

Chapter 6

AN ACT TO AMEND THE LEGISLATIVE ASSEMBLY AND EXECUTIVE COUNCIL ACT, THE LEGISLATIVE ASSEMBLY RETIRING ALLOWANCES ACT AND THE SUPPLEMENTARY RETIRING ALLOWANCES ACT

(Assented to March 17, 2015)

The Commissioner of Nunavut, by and with the advice and consent of the Legislative Assembly, enacts as follows:

PART 1

LEGISLATIVE ASSEMBLY AND EXECUTIVE COUNCIL ACT

- 1. The *Legislative Assembly and Executive Council Act* is amended by this Part.**
- 2. The following is added after section 33:**

Additional allowances, expenses, benefits

33.1 (1) The Management and Services Board may establish policies for the payment and recovery of allowances, reimbursement of expenses and provision of benefits to members who are not members of the Executive Council that are in addition to those provided for in sections 25 to 33.

Same

(2) The Executive Council may establish policies for the payment and recovery of allowances, reimbursement of expenses and provision of benefits to members of the Executive Council that are in addition to those provided for in sections 25 to 33.

- 3. Section 36 is repealed and the following substituted:**

Annual report by Speaker

36. (1) The Speaker shall, during each fiscal year, cause a report to be laid before the Legislative Assembly

- (a) setting out any policies made under subsection 33.1(1) in the previous fiscal year; and
- (b) showing the amounts paid by the Legislative Assembly by way of indemnity, allowance, expense or benefit during the previous fiscal year to each person who had been a member during that previous fiscal year, other than those amounts paid pursuant to a policy made under subsection 33.1(2).

Annual report by Premier

(2) The Premier shall, during each fiscal year, cause a report to be laid before the Legislative Assembly

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- (a) setting out any policies made under subsection 33.1(2) in the previous fiscal year; and
- (b) showing the amounts paid pursuant to a policy made under subsection 33.1(2), by way of allowance, expense or benefit, during the previous fiscal year to each person who had been a member of the Executive Council during that fiscal year.

Combined report

(3) For further clarity, the information required to be reported under this section may be combined into one report.

4. Section 70.01 is repealed.

PART 2

LEGISLATIVE ASSEMBLY RETIRING ALLOWANCES ACT

5. The *Legislative Assembly Retiring Allowances Act* is amended by this Part.

6. In section 1, paragraph (b) of the definition “recipient” is repealed and the following substituted:

- (b) is in receipt of an annual allowance by virtue of being a former spouse, surviving spouse or child of a member or former member; (*bénéficiaire*)

7. Subsection 20(1) is amended by striking out “An individual who ceases to be a member may elect” and substituting “Within six months after ceasing to be a member, an individual may elect”.

8. Paragraph 20.2(2)(a) is repealed and the following substituted”.

- (a) a division and distribution under sections 20.3 to 20.6; or

9. The following is added after section 20.2:

DIVISION ON FAMILY BREAKDOWN

Definitions

20.3. (1) In this section and sections 20.4 to 20.6,

“court order” means an order of the court under section 40 of the *Family Law Act* or a similar judgment of a court outside Nunavut that is enforceable in Nunavut; (*ordonnance judiciaire*)

“former spouse” means

- (a) a person who is a spouse of a member or former member and is applying for a division of property under section 38 of the *Family Law Act*; or
- (b) a person who was previously a spouse of a member or former member; (*ancien conjoint*)

“separation agreement” means a written agreement in settlement of rights arising out of a marriage or a conjugal relationship outside marriage between a member or former member and his or her former spouse, on or after the breakdown of that marriage or relationship; (*accord de séparation*)

“share” means, with respect to a member or former member or his or her former spouse, that person’s portion of the total pre-division benefit resulting from the division of the member or former member’s allowance under this section; (*part*)

“total pre-division benefit” means the benefit accrued to the member or former member under this Act immediately before the division under this section. (*total des prestations avant partage*)

Application

(2) This section applies with respect to the division and distribution of allowances under this Act where, as between a member or former member and his or her former spouse, a court order or separation agreement containing the information specified in subsection (4) is filed with the Management and Services Board, and this section further applies despite any other provision of this Act unless the contrary is specifically stated, and despite any other rule of law or equity.

