

CAYMAN ISLANDS



Supplement No.2 published with Extraordinary Gazette
No.37 dated 28th October, 2005.

**THE JUDGES' EMOLUMENTS AND ALLOWANCES LAW, 1997
(LAW 21 OF 1997)**

THE JUDGES' EMOLUMENTS AND ALLOWANCES ORDER, 2005

JUDGES EMOLUMENTS AND ALLOWANCES ORDER, 2005

ARRANGEMENTS OF PARAGRAPHS

1. Citation.
2. Definitions.
3. Emoluments.
4. Allowances.
5. Pensions and other retirement benefits.

First Schedule: Judicial Salaries

Second Schedule: Pension, etc., benefits

CAYMAN ISLANDS

JUDGES' EMOLUMENTS AND ALLOWANCES LAW, 1997

(LAW 21 OF 1997)

JUDGES' EMOLUMENTS AND ALLOWANCES ORDER, 2005

In exercise of the powers conferred on me by section 2 of the Judges' Emoluments and Allowances Law, 1997 I, Bruce Harry Dinwiddy, the Governor of the Islands, hereby make the following Order –

- | | |
|-------------|---|
| Citation | 1. This Order may be cited as the Judges' Emoluments and Allowances Order, 2005. |
| Definitions | <p>2. In this Order –</p> <p>“Board” means the Public Service Pensions Board established by section 5 of the Public Service Pensions Law (2004 Revision);</p> <p>“consumer price index” means the consumer price index of the Islands as prepared, from time to time, by the Government of the Islands;</p> <p>“Fund” means the Judicial Pension Fund established under paragraph 2 of the Second Schedule;</p> <p>“Judge” means the Chief Justice and other Judges of the Grand Court who, at any time, have been appointed as such under section 49I (2) of the Constitution of the Cayman Islands but does not include any acting appointment made under section 49K (1) of the Constitution; and</p> <p>“Plan” means the pension scheme set up under the Second Schedule to this Order;</p> |
| Emoluments | 3. (1) The Judges shall be paid for the period from their date of their appointment to office, or from the 2 nd September, 1997 whichever date occurs later in time, to the 1 st September, 2001, the emoluments contained in Part 1 of the First Schedule. |

(2) The Judges shall be paid for the period from the 2nd September, 2001 to the 1st September, 2003, the emoluments contained in Part 2 of the First Schedule.

(3) The Judges shall be paid for the period from the 2nd September, 2003 to the 1st September, 2005, the emoluments contained in Part 3 of the First Schedule.

(4) The emoluments set out in Part 3 of the First Schedule shall be reviewed in the year 2005 and thereafter at two yearly intervals, and shall be increased by such percentage amount as the consumer price index prepared in and for the Islands shows an increase over the consumer price as at the 2nd September, 2005, or as at the date of the last previous consumer price index increase awarded, as the case may be.

4. The Chief Justice shall receive annually a non-accountable entertainment allowance not exceeding one thousand dollars per annum, which is provided for the purpose of expenditure incurred in connection with the carrying out of his official duties.

Allowances

5. (1) Subject to subparagraph (2), Judges shall be eligible to receive pensions and other retirement benefits in accordance with the provisions contained in the Second Schedule and such pensions and retirement benefits shall be administered by the Public Service Pensions Board in accordance with such Schedule.

Pensions and other retirement benefits

(2) Where a Judge employed in Judicial Service prior to 1st September 1997 received any addition to his salary by way of gratuity, inducement allowance or contract officers' supplement for any period from or between the date of his employment to the 1st day of September 1997 then such Judge may elect not later than 30 days after the commencement of this Order-

- (a) to receive a pension for the said period at the rate of fifty percent of that calculated in accordance with paragraph 29 of the Second Schedule and thereafter a pension calculated in accordance with paragraph 29 of the Second Schedule; or
- (b) to repay to the Plan in respect of any month that such addition has been paid, a sum equal to ten per cent of the actual salary then paid and to receive a pension calculated in accordance with paragraph 29 of the Schedule.

FIRST SCHEDULE

Paragraph 3

Judicial Salaries

PART - 1

Salaries up to 1st September 2001

Chief Justice –

On first appointment and for the first
three years of
resident service \$ 150,000 per annum

Thereafter - \$ 160,000 per annum

Judges other than the Chief Justice –

On first appointment and for the first
three years of Resident service - \$ 132,600 per annum

Thereafter - \$ 141,440 per annum

PART - 2

Salaries with effect from 2nd September 2001 to 1st September 2003

Chief Justice –

On first appointment and for the first
three years of resident service \$ 166,484 per annum

Thereafter \$ 176,484 per annum

Judges other than the Chief Justice –

On first appointment and for the first
three years of resident service \$ 146,951 per annum

Thereafter \$ 156,747 per annum

PART 3

Salaries with effect from 2nd September 2003 to 1st September 2005

Chief Justice –

On first appointment and for the first three years of resident service	\$ 176,484 per annum
Thereafter (subject to paragraph 3 (4) of the Order)	\$ 183,102.72 per annum
Judges other than the Chief Justice – On first appointment and for the first three years of resident service	\$ 146, 951 per annum
Thereafter (subject to paragraph 3 (4) of the Order)	\$162,631.21 per annum

SECOND SCHEDULE

ARRANGEMENT OF PARAGRAPHS

Paragraph 5

PART A- GENERAL ADMINISTRATIVE PROVISIONS GOVERNING PENSIONS UNDER THIS SCHEDULE

Preliminary

1. Definitions

The Judicial Pension Fund

2. The Judicial Pension Fund and payments into the Fund
3. Disbursements from the Fund

Role of the Public Service Pensions Board

4. Powers and duties of the Board
5. Custody of fund assets
6. Calculation of benefits
7. Correction of mistakes in administering pensions
8. Communications to participants
9. Accounts, book-keeping and reporting

10. Actuarial valuation and contribution rates

Funding and Investments

11. Fund investments
12. Contributions to the Fund

Account Adjustments

13. Participant contribution account- credits
14. Government contribution account-credits
15. Account adjustments- debits
16. Beneficiary accounts
17. Account adjustment date

Special Rules Regarding Pension Payments

18. Cash out of small benefits
19. Payments under Plan conditioned on periodic certification

Miscellaneous

20. Plan amendment- financial impact
21. Designation of beneficiary
22. Payment and administration of children's pensions
23. Cessation of payments of children's pensions
24. Inflation protection

- 25. Participant rights
- 26. Pensions not to be assignable

PART B- DEFINED PENSION BENEFITS

Applicability

- 27. Applicability

Accounts

- 28. Contribution accounts

Retirement benefits

- 29. Normal retirement benefit
- 30. Participation upon re-employment after retirement
- 31. Early retirement
- 32. Resignation or termination from Judicial Service prior to retirement
- 33. Disability retirement
- 34. Disability benefit
- 35. Maximum pension
- 36. Forms of benefit and methods of payment

Death benefits

- 37. Pensions payable to surviving spouse and children
- 38. In-service death benefits
- 39. Pensions to beneficiaries where a participant is killed on duty.
- 40. Payment of pension to surviving spouse
- 41. Recalculation of children's pensions

PART C

DEFINED CONTRIBUTION BENEFITS

- 42. Defined contribution eligibility
- 43. Notification of eligibility

Accounts

- 44. Maintenance of accounts
- 45. Transfer of assets into the Fund from an approved plan

