

DIRECTIVE NO. 4

Issued under the Pension Benefits Act, 1997, effective December 13, 2001

DATED at St. John's, Newfoundland the 16th day of December, 2002

**WINSTON MORRIS
Superintendent of Pensions**

Locked-In Retirement Account Requirements

1. In this Directive
 - (a) "LIRA" means a registered retirement savings arrangement known as a Locked-in Retirement Account, as defined in the Regulations, that meets the conditions of this Directive;
 - (b) "owner" means the member or former member of a pension plan who has made a transfer pursuant to section 40 of the Act to a LIRA and, unless otherwise stated, includes the principal beneficiary or former principal beneficiary of the member or former member if the principal beneficiary or former principal beneficiary is entitled to a pension benefit as a result of the death of the member or former member or as a result of marriage breakdown;
 - (c) "principal beneficiary" means the spouse of a member or former member, or where the member or former member has a cohabiting partner, the member or former member's cohabiting partner as defined in the Act.
2. A contract to establish a Locked-In Retirement Account for purpose of a transfer under section 40 of the Act shall include the following provisions:

- (a) all money transferred, including all investment earnings, shall be used to provide a pension benefit and shall not be withdrawn except,
 - (i) before maturity, to transfer the money to the pension fund of a registered pension plan;
 - (ii) before maturity, to transfer the money to another Locked-In Retirement Account;
 - (iii) to purchase a life annuity contract that is provided by a person authorized under the laws of Canada or a province to sell annuities as defined in the *Income Tax Act* (Canada) under an insurance contract that meets the requirements of this Directive and Directive No. 6, commencing not before the person who is to receive the pension benefit obtains the earlier of:
 - (A) age of 55 years, or
 - (B) the earliest date on which the former member is entitled to receive a pension benefit under a pension plan from which the money was transferred to the LIRA as a result of termination of employment or termination of the plan.
 - (iv) to transfer the money to a Life Income Fund that meets the requirements of Directive No. 5, or
 - (v) to transfer to a Locked-in Retirement Income Fund that meets the requirements of Directive No. 17.
- (b) all money transferred, plus interest, shall not be assigned, charged, anticipated or given as security except as permitted by section 37 of the Regulations and that any transaction purporting to assign, charge, anticipate or give the money transferred as security is void;
- (c) except as provided in Part VI of the Act, all money transferred, plus interest, shall not be commuted or surrendered during the lifetime of the member and that any transaction purporting to surrender or commute the money transferred is void;

- (d) all money shall be invested in a manner that complies with the rules of investment contained in the *Income Tax Act* (Canada) and will not be invested directly or indirectly in any mortgage in respect of which the mortgagor is the owner of the money or the parent, brother, sister or child of the owner of the money or the principal beneficiary of any of those persons;
- (e) if money is paid out contrary to the Act or this Directive, the underwriter will provide or ensure the provision of a pension benefit equal in value to the pension benefit that would have been provided had the money not been paid out;
- (f) the transferee shall not permit any subsequent transfer except
 - (i) where a transfer would be permitted under the Act, and
 - (ii) the subsequent transferee agrees to administer the amount transferred as a pension benefit in accordance with the Act;
- (g) the transferee shall advise in writing any subsequent transferee that the amount transferred must be administered as a pension benefit under the Act;
- (h) the pension benefit payable to a former member who has a principal beneficiary at the date the pension commences shall be a joint and survivor pension benefit with at least 60% continuing to be payable to the survivor for life after the death of either unless the principal beneficiary waives the entitlement in a form and manner set out in a form provided by the Superintendent;
- (i) on the death of a former member who has a principal beneficiary, the surviving principal beneficiary, or where there is no surviving principal beneficiary or the surviving principal beneficiary had waived entitlement in the form and manner required by the Superintendent, a designated beneficiary, or where there is no designated beneficiary, the estate of the member or former member is entitled to a lump sum payment of the full value of the Locked-In Retirement Account;
- (j) where the owner is not a former member, the full value of the contract shall be paid to the designated beneficiary or, where there is no beneficiary, to the owner's estate;

- (k) money that is not locked in shall not be transferred to or held under a contract, other than a life annuity contract, that holds, or will hold locked-in money, unless the locked-in money is to be held in a separate account; and
 - (l) all contracts are subject, with any necessary modifications, to the division of pension benefits on marriage breakdown provisions in Part VI of the Act.
3. Notwithstanding section 2, the contract may provide for the withdrawal of money as a lump sum or series of payments if a medical practitioner certifies that due to mental or physical disability the life expectancy of the owner is likely to be shortened considerably, but where the owner is a former member of a pension plan such payment may only be made if the principal beneficiary of the former member has waived the joint and survivor pension entitlement in the form and manner required by the Superintendent.
 4. Notwithstanding section 2, the contract shall provide for a lump sum payment equal to the value of the entire contract on application by the owner to the financial institution for payment if, at the time the owner signs the application, the following conditions are met,
 - a) the value of all assets in all LIFs, LRIFs and LIRAs owned by him or her and governed by Newfoundland pension benefits legislation is less than 10 percent of the year's maximum pensionable earnings under the Canada Pension Plan for that calendar year; or
 - b)
 - i) the owner has reached the earlier of age 55 or the earliest date on which the owner would have been entitled to receive a pension benefit under the plan from which money was transferred, and
 - ii) the value of the owner's assets in all LIFs, LRIFs and LIRAs governed by Newfoundland pension benefits legislation is less than 40 percent of the year's maximum pensionable earnings under the Canada Pension Plan for that calendar year.
 5. An application for payment under section 4 shall be
 - a) on a form approved by the Superintendent, and

- b) accompanied by a waiver by the principal beneficiary of a former member of a pension plan of joint and survivor pension entitlement, in the form and manner required by the Superintendent.
6. The contract must comply with the conditions of registration under the *Income Tax Act* (Canada) and once registered, the contract shall remain registered.
 7. Where the commuted value of a pension benefit which was transferred to a Locked-In Retirement Account was determined in a manner that did not differentiate on the basis of sex, the immediate or deferred life annuity purchased with the funds in the arrangement shall not differentiate on the basis of the sex of the recipient.
 8. Where a Locked-In Retirement Account results from the transfer of the commuted value of a pension benefit, the arrangement shall contain a statement as to whether the commuted value was determined on a basis that differentiated on the basis of sex.
 9. This Directive replaces Directive No. 4 issued July 1, 2000 and shall take effect on December 13, 2001 with the exception of section 4 which shall apply to Locked-In Retirement Account contracts made before and after the effective date of this Directive.