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PUBLIC SERVICE SUPERANNUATION SCHEME ACT

CHAPTER 190A

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CHAPTER 190A

PUBLIC SERVICE SUPERANNUATION SCHEME ACT

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CHAPTER 190A

PUBLIC SERVICE SUPERANNUATION SCHEME ACT

[Date of assent: 9th May, 2012.]

[Date of commencement: By Notice.]

An Act of Parliament to establish the Contributory Public Service Superannuation Scheme for providing retirement benefits to persons in the public service and for connected purposes

[Act No. 8 of 2012, Act No. 14 of 2015.]

PART I – PRELIMINARY

1. Short title and commencement

This Act may be cited as the Public Service Superannuation Scheme Act, 2012, and shall come into operation on such date as the Minister may, by notice in the *Gazette*, appoint.

2. Interpretation

In this Act, unless the context otherwise requires—

“**accrued interest**” means the income or capital appreciation or depreciation, less any applicable tax, that is credited to a member’s retirement savings account;

“**actuary**” has the meaning assigned to it in section 2 of the Retirement Benefits Act, 1997;

“**Administrator**” means a body corporate or a person appointed by the Board as such under section 35;

“**benefit**” means pensions, gratuities and pensions paid to the dependants of a deceased member and any other payments made to members or their dependants under this Act;

“**Board**” means the Board of Trustees of the Scheme established under section 10;

“**Bond**” *deleted by Act No. 14 of 2015, s. 52;*

“**Chief Executive Officer**” means the Chief Executive Officer of the Board appointed under section 20;

“**child**” means any child of a deceased member who is under eighteen years of age or if the child is receiving full-time education, not more than twenty-five years of age and was at the time of the death of the deceased wholly or mainly dependent on the deceased:

Provided that this category of dependants shall—

- (a) be closed at the death of the member; and

- (b) includes an unborn child who, if already born, would have been a child of the deceased;

“contribution” means the amount payable by a member and by the Government into the Scheme;

“Custodian” means a custodian registered under the Retirement Benefits Act, (No. 3 of 1997) appointed by the Board under section 37;

“dependant”, in relation to a deceased member, means any relative of the deceased who survives the deceased and who, on the date of the deceased’s death, was—

- (a) a spouse to the deceased;
- (b) a child of the deceased; or
- (c) a parent of the deceased who was wholly or substantially dependent on the deceased for the provision of the ordinary necessities of life suitable for a person of his station;

“disciplined services” means the National Police Service, the Prisons Service and the National Youth Service;

“financial year” means the period of twelve months ending on the 30th June, in each year;

“Fund” means the Public Service Superannuation Fund established under section 9;

“Government” means the National Government;

“gratuity” means a commuted pension payable under section 28(1);

“life insurance company” means any company registered by the Insurance Regulatory Authority under the Insurance Act (Cap. 487) to carry out the business of providing life insurance;

“Manager” means a manager registered under the Retirement Benefits Act (No. 3 of 1997) appointed by the Board under section 36;

“member” means a person who is a member of the Scheme under section 5;

“Minister” means the Minister for the time being responsible for matters relating to finance;

“National Police Service Commission” means the National Police Service Commission established under Article 246 of the Constitution;

“notional interest” means the interest accrued on any amount recognized as payable by the employer but which will only become due and payable on the retirement of a member;

“pensionable emoluments” means the annual basic salary as determined by the Government and does not include allowances or any special remuneration, honorarium or other fluctuating emoluments received by the member;

“pensioner” means a member who has retired from the service of the employer;

“public service” means employment in the service of the Government—

- (a) by the Public Service Commission;
- (b) by the Teachers Service Commission as a teacher; or
- (c) by the National Police Service Commission; or
- (d) by any other service that the Minister determines to be public service for the purposes of this Act,

and includes service in any of the offices referred to in Articles 154, 155 and 234(3) (b) of the Constitution;

“Public Service Commission” means the Public Service Commission established under Article 233 of the Constitution;

“Retirement Benefits Authority” means the Authority by that name established under section 3 of the Retirement Benefits Act (No. 3 of 1997);

“retirement savings account” means an account set up and maintained by the Administrator under section 24;

“Scheme” means the Contributory Public Service Superannuation Scheme established by section 3;

“spouse” means a female or male person to whom a member is married or was married immediately before his death under any law, whether monogamous or not;

“Teachers Service Commission” means the Teachers Service Commission established under Article 237 of the Constitution;

“transfer of service” means the conferment, whether permanently or otherwise, of an office in the public service, other than that to which the person concerned was last substantively appointed, whether or not on promotion:

Provided that the posting of a public officer between duty posts in the same grade in the Government or on secondment to a county government shall not be regarded for this purpose as a transfer of service;

“Trustee” means a member of the Board of Trustees established under section 10.