Government Contributions

- 46. Government contribution

Retirement Benefits

- 47. Accrued benefit payable upon retirement
- 48. Disability retirement
- 49. Disability benefit
- 50. Resignation from Judicial service prior to retirement
- 51. Vesting
- 52. Distribution of participant contribution account balance
- 53. Forms of benefit and methods of payment
- 54. Methods of benefit payment
- 55. Method of election

Death benefits

- 56. Pensions payable to surviving spouse and children of active or deferred vested participants
- 57. In-service death benefit

- 58. Pensions to beneficiaries where a participant is killed on duty
- 59. Payment of pensions to surviving spouse
- 60. Payment of pension to surviving children
- 61. Commencement of benefits
- 62. Death after resignation but prior to benefit commencement date
- 63. Death after commencement date
- 64. Benefit paid to beneficiary if no surviving designated beneficiary
- 65. Benefit paid to beneficiary if no surviving spouse or children

**PART A- GENERAL ADMINISTRATIVE PROVISIONS GOVERNING
PENSIONS UNDER THIS SCHEDULE**

Preliminary

Definitions

1. In this Schedule –

“account adjustment date” means the date on which a participant’s accounts are adjusted, which date shall be the last day of each calendar year and such other dates as may be specified by this Schedule;

“accrued benefit” means -

- (a) in the case of the defined benefit part of the Plan, a participant’s pension under the Plan expressed in the form of an annual benefit commencing at normal retirement age and based on service and final average pensionable earnings on the date of determination; and
- (b) in the case of the defined contribution part of the Plan, the sum of the balances in a participant’s accounts on the date of determination;

except in the case of defined contribution participant who has resigned from Judicial Service prior to retirement the accrued benefit shall be the sum of the participant account balance plus a portion of the Government account balance that matches the participant contributions under the Plan together with the interest credited in accordance with this Schedule;

“active defined benefit participant” means a participant in Judicial Service and contributing to the Fund for benefits covered under the defined benefit part of the Plan;

“active defined contribution participant” means a participant in Judicial Service and contributing to the Fund for benefits covered under the defined contribution part of the Plan;

“active participant” means a participant contributing to the Fund for benefits covered under the Plan ;

“actuary” means a person who-

- (a) has qualified as an actuary by examination of the Institute of Actuaries in England or the Faculty of Actuaries in Scotland or the Societies of Actuaries in the United States of America or the Canadian Institute of Actuaries in Canada;
- (b) who is a current member in good standing of one of those professional associations; and
- (c) who has been appointed by the Board as the actuary for the Plan;

“Administrator” means the employee of the Board responsible for management of the Plan;

“approved plan” means the Plan and any plan registered with the Superintendent of Pensions within the Islands;

“beneficiary” means any person who is entitled under the Plan to receive a pension upon the death of a participant;

“Board” means the Public Service Pensions Board established by section 5 of the Public Service Pensions Law (2004 Revision);

“child” means a participant’s child (including an adopted child who was adopted in a manner recognised by law, a child born out of wedlock, a posthumous child, or a stepchild) who is either -

- (a) under the age of eighteen;
- (b) under the age of twenty-three and in full-time education; or
- (c) mentally or physically incapable of employment, as certified by the Chief Medical Officer;

“commutation” means the optional form of benefit whereby a participant elects to receive upon retirement in lieu of his full pension under the Plan, an immediate lump sum payment of a portion of the present value of his accrued benefit and a reduced pension equal in value to the remainder of his accrued benefit after deducting the lump sum payment, determined in accordance with paragraph 36 (2);

“CPI” means the consumer price index of the Islands as prepared by the Government;

“credited rate of return” means –

- (a) the rate of investment return to be credited to accounts on an account adjustment date, as determined by the Administrator on the day immediately prior to the date of commencement of this Order and at the end of each calendar year-
 - (i) where an account adjustment date is the last day of a calendar year on or after the date of commencement, the

- credited rate of return shall be the average rate of investment return on Fund investments for that calendar year and the two preceding calendar years; and
- (ii) where an account adjustment date does not fall on the last day of a calendar year, the credited rate of return shall be the credited rate of return that was applied on the previous account adjustment date prorated for the period of the year up to such account adjustment date;

“deferred benefit” means a benefit under the Plan payable to a deferred vested participant at retirement ;

“deferred vested participant” means a former participant who is entitled to a deferred benefit under the Plan;

“defined benefit participant” means a person who participates in the defined benefit part of the Plan established in accordance with this Schedule;

“defined contribution participant” means a person who participates in the defined contribution part of the Plan established in accordance with this Schedule;

“designated beneficiary” means the person or persons designated by the participant pursuant to paragraph 21 to receive benefits pursuant to this Schedule in the event of the participant’s death;

“disability retirement” means retirement due to permanent disability pursuant to paragraphs 33 and 48;

“early retirement” means retirement at early retirement age pursuant to paragraph 31 and 47 ;

“early retirement age” means any age between 55 and 64 inclusive, provided that the participant has completed 8 years of Judicial service;

“50% joint and survivor annuity” means a reduced annuity (determined by reference to Plan actuarial tables) for the life of the participant, followed, upon the participant’s death, by an annuity for the life of the participant’s spouse to whom the participant was married on the participant’s benefit commencement date equal to 50% of the reduced annuity that would have been payable to the participant had the participant been alive;

“final average pensionable earnings” means the average of a participant’s final annual salary for Judicial Service for the consecutive period of 36 months immediately prior to death, resignation, retirement or permanent disability;

“former participant” means a participant who terminated employment in the Judicial Service prior to being qualified for retirement under the Plan;

“full-time education” means attendance as a full-time student at a college, university, or other institution of tertiary education;

“Government contribution account” means-

- (a) under the defined benefit part, the book-keeping account documenting government contribution amounts (including interest credited in accordance with this Schedule) that match participant contributions made under this Plan reflected in the participant's contribution account;
- (b) under the defined contribution part, the book-keeping account documenting total Government contributions (including interest credited in accordance with this Schedule) made on behalf of the defined contribution participant;

“Judicial Service” means, subject to paragraph 5 of the principal part of the Order, service as a Judge of the Grand Court on or after 1st September 1997;

“married participant” means a participant who is legally married on the participant's benefit commencement date or on the date of the participant's death;

“normal retirement” means –

- (a) retirement at or after attainment of normal retirement age with at least eight years of Judicial Service ; or
- (b) 20 years of Judicial Service,

pursuant to paragraph 29 or 47;

“normal retirement age” means age 65;

“participant contribution account” means the book-keeping account documenting total participant contributions made by a participant under the Plan, or transferred from an approved plan under paragraph 45, plus the interest credited in accordance with this Schedule;

“pension” means the benefit, in the form of an annuity, lump sum or other form of benefit, due and payable to the participant or the participant's beneficiaries under this Schedule;

“pensionable service” means Judicial Service which shall be taken into account in computing benefits under this Schedule and in the case of defined benefit participant, shall include such service prior to the commencement of this Order;

“permanent disability” means a disability which is likely to render a participant incapable by reason of infirmity of mind or body of discharging the duties of his office and that such infirmity is likely to be permanent, as certified by the Chief Medical Officer acting on the advice of a medical board consisting of not less than 3 registered medical doctors;

“Plan actuarial tables” means actuarial tables approved by the Board and used by the Administrator in the determination of the amounts of benefits payable under the Plan and in the determination of actuarially equivalent values;

“registered medical doctor” means a medical doctor registered in accordance with the Health Practice Law (2005 Revision);

“retired participant” means a participant who retired from Judicial Service and is receiving, or is entitled to receive, pension benefits under this Schedule;

“retirement” means normal, early or disability retirement from Judicial Service as provided under this Schedule;

“salary” means a participant’s basic salary for such participant’s substantive office, or acting, duty or other allowances; and

“spouse”, in relation to a person, means a person who is the legal husband or wife of a participant at the time of his death.

