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LAWS OF KENYA

WIDOWS' AND CHILDREN'S PENSIONS ACT

CHAPTER 195

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CHAPTER 195

WIDOWS' AND CHILDREN'S PENSIONS ACT

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SCHEDULE —

SUPPLEMENTARY PROVISIONS IN RELATION
TO CONTRIBUTIONS BY CERTAIN PUBLIC
OFFICERS AND MATTERS CONNECTED
THEREWITH

CHAPTER 195

WIDOWS' AND CHILDREN'S PENSIONS ACT

[Date of assent: 24th November, 1965.]

[Date of commencement: 1st January, 1966.]

An Act of Parliament to make provision for granting pensions to widows and children of deceased public officers; and for purposes incidental thereto and connected therewith

[Act No. 31 of 1965, L.N. 344/1965, Act No. 4 of 1971, Act No. 7 of 1977.]

1. Short title and application

- (1) This Act may be cited as the Widows' and Children's Pensions Act.
- (2) This Act shall not apply to public officers who are not citizens of Kenya.

2. Interpretation

- (1) In this Act, except where the context otherwise requires—

“the authorized officer” means the Permanent Secretary who exercises supervision over the department concerned or over the department in which the public officer concerned holds a post, as the case may be, and in the case of the Judicial Department and the Office of the Attorney-General means the Attorney-General;

“child” includes a posthumous child, a stepchild and a child adopted in accordance with the law (including recognized customary law) of the place where the person adopting such child was resident at the time of the adoption, but does not include an illegitimate child;

“children's pension” means a pension granted under this Act to the children of a deceased public officer;

“Commission” means the Teachers Service Commission established under section 3 of the Teachers Service Commission Act (Cap. 212);

“medical grounds” in relation to the retirement of a public officer means—

- (a) in the case of retirement from the public service under the Government the circumstances described in section 6(e) of the Pensions Act (Cap. 189); or
- (b) in the case of retirement from other public service, the circumstances described in any provision corresponding to section 6(e) of the Pensions Act of the law or regulations of the public service in which he is last employed;

“other public service” means public service not under the Government and service in an unaided school of a person who is not employed by the Commission as a teacher;

“pensionable office” *deleted by Act No. 4 of 1971, s. 2;*

“**pensionable emoluments**”, “**pensionable office**” and “**public service**” have the meanings assigned to those expressions in section 2 of the Pensions Act (Cap. 189);

“**pensionable service**” and “**qualifying service**” have the meanings assigned to those expressions in regulation 2 of the Pensions Regulations;

“**Pensions Act**” means the Pensions Act (Cap. 189);

“**Pensions Regulations**” means the Pensions Regulations contained in the First Schedule to the Pensions Act;

“**public officer**” means a male or female person serving, whether on probation or not, in the public service on pensionable terms and a male or female teacher employed by the Commission, whether on probation or not, on pensionable terms;

“**Scheduled Government**” and “**service in the group**” have the meanings assigned to those expressions in regulation 8 of the Pensions Regulations;

“**service of the Government**” or “**service under the Government**” means—

- (a) such service as so defined in section 2 of the Pensions Act; and
- (b) in the case of a teacher employed by the Commission, such approved service as is deemed to be service of the Government under section 22(1) of the Pensions Act;

“**teacher**” means a male or female person who, being a citizen of Kenya, is employed by the Commission as a teacher and whose service as such is pensionable under the Pensions Act;

“**transferred public officer**” means a public officer transferred to or from public service under the Government from or to other public service;

“**unaided school**” means a school in Kenya which is not receiving grants out of the public funds of the Government or of a local authority;

“**widow's pension**” means a pension granted under this Act to a widow;

“**wife**” includes, in the case of an officer under whose religion or tribal custom polygamy is lawful, any person to whom the officer 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)

- (a) A person shall, for the purposes of this Act, be deemed to be in his period of childhood and full-time education while either—
 - (i) he is under the age of sixteen; or
 - (ii) he is receiving and has since the age of sixteen continuously received full-time instruction at any university, college, school or other educational establishment.

- (b) As respects any period during which the conditions specified in paragraph (a)(ii) of this subsection are not satisfied in relation to a person, the President may, if he is satisfied that the person's full-time education ought not to be regarded as completed, direct either—
- (i) that such period shall be ignored; or
 - (ii) that such period shall be so ignored and shall also be treated as part of his full-time education for all the other purposes of this Act, except for such purposes, if any, as may be specified.

(3) Any reference in this Act to a person ceasing to be a public officer includes a reference to the death of that person while in the public service.

[Act No. 4 of 1971, s. 2.]

3. Application of Act to existing and future public officers

(1) This Act shall apply to—

- (a) every male public officer in the service of the Government at the date of commencement of this Act who elects, within three months next following that date or such later date as the President may in any particular case approve, that this Act shall apply to him;
- (b) every male public officer not being a teacher appointed to service under the Government or transferred thereto from other public service after the date of commencement of this Act;
- (c) every male teacher who is in the employ of the Commission on such date as the President may, by order, appoint and who elects, within three months next following that date or such later date as the President may in any particular case approve, that this Act shall apply to him; and
- (d) every male teacher who enters into the employment of the Commission after the date appointed under paragraph (c) of this subsection.

(2) Any unmarried male public officer who has not elected that this Act shall apply to him under paragraph (a) or (c) of subsection (1) of this section and subsequently marries may within a period of three months next following the date of his marriage elect that this Act shall apply to him.

