contain such information as may be prescribed in regulations.

(4) Subject to subsection (5), in the case of a contributory pension plan, the effective date of the winding up shall not be earlier than the date members' contributions, if any, cease to be deducted or, in any other case, on the date notice of the winding up is given to the members.

(5) Notwithstanding subsection (4), the Commission may direct that a different date be taken as the effective date of winding up if it is satisfied that there are reasonable grounds for the change.

(6) The Commission may order the winding up of a pension plan in whole or in part—

- (a) if all or a significant part of the business of the employer is discontinued;
- (b) if the employer becomes insolvent;
- (c) if an application for its registration is not granted, or if the registration of the pension plan is revoked; or
- (d) if the employer becomes bankrupt within the meaning of the Bankruptcy Act 1989;

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- (e) if there has been a cessation or suspension of the employer's or employees' contributions or accrual of benefits to the pension fund;
- (f) if the employer fails to make contributions to the pension fund as required by this Act or the regulations;
- (g) if a significant number of members of the pension plan cease to be employed by the employer as a result of the discontinuance of all or part of, or the reorganization of, the employer's business; or
- (h) if any other event or circumstance, as may be prescribed, occurs.

Appointment of winding up administrator

39 (1) Where the Commission orders the winding up of a pension plan under section 38(6), it may appoint a person for this purpose who shall have the powers and functions of the administrator and who shall—

- (a) perform any act for and on behalf of the pension plan and represent it in and out of court;
- (b) compile an inventory of the assets and liabilities of the pension plan;
- (c) determine the amount each member is entitled to receive from the pension fund;
- (d) determine the amount due to former members of the pension plan and other persons;
- (e) set out the method of allocating and distributing the assets of the pension plan and the priorities for payment of benefits; and
- (f) perform any other function as may be prescribed.

(2) The reasonable costs of the person appointed by the Commission may be paid out of the pension fund.

(3) Nothing in this section shall be construed as prohibiting the appointment of the administrator for the purposes of subsection (1).

[section 39 amended by 1999:49 Sch para 18 effective 1 January 2000]

Report on winding up

40 (1) The person winding up a pension plan shall, at the conclusion of the winding up submit a report to the Commission for its approval, setting out the matters referred to in section 39.

- (2) The Commission may refuse to approve a winding up report if the report—
 - (a) is not in accordance with the requirements of this Act or regulations; or
 - (b) in its proposals or recommendations, does not protect the interests of the members and former members.

[section 40(1) amended by 1999:49 Sch para 19 effective 1 January 2000]

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Regulation of pension plan being wound up

41 With effect from the effective date of the winding up of a pension plan—

- (a) except as otherwise provided in paragraphs (b) and (c), no payment shall be made out of the pension fund of a pension plan until the Commission has approved the report of the person winding up the pension plan;
- (b) a pension or any other benefit the payment of which commenced before the effective date of the winding up may continue to be paid after that date; and
- (c) any payment out of the pension fund, other than a payment under paragraph (b) or for reasonable costs relating to the person appointed to wind up the pension fund as determined by the Commission, may be made only with the approval of the Commission or as prescribed in regulations;
- (d) the benefits provided under the pension plan shall become fully vested in the members without regard to their actual period of service;
- (e) notwithstanding the winding up, an employer shall remain liable for the contributions which he was, immediately before the effective date, liable to pay into the pension fund.

[section 41(a) amended by 1999:49 Sch para 19 effective 1 January 2000]

Notice of entitlements

42 On the winding up of a pension plan, the person winding up the pension plan shall give to each person entitled to a benefit in respect of the pension plan a statement setting out—

- (a) the person's entitlement under the pension plan; and
- (b) the options available to the person regarding the immediate payment of a pension benefit if he is eligible therefor or, if not so eligible, for the payment of a pension commencing on such future date and on such terms as may be prescribed; and
- (c) any other information prescribed by regulations.

[section 42 amended by 1999:49 Sch para 19 effective 1 January 2000]

Determination of entitlement

43 For the purpose of determining the amount of pension benefits and any other rights, benefits and entitlements on the winding up of a pension plan in whole or in part—

- (a) the employment of each member affected by the winding up shall be deemed to have been terminated on the effective date of the winding up; and
- (b) each member's pension benefits at the commencement of the winding up shall be determined as if the member had satisfied all conditions for eligibility for a deferred pension benefit.

