

**CONSOLIDATION OF  
LEGISLATIVE ASSEMBLY RETIRING ALLOWANCES ACT  
R.S.N.W.T. 1988,c.L-6**

*(Current to: September 30, 2017)*

**AS AMENDED BY NORTHWEST TERRITORIES STATUTES:**

R.S.N.W.T. 1988,c.41(Supp.)

In force February 6, 1990, except s.13: SI-001-90

s.13 in force July 15, 1996: SI-007-96

S.N.W.T. 1996,c.9

In force April 1, 1996

S.N.W.T. 1998,c.4

In force January 1, 1992 (deemed)

S.N.W.T. 1998,c.31

**Note: See s.1 of S.N.W.T. 1998,c.31 for coming into force provisions.**

**AS AMENDED BY NUNAVUT STATUTES:**

S.Nu. 2002,c.6

In force March 6, 2002

**Note: See s.21(2) of S.Nu. 2002,c.6 for coming into force provisions.**

S.Nu. 2005,c.8,s.3

s.3 in force May 5, 2005, except s.3(2),(3)

s.3(2),(3) in force April 1, 1999 (deemed)

S.Nu. 2006,c.10,s.5

s.5 in force June 15, 2006

S.Nu. 2008,c.8,s.2

s.2 in force June 4, 2008

S.Nu. 2015,c.6,s.5-9

s.5-9 in force March 17, 2015

**Note: see s.14 of S.Nu. 2015,c.6 for transitional provisions.**

S.Nu. 2015,c.20,s.1

s.1 in force November 5, 2015

S.Nu. 2017,c.19,s.1

s.1 in force June 8, 2017

This consolidation is not an official statement of the law. It is an office consolidation prepared for convenience only. The authoritative text of statutes can be ascertained from the *Revised Statutes of the Northwest Territories, 1988* and the Annual Volumes of the Statutes of the Northwest Territories (for statutes passed before April 1, 1999) and the Statutes of Nunavut (for statutes passed on or after April 1, 1999).

A copy of a statute of Nunavut can be obtained from the Territorial Printer at the address below.

The Annual Volumes of the Statutes of Nunavut and this consolidation are also available at <http://www.nunavutlegislation.ca/> but are not official statements of the law.

Any certified Bills not yet included in the Annual Volumes of the Statutes of Nunavut can be obtained through the Office of the Clerk of the Legislative Assembly.

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## GLOSSARY OF TERMS USED IN CONSOLIDATIONS

### *Miscellaneous*

- c. means "chapter".
- CIF means "comes into force".
- NIF means "not in force".
- s. means "section" or "sections", "subsection" or "subsections", "paragraph" or "paragraphs".
- Sch. means "schedule".
- SI-005-98 means the instrument registered as SI-005-98 in 1998. (*Note: This is a Northwest Territories statutory instrument if it is made before April 1, 1999, and a Nunavut statutory instrument if it is made on or after April 1, 1999 and before January 1, 2000.*)
- SI-012-2003 means the instrument registered as SI-012-2003 in 2003. (*Note: This is a Nunavut statutory instrument made on or after January 1, 2000.*)

### *Citation of Acts*

- R.S.N.W.T. 1988,c.D-22 means Chapter D-22 of the *Revised Statutes of the Northwest Territories, 1988*.
- R.S.N.W.T. 1988,c.10(Supp.) means Chapter 10 of the Supplement to the *Revised Statutes of the Northwest Territories, 1988*. (*Note: The Supplement is in three volumes.*)
- S.N.W.T. 1996,c.26 means Chapter 26 of the 1996 Annual Volume of the Statutes of the Northwest Territories.
- S.Nu. 2002,c.14 means Chapter 14 of the 2002 Annual Volume of the Statutes of Nunavut.

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**LEGISLATIVE ASSEMBLY RETIRING ALLOWANCES ACT**

## INTERPRETATION

## Definitions

1. In this Act,

"actuary" means a Fellow of the Canadian Institute of Actuaries engaged by the Management and Services Board under subsection 5(2); (*actuaire*)

"allowance" means an allowance payable under this Act; (*allocation*)

"basic allowance" means

- (a) in the case of a member, the annual allowance the member would have been eligible to receive under this Act if the member had ceased to be a member on the day immediately before the death of the member, and
- (b) in the case of a former member who is in receipt of an annual allowance, the annual allowance the former member was receiving under this Act at the time of the death of the former member; (*allocation de base*)

