

CHAPTER 372

THE PARASTATAL ORGANISATIONS PENSIONS SCHEME ACT

[PRINCIPAL LEGISLATION]

ARRANGEMENT OF SECTIONS

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SCHEDULE

CHAPTER 372

THE PARASTATAL ORGANISATIONS PENSIONS SCHEME ACT

An Act to establish a Parastatal Pension Scheme and a Board of Trustees to administer the Scheme and for related matters.

[1st July, 1978]

[G.N. No. 109 of 1978]

Acts Nos.

14 of 1978

4 of 1989

7 of 1991

3 of 1992

9 of 2000

25 of 2001

PART I

PRELIMINARY PROVISIONS (ss 1-3)

[PCh372s1]1. Short title

This Act may be cited as the Parastatal Organisations Pensions Scheme Act.

[PCh372s2]2. Interpretation Act No. 25 of 2001 s. 2; G.Ns. Nos. 101 of 1978; 82 of 1979; 72 of 1980; 131 of 1980

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

"Board" means the Board of Trustees of the Parastatal Pensions Fund established by section 17;

"contract terms" in relation to employment means the terms whereby a person is employed for a period of service with an eligibility for payment of a sum of money upon satisfactory completion of such period of service;

"employee" means any person employed by a parastatal organization or any self employed person;

"employees' terminal benefits scheme" shall have the meaning assigned to that expression in the Employees' Terminal Benefits Scheme (Registration and Regulation) Act *, but shall not include—

(a) the National Social Security Fund established by the National Social Security Fund Act *.

(b) the scheme established by this Act; and

(c) any scheme for payment of terminal benefits upon determination of employment on contract terms;

"employer" in relation to any employee means the parastatal organisation employing the employee;

"Fund" means the Parastatal Pensions Fund established by section 6;

"member" means an employee who is a member of the Parastatal Pensions Scheme established by section 4;

"Minister" means the Minister responsible for Finance;

"parastatal organisation" means—

(a) any body corporate established by or under any written law including—

(i) the East African Community;

(ii) any corporation within the East African Community;

(iii) any company registered under the Companies Act * upon registration and becoming a member;

(b) any company registered under the Companies Act of which the Government or any parastatal organisation has shares;

(c) any body of persons, whether corporate or incorporate, upon becoming a member;

(d) any person in the informal sector upon becoming a member; and

"pensionable emoluments" means the salary used in deduction of contributions which shall be taken into account in computing pensions, gratuities or other benefits under this Act.

"pensionable office" means an office in a parastatal organisation which office is approved by the management responsible for that parastatal organisation to be pensionable;

"pensionable service" means—

(a) any period of continuous service rendered by a member since his becoming a member of the scheme and includes periods of absence from duty on leave with not less than half salary; and

(b) any period of continuous service rendered by a member immediately prior to his becoming a member of the scheme during which he was employed by a parastatal organisation on other than contract terms or on other than temporary terms daily-paid or casual basis and during which he was governed by any employees' terminal benefits scheme under which the terminal benefit on retirement took the form of payment of a pension, and includes any periods of absence from duty on leave with not less than half salary;

"qualifying service" in relation to any member means the aggregate of—

(a) his pensionable service;

(b) his period of continuous service immediately prior to his becoming a member of the scheme during which he was employed by a parastatal organisation on other than contract terms or other than temporary, terms daily-paid or casual basis, and during which he was not governed by an employees' terminal benefits scheme; and

(c) in the case of any employee who, having served in any public service, is transferred to the service of a parastatal organisation, his public service on terms other than contract terms or on other than temporary, daily-paid or casual basis;

"salary" means the basic salary of the member excluding bonus, commission, cost of living allowance, incentive allowance, over-time payment, cost of living allowance, incentive allowance, overtime payment, Directors' fees or any other additional emoluments;

"scheme" means the Parastatal Pensions Scheme established by section 4;

"service" means service with or under the Government of the United Republic and includes any service which the Minister may, by notice in the Gazette, declare to be public service for the purposes of this Act;

"service" means service with a Parastatal Organisation or with two or more Parastatal Organisations;

"survivor" means any person who on the death of a member may be entitled to a survivors' benefit under this Act;

"trustee" means a member of the Board and includes the Chairman of the Board;

"wife" means lawfully married wife and the expression "husband" shall be construed accordingly.

(2) Where it appears to the Board that there is no satisfactory proof of the correct age of an employee or of any child, then the Board may, upon such evidence as it may think fit, presume the age of the employee or of such child, and such presumed age shall be taken to be the correct age of the employee or of such child for purposes of this Act.

For the avoidance of doubt, it is hereby declared that where an employee has been confirmed in a pensionable office, then, unless the terms of such appointment otherwise require,

such last-mentioned office is, for the purposes of this Act, an office in which he has been confirmed.

[PCh372s3]3. Pension to be granted in accordance with the Act and Regulations

(1) Pensions, gratuities and other benefits may be granted by the Board in accordance with the provisions of this Act and of the regulations made under the Act.

