

CAYMAN ISLANDS



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THE PUBLIC SERVICE PENSIONS LAW, 1999

(Law 6 of 1999)

THE PUBLIC SERVICE PENSIONS LAW, 1999

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CAYMAN ISLANDS

Law 6 of 1999.

I Assent

JAMES M. RYAN

Acting Governor.

3 May, 1999

A LAW TO REFORM THE LAW RELATING TO PUBLIC SERVICE PENSIONS, TO RE-ESTABLISH THE PUBLIC SERVICE PENSIONS BOARD AS A STATUTORY CORPORATION TO MANAGE AND ADMINISTER THE PUBLIC SERVICE PENSIONS FUND, TO RETAIN EXISTING PENSION RIGHTS FOR EXISTING GOVERNMENT EMPLOYEES, TO PROVIDE A DEFINED CONTRIBUTION PENSION PLAN FOR FUTURE GOVERNMENT EMPLOYEES, AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

PART I - GENERAL

Preliminary

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| Short title | 1. This Law may be cited as the Public Service Pensions Law, 1999. |
| Date of commencement | 2. This Law shall commence on the date that it is passed by the Legislative Assembly. |
| Pension rights to be determined under this Law | 3. On and after the date of commencement, the pension rights of all participants shall be determined under provisions of the Plan as set out in this Law. |
| Definitions | 4. In this Law, unless the context otherwise requires- |

“accounts” means-

- (a) a participant contribution account for the benefit of a participant under the defined benefit part of the Plan;
- (b) a participant contribution account; and
- (c) an employer contribution account for the benefit of a participant under the defined contribution part of the Plan;

“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 prescribed by regulations;

“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 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;

“acting allowance” means a monthly allowance paid in addition to basic salary for carrying out duties in excess of a participant’s substantive office relating to an acting appointment;

“actuary” means a person who-

- (a) either-
 - (i) 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 and who is a current member in good standing of one of those professional associations; or
 - (ii) holds some other actuarial qualification and who is, in the opinion of the Financial Secretary, suitable for recognition as an actuary for the purposes of this Law; and
- (b) who has been appointed by the Board (subject to the approval of the Auditor-General) as the actuary for the Plan;

“Administrator” means the employee of the Board responsible for management of the Plan or any other person authorised by the Board to act on behalf of such employee;

“approved investment” means an investment listed in the Second Schedule;

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

“basic salary” means a salaried participant’s full monthly salary for such participant’s substantive office, not including participant contributions, or acting, duty or other allowances;

“basic wages” means an hourly-rated participant’s full monthly wages for such participant’s substantive office, not including participant contributions, acting, duty or other allowances;

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

“benefit commencement date” means the first day of the first period for which a participant or a beneficiary is entitled to receive an annuity or other benefit under the Plan;

“Board” means the Public Service Pensions Board as established by section 6;

“child” means a participant’s child (including an adopted child who was adopted in a manner recognised by law, an illegitimate child, a posthumous child, or a step child) who is either-

- (a) under the age of 18;
- (b) under the age of 23 and in full-time education; or
- (c) mentally or physically incapable of employment, as certified by the Chief Medical Officer;

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

“commutation” means the optional form of benefit whereby a participant elects to receive upon retirement, in lieu of his full pension under this Law, 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 rules prescribed by regulations;

“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 Law 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;
- (b) with respect to participant contributions made to the Fund under the prior law credited to a participant contribution account on the date of commencement pursuant to section 31(2), the average rate of investment return on Fund investments for the period commencing on the date the Fund was established under the prior law and ending on the day immediately prior to the date of commencement of this Law, as determined by the Administrator;

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

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

“designated beneficiary” means the person or persons designated by the participant pursuant to section 20 to receive benefits pursuant to sections 44, 61, 63, 64 or 66 in the event of the participant’s death;

“disability retirement” means retirement due to permanent disability pursuant to section 36 or 53;

“duty allowance” means a monthly allowance paid in addition to basic salary for carrying out duties in excess of a participant’s substantive office where an acting allowance cannot be paid;

“early retirement” means retirement pursuant to sections 33 or 51 on or after attaining early retirement age but before attaining normal retirement age;

“early retirement age” means any age between ages 50 and 59 inclusive, provided that the participant has completed at least 10 years of qualifying service;

“employee” means an employee of an employer;

“employer” means-

- (a) the Government; or
- (b) a Statutory Authority who has opted to join the Plan with the approval of the Board;

“employer contribution account” means the book-keeping account documenting total employer contributions made on behalf of the participant under the defined contribution part, or transferred from the defined benefit part pursuant to section 49(2)(b), plus interest credited in accordance with rules prescribed by regulations;

“final average pensionable earnings” means the sum of-

- (a) a participant’s final full calendar month’s basic salary or basic wage, as the case may be, prior to death, resignation, retirement, or permanent disability;
- (b) the average over a participant’s final 36 consecutive calendar months pensionable service of his acting allowances and duty allowances; except that, for the purposes of this paragraph, if a participant incurs a break in service or an unpaid leave of absence within such 36-month period and is subsequently re-employed, the period during which he was not in pensionable service shall be disregarded and the last calendar month of his pre-break service and first calendar month of his re-employment shall be deemed to be consecutive calendar months; and
- (c) if a participant is employed as a police officer, his final month’s housing allowance;

