

NORTHERN EMPLOYEE BENEFITS SERVICES PENSION PLAN ACT

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NORTHERN EMPLOYEE BENEFITS SERVICES PENSION PLAN REGULATIONS

The Commissioner in Executive Council, under section 60 of the *Northern Employee Benefits Services Pension Plan Act* and every enabling power, makes the *Northern Employee Benefits Services Pension Plan Regulations*.

INTERPRETATION

1. (1) In these regulations,

"actuarial valuation report" means a report provided to the pension committee under paragraph 25(2)(a) of the Act; (*rapport d'évaluation actuarielle*)

"going concern assets" means the value of assets of the NEBS plan, including income due and accrued, determined on the basis of a going concern valuation; (*actif évalué en continuité*)

"going concern deficit" means the amount by which the going concern liabilities exceed the going concern assets; (*déficit évalué en continuité*)

"going concern excess" means the amount by which the going concern assets exceed the going concern liabilities; (*excédent évalué en continuité*)

"going concern liabilities" means the present value of the accrued benefits of the NEBS plan, including amounts due and unpaid, determined on the basis of a going concern valuation; (*passif évalué en continuité*)

"going concern special payment" means a special payment made under subsection 7(3) in respect of an unfunded liability of the NEBS plan; (*paiement spécial de continuité*)

"normal cost" means the cost of benefits, excluding going concern special payments, that are to accrue during a plan year, as determined on the basis of a going concern valuation; (*coûts normaux*)

"valuation date" means the date on which an actuarial valuation report values the liabilities of the NEBS plan. (*date d'évaluation*)

(2) In these regulations, the following expressions have the same meaning as in the *Pension Benefits Standards Regulations, 1985* (Canada), as amended from time to time:

- (a) life income fund;
- (b) locked-in registered retirement savings plan;
- (c) restricted life income fund;
- (d) restricted locked-in savings plan.

Core and Ancillary Pension Benefits

2. (1) All pension benefits payable under the NEBS plan except cost of living indexing benefits are prescribed to be core pension benefits for the purposes of paragraph (b) of the definition "core pension benefit" in section 1 of the Act.

(2) Cost of living indexing benefits payable under the NEBS plan are prescribed to be ancillary pension benefits for the purposes of paragraph (b) of the definition "ancillary pension benefit" in section 1 of the Act.

Calculation of Commuted Value

3. (1) The commuted value of a pension benefit of a former member shall be
- (a) calculated in accordance with the recommendations for the computation of transfer values of pensions issued by the Canadian Institute of Actuaries, as amended from time to time; and
 - (b) adjusted, in respect of the period between the date determined under paragraph (a) and a date not earlier than the end of the month immediately preceding the payment or transfer out of the NEBS plan, for interest at a rate not less than the rate of interest that was assumed in calculating the commuted value over the same period of time.
- (2) The period between the date as of which the commuted value is calculated under subsection (1) and the date of the payment or transfer of the commuted value out of the NEBS plan shall not exceed 180 days.
- (3) If, at the date of calculation, the former member has an unconditional entitlement to optional forms of pension or to optional commencement dates, the option that has the greatest value shall be used to calculate the commuted value.

Disclosure to Members

4. The annual statement to be sent to each active member under subsection 28(2) of the Act shall include the following information:
- (a) the name of the member;
 - (b) the period to which the statement applies;
 - (c) the date of birth of the member;
 - (d) the period that has been credited to the member for the purpose of calculating the pension benefit of the member;
 - (e) the date on which the member is first entitled to an immediate pension benefit;
 - (f) the date that is the earliest date on which the member is eligible for an unreduced pension;
 - (g) the name of the spouse of the member listed on the records of the pension committee;
 - (h) the name of any person on the records of the pension committee designated as the beneficiary of the pension benefit of the member;
 - (i) the additional voluntary contributions of the member made for the plan year and the accumulated additional voluntary contributions of the member as of the end of the plan year;
 - (j) the required contributions of the member made for the plan year and the accumulated required contributions of the member as of the end of the plan year;
 - (k) the amount of any funds transferred to the NEBS plan in respect of the member and the benefit under the NEBS plan attributable to that amount or the length of service credited to the member in respect of that amount;
 - (l) the annual amount of the pension benefit accrued in respect of the member as of the end of the plan year and payable on the earliest date on which the member is eligible for an unreduced pension;
 - (m) if applicable, the interest rates credited to the contributions of the member for the plan year;
 - (n) the benefit payable on the death of the member;
 - (o) a statement setting out the right to access the documents described in subsection 29(1) of the Act;
 - (p) a statement as to the going concern funded ratio of the NEBS plan based on the most recent actuarial valuation report for the NEBS plan.
5. (1) The statement to be provided under subsection 28(3) of the Act in respect of a member who has retired from the NEBS plan shall include the following information:
- (a) the date of the statement;
 - (b) the name and date of birth of the member;