(2) Any pension or gratuity granted under this Act shall be computed in accordance with the provisions in force at the actual date of the member's retirement from or of his death in the service.

PART II

THE PARASTATAL PENSIONS SCHEME (ss 4-5)

[PCh372s4]4. Establishment of the Scheme

There is hereby established a scheme to be called the Parastatal Pensions Scheme.

[PCh372s5]5. Membership of the Scheme Act No. 25 of 2001 s. 4

(1) All employees who are confirmed in a pensionable office in the service shall become members of the Scheme with effect from the date of commencement of the Scheme or from the date of employment whichever date last occurs:

Provided that—

(a) no employee who has attained the age of forty-five years as at the service shall become members of the Scheme with effect from the date of commencement of the Scheme or from the date of employment whichever date last occurs;

(b) where, at the commencement of the Scheme an employee has attained the age of forty years, he shall not be eligible to become a member of the Scheme unless, at such date, he has to his credit such length of qualifying service as, when aggregated with the period for which he would serve as an employee were he to continue as such an employee until his retirement upon attaining the age of fifty years, would be not less than ten years;

(c) any person registered as a member under this Act shall not cease to be a member by reason that his employer has been privatized, sold, leased or liquidated;

(d) any person who ceases to be a member due to any of the circumstances referred to in paragraphs (c), (d), (e) and (f) of subsection (1) of section 26 of the Act, in which he does not attain retirement age, he shall upon re-employment resume membership.

(2) Notwithstanding the provisions of subsection (1) of this section, a person who is non-pensionable in the service may become with effect from the date of employment a member of the scheme.

PART III

THE PARASTATAL PENSIONS FUND (ss 6-16)

[PCh372s6]6. Establishment of the Fund

(1) There is hereby established a Fund to be called the Parastatal Pensions Fund into which shall be paid all contributions and other moneys required or permitted by this Act.

(2) There may be charged on and paid out of the Fund all such sums of money as may be granted by way of pension, gratuity or other benefits, including the expenses of administration, as are authorised by this Act.

(3) An account known as "the Parastatal Pensions Fund Account" shall be kept with such bank or banks as the Board shall approve and all moneys payable into the Fund together with the income from investment of the Fund and other moneys required to be paid into the Fund shall be deposited in the Parastatal Pensions Fund account.

[PCh372s7]7. Management of the Fund Act No. 25 of 2001 s. 3

The Board shall be responsible for the management and control of the Fund in accordance with the provisions of this Act:

Provided that the Fund shall, subject to the direction of the Board, be responsible for the day-to-day administration of the Fund and the Scheme.

[PCh372s8]8. Compulsory contributions Act No. 25 of 2001 s. 5

(1) Each member shall make contribution to the Fund at the rate determined by the Minister and published in the Gazette, and such contribution shall be deducted from his salary monthly.

(2) The employer of the member shall contribute to the Fund each month such amount as may be necessary to meet the Board's obligations under this Act, in respect of the member as may be determined by the Minister upon recommendations by the Board.

(3) Both the member's and employer's contributions shall be remitted by the employer to the Fund within thirty days after the end of the month to which they relate.

[PCh372s9]9. Additional contributions by way of penalty where payment is delayed Act No. 25 of 2001 s. 6

(1) Where any employer fails to remit to the Fund the whole or any part of the contributions required to be remitted by him under subsection (2) of section 8 within the time prescribed by that subsection, a sum equal to five percentum of the amount which such employer has failed to remit shall become due from and payable by such employer by way of additional contribution and if such contribution or additional contribution remains unpaid to the Fund for a period of thirty days or more after the same shall have become payable, the employer shall become liable to pay by way of further additional contribution of five percentum of the aggregate amount remaining unpaid for each month or part after such date:

Provided that the Fund may, if it thinks fit, remit in whole or in part any penalty imposed by this section.

(2) An employer who fails to remit to the Fund any contributions and additional contribution which under this Act are required to be remitted, commits an offence.

(3) [Repealed by Act No. 25 of 2001 s. 6.]

[PCh372s10]10. Contributions and penalties recoverable as debts

(1) Any contribution or additional contribution payable under this Act shall be a debt due to the Board and shall be recoverable accordingly.

(2) In the event of any parastatal organisation being wound up before any contribution or additional contribution payable under this Act have been made, such contribution or additional contribution shall constitute a first charge on the distribution of the assets of the parastatal organisation being so wound up.

[PCh372s11]11. Records and returns by employers Act No. 25 of 2001 s. 3

Each employer shall, in respect of his employees who become members of the scheme, keep and maintain such records and submit such returns as the Board or the Fund may direct.

[PCh372s12]12. Fund to be held by the Board as trustees

For the avoidance of doubt, it is hereby declared that the money in the Fund shall, for the purposes of this Act and all other written laws, be deemed to be funds held by the Board in trust for the members of the Scheme to be administered by the Board in accordance with the provisions of this Act:

Provided that it shall be lawful for the Board to make payments out of the Fund for any of the purposes for which payments out of the Fund are expressly authorised by this Act.