Information

(3) On receipt of a written request for information concerning a member or former member’s entitlement to an allowance by or on behalf of a former spouse of the member or former member, and stating that a breakdown of the relationship between them has occurred, the Management and Services Board shall make available to the former spouse such information related to the member or former member’s allowance as would be available on request to the member or former member and shall treat the former spouse as if he or she were a member or former member with the rights to information, services and benefits set out in this Act and any regulations made under this Act.

Required information

(4) A court order or separation agreement referred to in subsection (2)

- (a) must contain the following information:
 - (i) 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 such period;

- (ii) the percentage of the value of the allowance to be used to determine the former spouse's share in respect of the period referred to in subparagraph (i); and
- (b) shall not require or permit any method or timing of calculation or distribution of the former spouse's entitlement that is not permitted by this Act or the regulations.

Options for distribution

(5) A court order or separation agreement referred to in subsection (2) that requires a division of a member or former member's entitlement to an allowance that has not yet commenced to be paid, may provide that the former spouse

- (a) must take a transfer of his or her share;
- (b) must take his or her share in the form of a monthly pension payable for his or her lifetime;
- (c) may elect either the option described in paragraph (a) or (b).

Where no option chosen

(6) Subject to subsection (7), a court order or separation agreement that does not address the options described in paragraphs (5)(a), (b), or (c) is deemed to give the former spouse the option described in paragraph (5)(c).

Limitation on election

(7) Despite the terms of any court order or separation agreement to the contrary, no former spouse may take a transfer of his or her share unless the court order or separation agreement has been provided to the Management and Services Board within two years after its effective date, and the election has been made in the format and within the period provided for by the Management and Services Board.

Application to court for remedy

(8) If, on receipt of a court order or separation agreement, including one that purports to contain the information described in subsections (4) and (5), the Management and Services Board is unable to comply with it because it is incomplete, does not comply with section 20.4 or the provisions of the regulations, or there is doubt as to what measures the Management and Services Board must take to comply with it, the Management and Services Board may apply to the court for instructions or a remedy on seven days' notice or such shorter period as the court may permit.

Supplementary Retiring Allowances Act

(9) A court order or separation agreement that purports to divide a member or former member's allowance under this Act but does not refer to this Act, applies equally to the member or former member's allowance under the *Supplementary Retiring Allowances Act* and any regulations made under that Act, provided that any allowance divided as a consequence may only be distributed in the manner described in section 20.5.

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Entitlement subject to filed court order, separation agreement

(10) The entitlement of any person to an allowance under this Act is subject to rights arising under a court order or separation agreement that has been filed with the Management and Services Board.

Value of total pre-division benefit

(11) The value of the total pre-division benefit and the share of a former spouse must be calculated in the manner specified in section 20.4.

Distribution

(12) The share of a former spouse arising under this Act may only be distributed under the conditions specified in section 20.5.

Satisfaction of entitlements, obligations

(13) If the full amount of the share of a former spouse arising under this Act has been distributed in accordance with section 20.5,

- (a) the former spouse shall not receive any further benefit under this Act; and
- (b) the Management and Services Board has no further obligation to the former spouse and has no liability to the member or former member, the former spouse or to any other person by reason only that the court order or separation agreement has been complied with.

Adjustment of share

(14) After a division of a member or former member's allowance under this section, the Management and Services Board shall adjust the member or former member's share on an actuarial basis so that the Fund neither gains nor loses, based on the assumptions used to determine the share in section 20.4, as a consequence of the division of the member or former member's allowance, and shall adjust its records accordingly.

Allowance payable to child

(15) Where a member or former member's entitlement to an allowance has been divided under this section, and he or she dies, the allowance payable to a child under this Act shall be paid in the manner specified in section 15.

