

LAWS OF KENYA

THE PENSIONS ACT

CHAPTER 189

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CHAPTER 189

THE PENSIONS ACT

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SCHEDULES.

CHAPTER 189

THE PENSIONS ACT

Commencement: Section 17–8th May, 1942

Remainder—1st January, 1946

An Act of Parliament to provide for the grant and regulating of pensions, gratuities and other allowances in respect of the public service of officers under the Government of Kenya.

31 of 1950,
 54 of 1951,
 45 of 1954,
 65 of 1954,
 39 of 1956,
 43 of 1958,
 21 of 1961,
 26 of 1962,
 13 of 1963,
 10 of 1965,
 32 of 1966,
 49 of 1968,
 10 of 1979,
 G.N. 844/1953,
 G.N. 241/1955,
 G.N. 1683/1955,
 L.N. 112/1956,
 L.N. 397/1956,
 L.N. 560/1956,
 L.N. 554/1958,
 L.N. 173/1960,
 L.N. 694/1961,
 L.N. 241/1963,
 L.N. 687/1963,
 L.N. 731/1963,
 L.N. 77/1964,
 L.N. 261/1964,
 L.N. 86/1966,
 L.N. 150/1966,
 L.N. 271/1968,
 L.N. 203/1969,
 L.N. 89/1978,
 13 of 1980,
 L.N. 39/1982,
 5 of 1983,
 20 of 1985,
 7 of 1990,
 L.N. 487/1994,
 4 of 1999,
 6 of 2003,
 9 of 2007.

1. This Act may be cited as the Pensions Act.

Short title.

Interpretation.

54 of 1951, s. 2,

43 of 1958, s. 2,

26 of 1962, s. 2,

13 of 1963, s. 2,

10 of 1965, s. 2,

10 of 1979, s. 2,

12 of 1950.

2. (1) In this Act, unless the context otherwise requires—

“African District Council service” means service before the 30th April, 1963 under an African District Council established under the African District Councils Ordinance, 1950 (now repealed);

“General Fund Services” means services which were being administered by the East African Community on behalf of the Republic of Kenya, the United Republic of Tanzania and the Sovereign State of Uganda under the provisions of Article 43 (2) of the Treaty for East African Co-operation, as listed in the Sixth Schedule to this Act;

Cap. 265.

“local authority service” means service on or after the 30th April, 1963 under a local authority established or deemed to have been established under the Local Government Act;

“other public service” means public service not under the Government;

“Oversea Superannuation Scheme” means the United Kingdom scheme to establish a fund to provide service pensions and gratuities and pensions to dependants on a contributory basis for overseas research and allied services;

“pensionable emoluments” means—

(a) in respect of service under the Government after the 31st December, 1953, includes salary, inducement and overseas addition to salary and personal allowance, but does not include duty allowance, house allowance, entertainment allowance or any other emoluments whatever;

(b) in respect of service under the Government between the 1st January, 1946 and the 31st December, 1953, includes salary and personal allowance, but does not include duty allowance, house allowance, entertainment allowance or any other emoluments whatever;

(c) for the purpose of calculating the aggregate pensionable emoluments of officers in respect of service under the Government before the 1st January, 1946, means—

(i) in the case of an officer who before the 1st January, 1946 held a pensionable office in which he had been confirmed, the emoluments which

were pensionable under the European Officers' Pensions Ordinance or the Non-European Officers' Pensions Ordinance (both now repealed), as the case may be; and

Cap. 66. (1948).

Cap 67. (1948).

(ii) in the case of an officer who before the 1st January, 1946 held a non-pensionable office or a pensionable office in which he had not been confirmed—

(a) the emoluments of the office which would have been pensionable emoluments under the European Officers' Pensions Ordinance or the Non-European Officers' Pensions Ordinance, as the case may be, if the office had been a pensionable office and the officer had been confirmed therein;

(b) if the officer does not come within the provisions of paragraph (a) of this subparagraph, the salary of the officer together with any house allowance for which he may have been eligible under the terms and conditions of his appointment;

(d) in respect of other public service, means emoluments which count for pension in accordance with the law or regulations in force in such service;

“pensionable office” means—

(a) in respect of an officer's service under the Government, an office—

(i) to which he has been appointed (on probation or otherwise) by the authority having power for the time being to make appointments to the service of the Government on terms which include eligibility for the grant of a pension under this Act or under any Act repealed by this Act; and

(ii) which he has not ceased to hold on those terms;

(b) in respect of other public service, an office which is for the time being a pensionable office under the law or regulations in force in that service;

“Pensions Regulations” means the regulations contained in the First Schedule to this Act;

“personal allowance” means a special addition to salary granted personally to the holder for the time being of the office, and which is specifically stated to be pensionable;

“public service” means—

- (a) service in a civil capacity under the Government or under the government of any other country or territory in the Commonwealth;
- (b) service under the High Commission, the Organization, the Community, the East African Railways and Harbours Administration, the East African Posts and Telecommunications Administration, the East African Railways Corporation, the East African Harbours Corporation, the East African Posts and Telecommunications Corporation, the Kenya Posts and Telecommunications Corporation, the Kenya Railways Corporation or the Kenya Ports Authority;
- (c) service which is pensionable—
 - (i) under the Oversea Superannuation Scheme;
 - (ii) under any Acts relating to the superannuation of teachers in the United Kingdom;
 - (iii) under a local authority in the United Kingdom;
or
 - (iv) under the National Health Service of the United Kingdom;
- (d) any other service that the President has determined to be public service for the purposes of this Act;
- (e) except for the purposes of computation of a pension or gratuity and of section 9 of this Act, service in respect of which a pension may be granted under the Governors’ Pensions Act, 1957 of the United Kingdom;
- (f) service as the holder of the office of President, Vice-President, Justice of Appeal, Registrar, officer or servant of the Court of Appeal for East Africa; or
- (g) service in the service of the Interim Commissioner for

the West Indies;

“salary” means the salary attached to a pensionable office or, where provision is made for taking service in a non-pensionable office into account as pensionable service, the salary attached to that office;

“service under the Community” does not include service in the service of the East African Airways Corporation or of the East African Development Bank;

“service of the Government” or “service under the Government” means public service in a civil capacity in the establishment of the Government or, at any time before the 12th December, 1964, of a Region, and also includes—

- (a) in the case of an officer who has served as a civilian employee of the East African Land Forces Organization and was either transferred from that service to the service of the Government of Kenya, Uganda or Tanganyika or the High Commission or secured an appointment with any one of those Governments or the High Commission, in either case without any break in service, his service with the East African Land Forces Organization;
- (b) in the case of the service prior to the 1st July, 1977 of a former Community employee who was on the 1st July, 1977 a Kenya citizen and who had rendered pensionable service in the General Fund Services, such service; and
- (c) such service in the General Fund Services of such former Community employees who do not come within paragraph (b) above as the Minister may, from time to time, by order declare to be service under the Government;

“wife” includes, in the case of an officer under whose religion or tribal custom polygamy is lawful, any person to whom the officer is lawfully married in accordance with the tenets of that religion or tribal custom; and in any such case the amount of any pension, gratuity or other allowance for which a wife is eligible under this Act shall be divided equally among all such wives during the period in which there is more than one wife eligible therefor; and “widow” shall be construed accordingly.

(2) For the avoidance of doubt, it is declared that where an officer has been confirmed in a pensionable office and is thereafter appointed to another pensionable office then, unless the terms of that appointment otherwise require, the last mentioned office is, for the purposes of this

Act, an office in which he has been confirmed.

(3) Where it appears to the President that there is no satisfactory proof of the correct age of an officer or of any child, the President may, upon such evidence as he may think fit, presume the age of the officer or of the child, and that presumed age shall be taken to be the correct age of the officer or of the child for the purposes of this Act.

Power to grant pensions.
39 of 1956, s. 5(2),
L.N. 397/1956,
L.N. 173/1960,
L.N. 77/1964.

3. (1) Pension, gratuities and other allowances may be granted by the Minister*, in accordance with the Pensions Regulations, to officers who have been in the service of the Government.

(2) The Pensions Regulations may be amended by regulations made by the President.

(3) Whenever the President is satisfied that it is equitable that any regulations made under this section should have retrospective effect in order to confer a benefit upon or remove a disability attaching to any person, they may be given retrospective effect for that purpose:

Provided that no such regulations shall have retrospective effect unless they have received the prior approval of the National Assembly signified by resolution.

(4) All regulations made under this section shall have the same force and effect as if they were contained in the First Schedule to this Act.

(5) Any pension or gratuity granted under this Act shall be computed in accordance with subsections (1), (2) and (3) of section 112 of the Constitution.

Benefits charged on Consolidated Fund.
L.N. 77/1964.

4. All pensions, gratuities or other allowances granted under this Act shall be a charge on the Consolidated Fund.

Pensions as of right.
4 of 1999, s. 54.

5. (1) Every officer shall have an absolute right to pension and gratuity.

(2) The right conferred under subsection (1) shall not apply in respect of compensation for past services, nor shall anything in this Act affect the right of the Government to dismiss any officer at any time and without compensation.

(3) Where an officer has completed five years of pensionable service, the benefits accruing to the officer under this Act shall vest in that officer and shall become payable in such manner and at such times as may be determined under this Act.

*Power delegated to the principal Pensions Officer of the Pensions

Division of the Treasury, by L.N. 317/1974.

6. (1) No pension, gratuity or other allowance shall be granted under this Act to any officer except on his retirement from the public service in one of the following cases—

(a) (i) in the case of a superscale officer, who between the 13th August, 1968 and 30th June, 1971, or in the case of an officer serving in Job Group L or above or a teacher in a comparable salary scale, who on or between the 1st July, 1971 and the 13th August, 1985, completes not less than ten years public service or attains the age of forty-five within the period commencing on the 13th August, 1968 and ending on the 13th August, 1985;

(ii) in the case of an officer serving in Job Group L or above or a teacher in a comparable salary scale who on or between the 14th August, 1985 and the 13th August, 1990, completes not less than ten years service and, in addition, attains the age of forty-five years within the period commencing on the 14th August, 1985 and ending on the 13th August, 1990:

Provided that the application of the officer to retire from the public service shall be submitted and approved in accordance with the procedure outlined in Personnel Circular No. 19 of 13th August, 1968 as amended or replaced from time to time;

(iii) Where the officer completes not less than five years of pensionable service;

(iv) in any other case not falling within the succeeding paragraphs of this subsection, on or after attaining the age of fifty years.

(b) in the case of transfer to other public service, in circumstances in which he is permitted by law or regulations of the service in which he is last employed to retire on pension or gratuity:

Provided that, if his service in that other public service is superannuated under the Egerton Agricultural College Retirement Benefits Scheme, which came into operation on 1st July, 1966, the Federated Superannuation System for Universities, or a similar insurance scheme, he has retired on one of the grounds mentioned in paragraphs (a), (c), (d), (e) and (f) of this section;

Circumstances in which pensions may be granted.

54 of 1951, s. 3,
45 of 1954, s. 2,
65 of 1954, s. 2,
43 of 1958, s. 3,
26 of 1962, s. 4,
10 of 1965, s. 2,
L.N. 77/1964,
10 of 1979, s. 3,
5 of 1983, s. 2,
20 of 1985, s. 2,
4 of 1999, s. 55.

- (c) on the abolition of his office;
- (d) on compulsory retirement for the purpose of facilitating improvement in the organization of the department to which he belongs, by which greater efficiency or economy may be effected;
- (e) on medical evidence, to the satisfaction of the President, that he is incapable by reason of any infirmity of mind or body of discharging the duties of his office and that the infirmity is likely to be permanent;
- (f) in the case of service under the Government, on termination of employment in the public interest as provided in this Act, or, in the case of transfer to other public service, on termination of employment in the public interest under a corresponding provision in any law or regulation relating to the grant of pensions in respect of public service;
- (g) on retirement in circumstances not mentioned in the preceding paragraphs of this section, rendering him eligible for a pension under the Governors' Pensions Act, 1957 of the United Kingdom or under any Act wholly repealed by that Act;
- (h) in the case of—
 - (i) police officers who are subordinate officers;
 - (ii) prison officers below the rank of chief warden, chief warden artisan or chief warden clerk;
 - (iii) administration police officers of or below the rank of senior sergeant; and
 - (iv) forest guards grades I, II, and III,

5 & 6 Eliz. 2,
c. 62.

on the completion in the public service of a period exceeding twelve years but not exceeding twenty years where the officer gives at least one month's notice in writing of his intention to retire:

Provided that—

- (i) a gratuity may be granted to a female officer, in accordance with this Act, who resigns on or with a view

to marriage or is required to retire on account of her marriage, notwithstanding that she is not otherwise eligible under this section for the grant of any pension, gratuity or other allowance;

- (ii) a pension, gratuity or other allowance may be granted in accordance with this Act to an officer on his retirement on or after the 1st January, 1946 from African District Council service or on his retirement on or after the 30th April, 1963 from local authority service to which he has been transferred, notwithstanding that there is no provision in that service for the retirement of the officer on pension or gratuity, if the circumstances in which the officer so retires are circumstances in which, had he remained in the service of the Government, he would have been eligible for a pension, gratuity or other allowance under this Act.

(2) For the purposes of paragraph (a) (i) of subsection (1)–

“Job Group L” means the salary scale of that designation set out in Personnel Circular No. 6 of 26th May, 1971 and any amendments or additions thereto;

“superscale officer” means an officer who was remunerated under any of the salary super scales set out in the Establishment Circular No. 18 of 28th March, 1961 and any amendments or additions thereto.

7. Where an officer eligible for any period of leave retires from the public service on the abolition of his office, he shall be deemed to continue in the public service in that office until the expiration of a period equal to that period of leave, or until his death, whichever occurs first, and for the purposes of computing pension, gratuity or other allowance under this Act the effective date of his retirement shall be the date on which the period of leave expires.

Retirement on abolition of office. 13 of 1963, s. 4.

8. Where an officer’s service is terminated on the ground that, having regard to the conditions of the public service, the usefulness of the officer thereto and all the other circumstances of the case, termination is desirable in the public interest, and a pension, gratuity or other allowance cannot otherwise be granted to him under this Act, the President may grant a pension, gratuity or other allowance, not exceeding in amount that for which the officer would be eligible if he retired from the public service in the circumstances described in paragraph (e) of section 6.

Termination of service in public interest. 45 of 1954, s. 3, L.N. 77/1964.

Compulsory retirement.
65 of 1954, s. 3,
43 of 1958, s. 4,
26 of 1962, s. 6,
5 of 1983, s. 3.

