

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

EXPLANATORY MEMORANDUM

1. Introduction

Articles 42, 43(7) and 58 of the draft Constitution of Sint Maarten provide that the pensions of ministers, the Minister Plenipotentiary and Members of Parliament should be regulated by national ordinance. This draft serves to execute those provisions.

The National Ordinance of 24 March 2006, regulating benefits and pensions for holders of political authority of the Netherlands Antilles and the island regions of Bonaire, Sint Maarten, Sint Eustatius and Saba and pensions for their surviving dependents served as a model for the framework for this draft. That regulation serves to coordinate the different regulations for the pension entitlements of all office holders, simplifying the execution and preventing excessive pension income. Obviously, this draft is confined to the holders of political authority of the new country of Sint Maarten, i.e.: the Prime Minister, the other ministers, the Members of Parliament and the Minister Plenipotentiary.

2. Contents of the draft in brief

Benefits

The regulation has a benefit section and a pension section. If a political authority no longer holds the political office and has not yet reached the age of 60, there is an entitlement to bridging benefits falling from 95% to 85%, 75% and 70% of their last-earned remuneration. The term of the benefits is equal to the time period in which the party concerned held political authority, lasting at least one year and no more than two years.

Benefits in the event of invalidity

A political authority who is occupationally disabled following the termination of the benefits due to illness or disabilities is entitled to renewal of the benefits. These benefits amount to 70% of the last-earned remuneration.

Anti-cumulation

As already mentioned, the benefits should be seen as bridging the gap until new income is acquired. If a political authority acquires income during the period of benefit entitlement, this income is settled with the benefits. The person concerned can never receive more benefits and new income than the amount of the last-earned remuneration as a political authority.

Old-age pension

In practice, a political authority will never spend his entire career as a political authority; as a rule, pension will also be built up in other positions.

The total pension rights built up in the different positions must lead to an acceptable old-age pension at a generally accepted retirement age. This does not alter the fact that, both because of the political risk and because of the attraction and status of political office, it is justified to set the build-up percentage per year of service a little higher than is usual for defined benefit pension schemes. A build-up percentage of 3% per year is proposed.

Pension is also built up in the period in which the benefit entitlement exists. Half of this period is counted as years of service for the build-up of the pension. This applies only if no settlement takes place due to income, because in that case it is assumed that pension is built up on the basis of that income.

The age until which a political authority can build up pension is 60. From that age onwards, the political authority is entitled to a pension. This age is consistent with the usual age at which pension rights arise.

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The pension rights are associated with the different categories in which political authorities can serve (minister, Member of Parliament and Minister Plenipotentiary). A pension is built up in each category over the period in which office was held in that category, on one of more occasions.

In the period in which the old-age pension is paid out, there is no anti-cumulation regulation for income from employment or other pensions. The pension is deemed to have been earned and built up over a particular period of the working life. Possibly together with the build-up of other pensions over other working periods, this gives rise to a pension that reflects the total working period.

The future and commenced pensions are adjusted in accordance with changes in the remuneration for civil servants with a view to inflation-proofing and index-linking of that remuneration. In the calculation of the pension, the right to the statutory old-age pension is taken into account with the aid of a franchise.

Surviving dependent's pension and orphans' pension

The surviving dependents pension and orphans' pension are largely similar to the surviving dependent's and orphans' pensions for civil servants. Consequently, these pension rights differ little in terms of entitlements, scale and duration from the rights that could be built up on the basis of other schemes.

In brief, the rights are as follows:

Surviving dependent's of deceased political authorities, i.e. their spouses, are entitled to a surviving dependent's pension amounting to 70% of the old-age pension. If the political authority is aged less than 60 at the time of decease, the surviving dependent's pension is based on the pension determined at the time when the deceased would have reached the age of 60. Decease during the period of benefit entitlement affords the right to add the years up to the age of 60 to the years of service, to the extent that the years of service were added at the time of decease.

For a surviving dependent to whom the political authority was married, there is a right to a special surviving dependent's pension to the extent that the marriage coincided with the period in which the political authority was in office, was entitled to benefits or was retired.

Children left by the deceased who are aged less than 18, and in some cases, less than 25, have a right to an orphans' pension. This concerns children with whom the deceased had a family-law relationship and children for whom the deceased had maintenance obligations or responsibility for foster care.