The Judicial Pension Fund

The Judicial Pension Fund and payments into the Fund.

2. There is established a Judicial Pension Fund and there shall be paid into the Fund-

- (a) all participant and Government contributions;
- (b) all rent, interest, dividends, income and other sums derived from the assets of the Fund;
- (c) such other sums as may legally be provided by the Government; and
- (d) such other sums as may be received and accepted by the Board on behalf of the Fund.

Disbursements from the Fund

3. (1) There shall be paid out of the Fund-

- (a) all pension benefits;
- (b) all expenses properly incurred in the administration of the Plan and of the Fund; and
- (c) such other payments as are permitted by this Schedule.

(2) No payments shall be made out of the Fund unless authorised by or under this Schedule.

Role of the Public Service Pensions Board

4. (1) The Board shall be responsible for-

Powers and duties of the Board

- (a) the administration of the Fund including-
 - (i) receiving into the Fund all sums due to it;
 - (ii) calculation and payment from the Fund of pensions due under this Schedule;
 - (iii) payments from the Fund necessary for the administration of the Fund;
 - (iv) investment of the Fund in accordance with this Schedule;
 - (v) accounting for all moneys collected, paid or invested under this Schedule;
 - (vi) causing a periodic actuarial review of the Fund pursuant to paragraph 10; and
 - (vii) the sale of investments as necessary to meet immediate liabilities and needs, and for reinvestment;
- (b) liaising with the Governor or a person delegated by him regarding collection of data;
- (c) liaising with the Governor or a person delegated by him regarding contribution payments;
- (d) accounting and reporting in respect of the Plan, as provided in paragraph 9;
- (e) record keeping, as provided in paragraph 9; and
- (f) recommending for approval, amendments to the Plan, as provided in paragraph 20.

(2) Without prejudice to the generality of subparagraph (1), in accordance with paragraph 10, the Board shall be responsible for recommending to the Governor contribution rates payable under the Plan from time to time.

(3) In the performance of its duties under this Schedule the Board may take such professional advice as the Governor considers appropriate and pay for such advice out of the Fund.

(4) No member or employee of the Board shall be personally liable for any act or default of the Board done or omitted to be done in good faith in the course of the operations of the Board.

5. The Board shall cause to be established one or more custody accounts into which the assets of the Fund shall be deposited and held.

Custody of fund assets

Calculation of benefits	<p>6. (1) A pension provided under this Schedule shall be calculated by the Administrator in accordance with the provisions of the Plan in effect on the date of a participant's resignation, death, permanent disability, or retirement except as otherwise provided in this Schedule.</p> <p>(2) In calculating a pension the Administrator shall use the Plan actuarial tables.</p>
Correction of mistakes in administering pensions	<p>7. The Board shall establish a procedure which enables any person to bring to the Board's attention a failure of administrative process which has prevented a pension from being paid or that has resulted in the incorrect calculation of the amount of a pension.</p>
Communications to participants	<p>8. The Board shall provide in writing to each participant or beneficiary-</p> <ul style="list-style-type: none">(a) an annual benefit statement;(b) a statement of retirement benefits at retirement;(c) a statement of vested benefits at resignation;(d) a death benefit statement at the time of death of the participant; and(e) any other information specified by the Governor.
Accounts, book-keeping and reporting	<p>9. (1) The Board shall prepare and maintain, in accordance with the standards prescribed for this purpose by the Financial Secretary and approved by the Governor, financial statements relating to the Fund.</p> <p>(2) Within the period of three months after 30th June of each year the Board shall prepare and submit to the Auditor-General in respect of that year-</p> <ul style="list-style-type: none">(a) a balance sheet;(b) a statement of revenue and expenditure by the Board during the year; and(c) such other financial statements as may be required to comply with subparagraph (1). <p>(3) On receipt of the financial statements referred to in subparagraph (2) the Auditor-General shall –</p> <ul style="list-style-type: none">(a) examine and audit the financial statements;(b) provide an opinion on the financial statements or certify the financial statements, as the case may be; and(c) provide such report on the financial statements as he thinks fit.

(4) The Auditor-General shall, within a period of six months after the close of the year to which they relate, return to the Board the financial statements together with his report, if any.

(5) Within thirty days after receipt from the Auditor-General of the financial statements and his report, if any, the Board shall prepare and submit to the Financial Secretary and the Governor a report of the financial activities of the Board relating to the Fund during the year to which the financial statements relate, which report shall include a copy of the financial statements and of the Auditor-General's report, if any.

(6) The report of the Board together with a copy of certified financial statements and the Auditor-General's report, if any, shall be laid by the Financial Secretary on the table of the Legislative Assembly for twenty-one days as soon as practicable after he receives it, and such report of the Board shall be gazetted.

10. (1) The Board shall cause periodic reviews to be carried out to assess and evaluate the assets and liabilities of the Fund in order-

Actuarial valuation and
contribution rates

- (a) to determine whether the Fund remains capable of meeting its long term liabilities at the rate or rates of contribution then in force;
- (b) if it is not so capable, to ascertain what rate or rates of contribution would be required to meet its long term liabilities; and
- (c) to determine the amount to be reflected on the balance sheet.;

and reviews shall be at such times as the Board considers appropriate but shall in no event be later than the three-year anniversary of the last review.

(2) The review shall be carried out by the actuary using reasonable actuarial assumptions and methodology agreed upon by the actuary and the Board.

(3) A report of the actuarial review carried out under subsection (1) shall be made to the Board, which shall send a copy to the Financial Secretary and the Governor, and the Governor may cause his own actuarial valuation to be carried out if he determines that there is good reason to do so.

(4) The Financial Secretary, acting upon the advice of the Governor shall, immediately after the Governor approves the report, lay such actuarial report on the table of the Legislative Assembly at its next meeting for twenty-one days, and such report shall be gazetted.

Funding and Investments

Fund investments

11. (1) The Fund shall be invested by the Board in approved investments as set out in Schedule 2 of the Public Service Pensions Law (2004 Revision) and for the purposes of this paragraph subsections (2) to (4) of section 16 of the Public Service Pensions Law (2004 Revision) shall apply.

(2) The Board may, with the approval of the Governor, pool the monies of the Fund with the monies of the fund under the Public Service Pensions Law (2004 Revision) and any other pensions fund and invest such monies in accordance with the provisions of that Law.

Contributions to the Fund

12. (1) For Judicial Service performed after the 1st September 1997 participants shall contribute, in respect of their pensions, at the rate of ten per cent of their salary.

(2) The participant contribution described in subparagraph (1) shall be deducted each pay period by the Judicial Administration from each participant's salary as provided in subparagraph (3).

(3) The amount of the participant contribution to be deducted from a participant's salary for each pay period pursuant to subparagraph (2) shall be determined by multiplying the participant's salary by ten per.

