

VOLUME: IV

PENSIONS

CHAPTER: 27:01 **This Act may be cited as the Pensions Act.**

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Pensions Regulations
4. Amendments to Schedule
5. Pensions, etc., to be charged on revenues of Botswana
6. When pensions will not be granted
7. Pensions, etc., not to be assignable
8. Botswana Public Officers' Pension Fund
9. Pensions, etc., to cease on bankruptcy
10. Withholding of benefits
11. Gratuity where officer dies in the service or after retirement
12. Gratuities to dependants when a non-pensionable officer dies in service
13. Pensions to dependants when an officer dies as a result of injuries received or disease contracted in the discharge of his duties
14. War service to count for pension purposes
15. Contributions to certain pensions, etc., payable by the Government of Lesotho and Swaziland
16. Application

17. Designation of public service
18. Gratuity of contract officers to be free of tax

Schedule - Pensions and Regulations

Law 17, 1965,
Law 23, 1965,
L.N. 84, 1966,
S.I. 50, 1967,
Act 16, 1968,
Act 38, 1969,
Act 28, 1973,
Act 4, 1978,
Act 21, 1986,
Act 4, 1998,
Act 4, 2001,
Act 11, 2008.

An Act to amend and consolidate the law relating to the granting of pensions and of superannuation and other allowances to and in respect of persons employed in the Public Service of Botswana.

[Date of Commencement: 14th January, 1966]

1. Short title

This Act may be cited as the Pensions Act.

2. Interpretation

(1) In this Act, unless the context otherwise requires-

"legal personal representative" means the person in whom, by whatever system of law is applicable, the estate of a deceased officer is vested or, where such officer leaves a surviving spouse or other dependants, such person as the Ministry may designate as being the person who in all the circumstances of the case and in order to safeguard the interests of the surviving spouse or dependants should be awarded a gratuity;

"Lesotho" means, in relation to any period prior to the 4th October, 1966, Basutoland;

"non-pensionable office" means an office which is not a pensionable office;

"other public service" means public service not under the Government of Botswana;

"overseas officer" means an officer serving on terms of service which provide for the payment to him of an inducement allowance;

"pensionable emoluments"-

(a) in respect of public service in Botswana include-

- (i) salary;
- (ii) inducement allowance;
- (iii) personal allowances,

but do not include duty allowance, entertainment allowance or any other emoluments whatever:

Provided that for the purpose of calculating the aggregate pensionable emoluments of officers retiring from the public service subsequent to the 1st January, 1947, pensionable emoluments shall include an additional one-sixth of salary (which shall be deemed to be the value of free quarters) in respect of service prior to that date;

(b) 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 service of the Government on terms which include eligibility for the grant of a pension under this Act; and

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

(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 such service;

"personal allowance" means a special addition to salary granted personally to the holder for the time being of the office, but pensionable emoluments do not include such an addition if it is granted subject to the condition that it shall not be pensionable;

"public service" means-

- (a) service in a civil capacity under the Government of Botswana or any other country or territory in the Commonwealth;
- (b) service under the East Africa High Commission, the East African Common Service Organization, the East African Posts and Telecommunications Administration, the East African Community, the East African Harbours Corporation, the East African Posts and Telecommunications Corporation or the East African Railways Corporation;
- (c) service which is pensionable-
 - (i) under the Overseas 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;
 - (v) under the Post Office, United Kingdom of Great Britain and Northern Ireland;
- (d) any other service the President may designate to be public service for the purposes of this Act;
- (e) except for the purposes of computation of a pension, gratuity or other allowance, service in respect of which a pension may be granted under the Governors' Pensions Act, 1957 (5 and 6 Eliz. 2 c.62);
- (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 Eastern Africa or the Court of Appeal for East Africa;
- (g) service in the service of the Interim Commissioner for the West Indies;
- (h) service in the public service of the Union of South Africa in respect of any officer transferred from a pensionable office in that service to a pensionable office under service of the Government of Bechuanaland before the 1st January, 1960;
- (i) pensionable service under the Government of the Republic of Southern Yemen by officers who had served in the public service of Aden;

"Public Service Commission", in relation to an officer to whom the provisions of section 110(2) of the Constitution are applicable, means the authority which, in terms of the Constitution, is empowered to remove such officer from office or, in cases where the provisions of section 116 of the Constitution are applicable, the appropriate Commission for the purposes of that section;

"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, and includes the value of rations and fuel or any other allowance of a permanent character given as an equivalent of salary;

"the Regulations" means the Pensions Regulations, contained in the Schedule.

(2) For the avoidance of doubt it is hereby 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 such appointment otherwise require, such last mentioned office, is for the purposes of this Act, an office in which he has been confirmed.

(3) Where a pensionable office is abolished, and the person holding that office retires from the public service in consequence, he shall, if the office is abolished before that day, be deemed to have continued to hold it until the day immediately preceding the date of his retirement.

3. Pensions Regulations

Subject to the provisions of section 116 of the Constitution, pensions, gratuities and other allowances may be granted in accordance with the Regulations in respect of officers who have been in public service under the Government of Botswana.

4. Amendments to Schedule

(1) The President may from time to time make regulations amending, adding to or revoking the Regulations.

(2) Whenever the President is satisfied that it is equitable that any regulation made under subsection (1) should have retrospective effect in order to confer a benefit upon or remove a disability attaching to any person, that regulation may be given retrospective effect for that purpose.

(3) All regulations made under this section shall have the same force and effect as if they were contained in the Schedule and the expression "this Act" shall, wherever it occurs in this Act, be construed as including a reference to the Schedule.

(4) Any pension, gratuity or other allowance granted under this Act shall be computed in accordance with regulations made under subsection (1).

5. Pensions, etc., to be charged on revenues of Botswana

There shall be charged and paid out of the revenues of Botswana all such sums as may from time to time be granted by way of pension, gratuity or other allowance in pursuance of this Act.

6. When pensions will not be granted

Any person appointed to the public service as a medical officer who also practises privately as a physician, surgeon or accoucheur, shall not be deemed to be or to have been the holder of a pensionable office unless he has signed an undertaking, in a form approved by the President, to regard the claims of his private practice on his time as subordinate to those of his work for the Government and to hold himself liable, without title to advance any claim for loss of private practice, to be removed for the purposes of public service from any one place or station in Botswana to any other.

