



## ANALYSIS

Title	7	Widow's Benefit
<b><u>PART I</u></b>	8	Opt - out for recent beneficiaries
<b><u>PRELIMINARY</u></b>	9	Entitlement to commence at age 60
1 Short title and commencement	<b><u>PART IV</u></b>	
2 Interpretation	<b><u>MISCELLANEOUS</u></b>	
3 Act to bind the Crown	10	Members of retiring age
<b><u>PART II</u></b>	11	Protection of existing members' entitlement
<b><u>MEMBERS OF PARLIAMENT</u></b>	12	Verification of sums paid
<b><u>TO BECOME CONTRIBUTORS</u></b>	13	Provision for payment
<b><u>TO THE FUND</u></b>	14	Taxation
4 Transfer of members from existing superannuation scheme to the Fund	15	Repeal
5 Transfer value of existing members' credits	16	Consequential amendments
<b><u>PART III</u></b>	17	Transitional
<b><u>EXISTING BENEFICIARIES</u></b>		
6 Benefits established		

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2003, No. 13

An Act to provide for members of parliament to become members of the Cook Islands Superannuation Fund, and to rationalise the regime of benefits paid to persons under the Legislative Assembly Members' Superannuation Act.

{26 June 2003

BE IT ENACTED by the Parliament of the Cook Islands in session assembled in accordance with the provisions of Article 41(1) of the Constitution of the Cook Islands and by the authority of the same as follows:-

Price \$4.50

**PART I**  
**PRELIMINARY**

1. **Short Title and Commencement** - (1) This Act may be cited as the Members of Parliament Superannuation Act 2003.

(2) Provided it shall have been assented to by the Queen's Representative on or before the 16<sup>th</sup> day of any calendar month, this Act shall come into force on the 16<sup>th</sup> day of that calendar month and if otherwise, then on the first day of the calendar month immediately following the calendar month of assent.

2. **Interpretation** - (1) In this Act, unless the context otherwise requires -

“annualised value” in relation to an existing benefit means the aggregate of all sums properly payable to the relevant existing beneficiary, in respect of the existing benefit, during the period 1 January 2002 to 31 December 2002 (or in the case of an existing beneficiary who became entitled to an existing benefit after 1 January 2002, the aggregate of such sums as would have been properly payable had he, instead, become so entitled on and from 1 January 2002);

“annual rate” means the aggregate of all sums payable in respect of any retirement allowance or widow's benefit payable under this Act (as the case may be) during the period 1 January to 31 December in any year;

“benefit day” means the 1<sup>st</sup> and the 16<sup>th</sup> day of each calendar month;

“Board” means the National Superannuation Board constituted under section 4 of the Superannuation Act;

“Clerk” has the meaning given to it by section 2 of the Legislative Services Act 1968-69;

“earnings” has the meaning given to it by section 2 of the Superannuation Act;

“existing beneficiary” means a person who, as at 1 January 2003, was entitled to receive an existing benefit;

“existing benefit” means:

- (a) any retiring allowance payable to a person under section 6 of the repealed Act;
- (b) any sum of money payable to a person under section 12 of the repealed Act;

“existing member” means a member of parliament duly elected, or appointed as the case may be and holding either a parliamentary seat or holding office as Speaker as at 1 January 2003;

“First Period” means the period of one month commencing on the implementation date;

“Financial Secretary” means the person appointed under section 4 of the Ministry of Finance and Economic Management Act 1995-96;

“Fund” means the Cook Islands National Superannuation Fund established by the Trust Deed;

“implementation date” means the date upon which this Act comes into force;

“interest rate” means five per centum per annum (5%p.a) and, where in this Act the interest rate is applied to any rising or fluctuating balance, interest shall be deemed to be compounded with interest rests, annually, as at the 30<sup>th</sup> day of June in each year;

“Legislative Service” means the legislative service established under the Legislative Services Act 1968-9;

“member of parliament” means a member of parliament and any person who receives an office salary pursuant to the Civil List Act 1984;

“repealed Act” means the Legislative Assembly Members’ Superannuation Act 1976;

“retirement allowance” means the retirement allowance to which an existing beneficiary is entitled under section 6 of this Act;

“Second Period” means the period of six months commencing immediately after the First Period;

“Superannuation Act” means the Cook Islands National Superannuation Act 2000;

“Third Period” means the period of six months commencing immediately after the Second Period;

“total contributions” in relation to an existing beneficiary means a sum equal to the aggregate of all sums payable pursuant to sections 4 and 5 of the repealed Act into the superannuation fund constituted by that Act:

- (a) in the case of an existing beneficiary entitled as at 1 January 2003 to receive a retiring allowance under section 6 of the repealed Act, by that person; and

- (b) in the case of an existing beneficiary entitled as at 1 January 2003 to receive an amount of money under section 12 of the repealed Act, by the member of parliament in respect of whom that amount was payable;

“Trust Deed” means the Cook Islands National Superannuation Trust Deed prepared in accordance with Section 11 of the Superannuation Act;

“widow’s benefit” means the benefit to which the widow of a former member of parliament or of an existing beneficiary, is entitled under section 6 or 7 of this Act.

