

---

<b>BULLETIN NUMBER:</b>	<b>PENS 15-002</b>
<b>TITLE:</b>	<b>SUMMARY OF CHANGES - ACT</b>
<b>LEGISLATION:</b>	<b>PENSION BENEFITS STANDARDS ACT</b>
<b>DATE:</b>	<b>MAY 2015</b>

---

## PURPOSE

The new *Pension Benefits Standards Act*, SBC 2012, c. 30, (the New Act), as amended by Bill 10-2014, the *Pension Benefits Standards Amendment Act*, will come into force on September 30, 2015. The New Act is largely based on the [recommendations of the Joint Expert Panel on Pension Standards \(JEPPS\)](#), but also reflects certain developments in the pension industry since the release of the JEPPS report.

This Bulletin is designed to provide stakeholders with a summary of key differences that exist between the New Act, and the previous *Pension Benefits Standards Act* (RSBC 1996, C 352) (the Former Act). In addition to new provisions and policy changes, which are detailed in this Bulletin, many sections of the legislation have been rewritten to make the New Act more readable and to clarify legislative requirements.

This Bulletin is largely drafted in sequential order to the corresponding section headings in the New Act, although for ease of reference, all of the provisions which will be applicable to a new type of benefit provision – the target benefit provision – have been consolidated at the end of this document.

**This Bulletin has no legal authority. A comprehensive review of the New Act should be used to determine specific legislative requirements applicable to a pension plan. Any questions about the New Act can be posed to the office of the Superintendent of Pensions.**

Stakeholders should also review the following documents:

1. PENS 15-001, “New Pension Legislation Proclaimed”
2. PENS 15-003, “Summary of Changes – Regulation”
3. PENS 15-004, “Administrative Information”

## DEFINITIONS

**“actuarial excess”** – for plans that are not terminated, this new definition replaces the term “surplus assets” found in the Former Act. With the introduction of target benefit provisions, as well as solvency reserve accounts, a new definition that describes various situations in which pension plan assets are greater than plan liabilities was needed.

**“benefit formula provision”** means, collectively, a traditional defined benefit provision, a target benefit provision, or a provision prescribed to be a benefit formula provision. The ability to prescribe new plan designs as a benefit formula provision provides greater flexibility in legislation to recognize and accommodate different benefit designs that may be developed in the future.

**“collectively bargained multi-employer plan”** – is a new term that is meant to provide clarity with respect to a “multi-employer plan” that is also a “negotiated cost plan,” both of which were defined in the Former Act. The change was made to more accurately describe the structure of this pension plan from the perspective of someone who is not familiar with pension legislation.

**“effective date of the termination”** – is a term used to more accurately describe when a pension plan terminates. The actual date of termination will depend on the circumstances in which the plan is terminated.

**“jointly sponsored plan”** – is a term used to recognize a type of pension plan that existed, but was not specifically contemplated, under the Former Act. Under a jointly sponsored plan (JSP), responsibility for funding and plan governance is determined jointly between members and employers.

**“member”** means

- an “active member”,
- a “deferred member”, or
- a “retired member”

These terms are meant to replace the terms “member” and “former member” under the Former Act, and more accurately describe an individual’s membership in a pension plan.

**“non-collectively bargained multi-employer plan”** – is a definition under the New Act that recognizes that not all multi-employer plans are negotiated cost plans.

**“pension”** –under the New Act this definition has been expanded to include payments under a defined contribution provision.

**“pension commencement date”** – is a new term meant to clarify when an individual becomes a “retired member” for the purposes of the New Act. The definition will also assist plan administrators, upon death of a member, to determine whether benefits payable to a surviving spouse or designated beneficiary are “pre-retirement” or “post-retirement” benefits.

“**pension eligibility date**” – is a new term that replaces “pensionable age” under the Former Act. Pension eligibility date is the date or age established in the plan text document at which a member is entitled to begin to receive a pension under the plan without reduction or increase.

“**surplus**” – this definition has been refined so that it applies only in the situation where a pension plan has terminated and is being wound up; that is, the assets are being distributed.

