

THE PENSIONS (AMENDMENT) ACT, 1979

No. 10 of 1979

Date of Assent: 24th May, 1979.

Date of Commencement:

Sections 2 and 7—1st December, 1967.

Section 8—29th September, 1971.

Rest—Various dates.

An Act of Parliament to amend the Pensions Act

ENACTED by the Parliament of Kenya as follows:—

1. (1) This Act may be cited as the Pensions (Amendment) Act, 1979.

Short title and commencement dates.

(2) The amendments contained in sections 2 and 7 shall both be deemed to have taken effect from 1st December, 1967.

(3) The amendments contained in section 8 shall be deemed to have taken effect on 29th September, 1971.

(4) All the other amendments shall either be deemed to have taken effect on the respective dates set out in or implied by such amendments or, where no such dates appear or can be so implied, shall take effect on the date of commencement of this Act.

2. Subsection (1) of section 2 of the Pensions Act is amended—

Amendment of section 2 of Cap. 189.

(a) by the insertion in appropriate alphabetical sequence of the following—

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

(b) in the definition of “public service”—

(i) by the deletion of paragraph (b) and substitution of the following—

(b) service under the High Commission, the Organization, the Community, the East

African Railways and Harbours Administration, the East African Posts and Telecommunications Administration, the East African Railways Corporation, the East African Harbours Corporation, the East African Posts and Telecommunications Corporation, the Kenya Posts and Telecommunications Corporation, the Kenya Railways Corporation or the Kenya Ports Authority;

(ii) by the deletion of paragraph (f) and substitution of the following—

(f) service as the holder of the office of President, Vice-President, Justice of Appeal, Registrar, officer or servant of the Court of Appeal for East Africa; or;

(c) by the deletion of the definition of “service of the Government” or “service under the Government” and substitution of the following—

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

(a) in the case of an officer who has served as a civilian employee of the East African Land Forces Organization and was either transferred from that service to the service of the Government of Kenya, Uganda or Tanganyika or the High Commission or secured an appointment with any one of those Governments or the High Commission, in either case without any break in service, his service with the East African Land Forces Organization;

(b) in the case of the service prior to the 1st July, 1977, of a former Community employee who was on the 1st July, 1977, a Kenya citizen and who had rendered pensionable service in the General Fund Services, such service; and

(c) such service in the General Fund Services of such former Community employees who do not come within paragraph (b) above as the Minister may, from time to time, by order declare to be service under the Government.;

(d) by the insertion in appropriate alphabetical sequence of the following—

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

3. Section 6 of the Pensions Act is amended by the insertion in paragraph (b) after the words “superannuated under” of the expression “the Egerton Agricultural College Retirement Benefits Scheme, which came into operation on 1st July, 1966,”.

Amendment of
section 6 of
Cap. 189.

4. The Pensions Act is amended by the repeal of section 15A and substitution of the following—

Replacement of
section 15A of
Cap. 189.

Pensions to
dependants
on death
of officer
in service
or on
retirement.

15A. (1) Subject to the other provisions of this Act—

(a) where an officer who has had ten or more years' service dies after he has retired from the service of the Government having been granted a pension under this Act, there shall continue to be paid a dependants' pension, on the terms and subject to the conditions set out in subsection (2) of this section, to the widow or the children of the officer for a period of five years next following the date of the officer's death, such dependants' pension to be at the rate of the officer's pension at the date of his death;

(b) where a pensionable officer who has served the Government for ten or more years dies while in the service, the President may grant to the widow or the children of the officer, in addition to any grant made

under section 16 of this Act, a dependants' pension, on the terms and subject to the conditions set out in subsection (2) of this section, for a period of five years next following the date of the officer's death at a rate not exceeding the amount of any pension that could have been granted to the officer if he had retired on medical grounds on the date of his death:

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

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

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

to receive (and if more than one child, in equal shares), the dependants' pension at the appropriate rate provided for under subsection (1) of this section:

Provided that—

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

(3) No dependants' pension shall be payable under this section in respect of any officer who has

not had at least ten years' service with the Government and every pension or other allowance granted under any of the other provisions of this Act to any such officer shall, unless it has ceased earlier, cease absolutely on the death of such officer.

Amendment of
section 16 of
Cap. 189.

5. Subsection (1) of section 16 of the Pensions Act is amended by the insertion of the words "twice the amount of" after the word "exceeding" in the ninth line.

Amendment of
section 21 of
Cap. 189.

6. Subsection (1) of section 21 of the Pensions Act is amended by the deletion of the proviso and substitution of the following new proviso—

Provided that—

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

Amendment of
Pensions
Regulations.