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- (c) the name and date of birth of the spouse of the member listed on the records of the pension committee;
- (d) the name of any person on the records of the pension committee designated as the beneficiary of the pension benefit of the member;
- (e) the date on which employment commenced;
- (f) the date on which credited service commenced;
- (g) the date that is the earliest date on which the member is eligible for an unreduced pension;
- (h) the date that is the earliest date on which the member is eligible for an early retirement pension;
- (i) the credited service of the member;
- (j) the additional voluntary contributions of the member made for the plan year and the accumulated additional voluntary contributions of the member as of the date of retirement;
- (k) the required contributions of the member made for the plan year and the accumulated required contributions of the member as of the date of retirement;
- (l) the amount of any funds transferred to the NEBS plan in respect of the member and the benefit under the NEBS plan attributable to that amount or the length of service credited to the member in respect of that amount;
- (m) the total pension benefit payable to the member as well as the amounts attributable to the benefit formula, to additional voluntary contributions and to any other lump sum payment;
- (n) the amount of any pension benefit payable for a limited period and the period during which it is payable;
- (o) the benefit payable on the death of the member;
- (p) the formula, if any, for indexing the pension benefit.

(2) The statement to be provided under subsection 28(3) of the Act in respect of a member who is entitled to a deferred pension benefit shall include the following information:

- (a) the date of the statement;
- (b) the name and date of birth of the member;
- (c) the name and date of birth of the spouse of the member listed on the records of the pension committee;
- (d) the name of any person on the records of the pension committee designated as the beneficiary of the pension benefit of the member;
- (e) the date on which employment commenced;
- (f) the date on which credited service commenced;
- (g) the date that is the earliest date on which the member is eligible for an unreduced pension;
- (h) the date that is the earliest date on which the member is eligible for an early retirement pension;
- (i) the credited service of the member;
- (j) the additional voluntary contributions of the member made for the plan year and the accumulated additional voluntary contributions of the member as of the date of cessation of membership;
- (k) the required contributions of the member made for the plan year and the accumulated required contributions of the member as of the date of cessation of membership;
- (l) the amount of any funds transferred to the NEBS plan in respect of the member and the benefit under the NEBS plan attributable to that amount or the length of service credited to the member in respect of that amount;
- (m) the total pension benefit payable to the member as well as the amounts attributable to the benefit formula, to additional voluntary contributions and to any other lump sum payment;
- (n) the amount of any pension benefit payable for a limited period and the period during which it is payable;

- (o) the total benefit and net benefit payable on the death of the member before early retirement;
- (p) the total commuted value of the pension benefit for transfer purposes as well as the amounts attributable to the benefit formula, to additional voluntary contributions and to any other lump sum payment;
- (q) the formula, if any, for indexing the pension benefit.

(3) The statement to be provided under subsection 28(3) of the Act in respect of a member who is not entitled to a deferred pension benefit shall include the following information:

- (a) the date of the statement;
- (b) the name and date of birth of the member;
- (c) the date on which employment commenced;
- (d) the date on which credited service commenced;
- (e) the credited service of the member;
- (f) the total lump sum payable to the member as well as the amount attributable to the member's contributions accumulated with interest, to additional voluntary contributions and to any other lump sum payment.

Funding Standards

6. The funding standards set out in section 7 apply for the purposes of subsection 31(1) of the Act.

7. (1) In this section, "unfunded liability" means

- (a) the amount by which an increase in the going concern liabilities of the NEBS plan resulting from an amendment to the plan exceeds the going concern excess of the plan as determined on the day before the effective date of the amendment; or
- (b) the amount by which the going concern deficit of the NEBS plan determined at a valuation date exceeds the present value of going concern special payments of the plan established in respect of periods after the valuation date.

(2) For the purposes of this section,

- (a) the date of emergence of an unfunded liability in respect of an occurrence described in paragraph (1)(a) is the effective date of the amendment;
- (b) the date of emergence of an unfunded liability in respect of an occurrence described in paragraph (1)(b) is the valuation date; and
- (c) the interest rate used to determine the present value of going concern special payments referred to in paragraph (1)(b) is the same as the interest rate used to determine the going concern liabilities of the NEBS plan at the valuation date.