3. **Act to Bind the Crown** - This Act shall bind the Crown.

## **PART II**

### **MEMBERS OF PARLIAMENT TO BECOME CONTRIBUTORS TO THE FUND**

4. **Transfer of members from existing superannuation scheme to the Fund** - (1)  
On and from the implementation date, every existing member shall cease contributions to the superannuation fund constituted under the repealed Act and no further subsidy shall be paid under section 5 of that Act.

(2) On and from the implementation date, every existing member (excluding only an existing member who shall have exercised the option afforded by section 10 of this Act) and every other person who shall, thereafter, become a member of parliament (including any existing beneficiary) shall become a contributor to the Fund in accordance with this Act and with the Superannuation Act.

(3) For the purposes of the Superannuation Act (and for no other purpose), each member of parliament shall be deemed to be an employee of the Legislative Service, and the Legislative Service shall be deemed to be the employer of that member of parliament and the Clerk shall, within 7 days of the implementation date, apply to the Board for registration of the Legislative Service pursuant to Section 28 of the Superannuation Act.

(4) On and from the implementation date, contributions shall be made in respect of the earnings of the relevant member of parliament by the Legislative Service (as if it were an employer), and by that member of parliament, (as if that member were an employee), in each case at a rate of 5% by the Legislative Service and at a rate of 5% by that member of parliament or at such amended rates as may from time to time be fixed pursuant to section 39(3) of the Superannuation Act and otherwise pursuant to the provisions of Part IV of that Act :

- (a) in the case of all existing members, with effect from the start of the first complete pay period after the implementation date; and
- (b) in the case of any other member of parliament, with effect from the start of the first pay period of that member;

and except as provided by this Act both the Legislative Service and each member of parliament shall be bound by the provisions of the Superannuation Act as if employer and employee respectively.

5. **Transfer value of existing members' credits** - (1) For the purposes of the Superannuation Act, the superannuation fund constituted by the repealed Act shall be deemed to be "an existing superannuation fund" but notwithstanding the provisions of section 38(2) of the Superannuation Act, the transfer value of each existing member's credit (if any) in the superannuation fund constituted by the repealed Act shall be calculated and dealt with in the manner provided by this section.

(2) Subject to subsection (4), all sums paid, or payable, into the superannuation fund constituted by the repealed Act pursuant to section 5 of that Act in respect of an existing member shall, within 30 days of the implementation date be transferred to the Fund together with interest calculated at the interest rate. Thereafter that sum shall be deemed, for all purposes to be, as to 50% to be a contribution made by that existing member as if he were an employee, and as to 50% by the Legislative Service as if it were an employer and in each case pursuant to section 39 of the Superannuation Act and shall be deemed, for the purposes of the Trust Deed, to be mandated employee contributions and mandated employer contributions respectively, in each case credited to the compulsory account of that existing member.

(3) Subject to subsection (4), all sums paid into the superannuation fund constituted under the repealed Act pursuant to section 4 of that Act shall be paid to that existing member together with interest calculated at the interest rate:

- (a) as to 50%, within seven days of the implementation date; and
- (b) as to the balance (together with such further sum by way of interest on that balance, calculated at the interest rate, for the period between the date of payment of the amount referred to in the preceding paragraph (a) and the date of payment of that balance), not later than one year following the implementation date.

(4) If an existing member shall, prior to the implementation date, have received any sum pursuant to the provisions of the repealed Act, then the amounts to be transferred and paid under subsections (2) and (3) respectively shall abate, equally, to such extent as the Financial Secretary shall determine as equitable in the circumstances, having regard to the sum received and the date of its receipt.

### **PART III** **EXISTING BENEFICIARIES**

6. **Benefits established** - (1) On and from the implementation date, no person shall have any further right or entitlement to receive either a retiring allowance or any other sum under the repealed Act. Each existing beneficiary shall, instead, be entitled, only during his or her lifetime:

- (a) in the case of an existing beneficiary who is a retired member of parliament, to receive a retirement allowance; and
- (b) in the case of an existing beneficiary who is the widow of a member of parliament, to receive a widow's benefit.