7. Pensions, etc., not to be assignable

A pension, gratuity or other allowance granted under this Act shall not be assignable or transferable except for the purpose of satisfying-

(a) a debt due to the Government of Botswana; or

(b) an order of any competent court for the payment of periodical sums of money towards the maintenance of the spouse or former spouse or minor child of the person 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 to the Government.

8. Botswana Public Officers' Pension Fund

(1) Any person who, before 1st April, 2001-

(a) is a pensioner or receives any gratuity or other allowance under this Act; or

(b) holds a pensionable office and is eligible for a pension, gratuity or other allowance under this Act,

may, if he so wishes, transfer his benefits under the present non-contributory pension scheme to the contributory Botswana Public Officers' Pension Fund established under the Pension and Provident Funds Act.

(2) A pensioner or other person who opts to transfer his benefits under subsection (1) shall do so within 24 months of the commencement of operations of the Botswana Public Officers' Pension Fund.

(3) Every person who is employed in a pensionable office on or after the 1st of April, 2001 shall join and draw his benefits from the Botswana Public Officers' Pension Fund.

9. Pensions, etc., to cease on bankruptcy

(1) Where 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 any competent court, then such pension or allowance shall forthwith cease.

(2) Where any officer is adjudicated bankrupt or declared insolvent by judgment of any competent court 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 not be paid to him 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 is not paid, or where any gratuity is not paid, by reason of this section, it shall be lawful for the President with the concurrence of the appropriate Commission in accordance with section 116 of the Constitution from time to time during the remainder of such person's life, or during such shorter period or periods, either continuous or discontinuous, to direct all or any part of the moneys to which such 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 with the concurrence of the appropriate Commission in accordance with section 116 of the Constitution may determine, in such proportion and manner as he thinks proper; and such 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 has not been paid, 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 has not been paid, or whose gratuity has not been paid, by reason of this section obtains his discharge from bankruptcy or insolvency, it shall be lawful for the President with the concurrence of the appropriate Commission in accordance with section 116 of the Constitution to direct that the pension or other allowance shall be restored or paid 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 such discharge or any later date; and the pension or other allowance shall be restored or paid and the gratuity or such remainder thereof (if any) paid, accordingly.

(6) For the purposes of this section "child" includes an illegitimate child, a step-child, an adopted child and a child for whom by any applicable customary law the officer is responsible, but shall not include a child who has attained the age of 21 years or, in the case of a female child, has married.

10. Withholding of benefits

(1) Where a public officer or former public officer who is entitled to payment of pension, gratuity or other allowance under this Act is convicted of one or more offences, under Part II of the Penal Code (relating to crimes of treason and other offences against the State's authority), or under the National Security Act, for which he has been sentenced to a term of imprisonment of at least 10 years, or has been sentenced on the same occasion to two or more consecutive terms amounting in aggregate to at least 10 years, the President may, if he thinks it is in the public interest to do so, withhold any pension, gratuity or other allowance payable to such officer under this Act.

(2) Where the President decides to withhold any benefits payable under this Act to any officer, he shall give such officer an opportunity to make such representations as the officer may wish to make to him.

(3) Where any benefits are withheld in accordance with the provisions of this section, the President may direct that all or any part of the benefits to which such officer would have been entitled by way of pension, gratuity or other allowance, but for the provisions of this section, should be paid or applied in the same manner in all respects as provided in section 9, and such benefits shall be paid or applied accordingly.

(4) Where any person whose pension or other allowances ceases or is not paid 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 or paid with retrospective effect, or his gratuity shall be paid, but in determining whether arrears of such pension or allowance are payable to such 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).

(5) Where any pension or other allowance ceases or is not paid, or a gratuity is not paid, by reason of this section, it shall be lawful for the President at any time, and upon such terms and from such date (including any past date) as he thinks fit to restore or direct the payment of, either in whole or in part, such pension or allowance or to direct the payment of such gratuity or any part thereof, but in determining whether arrears of such pension or allowance are payable 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).

(6) In the exercise of his functions under this section the President shall act with the concurrence of the appropriate Commission in accordance with section 116 of the Constitution.

11. Gratuity where officer dies in the service or after retirement

(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 in public service under the Government of Botswana, the Minister may, with the concurrence of the appropriate

Commission in accordance with section 116 of the Constitution, grant to his legal personal representative a gratuity of an amount not exceeding his annual pensionable emoluments or his commuted pension gratuity, if any, whichever is the greater:

Provided that for the purposes of this section an officer who has not been confirmed in his office and who dies in the circumstances mentioned in section 13(1) shall be deemed to have been confirmed in his office.

(2) The legal personal representative of an officer holding a pensionable office, who could have retired from service under the provisions of the Constitution or of the Public Service Act but who dies prior to such retirement, shall be entitled to receive the gratuity that would have been payable to the officer, if he had exercised his option to retire, and a death gratuity equivalent to three times the amount of the annual pension that would have been payable to the officer if he had retired prior to his death.

(3) Where an officer dies after retirement from public service under the Government of Botswana, having been granted or having become eligible for a pension under this Act, the Minister may, with the concurrence of the appropriate Commission in accordance with section 116 of the Constitution, grant to the legal personal representative of the deceased officer-

(a) a death gratuity equivalent to three times the annual amount of the pension of the deceased officer where the officer dies within 10 years of his retirement;

(b) a death gratuity equivalent to twice the annual amount of the pension of the deceased officer where the officer dies more than 10 years but less than 15 years after his retirement;

(c) a death gratuity equivalent to one year's annual amount of the pension of the deceased officer where the officer dies more than 15 years after his retirement.

(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 18 of the 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 such a grant to be made;

(b) "commuted pension gratuity" means the gratuity, if any, which might have been granted to the officer under the Regulations if the pensionable service which would be taken for the purpose of computing any pension or gratuity granted to him under this Act had been wholly under the Government of Botswana and if, on the day following the date of his death he had retired from the public service in the circumstances which enabled such a grant to be made and had elected to receive a gratuity and reduced pension.

(5) Any gratuity paid under the provisions of this section shall be abated by any amount paid to the officer in accordance with the General Orders of the Government of Botswana as an

advance on any gratuity payable under this Act or any other written law (not being a gratuity payable under this section) which would have accrued to such officer had he not died.

