

Occupational Retirement Schemes (Amendment) Bill 2019

**Draft Committee Stage Amendments
Proposed by the Administration**

As discussed at the Bills Committee meeting on 17 May 2019, the Administration proposed to make a number of textual and technical Committee Stage Amendments to the Occupational Retirement Schemes (Amendment) Bill 2019.

Members are invited to examine the Administration's proposal in Annex A. The marked-up version and the reasons for these amendments are set out in Annex B.

**Financial Services and the Treasury Bureau
June 2019**

Occupational Retirement Schemes (Amendment) Bill 2019

Committee Stage

Amendments to be moved by the Secretary for Financial Services and the Treasury

<u>Clause</u>	<u>Amendment Proposed</u>
4	In the proposed section 2B(2), by deleting “period” and substituting “continuous period”.
4	In the proposed section 2B(2), in the English text, by deleting “the business or” (wherever appearing) and substituting “the”.
10(2)	In the proposed section 10(1)(ab), in the Chinese text, by deleting “(a)” and substituting “(i)”.
10(2)	In the proposed section 10(1)(ab), in the Chinese text, by deleting “(b)” and substituting “(ii)”.
25	In the proposed section 33A(1), in the definition of <i>reportable event</i> , by adding before paragraph (a)— “(aa) a condition imposed under section 18(4A), or amended under section 18(4B), is not complied with for the scheme;”.
27	By adding before subclause (1)— “(1A) Before section 42(a)— Add “(aa) a condition imposed under section 18(4A), or amended under section 18(4B), in respect of the scheme is not complied with;”.”.
30	By deleting subclause (1) and substituting— “(1) Section 45(1)(d)— Repeal subparagraph (i)

Substitute

- “(i) a condition imposed under section 18(4A), or amended under section 18(4B), in respect of the scheme is not complied with;
- (ia) any requirement of section 20 is not complied with;
- (ib) any requirement of section 20A(1), (2) or (3) is not complied with;”.’”.

44(6)

In the proposed section 67(6A), by deleting “or (gab)”.

**Draft Committee Stage Amendments Proposed by the Administration
Marked-up Version of the Relevant Provisions**

**Sections 42 and 45(1), and proposed new sections 2B, 10(1)(ab), 33A and 67(6A)
of the Occupational Retirement Schemes Ordinance (Cap. 426)**

(Note:

Revisions made in blue are additions/amendments proposed by the Occupational Retirement Schemes (Amendment) Bill 2019 (the Bill).

Revisions made in red are amendments proposed by the Administration draft Committee Stage Amendments.)

Section		Provisions	Reasons
Bill	Cap. 426		
4	2B	<p>2B. Interpretation of employment</p> <p>(1) This section applies for the purposes of the definition of <i>occupational retirement scheme</i> in section 2(1) and of section 3.</p> <p>(2) If a person provides service on a full-time basis to a business or other organization in Hong Kong for a period continuous period of more than 4 years in a way and subject to a degree of control that the person may reasonably be regarded as an integral part of the business or organization—</p> <p>(a) the provision of service is to be regarded as employment;</p> <p>(b) the proprietor of the business or organization is to be regarded as an employer whether or not there is a contract of employment or service between the person and the proprietor; and</p> <p>(c) the person providing service is to be regarded as an employee of, or employed by, the proprietor of the business or organization under a contract of employment or service.</p> <p>(3) An employer does not include the government of a country, territory or place outside Hong Kong or any agency or undertaking of or by such a government that is not operated for the purpose of gain.</p>	<p>1. Deleting “period” and substituting “continuous period” – To make it clear that the requirement refers to a continuous period of more than 4 years.</p> <p>2. Removal of “business or” (English text only) – Textual amendments</p>