(4) Subject to paragraph 46, the Government shall contribute to the Fund at the rate prescribed by the most recent actuarial valuation accepted by the Governor pursuant to paragraph 10 and shall contribute at such rate no later than 15 days from the next date on which contributions are due.

(5) Where the Government fails to pay the contributions at the approved rate in accordance with the time limit set out in subparagraph (4) it shall pay interest on such contributions at the prime interest rate plus two per cent.

(6) Any participant contributions which are credited pursuant to this Schedule to a participant's account shall be credited to his account on the date such contributions are received.

(7) The Government's contribution in respect of a contributing participant's service shall be a charge on the revenue of the Islands and shall be determined and paid by the Government into the Fund at the same time as the Government pays the participant's contribution into the Fund under subparagraph (3).

(8) A participant shall cease to contribute to the Fund on the day on which he ceases to be employed in Judicial Service.

(9) Contributions shall be assessed, and deductions shall be made, based on the salary paid to a participant for the period for which the contributions and deductions relate, whether or not he may have, for any reason, been entitled to additional payments for that period.

Account Adjustments

13. (1) On each account adjustment date described in paragraph 17, the Administrator shall credit the participant contribution account of each participant with an amount equal to the sum of-

Participant contribution
account - credits

- (a) the aggregate amount of participant contributions deducted from his salary and paid into the Fund since the last account adjustment date;
- (b) the amount, if any, transferred to the Fund on behalf of the participant from an approved plan pursuant to paragraph 45 since the last account adjustment date;
- (c) for account adjustment dates falling on or prior to a participant's benefit commencement date, the interest attributable to his participant contribution account since the last account adjustment date determined by applying the credited rate of return for the period ending on the account adjustment date to-
 - (i) the participant contribution account balance on the prior account adjustment date; and
 - (ii) each contribution, transfer and distribution credited to or debited from such account since the last account adjustment date, taking into account the date each such contribution, transfer and distribution was paid into or out of the Fund.

14. On each account adjustment date described in paragraph 17, the Administrator shall credit the Government contribution account of each defined contribution participant with an amount equal to the sum of-

Government
contribution account--
credits

- (a) the Government contributions allocated to such participant's Government contribution account since the last account adjustment date; and
- (b) for account adjustment dates falling on or prior to a participant's benefit commencement date, the interest attributable to the participant's Government contribution account since the last account adjustment date determined by applying the credited rate of return for the period ending on the account adjustment date to-
 - (i) the Government contribution account balance on the prior account adjustment date; and

- (ii) each contribution, transfer and distribution credited to or debited from such account since the last account adjustment date taking into account the date each such contribution, transfer and distribution was paid into or out of the Fund.

Account adjustments -
debits

15. On each account adjustment date described in paragraph 17, the Administrator shall debit an amount equal to the sum of all distributions made to, by, or on behalf of, a participant since the last account adjustment date-

- (a) firstly, against his participant contribution account balance until such account balance is exhausted; and
- (b) secondly, in the case of a defined contribution participant, after his participant contribution account balance is exhausted, any distributions that remain to be debited shall be debited against his Government contribution account balance until that account balance is exhausted.

Beneficiary accounts

16. The account adjustments described in paragraph 15 in respect of a participant's accounts shall be made to the accounts, if any, of the surviving spouse, children, designated beneficiary or estate of a deceased participant on each applicable account adjustment date described in paragraph 17 until the balance of such accounts has been fully distributed in accordance with this Schedule.

Account adjustment date

17. The Administrator shall make the account adjustments described in paragraphs 13, 14, 15 and 16 to the account balances of a participant or beneficiary as at-

- (a) 31 December, 2005 and the last day of each calendar year thereafter that an account balance continues to be maintained on behalf of a participant or beneficiary;
- (b) the date of retirement, resignation or death of a participant;
- (c) the benefit commencement date of a participant or beneficiary; and
- (d) such other date or dates which the Administrator, in his discretion, considers necessary or appropriate.

Special Rules Regarding Pension Payments

Cash out of small
benefits

18. Notwithstanding any provision of this Schedule to the contrary, if the present value of a participant's accrued benefit determined by reference to Plan actuarial tables-

- (a) on such participant's benefit commencement date; or

- (b) on the participant's date of death in the event that the participant died while in active service; or

is less than \$20,000, the Board, in its discretion, may direct the Administrator to distribute the benefit to the participant, or the participant's beneficiaries if the participant is deceased, in a single lump sum cash payment payable on the participant's or beneficiaries' benefit commencement date.

19. (1) As a condition to the commencement and continued payment of pensions to or on behalf of a participant under the Plan, the Administrator shall require each person who is or will be in receipt of pension payments to submit prior to the recipient's benefit commencement date and on each anniversary thereafter (and at such other times as may be specified by the Administrator in his discretion) a signed certificate in the form and manner specified by the Board that that person is the participant or beneficiary who is authorised under the Plan to receive such pension payments.

Payments under Plan
conditioned on periodic
certification

(2) The signature on the certificate shall be witnessed by a Justice of the Peace, a notary public, a minister of religion, an attorney licensed to practice law in the Islands, a member of the Legislative Assembly or the Administrator.

(3) If the certificate described in subparagraph (1) is not received by the date specified, or if a certificate is not in the proper form or is otherwise defective, or if the Administrator has reasonable grounds to suspect its authenticity, the pension payments shall be suspended until the Administrator is in receipt of a proper certificate or is satisfied that such person is the appropriate recipient of the payments.

Miscellaneous

20. The Board shall determine the financial impact of all amendments to this Schedule and shall advise the Governor of its findings prior to such amendment being considered by the Governor.

Plan amendment-
financial impact

21. (1) Each participant shall be given the opportunity to designate a beneficiary or beneficiaries who shall be entitled to receive benefits pursuant to this Schedule in the event of the participant's death.

Designation of
beneficiary

(2) A participant shall be permitted to change a beneficiary designated under subparagraph (1) at any time prior to his death.

(3) In the event that a participant dies without designating a beneficiary, or if no designated beneficiary survives the participant, any benefit that would have

been payable to the participant's designated beneficiary under this Schedule shall be paid to the participant's estate.

Payment and
administration of
children's pensions

22. In all cases of a child's pension provided under this Schedule, the whole or any part of such pension may be paid, at the discretion of the Governor, either to the mother, father, legal guardian of such child, the child directly (if he is over the age of eighteen years) or to such other person or persons as the Governor may, in his discretion, consider to be fit and proper persons, to apply the same for the benefit of such child.

Cessation of payment of
children's pensions

23. (1) Any pension payable to a child pursuant to this Schedule shall cease upon the latest to occur of-

- (a) the child's attainment of age 18;
- (b) if the child is in full-time education on his eighteenth birthday, the first to occur of-
 - (i) the child's attainment of age 23; or
 - (ii) the child's cessation of full-time education; or
- (b) if the child is mentally or physically incapable of employment, as certified by the Chief Medical Officer, on his eighteenth birthday or the date on which the child is capable of employment.

(2) Where the Chief Medical Officer certifies that a child will never be mentally or physically capable of employment the pension payable to such child shall be paid to the child for the duration of his life.

