

A BILL

entitled

NATIONAL PENSION SCHEME (OCCUPATIONAL PENSIONS)  
AMENDMENT ACT 2019

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Minimum Criteria for Approval as a Trustee

WHEREAS it is expedient to amend the National Pension Scheme (Occupational Pensions) Act 1998 to enhance existing provisions, including provisions relating to multi-employer pension plans; introduce new provisions relating to, among other things, non-Bermudian employees, civil penalties, Guidance Notes, and hardship benefits for persons who are retired; and to make consequential and related amendments;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act, which amends the National Pension Scheme (Occupational Pensions) Act 1998 (the "principal Act"), may be cited as the National Pension Scheme (Occupational Pensions) Amendment Act 2019.

Amends section 2

2 Section 2(1) of the principal Act is amended—

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- (a) in the definition of “administrator” by inserting after “persons” the words “, including a trustee or a board of trustees”;
- (b) by deleting the definition of “Bermudian”;
- (c) by repealing and replacing the definition of “employee” with the following—
  - “employee” means a person who is employed in Bermuda by an employer; but does not include a person who has been granted permission under the Bermuda Immigration and Protection Act 1956 to engage in gainful occupation in Bermuda unless that person has been granted such permission for an aggregate period exceeding twelve months;”;
- (d) in the definition of “pensionable earnings” in paragraph (a)(iii) by deleting all the words from “which” to “question;”;
- (e) in the definition of “self-employed person” by deleting “a Bermudian over school leaving age, or the spouse of a Bermudian,” and substituting “a person over school leaving age,”;
- (f) in the definition of “actuary” by deleting “America or the Canadian Institute of Actuaries,” and substituting “America, the Canadian Institute of Actuaries, or some other professional association recognised by the Commission,”;
- (g) in the definition of “retirement product” by deleting “such pension plan other than a pension plan referred to in this Act” and substituting “a retirement plan”.

Amends section 3

2A Section 3 of the principal Act is amended by inserting the following after subsection (1A)—

“(1B) This Act does not require a pension plan to be provided in respect of employment or service in Bermuda by a citizen of the United States of America—

- (a) who has permission under the Bermuda Immigration and Protection Act 1956 to engage in gainful occupation in Bermuda; and
- (b) who participates in a pension plan qualified under what is commonly known as section 401(k) of the United States Internal Revenue Code.

(1C) An employer who has established a section 401(k) pension plan in respect of an employee referred to in subsection (1B) may register the plan with the Commission in accordance with section 5.”.

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Amends section 4

3 Section 4 of the principal Act is amended—

- (a) in subsection (2)(a) by deleting “one hundred and eighty” and substituting “ninety”;
- (b) in subsection (3) by deleting “in the prescribed form,” and substituting “on the form provided by the Commission,”.

Amends section 5

4 Section 5 of the principal Act is amended—

- (a) in the heading by inserting after “registration” the words “of pension plans”;
- (b) in the introductory paragraph by deleting “in the prescribed form” and substituting “on the form provided by the Commission”.

Amends section 7

5 Section 7(3) of the principal Act is amended—

- (a) in paragraph (a) by deleting “in the form prescribed by regulations” and substituting “on the form provided by the Commission”;
- (b) by repealing paragraph (c)(ii).

Amends section 8

6 Section 8 of the principal Act is amended—

- (a) in the heading by inserting after “employer to” the words “keep records and”;
- (b) by numbering the provision as subsection (2);
- (c) by inserting subsection (1) as follows—

“(1) An employer shall retain records in the manner and within such time limits as may be prescribed.”.

Amends section 11

7 Section 11 of the principal Act is amended—

- (a) in subsection (1A) in the continuation by deleting “limited to a fixed amount as”;
- (b) by inserting the following after subsection (1A)—

“(1B) An amendment to a pension plan is not void if the amendment permits a refund to a member or former member of contributions made and any interest thereon in respect of his employment before the date of the coming into operation of this section (1st January 2000).”;

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- (c) in subsection (4) by deleting “an application for registration has been filed” and substituting “it has been registered”.

Amends section 12

8 Section 12 of the principal Act is amended in the heading by deleting “, etc.” and substituting “of pension plans, etc”.

Amends section 14

9 Section 14 of the principal Act is amended—

- (a) by numbering the provision as subsection (1);  
(b) by inserting the following after subsection (1)—

“(2) The information referred to in subsection (1) may be provided by electronic means to the address or number provided by the member for the purposes of electronic communication.”.

Amends section 16

10 Section 16 of the principal Act is amended—

- (a) in subsection (1)—  
(i) in paragraph (f) by deleting the comma and substituting a semi-colon;  
(ii) by inserting the following after paragraph (f)—  
“(g) a trustee who holds the assets of the pension plan pursuant to section 18(3),”;  
(b) in subsection (2)—  
(i) by deleting “the documents” and substituting “such documents or extracts of such documents”;  
(ii) by deleting “or the pension fund and,” and substituting “or the pension fund, as prescribed, and”;  
(iii) by inserting after “those documents” the words “or extracts”.

Amends section 17

11 Section 17(2)(a) of the principal Act is repealed and replaced with the following—

- “(a) he has attained the age of twenty-three years, but has not attained the normal retirement age; and”.

Inserts Part IIA

12 The principal Act is amended by inserting the following after section 17—

“PART IIA  
APPROVAL OF TRUSTEES

Applications for approval as a trustee

17A An application by a person for approval as a trustee shall be made to the Commission in the manner prescribed.

Power of Commission to refuse or revoke approval

17B (1) Subject to the provisions of this Act relating to hearings and appeals, the Commission may refuse to approve an application, or revoke the approval of a trustee, if—

- (a) the applicant or trustee has contravened a provision of this Act or the Regulations;
- (b) it is not satisfied that the minimum criteria specified in the Third Schedule have been fulfilled with respect to the applicant or the trustee.

(2) A refusal of the Commission to approve a person as a trustee or to revoke approval of a trustee, has effect from the date specified by the Commission.

(3) Where the approval of a trustee is revoked the trustee shall be removed and another trustee appointed in accordance with the provisions of the pension plan and this Act, by the date specified by the Commission.”.

