

THE PARLIAMENTARY PENSIONS ACT, 1983**No. 4 of 1983***Date of Assent: 31st May, 1983**Date of Commencement: By Notice***ARRANGEMENT OF SECTIONS****Section**

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An Act of Parliament to make provision for granting pensions to persons who have been members of the National Assembly and their dependants

ENACTED by the Parliament of Kenya as follows:—

1. This Act may be cited as the Parliamentary Pensions Act, 1983, and shall come into force on such day as the Minister may, by notice in the Gazette, appoint and that date may be appointed retrospectively.

**Short title
and commence-
ment.**

Application.

2. The provisions of this Act shall apply to any person who is a member of the National Assembly on or at any time after the commencement of this Act.

Interpretation.

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

“accumulated with interest” means accumulated with interest at the rate of three per cent per annum with yearly rests up to the relevant date;

“Appeals Tribunal” means the appeals tribunal established under section 20;

“approved actuary” means an actuary approved by the Committee;

“child” means any child of the deceased or of any wife or husband of the deceased who—

(a) is under sixteen years of age; or

(b) is under twenty-one years of age and is undergoing a course of full time education, and in the case of a female child is not married or is not cohabiting with any person; or

(c) was at the time of the death of the deceased wholly or mainly dependent on the deceased and was at that time and has at all times since been either a person falling within paragraph (a) or (b) or is incapable, and likely to remain permanently incapable, by reason of bodily or mental infirmity, of earning his own living, and is not for the time being maintained out of moneys provided by the Government in a hospital or a similar institution;

“Committee” means the Management Committee set up under section 19;

“gratuity” includes a commuted pension under section 10;

“member of the National Assembly”, for the purposes of this Act, means an elected member, a nominated member or an *ex-officio* member, but does not include the Attorney-General;

“pensionable emoluments” includes salary, responsibility allowance, sitting allowance, constituency allowance and house allowance;

“service” means service as a member of the National Assembly;

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

(2) Reference to a widow shall, in the case of a female member, be interpreted as reference to a widower, and any provisions of this Act relating to a male member or his widow shall apply to a female member and her widower.

4. (1) Subject to the provisions of this section, there shall be deducted from each payment of pensionable emoluments made to a member, being a payment in respect of any period commencing on or after the date of commencement of this Act, a sum calculated at the rate of five per cent of the payment, and amounts so deducted shall be paid into the Consolidated Fund.

Contributions.

(2) If any salary or allowance from which a deduction required to be made under this section is not drawn, there shall be set aside, out of moneys available for the payment, a sum equal to the relevant deduction, and any sum so set aside shall be dealt with as if it were a sum so deducted.

(3) Except as otherwise expressly provided in this Act, no deduction or any part thereof made under this section shall be refunded to a member.

(4) Individual accounts shall be maintained by the Permanent Secretary to the Treasury of all contributions deducted under this section in respect of each member and interest notionally credited in respect of his contributions; and the accounts shall show the total amount at credit of each member as at 31st December of each year.

(5) Where an amount is deductible under subsection (1) in respect of a period before the date of publication of this Act, that amount shall bear interest at a rate of three per cent per

annum up to that date and seven per cent per annum thereafter, and the Committee may permit the deduction of that amount and interest thereon by instalments over a period of not more than three years from that date, and deduction thereof shall be a first charge on all payments due to a member in respect of pensionable emoluments, or due to the member, a dependant or legal personal representative in respect of any other payment under this Act.

Reckonable
service.

5. (1) Subject to subsection (2) of this section and to section 7 (4), the total reckonable service of a member shall be the aggregate of all periods beginning on or after the commencement of this Act during which he was or is a member of the National Assembly, and in respect of which periods deduction of contributions has been made under section 4.