[Act No. 14 of 2015, s. 52.]

PART II – ESTABLISHMENT, MEMBERSHIP AND CONTRIBUTIONS TO THE SCHEME

3. Establishment of the Public Service Superannuation Scheme

(1) There is established a scheme to be known as the Public Service Superannuation Scheme.

(2) The Scheme shall be a retirement benefits scheme within the meaning of the Retirement Benefits Act (No. 3 of 1997).

4. Object and purpose of the Scheme

The object and purpose of the Scheme shall be to—

- (a) pay retirement benefits to members of the Scheme;

- (b) ensure that every member of the Scheme receives his retirement benefits as and when they become due;
- (c) assist to improve the social security of members of the Scheme by ensuring that the members save in order to cater for their livelihood during their retirement; and
- (d) establish a uniform set of rules, regulations and standards for the administration and payment of retirement benefits for members of the Scheme.

5. Membership of the Scheme

(1) A person who—

- (a) at the commencement of this Act, is employed in the public service on permanent and pensionable establishment and—
 - (i) has not attained the age of forty-five years;
 - (ii) if the person has attained the age of forty-five years opts, within three months of such commencement or such longer period as the Minister may, by notice in the *Gazette*, prescribe, that this Act shall apply to him; or
- (b) joins the public service on or after the commencement of this Act on a permanent and pensionable establishment,

shall be a member of the Scheme.

(2) For the avoidance of doubt, the law to be applied with respect to the retirement benefits of a person in the public service at the commencement of this Act who does not, where required, opt for the application of this Act under subsection (1)(a), shall be the law in force when that period of service commenced.

(3) A member, other than a member who has retired and has opted to be paid his benefits under section 28(2)(a), who for any reason leaves the public service shall cease to be a member of the Scheme.

6. Mandatory contribution to the Scheme

(1) Every member of the Scheme shall contribute to the Scheme at the rate of seven and a half per cent which shall be deducted from his monthly pensionable emoluments:

Provided that where the Government fails to deduct a member's contribution, the sum may be recovered in the subsequent months and any penalties payable thereon shall be paid by the Government.

(2) The Government shall make a contribution for each member of the Scheme at the rate of at least fifteen per cent of the member's monthly pensionable emoluments:

Provided that where the Government fails to make a contribution in any month, a penalty at the rate of the return of the Fund for the previous financial year shall apply on the unpaid amount.

(3) The Government's contribution under subsection (2) shall be a direct charge on the Consolidated Fund.

(4) In addition to the contributions specified in subsections (1) and (2), the Government shall take out and maintain a life insurance policy that has disability benefits in favour of every member of the Scheme, for a minimum of five times of the member's annual pensionable emoluments.

(5A) The contribution specified in subsections (1) and (2) shall commence from such date as the Cabinet Secretary may, by notice in the Gazette, appoint.

[Act No. 14 of 2015, s. 53.]

7. Additional voluntary contributions

(1) Subject to such guidelines as the Board may, from time to time issue, a member of the Scheme may make additional voluntary contributions to the Scheme.

(2) Subject to any guidelines issued under subsection (1), a member shall instruct the Government to deduct the additional voluntary contribution from his monthly pensionable emoluments.

8. Obligations of the Government

The Government shall—

- (a) deduct a member's monthly contribution from the member's monthly salary;
- (b) set aside the Government's monthly contribution for each member; and
- (c) not later than ten working days after the end of the month in which the contributions are due, remit an amount comprising the member's and the Government contribution to the Custodian.

PART III – THE PUBLIC SERVICE SUPERANNUATION FUND AND BOARD OF TRUSTEES

9. Establishment of Public Service Superannuation Fund

(1) There is established a Fund to be known as the Public Service Superannuation Fund, which shall vest in and be operated and managed by the Board.

(2) There shall be paid—

- (a) into the Fund all contributions and any other payments required by this Act to be paid into the Fund; and
- (b) out of the Fund, all the benefits and any other payments required under the provisions of this Act to be paid out of the Fund.

