



REPUBLIC OF KENYA

**THE NATIONAL TREASURY
Pensions Department**

**LEGAL PROVISIONS OF THE PENSIONS
ACT**

LEGAL PROVISIONS OF THE PENSIONS ACT, CAP 189

The payment of pensions and other allied benefits to Civil Servants in this country was started by the colonial Government firstly for Europeans in 1927 and for Non-Europeans from 1932. The Pensions Act (Cap.189), of the laws of Kenya, came into operation in its present form w.e.f. 1st January, 1946. Since then it has been amended from time to time in order to up-date and make it easier to administer.

The Pensions Act (Cap.189), the main Act, makes provisions for the granting and regulating the payment of pensions, gratuities and other allowances in respect of the public service for officers under the Government of Kenya.

According to the existing terms and conditions of service, officers in the public service expect terminal benefits in accordance with their letters of appointment, as an incentive for the services they render to the country for a number of years of their working life.

Paragraph 4 of the Letter of (Probationary) Appointment in the service of the Government of Kenya, Form G.P. 24 (Revised) reads as follows:-

“If you are confirmed in your appointment, you will be eligible on retirement for retiring benefits in accordance with the provisions of the Pensions Legislation of the Public Service of Kenya”.

An officer who has rendered pensionable service to the Government of Kenya expects the payment of retirement benefits in accordance with the provisions of the Pensions Act. The benefits in question are non-contributory or free. In other words, the officer does not have to contribute a part of his salary in order to secure rights to retiring benefits.

In accordance with the provisions of the Pensions Act (Cap.189) Civil Servants or their dependants may be paid, on leaving the service of the Government and on fulfilling certain conditions, one or more of the following benefits.

- Service pension plus commuted pension
- Service gratuity
- Marriage gratuity
- Injury pension
- Death gratuity
- Dependants pension
- Compassionate gratuity
- Annual allowance

1. Calculation of the officer's pension and maximum pension – Regulation 4

Having ascertained the officer's particulars on eligibility for pension – the pension due to him is calculated by taking one-four hundred eightieth of the final pensionable emoluments for each completed month of pensionable service, subject to a maximum of the highest pensionable salary drawn by the officer in the course of his service.

(Completed month x annual salary)

480

Therefore, an officer with ten years' pensionable service, with final salary of K£1000-0-00 cts p.a., would be eligible for a pension calculated as under.

$$\frac{10 \text{ years} \times 12 \text{ months} \times \text{K}\text{£}1000-0-00 \text{ cts p.a.}}{480}$$

= K£250 per annum

An officer may prior to the date of retirement, elect to receive three-quarters of his annual pension and to receive in lieu of the other one-quarter, a lump sum gratuity equal to twenty times its amount. He would thus receive a reduced pension and a gratuity in lieu of full pension.

If in the case quoted above, the officer elected at the time of retirement, to receive a reduced pension and to commute a quarter of his pension, his dues would be worked out as follows:-

Unreduced pension as worked out above
= K£250 per annum

or Reduced pension = $\frac{3}{4} \times \text{K}\text{£}250$ per annum
= K£187.5 per annum

together with a commuted pension gratuity

= $\frac{1}{4} \times \text{K}\text{£}250 \times 20$
= K£1250 payable in lump sum
on retirement.

Death Gratuity $2 \times \text{£}1200 = \text{£}2400$

2. Calculation of gratuity where 10 years qualifying service is not completed – Regulation 5:

An officer who retires from the service in circumstances entitling him to a pension before completion of the necessary 10 years qualifying service is eligible for a gratuity at the rate of 5 times the annual amount of the pension, which if there had been no qualifying period, might have been granted to him. Thus for 8 years pensionable service the gratuity payable to an officer whose emoluments amounted to K£1200 p.a. would be:-

$$\frac{8 \text{ years} \times 12 \text{ months} \times \text{K}\text{£}1200 \times 5}{480} = \text{K}\text{£}1200.00$$

An officer who has retired from the service with less than 10 years qualifying service **on account of injuries** received on duty or an **abolition or re-organization grounds**, has an **option** for either the gratuity as calculated in this paragraph, or a pension calculated as in paragraph 1 above.