“former participant” means a participant who terminated employment in 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;

“Fund” means the Public Service Pensions Fund which is a continuation of the Public Service Pensions Fund established under section 5 of the prior law;

“investment grade” means a grade given to any security or other obligation by any two or more internationally recognised credit rating agencies to indicate that the security or other obligation is eligible for investment and it has at least an adequate capacity to pay interest and repay principal;

“investment manager” means a person or entity who meets the qualifications for an investment manager in accordance with rules prescribed by regulations;

“investment return” means the annual earnings on Fund investments, less expenses of the Fund for the same period;

“late retirement” means retirement pursuant to sections 34 or 52 after attaining normal retirement age;

“member” means a member of the Board;

“normal retirement” means retirement pursuant to sections 32 or 51 upon attaining normal retirement age;

“normal retirement age” means age 60;

“Other Public Service” means service with a Statutory Authority that has opted to join the Plan with the approval of the Board;

“participant” means an employee in Service, an employee on an approved leave of absence or an employee who has retired or resigned from Service on pensionable terms;

“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 pursuant to section 50, plus the interest credited in accordance with rules prescribed by regulations;

“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 the Plan;

“pensionable earnings” means for any full calendar month the sum of-

- (a) basic salary or basic wages, as the case may be;
- (b) acting allowances; and
- (c) duty allowances,

paid to the participant;

“pensionable service” means service which, pursuant to rules prescribed by regulations, shall be taken into account in computing benefits under the defined benefit part of the Plan;

“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, which infirmity is certified by the Chief Medical Officer as likely to be permanent;

“Plan” means the scheme set up by this Law and the regulations which set out the provisions of pension benefits granted to participants under the general, defined benefit and defined contribution parts;

“Plan actuarial tables” means actuarial tables used by the Administrator, in consultation with the actuary, in the determination of the amounts of benefits payable under the Plan and in the determination of actuarially equivalent values;

1995 Revision

“prior law” and “prior plan” mean the Pensions Law (1999 Revision), as amended, and the regulations made thereunder, as in effect on the day immediately prior to the date of commencement of this Law and the pension scheme thereby established;

“Public Service” means employment by the Government;

“qualifying service” means service which, pursuant to rules prescribed by regulations, may be taken into account in determining whether a participant is eligible for early retirement pursuant to sections 33 or 51 or to minimum pension benefits pursuant to section 40;

“retired participant” means a participant who is no longer in Service and is receiving pension benefits under this Law;

“retirement” means normal, early, late, disability or special retirement from Service as provided under this Law;

“Service” means Public Service and Other Public Service;

“special retirement” means retirement under special circumstances pursuant to sections 38 or 55;

“traded publicly” means traded on-

- (a) a stock exchange in the Islands; or
- (b) any other exchange recognised by internationally recognised credit rating agencies on which securities are traded, if the prices at which they have been traded on such market are regularly

published in a newspaper or business or financial publication of general or regular paid circulation; and

“transfer value” means the amount a participant may transfer to his defined contribution accounts from the defined benefit part of the Plan pursuant to section 49(2) or the amount a former participant may transfer to an approved plan from the defined benefit or defined contribution parts pursuant to sections 35 or 56.

Pension Regulations

5. (1) The Governor in Council may make regulations-
- (a) to prescribe the particulars which may be prescribed under sections 4, 11, 18, 29, 31, 32, 33, 35, 37, 38, 42, 43, 44, 45, 49, 54, 56, 59, 60, 61, 62, 63 and 64; and
 - (b) such as may be required for the effective implementation of the provisions of this Law.

Governor in Council to make and amend regulations

(2) The regulations may, from time to time, be amended, added to, or revoked, by regulations made by the Governor in Council after the Board has considered the financial impact of such amendments on the finances of the Fund.

(3) If the Governor in Council is satisfied that it is equitable that any regulation should have retrospective effect in order to confer a benefit upon or remove a disability attaching to any person or class of persons, that regulation may be given retrospective effect for that purpose unless the regulation as amended would reduce the benefit of a participant that has accrued prior to such amendment.

Public Service Pensions Board

6. (1) There is established the Public Service Pensions Board in which the Fund shall be vested and which shall, subject to the provisions of this Law, be responsible for administering the Fund.

Public Service Pensions Board

(2) The Board may employ a person to serve as Administrator, a person to serve as Director, Public Service Pensions (who may be the same person) and such other additional staff as it deems necessary to administer the Plan.

(3) The constitution and procedure of the Board and the duties of the Director, Public Services Pensions, are set out in Schedule 1.

(4) The Board shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of suing and being sued and shall have the power to hold land.