The orphans' pension for the child of the deceased parent amounts to 14% of the old-age pension and 28% for a 'full' orphan.

The total surviving dependent's and orphans' pension amounts to a maximum of the amount of the old-age pension.

Death benefits

Surviving dependents of deceased political authorities with rights to benefits and of retired political authorities are entitled to a lump sum benefit amounting to twice the monthly benefits or the monthly pension, respectively.

3. Operation of the scheme

Responsibility for the operation of this regulation, involving the calculation, award and payment of the benefits and pensions, rests with the Governor, on the recommendation of the Minister of Finance.

4. Financing of the benefits and the pensions

The amounts to be paid out in benefits and pensions are charged directly to the national budget. The Explanatory Memorandum of the Netherlands Antilles National Ordinance state that an expected sum of ANG120,000 for Sint Maarten must be paid out for pensions on an annual basis.

The burden of benefits and pensions on the budget is offset by income in the form of deductions from the remuneration of political authorities. These deductions are consistent with the deductions

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from the salaries of civil servants for similar provisions to those regulated in this draft (i.e. illness, old age and decease). The precise design of these deductions will take place through further rules.

The deductions payable by political authorities bear no direct relationship to the financing of the benefits and pensions. The payment of the deductions can therefore never be invoked as grounds for an entitlement to benefits or pensions. The deductions flow back to the national treasury.

5. Review and Appeal

The national ordinance contains no review or appeal procedure. Review and appeal take place in accordance with the rules of the National Ordinance concerning Administrative Justice.

6. Article by Article Section

Article 2

A political authority who is reappointed as a political authority after elections has no right to benefits. A choice has been made to take account of a total successive period of service as a political authority for the duration of the benefits. This means that there are also no rights if various positions are filled by a political authority simultaneously, and one of those positions is terminated while another continues.

The regulation concerning the lapse of pension rights provides for exceptional criminal situations with exceptional political consequences (see also Article 8(d)). The regulation is analogous to that for holders of political authority in the Netherlands.

Article 3

Persons serving as a political authority on several occasions, with or without interruption, are a regular occurrence. The positions may be the same or different. Pursuant to Article 8(c), the right to benefits ends when a new position as a political authority is accepted. In each position, new rights to benefits are then built up on the basis of this national ordinance.

In view of the uncertainty concerning the continuity of political office, its acceptance could mean that the person concerned could find themselves in a more detrimental position with regard to the duration of future benefits. For that reason, this Article provides that on acceptance of political office and in the situations referred to here, the benefit rights awarded are retained as follows.

For the duration of the benefits, earlier terms of office are taken into account if the interruption or interruptions do not jointly cover more than one sixth of the period to be taken into account. An interruption of e.g. six months has no consequences if the total period taken into account is more than six years. With a shorter period or a longer interruption, only the duration of the latest position is taken into account.

Article 4

The retaining pay regulation for civil servants of the Netherlands Antilles served as an example for the base and the amount of the benefits.

Only the income elements that can be regarded as remuneration for the performance of the political office serve as a basis for the benefits and the pension. Expenses allowances are not included, as it is assumed that incurring these expenses is related to the performance of the official duties.

The income of a political authority may arise in different forms, under different names. In order to determine what should be regarded as remuneration in cases of doubt, further rules may be imposed by national decree, containing general measures.

With a right to benefits following the performance of successive positions (Article 3), the base for the benefits is always the last-earned remuneration of the holder of political authority. Depending on the type of position and the associated remuneration, the last benefits awarded may be higher or lower than the previous benefits, naturally subject to any continuation of previous rights.

It is possible that a change in the remuneration of civil servants has a differentiated character or that supplements are paid out in fixed amounts. In these cases, and in cases in which the change

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in remuneration cannot automatically be expressed as an average percentage, further rules can be imposed by national decree, which are a balanced reflection of that change in remuneration.

Articles 5 and 6

This provision affords a former political authority a degree of guaranteed income in the event of disability following the end of the benefit period. A thorough medical examination must take place, however.

The benefits can be extended with benefits for incapacity due to illness or disability. The relevant former political authority must apply for this personally. A committee of medical experts determines the degree of disability for the right to continuation of benefits.

Every two years, towards the end of the term, the persistence of the disability will be examined at the request of the person concerned. If the person concerned fails to submit such a request, the benefits will be discontinued at the end of the two-year term.