12. Gratuities to dependants when a non-pensionable officer dies in service

(1) Subject to the provisions of section 116 of the Constitution where an officer to whom this section applies dies while in public service under the Government of Botswana after serving in that public office for not less than five years, it shall be lawful for the Minister to grant to his legal personal representative a gratuity at the rate herein specified for each complete year of that public service, that is to say-

- (a) for each of the first five years, one weeks' pay;
- (b) for each of the next five years, two weeks' pay;
- (c) for each additional year, four weeks' pay.

(2) Subject to the provisions of section 116 of the Constitution, where an officer to whom this section applies dies as a result of injuries received in public service under the Government of Botswana in the circumstances specified in section 13(1)(a) and (b) before completing five years' public service under that Government, it shall be lawful for the Minister to grant to his legal personal representative a gratuity not exceeding five weeks' pay.

(3) This section applies to an officer who holds-

- (a) a non-pensionable office; or
- (b) a pensionable office in which he is not serving on probation and if his appointment to that office is subject to confirmation in which he has not been confirmed, and who is not eligible for the grant of a pension, gratuity or other allowance under this Act (other than a pension under regulation 23(4)) or for the grant, under his terms of service, of a gratuity or benefit under any other scheme of superannuation.

(4) For the purposes of this section-

- (a) "pay" means pay at the date of the officer's death and includes any allowance that the Minister may see fit to include;
- (b) an officer who, having held a non-pensionable office, holds a pensionable office in which he is serving on probation shall be deemed to hold a non-pensionable office and his pay shall be deemed to be the pay last received by him in respect of the non-pensionable office he previously held or the pensionable emoluments of the pensionable office held by him, whichever is the greater;
- (c) in calculating the period in which any officer has served in public service under the Government of Botswana-
 - (i) subject to any general or special directions to the contrary that may be given by the

Minister, only continuous service terminating at his retirement or death shall be taken into account;

(ii) no regard shall be had to any period of service for which he is eligible for the grant of or has been granted a pension, gratuity or other allowance under this Act (other than a pension under regulation 23(4)) or, as provided under his terms of service, a gratuity or benefit under any other scheme of superannuation.

13. Pensions to dependants when an officer dies as a result of injuries received or disease contracted in the discharge of his duties

(1) Where an officer while in public service under the Government of Botswana-

(a) is injured in the actual discharge of duty by some injury specifically attributable to the nature of his duty which is not wholly or mainly due to, or seriously aggravated by, his own serious and culpable negligence or misconduct; or

(b) contracts a disease to which he is exposed by the nature of his duty, not being a disease wholly or mainly due to, or seriously aggravated by, his own serious and culpable negligence or misconduct,

and dies as a direct result of such injury or disease, and such death occurs within seven years of the date when he was injured or contracted the disease, the Minister, may grant, in addition to the grant, if any, made to his legal personal representative under section 11-

(i) if the deceased officer is survived by a spouse, a pension to the surviving spouse at a rate not exceeding ten-sixtieths of his or her annual pensionable emoluments at the date of the injury or P40 a year, whichever is the greater;

(ii) if the deceased officer is survived by a spouse to whom a pension is granted under subparagraph (i) and a child or children, a pension in respect of each child, until such child attains the age of 21 years, of an amount not exceeding one-eighth of the pension prescribed under subparagraph (i);

(iii)

(iv) if the deceased officer is survived by a child or children and a spouse to whom a pension is granted under subparagraph (i) and the surviving spouse subsequently dies, a pension in respect of each child as from the date of the death of the surviving spouse until such child attains the age of 21 years, of double the amount prescribed in subparagraph (ii);

(v) if the deceased officer is not survived by a spouse, or if no pension is granted to the surviving spouse and if the parent or parents of the deceased officer were wholly or mainly dependent on the officer for their support, a pension to the parent or parents of an amount not exceeding the pension which might have been granted to a surviving spouse;

(vi) if the deceased officer does not leave a widow or mother, or if no pension is granted to his widow and if his father was wholly or mainly dependent on him for his support, a pension to the father of an amount not exceeding the pension which might have been granted to his widow;

(vii) if the deceased officer does not leave a child or children who is or are eligible for a pension

under the provisions of this section, and if any brother or sister was wholly or mainly dependent on him for support, a pension to such brother or sister until he or she attains the age of 21 years, of the same amount and subject to the same conditions as the pension which might have been granted under subparagraph (ii) or (iv) as the case may be:

Provided that-

(a) if in the opinion of the President there are compassionate grounds for so doing, he may grant to any child of a deceased officer being a child who at the date of the death of the officer was wholly or mainly dependent on him for support and who has attained the age of 21 years a pension for such period as the President may determine, of an amount not exceeding the pension which may be granted under subparagraph (ii) or (iv) as the case may be;

(b) where a deceased officer leaves a child who was incapacitated at the time of the officer's death (hereinafter in this section referred to as an "incapacitated child") the President may, notwithstanding any pension which may have been granted under subparagraph (ii) or (iv) grant an additional pension in respect of such incapacitated child after he has attained the age of 21 years and so long as his incapacity continues, of an amount not exceeding one-half the pension which might have been granted under subparagraph (ii) or (iv) aforesaid, as the case may be;

(c) where compensation in respect of the death is payable under any law in force in Botswana which provides for the payment of workmen's compensation or under the law in force in respect of any other public service, in respect of death, the President may reduce or withhold any pension which may be payable under this section in such manner as he may consider reasonable;

(d) no pension shall be payable under this subsection at any time in respect of more than six children exclusive of incapacitated children, and where there are more than six such 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 such children during the period in which there are more than six children of pensionable age;

(e) in the case of a pension granted under subparagraph (v), (vi) or (vii) if it appears to the President at any time that the mother or father, or any brother or sister, is adequately provided with other means of support, such pension shall cease as from such date as the President may determine;

(f) where a deceased officer has contracted polygamous marriages and leaves more than one widow, or children born of such marriages and it is impracticable to grant a pension or pensions in the manner prescribed in any of the preceding provisions of this subsection, the President may-

(i) grant a pension, not exceeding the pension which might be granted to a surviving spouse under the said provisions to be divided between the polygamous widows in such proportions as the President may direct; and

(ii) grant a pension to each such child not exceeding the pension which might have been granted to a child under the said provisions.

(2) No pension shall be granted to a surviving spouse where the surviving spouse was not married to the deceased officer at the date of injury.

(3)

(4) In the case of an officer not holding a pensionable office the expression "pensionable emoluments" in subsection (1) shall mean the emoluments enjoyed by him which would have been pensionable emoluments if the office held by him had been a pensionable office.