(5) Any written notice, order or other document required to be served upon the Board, may be served by leaving the same, or sending it through the post in a prepaid letter, addressed to the Board at the office of the Secretary of the Board.

(6) The common seal of the Board shall be kept in the custody of the Secretary of the Board and shall not be affixed to any instrument except by the authority of the resolution of the Board. The sealing of any instrument shall be authenticated by the signature of either the Chairman or the Deputy Chairman, and of the Secretary.

Powers and duties of the Board

7. (1) The Board shall be responsible for-
- (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 Law;
 - (iii) payments from the Fund necessary for the administration of the Fund;
 - (iv) investment of the Fund in accordance with this Law;
 - (v) accounting for all moneys collected, paid or invested under this Law;
 - (vi) causing a periodic actuarial review of the Fund pursuant to section 13; and
 - (vii) the sale of investments as necessary to meet immediate liabilities and needs, and for reinvestment;
 - (b) liaising with the Chief Secretary and Statutory Authorities regarding collection of data;
 - (c) liaising with the Financial Secretary and Statutory Authorities regarding contribution payments;
 - (d) accounting and reporting in respect of the Plan, as provided in section 12;
 - (e) prescribing contribution rates in accordance with the latest actuarial report;
 - (f) record keeping, as provided in section 12;
 - (g) recommending for approval amendments to the Plan, as provided in section 19;
 - (h) adopting and maintaining a schedule of benefits payable pursuant to sections 28(2) and 43(2) with respect to participants who resigned, retired or died prior to the date of commencement of this Law; and
 - (i) administering such other pension plans or ex-gratia payments as the Governor in Council may direct; except that no assets of the

Fund shall be used to pay for any benefit or expense of such other pension plans or ex-gratia payments unless the Government prepaid such amounts.

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

(3) 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.

8. 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 Plan assets

9. A pension provided under this Law shall be calculated by the Administrator based on Plan actuarial tables and 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 provided in sections 23, 28(2) and 43(2). Calculation of benefits

10. 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. Correction of mistakes in administering pensions

11. The Board shall provide in writing to each participant or beneficiary-

- (a) a handbook summarising the provisions of the Plan;
- (b) an annual benefit statement;
- (c) a statement of retirement benefits at retirement;
- (d) a statement of vested benefits at resignation;
- (e) a death benefit statement at the time of death of the participant; and
- (f) any other information prescribed by regulations.

Communications to participants

12. (1) The financial statements of the Board shall be prepared and maintained in accordance with the standards prescribed for this purpose by the Financial Secretary. Accounts, book-keeping and reporting

(2) Within the period of four months after 31 December of each year the Board shall prepare and submit to the Auditor-General in respect of that year-

- (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 subsection (1).

(3) On receipt of the financial statements referred to in subsection (2) the Auditor-General shall examine and audit the financial statements and shall certify the financial statements subject to such report, if any, as he may think fit.

(4) The Auditor-General shall, within a period of 7 months after the close of the year to which they relate, return to the Board the certified financial statements together with his report, if any.

(5) Within 2 months after receipt from the Auditor-General of the certified financial statements and his report, if any, the Board shall prepare and submit to the Financial Secretary a report of the financial activities of the Board during the year to which the certified financial statements relate, which report shall include a copy of the certified financial statements and of the Auditor-General's report, if any.

(6) The report of the Board together with a copy of the 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 21 days as soon as practicable after he receives it, and such report of the Board shall be gazetted.

Actuarial valuation

13. (1) On the coming into force of this Law, and at such other times thereafter as it deems appropriate, but in no event later than the three-year anniversary of the latest review, the Board shall cause a review to be carried out to assess and evaluate the assets and liabilities of the Fund in order-

- (a) to determine whether it remains capable of meeting its liabilities for the following period of at least 40 years 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 reinstate that capability; and
- (c) to determine the amount to be reflected on the balance sheet,

and the first of such reviews shall assess the assets and liabilities of the Fund as at 1st January, 1999.

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

(3) A report of the actuarial review carried out pursuant to subsection (1) shall be made to the Board, which shall send a copy to the Financial Secretary,

and the Governor in Council may cause its own actuarial valuation to be carried out if it determines that there is good reason to do so.

(4) The Financial Secretary shall, immediately after he receives it, lay the actuarial report on the table of the Legislative Assembly for 21 days, and such report shall be gazetted.

Funding and Investments

14. The Public Service Pensions Fund established under the prior law shall be continued under this Law. Continuation of Public Service Pensions Fund

15. There shall be paid into the Fund- Payments into the Fund

- (a) all participant and employer contributions;
- (b) all assets transferred from an approved plan on behalf of a defined contribution participant pursuant to section 50;
- (c) all rent, interest, dividends, income and other sums derived from the assets of the Fund;
- (d) such other sums as may legally be provided by an employer; and
- (e) such other sums as may be received and accepted by the Board on behalf of the Fund.

