

CAYMAN ISLANDS



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THE NATIONAL PENSIONS (AMENDMENT) LAW, 2016

(LAW 17 OF 2016)

THE NATIONAL PENSIONS (AMENDMENT) LAW, 2016

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CAYMAN ISLANDS

Law 17 of 2016.

I Assent

Helen Kilpatrick

Governor.

6th June, 2016

A LAW TO AMEND THE NATIONAL PENSIONS LAW (2012 REVISION) TO INCREASE THE REQUIREMENTS FOR THE EDUCATION OF MEMBERS; TO ESTABLISH THE DEPARTMENT OF LABOUR AND PENSIONS; TO ESTABLISH THE NORMAL AGE OF PENSION ENTITLEMENT AND TO IMPROVE COMPLIANCE; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

1. (1) This Law may be cited as the National Pensions (Amendment) Law, 2016. Short title and commencement

(2) This Law shall come into force on such date as may be appointed by Order made by Cabinet and different dates may be appointed for different provisions of this Law and in relation to different matters.

2. The National Pensions Law (2012 Revision), in this Law referred to as the “principal Law”, with the exception of section 3, is amended by deleting the word “Superintendent” wherever it appears and substituting the word “Director”. Amendment of the National Pensions Law (2012 Revision), except section 3 - substitution of “Director” for “Superintendent”

3. The principal Law is amended in section 3 as follows - Amendment of section 3 - definitions

- (a) in the definition of the word “actuary” by deleting the word “Governor” and substituting the word “Cabinet”;
- (b) in the definition of the words “additional voluntary contribution” as follows -
 - (i) by inserting after the word “contribution” the words “and the earnings thereon”; and
 - (ii) by inserting after the words “pension fund by” the words “or on behalf of”;
- (c) by inserting in the appropriate alphabetical sequence the following definitions -
 - ““custodian” means the person entrusted with the safekeeping of the assets of the pension fund;
 - “Director” means the Director of the Department of Labour and Pensions established under section 79;
 - “household domestic” has the meaning assigned to those words in the Labour Law (2011 Revision);
 - “investment manager” means a person that manages the investment of a pension plan; and
 - “normal age of pension entitlement” means sixty-five years of age except that a person who attains sixty years of age, within the time prescribed by Order made by Cabinet, may opt for a normal age of pension entitlement of sixty years of age;”;
- (d) in the definition of the word “employee” by inserting after the words “but does not include a Caymanian as defined in the Immigration Law (2015 Revision) who is under twenty-three years of age and pursuing full time education”;
- (e) in the definition of the word “file” by deleting the word “Superintendent” and substituting the word “Director”;
- (f) by deleting the definition of the word “Governor”;
- (g) in the definition of the word “regulations” by deleting the word “Governor” and substituting the word “Cabinet”;
- (h) by deleting the definition of the word “Superintendent”; and
- (i) in the definition of the words “year’s maximum pensionable earnings” as follows -
 - (i) by deleting the word “sixty thousand dollars” and substituting the words “eighty-seven thousand dollars”; and
 - (ii) by inserting after the words “as may be prescribed” the words “by Order, made by Cabinet, containing the amount and the period for which that amount applies”.

Amendment of section
4 - establishment of
pensions plans

4. The principal Law is amended in section 4 as follows -

- (a) in subsection (1) by inserting after the words “or a defined contribution pension plan” the words “and the specific pension plan shall be selected in the prescribed manner”; and
- (b) by repealing subsection (3) and substituting the following subsections -

“(3) The Director shall cause to be published, in the Gazette or via any other media as the Director determines, notice of each pension plan registered under this Law together with the details of any persons who will carry on the functions of administrator, investment manager, investment adviser, or custodian of the pension plan.

(4) An employer who fails without reasonable cause to comply with the requirements of subsection (1) commits an offence and is liable -

- (a) in the case of a first offence, on summary conviction to a fine of twenty thousand dollars or to imprisonment for a term of two years, or to both;
- (b) in the case of a second offence, on summary conviction to a fine of fifty thousand dollars or to imprisonment for a term of three years, or to both; or
- (c) in the case of a third or subsequent offence, on conviction on indictment to a fine of one hundred thousand dollars or to imprisonment for a term of five years, or to both.”.

5. The principal Law is amended in section 5(2) by deleting the word “Governor” and substituting the word “Cabinet”.

Amendment of section
5 - greater pension
benefits and previous
pensions

Amendment of section 6 - prohibitions of administration of an unregistered pension plan

6. The principal Law is amended in section 6 by repealing subsection (5) and substituting the following -

“(5) If an employer to which subsection (4)(a) refers employs a Caymanian employee, then the employer shall enroll that employee in a plan registered in accordance with subsection (1).

(6) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of one year, or to both.

(7) In this section -

(2015 Revision)

“Caymanian” has the meaning assigned to it by the Immigration Law (2015 Revision);”.

Amendment of section 7 - refusal or revocation of registration

7. The principal Law is amended in section 7 by repealing subsection (3) and substituting the following -

“(3) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars or to imprisonment for a term of five years, or to both.”.

Amendment of section 8 - administrator

8. The principal Law is amended in section 8 by inserting the following subsection after subsection (6) -

“(7) A person who contravenes subsection (1) or (4) commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars or to imprisonment for a term of five years, or to both.”.

