

## **TRANSLATION OF THE OFFICIAL PUBLICATION OF SINT MAARTEN (AB 2010, GT no. 8)**

### **National ordinance regulating benefits and pensions for political authorities and pensions for their surviving dependents (pension regulation political authorities)<sup>1</sup>**

#### **CHAPTER 1 GENERAL PROVISIONS**

##### **Article 1**

1. The following definitions apply for the purposes of this national ordinance and the provisions based on it:
  - a. political authority: the minister, the Minister Plenipotentiary or the Member of Parliament;
  - b. former political authority: a person who qualifies for a pension on the grounds of dismissal, pursuant to this national ordinance;
  - c. retired political authority: a person entitled to a pension pursuant to this national ordinance;
  - d. dismissal: the formal termination of the appointment as a political authority, by any means;
  - e. civil servants: officials in the service of the country of Sint Maarten;
  - f. surviving dependent: a person to whom a political authority, former political authority or retired political authority was married on the date of decease.
  - g. competent authority: the Governor, with regard to former and retired ministers, Ministers Plenipotentiary and Members of Parliament.

#### **CHAPTER 2 BENEFITS**

##### **Article 2**

1. A political authority who has been dismissed and had not yet reached the age of 60 on the date of dismissal is entitled to benefits from the date on which the dismissal commenced, pursuant to the following Articles.
2. No entitlement to benefits exists if the political authority:
  - a. again serves as a political authority, without interruption;
  - b. is convicted of any crime, such that, in the opinion of the Governor, the political authority has shown conduct unbecoming from a national point of view.

##### **Article 3**

1. The right is granted for the duration of the term in which the relevant person served as a political authority, but for at least the term of one year and for no more than the term of two years.
2. If the person concerned served as a political authority with one or more interruptions, the time for which the person concerned served as a political authority in a term immediately preceding the latest dismissal shall be taken into account for the determination of the duration of the benefits, provided that those positions were uninterrupted for a maximum of one sixth of that term.
3. In the event of the discontinuation of benefits pursuant to Article 8(c), the following benefits will be granted at least until the date on which the former benefits would have ended, if the right to benefits was not terminated in the meantime.

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<sup>1</sup> This issuance takes place on the basis of the additional Article II of the Constitution.

#### **Article 4**

1. The benefits amount to 95% of the remuneration as a political authority for the first three months, to 85% during the following seven months, to 75% during the next ten months and to 70% thereafter.
2. 'Remuneration' referred to in the first paragraph, refers to the fixed income elements to which the political authority was entitled on the day prior to the date of dismissal.
3. By way of departure from the second paragraph, expense allowances of any description are not included in the remuneration.
4. If a general change is made in the remuneration of civil servants in connection with inflation-proofing or index-linking, the benefits referred to in the first paragraph, shall be adjusted in accordance with that change from the date on which that general change takes effect.
5. Further rules concerning the determination of the remuneration referred to in paragraph 2, and the concomitant change referred to in the fourth paragraph, may be imposed by or pursuant to a national decree, containing general measures.

#### **Article 5**

1. If, on the date on which benefits end, a former political authority is unable to occupy his former position due to illness or disabilities, the benefits will be continued for the duration of the disability, in observance of Article 6.
2. The continued benefits will amount to 70% of the remuneration referred to in Article 4(1).
3. In order to establish the existence of disability referred to in the first paragraph, the competent authority shall open inquiries by a committee of medical experts that it appoints.

#### **Article 6**

1. Continuation of the benefits shall take place on the application of the person concerned and for terms of no more than two years, without prejudice to the provisions of this national ordinance concerning the termination of the benefits.
2. The person concerned must submit an application referred to in paragraph 1, at least three months prior to the termination of the benefits or the expiration of the term referred to in paragraph 1, respectively.
3. In order to establish the existence of disability following the end of the term referred to in paragraph 1, the competent authority may open inquiries as referred to in Article 5(3).

#### **Article 7**

1. The income enjoyed by a former political authority shall be settled with the benefits for the month to which that income relates or can be deemed to relate.
2. 'Income' referred to in the first paragraph, refers to the combined amount that the person concerned enjoys through the performance of activities undertaken from or after the date of the dismissal as a political authority, as:
  - a. profits from enterprise;
  - b. income from or in connection with employment.
3. For the purposes of the application of paragraphs 1 and 2, the following is also deemed to be income:
  - a. income from the activities referred to in paragraph 2, undertaken within one year immediately prior to the dismissal;
  - b. income enjoyed from employment in which the political authority was granted leave of absence in connection with the occupancy of that office.

