

CONSOLIDATION OF SUPPLEMENTARY RETIRING ALLOWANCES ACT

S.Nu. 2002,c.4
In force March 6, 2002

(Current to: February 7, 2020)

AS AMENDED BY:

S.Nu. 2003,c.11

In force June 6, 2003

S.Nu. 2005,c.8,s.4

s.4 in force May 5, 2005, except s.4(2),(3)

s.4(2),(3) in force April 1, 1999 (deemed)

S.Nu. 2008,c.8,s.3

s.3 in force June 4, 2008

S.Nu. 2015,c.6,s.10-13

s.10-13 in force March 17, 2015

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

S.Nu. 2015,c.20,s.2

s.2 in force November 5, 2015

S.Nu. 2017,c.19,s.2

s.2 in force June 8, 2017

S.Nu. 2019,c.22, Part 2

Part 2 in force November 7, 2019

Note: see s.19 of S.Nu. 2019,c.22 for transitional provisions.

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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SUPPLEMENTARY 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 section 4; (*actuaire*)

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

"annual allowance" means an annual allowance payable pursuant to section 9, 10, 11 or 16.1; (*allocation annuelle*)

"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 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*)

"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*)

"fixed term allowance" means an allowance payable over a fixed term pursuant to section 16.1; (*allocation à terme fixe*)

"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*)

"Speaker" means the Speaker of the Legislative Assembly; (*président*)

"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*)
S.Nu. 2003,c.11,s.2; S.Nu. 2005,c.8,s.4(2);
S.Nu. 2008,c.8,s.3(6); S.Nu. 2015,c.6,s.11.

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.2(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.2(2).

ADMINISTRATION

Management and Services Board

4. (1) The Management and Services Board shall administer this Act and the regulations made under this Act.

Engaging persons

(2) 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 those persons.

Engaging professionals

(3) 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.

Accounts

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

Frequency of valuation

(5) 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.

S.Nu. 2017,c.19,s.2

Payments out of Consolidated Revenue Fund

5. (1) Every allowance and benefit payable under this Act and all expenses incurred in the administration of the Act shall be paid out of the Consolidated Revenue Fund out of moneys appropriated for the purpose.

Administration by Management and Services Board

(2) Notwithstanding the *Financial Administration Act*, the Management and Services Board shall oversee the administration of that portion of the Consolidated Revenue Fund that can be attributed to moneys appropriated for a purpose mentioned in subsection (1).

ALLOWANCES TO MEMBERS

Allowances

6. (1) An allowance shall be paid in accordance with this Act to or in respect of a person who elects to participate in this Act under section 7 and who

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

Monthly payments

(2) Subject to subsections 11(4) and 16.1(1), an annual allowance is payable monthly to every recipient during the lifetime of the recipient. S.Nu. 2003,c.11,s.3.

Election by member

7. (1) A member is only entitled to participate in this Act if the member elects to do so by filing a form to that effect with the Speaker.

Late election by member

(2) If a member files the form referred to in subsection (1) more than 60 days after first being elected to the Legislative Assembly, the service of the member for the purposes this Act is deemed to

- (a) start on the day the member files the form; and
 - (b) for greater certainty, not include any period during which the member was a member prior to the day the member files the form.
- S.Nu. 2019,c.22,s.17.

Suspension

7.1. A period referred to in section 3.1 is not to be included in the determination of the time limit for making an election under section 7. S.Nu. 2015,c.20,s.2(3).

Section 11 of *Legislative Assembly and Executive Council Act*

8. (1) Where a person ceases to be a member by virtue of section 11 of the *Legislative Assembly and Executive Council Act*, no allowance shall be paid to or in respect of that person.

Ceasing to be a member

(2) For the purposes of subsection (1), a person ceases to be a member by virtue of section 11 of the *Legislative Assembly and Executive Council Act* if

- (a) he or she is convicted of an offence referred to in subsection (1) of that section;
- (b) he or she is expelled under subsection (2) of that section; or
- (c) he or she is convicted of an offence referred to in subsection (2) of that section and resigns before the Legislative Assembly determines whether or not to expel him or her.

Entitlement to refund

(3) A person referred to in subsection (1) is entitled to be refunded the difference between the contributions the person made and the contributions that the person would have made under subsection 6(1) of the *Legislative Assembly Retiring Allowances Act*, with interest fixed by the Management and Services Board, if the person

- (a) has made contributions under subsection 6(2) or (6) of that Act; and
- (b) is a qualifying member as defined in subsection 9(1).