Amendment of section 9 - registration

9. The principal Law is amended in section 9 as follows -

(a) by repealing subsection (2) and substituting the following subsection -

“(2) An application for the registration of a pension plan shall be made in the prescribed form and accompanied by -

- (a) the prescribed fee;
- (b) two certified copies of the document constituting the pension plan and the relevant pension fund;
- (c) a certified copy of any reciprocal transfer agreement related to the pension plan;
- (d) a statement of investment policy in the prescribed manner;

- (e) evidence of the method utilised to address on-going administrator training;
 - (f) details of the person that has accepted the appointment as auditor of the pension plan;
 - (g) details of any persons, including evidence of the knowledge and skill of the persons, who will carry on the functions of administrator, investment manager, investment adviser, agent of the administrator or custodian of the pension plan;
 - (h) details of all the individuals to be appointed to the pension committee, the board of trustees or the trust company acting as administrator;
 - (i) in the case of a defined benefit pension plan, an original or certified copy of an actuarial report;
 - (j) any other prescribed information respecting the pension plan and pension fund;
 - (k) a certified copy of the explanation and any other information required under section 20(1); and
 - (l) any other information and particulars including copies of any actuarial report or advice given to the administrator or employer in connection with the establishment of the plan as the Director considers relevant.”; and
- (b) in subsection (3) by deleting the word “Governor” and substituting the word “Cabinet.

10. The principal Law is amended in section 12(2) by deleting the word “Governor” and substituting the word “Cabinet”. Amendment of section 12 - registration of amendment

11. The principal Law is amended by repealing section 16 and substituting the following section - Amendment of section 16 - duties of administrator

“Duties of the administrator

16. (1) An administrator shall -
- (a) administer the pension plan and pension fund in accordance with this Law and Regulations; and
 - (b) administer the pension plan and any amendment to the pension plan in accordance with the documents filed with the Director upon registration of that plan or amendment.
- (2) An administrator shall -

- (a) where more than one pension plan is administered by the administrator, segregate the assets, bank accounts and records of each pension plan from the other; and
- (b) segregate the assets, bank accounts and records of a pension plan from any other business in which the administrator may be engaged.

(3) An administrator shall use that administrator's best efforts in the administration of a pension fund using all relevant knowledge and skill that, by reason of the administrator's profession or business or calling, that administrator ought to possess.

- (4) The administrator of a pension plan shall -
 - (a) pay the prescribed fee to the Director in respect of the pension plan within three months of the end of the financial year of the pension plan;
 - (b) file with the Director each year during the continuation of the pension plan an annual information return relating to the pension plan in the prescribed form within three months of the end of the financial year of the pension plan or within any longer period the Director may approve;
 - (c) within six months of the end of a financial year of the pension plan or within any longer period that the Director may approve, file with the Director audited financial statements of the pension plan prepared in the prescribed manner by an independent auditor approved by the Director, together with a copy of any management letter issued by the auditor;
 - (d) every three years during the continuation of a defined benefit pension plan with the assistance of an actuary, review the financial operation of the pension plan and file with the Director an actuarial report within six months of the completion of the review, or any longer period the Director

- may allow;
- (e) provide returns and expense ratios for the pension plan, in the prescribed format, which shall be provided to the Director within six months of the end of a financial year of the pension plan or within any longer period that the Director may approve;
 - (f) provide the Director, within three months of the end of the financial year, evidence of annual administrator training;
 - (g) file with the Director a list of all active and inactive employers in the pension plan annually when filing the annual information return under paragraph (b) and on a monthly basis, thereafter, file with the Director all employer movements in or out of the pension plan;
 - (h) hold annual general meetings dealing with prescribed information and provide a record thereof to the Director within three months of the meeting and to the members with the statement required under section 22;
 - (i) file with the Director any additional reports required under this Law;
 - (j) publish the pension plan or details relating thereto in the prescribed manner;
 - (k) ensure that all documents and records of the pension plan are maintained in a central location and notify the Director of that location and any changes to that location; and
 - (l) prepare and submit to the Director, together with the audited financial statement each year -
 - (i) confirmation that the statement of investment policy is in compliance with the prescribed requirements; and
 - (ii) a register of the members of the pension plan, and the register shall specify -
 - (aa) the name of each member;
 - (bb) the date of birth of each

- member;
- (cc) the employer of each member;
and
- (dd) the value of the accrued benefit
of each member.

(5) If an administrator fails to comply with any requirement under this section, the Director may dismiss the administrator and act as or may appoint another administrator of the plan.

(6) The reasonable administration costs of the Director or the administrator approved by the Director of any action taken under subsection (5) shall be paid by the pension fund.

(7) A person who contravenes this section commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars or to imprisonment for a term of five years, or to both.”.

Insertion of section
16A - functions of the
administrator

12. The principal Law is amended by inserting after section 16 the following section -

“Functions of the
administrator

16A. (1) An administrator shall ensure that the administration, custodianship and investment of a pension plan or pension fund are undertaken by persons qualified and experienced to be administrators, custodians, investment advisers and investment managers, as the case may be.

(2) An administrator shall exercise the care, diligence and skill in the administration of a pension plan and in the management and investment of the pension fund that a person of ordinary prudence would exercise in dealing with the property of another.

(3) An administrator shall not knowingly permit that administrator’s private interests to conflict with that administrator’s duties and powers in respect of a pension plan or pension fund.

(4) An administrator is not entitled to any benefit

from a pension plan other than -

- (a) pension benefits or ancillary benefits or a refund of contributions under the plan to which the administrator is entitled as a member, former member or claimant under the plan ;
- (b) ancillary benefits; and
- (c) the administrative fees and expenses as are provided by a pension plan.