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Liability of employer on winding up

44 (1) Where a pension plan is wound up, the employer shall pay into the pension fund an amount equal to the total of all payments that, under this Act, the regulations and the pension plan, are due or that have accrued and that have not been paid into the pension fund.

(2) The employer shall pay the money due under subsection (1) in the prescribed manner and at the prescribed times.

(3) In any case where—

- (a) any warrant of distress is executed against the property of an employer and the property is seized or sold in pursuance of the execution; or
- (b) on the application of a secured creditor the property of an employer is seized or sold,

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.

[section 44(3) amended by 1999:49 Sch para 20 effective 1 January 2000]

Pension fund continues subject to the Act and the regulations

45 (1) The pension fund of a pension plan that is wound up continues to be subject to this Act and the regulations until all the assets of the pension fund have been disbursed.

(2) Where the money in a pension fund is not sufficient to pay all the pension on the winding up of the pension plan in whole or in part, the pension benefits and other benefits shall be reduced in the prescribed manner.

[section 45(2) amended by 1999:49 Sch para 21 effective 1 January 2000]

Surplus

46 No surplus may be paid out of a pension fund without the prior consent of the Commission.

PART VIII

SALES, TRANSFERS AND NEW PLANS

Continuation of benefits under successor employer

47 (1) Where an employer who contributes to a pension plan sells, assigns or otherwise disposes of all or part of his business or all or part of the assets of his business, and a member of the pension plan as a result becomes an employee of the successor employer and becomes a member of the pension plan provided by the successor employer, that member—

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- (a) continues to be entitled to the benefits provided under the employer's pension plan in respect of his employment up to the effective date of sale, assignment or disposition, without further accrual;
- (b) is entitled to credit in the pension plan of the successor employer for the period of membership in the employer's pension plan, for the purpose of determining eligibility for membership in or entitlement to benefits under the pension plan of the successor employer; and
- (c) is entitled to credit in the employer's pension plan for the period of employment with the successor employer for the purpose of determining entitlement to benefits under the employer's pension plan.

(2) Subsection (1)(a) does not apply if the successor employer assumes responsibility for the accrued benefits of the employer's pension plan and the pension plan of the successor's employer shall be deemed to be a continuation of the employer's plan with respect to any benefits or assets transferred.

(3) Where a transaction described in subsection (1) takes place, the employment of the employee shall be deemed, for the purposes of this Act, not to be terminated by reason of the transaction.

(4) Subject to subsection (5), where a transaction described in subsection (1) occurs and the successor employer assumes responsibility in whole or in part for the benefits provided under the employer's pension plan, with the prior approval of the Commission, a transfer of assets shall be made from the pension fund related to the employer's pension plan to the pension fund related to the plan provided by the successor employer in accordance with the prescribed terms and conditions.

(5) The Commission shall not approve a transfer of assets that does not—

- (a) protect the pension benefits and any other benefits and rights of the members and former members; or
- (b) meet the prescribed requirements and qualifications provided for in or under this Act or the regulations.

(6) The Commission may by order require a transferee to return to the pension fund, with interest at a rate to be prescribed, assets transferred without the prior approval required by subsection (4).

(7) Subject to section 51, an order for return of assets under subsection (6) may be enforced in the same manner as a judgement of the Supreme Court for the payment of a sum of money.

(8) In this section, "successor employer" means the person who acquires the business or the assets of the employer.

[section 47(2) amended by 1999:49 Sch para 21 effective 1 January 2000]

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Adoption of a new pension plan

48 (1) Where a pension plan is established by an employer to be a successor to an existing pension plan and the employer ceases to make contributions to the original pension plan, the original pension plan shall be deemed not to be wound up and the new pension plan shall be deemed to be a continuation of the original pension plan.

(2) The benefits and rights under the original pension plan in respect of employment before the establishment of the new pension plan shall be deemed to be benefits and rights under the new pension plan.

(3) Subsection (2) applies whether or not the assets and liabilities of the original pension plan are consolidated with those of the new pension plan.

(4) No assets may be transferred from the pension fund of the original pension plan to the pension fund of the new pension plan without the prior approval of the Commission or contrary to the prescribed terms and conditions.