Where person subsequently elected

(4) If a person referred to in subsection (1) is subsequently elected to the Legislative Assembly, he or she may elect under section 7 as if he or she had been elected to the Legislative Assembly for the first time, but is deemed for the purposes of this Act to have never previously been a member.

Resumption in payment

(5) Nothing in this section prevents the resumption in payment of an allowance that had ceased to be paid pursuant to subsection 17(2). S.Nu. 2008,c.8,s.3(2).

Definition of "qualifying member"

9. (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 that Legislative Assembly until it is dissolved.

Annual allowance

(2) Subject to sections 7 and 16, 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, 3% 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, 3% 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; and
- (b) shall not include any year after November 30 in the year in which the member or former member attains the age of 71 years.
S.Nu. 2003,c.11,s.4; S.Nu. 2008,c.8,s.3(3)(a).

Definitions

10. (1) In this section:

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

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

- (a) is eligible for an allowance under section 9; and
- (b) has served at least one year in a required capacity.
(*député admissible*)

Additional annual allowance

(2) Subject to section 16, a qualifying member shall be paid, on attaining pensionable age, in addition to the allowance payable under section 9, an annual allowance equal to

- multiplied by
- (a) the number of years of service in the required capacity;
 - (b) where the member has served four or more years in the required capacity, 3% 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, 3% of the average annual earnings received by the member during the period of total service in the required capacity.

Maximum years of service

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

- (a) shall not exceed 15 years; and
 - (b) shall not include any year after November 30 in the year in which the member or former member attains the age of 71 years.
- S.Nu. 2008,c.8,s.3(3)(a).

ALLOWANCES TO SURVIVORS

Allowances to surviving spouse and children

11. (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 clause (1)(c)(i) and, notwithstanding subsection (2), an allowance payable under clause (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; or
- (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.Nu. 2005,c.8,s.4(3); S.Nu. 2008,c.8,s.3(6).

Lump sum

12. (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.

Payment to beneficiary

13. 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.

Designation of beneficiary

14. (1) A member or former member may designate a beneficiary for the purposes of sections 12, 13 and 16.1 in accordance with the regulations.

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.Nu. 2003,c.11,s.5.

POST RETIREMENT INCREASES

Post-retirement increase

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

Formula

(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.

When post-retirement increase 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.

RETIREMENT

Election to receive allowance at other time

16. (1) Subject to subsection (3), 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.

Reduction for early election

(2) 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 shall be reduced by 0.25% for each month or part of a month that precedes the day the member attains pensionable age.

Where election not made

(3) 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.Nu. 2008,c.8,s.3(4).

Election to receive allowance for a fixed term

16.1. (1) A member who ceases to be a member may elect to receive a monthly allowance to be paid out over a fixed term of 15 years in lieu of any annual allowances to which the member may be entitled under sections 9 and 10.

Commencement

(2) Notwithstanding section 16, payment of a fixed term allowance according to an election by a member or former member under subsection (1) may

- (a) commence immediately; or
- (b) be deferred to commence on the first day of any month prior to December 31 of the year in which the member or former member attains the age of 71 years.

Notice

(3) A member or former member who elects to defer payment of a fixed term allowance under paragraph 16.1(2)(b) must give three months' notice of his or her intention to have payment commence.

Where election not made

(4) If a member or former member who has made an election to receive a fixed term allowance under subsection (1) fails to give notice under subsection (3) of his or her intention to have payments commence before December 31 of the year in which he or she attains the age of 71 years, he or she is deemed to have elected to receive any allowances payable to him or her under sections 9 and 10 according to the terms of those sections.

Payment to beneficiary

(5) If a member or former member who has made an election under subsection (1) dies before the fixed term allowance has been paid out in full, the surviving spouse of the member or former member may choose whether to receive the remainder of the fixed term allowance to which the member or former member was entitled

- (a) in the form of monthly payments spread over the remainder of the fixed term elected by the member and apportioned as follows:
 - (i) in the event that there are no surviving children, 100% to the surviving spouse,

- (ii) in the event that there are surviving children, 66 2/3% to the surviving spouse and the balance divided equally between the surviving children;
- (b) subject to subsection (6), in the form of monthly payments with 66 2/3% of the actuarial present value of the remainder of the fixed term allowance paid to the surviving spouse for the spouse's lifetime and 33 1/3% of the actuarial present value divided equally between the surviving children and paid in accordance with subsection 11(4); or
- (c) subject to subsection (6), in the form of monthly payments payable over a new fixed term of 5, 10 or 15 years with 66 2/3% of the actuarial present value of the remainder of the fixed term allowance paid to the surviving spouse and 33 1/3% of the actuarial present value divided equally between the surviving children.