[PCh372s13]13. Investment of moneys available in the Fund

(1) Subject to any directions of the Minister in that behalf, the Board may invest moneys in the Fund which are surplus to current needs in accordance with the provisions of the Trustees Investment Act *.

(2) The Board may, and shall if so directed by the Minister, establish and maintain such subsidiary funds of the Fund as the Board or the Minister may consider necessary or expedient and shall make into or from any such subsidiary fund such payments as the Board may deem fit or in the case of subsidiary fund established pursuant to the direction of the Minister, as the Minister may direct.

[PCh372s14]14. Accounts and audit Act No. 25 of 2001 s. 3

(1) The Board shall cause to be kept and maintained proper books of accounts and records with respect to—

(a) the receipt and expenditure of moneys and other financial transactions of the Fund;

(b) the assets and liabilities of the Fund,

and shall cause to be made out, for every financial year, a balance sheet and a statement showing details of the income and expenditure of the Fund and all its assets and liabilities.

(2) Not later than six months after the close of every financial year, the accounts including the balance sheet of the Fund relating to the financial year shall be audited by the Tanzania Audit Fund.

(3) As soon as the accounts of the Fund have been audited, and in any case not later than six months after such audit, the Board shall submit to the Minister a copy of the report made by the auditors.

(4) As soon as practicable after receipt by him of the copy of the statement together with the copy of the report submitted pursuant to subsection (3), the Minister shall lay a copy of the statement together with a copy of the auditor's report before the National Assembly.

[PCh372s15]15. Report by the Board

The Board shall, within six months after the end of each financial year, make a report to the Minister on the operations of the Fund during that financial year, and the Minister shall lay a copy of such report before the National Assembly together with a copy of the statement of accounts required to be laid before the National Assembly by section 14.

[PCh372s16]16. Evaluation of the Fund Act No. 25 of 2001 s. 7

(1) The Board shall, at intervals of not more than five years or at any time when the Minister so directs, cause the assets and liabilities of the Fund to be evaluated by an actuary.

(2) A report of the evaluation carried out in terms of subsection (1) shall be submitted to the Minister within such time and in such report, the Minister shall take such measures as he may consider necessary or expedient for the avoidance of any current or future deficiency in the Fund, and may direct the employers to increase their contributions to the Fund by such revised rate as he may determine.

PART IV

BOARD OF TRUSTEES OF THE PARASTATAL PENSIONS FUND (ss 17-23)

[PCh372s17]17. Establishment of the Board

- (1) There is hereby established a Board of Trustees of the Parastatal Pensions Fund.
- (2) The Board shall be a body corporate and in its corporate name, be capable of—
 - (a) suing and being sued;
 - (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of property, movable or immovable; and
 - (c) entering into contracts and performing all such other things or acts for the proper performance of its functions under this Act which may lawfully be performed by a body corporate.
- (3) The provisions of the Schedule to this Act shall have effect as to the composition of the Board, the appointment and termination of the appointment of its members, the proceedings of the Board and such other matters in relation to the Board and its members as are provided.
- (4) The Minister may, by order in the Gazette, amend, vary or replace all or any of the provisions of the First Schedule to this Act.

[PCh372s18]18. Functions of the Board Act No. 25 of 2001 s. 8

The functions of the Board shall be—

- (a) to manage and administer the Fund;

- (b) to invest moneys available in the Fund;
- (c) to be responsible for the disbursement of pension, gratuities and other benefits in accordance with the provisions of this Act;
- (d) to advise the Minister on matters relating to the administration of this Act; and
- (e) to formulate or design schemes and grant benefits to both formal and informal sector whenever it deems appropriate;
- (f) to do all such acts and things, to enter into all such transactions as, in the opinion of the Board, may be necessary for the proper and efficient administration of the Fund.

[PCh372s19]19. Duties of the Board

It shall be the duty of the Board—

- (a) to manage and administer the fund in accordance with the highest standards which a person holding any fund in a fiduciary capacity on behalf of another may reasonably be expected to conform to;
- (b) to protect, safeguard and promote the interests of the members;
- (c) to do all such acts and things as the Board may reasonably be expected to do—
 - (i) to uphold and support the credit of the Board;
 - (ii) to obtain and justify the confidence of parastatal organisations in general and of the members in particular; and

- (iii) to avert and minimise any loss to the Fund.

[PCh372s20]20. Remuneration and allowances of members of the Board

(1) The members of the Board shall be entitled to receive such remuneration, allowances and other benefits as the Minister may direct, and all such remuneration, allowances and other benefits shall be Board charged to the Fund.

(2) No remuneration or allowance except such allowances for expenses as may be expressly authorised by the Minister, shall be paid to any member of the Board who is a public officer.