(5) Subsection (4) applies with necessary modifications to a member of a pension committee or board of trustees that is the administrator of a pension plan and to a member of a board, agency or committee made responsible by this Law or any other law for the administration of a pension plan.

(6) If an administrator fails to comply with any requirement under this section, the Director may dismiss the administrator and act as or may appoint another administrator of the plan.

(7) The reasonable administration costs of the Director or the administrator approved by the Director of any action taken under subsection (6) shall be paid by the pension fund.

(8) A person who contravenes this section commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars or to imprisonment for a term of five years, or to both.

13. The principal Law is amended in section 17 as follows -

- (a) in the marginal note by deleting the words “diligence, care and skill” and substituting the words “administrator may employ agents”;
- (b) by repealing subsections (1), (2), (7) and (8); and
- (c) in subsection (6), by deleting the words “subsections (1) and (2)” and substituting the words “subsections 16 (1), (2) and (3) and 16A (1), (2) and (3) ”.

Amendment of section
17- diligence, care and
skill

Insertion of section
18A - obligations of
employer

14. The principal Law is amended by inserting after section 18 the following section -

“Obligations of
employer

18A.(1) An employer shall cause to be kept proper payroll accounts, books and records with respect to all sums of money paid by the employer to a pension plan.

(2) For the purposes of subsection (1), proper payroll accounts, books and records shall not be deemed to be kept if there are not kept such payroll accounts, books and records as are necessary to give a true and fair view of the state of affairs of the employer with regards to a pension plan and to explain its transactions.

(3) An employer shall cause all books of account required to be kept under subsection (1) to be retained for a minimum period of five years from the date on which they are prepared.

(4) For each employee, except an employee for whom an employer is not required to provide a pension plan or to contribute to a pension plan under section 25, an employer shall keep and maintain records showing -

- (a) the name of and current contact information for the employee;
- (b) the date the employment commenced and the duration;
- (c) whether the employment is part time or full time;
- (d) the rate of pay and salaried arrangements;
- (e) gross and net amounts of pay;
- (f) bonuses;
- (g) resignations and terminations relating to the employee;
- (h) the name of the pension plan;
- (i) all deductions from earnings of the employee for pension contributions;
- (j) all contributions made by the employer and on behalf of the employee and evidence of payment to the pension plan;
- (k) the period over which contributions were made;
- (l) the dates on which the contributions were

made; and

- (m) any interest payments made in the name of the pension plan.

(5) The contributions shall be stated clearly and there shall be no comingling; that is, contributions shall be differentiated from other payments that employers are required to pay, such as health insurance.

(6) An employer shall retain records required to be kept under subsection (4) for a minimum period of five years from the date on which they are prepared.

(7) An employer shall maintain a written notification, acknowledged by the employee in writing, of the pension plan referred to in section 4(1).

(8) An employer who -

- (a) knowingly and wilfully contravenes subsections (1) or (3); or
- (b) fails without reasonable cause to comply with subsections (4), (5), (6) or (7),

commits an offence and is liable on summary conviction to a fine of ten thousand dollars.”.

15. The principal Law is amended by repealing section 20 and substituting the following -

Repeal and substitution of section 20 - information from administrator

“Information from administrator

20. (1) An administrator shall provide, in writing, to each person who under this Law is required to become a member of a pension plan, immediately upon the person’s application for membership in the pension plan -

- (a) an explanation of the provisions of the pension plan that apply to the person;
- (b) an explanation of the person’s rights and obligations under the pension plan;
- (c) details of the returns and expense ratios of the pension fund in the prescribed format; and
- (d) any other information prescribed.

(2) An employer shall, within twenty-one days after the date upon which an employee becomes eligible to

become a member of a pension plan, provide to an administrator the information required to enable the administrator to comply with this section.”.

Repeal and substitution of section 22 - annual statement of pension benefits

16. The principal Law is amended by repealing section 22 and substituting the following section -

“Semi-annual statement of pension benefits

22. (1) An administrator shall on a semi-annual basis, or at the shorter period as may be specified in a pension plan, give to each member a written statement setting out -

- (a) the prescribed information in respect of the pension plan which shall cover the pension plan’s operations since the last report or since registration in the first instance;
- (b) in the case of a pension plan that is a defined benefit pension plan, the member’s expected pension benefits as at the member’s normal pension entitlement date or, in the case of a pension plan that is a defined contribution pension plan, the amount of money standing in the member’s account; and
- (c) any ancillary benefits for which the member is eligible.

(2) Notwithstanding the requirement for a written statement under subsection (1), a statement may be forwarded to a member electronically or via any other media upon the consent of the member in writing to accept transmission of the statement in that manner.

(3) An administrator shall, where a member terminates employment with an employer or otherwise ceases to be a member of a plan, give to that member or any other person who is, as a result, entitled to a benefit under the pension plan, a written statement setting out the prescribed information in respect of the benefits, rights and obligations of the member or the other person.

(4) Subsection (3) applies in respect of a multi-employer pension plan where a member ceases to be a member but does not apply where a member terminates employment with an employer but continues to be a

member.”.

17. The principal Law is amended in section 23 as follows -

Amendment of section 23 - inspection of administrator's documents

- (a) in subsection (1) by deleting the words “On a written request” and substituting the words “Within thirty days of a written request”;
- (b) in subsection (4) by deleting the words “calendar year unless the documents have been changed or amended during the course of the year” and substituting the words “six months unless the documents have been changed or amended during the course of the six month period”; and
- (c) by inserting after subsection (4) the following subsection -

“(5) For the avoidance of doubt, only a person mentioned in subsection (1) shall be entitled to inspect the documents referred to in subsection (1).”.