9. (1) The President may require an officer to retire from the service of the Government—

- (a) (i) }
(ii) } (Deleted by 5 of 1983, s.3);

(iii) in the case of an officer referred to in section 6 (h), on the completion of twelve, sixteen or twenty years' public service as such an officer, provided he is, within a period of three months next before or after the completion of the period of twelve, sixteen or twenty years' public service, as the case may be, notified in writing of the intention to require him to retire;

(iv) in any other case, at any time after the officer attains the age of fifty years;

(b) in the case of a female officer, whether or not paragraph (a) applies, on account of her marriage.

(2) This section shall not apply to a judge.

Minimum and maximum pensions.
26 of 1962, s. 7,
L.N. 77/1964,
49 of 1968, s. 2,
7 of 1990,
9 of 2007, s.31.

10. A pension granted to an officer under this Act shall not be less than two thousand shillings or such other amount as may be specified by the President from time to time, but shall not exceed the full pensionable emoluments drawn by the officer at the time of his retirement.

Deferment of Pension.

10A. (1) Where an officer retires from the public service before attaining the age of fifty years, the payment of the pension benefits granted at the time of retirement shall be deferred until such officer attains the age of fifty years, except in the following cases—

- (a) where the officer retires before completion of ten years of service;
- (b) where an officer retires under section 6 (1)(e) or (h),
or
- (c) where sections 17, 18, or 19 apply.

(3) The pension payable where any deferral of payment arises under subsection (1) shall be estimated based on projected pensionable emoluments from the date of retirement until the officer attains the age of fifty years, according to such procedures as may be specified

in regulations.

11. (1) Every pension granted under this Act shall be subject to the condition that, unless or until the officer attains the age of fifty years, he may, if physically fit for service, be called upon to accept an office in the service of the Government not less in value than the office which he held at the date of his retirement; and, where a pensioner so called upon declines to accept that office, the payment of his pension may be suspended until he has attained the age of fifty years.

Liability of pensioner to be called upon to take further employment. 26 of 1962, s. 8, L.N. 77/1964.

(2) Subsection (1) shall not apply in any case where the President, being of opinion that the officer is not qualified for other employment in the public service or that there is no reason to expect that he can be shortly re-employed therein, otherwise directs.

12. Where an officer to whom a pension has been granted under this Act is appointed to another office in the public service, the payment of his pension, or any part thereof, may, with his consent, if the President thinks fit, be suspended during the period of his re-employment.

Suspension of pension on re-employment. 26 of 1962, s. 9.

13. A pension, gratuity or other allowance granted under this Act shall not be assignable or transferable except for the purposes of satisfying—

Pensions, etc., not assignable.

(a) a debt due to the Government; or

(b) an order of any court for the payment of periodical sums of money towards the maintenance of the wife, or former wife, or minor child, of the officer to whom the pension, gratuity or other allowance has been granted,

and shall not be liable to be attached, sequestered or levied upon for or in respect of any debt or claim whatever except a debt due to the Government.

14. (1) Where before the 1st July, 1999 any person to whom a pension or other allowance has been granted under this Act is adjudicated bankrupt or is declared insolvent by judgment of a court, then the pension or allowance shall forthwith cease.

Pensions, etc., to cease on bankruptcy. L.N. 77/1964, 4 of 1999, s. 57.

(2) Where any officer is adjudicated bankrupt or declared insolvent by judgment of a court as provided in subsection (1) either—

(a) after retirement in circumstances in which he is eligible for pension, gratuity or other allowance under this Act, but before the pension, gratuity or other allowance is granted; or

- (b) before such retirement, and he has not obtained his discharge from bankruptcy or insolvency at the date of retirement,

then, in the former case, any pension or other allowance eventually granted to him shall cease as from the date of adjudication or declaration, as the case may be, and in the latter case the pension or other allowance may be granted, but shall cease forthwith and not become payable, and in either case the gratuity may be granted but shall not be paid to him.

(3) Where a pension or other allowance ceases, or where any gratuity is not paid, by reason of this section, the President may from time to time during the remainder of the person's life, or during such shorter period or periods, either continuous or discontinuous, as the President thinks fit, direct all or any part of the moneys to which that person would have been entitled by way of pension, gratuity or other allowance, had he not become bankrupt or insolvent, to be paid to, or applied for the maintenance or benefit of, all or any, to the exclusion of the other or others, of the following, that is to say, such person and his wife, child or children, or such other dependants as the President may determine, in such proportion and manner as the President thinks proper; and the moneys shall be paid or applied accordingly.

(4) Moneys applied for the discharge of debts of the person whose pension or other allowance has ceased, or whose gratuity has not been paid, by reason of this section, shall, for the purposes of this section, be regarded as applied for his benefit.

(5) Where a person whose pension or other allowance has ceased, or whose gratuity has not been paid, by reason of this section, obtains his discharge from bankruptcy or insolvency, the President may direct that the pension or other allowance shall be restored and the gratuity, or so much thereof (if any) as remains after deducting any payments made under subsection (3), paid as from the date of the discharge or any later date; and the pension or other allowance shall be restored, and the gratuity or remainder thereof (if any) paid, accordingly.

Pensions, etc., may cease on conviction. L.N. 77/1964, 4 of 1999, s. 58.

15. (1) Where before the 1st July 1999 any person to whom a pension or other allowance has been granted under this Act is sentenced to a term of imprisonment by a competent court for any offence, that pension or allowance shall, if the President so directs, cease as from such date as the President determines.

(2) Where before the 1st July 1999 any officer is sentenced to a term of imprisonment by a court for any offence after retirement in circumstances in which he is eligible for pension, gratuity or other allowance under this Act but before the pension, gratuity or other

allowance is granted, then—

(a) subsection (1) shall apply as respects any pension or other allowance which may be granted to him; and

(b) the President may direct that any gratuity which may be granted to him shall not be paid.

(3) Where a pension or other allowance ceases, or a gratuity is not paid, by reason of this section, the President may direct all or any part of the moneys to which that person would have been entitled by way of pension, gratuity or other allowance, but for this section, to be paid or applied in the same manner in all respects as is provided in section 13; and the moneys shall be paid or applied accordingly.

(4) Where any person whose pension or other allowance ceases, or whose gratuity is not paid, by reason of this section, after conviction at any time receives a free pardon, the pension or allowance shall be restored with retrospective effect, or his gratuity shall be paid; but in determining whether arrears of the pension or allowance are payable to that person, and in computing the amount thereof and the amount of any gratuity, account shall be taken of all moneys paid or applied under subsection (3).

16. Where any person to whom a pension or other allowance has been granted under this Act, otherwise than under section 19, before the 1st July 1999 becomes either a director of any company the principal part of whose business is in any way directly concerned with Kenya, or an officer or servant employed in Kenya by any such company, without the prior permission in writing of the President, that pension or allowance shall cease if the President so directs:

Pensions, etc., on accepting certain appointments.
4 of 1999, s. 59.

Provided that the President may, on being satisfied that the person in respect of whose pension or other allowance any such direction has been given has ceased to be a director of the company, or to be employed as an officer or servant of the company in Kenya, as the case may be, give directions for the restoration of the pension or allowance, with retrospective effect, if he thinks fit, to such a date as he may specify; and the pension or other allowance shall be restored accordingly.

16A. A person to whom a pension or other allowance is payable under this Act shall be entitled to be retained in the service until the payment in full of the gratuity payable to him consequent upon the exercise by him of his option to receive such gratuity under the provisions of this Act.

Pensioner to be retained in service pending payment of gratuity.
6 of 2003, s. 2.

Pensions to dependants on death of officer in service or on retirement. 10 of 1979, s. 4.

- 17. (1)** Subject to the other provisions of this Act—
- (a) where an officer who has had ten or more years' service dies after he has retired from the service of the Government having been granted a pension under this Act, there shall continue to be paid a dependants' pension, on the terms and subject to the conditions set out in subsection (2), to the widow or the children of the officer for a period of five years next following the date of the officer's death, at the rate of the officer's pension at the date of his death;
 - (b) where a pensionable officer who has served the Government for ten or more years dies while in the service, the President may grant to the widow or the children of the officer, in addition to any grant made under section 18, a dependants' pension, on the terms and subject to the conditions set out in subsection (2), for a period of five years next following the date of the officer's death at a rate not exceeding the amount of any pension that could have been granted to the officer if he had retired on medical grounds on the date of his death:

Provided that in the event of a widow to whom a dependants' pension has been granted under the provisions of this subsection dying or otherwise ceasing to be entitled to the pension, the child or children who are entitled, in accordance with the terms and conditions set out in subsection (2), to a dependants' pension shall be entitled in accordance with those terms and conditions to receive the dependants' pension for the remainder of the period of five years from the officer's death which is still outstanding at the date on which the widow dies or otherwise ceases to be entitled to the dependants' pension.

(2) For the purposes of subsection (1), a dependants' pension shall be paid on the following terms and subject to the following conditions—

- (a) if the deceased officer leaves a widow, whether or not he also leaves any children, the widow shall for so long as she is alive and remains unmarried be entitled to receive the whole of the dependants' allowance at the appropriate rate provided for under subsection (1);
- (b) if the deceased officer does not leave a widow or if within the period of five years during which the dependants'

pension is payable under this section the deceased's widow dies or remarries, any child or children of the deceased who is or are entitled at the appropriate date to receive the dependants' pension shall be entitled to receive (and if more than one child, in equal shares) the dependants' pension at the appropriate rate provided for under subsection (1):

Provided that—

- (i) a dependants' pension or a share thereof shall not be payable under this subsection at any time to any child who has attained the age of twenty-one years unless, and only during the time that, the child is receiving full-time education at a university, college, school or other educational establishment which is approved by the President for the purposes of this section;
- (ii) a dependants' pension or share thereof granted to a female child under this subsection shall cease upon the marriage of that child at any age;
- (iii) in the event of any child ceasing under any of the provisions of this proviso to be entitled to a share of a dependants' pension, his or her share shall from the date of cessation be divided equally between all the other children then still entitled to receive the pension and if only one child then remains so entitled shall be paid to him;
- (iv) for the avoidance of doubt it is declared that no dependants' pension or share thereof shall be payable at any time after the fifth anniversary of an officer's death.

(3) No dependants' pension shall be payable under this section in respect of any officer who has not had at least ten years' service with the Government and every pension or other allowance granted under any other provision of this Act to any such officer shall, unless it has ceased earlier, cease absolutely on the death of the officer.

18. (1) Where an officer holding a pensionable office who is not on probation or agreement, or an officer holding a non-pensionable office to which he has been transferred from a pensionable office in which he has been confirmed, dies while serving under the Government, the President may grant to his legal personal representative, or, in case the gratuity does not exceed ten thousand shillings, to such person as the President shall name as the recipient, a gratuity of an amount not exceeding twice the amount of his annual pensionable emoluments or

Gratuity where officer dies in service or after retirement. 26 of 1962, s. 10, 10 of 1965, s. 5, 10 of 1979, s. 5, 13 of 1980, Sch.

his commuted pension gratuity, if any, whichever is the greater.

(2) Where an officer dies after retirement from service under the Government having been granted, or having become eligible for, a pension under this Act and the sums paid or payable to him at the date of his death on account of that pension, including any sum awarded by way of gratuity under regulation 27 of the Pensions Regulations and any pension or gratuity paid or payable in respect of his service under any scheduled Government (as defined in regulation 8 of the Pensions Regulations) but excluding any additional pension awarded in accordance with regulation 25 (1) (ii) of the Pensions Regulations, are less in total than twice the amount of his annual pensionable emoluments, the President may grant a gratuity equal to the deficiency to his legal personal representative or, where that gratuity does not exceed ten thousand shillings, to such person as the President shall name as the recipient.

(3) This section shall not apply in the case of the death of any officer where benefits corresponding to the benefits which may be granted under this section are payable under the Oversea Superannuation Scheme in respect of such death.

(4) In this section—

- (a) “annual pensionable emoluments” means the emoluments taken for the purpose of computing any pension or gratuity granted to the officer under this Act, or in the case of such officer as is described in subsection (1), the emoluments which would have been taken in accordance with regulation 20 of the Pensions Regulations for the purpose of computing the pension or gratuity that would have been granted to the officer if, on the day following the date of his death, he had retired from the public service in circumstances which enabled the grant to be made; and
- (b) “commuted pension gratuity” means the gratuity, if any, which might have been granted to the officer under regulation 27 of the Pensions Regulations if his pensionable service had been wholly in Kenya and if on the day following the date of his death he had retired from the public service on the ground of ill health and had elected to receive a gratuity and reduced pension.

(5) For the purposes of this section, any officer, other than an officer who has been confirmed in his office, who dies in the circumstances mentioned in section 19 (1) shall be deemed to have been confirmed in his office.

19. (1) Where an officer dies as a result of inquiries received—

(a) in the actual discharge of his duty; and

(b) without his own default; and

(c) on account of circumstances specifically attributable to the nature of his duty,

Pension to dependants when officer killed on duty. 45 of 1954, s. 5, 26 of 1962, s. 11, L.N.77/1964, 5 of 1983, s. 4.

while in the service of the Government, the President may grant, in addition to the grant, if any, made to his legal personal representative under section 18—

- (i) if the deceased officer leaves a widow, a pension to her, while unmarried and of good character, at a rate not exceeding ten-sixtieths of his annual pensionable emoluments at the date of the injury or sixty pounds a year, whichever is the greater;
- (ii) if the deceased officer leaves a widow to whom a pension is granted under paragraph (i) and a child or children, a pension in respect of each child, until he attains the age of twenty-one years, of an amount not exceeding one-eighth of the pension specified in that paragraph;
- (iii) if the deceased officer leaves a child or children but does not leave a widow or no pension is granted to the widow, a pension in respect of each child, until he attains the age of twenty-one years, of double the amount specified in paragraph (ii);
- (iv) if the deceased officer leaves a child or children and a widow to whom a pension is granted under paragraph (i) and the widow subsequently dies, a pension in respect of each child, as from the date of the death of the widow and until that child attains the age of twenty-one years, of double the amount specified in paragraph (ii);
- (v) if the deceased officer does not leave a widow, or if no pension is granted to the widow, and if his mother was wholly or mainly dependent on him for her support, a pension to the mother, while of good character and without adequate means of support, of an amount not exceeding the pension which might have been granted to his widow;

Provided that—

- (i) a pension shall not be payable under this subsection at any time in respect of more than six children, and where there are more than six children in respect of whom, but for this proviso, a pension would be payable, then the amount payable in respect of six children shall be divided equally among all the children during the period in which there are more than six children of pensionable age;
- (ii) in the case of a pension granted under paragraph (v), if the mother is a widow at the time of the grant of the pension and subsequently remarries, the pension shall cease as from the date of the remarriage; and, if it appears to the President at any time that the mother is adequately provided with other means of support, the pension shall cease as from such date as the President may determine;
- (iii) a pension granted to a female child under this section shall cease upon her marriage under the age of twenty-one years.