Amends section 18

13 Section 18(3) of the principal Act is amended—

- (a) in the introductory paragraph by deleting “employer by” and substituting “employer, by an approved trustee”;
- (b) by repealing subparagraphs (a) to (d).

Amends section 19

14 Section 19 of the principal Act is amended—

- (a) in subsection (1)(b)—
  - (i) by deleting “limited to a fixed amount”;
  - (ii) by deleting “equally”;
  - (iii) by inserting after “pension plan” the words “in accordance with the collective agreement”;
- (b) in subsection (6) by deleting “immediately” and substituting “, within the period of fifteen days,”;
- (c) by inserting the following after subsection (6)—

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“(6A) An employer who—

- (a) fails to pay contributions that have been withheld from a member’s earnings; or
- (b) fails to pay the contributions owed by the employer,

within the time specified in subsection (5) shall, in addition to paying the contributions owed to the pension fund, pay interest on the unpaid contributions into the fund at the rate prescribed by the Minister by Notice published in the Gazette, subject to the negative resolution procedure.

(6B) The rate of interest prescribed by the Minister under subsection (6A) shall be upon the advice of the Commission, and shall not be more than seven percent per annum.”.

Amends section 19A

15 Section 19A of the principal Act is amended—

- (a) in subsection (1) by deleting “19(5),” and substituting “19(5) and the interest owing under section 19(6A),”;
- (b) in subsection (2) by—
  - (i) inserting after “of contributions” the words “and interest thereon”;
  - (ii) inserting after “owes contributions” the words “and interest”;
  - (iii) inserting after “for contributions” the words “and interest”;
  - (iv) inserting after “those contributions” the words “and the interest”;
- (c) in subsection (4) by—
  - (i) inserting after “paid contributions” the words “and interest”;
  - (ii) inserting after “the contributions” the words “and interest”;
  - (iii) inserting after “those contributions” the words “and the interest”.

Amends section 21

16 Section 21(1) of the principal Act is amended by inserting after “plan” the words “who has retired”.

Amends section 22

17 Section 22 of the principal Act is amended—

- (a) in subsection (1) by deleting “two years” and substituting “one year”;
- (b) by inserting the following after subsection (1)—

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“(1A) Notwithstanding subsection (1), the Commission may approve a vesting period other than that specified in that subsection where the pension plan is a multi-employer pension plan.”.

Amends section 23

18 Section 23 of the principal Act is amended—

- (a) in subsection (2) by—
  - (i) inserting after “delivering” the words “a written direction”;
  - (ii) deleting “a direction in the form determined by the Commission”;
- (b) in subsection (3) by deleting “thirty days after delivery of the direction” and substituting “forty-five days after delivery of the direction, unless otherwise directed by the Commission”;
- (c) in subsection (4) by—
  - (i) deleting “may” and substituting “shall”;
  - (ii) deleting “or as otherwise required by law” and substituting “, as otherwise required by law, or as directed by the Commission”;
- (d) by inserting the following after subsection (5)—

“(6) This section does not apply where a pension plan provides for an employee who terminates his employment with his employer to remain a member of the employer’s pension plan, and the member has elected to do so.”.

Amends section 24

19 Section 24 of the principal Act is amended—

- (a) in subsection (3) by inserting after “operation” the words “, if the pension plan so provides”;
- (b) in subsection (9) by repealing and replacing paragraphs (a) and (b) with the following—
  - “(a) of such amount of any contributions made, interest thereon or accrued benefits, in such circumstances of financial hardship as may be prescribed;
  - (b) a lump sum, where the member or former member has attained normal retirement age and has retired, of up to—
    - (i) 25% of his account balance, in the case of a defined contribution pension plan or a local retirement product; or
    - (ii) 25% of the commuted value of his benefits, in the case of a pension plan that provides defined benefits,as may be prescribed.”;



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(c) by deleting the continuation.

Amends section 28

20 Section 28 of the principal Act is amended by inserting after “pursuant to a” the words “court ordered”.

Amends section 31

21 Section 31(3) of the principal Act is amended by deleting “two years” and substituting “one year”.

Amends section 34

22 Section 34 of the principal Act is amended by deleting “which is likely to reduce considerably his life expectancy” and substituting “which, in the opinion of a qualified medical practitioner, is likely to reduce his life expectancy to five years or less”.

Repeals and replaces section 35

23 Section 35 of the principal Act is repealed and replaced with the following—

“Small Pensions

35 (1) Where a former member has attained the normal retirement age and has retired, a pension plan that provides defined benefits shall provide for payment of the commuted value of the former member’s benefits to the former member if the commuted value is not more than \$50,000.

(2) Where a former member has attained the normal retirement age and has retired, a defined contribution pension plan or a local retirement product shall provide for payment of the former member’s account balance to the former member if the account balance is not more than \$50,000.”.

Amends section 38

24 Section 38(6)(c) of the principal Act is amended by deleting “or” at its last occurrence.

Amends section 40

25 Section 40(1) of the principal Act is amended by inserting after “approval,” the words “together with the prescribed fee,”.

Amends section 46

26 Section 46 of the principal Act is amended by inserting after “fund” the words “that has been wound up”.

Amends section 47

27 Section 47 of the principal Act is amended—

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- (a) in subsection (1) in the introductory paragraph by deleting “assets of his business,” and substituting “assets of his business (including by way of merger or amalgamation),”;
- (b) by inserting the following after subsection (1)—

“(1A) Where, in a transaction described in subsection (1) the employer’s pension plan is a defined contribution pension plan, then a member who becomes an employee of the successor employer shall have his pension fund account balance transferred to the successor employer’s pension plan.”.

Amends section 49

28 Section 49(2) of the principal Act is amended—

- (a) in paragraph (a)—
  - (i) by deleting “or pension fund” and substituting “, local retirement product or pension fund”;
  - (ii) by deleting “or the pension plan” and substituting “, the pension plan or local retirement product”;
- (b) in paragraph (c)—
  - (i) by deleting “plan,” and substituting “plan or local retirement product,”;
  - (ii) by inserting after “a pension plan” the words “or local retirement product”.

Amends section 50

29 Section 50(1) of the principal Act is amended by inserting after “plan” the words “, local retirement product or pension fund”.