"benefit" means a supplementary retirement benefit payable under section 18; (*prestation*)

"Benefit Index" means the Benefit Index as defined in the *Supplementary Retirement Benefits Act* (Canada); (*indice de prestation*)

"child" means a natural child or adopted child of a member or former member, and includes a person whom a member has demonstrated a settled intention to treat as his or her child, except under an arrangement where the child is placed for valuable consideration in a foster home by a person having lawful custody, where the child

- (a) is less than 19 years of age on the expiry of December 31 of the calendar year in which the member or former member dies; or
- (b) has attained 19 years of age, but is less than 25 years of age, is not cohabiting and is in full-time attendance at a school or university, having been in full-time attendance substantially without interruption since he or she reached 19 years of age, or since the member or former member died, whichever occurred later; (*enfant*)

"cohabit" means to live together in a conjugal relationship; (*cohabiter*)

"contributions" means contributions made by members under this Act; (*contribution*)

"defined benefit limit" has the meaning assigned to it by subsection 8500(1) of the *Income Tax Regulations*, made under the *Income Tax Act* (Canada); (*plafond des prestations déterminées*)

"Deputy Speaker" means the Deputy Speaker and chairperson of the Committee of the Whole; (*président adjoint*)

"earnings" means the indemnity payable to a person for service in a capacity referred to in section 2 of Schedule C of the *Legislative Assembly and Executive Council Act*; (*indemnité*)

"Fund" means the Legislative Assembly Retiring Allowances Fund established under subsection 4(1); (*fonds*)

"Management and Services Board" means the Management and Services Board established by the *Legislative Assembly and Executive Council Act*; (*Bureau de régie et des services*)

"member" means a member of the Legislative Assembly; (*député*)

"pensionable age" means the earliest of

- (a) the age of 60 years,
- (b) 30 years of service, or
- (c) the aggregate of an age in years and years of service equal to 80; (*âge admissible*)

"pensionable remuneration" means an annual, daily or other indemnity payable to a member under the *Legislative Assembly and Executive Council Act*; (*revenu admissible*)

"recipient" means a person who

- (a) is a member or former member who is in receipt of an annual allowance under this Act, or
- (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*)

"service" means service as a member of the Legislative Assembly; (*mandat*)

"surviving spouse" means a person who, immediately before the death of a member or former member

- (a) was married to the member or former member and was cohabiting with him or her,
- (b) was married in good faith to the member or former member in a marriage that was voidable or void, had entered that marriage in good faith, and was cohabiting with him or her, or



- (c) was cohabiting outside marriage with the member or former member and was registered in accordance with the regulations as a spouse, if
- (i) the person and the member or former member had cohabited for a period of at least two years, or
  - (ii) the person and the member or former member had cohabited in a relationship of some permanence and were together the natural or adoptive parents of a child. (*conjoint survivant*)
- R.S.N.W.T. 1988,c.41(Supp.),s.2; S.N.W.T. 1998,c.4,s.2;  
S.N.W.T. 1998,c.31,Sch.A,s.1; S.Nu. 2002,c.6,s.2;  
S.Nu. 2005,c.8,s.3(2); S.Nu. 2008,c.8,s.2(16);  
S.Nu. 2015,c.6,s.6.

#### Duration of Legislative Assembly

**2.** For the purposes of this Act, a Legislative Assembly that is not dissolved before the expiration of the period fixed for its duration shall be deemed to be dissolved on the expiration of that period.

#### When a person ceases to be a member

- 3.** For the purposes of this Act
- (a) a person does not cease to be a member by reason only of a dissolution of the Legislative Assembly; and
  - (b) a person who, immediately before a dissolution of the Legislative Assembly, was a member shall cease to be a member if he or she is not elected as a member of the Legislative Assembly at the general election next following the dissolution and shall be deemed to have ceased to be a member on the day on which the general election was held.

#### Exclusion – suspension

**3.1.** If a member is suspended from the Legislative Assembly by a majority vote, the member's service is not to include the period that begins on the day on which the suspension starts and ends on the day fixed by a majority vote of the Legislative Assembly for the reinstatement of the member's entitlement to accrue pensionable service. S.Nu. 2015,c.20,s.1(2).

#### Effect of suspension

**3.2.** Despite any provision of this Act, no contribution shall be paid by a member in respect of any period referred to in section 3.1. S.Nu. 2015,c.20,s.1(2).