#### EXEMPTION OF PLANS

Under section 3 of the New Act, plans whose only members are connected persons, as that term is defined under the *Income Tax Act*, are largely exempt from the application of the New Act, except for certain sections that are detailed in the New Regulation. These plans were exempt from application of the Former Act, subject to conditions set out in the regulation associated with the Former Act.

#### SUPERINTENDENT’S TERMS AND CONDITIONS

Under section 6 of the New Act, the Superintendent of Pensions (Superintendent) may impose conditions on any approval, authorization, extension, consent or permission given by the Superintendent under this Act.

#### RIGHT OF MEMBER TO MAKE A TRANSFER

Section 8 (2) of the New Act sets out a provision that any person who is entitled to receive a lump sum amount under the pension plan has the right to transfer that amount to a registered retirement savings plan that is not subject to the locking-in provisions of the New Act and Regulation.

#### GENERAL REQUIREMENTS OF PLAN TEXT DOCUMENTS

The New Act recognizes that many provisions allow for the payment of administrative and investment expenses related to the administration of a pension plan to be paid from the pension fund. This provision is meant to provide clarity for plan administrators where the plan text document is silent on the ability to pay expenses from the plan’s fund.

Section 8 (3) limits the ability of the plan administrator to pay expenses from the plan fund if the plan text document provides for, or requires, payment in any other manner.

#### IF APPLICATION IS REFUSED OR WITHDRAWN

If the Superintendent refuses to register a pension plan, or if an application to register a pension plan is withdrawn by the applicant, section 15 of the New Act sets requires that any contributions made while the application to register a pension plan was before the Superintendent must be returned to the person who made those contributions. Where employees were required to contribute to the pension fund, interest earned on those contributions must be included in the amount returned to employees.

## ENTITLEMENT OF EMPLOYEES TO JOIN A PLAN AND MANDATORY ENROLLMENT

Section 29 of the New Act sets out the provisions related to the employees' entitlement to enroll in a pension plan in which their employer participates. These provisions are largely similar to the provisions of the Former Act.

The most significant change, set out in section 29 (1) (c) of the New Act, provides that the condition for enrollment into a collectively bargained multi-employer pension plan is 2 years of employment and earnings of at least 35% of the Year's Maximum Pensionable Earnings. The Former Act based enrolment on the completion of 350 hours over a 2 year period.

With this change, the rules for the enrolment in a pension plan are consistent for all plan types under the New Act.

Section 29 (2) (b) of the New Act allows a plan text document to include a provision for auto-enrolment with an opt-out option for members. Where a plan text document includes such provisions, employees are automatically enrolled as active members of the plan unless they make an election not to participate in the plan.

The Former Act previously permitted mandatory enrolment as a term and condition of employment, but was silent on whether it could be combined with an employee opt-out clause.

## DISPUTE AS TO CLASS OF EMPLOYEES

The New Act, in section 30, grants the Superintendent the power to require a pension plan administrator to accept an employee as a member of the plan if there is a dispute as to whether or not that employee is a member of a class of employees for whom the pension plan is maintained. Similar authority existed under the regulation associated with the Former Act.

## SUSPENSION OF MEMBERSHIP

Section 31 of the New Act allows a plan text document to include provisions allowing active members the option of suspending participation in the pension plan. The Former Act was silent in this regard.

Where an active member elects to suspend their participation in a pension plan, the member cannot elect portability rights in respect of that member's accrued benefit. Section 26 of the New Regulation requires that any member who has suspended their active membership in a plan must be given the opportunity to recommence their participation in the plan effective January 1 and July 1 of each year.

### VESTING OF PENSION

Section 32 of the New Act provides immediate vesting in the entitlement to receive a pension from the plan in respect of all plan membership, including service accrued prior to the introduction of the New Act. As set out in section 29, plan administrators are still permitted to limit a member's eligibility to enroll in the plan for a period that does not exceed 2 years of employment.

Conditions related to the locking-in of vested entitlements have changed. Under the Former Act, locking-in occurred after two years of membership in the plan. Under the New Act, any amount of benefit that is in excess of 20% of the Year's Maximum Pensionable Earnings, as that term is defined in the *Canada Pension Plan*, is locked-in. The "small benefit" test related to the amount of annual pension no longer applies in any circumstance.

### RETENTION OF RECORDS

Under section 34 of the New Act, any record pertaining to a pension plan, or a copy of it, must be retained in Canada.