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4. If the person concerned receives income or higher income, other than as a result of a general pay increase, on or after the dismissal date, from the activities referred to in the second paragraph, undertaken before the dismissal date, other than as referred to in paragraph 3, paragraph 1 applies to that income or higher income.
5. The settlement shall take place in such a manner that the benefits are reduced by the amount by which the benefits plus that income exceed the remuneration on which the benefits are based.

#### **Article 8**

The entitlement to benefits ends on the date on which the former political authority:

- a. is deceased;
- b. reaches the age of 60;
- c. once again becomes a political authority;
- d. is convicted of any crime, such that, in the opinion of the Governor, the political authority has shown conduct unbecoming from a national point of view.

#### **Article 9**

1. As soon as possible after the decease of a former political authority who was entitled to benefits, the surviving dependent from whom the deceased was not permanently separated shall be paid an amount equal to the benefits of the political authority for a period of three months.
2. If the deceased leaves no surviving dependent as referred to in the first paragraph the benefit referred to in the first paragraph, shall be paid for children with a family-law relationship to the deceased who have not yet reached the age of 18 and are not, and have not been married, or for children who have not yet reached the age of 18, who are not and have not been married, for whom the deceased cared as a foster parent.
3. If there are no such children, the amount referred to in paragraph 1 shall be paid to parents, children who have reached the age of majority, brothers or sisters, if the deceased was the breadwinner for those relations.
4. If the deceased leaves no relations as referred to in the first and second paragraphs the amount referred to there may be paid, in part or in full, for the costs of the last illness and the funeral expenses, if the estate is not sufficient to cover those costs.

#### **Article 10**

The benefits will be paid in monthly instalments, determined for one month.

### **CHAPTER 3 THE OLD-AGE PENSION**

#### **Article 11**

1. Following dismissal, a political authority is entitled to a pension if he has reached the age of 60 on the commencement date of the dismissal, unless he serves once again as a political authority on that date.
2. A former political authority acquires the right to a pension on reaching that age, unless he is serving or is to serve as a political authority once again on that date.

#### **Article 12**

1. The following definitions apply for the purposes of this section:
  - a. years of service:

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1. the term for which the political authority served in a position as referred to in Article 1(a);
2. the term in which the entitlement to benefits existed pursuant to chapter 2;
- b. calculation base: the remuneration, referred to in Article 4, determined for one year, that the person concerned received in that office on the day prior to the date of dismissal.
- c. franchise: 10/7 of the benefits from the legal old-age pension, calculated as an annual amount, applying on the date on which the entitlement to a pension commences. The franchise will be rounded up to full guilders;
- d. pension base: the calculation base on the date on which the pension entitlement commences, adjusted if necessary in accordance with the provisions of Article 14, less the franchise.
2. Half of the time referred to in paragraph 1(a)(2) qualifies as years of service. To the extent that, and for as long as the benefits are reduced pursuant to Article 7, that time does not qualify as years of service.
3. If the person concerned has held office as a political authority on several occasions in the same category as referred to in Article 1(a), the last dismissal in the category for that office applies for the purposes of paragraph 1(b).

#### **Article 13**

1. The annual pension amounts to:
  - a. 5% of the pension base for each full year of service, and
  - b. 1/12th of 3% for each remaining month of service, to a maximum of 70%.
2. For the purposes of paragraph 1(b), a remaining service term of less than one month is treated as a full month.
3. The pension of a political authority and a former political authority who has served as a political authority in positions in several different categories, within the meaning of Article 1(a), amounts to the sum of the amounts calculated individually for each of those categories on the basis of the years of service, calculation base and pension base for the categories distinguished.

#### **Article 14**

1. If a general change is made in the remuneration of civil servants in connection with inflation-proofing or index-linking, the pension base shall be adjusted in accordance with that change from the date on which that change in remuneration takes effect. The pension awarded will be recalculated accordingly.
2. If a change in the remuneration referred to in the first paragraph, leads to a reduction in that remuneration in comparison with the previous level, the pension base will not be adjusted. If a later subsequent change, as referred to above, leads to an increase, that increase will be omitted in part or in full until the adjustment of the pension base that would have taken place through the application of paragraph 1 has been compensated in full.
3. Further rules may be imposed for the implementation of paragraphs 1 and 2 by or pursuant to a national ordinance, containing general measures.