(2) For the purposes of this section—

(a) an officer who dies as a result of injuries received while travelling by air in pursuance of official instructions shall be deemed to have died as the result of injuries received—

(i) in the actual discharge of his duty; and

(ii) on account of circumstances specifically attributable to the nature of his duty;

(b) an officer proceeding by a route approved by the President to or from Kenya at the commencement or termination of his service therein, or of a period of secondment, duty or leave therefrom, who dies as the result of damage to the vessel, aircraft or vehicle in which he is travelling, or of any act of violence directed against the vessel, aircraft or vehicle, shall, if the President is satisfied that the damage or act is attributable to circumstances arising out of any war in which the Republic may be engaged, be deemed to have died as the result of injuries received—

(i) in the actual discharge of his duty; and

(ii) without his own default; and

(iii) on account of circumstances specifically attributable to the nature of his duty.

(3) In the case of an officer not holding a pensionable office, “pensionable emoluments” in this section means the emoluments enjoyed by him which would have been pensionable emoluments if the office held by him had been a pensionable office.

(4) For the purposes of this section “child” includes—

(a) a posthumous child;

(b) a step-child or illegitimate child born before the date of the injury and wholly or mainly dependent upon the deceased officer for support; and

(c) an adopted child, adopted in a manner recognized by law before the date of the injury, and wholly or mainly dependent upon the deceased officer for support.

(5) This section shall not apply in the case of the death of any officer—

(a) if his dependants, as defined in any written law relating to workmen’s compensation, are entitled to compensation under any such law or to compensation under any such law where no pension is paid under this section; or

(b) where benefits corresponding to the benefits granted by this section are payable under the Oversea Superannuation Scheme in respect of such death.

19A. A dependant’s pension payable under the foregoing sections shall be paid to the dependants within a period of ninety (90) days after the death of the officer concerned, failing which interest shall accrue thereon at bank rates until payment is made in full:

Payment of dependant’s pension. 6 of 2003, s. 3.

Provided that no interest shall be payable under this section where the failure to pay is occasioned by legal proceedings in respect of the payment.

20. This Act shall apply—

(a) to every officer appointed to the service of the Government on or after the 3rd September, 1948 otherwise than on transfer from other public service;

Application of Act.

(b) subject to the Second Schedule, to every officer—

- (i) transferred to the service of the Government on or after the 3rd September, 1948 from other public service; or
- (ii) in the service of the Government before the 3rd September, 1948 who, in accordance with Government Secretariat Circular No. 68 of the 1st October, 1948, elected or is deemed to have elected for the new terms of service contained in that circular and any amendments thereto; or
- (iii) transferred from the service of the Government to other public service before the 1st January, 1946 who retires from the public service subsequent to that date;

(c) to every officer to whom Government Secretariat Circular No. 69 of the 1st October, 1948 and any amendments and additions thereto applies.

21. (1) If any difficulty arises in bringing into operation any of the provisions of the Second Schedule or in giving effect to the purposes thereof, the President may, by order, amend the Second Schedule or the Third Schedule for the purpose of removing the difficulty, or of conferring a benefit upon, or removing a disability attached to, any officer or class of officer.

(2) Any order made under this section may be given retrospective effect to a day not earlier than the commencement of this Act:

Provided that no such order shall have retrospective effect unless it has received the prior approval of the National Assembly signified by resolution.

(3) All orders made under this section shall be laid before the National Assembly.

22. Where any question exists in relation to any matter arising under this Act, that question may be determined by the President.

23. (1) This Act (including the First Schedule) in its application to an officer who retires from the public service under the limited scheme of retirement or the general scheme of retirement for non-designated officers or, in the case of a deceased officer, who so retired

Power to amend
Second and Third
Schedules.
45 of 1954, s. 6,
L.N. 77/1964.

Questions to be
determined by
President.
L.N. 77/1964.

Officer retiring under
limited scheme or
general scheme for

or was qualified so to retire before his death, shall be subject to the modifications specified in Part I or Part II, as the case may be, of the Fourth Schedule:

non-designated officers.
10 of 1965, s. 5,
16 of 1966, s. 6,
10 of 1979, s. 6.

Provided that—

- (i) the general scheme of retirement shall have no application to an officer in the public service who is a citizen of Kenya, and shall be deemed to have ceased to apply to any such officer after the 18th January, 1966;
- (ii) subject to paragraph (i), the general scheme of retirement shall continue to apply to any person who, being an officer holding a pensionable office in the service of the Government to whom the provisions of the scheme apply or would have applied, is transferred on or after the 1st July, 1971 to the employment of the Commission referred to in subsection (2) of section 22, and such person shall for the purposes of this Act be deemed to be an officer in the service of the Government during the period of his employment by the Commission in a pensionable office.

(2) In this section and in the Fourth Schedule, “the limited scheme of retirement” and “the general scheme of retirement” mean the schemes of retirement for non-designated officers attached to Service Circular No. 27 of the 27th October, 1962 (including any amendments thereto) and Personnel Circular No. 11 of the 1st May, 1963 (including any amendments thereto) respectively.

24. (1) This Act (including the First Schedule but excluding the Second, Third and Fourth Schedules) shall, subject to the modifications thereof contained in the Fifth Schedule, apply to a teacher, and a teacher shall, for the purposes of this Act and during his approved service in Kenya, be deemed to be an officer in the service of the Government.

Pensions, etc., for certain teachers.
32 of 1966, s. 2,
49 of 1968, s. 3.

(2) For the purposes of this section and the Fifth Schedule—

“approved service” means such service as the Minister for the time being responsible for education may, after consultation with the Minister for the time being responsible for finance, declare to be approved service for the purposes of this Act;

“Commission” means the Teachers Service Commission established by the Teachers Service Commission Act;

Cap. 212.

“teacher” means—

L.N. 390/1957.

- (a) any person who, before the 1st August, 1962, was a contributor to the Fund established under the African Teachers Service (Contributory Pensions Fund) Regulations (now revoked) and who was eligible to exercise an option under Education Circular No. 3 of 1962 dated the 18th October, 1962;
- (b) any person who was a contributor to the Group Pension Scheme referred to in Education Circular No. 10 of 1963 dated the 9th October, 1963 and who was eligible to exercise an option under that Circular;

3 of 1954.

- (c) any person who—
 - (i) being an African, was appointed on or after the 1st August, 1962 to the Teachers Service established under the Teachers Service Act (now repealed); or
 - (ii) not being an African, but being a teacher for the purposes of the Teachers Service Act—
 - (a) was appointed to an aided school as a teacher before the 1st January, 1964 and was not eligible to contribute to the Group Pension Scheme referred to in Education Circular No. 10 of 1963 dated the 9th October, 1963; or
 - (b) was appointed to an aided school as a teacher on or after the 1st January, 1964:

Provided that no such person shall be eligible for the grant of a pension or gratuity under this Act unless he is a citizen of Kenya;

- (d) any citizen of Kenya who, being a teacher for the purposes of the Teachers Service Act, is employed as a teacher in any school in Kenya which is an unaided school;
- (e) any citizen of Kenya who, having been registered as a teacher by the Commission, was employed as a teacher by the Commission on or after the 23rd January, 1967;
- (f) any citizen of Kenya who, having been registered as a teacher by the Commission, was employed as a teacher by any employer other than the Commission on or after the 23rd January, 1967.

FIRST SCHEDULE

(ss. 3 and 16)

REGULATIONS FOR THE GRANTING OF PENSIONS, GRATUITIES AND OTHER
ALLOWANCES TO OFFICERS*Part I* Preliminary

G.N. 844/1953,
G.N. 241/1955,
G.N. 1683/1955,
L.N. 112/1956,
L.N. 560/1956,
L.N. 554/1958,
L.N. 694/1961,
26 of 1962, s. 12,
L.N. 241/1963,
L.N. 731/1963,
L.N. 77/1964,
L.N. 261/1964,
L.N. 86/1966,
L.N. 150/1966,
49 of 1968,
L.N. 271/1968,
L.N. 89/1978,
10 of 1979,
L.N. 39/1982,
20 of 1985, s. 3,
L.N. 487/1994,
4 of 1999.

1. These Regulations may be cited as the Pensions Regulations.

2. In these Regulations, unless the context otherwise requires—

“pensionable service” means service which may be taken into account in computing pension under these Regulations;

“qualifying service” means service which may be taken into account in determining whether an officer is eligible by length of service for pension or gratuity.

Part II Officers Without Other Public Service

3. Save when the President in any special case otherwise directs, this Part shall not apply in the case of any officer transferred to or from the service of the Government from or to other public service, except for the purpose of determining whether the officer would have been eligible for pension or gratuity, and the amount of pension or gratuity for which the officer would have been eligible, if the service of the officer had been wholly under the Government.

4. Subject to the Act and these Regulations, every officer holding a pensionable office in the service of the Government, who has been in that service in a civil capacity for ten years or more, may be granted on retirement a pension at the annual rate of one four hundred – eightieth of his pensionable emoluments for each complete month of his pensionable service, but no pension commencing after the 1st July, 1977, shall be

Citation.

Interpretation.

Application of Part.

To whom and at what rates pensions may be granted.
L.N. 487/1994.

less than sixty pounds per annum. Gratuities where length of service does not qualify for pension.

Gratuities where length of service does not qualify for pension.

5. Every officer, otherwise qualified for a pension, who has not been in the service of the Government in a civil capacity for ten years, may be granted on retirement a gratuity not exceeding five times the annual amount of the pension which, if there had been no qualifying period, might have been granted to him under regulation 4.

Marriage gratuities.

6. Where a female officer, having served in a civil capacity under the Government for not less than five years and having been confirmed in a pensionable office, resigns from the service of the Government on or with a view to marriage or is required to retire from the service of the Government on account of her marriage, and is not eligible for the grant of any pension or otherwise eligible for gratuity under this Part, she may be granted, on production within six months after her resignation or retirement, or such longer period as the President may in any particular case allow, of satisfactory evidence of her marriage, a gratuity not exceeding one-twelfth of a month's pensionable emoluments at the time of her resignation or retirement for each completed month of pensionable service in the service of the Government or one year's pensionable emoluments, whichever is the less.

Part III □ Transferred Officers

Application of Part.

7. This Part shall apply only in the case of an officer transferred to or from the service of the Government from or to other public service.

Interpretation of Part.

8. (1) In this Part and in Part IV—

“scheduled government” means—

- (a) the government of any territory, or any authority, mentioned in the Schedule to these Regulations;
- (b) the Government of Ceylon, in respect of any officer appointed to service under that Government before the 4th February, 1948;
- (c) the Government of Palestine, in respect of any officer appointed to service under that Government before the 15th May, 1948;
- (d) the High Commissioner for Transport in Kenya and Uganda, in respect of any officer appointed to the service of that authority before the 1st May, 1948;

- (e) the Government of the Somali Republic, in respect of any officer appointed to service under the former Government of the Somaliland Protectorate before the 26th June, 1960;
- (f) the Government of Cyprus, in respect of any officer appointed to service under that Government before the 16th August, 1960;
- (g) any authority in respect of the service thereunder of an officer which service is pensionable under the Kenya Local Authorities Superannuation Fund Rules, 1963 or the Kenya Local Government Officers' Superannuation Fund Rules, 1963;
- (h) the Organization or, with effect from the 1st December, 1967, the Community, in respect of any person appointed to serve as President, Vice-President, Justice of Appeal, Registrar, officer or servant of the Court of Appeal for Eastern Africa or, with effect from 1st December, 1967, the Court of Appeal for East Africa;
- (i) the Interim Commissioner for the West Indies in respect of any person appointed or deemed to have been appointed to service as Judge, Registrar, officer or servant of the British Caribbean Court of Appeal by or under the British Caribbean Court of Appeal Order in Council, 1962;
- (j) the Community, in respect of any officer appointed to serve under the Community;

L.N. 293/1963,
L.N. 313/1963.

“service in the group” means service under the Government and under a scheduled government or scheduled governments.

(2) For the purposes of these Regulations—

- (a) any officer in public service under the Government of the Federation of Rhodesia and Nyasaland immediately before the 1st January, 1964, who was immediately before that date employed on secondment to service under the Government of Southern Rhodesia, or Northern Rhodesia, or Nyasaland, or was as from that date so employed, shall be deemed to continue to serve in public service under the Government of the Federation of Rhodesia and Nyasaland until his employment on secondment is terminated;

- (b) any pension awarded on or after the 1st January, 1964 in respect of service under the Government of the Federation of Rhodesia and Nyasaland shall be deemed to have been granted by that Government, notwithstanding the provisions of the Federation of Rhodesia and Nyasaland (Dissolution) Order in Council, 1963.

Pension for service wholly within group.

9. (1) Where the other public service of an officer to whom this Part applies has been wholly under one or more scheduled governments and his aggregate service would have qualified him had it been wholly in the service of the Government for a pension under the Act, he may, on his retirement from the public service in circumstances in which he is permitted by the law or regulations of the service in which he is last employed to retire on pension or gratuity, be granted in respect of his service under the Government a pension of such an amount as bears the same proportion to the amount of pension for which he would have been eligible had his service been wholly under the Government, as the aggregate amounts of his pensionable emoluments during his service under the Government bears to the aggregate amounts of his pensionable emoluments throughout his service in the group, but no pension commencing after 1st July, 1977, shall be less than sixty pounds per annum.

(2) In determining for the purposes of this regulation the pension for which an officer would have been eligible if his service had been wholly under the Government—

- (a) in the application of regulation 20, his pensionable emoluments shall be determined by reference to the pensionable emoluments enjoyed by him at the date of retirement from the public service or during the three years preceding that date, as the case may be, except that, where the officer is not serving in a scheduled government at that date, the date upon which he was last transferred from the service of a scheduled government shall be deemed to be the date of his retirement for the purposes of this subparagraph;
- (b) no regard shall be had to an additional pension granted under regulation 24 or regulation 25;
- (c) regard shall be had to the condition that pension may not exceed two-thirds of his highest pensionable emoluments;
- (d) no period of other public service under a scheduled government in respect of which no pension or gratuity is granted to him shall be taken into account.

(3) For the purposes of this regulation, the aggregate amount of an officer's pensionable emoluments shall be taken as the total amount of pensionable emoluments which he would have received or enjoyed had he been on duty on full pay in his substantive office or offices throughout his period of service in the group after the attainment of the age of eighteen years, or (where it would be to his advantage) after the attainment of the age of twenty years:
his service in the group.