Amends section 51

30 Section 51 of the principal Act is amended—

- (a) by repealing and replacing subsection (1) with the following—
  - “(1) Where the Commission proposes to—
    - (a) refuse to register a pension plan or an amendment to a pension plan, it shall serve notice of the proposal together with written reasons therefor, on the applicant or the administrator of the plan;
    - (b) cancel the registration of a pension plan, it shall serve notice of the proposal together with written reasons therefor, on the administrator of the plan;
    - (c) refuse to approve a person as a trustee or revoke the approval of a trustee, it shall serve notice of the proposal together with the written reasons therefor, on the applicant or the trustee;

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(d) impose a civil penalty, it shall serve notice of the proposal together with written reasons therefor, on the person on whom it proposes to impose the penalty.”;

(b) by inserting the following after subsection (3)—

“(4) Following a hearing, the Commission shall serve on the party to the hearing written notice which must—

(a) give its decision;

(b) give reasons for the decision;

(c) state, if the decision relates to the imposition of a civil penalty—

(i) the amount of the penalty;

(ii) the date upon which the penalty must be paid; and

(iii) that if unpaid, the penalty may be recovered by the Commission as a civil debt; and

(d) inform the party of his right to appeal the Commission’s decision to the Supreme Court under section 52.

(5) A decision notice shall be served within ninety days of the date of the hearing; and if no decision notice is served within that period, it shall be deemed that the Commission has decided not to take the action proposed in the notice of the proposal served under subsection (1).”.

Amends section 52

31 Section 52 of the principal Act is repealed and replaced with the following—

“Appeals to Supreme Court

52 A person aggrieved by the decision of the Commission to—

(a) refuse to register a pension plan or an amendment to a pension plan;

(b) cancel the registration of a pension plan;

(c) refuse to approve or revoke the approval of a trustee;

(d) impose a civil penalty, or with respect to the amount of the penalty,

may appeal to the Supreme Court in writing within twenty-one days of the service of the decision of the Commission or such longer period as, on application by the person appealing, the Supreme Court may allow.”.

Amends section 56

32 Section 56 of the principal Act is amended by inserting the following after paragraph (b)—

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“(ba) to consider and determine applications for approval as a trustee;”.

Amends section 61

33 Section 61(1) of the principal Act is repealed and replaced with the following—

“(1) The Commission may order an employer, an administrator of a pension plan, or any other person dealing with a pension plan, local retirement product or pension fund to provide the Commission with such information or report within such time limits as it may specify for the purpose of ascertaining compliance with this Act and the Regulations, or for statistical and research purposes.”.

Amends section 66

34 Section 66 of the principal Act is amended by inserting after “The Commission may” the words “, upon application and payment of the prescribed fee,”.

Amends section 67

35 Section 67 of the principal Act is amended—

- (a) in subsections (1) and (2) by deleting “A person” and substituting “Subject to section 68A, a person”;
- (b) by inserting the following after subsection (4)—

“(4A) In deciding whether a person has contravened a provision of this Act, the regulations, or an order, the Commission shall consider whether the person followed any relevant Guidance Notes which, on the day of the offence, had been issued by the Commission.”;

- (c) in subsection (5) by inserting after “paid” the words “together with the interest prescribed,”.

Inserts section 68A

36 The principal Act is amended by inserting the following after section 68—

“Commission may impose civil penalties

68A (1) Where a person is liable to a criminal conviction under section 67, the Commission may, instead of proceeding under that section, impose a civil penalty as follows, subject to the provisions of this Act relating to hearings and appeals—

- (a) in the case of an administrator who fails to submit to the Commission—
  - (i) the annual information report on the pension plan pursuant to section 7(3)(a);
  - (ii) the financial statements of the pension fund pursuant to section 7(3)(b);

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(iii) the three-year fiscal report (the triennial report) prepared by an actuary pursuant to section 7(3)(c)(i);

(iv) information in writing concerning the funding of the pension plan pursuant to section 18(2);

such amount as the Commission considers appropriate, but not exceeding \$25,000.

(b) in the case of a person winding up a pension plan who fails to submit a report for the Commission's approval pursuant to section 40(1), such amount as the Commission considers appropriate, but not exceeding \$25,000;

(c) in the case of any other contravention of a provision of this Act or the National Pension Scheme (General) Regulations 1999, such amount as the Commission considers appropriate, but not exceeding \$50,000.

(2) For the purposes of subsection (1), "appropriate" means effective, proportionate and dissuasive.

(3) A civil penalty imposed under this section is payable to the Commission, and is recoverable as a debt due to the Commission.

(4) Where a person has been charged with an offence under section 67, the Commission shall not impose a civil penalty in relation to the same matter."

Amends section 69

37 Section 69(1) of the principal Act is amended—

(a) by inserting the following after paragraph (j)—

"(ja) prescribing actuarial standards for pension plans;

(jb) prescribing the maximum fee payable in relation to services rendered in respect of a pension plan, life annuity contract or pension fund;"

(b) in paragraph (n) by inserting after "prescribing" the words "annual administrative fees payable to the commission, and".

Inserts section 69A

38 The principal Act is amended by inserting the following after section 69—

"Guidance Notes

69A (1) The Commission may issue Guidance Notes to employers, administrators, and other persons dealing with a pension plan, pension fund or local retirement product for the purpose of promoting best practices and compliance with this Act and the Regulations.

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(2) Notwithstanding the generality of subsection (1), Guidance Notes may be issued in respect of—

- (a) principles and standards to be observed in the performance of duties;
- (b) custody of assets, investment management, audit and accounting;
- (c) outsourcing of functions;
- (d) any procedural matters.

(3) Before issuing Guidance Notes, the Commission shall publish a draft of the Notes in such manner as it considers appropriate, and shall take into account any representations made to it about the draft.

(4) An employer, administrator, or other person dealing with a pension plan, local retirement product or pension fund must, in the performance of his duties, have regard to any Guidance Notes issued by the Commission.

(5) For greater certainty, failure to have regard to Guidance Notes issued by the Commission is not an offence under this Act.

(6) The Statutory Instruments Act 1977 does not apply to Guidance Notes issued under this section. ”.