### **CHAPTER 4 THE SURVIVING DEPENDENT'S PENSION AND ORPHANS' PENSION**

#### **Article 15**

1. The surviving dependent of a political authority, former political authority or retired political authority is entitled to a surviving dependent's pension.

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2. No entitlement to a surviving dependent's pension exists if the marriage was solemnised after the dismissal of the spouse, unless
  - a. at the time of the marriage, the spouse was entitled to benefits in connection with his or her dismissal as a political authority, or
  - b. the spouses were already married prior to the dismissal, provided that the marriage was solemnized before the political authority reached the age of 60.
3. For the purposes of paragraph 2, dismissal is deemed not to have commenced if the spouse takes office as a political authority again with no significant interruption.
4. No significant interruption exists if this lasted for less than two months.

#### **Article 16**

1. The spouse of a deceased political authority, former political authority or retired political authority is entitled to a special surviving dependent's pension provided that he or she would have been entitled to a surviving dependent's pension if the political authority, former political authority or retired political authority had died on the date on which the decision ordering their divorce or the dissolution of the marriage was recorded in the register set up for that purpose by law.
2. The first paragraph does not apply if the relevant spouse acquires the right to a surviving dependent's pension in relation to the decease of the same political authority to which that spouse was married.

#### **Article 17**

1. Following the decease of a political authority, former political authority or retired political authority, the following persons are entitled to an orphans' pension:
  - a. the children with a family-law relationship to the deceased who have not yet reached the age of 18 and are not and have not been married;
  - b. the children of a male political authority with which he did not have a family-law relationship who have not yet reached the age of 18 and are not and have not been married, if he was required by law to maintain those children at the time of his decease or had recognised a maintenance obligation in an authentic deed;
  - c. the children who have not yet reached the age of 18 and are not and have not been married for whom the deceased bore responsibility as a foster parent at the time of decease.
2. Paragraph 1 also applies to children who have reached the age of 18 but not the age of 25 and are not and have not been married, in accordance with the distinctions and conditions laid down in paragraph 1, and:
  - a. whose time, apart from in cases of illness or holidays, is fully or largely taken up by or in connection with being in education; or
  - b. who, in the opinion of the competent authority, are permanently unable, due to illness or disability, to earn through work appropriate to their abilities, one third of what physically and mentally healthy children of the same age are able to earn with such work.
3. Paragraphs 1 and 2 do not apply to children who were born, or for whom foster care began after the relevant political authority was dismissed. Article 15(2) and Article 15(3) are likewise applicable.

#### **Article 18**

1. If, in the opinion of the competent authority, a political authority, former political authority or retired political authority is missing, the parties who would derive pension rights from the

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decease of the political authority, former political authority or retired political authority shall be entitled to a temporary pension on the same basis as that described in the above Articles of this Chapter.

2. The temporary pension shall be replaced by a permanent pension by law as soon as the assumed decease of the missing person is established.

#### **Article 19**

1. The surviving dependent's pension amounts to 70% of the pension to which the deceased political authority would have been entitled as such if he had been dismissed on the day following the date of decease or to which a deceased former political authority would have been entitled to, or which a retired political authority would have received as such, on the date of decease.
2. By way of departure from the preceding paragraph, surviving dependents of the following are entitled to the pension amounts below:
  - a. a political authority who dies before reaching the age of 60: five sevenths of the pension to which that political authority would have been entitled if he had held the office until reaching the said age;
  - b. a former political authority in the period, for which he was assigned benefits: five sevenths of the amount of the pension to which that former political authority would have been entitled if he had received benefits until reaching the age of 60, on the understanding that for the determination of the pension, the years of service will be included to the extent that these qualify as years of service on the date of decease, pursuant to the provisions of Article 12(2).