### RESPONSIBILITY OF AN ADMINISTRATOR, PARTICIPATING EMPLOYER, AND FUND HOLDER

The New Act provides greater clarity on the duties and obligations for plan administrators and other parties or service providers. Section 35 describes the responsibilities of the administrator, while sections 45 to 48 set out provisions relating to the participating employer or employers and section 51 deals with the responsibilities of fundholders.

### ADMINISTRATOR MUST DISCLOSE INSOLVENCY PROCEEDINGS

In order to help secure and preserve member entitlements in a pension plan, and to ensure appropriate regulatory oversight, section 39 of the New Act requires that the administrator of a pension plan notify the Superintendent when a proceeding is initiated under certain pieces of bankruptcy and insolvency legislation.

### REVIEW OF A PENSION PLAN

The New Act requires that an administrator of a pension plan must assess a number of factors related to the plan's operation, governance, and general administration and prepare a report on the results of the findings. Under section 41 (2) of the New Act, this report is not required to be filed with the Superintendent, but must be submitted to the Superintendent upon request.

### ADMINISTRATOR MUST ENSURE THE ESTABLISHMENT OF A GOVERNANCE POLICY

As set out in section 42 of the New Act, the administrator of a pension plan must develop a governance policy which covers the structures and processes for overseeing, managing and

administering the plan. Among other things, the governance policy will help define the responsibilities of various parties to the pension plan, which may include the plan sponsor, participating employer(s), and the plan administrator. The content of the governance policy is detailed in section 50 of the New Regulation.

#### ADMINISTRATOR MUST ENSURE THE ESTABLISHMENT OF A FUNDING POLICY

Section 44 of the New Act requires that the administrator ensure that a funding policy is established for the plan. Similar to a governance policy, the consideration of different roles under a pension plan may be necessary to fully develop the funding policy. The content of the funding policy is detailed in section 52 of the New Regulation.

#### APPLICATION OF TRUST AGREEMENT

Section 47 of the New Act provides that, where a multi-employer plan is established by or under a trust agreement, each participating employer in that plan is bound by the trust agreement.

#### PARTICIPATION AGREEMENT

Section 48 of the New Act requires that all participating employers in an NCBMEP sign a participation agreement with the plan administrator. The required contents of a participation agreement are set out in section 28 of the New Regulation.

Further, where a participating employer does not abide by the terms of the participation agreement, section 49 of the New Act sets out the steps the plan administrator may take to ensure or compel compliance with the provisions of the participation agreement by any participating employer or former employer.

#### SOLVENCY RESERVE ACCOUNT

Section 54 of the New Act permits the creation of a new fund or account called a solvency reserve account. This provision was introduced to deal with concerns about the limited ability of participating employers to access excess funds held in a pension plan fund.

The solvency reserve account will hold only payments made in respect of a solvency deficiency by the participating employer or employers. The New Act provides participating employers greater ability to withdraw accessible excess from the solvency reserve account, subject to conditions that are outlined in the New Regulation.

#### REMITTING OF CONTRIBUTIONS

The New Act shortens the period after which fundholders must advise the Superintendent of Pensions (the Superintendent) if contributions are not remitted by a participating employer. The Former Act required written notification of non-remittance 60 days after the expiry of the 30-day prescribed period (a total of 90 days). The New Act requires that written notification be provided 15 days after the expiry of the 30-day prescribed period (a total of 45 days).

Other requirements related to reporting of contributions that are less than expected are set out in the New Regulation.

#### MAXIMUM EMPLOYEE CONTRIBUTIONS UNDER A BENEFIT FORMULA PROVISION

The New Act exempts JSPs from performing excess contribution calculations. The rationale for the provision is that, as joint sponsors of the plan, the members are making contributions and special payments in respect of the liabilities of the plan as a whole.

#### USE OF ACTUARIAL EXCESS

Section 63 (2) of the New Act provides the Superintendent explicit authority to direct a plan administrator to stop applying actuarial excess to reduce or eliminate contributions, where the Superintendent believes it is appropriate to do so.

