

**THE WIDOWS' AND CHILDREN'S PENSIONS
(AMENDMENT) ACT, 1971**

No. 4 of 1971

Date of Assent: 29th January, 1971

Date of Commencement: 29th January, 1971

**An Act of Parliament to amend the Widows' and Children's
Pensions Act**

ENACTED by the Parliament of Kenya, as follows:—

1. This Act may be cited as the Widows' and Children's Pensions (Amendment) Act, 1971. Short title.

2. Subsection (1) of section 2 of the Widows' and Children's Pensions Act (hereinafter referred to as the principal Act) is hereby amended— Amendment of section 2 of Cap. 195.

(a) by the deletion of the definition of "pensionable emoluments", "pensionable office", "public service", "other public service", "public officer", "service of the Government", "service under the Government" and "widow's pension";

(b) by the insertion in their proper alphabetical positions of the following—

Cap. 212.

"Commission" means the Teachers Service Commission established under section 3 of the Teachers Service Commission Act;

"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;

Cap. 189.

"pensionable emoluments", "pensionable office" and "public service" have the meanings assigned to those expressions in section 2 of 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;

“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;

“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.

Amendment of
section 3 of
Cap. 195.

3. Section 3 of the principal Act is hereby amended—

(a) in subsection (1)—

(i) by the deletion of the word “and” at the end of paragraph (a) and by the insertion after the words “public officer” in paragraph (b) of the words “not being a teacher”;

(ii) by the addition of the following new paragraphs—

(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;

(b) in subsection (2), by the deletion of the word and figures “subsection (1)(a)” and the substitution therefor of the words and figures “paragraph (a) or (c) of subsection (1)”.

4. Subsection (2) of section 7 of the principal Act is hereby amended by the deletion of the words “In this section” and the substitution therefor of the words “In this Act”.

Amendment of
section 7 of
Cap. 195.

5. Section 8 of the principal Act is hereby amended by the deletion of subsection (6) and the substitution therefor of the following—

Amendment of
section 8 of
Cap. 195.

(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.

Amendment of
section 11 of
Cap. 195.

6. Paragraph (b) of subsection (3) of section 11 of the principal Act is hereby amended by the deletion of the words and commas "born, or as the case may be, adopted," and the substitution therefor of the word "adopted".

Amendment of
section 12 of
Cap. 195.

7. Section 12 of the principal Act is hereby amended—

(a) in the marginal note, by the addition thereto of the words "in cases of monogamous marriages"; and

(b) in subsection (1), by the addition before the word "Only" in the first line of the words "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,".

Insertion of
new section 12A
in Cap. 195.

8. The principal Act is hereby amended by the insertion after section 12 of the following—

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

12A. (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.

(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 life-time 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.

Amendment of
section 13 of
Cap. 195.

9. Section 13 of the principal Act is hereby amended by the deletion of subsection (1) and the substitution therefor of the following—

(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.

Amendment of
section 14 of
Cap. 195.

10. Subsection (3) of section 14 of the principal Act is hereby amended by the deletion of the words "and is without children of pensionable age" and "or a child of pensionable age".

Amendment of
section 15 of
Cap. 195.

11. Paragraph (a) of subsection (3) of section 15 of the principal Act is hereby amended by the insertion immediately before the word "rate" of the word "annual".

Amendment of
section 17 of
Cap. 195.

12. Subsection (3) of section 17 of the principal Act is hereby amended by the deletion of the figures and word "10 and 12" and the substitution therefor of the figures and word "10, 12 and 12A".

Amendment of
section 18 of
Cap. 195.

13. Section 18 of the principal Act is hereby amended by the deletion of the figures and word "10 and 12" wherever they appear and the substitution therefor of the figures and word "10, 12 and 12A".

14. Section 21 of the principal Act is hereby amended by the deletion of the words "No pension" and the substitution therefor of the words "Except as may be expressly provided in this Act, no pension".

Amendment of section 21 of Cap. 195.

15. Section 22 of the principal Act is hereby amended by the deletion of the words "and the public officer to have become a widower".

Amendment of section 22 of Cap. 195.

16. The provisions of the Schedule to the principal Act set forth in the first column of the Schedule to this Act are hereby amended in the manner specified in the second column of the Schedule to this Act.

Amendment of Schedule to Cap. 195.

SCHEDULE

(s. 16)

<i>Provisions to be Amended</i>	<i>Amendment</i>
Paragraph 1 (a).	Delete "3 (1) (a)" and substitute "3".
Paragraph 1 (b) and (c).	Insert after "commencement of this Act" in both places the words "or, in the case of a teacher, after the date appointed under section 3 (1) (c) of this Act".
Paragraph 2.	(a) In subparagraph (b) substitute "subparagraph (e)" for "subparagraph (d)". (b) Renumber subparagraph (d) as subparagraph (e). (c) Insert new subparagraph (d) as follows— (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.
Paragraph 3.	Insert after "such contributions shall" the words "subject to the provisions of paragraph 4 of this Schedule,".
Paragraph 4.	Insert after "said amount of the lump sum contribution" the words "or the said proportion of such amount".
Paragraph 6 (b).	(a) Delete "falls" and substitute "fall". (b) Delete "without regard to the paragraph" and substitute "without regard to the preceding subparagraph".
Paragraph 7 (a).	Delete "15 (4)" and substitute "15 (5)".