(5) The Commission shall not approve a transfer of assets that does not protect the pension benefits and any other benefits and rights of the members, former members and beneficiaries of the original pension plan or that does not meet the prescribed requirements and qualifications.

(6) The Commission may by order require a transferee to return to the pension fund assets, with interest at a rate to be prescribed in the regulations, transferred to him by the administrator without the prior approval of the Commission or transferred contrary to the prescribed terms or conditions.

(7) Subject to section 51, an order for the return of assets under subsection (6), may be enforced in the same manner as a judgment of the Supreme Court for the payment of a sum of money.

PART IX

ORDERS AND ADVICE BY COMMISSION

Orders by Commission

49 (1) The Commission may, in the circumstances mentioned in subsection (2), order an administrator or any other person to take or refrain from taking any action in respect of a pension plan or a pension fund.

(2) The Commission may make an order under this section if it is of the opinion—

- (a) that the pension plan or pension fund is not being administered in accordance with this Act, and the regulations or the pension plan; or
- (b) that the pension plan does not comply with this Act and the regulations; or
- (c) that the administrator of the pension plan, the employer or any other person dealing with a pension plan is contravening a requirement of this Act or the regulations.

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(3) In an order made under this section the Commission may specify the time or times when or the periods of time within which the persons to whom the order is directed must comply with the order.

(4) An order under this section is not effective unless the reasons for the order are set out in the order.

Advice by Commission as to conformity

50 (1) The Commission may at any time, advise whether the rules of a pension plan do or do not conform with the requirements of this Act or the regulations.

(2) Where the Commission advises that the rules do not conform, it may indicate what steps it considers should be taken in order to achieve conformity.

PART X HEARINGS AND APPEALS

Hearing in certain cases

51 (1) Where the Commission proposes to refuse to register a pension plan or an amendment to a pension plan or to revoke the registration of a pension plan, it shall serve notice of the proposal, together with written reasons therefor, on the applicant or the administrator of the plan.

(2) A notice under subsection (1) shall state that the person on whom it is served is entitled to a hearing by the Commission if the person delivers to the Commission, within thirty days after service of the notice under that subsection, notice accepting that a hearing should be held regarding the matter in which the Commission proposes to make a decision.

(3) A party to a hearing shall be given a reasonable opportunity to show, or to achieve, compliance before the hearing, with all lawful requirements for the registration or the continued registration of the pension plan.

Appeals to Supreme Court

52 A person aggrieved by the decision of the Commission to reject an application to register a pension plan, or an amendment to the pension plan or to revoke the registration of a pension plan may appeal to the Supreme Court in writing within twenty-one days of the service of the decision of the Commission or such longer period as, on application by the person appealing, the Supreme Court may allow.

Regulations relating to hearings and appeals

53 The Minister may by regulations prescribe the practice and procedure for hearings and, in consultation with the Chief Justice, for appeals to the Supreme Court under this Part.

PART XI
THE PENSION COMMISSION

Establishment of Pension Commission

- 54 (1) There is established a body to be known as the Pension Commission.
- (2) The Commission is a body corporate with perpetual succession and a common seal and shall have power to—
- (a) acquire, hold and dispose of moveable and immovable property;
 - (b) enter into contracts;
 - (c) sue and to be sued in its own name; and
 - (d) do and suffer all such acts and things as bodies corporate may lawfully do or suffer.
- (3) The provisions of the Second Schedule shall have effect with respect to the constitution, proceedings and other matters set out in that Schedule in relation to the Commission.

Members of the Commission

- 55 (1) The Commission shall consist of—
- (a) the following members appointed by the Minister—
 - (i) a Chairman;
 - (ii) a Deputy Chairman; and
 - (iii) not less than five nor more than seven other members; and
 - (b) the Financial Secretary as *ex officio* member.
- (2) The Chairman and the Deputy Chairman shall hold office at the Minister's pleasure.
- (3) A member of the Commission referred to in paragraph (a)(iii) of subsection (1) shall, unless his appointment is sooner terminated or he otherwise ceases to be a member, hold office for a term not exceeding three years or such other shorter period as may be specified in his instrument of appointment and may, from time to time, be re-appointed.
- (4) A member appointed under subsection (1)(a) may resign his office by notice in writing delivered to the Minister.
- (5) There may be paid as part of the expenses of the Commission to members of the Commission appointed under subsection (1)(a) such remuneration and allowances as the Minister may determine.