#### IF EMPLOYMENT CONTINUES AFTER PENSION ELIGIBILITY DATE

Section 66 of the New Act requires that a plan member who continues to be employed after reaching his or her pension eligibility date plan must continue to accrue benefits under the plan, except where the plan provisions explicitly limit the years of pensionable service to be included in determining the pension (see section 73 of the New Act). However, at the plan administrator's discretion, that member may also be permitted to:

- cease accruing benefits and commence receipt of the pension,
- cease accruing benefits and elect a deferred pension, the amount of which must be actuarially increased at the subsequent pension commencement date, or
- commence receipt of the pension and continue to accrue additional benefits, to the extent permitted under the *Income Tax Act*.

#### FLEXIBILITY FOR LIFE INCOME TYPE PAYMENTS

Under section 75 of the New Act, a pension plan may, but is not required to, offer members the option to receive monthly retirement income similar to that which would have been paid had the locked-in funds been transferred to a life income fund (LIF).

#### SURVIVOR BENEFITS IF MEMBER DIES BEFORE PENSION COMMENCEMENT

Section 79 of the New Act gives a surviving spouse of a member who dies before pension commencement the ability to immediately receive a pension from the plan, regardless of the surviving spouse's age.

Section 79 (3) of the New Act allows a plan administrator to require that surviving spouse to make a portability option rather than commence receipt of a pension from the plan.

### ANCILLARY BENEFITS

Section 82 of the New Act describes ancillary benefits that may be offered by a pension plan, including, for example cost of living adjustments or bridge benefits. Consistent with the nature of ancillary benefits, the benefit can be reduced (or eliminated) if a member has not met all the requirements of the plan text document necessary to receive the ancillary benefit.

### WHEN A PLAN CAN REQUIRE A TRANSFER TO BE MADE

Section 89 of the New Act allows a pension plan to require that a member who is entitled to only a defined contribution benefit must transfer the full entitlement from the plan, regardless of the amount of benefit or when the member joined the pension plan.

The New Act maintains the existing mandatory transfer requirements that may be adopted by benefit formula provisions.

### ANNUITY PURCHASES

Section 89.1 of the New Act provides that, where a pension plan administrator complies with prescribed conditions when purchasing an annuity in satisfaction of a member's pension entitlement, the plan has no continuing liability should the insurance company from whom the annuity was purchased become insolvent.

### LIMITATIONS ON PAYMENTS OF PENSIONS OR BENEFITS

Under section 103 of the New Act, the Superintendent may direct that a plan administrator reduce or refrain from making payments out of a plan that is terminating while the winding-up of the plan is continuing. This would occur where the Superintendent considers that payments of these amounts would unfairly prejudice other members of the plan.

### TRANSFER RIGHTS ON WINDING UP

Section 105 of the New Act gives those in receipt of a pension the option to elect portability on full plan windup in certain limited circumstances, which are detailed in the New Regulation.

### APPOINTMENT OF ADMINISTRATOR

The Superintendent now has discretion, under section 114 of the New Act, to appoint a temporary administrator where the administrator, as defined in the New Act, cannot be located, is insolvent, or is unable or unwilling to fulfill their duties under the New Act and there has been substantial failure to comply with the requirements of the New Act.

### DESIGNATION OF ACTUARY

Section 115 of the New Act allows the Superintendent's authority to designate another actuary for the production of valuation opinion if the Superintendent is of the opinion that actuarial assumptions or the methodology used in the preparation of an actuarial valuation report or termination report are inappropriate for the plan in the circumstances.

### ADMINISTRATIVE PENALTIES

Under section 116 of the New Act, the Superintendent has discretion to levy administrative penalties for material non-compliance with or breaches of legislated requirements. Where the Superintendent levies an administrative penalty, that penalty may not be paid from the plan fund.

### EXPENSES RELATED TO INSPECTIONS

Where the Superintendent performs a compliance evaluation, and as the result of that evaluation either issues a direction for compliance or levies an administrative penalty against a person, section 118 of the New Act provides that the Superintendent may require payment for the expenses related to the compliance evaluation.

### OFFENCES AND PENALTIES

Where an individual commits an offence under the New Act, that person may be subject to a penalty, the amount of which cannot exceed \$500,000 in the case of a corporation or administrator, and \$100,000 in the case of an individual. One important aspect of an offence under the Act is that a fine, as a result of an offence, cannot be paid from the plan fund.