Provided that—

- (i) in calculating the aggregate amount of his pensionable emoluments, no account shall be taken of any service under the Government or a scheduled government in respect of which no pension or gratuity is granted to him by the Government or scheduled government, as the case may be;
- (ii) where any service in a civil capacity otherwise than in a pensionable office is taken into account as pensionable service, the officer's aggregate pensionable emoluments during that service shall be taken into account to the same extent as that service is taken into account as pensionable service.

10. (1) Where the other public service of an officer to whom this Part applies has not included service under any of the scheduled governments, and his aggregate service would have qualified him, had it been wholly in the service of the Government, for a pension under these Regulations, he may, on his retirement from the public service in circumstances in which he is permitted by the law or regulations of the service in which he is last employed to retire on a pension, or gratuity, be granted in respect of his service under the Government a pension at the annual rate of one four hundred-eightieth of his pensionable emoluments for each complete month of his pensionable service in the service of the Government, but no pension commencing after the 1st July, 1977, shall be less than sixty pounds per annum.

Pension where other service not within group.
L.N. 487/1994.

(2) Where the officer is not in the service of the Government at the time of his retirement in the circumstances referred to in paragraph (1), his pensionable emoluments for the purposes of that paragraph shall be those which would have been taken for the purpose of computing his pension if he had retired from the public service and been granted a pension at the date of his last transfer from the service of the Government.

Pension where other service partly within and partly not within group.

11. Where a part only of the other public service of an officer to whom this Part applies has been under one or more of the scheduled governments, regulation 9 shall apply; but, in calculating the amount of pension, regard shall be had only to service in the group.

Gratuities where length of service does not qualify for pension.

12. Where an officer to whom this Part applies retires from the public service in circumstances in which he is permitted by the law or regulations of the service in which he is last employed to retire on pension or gratuity, but has not been in the public service in a civil capacity for ten years, he may be granted in respect of his service under the Government a gratuity not exceeding five times the annual amount of the pension which, if there had been no qualifying period might have been granted to him under regulation 9, 10 or 11, as the case may be:

Provided that—

- (i) where the officer retires or is deemed to have retired from the service of the Government of Zambia, Uganda or Tanzania or from service under the Community, the East African Community, the East African Railways Corporation, the East African Harbours Corporation or the East African Posts and Telecommunications Corporation under any written law which permits him to receive a pension thereunder, he may be granted, in respect of his service under the Government of Kenya and in lieu of any gratuity under the provisions of this regulation, a pension calculated in accordance with regulation 9 or 11 notwithstanding that he has not completed in the aggregate the minimum period of qualifying service;
- (ii) where an officer, having been a contributor to the fund, established under the Nairobi Municipality (Superannuation Fund) Rules, 1950 (now revoked), retires from employment with, or has his services terminated by, the City Council of Nairobi under the Kenya Local Authorities Superannuation Fund Rules, 1963, and the officer is under those Rules permitted to receive a pension, he may be granted, in respect of his services under the Government and in lieu of any gratuity under the provisions of this regulation, a pension calculated in accordance with regulation 9 or 11 notwithstanding that he has not completed in the aggregate the minimum period of qualifying service.

G.N. 99/1950.

L.N. 293/1963.

13. In relation to an officer who retires in the circumstances mentioned either in the proviso to paragraph (b) of section 6, or in paragraph (ii) of the proviso to section 6, of the Act, regulations 9, 10 and 12 shall have effect as if there were substituted for the words “he is permitted by the law or regulations of the service in which he is last employed to retire on pension or gratuity”, wherever they appear therein, the words “he would be eligible for a pension, gratuity or other allowance, under this Act”.

Construction with regard to special categories of retirement.

14. A female officer to whom this Part applies who resigns from public service on or with a view to marriage, or is required to retire from public service on account of her marriage, and in consequence—

Marriage gratuities.

- (a) would, if the whole of her public service had been under the Government, have been eligible for a gratuity under regulation 6; and
- (b) if she is, at the date of her resignation or retirement in other public service, eligible for a gratuity under provisions corresponding to that regulation in the law or regulations of the public service in which she is last employed,

may, if she is not eligible for the grant of any pension or otherwise eligible for gratuity under this Part, be granted a gratuity which bears to the gratuity for which she would be eligible if the whole of her public service had been under the Government, the proportion which the aggregate amount of her pensionable emoluments during her service under the Government bears to the aggregate of her pensionable emoluments during her total service in the group:

Provided that—

- (i) for the purpose of computing an officer’s total public service under this regulation, no regard shall be had to any service other than service within the group or to any service under a government which does not grant a gratuity to her in consequence of her resignation or retirement;
- (ii) in computing the gratuity only service under a scheduled government shall be taken into account;
- (iii) any gratuity so granted shall be computed in accordance with regulation 6.

Part IV – General

General rules as to
qualifying service
and pensionable
service.

15. (1) Subject to the provisions of these Regulations, qualifying service shall be the inclusive period between the date on which an officer begins to draw salary in respect of public service and the date of his leaving the public service, without deduction of any period during which he has been absent on leave.

(2) No period which is not qualifying service by virtue of paragraph (1) shall be taken into account as pensionable service.

(3) No period during which the officer was not in public service shall be taken into account as qualifying service or as pensionable service:

Provided that, notwithstanding that Palestine ceased to be a territory under British mandate on the 15th May, 1948, any officer who held office in the service of the Government of Palestine immediately before that date shall for the purposes of these Regulations be deemed to continue in public service until either he is appointed to public service elsewhere or, if he is not so appointed, he retires or is removed from office.

Continuity of service.

16. (1) Except as otherwise provided in these Regulations, only continuous service shall be taken into account as qualifying service or as pensionable service:

Provided that—

- (i) any break in service caused by temporary suspension of employment not arising from misconduct or voluntary resignation; and
- (ii) in the case of an African subordinate police officer or an African subordinate prison officer, any break in service between discharge and re-enlistment which has been disregarded for the purpose of the grant of a gratuity in accordance with subsection (4) of section 20 of the Police Ordinance, 1930 (now repealed), or paragraph (3) of rule 5 of the Prisons Rules, 1930 (now revoked), respectively,

64 of 1930.

G.N. 742/1930.

shall be disregarded for the purposes of this paragraph.

- (2) An officer—
- (a) whose pension has been suspended under section 11 of the Act or under a corresponding provision in any law or regulation relating to the grant of pensions in respect of public service; or
 - (b) who has retired from the public service without pension on account of ill-health, abolition of office or reorganization designed to effect greater efficiency or economy and has subsequently been re-employed in the public service; or
 - (c) who, being a female officer, has retired from the public service without pension on or with a view to marriage and has subsequently been re-employed in the public service; or
 - (d) who has left pensionable service under the Teachers (Superannuation) Act, 1925 of the United Kingdom or any Act amending or replacing that Act, or under the Oversea Superannuation Scheme, or under any enactment approved by the President for the purpose of this regulation, with a view to entering public service not being service pensionable under such Act, scheme or enactment, and has, not later than three months, or such extended period as the President may in any particular case approve, after leaving the first-mentioned service, received any salary in respect of employment in public service not so pensionable,

15 & 16 Geo. 5,
c. 59.

may, if the President thinks fit, be granted the pension or gratuity for which he would have been eligible if any break in his public service immediately before the suspension, re-employment or employment had not occurred, the pension to be in lieu of—

- (i) any pension previously granted to him from the funds of Kenya; and
- (ii) any gratuity so granted which is required to be refunded as a condition of the application to the officer of this regulation,

but additional to any gratuity so granted which is not required to be so refunded.

Leave without salary. 17. No period during which an officer has been absent from duty on leave without salary shall be taken into account as pensionable service, unless the leave has been granted on grounds of public policy with the approval of the President.

18 and 19. (*Deleted by 49 of 1968, s. 4.*)

Emoluments to be taken for computing pension or gratuity. 20. (1) For the purpose of computing the amount of the pension or gratuity of an officer who has had a period of not less than three years' pensionable service before his retirement—

- (a) in the case of an officer who has held the same office for a period of three years immediately preceding the date of his retirement, the full annual pensionable emoluments enjoyed by him at that date in respect of that office shall be taken;
- (b) in the case of an officer who at any time during the period of three years has been transferred from one office to another, but whose pensionable emoluments have not been changed by reason of the transfer or transfers, otherwise than by the grant of any scale increment, the full annual pensionable emoluments enjoyed by him at the date of his retirement in respect of the office then held by him shall be taken;
- (c) in other cases, one-third of the aggregate pensionable emoluments enjoyed by the officer in respect of his service during the three years of his service immediately preceding the date of his retirement shall be taken:

Provided that—

- (i) if one-third is less than the highest annual pensionable emoluments enjoyed by him at the date of any transfer within the period of three years, those annual pensionable emoluments shall, subject to paragraph (iii) of this proviso, be taken;
- (ii) if one-third is less than the annual pensionable emoluments which would have been enjoyed by him at the date of his retirement if he had continued to hold any office from which he has been transferred at any time during the period of three years and had received all scale increments which, in the opinion of the President, would have been granted to him, the annual pensionable emoluments which would have

been so enjoyed shall, subject to paragraph (iii) of this proviso, be taken; and

- (iii) unless the President otherwise directs, in no circumstances shall the emoluments to be taken exceed the full annual pensionable emoluments enjoyed by the officer at the date of his retirement in respect of the office then held by him.

(2) For the purpose of determining under paragraph (1) the pensionable emoluments that an officer has enjoyed or would have enjoyed, as the case may be, he shall be deemed—

- (a) to have been on duty on full pensionable emoluments throughout the period of three years immediately preceding the date of his retirement; and
- (b) to have enjoyed the benefit of any increase due to a general revision in the pensionable emoluments of any office held by him as if the increase had been payable throughout the period of three years:

Provided that if he has been transferred from an office which has been abolished, and for this reason the pensionable emoluments of that office have not been considered in a general revision of pensionable emoluments, then, for the purposes of this regulation, the pensionable emoluments attached to the abolished office shall be equated with those of such office or offices as are certified by the President in his discretion as having enjoyed the same pensionable emoluments as the abolished office at the time of revision.

(3) For the purpose of computing the amount of the pension or gratuity of an officer who has had a period of less than three years' pensionable service before his retirement—

- (a) the average annual pensionable emoluments enjoyed by him during the period shall be taken;
- (b) he shall be deemed to have been on duty on full pensionable emoluments throughout the period; and
- (c) he shall be deemed to have enjoyed the benefit of any increase due to a general revision in the pensionable emoluments of any office held by him as if the increase had been payable throughout the period.

4 of 1999, s. 60.

20A. The pension payable where the same is deferred under section 10A shall be the projected pensionable emoluments from the date of retirement from the public service until the officer attains the age of fifty years, increased by the higher of—

- (a) three per cent compounded per full year from the date of retirement to the date of attaining the age of 50 years; and
- (b) the increase in pensionable emoluments the officer would have earned, if the officer had remained in the service through scale increments and any increases in the salary scales that would have arisen over the period from the date of retirement to the date of attaining the age of fifty years, as the Director of Pensions may determine.

Service otherwise than in a pensionable office.

21. (1) Only service in a pensionable office shall be taken into account as pensionable service:

Provided that—

- (i) service in a pensionable office otherwise than on probation or in a substantive capacity shall count only as to one-half of the service or such greater proportion or the whole thereof as the President may determine;
- (ii) where a period of continuous service in a civil capacity otherwise than in a pensionable office is immediately followed by service in a pensionable office and the officer is confirmed therein, one-half of that period, or such greater portion or the whole thereof as the President may determine, may be taken into account;
- (iii) any break in service which may be disregarded under regulation 16 may likewise be disregarded in determining for the purposes of paragraph (ii) of this proviso whether one period of service immediately follows another period of service;
- (iv) where an officer has been transferred from a pensionable office in which he has been confirmed to an office other than a pensionable office and subsequently retires either from a pensionable office or from that other office, his service in the other office may, with the approval of the President, be taken into account as though it were service in the pensionable

office which he held immediately before the transfer, and at the pensionable emoluments which were payable to him at the date of transfer;

(v) where a period of service in a non-pensionable office is taken into account under this regulation, the officer shall, during that period, be deemed for the purposes of regulations 6, 24 and 25 to be holding a pensionable office and, where that period is taken into account under paragraph (iv) of this proviso, to have been confirmed therein;

(vi) where an officer who is a contributor to the provident fund established under the Provident Fund Act is without break of service appointed to a pensionable office and confirmed in that office, he shall, on surrendering all claim to any refund of contributions made in respect of any period between his attaining the age of eighteen years or, where it would be to his advantage, the age of twenty years and the date of his confirmation in the pensionable office, be deemed for the purposes of the Act and these Regulations to have been serving in a pensionable office during that period;

Cap. 191.

(vii) where an officer has been granted a gratuity under any contract, or where a female officer has been granted a marriage gratuity under regulation 6 or regulation 14, and such gratuity—

(a) has been refunded, the period of service in respect of which the gratuity was granted may be taken into account as to one-half of the service or such greater proportion or the whole thereof as the President may determine;

(b) has not been refunded, the period of service in respect of which the gratuity was granted shall not be taken into account as pensionable service.

(2) Any officer who was remunerated under any of the enhanced contract scales introduced in 1955 or thereafter and abolished by Establishment Circular No. 51 of the 6th December, 1958 may at his option (such option to be exercised within three months from the date upon which the officer is admitted to the permanent and pensionable establishment or from the 4th September, 1962, whichever date is the later, or on such other later day as the President may in any particular case approve) repay to the Government a sum equal to the difference

between the remuneration he actually received under the enhanced contract scale and the remuneration he would have received under the corresponding scale relating to the permanent and pensionable establishment.

(3) Notwithstanding anything to the contrary in paragraph (1), no service in respect of which an officer was remunerated under any enhanced temporary scale (set out in Establishment Circular No. 4 of the 28th January, 1955 or in any subsequent circular and abolished by Establishment Circular No. 51 of the 6th December, 1958) shall be taken into account for the purpose of calculating any pension under the Act unless the officer has repaid to the Government the sum provided for in paragraph (4).

(4) Any officer remunerated under any enhanced temporary scale referred to in paragraph (3) may at his option (such option to be exercised within three months from the date upon which the officer is admitted to the permanent and pensionable establishment or from the 4th September, 1962, whichever date is the later, or on such other later day as the President may in any particular case approve) repay to the Government a sum equal to the difference between the remuneration he actually received under the enhanced temporary scale, and the remuneration he would have received under the corresponding scale relating to the permanent and pensionable establishment.

Acting service.