[PCh372s21]21. Powers of the Board to delegate Act No. 25 of 2001 s. 3

(1) The Board may by writing delegate, subject to such terms, conditions, and restrictions as it may specify, to any committee of the Board or to the Fund all or any of the functions, authorities or duties conferred upon the Board by or under this Act and where any delegation is so made the delegated function, power, authority or duty may be performed or, as the case may be, exercised by the delegate subject to the terms, conditions and restrictions specified in writing.

(2) The Board may revoke a delegation made by it under this section.

(3) No delegation made under this section shall prevent the Board from itself performing or exercising the function, power, authority or duty delegated.

(4) In the event of any dispute between the Board and the Fund on or in relation to any matter arising from any delegation or purported delegation made under this Act, the dispute shall be referred to the Minister whose decision shall be final and binding on the parties.

[PCh372s22]22. Duties of the Fund in relation to the Board Act No. 25 of 2001 s. 3

(1) Without prejudice to the provisions of sections 18 and 19, the duties of the Fund in relation to the Board shall be—

(a) to receive all the contributions and other moneys which are required to be paid into the Fund;

(b) to keep and maintain a register of all members contributing to the Fund and any other registers which under this Act or regulations made may be required to be kept;

(c) to establish and maintain a record in respect of each member of all payments made by such member and his employer by way of contributions;

(d) to pay pensions, gratuities, withdrawal, and other benefits to members or their dependants in accordance with the provisions of this Act;

(e) to provide secretarial services to the Board;

(f) to furnish the Board with such information as it may reasonably require for the performance of its functions;

(g) to do all such other functions as may be delegated to it in accordance with the provisions of this Act.

(2) The Fund shall be entitled to such fee as the Minister may prescribe in relation to the services rendered by it under this Act and such fee shall be paid out of the Fund in such manner as the Minister may direct.

[PCh372s23]23. Minister may give directions to the Board

The Minister may give to the Board directions of a general or specific nature as to the performance by the Board of any of its functions under this Act or in relation to any matter appearing to the Minister to affect the national interest and the Board shall give effect to every such direction.

PART V

RETIREMENT (s 24)

[PCh372s24]24. Age of retirement Act No. 9 of 2000 s. 26

(1) It shall be lawful for any employer to require any member to retire from the service at any time after he attains the age of fifty-five years and for any member to elect so to retire at any time after he attains such age or, in the case of a female member, on marriage:

Provided that no member may continue to serve after he attains the age of sixty years unless—

(a) the appropriate authority considers it to be in the public interest that such member should so continue to serve; and

(b) such member consents in writing to continue to serve.

(2) Notwithstanding the provisions of subsection (1), no member shall be permitted to continue in the service on pensionable terms after he attains the age of sixty years.

(3) For the purposes of this section the appropriate authority shall be—

(a) in the case of appointments where the appointing authority is the President, the President;

(b) in all other cases, the Minister responsible for the parastatal organisation in which the member is employed.

PART VI

GRANTING OF PENSIONS AND GRATUITIES (ss 25-37)

[PCh372s25]25. Pensions not as of right

(1) Nothing in this Act shall be construed as conferring on a member or his survivors an absolute right to any pension, gratuity or survivors' benefits, as the case may be, payable under the provisions of this Act.

(2) Without prejudice to the provisions of subsection (1), where it is established to the satisfaction of the Board that a member has been guilty of negligence, irregularity or misconduct, the pension, gratuity or other benefit may be reduced or altogether withheld.

[PCh372s26]26. Circumstances in which pension may be granted Act No. 25 of 2001 s. 9

(1) No pension or gratuity shall be awarded under this Act to any member except on his retirement from the service in one of the following circumstances—

- (a) on or after attaining the age of fifty-five years;
- (b) on medical evidence to the satisfaction of the employer that he is incapable by reason of any infirmity of mind or body of discharging the duties of his office and that such infirmity is likely to be permanent;
- (c) on compulsory retirement for the purpose of facilitating improvement in the organisation of his employer, by which greater efficiency or economy may be effected or compulsory retirement following the winding up of the organisation of his employer;
- (d) in the case of transfer to public service, in circumstances in which he is permitted by the law or regulation of such service to retire on pension or gratuity;
- (e) in the case of removal from the service in the public interest as provided in this Act;
- (f) on retirement from the service with the consent of or on the directions of the President where the President, by writing under his hand, declares that paragraph shall apply to him.

(2) Notwithstanding the provisions of paragraphs (c), (d), (e) and (f) of subsection (1), no pension shall be payable—

- (a) to a member unless he has attained the age of fifty five years and has retired from service; or

(b) to a member who has retired from service and is on receipt of monthly pension until he has attained the age of fifty five.

[PCh372s27]27. Service not qualifying for pension Act No. 25 of 2001 s. 10

(1) No pension shall be awarded under this Act to any member in respect of any service—

(a) while absent from duty on leave without salary unless it is established to the satisfaction of the Board that—

(i) such leave was granted on grounds of public policy; and

(ii) the employer undertakes to pay into the Fund the employee's and the employers contributions and additional contributions for the period that employee was so absent;
or

(c) while below the retirement age.