16. (1) There shall be paid out of the Fund- Disbursements from the Fund

- (a) all pension benefits;
- (b) all expenses properly incurred in the administration of the Plan and of the Fund;
- (c) upon the direction of the Administrator, payment pursuant to sections 35 or 56 of the participant's transfer value to an approved plan; and
- (d) ex-gratia pensions granted on and after the commencement of this Law, subject to the Government's pre-payment into the Fund of amounts necessary to pay such ex-gratia pensions.

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

17. (1) The Fund shall be invested by the Board in approved investments as set out in Schedule 2. Fund investments

(2) The Board may appoint one or more investment managers to whom the Board may delegate any or all of its investment duties hereunder.

(3) The Board shall invest the Fund in such a manner to ensure that there is no undue risk of loss or impairment to the Fund and pursuant to the advice of any investment managers appointed by the Board pursuant to subsection (2).

(4) The Board shall exercise the care, diligence and skill in the investment of the Fund that persons of ordinary prudence would exercise in dealing with the property of another.

Contributions to the
Fund

18. (1) Participants shall contribute to the Fund at the rate prescribed by regulations, and in default of such prescription, at the rate of 6% of their pensionable earnings.

(2) (a) Employers (including Statutory Authorities to which a participant has been seconded or employed) shall contribute to the Fund the amount prescribed by the Board in accordance with section 7(1)(e).

(b) When an active participant is transferred to a non-participating Statutory Authority, the non-participating Statutory Authority may opt, with the approval of the Board, to join the Plan and shall, for the purpose of paying the employer contribution for such active participant, be deemed a participating Statutory Authority .

(3) A participant's contribution shall be deducted each pay period by the Accountant General (or by an employing Statutory Authority with which a participant has been seconded or employed) from such participant's pensionable earnings and paid by the Accountant General into the Fund on a monthly basis or in the case of deductions made by an employing Statutory Authority, such deductions shall be paid to the Administrator on a monthly basis for payment into the Fund.

(4) Any participant contributions and employer contributions which are credited pursuant to this Law to a participant's account shall be credited to his accounts on the account adjustment date next following the later of the date such contributions were initially paid into the Fund or the date the participant first became a participant.

(5) The Government's contribution in respect of a contributing participant's Public Service shall be a charge on the revenue of the Islands and shall be determined and paid by the Accountant General into the Fund at the same time as the Accountant General pays the participant's contribution into the Fund under subsection (3).

(6) A Statutory Authority's contribution in respect of a contributing participant's Other Public Service shall be paid to the Administrator for payment into the Fund at the same time the Statutory Authority pays the participant's contribution to the Administrator under subsection (3).

(7) Subject to the provisions, every participant shall cease to contribute to the Fund on the day on which he ceases to be employed in the Service.

(8) Contributions shall be assessed, and deductions shall be made, based on the pensionable earnings 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.

Miscellaneous

19. The Board shall determine the financial impact of all amendments to this Law and the regulations and shall advise the Governor in Council of its findings prior to such amendment being considered by the Governor in Council or laid before the Legislative Assembly.

Plan amendments -
financial impact

20. (1) Each participant shall be given the opportunity to designate a beneficiary or beneficiaries who shall be entitled to receive benefits pursuant to sections 44, 61, 63, 64, or 66 and the regulations in the event of the participant's death.

Designation of
beneficiary

(2) A participant shall be permitted to change a beneficiary designated under subsection (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 Law and the regulations shall be paid to the participant's estate.

21. In all cases of a child's pensions provided under this Law, the whole or any part of such pension may be paid, at the discretion of the Administrator, either to the mother, father, to the legal guardian of such child, to the child directly (if he is over the age of 18), or to such other person or persons as the Administrator may, in his discretion, consider to be fit and proper persons, to apply the same for the benefit of such child, and after such payment the Fund shall be free of all responsibility in respect of such payment.

Payment and
administration of
children's pensions

22. Any pension payable to a child pursuant to sections 43, 45, 60 or 62 shall cease upon the latest to occur of-

Cessation of payment of
children's pensions

- (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
- (c) if the child is mentally or physically incapable of employment, as certified by the Chief Medical Officer, on his eighteenth birthday, the date on which the child is capable of employment.

Inflation protection

23. (1) Notwithstanding any other provision of this Law, 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 paragraphs-

- (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 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 in Council shall approve, any increases in pension benefits in excess of 9.8%.

Participation upon re-employment after retirement

24. A retired participant who is receiving a pension and who is subsequently re-employed in Service shall continue to receive that pension without interruption upon re-employment but shall be ineligible to make contributions or accrue further benefits under the Plan.

Participant rights

25. (1) No participant shall lose his right to a pension under this Law because he is-

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

(2) A pension granted under this Law 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 section 26(a)(i) and (ii).

26. A pension provided under this Law 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.

27. (1) Notwithstanding any provision to the contrary, a retired or deferred vested participant who-

Non-resident non-
Caymanians

1997 Revision

- (a) is not the holder of Caymanian status as defined in section 14 of the Immigration Law (1997 Revision); and
- (b) ceases to reside in the Islands,

may, upon such cessation in residency, elect to receive the present value of the remainder of his accrued benefit (actuarially adjusted to take into account any benefits already paid to the participant pursuant to any of the other forms of benefit available to the participant or due to any prior distribution) in an immediate single lump sum cash payment payable within one month after he so ceases to be resident in the Islands.