22. Any period during which an officer has performed only acting service in an office may be taken into account as pensionable service (subject, if the office is a non-pensionable office, to regulation 21 (1) if the period of such acting service—

- (a) is not taken into account as part of his pensionable service in other public service; and
- (b) is immediately preceded or followed by service in a substantive capacity in a pensionable office under the same government or authority,

and not otherwise.

Service under age of twenty or on probation or agreement.

23. Save as otherwise provided in these Regulations, there shall not be taken into account as pensionable service—

- (a) any period of service while the officer was under the age of eighteen years or, where it would be to his advantage, twenty years; or
- (b) any period of service while he was on probation or agreement, unless without break of service he is confirmed in a pensionable office in the public service:

Provided that any break of service which may be disregarded under the provisions of regulation 16 may likewise be disregarded in determining whether the officer is confirmed in a pensionable office without break of service.

Part V □ Supplementary

24. If before the 1st July 1999 an officer holding a pensionable office retires from the public service in consequence of the abolition of his office or for the purpose of facilitating improvement in the organization of the department to which he belongs, by which greater efficiency or economy may be effected, he may—

Abolition of office and re-organization. 4 of 1999, s. 61.

- (a) if he has been in the public service for less than ten years, be granted in lieu of any gratuity under regulation 5 or 12, a pension under regulation 4, 9, 10 or 11, as the case may be, as if the words “for ten years or more” were omitted from regulation 4;
- (b) if he retires from the service of the Government, be granted an additional pension at the annual rate of one-sixtieth of his pensionable emoluments for each complete period of three years’ pensionable service:

Provided that—

- (i) the addition shall not exceed ten-sixtieths; and
- (ii) the addition together with the remainder of the officer’s pension shall not exceed the pension for which he would have been eligible if he had continued until the age of fifty-five years to hold the office held by him at the date of his retirement, having received all increments for which he would have been eligible by that date.

25. (1) If an officer holding a pensionable office in which he has been confirmed is permanently injured—

Officers retiring on account of injuries.

- (a) in the actual discharge of his duty; and
- (b) without his own default; and
- (c) on account of circumstances specifically attributable to the nature of his duty,

he may—

- (i) if his retirement is thereby necessitated or materially accelerated and he has been in the public service for less than ten years, be granted, in lieu of any gratuity under regulation 5 or 12, a pension under regulation 4, 9, 10 or 11, as the case may be, as if the words “for ten years or more” were omitted from regulation 4;
- (ii) if so injured while in the service of the Government, be granted on retirement an additional pension at the annual rate of the proportion of his actual pensionable emoluments at the date of his injury appropriate to his case as follows—

when his capacity to contribute
to his own support is—

slightly impaired	five—sixtieths
impaired	ten—sixtieths
materially impaired	...	fifteen—sixtieths
totally destroyed	twenty—sixtieths:

Provided that the amount of the additional pension may be reduced to such an extent as the President thinks reasonable where the injury is not the cause or the sole cause of retirement.

(2) An officer holding a pensionable office in which he has not been confirmed, or holding a non-pensionable office, and so injured while in the service of the Government may be granted on retirement a pension of the same amount as the additional pension which might be granted to him under paragraph (1) if his office were a pensionable office and he had been confirmed therein; and the provisions of regulation 27 shall not apply to a pension granted under this paragraph.

(3) For the purposes of this regulation—

- (a) an officer who is permanently injured as a result of injuries received while travelling by air in pursuance of official instructions shall be deemed to have been permanently injured—
 - (i) in the actual discharge of his duty; and
 - (ii) on account of circumstances specifically attributable to the nature of his duty;

(b) an officer proceeding by a route approved by the President to or from Kenya at the commencement or termination of his service therein, or of a period of secondment, duty or leave therefrom, who is permanently injured as a result of damage to the vessel, aircraft or vehicle in which he is travelling, or of any act of violence directed against the vessel, aircraft or vehicle, shall, if the President is satisfied that the damage or act is attributable to circumstances arising out of any war in which the Republic may be engaged, be deemed to have been permanently injured—

(a) in the actual discharge of his duty; and

(b) without his own default; and

(c) on account of circumstances specifically attributable to the nature of his duty.

(4) In the case of an officer not holding a pensionable office, “pensionable emoluments” in this regulation means the emoluments enjoyed by him which would have been pensionable emoluments if the office held by him had been a pensionable office.

(5) Neither subparagraph (ii) of paragraph (1) nor paragraph (2) shall apply in the case of an officer who in consequence of his injury is entitled—

(a) to compensation under any written law relating to workmen’s compensation or to compensation under any such law where no pension is paid under this regulation; or

(b) to benefits, corresponding to the benefits granted under that subparagraph or paragraph, under the Oversea Superannuation Scheme.

26. (1) An officer who is—

(a) a subordinate officer within the meaning of the Police Act; or

(b) a prison officer below the rank of chief warden, chief warden artisan or chief warden clerk; or

(c) an administration police officer of or below the rank of senior sergeant; or

Retirement of certain other officers.
20 of 1985, s. 3.
Cap. 84.

(d) a forest guard grade I, II, or III,

and who retires from the public service on completion of a period exceeding twelve years but not exceeding twenty years may be granted at his option—

(i) if he retires voluntarily either a gratuity at the rate of one month's pay for each completed year of service or, if he is a depositor under the Provident Fund Act, the moneys to which he is entitled thereunder on retirement;

(ii) if he retires compulsorily either of the benefits referred to in subparagraph (i) a pension calculated in accordance with these Regulations.

(2) Where the officer is a depositor under the Provident Fund Act, the amount of any gratuity and the capital value of any pension granted to him under paragraph (1) shall be deemed to be a sum due to the Government for the purposes of section 18 of that Act.

(3) For the purposes of this regulation, "pay" includes the value of free quarters and any allowance which the President may think fit to include.

27. Any officer to whom a pension is granted under the Act may, at his option exercisable not later than the day immediately preceding the date of his retirement from the public service, or at such later date as the President may in any special case approve, be paid in lieu of that pension a pension at the rate of three-fourths or any greater fraction of that pension together with a gratuity equal to twenty times the amount of the reduction so made in the pension:

Provided that, in the application of this regulation to cases where the limitation prescribed by section 10 (2) operates, the words "that pension" shall mean the amount of pension which the officer would have drawn from the funds of Kenya if he had not exercised his option under this regulation.

28. (1) An officer, other than an officer who has been confirmed in his office, who is not in receipt of any pension and who is not otherwise eligible for any pension (other than a pension under paragraph 2 of regulation 25), gratuity (other than a gratuity under any contract) or other allowance from the funds of Kenya may, if he has been in the public service—

(a) for not less than seven years and is retired from the service in any of the circumstances described in paragraphs (c),

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Gratuity and reduced pension.
L.N. 487/1994.

Compassionate gratuity or allowance for non-pensionable officers.

(d), (e) and (f) of section 6 of the Act; or

- (b) for not less than ten years and retires from the service in any of the circumstances described in paragraphs (a) and (b) of section 6 of the Act,

be granted a compassionate gratuity, at the rate of one-twelfth of a month's pay at the time of his retirement, for each complete month of his continuous service under the Government:

Provided that—

- (i) no period of service in respect of which any gratuity has been paid or is payable under any contract, or which was remunerated under any of the enhanced temporary scales referred to in paragraph (3) of regulation 21, shall be taken into account for the purpose of computing any gratuity under this paragraph, except where the officer remunerated under any of the enhanced temporary scales has repaid to the Government the sum provided for in paragraph (4) of regulation 21;
- (ii) where any temporary service is followed by service under a contract providing for payment of a gratuity, the compassionate gratuity shall be as assessed on a month's pay at the end of the temporary service;
- (iii) in the case of an officer whose pay on which his gratuity is to be calculated is less than forty shillings per month, such pay shall be deemed to be forty shillings per month;
- (iv) in the case of an Arab or an African officer who is not a non-European officer as defined by the Non-European Officers' Pensions Ordinance (now repealed), and who was appointed to the service before the 1st November, 1948, any period of service before the officer attained the age of twenty years shall, notwithstanding regulation 23 (a), be taken into account in determining the officer's service for the purpose of computing the gratuity for which he is eligible;
- (v) where the other public service of an officer includes East African service as defined in Part I of the Second Schedule to the Act, the gratuity payable shall be

Cap. 67 (1948).

calculated on his last pay in respect of that service and shall be the amount which bears to the gratuity for which he would be eligible if the whole of that service had been service under the Government, the proportion which his service under the Government bears to the total of that service.

(2) For the purpose of computing an officer's gratuity under paragraph (v) of the proviso to paragraph (1), no regard shall be had to any service under a government which does not grant a gratuity to him in consequence of his retirement from the public service.

(3) An officer who has been granted a gratuity under paragraph (1), who has been in the public service for not less than thirty years and whose salary on retirement is not more than the maximum salary payable for the time being to officers serving in Job Group B, or such other amount as the President may declare for the purposes of this paragraph, may, in addition to that gratuity, be granted an annual allowance of one thousand two hundred shillings, or, if he has had other public service, an annual allowance as bears the same proportion to an annual allowance of one thousand two hundred shillings as his service under the Government bears to his total public service.

(4) Where an officer, other than an officer who has been confirmed in his office, having not less than seven years' public service dies while in the service of the Government and his dependants are not otherwise eligible for any gratuity under the Act or these Regulations, the President may grant to the dependants of that officer or to such persons as the President shall name, a gratuity of an amount not exceeding the amount which might have been granted to the officer under paragraph (1) (a) had he retired in the circumstances set out therein at the date of his death.

(5) For the purposes of this regulation—

- (a) "pay" includes the value of free quarters and any allowance which the President may think fit to include;
- (b) notwithstanding the provisions of regulation 16, directions may be given by the President, either generally or in any particular case, for disregarding breaks in service from whatever cause and for determining the minimum number of days' work in any year which shall count as a complete year of service; and such directions shall have effect as if they were contained in these Regulations;

(c) an officer who, having held a non-pensionable office, is serving on probation in a pensionable office shall be deemed to hold a non-pensionable office, and his pay shall be deemed to be the pensionable emoluments of the pensionable office or the pay last received by him in respect of his service in a non-pensionable office, whichever is the greater.

(6) This regulation shall not apply to—

(a) a male officer appointed or transferred to the service of the Government on or after the 1st April, 1966; or

(b) a female officer appointed or transferred to the service of the Government on or after the 1st January, 1977.

SCHEDULE

(r. 8 (a))

Aden.
Antigua.
Bahamas.
Barbados.
Basutoland.
Bechuanaland Protectorate.
Bermuda.
Botswana.
British Antarctic Territory.
British Guiana.
British Honduras.
British Solomon Islands Protectorate.
Cayman Islands.
Colonial Audit Department (Home Establishment).
Crown Agents for Oversea Governments and Administrations.
Dominica.
Cyprus.
East African Common Services Organization.
East African Harbours Corporation.
East Africa High Commission.
East African Posts and Telecommunications Corporation.
East African Railways and Harbours Administration.
East African Railways Corporation.
Eastern Region of Nigeria.
Employing authorities under the Oversea Superannuation Scheme.
Employing governments, authorities or organizations under the Overseas Service Act.
Falkland Islands.

Federated Malay States.
Federation of Malaya.
Federation of Nigeria.
Federation of Rhodesia and Nyasaland.
Fiji.
Gambia.
Ghana.
Gibraltar.
Gilbert and Ellice Islands Colony.
Gold Coast.
Grenada.
Guyana.
Hong Kong.
Interim Commissioner for the West Indies.
Jamaica.
Leeward Islands (before the 1st July, 1956).
Lesotho.
Malawi.
Malayan Establishment.
Malayan Union.
Malaysia.
Malta.
Mauritius.
Montserrat.
New Hebrides.
Nigeria.
Nigeria, Eastern Region of.
Nigeria, Federal Republic of.
Nigeria, Mid-Western Region of.
Nigeria, Northern Region of.
Nigeria, Western Region of.
Nigeria College of Arts, Science and Technology.
North Borneo.
Northern Rhodesia.
Nyasaland.
Sabah.
St. Christopher Nevis and Anguilla.
St. Helena.
St. Lucia.
St. Vincent.
Sarawak.
Seychelles.
Sierra Leone.
Singapore.
Somaliland.
Southern Rhodesia.
South Yemen.

Straits Settlements.
 Swaziland.
 Tanganyika Broadcasting Corporation.
 Tanganyika.
 Tanzania.
 Tonga.
 Trinidad and Tobago.
 Turks and Caicos Islands.
 Uganda.
 United Kingdom of Great Britain and Northern Ireland.
 Virgin Islands.
 West Indies (Federation).
 Zambia, Republic of.
 Zanzibar.

SECOND SCHEDULE

(s. 18)

APPLICATION OF THE ACT AND THE PENSIONS REGULATIONS TO CERTAIN
 OFFICERS OF THE GOVERNMENT

Part I Preliminary

43 of 1958,
 ss. 6 and 7,
 26 of 1962, s. 13,

L.N. 271/1968.

1. The provisions of this Schedule shall apply to officers in the service of the Government who were in the public service before the 3rd September, 1948.

Application of
 Schedule.

2. In this Schedule, and in the application of the Act and of the Regulations to any officer to whom this Schedule applies-

Interpretation.

“East African Dependencies” means Kenya, the High Commission, the Trust Territory of Tanganyika, the Uganda Protectorate, the Zanzibar Protectorate, the Nyasaland Protectorate, the Somaliland Protectorate, Northern Rhodesia and the High Commissioner for Transport in Kenya and Uganda, in respect of service before the 1st May, 1948;

“East African service” means service in a civil capacity under one or more of the East African Dependencies;

“elected” includes cases where an officer under Government Secretariat Circular No. 68 of the 1st October, 1948, and any amendments or additions thereto, is deemed to have elected;

“new terms of service” means the new terms of service contained in Government Secretariat Circular No. 68 of the 1st October, 1948 and any amendments or additions thereto;

“the regulations” means the Pensions Regulations contained in the First Schedule to the Act.

Part II Officers Transferred other than from East African Service

Application of Part II of the Schedule.

3. The provisions of this Part shall apply only in the case of an officer who—

- (a) was transferred to the service of the Government other than from East African Service before the 3rd September, 1948 and who has elected for the new terms of service; or
- (b) is transferred to the service of the Government other than from East African service on or after the 3rd September, 1948.

Officers transferred on or after 3rd September, 1948, or who are transferred before that date and who elect for new terms.