No combination of share and allowance

(16) Where a former spouse has received or is entitled to receive a share of a member or former member's allowance under this section, no portion of such share and no right associated with that share may be combined with any allowance to which the former spouse may become entitled as a result of the former spouse being or becoming a member or as a result of a subsequent division of the allowance of another member or former member.

Calculation of Divided Benefits

20.4. (1) The value of each of the total entitlement, total pre-division benefit, former spouse's share and member or former member's share is, for the purposes of section 20.3, to be calculated in the manner set out in this section.

Total entitlement

(2) The total entitlement shall be equal to the actuarial present value, determined in accordance with the going concern assumptions in the most recent actuarial valuation prepared in accordance with the regulations, including death benefit and indexing benefits but excluding the value of allowances payable to a child under this Act, calculated as at the later of the end date specified in subparagraph 20.3(4)(a)(i) and the date the member or former member ceases to be a member.

Calculation of pre-division benefit

(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 specified in subparagraph 20.3(4)(a)(i), and
- (d) D is the period during which the total entitlement accrued.

Calculation of former spouse's share

(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.

Calculation of member or former member's share

(5) The member or former 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 20.6, if applicable.

Shares must equal pre-division benefit

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

Immediate calculation

(7) Subject to subsection 20.3(8), the amounts calculated under this section must be calculated without delay following the Management and Services Board's receipt of the court order or separation agreement.

Separate calculations where election

(8) If a court order or separation agreement provides that a former spouse may elect between a transfer of his or her share or a monthly pension payable for his or her lifetime, and the former spouse has elected to take a monthly pension, or if the former spouse is deemed to have made such an election under subsection 20.5(6), separate calculations of the total entitlement, total pre-division benefit, former spouse's share and member or former member's share shall be made in respect of such former spouse.

Communication of calculations

(9) The Management and Services Board shall communicate the results of any calculations performed under this section to the member or former member and to the former spouse without delay.

Commuted value

(10) A commuted value of an allowance calculated under this section must be determined in accordance with Section 3500 of the *Standards of Practice* of the Canadian Institute of Actuaries, as amended from time to time, and be calculated as at the end date referred to in subparagraph 20.3(4)(a)(i), and for greater certainty must

- (a) include the value of death benefits and indexing benefits; and
- (b) exclude
 - (i) the value of any partial transfer of the allowance under section 20, and
 - (ii) the value of allowances payable to a child under section 15.

Calculation of actuarial present value

(11) An actuarial present value of an allowance calculated under this section must be determined in accordance with the going concern assumptions in the most recent actuarial valuation prepared in accordance with the regulations, calculated as at the later of the end date referred to in subparagraph 20.3(4)(a)(i) and the date the member or former member ceases to be a member, if applicable, and for greater certainty must

- (a) include the value of death benefits and indexing benefits; and
- (b) exclude
 - (i) the value of any partial transfer of the allowance under section 20, and
 - (ii) the value of allowances payable to a child under section 15.

Distribution of share

20.5 (1) Once a former spouse's share is calculated under subsection 20.4(4), it shall be distributed in accordance with this section.

Where former member not a qualifying member

(2) If the allowance is that of a former member who is not a qualifying member as defined in subsection 11(1), the former spouse's share may be distributed only by way of

- (a) a lump sum payment under section 7;
- (b) a transfer to the former spouse's registered retirement savings plan;
or
- (c) if permitted by the administrator of a registered pension plan in which the former spouse is a member, a transfer to that plan.

Where transfer of share

(3) If a court order or separation agreement requires a former spouse to take a transfer of his or her share or the former spouse is permitted to elect to take a transfer and does so elect, and if the allowance is that of a member or a qualifying member as defined in subsection 11(1), and the allowance is not in payment, the former spouse's share will be

- (a) transferred without delay to the former spouse's registered retirement savings plan, or
- (b) if permitted by the administrator of a registered pension plan in which the former spouse is a member, transferred to that plan.