10. Establishment of a Board of Trustees

(1) There is established a board of trustees of the Fund to be known as the Public Service Superannuation Fund Board of Trustees, which shall consist of—

- (a) a Chairman who shall be appointed by the Minister and who—
 - (i) has at least twenty years or an aggregate of twenty years experience in a senior management position in the Public Service; and
 - (ii) is not in the service of any employers' or worker's representatives or any person affiliated to any of the organisations represented on the Board;

- (b) the Permanent Secretary in the Ministry for the time being responsible for matters relating to finance or his representative;
- (c) the Permanent Secretary in the Ministry for the time being responsible for matters relating to the public service or his representative;
- (d) the Secretary to the Teachers Service Commission or his representative;
- (e) the Secretary to the Public Service Commission or his representative;
- (f) the Inspector General of the National Police Service or his representative;
- (g) three other Trustees appointed by the Minister, of whom—
 - (i) one shall be nominated by the Kenya National Union of Teachers;
 - (ii) one shall be nominated by the Kenya Union of Post Primary Education Teachers;
 - (iii) one shall be nominated by the Union of Kenya Civil Servants; and
- (h) the Chief Executive Officer appointed under section 20, who shall be an *ex-officio* member and who shall not be entitled to vote on any matter before the Board.

(2) The Board shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued; and
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) doing or performing all other things or acts for the furtherance of the provisions of this Act which may be lawfully done or performed by a body corporate.

(3) The Board may co-opt not more than two persons to assist it for such purposes and such periods as to board may determine, but persons so co-opted may not vote on any matter before the Board.

(4) The Board shall elect from among its number one person to be the Vice-Chairman and act as the Chairman whenever the office of the Chairman is vacant or the holder thereof is absent from a meeting or is for any reason incapable of exercising his functions.

(5) A Trustee appointed under this section shall, in relation to the Fund, have the duties and obligations of a trustee, and be accountable in accordance with the provisions of the Trustee Act (Cap. 167).

11. Objects and functions of the Board

- (1) The objects and functions of the Board shall be to—
 - (a) collect contributions of members;
 - (b) optimally invest the contributions collected;

- (c) protect members' contributions;
- (d) provide pension and other benefits to the members of the Scheme and their dependants;
- (e) advise the Minister on any necessary adjustments in the Scheme in order to realize its objects under paragraphs (a), (b) and (c); and
- (f) perform such other function as may be conferred on it by this Act or under any other written law.

12. Qualification for appointment

(1) The Trustees appointed under section 10(1)(g) shall be appointed by virtue of their knowledge or experience in matters relating to the administration of scheme funds, banking, insurance, law or actuarial studies.

(2) No person shall be appointed as a Trustee under section 10 if that person—

- (a) has been convicted of a criminal offence, which questions his capacity to serve as a Trustee;
- (b) is adjudged bankrupt or enters into a composition or arrangement with his creditors; or
- (c) is disqualified under the provisions of any other written law from appointment as such.

13. Tenure of office

(1) The Chairman and the Trustees appointed under section 10(1)(g) shall hold office for a term of three years and may be eligible for re-appointment to a final term of three years.

(2) Notwithstanding the provisions of subsection (1), a Trustee of the Fund shall be removed from office by a resolution of the Board if the Trustee—

- (a) has been absent from three consecutive meetings of the Board without justifiable cause or the permission of the Chairman;
- (b) becomes bankrupt or makes a compromise with his creditors;
- (c) is convicted of a felony or of any offence involving dishonesty or corruption; or
- (d) becomes incapable of carrying out the functions of his office, either arising from an infirmity of mind or body.

(3) A Trustee, other than an *ex-officio* member, shall cease to be a member of the Board if the Trustee resigns from office by a notice, under his hand, addressed to the Minister.

14. Filling of vacancy

Whenever the office of a Trustee appointed under sections 10(1)(g) becomes vacant before the expiry of the Trustee's term of office, the Minister shall, on the recommendation of the nominating body, appoint a person similarly qualified to fill the vacant position for the remainder of the term.

15. Meetings of the Board

(1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) The quorum for the conduct of the meetings of the Board shall be two thirds of the Trustees, of whom at least two shall be representatives of members and two representatives of the employers.

(3) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the Trustees present and voting, and in the case of an equality of votes the Chairman or person presiding shall have a casting vote.

(4) The Board may invite any person who is not a member of the Board to participate in the deliberations of the Board, but such person shall not be entitled to vote.

(5) Subject to this Act, the Board may regulate its own procedure.

16. Committees of the Board

(1) The Board may establish committees consisting of members of the Board to deal with such matters as the Board may specify.