Inflation protection

24. (1) Notwithstanding any other provision of this Schedule pensions in payment shall be adjusted for inflation on an annual basis as of the first day of each calendar year in accordance with the following-

- (a) when the increase in CPI is less than or equal to 5%, pension benefits shall be increased at a rate equal to 100% of the CPI, providing a maximum increase of 5%;
- (b) when the increase in CPI is greater than 5% but less than or equal to 8%, pension benefits shall be increased at a rate equal to the sum of 5% plus four fifths of the difference between 5% and the CPI, providing a maximum increase of 7.4%;
- (c) when the increase in CPI is greater than 8% but less than or equal to 12%, pension benefits shall be increased at a rate equal to the sum of 7.4% plus six tenths of the difference between 8% and the CPI, providing a maximum increase of 9.8%; or

- (d) when the increase in CPI is greater than 12%, pension benefits shall be increased at a minimum rate of 9.8% and the Board shall determine, and the Governor may approve, any increases in pension benefits in excess of 9.8%.

(2) The credited rate of return on participant contributions under defined benefit deferred pensions shall not be less than the inflation adjustment specified in subparagraph (1) during the period of deferral.

25. (1) A participant shall not lose his right to a pension under this Schedule because he is- Participant rights

- (a) adjudicated bankrupt or declared insolvent by any competent Court; or
- (b) sentenced to a term of imprisonment by any competent Court for any offence.

(2) A pension granted under this Schedule is exempt from execution, seizure, attachment or any other process in respect of any debt or claim of a creditor, except for the purposes specified in paragraph 26(a)(i) and(ii).

26. A pension provided under this Schedule shall not be-

Pensions not to be
assignable

- (a) transferable or assignable by a participant or beneficiary, except for the purpose of satisfying-
 - (i) a debt due to the Government; or
 - (ii) an order of a Court for the payment of periodical sums of money towards the maintenance of the spouse, former spouse or minor child of the participant to whom the pension has been granted; or
- (b) subject to, or available to, the creditors of a participant prior to payment thereof.

PART B- DEFINED PENSION BENEFITS

Applicability

27. This Part applies to the judges employed in Judicial Service on or after 1st September 1997 to a date before or to the date of the commencement of this Order and such judges are referred to in this Schedule as the defined benefit participants. Applicability

Accounts

28. The Administrator shall maintain on the books of the Fund for each active, deferred vested and retired defined benefit participant and for any beneficiary of a Contribution accounts

deceased participant, for so long as the Plan maintains an obligation to pay to or on behalf of the participant or beneficiary a benefit under this Schedule-

- (a) a participant contribution account;
- (b) a Government contribution account; and
- (c) such other accounts and sub-accounts which the Administrator may from time to time deem appropriate.

Retirement benefits

Normal retirement benefit

29. (1) An active defined benefit participant who retires from Judicial Service at normal retirement age shall be entitled to receive an immediate pension equal to his normal retirement benefit, based on such participant's pensionable service and final average pensionable earnings as at his date of retirement from Judicial Service.

(2) Any pension provided under this Part shall be calculated at the rate of one-three hundredths of the final average pensionable earnings for each completed month of Judicial Service.

Participation upon reemployment after retirement

30. A retired participant who is receiving a pension and who is subsequently re-employed in Judicial Service shall continue to receive such pension without interruption upon re-employment but shall be ineligible to make contributions or accrue further benefits under the provisions of this Schedule.

Early retirement

31. (1) Upon the attainment of early retirement age, an active defined benefit participant shall be eligible to retire from Judicial Service with an immediate pension equal to his early retirement benefit under this defined benefit part, as determined in the same manner as his normal retirement benefit except that the participant's pensionable service and final average pensionable earnings shall be determined on his actual date of retirement.

(2) In the case of a participant who retires from Judicial Service with eight or more years of Judicial Service upon or after attaining age 55, but before attaining age 60, be determined in the manner described in paragraph (a), except that the benefit so determined shall be actuarially reduced by the relevant early retirement reduction factor set out in the Plan actuarial tables to take into account the additional years prior to attaining age 60 that he shall be entitled to receive benefit payments.

Resignation or termination from Judicial Service prior to retirement

32. (1) An active defined benefit participant who resigns or is terminated from Judicial Service prior to completion of eight years of Judicial Service may, at any time after his resignation or termination date, elect –

- (a) to receive an immediate lump sum cash payment equal in amount to the sum of his participant contribution account balance and Government matching contribution account balance as at his date of resignation or termination from Judicial Service; or
- (b) to have the Board transfer to an approved plan the lump sum specified in sub sub-paragraph (a).

(2) An active defined benefit participant who resigns or is terminated from Judicial Service after completion of eight years of Judicial Service but prior to attaining normal retirement age may, at any time after his resignation or termination date, elect –

- (a) to receive an immediate lump sum cash payment equal in amount to the sum of his participant contribution account balance and Government contribution account balance as at his date of resignation or termination from Judicial Service;
- (b) to leave his accrued benefit in the Fund until he becomes eligible for retirement (in which case his participant contribution account will continue to be credited with interest in accordance with rules promulgated by the Board); or
- (c) to have the Board transfer to an approved plan, subject to the limitations prescribed in subparagraph (3), an amount equal to the greater of-
 - (i) the sum of his participant contribution account balance and the Government contribution account balance as at his date of resignation or termination from Judicial Service; or
 - (ii) the actuarial equivalent present value of the former participant's accrued benefit on the date of resignation or termination (determined by reference to Plan actuarial tables and based on pensionable service and final average pensionable earnings on the date of resignation or termination).

(3) Notwithstanding subparagraph (2)(c) (ii) the maximum amount that may be transferred by a participant to an approved plan under subparagraph (1) shall be determined from time to time by the Board.

33. (1) An active defined benefit participant who becomes permanently disabled shall be eligible to retire from Judicial Service with an immediate pension, effective on the date of his permanent disability, if his permanent disability is determined by a medical board comprising no less than 3 registered medical doctors and certified by the Chief Medical Officer.

Disability retirement

(2) Where a participant to whom a pension is being provided under this paragraph is found by the Chief Medical Officer, acting on the advice of the

medical board, to be no longer disabled or is re-appointed to his prior Judicial Service, the payment of his pension shall be suspended until such participant's subsequent retirement from Judicial Service.

Disability benefit

34. (1) The pension payable pursuant to paragraph 33 shall be determined in the same manner as his normal retirement benefit, except that such participant's pensionable service and final average pensionable earnings shall be determined as at his actual date of disability retirement.

(2) If an active defined benefit participant is permanently disabled due to injuries incurred-

- (a) whilst in the actual discharge of his duty; and
- (b) without his own default,

and as a result of the injury the participant is eligible for disability retirement under paragraph 33 and retires under that paragraph, the participant shall be provided with an additional pension equal in amount to one-third of the participant's final average pensionable earnings, determined as at his disability retirement date.

Maximum pension

35. (1) In no case shall the total cumulative pension provided under this Schedule to a defined benefit participant, prior to commutation, exceed an annual amount equal to two-hundred and forty divided by three hundred ($240/300$) of such participant's final average pensionable earnings.

(2) For the purposes of this paragraph, an additional pension provided pursuant to paragraph 34 (2) in respect of an injury occurring in the actual discharge of a participant's duties shall not be taken into account; but where a defined benefit participant is provided such an additional pension under this Schedule, the monthly amount thereof together with the remainder of his monthly pension or pensions shall not, prior to commutation, exceed five-sixths of his highest salary during any full calendar month of his Service.