(5) An officer who dies as a result of an injury received while travelling by air in pursuance of official instructions, which injury is not wholly or mainly due to or seriously aggravated by his own serious and culpable negligence or misconduct shall be deemed for the purposes of this section to have died in the circumstances described in subsection (1)(a):

Provided that in such a case the rates of pension prescribed in subsection (1)(i) and (ii) shall be fifteen-sixtieths and one-sixth respectively.

(6) Where the President is satisfied that damages have been or will be recovered in respect of the death for which a pension may be granted under subsection (1), the President may take those damages into account against such pension in such manner and to such extent that he may think fit and may withhold or reduce the pension accordingly.

(7) For the purposes of subsection (6) an officer shall be deemed to recover damages whether they are paid in pursuance of a judgment or order of a court by way of settlement or compromise of his claim and whether or not proceedings are instituted to enforce that claim.

(8) For the purposes of this section the following words have in relation to an officer, the meanings hereby respectively assigned to them-

(a) "brother" includes every male child of his father or his mother;

(b) "child" includes-

(i) a posthumous child;

(ii) a step-child or illegitimate child born before the date of the injury or contracting the disease, as the case may be, and wholly or mainly dependent upon the deceased officer for support;

(iii) an adopted child, adopted before the date of the injury or contracting the disease, as the case may be, and dependent as aforesaid; and

(iv) a child for whom by any applicable customary law the officer is responsible when the officer became responsible before the date of the injury or contracting the disease, as the case may be, and dependent as aforesaid;

(c) "incapacitated" means in relation to a child, incapable by reason of some specific bodily or mental disability of earning his own living, and a child who is in any event too young to earn his own living shall be treated as incapacitated for the purposes of this section if it appears that, by reason of any specific bodily or mental disability, he will be incapable of earning his own living when he attains the age

at which he would otherwise be capable of doing so;

- (d) "father" includes his step-father and a male person by whom he has been adopted;
- (e) "mother" includes a step-mother and a female person by whom he has been adopted;
- (f) "sister" includes every female child of his father or his mother.

(9) In this section, unless the contrary intention appears, a reference to an officer being injured and to the date on which an injury is sustained shall respectively be construed as including references to him contracting a disease such as is mentioned in subsection (1)(b) and to the date on which such disease is contracted.

(10) In the exercise of their functions under this section the Minister and President shall act with the concurrence of the appropriate Commission in accordance with section 116 of the Constitution.

14. War service to count for pension purposes

Where an officer has served with Her Majesty's Forces in time of war, prior to 30th September, 1966, with the approval of the authority in whose service he was last employed before so serving or of the Secretary of State, the following provisions shall have effect-

(a) during the period of such service in Her Majesty's Forces including any period after the termination of the war (in this section referred to as "military service"), he shall be deemed, for the purposes of this Act, to have been on leave on full salary from the public service in which he was last employed, and to have held the substantive office last held by him in that service prior to military service;

(b) during any period between his leaving the public service for the purpose of serving in Her Majesty's Forces and the date of his commencing military service, he shall, for the purposes of this Act, be deemed to be on leave without pay, not granted on grounds of public policy, from the public service in which he was last employed, and to have held the substantive office last held by him in that service, prior to military service; and during any period between the termination of his military service and the date of his re-entering the public service he shall, for the said purposes, be deemed to be on leave as aforesaid from the service, and to have held the substantive office, in which he is re-employed:

Provided that-

(i) this section shall not apply when either period mentioned in paragraph (b) exceeds three months, or such longer period as the President may in any special case determine; or if the officer failed, after serving with Her Majesty's Forces, to re-enter the public service otherwise than in circumstances in which he would be permitted, under the law applicable to the public service in which he is last employed prior to military service, to retire on pension or gratuity, such circumstances arising not later than the expiration of three months, or such longer period as may be determined aforesaid, after the termination of his military service;

(ii) if during any period mentioned in paragraph (a) the officer has qualified for pension, or received emoluments in lieu of pension rights, actually in respect of military service, paragraph (a) shall,

as respects that period, have effect as if the words "leave without salary not on grounds of public policy" were substituted for the words "leave on full salary";

(iii) if during his military service the officer has been injured or killed, he shall not, for the purposes of this Act, be deemed to have been injured or killed in the discharge of his duty;

(iv) the provisions of this section which require that the officer shall be deemed to have held a specified office and to have been on leave from a specified service shall not apply in respect of any period during which he has actually held any other substantive office and have been on leave from any public service;

(v) except where the President in any particular case otherwise directs, this section shall not apply where the office in the public service last held by the officer prior to military service was not a pensionable office.

15. Contributions to certain pensions, etc., payable by the Governments of Lesotho and Swaziland

When a pension, gratuity or other allowance is payable to or in respect of any officer from the funds of Lesotho or Swaziland in respect of service remunerated by a salary or emoluments towards which contributions have been paid out of funds of Botswana, contributions towards the amount of such pension, gratuity, or other allowance may be paid from the funds of Botswana to the funds of Lesotho or Swaziland, as the case may be, which shall bear the same proportion to such pension, gratuity or other allowance as the annual contribution towards the said salary or emoluments at the date of the officer's retirement or death bears to the total annual amount of the officer's salary or emoluments at that date.

16. Application

The provisions of this Act shall apply-

(a) to every officer who was in the public service of the Government of Botswana immediately before the commencement of this Act;

(b) to every officer appointed to the public service of the Government of Botswana on or after the commencement of this Act;

(c) to every officer transferred to the public service of the Government of Botswana after the commencement of this Act, in respect of service on or after that date;

(d) to every officer transferred from the public service of the Government of Botswana to other public service before the commencement of this Act, and still in other public service on that date:

Provided that when an officer to whom the Pensions Proclamation repealed by this Act applied left the public service before the commencement of this Act, and has been re-employed in the public service after such date, he shall for the purposes of this paragraph be deemed to be in the public service at the commencement of this Act.

17. Designation of public service

The President may, if he considers it to be in the public interest, by order designate such service as he deems fit, to be public service for the purposes of this Act.

18. Gratuity of contract officers to be free of tax

Any gratuity payable under this Act to any officer appointed on contract for a period of 24 months to 36 months shall be payable free from tax.