[Act No. 4 of 1971, s. 3, Act No. 8 of 2012, s. 58.]

3A. Application of Act to officers compulsorily transferred from other public service

Notwithstanding anything to the contrary contained in paragraphs (b) or (d) of subsection (1) of section of this Act, this Act shall not apply to any male public officer who, in the opinion of the President, has been compulsorily transferred to service under the Government or into the employment of the Commission, from other public service, unless such officer elects within three months next following the date of his transfer or such later date as the President may in any particular case approve, that this Act shall apply to him:

Provided that in the case of male public officers who, in the opinion of the President, were compulsorily transferred to service under the Government from other public service between the date of the commencement of this Act and 31st October, 1977, any such male public officer may before 1st January, 1978, elect that this Act shall not apply to him and on his so electing the amount of all contributions already paid by him shall be refunded to him without interest.

[Act No. 7 of 1977, s. 2.]

4. Application of Act to female public officers

(1) A female public officer holding a pensionable office may on proof, to the satisfaction of the President, that her husband is wholly or mainly dependent on her elect in accordance with section 3 of this Act, that this Act shall apply to her.

(2) Where this Act applies to a woman by reason of an election under this section all the provisions of this Act shall apply to her as if references to a male person who is or was a public officer include references to her, and as if any reference to the wife or widow of such a person includes a reference to her husband or her widower:

Provided that—

- (i) where she leaves a widower, the President may direct that section 12(2) of this Act shall apply to any children's pension payable in respect of her service to the exclusion of section 12(3) of this Act notwithstanding that some or all of the persons for whose benefit the pension can enure were not at the time of her death in the care of some person other than the widower; and
- (ii) if her husband dies and she remarries, the subsequent marriage and the children thereof shall not be taken into account for purposes of this Act unless she proves while she is still a public officer, to the satisfaction of the President that her husband by that marriage is wholly or mainly dependent on her.

5. Power to grant widow's and children's pensions

Subject to the provisions of this Act, the President shall on the death of a person to whom this Act applies (hereinafter in this Act referred to as the deceased) grant, in respect of his service—

- (a) where he leaves a widow, a widow's pension to that widow; and
- (b) where he had a wife (whether or not the marriage continued until his death and whether or not a widow's pension is or can be granted), a children's pension for the benefit of the children of the marriage and of such other children of his or hers as may qualify for a benefit under section 11 of this Act:

Provided that no marriage of the deceased which takes place after he has ceased to be a public officer shall be taken into account for the purposes of this Act and accordingly any reference in this Act to a wife, the widow or the children shall be construed strictly in relation to a marriage other than a marriage referred to in this proviso.

6. Qualifications for pensions under this Act to depend on eligibility under the Pensions Act and Pensions Regulations

A pension shall not be granted under this Act unless—

- (a) the deceased had become eligible for the grant of a pension (other than a pension under regulation 25 of the Pensions Regulations) under the Pensions Act (Cap. 189), whether such a pension had actually been granted or not; or
- (b) the deceased would have become eligible for the grant of a pension under the Pensions Act if the provisions of regulation 4 of the Pensions Regulations (which relate to the minimum qualifying service) had not been applicable to him; or
- (c) the deceased was still serving as a public officer at the time of his death and would, if—
 - (i) he had then retired on medical grounds and either been confirmed in a pensionable office before his death or, if he had not been confirmed in a pensionable office, he had been so confirmed; and
 - (ii) in either case, the provisions of regulation 4 of the Pensions Regulations (which relates to minimum qualifying service) had not been applicable to him and he had completed at least one month's pensionable service,

have become eligible for the grant of a pension.

7. Computation of basic pension

(1) Where the deceased was serving as a public officer in the service of the Government at the time of his death or had retired from that service in the circumstances described in paragraphs (c), (d) or (e) of section 6 of the Pensions Act (Cap. 189) and at the time of his death or retirement, his pensionable service was less than twenty years, his basic pension shall—

- (a) if his pensionable service had been wholly under the Government, be computed as if it had been pensionable service for a period of twenty years or if it would have been for a shorter period than twenty years if he had died or retired at the age of fifty (or at the age of fifty-seven if he held the office of a judge of the High Court at the time of his death or retirement), for such shorter period;
- (b) if his pensionable service had not been wholly under the Government, be increased by an amount equal to the difference between the pension for which he would have been eligible if his pensionable service had been wholly under the Government and paragraph (a) of this subsection had applied to him and the pension for which he would have been eligible if his pensionable service had been wholly under the Government and paragraph (a) of this subsection had been left out of account;

- (c) if his pensionable service had not been wholly under the Government and in respect of his other public service prior to his first transfer to public service under the Government he had had no opportunity of contributing to a widow's and orphans' pension scheme provided for under any written law or to the Oversea Superannuation Scheme be computed as if his pensionable service had commenced on the day on which he was first transferred from other public service to service under the Government and paragraph (a) of this section applied to him.

(2) In this Act references to the basic pension of an officer mean the pension for which, under the Pensions Act, he was eligible on the date of his death (whether such a pension or any other pension had actually been granted or not) or, as the case may be, for which he would have been eligible, calculated, in either case with reference to his pensionable service only, and any abatement, addition or other pension or allowance which may or might be made under the provisions of the Pensions Act shall be left out of account.

[Act No. 4 of 1971, s. 4.]

