

ANTIGUA AND BARBUDA



**THE EASTERN CARIBBEAN SUPREME COURT (JUDICIAL OFFICERS'
PENSION) BILL, 2019**

No. of 2019

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(JUDICIAL OFFICERS' PENSION) BILL, 2019
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AN ACT to provide for pensions and gratuities payable in respect of the service of judicial officers of the Eastern Caribbean Supreme Court and matters related thereto.

ENACTED by the parliament of Antigua and Barbuda as follows –

PRELIMINARY

1. Short title and commencement

(1) This Act may be cited as the Eastern Caribbean Supreme Court (Judicial Officers' Pensions) Act, 2019.

(2) This Act shall come into force on a day appointed by the Minister by Notice published in the official *Gazette*.

2. Interpretation

In this Act –

“Chief Justice” mean the Chief Justice of the Court;

“Commission” means the Judicial and Legal Services Commission;

“Court” means the Eastern Caribbean Supreme Court;

“full pension” means a pension computed under section 8(a)(i), (b)(i), (c)(i) or (d)(i);

“High Court Judge” means a High Court Judge of the Court;

“judicial officer” means the Chief Justice, a Justice of Appeal, a High Court Judge or a Master of the Court;

“Judge” means the Chief Justice, a Justice of Appeal or a High Court Judge of the Court;

“Justice of Appeal” means a Justice of Appeal of the Court;

“Master” means a Master of the Court;

“pensionable emoluments”, in respect of service as a judicial officer, means the salary attached to the office of the judicial officer and includes such maximum amount for housing and utilities as may be prescribed;

“prescribed” means prescribed by regulations made under section 16;

“Puisne Judge” means a High Court Judge

“reduced pension” means a pension payable under section 9;

“retirement age”, in relation to a judicial officer, means the mandatory retirement age of that judicial officer as provided for in the Supreme Court Order;

“salary” means the salary attached to the office of a judicial officer as stated in the Supreme Court Order and the Supreme Court (Masters) Order;

“Secretary” means the Secretary to the Commission;

“spouse” means husband or wife.

3. Application

(1) Subject to subsection (2), this Act applies to a judicial officer in respect of whom the Secretary has, pursuant to a direction given by the Chief Justice under section 13(1) of the Supreme Court Order, issued an instrument of assignment for pension purposes which assigns the judicial officer to Antigua and Barbuda.

(2) A person who was, immediately before the coming into operation of this Act, a judicial officer, may, in writing and within six months of the coming into operation of this Act, opt not to be subject to this Act, but to receive pension, gratuity or any other eligible allowances in accordance with the Pensions Act, Cap 311.

4. Act binds the State

This Act binds the Crown.

PART I – PENSIONS AND GRATUITIES

5. Pensions to be charged on Consolidated Fund

There shall be charged on and paid out of the Consolidated Fund all such sums of money as may from time to time be payable by way of pension or gratuity in pursuance of this Act and the Supreme Court Order.

6. Circumstances in which pension may be granted

(1) A pension may be granted under this Act to a judicial officer on his or her retirement from judicial service on or after he or she has served at least five continuous years of service as a judicial officer and in one of the following cases:

- (a) on attaining the retirement age;
- (b) on the abolition of his or her office; or
- (c) if he or she, or a person appointed by the Court to act on his or her behalf, applies to the Commission, in writing, for him or her to retire on the grounds that –
 - (i) he or she is incapable by reason of any infirmity of mind or body of discharging the duties of his or her office; and
 - (ii) the infirmity is likely to be permanent,and submits with the application, medical evidence to the satisfaction of the Commission.

7. Retirement

(1) A judicial officer shall retire from office on attaining the retirement age.

(2) Notwithstanding subsection (1) but subject to subsection (3), a judicial officer may retire from office, if he or she gives to the Commission at least twelve (12) months notice, in writing, of his or her intention to do so.

(3) The period of notice under subsection (2) does not include any period of vacation leave –

- (a) which the judicial officer earned before; or
- (b) to which the judicial officer becomes entitled on or after,

the date on which he or she gives notice under subsection (2).

8. Rate of pension

The pension payable to a judicial officer on his or her retirement in pensionable circumstances is as follows:

- (a) in the case of the Chief Justice –
 - (i) if he or she has had continuous service as a judicial officer for a period of not less than ten (10) years, the pension shall be equal to the annual pensionable emoluments attached to the office of Chief Justice; or
 - (ii) if he or she has had continuous service as a judicial officer for a period of less than ten years but not less than five years, the pension shall be computed on a pro-rated basis calculated by dividing the number of years of continuous service by ten years and multiplying the result by the annual pensionable emoluments attached to the office of Chief Justice;