18. The principal Law is amended in section 25 as follows -

Amendment of section 25 - eligibility for membership

- (a) by repealing subsection (1) and substituting the following subsection -

“(1) Subject to subsection (2) all employees between the ages of eighteen years and the normal age of pension entitlement shall be members of a pension plan.”; and

- (b) in subsection (2) as follows -
 - (i) in paragraph (a) by deleting the word “nine” and substituting the word “six”; and
 - (ii) in paragraph (b) by deleting the words “to do housework in private residences” and substituting the words “as a household domestic”.

19. The principal Law is amended by repealing section 26 and substituting the following -

Repeal and substitution of section 26 - normal retirement date

“Normal pension entitlement date

26. (1) The normal pension entitlement date under a pension plan submitted for registration under this Law is the date, not later than three months after attaining the normal age of pension entitlement, on which a person becomes entitled under a registered pension plan to collect that person's pension benefits.

(2) Every pension plan established prior to the 1st June, 1998 and registered under this Law, shall be deemed

to specify a normal pension entitlement date in respect of pension benefits that accrue after the 1st June, 1998, that is not later than one year after attainment of the normal age of pension entitlement.

(3) The first instalment of a member's pension is due not later than the first day of the month following the normal pension entitlement date, unless the member elects otherwise.

(4) An active member who continues employment and membership in a pension plan after the normal pension entitlement date may elect to continue accruing benefits under the pension plan up to the date of the member's pension entitlement and is subject to any terms of the pension plan -

- (a) limiting the number of years of employment or active membership that can be considered for the purpose of determining a member's pension benefit; or
- (b) fixing a maximum amount of a member's pension benefit.

(5) The first instalment of a pension of a member who makes the election described in subsection (4) is due not later than the earlier of -

- (a) the first day of the month following the date of revocation of the election by the member; or
- (b) the first day of the month following the date of termination of employment of the member."

Amendment of section
27 - deferred pension for
past service

20. The principal Law is amended in section 27 by deleting the words "normal retirement date" and substituting the words "normal pension entitlement date".

Amendment of section
28 - deferred pension

21. The principal Law is amended in section 28 by deleting the words "normal retirement date" and substituting the words "normal pension entitlement date".

Amendment of section
30 - minimum benefit

22. The principal Law is amended in section 30 as follows -

- (a) in subsection (1) as follows -

- (i) by deleting the words “his normal retirement date” and substituting the words “the member’s normal pension entitlement date”; and
- (ii) by deleting the word “forty-two” and substituting the word “forty-seven”;
- (b) in subsection (2) by deleting the words “normal retirement date” and substituting the words “normal pension entitlement date”; and
- (c) in subsection (4) by deleting “47(9)” and substituting “47(8)”.

23. The principal Law is amended in section 33 as follows -

Amendment of section 33 - early retirement option

- (a) in subsection (1)(c) by deleting the words “normal retirement date” and substituting the words “normal pension entitlement date”; and
- (b) in subsection (2) by deleting the words “normal retirement date” and substituting the words “normal pension entitlement date”.

24. The principal Law is amended by repealing section 34 and substituting the following -

Repeal and substitution of section 34 - transfer

“Transfer

34. (1) A member of a pension plan who, on or after 1st June, 1998, terminates employment with a specific employer and who is entitled to a deferred benefit -

- (a) may request the administrator to pay an amount equal to the commuted value of the deferred benefit or the balance in the member’s defined contribution account -
 - (i) to another registered pension plan, if the administrator of the other pension plan agrees to accept the payment;
 - (ii) into a prescribed pension entitlement savings arrangement; or
 - (iii) for the purchase for the member of a life annuity that will not commence before the earliest date on which the member would have been entitled to receive payment of pension benefits under the pension plan;
- (b) may elect to remain in the pension plan; or
- (c) may elect to transfer that deferred benefit to a plan administered under the Public Service Pensions Law (2013 Revision) if the administrator of the Public Service Pensions Board agrees to accept the

(2013 Revision)

payment.

(2) The pension entitlement under subsection (1) is subject to the prescribed limitations in respect of the transfer of funds from pension funds.

(3) Notwithstanding subsection (1), where -

- (a) a member's employment is terminated;
- (b) the member ceases to reside in the Islands;
and
- (c) no contributions have been made to a pension plan by or on behalf of the member for a period of two years or more,

the member may request the administrator to pay an amount equal to the commuted value of the deferred benefit or the balance in the member's defined contribution account to a pension plan, pension entitlement savings arrangement or life annuity that is outside of the Islands.

(4) The requirements under subsection (3) are not applicable to transfers between registered pension plans.

(5) For the purposes of subsection (3), a person is considered to have ceased to be resident in the Islands if that person has been absent from the Islands for a period of two years or more, and, in calculating a period of absence, no account shall be taken of a period of residence in the Islands for an aggregate period of less than three months.

(6) Subject to subsections (1) and (3), an administrator may, on making a payment or transfer under section 42, 53 or this section, make a deduction from that payment or transfer, subject to a prescribed maximum fee, exclusive of any transfer fees charged by the pension plan's bankers, in respect of actual and ascertainable administrative expenses incurred in making the payment or transfer that is -

- (a) provided for in the pension plan to be made in respect of all transfers and withdrawals; and
- (b) approved by the Director,

and the Director shall not approve a provision in a pension

plan that purports to enable different levels of deduction to be made in respect of different classes of members.