8. Widow's pensions not to be granted in certain circumstances

(1) A widow's pension shall not be granted if—

- (a) the widow was at the time of the death of the deceased cohabiting with a person other than the deceased; or
- (b) after the death of the deceased the widow remarries or cohabits with any person,

and if, after the grant of a widow's pension a widow remarries or cohabits with any person, the pension shall cease as from the date of remarriage or the commencement of cohabitation:

Provided that where—

- (i) a pension is withheld or ceases under this section; and
- (ii) the President is satisfied at a subsequent date that the subsequent marriage or cohabitation has come to an end, or that there are compassionate grounds for the payment of a pension notwithstanding that marriage,

the President may grant or regrant the pension as from that date.

(2) A widow's pension shall not be granted if the deceased's death occurs within twelve months of the marriage and there are no children born of the marriage:

Provided that the President may, if he is satisfied that there are compassionate grounds, grant a pension.

(3) Subject to the provisions of subsections (1) and (2) of this section, a widow's pension shall be paid in respect of the whole period from the death of the deceased to the death of the widow.

(4) The annual rate of a widow's pension shall amount to one-third of the rate of the pension of the deceased.

(5) Where the annual rate of the widow's pension is less than twelve pounds, the President may, on the application of the widow within three months next following the grant of the pension or within such longer period as the President may in any particular case approve, commute the pension by paying to her a sum which, according to actuarial tables prepared from time to time by an actuary appointed by the President, is actuarially equivalent, at the date of payment, to the value of the pension.

(6) In this section, subject to section 7 of this Act, **“the rate of the pension of the deceased”** means—

- (a) in the case of a public officer who has married under any religious or tribal custom according to which polygamy is lawful, that amount of the basic pension of such officer as is proportionate to the number of wives had by the deceased; and
- (b) in any other case, the annual rate of the basic pension of the deceased.

(7) For the purposes of this Act, the annual rate of pension for which any widow is eligible on the death of a public officer (whether such pension is actually granted or not) or, as the case may be, she could have been granted had she been so eligible, shall be regarded as separate and distinct, and shall not be affected by any change whatsoever in the number of his widows eligible for a pension.

[Act No. 4 of 1971, s. 5.]

9. Bankruptcy of widow

If a person to whom a widow's pension has been granted is adjudicated bankrupt, or is declared insolvent by any competent court, such pension shall cease as from the date of the bankruptcy or insolvency:

Provided that where a pension ceases under this section the President may, from time to time, during the remainder of her life, or during such shorter period or periods either continuous or discontinuous as he deems fit, authorise the payment to such widow of an allowance at a rate not exceeding the rate of such pension, or the President may, in such manner and at such time as he thinks fit, authorize the application of such allowance for the maintenance and personal support of such widow.

10. Payment of widow's pension in cases of failure to maintain children

Where the deceased leaves a widow who deserts, abandons or fails to maintain a child whom she is bound by law to maintain, the President may direct that such portions of the widow's pension as he thinks fit shall be paid to such person as he may direct and be applied by that person for the benefit of the child.

11. Beneficiaries under children's pensions

(1) A children's pension shall be granted if, and be paid so long as and whenever, there are persons for whose benefit it can enure.

(2) Subject to subsection (3) of this section, the persons for whose benefit a children's pension can enure are the children of the deceased or of any wife of his who are for the time being in their period of childhood and full-time education.

(3) A children's pension shall not enure—

- (a) for the benefit of any child conceived after the deceased has ceased to be a public officer;
- (b) for the benefit of any child by reason that he is the adopted child of the deceased if he was adopted after the termination of the deceased's last marriage or after the deceased had ceased to be a public officer;
- (c) for the benefit of any child by reason that he is the child of a wife of the deceased if he was born or became her child after the termination of the marriage or after the deceased had ceased to be a public officer;
- (d) for the benefit of any child by reason that—
 - (i) he is the adopted child of the deceased; or
 - (ii) he is the stepchild of the deceased and a child of a wife of his; or
 - (iii) he is the stepchild or adopted child of a wife of the deceased,

unless he was wholly or mainly dependent on the deceased at the time of death;

- (e) for the benefit of a female child who at the time of the death of the deceased was married or was cohabiting with any person, and, if after the death of the deceased, a female child marries or cohabits with any person, she shall thereupon cease to be a person for whose benefit a children's pension can enure:

Provided that where—

- (i) a pension does not enure for the benefit of a person by virtue of this paragraph; and
- (ii) the President is satisfied at a subsequent date that the marriage or cohabitation has come to an end or that there are compassionate grounds for permitting the pension to enure for her benefit notwithstanding the marriage or cohabitation,

the President may, if he thinks fit, grant the pension, or as the case may be, permit the pension to enure for her benefit, as from that date.

[Act No. 4 of 1971, s. 6.]

12. Rate and mode of payment of children's pensions in cases of monogamous marriages

(1) Subject to the provisions of this Act, where a deceased officer has not married under any religious or tribal custom according to which polygamy is lawful, only one children's pension shall be granted in respect of the service of the deceased, but—

- (a) the rate thereof may vary according to the number of persons for whose benefit it can for the time being enure; and
- (b) it shall be paid to such person or persons as the President may from time to time direct, and different parts thereof may be directed to be paid to different persons; and

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(c) the person to whom all or any part thereof is paid shall apply the sum paid to him, without distinction, for the benefit of all the persons for whose benefit the pension can for the time being enure or for the benefit of such of them as the President may from time to time direct.