(2) Any person to whom this Act applies who has, at any time before the commencement of this Act, but on or after 1st June, 1963, served as a member of the National Assembly shall, if he applies therefor and pays to the Consolidated Fund within a period of six months from such commencement all the contributions applicable to his pensionable emoluments in respect of that service accumulated with interest to the date of payment, be eligible to have that service treated as reckonable service under this section :

Provided that where a person is not able to pay the accumulated amount in a lump sum within that period, the Committee may permit him to pay the amount in instalments extending over a period of not more than three years, subject to the condition that interest accumulated in respect of each instalment is paid up to the date of its payment, and subject also to the condition that if, before the full amount is so paid, any pension, gratuity or other allowance becomes due to the person, his dependants or his legal personal representative, that pension, gratuity or other allowance shall, in so far as it relates to or is based on that past service, be reduced to such extent as an approved actuary may advise.

(3) For the purpose of this section, where there is more than one period falling under subsection (1) or (2) those periods shall be aggregated, and where those periods contain fractions of a year the total of those fractions shall be converted into years, months and days by taking a year to contain three hundred and sixty-five days and a month to contain thirty days.

(4) For the purposes of subsection (2), the rate of interest chargeable on an amount payable by the member shall, in respect of the period commencing six months after the publication of this Act, be seven per cent per annum.

6. Pensions payable under this Act shall be based on the member's pensionable emoluments for the last twelve months (whether continuous or discontinuous) during which he was a member of the National Assembly.

Pensionable
emoluments.

7. (1) The Committee shall refund the contributions paid by a person accumulated with interest, on written application by that person, subject to the following conditions being fulfilled in respect of him, namely that he has ceased to be a member of the National Assembly and that his aggregate period of reckonable service is less than ten years :

Refund of
contributions.

Provided that where the refund is due to retirement of the member for reasons of ill-health and the conditions specified in paragraph (b) of section 9 are fulfilled, the amount refunded shall be as specified in that paragraph.

(2) If after the refund of the contributions to him under this section the contributor again becomes a person liable to pay contributions under section 4, he may, if he so desires, repay in one lump sum all the contributions paid to him, including interest paid thereon and accumulated interest thereon to the date of repayment, within a period of three months from the date he becomes so liable.

(3) Any amount (whether of principal or interest) paid by the contributor under subsection (2) shall be treated for the purposes of this section as if it were a contribution made by him at the time when he makes that payment.

(4) For the purpose of calculating a person's aggregate period of reckonable service, no account shall be taken of any period in respect of which contributions paid by that person have been refunded to him under this section and not subsequently repaid by him.

(5) For the purposes of this Act a person who ceased to be a member of the National Assembly in consequence of its dissolution shall be deemed to continue to be a member until such time as he fails to be re-elected (whether by reason of failing to stand for election or otherwise) to the National Assembly in the election to the new Parliament consequent on that dissolution.

Pensions to
former
members.

8. (1) Subject to the provisions of this Act, a person shall after the date of commencement thereof be entitled to receive a pension under this section as from the time when the following conditions are fulfilled in respect of him—

- (a) he has ceased to be a member of the National Assembly; and
- (b) his aggregate period of reckonable service is not less than ten years; and
- (c) he has attained the age of fifty years.

(2) The annual amount of pension payable to a person under this section shall be a sum equal to one six-hundredth of his pensionable emoluments for each completed month of his aggregate period of reckonable service.

Retirement by
reason of
ill-health.

9. Where a member of the National Assembly retires for reasons of ill-health and the Committee is satisfied on the basis of medical evidence supported by the report of a Medical Board appointed by the Director of Medical Services that there is no reasonable possibility of the person becoming fit to become again a member of the National Assembly, the Committee shall—

- (a) where the member's aggregate period of reckonable service is not less than ten years, grant a pension calculated in accordance with section 8 (2) and benefits in accordance with sections 13 and 14, notwithstanding the fact that he has not attained the age of fifty years;
- (b) where the member's aggregate period of reckonable service is less than ten years, grant a refund of the members contributions together with those made by the Government on his behalf accumulated with interest.

Commutation
of pension.