Functions of the Commission

- 56 The functions of the Commission are—

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- (a) to administer this Act and the Regulations;
- (b) to consider and determine applications for the registration of pension plans;
- (c) to promote and ensure compliance, by pension plans, with the provisions of this Act and the regulations;
- (d) to monitor the administration, and funding, of pension plans and to enforce the provisions of this Act and the regulations in respect of such administration and funding;
- (e) to verify the payment of benefits under pension plans;
- (f) to promote public education on pension plans and their benefits;
- (g) to advise the Minister on any matter relating to pensions, including the development of laws relating to pension plans;
- (h) to provide such information relating to its functions as the Minister may require; and
- (i) to investigate complaints relating to a pension plan and a pension fund;
- (j) to perform any other functions provided for in or under this Act.
- (k) to carry out functions under section 40A and Schedule 2 of the Public Service Superannuation Act 1981.

[Section 56 paragraph (k) inserted by 2012 : 9 s. 6 effective 1 April 2012]

Officers and employees of the Commission

57 (1) The Commission shall appoint a Chief Executive Officer and such other officers and employees as it may consider appropriate for the discharge of its functions and, subject to section 58 on such terms and conditions as the Commission may determine.

Chief Executive Officer

58 (1) The Chief Executive Officer of the Commission shall be appointed by the Commission after consultation with the Minister and his services shall not be terminated by the Commission except after the like consultation.

(2) The terms and period of service of the Chief Executive Officer shall be fixed by the Commission.

(3) The Chief Executive Officer shall be responsible for the day to day management of the Commission and, subject to the directions of the Commission, shall be responsible for carrying out the functions of the Commission.

Protection from personal liability

59 A member of the Commission or any officer, employee or agent of the Commission shall not be personally liable in damages for anything done or omitted to be done in the

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discharge or purported discharge of the Commission's functions under this Act unless the act or omission was in bad faith.

Funds of the Commission

60 The funds of the Commission shall consist of—

- (a) grants from the Government out of moneys appropriated by the Legislature for the purposes of the Commission;
- (b) any moneys accruing to the Commission in the course of the Commission's discharge of its functions; and
- (c) any other moneys received by the Commission.

Power to order information and reports

61 (1) For the purpose of ascertaining compliance with this Act and the regulations, the Commission may order an employer or an administrator of a pension plan to provide the Commission with such information or report and within such time limits as it may specify.

(2) An order under this section may include, but is not limited to, ordering the preparation of a new report and specifying the assumptions and methods or both, that shall be used in the preparation of the new report.

Accounts and audit

62 (1) The Commission shall keep books of account and maintain proper records of its operations.

(2) The accounts of the Commission shall be audited annually by the Auditor or such other person registered as a public accountant under the Chartered Professional Accountants of Bermuda Act 1973 appointed for the purpose by the Auditor on such terms and conditions as the Auditor may determine.

[Section 62 amended by 2014 : 8 s. 16 effective 11 April 2014]

Budget

63 (1) The Commission shall submit to the Minister for his approval—

- (a) not later than seven months prior to the commencement of each financial year, income and expenditure estimates, in such detail as the Minister may require, relating to the programmes planned for that financial year of operation of the Commission; and
- (b) as soon as may be, any subsequent proposal to amend such estimates,

and the estimates, together with any amendments, upon being approved by the Minister, shall be the Commission's budget for the financial year to which it relates.

(2) The Minister may in any case, on the application of the Commission, increase or decrease the period of seven months specified in subsection (1)(a).

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Annual Reports

64 (1) The Commission shall, within six months of the end of each financial year, submit to the Minister an annual report in respect of that year containing—

- (a) a copy of the audited accounts of the Commission together with the Auditor's report on those accounts;
- (b) a report on the operations of the Commission during that financial year; and
- (c) such other information as the Minister may, prior to the completion of the annual report or as supplementary thereto, require.

(2) The Minister shall cause a copy of the annual report to be laid before both Houses of the Legislature at the session of the House of Assembly immediately following the submission of the report.

PART XII

GENERAL

Power of entry, search, etc.