Forms of benefit and methods of payment

36. (1) The normal form of payment of a pension provided under this Order to a defined benefit participant shall be an annuity for the life of the participant paid by equal monthly payments (subject to annual adjustments for inflation pursuant to paragraph 24) commencing at the end of the month following retirement or, in the case of a deferred vested participant, following attainment of normal retirement age.

(2) A defined benefit participant to whom a pension is payable under this Order may elect at the time of retirement from Service to be paid in lieu of such pension-

- (a) a reduced pension at a rate of not less than 75% of such pension; plus
- (b) an immediate lump sum cash payment equal in amount to the present value, determined with reference to Plan actuarial tables, of the difference between such pension and the reduced pension described in paragraph (a).

Death benefits

37. (1) Upon the death of an active, retired or deferred vested defined benefit participant there shall be paid to the participant's surviving spouse and children, if any, a pension determined in accordance with this paragraph.

Pensions payable to
surviving spouse and
children

(2) Upon the death of a defined benefit participant there shall be paid to such participant's surviving spouse and children-

- (a) if the deceased was a retired participant, a monthly pension based on the amount of pension he was drawing at the date of his death, or
- (b) if the deceased was an active participant, a monthly pension based on his accrued benefit at the time of his death,

in accordance with the provisions of this paragraph.

(3) Where the defined benefit participant dies leaving a spouse but no children, subject to the limitations set out in subparagraph (7), the surviving spouse is entitled to a monthly pension equal to one-half of the pension determined in subparagraph (2).

(4) Where the defined benefit participant dies leaving a spouse and children-

- (a) subject to the limitations set out in subparagraph (5), the surviving spouse is entitled to a monthly pension equal to one-half of the pension determined in subparagraph (2); and
- (b) each child is entitled, until the date specified in paragraph 23 for cessation of children's pensions, to a monthly pension equal to one-half of the pension determined in subparagraph (2), divided by the total number of children left by the participant.

(5) Notwithstanding subparagraph (4), where at the time of a defined benefit participant's death, the Administrator is in receipt of either-

- (a) an election by the participant to which the participant's spouse has consented in writing; or
- (b) a court order directing that upon the participant's death the Administrator shall pay the surviving spouse's pension to the children,

then the pension otherwise payable to the participant's surviving spouse, if any, shall be equally distributed among the children; and such pension shall be paid in addition to any other benefit otherwise payable to the children pursuant to this paragraph.

(6) Where the defined benefit participant dies leaving children, but no surviving spouse, the children shall be entitled to the benefit described in subparagraph (4) determined as if a surviving spouse existed and the election described in subparagraph (5)(a) had been made.

(7) Notwithstanding any other provision in this paragraph to the contrary, the benefit payable to a surviving spouse of a deceased retired participant shall be actuarially reduced in accordance with Plan actuarial tables if such surviving spouse is less than fifty-five years of age and more than ten years younger than the deceased retired participant.

38. (1) If an active defined benefit participant dies while still a judge, upon his death there shall be paid to the deceased participant's designated beneficiary an amount equal to the excess, if any, of the greater of-

In-service death benefit

- (a) twelve times the participant's final average pensionable earnings, determined as at the date of his death; or
- (b) his participant contribution account balance determined as at the date of his death,

over the actuarially equivalent present value determined by reference to Plan actuarial tables of the benefits, if any, payable to the participant's beneficiaries in accordance with this Schedule.

(2) If the deceased participant failed to designate a beneficiary, or if his designated beneficiary has predeceased him and there is no new designated beneficiary, the amount payable under this paragraph shall be paid to the participant's estate.

39. (1) Where an active defined benefit participant dies while serving as a judge as a result of injuries received-

Pensions to beneficiaries where a participant is killed on duty

- (a) whilst in the actual discharge of his duties; and
- (b) without his own default,

there shall be paid to the participant's beneficiaries an additional pension in accordance with this paragraph.

(2) Where the participant dies leaving a spouse, a monthly pension shall be paid to the surviving spouse, at a rate not exceeding fifteen-sixtieths of such participant's final average pensionable earnings on the date of injury.

(3) Where the participant dies leaving a surviving spouse to whom a pension is provided pursuant to subparagraph (2) and six children or less, a monthly pension shall be paid to each such child, until the date specified in paragraph 23 for cessation of children's pensions, at a rate not exceeding one-sixth of the pension, prior to commutation, provided to the surviving spouse under subparagraph (2).

(4) Where the participant dies leaving six children or less, but does not leave a surviving spouse, a monthly pension shall be paid to each child, until the date specified in paragraph 23 for cessation of children's pensions, at a rate of twice the amount specified in subparagraph (3).

(5) Where the participant dies leaving six children or less and a surviving spouse to whom a pension is provided pursuant to subparagraph (2) and the surviving spouse subsequently dies, the monthly pension in respect of each child shall be increased at the date of death of the surviving spouse to twice the amount specified in subparagraph (3).

(6) Where the participant dies leaving more than six children, the aggregate amount of pension payments that would be payable to six children pursuant to subparagraph (3), (4) or (5), as the case may be, shall be divided equally among all such children during the period in which there are more than six children who are entitled to receive a pension under this paragraph.

(7) Where the participant dies without leaving a spouse and without leaving any children, and if the deceased participant's mother or father or both parents were wholly or mainly dependent on him for financial support and have no other means of financial support, as determined by the Administrator, a monthly pension shall be paid to the mother or father or both, while they are without adequate means of support at a rate not exceeding one-sixth of the deceased participant's final pensionable earnings as at the date of injury.

(8) A pension provided under subparagraph (7) shall cease on the written instructions of the Administrator if it appears to the Administrator that the mother or father or both parents are receiving adequate financial support by other means.

(9) An active participant who dies as a result of injuries received while travelling in pursuance of official instruction shall be deemed to have died in the circumstances detailed in subparagraph (1).

(10) This paragraph shall not apply in the case of the death of an active participant if his beneficiaries, as defined in the Workman's Compensation Law (1996 Revision), are entitled to compensation under that law if no pension is paid under this paragraph.

1996 Revision

Payment of pension to
surviving spouse

40. A surviving spouse to whom a pension is payable under paragraph 37, 38 or 39 may elect prior to his benefit commencement date to be paid in lieu of such pension-

- (a) a reduced pension at a rate of not less than 75% of the pension; and
- (b) an immediate lump sum cash payment equal in amount to the present value, determined with reference to Plan actuarial tables, of the difference between such pension and the reduced pension described in sub sub-paragraph (a).

41. The Administrator shall recalculate the pensions payable to a deceased participant's children pursuant to paragraph 38 or 39 upon written notice received by the Administrator within ten months after the participant's death of the birth of a posthumous child or posthumous children of such deceased participant.

Recalculation of
children's pensions

PART C

DEFINED CONTRIBUTION BENEFITS

42. This Part applies to judges appointed after the date of the commencement of this Order.
43. The Administrator shall notify a judge of his participation in the defined contribution part when that judge first becomes a defined contribution participant pursuant to this Schedule and the accounts specified in paragraph 44 are established on his behalf.