(2) No gratuity shall be awarded under this Act to any member in respect of any service—

(a) while absent from duty on leave without salary unless it is established to the satisfaction of the Board that—

(i) such leave was granted on grounds of public policy; and

(ii) the employer undertakes to pay into the fund the employees' and the employer's contributions for the period that employee was so absent;

(b) while under the age of eighteen years.

[PCh372s28]28. Rate of pension and gratuity Acts Nos. 4 of 1989 s. 14; 7 of 1991 Sch.

(1) Subject to the provisions of this Act, a member who shall have had not less than an aggregate of ten years qualifying service may, on retirement, be granted—

(a) reduced annual pension of an amount equal to three-fourths of the specified amount; and

(b) a commuted pension gratuity equal to twelve and one-half times the one fourth of the specified amount, unless the said member exercises an option in writing to be paid in lieu of such reduced pension and commuted pension gratuity, the specified amount;

(c) a pension gratuity equal to twelve and one-half times the specified amount where the reduced annual pension does not exceed eighteen thousand shillings:

Provided that this paragraph shall apply in relation to officers who, on the date of coming into operation of this Act, had retired.

(2) For the purposes of this section "specified amount" means—

(a) in relation to the period of service referred to in paragraph (a) of the definition "pensionable service" in subsection (1) of section 2, an annual amount equal to one six hundredth of the member's annual pensionable emoluments for each completed month of his pensionable service;

(b) in relation to the period of service referred to in paragraph (b) of the definition "pensionable service" in subsection (1) of section 2, an annual amount equal to the pension computation factor (which applied to the member under the employee's terminal benefit scheme

by which he was governed prior to his becoming a member of the scheme established by this Act) of the member's annual pensionable emoluments for each completed month of his pensionable service.

(3) The option referred to in subsection (1) of this section shall be exercisable, and if it has already been exercised, may be revoked, not later than the day immediately preceding the date of his retirement from the service.

[PCh372s29]29. Maximum pension

(1) Except in cases provided for by subsection (2), a pension granted to a member under this Act shall not exceed two thirds of the highest pensionable emoluments drawn by him at any time in the course of his service.

(2) A member who has been granted a pension in respect of his service shall not at any time draw from the Fund an amount of pension which when added to the amount of any pension drawn in respect of his public service, exceeds two-thirds of the highest pensionable emoluments enjoyed by him at any time in the course of his parastatal or public service.

(3) Where the limitation specified by subsection (2) operates, the amount of the pension drawn from the Fund shall be subject to the approval of the Board, in order that it may be determined with due regard to the amount of any Pension to be drawn in respect of the public service.

[PCh372s30]30. Pension in the case of removal from service in the public interest

Where a member is removed from the service in the public interest and a pension or gratuity cannot the otherwise be awarded to him under the provisions of this Act, the Board may, if it considers it fit, award such pension or gratuity it considers just and proper, not exceeding in amount that for which the member would be eligible if he retired from the service in circumstances described in paragraph (b) of section 26.

[PCh372s31]31. Transfer to public service

Where a member who holds a public pensionable office is transferred to the public service and such transfer is approved by the Chief Secretary to the President as being in the public interest, he may, on retirement from such public service in circumstances entitling him to a pension or gratuity in respect of his public service, be awarded a pension or gratuity under this Act in respect of the period during which he was a member of the scheme and calculated with reference to the benefits under the provisions of this Act:

Provided that—

(a) his pensionable emoluments for the purposes of this section shall be those which are taken for computing his pension in the public service;

(b) where such member ceases to be employed in the public service in circumstances which do not entitle him to any pension or gratuity in respect of his public service, such member shall not be entitled to any pension or gratuity under this section but he may be paid the withdrawal benefits for which he may qualify under the provisions of section 44.

[PCh372s32]32. Effect of conviction or detention on pension

(1) If any member to whom a pension or gratuity has been granted under this Act is sentenced to a term of imprisonment by any competent court for any offence involving moral turpitude, or is detained pursuant to an Order made under the Preventive Detention Act *, the pension shall cease as from the date of such imprisonment or detention unless otherwise decided by the Minister.

(2) If any member is sentenced or detained after retirement in circumstances in which he is eligible for a pension or gratuity under this Act but before the pension or gratuity is granted then the provisions of subsection (1) shall apply as respects any pension or gratuity which may be granted to him.

(3) Where a pension or gratuity ceases by reason of this section, it shall be lawful for the Board to direct all or any part of the moneys to which such member would have been entitled by way of pension or gratuity had he not been sentenced or detained as aforesaid, to be paid to, or applied for the maintenance or benefit of, during the period of his imprisonment or detention, his dependants in such proportions and manner as the Board thinks proper:

Provided that any payment made under this subsection shall cease upon the completion by such member of his sentence or his release from such detention.

