

# THE PENSIONS (AMENDMENT) ACT, 1965

No. 10 of 1965

*Date of Assent: 5th May 1965*

*Date of Commencement: 11th May 1965*

## An Act of Parliament to amend the Pensions Act

ENACTED by the Parliament of Kenya, as follows:—

Short title.

1. This Act may be cited as the Pensions (Amendment) Act, 1965.

Amendment of  
section 2 of  
Cap. 189.

2. Section 2 of the Pensions Act, hereinafter referred to as the principal Act, is amended—

(a) by inserting, in its alphabetical position, a new definition as follows—

L.N. 256/  
1963.

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

(b) by substituting for the definitions of “African District Council service” and “pensionable office” which appear therein, the following definitions—

12 of 1950.

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the 30th April 1963 under any African District Council established under the African District Councils Act, 1950 (now repealed);

“pensionable office” means—

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

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service of the Government on terms which include eligibility for the grant of a pension under this Act or under any Act repealed by this Act; and

- (ii) which he has not ceased to hold on such terms;
- (b) in respect of other public service, an office which is for the time being a pensionable office under the law or regulations in force in such service;
- (c) in the definition of "service of the Government" or "service under the Government", by substituting for the words "under the Government", which appear therein immediately after the words "in a civil capacity", the words "in the establishment of the Government or, at any time before the 12th December 1964, of any Region".

3. Proviso (ii) to section 6 of the principal Act is amended by inserting immediately after the words "African District Council service" which appear therein, the words "or on his retirement on or after the 30th April 1963 from local authority service,".

Amendment of section 6 of principal Act.

4. The principal Act is amended by inserting immediately after section 15 thereof a new section as follows—

Insertion of new section 15A in principal Act.

Pensions, etc., to cease on death.

15A. Every pension or other allowance granted under this Act shall, unless it has sooner ceased, cease upon the death of the person to whom it is granted.

5. Section 16 of the principal Act is amended by substituting for subsection (4) thereof the following subsection—

Amendment of section 16 of principal Act.

(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) of this section, the emoluments which would have been taken in accordance with regulation 20 of the Pensions Regulations for the purpose of computing the pension or gratuity that would have been granted to the officer if, on the day following the date of his death, he had retired from the public service in circumstances which enabled such grant to be made; and

- (b) "commuted pension gratuity" means the gratuity, if any, which might have been granted to the officer under regulation 27 of the Pensions Regulations if his pensionable service had been wholly in Kenya and if on the day following the date of his death he had retired from the public service on the ground of ill health and had elected to receive a gratuity and reduced pension.

Insertion of new section 21 in principal Act.

6. The principal Act is amended by inserting immediately after section 20 thereof a new section 21 as follows—

Officers retiring under the limited scheme of retirement or the general scheme of retirement for non-designated officers.

21. (1) The provisions of this Act (including the First Schedule thereto) in their application to an officer who retires from the public service under the limited scheme of retirement or the general scheme of retirement for non-designated officers or, in the case of a deceased officer, who so retired or was qualified so to retire before his death shall be subject to the modifications specified in Part I or Part II, as the case may be, of the Fourth Schedule to this Act.

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

Insertion of new Fourth Schedule to the principal Act.

7. (1) The principal Act is amended by inserting immediately after the Third Schedule thereto a new Fourth Schedule as specified in the Schedule to this Act.

(2) Parts I and II of the Fourth Schedule to the principal Act (as introduced by this section) shall be deemed to have come into operation on the 20th July 1961 and the 1st June 1963, respectively.

Amendment of the principal Act.

8. The principal Act is amended by substituting for the expressions "Governor in Council" and "Governor-General" wherever they appear therein, in each case, the word "President".

## SCHEDULE

(s. 7)

## FOURTH SCHEDULE

(s. 21)

Modification of the Act and the First Schedule thereto (in this Schedule referred to as "the Regulations") in their Application to Officers Retiring under the Limited and General Schemes of Retirement for Non-designated Officers.

