



GUIDANCE NOTES

TEMPORARY REFUNDS BY PENSION PLAN AND/OR LOCAL RETIREMENT ACCOUNT ADMINISTRATORS

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1.0 Introduction

This Guidance has been issued by the Pension Commission (“the Commission”) to assist pension plan or local retirement product administrators (“Administrators”) in administering requests for a temporary refund the National Pension Scheme (Occupational Pensions) Act 1998. (the “Act”). It will be updated as necessary and revised versions published from time to time. This Guidance reflects the Commission’s understanding and expectations of Administrators in reviewing such applications.

An Administrator may seek further guidance from the Commission if it is unsure of how to address any of the scenarios or conditions presented below or matters not covered by this guidance.

2.0 Regulatory Scope

The National Pension Scheme (Occupational Pensions) Act 1998 and the National Pension Scheme (General) Regulations are the statutory basis for the establishment and administration of private, occupational pension schemes and local retirement products in Bermuda. Section 24(9) of the Act specifically provides for a lump sum refund, in the case of a defined contribution pension plan or local retirement product, of up to \$12,000, as prescribed in regulations. Applications must be made prior to 30 June, 2021.

The National Pension Scheme (Refund) (Temporary) Regulations 2020 (the “Regulations”) provides for the specific provisions relating to the submission and approval of such refunds and related matters. A member or former of a defined contribution pension plan or a member or policy holder of a local retirement product, who has **not** attained normal retirement age (65 years of age), is able to receive a lump sum refund of their vested account balance of up to \$12,000. Please note that the current vesting requirement under the Act is one year of membership or earlier, if the plan rules provide. For the avoidance of doubt, if a member or former member is vested, the pension fund balance upon which they can receive a refund includes their employer’s contributions and earnings.

Please note that the Act requires such refunds to be made in accordance with the Regulations notwithstanding any terms of a pension plan or local retirement product to the contrary.

3.0 Applications

A request for a Temporary Refund under the Act to an Administrator should be in a form provided by the Administrator. Please note that the Commission requires a draft copy of the Form to be submitted to it for its review prior to being distributed to applicants. Any subsequent changes to the form must also be submitted to the Commission.

In considering an application, the Commission expects Administrators to: -

- a) carry out any enquiries which it considers appropriate (e.g. approaching other Administrators or the Commission as necessary);
- b) take reasonable precautions to ensure the authenticity of the applicant (especially when receiving an application electronically (via email or otherwise));
- c) ask the applicant, if necessary, to answer questions and explain any matter(s) the Administrator considers relevant to the application;
- d) seek additional information from the applicant or other Administrators when necessary;
- e) request any information furnished by the applicant to be verified in such manner as the Administrator may specify; and
- f) take into account any other information which the Administrator considers relevant in relation to the application.

Please note that applicants and their applications are not subject to any financial hardship evaluation, concerns or criteria and these factors must not be considered in the review and approval process by an Administrator.

When an Administrator approaches another Administrator for information relating to the applicant, the Administrator should be willing, when requested by the other Administrator, to provide a copy of the Certification and Authorization section of the completed application form. It is recognized that this may be necessary so that the Administrator receiving the information request from the requesting Administrator, can satisfy any confidentiality/authorisation requirements they may have related to the applicant.

Administrators should be aware that an applicant, at the time of application, with more than \$12,000 in their account can only receive up to \$12,000. An applicant may request a refund for less than \$12,000. An applicant may make an application from more than one account held by an Administrator. However, the Administrator shall not approve an application where the amount of the refund would exceed \$12,000 from all of the applicant's accounts combined, whether administered by it or by another Administrator. Please note that it is possible for an applicant having, for example, \$6,000 in an applicable pension plan with one Administrator and another \$6,000 in a local retirement product with a different Administrator (or some other amount combinations under both, up to \$12,000) to be able to receive two approvals (one from each Administrator) up to the maximum \$12,000.

In addition, Administrators should note that an applicant **must be under the normal retirement age (normally 65)** at the time of application. Whether they are retired or not does not apply.

Administrators are expected to be able to provide a written statement to an applicant showing the value of his vested account balance application (within 30 days of the application date stated on the application). Such a statement has to be provided to an applicant within seven working days of receiving such a request.

An Administrator may not make a Temporary Refund payment where an applicant has purchased an annuity (life, term certain or other) as these funds are locked-in and the Act and Regulations do not apply to this type of retirement vehicle for purposes of the refunds. In addition, defined benefit plans are ineligible and refunds cannot be approved or permitted from such plans.

Furthermore, an Administrator shall not approve more than one application made under the Regulations. An Administrator shall not approve an application if they receive information from the applicant, another Administrator or other reliable source that the applicant has previously received such a refund, and the requested refund amount made to them would exceed \$12,000 from all of the applicant's accounts combined, whether administered by the Administrator or another Administrator. In such cases they must deny the application.

The Administrator should not apply any refund unless it is satisfied that the applicant has provided all of the requested information in an accurate and truthful manner and the requirements under the Regulations have been satisfied. If information comes to the attention of the Administrator which calls into question or refutes the information provided by the applicant, the Administrator shall not approve the application nor make the requested refund payment.

Where an application is incomplete or defective in a material respect, the Administrator shall, by notice in writing to the applicant, request the applicant to complete or remedy the defect within a specified time. An Administrator shall not approve an application where the applicant fails to do so within the time specified.

The Act or Regulations do not specify a maximum amount of time for an application to be considered. However, the Commission expects Administrators to deal with applications as promptly as possible. The time required to complete enquiries may vary, however, depending on the nature of the issues which may arise and the difficulty or otherwise in obtaining any additional information which may be necessary, the Commission would not expect an application to normally remain outstanding for a period in excess of 2 weeks; and in most cases the timetable should be appreciably less.

Once an application is approved, an Administrator has to make payment of the refund to the applicant within twenty working days after approving the application.

4.0 Reporting Requirements

Administrators are required to provide a monthly statistical report to the Commission containing the following information:

- a) a list of all applications made to the Administrator under the Regulations;
- b) in respect of each application received, the following:
 - (i) the Administrator's decision;
 - (ii) where the application was approved, the amount of the refund paid to the applicant;
 - (iii) where the application was denied, the reason(s) for the denial; and
 - (iv) any other information requested by the Commission.

The Commission expects Administrators to submit the relevant information by the 15th day of the month following the respective reporting month (e.g. report for applications received in May, 2020 is to be submitted by 15 June, 2020). If an Administrator is unable to submit the information in the required timeframe, the Commission expects to be notified immediately and the reasons for not being able to do so and the expected submission date.

5.0 Record Keeping.

An Administrator is required to retain every application received with supporting documents, together with notices issued and the materials and information supporting the determination of the application.

6.0 Imposition of Charges.

The Regulations do not permit an Administrator to impose a charge against the applicant's account or require payment from an applicant, in respect of any duty or requirement performed by it under the Regulations. It is recognized that any fees charged by non-related entities (e.g. banking and/or government charges) associated with making the payment domestically or overseas can be deducted from an applicant's payment.

7.0 Disclosure of Information

As the information provided above will not normally include any specific individual personal information, The Commission will be free to share such information with any person it deems appropriate both internally and externally, including in its annual report, statistical bulletins or other releases to members of the general public or other interested parties. However, the Commission will not normally include any specific individual's personal information.

If an Administrator receives an application that is not readily addressed by the above, they should contact the Commission for further clarification and guidance.