4. An officer to whom this Part applies shall be subject to the provisions of the Act and of the regulations, save that in the application of those provisions to the officer—

- (a) if he was appointed to the public service before the 1st January, 1930, and his public service has been wholly under one or more of the scheduled governments, and immediately before his appointment to the service of the Government he was eligible to have his pension calculated in accordance with a provision corresponding to that set out in this subparagraph, regulation 9 of the regulations shall have effect as if a third proviso were added at the end of paragraph (3) thereof as follows—

“(iii) where it would be to the advantage of the officer, his pension in respect of his service under the Government may be calculated as if any scheduled government in which he has served were not a scheduled government.”;

- (b) if he retired before 1st January, 1949, and for the purpose of computing his pension his case falls within subparagraph (c) of paragraph (1) of regulation 20 of the regulations, then regulation 9 of the regulations shall have effect as if there were added to subparagraph (a) of paragraph (2) thereof the following proviso—

“Provided that, where his pensionable emoluments are determined by reference to the pensionable emoluments enjoyed by him during the three years preceding the date of retirement from public service, then

for the purpose of such determination the pensionable emoluments enjoyed by him in any former office shall be deemed to have been the pensionable emoluments of that office which he would have enjoyed had his service in that office been after the 1st January, 1946” ;

- (c) if under any of the enactments specified in paragraph 1 of the Third Schedule to the Act he was eligible on retirement, in circumstances in which he might be granted a pension or gratuity, to have such pension or gratuity in respect of an earlier period of service under the Government calculated at the annual rate of one four-hundred-and eightieth of his pensionable emoluments for each complete month of pensionable service, regulation 9 of the regulations shall have effect as if there were inserted at the end of paragraph (2) thereof the following subparagraph—

“(e) in the application of regulation 4, his pension shall be computed separately—

- (i) in respect of pensionable service before the date on which he ceased to be eligible to have his pension or gratuity calculated at the annual rate of one four-hundred-and-eightieth of his pensionable emoluments for each complete month of pensionable service at the aforementioned rate; and
- (ii) in respect of pensionable service on and after that date at the annual rate of one six-hundredth of his pensionable emoluments for each complete month of pensionable service,

and in either computation the other period of service shall be treated for the purposes of this Part as though it has been service under a scheduled government.”.

Part III □ Officers Appointed to the Public Service before the 3rd of September, 1948—

- (a) the whole of whose service has been under the Government; or
- (b) who have been transferred to the Government from East African Service.

Application of Part III of the Schedule.

5. The provisions of this Part shall apply only to officers who were in the public service before the 3rd September, 1948 and—

- (a) the whole of whose service has been under the Government and who have elected for the new terms of service; or
- (b) who have been transferred to the service of the Government from East African service before the 3rd September, 1948 and who have elected for the new terms of service; or
- (c) who have been transferred to the service of the Government from East African service on or after the 3rd September, 1948.

Officers with whole service in Government or transferred from East African service.

6. An officer to whom this Part applies and who before the 3rd September, 1948 was subject to the provisions of any of the enactments specified in paragraphs 1 to 12 of the Third Schedule to the Act shall be subject to the provisions of the Act and of the regulations, save that in the application of those provisions to any such officer—

- (a) if the officer under any such enactment was eligible, on retirement in circumstances in which he might be granted a pension or gratuity, to have that pension or gratuity calculated in respect of his public service immediately before the 1st January, 1946 (and for the purpose of this paragraph regulation 2 of the European Officers' Pensions Regulations (now revoked) shall have effect as if for the words "service subsequent to that date and not otherwise" there were substituted the words "service subsequent to the 1st January, 1946 and not otherwise"), at the annual rate of one four-hundred-and-eightieth of his pensionable emoluments for each complete month of pensionable service, then—
 - (i) if he is an officer who has been transferred to the Government, regulation 9 of the regulations shall have effect as if there were inserted at the end of paragraph (2) thereof the following subparagraph—

“(e) in the application of regulation 4—

- (i) his pension shall be calculated separately in respect of pensionable service before the 1st January, 1946 and in respect of pensionable service on or after that date; and, where as a result of the separate

Cap. 66 (1948), p. 800.

calculation he would otherwise suffer a loss of one month's pensionable service, one month's pensionable service shall be added to the period with the greatest number of residual days or, if the residual days are equal, to the period before the 1st January, 1946; and

(ii) in respect of the period before the 1st January, 1946, his pension shall be calculated at the annual rate of one four-hundred-and-eightieth of his pensionable emoluments for each complete month of pensionable service, and in respect of the period on or after the 1st January, 1946, his pension shall be calculated in accordance with regulation 4;

(iii) the sum arrived at by adding together the amounts of such separate calculations shall be the pension for which he would have been so eligible.”;

(ii) if he is an officer the whole of whose service has been under the Government, then in the application of regulation 4 of the regulations his pension shall be calculated in the manner provided in subparagraph (e) of paragraph (2) of regulation 9 of the regulations (as inserted therein by paragraph (i) of subparagraph (a) of this paragraph);

(b) if the officer has been transferred to the service of the Government, and under the enactments specified in paragraph 1 of the Third Schedule to the Act was eligible, on retirement in circumstances in which he might be granted a pension or gratuity, to have that pension or gratuity in respect of an earlier period of service under the Government (such period not being in respect of his service immediately before the 1st January, 1946) calculated at the annual rate of one four-hundred-and-eightieth of his pensionable emoluments for each complete month of pensionable service, then regulation 9 of the regulations shall have effect as if there were inserted at the end of paragraph (2) thereof the following subparagraph—

“(e) in the application of regulation 4, his pension shall be calculated separately—

- (i) in respect of pensionable service before the date on which he ceased to be eligible to have his pension or gratuity calculated at the annual rate of one four-hundred-and-eightieth of his pensionable emoluments for each complete month of pensionable service at the aforementioned rate; and
- (ii) in respect of pensionable service on and after that date at the annual rate of one six-hundredth of his pensionable emoluments for each complete month of pensionable service,

and in either computation the other period of service shall be treated for the purposes of this Part as though it had been service under a scheduled government.”;

- (c) if under the enactments specified in paragraph 1 of the Third Schedule to the Act the pensionable emoluments of the officer included house allowance calculated at fifteen per cent of his salary without any maximum and the officer, not having been transferred to or from the service of the Government since the 31st December, 1945, retires having held an office the initial or fixed salary of which was on the 31st December, 1953 £1, 335 per annum or more, then for the purposes of ascertaining his pensionable emoluments for any calculations made in accordance with subparagraph (a) of this paragraph, in respect of the period before 1st January, 1946, his salary during any period in which he was serving in such an office shall be deemed to be the amount resulting from the reduction by ten per cent subject to a maximum reduction of £150 of his actual salary and the addition to that figure of fifteen per cent of that reduced figure;
- (d) if the officer retired before the 1st January, 1949 and for the purpose of computing his pension his case falls within subparagraph (c) of paragraph (1) of regulation 20 of the regulations, then regulation 4 or subparagraph (a) of paragraph (2) of regulation 9 (as the case may be) of the regulations shall have effect as if there were added thereto the following proviso—

“Provided that, where his pensionable emoluments are determined by reference to the pensionable emoluments enjoyed by him during the three years preceding the date of retirement from public service, then for the purpose of such determination the pensionable emoluments enjoyed by him in any former office shall be deemed to have been the pensionable emoluments of that office which he would have enjoyed had his service in that office been after the 1st January, 1946.”;

- (e) if the officer under any of the enactments specified in paragraphs 1 to 8 of the Third Schedule to the Act was entitled to retire after completing twenty years' East African pensionable service or on or after attaining the age of fifty years, subparagraph (iii) of paragraph (a) of section 6 and subparagraph (iv) of paragraph (a) of section 8 of the Act shall have effect as if for the words “fifty years” there were substituted the words “fifty years or on completion of twenty years' East African pensionable service”;
- (f) if the officer under any of the enactments specified in paragraphs 9 to 12 of the Third Schedule to the Act was entitled to retire after completing thirty years' East African pensionable service, or on or after attaining the age of fifty years, subparagraph (iii) of paragraph (a) of section 6 and subparagraph (iv) of paragraph (a) of section 8 of the Act shall have effect as if for the words “fifty years” there were substituted the words “fifty years or on completion of thirty years' East African Pensionable service”;
- (g) if the officer was appointed to public service before the 1st January, 1930 and his public service has been wholly under one or more of the scheduled governments, and immediately before his appointment to the service of the Government he was eligible to have his pension calculated in accordance with a provision corresponding to that set out in this subparagraph, regulation 9 of the regulations shall have effect as if a third proviso were added at the end of paragraph (3) as follows—

“(iii) where it would be to the advantage of the officer, his pension in respect of his service under the Government may be calculated as if any scheduled government in which he has served were not a scheduled government.”;

- (h) if the officer under the enactments specified in paragraphs 1 to 8 of the Third Schedule to the Act was entitled to elect, and does elect, to have his pension computed in accordance with the enactments specified in paragraph 17 of the Third Schedule to the Act, then—
- (i) paragraph (3) of regulation 9 of the regulations shall have effect as if the words “after the attainment of the age of eighteen years or, where it would be to his advantage, after the attainment of the age of twenty years” were deleted therefrom;
 - (ii) paragraph (a) of regulation 23, and regulation 27, of the regulations and subparagraph (g) of this paragraph shall not have effect;
 - (iii) subparagraph (a) of this paragraph shall have effect as if for the words “one four-hundred-and-eightieth of his pensionable emoluments for each complete month”, wherever they appear, there were substituted the words “one fortieth of his pensionable emoluments for each complete year”, and as if the words “and, where as a result of such separate calculation he would otherwise suffer a loss of one month’s pensionable service, one month’s pensionable service shall be added to the period with the greatest number of residual days or, if such residual days are equal to the period before the 1st January, 1946” were deleted therefrom;
- (i) if the officer under the enactments specified in paragraph 9 to 12 of the Third Schedule to the Act was entitled to elect, and does elect, to have his pension calculated in accordance with the enactments specified in paragraph 17 of the Third Schedule to the Act, then—
- (i) paragraph (3) of regulation 9 of the regulations shall have effect as if the words “after the attainment of the age of eighteen years or, where it would be to his advantage, after the attainment of the age of twenty years” were deleted therefrom;
 - (ii) paragraph (a) of regulation 23, and regulation 27, of the regulations shall not have effect;
 - (iii) (a) if he is an officer who has been transferred

to the Government from East African service, regulation 9 of the regulations shall have effect as if there were inserted at the end of paragraph (2) thereof the following subparagraph—

“(e) in the application of regulation 4 of these Regulations, his pension shall be calculated as if for the words “one six-hundredth of his pensionable emoluments for each complete month of his pensionable service” in that regulation there were substituted the words “one fiftieth of his pensionable emoluments for each complete year of his pensionable service.”;

(b) if he is an officer the whole of whose service has been under the Government, in the application of regulation 4 of the regulations his pension shall be calculated in the manner provided in subparagraph (e) of paragraph (2) of regulation 9 of the regulations (as inserted by this subparagraph);

(iv) if the pensionable emoluments of the officer included house allowance calculated at fifteen per cent of his salary without any maximum, and the officer not having been transferred from the service of the Government retires having held an office the initial or fixed salary of which was on the 31st December, 1953 £801 per annum or more, then for the purpose of ascertaining his pensionable emoluments for any calculation made in accordance with this subparagraph in respect of the period before the 1st January, 1946, his salary during any period in which he was serving in such an office shall be deemed to be the amount resulting from the reduction by ten percent, subject to a maximum reduction of £72, of his actual salary and the addition to that reduced figure of fifteen per cent of that reduced figure.

Part IV—Officers in the Service of Government who were not Eligible for free Pension before the 3rd September, 1948

7. The provisions of this Part shall apply to officers in the service of the Government on or after the 1st January, 1946 who before the 3rd September, 1948 had not been confirmed in offices which were pensionable under the enactments specified in paragraphs 1 and 9 of the Third Schedule to the Act and who have elected for new terms of service.

Application of Part IV of the Schedule.

Officers who were contributors to a provident fund or contributory pensions fund.

8. An officer to whom this Part applies and who was a contributor under any of the enactments specified in paragraphs 13, 14, 15 and 16 of the Third Schedule to the Act shall, on being refunded any contributions (together with interest thereon) made by him under any of those enactments before his attaining the age of eighteen years, or where it would be to his advantage, before his attaining the age of twenty years, and on surrendering all claim to any refund of contributions and to any other benefits in respect of any period after his attaining the age of eighteen years, or where it would be to his advantage, after his attaining the age of twenty years and—

- (a) if his office became pensionable on or before the 3rd September, 1948 as a result of the new terms of service, the 1st January, 1946;
- (b) if he was appointed to a pensionable office after the 3rd September, 1948, the date of appointment to that office,

be subject to the provisions of the Act and of the regulations, save that in the application of those provisions to any such officer—

- (i) if the officer retires before the 1st January, 1949 and for the purpose of computing his pension his case falls within subparagraph (c) of paragraph (1) of regulation 20 of the regulations, then regulation 4, or subparagraph (a) of paragraph (2) of regulation 9, (as the case may be) of the regulations shall have effect as if there were added thereto the following proviso—

“Provided that, where his pensionable emoluments are determined by reference to the pensionable emoluments enjoyed by him during the three years preceding the date of retirement from public service, then for the purpose of such determination the pensionable emoluments enjoyed by him in any former office shall be deemed to have been the pensionable emoluments of that office which he would have enjoyed had his service in that office been after the 1st January, 1946.”;

- (ii) regulation 21 (1) of the regulations shall have effect as if a further paragraph were added at the end of the proviso thereto, as follows—

“(viii) any period of continuous service after attaining the age of twenty years during which contributions were made by the officer or by the Government under any of the enactments specified in paragraphs 13, 14, 15 and 16 of the Third Schedule to the Act

and any period of continuous service before the commencement of those contributions shall be deemed to be service in a pensionable office in a substantive capacity for the purposes of the Act; but an officer who was appointed or, in the opinion of the President, was selected for appointment, to a pensionable office before the 3rd September, 1948 shall not be required to surrender any claim to any refund of contributions made by him under any of the enactments referred to in this paragraph.”.

9. An officer to whom this Part applies who was in the service of the Government before the 3rd September, 1948 who elected for the new terms of service, and who immediately before his election was not a contributor to a contributory pension fund or a provident fund under any of the enactments specified in paragraphs 13, 14, 15 and 16 of the Third Schedule to the Act, shall be subject to the provisions of the Act and of the regulations, save that in the application of those provisions to him—

Officers in service of Government before 3rd September, 1948, who elect new terms and who were not eligible for pension, contributory pension or provident fund benefits.