Amends section 72

39 Section 72 of the principal Act is amended by inserting after “this Act” the words “, or required to be registered under this Act,”.

Consequential amendments to the (General) Regulations 1999

40 The National Pension Scheme (General) Regulations 1999 are amended in the manner set out in Schedule 1.

Amends the (Financial Hardship) Regulations 2010

41 The National Pension Scheme (Financial Hardship) Regulations 2010 are amended in the manner set out in Schedule 2.

Inserts Third Schedule

42 The principal Act is amended by inserting the Schedule to this Act, entitled “Third Schedule - Minimum Criteria for Approval as a Trustee”, after the Second Schedule to the principal Act.

Savings and transitional provisions

43 (1) On the day this Act comes into operation, a person who—

- (a) lawfully performs the duties of a trustee in relation to a registered pension plan, pension fund, or local retirement product; and

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- (b) applies to be approved as a trustee, not later than six months from the day this Act comes into operation,

may continue to perform those duties until his application is determined by the Commission.

(2) A person referred to in subsection (1) who continues to perform the duties of a trustee other than as provided for in that subsection, commits an offence under section 67(1) of the principal Act.

(3) For the avoidance of doubt, on the day this Act comes into operation an application for registration is not required in respect of—

- (a) a pension plan that is registered with the Commission; or
- (b) a financial institution pension plan or a local retirement product approved by the Commission.

(4) Section 19(6A) of the principal Act (inserted by section 14(c) of this Act) which requires an employer to pay interest on unpaid contributions, shall apply to unpaid contributions from the day that section comes into force.

(5) On the day section 2(c) of this Act comes into force, an employee—

- (a) who, under the Bermuda Immigration and Protection Act 1956, has been granted permission to engage in gainful occupation in Bermuda for an aggregate period exceeding twelve months; and
- (b) who is not a member of his employer's pension plan that is registered or required to be registered,

shall, if eligible pursuant to section 17 of the principal Act, be a member of his employer's pension plan, and the employee and his employer shall contribute to the pension fund of the pension plan in accordance with subsection (6).

(6) An employee referred to in subsection (5) who is a member of a—

- (a) defined contribution pension plan and his employer shall both contribute equally to the pension fund of the pension plan for the benefit of that member;
- (b) multi-employer pension plan, established pursuant to a collective agreement under which the obligation of the member's employer to contribute is set out in a collective agreement, and his employer shall both contribute to the pension fund of the pension plan in accordance with the collective agreement for the benefit of that member; and
- (c) defined benefit plan and his employer shall contribute in accordance with the provisions of the pension plan and the regulations such amounts as are required to fund the benefits accruing under the pension plan,

from the date of membership in the pension plan at the rates and dates specified in Schedule 3 (Transitional Contribution Schedule) to this Act.

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Commencement

44 This Act comes into operation on such day as the Minister may appoint by Notice published in the Gazette, and the Minister may appoint different days for different provisions.



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SCHEDULE 1

(section 40)

CONSEQUENTIAL AMENDMENTS TO THE  
NATIONAL PENSION SCHEME (GENERAL) REGULATIONS 1999

Amends regulation 2

1. Regulation 2 of the National Pension Scheme (General) Regulations 1999 (the “General Regulations”) is amended—

- (a) in the definition of “prescribed retirement product”—
  - (i) by deleting “prescribed” and substituting “local”;
  - (ii) by deleting “pension plan” and substituting “retirement plan”;
  - (iii) in paragraph (a) by inserting after “institution” the words “in Bermuda”;
  - (iv) in paragraph (b) by inserting after “person” the words “in Bermuda”;
- (b) by inserting the following definition in its proper alphabetical order—

“overseas retirement product” means a retirement plan—

- (a) provided by a body or person outside Bermuda which provides retirement benefits; and
- (b) which is recognised by the Commission;”.

Amends Part II heading

2. The Part II heading is amended by inserting after “PLAN” the words “AND APPROVAL OF TRUSTEE”.

Revokes and replaces regulation 3

3. Regulation 3 is revoked and replaced with the following—

“Application for registration of pension plan, etc.

3 An application for—

- (a) registration of a pension plan;
- (b) registration of a financial institution pension plan;
- (c) approval of a local retirement product,

shall be made on the form provided by the Commission, and shall be accompanied by certified copies of the documents specified in that form and the prescribed fee.”.

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Amends regulation 4

4. Regulation 4(1) is amended by deleting “in Form No. 2 in the First Schedule” and substituting “made on the form provided by the Commission”.

Inserts regulation 4A

5. The General Regulations are amended by inserting the following after regulation 4—

“Application for approval as trustee

4A (1) An application for approval as a trustee shall be made on the form provided by the Commission, and shall be accompanied by certified copies of the documents specified in the form and the prescribed fee.

(2) The Commission shall, upon payment of the prescribed fee, issue a certificate of approval to the trustee.”.

Amends regulation 5

6. Regulation 5 is amended by deleting “in Form No. 3 in the First Schedule” and substituting “made on the form provided by the Commission and accompanied by the prescribed fee”.

Amends regulation 6

7. Regulation 6 is amended—

(a) in the heading by inserting after “registration” the words “of a pension plan, etc.”;

(b) by deleting all the words of the provision and substituting “The Commission shall, subject to payment of the prescribed fee, issue a notice of registration or a certificate of approval in respect of an application made under regulation 3.”.

Amends regulation 8

8. Regulation 8 is amended by deleting “in Form No. 4 in the First Schedule” and substituting “on the form provided by the Commission, together with the prescribed fee”.

Amends regulation 9

9. Regulation 9 is amended—

(a) in paragraph (2) by deleting “\$1,000,000” and substituting “\$3,000,000”;

(b) in paragraph (4) by deleting “basis of accounting” and substituting “method of accounting or, if approved by the Commission, on the cash method of accounting”.

Amends regulation 11

10. Regulation 11(1)(o) is amended—

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- (a) in clause (ii) by deleting “and”;
- (b) in clause (iii) by inserting after “benefit;” the word “and”;
- (c) by inserting the following after clause (iii)—

“(iv) a summary of fees and expenses;”.