## LEGISLATIVE ASSEMBLY RETIRING ALLOWANCES FUND

### Legislative Assembly Retiring Allowances Fund

- 4.** (1) There shall be established a fund called the Legislative Assembly Retiring Allowances Fund into which shall be paid
- (a) by the Comptroller General, from the Consolidated Revenue Fund, the sums that the Commissioner may direct to fund the allowances and benefits earned by members;
  - (b) contributions made by members under this Act; and
  - (c) any investment income earned by the Fund.

### Payment of allowances, benefits and expenses

(2) Every allowance and benefit payable under this Act and all expenses incurred in the administration of the Fund shall be paid out of the Fund and shall be charged to the Fund.

### Account of member and former member

(3) An account shall be kept in respect of every member and former member in which shall be shown all payments made by or to the member or former member or the legal representatives of the member or former member under this Act.

### Administration of Fund

(4) The Fund shall be administered by the Management and Services Board.

### Surplus

(5) If the Fund is wound up and a surplus arises that cannot be distributed to members and former members in accordance with this Act, the surplus shall be paid into the Consolidated Revenue Fund.

### Frequency of valuation

- (6) The actuary
- (a) shall value the liabilities under this Act as at April 1 following each general election;
  - (b) may value the liabilities under this Act as at any other day; and
  - (c) shall provide a report of every valuation under this subsection to the Management and Services Board.
- R.S.N.W.T. 1988,c.41(Supp.),s.3; S.Nu. 2017,c.19,s.1.

## MANAGEMENT AND SERVICES BOARD

### Engagement of persons and delegation of powers

**5.** (1) The Management and Services Board may engage the persons that it considers necessary for carrying out the provisions of this Act and it may delegate all or any of its powers of administration to these persons.

## Engagement of professionals

## (2) The Management and Services Board

- (a) may engage the professionals that it requires to assist and advise it in the administration of this Act, and
- (b) shall fix the functions, duties and remuneration of the professionals that it engages,

and such professionals shall be paid out of the Fund.

**5.1. Repealed, S.Nu. 2002,c.6,s.3.**

## CONTRIBUTIONS

## Contributions

**6.** (1) Subject to subsections (2), (3), (5) and (8), a member shall contribute to the Fund in each month  $6\frac{1}{2}\%$  of  $\frac{1}{12}$  of the lesser of

- (a) the yearly pensionable remuneration and earnings of the member; and
- (b) the defined benefit limit divided by 2%.

## Where member has filed election

(2) Subject to subsections (4), (5) and (8), if a member has filed an election in accordance with section 7 of the *Supplementary Retiring Allowances Act*, the member shall contribute to the Fund, in each month, 9% of  $\frac{1}{12}$  of the lesser of

- (a) the yearly pensionable remuneration and earnings of the member; and
- (b) the defined benefit limit divided by 2%.

## Contributions ceasing under subsection (1)

(3) No member shall contribute under subsection (1) after the member attains  $37\frac{1}{2}$  years of service.

## Contributions ceasing under subsection (2)

(4) No member shall contribute under subsection (2) after the member attains 15 years of service.

## Contributions ceasing at 71 years

(5) No member shall contribute under subsection (1) or (2) after November 30 in the year in which the member attains the age of 71 years.

## Contribution prior to coming into force

(6) For the period of service commencing April 1, 1999, and ending immediately before the day this subsection comes into force, a member who files an election under section 7 of the *Supplementary Retiring Allowances Act* shall contribute to the Fund, for each month or portion of a month during the period, 2.5% of the lesser of

- (a) the pensionable remuneration and earnings paid to the member in the month; and

- (b) 1/12 of the defined benefit limit divided by 2%.

#### Contribution by way of deduction

(7) A contribution under subsection (6) must be made by way of a deduction in accordance with section 6.1 during the duration of the First Legislative Assembly of Nunavut.

#### Maximum yearly contribution

(8) A member's yearly contribution shall not exceed the lesser of

- (a) 9% of the member's pensionable remuneration and earnings for the year: and
- (b) \$1000 plus 70% of the member's pension credit for the year, as calculated under Part LXXXIII of the *Income Tax Regulations* (Canada).

R.S.N.W.T. 1988,c.41(Supp.),s.4,5; S.N.W.T. 1998,c.4,s.3;  
S.Nu. 2002,c.6,s.4; S.Nu. 2008,c.8,s.2(2)(a).

#### Mode of contribution

**6.1.** A contribution under section 6 must be made by way of deduction from the pensionable remuneration and earnings of a member. S.N.W.T. 1998,c.4,s.3.