- (a) if the officer retired before the 1st January, 1949 and his case falls, for the purpose of computing his pension, under subparagraph (c) of paragraph (1) of regulation 20 of the regulations, then regulation 4, or subparagraph (a) of paragraph (2) of regulation 9, (as the case may be) of the regulations shall have effect as if there were added thereto the following proviso—

“Provided that, where his pensionable emoluments are determined by reference to the pensionable emoluments enjoyed by him during the three years preceding the date of retirement from public service, then, for the purpose of such determination, the pensionable emoluments enjoyed by him in his former office shall be deemed to have been the pensionable emoluments of that office which he would have enjoyed had his service in such office been after the 1st January, 1946.”;

- (b) if the officer is an officer referred to in paragraph 19 of Government Secretariat Circular No. 68 of the 1st October, 1948, paragraph (1) of regulation 21 of the regulations shall have effect as if a further paragraph were added at the end of the proviso thereto, as follows—

“(viii) any period of continuous service after the 31st December, 1942 and after the officer has attained the age of eighteen years, or where it would be to his advantage, after the attainment of the age of twenty years, shall be deemed to be service in a pensionable office in a substantive capacity for the purposes of the Act.”.

Part V □ *Officers Transferred from the Service of the Government to other East African Service before the 1st January, 1946*

Application of Part V of the Schedule.

10. The provisions of this Part shall apply to officers transferred from the service of the Government to an East African Dependency before the 1st January, 1946 who have elected in the East African Dependency in which they were serving on the 1st January, 1946 to be subject to new terms of service which the Governor may declare for the purposes of this paragraph to be similar to the new terms of service contained in Government Secretariat Circular No. 68 of the 1st October, 1948, and who, without being transferred back to the service of the Government, or outside the East African Dependencies, before the 1st January, 1946, retire from other public service in circumstances in which they are eligible for pension or gratuity under the regulations.

Officers who were pensionable or contributors to fund before transfer.

11. An officer to whom this Part applies shall—

- (a) if he was an officer who immediately before his transfer from the service of the Government held a pensionable office in which he had been confirmed, be deemed to be an officer who was transferred to the service of the Government from East African service before the 3rd September, 1948 and who has elected for the new terms of service;
- (b) if he was an officer who immediately before his transfer from the service of the Government was a contributor under any of the enactments specified in paragraphs 13, 14, 15 and 16 of the Third Schedule to the Act and who as a result of new terms of service which the President may declare to be similar to those contained in Government Secretariat Circular No. 68 of the 1st October, 1948 has become pensionable, shall be deemed to be an officer who was in the service of Government on or after the 1st January, 1946 and who before the 3rd September, 1948 had not been confirmed in an office which was pensionable under the enactments specified in paragraphs 1 and 9 of the Third Schedule to the Act and who has elected for the new terms of service.

Part VI □ *Officers Transferred from the Service of the Government to Public Service outside the East African Dependencies before the 1st January, 1946*

Application of Part VI of the Schedule.

12. The provisions of this Part of this Schedule shall apply only—

- (a) to officers who were transferred from the service of the Government to public service outside the East African Dependencies before the 1st January, 1946 and who have not subsequently been transferred back to the service of the Government; and
- (b) to officers who were transferred from the service of the Government to the service of another East African Dependency and were subsequently transferred from the East African Dependencies to service outside the East African Dependencies before the 1st January, 1946 and who have not subsequently been transferred back to the service of the Government.

13. An officer to whom this Part applies shall continue to remain subject to the enactments specified in the Third Schedule to the Act which applied to him immediately before his last transfer from the service of the Government, so, however, that in the application thereof paragraph (1) of regulation 16 of the European Officers' Pensions Regulations (now revoked) shall have effect as if for the word "ten" there were substituted the words "twelve and a half".

Application of enactments.
Cap. 66 (1948), p. 800.

Part VII □ Officers who have Elected not to be Subject to the New Terms of Service

14. The provisions of this Part shall apply only in the case of officers who have elected not to be subject to the new terms of service.

Application of Part VII of the Schedule.

15. An officer to whom this Part applies shall continue to remain subject to the enactments specified in the Third Schedule to the Act which applied to him before his election not to be subject to the new terms of service:

Application of enactments.

Provided that such an officer who is transferred on or after the 3rd September, 1948 to any other office, whether in the service of the Government or other public service, shall cease to be subject to those enactments and shall thereupon in respect of the whole of his service under the Government be deemed to be an officer who elected for the new terms of service.

26 of 1962, s.14.

THIRD SCHEDULE

(s. 19, and Second Schedule paras,4(c), 6, 7, 8, 9, 11, 13 and 15)

ENACTMENTS RELATING TO RETIRING BENEFITS OF OFFICERS TRANSFERRED FROM EAST AFRICAN SERVICE

- Cap. 66 (1948). 1. The European Officers' Pensions Ordinance of Kenya, and all amendments thereto and all regulations made thereunder.
- Cap. 47 (1947). 2. The European Officers' Pensions Ordinance of Tanganyika, and all amendments thereto and all regulations made thereunder.
- Cap. 66 (1935). 3. The European Officers' Pensions Ordinance of Uganda, and all amendments thereto and all regulations made thereunder.
- Cap. 59 (1965). 4. The European Officers' Pensions Ordinance of Northern Rhodesia, and all amendments thereto and all regulations made thereunder.
- Cap. 59. 5. The European Officers' Pensions Ordinance of Nyasaland, and all amendments thereto and all regulations made thereunder.
- Cap. 54. 6. The European Officers' Pensions Decree of Zanzibar, and all amendments thereto and all regulations made thereunder.
- Cap. 43. 7. The European Officers' Pensions Ordinance of British Somaliland, and all amendments thereto and all regulations made thereunder.
- G.N. 210/1933. 8. The Kenya and Uganda Railways and Harbours European Officers' Pensions Regulations, 1932, and all amendments thereto.
- Cap. 67 (1948). 9. The Non-European Officers' Pensions Ordinance of Kenya, and amendments thereto and all regulations made thereunder.
- Cap. 268 (1959). 10. The Junior Officers' Pensions Ordinance of Tanganyika, and all amendments thereto and all regulations made thereunder.
- Cap. 8 (1935). 11. The Asiatic Officers' Pensions Ordinance of Uganda, and all amendments thereto and all regulations made thereunder.
- 10 of 1945. 12. The Non-European Officers' Pensions Decree, 1945, of Zanzibar, and all amendments thereto and all regulations made thereunder.
- Cap. 69 (1948). 13. The Kenya European Civil Service Contributory Pensions Ordinance of Kenya, and all amendments thereto and all regulations made thereunder.

14. The European Civil Service Provident Fund Ordinance of Kenya and all amendments thereto and all regulations made thereunder. Cap. 70 (1948).
15. The Asian Civil Service Provident Fund Ordinance of Kenya, and all amendments thereto and all regulations made thereunder. Cap. 72 (1948).
16. The Provident Fund Act of Kenya, and all amendments thereto and all regulations made thereunder. Cap. 191.
17. The Superannuation Acts of the United Kingdom.

FOURTH SCHEDULE

(s. 21) 10 of 1965, s. 7,
L.N. 203/1969,
10 of 1979, s. 8.

APPLICATION OF THE ACT AND THE PENSIONS REGULATIONS TO OFFICERS
RETIRING UNDER THE LIMITED AND GENERAL SCHEMES OF RETIREMENT
FOR NON-DESIGNATED OFFICERS

Part I—Limited Scheme of Retirement
(w.e.f. 20th July, 1961)

1. In this Part, “the special factor” in relation to an officer means the factor obtained from Appendix II to Service Circular No. 27 of 27th October, 1962 that is appropriate to the age of that officer at his retirement reckoned in completed years and completed months.

2. Section 6 of the Act shall have effect as if there were added after paragraph (h) thereof a further paragraph as follows—

“(i) under the limited scheme of retirement provided by section 21:”.

3. Section 10 of the Act shall not apply.

4. Where an officer who has been given permission to retire under the limited scheme of retirement dies while still serving or while on leave before retirement or after retirement, section 16 of the Act shall have effect as if—

(a) in subsection (4) thereof, there were substituted for the expression, “on the ground of ill health”, wherever it appears therein, the expression “under the limited scheme of retirement provided by section 21”; and

(b) there were inserted at the end thereof two new subsections as follows—

“(6) Where an officer to whom this subsection applies dies, his dependants or his legal personal representative shall receive forthwith, in addition to any gratuity granted under this section—

- (a) in the case of an officer who dies while still serving or while on leave before retirement, a gratuity of an amount representing the commuted pension gratuity which would have been paid to the officer in respect of his additional pension under regulation 24A of the Pensions Regulations had he on the day following the date of his death retired from the public service under the limited scheme of retirement provided by section 21 and elected to receive a gratuity and reduced pension;
- (b) in the case of an officer who dies after retirement, a gratuity of an amount representing the balance, if any, of the instalments of the commuted pension gratuity which would have been paid to the officer in respect of his additional pension under regulation 24A of the Pensions Regulations had he remained alive until all the instalments for which he was eligible had been paid.

(7) In computing the gratuity payable under this section, no account shall be taken of the additional pension granted under regulation 24A of the Pensions Regulations or of the commuted pension gratuity paid or payable in respect of that additional pension.”

5. Where an officer retires under the limited scheme of retirement—

- (a) regulation 4 of the Pensions Regulations shall be read as if the words “for ten years or more” were omitted;
- (b) regulation 5 of the Pensions Regulations shall not apply to such an officer; and
- (c) regulation 20 of the Pensions Regulations shall be replaced by the following regulation—

“20. For the purpose of computing the additional pension under regulation 24A of an officer who retires under the limited scheme of retirement provided by section 21 of the Act, the full annual pensionable emoluments enjoyed by the officer in respect of the office held by him at the date of his retirement shall be taken.”.

6. The Pensions Regulations shall have effect as if there were inserted, immediately after regulation 24 thereof, a new regulation as follows—

“24A. An officer who retires under the limited scheme of retirement provided by section 21 of the Act may be granted an additional pension at the annual rate of one-twelfth of one one-hundred-and-eightieth of the full annual pensionable emoluments enjoyed by him in respect of the office held by him at the date of his retirement for each completed month of pensionable service:

Provided that—

- (i) the addition when added to the remainder of the officer’s pension shall not exceed the pension for which he would have been eligible under the Act if he had continued to hold the office held by him on the date of his retirement until he had reached the age of 55 years and had then retired having been granted all increments of salary for which he would have been eligible by that date;
- (ii) the gratuity payable in accordance with regulation 27, in so far as it relates to an additional pension payable under this regulation, shall be paid by four instalments of which the first shall be payable on the officer’s retirement and the remaining three at annual intervals thereafter, subject to the provisos that—
 - (a) if the gratuity value is £25 or less it shall be payable in full, if between £25 and £50 it shall be payable in two instalments, if between £50 and £75 by three instalments and if over £75 by four instalments;
 - (b) interest shall not be payable on the outstanding instalments, since the additional pension relating to those instalments will continue to be paid to the officer until the full amount of gratuity is paid.”.

7. Regulation 27 of the Pensions Regulations shall have effect as if there were substituted for the words “a gratuity equal to twelve and one-half times the amount of the reduction so made in the pension” the words “a gratuity equal to the amount of the reduction so made in the pension multiplied by the special factor”.

8. The Pensions Regulations shall have effect as if there were inserted, immediately after regulation 27, a new regulation as follows—

“27A. (1) Where any officer to whom Part III of these Regulations applies retires under the limited scheme of retirement provided by section 21 of the Act and is granted by any government or other authority that is a scheduled government for the purposes of that Part both a pension and a gratuity, having elected to receive that pension and that gratuity in lieu of a pension of greater amount, he may be granted (in addition to any gratuity that may be granted to him under regulation 27) a gratuity equal to the amount (if any) by which the amount produced by—

- (a) subtracting the annual amount of the pension granted to him by the scheduled government from the annual amount of the pension that would have been granted to him by that government had he not elected to receive the gratuity granted to him by the scheduled government; and
- (b) multiplying the resulting amount by the special factor, exceeds the amount of the gratuity granted to him by the scheduled government.

(2) Any gratuity payable to an officer who retires under the limited scheme of retirement provided by section 21 of the Act, and any gratuity payable to the dependants or to the legal personal representative of such an officer, shall be exempt from tax under any law in force in Kenya relating to the taxation of income or imposing any other form of taxation.”

*Part II □ General Scheme of Retirement
(w.e.f. 1st June, 1963)*

1. In this Part, “the special factor” in relation to an officer means the factor obtained from Appendix II to Personnel Circular No. 11 of 1st May, 1963 that is appropriate to the age of that officer at his retirement reckoned in completed years and completed months.

2. Section 6 of the Act shall have effect as if there were added after paragraph (h) thereof a further paragraph as follows—

“(i) under the general scheme of retirement provided by section 21:”.

3. Where an officer who has given or is eligible to give notice of his retirement under the general scheme of retirement retires in any of the cases mentioned in paragraphs (c), (d), (e) and (f) of section 6 of the Act or, having attained the age of fifty years, is compulsorily retired in accordance with section 8 of the Act, he shall be deemed to have retired under paragraph (i) of section 6 of the Act (as inserted by paragraph 2 of this Part).

4. Section 10 of the Act shall not apply.

5. Section 16 of the Act shall have effect as if—

- (a) in subsection (4) thereof, there were substituted for the words “on the ground of ill health” wherever it appears, the words “under the general scheme of retirement provided by section 21”; and
- (b) there were inserted at the end thereof two new subsections as follows—

“(6) Where an officer who is eligible to retire under the general scheme of retirement provided by section 21 dies while serving the Government or while on leave prior to retirement, his dependants or his legal personal representatives shall receive forthwith, in addition to any gratuity granted under this section, a gratuity of an amount representing the commuted pension gratuity which would have been paid to the officer in respect of the additional pension under regulation 24A of the Pensions Regulations had he on the day following the date of his death voluntarily retired from the public service under the general scheme of retirement and election to receive a gratuity and reduced pension.

(7) In computing the gratuity payable under this section, no account shall be taken of the additional pension granted under regulation 24A of the Pensions Regulations or of the commuted pension gratuity paid or payable in respect of the additional pension.”.

6. Where an officer retires under the general scheme of retirement—

- (a) regulation 4 of the Pensions Regulations shall be read as if the words “for ten years or more” were omitted; and
- (b) regulation 5 of the Pensions Regulations shall not apply to such an officer.

7. Where an officer retires under the general scheme of retirement on the grounds that he has been individually superseded for promotion as a result of the Government's Kenyanization policy, or where an officer is required to retire under that scheme in the interests of such policy of Kenyanization or in either of the cases mentioned in paragraphs (c) and (d) of section 6 of the Act or in accordance with section 8 of the Act on or after attaining the age of fifty years, regulation 20 of the Pensions Regulations shall be replaced by the following regulation—

“20. For the purpose of computing the pension under regulation 4 of an officer who retires under the general scheme of retirement provided by section 21 of the Act, the full annual pensionable emoluments enjoyed by the officer in respect of the office held by him at the date of his retirement shall be taken.”.