#### **Article 20**

1. The special surviving dependent's pension of the surviving dependent of a political authority, former political authority or retired political authority is determined in the same way as the pension of the surviving dependent of a political authority, former political authority or retired political authority, on the understanding that only the years of service prior to the dissolution of the marriage are taken into account in the determination of the pension.
2. If entitlements to more than one special surviving dependent's pension as referred to in this Chapter derive from the same decease, the first paragraph is likewise applicable, on the understanding that for the determination of the special surviving dependent's pension derived from each marriage preceded by an earlier marriage, only the years of service that coincide, or which can be deemed to coincide with the duration of the marriage are taken into account.
3. If an entitlement to one or more special surviving dependent's pension(s) arises on decease, the surviving dependent's pension deriving from the same decease is deducted from the amount thereof.

#### **Article 21**

If a surviving dependent remarries, the pension of the person concerned is recalculated from the month following that in which the surviving dependent remarries. Only the years of service of the political authority, former political authority or retired political authority qualifying for the pension before the date of his decease are taken into account here.

#### **Article 22**

1. The amount of the orphans' pension is as follows:

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- a. 14% for each child whose surviving parent derives pension rights from the decease of a political authority, former political authority or retired political authority;
  - b. 28% of the deceased's pension for each other child, calculated in observance of Article 19.
2. For the purposes of paragraph 1 'parent' also refers to the surviving dependent who was responsible for foster care of a child, referred to in Article 17(1)(c) at the time of the decease of the political authority, former political authority or retired political authority.

#### **Article 23**

1. The orphans' pension shall be recalculated in accordance with Article 22 if the parent's surviving dependent's pension or special surviving dependent's pension is terminated due to that parent's decease.
2. If the parent's surviving dependent's pension is redetermined pursuant to Article 21, due to remarriage, the orphans' pension referred to in Article 22(1)(a) shall be increased by an amount relating to that of the orphans' pension, as, for example, the difference between the surviving dependent's pension referred to in Article 19, before and after the application of Article 21 relates to that of the surviving dependent's pension before that application.
3. For the purposes of this Article, Article 22(2) is likewise applicable.

#### **Article 24**

The temporary pension is equal to the pension to which the recipient would have been entitled if the missing person had died on the date on which he or she disappeared.

#### **Article 25**

1. The combined amount of the pensions, referred to in this Chapter shall not exceed the amount of the pensions on which those pensions are based.
2. If, due to the application of paragraph 1, the pension elements referred to there must be reduced, this shall take place in proportion to the individual amounts.

#### **Article 26**

1. As soon as possible after the decease of a retired political authority, benefits will be awarded to a surviving dependent from whom he or she was not separated, in the amount of the pension of that political authority for a period of two months.
2. If the deceased leaves no relations as referred to in the first paragraph the amount referred to in the first paragraph shall be paid out for the benefit of children to which the deceased bore a family-law relationship, who have not yet reached the age of 21 and are not and have not been married, or for children for which the deceased was responsible for their foster care, who have not yet reached the age of 21 and are not and have not been married.
3. If there are no such children, the amount referred to in the first paragraph, shall be paid for parents, children who have reached the age of majority, brothers or sisters for whom the deceased was the breadwinner.
4. If the deceased left no relations as referred to in the first and second paragraphs the amount referred to there may be paid for the costs of the last illness and funeral expenses, if the estate is insufficient to cover those costs.

### **CHAPTER 5 AWARD AND PAYMENT OF PENSIONS AND BENEFITS**

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### **Article 27**

1. The competent authority shall decide on the award of benefits and pensions on the application of the political authorities. The documents that the competent authority considers necessary for processing of the application must be submitted.
2. The competent authority is also authorised to award benefits and pensions officially.
3. The competent authority shall decide on the award of benefits and pensions in a dated administrative decision stating the grounds for the decision and well as the legal provisions on which that decision is based.
4. In an award administrative decision, the years of service taken into account for the benefits or the pension shall be fixed, as shall the amount on which the calculation of these is based.

### **Article 28**

1. The competent authority shall provide for the payment of benefits of the political
2. Payment shall take place in monthly instalments.
3. Claimable terms of benefits or pensions that have not been collected for two successive years shall not be paid out unless, in the opinion of the competent authority, the person concerned cannot reasonably be deemed to have been in default.
4. The competent authority is authorised to grant advance payments of benefits or pensions.
5. The competent authority may delegate an institution by or pursuant to a national decree, containing general measures, which will be charged with the execution of this national ordinance with regard to the pensions, referred to in Chapters 3 and 4, and may impose further rules in that regard.