(2) The retirement allowances and the widow's benefits established by this Act are benefits, in each case:

- (a) which shall be calculated at an annual rate calculated in accordance with the provisions of subsections (3) and (4);
- (b) the recipient's entitlement to which shall be deemed to accrue from week to week and to be payable twice monthly in advance;
- (c) the first payment of which shall be made either (in the case of an existing beneficiary who has attained the age of 60 years on or before the implementation date) on the implementation date or (in every other case) on the first benefit day following the 60<sup>th</sup> birthday of that existing beneficiary;
- (d) subsequent payments of which shall be made on the first and the sixteenth day of each calendar month.

(3) If the annualised value of the existing benefit of an existing beneficiary is \$10,000.00 or less, then, subject to the terms of this Act, that existing beneficiary shall be entitled to receive a retirement allowance or a widow's benefit (as the case may be) at an annual rate equal to the annualised value of the existing benefit of that existing beneficiary.

(4) In every other case an existing beneficiary shall, subject to the provisions of subsection (5) be entitled to receive a retirement allowance (or, as the case may be, a widow's benefit), at the annual rate which is the greatest of : -

- (a) 25% of the annualised value of the existing benefit of that existing beneficiary; or
- (b) 8% of an amount equal to the total contributions of that existing beneficiary (after deducting any sum paid out to or in respect of that existing beneficiary under section 10 of the repealed Act) together with interest calculated at the interest rate to the date of final retirement of the member of parliament (prior to the implementation date) in respect of whom the entitlement of the existing beneficiary arises; or
- (c) \$10,000.00.

(5) The provisions of subsection (4) shall not have effect in respect of an existing beneficiary to whom that subsection applies until that beneficiary shall have received the sums to which that beneficiary is entitled under this subsection, which shall be by way of retirement allowance (or, as the case may be widow's benefit):

- (a) during the First Period, on each benefit day, a sum which is equal to 1/24th of the annualised value of the existing benefit of that existing beneficiary;
- (b) during the Second Period, on each benefit day a sum which is 1/24th of the greater of :-
  - (i) 75% of the annualised value of the existing benefit of that existing beneficiary; or

- (ii) the annual rate of the retirement allowance (or, as the case may be, widow's benefit) to which that existing beneficiary would otherwise be entitled pursuant to subsection (4);
- and if the former is greater (but not otherwise) -
- (c) during the Third Period, on each benefit day a sum which is 1/24th of the greater of :-
  - (i) 50% of the annualised value of the existing benefit of that existing beneficiary; or
  - (ii) the annual rate of the retirement allowance (or, as the case may be, widow's benefit) to which that existing beneficiary would otherwise be entitled pursuant to subsection (4).

7. **Widow's Benefit** - (1) Subject to subsection (3), in the event of the death of an existing beneficiary the widow of that existing beneficiary shall be paid a widow's benefit which shall be of an annual rate which is equal to the lesser of :-

- (a) 50% of the annualised value of the existing benefit of that existing beneficiary as at 1 January 2003; or
- (b) the annual rate of the benefit which would have been payable to that existing beneficiary under either section 6(3) or section 6(4) had he not died

(2) Subject to subsection (3), if that existing beneficiary would have been entitled to benefits under section 6(4) and if his widow is entitled, under subsection (1), to a widow's benefit under paragraph (b) of that subsection, that widow shall, before becoming entitled to receive the benefit under that paragraph be entitled to payment of a benefit payable at the times specified and at 50% of the rates provided for, in section 6(5).

(3) The entitlement of any widow under section 6 (as an existing beneficiary) or under subsections (1) or (2) of this section shall be paid only during her lifetime or until remarriage.

8. **Opt - out for recent beneficiaries** - An existing beneficiary who became entitled to an existing benefit on or after 23 March 1999 (or where section 7 applies, his widow) may, subject to the provisions of this Act, by notice in writing to the Clerk (such notice to be received on or before 4.00pm on the 25<sup>th</sup> day following the implementation date) require that in lieu of receiving the benefits provided for under section 6 of this Act (or in the case of a widow of an existing beneficiary, the benefits provided for under section 7), that existing beneficiary (or his widow as the case may be) instead receive payment of a sum, in cash, which is equal to the difference between the total contributions attributable to that existing beneficiary and the aggregate value of all monies received under the repealed Act by that existing beneficiary (or, as the case may be, the spouse of that existing beneficiary) down to the date of exercise of that option, together with interest calculated at the interest rate and where such notice is given, that sum shall be paid to the existing beneficiary within thirty days of the implementation date.