Exception

(6) In the event that a monthly payment to any surviving spouse or child under subsection (5) would be less than an amount prescribed, the actuarial present value of the remainder of the fixed term allowance for that person will be paid to that person in the form of a lump sum payment.

Where no surviving spouse

(7) Subject to subsection (8), if a member or former member who has made an election under subsection (1) dies before the fixed term allowance has been paid out in full leaving children but no surviving spouse, the actuarial present value of the remainder of the fixed term allowance will be divided equally between the surviving children and paid in accordance with subsection 11(4).

Avoidance of minimal payments

(8) In the event that any monthly payment to a surviving child under subsection (7) would be less than an amount prescribed, the actuarial present value of the remaining fixed term allowance for that person will be paid to that person in the form of a lump sum payment.

Value to be equivalent

(9) Notwithstanding section 16, the total amount of a fixed term allowance shall be determined to be actuarially equivalent to the annual allowances payable under sections 9 and 10. S.Nu. 2003,c.11,s.6; S.Nu. 2008,c.8,s.3(3)(b),(4); S.Nu. 2019,c.22,s.18.

Entitlement to allowance or fixed term allowance

17. (1) A member is not entitled to receive any allowance or fixed term allowance until whichever of the following first occurs:

- (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.

Cessation of allowance or fixed term allowance

(2) If a former member is receiving an allowance or fixed term allowance and is elected again to the Legislative Assembly, the allowance or fixed term 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 or fixed term allowance until subsection (1) again applies.

Resumption of allowance or fixed term allowance

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

- (a) the allowance or fixed term 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 or fixed term allowance for his or her subsequent service, and that allowance or fixed term allowance shall be calculated under sections 9 and 10 separately from the allowance or fixed term 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.Nu. 2003,c.11,s.7; S.Nu. 2008,c.8,s.3(3)(c).

LIMITATION ON AMOUNT OF ALLOWANCE

Maximum allowance

18. (1) Notwithstanding any other provision of this Act or of the *Legislative Assembly Retiring Allowances Act*, the combined allowances payable to or in respect of a member or a former member under this Act and the *Legislative Assembly Retiring Allowances Act* in the year in which the allowances commence or commenced to be paid shall not exceed 75% of the sum of

- (a) the average annual pensionable remuneration referred to in subsection 9(2); and
- (b) the average annual earnings determined in accordance with paragraph 10(2)(b) or (c);

multiplied by the ratio that the Benefit Index for the year in which the allowances commence or commenced to be paid bears to the Benefit Index for the year in which the member or former member ceases to be a member.

Priority in case of reduction

(2) If the combined allowances payable in respect of a member or a former member are reduced as a result of the application of subsection (1), the reduction shall be made

- (a) first from the allowances payable under this Act; and
- (b) if there is no allowance or no further allowance payable under this Act, from the allowances payable under the *Legislative Assembly Retiring Allowances Act*.

Adjustments to maximum allowance

(3) Where combined allowances are limited under subsection (1), the only adjustments that may be made to the combined allowances payable to a member or former member after the year in which the allowances commence or commenced to be paid are the post-retirement increases referred to in section 15 of this Act and section 18 of the *Legislative Assembly Retiring Allowances Act*.

Application to allowance payable on death

(4) In respect of an allowance payable under subsection 11(1), subsection (1) applies to the basic allowance of the member or former member referred to in paragraphs 11(1)(a), (b) and (c).

Application to fixed term allowance payable on death

(4.1) In respect of a fixed term allowance payable under subsection 16.1(1), subsection (1) applies to the basic allowance of the member or former member under sections 9 and 10.

Legislative Assembly Retiring Allowances Act

(5) In respect of an allowance payable under subsection 15(1) of the *Legislative Assembly Retiring Allowances Act*, subsection (1) applies to the basic allowance of the member or former member referred to in paragraphs 15(1)(a), (b) and (c) of that Act. S.Nu. 2003,c.11,s.8.