SCHEDULE
PENSIONS REGULATIONS

(under section 3)

ARRANGEMENT OF REGULATIONS

PART I
Preliminary

REGULATION

1. Citation
2. Interpretation

PART II
Officers without other Public Service

3. Application of Part II
4. Pension to whom and at what rates to be granted
5. Gratuities in certain circumstances
6. Marriage gratuities

PART III

Transferred Officers

7. Application of Part III
8. Interpretation
9. Pension for service wholly within the group
10. Pension where other service is not within the group
11. Pension where other service both within and not within the group
12. Gratuities where length of service does not qualify for pension
13. Marriage gratuities

PART IV

General

14. General rules as to qualifying service and pensionable service
15. Continuity of service
16. Leave without salary
17. Service in Her Majesty's forces
18. Emoluments to be taken for computation of pensions, etc.
19. Non-pensionable service
20. Acting service
21. Service under age of 20 or on probation or agreement

PART V

Supplementary

22. Abolition of office
23. Officers injured or contracting diseases in the discharge of their duties

24. Officers retired on medical grounds
25. Gratuity and reduced pension
26. Gratuities for officers who have served in non-pensionable offices

Law 23, 1965,
L.N. 78, 1966,
S.I. 3, 1967,
S.I. 50, 1967,
S.I. 10, 1968,
Act 38, 1969,
S.I. 4, 1973,
S.I. 40, 1974,
Act 4, 1978,
S.I. 32, 1979,
S.I. 140, 1980,
S.I. 77, 1986,
S.I. 12, 1998,
S.I. 73, 2000.

PART I

Preliminary (regs 1-2)

1. Citation

These Regulations may be cited as the Pensions Regulations.

2. Interpretation

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, gratuity, or other allowance.

PART II

Officers without other Public Service (regs 3-6)

3. Application of Part II

Except when the Director of Public Service Management in any special case otherwise directs, this Part of these Regulations shall not apply in the case of any officer transferred to or

from the public service under the Government of Botswana from or to other public service except for the purpose of determining whether such 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 service in public service under the Government of Botswana.

4. Pension, to whom, and at what rates to be granted

(1) Subject to the provisions of the Act and these Regulations, every public officer to whom this regulation applies may be granted a pension on his retirement-

(a) on or after attaining the age at which he is permitted or required to retire under the provisions of the Constitution or the Public Service Act; or

(b) on medical grounds in accordance with the provisions of section 16 of the Public Service Act.

(2) Subject to the provisions of the Act and these Regulations, a public officer to whom this regulation applies means a public officer in a pensionable office under the Government of Botswana who has been in the public service of the Government of Botswana for 10 years or more.

(3) A pension payable to a public officer under this regulation shall be at the rate of one four-hundred and fiftieth of his pensionable emoluments in respect of each completed month of pensionable service.

5. Gratuities in certain circumstances

(1) Subject to the provisions of the Act and these Regulations, every public officer who would otherwise qualify for a pension in accordance with the provisions of regulation 4, but who has not completed the 10 year qualifying period referred to in regulation 4(2), may be granted on retirement a gratuity not exceeding five times the annual amount of the pension which, had there been no qualifying period, might have been granted to him under regulation 4.

(2) Subject to the provisions of the Act and these Regulations, a constable in the Botswana Police Force or a warder in the Prison Service who has been permitted or required to retire after serving a minimum of 20 years' continuous service in the Botswana Police Force or the Prison Service, or in both of them, may, if he does not otherwise qualify for a pension under regulation 4, be granted a gratuity in accordance with the rate specified in subregulation (1).

(3) Where a public officer who is compulsorily retired as a result of disciplinary proceedings being taken against him has served a minimum of 20 years' continuous service in the public service, but does not qualify for a pension under regulation 4 because he has not reached the age of 45 years at the time of his retirement, he may be granted a gratuity not exceeding five times the annual amount of the pension which might have been granted to him under regulation 4 had there been no age qualification.

(4) Where a public officer resigns from the public service after he has served a minimum

of 20 years' continuous service but does not qualify for a pension under regulation 4 because he has not reached the age of 45 years at the time of his resignation, he shall nevertheless be entitled to a gratuity equivalent to five weeks' salary for every completed year of service subject to a maximum of two years' salary.

6. Marriage gratuities

Where a female officer having been in public service under the Government of Botswana for not less than five years and having been confirmed in a pensionable office, retires for the reason that she is about to marry, or has married, and is not eligible for the grant of any pension or otherwise eligible for gratuity under this Part, she may be granted on production of satisfactory evidence of her marriage, within six months after her retirement, or such longer period as the Director of Public Service Management may in any case allow, a gratuity of an amount not exceeding-

(a) one year's annual pensionable emoluments; or

(b) five times the annual amount of the pension which might have been granted to her under regulation 4 had there been no qualifying period and had that regulation been applicable to her, whichever amount shall be the less.

PART III

Transferred Officers (regs 7-13)

7. Application of Part III

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

8. Interpretation

(1) In this Part and Part IV-

"scheduled administration" 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 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 Government of the Somali Republic, in respect of any officer appointed to service under the former Government of the Somaliland Protectorate before 26th June, 1960;

(e) the Government of Cyprus, in respect of any officer appointed to service under that Government before 16th August, 1960;

(f) the East African Common Services Organization or, with effect from 1st December, 1967, the East African Community, in respect of any person deemed to have been appointed or appointed to service 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;

(g) the Interim Commission for the West Indies in respect of any person deemed to have been appointed or appointed to service as Judge, Registrar, Officer or servant of the British Caribbean Court of Appeal Order in Council, 1962;

"service in the group" means service in the public service under the Government of Botswana and under a scheduled administration or scheduled administrations.

(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 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 1st January, 1964, in respect of service under the Government 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.

(3) Where an officer to whom this Part applies is, on his retirement from the public service, not granted a pension or gratuity in respect of his employment in the service in which he was last employed, solely by reason of the fact that he has not held office or pensionable office therein for a specified period, he shall nevertheless be deemed for the purposes of this Part to have retired in circumstances in which he is permitted by the law in force in respect of the service in which he is last employed to retire on pension or gratuity.