(7) A former member may exercise that member's pension entitlement under subsections (1) and (3) by delivering to the administrator within the prescribed period of time a direction in a form supplied by the Director.

(8) Subject to compliance with the requirements of this section and the Regulations, the administrator shall comply with the direction referred to in subsection (7) not later than forty-five days after the date of delivery of the direction.

(9) An administrator who contravenes subsection (8) commits an offence and is liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for a term of two years, or to both; and if the offence is a continuing one to a fine of one thousand dollars for every day or part of a day during which the offence has continued.

(10) The administrator shall not make a payment under -

- (a) subsection (1)(a)(ii), unless the pension entitlement savings arrangement is in accordance with the prescribed requirements; and
- (b) subsection (1)(a)(iii), unless the contract to purchase the deferred life annuity is in accordance with the prescribed requirements.

(11) Where a payment does not meet the limitations prescribed in relation to the transfer of funds from pension funds, the administrator shall not make the payment without the approval of the Director.

(12) The Director may, by Order, approve a payment under subsection (11) subject to the terms and conditions contained in the Order that the Director thinks fit in the circumstances.

(13) Where -

- (a) a payment that does not meet the conditions prescribed in relation to the transfer of the funds from pension funds is made without the approval of the Director; or
- (b) there is a failure to comply with a term or condition of the approval given under subsection (12),

the Director may, by Order, require any person to whom payment has been made to repay an amount equal to the amount paid together with interest on the amount.

(14) This section does not apply in respect of benefits under a pension plan accrued on or before a prescribed date where those benefits are guaranteed by an approved provider and the guarantee was given by the approved provider on or before that date.

(15) Subject to section 76, an Order for payment under subsection (12) may be enforced in the same manner as a judgment of the Grand Court for the payment of money.

(16) An administrator is discharged from all responsibilities and liabilities in respect of a payment made in good faith under this section and in compliance with this Law.”.

Amendment of section
39 - pre-retirement death
benefit

25. The principal Law is amended in section 39 as follows -

- (a) in subsection (1) by inserting after the word “entitled” the word “either”;
- (b) in subsection (2) by deleting the words “the surviving spouse may elect that either” and substituting the words “the surviving spouse who elects to receive a deferred pension may further elect that either”;
- (c) in subsection (2)(a) -
 - (i) in sub-paragraph (i) by deleting the word “sixty” and substituting the word “sixty-five”;

- (ii) in sub-paragraph (ii) by deleting the words “normal retirement age” and substituting the words “normal age of pension entitlement”; and
- (d) in subsection (3) by deleting the words “normal retirement date” and substituting the words “normal pension entitlement date”.

26. The principal Law is amended in section 41 by deleting the words “normal retirement date” and substituting the words “normal pension entitlement date”. Amendment of section 41 - commuted value

27. The principal Law is amended in section 43(1)(b) by deleting the words “normal retirement date” and substituting the words “normal pension entitlement date”. Amendment of section 43 - payment on breakdown of marriage

28. The principal Law is amended in section 47 as follows - Amendment of section 47 - contribution rate

- (a) in subsection (2) by deleting the word “Governor” and substituting the word “Cabinet”;
- (b) in subsection (3)(c) by deleting the words “, subject to paragraph (a) of subsection (9),”;
- (c) in subsection 8(c) by deleting the words “normal retirement age” and substituting the words “normal age of pension entitlement”; and
- (d) by inserting after subsection 9 the following subsections -

“(10) Subject to the pension plan, a member may access that member’s additional voluntary contributions prior to the normal age of pension entitlement as follows -

- (a) for medical purposes where the member’s health insurance does not cover the cost of the medical attention sought and the medical attention sought is not elective;
- (b) for temporary unemployment where that unemployment is within the first six month period following the three month period after the date upon which the member was terminated;
- (c) for housing purposes including the construction of the member’s dwelling house, purchase of residential land for the member or for payment of the outstanding balance of member’s mortgage in full but excluding the payment of rent or similar purposes; and

- (d) for the educational purposes of a member or the dependent child of a member who is under twenty-three years of age and pursuing full time education.

(11) For the purposes of subsection (10) a member shall make an application to the administrator in the manner designated by the Director.

(12) An administrator shall provide to the Director on a monthly basis -

- (a) a list of the names of all members who have withdrawn an amount from the member's respective account in a pension plan under this section, stating the amount of each withdrawal;
- (b) a list of the names of all members who applied for an amount under this section;
- (c) a copy of each letter to each member stating the reason for refusal under subsection (12)(b); and
- (d) in the form designated by the Director, a report with respect to each member who has withdrawn an amount from the member's account in a pension plan under this section.

(13) A person who contravenes this section commits an offence and is liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for a term of two years, or to both."

Repeal and substitution of section 48 - notice to superintendent of arrears of contributions

29. The principal Law is amended by repealing section 48 and substituting the following section -

"Notice to Director of arrears of contributions

48. (1) A member and the member's employer shall contribute to the pension fund of a pension plan on behalf of that member from the date that the member is required by this Law to participate in the pension plan and at the rates specified in section 47(3).

(2) Contributions shall be remitted to employees' pension plans on or before the 15th day of the month next following any month in which the employee performs services for the employer, for which the employee receives

or expects to receive remuneration, regardless of the employee's established pay period, and this date shall be known as the "contribution date deadline."