(2) The Board may co-opt persons who are not members of the Board to committees established under subsection (1) for a particular reason and such persons shall hold office for such period as the Board may determine.

(3) Subject to any specific or general direction of the Board, a committee established under subsection (1) may regulate its own procedure.

17. Disclosure of interest

(1) If a member of the Board is present at a meeting of the Board or any committee of the Board at which any matter is the subject of consideration and in which matter the member or his dependants are directly or indirectly interested in a private capacity the member shall, as soon as practicable after the commencement of the meeting, disclose such interest and shall not, unless the Board otherwise directs take part in any consideration or discussion, or vote on any question relating on such matter.

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

(3) Failure to disclose such interest shall lead to the disqualification of the Trustee from holding office as a Trustee.

18. Remuneration of Trustees

The Chairman and the Trustees shall be paid such sitting allowances or other remuneration for expenses as the Minister may, from time to time, approve.

19. The powers of the Board

(1) In the exercise of its functions, the Board shall be accountable to the Government and to the members of the Scheme.

(2) The Board shall have all powers necessary for the proper performance of its functions under this Act and in particular, the Board shall have the power to—

- (a) control, supervise and administer the assets of the Fund in such manner and for such purposes as best promote the purpose of providing retirement benefits for members of the Scheme;
- (b) determine the provisions to be made for capital and recurrent expenditure and for reserves of the Fund;
- (c) receive contributions from members and authorize the custody, investment and administration of these contributions and the payment of retirement benefits as provided under this Act;
- (d) enter into association with such other bodies or organizations within or outside Kenya as the Board may consider desirable or appropriate and in furtherance of the purpose for which the Fund is established;
- (e) subcontract any of its functions to a person or firm with proven experience in the particular function being subcontracted;
- (f) give such direction as it may consider necessary to give effect to the provisions of this Act; and
- (g) do such other things as are necessary to give effect to the provisions of this Act.

20. The Chief Executive Officer of the Board

(1) There shall be a Chief Executive Officer who shall be appointed by the Board following a competitive process of recruitment and on such terms and conditions of service as shall be determined by the Board in the instrument of appointment or otherwise in writing from time to time.

(2) No person shall be appointed as the Chief Executive Officer unless he has at least ten years experience in a managerial capacity in the retirement benefits, accounting, finance, investment, insurance or the banking sectors.

(3) The Chief Executive Officer shall be the Chief Executive of the Board and be responsible to the Board for the management of the Fund.

(4) The Chief Executive Officer shall, subject to the directions of the Board, be responsible for the day to day management of the affairs of the Fund.

(5) The Chief Executive Officer shall be the Secretary to the Board of Trustees.

21. Staff of the Board

The Board may appoint such officers or members of staff as may be necessary for the proper discharge of the functions of the Board under this Act or any other written law, on such terms and conditions of service as the Board may determine.

22. Delegation of powers

The Board may, by resolution generally or in any particular case, delegate to the Chief Executive Officer, an officer, employee or agent of the Board, the exercise of any of the powers or the performance of any of its functions under this Act or under any other written law.

23. The common seal

(1) The common seal of the Board shall be kept in such custody as the Board may direct and shall not be used except by the order of the Board.

(2) The common seal of the Fund shall, when affixed to a document and is duly authenticated, be judicially and officially noticed, and unless and until the contrary is proved, any necessary order or authorization by the Board under this section shall be presumed to have been duly given.

PART IV – MANAGEMENT AND ADMINISTRATION OF THE FUND**24. Retirement Savings Account**

(1) The Administrator shall set up and maintain a retirement savings account for every member in the member's name.

(2) A member shall not have access to the funds held in the member's retirement savings account or have any dealing with the Custodian with respect to the retirement savings account except through the Administrator.

(3) The Custodian shall, upon receiving the contributions remitted under sections 6 and 7, notify the Administrator who shall cause the contributions to be credited in the retirement savings account of the member in respect of whom the Government had made the payment.

25. Vesting of benefits

(1) All the benefits derived from contributions by a member shall immediately vest in the member.

(2) Notwithstanding the provisions of any other written law, all benefits derived from the contributions made by the Government to a member's retirement savings account shall vest in the member after a period of five years at the rate of fifty per cent of the accumulated amount and increase by ten per cent for each full year thereafter up to a maximum of one hundred per cent after ten years of service from the date of commencement of this Act or from the date of joining the Scheme—

Provided that—

- (a) where a member dies while in the service of the employer the contributions by the Government to the member's retirement savings account shall immediately vest in the dependants of the member; or
- (b) where a member retires upon attaining the age of fifty years, the contributions by the Government to the member's retirement savings account shall immediately vest in the member.