7. The Pensions Regulations contained in the First Schedule to the Pensions Act are amended—

(a) in paragraph (1) of regulation 8—

(i) by the deletion of subparagraph (h) and substitution of the following—

(h) the Organization or, with effect from the 1st December, 1967, the Community, in respect

of any person appointed to serve as President, Vice-President, Justice of Appeal, Registrar, officer or servant of the Court of Appeal for Eastern Africa or, with effect from 1st December, 1967, the Court of Appeal for East Africa;

(ii) by the addition of a new subparagraph as follows—

(j) the Community, in respect of any officer appointed to serve under the Community;

(b) in proviso (i) to regulation 12 by the deletion of the words “Northern Rhodesia, Uganda, Tanganyika or Zanzibar or from the service of the Organization, the East African Railways and Harbours Administration, or the East African Posts and Telecommunications Administration” and substitution of the words “Zambia, Uganda or Tanzania or from service under the Community, the East African Community, the East African Railways Corporation, the East African Harbours Corporation or the East African Posts and Telecommunications Corporation”;

(c) in regulation 28—

(i) by the deletion in paragraph (3) of the words “three hundred and fifty” where they appear at the beginning of the fourth line and substitution of the words “six hundred”;

(ii) by the insertion in paragraph (4) of the commas and words “, or to such persons as the President shall name,” after the word “officer” where it appears at the beginning of the sixth line;

(d) in the Schedule, by the insertion in appropriate alphabetical sequence, of the following—

East African Harbours Corporation.

East African Posts and Telecommunications Corporation.

East African Railways Corporation.

South Yemen.

Amendment of
Fourth Schedule
to Cap. 189.

8. Part II of the Fourth Schedule to the Pensions Act is amended—

(a) in subparagraph (b) of paragraph 5, by the deletion of subsection (8) set out therein and substitution of the following—

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

(b) in paragraph 7, by the deletion of the words “and the additional pension under regulation 24B” which appear in the version of regulation 20 set out therein;

(c) in paragraph 9, by the deletion of the words “on the grounds that he has been individually superseded for promotion as a result of the Government’s Kenyanization Policy, or where an officer is required to retire under that scheme in the interests of such policy of Kenyanization or in either of the cases mentioned in paragraphs (c) and (d) of section 6 of the Act or in accordance with section 8 of the Act on or after attaining the age of fifty years” which appear in the version of regulation 24B set out therein.

Amendment of
Fifth Schedule
of Cap. 189.

9. The Fifth Schedule to the Pensions Act is amended—

(a) in paragraph 1, by the deletion of the definition of “aided school” and “Government school”, and substitution of the following—

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

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

- (b) in paragraph 2 (a), by the deletion of the definition of “pensionable emoluments” and substitution of the following—

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

- (c) in paragraph 3 (c), by the deletion of subparagraphs (b), (c), (d) and (e) of paragraph (i) of the proviso to the version of regulation 21 set out in paragraph 3 (c) and substitution of the following new subparagraphs—

(b) his approved service before the 1st August, 1962, which counted in full as contributory service under the African Teachers Service (Contributory Pensions Fund) Regulations (now revoked) shall, together with any probationary service, count as full pensionable service and his approved service before that date which counted in half as contributory service under those Regulations shall count as to the whole of such service, if he opted to surrender to the Government his entire interest in the Fund established under those Regulations;

(c) his approved service before the 1st August, 1962, which counted in full as contributory service under the African Teachers Service (Contributory Pension Fund) Regulations (now revoked) shall, together with any probationary service, count as full pensionable service, if having opt to withdraw from the Fund established under those Regulations his own, but not his employer's, contributions with interest thereon, he refunds in full to the Government the amount of such contributions and interests;

- (d) his approved service before the 1st August, 1962, shall not be taken into account if he opted to withdraw his own and his employer's contributions to the Fund established under the African Teachers Service (Contributory Pensions Fund) Regulations (now revoked) unless he refunds in full to the Government his own and his employer's contributions withdrawn with interest thereon;
- (e) a teacher who opted under Education Circular No. 3 of 1962, dated 18th October, 1962, to retain his entire rights under the African Teachers Service (Contributory Pensions Fund) Regulations (now revoked) and who now opts to surrender to the Government all his own contributions together with employer's contributions made to the Fund as at 31st July, 1962, with interest shall have his approved service, which counted in full as contributory service under the African Teachers Service (Contributory Pensions Fund) Regulations (now revoked) together with any probationary service, count as full pensionable service and any of his approved service before that date which counted in half as contributory service under those Regulations shall count as to the whole of such service;
- (f) a teacher who opted under Education Circular No. 3 of 1962, dated 18th October, 1962, to continue to contribute under the African Teachers Service (Contributory Pensions Fund) Regulations (now revoked) and who now opts to surrender to the Government all his contributions thereon, in lieu of the Government Free Pensions Scheme shall have his approved service which counted in full as contributory service under the African Teachers (Contributory Pensions Fund) Regulations (now revoked) together with any probationary service, count as full pensionable service and any of his approved service before that date which counted in half as contributory service under those Regulations shall count as to the whole of such service;