(2) When the deceased leaves no widow, and, if he leaves a widow, after her death, the annual rate of a children's pension—

(a) while the persons for whose benefit it can enure are two or more in number, shall amount to one-half of the rate of the pension of the deceased;

(b) while there is only one such person shall amount to one-quarter of the rate of the pension of the deceased.

(3) Subject to subsection (4) of this section, where the deceased leaves a widow, the annual rate of a children's pension during her life, while there are one or more persons for whose benefit it can enure shall amount to one-sixth of the rate of the pension of the deceased:

Provided that—

(i) where all the persons for whose benefit a children's pension can enure were at the time of death of the deceased in the care of some person other than the widow, the President may, if he thinks fit, direct that subsection (2) of this section shall apply notwithstanding that the widow is still alive; and

(ii) where some but not all of those persons were at that time in the care of some person other than the widow, the annual rate of the children's pension shall, if the President thinks fit, amount to the sum of the rate to which it might have amount to the sum of the rate to which it might have amounted if those persons were left out of account and the rate to which it might have amounted if the widow were dead and the other persons were left out of account, so however, that in no case shall the annual rate of the pension amount to more than one-third of the rate of the pension of the deceased.

(4) Notwithstanding anything in the preceding provisions of this section, where the deceased leaves a widow and no widow's pension is granted to her or if one is granted to her it ceases to be paid before her death, no children's pension shall be payable as respects any period comprised within the lifetime of the widow or within the time in respect of which no widow's pension is payable, as the case may be, unless the President directs that such a pension shall be so payable, but if the President does so direct, he may, if he thinks fit, further direct that subsection (2) of this section shall apply as respects any such period notwithstanding that the widow is alive.

(5)

(a) Where the annual rate of a children's pension is less than twelve pounds, the President may, on the application of any person made within three months next following the grant of the pension or within such longer period as the President may in any particular case approve, commute the pension by paying to such person or persons, as he thinks fit, a sum which, according to actuarial tables to be produced from time to time by an actuary appointed by the President is actuarially equivalent, at the date of payment, to the value of the pension.

- (b) The provisions of this subsection shall not apply where a widow's pension has been granted and the aggregate of the annual rates of the widow's pension and the children's pension exceeds twelve pounds.

(6) In this section, subject to section 7 of this Act the expression "**the rate of pension of the deceased**" means the annual rate of the basic pension of the deceased.

[Act No. 4 of 1971, s. 7.]

12A. Rate and mode of payment of children's pensions in cases of polygamous marriages

(1) Subject to the provisions of this Act, where a deceased public officer has married under any religious or tribal custom according to which polygamy is lawful only one children's pension shall be granted in respect of the service of the deceased to his children by his marriage to each wife of his, but—

- (a) the rate thereof may vary according to the number of children by that marriage for whose benefit it can for the time being enure; and
- (b) it shall be paid to such person or persons as the President may from time to time direct, and different parts thereof may be directed to be paid to different persons; and
- (c) the person to whom all or any part thereof is paid shall apply the sum paid to him, without distinction, for the benefit of all the persons for whose benefit the pension or part thereof can for the time being enure or for the benefit of such of them as the President may from time to time direct.

(2) A children's pension granted in respect of the children of the deceased by his marriage with any wife of his—

- (a) shall be regarded as being separate and distinct from the children's pension granted in respect of his children by any other marriage;
- (b) shall not be affected by the death of a widow of any other marriage;
- (c) shall not be affected by any change whatsoever in the number of children by any other marriage.

(3) When, by his marriage with any wife of his, the deceased leaves no widow, and, if he leaves such a widow, after her death, the annual rate of children's pension payable in respect of the children of that marriage—

- (a) while there is only one person for whose benefit it can enure, shall amount to seventy-five per centum of the basic family pension;
- (b) while there are two persons for whose benefit it can enure, shall amount to one hundred per centum of the basic family pension;
- (c) while there are three persons for whose benefit it can enure, shall amount to one hundred and twenty-five per centum of the basic family pension;
- (d) while there are four or more persons for whose benefit it can enure, shall amount to one hundred and fifty per centum of the basic family pension.

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(4) Subject to subsection (5) of this section, where the deceased leaves a widow of any marriage of his, the annual rate of the children's pension payable during the life of the widow in respect of the children of that marriage—

- (a) while there is only one person for whose benefit it can enure, shall amount to twenty-five per centum of the basic family pension;
- (b) while there are two persons for whose benefit it can enure, shall amount to fifty per centum of the basic family pension;
- (c) while there are three or more persons for whose benefit it can enure, shall amount to seventy-five per centum of the basic family pension:

Provided that—

- (i) where all the persons for whose benefit a children's pension can enure were at the time of the death of the deceased in the care of some person other than that widow, the President may, if he thinks fit, direct that subsection (3) of this section shall apply notwithstanding that the widow is still alive; and
- (ii) where some but not all of those persons were in the care of some person other than that widow, the annual rate of the children's pension shall, if the President so directs, amount to the sum of the rate to which it might have amounted if those persons were left out of account and the rate to which it might have amounted if the widow were dead and the other persons were left out of account, so, however, that in no case shall the annual rate of such pension amount to more than the basic family pension.