(4) Where a pension has ceased under this section following a conviction and the member so convicted is subsequently accorded a free pardon, the pension shall be restored to him with effect from the date when it so ceased:

Provided that in determining whether arrears of such pension are payable to such member and in computing the amount, account shall be taken of all moneys paid or applied under subsection (3).

(5) The provision of this section shall apply, mutatis mutandis where a survivor is sentenced or detained.

[PCh372s33]33. Restriction on assignment, attachment of pension

A pension or gratuity awarded under this Act shall not be assignable or transferable except for the purpose of satisfying—

- (a) a debt due to the Government or any parastatal organisation; or
- (b) an order of any competent court for the periodical payment of sums of money towards the maintenance of the dependants of the member to whom the pension or gratuity has been awarded, and shall not be liable to be attached, sequestered or levied upon for or in respect of any other debt or claim.

[PCh372s34]34. Gratuity where length of service does not qualify for pension

Every member, otherwise qualified for a pension, who has not completed a minimum period of ten years' qualifying service may, on retirement, be awarded a gratuity not exceeding five times such specified amount referred to in subsection (2) of section 28 as might have been computed if there had been no qualifying period:

Provided that the payment under this section shall not be less than the aggregate of the members' own contributions to the Fund with interest compounded at the rate of five per centum per annum.

[PCh372s35]35. Gratuity on marriage of female member

(1) Where a female member, having held a pensionable office or offices in the parastatal service for not less than five years, and having been confirmed in a pensionable office, marries or is about to marry, she may elect—

(a) to retire from the parastatal service and, in such case, if she is otherwise eligible for the grant of pension or gratuity, she may be granted such pension or gratuity, as the case may be, or, if she is not so eligible, for the grant of a pension or a gratuity, she may be granted such pension or gratuity, as the case may be or, if she is not so eligible, she may be granted a gratuity not exceeding one-twelfth of a month's pensionable emoluments for each completed month of pensionable service or one year's pensionable emoluments, whichever shall be the less; or

(b) to continue in the parastatal service on pensionable terms, and, in such case, on her subsequent retirement from the parastatal service if she is otherwise eligible, she may be granted the gratuity for which she would have been eligible under subparagraph (a) had she retired from the service on the date of her marriage; or

(c) to continue in the parastatal service otherwise than on pensionable terms, and, in such case, on her subsequent retirement from the service, she may be granted the gratuity for

which she would have been eligible under subparagraph (a) had she retired from the service on the date of her marriage.

(2) No person shall be granted a gratuity under this section unless she produces, within six months after her retirement or such longer period as the Board may allow, satisfactory evidence of her marriage.

[PCh372s36]36. Repealed

[Repealed by Act No. 7 of 1991 Sch.]

[PCh372s37]37. Liability of pensioner to be recalled for service

(1) Every pension awarded to a member under this Act shall be subject to the express condition that unless the member has attained the age of fifty years, he may be recalled for service, and to accept an office which is not less in value than the office he held at the date of his retirement from the service.

(2) If the pensioner refuses to accept such office, the Minister may direct that the pension payable to such pensioner be suspended until he reaches the age of fifty years.

PART VII

SURVIVORS' BENEFITS (ss 38-44)

[PCh372s38]38. Construction

In this Part unless the context otherwise requires, "dependant" in relation to a deceased member means—

(a) where the deceased member was a male, his widow or where immediately preceding his death, he was married to two or more wives, all his widows;

(b) where the deceased member was a female, the husband of such deceased member who satisfies the Board that he was wholly or substantially dependent upon the member's income for his livelihood;

(c) every child of the deceased member under the apparent age of eighteen years who was wholly or substantially dependent upon the deceased member's income for his livelihood but does not include any married daughter living with her husband immediately preceding the death of the deceased member; and

(d) the immediate parents of the deceased member, who satisfy the Board that they were wholly or substantially dependent upon the deceased member's income for their livelihood.

[PCh372s39]39. Death gratuity Act No. 25 of 2001 s. 11

(1) Where a member dies while in the service, it shall be lawful for the Board to grant to his legal personal representative a gratuity of an amount not exceeding either his annual pensionable emoluments, or his commuted pension gratuity, if any, whichever is the greater.

(2) Where a member who has retired from the service on pension dies before he has received by way of pension or reduced pension and gratuity or other benefits under this Act an amount which is equivalent to the amount which might have been granted to his legal personal representative under subsection (1) of this section had such member died while still in the parastatal service, it shall be lawful for the Board to grant to the legal personal representative of

such member a gratuity of an amount not exceeding the difference between the amount which has already been paid to such member by way of pension or reduced pension and gratuity or other benefits under this Act and the amount which might have been granted to his legal personal representative under subsection (1) of this section had such member died while still in the service.