(2) The Administrator shall exempt from the coverage of the Plan any non-resident of the Islands who is not the holder of Caymanian status as defined in section 14 of the Immigration Law (1997 Revision) if the non-resident, non-Caymanian requests such exemption and can demonstrate to the satisfaction of the Administrator that he is a current participant in another pension plan.

1997 Revision

PART II - DEFINED BENEFITS

Applicability and Eligibility

28. (1) This Part shall apply to all defined benefit participants.

Applicability

(2) Each participant who retired or resigned from Service prior to the date of commencement of this Law and who was entitled to receive pension benefits under the prior law shall be entitled to receive pension benefits under this Law, pursuant to a schedule of benefits adopted and maintained by the Board pursuant to section 7(1)(h), which benefits shall in no event be lesser in value than the

benefits that would have been accrued or payable on the day immediately prior to the date of commencement of this Law.

Defined benefit
eligibility

29. (1) An active participant under the prior plan on the day immediately prior to the date of commencement of this Law shall become an active defined benefit participant under this Plan on the date of commencement and the participant shall be entitled to benefits under this Plan which shall not be lesser in value than the benefits he would have been entitled to under the prior plan on the day immediately prior to the date of commencement of this Law.

(2) Except as provided in section 28(2), an employee who was not an active participant under the prior plan on the day immediately prior to the date of commencement of this Law shall be ineligible to participate in the defined benefit part of this Plan.

(3) An active defined benefit participant who transfers from Service to a non-participating Statutory Authority may, with the approval of the Board and the employing Statutory Authority, continue as an active defined benefit participant.

(4) An active defined benefit participant who incurs a permitted break in service (as prescribed in the regulations) may continue as an active defined benefit participant upon his return to Service.

Option to transfer to
defined contribution part

30. (1) An active defined benefit participant may transfer his participation from the defined benefit part to the defined contribution part of the Plan.

(2) A participant who transfers to the defined contribution part shall not accrue or receive benefits under the defined benefit part, but shall from the date of transfer, be governed by the provisions of the defined contribution part of the Plan.

Accounts

Participant contribution
account

31. (1) The Administrator shall maintain on the books of the Fund for each participant who is an active defined benefit participant, and for each retired and deferred vested participant of the prior plan who made contributions under the prior law and who is entitled to a scheduled benefit under the Plan pursuant to section 28(2), and for any beneficiary of a deceased defined benefit participant, for so long as the Plan maintains an obligation to pay to or on behalf of such participant or beneficiary a benefit under this Law, a participant contribution account.

(2) The Administrator shall determine a participant contribution account balance as at 31st December, 1997 for each participant described in subsection (1) who made contributions under the prior law. The participant contribution account balance shall include all participant contributions made to the Fund by the participant under the prior law, plus interest credited in accordance with rules prescribed by regulations, minus distributions, if any, made to or on behalf of the participant prior to the date of commencement which were attributable to the participant contributions.

(3) The Administrator shall make adjustments to each participant contribution account balance at such times and in such manner as prescribed by regulations.

Retirement Benefits

32. Upon the attainment of normal retirement age, an active defined benefit participant shall be entitled to receive an immediate pension equal to his normal retirement benefit under this defined benefit part, as determined pursuant to rules prescribed by regulations, based on the participant's pensionable service and final average pensionable earnings at normal retirement age. Normal retirement

33. Upon the attainment of early retirement age, an active defined benefit participant shall be eligible to retire from Service with an immediate pension equal to his early retirement benefit under this defined benefit part, as determined pursuant to rules prescribed by regulations, based on the participant's age, pensionable service and final average pensionable earnings at his actual date of retirement. Early retirement

34. An active defined benefit participant who continues employment with an employer after attaining normal retirement age shall be deemed to have retired from Service on the date he attained normal retirement age and to have been re-employed in Service the following day, and section 24 shall apply to any such participant. Late retirement

35. (1) An active defined benefit participant who resigns from Service prior to becoming eligible for retirement under this Law 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 his participant contribution account will continue to be credited with interest in accordance with rules prescribed by regulations) or to have the Board transfer to an approved plan, subject to the limitations prescribed in subsection (2), an amount equal to the greater of- Resignation from Service prior to retirement

- (a) the participant contribution account balance of a participant; or

- (b) the actuarial equivalent present value of the former participant's accrued benefit on the date of resignation (determined by reference to Plan actuarial tables and based on pensionable service and final pensionable earnings on the date of resignation).

(2) Notwithstanding subsection (1)(b), the maximum amount that may be transferred by a participant to an approved plan pursuant to subsection (1) shall be prescribed from time to time by the Board. In the event that the amount determined under subsection (1) in the aggregate exceeds the permissible maximum by more than \$5,000, the excess of the amount determined under subsection (1) shall remain in the Fund in the participant's employer contribution account and the participant shall have the rights of a deferred vested participant with respect to such account balance. Where the excess amount does not exceed \$5,000, the amount determined under subsection (1) shall be transferred to the approved plan.