3. Marriage gratuity – Regulation 6:

A female officer who resigns from the service on or with a view to marriage or who is required to retire on account of marriage and has completed **at least 5 years service** under the Government, having been **confirmed in a pensionable office** may be granted a

marriage gratuity on production of satisfactory evidence of her marriage **within six months** of her marriage or retirement at the rate of one-twelfth of a months pensionable emoluments for each completed month of pensionable service, subject to a maximum of one year's pensionable emoluments.

Mainly TSC Female Officers

Expected to resume after two years

- (i) Thus, an officer who has done 10 years pensionable service on a salary of K£1200 p.a. would be eligible for a marriage gratuity calculated as follows:-

$$\frac{\text{K£1200} \times 10 \text{ years} \times 12 \text{ months}}{144} = \text{K£100}$$

- (ii) However if the officer had done 15 years pensionable service on a salary of K£1200 p.a., she would be eligible for a marriage gratuity calculated as follows:-

$$\frac{\text{K£1200} \times 15 \text{ years} \times 12 \text{ months}}{144} = \text{K£1500},$$

But limited to one years salary i.e. K£1200

4. Calculation of service gratuity for Police, Prisons, A.P. and Forest Guards – Regulation 26

This gratuity is calculated at the rate of one month's pay for each complete year of service.

- (i) Thus an officer who has done 12 years service and resigns voluntarily on completion of 12 years service on a salary of K£531 p.a. would have his service gratuity calculated as follows:-

$$\frac{\text{K£531} \times 12 \text{ years}}{12} = \text{K£531}$$

- (ii) If he had done 16 years or 20 years service, his service gratuity would be:

$$\frac{\text{K£531} \times 16 \text{ years}}{12} = \text{K£708}$$

- (iii) $\frac{\text{K£531} \times 20 \text{ years}}{12} = \text{K£885}$

5. Death Gratuity – Section 18

A death gratuity of an amount **not exceeding TWICE** the amount of a deceased pensionable officer's annual pensionable emoluments **or his commuted pension gratuity whichever is the greater** is payable to the legal personal representative of the officer. Where an officer who has retired from the service of the Government dies immediately thereafter, a death gratuity equal to the difference between what has already been paid to him by way of commuted pension gratuity and monthly pensions on the one hand; and what

should have been paid as death gratuity had he died on the day of his retirement, would become payable to his legal personal representative.

Pensionable Emoluments = £1200

Commutated Pension Gratuity = $\frac{1}{4} \times \text{K}\pounds 250 \times 20$
= K£1250 payable in lump sum
on retirement.

Death Gratuity $2 \times \pounds 1200 = \pounds 2400$

6. Pension to Dependants on the Death of Officer in service of retirement – Section 17

When an officer who has had **ten or more years'** service dies **after he has retired** from the service of the Government having been granted a pension under the Pensions Act, a dependants' pension to the widow or the children of the officer is payable for a period of **five years** at the rate of the officer's pension at the date of his death. The dependants' pension is also paid to the widow or children of the officer in case where a pensionable officer who has served the Government for **ten or more years dies while in the service**. Otherwise, if there are no dependants pension ceases on the date of death.

Pensionable Emoluments = £1200

Unreduced Pension = $10 \times 12 \times 1200$

480

= £300

Dependant's Pension = **£300 but for 5 years only**

Plus:

7. Dependants' Pension or Killed on duty pension – Section 19:

A pension becomes payable to the widow and/or children of an officer who **dies**

- **as a result of injuries** received in the actual discharge of his **duty**;
- **without his own default** and
- on account of **circumstances** specifically attributable to the nature of his duty.