Amends regulation 15

11. Regulation 15(1) is amended in the introductory paragraph by deleting “statement that sets out, in accordance with section 15 of the Act,” and substituting “statement required under section 15 of the Act that sets out at least”.

Inserts Part IIA

12. The General Regulations are amended by inserting the following after regulation 16—

“PART IIA

EMPLOYER REQUIREMENTS

Retention of records by employer

16A (1) An employer shall maintain the following records with respect to its pension plan and each of its employees—

- (a) records relating to the pension plan—
  - (i) the registration number of the pension plan;
  - (ii) the administrator’s name and address;
- (b) records relating to an employee—
  - (i) name, date of birth, and address of the employee;
  - (ii) date employment commenced;
  - (iii) salaries, wages, bonuses and any other type of compensation paid to the employee, whether directly or indirectly;
  - (iv) date of eligibility for enrolment in the pension plan;
  - (v) actual date of enrolment in the pension plan;
  - (vi) employee contributions—
    - (A) dates and amounts withheld by the employer;
    - (B) dates and amounts paid into the pension fund;
  - (vii) dates and amounts of employer contributions paid into the pension fund for the benefit of the employee;
  - (viii) date of termination of employment.

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(2) The records referred to in paragraph (1) shall be kept by the employer for a minimum of seven years following the date of termination of the employee.

(3) Records that are stored electronically must be capable of being reproduced in legible form.

(4) This section applies to a person who stores or maintains records on behalf of an employee.”.

Amends regulation 19

13. Regulation 19 is amended by inserting the following after paragraph (1)—

“(1A) The annual administrative fees referred to in paragraph (7) of the Second Schedule are based on membership at the financial year-end of the pension plan, and are payable by 30 June of each calendar year.

(1B) The annual administrative fees referred to in paragraph (7) of the Second Schedule shall be paid by the administrator, and such fees are not recoverable from the pension plan, the pension fund, the employer, or the members or former members of the pension plan.”.

Amends regulation 21

14. Regulation 21 is amended by deleting “sixty-six, years of age” and substituting “the normal retirement age”.

Amends regulation 22

15. Regulation 22(2) is amended by deleting “\$5,000” and substituting “\$10,000”.

Amends regulation 25

16. Regulation 25 is amended—

(a) in the introductory paragraph by deleting “In this regulation” and substituting “In this Part”;

(b) by inserting the following definition in its proper alphabetical order—

“ “pension plan” includes a local retirement product;”.

Amends regulation 28

17. Regulation 28 is amended by deleting “a reasonable range of investments” and substituting “the range of investments, as may from time to time be approved by the Commission,”.

Amends regulation 29

18. Regulation 29(3)(c) is amended by deleting all the words and substituting “any security or insurance contract approved by the Commission; or”.

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Amends regulation 32

19. Regulation 32 is amended by inserting after “plan” the words “or any person dealing with a pension plan, local retirement product, or pension fund”.

Amends regulation 35

20. Regulation 35 is amended—

- (a) in the heading by inserting after “Prohibited” the words “loans and”;
- (b) in paragraph (1)—
  - (i) in the introductory paragraph by deleting “to or, except where securities are traded publicly, invested in the securities of,” and substituting “to, either directly or indirectly, or invested in securities of the following where such securities are not traded publicly”;
  - (ii) by inserting the following after subparagraph (e)—

“(ea) a member or former member of the pension plan;”;
  - (iii) in subparagraph (f) by —
    - (A) deleting “spouse” and substituting “husband, wife”;
    - (B) deleting “(e)” and substituting “(ea)”;
- (c) in paragraph (2) by—
  - (i) inserting after “loaned,” the words “either directly or indirectly,”;
  - (ii) deleting “105” in the two instances where the word occurs and substituting “100”.

Amends regulation 39

21. Regulation 39(1) is amended in the definition of “going concern valuation” by deleting “British or American”.

Inserts regulation 39A

22. The General Regulations are amended by inserting the following after regulation 39—

“Application for approval to issue annuity contracts

39A (1) An application for approval to issue annuity contracts shall be made on the form provided by the Commission, and shall be accompanied by certified copies of the documents specified in the form and the prescribed fee.

(2) The Commission shall, upon payment of the prescribed fee, issue a certificate of approval to the person approved to issue annuity contracts.”.

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Inserts regulation 40A

23. The General Regulations are amended by inserting the following after regulation 40—

“Funding of multi-employer pension plan

40A Regulation 40 does not apply to a multi-employer pension plan where an alternative method of funding the plan has been approved by the Commission.”.

Amends regulation 41

24. Regulation 41 is amended—

- (a) in paragraph (1) by inserting after “must” the words “, if required by the Commission,”;
- (b) in paragraph (2) by inserting after “shall” the words “, if required by the Commission,”;
- (c) by inserting the following after paragraph (2)—

“(3) An application for approval of a transfer shall be accompanied by the prescribed fee.”.

Amends regulation 42

25. Regulation 42(1) is amended—

- (a) in the introductory paragraph by inserting after “shall” the words “, if required by the Commission,”;
- (b) in subparagraph (c) by deleting “and”;
- (c) in subparagraph (d) by deleting the full-stop and substituting “; and”;
- (d) by inserting the following after subparagraph (d)—

“(e) such other persons as the Commission may direct.”.

Amends regulation 43

26. Regulation 43(3) is amended by deleting “or a person who is authorised by a financial institution” and substituting “, a person who is authorised by a financial institution, or some other body or person recognised by the Commission”.

Amends regulation 49

27. Regulation 49 is amended—

- (a) in paragraph (1)(a) by deleting “British or American”;
- (b) by inserting the following after paragraph (2)—

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“(3) This regulation does not apply to a multi-employer pension plan where an alternative method of determining the assets and liabilities of the pension plan has been approved by the Commission.”.

Amends regulation 51

28. Regulation 51 is amended—

(a) in paragraph (2) by—

(i) deleting “and 51(1)” and substituting “, 51(1) and (4)”;

(ii) deleting “British or American”;

(b) in paragraph (4) by deleting “subsequent report” and substituting “subsequent actuarial valuation”.

Amends regulation 54

29. Regulation 54 is amended—

(a) in the heading by deleting “life”;

(b) in paragraph (3) by deleting “prescribed”.