10. (1) A member who is entitled to a pension shall be entitled to commute up to one quarter of his annual pension at an equivalent of twelve and a half times the amount so commuted.

(2) The option to commute under this section shall be exercised not later than the last day before retirement or at such later date as may be approved by the Committee, and that option once exercised shall be final and irrevocable.

11. Where a person dies after the commencement of this Act at a time when he was or had at any time previous to his death been a member of the National Assembly, and he has not become eligible for a pension in accordance with section 8, then—

Death before retirement.

- (a) if his aggregate period of reckonable service is less than twelve months the Committee shall refund to his legal personal representatives his contributions accumulated with interest;
- (b) if his aggregate period of reckonable service is not less than twelve months but less than ten years the Committee shall pay a gratuity to his legal personal representatives of an amount equal to five times his annual pensionable emoluments on the date of his death or on the last date on which he was a member, as the case may be; or
- (c) if his aggregate period of reckonable service is not less than ten years the Committee shall pay—
 - (i) a gratuity as under paragraph (b); and
 - (ii) if he leaves a widow, a pension to the widow under section 13; and
 - (iii) if he leaves any children, a pension to the children under section 14.

12. Where a pensioner dies and no pension is payable in respect of him under section 13 or 14 and the total of the sums paid to him at the date of his death on account of his pension, including any part of the pension which has been commuted under section 10, is less than the total of his contributions accumulated with interest to the date of his retirement, then the Committee shall grant a gratuity to his legal personal representatives equal to the excess of the amount by which those contributions accumulated with interest exceed the total sums so paid.

Gratuity payable on death in certain cases.

13. (1) Subject to the provisions of this section, the widow of a man who has died after the date of commencement of this Act shall be entitled to receive a pension under this section if her late husband, at the time of his death—

Pensions to widows and widowers.

- (a) was entitled to receive a pension under section 8 (1); or

(b) was not so entitled but whose aggregate period of reckonable service was not less than ten years.

(2) The annual amount of a widow's pension under this section shall be one-half of the actual or prospective pension of her late husband:

Provided that where the deceased leaves more than one wife the pension payable shall be shared equally among his wives.

(3) Subject to subsection (4), a pension payable under this section to a widow shall continue for her life or until her remarriage:

Provided that in the case of remarriage the Committee may, with the concurrence of the Attorney-General, at any time direct that the pension shall be restored if it is satisfied that the subsequent marriage has been terminated.

(4) No pension shall be payable under this section to a widow who at her husband's death was cohabiting with another person; and if a widow entitled to such a pension cohabits with another person the pension shall cease to be payable.

(5) Where a man dies in circumstances in which, apart from this subsection, a widow's pension would be payable to a woman married to him within the year ending with his death, then if—

(a) there are no children of that marriage; and

(b) it appears to the Committee that his death within the year was reasonably foreseeable by him at the date of his marriage,

the Committee, with the concurrence of the Attorney-General, may direct that no widow's pension shall be payable under this section.

(6) Where a woman who is entitled to receive a pension under section 8 (1), or who is not so entitled but whose aggregate period of reckonable service is not less than ten years, dies, her widower shall become entitled to a pension under this section; and that pension may be terminated on the direction of the Committee in the event of his remarriage.

(7) The provisions of subsections (4) and (5) shall apply *mutatis mutandis* for the purposes of subsection (6).

14. (1) Subject to the provisions of this section, a child-
ren's pension shall be payable for the benefit of any child or
children of a person who dies after the coming into force of
this Act and who, at the time of his death, is or has been
married, if at the time of his death either of the conditions
specified in paragraphs (a) and (b) of section 13 (1) is fulfilled.

Pensions to
children.

(2) A pension payable under this section shall be as
follows—

(a) while there is only one child, a pension at the rate of
25 per cent of the actual or prospective pension of
the deceased;

(b) while there are two children, a pension at the rate
of 50 per cent of the actual or prospective pension
of the deceased to be divided equally for the benefit
of each child;

(c) while there are three or more children, a pension at
the rate of 75 per cent of the actual or prospective
pension of the deceased to be divided equally for the
benefit of each child.