The widow's pension is payable to her while she **remains unmarried** and of good character at the rate of **10/60ths** of the officer's pensionable emoluments at the date of his injury or death. The pension payable to **each child is at the rate of 1/8th of their mother's pension, subject to a maximum of 6 children.**

Pensionable Emoluments at injury = £1200

KID Dependant's Pension = $10/60 \times \pounds 1200$

= £200

Children = $1/8^{\text{th}} \times \pounds 200 = \pounds 25$

8. Injury Pension – Regulation 25:

An officer who is permanently injured in the same circumstances referred to in para. 7 above **i.e.**

- **as a result of injuries** received in the actual discharge of his **duty**;
- **without his own default**;
- and
- on account of **circumstances** specifically attributable to the nature of his duty.

will **in addition** to any gratuity or pension awarded to him under **regulation 4 and 5** of the pensions Regulations also receive an additional injury pension proportionate to his pensionable emoluments at the date of his injury at the following rates:-

Steps to take when you are injured: -

- Reported immediately to the Director of Pensions (except Workmen’s Compensation)
- Appear in person before a medical Board of 3 persons
- As soon as possible after the injury
- MD 304 Form signed by the Director of Medical Services
- LD 104 Form with salary details

Percentage paid

Where his capacity to contribute to his own support is –

- Slightly impaired 5/60ths
- Impaired 10/60ths
- Materially impaired 15/60ths
- Totally destroyed 20/60ths

e.g.	Pensionable Emoluments at Injury date	= £1000
	Pension under Reg.4	= £300
	Injury Pension 5/60 x £1000	= £ 83.33
	Total Pension	= £383.33

NB: Non-pensionable officers earning more than £4000 p.a. are paid under Workmen’s Compensation **immediately** on confirmation of Injury

9. Pension on Abolition of office or Re-organization of Ministry or Department: Regulation 24

An officer who is retired because of abolition of his office or reorganization of his Ministry or Department is eligible for a pension or gratuity **at his option**, even though he may not have completed the necessary ten years qualifying service.

He is also eligible for an **additional pension at the rate of one-sixtieth** of his pensionable emoluments for each completed period of **three years’** pensionable service, the additional pension being **limited to ten-sixtieths** of his pensionable emoluments, and together with the remainder of his pension to the pension for which he would have been eligible if he had continued until the age of 55 years to hold the office held by him at the date of his

retirement having received all increments for which he would have been eligible at that date.

Calculation

Pensionable Emoluments = £1200

Pension under Reg. 4

$\frac{10 \text{ years} \times 12 \text{ months} \times \text{K}\text{£}1200-0-00\text{cts p.a.}}{480}$

480

= K£300 per annum

Additional Pension

= $\frac{1}{60} \times 3^* \times 1200$

= £60

* 10 years = 3 periods of 3 years completed

Total Pension

= £1260

10. Compassionate Gratuity – Regulation 28

An officer who is not eligible for a pension, either because he is a holder of a non-pensionable office, or a holder of a pensionable office in which he has not been confirmed, and who being a male officer was appointed or transferred to the service of the Government before 1st April 1966, and being a female officer was so appointed or transferred before 1st January 1977, is eligible for the grant of a compassionate gratuity at the rate of **one-twelfth of a month's pay** as at the date of retirement for each completed month of service.

NB: NSSF came into effect 1966 and non-pensionable officers since then are covered under NSSF. Hence this award is being phased out. IN addition, these officers are expected to be covered under the new scheme.

To qualify for a compassionate gratuity an officer should have

- served for not less than 10 years if he retires on age grounds, and for
- not less than 7 years if he retires on the grounds of ill-health;
- public interest;
- abolition of office or re-organization.

Illustration: Thus an officer who has served for 25 years and leaves the service on age grounds at a monthly pay of Kshs.885/= would have his compassionate gratuity calculated as follows:-

$\frac{1}{12} \text{ of Kshs.}885 \times 25 \text{ years} \times 12 \text{ months}$

= Kshs.22,125/=

11. Annual Allowance: Regulation 28(3)

In addition to the compassionate gratuity already granted to him, an officer who has been in the public service for **not less than 30 years** and whose salary on retirement is not more than the maximum salary payable for the time being to officers serving job Group “B” may be granted an annual allowance of Kshs.1200/= or KShs100/= per month.

12. Maintenance Allowance – Section 14 (Bankruptcy) and 15 (Conviction-18 months)

This is an allowance payable to the family (wife and/or children) of a pensioner following the cessation of his pension on bankruptcy or imprisonment by a competent court for any offence. It is normally **equivalent to the pension that was being earned by the pensioner** at the time the pension ceased, but it may be less at the discretion of the President (i.e. Director of Pensions).