Disability retirement

36. (1) An active defined benefit participant who becomes permanently disabled shall be eligible to retire from Service with an immediate pension, effective on the date of his permanent disability, if his permanent disability is certified by the Chief Medical Officer.

(2) Where a participant to whom a pension is being provided under this section (or to whom a pension on medical grounds was granted under the prior law) is found by the Chief Medical Officer to be no longer disabled or is re-appointed to his prior office or appointed to an office in Service which the Administrator determines to be similar, the payment of his pension shall be suspended until the earlier of-

- (a) the participant's attainment of normal retirement age, or
- (b) the later to occur of the participant's subsequent termination from Service or attainment of early retirement age.

(3) A participant whose pension is suspended pursuant to subsection (2) shall become an active defined contribution participant on the date of his re-employment.

(4) Where a participant to whom a pension is being provided under this section (or to whom a medical pension was granted under the prior law) is re-appointed to an office in Service which the Administrator determines to be dissimilar to the office he held immediately prior to the onset of permanent disability, section 24 shall apply to the participant.

Disability benefit

37. (1) The pension payable pursuant to section 36 shall be determined in the same manner as the participant's normal retirement benefit, except that his

pensionable service and final average pensionable earnings shall be determined on 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 section 36 and retires under that section, the participant shall be provided with an additional pension determined in accordance with regulations made under this Law.

38. (1) An active defined benefit participant shall be eligible to retire from Service with an immediate pension equal to the actuarial equivalent of his normal retirement benefit under this Part, as determined pursuant to regulations made under this Law and with reference to Plan actuarial tables, based on the participant's age, pensionable service and final average pensionable earnings on his actual special retirement date, upon-

Retirement under special circumstances

- (a) the abolition of the participant's office; or
- (b) his removal from office for the purpose of facilitating improvement in the organisation of the department to which the participant belongs.

(2) The Governor in Council may determine that a participant who retires due to special circumstances may, in addition to the pension provided in subsection (1), be provided an ex-gratia pension. In that event, as required by section 16(d), the Government shall make a pre-payment to the Fund of an amount equal to the actuarial value of the ex-gratia pension commitments as agreed between the Board and the Government based on the recommendation of the actuary which shall take into account any related death or inflation protection obligations.

39. (1) No pension provided under the defined benefit part of this Law to a participant shall, prior to commutation, exceed a monthly amount equal to two-thirds of the highest pensionable earnings drawn by him during any full calendar month of his Service, except as provided in section 40.

Maximum pensions

(2) No pension provided under the defined benefit part of this Law to a participant who has been granted a pension in respect of Other Public Service shall, prior to commutation, exceed, when added to the amount of any such pension or pensions drawn in respect of Other Public Service, a monthly amount

equal to two-thirds of the highest pensionable earnings drawn by him during any full calendar month of his Service, except as provided in section 40.

(3) For purposes of this section, an additional pension benefit provided pursuant to section 37(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 Law, 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 pensionable earnings during any full calendar month of his Service.

Minimum pension payments

40. (1) Notwithstanding any provision of this Law to the contrary, no pension provided under the defined benefit part of this Law and payable to a participant with 10 or more years of qualifying service shall result in monthly payments, after commutation, of less than \$400; except that such minimum pension payments shall not apply to a retired participant whose benefits commenced prior to his attainment of age 55, a deferred vested participant, or to benefits payable to a surviving spouse or child upon the death of the participant.

(2) The aggregate amount of pension payments under this Law made to or on behalf of any defined benefit participant shall in no event be less than an amount equal to his participant contribution account balance at the time of retirement or death. Where the total amount of pension paid to or on behalf of a defined benefit participant is less than his participant contribution account balance on the date of the participant's death or the death of the participant's last surviving beneficiary, the difference shall be paid in cash to the participant's or beneficiary's estate.

Vesting

41. The accrued benefit of a defined benefit participant shall at all times be fully vested and shall not be subject to forfeiture for any reason.

Forms of benefit and methods of payment

42. The pension payable to or on behalf of a retired, deferred vested or deceased defined benefit participant under this Law shall be paid in accordance with the forms of benefit and methods of payment as elected by such participant pursuant to regulations made under this Law.

Death Benefits

Pensions payable to surviving spouse and children

43. (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 regulations made under this Law.

(2) Where a participant of the prior plan died before the date of commencement of this Law, the pensions, if any, payable to the deceased participant's beneficiaries under this Law shall be as set out in a schedule of benefits adopted and maintained by the Board pursuant to section 7(1)(h).

44. (1) If an active defined benefit participant dies in Service, 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) 12 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 section 43 and regulations made under this Law.

(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 section shall be paid to the participant's estate.