### **Article 29**

All pensions shall be terminated at the end of the month in which the entitled party dies. In the case of a right-holder who is missing, the pension shall be terminated from the date on which his assumed decease is established.

## **CHAPTER 6 FINANCIAL PROVISIONS**

### **Article 30**

According to rules to be laid down by or pursuant to a national decree, containing general measures, an amount shall be deducted from the remuneration of political authorities and from the benefits of former political authorities, equal to the deductions from the remuneration of civil servants in relation to claims for illness, disability, old age and decease.

### **Article 31**

The benefits and pensions, including the pensions referred to in Chapter 4, arising from the entitlements to ministers, Ministers Plenipotentiary and Members of Parliament pursuant to this national ordinance shall be charged to the national budget.

### **Article 32**

1. If pension is paid out for longer than is provided for in Articles 8 and 29, the excess payments shall be reclaimed.
2. If a missing person proves to be alive, the temporary pension payments, referred to in Article 18, shall be reclaimed.
3. Payment of reclaimed amounts as referred to the first and second paragraphs shall take place in instalments to be fixed by the competent authority.

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### **Article 33**

1. Both the parties with current or future entitlements to pensions pursuant to Chapter 3 and their surviving dependents have the right to compensation for medical expenses on the basis of the regulation applying to retired government officials.
2. For the purposes of paragraph 1, the person concerned is assigned to the category for an official who is paid according to the maximum for Scale 17.
3. With regard to the application by analogy, referred to in the first paragraph , further rules may be imposed by national decree, containing general measures, without prejudice to paragraph 2.

## **CHAPTER 7 INFORMATION OBLIGATIONS**

### **Article 34**

1. All persons entitled to benefits or pensions are required to notify the competent authority without delay of all facts and circumstances concerning them that could affect their entitlement to benefits or pensions, or the amounts of these.
2. The competent authority is authorised to require persons who derive rights from the rules laid down by or pursuant to this national ordinance, or on whom obligations are imposed by those rules, the body that paid the remuneration of the political authority, the Inspector of Direct Taxes and the Social Insurance Bank to provide the information that can reasonably be deemed to be necessary for an assessment of the relevant rights and obligations. Requirements shall be issued in writing.
3. The competent authority is also authorised to require access to business data and documents of the persons and institutions, referred to in the first paragraph , to the extent that inspection of their contents can reasonably be deemed to be necessary for an assessment of the rights and obligations referred to in that paragraph.
4. The competent authority is authorised to make copies of data and documents. If copying cannot take place at the location where the data and documents are located, the minister is authorised to take these away for that purpose, for a short period, in exchange for a written receipt to be issued by the competent authority.
5. The competent authority may authorise one or more persons to exercise the powers, referred to in paragraphs 1 to 3.
6. The persons referred to in the fourth paragraph, shall carry proof of identity with them in exercising their powers, as well as their authorisation or a copy thereof. They shall show these documents immediately on request.

### **Article 35**

1. All persons entitled to benefits or pensions are required to provide the competent authority with all assistance which that authority may reasonably require in order to exercise its powers.
2. Persons required to protect confidentiality on the grounds of their office, profession or by law may refuse to provide assistance, to the extent that this arises from their confidentiality obligations.

### **Article 36**

1. All persons entitled to benefits or pensions who fail to comply with the provisions of Articles 34 and 35 shall be penalised with a custodial sentence of no more than one month, a fine of no more than one thousand guilders, or both penalties.

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2. All persons entitled to benefits or pensions who provide information for the execution of Articles 34 and 35 that they know to be inaccurate shall be penalised with a custodial sentence of no more than one month, a fine of no more than one thousand guilders, or both penalties.
3. All persons entitled to benefits or pensions who provide inaccurate information for the execution of Articles 34 and 35 with a view to motivating the competent authority or the personnel responsible for the execution of this national ordinance on behalf of that authority to take action that they would not have taken without that information shall be penalised with a custodial sentence of no more than one year, a fine of no more than ten thousand guilders, or both penalties.
4. The offences criminalised in the first and second paragraphs are infringements. The offence criminalised in paragraph 3 is a criminal offence.

## **SECTION 8 FINAL PROVISION**

### **Article 37**

This national ordinance may be referred to as the 'Pension regulation for political authorities'.

Issued on the twentieth of December 2010  
The Minister of General Affairs,  
S.A. Wescot-Williams

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