(3) A contribution not received by the close of business on the contribution date deadline is considered a delinquent contribution.

(4) An administrator shall immediately take action to collect a delinquent contribution which for the purposes of this subsection includes interest accrued on the delinquent contribution.

(5) A delinquent contribution not received by the administrator by the 15th day of the month next following the contribution date deadline, in this section referred to as the "reportable date", shall be reported in writing by the administrator to the Director in the form approved by the Director.

(6) An administrator shall notify -

- (a) the Director in writing on or before the 20th day of the month next following the month of the contribution date deadline, in this section referred to as "the delinquent notification date", of any delinquent contributions not received by the reportable date and still outstanding at the date of reporting; and
- (b) the affected employees in writing within sixty days of the date on which the Director is notified under paragraph (a) of the delinquent contributions reported under paragraph (a) and the administrator may publish the names of employers whose delinquent contributions have not been received by the delinquent notification date.

(7) The Director, if the Director considers it necessary, may instruct an administrator in writing, to publish in another publication that the Director shall identify, in addition to the publication under subsection

(6)(b), the names of employers for whom contributions have not been received by the delinquent notification date.

(8) Notwithstanding the requirement for written notification under subsection (6)(b), notification may be forwarded to an affected employee electronically or via any other media upon the consent of the employee in writing, to accept transmission of notification in that manner.

(9) The Director shall, no later than the 20th day of the month next following the delinquent notification date, initiate an action to recover the payment of the delinquent contributions by one or more of the following means -

- (a) by letter of demand to the employer, stating a time within fourteen days of the date of the letter of demand that the contribution shall be paid into the pension plan, and outlining the action that will be taken if the contribution is not forthcoming within the specified time;
- (b) by letter demanding the appearance of the delinquent employer before the Director for the purpose of explaining the delinquency, disclosing the employer's banking arrangements, delinquent contributions and payroll records and arriving at an acceptable payment plan, but only if the Director is of the opinion that the delinquency can be rectified and that the employer is acting in good faith;
- (c) by ordering the payment of a delinquency collection fee equal to the greater of ten per cent of the total amount delinquent or fifty dollars per day, from the contribution date deadline until the total amount of delinquent contributions is paid;
- (d) by commencing legal proceedings in a court of competent jurisdiction to recover the delinquent contributions, any fines and fees arising pursuant to this Law, except that no action is necessary for one or more of the following reasons -

- (i) where the delinquency was reported in error;
 - (ii) where the delinquency has been corrected by full payment; or
 - (iii) where any action has been taken in resolution of the delinquency consistent with this Law; or
- (e) by publishing breaches of the Law by employers and such publications shall include the name of the employer, the offence under the Law which was contravened and the applicable penalty.

(10) Any information disclosed to the Director pursuant to subsection (9)(b) shall be used solely for the purposes of pension arrears recovery and shall otherwise be kept confidential.

(11) Any expenses of the administrator for the additional reporting for the purposes of subsection (6), which shall be approved in advance either generally or specifically by the Director, or any expenses authorized pursuant to this Law to be made by the Director for the actions pursuant to subsection (7) or (9), shall be borne by the employer concerned and not by the pension plan in general or the employees.

(12) An employer who fails to pay contributions into a pension plan within the specified time given by the Director shall, in addition to the delinquent contributions and the fee and expenses levied pursuant to subsection (9)(c) and (11), be liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for a term of two years, or to both.

(13) The Director may -

- (a) investigate the relevant activities of employers in respect of contributions to pension plans; and
- (b) share information pursuant to an investigation under paragraph (a) regarding employers with other Government departments and agencies.

(14) Where pursuant to legal proceedings commenced under subsection (9)(d) funds are restrained for the payment of delinquent contributions to a pension plan, the court shall not make an Order to allow for the payment of costs, legal and other expenses out of the funds.

(15) Where an employee reasonably believes that an employer has failed to remit contributions to the administrator by the reportable date, the employee may in writing report the employer to the Director and the Director may, after making investigations in accordance with subsection (13), take any action referred to in subsection (9).”.

Repeal and substitution of section 50 - accrual

30. The principal Law is amended by repealing section 50 and substituting the following section -

“Accrual

50. (1) An employer is liable to pay interest to a pension fund, as prescribed, on all money that is due to be paid by the employer to that pension fund at the current prime rate in the Islands plus five percent, calculated on a daily basis in addition to any other fees, fines and penalties specified by this Law or ordered by a court of competent jurisdiction.

(2) For the purposes of section 48, the amount of any delinquent contribution to be collected and paid, is inclusive of the accrued interest calculated in accordance with this section.

(3) The administrator of a pension fund shall ensure that all interest due on delinquent contributions has been properly calculated as stipulated in this section and received in accordance with the provisions of this Law and paid into the pension plan of the employee.”.

Amendment of section 52B - withdrawal of amount from pension account as a deposit

31. The principal Law is amended in section 52B(10) by deleting the words “normal retirement age” and substituting the words “normal age of pension entitlement”.

32. The principal Law is amended in section 52C(9) by deleting the words “normal retirement age” and substituting the words “normal age of pension entitlement”. Amendment of section 52C - withdrawal of amount from pension account to pay off an existing mortgage
33. The principal Law is amended in section 52D(1)(c) by deleting the words “normal retirement age” and substituting the words “normal age of pension entitlement”. Amendment of section 52D - additional contributions
34. The principal Law is amended by repealing section 53 and substituting the following section - Repeal and substitution of section 53 - refunds

“Refunds 53. (1) Except as is otherwise provided under this Law, no member or former member is entitled to a refund from a pension fund of contributions made by that member or on that member’s behalf in respect of employment in the Islands or investment earnings on the contributions or otherwise to receive a payment or transfer from the pension plan on or after 1st June, 1998.