9. Pension for service wholly within the group

(1) Subject to the provisions of the Act and of these Regulations, where the other public service of an officer to whom this Part applies has been wholly under one or more scheduled administrations and his aggregate service would have qualified him had it been wholly service in public service under the Government of Botswana for a pension under these Regulations, he may, on his retirement from the public service, be granted in respect of his service in public service under the Government of Botswana a pension of such an amount as shall bear the same proportion to the amount of pension for which he would have been eligible had his service been wholly in public service under the Government of Botswana as the aggregate amounts of his pensionable emoluments during service in public service under the Government of Botswana shall bear to the aggregate amounts of his pensionable emoluments throughout his service in the group.

(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 service in public service under the Government of Botswana-

(a) in the application of regulation 18, his pensionable emoluments shall be determined by reference to the pensionable emoluments enjoyed by him at the date of his retirement from the public service or during the three years or lesser period preceding that date, as the case may be, except that where the officer is not serving under a scheduled administration at that date, the date upon which he was last transferred from the public service under a scheduled administration shall be deemed to be the date of his retirement for the purposes of this paragraph;

(b) no regard shall be had to an additional pension under regulation 22 or 23.

(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 subsequent to the attainment of the age of 20 years:

Provided that-

(i) in calculating the aggregate amount of his pensionable emoluments, no account shall be taken of any service under a scheduled administration or under the Government of Botswana in respect of which no pension or gratuity is granted to him by that administration or Government, as the case may be;

(ii) where 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.

(4) For the purposes of this regulation where an officer retires from the public service under the Government of Lesotho or Swaziland under the provisions of a scheme of retirement, whether contained in a law or not, which is applicable to that public service and in circumstances in which he is permitted to retire therefrom on pension, he may, notwithstanding that his total public service is less than 10 years, be granted, in lieu of any gratuity under regulation 12, a pension under this regulation as if the words "for 10 years or more" were omitted from regulation 4.

10. Pension where other service is not within the group

(1) Subject to the provisions of the Act and of these Regulations, where the other public service of an officer to whom this Part of these Regulations applies has not included service under any of the scheduled administrations, and his aggregate service would have qualified him, had it been wholly service in public service under the Government of Botswana for a pension under these Regulations, he may on his retirement from public service, be granted in respect of his service in public service under the Government of Botswana, a pension of an amount equal to the pension for which he would have been eligible under regulation 4, if there had been no qualifying period and if he had no other public service.

(2) Where the officer is not in public service under the Government of Botswana at the time of such retirement, his pensionable emoluments for the purposes of subregulation (1) shall be those which would have been taken for the purposes 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 public service under the Government of Botswana.

(3) Any officer who, prior to 1st January, 1960, has been transferred from a pensionable office in the public service of the Union of South Africa or in the public service of Southern Rhodesia, to a pensionable office under the public service of the Government of Botswana, and has served not less than 10 years in all in a pensionable office, shall on retirement receive in respect of the period of such other public service and of his service in a pensionable office in Botswana such pension as would have been payable to him if the whole of such service had been in Botswana notwithstanding that he may not have completed 10 years' actual service in Botswana:

Provided, however, that any pension, or the aggregate of any reduced pension and of any portion of the unreduced pension used for the purpose of computing a gratuity, which may be payable by the Government of South Africa or the Government of Southern Rhodesia, as the case may be, towards the pension of any such officer shall be deducted from the unreduced pension payable to such officer, and any gratuity payable to such officer under the provisions of regulation 25 shall in no case exceed a sum equal to twelve and one half times one-fourth of the pension payable to such officer out of Botswana funds.

11. Pension where other service both within and not within the group

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 administrations, the provisions of regulation 9 shall apply, but in calculating the amount of pension, regard shall be had only to service in the group.

12. Gratuities where length of service does not qualify for pension

Subject to the provisions of the Act and of these Regulations, where an officer to whom this Part applies retires from the public service but has not been in the public service for 10 years, he may be granted in respect of his service in the public service under the Government of Botswana, 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.

13. Marriage gratuities

Where a female officer to whom this Part applies retires for the reason that she is about to marry or has married, and-

(a) would have been eligible for a gratuity under regulation 6 if her public service had been wholly under the Government of Botswana; and

(b) is not eligible for the grant of any pension or otherwise eligible for gratuity under this Part,

she may be granted in respect of her public service under the Government of Botswana a gratuity of an amount not exceeding five times the annual amount of the pension for which she would have been eligible under regulation 9, 10 or 11 had there been no qualifying period and had regulation 9, 10 or 11, as the case may be, been applicable to her:

Provided that for the purpose of computing the amount of such a gratuity-

(i) in relation to regulation 9 or 11, regulation 9(2)(c) shall have effect as if the reference to two-thirds of her highest pensionable emoluments were a reference to one-fifth of her annual pensionable emoluments;

(ii) in relation to a pension under regulation 9, 10 or 11, the annual amount of that pension shall not exceed one-fifth of her annual pensionable emoluments.

PART IV

General (regs 14-21)

14. General rules as to qualifying service and pensionable service

(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 subregulation (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.

15. Continuity of service

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

Provided that any person holding office in public service under the Government of Palestine immediately before 15th of May, 1948, shall be deemed to have continued in his office until either he was appointed to the service of a scheduled administration elsewhere, or if he was not so appointed, he retired or was removed from office.

(2) An officer-

(a) who has retired from the public service without pension on account of ill health, or abolition of office, and has subsequently been re-employed in the public service; or

- (b) who has left pensionable service-
 - (i) under any Acts relating to the superannuation of teachers in the United Kingdom;
 - (ii) under a local authority in the United Kingdom; or
 - (iii) under the National Health Service of the United Kingdom,

with a view to entering public service, not being pensionable service as aforesaid and has, not later than three months, or such extended period as the Minister may in any particular case approve, after leaving such pensionable service received any salary in respect of employment in public service not so pensionable may if the Minister, acting with the concurrence of the appropriate Commission in accordance with section 116 of the Constitution, thinks fit, be granted the pension or gratuity for which he would have been eligible if any break in his public service immediately prior to such suspension, re-employment or employment had not occurred, such pension being in lieu of-

- (a) any pension previously granted to him from the funds of Botswana; and
- (b) 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 refunded as aforesaid.

16. Leave without salary

No period during which an officer has been absent from duty on leave without salary shall be taken into account as pensionable service unless such leave has been granted on grounds of public policy with the approval of the Director of Public Service Management.

17. Service in Her Majesty's Forces

Where an officer, during some period of his service has been on the active list of the Royal Navy, the Army or the Royal Air Force and pension contributions have been paid in respect of that period from the funds of the Bechuanaland Protectorate, or of any scheduled administration and have not been refunded, such period shall not be taken into account as pensionable service.

