

No. of 2021

VIRGIN ISLANDS

**EASTERN CARIBBEAN SUPREME COURT (JUDICIAL OFFICERS'
PENSIONS) ACT, 2021**

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No. of 2021

**Eastern Caribbean Supreme Court
(Judicial Officers' Pensions) Act, 2021**

**Virgin
Islands**

I Assent

**Governor
, 2021**

VIRGIN ISLANDS

No. of 2021

A Bill for

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.

[Gazetted , 2021

ENACTED by the Legislature of the Virgin Islands as follows:

PART I

PRELIMINARY

Short title and commencement.

1. (1) This Act may be cited as the Eastern Caribbean Supreme Court (Judicial Officers' Pensions) Act, 2021.

(2) This Act shall come into force on a date the Governor may by Proclamation published in the *Gazette*, appoint.

Interpretation.

2. In this Act

"Chief Justice" means 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 appointed under section 12 of the Supreme Court Order; 1967 No. 223

"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;

"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; 1967 No. 223

"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; 1967 No. 223

"Secretary" means the Secretary to the Commission; S.I No. 61 of 2008

"spouse" means husband or wife.

3. (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 the Virgin Islands. Application.

(2) A person who was a judicial officer, immediately before the coming into operation of this Act, 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 Eastern Caribbean Supreme Court (Rate of Pension of Judges) Act, 1990 and the Pensions No. 13 of 1990 Cap. 161

Act.

Act binds the Crown.

4. This Act binds the Crown.

PART II

PENSIONS AND GRATUITIES PAYABLE IN RESPECT OF THE SERVICE OF JUDICIAL OFFICERS OF THE COURT

Pensions to be charged on Consolidated Fund.

5. There shall be charged on and paid out of the Consolidated Fund of the Virgin Islands 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.

Circumstances in which pension may be granted.

6. 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.

Retirement.

7. (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 months' notice, in writing, of his or her intention to do so.

(3) The period of notice under subsection (2) shall 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. The pension payable to a judicial officer upon his or her retirement in pensionable circumstances shall be as follows: Rate of pension.

- (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 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 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 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 Master for a period of not less than fifteen 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 Master 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.

Reduced pension.

9. A judicial officer may, upon 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.

Spouse's pension.

10. 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.

Payment of pension.

11. (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 shall, subject to the provisions of 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 upon 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 under 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,

which that person would have been entitled to receive 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 and the gratuity shall be 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 under 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. 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 was in receipt.

Increases in pension.

13. (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.

Gratuities where length of service does not qualify for pension.

(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 upon the judicial officer attaining the retirement age.

Gratuity on death in office.

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

Pensions not to be assignable.

15. A pension or gratuity under this Act shall not be assignable or transferable.

PART III

MISCELLANEOUS

Regulations.

16. (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.

Repeal.
No. 13 of 1990

17. (1) Subject to section 18, the Eastern Caribbean Supreme Court (Rate of Pension of Judges) Act, 1990 is repealed.

Savings.

18. Notwithstanding section 17, the Eastern Caribbean Supreme Court (Rates of Pension) (Judges) Act, 1990 shall continue to apply to a person who was, immediately before the coming into operation of this Act, receiving a pension under that Act and a person who was a judicial officer immediately

before the coming into operation of this Act who opts not to be subject to this Act under section 3.

Passed by the House of Assembly this day of , 2021.

Speaker.

Clerk of the House of Assembly.

OBJECTS AND REASONS

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.

Part I of the Bill would make certain preliminary provisions. The preliminary provisions are set out in clauses 1 to 4 of the Bill.

Clause 1 provides for the short title of the proposed Bill and the commencement provision.

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

Clause 3 provides for the application of the Bill to judicial officers of the Eastern Caribbean Supreme Court (hereinafter referred to as “the Court”) who are assigned by the Chief Justice to the Virgin Islands 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 Bill would be able to opt to come under the proposed Bill or to remain under the Pensions Act (Cap. 161) and the Eastern Caribbean Supreme Court (Rate of Pension of Judges) Act, 1990 (No. 13 of 1990).

Clause 4 provides that the Bill binds the Crown.

Part II of the Bill provides for the pensions and gratuities payable in respect of the service of judicial officers of the Court, as set out in clauses 5 to 15 of the Bill.

Clause 5 provides that all pensions and gratuities payable under the proposed Bill would be charged on and paid out of the Consolidated Fund of the Virgin Islands.

Clause 6 provides for the circumstances in which a pension may be granted. A judicial officer who has served for at least five continuous years would be eligible for a pension on attaining the mandatory 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 requires a judicial officer to retire on attaining the mandatory retirement age after giving the Commission at least twelve months’ notice.

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

Clause 9 provides for judicial officers to opt to receive a reduced pension and a gratuity instead of their full pension. Clause 10 provides 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 makes 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.

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

Clauses 13 provides 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 would, 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.

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

Part III of the Bill provides for miscellaneous provisions. Clause 16 provides for the making of regulations.

Clause 17 repeals the Eastern Caribbean Supreme Court (Rate of Pension of Judges) Act, 1990 (No. 13 of 1990).

Under Clause 18 the Eastern Caribbean Supreme Court (Rates of Pension) (Judges) Act, 1990 (No. 13 of 1990) will continue to apply to persons who are in receipt of a pension under that Act immediately before the coming into operation of the proposed Act and who chooses not to be paid a pension under this Bill.