



BERMUDA

NATIONAL PENSION SCHEME (FINANCIAL HARDSHIP) REGULATIONS 2010

BR 48 / 2010

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## NATIONAL PENSION SCHEME (FINANCIAL HARDSHIP) REGULATIONS 2010

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The Minister of Finance, in exercise of the powers conferred by section 24 and 69 of the National Pension Scheme (Occupational Pensions) Act 1998, makes the following Regulations:

### *Preliminary*

#### Citation

1 These Regulations may be cited as the National Pension Scheme (Financial Hardship) Regulations 2010.

#### Interpretation

2 In these Regulations—

“account” means the vested portion of the account balance or the commuted value in the name of the applicant under the pension plan or retirement product from which a refund is sought;

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

“applicant” means a member or former member in respect of an account who makes an application;

“application” means an application to the Commission under these Regulations for a refund from an account (or more than one account) to pay expenses or arrears falling within regulation 3;

“application date” means the date the application form was signed;

“child” means a child, step-child or adopted child of the applicant, and includes a child of a male applicant who is the registered father of the child or has been adjudged by a court to be the father of the child;

“dependant” means—

(a) the husband or wife of the applicant; or

(b) a child or sibling of the applicant who is in fact dependant on the financial support of the applicant or the applicant’s husband or wife on the application date;

“landlord”, in relation to a particular tenant, means the person entitled to receive rent from the tenant;

“tenant” means the person who, as between himself and the landlord, is entitled to exclusive possession of the premises in question;

“third party” means anyone other than the applicant or a dependant of the applicant, including—

(a) an employer;

(b) an insurer;

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- (c) the Government of Bermuda and its agencies;
- (d) a charitable or philanthropic organisation; and
- (e) a relative or friend of the applicant;

“working day” does not include a Saturday, Sunday or other public holiday within the meaning of the Public Holidays Act 1947.

*[Regulation 2 "landlord" and "tenant" inserted by BR 40 / 2011 reg. 2 effective 27 July 2011; Regulation 2 definition "the Act" inserted, and definitions "account" and "applicant" amended by 2019 : 48 s.41 effective 2 January 2020]*

### *Financial hardship*

#### Circumstances of financial hardship

- 3 (1) An applicant may only make an application to cover—
- (a) eligible medical expenses (in accordance with regulation 4);
  - (b) arrears of mortgage or other payments relating to a debt secured on the applicant's principal residence, the non-payment of which has resulted in the threat of loss of the principal residence (in accordance with regulation 5);
  - (ba) arrears of rent on the applicant's home, the non-payment of which has resulted in the imminent threat of the applicant's eviction from the home (in accordance with regulation 5A);
  - (c) eligible educational expenses (in accordance with regulation 6); or
  - (d) eligible funeral expenses (in accordance with regulation 6A).
- (2) An applicant may only make an application if he, or the person for whom the application is being made, has no other reasonable way of raising money to pay those expenses or arrears.

(3) An application may be made to cover two or more of the circumstances mentioned in paragraph (1).

*[Regulation 3 amended by BR 40 / 2011 reg. 3 effective 27 July 2011; Regulation 3 subparagraph (1)(d) inserted by 2019 : 48 s.41 effective 2 January 2020]*

#### Eligible medical expenses

- 4 (1) An application may be made in respect of eligible medical expenses of the applicant or a dependant or parent of the applicant.
- (2) “Eligible medical expenses” means medically necessary goods or services of a medical or dental nature in respect of an illness or disability, recognised by the Commission for the purposes of these Regulations, and for which the applicant (or his dependant or parent, as the case may be) does not have medical insurance coverage, including—
- (a) medical or dental services provided by a hospital or a health care provider;

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- (b) services provided by an attendant or a nursing home to a person suffering a severe and prolonged disability;
- (c) services provided by a caregiver;
- (d) ambulance services;
- (e) medical devices such as—
  - (i) wheelchairs;
  - (ii) artificial limbs; and
  - (iii) spectacles;
- (f) purchase, training and care of a guide dog;
- (g) dentures;
- (h) rehabilitative therapy;
- (i) prescription drugs;
- (j) diagnostic testing.

(3) An application under this regulation shall include a certification by a registered health professional (as defined in section 2 of the Bermuda Health Council Act 2004), or a person with qualifications accepted as equivalent by the Commission, that the goods or services in question are medically necessary.