(5) Notwithstanding anything in the preceding provisions of this section, where the deceased by his marriage with any wife of his leaves a widow and no widow's pension is granted to her or, if such a pension is granted, it ceases to be paid before her death, no children's pension shall be payable as respects any period comprised within the lifetime of that widow or within the time in respect of which no widow's pension is payable, as the case may be, unless the President directs that such a pension shall be so payable, but if the President does so direct he may, if he thinks fit, further direct that subsection (3) of this section shall apply as respects any such period notwithstanding that the widow is still alive.

(6) Where the annual rate of a children's pension is less than two hundred and forty shillings, the President may, on the application of any person made within three months next following the grant of the pension, or within such longer period as the President may in any particular case approve, commute the pension by paying, to such person or persons as he may think fit, a sum which, according to actuarial tables to be produced from time to time by an actuary appointed by the President, is actuarially equivalent at the date of payment to the value of the pension:

Provided that the provisions of this subsection shall not apply where a widow's pension has been granted and the aggregate of the annual rates of the widow's pension and the children's pension in respect of children of the marriage of that widow and the deceased exceeds two hundred and forty shillings.

(7) Subject to the provisions of section 11 of this Act, for the purposes of this section—

- (a) any person for whose benefit a children's pension can enure by reason that he is—
 - (i) the stepchild of the deceased and the child of a wife of the deceased; or
 - (ii) the stepchild or adopted child of a wife of the deceased,

shall be regarded as a child of the marriage of the deceased and that wife;

- (b) the stepchild or adopted child of the deceased shall be regarded as the child of the marriage of the deceased with that wife who is, or if dead would have been if alive, required in accordance with the tenets of her religion or tribal custom to assume responsibility for maintaining that child after the death of the deceased.

(8) In this section “**basic family pension**” means one-third of the rate of the basic pension of the deceased public officer divided by the number of marriages contracted by him.

[Act No. 4 of 1971, s. 8.]

13. Periodical contributions

(1) Every public officer—

- (a) who makes an election under section 3 of this Act shall at the same time elect whether or not to make contributions under this section;
- (b) to whom this Act automatically applies shall make contributions under this section as from the date when this Act so applies.

(2) Contributions by a public officer under this section—

- (a) shall be equal to two per centum of the amount of the annual pensionable emoluments from time to time enjoyed by him; and
- (b) shall be payable in respect of his pensionable emoluments—
 - (i) from the date as from which his election to pay contributions becomes effective until he ceases to be a public officer under the Government; and
 - (ii) in the case of an officer transferred to other public service who subsequently re-enters public service under the Government, from the date of his re-entry until he ceases to be a public officer under the Government:

Provided that no contributions shall be payable in respect of any period which is not taken into account as pensionable service; and

- (c) shall be paid by abatements from the officer's salary, or in exceptional cases, at such other times or in such other manner as the President shall determine.

(3) An election by an officer under subsection (1) of this section shall be effective as from the date when this Act first applies to him:

Provided that in the case of a person who—

- (i) on the date of his first appointment to the service under the Government or at the date of commencement of this Act is unmarried; and

- (ii) marries thereafter; and
- (iii) has not already elected under subsection (1) of this section to make contributions under this section,

an election shall be effective as from the first day of the month in which he married.

[Act No. 4 of 1971, s. 9.]

14. Return of periodical contributions

(1) Subject to the provisions of this section, if—

- (a) where a person who has made periodical contributions ceases to be a public officer, it appears that he has had no wife throughout the period commencing with the date of his first appointment in the service of the Government and terminating on the date when he ceases to be a public officer; or
- (b) a person who has made periodical contributions ceases to be a public officer under such circumstances that he is not eligible for the grant of a pension under the Pensions Act (Cap. 189) and would not have become eligible under the circumstances described in paragraph (b) or paragraph (c) of section 6 of this Act,

the whole of his periodical contributions shall be returned to him or to his legal personal representative.

(2) Where a person who has made periodical contributions ceases to be a public officer in such circumstances that he is eligible only for the grant of a gratuity under the Pensions Act, then, unless he retires from the public service in the circumstances described in section 6(e) of the Pensions Act, he may elect that the whole of his periodical contributions may be returned to him in return for the surrender of such benefits as might enure under this Act to his widow and his or her children.

(3) With effect from 1st March, 1977, if a person who has made periodical contributions has no wife and is without children of pensionable age at the date on which he ceases to be a public officer, there shall be returned to him or his legal personal representative all contributions made by him.

(4) Where any contributions are returned under this section, they may be returned with an addition of one-and-a-quarter per centum of the aggregate amount of the returned contributions for each year and part of a year of service in respect of which the contributions were made.

[Act No. 4 of 1971, s. 10, Act No. 7 of 1977, s. 3.]

15. Contributions by reduction in pension or gratuity

(1) Subject to the provisions of this Act, where a pension or gratuity under the Pensions Act (Cap. 189) becomes payable to or in respect of a public officer, payment shall be made in respect of contributions due from him under this Act in the form of a reduction—

- (a) in the gratuity, where one is payable; or
- (b) where no such gratuity is payable, or the payment under this section exceeds the gratuity, then to the extent of such excess, in any such pension payable.