(3) For the purposes of this section—

"annual pensionable emolument" means an average of five years highest pensionable emoluments a member earned during his pensionable service;

"commuted pension gratuity" means the gratuity which might have been granted to the member under section 28 if he had retired from the parastatal service at the date of his death in circumstances described in paragraph (b) of section 26;

"legal personal representative" includes, in any case where the gratuity does not exceed ten thousand shillings, such person as the Board may determine.

[PCh372s40]40. Survivors' benefits for dependants

(1) Where a member who has completed not less than ten years of qualifying service dies whilst in the service, his dependants may be granted, with effect from the date following that of the death of the member, a survivors' benefit under this section in addition to the death gratuity payable to the estate of the deceased member under the provisions of section 39.

(2) The survivors' benefit under this section shall be of an amount equal to three-fourths of the specified amount referred to in subsection (2) of section 28 and such specified amount

shall be ascertained as if the deceased member had retired immediately preceding his death in circumstances described in paragraph (b) of section 26.

(3) The distribution of survivors' benefit as between the dependants shall be made in accordance with the intestate law of succession governing the community to which the deceased member belonged.

(4) The payment of survivors' benefit shall cease upon expiry of a period of three years from the date following that of the death of the deceased member or on the recipient's death whichever shall be the earlier except that—

(a) in the case of any payment of a survivors' benefit or any portion being paid to a widow who remarries within a period of three years, the payment shall cease upon such remarriage;

(b) in the case of any dependent child, the payment shall cease upon such child attaining the age of eighteen years.

(5) The provisions of this section shall apply, mutatis mutandis, where a former member in receipt of a pension under this Act dies within a period of three years immediately following his retirement on pension provided that the survivors' benefit payable in such a case shall not exceed the amount of pension which was being paid to the deceased member immediately preceding his death under the provisions of paragraph (a) of subsection (1) of section 28 and provided further that the survivors' benefits shall be payable only for the balance of the period of three years from the date of retirement on pension of the deceased member.

(6) Where any portion of survivors' benefit payable under this section ceases to be payable by reason of the death of the recipient on remarriage of the widow or any dependent child attaining the age of eighteen years during the aforesaid period of three years following the death of the deceased member, such portion shall, for the remaining period, be divided amongst other dependants in the proportion in which they would have been entitled under the appropriate law of succession and the dependant whose portion has so ceased not been entitled to any survivors' benefit immediately following the death of the deceased member.

(7) Where a member dies in the service—

(a) after not less than ten years of qualifying service but leaving no dependants surviving him; or

(b) after less than ten years of qualifying service irrespective of whether or not he leaves dependants surviving him,

there may be awarded to his estate only the death gratuity under the provisions of section 39 and no other survivors' benefit shall be payable in such cases.

[PCh372s41]41. Pension or survivors' benefits payable monthly in arrear

Every pension or survivors' benefit payable under the provisions of this Act shall be payable monthly in arrear.

[PCh372s42]42. Pension to cease on death

Subject to the provisions of section 40, every pension awarded under the provisions of this Act shall, unless it has sooner ceased, cease upon the date following that of the death of the person to whom it was awarded.

[PCh372s43]43. Board may arrange with Public Trustee or other public officer for distribution of pension or survivors' benefits

Where any pension, gratuity or benefit become payable by the Board to a member or his dependants either on the cessation of pension under section 32 or by way of a survivors' benefit under section 40, it shall be lawful for the Board to enter into an arrangement with the Public Trustee or other Public officer whereby such payment shall be made to such public Trustee or public officer who shall undertake the distribution of the payment amongst the persons entitled.

[PCh372s44]44. Withdrawal benefits Act No. 25 of 2001 s. 12

(1) Where a member ceases to be employed in circumstances in which he is not eligible for any pension, gratuity or any other benefit under the provisions of this Act, he shall be refunded the amount of his own contributions and that of his employer to the Fund.

(2) Where a member has been employed for a period of not less than five years and the cessation of such employment is not due to dismissal for misconduct the amount of his own contribution and that of his employer together with a simple interest at the rate to be determined by the Board of Trustees shall be paid to him.

PART VIII

LEGAL PROCEEDINGS, OFFENCES AND PENALTIES (ss 45-50) Act No. 25 of 2001 s. 13

Any person who—

(a) for the purposes of evading payment of any contribution by him or another person knowingly makes any false statement or representation, or produces or furnishes or causes to be produced or furnished any document or information which he knows to be false in a material particular;

(b) for the purpose of obtaining any benefit or refund for himself or some other person, knowingly makes any false statement or representation or produces or furnishes or causes to be produced or furnished any document or information which he knows to be false in a material particulars;

(c) misrepresents or fails to disclose any material fact;

(d) fails to pay to the Fund within the prescribed period any contributions and additional contributions thereof which he is liable to pay under this Act;

(e) fails to comply with any regulations made under this Act as a result of which there is loss to the Fund or as a result of which the individual covered by the scheme records or contribution cannot be maintained;

(f) fails without lawful excuse to produce documents required to be produced under this Act;

(g) knowingly deducts from an employee's salary any sum in respect of contribution to the Fund greater than the employee's share of statutory contribution;

(h) misrepresents or fails to disclose any material fact as a result of which he obtains benefits from the Fund which he would have not been entitled,

commits an offence and is liable on conviction to a fine of five hundred thousand shillings or to imprisonment for a term not exceeding two years or to both that fine and imprisonment.