(2) Notwithstanding subsection (1), on application by the administrator, contributions and interest thereon may be refunded to a member with the approval of the Director if -

- (a) the pension plan provides for the refund; and
- (b) the pension plan meets prescribed requirements.”.

(3) Subsection (2) shall only apply to a person who has attained the normal age of pension entitlement and provides evidence through the administrator to the satisfaction of the Director that the member cannot transfer that member’s pension benefits to another pension plan, pension entitlement savings arrangement or life annuity.

(4) Notwithstanding subsection (1), where -

- (a) a member’s employment is terminated;

- (b) that member ceases to reside in the Islands; and
- (c) no mandatory contributions have been made to a pension plan by or on behalf of the member for a period of two years or more,

the member may elect, after the expiration of two years from the termination of the member's employment, in the case of a defined contribution pension plan, to receive a lump sum payment of an amount equal to not less than the amount of the contributions made by or on behalf of the member and the investment earnings on the contributions made under the pension plan or to have the units allocated to the member's account realised by the approved provider and to have the amount transferred to another pension plan, and in the case of a defined benefit plan, to receive a lump sum payment of the commuted value of the member's accrued pension benefits.

(5) For the purposes of subsection (4), a person shall be deemed to have ceased to be resident in the Islands when the person has been absent from the Islands for a period of six months or more, and, in calculating a period of absence, no account shall be taken of a period of residence in the Islands for a continuous period less than three months.

(6) Further to the requirements of subsection (4) an administrator shall provide, in the form that the administrator considers appropriate, a member leaving the jurisdiction details setting out that member's ability to access the member's pension benefits under this Law.

(7) A person may only apply for a refund under subsection 4 within the time prescribed by Order made by Cabinet.”.

35. The principal Law is amended in section 69 by inserting after subsection (7) the following subsection -

Amendment of section 69 - adoption of a new pension plan

“(8) An administrator who contravenes this section, commits an offence and is liable on summary conviction to a fine of fifty thousand dollars or five per cent of the assets transferred whichever is greater and this fine shall be paid by the administrator and shall not be charged to the pension plan.”.

36. The principal Law is amended in section 74(4) by deleting the word “Governor” and substituting the word “Cabinet”.

Amendment of section 74 - quorum and votes

37. The principal Law is amended in sections 78(3), (5), (6) and (8) by deleting the word “Governor” wherever it appears and substituting the word “Cabinet”.

Amendment of section 78 - National Pensions Board

38. The principal Law is amended by repealing section 79 and substituting the following -

Repeal and substitution of section 79 - Superintendent

Department of Labour and Pensions

79. (1) There is established the Department of Labour and Pensions which shall be responsible for the administration and enforcement of this Law.

(2) The Department of Labour and Pensions shall be comprised of the Director, Deputy Director, officers and other members of staff necessary to satisfy the requirement of subsection (1).

(3) The Director, Deputy Director, officers and other members of staff of the Department of Labour and Pensions shall be appointed pursuant to the Public Service Management Law (2013 Revision) and the Regulations made thereunder.

(4) The Director is the chief administrative officer of the Board and shall exercise the powers and perform the duties that are vested in or imposed upon the Director by this Law and the Regulations.

39. The principal Law is amended by inserting after section 79 the following section -

Insertion of section 79A - Powers of Director and Deputy Director

“Powers of Director and Deputy Director

79A. The Director, Deputy Director and any designated person pursuant to section 87 shall

have, when performing duties regarding the imposition of administrative penalties under this Law the same powers, privileges and immunities as are conferred on a constable by the Police Law (2014 Revision) and may perform the functions required to be performed by the designated person in accordance with section 87.”.

- Amendment of section 80 - duty of Superintendent and Board
40. The principal Law is amended in section 80 by repealing paragraph (a) and substituting the words “hear, consider and determine decisions appealed in accordance with Part XIII of the Law”.
- Amendment of section 81 - research
41. The principal Law is amended in section 81(4) by deleting the word “one” and substituting the word “five”.
- Amendment of section 82 - information
42. The principal Law is amended in section 82 as follows -
- (a) in subsection (3) by deleting the words “one thousand dollars” and substituting the words “ten thousand dollars or to imprisonment for a term of one year, or to both”; and
 - (b) in subsection (6) by deleting the words “five thousand dollars” and substituting the words “twenty thousand dollars or to imprisonment for a term of two years, or to both”.
- Amendment of section 85 - annual report
43. The principal Law is amended in section 85(2) by deleting the word “Governor” and substituting the word “Cabinet”.
- Amendment of section 87 - entry onto business premises by the Superintendent
44. The principal Law is amended in section 87 as follows -
- (a) by deleting the words “business premises” wherever they appear in the section and substituting the word “workplaces”; and
 - (b) by inserting after subsection (9) the following subsection -
“(10) For the purposes of this section “workplaces” means any premises in which any employee is employed to work and, without prejudice to the generality of the foregoing, includes any shop, office, licensed premises or factory; but does not include, in respect of a household domestic employed there, a private home.”.
- Amendment of section 88 - obstruction
45. The principal Law is amended in section 88 as follows -
- (a) by inserting after subsection (1) the following subsection -
“(1A) A person shall not knowingly or wilfully provide false or misleading information in connection with any information the person is required to provide under this Law.”; and

- (b) in subsection (2) -
 - (i) by deleting the words “contravenes subsection (1)” and substituting the words “contravenes subsection (1) or (1A)”;
 - and
 - (ii) by deleting the words “one thousand dollars” and substituting the words “ten thousand dollars or to imprisonment for a term of one year, or to both.”.