65 (1) For the purposes of the administration or enforcement of this Act and the regulations or any matter relating to the Act or the regulations, a member of the Commission, an officer or employee of the Commission may or any other person authorized by the Commission may, either alone or together with another person or persons,

- (a) at any reasonable time, enter any premises, where that person has reasonable grounds to believe that documents or other things relating to a pension plan or a pension fund are kept;
- (b) examine, investigate or make inquiries or require the production of any document or thing relating to a pension plan or a pension fund;
- (c) make, take, remove or require the making, taking or removal of copies or extracts relating to an examination, investigation or inquiry.

(2) A person exercising powers under subsection (1)—

- (a) shall provide identification of himself at the time of entry; and
- (b) may not enter a private residence without the consent of the owner or occupier except on the authority of an inspection order issued under subsection (4).

(3) A copy of any document relating to a pension plan or pension fund and made under subsection (1) in the course of an investigation, examination or inquiry and certified by the Chief Executive Officer is admissible in evidence in any action for all purposes for which the original would have been admissible.

(4) Where an owner or occupier of premises denies entry to any person referred to in subsection (1) or orders him to leave the premises, or obstructs him or refuses to comply

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with a request for the production of any document required under that subsection, that person may apply to a magistrate for an inspection order authorising him to enter the premises and do anything for the purpose of any matter set out in subsection (1).

Extension of time

66 The Commission may extend any time limit under this Act or the regulations, before or after the expiration of the time limit, if satisfied that there are reasonable grounds for granting the extension and may give such directions as the Commission considers proper consequent upon the extension.

Offences, penalties and orders for payment

67 (1) A person who contravenes a provision of this Act or the Regulations is guilty of an offence.

(2) A person who contravenes an order made under this Act is guilty of an offence.

(3) Subject to section 65(4), a person who hinders or obstructs another person lawfully carrying out a duty under this Act or the Regulations is guilty of an offence.

(4) A person convicted of an offence under this Act is liable—

(a) on conviction by a court of summary jurisdiction, to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment ; or

(b) on conviction on indictment, to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding five years, or to both such fine and imprisonment.

(5) Where a person is convicted of an offence relating to the failure to submit or make payment to a pension fund, the court may, in addition to any penalty, assess the amount not submitted or paid and order the person to pay the amount to the pension fund.

Offences by bodies corporate

68 (1) Where an offence under this Act or the regulations which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and be liable to be proceeded against accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Regulations

69 (1) The Minister may, after consultation with the Commission, make regulations—

(a) for the administration of pension plans, pension funds and benefits;

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- (b) prescribing the method of calculating the commuted value of a pension or benefit in a pension plan;
 - (c) prescribing the methods of calculating the values of assets and liabilities of pension funds; and the carrying out of periodic actuarial valuations of pension plans;
 - (d) providing for the establishment of pension plans, in respect of persons who are self-employed;
 - (e) prescribing criteria to be complied with in connection with the paying of surplus out of pension funds;
 - (f) regulating the investment of money from pension funds and prescribing the investments or categories of investment in which such money may be invested;
 - (g) prescribing the requirements for life annuity contracts purchased from benefits paid or payable under this Act;
 - (h) prescribing rates of interest and the method of calculating interest payable under this Act or the regulations;
 - (i) prohibiting the investment of money from pension funds; and
 - (j) requiring the audit of pension plans and pension funds and prescribing the persons who may perform, and the manner of performing, such audits;
 - (k) governing the winding up or partial winding up of pension plans and prescribing priorities or the method of determining priorities on winding up, including priorities in the allocation of assets and related matters;
 - (l) prescribing reports to be submitted to the Commission, the contents and method of preparation of such reports, the persons by whom such reports are to be prepared and the qualification, if any, required in respect of such persons;
 - (m) prescribing forms and records required to be prescribed under the Act and time limits for retention of such records;
 - (n) prescribing any fees payable under any provision of this Act or the Regulations;
 - (o) prescribing retirement products and the requirement of such products;
 - (p) prescribing the information that shall be provided by an administrator of a pension plan to members and the period of time for which such information shall be provided; and
 - (q) generally prescribing all other matters which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The affirmative resolution procedure shall apply to regulations made under this Act.

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Reciprocity with other countries

70 (1) For the purpose of giving effect to any agreement between the Government of Bermuda and the government of another country providing for reciprocity in matters relating to payments for purposes similar or comparable to the purposes of this Act, the Minister may, by regulations made by him under this section, make provision for modifying or adapting this Act in its application to cases affected by the agreement.