#### Refund of contributions

**7.** (1) A person shall receive a refund of all contributions made, with interest at the rate fixed by the Management and Services Board, where that person, on ceasing to become a member, is not a qualifying member as defined in subsection 11(1).

#### Return of refund

(2) Subject to subsection 8(4) of the *Supplementary Retiring Allowances Act*, a person who has received a refund under subsection (1) and who is subsequently re-elected to the Legislative Assembly may return to the Fund the amount of the refund with interest fixed by the Management and Services Board, and where a person has done so, the years in respect of which the refund was made shall be included in calculating his or her years of service. R.S.N.W.T. 1988,c.41(Supp.),s.6; S.N.W.T. 1996,c.9,Sch.C,s.1; S.N.W.T. 1998,c.31,Sch.A,s.3; S.Nu. 2002,c.6,s.5; S.Nu. 2008,c.8,s.2(5).

#### When contributions not to be paid

**8.** Notwithstanding anything in this Act, no contribution shall be made by a member

(a) after the member has been disqualified from sitting in the Legislative Assembly; or

(b) after the member has ceased to be a member.

(c) **repealed, R.S.N.W.T. 1988,c.41(Supp.),s.7.**  
R.S.N.W.T. 1988,c.41(Supp.),s.7.

**9. Repealed, R.S.N.W.T. 1988,c.41(Supp.),s.8.**

## RETIRING ALLOWANCES

## Allowances

**10.** (1) An allowance shall be paid in accordance with this Act to or in respect of a person who

- (a) being a member, ceases to be a member; or
- (b) being a member or former member, dies.

## When allowance payable

(2) Subject to subsections 15(3) and (4), an annual allowance is payable monthly to every recipient during the lifetime of the recipient. S.Nu. 2002,c.6,s.6.

## Definition of "qualifying member"

**11.** (1) In this section, "qualifying member" means a member who ceases to be a member and who

- (a) at the time he or she ceases to be a member has given at least four years of service; or
- (b) was elected to the Legislative Assembly at a general election and, at the time he or she ceases to be a member, has continued as a member of the Legislative Assembly until it is dissolved.

## Formula for annual allowance

(2) Subject to sections 13, 19, 19.1 and 20, a qualifying member shall be paid, on attaining pensionable age, an annual allowance in an amount equal to

- (a) the number of years of service;
- multiplied by
- (b) where the member has served four or more years, 2% of the average annual pensionable remuneration received by the member during any period selected by him or her or on his or her behalf consisting of non-overlapping periods of service totalling four years; or
  - (c) where the member has served less than four years, 2% of the average annual pensionable remuneration received by the member during the period of total service.

## Maximum years of service

(3) The number of years of service referred to in paragraph (2)(a)

- (a) shall not exceed 15 years if the member has filed an election in accordance with section 7 of the *Supplementary Retiring Allowances Act*;
- (b) shall not exceed 37 1/2 years if the member has not filed an election in accordance with section 7 of the *Supplementary Retiring Allowances Act*; and

- (c) shall not include any year after November 30 in the year in which the member or former member attains the age of 71 years.  
 R.S.N.W.T. 1988,c.41(Supp.),s.10; S.N.W.T. 1996,c.9,Sch.C,s.2;  
 S.N.W.T. 1998,c.4,s.4; S.N.W.T. 1998,c.31,Sch.A,s.4;  
 S.Nu. 2002,c.6,s.7; S.Nu. 2008,c.8,s.2(2)(b).

#### Definitions

**12.** (1) In this section,

"qualifying member" means a member who, at the time the member ceases to be a member,

- (a) is eligible for an allowance under section 11; and  
 (b) has served at least one year in a required capacity;  
*(député admissible)*

"required capacity" means a capacity referred to in section 2 of Schedule C of the *Legislative Assembly and Executive Council Act*. *(qualité requise)*

**(2) Repealed, S.Nu. 2002,c.6,s.8(2).**

#### Retiring allowance based on earnings for service

(3) Subject to sections 13 and 19 to 20, a qualifying member shall be paid, on attaining pensionable age, in addition to the allowances payable under section 11, an annual allowance equal to

- (a) the number of years of service in the required capacity,  
 multiplied by  
 (b) where the member has served four or more years in the required capacity, 2% of the average annual earnings received by the member during any period selected by him or her or on his or her behalf consisting of non-overlapping periods of service in the required capacity totalling four years, or  
 (c) where the member has served less than four years in the required capacity, 2% of the average annual earnings received by the member during the period of total service in the required capacity.