(3) An unfunded liability of the NEBS plan shall be funded by going concern special payments sufficient to liquidate the unfunded liability by equal annual payments over a period of 15 years from the date on which the unfunded liability emerged.

(4) The NEBS plan shall be funded in each plan year as follows:

- (a) by contributions from participating employers and members, each equal to one-half of the normal cost of the NEBS plan;
- (b) by equal going concern special payments from participating employers and members.

(5) The amount required under paragraph (4)(a) may be reduced by an amount not greater than the going concern excess as long as the contributions of participating employers and members are reduced by an equal amount.

(6) If an unfunded liability is, by the making of an additional payment, liquidated at a rate greater than the sum of the going concern special payments required under paragraph (4)(b), the amount of a going concern special payment for a subsequent plan year may be reduced if the outstanding balance of the unfunded liability will at no time be greater than it would have been if those going concern special payments had been made.

(7) Payments to the NEBS plan shall be made as follows:

- (a) the normal cost of the NEBS plan shall be paid in equal installments or as a percentage of the anticipated remuneration to be paid to the members during the plan year and shall be paid not less frequently than monthly and not later than 30 days after the end of the period in respect of which the installment is paid;
- (b) any going concern special payments to be made during the plan year shall be paid not less frequently than monthly and not later than 30 days after the end of the period in respect of which the installment is paid;
- (c) the contributions of members shall be remitted to the pension committee not later than 30 days after the end of the period in respect of which the contributions were deducted;
- (d) the pension committee shall immediately pay into the pension fund any amount remitted to the pension committee.

Portability of Commuted Values

8. (1) For the purposes of paragraph 41(1)(b) of the Act, a life income fund, a restricted life income fund and a locked-in registered retirement savings plan are retirement savings arrangements to which the commuted value of a deferred pension benefit may be directly transferred.

(2) Sections 20, 20.1, 20.2 and 20.3 and Forms 1, 2 and 3 of Schedule V of the *Pension Benefits Standards Regulations, 1985* (Canada), as amended from time to time, apply for the purposes of this section.

(3) In applying the provisions of the *Pension Benefits Standards Regulations, 1985* (Canada) referred to in subsection (2) for the purposes of this section

- (a) a reference to a federally-regulated locked-in plan shall be read as a reference to a fund or plan referred to in subsection (1) or to a restricted locked-in savings plan;
- (b) a reference to subsection 25(4) of the *Pension Benefits Standards Act, 1985* (Canada) shall be read as a reference to section 54 of the Act; and
- (c) a reference to section 26 of the *Pension Benefits Standards Act, 1985* (Canada) shall be read as a reference to section 41 of the Act.

9. (1) For the purposes of paragraph 41(1)(c) of the Act, an immediate life annuity or a deferred life annuity that is purchased with a commuted value or with the funds of a locked-in registered retirement savings plan, a restricted locked-in savings plan, a life income fund or a restricted life income fund shall provide that

- (a) except as set out in section 54 of the Act, no benefit provided under the annuity shall be assigned, charged, anticipated or given as security and any transaction purporting to assign, charge, anticipate or give the benefit as security is void;
- (b) except in the case of the unexpired period of a guaranteed annuity where the annuitant is deceased, no benefit provided under the annuity shall be surrendered or commuted during the lifetime of the annuitant or the spouse of the annuitant and any transaction purporting to surrender or commute such a benefit is void; and
- (c) where the annuitant has a spouse at the time that annuity benefits commence to be paid, the annuity benefit shall be paid in the form of a joint and survivor benefit referred to in subsection 47(2) of the Act, subject to any waivers properly made and filed with the pension committee under subsection 47(3) of the Act.

(2) A deferred life annuity referred to in subsection (1) that is purchased with a commuted value or with the funds of a locked-in registered retirement savings plan, a restricted locked-in savings plan, a life income fund or a restricted life income fund shall provide that

- (a) if the annuitant dies before the annuity payments commence, the survivor is entitled, on the death of the annuitant, to an amount equal to the commuted value of the deferred life annuity; and
- (b) any amount to which the survivor is entitled shall be
 - (i) transferred to a locked-in registered retirement savings plan,

- (ii) transferred to another pension plan registered under the *Income Tax Act* (Canada), if the pension plan permits such a transfer and administers the benefit attributed to the transferred funds as if the benefit were that of a plan member with two years of membership in the plan,
- (iii) used to purchase an immediate life annuity or a deferred life annuity from an insurance company, or
- (iv) transferred to a life income fund or to a restricted income fund.