Where former spouse has attained 55 years of age

(4) If a former spouse described in subsection (3) has attained 55 years of age a transfer under that subsection must be made on a locked-in basis.

Communication of election

(5) The election contemplated by subsection (3) must be made and communicated to the Management and Services Board on the forms provided by the Management and Services Board within 90 days after their delivery to the former spouse.

Monthly pension where required or no election

(6) If a court order or separation agreement requires a former spouse to take a monthly pension payable for his or her lifetime, or if the former spouse may elect to take a transfer and does not so elect within the 90 day period described in subsection (5), and if the allowance is that of a member or a qualifying member as defined in subsection 11(1) and the allowance is not in payment, the former spouse shall receive his or her share in the form of a monthly pension payable for his or her lifetime, with a guarantee of not less than 60 monthly payments, commencing on such date as the former spouse may elect that is

- (a) not earlier than the date the member ceases to be a member, and
- (b) not later than the end of the calendar year in which the former spouse attains 71 years of age.

Where former member receiving allowance

(7) If a former member is receiving an allowance at the time of division, the former spouse will receive his or her share in the form of a monthly pension commencing

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immediately for his or her lifetime, with a 60 month guarantee period starting from the date of commencement of the former member's allowance.

Guarantee includes prior payments

(8) For greater certainty, any payments made to the former member prior to the time of the division are included in the number of monthly payments guaranteed under subsection (7).

Adjustment of former spouse's share

(9) If the former spouse's share is distributed in the manner described in subsection (2) or (3), the former spouse's share must be adjusted with interest from the end date specified in the court order or separation agreement as referred to in subparagraph 20.3(4)(a)(i) to the date of distribution.

Definitions

(10) For purposes of this section, a registered retirement savings plan and registered pension plan have the meanings assigned in subsection 248(1) of the *Income Tax Act* (Canada).

Provision for child

20.6. The allowances payable to a child following the death of a member or former member shall not be affected by a division under section 20.3, and shall be paid to an eligible child in accordance with section 15 as if no such division had occurred, and if the former spouse is alive following the death of the member or former member, as if the former spouse was entitled to a survivor allowance under section 15 derived from the member or former member's allowance.

PART 3

SUPPLEMENTARY RETIRING ALLOWANCES ACT

10. The *Supplementary Retiring Allowances Act* is amended by this Part.

11. In section 1, paragraph (b) of the definition "recipient" is repealed and the following substituted:

- (b) is in receipt of an annual allowance by virtue of being a former spouse, surviving spouse or child of a member or former member;
(*bénéficiaire*)

12. Paragraph 19(2)(a) is repealed and the following substituted:

- (a) a division and distribution under sections 19.1 to 19.4; or

13. The following is added after section 19:

DIVISION ON FAMILY BREAKDOWN

Definitions

19.1. (1) In this section and sections 19.2 to 19.4,

“court order” means an order of the court under section 40 of the *Family Law Act* or a similar judgment of a court outside Nunavut that is enforceable in Nunavut; (*ordonnance judiciaire*)

“former spouse” means

- (a) a person who is a spouse of a member or former member and is applying for a division of property under section 38 of the *Family Law Act*; or
- (b) a person who was previously a spouse of a member or former member; (*ancien conjoint*)

“separation agreement” means a written agreement in settlement of rights arising out of a marriage or a conjugal relationship outside marriage between a member or former member and his or her former spouse, on or after the breakdown of that marriage or relationship; (*accord de séparation*)

“share” means, with respect to a member or former member or his or her former spouse, that person’s portion of the total pre-division benefit resulting from the division of the member or former member’s allowance under this section; (*part*)

“total pre-division benefit” means the benefit accrued to the member or former member under this Act immediately before the division under this section. (*total des prestations avant partage*)

Application

(2) This section applies with respect to the division and distribution of allowances under this Act where, as between a member or former member and his or her former spouse, a court order or separation agreement containing the information specified in subsection (4) is filed with the Management and Services Board, and this section further applies despite any other provision of this Act unless the contrary is specifically stated, and despite any other rule of law or equity.