An offence under the Former Act imposed a maximum penalty of \$100,000 for a corporation or \$25,000 for an individual.

### LIMITATION PERIOD FOR PROSECUTION

Under section 124 of the New Act, a prosecution of an offence or the levying of an administrative penalty cannot occur later than 3 years after the time when the Superintendent first had knowledge of the offence. The period for limitation of prosecution under the Former Act was 2 years and only applied to offences (as the Former Act did not contain provisions for administrative penalties).

### TARGET BENEFIT PROVISIONS

#### *Application of Target Benefit Provisions*

Although the JEPPS report had largely described and envisioned a target benefit provision in the context of a collectively bargained multi-employer pension plan, the New Act does not specifically limit target benefits to only these types of plans.

*Definitions*

**“commuted value”** – this definition, and as further described in section 1(2) of the New Act, provides that the calculation of a commuted value of a target benefit provision is to be done in the manner prescribed in the Regulations.

**“target benefit provision”** – this term describes a new type of benefit, called a target benefit, which establishes (by a formula) the amount of pension that is intended to be payable to a member and provides that the benefit may be reduced as and when necessary.

*Restrictions on amendments to reduce benefits*

As set out in section 20 (2) (d) of the New Act, if an actuarial valuation report for a target benefit provision demonstrates that the contribution rate is insufficient to meet the funding requirements set out in the New Regulation, the plan administrator must, concurrently with the filing of the actuarial valuation report, file an amendment to:

- reduce ancillary benefits, and/or
- reduce the amount of the target benefit (including on a retroactive basis if necessary) and/or
- increase contributions (where applicable or possible).

*Temporary improvements to a pension in pay*

Section 21 of the New Act permits the administrator of a pension plan that offers a target benefit to implement a “one-time” or “temporary” increase to pensions in pay, subject to certain conditions detailed in the New Regulation.

Under the Former Act, granting a temporary benefit improvement was not allowed. The Former Act requires that an administrator must continue to provide (and fund for) a benefit improvement once granted.

*Funding requirement for target benefits*

The New Act enables the development of funding rules for a target benefit provision in the New Regulation, to be called “Going Concern Plus”. These requirements are in the Regulation.

The New Act provides that a participating employer’s liability (and an active member’s liabilities as applicable in a jointly sponsored pension plan) under a target benefit provision is limited to the amount that each party is contractually obligated to contribute.

*Maximum employee contributions under a benefit formula provision*

The New Act creates regulation-making authority for the calculation of employee excess contributions in the context of a plan that provides a target benefit. The details of this calculation are outlined in the New Regulation.

*What may be transferred?*

Under the New Act, where a member who terminates active membership elects a portability option and is entitled to a benefit under a target benefit provision, the amount that is to be paid to that person is the product of the commuted value of that benefit and the target benefit funded ratio. Unlike the Former Act, that person is not entitled to any additional amount if the target benefit funded ratio is less than one (1).

The calculation of the target benefit funded ratio is described in the New Regulation.

**MORE INFORMATION**

All interested persons should monitor the Pensions website ([http://www.fic.gov.bc.ca/index.aspx?p=pension\\_plans/index](http://www.fic.gov.bc.ca/index.aspx?p=pension_plans/index)) for further updates and information.

Plan sponsors and their service providers should contact the relevant employee of the Superintendent of Pensions if they have questions specific to their plan.

Other stakeholders may contact the Office of the Superintendent of Pensions by telephone or by email at:

Telephone: 604 660-3382  
email: Pensions@ficombc.ca

At the Financial Institutions Commission, we issue information bulletins to provide technical interpretations and positions regarding certain provisions contained in the *Pension Benefits Standards Act*, Regulations and other pertinent legislation. While the comments in a particular part of an information bulletin may relate to provisions of the law in force at the time they were made, these comments are not a substitute for the law. The reader should consider the comments in light of the relevant provisions of the law in force at the time, taking into account the effect of any relevant amendments to those provisions or relevant court decisions occurring after the date on which the comments were made. Subject to the above, an interpretation or position contained in an information bulletin generally applies as of the date on which it was published, unless otherwise specified.