Section		Provisions	Reasons
Bill	Cap. 426		
10(2)	10(1)(ab)	<p>(ab) 處長可藉書面通知，規定某人在該通知所指明的限期內，提供關乎該計劃的資料或文件(包括就處長所指明的事宜提供的法律意見或核數師證明書)，而該等資料或文件是為使處長能夠決定下述事宜而合理需要的 —</p> <p>(a)(i) 該計劃的條款是否將該計劃的成員限於合資格的人；及</p> <p>(b)(ii) 該計劃的成員是否全屬合資格的人；</p>	<p>Formatting amendments (Chinese text only)</p>
25	33A	<p>33A.Registrar to be notified of certain events</p> <p>(1) In this section—</p> <p><i>reportable event</i> (須申報事件) means, in relation to a registered scheme, the occurrence of any of the following—</p> <p>(aa) a condition imposed under section 18(4A), or amended under section 18(4B), is not complied with for the scheme;</p> <p>(a) any requirement of section 20 is not complied with for the scheme;</p> <p>(b) any requirement of section 20A(1), (2) or (3) is not complied with for the scheme;</p> <p>(c) any requirement of section 21 is not complied with for the scheme;</p> <p>(d) any requirement of section 24 is not complied with for the scheme;</p> <p>(e) any requirement of section 25 is not complied with for the scheme;</p> <p>(f) a requirement under section 26(1) is not complied with for the scheme;</p> <p>(g) any requirement of section 27 is not complied with for the scheme;</p> <p>(h) the requirement of section 70B is not complied with for the scheme;</p> <p>(i) any term of the scheme allows a person other than an eligible person to be a member of the scheme;</p> <p>(j) not all members of the scheme are eligible persons;</p> <p><i>working day</i> (工作日) means a day that is not—</p> <p>(a) a general holiday;</p> <p>(b) a Saturday; or</p>	<p>To add the non-compliance of a registration condition as one of the reportable events that the relevant employer or administrator of a registered scheme must report to the Registrar.</p>

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		<p>(c) a black rainstorm warning day or gale warning day as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1).</p> <p>(2) If the relevant employer or administrator of a registered scheme becomes aware of a reportable event that occurs on or after the date on which the Occupational Retirement Schemes (Amendment) Ordinance 2019 (of 2019) comes into operation, the relevant employer or administrator must—</p> <p>(a) not later than the seventh working day after becoming aware of the event, give written notice to the Registrar setting out the particulars of the event;</p> <p>(b) keep a record of the particulars of the event;</p> <p>(c) permit the Registrar to inspect the record at any reasonable time during ordinary business hours; and</p> <p>(d) give written notice to the Registrar setting out such further or better particulars of the event as the Registrar requires as soon as practicable after the Registrar makes the requirement.</p> <p>(3) A person who, without reasonable excuse, contravenes subsection (2) commits an offence and is liable on summary conviction to a fine at level 6.</p>	
27	42	<p>42. Grounds for cancellation of registration</p> <p>Where in relation to a registered scheme it appears to the Registrar that—</p> <p>(aa) a condition imposed under section 18(4A), or amended under section 18(4B), in respect of the scheme is not complied with;</p> <p>(a) any requirement of section 20 is not complied with;</p> <p>(ab) any requirement of section 20A(1), (2) or (3) is not complied with;</p> <p>(b) the requirement of section 21 is not complied with;</p> <p>(c) any requirement of section 24 is not complied with;</p> <p>(d) any requirement under section 26(1) is not complied with;</p> <p>(e) any requirement of under section 27(7) is not complied with;</p> <p>(f) the requirement of section 28(3) is not complied with;</p> <p>(fa) a notice has been given under section 29(1);</p>	To mirror the list of grounds based on which the Registrar may withdraw the exemption certificate of an exempted scheme, by adding the non-compliance of a registration condition as one of the grounds based on which the Registrar may cancel the registration of a scheme.