18. Emoluments to be taken for computation of pensions, etc.

(1) For the purpose of computing the amount 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 such period of three years has been transferred from one office to another, but whose pensionable emoluments have not been changed by reason of such transfer or transfers, otherwise than by 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 such one-third is less than the highest annual pensionable emoluments enjoyed by him at the date of any transfer within such period of three years these annual pensionable emoluments shall be taken; and

(ii) if such 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 such period of three years, and has received all scale increments which, in the opinion of the Minister would have been granted to him, the annual pensionable emoluments which would have been so enjoyed shall be taken.

(2) For the purpose of determining under subregulation (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 such increase had been payable throughout such 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 Minister in his discretion as having enjoyed the same pensionable emoluments as the abolished office at the time of the said 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 such period shall be taken;

(b) he shall be deemed to have been on duty on full pensionable emoluments throughout such 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 such increase had been payable throughout such period.

(4) Notwithstanding any other provision of this regulation the pensionable emoluments taken for the purposes of computing the pension or gratuity of any officer shall in no circumstances exceed the full annual pensionable emoluments enjoyed by the officer at the date of retirement in respect of the office then held by him.

19. Non-pensionable service

Only service in a pensionable office (not being service in respect of which the officer is entitled to a gratuity in lieu of pension or to benefit under any other scheme of superannuation) shall be taken into account as pensionable service:

Provided that-

(i) where a period of service in a civil capacity otherwise than in a pensionable office (not being service in respect of which the officer is entitled to a gratuity in lieu of pension) is immediately followed by service in a pensionable office and the officer is confirmed therein, the whole or any part of such period may with the approval of the Director of Public Service Management be so taken;

(ii) any break in service which may be disregarded under the provisions of regulation 15 may likewise be disregarded in determining for the purposes of the preceding provisions of this regulation whether one period of service immediately follows another period of service;

(iii) (a) where an officer has been transferred from a pensionable office in which he had been confirmed to an office which is not pensionable and subsequently retires either from a pensionable office or an office which is not pensionable his service in the office which is not pensionable may, with the approval of the Director of Public Service Management, be taken into account as though it were service in the pensionable office which he held immediately prior to such transfer and at the pensionable emoluments which were payable to him at the date of transfer;

(b) where a period of non-pensionable service is taken into account under this regulation, the officer shall, during that period, be deemed for the purposes of regulations 6, 22 and 23 to be holding a pensionable office, and where that period is taken into account under paragraph (iii)(a) to have been confirmed therein.

20. Acting service

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 service is non-pensionable, to the provisions of regulation 19) 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 in the public service under the same government or authority, and not otherwise.

21. Service under age of 20 or on probation or agreement

Except 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 16 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 15 may likewise be disregarded in determining whether the officer is confirmed in a pensionable office without break of service.

PART V

Supplementary (regs 22-26)

22. Abolition of office

Where an officer holding a pensionable office retires from the public service in consequence of the abolition of his office he may-

- (a) in lieu of any gratuity that he may or may not be entitled to, be granted a pension in accordance with the provisions of regulation 4, 9, 10 or 11, as the case may be, notwithstanding that he would not otherwise qualify for such pension by reason of age or length of service;
- (b) if he retires from the public service under the Government of Botswana, be granted an additional pension at the annual rate of one one hundred and eightieth of his pensionable emoluments for each complete year of his pensionable service:

Provided that-

- (i) the addition shall not exceed thirty one hundred and eightieths; 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 to hold the office held by him at the date of his retirement, and retired on reaching the age at which he would have been compelled to retire under the provisions of the Constitution or the Public Service Act, as the case may be, having received all increments for which he would have been eligible by that date.

23. Officers injured or contracting diseases in the discharge of their duties

(1) This regulation shall apply to an officer who-

- (a) is injured in the actual discharge of his duty by some injury specifically attributable to the nature of his duty which is not wholly or mainly due to, or seriously aggravated by, his own serious and culpable negligence or misconduct; or

(b) contracts a disease to which he is exposed by the nature of his duty, not being a disease wholly or mainly due to, or seriously aggravated by, his own serious and culpable negligence or misconduct.

(2) In this regulation unless the contrary intention appears, references to an officer being injured and to the date on which an injury is sustained shall respectively be construed as including references to him contracting such a disease as is mentioned in subregulation (1)(b) and to the date on which such disease is contracted.

(3) Where an officer to whom this regulation applies is holding a pensionable office in which he has been confirmed he may-

(a) if his retirement is necessitated or materially accelerated by his injury, be granted, in lieu of any gratuity that he may or may not be entitled to, a pension in accordance with the provisions of regulation 4, 9, 10 or 11, as the case may be, notwithstanding that he would not otherwise qualify for such pension by reason of age or length of service;

(b) if he was injured in public service under the Government of Botswana 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 shown in the following table-

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 Minister with the concurrence of the appropriate Commission in accordance with section 116 of the Constitution thinks reasonable where the injury is not the cause or the sole cause of retirement.

(4) An officer to whom this regulation applies who is injured while in public service under the Government of Botswana who holds a non-pensionable office or who holds a pensionable office in which he has not been confirmed, may be granted on retirement, a pension of the same amount as the additional pension which may be granted to him under subregulation (3) if his office were a pensionable office and he had been confirmed therein.

(5) The provisions of regulation 25 shall not apply to a pension granted under subregulation (4).

(6) If, for the purpose of assessing the amount of any additional pension or pension to be

granted under subregulation (3)(b) to any officer to whom this regulation applies, the degree of permanent impairment of his capacity to contribute to his support is in doubt, he may be granted a provisional award to have effect until such time as his degree of permanent impairment can be determined.

(7) The provisions of regulation 25 shall not apply to an award made under subregulation (6).

(8) An officer who is injured while travelling by air in pursuance of official instructions, and whose injury is not wholly or mainly due to, or seriously aggravated by, his own serious and culpable negligence or misconduct, shall be deemed for the purposes of this regulation to have been injured in the circumstances described in subregulation (1):

Provided that in such a case the rates of pension prescribed in subregulation (3)(b) shall be seven-and-a-half sixtieths, fifteen sixtieths, twenty-two-and-a-half sixtieths and thirty sixtieths respectively.