45. Where an active defined benefit participant dies while in Service as a result of injuries received-

Pensions to beneficiaries where a participant is killed on duty

- (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 section 44, there shall be paid to the participant's beneficiaries, if any, a pension determined in accordance with regulations made under this Law.

PART III - DEFINED CONTRIBUTIONS

Applicability and Eligibility

46. This Part shall apply to all defined contribution participants.

Applicability

47. An employee who is not participating in the defined benefit part shall, unless exempted pursuant to section 27(2), become an active defined contribution participant on the later of-

Defined contribution eligibility

- (a) the date of commencement of this Law;
- (b) the first day of the month next following the date on which the employee attains the age of 18; or
- (c) the date he is first employed in Service.

No transfers to defined benefit part

48. No transfers of participation will be permitted from the defined contribution part to the defined benefit part of the Plan.

Accounts

Maintenance of accounts

49. (1) The Administrator shall maintain on the books of the Fund for each active, deferred vested and retired defined contribution participant (and each former defined benefit participant who, pursuant to section 35(2), has the rights of a deferred vested defined contribution participant with respect to the portion of his deferred vested benefit which remains in the Fund), and for any beneficiary of a deceased defined contribution 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 Law-

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

(2) The Administrator shall determine for each active defined benefit participant who elects to transfer to the defined contribution part from the defined benefit part pursuant to section 30 a participant contribution account balance and, based on Plan actuarial tables, an employer contribution account balance on the date of transfer.

- (a) The participant contribution account balance for each such participant shall equal the sum of the contributions made by the participant up to the date of transfer plus interest credited in accordance with regulations made under this Law.
- (b) The employer contribution account balance for each such participant shall equal the excess, if any, of the actuarial equivalent present value of the participant's accrued benefit under the defined benefit part on the date of transfer (determined by reference to Plan actuarial tables and based on pensionable service and final pensionable earnings on such date) over an amount equal to the value of his participant contribution account balance on that date.

(3) The Administrator shall make adjustments to the account balances of a defined contribution participant's accounts at such times and in such manner as prescribed by regulations.

50. 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.

Transfer of assets into the Fund from an approved plan

Retirement Benefits

51. Upon retirement from 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, which shall not be later than his normal retirement age, and distributed in accordance with section 59.

Accrued benefit payable upon retirement

52. An active defined contribution participant who continues employment with an employer after attaining normal retirement age shall be deemed to have retired from Service on the date he attained normal retirement age and to have been re-employed in Service the following day, and section 24 shall apply to any such participant.

Late retirement

53. (1) An active defined contribution participant who becomes permanently disabled shall be eligible to retire from Service with an immediate pension, effective on the date of his permanent disability, provided such permanent disability is certified by the Chief Medical Officer, and shall be entitled to receive-

Disability retirement

- (a) his accrued benefit determined on his benefit commencement date distributed in accordance with section 59; 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 section is found by the Chief Medical Officer to be no longer disabled or is re-appointed to his prior office or appointed to an office in Service which the Administrator determines to be similar, the payment of his pension shall be suspended until the earlier of-

- (a) the participant's attainment of normal retirement age; or
- (b) the later to occur of the participant's subsequent termination from Service or attainment of early retirement age.

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

(4) Where a participant to whom a pension is being provided under this section is re-appointed to an office in Service which the Administrator determines to be dissimilar to the office he held immediately prior to the onset of permanent disability, section 24 shall apply to the participant.

Disability benefit

54. (1) A pension payable to a participant under section 53 shall be determined in the same manner as if the participant had retired in accordance with section 51.

(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 section 53 and retires under that section, he shall be provided with an additional pension determined in accordance with rules prescribed by regulations.

Retirement under special circumstances

55. (1) Upon the occurrence of any of the circumstances described in section 38(1), an active defined contribution participant shall be eligible to retire from Service with an immediate pension equal to his accrued benefit determined on his benefit commencement date and distributed in accordance with section 59.

(2) The Governor may determine that a participant who retires due to special circumstances may, in addition to the pension provided in subsection (1), be provided an ex-gratia pension.

Resignation from Service prior to retirement

56. (1) An active defined contribution participant who resigns from Service prior to becoming eligible for retirement under this Law 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 prescribed by regulations) or to have the Board transfer to an approved plan an amount equal to the sum of-

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

(2) Notwithstanding subsection (1)(b), the maximum amount that may be transferred by a participant to an approved plan pursuant to subsection (1) shall be prescribed from time to time by the Board. If the amount determined under subsection (1) in the aggregate exceeds the permissible maximum by more than \$5,000, the excess of the amount determined under subsection (1) shall remain in the Fund in the participant's employer contribution account and the participant

shall have the rights of a deferred vested participant with respect to the account balance. If the excess amount does not exceed \$5,000, the amount determined under subsection (1) shall be transferred to the approved plan.

(3) Notwithstanding subsection (2), the Board may further limit the amount, if any, in excess of the amount determined under subsection (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 subsection (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 regulations made under this Law).