*Part I—Limited Scheme of Retirement*

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

2. Section 6 of the Act shall have effect as if there were added at the end thereof a paragraph as follows—

- (i) under the limited scheme of retirement provided by section 21 of this Act.

3. Section 10 of the Act shall not apply.

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

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

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

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

- (i) in the case of an officer who dies while still serving or while on leave prior to retirement, a gratuity of an amount representing the commuted pension gratuity which would have been paid to the officer in respect of his additional pension under regulation 24A of the Regulations had he on the day following the date of his death retired from the public service under the limited scheme of retirement provided by section 21 of this Act and elected to receive a gratuity and reduced pension;

- (ii) in the case of an officer who dies after retirement, a gratuity of an amount representing the balance, if any, of the instalments of the commuted pension gratuity which would have been paid to the

## SCHEDULE—(Contd.)

officer in respect of his additional pension under regulation 24A of the Regulations had he remained alive until all the instalments for which he was eligible had been paid.

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

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

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

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

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

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

Provided that—

- (i) the addition when added to the remainder of the officer's pension shall not exceed the pension for which he would have been eligible under the Act if he had continued to hold the office held by him on the date of his retirement until he had reached the age of 55 years and had then retired having been granted all increments of salary for which he would have been eligible by that date;
- (ii) the gratuity payable in accordance with regulation 27 of the Regulations in so far as it relates to an additional pension payable under this regulation, shall be paid



## SCHEDULE—(Contd.)

by four instalments of which the first shall be payable on the officer's retirement and the remaining three at annual intervals thereafter, subject to the provisos that—

- (a) if the gratuity value is £25 or less it shall be payable in full, if it is between £25 and £50 it shall be payable in two instalments, between £50 and £75 by three instalments and over £75 by four instalments;
- (b) interest will not be payable on the outstanding instalments since the additional pension relating to those instalments will continue to be paid to the officer until the full amount of gratuity is paid.

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

8. The Regulations shall have effect as if there were inserted immediately after regulation 27 thereof the following regulation:—

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

- (a) subtracting the annual amount of the pension granted to him by the scheduled Government from the annual amount of the pension that would have been granted to him by that Government had he not elected to receive the gratuity granted to him by the scheduled Government; and

(b) multiplying the resulting amount by the special factor, exceeds the amount of the gratuity granted to him by the scheduled Government.

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

## SCHEDULE—(Contd.)

*Part II—General Scheme of Retirement*

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

2. Section 6 of the Act shall have effect as if there were added at the end thereof a paragraph as follows—

(j) under the general scheme of retirement provided by section 21 of this Act.

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

4. Section 10 of the Act shall not apply.

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

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

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

(8) Where an officer who retires under the general scheme of retirement provided by section 21 of this Act in circumstances entitling him to an additional pension under regulation 24B of the Regulations dies while still serving or while on leave prior to retirement, his dependants or his legal personal representative 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 his additional pension under the said regulation 24B had he on the day following the date of his death been required to retire from the public service under the general scheme of retirement in circumstances entitling him to the additional pension and elected to receive a gratuity and reduced pension.

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

## SCHEDULE—(Contd.)

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

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

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

20. For the purpose of computing the pension under regulation 4 and the additional pension under regulation 24B of the Regulations of an officer who retires under the general scheme of retirement provided by section 21 of the Act the full annual pensionable emoluments enjoyed by the officer in respect of the office held by him at the date of his retirement shall be taken.

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

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

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

Provided that the addition when added to the remainder of the officer's pension shall not exceed the pension for which he would have been eligible under the Act if he had continued to hold the office held by him on the date of his retirement until



## SCHEDULE—(Contd.)

he had reached the age of 55 years and had then retired having been granted all increments of salary for which he would have been eligible by that date.

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

11. The Regulations shall have effect as if there were inserted immediately after regulation 27A thereof the following regulation—

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

(a) subtracting the annual amount of the pension granted to him by the scheduled Government from the annual amount of the pension that would have been granted to him by that Government had he not elected to receive the gratuity granted to him by the scheduled Government; and

(b) multiplying the resulting amount by the special factor, exceeds the amount of the gratuity granted to him by the scheduled Government.

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