Assignment of rights

19. (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 19.1 to 19.4; or
 - (b) assignment by the legal representative of a deceased member or former member on the distribution of his or her estate. S.Nu. 2015,c.6,s.12.

DIVISION ON FAMILY BREAKDOWN

Definitions

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

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

"former spouse" means

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

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

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

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

Application

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

Information

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

Required information

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

Options for distribution

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

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

Where no option chosen

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

Limitation on election

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

Application to court for remedy

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

Legislative Assembly Retiring Allowances Act

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

Entitlement subject to filed court order, separation agreement

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

Value of total pre-division benefit

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

Distribution

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

Satisfaction of entitlements, obligations

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

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

Adjustment of share

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

Allowance payable to child

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

No combination of share and allowance

(16) Where a former spouse has received or is entitled to receive a share of a member or former member's allowance under this section, no portion of such share and

no right associated with that share may be combined with any allowance to which the former spouse may become entitled as a result of the former spouse being or becoming a member or as a result of a subsequent division of the allowance of another member or former member. S.Nu. 2015,c.6,s.13.

Calculation of divided benefits

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

Total entitlement

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

Calculation of pre-division benefit

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

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

where

- (a) A is the total pre-division benefit,
- (b) B is the total entitlement determined in accordance with subsection (2),
- (c) C is the period specified in subparagraph 19.1(4)(a)(i), and
- (d) D is the period during which the total entitlement accrued.

Calculation of former spouse's share

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

Calculation of member or former member's share

(5) The member or former member's share is to be calculated at the same time as the total entitlement, and shall be the total pre-division benefit reduced by the former spouse's share as determined under subsection (4) and further adjusted under section 19.4, if applicable.

Shares must equal pre-division benefit

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

Immediate calculation

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

Communication of calculations

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

Commuted value

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

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

Calculation of actuarial present value

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

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

S.Nu. 2015,c.6,s.13.

Distribution where allowance not in payment

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

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

Communication of election

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

Distribution where in allowance in payment

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

Guarantee includes prior payments

(4) For greater certainty, any payments made to the former member prior to the time of the division are included in the number of monthly payments guaranteed under subsection (3). S.Nu. 2015,c.6,s.13.

Provision for child

19.4. The allowances payable to a child following the death of a member or former member shall not be affected by a division under section 19.1, and shall be paid to an eligible child in accordance with section 11 as if no such division had occurred, and if the former spouse is alive following the death of the member or former member, as if the former spouse was entitled to a survivor allowance under section 11 derived from the member or former member's allowance. S.Nu. 2015,c.6,s.13.

REPORT TO THE LEGISLATIVE ASSEMBLY

Report

20. 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 prepared by the actuary under subsection 4(5); and
- (b) any other information that in the opinion of the Management and Services Board should be brought to the attention of the Legislative Assembly.

Tabling of elections

20.1. The Speaker shall, as soon as possible after the end of the fiscal year, lay before the Legislative Assembly copies of the elections filed by members under sections 7 and 16.1. S.Nu. 2003,c.11,s.9.

REGULATIONS

Regulations

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

- (a) respecting the administration of this Act and the regulations made under this Act;
- (b) respecting any form that may be necessary for the administration of this Act;
- (c) respecting the calculation of the actuarial present value of the allowance under subsection 12(2), section 13 and subsection 16.1(5);
- (d) respecting the registration of members and their spouses and any changes to or deletion of a registration;
- (e) respecting the designation of a beneficiary, and the revocation of a designation, under subsection 14(1);
- (f) respecting elections that may be made by a member under section 7 and subsections 16(1) and 16.1(1);
- (g) respecting the information to be provided by a member for the purpose of the administration of this Act;
- (h) setting out when every allowance and benefit shall be paid and when payment to a recipient shall commence and cease, and providing that where a person receiving an allowance ceases to be entitled to the allowance, payment may be made in respect of the full month in which that person ceases to be entitled to an allowance;
- (i) 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;
- (j) 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;
- (k) 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;
- (l) respecting the giving and revocation of notices under section 16.1;
- (m) establishing the amount of the minimum monthly allowance payable to a surviving spouse or child under subsection 16.1(6) or 16.1(8).

S.Nu. 2003,c.11,s.10; S.Nu. 2005,c.8,s.4(4).