8. Regulation 24 of the Pensions Regulations shall not apply in the case of an officer who is required to retire under the general scheme of retirement in either of the cases mentioned in paragraphs (c) and (d) of section 6 of the Act.

9. The Pensions Regulations shall have effect as if there were inserted immediately after regulation 24 thereof a new regulation as follows—

“24A. Where an officer retires under the general scheme of retirement provided by section 21 of the Act he may be granted an additional pension at the annual rate of one-twelfth of one one-hundred-and-eightieth of the full annual pensionable emoluments enjoyed by him in respect of the office held by him at the date of his retirement for each completed month of pensionable service:

Provided that the addition when added to the remainder of the officer's pension shall not exceed the pension for which he would have been eligible under the Act if he had continued to hold the office held by him on the date of his retirement until he had reached the age of 55 years and had then retired having been granted all increments of salary for which he would have been eligible by that date.”.

10. Regulation 27 of the Pensions Regulations shall have effect as if there were substituted for the words “a gratuity equal to twelve and one-half times the amount of the reduction so made in the pension” the words “a gratuity equal to the amount of the reduction so made in the pension multiplied by the special factor”.

11. The Pensions Regulations shall have effect as if there were inserted immediately after regulation 27 thereof a new regulation as follows—

“27A. (1) Where any officer to whom Part III of these Regulations applies retires under the general scheme of retirement provided by section 21 of the Act and is granted by any government or other authority that is a scheduled government for the purposes of that Part both a pension and a gratuity, having elected to receive that pension and that gratuity in lieu of a pension of greater amount, he may be granted (in addition to any gratuity that may be granted to him under regulation 27) a gratuity equal to the amount (if any) by which the amount produced by—

- (a) subtracting the annual amount of the pension granted to him by the scheduled government from the annual amount of the pension that would have been granted to him by that government had he not elected to receive the gratuity granted to him by the scheduled government; and
- (b) multiplying the resulting amount by the special factor, exceeds the amount of the gratuity granted to him by the scheduled government.

(2) Any gratuity payable to an officer who retires under the general scheme of retirement provided by section 21 of the Act, and any gratuity payable to the dependants or to the legal personal representative of such an officer, shall be exempt from tax under any law in force in Kenya relating to the taxation of income or imposing any other form of taxation.”.

FIFTH SCHEDULE

(s. 22) 32 of 1966, s. 3,
49 of 1968, s. 5,
L.N. 271/1968,
10 of 1979, s. 9.

APPLICATION OF THE ACT AND THE PENSIONS REGULATIONS TO CERTAIN TEACHERS

1. In this Schedule—

“aided school” means a school in Kenya, other than a Government school, which is maintained or assisted by way of recurrent grant out of the public funds of the Government;

“Government school” means a school maintained out of the public funds of the Government and managed by the Ministry for the time being responsible for education;

“unaided school” means a school in Kenya which is neither an aided school nor a Government school.

2. The Act shall have effect as if—

- (a) in section 2 thereof, there were substituted for the definitions of “pensionable emoluments” and “pensionable office” the following definitions—

“pensionable emoluments” includes salary and responsibility allowance but does not include any cost of living allowance, entertainment allowance or any other emoluments whatever;

“pensionable office” means an office in an aided school or in an unaided school to which a teacher has been appointed (on probation or otherwise) by the authority having power for the time being to appoint a teacher on terms which include eligibility for the grant of a pension under this Act and which the teacher has not ceased to hold on those terms;” ;

- (b) in section 3 (2) thereof, there were inserted immediately after the words “Pensions Regulations” the words “or the modifications contained in the Fifth Schedule”;

- (c) in section 6 (d) thereof, there were substituted for the words “department to which he belongs” the words “educational service in which he is employed”.

3. The Pensions Regulations shall have effect as if—

- (a) in regulation 15 thereof—

(i) in paragraph (1), there were substituted for the words “and the date of his leaving the public service” the words “or approved service and the date of his leaving any such service”;

(ii) in paragraph (3), there were inserted immediately after the words “public service” the words “or approved service”

- (b) in regulation 16 (1) thereof, there were inserted immediately after proviso (ii) thereto a further proviso as follows—

“(iii) in the case of a teacher who has opted under Education Circular No. 3 of 1962 dated the 18th October, 1962 for benefits under the Act, any break in service before the 1st August, 1962 that was disregarded for the purposes of the African Teachers Service (Contributory Pensions Fund) Regulations (now revoked),”;

- (c) there were substituted for regulation 21 thereof the following regulation—

“21. Only service in a pensionable office shall be taken into account as pensionable service:

Provided that—

- (i) where a teacher has opted under Education Circular No. 3 of 1962 dated the 18th October, 1962 for benefits under the Act—
- (a) his approved service in Kenya after the 31st July, 1962 shall, subject to paragraph (v) of this proviso—
- (i) if it is service in a pensionable office, count as pensionable service; and
- (ii) if it is service in an office which is not a pensionable office, count only as to one-half of such service or such greater proportion or the whole thereof as the President may determine;
- (b) his approved service before the 1st August, 1962 which counted in full as contributory service under the African Teachers Service (Contributory Pensions Fund) Regulations (now revoked) shall, together with any probationary service, count as full pensionable service and his approved service before that date which counted in half as contributory service under those Regulations shall count as to the whole of such service, if he opted to surrender to the Government his entire interest in the Fund established under those Regulations;
- (c) his approved service before the 1st August, 1962 which counted in full as contributory service under the African Teachers Service (Contributory Pensions Fund) Regulations shall, together with any probationary service, count as full pensionable service, if having opted to withdraw from the Fund established under those Regulations his own, but not his employer's, contributions with interest thereon, he refunds in full to the Government the amount of those contributions and interest;
- (d) his approved service before the 1st August, 1962 shall not be taken into account if he opted to withdraw his own and his employer's contributions to the Fund established

under the African Teachers Service (Contributory Pensions Fund) Regulations unless he refunds in full to the Government his own and his employer's contributions withdrawn with interest thereon;

- (e) where he opted under that Circular to retain his entire rights under the African Teachers Service (Contributory Pensions Fund) Regulations and now opts to surrender to the Government all his own contributions together with employer's contributions made to the Fund as at 31st July, 1962 with interest he shall have his approved service which counted in full as contributory service under those Regulations, together with any probationary service, counted as full pensionable service and any of his approved service before that date which counted in half as contributory service under those Regulations shall count as to the whole of such service;
 - (f) where he opted under that Circular to continue to contribute under the African Teachers Service (Contributory Pensions Fund) Regulations and now opts to surrender to the Government all his contributions thereon, in lieu of the Government Free Pensions Scheme he shall have his approved service which counted in full as contributory service under those Regulations, together with any probationary service, counted as full pensionable service and any of his approved service before that date which counted in half as contributory service under those Regulations shall count as to the whole of such service;
- (ii) where a teacher in an aided school has opted under Education Circular No. 10 of 1963 dated the 9th October, 1963 for benefits under the Act—
- (a) his approved service in Kenya after the 31st December, 1963 shall, subject to paragraph (v) of this proviso—
 - (i) if it is service in a pensionable office, count as pensionable service; and
 - (ii) if it is service in an office which is not a pensionable office, count only as to one-half of such service or such greater proportion or the whole thereof as the President may determine;
 - (b) his approved service in Kenya before the 1st January, 1964, for the period during which he contributed to the Group Pensions Scheme referred to in that Circular, shall

- count as pensionable service and his approved service in Kenya before the commencement of his contribution to that scheme shall, together with any probationary service, count as to the whole of such service, if he opted to surrender to the Government his entire interest in the Group Pensions Scheme;
- (c) his approved service in Kenya before the 1st January, 1964 shall not be taken into account if he opted to retain his rights under the Group Pensions Scheme referred to in that Circular in respect of such service, unless he refunds to the Government all the contributions withdrawn with interest thereon, but if he opted to retain his rights under the Group Pensions Scheme and to receive a paid-up pension certificate under that scheme he shall not be eligible or allowed to refund the contributions withdrawn;
- (iii) where an African teacher is first appointed to an aided school on or after the 1st August, 1962, or where a non-African teacher is first appointed to an aided school on or after the 1st January, 1964, his approved service in that school in a pensionable office shall count as pensionable service and his other approved service in that school, if any, shall count only as to one-half of such service or such greater proportion or the whole thereof as the President may determine;
- (iv) where a non-African teacher is first appointed to an aided school before the 1st January, 1964, and was not eligible to contribute to the Group Pensions Scheme referred to in Education Circular No. 10 of 1963 dated 9th October, 1963, his approved service before the 1st January, 1964 shall not be taken into account and his approved service in such school from that date shall—
- (a) if it is service in a pensionable office, count as pensionable service; and
- (b) if it is service in an office which is not a pensionable office, count only as to one-half of such service or such greater proportion or the whole thereof as the President may determine;
- (v) where an African teacher is employed in an unaided school on or after the 1st August, 1962, or where a non-African teacher is employed in an unaided school on or after the 1st January, 1964, his approved service in Kenya

on or after that date in any such school shall not count as pensionable service unless his employer pays in full to the Government a sum representing twenty-five percent of the pensionable emoluments enjoyed by the teacher during the entire period of such service, and any sum so paid shall not be refundable in any circumstances, but where a qualified teacher on having been registered by the Teacher Service Commission as a teacher, other than a teacher who has been dismissed and has not subsequently been reinstated by the Commission, is recruited and employed as a teacher in any non-profit making unaided Harambee School which is recognised as such by the Minister for the time being responsible for education, and the teacher renders continuous teaching service in that school, his admission to the Free Pensions Scheme need not, if the President so determines, be subject to the payment of a sum representing twenty-five percent of the pensionable emoluments and his approved service on or after 25th February, 1977 shall count in full as pensionable service, whilst his approved service before that date shall-

- (a) if covered by payment of the pension contributions, count in full as pensionable service; or
 - (b) if not covered by payment of pension contributions, count as to one-half of such service or such greater proportion as the President may determine;
- Cap. 212.
- (vi) where an African teacher who was not a member of the Teacher Service established under the Teachers Service Act was employed in an unaided school before the 1st August, 1962, or where a non-African teacher was employed in an unaided school before the 1st January, 1964, no account shall be taken of his approved service before that date in any such school;
 - (vii) where a teacher is registered and employed by the Commission on or after the 23rd January, 1967, his approved service in Kenya in a pensionable office shall count as pensionable service and his other approved service in Kenya, if any, shall count only as to one-half of such service or such greater proportion or the whole thereof as the President may determine; and
 - (viii) where a teacher, having been registered as a teacher by the Commission, is employed as a teacher by any employer other than the Commission on or after the 23rd January, 1967, his approved service in Kenya on or after

the 23rd January, 1967 with any such employer shall not count as pensionable service unless his employer pays in full to the Government a sum representing twenty-five percent of the pensionable emoluments enjoyed by the teacher during the entire period of his service with that employer, and any sum so paid shall not be refundable in any circumstances, but where a qualified teacher on having been registered by the Teachers Service Commission as a teacher, other than a teacher who has been dismissed and has not subsequently been reinstated by the Commission, is recruited and employed as a teacher in any non-profit making unaided Harambee School which is recognised as such by the Minister for the time being responsible for education, and the teacher renders continuous teaching service in that school, his admission to the Free Pensions Scheme need not, if the President so determines, be subject to the payment of a sum representing twenty-five percent of the pensionable emoluments and his approved service on or after 25th February, 1977 shall count in full as pensionable service, whilst his approved service before that date shall—

- (a) if covered by payment of the pension contributions, count in full as pensionable service; or
- (b) if not covered by payment of pension contributions, count as to one-half of such service or such greater proportion as the President may determine.”.

SIXTH SCHEDULE

(s. 2 (1))

10 of 1979, s. 10.

LIST OF GENERAL FUND SERVICES

The secretariat of the Community, including services relating to the Common Market and the Chambers of the Counsel to the Community.

The East African Directorate of Civil Aviation.

The East African Meteorological Department.

The East African Customs and Excise Department.

The East African Income Tax Department.

The East African Industrial Court.

The East African Literature Bureau.

The (East African) Auditor-General's Department.

The East African Community Service Commission.

The East African Legislative Assembly.

The East African Agriculture and Forestry Research Organization.

The East African Freshwater Fisheries Research Organization.

The East African Marine Fisheries Research Organization.

The East African Trypanosomiasis Research Organization.

The East African Veterinary Research Organization.

The East African Leprosy Research Centre.

The East African Institute of Malaria and Vector-Borne Diseases.

The East African Institute for Medical Research.

The East African Virus Research Organization.

The East African Industrial Research Organization.

The East African Tropical Pesticides Research Institute.

The East African Tuberculosis Investigation Centre.

Services arising from the operations of the East African Currency Board.

Services for the administration of grants or loans made by the government of any country, any organization or any authority, for the purposes of projects or services agreed between the Community and the Partner States.

Services, including statistical services, for the purposes of co-ordinating the economic activities of the Partner States.

Services for the purposes of any body or authority established in pursuance of paragraph 4 of Article 43 of the Treaty for East African Co-operation.

Services for the purposes of the East African Industrial Court established by Article 85 of the Treaty for East African Co-operation.

SUBSIDIARY LEGISLATION

[Subsidiary]

DECLARATION OF APPROVED SERVICE

L.N. 59/1985.

PURSUANT to the provisions of section 22 of the Pensions Act, the Minister for Education, Science and Technology declares that the following service prior to the 1st August, 1962 or 1st January, 1964, as the case may be, shall be approved service for the purposes of the Act—

- (a) service as a teacher in the capacity of an Education Officer, an Assistant Education Officer, Inspector of Schools or Assistant Inspector of Schools;
- (b) service as a teacher in the capacity of a Supervisor of Schools, Assistant Supervisor of Schools, Education Secretary or Assistant Education Secretary;
- (c) service as a teacher in Government Service or Non-Government service;
- (d) teaching service during the probationary period between qualifying as a teacher and being issued with a teaching certificate or license to teach;
- (e) such teaching service as an unqualified teacher prior to becoming qualified as a teacher as the President may allow as service in accordance with regulation 21 of the Pensions Regulations;
- (f) such teaching service as an untrained teacher prior to becoming qualified as a teacher as the President may allow as service in accordance with regulation 21 of the Pensions Regulations:

Provided that any non-contributory teaching service otherwise than on probation shall count only as one half of such service for the purpose of said Act.

This Notice shall be deemed to have come into force on the 8th June, 1979.