(3) A member shall not withdraw the benefits vested on him under subsection (2) until the time he retires in terms of section 27 of this Act.

26. Withdrawal from the retirement savings account

No member shall be entitled to withdraw the balance in his retirement savings account before he retires under section 27:

Provided that a member may withdraw—

- (a) his contribution and accrued interest in full, on leaving employment for any other reason; and

- (b) the aggregate of any additional voluntary contributions made into the Scheme under section 7(1) together with accrued interest thereon in full, on leaving employment for any other reason.

27. Retirement from the service

- (1) Notwithstanding the provisions of section 26, any member who retires—
 - (a) on attaining the age of sixty years, or where his exact date of birth is not known, on the 1st July in the year in which his sixtieth birthday is deemed by the Board to occur, which shall be the normal retirement age;
 - (b) on attaining the age of fifty years;
 - (c) before attaining the age of fifty years in accordance with the terms and conditions of his employment;
 - (d) from the disciplined services, on completion of service of a period exceeding twelve years but not exceeding twenty years after the officer, gives at least one month's notice in writing of his intention to retire;
 - (e) on the abolition of his office;
 - (f) on compulsory retirement under subsection (4);
 - (g) on the advice of a Medical Board appointed by the Director of Medical Services certifying that the member is no longer mentally or physically capable of carrying out the functions of his office; or
 - (h) on termination of his service in the public interest,

shall be entitled to make withdrawals in accordance with section 28.

(2) The Medical Board may at the request of the employer review the fitness of a member who retires under subsection (1)(g) and where the Medical Board certifies that the member is then mentally and physically capable of carrying out the functions of his office, the member may re- enter the Scheme upon securing another employment with the employer.

(3) The proof of age of a retiring member for the purposes of subsection (1) shall be the birth certificate, submitted by such member at the time of joining the service.

- (4) The Government may require an officer to retire from the public service—
 - (a) in the case of an officer referred to in subsection (1)(d), on the completion of twelve, sixteen or twenty year's 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; or
 - (b) in any other case, at any time after the officer attains the age of fifty years.

28. Payment of Retirement benefits

(1) Where a member retires as provided in this Act the member may, on written request to the Administrator, withdraw a lump sum from the balance in his retirement savings account that shall not exceed the equivalent of one third of the balance:

Provided that a member may withdraw any additional voluntary contributions made into the Scheme and accrued interest in full.

(2) The retirement benefits may be paid to a member who retires under section 27 in—

- (a) monthly or quarterly withdrawals calculated by an actuary on the basis of an expected life span and payable out of the Fund; or
- (b) a monthly or quarterly annuity for life purchased from a life insurance company of a member's choice:

Provided that the annuity shall include a provision for benefits payable to dependants upon a member's death.

(3) Notwithstanding the provisions of any other written law, a pension, gratuity or other allowance granted under this Act shall not be—

- (a) assignable or transferable except for the purpose of satisfying—
 - (i) a debt due to the Government; or
 - (ii) 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;
 - (iii) a cause for assignment approved by the Retirement Benefits Authority; or
- (b) liable to be attached, sequestered or levied upon for or in respect of any debt or claim whatsoever except a debt due to the Government.

(4) The payment of the retirement pension shall commence from the end of the month immediately following the month of the member's retirement.

29. Particulars of member and dependants of the member

(1) Every member shall furnish the Administrator in the prescribed manner, with the particulars relating to the member and the dependants of the member for the purpose of receipt of benefits upon the member's death.

(2) A member may update the particulars furnished under subsection (1) at any time and in any event, at least three years before his retirement, and such revised.

(3) Where upon the death of a member the benefits are paid to a person validly nominated under this section, no other person shall have any other claim to the benefits against the Scheme.

(4) Where a dispute relating to a nomination under this section arises, the Board shall have the absolute powers to consider evidence presented and determine the rightful dependant.

30. Death of a member

Where a member dies whilst in employment, the Administrator shall apply the entitlements of such member under the life insurance policy maintained under section 6 (4), in accordance with section 28 in favour of the dependants of the deceased or, in the absence of such dependants, to the executor or the administrator of the estate of the deceased.