Presidential pardon required in order for the pension to be reinstated once out of prison or the bankruptcy ruling is lifted. Given personally by the President.

PENSIONS SCHEMES FOR MEMBERS OF THE TEACHERS SERVICE

As you are probably aware, a Free Pensions Scheme was introduced for the members of the African Teachers Service with effect from **1st August, 1962** vide Education Circular No.3 of 1962 dated 18th October, 1962. All teachers, who were then contributing to the **African Teachers Service Contributory Pensions Fund (ATS)** were provided with four options as under:-

OPTION (A)

Teachers were to elect to come on to a Free Government Pension Scheme back-dated for the period of their previous contribution, in which case they would forfeit their rights under the contributory scheme.

OPTION (B)

They were to choose to retain their rights under the present scheme in respect of past contributions and to transfer to the new scheme for a date agreed, in which case the Free Pension will not be back-dated.

OPTION (C)

They were to continue under the present scheme, which would mean continuing to contribute 7^{1/2}% of the teacher's salary and the employer continuing to contribute 8^{1/2}%.

OPTION (D)

They were to elect to come on to a free pension scheme and to withdraw the teachers' contribution plus interest to the present scheme, at a time and on a basis to be agreed between the Government and the Union.

All contributors to the African Teachers Service contributory Pensions Fund were given copies of the Education Circular No.3 of 1962 dated 18th October, 1962 and were required to elect only one of the four options given.

Following the issue of the Circular it was agreed as follows:-

- (i) Teachers who were contributors to the Provident Funds prior to 1st January, 1956 when the African Teachers Service Contributory Pensions Fund was established, and whose past contributions were handed over to the Pensions Fund and who

continued to contribute to the new Fund from that date, would be eligible for a **refund** of their own contributions and their employers' contributions plus interest on both.

- (ii) Those who did not qualify for the refund of their employers' contributions – this group comprised teachers who joined the Pensions Fund from 1st January, 1956 and thereafter the first time and those who returned to teaching after a break in service – **would receive the benefit on one-third** ($\frac{1}{3}$) service for pensions computation under the Pensions Regulations (Cap.189). The one-third service applied only to the contributory service, between 1st January, 1956 and 31st July, 1962.

A vast majority of the contributors opted to withdraw their contributions under **Option (D)**. Following the receipt of the option forms it was decided that the refunds would be made in two instalments. Refunds were of two categories. One consisted of Teacher's contributions and Employer's contributions plus interest on both and the other, Teacher's contributions plus interest only.

EFFECT OF OPTION

Those who **withdrew** their own and their employers' contributions plus interest, their contributory service and any other previous service would **not count as pensionable service**. Only service from 1st August, 1962 to the date of retirement would count as pensionable service. This would mean that by receiving the employers' contributions in addition to their own, they lost their previous service for a pension under the Pensions Regulations (Cap.189).

Those who withdrew their own contributions but not their employers' the period of their contributory service would **count as to one-third 1/3 as pensionable service** and service from 1st August, 1962 to the date of retirement would count in full as pensionable service. Any service prior to the contributory service would not count as pensionable service under the Pensions Regulations (Cap.189).

As regards options (A), (B) and (C) the position was different.

OPTION (A)

Teachers were not eligible for a refund of the contributions. They just surrendered their contributions including those of the employers to the Government so that in the event of their retirement from the Teachers Service they would enjoy a pension based on the following pensionable service.

- (i) Non-contributory service i.e. service before the contributory service would count in half as pensionable service.
- (ii) Contributory service would count in full as pensionable service.
- (iii) Service from 1st August, 1962 to the date of retirement would count in full as pensionable service.

OPTION (B)

Teachers were not eligible for a refund of the contributions unless they left the service before being pensionable. They just retained their rights under the African Teachers

Service Contributory Pensions Scheme as at 31st July, 1962 and transferred to the Free Pensions Scheme from 1st August, 1962 so that in the event of their retirement from the service they could enjoy two pensions:-

- (i) One calculated in relation to the contributory service as at 31st July, 1962 under the Pensions fund Regulations (Cap.212).
- (ii) The other calculated in relation to the service from 1st August, 1962 to the date of retirement under the Pensions Regulations (Cap.189).