#### Maximum years of service

- (4) The number of years of service referred to in paragraph (3)(a)  
 (a) shall not exceed 15 years if the member has filed an election in accordance with section 7 of the *Supplementary Retiring Allowances Act*;  
 (b) shall not exceed 37 1/2 years if the member has not filed an election in accordance with section 7 of the *Supplementary Retiring Allowances Act*; and

- (c) shall not include any year after November 30 in the year in which the member or former member attains the age of 71 years.  
R.S.N.W.T. 1988,c.41(Supp.),s.10; S.N.W.T. 1998,c.4,s.5;  
S.Nu. 2002,c.6,s.8; S.Nu. 2008,c.8,s.2(2)(b),(6),(16).

#### Maximum allowance

**13.** (1) The aggregate of the allowances paid under subsections 11(2) and 12(3) shall not exceed the amount determined by the formula

$$A \times B$$

where

- (a) A is the lesser of
- (i) the defined benefit limit for the year in which the allowances commence to be paid, and
  - (ii) 2% of the total of the average annual pensionable remuneration and earnings calculated under subsection (2), and
- (b) B is the number of years of service of the member.

#### Calculation

(2) The "average annual pensionable remuneration and earnings" referred to in subsection (1)(a)(ii) is the average annual pensionable remuneration and earnings received by the member over the three non-overlapping years of service that have the highest average annual pensionable remuneration and earnings where

- (a) each of those years' pensionable remuneration and earnings;
- is multiplied by
- (b) the ratio obtained by dividing the average wage for the year in which the allowances commence to be paid by the average wage for the year in which the pensionable remuneration and earnings were paid.

#### Definitions

(3) In this section,

"average wage" means, in respect of a year, the amount obtained by adding the wage measures for each of the months in the 12 month period ending on June 30 of the immediately preceding calendar year, and by dividing that sum by 12; (*salaires moyen*)

"wage measure" means, in respect of any month, the average weekly wages and salaries of

- (a) the Industrial Aggregate in Canada for the month as published by Statistics Canada under the *Statistics Act* (Canada), or

- (b) in the event that the Industrial Aggregate ceases to be published, such other measure for the month as is prescribed by regulation under the *Canada Pension Plan* for the purposes of paragraph 18(5)(b) of that Act. (*mesure des gains*)  
R.S.N.W.T. 1988,c.41(Supp.),s.11; S.N.W.T. 1998,c.4,s.6;  
S.Nu. 2002,c.6,s.9.

**14. Repealed, R.S.N.W.T. 1988,c.41(Supp.),s.12.**

ALLOWANCES ON DEATH

Allowances to surviving spouse and children

**15.** (1) Where a member or former member dies, on his or her death an annual allowance shall be paid to the surviving spouse and to each child of the member or former member as follows:

- (a) to the surviving spouse, an annual allowance equal to
  - (i) 100% of the basic allowance of the member or former member for the first 60 monthly payments beginning the day on which an allowance under this Act commences to be paid, and
  - (ii) 66 2/3% of the basic allowance of the member or former member after the first 60 monthly payments;
- (b) if the member or former member dies leaving a surviving spouse, to each child of the member or former member, an annual allowance equal to 10% of the basic allowance of the member or former member;
- (c) if the member or former member dies without leaving a surviving spouse, to each child of the member or former member, an annual allowance equal to
  - (i) 100% of the basic allowance of the member or former member, divided by the number of children, for the first 60 monthly payments beginning the day on which an allowance under this Act commences to be paid, and
  - (ii) 25% of the basic allowance of the member or former member after the first 60 monthly payments.

Duration of allowance

(2) An allowance payable under paragraph (1)(a) is payable for the lifetime of the surviving spouse.

Five year guarantee

(3) An allowance payable under subparagraph (1)(c)(i) and, notwithstanding subsection (2), an allowance payable under subparagraph (1)(a)(i) are payable for 60 monthly payments made after the day on which an allowance under this Act commences to be paid to the former member.



#### Allowance to child

(4) An allowance payable under paragraph (1)(b) or subparagraph (1)(c)(ii) is payable until

- (a) December 31 of the calendar year in which the child attains 18 years of age;
- (b) where the child is a child within the meaning of paragraph (b) of the definition of "child" in section 1, whichever of the following first occurs:
  - (i) the child attains 25 years of age, or
  - (ii) the child begins to cohabit or ceases to be in full-time attendance at a school or university.