- (2) A payment shall not be made under this section where—
- (a) the public officer has no wife when he ceases to be a public officer and has had no wife throughout the period commencing with the date of his first appointment in the service of the Government and terminating on the date when he ceases to be a public officer; or
 - (b) being a person who has ceased to be a public officer in such circumstances that he is eligible only for the grant of a gratuity and not having retired from the public service in the circumstances described in section 6(e) of the Pensions Act he elects to surrender such benefits as might enure under this Act to his widow and his or her children; or
 - (c) the number of relevant months as defined in subsection (5) of this section is nil.

- (3)
- (a) Where the payment by a public officer under this section takes the form of a reduction in the amount of the pension, it shall be made at the annual rate of two-twenty-fifths of the total amount of the contribution.
 - (b) Where the payment takes the form of a reduction in gratuity it shall be equivalent to the total amount of the contribution.
 - (c) For the purposes of this subsection—

“**annual pensionable emoluments**” means the emoluments which would be taken for the purpose of computing the public officer’s pension or gratuity in accordance with the provisions of regulation 20 of the Pensions Regulations;

“**the total amount of the contribution**” means the sum equal to one-twelfth of two per centum of the officer’s annual pensionable emoluments when he ceased to be a public officer, multiplied by the number of relevant months as defined in subsection (5) of this section.

(4) Where the payment due from a public officer takes the form of a reduction in his pension and that pension ceases under the provisions of either section 13, section 14 or section 15 of the Pensions Act, sums equivalent to those by which the pension would have been reduced had it not ceased, shall be deemed to have been paid on account of the payment due under this Act.

(5) In this section the expression “**the number of relevant months**” means—

- (a) if the public officer has a wife when he ceases to be a public officer, the number of completed months of pensionable service under the Government which he then has;
- (b) if the public officer has no wife when he ceases to be a public officer, the number of completed months of pensionable service under the Government which he had when he last had a wife before that date,

reduced in each case by the number of months, if any, for which periodical contributions have been made by him and are not returnable.

[Act No. 4 of 1971, s. 11.]

16. Contributions payable in respect of re-employed pensioner

Where a public officer, whose pension has been suspended under section 11 of the Pensions Act (Cap. 189) or whose earlier public service is taken into account in accordance with regulation 16(2)(b) of the Pensions Regulations, has had a

reduction made in the pension or gratuity granted to him under that Act in accordance with section 15 of this Act he shall—

- (a) if such reduction had been made from the aforesaid gratuity, be deemed to have made periodical contributions in respect of the period of his pensionable service taken into account in calculating the amount of such reduction;
- (b) if such reduction had been made from the aforesaid pension, be deemed to have made periodical contributions in respect of that proportion, not exceeding the whole, of his pensionable service taken into account in calculating the amount of such reduction as the actual amount of the contribution paid by way of reduction in pension bears to the total amount of the contribution used in determining the amount of the reduction.

17. Information to be furnished

(1) Every public officer to whom this Act applies shall—

- (a) within three months of the day on which this Act first applies to him, notify the authorized officer in writing if he is married, or a widower with children in their period of childhood and full-time education, the date of his marriage and the birth of his and his wife's children;
- (b) if he marries, notify his marriage to the authorized officer in writing within three months of the marriage;
- (c) notify the authorized officer within three months of the event—
 - (i) the birth of any child born to him or his wife;
 - (ii) the adoption of any child by him or his wife;
 - (iii) the marriage of any female child during her period of childhood and full-time education;
 - (iv) the death of his wife and the death or adoption of children who are in their period of childhood and full-time education;
 - (v) the annulment or dissolution of his marriage and the date thereof.

(2) The widow of a public officer to whom this Act applies shall notify to the Permanent Secretary to the Treasury in writing within three months of the event—

- (i) the date of the death of the deceased;
- (ii) the birth of any posthumous child;
- (iii) the marriage or cohabitation with any person of any female child during her period of childhood and full-time education;
- (iv) the death of any child during his period of childhood and full-time education;
- (v) her own remarriage, cohabitation with any person or her bankruptcy.

(3) Any person in receipt of a pension in respect of a child under sections 10, 12 and 12A of this Act shall notify the Permanent Secretary to the Treasury in writing within three months of the event—

- (i) the death of the child;

- (ii) the marriage or cohabitation of the female child during the period of her childhood and full-time education.

(4) Any statement or notice made or given in pursuance of the provisions of this section shall be proved by the production of birth, death or marriage certificates or by affidavit or otherwise to the satisfaction of the Permanent Secretary to the Treasury.

[Act No. 4 of 1971, s. 12.]

18. Penalty for non-compliance

(1) Any public officer to whom this Act applies, a widow of such officer or any person in receipt of a pension under sections 10, 12 and 12A of this Act, who fails or neglects to comply with any of the requirements of section 17 of this Act, shall, for each default be liable, at the discretion of the President, to pay a fine not exceeding forty shillings, which may be deducted from his salary or from his or her pension or the pension payable, as the case may be.

(2) If any public officer to whom this Act applies, a widow of such officer or any person in receipt of a pension under sections 10, 12 and 12A of this Act makes any false statement respecting any of the particulars required by this Act to be given to the authorized officer, or to the Permanent Secretary to the Treasury, all or any part of the rights or benefits which would or might enure to him or his widow and children under this Act shall be liable to be forfeited at the discretion of the President.

[Act No. 4 of 1971, s. 13.]

19. Mode of making election

(1) Any election authorized to be made under this Act shall be in writing and shall be made to the authorized officer.

(2) The date of making of the election shall be deemed to be the date of receipt of the written notification of the election by the authorized officer.