15. If it is established to the satisfaction of the Com-
mittee that a member has been guilty of serious misconduct
or has made any false claim or declaration concerning a bene-
fit payable under this Act, the Committee may reduce any
pension or gratuity payable, whether to that member or to any
of his dependants in respect of his service, to an extent not
exceeding two thirds of the pension or gratuity.

Reduction of
benefits.

16. (1) Every pension granted under this Act shall,
unless it has sooner ceased, cease upon the death of the person
to whom it is granted.

Cessation of
pension.

(2) No such pension shall be payable to a person in res-
pect of any period during which he is a member of the
National Assembly.

Benefits not
assignable.

17. A pension or gratuity granted under this Act shall not be assignable or transferable, and shall not be liable to be attached, except for the purpose of satisfying—

- (a) a debt due to the Government; or
- (b) an order of any court for payment of periodical sums of money towards the maintenance of a wife, former wife or minor child of the person to whom the pension or gratuity has been granted.

Benefits
charged to
Consolidated
Fund.

18. All refunds of contributions, interest on contributions, pensions, gratuities and allowances which are payable under the provisions of this Act shall be charged on and shall be paid from the Consolidated Fund.

Management
committee.

19. This Act shall be administered by a Management Committee comprising of the following—

- (a) the Speaker of the National Assembly who shall be the chairman;
- (b) the Attorney-General or his representative;
- (c) three members of the National Assembly to be appointed by the National Assembly;
- (d) the Permanent Secretary to the Treasury or his representative;
- (e) the Clerk of the National Assembly who shall be the secretary; and
- (f) the Accounts Controller of the Treasury.

(2) In the absence of the chairman one of the members who is a member of the National Assembly shall take the chair.

(3) A quorum of the Committee shall be four, including the Permanent Secretary to the Treasury or his representative, the Speaker and one other member of the National Assembly.

(4) If during the deliberations of the Committee any matter involving a question of law needs to be decided, the Committee shall obtain the advice of the Attorney-General thereon and shall act on his advice on that question of law.

20. (1) There shall be an Appeals Tribunal (hereinafter referred to as the Tribunal) whose functions shall be to hear and decide appeals made to it by any person who is aggrieved by a decision made by the Committee.

Appeals
Tribunal.

(2) The Tribunal shall consist of the following members—

(a) the Chief Justice who shall be the chairman;

(b) the Controller and Auditor-General;

(c) a member to be appointed by the National Assembly at the commencement of this Act and thereafter during the first session of each new Parliament.

(3) The Tribunal shall regulate its own procedure.

(4) No appeal shall lie to any court in respect of any matter on which an appeal lies to the Tribunal under this Act, and every decision of the Tribunal on the appeal shall be final.

(5) Any person who is aggrieved by a decision of the Committee under the provisions of this Act may appeal to the Tribunal within sixty days of the date on which the decision is notified to him or comes to his knowledge:

Provided that, before hearing any appeal, the Tribunal may require security from the appellant, either in cash or in such other form as it may specify.

(6) The expenses of the Tribunal shall be shared equally between the National Assembly and the Exchequer.

21. (1) All accounts kept under this Act shall be audited by the Controller and Auditor-General at least once in every calendar year.

Auditing of
accounts.

(2) Before any payment is made to any person eligible for a pension, gratuity or other payment under this Act, or to his eligible widow or other dependants, the computation of that payment shall be verified and certified as correct by the Controller and Auditor-General.

22. (1) Once in every ten years, or at such other time as the President may direct, the relationship between contributions made and benefits paid out under this Act shall be reviewed by an approved actuary who shall examine whether

Actuarial
review.

the contributions made by the members are equivalent, according to his estimation, to one-third of the benefits paid thereunder and shall recommend any necessary change in the rate of contributions in order to achieve this.

(2) Any report or findings of an actuary made under subsection (1) shall be laid before the National Assembly without undue delay.