Information

(3) On receipt of a written request for information concerning a member or former member’s entitlement to an allowance by or on behalf of a former spouse of the member or former member, and stating that a breakdown of the relationship between them has occurred, the Management and Services Board shall make available to the former spouse such information related to the member or former member’s allowance as would be available on request to the member or former member and shall treat the former spouse as if he or she were a member or former member with the rights to information, services and benefits set out in this Act and any regulations made under this Act.

Required information

- (4) A court order or separation agreement referred to in subsection (2)
- (a) must contain the following information:
 - (i) 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 such period;
 - (ii) the percentage of the value of the allowance to be used to determine the former spouse's share in respect of the period referred to in subparagraph (i); and
 - (b) shall not require or permit any method or timing of calculation or distribution of the former spouse's entitlement that is not permitted by this Act or the regulations.

Options for distribution

- (5) A court order or separation agreement referred to in subsection (2) that requires a division of a member or former member's entitlement to an allowance that has not yet commenced to be paid, may provide that the former spouse
- (a) must take a transfer of his or her share;
 - (b) must take his or her share in the form of a monthly pension payable for his or her lifetime;
 - (c) may elect either the option described in paragraph (a) or (b).

Where no option chosen

(6) Subject to subsection (7), a court order or separation agreement that does not address the options described in paragraphs (5)(a), (b), or (c) is deemed to give the former spouse the option described in paragraph (5)(c).

Limitation on election

(7) Despite the terms of any court order or separation agreement to the contrary, no former spouse may take a transfer of his or her share unless the court order or separation agreement has been provided to the Management and Services Board within two years after its effective date, and the election has been made in the format and within the period provided for by the Management and Services Board.

Application to court for remedy

(8) If, on receipt of a court order or separation agreement, including one that purports to contain the information described in subsections (4) and (5), the Management and Services Board is unable to comply with it because it is incomplete, does not comply with section 19.2 or the regulations, or there is doubt as to what measures the Management and Services Board must take to comply with it, the Management and Services Board may apply to the court for instructions or a remedy on seven days' notice or such shorter period as the court may permit.

Legislative Assembly Retiring Allowances Act

(9) A court order or separation agreement that purports to divide a member or former member's allowance under this Act but does not refer to this Act, applies equally

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to the member or former member's allowance under the *Legislative Assembly Retiring Allowances Act* and any regulations made under that Act, provided that any allowance divided as a consequence may only be distributed in the manner allowed by that Act.
Entitlement subject to filed court order, separation agreement

(10) The entitlement of any person to an allowance under this Act is subject to rights arising under a court order or separation agreement that has been filed with the Management and Services Board.

Value of total pre-division benefit

(11) The value of the total pre-division benefit and the share of a former spouse must be calculated in the manner specified in section 19.2.

Distribution

(12) The share of a former spouse arising under this Act may only be distributed in accordance with section 19.3.

Satisfaction of entitlements, obligations

(13) If the full amount of the share of a former spouse arising under this Act has been distributed in accordance with section 19.3,

- (a) the former spouse shall not receive any further benefit under this Act; and
- (b) the Management and Services Board has no further obligation to the former spouse and has no liability to the member or former member, the former spouse or to any other person by reason only that the court order or separation agreement has been complied with.

Adjustment of share

(14) After a division of a member or former member's allowance under this section, the Management and Services Board shall adjust the member or former member's share on an actuarial basis so that the Fund neither gains nor loses, based on the assumptions used to determine the share in section 19.2, as a consequence of the division of the member or former member's allowance, and shall adjust its records accordingly.

Allowance payable to child

(15) Where a member or former member's entitlement to an allowance has been divided under this section, and he or she dies, the allowance payable to a child under this Act shall be paid in the manner specified in section 11.