31. Missing member

(1) Notwithstanding anything to the contrary contained in any other law, where a member is missing and it is proved that the member has not been heard of for seven years by those who might reasonably be expected to have heard of the member if he were alive, there shall be a rebuttable presumption that the member is dead and the provisions of section 30 shall apply.

(2) Where it is confirmed that the missing member is dead, the provisions of section 30 shall apply.

32. Death in retirement

(1) Where a member who was married at the date of his retirement, and was receiving a retirement benefit under section 28(2)(b), dies while in retirement, a pension that is equivalent to the unutilized balance of his retirement savings account shall, be paid to his dependants.

(2) The payment under subsection (1) shall be made to the dependants commencing from the day following the member's death.

33. Transfer of service

Where a member transfers his service within the public service, or from the Government to a county government and *vice versa*, the same retirement savings account shall be maintained for the member.

34. Prohibited payments out of the Scheme

No payment shall be made out of the Scheme—

- (a) to the Government without the prior written consent of the Retirement Benefits Authority; or
- (b) to a member while he is still in the public service; or
- (c) to any person as a loan, advance or other similar benefit or payment except as provided under section 28.

35. Appointment and functions of the Administrator

(1) The Board shall appoint an Administrator of the Fund who shall, in accordance with the Retirement Benefits Act, carry out the following functions—

- (a) open a retirement savings account for each member with a personal pension number;
- (b) credit the member's retirement savings account with the contributions each month;
- (c) inform the employer where a member's contribution details differ from the expected;

- (d) provide customer service support to members, including access to member's account balances and statements on demand;
- (e) cause to be paid retirement benefits to member who has retired in accordance with the provisions of this Act;
- (f) be responsible for all calculations relating to retirement benefits; and
- (g) carry out any other functions as may be directed by the Board from time to time.

(2) The Administrator shall ensure that all income earned from the investment of the Fund is distributed to the credit of the members' retirement savings accounts save for clearly defined and reasonable fees, charges, costs and expenses of transactions approved by the Board or any income set aside by the Board and deposited into the reserve account maintained under section 41.

36. Appointment and functions of the Manager

The Board shall appoint a Manager of the Fund who shall, in accordance with the Retirement Benefits Act—

- (a) develop an investment strategy for the Fund for the approval of the Board;
- (b) invest and manage the Scheme funds and assets in accordance with the provisions of this Act and the Retirement Benefits Act (No. 3 of 1997);
- (c) maintain books of account on all transactions relating to the Fund; and
- (d) provide regular information on investment strategy, market returns and other performance indicators to the Board for the benefit of members of the Scheme.

37. Appointment and functions of the Custodian

The Board shall appoint a Custodian of the Fund who shall, in accordance with the Retirement Benefits Act—

- (a) receive the total contributions remitted by the employer under section 6 on behalf of the Board;
- (b) within twenty-four hours of receipt of the contributions from the employer notify the Administrator of such receipt;
- (c) hold pension funds and assets in safe custody on trust for the member and beneficiaries of the retirement savings account;
- (d) on behalf of the Board, settle transactions and undertake activities relating to the administration of the Fund including the collection of dividends and related activities;
- (e) report to the Board on any matter relating to the assets being held by the Custodian on its behalf at such intervals as may from time to time be determined by the Board;

- (f) undertake statistical analysis on the investments and returns on investments with respect to pension funds in its custody and provide data and information to the Administrator and the Board; and
- (g) execute in favour of the Board the relevant proxy for the purpose of voting in relation to the investments:

Provided that the Custodian shall maintain all pension funds and assets in its custody to the exclusive order of the Board and shall not utilise any pension fund or assets in its custody to meet its own financial obligation to any person whatsoever.

38. Duty of care

The Administrator, Manager and Custodian shall—

- (a) ensure that the Scheme and the Fund are at all times managed or held in accordance with the provisions of this Act, Regulations or guidelines made under the Act and any directions issued by the Retirement Benefits Authority;
- (b) take reasonable care to ensure that the management of the Scheme or safe keeping of the Fund assets is carried out in the best interests of the members;
- (c) report to the Board, as soon as reasonably practicable, any unusual occurrence with respect to the Scheme and Fund which in their view could adversely affect the rights of the owner of a retirement savings account under the Scheme; and
- (d) report to the Board, as soon as is reasonably practicable, if the employer is in default of remittance of any contributions and such remittance remains due for more than ten days.