Calculations of the two pensions were not similar and the total pension would be less than the pension one could earn under Option (A).

OPTION (C)

Teachers were not eligible for a refund of the contributions unless they left the service before being pensionable. They opted to continue to contribute to the African Teachers Service contributory Pensions Fund and thus were liable to the continued payment of 7¹/₂% of the teacher's salary until the date of retirement, the employer continued to pay 8¹/₂% until the date of retirement.

Unlike options (A), (B) and (D) where the teachers could opt to retire on pension after attaining the age of 50 years, teachers with Option (C) could only retire on pension after completion of 30 years of qualifying service or attaining the age of 55 years. The pension is calculated on a different basis and is related to the contributory service. The pension rights are governed by Pensions Fund Regulations (Cap.212). The Pension under Option (C) would be less than it would be under either Option (A) or Option (B). In short, option (A) was the best of all in so far as the retirement pension was concerned.

GENERAL CONSIDERATION AND CONDITIONS

Forfeiture of Pension Rights on Resignation or Dismissal

An officer who resigns except with a view to marriage in the case of a woman officer, or on attaining the retiring age, forfeits all claims to the retiring benefits. Similarly an officer who is dismissed from service forfeits all claims to pension, etc.

Pension not a Right

No officer shall have an absolute right to compensation for past services or to pension, gratuity or other allowance.

Reduction or Withdrawal of Pension

Where it is established that an officer has been guilty of negligence, irregularity or misconduct, the pension, gratuity or other allowance, may be reduced or altogether withheld. However, the approval of the Public Service Commission must be sought. This is under the Constitution of Kenya.

Pension to Cease on Conviction

Where any person to whom a pension or other allowance has been granted under the Pensions Act is sentenced to a term of imprisonment by any competent court for any offence, such pension or allowance may be stopped. Any part of that pension or other allowance may be paid to or applied for the maintenance or benefit of, his dependants in the manner laid down in section 13 of the Pensions Act.

Pension to Cease on Bankruptcy

Where any person to whom a pension or other allowance has been granted under this Act is adjudicated bankrupt or is declared insolvent by judgement of any competent court, then such pension or allowance may be paid to, or applied for the maintenance or benefit of, his dependants in the manner laid down in section 13 of the pensions Act.

Transfer of Service

This is possible only where the organization to which an officer wants to transfer his services from the Government has been declared for the purposes of Kenya Pensions Act to be "Public Service". An officer transferring to "Other Public Service" enjoys the privilege of having his pension rights with the Government "preserved" or "kept in cold storage" for the duration of his service with that "Other Public Service". In the event of his retirement from that other service in circumstances permitted by that service, the officer will have his benefits in respect of his service with the Government calculated separately and paid to him.

Service on Contract Terms:- Paid under the C.O.R.

Counts in full if the officer serving on those terms was being paid on a salary scale applicable to members of the permanent establishment and if he surrendered the gratuity earned under the contract, having been admitted without a break of service to the pensionable establishment.

Service on Provident Fund Terms:- CAP 191

In respect of an officer who was in the service prior to 1st January, 1954 counts in full in calculating a pension or gratuity provided that he was admitted, without a break in his service, to the pensionable establishment, and he surrendered his own contribution to the provident fund for the period in question.

Determination of Age – Regulation 23:

Since the earliest age acceptable for pensionable service is 18 years, and the minimum age at which a person can be allowed to retire on age grounds is 50 years, there should be a system of determining the age of an officer on first appointment. The age recorded in the Application of Employment forms PSC 2 and verified at the time of the officer's appointment is taken as the correct age. Any alteration to this age must be, supported by the production of a birth certificate. Application for a certificate must however be routed through the head of department who must vouch for the correctness of the age given in the record of service.

In a nutshell the above is a summary of the provisions of the Pensions Act, Cap 189, but notes such as these cannot pretend to cover every detail, and it is urged that the Act becomes one of the legislations in your Grey Book.