Amends regulation 55

30. Regulation 55(1)(a) is amended by deleting “Recommendations for the Computation of Transfer Values from Registered Pension Plans, or a corresponding British or American equivalent” and substituting “Standards or Recommendations, or a corresponding equivalent”.

Inserts regulation 55A

31. The General Regulations are amended by inserting the following after regulation 55—

“Surplus

55A An administrator of a pension plan or local retirement product shall not pay any surplus out of a pension fund without the prior approval of the Commission.”.

Amends regulation 56

32. Regulation 56(4) is amended by inserting after “employer contributions” the words “, including money received by the employer from the member,”.

Revokes First Schedule

33. The First Schedule to the General Regulations is revoked.

Revokes and replaces Second Schedule

34. The Second Schedule to the General Regulations is revoked and replaced with the Schedule to this Act entitled “Second Schedule - Fees”.

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SCHEDULE 2

(section 41)

RELATED AMENDMENTS TO THE NATIONAL PENSION SCHEME  
(FINANCIAL HARDSHIP) REGULATIONS 2010

Amends regulation 2

(1) Regulation 2 of the National Pension Scheme (Financial Hardship) Regulations 2010 (the “Hardship Regulations”) is amended—

(a) by inserting the following definition in its proper alphabetical order—

“the Act” means the National Pension Scheme (Occupational Pensions) Act 1998;

(b) in the definition of “account” by deleting “prescribed”;

(c) in the definition of “applicant” by deleting “application, but does not include a member or former member who is in receipt of a pension;” and substituting “application;”.

Amends regulation 3

(2) Regulation 3(1) is amended—

(a) in subparagraph (ba) by deleting “or”;

(b) in subparagraph (c) by deleting the full-stop and substituting “; or”;

(c) by inserting the following after subparagraph (c)—

“(d) eligible funeral expenses (in accordance with regulation 6A).”.

Amends regulation 6

(3) Regulation 6(2) is amended—

(a) in the introductory paragraph by inserting after “establishment” the words “or landlord”;

(b) by revoking and replacing subparagraph (b) with the following—

“(b) expenses for housing, including rent payable to a landlord or expenses for residence halls and meal plans operated by the establishment;”.

Amends regulation 11

(4) Regulation 11 is amended by inserting the following after paragraph (2)—

“(3) Paragraph (1) does not apply to a person who has attained normal retirement age and has retired.”.



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Inserts regulation 6A

(5) The Hardship Regulations are amended by inserting the following after regulation 6—

“Eligible funeral expenses

6A (1) An application may be made in respect of eligible funeral expenses on behalf of the applicant or a dependant or parent of the applicant.

(2) “Eligible funeral expenses” means the following expenses for services provided by a relevant funeral home—

- (a) interment expenses;
- (b) cremation expenses;
- (c) other related funeral home expenses recognised by the Commission for the purposes of these Regulations.

(3) “Relevant funeral home” means a business in Bermuda, recognised by the Commission for the purposes of these Regulations, that provides cremation, interment and related funeral services.

(4) The application shall be supported by a statement, in writing from the relevant funeral home which includes an invoice for, or estimate of, the expenses.

(5) Subject to regulation 8 (Maximum payment), the Commission may approve payment of the full amount indicated under paragraph (4).

(6) An application shall not be approved in respect of eligible funeral expenses—

- (a) which have already been paid; or
- (b) which are due to be paid by a third party.”.

Amends regulation 14

(6) Regulation 14 is amended—

(a) in paragraph (2)—

(i) in subparagraph (ba) by deleting “or” at its last occurrence;

(ii) by revoking and replacing subparagraph (c) with the following—

“(c) the landlord of the applicant or dependant of the applicant or the relevant educational establishment, if the application is made under regulation 6; or”;

(iii) by inserting the following after subparagraph (c)—

“(d) the relevant funeral home, if the application is made under regulation 6A.”;

(b) in paragraph (5) by deleting “prescribed”.

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SCHEDULE 3

(section 43(5) and (6))

TRANSITIONAL CONTRIBUTION SCHEDULE

Date	Contribution Rate (% of Pensionable Earnings)	Annual Defined Benefit Accrual Rate (% of Final Average Earnings)
1 January 2020	1%	0.25%
1 January 2021	2%	0.50%
1 January 2022	3%	0.75%
1 January 2023	4%	1.00%
1 January 2024	5%	1.25%

For the purposes of calculating the annual defined benefit accrual rate of a member, “final average earnings” means—

- (a) the annual average of the member’s highest consecutive 60 months of pensionable earnings during the 120 months immediately before the date the calculation is required; or
- (b) where he has less than 60 months of pensionable earnings, the member’s average pensionable earnings calculated over his actual period of active membership in the pension plan.

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SECOND SCHEDULE

(regulation 19)

FEES

<u>COLUMN 1</u>	<u>COLUMN 2</u>
(1) Registration of Pension Plans	
(a) applying to register—	
(i) a pension plan under regulation 3(a)	\$500
(ii) a financial institution pension plan under regulation 3(b)	\$1,000
(b) issuing a notice of registration in respect of—	
(i) a pension plan under regulation 6	\$500
(ii) a financial institution pension plan under regulation 6	\$500
(c) applying to register an amendment to a pension plan under regulation 4(1)	\$200
(2) Proof of Participation	
Submitting proof of participation in a financial institution pension plan under regulation 5	\$5 per member
(3) Approvals	
(a) Local Retirement Product	
(i) applying for approval of a local retirement product under regulation 3(c)	\$1,000
(ii) issuing a certificate of approval under regulation 6	\$500
(b) Trustees	
(i) applying for approval as a trustee under regulation 4A(1)	\$100 per trustee
(ii) issuing a certificate of approval under regulation 4A(2)	\$100 per trustee
(c) Transferring a Pension Plan	
applying for approval to transfer a pension plan under regulation 41(3)	\$100
(d) Winding-Up Report	
applying for approval of a winding-up Report under section 40(1) of the Act	\$100