PART V – FINANCIAL PROVISIONS

39. Administrative expenses of the Fund

The Board shall establish an account into which shall be paid—

- (a) the initial take off grant out of moneys provided by Government for the expenditure incurred by the Board in the exercise of its powers or the performance of its function under this Act;
- (b) the annual administrative fee deducted from the investment income of the Fund at the rate approved from time to time by the Minister but subject to a maximum of ten per cent of such investment income;
- (c) such moneys or assets as may accrue to or vest in the Board in the course of the exercise of the powers of the Board;
- (d) income from the investment of the monies held in the account; and
- (e) all monies from any other source provided for or donated or lent to the Board.

40. Investment of surplus funds

(1) The Board may invest any surplus funds held in the account established under section 39 in securities approved by the Minister for the time being in charge of matters relating to finance.

(2) The Board may place on deposit with such bank or banks as it may determine any moneys held in the account established under section 39 that are not immediately required for the purposes of the administration of the Fund.

41. Reserve Account

(1) There shall be maintained a reserve account of the Fund into which shall be deposited—

- (a) any special contribution paid into the Fund by the Government for the purpose of improving the benefits of the members; and
- (b) any income of the Fund that the Board determines should be set aside to stabilise the returns to members subject to a maximum of ten per cent of such income:

Provided that no money shall be drawn out of the reserve account except as directed by the Board.

(2) Any sums of money determined to be income of the reserve account shall be treated as income forming part of the general income of the Fund.

42. Financial Year

The financial year of the Fund shall be the period of twelve months ending on the 30th June in each year.

43. Annual estimates

(1) Before the commencement of each financial year, the Board shall cause to be prepared estimates of revenue and expenditure of the Fund for that year.

(2) The annual estimates shall be prepared at least three months before commencement of the financial year to which they relate and shall be submitted to the Board for approval, and after such approval, the Fund shall not increase the annual estimates without the consent of the Minister.

(3) The annual estimates shall make provision for all the estimated expenditure of the Fund for the financial year and in particular, the estimates shall provide for—

- (a) the payment of the salaries, allowances and other charges in respect of the staff of the Fund;
- (b) the payment of pensions, gratuities and other charges in respect of the retirement benefits due to the staff of the Fund;
- (c) the proper maintenance of the buildings and grounds of the Fund;
- (d) the maintenance, repair and replacement of the equipment and other property of the Fund;
- (e) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement

of buildings or equipment, or in respect of such other matter as the Board may deem appropriate; and

(f) any other administrative costs of the Scheme.

(4) No expenditure shall be incurred for the purposes of the Board except in accordance with the annual estimates approved under this section or in pursuance of a prior authorization by the Minister.

44. Accounts and audit

(1) The Board shall cause to be kept all proper books and records of account of the income, expenditure and assets of the Fund.

(2) The Board shall cause accounts of the Fund to be prepared and be submitted for auditing and reporting annually by the Controller and Auditor General in accordance with the Public Audit Act (No.12 of 2003).

45. Actuarial valuation of the Fund

(1) The Fund shall be valued at intervals not exceeding five years by an actuary appointed by the Board.

(2) The actuary appointed under subsection (1) shall—

- (a) prepare a report on the state of the Fund; and
- (b) recommend any necessary action to be taken.

(3) The actuary shall submit the report prepared under subsection (2) to the Board.

(4) The Board shall within six months of the receipt of such report pay due regard to any recommendations made by the actuary and in so doing, may—

- (a) increase or decrease the rates of contribution payable in respect of members; or
- (b) take any other action recommended by the actuary.

PART VI – MISCELLANEOUS

46. Offences by individuals

Any person who fails to discharge any duty or obligation required of such person by any provisions of this Act commits an offence and, except in the case of a body corporate, is liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years or both fine and imprisonment.

47. Offences by body corporate

Where a body corporate fails to discharge any duty or obligation required of such body corporate by any provision of this Act, the body corporate and every director or officer who had knowledge of the duty or obligation and did not exercise due diligence to ensure execution of the duty or obligation as stipulated under this Act commits an offence and is liable on conviction to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years or both.

48. Misappropriation of assets

Any employee of the Fund, manager, administrator or custodian who misappropriates the assets of the Fund commits an offence and is liable on conviction to a fine of an amount equal to three times the amount misappropriated or imprisonment for a term not exceeding seven years or both.

49. Removal from office

Notwithstanding the provisions of any other law, the Minister may in addition to the penalties stipulated under this Act, cause to be removed from office any trustee or employee of the Fund who is convicted of an offence under this Act.