(4) An application shall include an invoice for, or estimate of, the expenses.

(5) Subject to regulation 8 (maximum payment) the Commission may approve a payment of the full amount of the eligible medical expenses as indicated on the invoice or estimate.

- (6) An application shall not be approved in respect of eligible medical expenses—
- (a) which have already been paid; or
  - (b) which are due to be paid by a third party.

(7) “Third party” does not, in relation to an application made in respect of eligible medical expenses of a parent of the applicant, include that parent.

### Imminent loss of principal residence -mortgage or debt arrears

5 (1) An application may be made in respect of the imminent loss of the applicant’s principal residence due to arrears of mortgage or other payments relating to a debt secured on the principal residence.

- (2) “Principal residence” means a housing unit located in Bermuda which is—
- (a) owned by the applicant or the husband or wife of the applicant; and
  - (b) ordinarily inhabited by the applicant on the application date.

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(3) An application shall be supported by a notice in writing from the mortgage provider or debt issuer which specifies—

- (a) the imminent threat of foreclosure on, or sale of, the principal residence if the arrears are not paid;
- (b) the amount of the arrears;
- (c) the amount of the monthly payments on the application date;
- (d) the names of the mortgagors or debtors.

(4) An application may not be approved if the names of the mortgagors or debtors specified under paragraph (3)(d) do not include the applicant or husband or wife of the applicant.

(5) Subject to regulation 8 (maximum payment), the Commission may approve a payment of—

- (a) the amount of the arrears of mortgage or other payments specified under paragraph (3)(b); plus
- (b) up to an additional six months of payments calculated using the amount specified under paragraph (3)(c).

*[Regulation 5 amended by BR 40 / 2011 reg. 4 effective 27 July 2011]*

### Imminent threat of eviction from home - rent arrears

5A (1) An application may be made in respect of the imminent threat of eviction of the applicant from his home due to arrears of rent.

(2) This regulation applies only in relation to a home in Bermuda that is—

- (a) rented by the applicant or the husband or wife of the applicant; and
- (b) ordinarily inhabited by the applicant on the application date,

regardless of whether anybody else is also renting or inhabiting the home or any part of the premises which contains the applicant's home.

(3) An application shall be supported by a notice in writing from the landlord which specifies—

- (a) the imminent threat of eviction from the home if the rental arrears are not paid;
- (b) the amount of the rental arrears;
- (c) the amount of the monthly rental payments on the application date;
- (d) the names of all of the tenants.

(4) An application shall be accompanied by—

- (a) the rental agreement; and

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- (b) a receipt for the most recent rental payment.
- (5) An application may not be approved—
  - (a) if the names of the tenants specified under paragraph (3)(d) do not include the applicant or husband or wife of the applicant;
  - (b) if the applicant or husband or wife of the applicant own or control, directly or indirectly (whether through a trust or otherwise) the home which is the subject of the application; or
  - (c) if the application is made in respect of more than one home.
- (6) Subject to regulation 8 (maximum payment), the Commission may approve a payment of—
  - (a) the amount of the arrears of rent specified under paragraph (3)(b); plus
  - (b) up to an additional six months of rental payments calculated using the amount specified under paragraph (3)(c).

*[Regulation 5A inserted by BR 40 / 2011 reg. 5 effective 27 July 2011]*

### Eligible educational expenses

- 6 (1) An application may be made in respect of eligible educational expenses on behalf of the applicant or a dependant of the applicant.
- (2) “Eligible educational expenses” means the following expenses payable directly to a relevant educational establishment or landlord—
  - (a) tuition fees;
  - (b) expenses for housing, including rent payable to a landlord or expenses for residence halls and meal plans operated by the establishment;
  - (c) other expenses recognised by the Commission for the purposes of these Regulations;
- (3) “Relevant educational establishment” means the Bermuda College and any other accredited overseas university, college or educational institution providing tertiary education, and recognised by the Commission for the purposes of these Regulations.
- (4) The application shall be supported by a statement in writing from the relevant educational establishment 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 educational expenses—
  - (a) which have already been paid; or
  - (b) which are due to be paid by a third party.

*[Regulation 6 paragraph (2) amended by 2019 : 48 s.41 effective 2 January 2020]*

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### 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.