(b) in the case of a Justice of Appeal –

- (i) if he or she has had continuous service as a judicial officer for a period of not less than twelve (12) years, the pension shall be equal to the annual pensionable emoluments attached to the office of Justice of Appeal; or
 - (ii) if he or she has had continuous service as a judicial officer for a period of less than twelve years but not less than five years, the pension shall be computed on a pro-rated basis calculated by dividing the number of years of continuous service by twelve years and multiplying the result by the annual pensionable emoluments attached to the office of Justice of Appeal;
- (c) in the case of a High Court Judge –
- (i) if he or she has had continuous service as a judicial officer for a period of not less than fifteen (15) years, the pension shall be equal to the annual pensionable emoluments attached to the office of High Court Judge; or
 - (ii) if he or she has had continuous service as a judicial officer for a period of less than fifteen years but not less than five years, the pension shall be computed on a pro-rated basis calculated by dividing the number of years of continuous service by fifteen years and multiplying the result by the annual pensionable emoluments attached to the office of High Court Judge;
- (d) in the case of a Master –
- (i) if he or she has had continuous service as a judicial officer for a period of not less than fifteen (15) years, the pension shall be equal to the annual pensionable emoluments attached to the office of Master; or
 - (ii) if he or she has had continuous service as a judicial officer for a period of less than fifteen years but not less than five years, the pension shall be computed on a pro-rated basis calculated by dividing the number of years of continuous service by fifteen years and multiplying the result by the annual pensionable emoluments attached to the office of Master;

9. Reduced pension

A judicial officer may, on retirement, opt to receive in lieu of a full pension, a reduced pension equal to three-quarters of the full pension plus a gratuity equal to fifteen times one-quarter of the full pension.

10. Spouse's pension

Where a person who held office as a judicial officer dies while in receipt of a pension under this Act, there shall be paid to, and during the lifetime of, his or her spouse, a pension equal to two-thirds of the annual pension which would have been payable to that person.

11. Payment of pension

(1) Subject to subsections (2) and (5), a pension payable under section 8 or 9 shall be paid monthly in arrears with effect from the date of retirement in pensionable circumstances and, subject to this Act, continue to be paid during the lifetime of the person entitled to the pension.

(2) A judicial officer, otherwise qualified for pension under section 8(a)(i), (b)(i), (c)(i) or (d)(i), who resigns from office before attaining the retirement age, shall –

(a) be entitled to receive a pension under section 8 or a reduced pension and gratuity under section 9 on attaining the retirement age; and

(b) at the time of resignation specify whether he or she opts to receive a pension in accordance with section 8 or a reduced pension and gratuity under section 9.

(3) Subject to subsection (4), where a person referred to in subsection (2) dies before attaining the retirement age, there shall be paid to his or her spouse –

(a) a spouse's pension in accordance with section 10; or

(b) where the person opted under subsection (2)(b) to receive a reduced pension and gratuity under section 9 –

(i) a pension equal to two-thirds of the reduced pension; and

(ii) a gratuity equal to two-thirds of the gratuity,

to which that person would have been entitled under subsection (2)(a) if he or she had attained the retirement age.

(4) Where a person referred to in subsection (2) dies before attaining the retirement age and without leaving a spouse, a gratuity shall be paid to his or her estate in an amount computed in the same manner as if he or she had opted under subsection (2)(b) to receive a reduced pension and gratuity under section 9.

(5) A pension under section 8 or a reduced pension and gratuity section 9 shall be paid if the Chief Justice certifies, in writing, to the Commission, that the person entitled to receive it has completed all outstanding judgments and other judicial assignments to the satisfaction of the Chief Justice.

12. Increases in pension

Where the pensionable emoluments attached to the office of a judicial officer are increased, a person who is in receipt of a pension under this Act or any other enactment with respect to service as a judicial officer shall, with effect from the date of the increase, be entitled to a corresponding proportionate increase in the pension to which that officer is in receipt.

13. Gratuities where the length of service does not qualify for pension

(1) A judicial officer, not qualified for pension under section 8, who has not had continuous service as a judicial officer for at least five years may, on his or her retirement or resignation from judicial office after he or she has served in such office for a period of three or

more continuous years, be granted a gratuity not exceeding twenty-five percent of his or her annual salary, including allowances for housing and utilities.

(2) A gratuity payable to a judicial officer under subsection (1) shall be paid by the Member State or Territory to which the judicial officer has been assigned for the purposes of pension on the judicial officer attaining the retirement age.

14. Gratuity on death in office

(1) Subject to subsection (3), where a person dies while holding office as a judicial officer and is not, at the date of death, eligible for a pension or gratuity, there shall, on the recommendation of the Chief Justice to the Commission, be paid to his or her spouse a gratuity equal to one year's pensionable emoluments.

(2) Subject to subsection (3), where a person dies while holding office as a judicial officer and is, at the date of death, eligible for a pension, there shall, on certification by the Chief Justice, be paid to his or her spouse a gratuity of an amount equal to fifteen times one-quarter of the pension and two-thirds of the reduced pension in accordance with section 10 to which the judicial officer would have been entitled if he or she had retired at the date of death.