50. Government of Kenya Public Service Superannuation Bond

(1) The right to retirement benefits of any member who at the commencement of this Act is—

- (a) already covered under any other pension scheme existing before the commencement of this Act and whose benefits are payable out of the Consolidated Fund; and
- (b) a member of the Scheme shall be recognized in the form of an amount acknowledged through the issuance of a letter recognizing accrued benefits at the date of joining the scheme under this Act.

(2) *Deleted by Act No. 14 of 2015, s. 54(b).*

(3) *Deleted by Act No. 14 of 2015, s. 54(b).*

(4) *Deleted by Act No. 14 of 2015, s. 54(b).*

(5) No member who is entitled to benefits under this Act shall have any other recourse to a benefit payable out of the Consolidated Fund at the commencement of this Act or any later date of joining the Scheme established under this Act.

[Act No. 14 of 2015, s. 54.]

51. Conversion from the National Social Security Fund

The persons in the public service who were not on permanent and pensionable terms of service and were contributing to the National Social Security Fund before the commencement of this Act shall, upon the commencement of this Act be admitted to permanent and pensionable establishment.

52. Phasing of contributions

The contributions by the members of the Scheme shall be phased in the first three years after the commencement of the Act at the rates of two per cent, five per cent and seven and a half per cent of a member's pensionable emoluments in the first, second and third years respectively.

53. Protection from personal liability

No matter or thing done by a member of the Board or any officer, employee or agent of the Fund shall, if the matter or thing is done *bona fide* for executing the functions, powers or duties of the Fund, render the member, officer, employee or agent or any person acting on their directions personally liable to any action, claim or demand whatsoever.

54. Liability for damages

The provisions of this Act shall not relieve the Fund of the liability to pay compensation or damages to any person for any injury to him, his property or any of his interests caused by the exercise of any power conferred by this Act or any other written law or by the failure, whether wholly or partially, of any works.

55. Regulations

(1) The Minister may, on the recommendation of the Board, make regulations generally for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), regulations under that subsection may include regulations for—

- (a) prescribing the particulars, information, proof or evidence to be furnished as to any question or matter arising under this Act, including any question or matter relevant to the making or validity of any claim or application for the payment of any benefit, under this Act;
- (b) prescribing, in respect of any action required or permitted to be taken under this Act, the time and manner of taking that action, the procedure to be followed, and the forms to be used.

56. Provisions of the Retirement Benefits Act

The provisions of the Retirement Benefits Act and regulations thereunder shall apply to the Fund.

PART VII – CONSEQUENTIAL AMENDMENTS

57. Amendments of section 20 of Cap. 189

Section 20 of the Pensions Act is amended by renumbering the existing provision as subsection (1) and inserting the following new subsection immediately after subsection (1)—

(2) This Act shall not apply to—

- (a) a person who, at the commencement of the Public Service Superannuation Scheme Act, 2012, is employed in the public service on permanent and pensionable establishment and has not attained the age of forty-five years;

- (b) a person who joins service of the Government after the commencement of the Public Service Superannuation Scheme Act, 2012; or
- (c) a person in the service of the Government at the commencement of the Public Service Superannuation Scheme Act, 2012, who elects within such period as may be specified by or under the Public Service Superannuation Scheme Act, 2012, that the provisions of that Act shall apply to him.

58. Amendment of section 3 of Cap. 195

Section 3 of the Widows' and Children's Pensions Act is amended by inserting the following new subsection immediately after subsection (1)—

(1A) This Act shall not apply to—

- (a) an officer or a teacher who, at the commencement of the Public Service Superannuation Scheme Act, 2012, is employed in the public service on permanent and pensionable establishment and has not attained the age of forty-five years;
- (b) an officer or a teacher appointed to the service of the Government after the commencement of the Public Service Superannuation Scheme Act, 2012; or
- (c) an officer or a teacher in the service of the Government at the commencement of the Public Service Superannuation Scheme Act, 2012, who elects within such period as may be specified by or under that Act, that the provisions of that Act shall apply to him.

59. Amendment of section 32 of No. 3 of 1997

Section 32(1) of the Retirement Benefits Act, 1997 is amended by inserting the word "fully" immediately before the word "funded".

60. Amendment to the First Schedule of No. 45 of 2013

The First Schedule to the National Social Security Fund Act (No. 45 of 2013) is amended by inserting the following new paragraph (3) immediately after paragraph (2)—

"(3) A person who is a beneficiary of a pension scheme funded out of the Consolidated Fund shall be exempt from Tier II contributions under this Act."

[Act No. 14 of 2015, s. 55.]