*[Regulation 6A inserted by 2019 : 48 s.41 effective 2 January 2020]*

### *Limitations*

#### Minimum payment

7 An application which would result in a payment of less than \$1000 being made shall be rejected by the Commission.

#### Maximum payment

8 (1) The maximum refund which the Commission may approve per application is 20% of the commuted value or account balance of the applicant's account (or each individual account, if more than one) on the application date.

(2) The account balance or commuted value shown on a statement issued within 30 days of the application date shall, for the purposes of these Regulations, be deemed to be the account balance or commuted value on the application date.

(3) A person who intends to make an application may request the account balance or commuted value of the account from the administrator, and the administrator shall provide the information within five working days of receiving a written request from the applicant.

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### Permitted number of applications

9 (1) The Commission shall not approve more than two applications during the lifetime of an applicant.

(2) The Commission shall not approve an application made within five years of the date on which a previous application by the applicant was approved (whether in whole or in part).

### *Application*

### Manner of making application

10 (1) An application shall be made on a form distributed by the Commission for the purposes of these Regulations.

(2) The applicant shall submit with the application all the information required by these Regulations and the form, including the commuted value or account balance of the applicant's account (or accounts, if more than one) on the application date (see regulation 8).

(3) The applicant shall certify—

(a) that he has no other reasonable way of raising money to pay the expenses or arrears;

(b) that he has not been required by any third party to make the application; and

(c) that all the information supplied is accurate to the best of his belief.

(4) If the application relates to expenses of the applicant's dependant or parent, the applicant shall also certify that, to the best of his knowledge and belief, the dependant or parent (as the case may be) has no other way of raising money to pay the expenses.

(5) The applicant shall sign and date the form.

### Application fee

11 (1) An application shall be accompanied by a non-refundable fee of \$100.

(2) If the applicant applies to the administrator for a cheque payable to the Commission from the applicant's account in the amount of the application fee, the administrator shall provide the cheque within five working days.

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

*[Regulation 11 paragraph (3) inserted by 2019 : 48 s.41 effective 2 January 2020]*

### Further information

12 (1) The applicant shall supply any further information required by the Commission to support the application.



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(2) An application shall not be considered complete for the purposes of regulation 13 until—

- (a) that further information has been supplied to the Commission in writing; or
- (b) the deadline set by the Commission for submitting the further information has passed.

### *Decision, payment and record-keeping*

#### Decision of Commission

13 (1) The Commission shall consider the completed application, make a decision and notify the applicant of its decision and, if the application is rejected, give the reasons for the rejection.

(2) The Commission shall not approve an application which does not meet the conditions set out in these Regulations.

(3) If the application is approved, the Commission shall send notification to the administrator—

- (a) of the amount to be refunded from the applicant's account; and
- (b) directing the administrator to make the payment.

#### Duty of administrator to make payment if application approved

14 (1) Unless requested otherwise by the applicant, the administrator shall make the payment within fifteen working days of receiving the notification under regulation 13(3).

(1A) But in the case of payments approved under regulation 5A(6)(b), the administrator shall make payments on a monthly basis, unless requested otherwise by the applicant.

(2) The administrator shall make the payment directly to—

- (a) the provider of the medical or dental goods or services which are the subject of an application under regulation 4;
- (b) the relevant mortgage provider or debt issuer, if the application is made under regulation 5;
- (ba) the landlord of the applicant or the landlord of the applicant's husband or wife, if the application is made under regulation 5A;
- (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
- (d) the relevant funeral home, if the application is made under regulation 6A.

(3) The administrator shall not make a payment in relation to an application which has been rejected by the Commission.

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(4) The administrator shall not levy a fee against the account or the applicant in relation to the provision of a statement or other information to support an application, or the making of a payment under these Regulations.

(5) The administrator shall comply with its obligations under these Regulations even if the terms of the relevant pension plan or retirement product provide to the contrary.

*[Regulation 14 amended by BR 40 / 2011 reg. 6 effective 27 July 2011; Regulation 14 amended by 2019 : 48 s.41 effective 2 January 2020 ]*

### Commission to keep records

15 For the purposes in particular of regulation 9 (permitted number of applications) the Commission shall keep a copy of each application with the following information relating to it—

- (a) whether it was approved or rejected;
- (b) the amount (if any) permitted to be refunded to the applicant; and
- (c) the reasons given if the application was rejected;

and the Commission may keep copies of documentation submitted in support of an application.

Made this 4th day of August, 2010

Minister of Finance

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*[Amended by:*

BR 40 / 2011

2019 : 48]