(3) Where a person referred to in subsection (1) or (2) dies without leaving a spouse, the gratuity payable under subsection (1) or (2), as the case may be, shall be paid to his or her estate.

(4) For the purpose of this section, a person is eligible for a pension at the date of his or her if he or she would have qualified for a pension if he or she had retired on the date of death.

15. Pension not to be assignable

A pension or gratuity under this Act is not assignable or transferable.

PART II – MISCELLANEOUS

16. Regulations

(1) The Commission may make regulations prescribing anything which is necessary or expedient to carry this Act into effect.

(2) Without prejudice to the generality of subsection (1), the Commission may make regulations in relation to –

- (a) pensionable emoluments;
- (b) qualifying service; and
- (c) pensionable service.

EXPLANATORY MEMORANDUM

This Bill seeks to provide for the payment of pensions and gratuities in respect of the service of judicial officers of the Eastern Caribbean Supreme Court and matters related thereto.

The preliminary provisions are contained in Clauses 1 through to 4.

Clause 1 provides for the short title of the proposed Act, which would come into operation on a day appointed by the Minister.

Clause 2 provides for the interpretation of certain terms used in the proposed Act.

Clause 3, the proposed Act apply to judicial officers of the Eastern Caribbean Supreme Court (hereinafter referred to as “the Court”) who are assigned by the Chief Justice to Antigua and Barbuda for pension purposes. The judicial officers of the Court are the Chief Justice, Justices of Appeal, High Court Judges and Masters. A person who is already a judicial officer at the coming into operation of the proposed Act would be able to opt to come under the proposed Act or to remain under the Pensions Act and the Eastern Caribbean Supreme Court (Rate of Pension of Judges) Act as interpreted by the decision of the Privy Council in Appeal No. 64 of 2015. The proposed Act would also apply to all persons assuming office as a judicial officer for the first time on or after the commencement of the proposed Act.

Clause 4, the proposed Act binds the State of Antigua and Barbuda.

Part I – Pensions and Gratuities consist of Clauses 5 through to 15.

Clause 5 would provide that all pensions and gratuities payable under the proposed Act would be charged on and paid out of the Consolidated Fund of Antigua and Barbuda.

Clause 6 would provide for the circumstances in which a pension may be granted. A judicial officer who has served for at least five (5) continuous years would be eligible for a pension on attaining the mandatory retirement age as provided for in the Supreme Court Order or, if he or she so desires, on or after attaining the early retirement age as provided for in the Supreme Court Order. He or she would also be eligible for pension if his or her office is abolished or if he or she applies to the Commission to retire on the grounds of ill health and submits medical evidence to the satisfaction of the Commission.

Clause 7 would require a judicial officer to retire on attaining the mandatory retirement age. A judicial officer would, however, be able to retire on or after attaining the early retirement age after giving the Commission at least twelve (12) months' notice, excluding any period of vacation leave.

Clause 8 would provide for the new rates for full and pro-rated pensions for judicial officers.

Clause 9 would provide for judicial officers to opt to receive a reduced pension and a gratuity instead of a full pension.

Clause 10 would provide for the payment of a pension to the spouse of a judicial officer where the judicial officer dies while in receipt of a pension.

Clause 11 would make certain provisions with respect to the payment of pensions. Pensions would be paid monthly in arrears with effect from the date of retirement and would continue to be paid during the lifetime of the person entitled thereto.

Judicial officers who otherwise qualify for pension and who resign from office before attaining the early retirement age or the retirement age, would start to receive their pension on attaining that age. If any of them die before attaining the early retirement age or the retirement age, a spouse's pension would be payable to his or her spouse, if he or she had opted for a reduced pension and gratuity, two-thirds of the reduced pension and gratuity would be payable to his or her spouse. If he or she dies without leaving a spouse, a gratuity would be payable to his or her estate.

Additionally, pensions would not be paid to a judicial officer unless the Chief Justice certifies to the Commission that he or she has satisfactorily completed all outstanding judgments and other judicial assignments.

Clause 12 would provide for corresponding proportionate increases in pension whenever the pensionable emoluments attached to the offices of judicial officers are increased.

Clause 13 would provide for the payment of gratuities where the length of service does not qualify for pension.

Clause 14 would provide for the payment of a gratuity to the spouse of a judicial officer where the judicial officer is not yet qualified for a pension and dies while holding office. A gratuity and a pension, however, be payable to the spouse of a judicial officer where the judicial officer is qualified for a pension and dies while holding office. A gratuity would be payable to the estate of judicial officer who dies while holding office and without leaving a spouse.

Clause 15, a pension or gratuity would not be assignable or transferable.

Part II of the Bill would make certain miscellaneous provisions.

Clause 16 would provide for the making of regulations.

Clause 17 would repeal the Eastern Caribbean Supreme Court (Rate of Pension of Judges) Act, Cap. 143A

Clause 18 saves some operations with respect to existing pension rights under the Eastern Caribbean Supreme Court (Rate of Pension of Judges) Act, Cap. 143A