Defined contribution
eligibility

Notification of eligibility

Accounts

44. The Administrator shall maintain on the books of the Fund for each active, deferred vested and retired defined contribution participant and for any beneficiary of a deceased participant, for so long as the Plan maintains an obligation to pay to or on behalf of the participant or beneficiary a benefit under this Schedule-
- (a) a participant contribution account;
 - (b) a Government contribution account; and
 - (c) such other accounts and sub-accounts which the Administrator may from time to time deem appropriate.
45. An active defined contribution participant may elect at any time to have any assets which are or were held in an approved plan on his behalf transferred to the Fund and credited to his participant contribution account.

Maintenance of accounts

Transfer of assets into
the Fund from an
approved plan

Government Contributions

46. The Government shall contribute to the Fund on behalf of each active defined contribution participant at the rate of twenty per cent of such participant's salary.

Government
contribution

Retirement Benefits

47. Upon retirement from Judicial Service at any time after attaining early retirement age, an active defined contribution participant shall be entitled to receive his accrued benefit determined on his benefit commencement date.
48. (1) An active defined contribution participant who becomes permanently disabled shall be eligible to retire from Judicial Service with an immediate

Accrued benefit payable
upon retirement

Disability retirement

pension, effective on the date of his permanent disability, if his permanent disability is determined by a medical board comprising no less than 3 registered medical doctors and certified by the Chief Medical Officer certified by the Chief Medical Officer, and shall be entitled to receive-

- (a) his accrued benefit determined on his benefit commencement date distributed in accordance with paragraph 54; and
- (b) an amount equal to the excess, if any, of 12 times such participant's final average pensionable earnings determined on the date of his retirement over the actuarially equivalent present value of the participant's accrued benefit, payable to the participant as a lump sum.

(2) Where a participant to whom a pension is being provided under this paragraph is found by the Chief Medical Officer, acting on the advice of the medical board, to be no longer disabled or is re-appointed to his prior Judicial Service, the payment of his pension shall be suspended until such participant's subsequent retirement from Judicial Service..

(3) A participant whose pension is suspended pursuant to subparagraph (2) shall resume active participation in the defined contribution part on the date of his re-employment.

(4) On resumption by a participant pursuant to subparagraph (3) the participant's account balance shall be re-instated and re-determined based on payments made and applicable interest credits for the period during which the participant was disabled.

Disability benefit

49. (1) A pension payable to a participant under paragraph 48 shall be determined in the same manner as if the participant had retired in accordance with paragraph 47.

(2) If an active defined contribution participant is permanently disabled due to injuries incurred-

- (a) whilst in the actual discharge of his duty; and
- (b) without his own default,

and as a result of those injuries he is eligible for disability retirement under paragraph 48 and retires under that paragraph, he shall be provided with an additional pension determined in accordance with subparagraph (3).

(3) The additional disability pension payable to a participant pursuant to this paragraph shall be equal in amount to one-third of the participant's final average pensionable earnings, determined as at his disability retirement date.

50. (1) An active defined contribution participant who resigns from Judicial Service prior to becoming eligible for retirement under this Schedule may, at any time after his resignation date, elect either to leave his accrued benefit in the Fund until he becomes eligible for retirement (in which case such participant's accounts will continue to be credited with interest calculated in accordance with paragraph 13 and 14)) or to have the Board transfer to an approved plan an amount equal to the sum of-

Resignation from
Judicial Service prior to
retirement

- (a) the participant's participant contribution account balance; and
- (b) the participant's Government contribution account balance, subject to the limitations prescribed in subparagraphs (2), (3) and (4).

(2) Notwithstanding subparagraph (1)(b), the maximum amount that may be transferred by a participant to an approved plan pursuant to subparagraph (1) shall be specified from time to time by the Board.

(3) Notwithstanding subparagraph (2), the Board may further limit the amount, if any, in excess of the amount determined under subparagraph (1)(a) that may be transferred to an approved plan if it considers such limitation necessary or advisable to avoid depletion of the Fund's assets.

(4) A former defined contribution participant who does not make the election described in subparagraph (1) shall be deemed to have elected to leave his accrued benefit in the Fund until he becomes eligible for retirement (in which case such participant's accounts will continue to earn interest credited in accordance with this Schedule).

51. A defined contribution participant contribution account and a portion of the Government account balance that matches the participant contributions under the Plan together with the interest credited in accordance with this Schedule shall at all times be fully vested and shall not be subject to forfeiture for any reason.

Vesting

52. (1) The aggregate amount of benefit payments under this Schedule made to or on behalf of any defined contribution participant or beneficiary of a participant shall not be less than an amount equal to the participant contribution account balance of the participant at the time of the first to occur of retirement or death.

Distribution of
participant contribution
account balance

(2) In the event that the total amount of benefits paid to or on behalf of a defined contribution participant is less than the participant contribution account balance on the date of the participant's death, the remaining balance shall be paid in cash to the participant's or beneficiary's estate.

Forms of benefit and
methods of payment

53. The accrued benefits payable to or on behalf of a retired, deferred vested or deceased defined contribution participant under this Schedule shall be paid in accordance with the forms of benefit and methods of payment as elected by such participant pursuant to this Schedule.

Methods of benefit
payment

54. (1) The normal form of payment of the accrued benefit of a defined contribution participant shall be-

- (a) in the case of an unmarried participant, an annuity for the life of the participant paid by equal monthly payments (subject to annual adjustments for inflation pursuant to paragraph 24); or
- (b) in the case of a married participant, a 50% joint and survivor annuity paid by equal monthly payments (subject to annual adjustments for inflation pursuant to paragraph 24).

(2) In lieu of the pensions described in subparagraph (1), a defined contribution participant may elect any one of the following optional forms of payment of his accrued benefit-

- (a) in the case of an unmarried participant, an annuity consisting of equal monthly payments (adjusted annually for inflation pursuant to paragraph 24) for the life of the participant, but if the participant should die prior to receiving a total of 120 monthly payments, the participant's designated beneficiary shall receive an immediate lump sum cash payment upon such death equal to the product of the deceased participant's monthly payment at the time of death times the number of monthly payments which remain to be made to reach 120 total payments; and
- (b) in the case of a married participant, subject to the written consent of his spouse to such election-
 - (i) the annuity described in subparagraph (1)(a); or
 - (ii) the annuity described in subparagraph (2)(a).

(3) In addition to any other optional form of payment described in this paragraph, a defined contribution participant may elect to receive up to **25%** of his accrued benefit in the form of an immediate lump sum cash payment, subject to the written consent of the spouse in the case of a married participant, and to receive the balance of his accrued benefit in any of the other forms applicable to such participant, as set out in this paragraph.

(4) The amount of benefit payable under each of the payment options described in this paragraph shall be determined by reference to Plan actuarial tables based on a defined contribution participant's account balances valued on his benefit commencement date and taking into consideration the age of the participant at the time of retirement (and, in the case of a 50% joint and survivor annuity, the age of the participant's spouse).

(5) A defined contribution participant who retired from Judicial Service prior to normal retirement age may elect pursuant to this paragraph to defer payment of his accrued benefit until he attains normal retirement age.

55. (1) Upon the request of a defined contribution participant, or at least three months prior to such participant's normal retirement date, the Administrator shall provide the participant with a form of Application for Retirement (including commutation and optional form of benefit elections).

Method of election

(2) In order to elect an optional form of benefit, a defined contribution participant must complete the application indicating his election, sign the application (and, if applicable, have his spouse sign the consent to such election) and return it to the Administrator not later than one month prior to his benefit commencement date.