(9) Where compensation in consequence of the injury is payable under any law in force in Botswana which provides for the payment of workmen's compensation, or where benefits corresponding to an additional pension or pension under subregulation (3) or (4) are payable, under the law in force in respect of any other public service, in consequence of the injury, the Minister with the concurrence of the appropriate Commission in accordance with section 116 of the Constitution may reduce or withhold any additional pension or pension payable under either subregulation (3) or (4) aforesaid in such manner as he may consider reasonable.

(10) Where the Minister is satisfied that damages have been or will be recovered by an officer in respect of an injury for which an additional pension or pension may be granted under subregulation (3)(b) or (4), the Minister may with the concurrence of the appropriate Commission in accordance with section 116 of the Constitution take these damages into account against such additional pension or pension in such manner and to such extent as he may think fit and may withhold or reduce the additional pension or pension accordingly.

(11) For the purposes of subregulation (10) an officer shall be deemed to recover damages whether they are paid in pursuance of a judgment or order of the court or by way of settlement or compromise of his claim and whether or not proceedings are instituted to enforce that claim.

24. Officers retired on medical grounds

Where a public officer holding a pensionable office in which he has been confirmed is permitted or required to retire from the public service on medical grounds under section 16 of the Public Service Act, in circumstances in which regulation 23 does not apply, he may be granted-

(a) if he has been in the public service for 10 years or more, a pension in accordance with the provisions of regulation 4, 9, 10 or 11, notwithstanding that he does not otherwise qualify for a pension under those regulations; or

(b) if he has been in the public service for less than 10 years, a gratuity in accordance with the provisions of regulation 5 or 12, notwithstanding that he does not otherwise qualify for a gratuity under those regulations.

25. Gratuity and reduced pension

(1) Any officer to whom a pension is granted under the Act may, at his option exercisable as provided in this regulation, be paid in lieu of such pension a pension at the rate of not less than three-fourths of such pension together with a gratuity equal to twelve and a half times the amount by which such pension is reduced.

(2) An option exercisable in accordance with this regulation-

(a) shall be exercisable, and if exercised, may be revoked on or before the date of the officer's retirement or with the permission of the Minister at any time between that date and the date of the final award of the pension granted to him under the Act;

(b) shall be exercised or revoked by notice in writing addressed to the Minister;

(c) shall be deemed to have been exercised or revoked on the date on which such notice is received.

(3) If an officer who has not exercised an option in accordance with this regulation dies after he has retired but before a pension has been granted to him under the Act the Minister may with the concurrence of the appropriate Commission in accordance with section 116 of the Constitution grant to his legal personal representative a gratuity and a reduced pension as provided in subregulation (1) as if the officer exercised the option before his death.

26. Gratuities for officers who have served in non-pensionable offices

(1) Subject to the provisions of section 116 of the Constitution, where an officer to whom this regulation applies retires or resigns from public service under the Government of Botswana after serving in that public service for not less than five years, he may be granted by the Minister a gratuity at the rate of five weeks' pay for each completed year of service:

Provided that the total amount of the gratuity payable shall not exceed the amount of two years' pay.

(2) This regulation applies to an officer who holds-

(a) a non-pensionable office;

(b) a pensionable office in which he is not serving on probation and (if his appointment to that office is subject to confirmation) in which he has not been confirmed and who is not eligible for the grant of a pension, gratuity or other allowance under the Act (other than a pension under subregulation 23(4)) or for the grant, under the terms of service, of a gratuity or a benefit under any other scheme of superannuation.

(3) For the purposes of this regulation-

(a) "pay" means pay at the date of the officer's retirement or resignation and includes any allowance the Minister may think fit to include;

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

(c) in calculating the period in which any officer has served in public service under the Government of Botswana-

(i) subject to any general or special directions that may be given by the Minister, only continuous service terminating at his retirement or resignation shall be taken into account;

(ii) no regard shall be had to any period of service for which he is eligible for the grant of or has been granted a pension, gratuity or other allowance under the Act (other than a pension under regulation 23(4)) or, as provided under his terms of service, a gratuity or a benefit under any other scheme of superannuation.

(4) An industrial class worker may, after every five years' continuous service and on application to the Minister, be granted a gratuity at the rate of five weeks' pay for each completed year of service.

SCHEDULE TO REGULATIONS

LIST OF SCHEDULED ADMINISTRATIONS AND AUTHORITIES

(Regulation 8(1))

Aden

Antigua

Bahamas

Barbados

Basutoland

Bermuda

British Antarctic Territory

British Honduras

British Solomon Islands Protectorate

Brunei

Cayman Islands

Crown Agents for Overseas Governments and Administrations

Dominica

East African Common Services Organization

East African Community

East African Harbours Corporation

East African High Commission

East African Posts and Telecommunications Corporation

East African Railways and Harbours Administration

East African Railways Corporation

Eastern Nigeria

Employing Authorities under the Overseas Superannuation Scheme

Falkland Islands

Federal Republic of Nigeria

Federation of Malaya

Federated Malay States

Federation of Nigeria

Federation of Rhodesia and Nyasaland

Fiji

Gambia

Ghana

Gibraltar

Gilbert and Ellice Islands

Gold Coast

Grenada

Guyana

Hong Kong

Interim Commissioner for the West Indies

Jamaica

Kenya

Kenya and Uganda Railways and Harbours Administrations

Kingdom of Lesotho

Leeward Islands (before 1.7.1956)

Malawi

Malayan Establishment

Malayan Union

Malaysia

Malta

Mauritius

Mid West Nigeria

Montserrat

Nigeria

North Borneo

Northern Nigeria

Northern Rhodesia

Nyasaland

Overseas Audit Department (Home Establishment)

Post Office, United Kingdom of Great Britain and Northern Ireland

Republic of Botswana

Sabah

St. Christopher, Nevis and Anguilla

St. Helena

St. Lucia

St. Vincent

Sarawak

Seychelles

Sierra Leone

Singapore

Somaliland Protectorate

Southern Cameroons

Southern Rhodesia

Straits Settlements

Swaziland

Tanganyika

The West Indies (Federation)

Tonga

Trinidad and Tobago

Turks and Caicos Islands

Uganda

Unfederated Malaya States

United Kingdom of Great Britain and Northern Ireland

United Republic of Tanzania

Virgin Islands

Western Nigeria

Zambia

Zanzibar

Service under Overseas Act, 1958 (6 and 7 Eliz. 2, c. 14).