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(e)	Annuity Contract	
	(i) applying under regulation 39A(1) for approval to issue annuity contracts	\$200
	(ii) issuing a certificate under regulation 39A(2) for approval to issue annuity contracts	\$200
(4)	Annual Information Report	
	Submitting an annual information report pursuant to regulation 8	\$5 per member and former member
(5)	Extension of Time	
	Applying for extension of time pursuant to section 66 of the Act	\$100 per application
(6)	Supplying Documents	
	Supplying copies of documents pursuant to section 16(2) of the Act—	
	(a) for each page	\$1
	(b) minimum fee	\$5
(7)	Annual Administrative Fees	
	Annual administrative fee in respect of—	
	(a) an employer pension plan that is not a multi-employer pension plan; or a self-employment pension plan; or a financial institution pension plan; or a plan that is not self-administered by an employer	\$30 per member and former member
	(b) a financial institution pension plan	\$30 per member and former member
	(c) a pension plan self-administered by an employer	\$3,000 or \$30 per member and former member, whichever is lower

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|-----------------------------------|--|
| (d) a multi-employer pension plan | \$50,000 per annum, or \$30 per member and former member, whichever is lower |
| (e) a local retirement product    | \$30 per member  |

THIRD SCHEDULE

(section 17B(2)(b))

MINIMUM CRITERIA FOR APPROVAL AS A TRUSTEE

Trustees to be fit and proper persons

1 (1) Every person approved as a trustee under this Act shall be a fit and proper person to perform functions in relation to any activity carried on by him.

(2) In determining whether a person is a fit and proper person to be a trustee, regard shall be had to his probity, to his competence and soundness of judgement for fulfilling the responsibilities of a trustee, to the diligence with which he is fulfilling or likely to fulfil those responsibilities, and to whether the interests of members or former members of a pension plan or local retirement product or their beneficiaries are, or are likely to be, in any way threatened by his holding that position.

(3) Without prejudice to the generality of the foregoing provisions, regard may be had to the previous conduct and activities of the person in acting as a trustee, or in business or financial matters of the person in question and, in particular, to any evidence that the person has—

- (a) committed an offence involving fraud or other dishonesty or violence;
- (b) contravened any provision made by or under any enactment appearing to the Commission to be designed for protecting the public or members and former members of a pension plan or local retirement product against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of trustee services, or the management of companies against financial loss due to the conduct of discharged or undischarged bankrupts;
- (c) engaged in any business practices appearing to the Commission to be deceitful or oppressive or otherwise improper (whether lawful or not) or which otherwise reflect discredit on the person's method of conducting business;
- (d) engaged in or has been associated with any other business practices or other conduct so as to cast doubt on the competence and soundness of judgement of the person;
- (e) been censured, criticized or disciplined by any professional body to which the person is or had been associated;
- (f) been subject to any regulatory sanctions, whether in Bermuda or overseas.

Integrity and skill

2 A person is to perform the duties of a trustee with integrity and the appropriate professional skill, and in accordance with the requirements of this Act and the Regulations.

NATIONAL PENSION SCHEME (OCCUPATIONAL PENSIONS)  
AMENDMENT BILL 2019

EXPLANATORY MEMORANDUM

This Bill seeks to amend the National Pension Scheme (Occupational Pensions) Act 1998 (the “principal Act”) as follows—

Clause 1 is self explanatory.

Clause 2 amends section 2 (Interpretation). The definition of “administrator” has been amended to clarify that the term applies to trustees or boards of trustees who act as administrators of pension plans. The definition of “pensionable earnings” is amended to include all payments of bonuses. The definition of “employee” has been repealed and replaced so that the Act applies to all employees, whether Bermudian or non-Bermudian. The definition of “self-employed person” has been amended so that the Act applies to any person who is self-employed, whether Bermudian or non-Bermudian. The definition of “Bermudian” has been repealed as that term is no longer applicable. Amendments have also been made to the definitions of “actuary” and “retirement product”.

Clause 3 amends section 4 (Obligation of employers to establish and maintain pension plans). The amendment requires an employer to apply to register a pension plan within 90 days (not 120 days) of establishing the plan, and the reference to the prescribed form has been deleted.

Clause 4 amends section 5 (Applications for registration) by deleting the reference to a prescribed form.

Clause 5 amends section 7 (General responsibilities of administrator) to remove the requirement of an administrator of a defined contribution pension plan to submit triennial reports of the pension fund to the Commission, and to delete the reference to a prescribed form.

Clause 6 amends section 8 (Duty of employer to provide information to administrator) to provide for the Minister to prescribe the manner and length of time within which an employer must keep records relating to the pension plan and each employee.

Clause 7 amends section 11 (Amendment of pension plan and registration of amendments). A new subsection (1B) has been inserted relating to the refund of contributions made before section 11 came into operation. Subsection (4) now provides for amendments to a pension plan to take effect upon registration (not the day on which the application for registration is filed).

Clause 8 amends section 12 (Power of Commission to refuse to register or to cancel registration, etc.) to refer to pension plans in the section heading.

Clause 9 amends section 14 (Annual statement of pension benefits) by providing for annual statements to be sent to members by electronic means.



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Clause 10 amends section 16 (Access to documents in custody of administrator) to include trustees who hold the assets of a pension plan as a person who may make a request to the administrator to inspect documents and information relating to the pension plan.

Clause 11 amends section 17 (Eligibility for membership) by providing for an employee to be eligible for membership in a pension plan if he has attained the age of twenty-three years but has not attained the normal retirement age.

Clause 12 inserts Part IIA (Approval of Trustees) which requires persons to apply to the Commission for approval as a trustee.

Clause 13 amends section 18 (Funding) to require assets of a pension plan to be held by an approved trustee.

Clause 14 amends section 19 (Contributions). Subsection (1)(b) has been amended with respect to multi-employer pension plans. Subsection (6) is amended to require administrators and persons who hold the assets of a pension plan in a pension fund to notify the employer and the Commission within 15 days (not immediately) of an employer failing to make the required contribution into the pension fund. New subsections (6A) and (6B) have been inserted to require interest to be paid by an employer on unpaid contributions at the rate prescribed by the Minister by Notice.

Clause 15 amends section 19A (Civil proceedings) to provide for interest owed on unpaid contributions to be recoverable as a civil debt.

Clause 16 amends section 21 (Early retirement) to provide for a person who has retired to elect to receive an early retirement pension, provided he is within ten years of attaining the normal retirement date.