#### Where more than one allowance payable

(5) Where more than one allowance is payable under subsection (1), the total amount of the allowances shall not exceed 100% of the basic allowance of the member or former member. S.N.W.T. 1996,c.9,Sch.C,s.3; R.S.N.W.T. 1988,c.41(Supp.),s.13; S.N.W.T. 1998,c.4,s.7; S.Nu. 2002,c.6,s.10; S.Nu. 2005,c.8,s.3(3); S.Nu. 2008,c.8,s.2(16).

#### **16. Repealed, R.S.N.W.T. 1988,c.41(Supp.),s.14.**

#### Lump sum

**17.** (1) Where a member or former member who is not in receipt of an allowance under this Act dies and there is no person to whom an allowance may be paid in respect of that member or former member, a lump sum approved by the Management and Services Board shall be paid to the beneficiary designated by the member or former member.

#### Amount

(2) A lump sum referred to in subsection (1) shall be equal to the actuarial present value of the basic allowance that would have been paid to the member or former member as determined by the actuary in accordance with the regulations. R.S.N.W.T. 1988,c.41(Supp.),s.15; S.N.W.T. 1996,c.9,Sch.C,s.4; S.Nu. 2002,c.6,s.11.

#### Lump sum payable in respect of a member without dependants

**17.1.** Where a former member who is in receipt of an allowance dies and there is no person to whom an allowance may be paid in respect of that former member, a lump sum equal to the actuarial present value of the allowance that would have been paid to the former member for the period commencing on the day of the former member's death and ending on the day before the tenth anniversary of the day that payment of the allowance to the former member commenced shall be paid to the beneficiary designated by the former member. S.N.W.T. 1996,c.9,Sch.C,s.5.

#### Designation of beneficiary

**17.2.** (1) A member or former member may designate a beneficiary for the purposes of sections 17 and 17.1.

## Deemed designation of beneficiary

(2) A member or former member who does not make a designation of a beneficiary under subsection (1) is deemed to have designated his or her estate as beneficiary. S.N.W.T. 1996,c.9,Sch.C,s.5.

## POST-RETIREMENT INCREASES

## Post-retirement increase

**18.** (1) A post-retirement increase shall be paid to every recipient.

## Amount of post-retirement increase

(2) The post-retirement increase payable to a recipient for a month in any year is an amount equal to the amount obtained by multiplying

(a) the amount of the annual allowance payable to the recipient for that month,

by

(b) the ratio that the Benefit Index for the year in which that month falls bears to the Benefit Index for the year in which the member or former member ceases to be a member or dies,

and by subtracting from that product the amount of the annual allowance payable to the recipient for that month.

## How post-retirement increase is payable

(3) A post-retirement increase payable to a recipient is payable at the same time, in the same manner, and subject to the same terms and conditions as an annual allowance payable to that recipient. S.Nu. 2002,c.6,s.12,13.

## RETIREMENT

## Election to receive allowance at other time

**19.** (1) Subject to subsection (5), a member who ceases to be a member may elect, in accordance with the regulations, to begin receiving, at any time, any allowance to which he or she would otherwise be entitled under this Act.

(2) **Repealed, S.Nu. 2002,c.6,s.14(1).**

(3) **Repealed, S.Nu. 2002,c.6,s.14(1).**

## Adjustment of amount

(4) Where a member or former member elects under subsection (1) to commence receiving an allowance before he or she has attained pensionable age, the amount of the allowance payable to him or her, in respect of service shall be reduced by 0.25% for each month or part of a month that precedes the day the member attains pensionable age.

### Limitation

(5) A member or former member may not elect to begin receiving any allowance under this Act after December 1 in the year in which the member or former member attains the age of 71 years.

### Where election not made

(6) A member or former member who fails to make an election before December 1 of the year in which he or she attains the age of 71 years is deemed to have elected to commence receiving an allowance on December 1 of that year.  
S.N.W.T. 1998,c.4,s.8; S.Nu. 2002,c.6,s.14(1); S.Nu. 2008,c.8,s.2(2)(c),(3).

### Allowance not paid during service

**19.1.** (1) A member is not entitled to receive any allowance until

- (a) he or she ceases to be a member, or
- (b) December 1 in the year in which the member attains the age of 71 years,

whichever first occurs.