(2) Except insofar as regulations made under subsection (1) make specific modifications or adaptations, this Act shall be read and construed with such modifications and adaptations to such extent as may be required to give effect to the provisions contained in an agreement to which subsection (1) applies.

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

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.

[section 71 substituted by 1999:49 s.10 effective 1 January 2000]

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.

[section 72 inserted by 1999:49 s.10 effective 1 January 2000]

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FIRST SCHEDULE

(section 19)

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CONTRIBUTION SCHEDULE

| Date | Contribution Rate (% of pensionable earnings) | Annual Defined Benefit Accrual Rate (% of final average earnings) |
|----------------|---|---|
| 1 January 2000 | 1% | 0.25% |
| 1 January 2001 | 2% | 0.50% |
| 1 January 2002 | 3% | 0.75% |
| 1 January 2003 | 4% | 1.00% |
| 1 January 2004 | 5% | 1.25% |

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
- (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.

[Schedule 1 amended by 1999:49 s.5(2) effective 1 January 2000]

SECOND SCHEDULE

(section 54(3))

PROCEDURE AT MEETINGS

1 No fewer than five appointed members shall form a quorum at a meeting of the Commission.

2 An *ex officio* member may attend a meeting of the Commission and may assist the Commission in its deliberations on any matter, but an *ex officio* member shall not be counted for the purpose of constituting a quorum and shall have no vote.

3 (1) The Chairman or, in his absence, the Deputy Chairman, shall preside at a meeting of the Commission.

(2) If both the Chairman and the Deputy Chairman are absent the members present shall elect from among their numbers an appointed member to preside at that meeting.

4 (1) Any question proposed for a decision by the Commission shall be determined by a majority of the votes of the appointed members present and voting at a meeting of the Commission.

(2) The Chairman or other person presiding at a meeting of the Commission shall have a deliberative, and in the event of an equality of votes, a second or casting, vote.

5 (1) Subject to sub-paragraphs (2) and (3), the Commission shall meet as often as it considers it necessary so to do for the exercise and performance of its functions under this Act and, without prejudice to the generality of the foregoing, shall, in any event, meet no fewer than ten times in a financial year.

(2) The Chairman may at any time, and shall, at the request in writing of the Minister or of any two members of the Commission convene a special meeting of the Commission.

(3) A notice convening a special meeting of the Commission shall state the purpose for which the special meeting is being convened.

(4) Meetings of the Commission shall be held at such places, on such dates and at such times as the Chairman may determine and notice of such place, date and time shall be given in writing, to each member of the Commission at least forty-eight hours before the time fixed for such meeting.

(5) The Chairman shall cause minutes of all meetings of the Commission to be kept.

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6 (1) A member who is in any way directly or indirectly interested in any matter which falls to be considered by the Commission shall disclose the nature of his interest at a meeting of the Commission, and the disclosure shall be recorded in the minutes of the meeting.

(2) The member shall not take part in any deliberation or decision with respect to the matter if the Commission decides that the interest in question might prejudicially affect the member's consideration of the matter.

(3) For the purposes of this paragraph, a notice given by a member at a meeting to the effect that he is a member of a specified body corporate or firm and is to be regarded as interested in any matter concerning that body or firm which falls to be considered after the date of the notice shall be sufficient disclosure of his interest.

MISCELLANEOUS

7 (1) The seal of the Commission shall be authenticated by the Chairman or Deputy Chairman and the Chief Executive Officer and shall be judicially and officially noticed.

(2) All documents, other than those required by law to be under seal, made by the Commission and all decisions of the Commission may be signified under the hand of the Chairman or any other member or officer authorized to act in that behalf.

8 The validity of any act or proceeding of the Commission shall not be affected by any vacancy among the members, or by any defect in the appointment of a member, or by any failure to comply with any requirement of paragraph 5.

9 Subject to the provisions of this Act, the Commission shall meet for the dispatch of business, and otherwise regulate its affairs, as it thinks fit.

[Assent Date: 17 July 1998]

[Operative Date 17 May 1999 Sections 2, 54 - 64, 69 & Second Schedule; 1 January 2000 Remainder Sections]

[Amended by:

1999 : 49

2001 : 22

2006 : 32

2010 : 19

2012 : 9

2014 : 8]