No combination of share and allowance

(16) Where a former spouse has received or is entitled to receive a share of a member or former member's allowance under this section, no portion of such share and no right associated with that share may be combined with any allowance to which the former spouse may become entitled as a result of the former spouse being or becoming a

member or as a result of a subsequent division of the allowance of another member or former member.

Calculation of divided benefits

19.2. (1) The value of each of the total entitlement, total pre-division benefit, former spouse's share and member or former member's share is, for the purposes of section 19.1, is to be calculated in the manner set out in this section.

Total entitlement

(2) The total entitlement shall be equal to the actuarial present value, determined in accordance with the going concern assumptions in the most recent actuarial valuation prepared in accordance with the regulations, including death benefit and indexing benefits but excluding the value of allowances payable to a child under this Act, calculated as at the later of the end date specified in subparagraph 19.1(4)(a)(i) and the date the member or former member ceases to be a member.

Calculation of pre-division benefit

(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 specified in subparagraph 19.1(4)(a)(i), and
- (d) D is the period during which the total entitlement accrued.

Calculation of former spouse's share

(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.

Calculation of member or former member's share

(5) The member or former 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 19.4, if applicable.

Shares must equal pre-division benefit

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

Immediate calculation

(7) Subject to subsection 19.1(8), the amounts calculated under this section must be calculated without delay following the Management and Services Board's receipt of the court order or separation agreement.

Communication of calculations

(8) The Management and Services Board shall communicate the results of any calculations performed under this section to the member or former member and to the former spouse without delay.

Commuted value

(9) A commuted value of an allowance calculated under this section must be determined in accordance with Section 3500 of the *Standards of Practice* of the Canadian Institute of Actuaries, as amended from time to time, and be calculated as at the end date referred to in subparagraph 19.1(4)(a)(i), and for greater certainty must

- (a) include the value of death benefits and indexing benefits; and
- (b) exclude the value of allowances payable to a child under section 11.

Calculation of actuarial present value

(10) An actuarial present value of an allowance calculated under this section must be determined in accordance with the going concern assumptions in the most recent actuarial valuation prepared in accordance with the regulations, calculated as at the later of the end date referred to in subparagraph 19.1(4)(a)(i) and the date the member or former member ceases to be a member, if applicable, and for greater certainty must

- (a) include the value of death benefits and indexing benefits; and
- (b) exclude the value of allowances payable to a child under section 11.

Distribution where allowance not in payment

19.3. (1) Despite any requirement to the contrary in a court order or separation agreement, if the member or former member's allowance is not in payment, the former spouse's share shall be distributed in the form of a monthly pension payable for the lifetime of the former spouse, with a guarantee of not less than 60 monthly payments, commencing on such date as the former spouse may elect that is

- (a) not earlier than the date the member ceases to be a member, and
- (b) not later than the end of the calendar year in which the former spouse attains 71 years of age.

Communication of election

(2) The election contemplated by subsection (1) must be made and communicated to the Management and Services Board on the forms provided by the Management and Services Board within 90 days after their delivery to the former spouse.

Distribution where in allowance in payment

(3) Despite any requirement to the contrary in a court order or separation agreement, if the member or former member's allowance is in payment, the former spouse's share shall be distributed in the form of a monthly pension payable for his or her lifetime commencing immediately, with a 60 month guarantee period starting from the date of commencement of the former member's allowance.

Guarantee includes prior payments

(4) For greater certainty, any payments made to the former member prior to the time of the division are included in the number of monthly payments guaranteed under subsection (3).

Provision for child

19.4. The allowances payable to a child following the death of a member or former member shall not be affected by a division under section 19.1, and shall be paid to an eligible child in accordance with section 11 as if no such division had occurred, and if the former spouse is alive following the death of the member or former member, as if the former spouse was entitled to a survivor allowance under section 11 derived from the member or former member's allowance.

PART 4

TRANSITIONAL

14. An individual who ceased to be a member of the Legislative Assembly before the coming into force of this Act may only make the election referred to in section 20 of the *Legislative Assembly Retiring Allowances Act* within six months after the coming into force of this Act.