### Cessation of allowance

(2) If a former member is receiving an allowance and is elected again to the Legislative Assembly, the allowance shall cease to be paid pursuant to subsection 25(2) of the *Legislative Assembly and Executive Council Act*, and he or she shall not be entitled to receive the allowance until subsection (1) again applies.

### Resumption of allowance

(3) When subsection (1) again applies to the former member who becomes a member as described in subsection (2)

- (a) the allowance referred to in subsection (2) shall recommence at the rate at which it was being paid before it ceased, plus any increase that is arrived at by application of the Benefit Index; and
- (b) he or she is entitled to an additional allowance for his or her subsequent service, and that allowance shall be calculated under sections 11 and 12 separately from the allowance referred to in paragraph (a).

### Definition of "subsequent service"

(4) For the purposes of paragraph (3)(b), "subsequent service" means service as a result of the election referred to in subsection (2). S.N.W.T. 1998,c.4,s.8; S.Nu. 2002,c.6,s.15; S.Nu. 2008,c.8,s.2(2)(d).

### Transfer to retirement savings plan

**20.** (1) Within six months after ceasing to be a member, an individual may elect, in accordance with subsection (1.1) and the regulations, to transfer all or a portion of the aggregate value of the allowances payable under this Act, calculated as at the time the member so elects and in accordance with the regulations,

- (a) if the member has not attained the age of 55 years, to a registered retirement savings plan; or
- (b) if the member has attained the age of 55 years, to a registered retirement savings plan of the prescribed kind.

#### Amount that may be transferred

(1.1) For the purpose of determining the amount that may be transferred under subsection (1),

- (a) the entire aggregate value of the allowances payable under this Act after the member has attained 65 years of age must be included; and
- (b) all or a portion of the aggregate value of the allowances payable under this Act before the member has attained 65 years of age may be included.

#### Election to transfer a portion – required information

(1.2) A member who elects to transfer a portion as described in paragraph (1.1)(b) shall specify, in the election, the period of time to which the portion relates.

#### "registered retirement savings plan" defined

(2) In subsection (1), "registered retirement savings plan" has the meaning assigned to it by subsection 146(1) of the *Income Tax Act* (Canada).

#### Where amount exceeds allowable limit

(3) Where the amount transferred under subsection (1) exceeds the amount prescribed under paragraph 147.3(3)(c) of the *Income Tax Act* (Canada), the excess, less any amount required by that Act to be withheld, shall be paid to the member.

#### Allowances payable on death

(4) Where an election is made under subsection (1), the allowances referred to in section 15 and the lump sum referred to in sections 17 and 17.1 are payable only if

- (a) the individual elected to transfer only a portion of the aggregate value of the allowances payable under this Act; and
- (b) the individual, on his or her death, was eligible for an allowance under this Act.

S.N.W.T. 1998,c.4,s.8; S.Nu. 2002,c.6,s.16;

S.Nu. 2008,c.8,s.2(9),(10),(11),(12); S.Nu. 2015,c.6,s.7.

#### **20.1. Repealed, S.Nu. 2002,c.6,s.17.**

### ASSIGNMENT

#### Assignment of rights

**20.2.** (1) No right of any person under this Act is capable of being assigned, charged, anticipated, given as security or surrendered.

### Exceptions to assignment

- (2) For the purposes of subsection (1), assignment does not include
- (a) a division and distribution under sections 20.3 to 20.6; or
  - (b) assignment by the legal representative of a deceased member or former member on the distribution of his or her estate.

### Exception to surrender

(3) For the purposes of subsection (1), surrender does not include a reduction in benefits to avoid the revocation of the registration of this retiring allowances plan under the *Income Tax Act* (Canada). S.Nu. 2002,c.6,s.18; S.Nu. 2008,c.8,s.2(13); S.Nu. 2015,c.6,s.8.

## 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.

#### 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. S.Nu. 2015,c.6,s.9.

#### 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.

Commutated 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.
- S.Nu. 2015,c.6,s.9.

#### 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 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). S.Nu. 2015,c.6,s.9.

#### 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. S.Nu. 2015,c.6,s.9.

### REPORT TO LEGISLATIVE ASSEMBLY

#### Report to Legislative Assembly

**21.** (1) The Management and Services Board shall, as soon as possible after the end of each fiscal year, lay before the Legislative Assembly a report on the administration of this Act during the preceding fiscal year and shall include in the report

- (a) any report on the Fund prepared by the actuary under subsection 4(6);
- (b) the financial statements of the Fund;
- (c) the report of the auditor on the financial statements of the Fund;  
and
- (d) any other information that in the opinion of the Management and Services Board should be brought to the attention of the Legislative Assembly.