9. **Entitlement to commence at age 60** - Neither an existing beneficiary who is under the age of 60 years nor (in the event of the death of that existing beneficiary) his widow shall be entitled to the payment of any benefit under this Act until that existing beneficiary shall have attained (or would have attained if not having died sooner) the age of 60 years, whereupon that existing beneficiary (or as the case may be his widow) shall be entitled to receive a retirement allowance (or a widow's benefit) on and from the first benefit day following that existing beneficiary's 60<sup>th</sup> birthday. Such an existing beneficiary (or his widow) shall nevertheless be entitled to receive during the First Period, on each benefit day, a sum which is equal to 1/24th of the annualised value of the existing benefit of that existing beneficiary.

#### **PART IV** **MISCELLANEOUS**

10. **Members of retiring age** - (1) Any existing member who, as at the implementation date, is aged 60 years or over may, by notice in writing to the Clerk, (such notice to be received on or before 4.00pm on the 25<sup>th</sup> day following the implementation date) require that the sum which would otherwise be transferred to the Fund pursuant to section 5(2) of this Act instead be paid to that existing member in lieu of his becoming a member of the Fund and where such notice is given that sum shall be paid to that existing member within thirty days of the implementation date.

(2) Where any existing member to whom subsection (1) applies is paid the sum which would otherwise be transferred to the Fund under section 5(2) of this Act, that person shall thereafter not be a member of the Fund nor shall he be entitled to become a member of the Fund, and accordingly section 4(2),(3) and (4) shall cease to apply to that person and he shall be deemed not to be an employee for the purposes of the Superannuation Act (whether in respect of parliamentary service or any other form of employment or self-employment).

(3) Notwithstanding the provisions of the Superannuation Act, the Clerk shall, in respect of each existing member to whom this section applies, retain the contributions both of that member and of the Legislative Service which are attributable to the pay period commencing on the implementation date (and, if necessary, attributable to the pay period next following) and shall not pay those sums to the Fund until the Clerk is satisfied that the member does not wish to exercise the option afforded him under this section, either by reason of the expiry of the 25 day period referred to in this section, or by that member, prior to the expiry of that period advising the Clerk, in writing, of his intention not to exercise that option. In either such case, the Clerk shall thereafter effect payment to the Fund in the manner contemplated by the Superannuation Act. In any other case, the Clerk, for the Legislative Service, shall retain the contributions of the Legislative Service and shall disburse to that member those contributions of that member previously deducted.

11. **Protection of existing members' entitlement** - The entitlement of an existing member:

- (a) to receive the sums provided for under section 5 (3) of this Act and to have transferred to the Fund the sums provided for under section 5(2) of this Act; and



- (b) in the case of an existing member to whom the provisions of section 10 of this Act apply, to exercise the option conferred by and receive the sum provided for under that section -

shall not be affected by the death of that existing member and those sums shall instead form part of the estate of that deceased existing member and accordingly be payable to the personal representatives of that deceased existing member and if the time provided for exercise of the option conferred by section 10 of the Act shall not have expired, that option may be exercised, for the estate of that deceased member, by those personal representatives.

12. **Verification of sums paid** - (1) It shall be the duty of the Financial Secretary to take steps immediately to:

- (a) verify the sums paid and payable under the repealed Act for the purposes of calculating the allowances and sums payable to any person under this Act; and
- (b) calculate the allowances and sums payable to any person under this Act for the purposes of assisting the Clerk in the discharge of his obligations under this Act.

(2) Any determination made by the Financial Secretary under this section shall be conclusive and shall be binding upon all persons and for all purposes save in the case of manifest error.

(3) No proceedings in any court in respect of a determination made by the Financial Secretary under subsection (1)(a) or (b) may be brought after the expiration of one year from the date upon which the determination was first notified to the relevant person referred to in subsection (1) or, if that person shall be deceased, his or her personal representative.

13. **Provision for payment** - All allowances and other sums payable under this Act shall be paid without further appropriation than this section from the Cook Islands Government Account.

14. **Taxation** - Every sum payable to any person under this Act shall be exempt income within the meaning of the Income Tax Act 1997.

15. **Repeal** - The Legislative Assembly Members' Superannuation Act 1976 is hereby repealed.

16. **Consequential amendments** - The Civil List Act 1984 is amended by -

- (a) omitting from sections 8(4) and 9(6), the words "a retiring allowance under the Legislative Assembly Members' Superannuation Act 1976" and substituting in each case the words "either a retirement allowance or a widow's benefit under the Members of Parliament Superannuation Act 2003"; and
- (b) repealing section 30.

17. **Transitional** - Nothing in section 37(1) of the Superannuation Act applies to an existing member.

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This Act shall be administered by the Ministry of Finance and Economic Management.