Court Orders and Separation Agreements

10. (1) On receipt of a written request for information concerning a member's entitlement to a pension benefit, deferred pension benefit or pension by or on behalf of a spouse or former spouse of the member that states that a breakdown of the relationship between them has occurred, the pension committee shall make available to the spouse or former spouse any information related to the member's pension benefits that would be available on request to the member.

(2) On receipt of a court order or separation agreement from a member or his or her former spouse that requires a division of a member's pension benefit, the pension committee shall make available to the former spouse all information referred to in subsection (1), and shall treat the former spouse as if he or she were a member with the rights to information, services and benefits set out in the Act and these regulations.

(3) A court order or separation agreement referred to in subsection (2) must contain the following information:

- (a) the dates when the period of joint accrual of the benefit began and ended for the purposes of the *Family Law Act*, and any breaks during that period;
- (b) the percentage of the value of the pension benefit to be used to determine the former spouse's share in respect of the period referred to in paragraph (a).

(4) If, on receipt of a court order or separation agreement, including one that purports to contain the information described in subsection (3), the pension committee is unable to comply with it because it is incomplete, it does not comply with section 54 of the Act or the provisions of these regulations, or there is doubt as to what measures the pension committee must take to comply with it, the pension committee may apply to the Court for an opinion, advice, direction or remedy on seven days notice or any shorter period that the Court may permit.

Calculation of Divided Benefits

11. (1) The value of each of the total entitlement, total pre-division benefit, former spouse's share and member's share is, for the purposes of subsection 54(4) of the Act, to be calculated in the manner set out in this section.

(2) The total entitlement shall be equal to the commuted value excluding the value of benefits payable to a child as may be permitted under the NEBS plan, calculated as at the later of the end date referred to in paragraph 10(3)(a) and the date the member ceases to be an active member.

(3) The total pre-division benefit is to be calculated at the same time as the total entitlement, according to the following formula:

$$A = B \times \frac{C}{D}$$

where

- (a) A is the total pre-division benefit,
- (b) B is the total entitlement determined in accordance with subsection (2),
- (c) C is the period, or total of the periods, of joint accrual between the dates referred to in paragraph 10(3)(a), and

(d) D is the period during which the total entitlement accrued.

(4) The former spouse's share is to be calculated at the same time as the total entitlement, and shall be the total pre-division benefit multiplied by the percentage of it awarded or given to the former spouse in the court order or separation agreement referred to in paragraph 10(3)(b).

(5) The member's share is to be calculated at the same time as the total entitlement, and shall be the total pre-division benefit reduced by the former spouse's share as determined under subsection (4) and further adjusted under section 13, if applicable.

(6) The aggregate of the actuarial present values of the shares of the member and the former spouse must equal the actuarial present value of the total pre-division benefit.

Distribution of Benefits

12. (1) Notwithstanding any requirement to the contrary contained in a court order or separation agreement, if the member's pension benefit, deferred pension benefit or pension is not in payment, the former spouse's share shall be paid to the former spouse in the manner specified in the NEBS plan as long as the benefit is paid as, or is the actuarial equivalent of, a monthly pension payable for the lifetime of the former spouse, with a guarantee of not less than 60 monthly payments commencing on

- (a) the date the member ceases to be a member, whether by retirement, termination of membership or death; or
- (b) any subsequent other date that the former spouse may elect in accordance with subsection (2).

(2) A former spouse may only elect a subsequent date under paragraph (1)(b) if

- (a) the payment of benefits commences no later than December of the calendar year in which the former spouse attains 71 years of age, or immediately if that month has passed; and
- (b) the election is made in the form provided by the pension committee within 90 days after the delivery of the form to the former spouse.

(3) Notwithstanding any requirement to the contrary contained in a court order or separation agreement, if the member's pension is already in payment, the former spouse's share shall be paid to the former spouse as a monthly pension for the lifetime of the former spouse, with a guarantee of not less than 60 monthly payments starting from the date of commencement of the member's pension, commencing immediately.

Adjustment of Member's Share

13. For the purposes of subsection 54(7) of the Act, the member's share may be adjusted on an actuarial basis so that the pension fund neither gains nor loses based on the assumptions used to determine the share in subsection 11(5) as a consequence of the division of the member's pension benefit.

COMMENCEMENT

14. These regulations come into force on the day the *Northern Employee Benefits Services Pension Plan Act* comes into force.

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