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		<ul style="list-style-type: none"> (g) any requirement of section 30(1) or (2) is not complied with; (h) the requirement of section 31 is not complied with; (i) any requirement under section 32(1) is not complied with; (j) any requirement under section 33(1) or (1A) is not complied with; (k) the requirement of section 37(1) is not complied with; (l) a notice has been given under section 37(2) and no application was made under that section as regards the scheme or that an application made under that section is refused; (m) a notice has been given under section 39(1) and no undertaking was given to the Registrar in accordance with section 39(3); (n) a notice has been given under section 39(2) and no application was made under that section as regards the scheme;or (na) any requirement of section 67(2)(gab) is not complied with; (nb) the requirement of section 70B is not complied with; (o) on information available to him the cancellation of the registration of the scheme will be in the interests of the members of the scheme as a whole;; (p) any term of the scheme allows a person other than an eligible person to be a member of the scheme; (q) not all members of the scheme are eligible persons; (r) the scheme is not, or has ceased to be, an occupational retirement scheme; or (s) the cancellation of the registration of the scheme is in the public interest, <p>the Registrar may issue a proposal to cancel registration of the scheme.</p>	
30	45(1)	<p>45. Cancellation of registration</p> <p>(1) Where—</p> <ul style="list-style-type: none"> (a) a notice of a proposed cancellation of the registration of a registered scheme has been given in accordance with section 43(1); (b) the period during which representations or objections may be made has expired; 	Same as above

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		<p>(c) not less than 2 months have expired since the date of such notice; and</p> <p>(d) the Registrar, having considered the representations or objections (if any) made as regards the proposed cancellation, is satisfied that—</p> <p>(i) a condition imposed under section 18(4A), or amended under section 18(4B), in respect of the scheme is not complied with;</p> <p>(i ia) any a requirement of section 20 is not complied with;</p> <p>(ia ib) any requirement of section 20A(1), (2) or (3) is not complied with;</p> <p>(ii) the requirement of section 21 is not complied with;</p> <p>(iii) any requirement of section 24 has not been complied with;</p> <p>(iv) a requirement under section 26(1) is not complied with;</p> <p>(v) any a requirement of under section 27(7) is not complied with;</p> <p>(vi) the requirement of section 28(3) is not complied with;</p> <p>(via) a notice has been given under section 29(1);</p> <p>(vii) any a requirement of section 30(1) or (2) is not complied with</p> <p>(viii) the requirement of section 31 is not complied with;</p> <p>(ix) any requirement under section 32(1) is not complied with;</p> <p>(x) any a requirement under section 33(1) or (1A) is not complied with;</p> <p>(xi) the requirement of section 37(1) is not complied with;</p> <p>(xii) a notice has been given under section 37(2) and no application was made under that section as regards the scheme or that an application made under that section is refused;</p> <p>(xiii) a notice has been given under section 39(1) and no undertaking was given to the Registrar in accordance with section 39(3);</p> <p>(xiv) a notice has been given under section 39(2) and no application was made under that section as regards the scheme; or</p> <p>(xiva) any requirement of section 67(2)(gab) is not complied with;</p> <p>(xivb) the requirement of section 70B is not complied with;</p> <p>(xv) the cancellation of the registration of the scheme will be in the interests of the members of the scheme as a whole;</p>	

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		<p>(xvi) any term of the scheme allows a person other than an eligible person to be a member of the scheme;</p> <p>(xvii) not all members of the scheme are eligible persons;</p> <p>(xviii) the scheme is not, or has ceased to be, an occupational retirement scheme; or</p> <p>(xix) the cancellation of the registration of the scheme is in the public interest, the Registrar may cancel the registration of the scheme.</p>	
44(6)	67(6A)	A representative employer who without reasonable excuse fails to give the Registrar an annual return, a written statement or documentary evidence as required under subsection (2)(ga) or (gab) commits an offence and is liable on summary conviction to a fine at level 3.	Technical amendment to standardise the practice with respect to non-group registered schemes with group registered schemes by removing the consequences for non-compliance with the newly added requirement on the submission of written statement.