Clause 17 amends section 22 (Vesting) to require pension plans to provide for the full vesting of accrued benefits in each of its members within a period not exceeding one year (not two years), and for the Commission to approve a full vesting period other than one year in respect of multi-employer pension plans.

Clause 18 amends section 23 (Portability) to provide for section 23 not to apply where a pension plan provides for an employee, who has terminated his employment to remain a member of the employer's pension plan, and the member has elected to do so; and for the administrator of a pension plan to comply with a member's directions within 45 days (not 30 days) of delivery of the direction.

Clause 19 amends section 24 (Restrictions on refunds) by providing for a lump-sum refund to members or former members of a pension plan who have attained retirement age and who have retired, and for the Minister to prescribe regulations in this regard.

Clause 20 amends section 28 (Exceptions to general restrictions) to refer to court ordered property settlement agreements.

Clause 21 amends section 31 (Survivor benefits on death before pension commences) by providing for a lump sum to be paid to the beneficiary of a member of a pension plan, where the member dies before completing one year (not two years) membership in the pension plan.

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Clause 22 amends section 34 (Variation of payment to disabled persons) to permit variation in the terms of payment of a pension or other benefit where the opinion of a qualified medical practitioner is that the life expectancy of the member or former member is likely reduced to five years or less.

Clause 23 repeals and replaces section 35 (Small pensions) which now provides for small pension plans to provide for payment to a former member who has attained normal retirement age and who has retired, if the commuted value or the account balance is not more than \$50,000.

Clause 24 makes an editorial amendment to section 38 (Winding up).

Clause 25 amends section 40 (Report on winding up) by providing for the payment of an application fee when a winding-up report is submitted for the Commission's approval.

Clause 26 amends section 46 (Surplus) to clarify that surplus in a fund that has been wound up is not to be paid out without the consent of the Commission.

Clause 27 amends section 47 (Continuation of benefits under successor employer) to refer to the assets of a business where there is a merger or amalgamation; and with respect to the transfer of a member's account balance to a successor employer's pension plan.

Clause 28 amends section 49 (Orders by Commission) to provide for the Commission to make an order with respect to a person dealing with a local retirement product.

Clause 29 amends section 50 (Advice by Commission as to conformity) to provide for the Commission to advise whether a local retirement product conforms with the requirements of the principal Act or the regulations.

Clause 30 amends section 51 (Hearing in certain cases) by providing for persons to be heard by the Commission when the Commission proposes to refuse to approve or revoke the approval of a person as a trustee, or to impose a civil penalty.

Clause 31 amends section 52 (Appeals to Supreme Court) by providing for persons to appeal to the Supreme Court against a decision of the Commission to refuse or revoke the approval of a trustee, or to impose a civil penalty or the amount of the penalty.

Clause 32 amends section 56 (Functions of the Commission) to provide for the Commission to determine applications for approval as trustees.

Clause 33 amends section 61 (Power to order information and reports) by providing for the Commission to order information for statistical and research purposes, and also to order information from persons dealing with a pension plan, local retirement product, or a pension fund.

Clause 34 amends section 66 (Extension of time) to provide for an application fee to be payable in respect of an application for extension of time.

Clause 35 amends section 67 (Offences, penalties and orders for payment) by providing for the Commission to take into account whether or not Guidance Notes issued by the Commission had been followed when determining if a person had contravened the principal Act, Regulations, or an order.

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Clause 36 inserts section 68A (Commission may impose civil penalties). The amendments provide (a) for the Commission to impose a civil penalty where a person is liable to prosecution for an offence under section 67; (b) for the range of penalties that may be imposed; (c) for penalties to be recovered as a civil debt; (d) for penalties to be payable to the Commission; and (e) for the Commission not to impose a civil penalty where a person has been charged with an offence in respect of the same matter.

Clause 37 amends section 69 (Regulations) by providing for regulations to be made prescribing actuarial standards, maximum fees payable for services rendered to a pension plan, pension fund, or life annuity contract, and administrative fees to be payable to the Commission.

Clause 38 inserts section 69A (Guidance Notes) which provides for the Commission to issue Guidance Notes to promote best practices and compliance with the Act and the Regulations by employers, administrators, and other persons dealing with a pension plan, local retirement product, or a pension fund. Such persons must have regard to the Guidance notes in the performance of their duties, but failure to comply with Guidance Notes is not an offence. The Statutory Instruments Act 1977 does not apply to Guidance Notes.

Clause 39 makes a related amendment to section 72 (Application of Pension Trust Funds Act 1966).

Clause 40 provides for consequential amendments to the National Pension Scheme (General) Regulations 1999 as set out in Schedule 1 to this Act. These include amendments in relation to (a) the definitions of local and overseas retirement products; (b) applications for approval as a trustee, and as a person who may issue annuity contracts; (c) fees in respect of applications for proof of participation in a financial institution pension plan, notices of registration, and applications for approval of a transfer report; (d) the value of the assets of a pension plan which require an auditor's report, and the basis of accounting for preparing financial statements; (e) annual administrative fees; (f) the amount of contributions to be made by self-employed persons to a self-employment pension plan; (g) multi-employer pension plans; (h) the revocation of the First Schedule (Forms); and (i) the Second Schedule (Fees) is revoked and replaced by the Schedule to this Act entitled "Second Schedule - Fees".

Clause 41 provides for related amendments to the National Pension Scheme (Financial Hardship) Regulations 2010 as set out in Schedule 2 to this Act. Among other things, the amendments provide for payment of eligible funeral expenses, payments to be made directly to the landlord of a person receiving educational benefits, and for persons who have attained the normal retirement age and have retired not to pay the application fee.

Clause 42 inserts a Third Schedule entitled "Minimum Criteria for Approval as a Trustee.

Clause 43 provides a savings and transitional provision on the day this Act comes into operation with respect to (a) trustees (b) interest payable by employers on unpaid contributions; (c) persons employed under the Bermuda Immigration and Protection Act 1956; and (d) pension plans, financial institution pension plans, and local retirement products.

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Clause 44 provides for the Minister to bring this Act into operation by Notice published in the Gazette, and different days may be appointed for different provisions.