(3) After the expiry of any period within which an election under this Act is required to be made, any such election shall be irrevocable.

20. Proof of claims to pension

The authorized officer may require such proof as he considers desirable that any person who claims to be entitled to a pension under this Act or on behalf of whom such claim is made, is alive and entitled to the pension, and the payment of any pension may be refused until such proof is furnished to the satisfaction of the Permanent Secretary of the Treasury.

21. Pension not to be assigned

Except as may be expressly provided in this Act, no pension payable, and no rights of any person, under the provisions of this Act shall be assignable or transferable or liable to be attached, sequestered or levied upon for, or in respect of any debt or claims whatsoever.

[Act No. 4 of 1971, s. 14.]

22. Effect of certain nullity decrees

Where the marriage of any public officer has been annulled or dissolved by the decree of any competent court, the wife party to such marriage shall for all purposes of this Act be deemed to have died at the date of such decree.

[Act No. 4 of 1971, s. 15.]

23. Financial provisions

(1) There shall be paid out of the consolidated fund—

- (a) any pension or return of contribution with or without interest which is payable under or by virtue of this Act;
- (b) any expenses incurred in the administration of this Act.

(2) Contributions under this Act shall be paid into the consolidated fund.

24. Application of the Schedule to this Act in respect of certain officers

The supplementary provisions of the Schedule to this Act shall have effect in relation to the contributions to be made by the public officers mentioned therein and to the matters connected therewith.

25. Cap. 192, Cap. 193, Cap. 194 to cease to apply to certain public officers

Subject to the provisions of this Act, the Widows' and Orphans' Pensions Act, the Asiatic Widows' and Orphans' Pension Act and the Asian Officers' Family Pensions Act shall cease to apply to a public officer as from the date on which this Act first applies to him.

26. Questions to be determined by the President

Where any question or dispute exists in relation to any matter arising under this Act such question or dispute may be determined by the President, and the President's decision thereon shall be binding and conclusive on all parties.

SCHEDULE

[Section 24, Act No. 4 of 1971, s. 16.]

SUPPLEMENTARY PROVISIONS IN RELATION TO CONTRIBUTIONS BY
CERTAIN PUBLIC OFFICERS AND MATTERS CONNECTED THEREWITH

Public officers in service under the Government at the date of the commencement of this Act and certain officers subsequently appointed to be public officers under the Government.

1. Where—

- (a) a public officer elects under section 3 of this Act that this Act shall apply to him; or
- (b) a person appointed to service under the Government after the date of commencement of this Act or, in the case of a teacher, after the date appointed under section 3(1)(c) of this Act has had previous service under the Government on non-pensionable terms; or

- (c) a public officer transferred to service under the Government after the commencement of this Act or, in the case of a teacher, after the date appointed under section 3(1)(c) of this Act has had previous service under the Government,

this Act shall be deemed to apply to him as from the date of the commencement of his pensionable service under the Government.

2.

- (a) Subject to the provisions of this Schedule, a public officer mentioned in the preceding paragraph shall elect within three months of the first date on which this Act actually applied to him, whether or not to make a lump sum contribution in respect of the period of pensionable service which he had at first date on which this Act actually applied to him.
- (b) The lump sum contribution payable under the preceding paragraph shall be equal to one-twelfth of two per centum of his annual pensionable emoluments ascertained in accordance with regulation 20 of the Pensions Regulations, at the first date on which this Act actually applied to him multiplied by the number of relevant months as defined in subparagraph (e) of this paragraph.
- (c) Where a public officer has made a lump sum contribution under this paragraph he shall be deemed to have made periodical contributions in respect of the period of his pensionable service taken into account in calculating the amount of such lump sum contribution.
- (d) A lump sum contribution by a public officer under this paragraph shall, within twelve months of the first date on which this Act actually applied to him, or within such extended period as the President may, in exceptional circumstances allow, be paid in such manner as the President may direct.
- (e) In this paragraph, the expression “**the number of relevant months**” means the number of complete months of pensionable service under the Government which the public officer had at the date on which this Act first applied to him reduced by the number of complete months of such service in respect of which he has been deemed to have made periodical contributions.

3. Where a public officer mentioned in paragraph 1 of this Schedule has, during the whole or any part of his pensionable service under the Government prior to the first date on which this Act actually applied to him, made contributions under the Widows' and Orphans' Pensions Act (Cap. 192), the Asiatic Widows' and Orphans' Pension Act (Cap. 193) or the Asian Officers' Family Pensions Act (Cap. 194) and on the day immediately prior to the date on which this Act applied to him ranked for benefit under the Widows' and Orphans' Pensions Act, the Asiatic Widows' and Orphans' Pensions Act or the Asian Officers' Family Pensions Act, as the case may be, such contributions shall, subject to the provisions of paragraph 4 of this Schedule, be deemed to have been periodical contributions under this Act and the number of relevant months referred to in section 15 of this Act and in paragraph 2 of this Schedule shall be reduced accordingly.