46. The principal Law is amended in section 90 as follows -

Amendment of section 90 - offences

- (a) in subsection (1) by deleting the words “five thousand dollars” and substituting the words “ten thousand dollars or to imprisonment for a term of one year, or to both”;
- (b) in subsection (3) by deleting the words “occurred or is alleged to have occurred” and substituting the words “was reported to the Director”; and
- (c) by inserting after subsection (3) the following subsection -

“(4) After obtaining the written consent of the Director of Public Prosecutions, the Director or Deputy Director may institute criminal proceedings for any offence under this Law, and may appear before the Court to conduct the prosecution in respect of the offence.”.

47. The principal Law is amended by inserting after section 90 the following sections -

Insertion of section 90A - liability of directors, etc. where offence is committed by a body corporate

“Liability of directors, etc. where offence is committed by a body corporate

90A. (1) Where a body corporate commits an offence under this Law, every director or other officer concerned in the management of the body corporate commits that offence unless the director or other officer proves that the offence was committed without the director’s or other officer’s consent or connivance or that the director or other officer exercised reasonable diligence to prevent the commission of the offence.

(2) In subsection (1), “director” in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

48. The principal Law is amended in section 94 by inserting after subsection (2) the following subsections -

Amendment of section 94 - conflict

“(3) Notwithstanding subsection (2), the Director may share information with Government departments and statutory authorities

regarding the compliance of pension plans with this Law and the failure of employers to provide pension benefits or make timely contributions in accordance with this Law.

(4) Information shared by the Director under subsection (3) shall not include any personal information of any employee and is limited to -

- (a) the particulars of the employer;
- (b) the type of contravention under the Law by the employer; and
- (c) the resulting effect of the contravention of the Law by the employer.”.

Insertion of section
94A - victimization

49. The principal Law is amended by inserting after section 94 the following section -

“Victimization

94A.(1) Where an employee reasonably believes that an employer has failed to comply with this Law, the employee may in writing make a disclosure of information to the Director or an authorized officer.

(2) An employer shall not subject or threaten to subject an employee to any victimization on account of a disclosure made under subsection (1).

(3) An employee shall not be considered to be subject to victimization where the employer has the right under any law in force in the Islands to take the action complained of or the action is demonstrably unrelated to the disclosure made.

(2011 Revision)

(4) An employee who reasonably believes that the employee has been victimized as a result of the employee’s disclosure under subsection (1) may make a complaint to a Labour Tribunal in accordance with the Labour Law (2011 Revision).

(5) In this section “victimization” includes the following -

- (a) dismissal;
- (b) suspension;
- (c) denial of promotion;
- (d) demotion;
- (e) redundancy;
- (f) intimidation;

- (g) reduction of employee earnings;
- (h) reduction of employee benefits;
- (i) subjection to any discrimination by an employer or an employee ; or
- (j) the threat of any action referred to in paragraphs (a) to (h).”.

50. The principal Law is amended as follows -

Amendment of section
95 - regulations

- (a) in sections 95(1), (2), (4) and (5) by deleting the word “Governor” wherever it appears and substituting the word “Cabinet”; and
- (b) in subsection (2) as follows -
 - (i) by deleting the word “and” at the end of paragraph (v);
 - (ii) by deleting the full stop at the end of paragraph (w) and substituting “; and”; and
 - (iii) by inserting after paragraph (w) the following paragraph -
 - “(x) prescribing the manner in which an administrative penalty system may be implemented and for all matters that are necessary or convenient to be prescribed for giving effect to the administrative penalty system, which shall empower the Director where a specified offence is committed under this Law to stay or compound any proceeding for that offence; subject to the conditions the Director may think fit, which may include, but are not limited to, the payment of a levy, being not less than twice and not more than five times the amount of any fees that would have been payable had the provisions of this Law been observed and in the event that no fees are payable under this Law, the Director may impose a fine of up to such amount as may be prescribed.”.

51. The principal Law is amended by inserting after section 95 the following section -

Insertion of section
95A - Verification of
compliance

“Verification
of compliance

95A. (1) An employer may, for any purpose, by application, request from the Director or administrator, as authorized by the Director verification that the employer has complied with the provisions of this Law and the Director or administrator, as authorized by the Director if satisfied that the employer is in compliance with the Law, shall issue that verification in the form that the Director or administrator as authorized by the Director considers to be appropriate.

(2) Verification provided by the Director or administrator as authorized by the Director under subsection (1) shall be provided to the employer upon payment, by the employer, of the prescribed fee.

(3) Verification given by the Director or administrator as authorized by the Director under this section is evidence that the employer is in compliance with this Law on the date that the verification is issued by the Director or administrator as authorized by the Director.

(4) An employer is deemed to be in compliance with this Law if all contributions, interest and fees, under this Law have been paid and the Director or administrator as authorized by the Director has no knowledge that the employer has contravened any of the provisions of this Law.”.

Passed by the Legislative Assembly the 6th day of May, 2016.

Juliana Y. O’Connor-Connolly

Speaker.

Zena Merren-Chin

Clerk of the Legislative Assembly.