Article 7

During the period of entitlement to benefits, all income is settled with the benefits. The term 'from or in connection with work' means that both income from active employment and income arising from former employment (benefits) are taken into account.

Income that the person concerned already had before dismissal from office and that is still present at that time is in principle exempted from settlement with the benefits. After all, this income was also enjoyed together with the remuneration for serving as a political authority. An exception to this exemption from settlement is made for income that commenced up to one year prior to the dismissal. It is assumed that this income was started with a view to the discontinuation of the political office. The income or higher income arising from activities that commenced before the dismissal is also not exempted from settlement.

Article 9

This provision is consistent with the provisions concerning death benefits currently contained in various legal status and pension schemes.

Article 12

Paragraph 1(a)

The time spent in all positions as a political authority is counted as years of service for the purpose of the determination of the pension. The time spent with an entitlement to benefits is also included in the years of service for the purpose of the pension, albeit only for half (paragraph 2). However, if the benefits are reduced through income from employment, it is assumed that pension rights are also built up in that activity. In order to avoid dual build-up of pension, the time with entitlement to benefits is not included for the purpose of the pension in that case.

Paragraph 1(b)

The calculation base for the determination of the pension is fixed for each of the (different) positions that the person concerned has held as a holder of political authority. Since the remuneration may differ for each position, so may the calculation base. The determination of the pension in such a case is explained under Article 13.

Paragraph 1(c)

The franchise is fixed on the date on which the right to a pension commences. This may be at the age of 60, but may also be later if the person concerned is serving as a political authority at that time.

Paragraph 1(d)

The pension base consists of the calculation base less the franchise. If the last dismissal from a position as a political authority does not directly precede the date on which the right to a pension arises – in most cases at the age of 60 – the 'old' pension base must be raised to the level of the remuneration applying on the retirement date (indexation). The calculation base is then adjusted, pursuant to the provisions of Article 14, to the general remuneration changes that have occurred since the last determination of the remuneration associated with that calculation base.

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Paragraph 2

See the explanation of paragraph 1(a).

Paragraph 3

If the person concerned has held positions of political authority in the same category on several occasions, a single pension base is fixed, derived from the calculation base for the remuneration prior to the last dismissal from that position.

Article 13

The calculation of the pension takes place by multiplying the number of years of service by 5% of the pension base. The maximum pension is set at 70%. The pension of a person who has held different positions as a political authority consists of a total of the pensions calculated for each of those positions. The reason for this is that the amount of the remuneration or payment for each of those positions differs. The calculation of a pension based solely on the last position held could be relatively high or relatively low, depending on the level of that position. For that reason, it is proposed that the calculation of the pension be based on the pension bases for those positions, each in proportion to the years of service in that position. This provides an accurate reflection of the total amount of time served as a political authority and the average income received.

Article 14

The adjustment of pensions that are already paying out is calculated on the basis of a general change in the remuneration of civil servants in connection with inflation-proofing and index-linking of this remuneration. It is possible that the change has a differentiated character or that supplements are paid out in fixed amounts. In such cases, and in the cases in which the change in remuneration cannot automatically be expressed as an average percentage, further rules can be laid down by national decree, that form a balanced reflection of the change in remuneration.

Article 14(2) means that reductions in remuneration are not reflected in the pensions, but that reductions are 'put on the tab' and are settled with increases that occur later as a result of increases in remuneration.

Articles 15 to 26 inclusive

These Articles are largely similar to the provisions concerning the surviving dependent's pensions in the National Ordinance concerning civil service pensions, which applied to civil servants of the Netherlands Antilles. Article 25 is consistent with Article 50 of the aforementioned national ordinance. It prescribes a proportional reduction in the pension amounts if the total of the surviving dependent's pension, special surviving dependent's pension and the orphans' pension exceeds the amount derived from those pensions, i.e. the notional personal pension of the deceased holder of political authority. This already occurs if there are more than two orphans in addition to a widow/widower.

Article 31

This order regulates the pensions of political authorities at the central level.

Articles 34 and 35

The authorisation to provide for the payment of benefits and pension means that the competent authority also monitors whether the relevant recipients of benefits and pensions still comply with the conditions for the regular payments. Particularly in the period in which the entitlement to benefits exists, monitoring is intensive. The operator must then monitor whether persons entitled to benefits receive income in addition to the benefits.

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