4. Where a public officer mentioned in paragraph 1 of this Schedule has, during the whole or any part of his pensionable service under the Government prior to the first date on which this Act actually applied to him, made contributions under section 5(3)(a) of the Widows' and Orphans' Pensions Act or under section 13(2)(a) of the Asian Officers' Family Pensions Act and on the day immediately prior to the date on which this Act applied to him ranked for benefit under the Widows' and Orphans' Pensions Act or the Asian Officers' Family Pensions Act, as the case may be—

- (a) the amount of the lump sum contribution payable under paragraph 2 of this Schedule;
- (b) that proportion of the amount of the lump sum contribution payable under section 15 of this Act and under paragraph 7 of this Schedule which is attributable to the period of pensionable service under the Government which he had at the first date on which this Act actually applied to him,

shall be reduced by the aggregate amount of the said contributions made by him under the Widows' and Orphans' Pensions Act (Cap. 192) or the Asian Officers' Family Pensions Act in respect of the period of his pensionable service taken into account in calculating the said amount of the lump sum contribution or the said proportion of such amount, together with the addition of one and one-quarter per centum of such aggregate amount in respect of each year or part of a year in respect of which contributions were made.

5. Where in respect of a public officer mentioned in paragraph 1 of this Schedule, who has, during the whole or any part of his pensionable service under the Government prior to the first date on which this Act actually applied to him, made contributions under the Widows' and Orphans' Pensions Act (Cap. 192), the Asiatic Widows' and Orphans' Pensions Act (Cap. 193) or the Asian Officers' Family Pensions Act (Cap. 194) and on the day immediately prior to the date on which this Act applied to him ranked for benefit under the Widows' and Orphans' Pensions Act, the Asiatic Widows' and Orphans' Pensions Act (Cap. 193) or the Asian Officers' Family Pensions Act (Cap. 194), as the case may be, a return of periodical contributions falls to be made under section 14 of this Act, for the purpose of that section periodical contributions shall include his actual periodical contributions, any lump sum contribution actually paid under paragraph 2 of this Schedule and an amount equal to the aggregate of the contributions made by him under the Widows' and Orphans' Pensions Act (Cap. 192), the Asiatic Widows' and Orphans' Pensions Act (Cap. 193) or the Asian Officers' Family Pensions Act (Cap. 194), as the case may be.

6.

- (a) Where a public officer ceases to be a contributor under the Widows' and Orphans' Pensions Act (Cap. 192), the Asiatic Widows' and Orphans' Pensions Act (Cap. 193) or the Asian Officers' Family Pensions Act (Cap. 194) in accordance with section 25 of this Act he shall be deemed to have surrendered any claim to rank for benefit under any of the aforementioned acts:

Provided that—

- (i) if he was a contributor under the Widows' and Orphans' Pensions Act (Cap. 192) or the Asian Officer's Family Pensions Act (Cap. 194) the aggregate rate of any widows' pension and any children's pension payable under this Act shall not at any time be at a lower rate than the rate of pension which would have been payable to his beneficiaries at the date of his death under the Widows' and Orphans' Pensions Act (Cap. 192) or the Asian Officer's Family Pensions Act (Cap. 193), as the case may be, if he had been treated for the purposes of those Acts as having transferred to other public service and as having ceased to contribute under those Acts as from the first date on which this Act actually applied to him;
 - (ii) if he was a contributor to the Asiatic Widows' and Orphans' Pensions Act (Cap. 193) and his death occurs within a period dating from the first date on which this Act actually applied to him equal to one-third of the number of complete months during which he contributed under that Act, the aggregate rate of any widows' pension or any children's pension payable under this Act shall be less than £50 a year.
- (b) Where in any case the provisions of the preceding subparagraph fall to be applied—
- (i) if there is only one person to whom a pension is being paid or to whom a pension is to be granted such pension shall be at the higher rate prescribed in the preceding subparagraph;
 - (ii) if there are two or more persons to whom pensions are being paid or to whom pensions are to be granted, each person's pension shall be such proportion of the higher rate of pension prescribed in the preceding subparagraph as that person's pension calculated without regard to the preceding subparagraph bears to the aggregate of the persons' pensions calculated without regard to the preceding subparagraph.
- (c) For the avoidance of doubt it is hereby declared that the increased widow's pension and the increased children's pension payable under subparagraph (b) of this paragraph shall—
- (i) not be granted unless the full amount of the contribution payable under section 15 of this Act is made to the Permanent Secretary to the Treasury within three months of the date of death of the deceased;
 - (ii) be payable in accordance with the provisions of this Act.

TRANSFERRED PUBLIC OFFICERS

7. Where contributions fall to be made by or in respect of a transferred public officer under section 15 of this Act—

- (a) if such contributions fall payable on his retirement from the public service or on his death while in the public service under the Government the amount by which the pension or gratuity payable to or in respect of him under the Pensions Act may be reduced under section 15 of this Act, and under paragraphs 2 and 3 of this Schedule shall be such an amount as shall bear the same proportion to the aggregate amount of the contributions which would fall to be made by or in respect of him under section 15 of this Act and under paragraphs 2 and 3 of this Schedule had his service in the Group been wholly in public service under the Government as the aggregate amount of his pensionable emoluments during the number of the relevant months as defined in section 15(5) of this Act and under paragraph 2 of this Schedule, of service under the Government bears to the aggregate amount of his pensionable emoluments during the said relevant months and his service under any scheduled Government;
- (b) if such contributions become payable on the death of the public officer while he is in other public service, no widow's pension or children's pension shall be payable under this Act unless a sum equal to the amount by which, if the public officer had died in public service under the Government, the gratuity payable in respect of him under the Pensions Act would have been reduced under the provisions of subparagraph (a) of this paragraph is paid to the Permanent Secretary to the Treasury within three months next following the date of his death or within such extended period as the President may allow.