Death Benefits

56. (1) Upon the death of a participant prior to commencement of his benefits, there shall be paid to the participant's surviving spouse and children, if any, a pension in accordance with the provisions of this Schedule.

Pensions payable to surviving spouse and children of active or deferred vested participants

(2) Where the defined contribution participant dies leaving a spouse but no children, the surviving spouse is entitled to a pension payable in the form of an annuity equal in value to such participant's account balances as at the date of such participant's death.

(3) Where the defined contribution participant dies leaving a spouse and children -

- (a) the surviving spouse is entitled to one-half of the pension described in subparagraph (2); and
- (b) one-half of the participant's account balances on the date of the participant's death shall be divided equally among the children and paid to the children in a single lump sum cash payment.

(4) Notwithstanding subparagraph (3), where at the time of a defined contribution participant's death, the Administrator is in receipt of either-

- (a) an election by the participant to which the participant's spouse has consented in writing; or
- (b) a court order, directing that upon the participant's death the Administrator shall pay the surviving spouse's pension to the children,

then the pension otherwise payable to the participant's surviving spouse, if any, shall be divided equally among the children and paid to the children in a single lump sum cash payment; and the pension shall be paid in addition to any other benefit otherwise payable to the children pursuant to this paragraph.

(5) Where the defined contribution participant dies leaving children, but no surviving spouse, the deceased participant's account balances on the date of the participant's death shall be divided equally among the children and paid to the children in a single lump sum cash payment.

(6) Where the defined contribution participant dies leaving no spouse and no children, the full value of the deceased participant's account balances shall be paid in a single lump sum to the participant's designated beneficiary, and if such designated beneficiary predeceases the participant, to the participant's estate.

In-service death benefit

57. (1) If an active defined contribution participant dies while still a judge, upon his death there shall be paid to the deceased participant's designated beneficiary an amount equal to the excess, if any, of the greater of-

- (a) twelve times the participant's final average pensionable earnings, determined as at the date of his death; or
- (b) his participant contribution account balance determined as at the date of his death,

over the actuarially equivalent present value determined by reference to Plan actuarial tables of the benefits, if any, payable to the participant's beneficiaries in accordance with this Schedule.

If the deceased participant failed to designate a beneficiary, or if his designated beneficiary has predeceased him and there is no new designated beneficiary, the amount payable under this paragraph shall be paid to the participant's estate.

Pensions to beneficiaries where a participant is killed on duty

58. (1) Where an active defined contribution participant dies while in Judicial Service as a result of injuries received-

- (a) whilst in the actual discharge of his duty; and
- (b) without his own default,

in addition to any benefit payable to the deceased participant's designated beneficiaries or estate pursuant to paragraph 57, there shall be paid to the participant's beneficiaries, if any, a pension determined in accordance with this paragraph.

(2) Where the participant dies leaving a spouse, a monthly pension shall be paid to the surviving spouse at a rate not exceeding fifteen-sixtieths of the participant's final average pensionable earnings on the date of injury.

(3) Where the participant dies leaving a spouse to whom a pension is provided pursuant to subparagraph (2) and six children or less, a monthly pension shall be paid to each child, until the date specified in paragraph 23, at a rate not exceeding one-sixth of the pension, prior to commutation, provided to the surviving spouse under subparagraph (2).

(4) Where the participant dies leaving six children or less, but does not leave a surviving spouse, a monthly pension shall be paid to each child, until the date specified in paragraph 23 for cessation of children's pensions, at a rate of twice the amount specified in subparagraph (3).

(5) Where the participant dies leaving six children or less and a surviving spouse to whom a pension is provided pursuant to subparagraph (2) and the surviving spouse subsequently dies, the monthly pension in respect of each child shall be increased on the date of death of the surviving spouse to twice the amount specified in subparagraph (3).

(6) Where the participant dies leaving more than six children, the aggregate amount of pension payments that would be payable to six children pursuant to subparagraph (3), (4) or (5), as the case may be, shall be divided equally among all the children during the period in which there are more than six children who are entitled to receive a pension under this paragraph.

(7) Where the participant dies without leaving a surviving spouse and without leaving any children, and if the deceased participant's mother or father or both parents were wholly or mainly dependent on him for financial support and have no other means of financial support, as determined by the Administrator, a monthly pension shall be paid to the mother or father or both, while without adequate means of support at a rate not exceeding one-sixth of the deceased participant's final average pensionable earnings as at the date of injury.

(8) A pension provided under subparagraph (7) shall cease on the written instructions of the Administrator if it appears to the Administrator that the mother or father or both parents are receiving adequate financial support by other means.

(9) An active defined contribution participant who dies as a result of injuries received while travelling in pursuance of official instruction shall be deemed to have died in the circumstances detailed in subparagraph (1).

(10) This paragraph shall not apply in the case of the death of any active defined contribution participant if his beneficiaries, as defined in the Workmen's Compensation Law (1996 Revision), are entitled to compensation under that law if no pension is paid under this paragraph.

1996 Revision

Payment of pensions to surviving spouse

59. A surviving spouse to whom a pension is payable under paragraph 56 may elect prior to his benefit commencement date to be paid in lieu of the pension-

- (a) a reduced pension at a rate of not less than 75% of the pension; and
- (b) an immediate lump sum cash payment equal in amount to the present value, determined with reference to Plan actuarial tables, of the difference between the pension and the reduced pension described in sub-subparagraph (a).

Payment of pensions to surviving children

60. Upon written notice received by the Administrator of the possibility of the birth of a posthumous child of a deceased defined contribution participant, the Administrator shall delay payment of any pension payable to a child pursuant to paragraph 56 for up to ten months after the participant's death in order to determine whether there are any posthumous children of the participant who are entitled to a pension under such paragraph.

Commencement of benefits

61. Benefit payments (including lump sum cash payments) provided under this Schedule shall commence-

- (a) in the case of a retired participant, at the end of the month following retirement; and
- (b) in the case of a beneficiary, at the end of the month following the participant's death, except as provided in paragraph 60.

Death after resignation but prior to benefit commencement date

62. Upon the death of a deferred vested defined contribution participant prior to the participant's benefit commencement date, the deceased deferred vested participant's designated beneficiary shall be entitled to receive an immediate lump sum cash payment equal to the excess, if any, of the participant's accrued benefit determined on the date of his death, less any prior distributions, over the actuarially equivalent present value determined by reference to Plan actuarial tables of the benefits, if any, payable to such participant's beneficiaries in accordance with paragraphs 56 and 60.

Death after benefit commencement date

63. Upon the death of a retired participant after the participant's benefit commencement date, the designated beneficiary of the participant shall be entitled to receive such benefit as is provided under the distribution form elected by the participant pursuant to paragraph 53.

64. If a deceased participant has failed to designate a beneficiary, or if his designated beneficiary has predeceased him, the amount payable under paragraph 57, 62 or 63 shall be paid to the participant's estate.

Benefit paid to estate if
no surviving designated
beneficiaries

65. If a deceased participant dies with no spouse and no children surviving him, the amount payable under paragraph 56 shall be paid in a single lump sum to the participant's designated beneficiary, or if his designated beneficiary has predeceased him, the amount shall be paid in a single lump sum to his estate.

Benefit paid to
beneficiary if no
surviving spouse or
children

Made this 27th day of October, 2005

Bruce H. Dinwiddy

Governor