#### Contents of financial statements

(2) The financial statements referred to in paragraph (1)(b) must be prepared in accordance with generally accepted accounting principles applied on a basis consistent with that of the preceding fiscal year and must include

- (a) a statement of net assets available for allowances and benefits as at the end of the fiscal year; and
- (b) a statement of changes in net assets available for benefits and allowances for the fiscal year.

#### Appointment of auditor

(3) The auditor shall be appointed by the Management and Services Board.

#### Report of auditor

(4) The auditor shall make a report to the Legislative Assembly on the financial statements referred to in paragraph (1)(b) stating

- (a) whether, in the opinion of the auditor, the financial statements comply with subsection (2);
- (b) whether, in the opinion of the auditor, proper books of account have been kept in respect of the Fund;
- (c) whether, in the opinion of the auditor, the transactions made in respect of the Fund comply with this Act; and

- (d) any other matter, within the scope of the examination of the auditor, that in the opinion of the auditor should be brought to the attention of the Legislative Assembly.

#### Powers of auditor

##### (5) The auditor may

- (a) inspect at any reasonable time any record, document, book, account or voucher relating to the Fund, and
- (b) require any person administering the Fund or engaged by the Management and Services Board under subsection 5(1) or (2) to provide any explanation or information,

that the auditor considers necessary to enable the auditor to make a report under subsection (4). S.Nu. 2008,c.8,s.2(14).

## REGULATIONS

#### Regulations

**22.** The Speaker, on the recommendation of the Management and Services Board, may make regulations

- (a) **repealed, R.S.N.W.T. 1988,c.41(Supp.),s.16;**
- (b) **repealed, R.S.N.W.T. 1988,c.41(Supp.),s.16;**
- (c) respecting the funding of allowances and adjustments payable under this Act;
- (d) respecting the manner in which the Fund is to be administered;
- (e) respecting forms required for the purposes of this Act;
- (e.1) respecting the calculation of the following:
  - (i) the actuarial present value of the basic allowance under subsection 17(2),
  - (ii) the actuarial present value of the allowance under section 17.1;
- (e.2) respecting the registration of members and their spouses and any changes to or deletion of a registration;
- (e.3) respecting the designation of a beneficiary under subsection 17.2(1) and the revocation of a designation;
- (e.4) respecting elections that may be made by a member under subsection 19(1) or 20(1);
- (e.5) respecting the information to be provided by a member for the purpose of the administration of this Act or the Fund;
- (f) setting out when every allowance and benefit shall be paid and when payment to a recipient shall commence and cease and providing that, if a person ceases to be entitled to the allowance, payment may be made in respect of the full month in which the person ceases to be entitled to the allowance;
- (g) providing, where a person receiving an annual allowance is incapable of managing his or her affairs, that the allowance may be paid to another person on his or her behalf;

- (h) defining, for the purposes of this Act, the expression "full-time attendance at school or university" as applied to a child of a member or former member;
- (i) specifying, for the purposes of this Act, the circumstances under which attendance at school or university by a child of a member or former member shall be deemed to be substantially without interruption;
- (j) **repealed, S.N.W.T. 1998,c.31,Sch.A,s.5(b);**
- (k) **repealed, S.Nu. 2002,c.6,s.19;**
- (k.1) respecting the manner in which the aggregate value of allowances is to be calculated for the purposes of section 20;
- (k.2) respecting the kinds of retirement savings plans to which the aggregate value of allowances may be transferred under section 20 or prescribing the kinds of such retirement savings plans by adopting provisions of the *Pension Benefits Standards Regulations, 1985* made under the *Pension Benefits Standards Act, 1985* (Canada); and
- (l) for any other purpose considered necessary to give effect to this Act.  
R.S.N.W.T. 1988,c.41(Supp.),s.16; S.N.W.T. 1998,c.4,s.9;  
S.N.W.T. 1998,c.31,Sch.A,s.5; S.Nu. 2002,c.6,s.19;  
S.Nu. 2005,c.8,s.3(4); S.Nu. 2008,c.8,s.2(15).

**23. Repealed, S.Nu. 2002,c.6,s.20 and S.Nu. 2006,c.10,s.5(3).**

**24. Repealed, S.Nu. 2002,c.6,s.20.**

**25. Repealed, S.Nu. 2002,c.6,s.20.**