57. The accrued benefit of a defined contribution participant shall at all times be fully vested and shall not be subject to forfeiture for any reason. Vesting

58. The aggregate amount of benefit payments under this Law 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. In the event that the total amount of benefits paid to or 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. Distribution of participant contribution account balance

59. Except as otherwise specifically provided in this Law, the accrued benefits payable to or on behalf of a retired, deferred vested or deceased defined contribution participant under this Law shall be paid in accordance with the forms of benefit and methods of payment as elected by such participant pursuant to regulations made under this Law. Forms of benefit and methods of payment

Death Benefits

60. Upon the death of an active or deferred vested defined contribution participant there shall be paid to the participant's surviving spouse and children, if any, a pension determined in accordance with the rules prescribed by regulations. Pensions payable to surviving spouse and children

61. If an active defined contribution participant dies in Service, upon his death there shall be paid to the deceased participant's designated beneficiary an amount equal to the excess, if any, of 12 times the participant's final average pensionable earnings determined on the date of his death over the actuarially equivalent present value determined by reference to Plan actuarial tables of the benefits, if In-service death benefit

any, payable to the participant's beneficiaries in accordance with section 60 and rules prescribed by regulations.

Pensions to beneficiaries where a participant is killed on duty

62. Where an active defined contribution participant dies while in 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 section 61, there shall be paid to the participant's beneficiaries, if any, a pension determined in accordance with regulations made under this Law.

Death after resignation but prior to benefit commencement date

63. 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 section 60 and regulations made under this Law.

Death after benefit commencement date

64. Upon the death of a retired defined contribution 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 section 59 or as may be prescribed by regulations.

Benefit paid to estate if no surviving designated beneficiaries

65. If a deceased participant has failed to designate a beneficiary, or if his designated beneficiary has predeceased him, the amount payable under sections 61, 63 and 64 shall be paid to the participant's estate.

Benefit paid to beneficiary if no surviving spouse or children

66. If a deceased participant dies with no spouse and no children surviving him, the amount payable under section 60 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.

PART IV - REPEAL OF PRIOR LAW AND TRANSITIONAL PROVISIONS

Repeal of prior law

67. The Pensions Law (1999 Revision) is repealed.

68. Where a participant had applied for an ex-gratia allowance under the prior law but had not attained age 60 prior to the commencement of this Law, in the year in which the participant attains age 60 the Government shall either make a pre-payment to the Fund of an amount equal to the actuarial present value of such-ex-gratia allowance commitments as agreed between the Board and the Government based on the recommendation of the actuary or shall prepay by January 30 of such year and for each year thereafter, an amount equal to the full year's payments to such participant.

Payment of ex-gratia allowances under prior law

SCHEDULE 1

Section 6

Part 1 - Constitution and Procedure of the Board

1. The Board shall consist of not more than 10 members including the Financial Secretary, the Deputy Financial Secretary, the Chairman of the Public Service Commission, the Deputy Chief Secretary, the President of the Cayman Islands Civil Service Association or his substitute, the President of the Public Managers Association or his substitute, a Crown counsel appointed by the Attorney-General as legal adviser to the Board, and not more than 3 members appointed by the Governor, one of whom must have substantial professional investment experience and one of whom must be a retired participant under this Plan.
2. The Chairman of the Board shall be the Financial Secretary and the Deputy Chairman shall be the Deputy Financial Secretary.
3. The Secretary of the Board shall be the Director, Public Service Pensions.
4. A member who is appointed by the Governor shall hold office at the Governor's pleasure.
5. A member appointed by the Governor may resign his office at any time in writing addressed to the Governor, and shall cease to be a member from the date of the receipt of such resignation by the Governor.
6. The Board shall meet at least once in every 3 calendar months.
7. The Secretary shall keep the minutes of each meeting of the Board in proper form.
8. The Board at its first meeting shall adopt standing orders to govern its proceedings.

Part 2 - Duties of the Director, Public Service Pensions

9. The Director, Public Service Pensions, shall have the following duties-
- (a) giving direction to any investment managers appointed by the Board pursuant to section 17(2);
 - (b) managing the cash flow of the Fund;
 - (c) liaising with Plan actuaries;
 - (d) assisting auditors;
 - (e) developing funding policies;
 - (f) interpreting the Plan;
 - (g) assisting in the preparation of reports of the Board required under this Law;
 - (h) supervising staff assigned to administer the Plan; and
 - (i) performing such other duties as the Board, in its discretion, may assign.

Section 17

SCHEDULE 2

Approved Investments

- 1. Cash, including Certificates of Deposit.
- 2. Treasury Bills.
- 3. Foreign government issued bonds.
- 4. Investment grade corporate bonds.
- 5. Equities and debt securities of companies that are traded publicly.
- 6. Collective investment schemes registered on internationally recognised stock exchanges, including open-end and closed-end mutual or pooled funds which invest in investment grade bonds, mortgages or equities.

Passed by the Legislative Assembly the 14th day of April, 1999.

Mabry S. Kirkconnell

Speaker.

Georgette Myrie

Clerk of the Legislative Assembly.