(d) in paragraph 3 (c), by the deletion of subparagraphs (b) and (c) of paragraph (ii) of the proviso to the version of regulation 21 set out in paragraph 3 (c) and substitution of the following new subparagraphs—

(b) his approved service in Kenya before the 1st January, 1964, for the period during which he contributed to the Group Pensions Scheme referred to in that Circular shall count as pensionable service and his approved service in Kenya before the commencement of his contribution to that scheme shall together with any probationary service, count as to the whole of such service, if he opts to surrender to the Government his entire interest in the Group Pensions Scheme;

(c) his approved service in Kenya before the 1st January, 1964, shall not be taken into account if he opted to retain his rights under the Group Pensions Scheme, referred to in the Circular in respect of such service, unless he refunds to the Government all the contributions withdrawn with interest thereon but if he opted to retain his rights under the Group Pensions Scheme and to receive a paid-up pension certificate under that scheme he shall not be eligible or allowed to refund the contributions withdrawn;

(e) in paragraph 3 (c), by substituting a comma respectively for the semicolon and the word “and” at the end of paragraph (v) of, and for the full stop at the end of paragraph (viii) of, the proviso to the version of regulation 21 set out in paragraph 3 (c) and the insertion immediately thereafter in both paragraph (v) and paragraph (viii) of following words—

but where a qualified teacher on having been registered by the Teachers Service Commission as a teacher other than a teacher who has been dismissed and has not subsequently been reinstated by the Commission, is recruited and employed as a teacher in any non-profit making unaided Harambee School which is recognized as such by the Minister for the time being

responsible for Education, and such teacher renders continuous teaching service in such school, his admission to the Free Pensions Scheme need not, if the President so determines, be subject to the payment of such sum representing twenty-five per cent of such pensionable emoluments and his approved service on or after 25th February, 1977, shall count in full as pensionable service whilst his approved service before that date shall—

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

Addition of
Schedule
to Cap 189.

10. The Pensions Act is amended by the addition of the following Schedule—

SIXTH SCHEDULE

(s. 2 (1))

LIST OF GENERAL FUND SERVICES

- (i) The secretariat of the Community, including services relating to the Common Market and the Chambers of the Counsel to the Community;
- (ii) The East African Directorate of Civil Aviation;
- (iii) The East African Meteorological Department;
- (iv) The East African Customs and Excise Department;
- (v) The East African Income Tax Department;
- (vi) The East African Industrial Court;
- (vii) The East African Literature Bureau;
- (viii) The (East African) Auditor-General's Department;
- (ix) The East African Community Service Commission;
- (x) The East African Legislative Assembly;
- (xi) The East African Agriculture and Forestry Research Organization.
- (xii) The East African Freshwater Fisheries Research Organization;
- (xiii) The East African Marine Fisheries Research Organization;
- (xiv) The East African Trypanosomiasis Research Organization;
- (xv) The East African Veterinary Research Organization;
- (xvi) The East African Leprosy Research Centre;

- (xvii) The East African Institute of Malaria and Vector-Borne Diseases;
- (xviii) The East African Institute for Medical Research;
- (xix) The East African Virus Research Organization;
- (xx) The East African Industrial Research Organization;
- (xxi) The East African Tropical Pesticides Research Institute;
- (xxii) The East African Tuberculosis Investigation Centre;
- (xxiii) Services arising from the operations of the East African Currency Board;
- (xxiv) Services for the Administration of grants or loans made by the government of any country, any organization or any authority, for the purposes of projects or services agreed between the Community and the Partner States;
- (xxv) Services, including statistical services, for the purposes of co-ordinating the economic activities of the Partner States;
- (xxvi) Services for the purposes of any body or authority established in pursuance of paragraph 4 of Article 43 of the Treaty for East African Co-operation;
- (xxvii) Services for the purposes of the East African Industrial Court established by Article 85 of the Treaty for East African Co-operation.