(2) The court before which any person is convicted of an offence under this Act may, without prejudice to any civil remedy; order the person to pay to the Fund the amount of any contributions, together with any interests or penalty thereon, certified to be due from such person to the Fund at the date of conviction, and the amount may be recovered in the same manner as a fine and shall be paid into the Fund for the account of the concerned covered persons.

(3) Proceedings in respect of any offence under this Act may be commenced at any time when it comes to the knowledge of the Director-General that there is evidence to justify the prosecution for the offence.

(4) Every magistrate, other than a primary court magistrate, shall have jurisdiction, notwithstanding anything to the contrary contained in any law respecting the jurisdiction of such magistrate, in all cases or matters arising under this Act.

[PCh372s46]46. Joinder in cases of non-payment of contributions Act No. 25 of 2001 s. 13

(1) Notwithstanding anything to the contrary contained in any other law in force, in any proceedings against an employer in respect of contributions due for more than one of his

employees, the magistrate may permit one plaint or one charge sheet to be made or filed in respect of all contributions claimed to be due.

All claims shall rank equally between themselves, and shall be entered in full to the member's contribution account, unless the amount recovered from the employer be less than the total amount of the claims with costs, in which case, after payment of the costs, all the claims shall, subject to marginal adjustments, abate in equal proportions among themselves and be entered to the member's contribution records accordingly.

[PCh372s47]47. Legal proceedings Act No. 25 of 2001 s. 13

Any action for the recovery of contributions and all criminal proceedings under section 45 may be instituted by the Director-General or an officer of the Fund appointed by the Fund in that behalf, and where action is instituted before any court, any person authorized by this section may appear and conduct the case.

[PCh372s48]48. Priority for payment of contribution Act No. 25 of 2001 s. 13

Where the Director-General has given the court a written notice of a claim under this Act and—

(a) any attachment is issued against the property of an employer in execution of a decree against him and any such property is seized or sold or otherwise realized in pursuance of such executing; or

(b) on the application of a creditor the property of an employer is sold, the proceedings of the sale or other realization of such property, shall not be distributed to any

person entitled thereto until the court ordering the sale or realization has made provisions for the payment, after the payment of costs of sale or realization, or any amounts due in respect of contributions payable by the employee under this Act before the date of such order.

[PCh372s49]49. Protection of contribution Act No. 25 of 2001 s. 13

The sum standing to the account of a member shall, until paid out in accordance with the provisions of this Act, remain the property of the Fund and shall not form part of the assets of that member in the event of his bankrupt or insolvency, or be liable to attachment in satisfaction of his debts.

[PCh372s50]50. Protection Act No. 25 of 2001 s. 13

Notwithstanding anything to the contrary contained in any written law, where any judgment or order has been obtained against a contributory member, no execution or attachment or process of any nature shall be issued against his contributions except in accordance with the terms of the Fund, and the contributions shall not form part of the assets of the member in event of bankruptcy;

PART IX

MISCELLANEOUS PROVISIONS (ss 51-58) Act No. 25 of 2001 s. 13

[PCh372s51]51. Provisions regulating employees' terminal benefits schemes in operation prior to the commencement of this Act Act No. 25 of 2001 ss. 3 and 13

(1) Where a member immediately prior to the commencement of this Act was a member of an existing non statutory employees' terminal benefits scheme operated by or on behalf of his

employer and under which he qualified for the grant of a pension on retirement, his membership of such scheme shall cease upon his becoming a member of the scheme established by this Act.

(2) Notwithstanding such cessation of membership of such employees' terminal benefits scheme, where a member was, in respect of his service prior to his becoming a member of the scheme established by this Act governed by a pension computation factor which is more advantageous than that provided for in paragraph (a) of subsection (2) of section 2 he shall continue to be governed by the said more advantageous pension computation factor in respect of his membership of the scheme established by this Act:

Provided that where a member is allowed to retain his more advantageous pension computation factor, the member and his employers shall be required to contribute to the Fund at such rate or rates as are determined by the Board in consultation with the Minister.

(3) Subject to the provisions of subsection (2) of section 16, any such rate or rates shall not be higher than those at which the member and his employer could have contributed under the employees' terminal benefits scheme by which the member was governed immediately prior to his becoming a member of the scheme established by this Act.

(4) The Minister may direct any public officer or the Board or the Fund to negotiate with the employers or Trustees operating the employers' terminal benefits scheme, whose members have, consequent upon the enactment of this Act, ceased to be members of such employees' terminal benefits schemes, for the winding up of such schemes and for amalgamating the assets with or incorporating into the scheme established by this Act. In concluding any such

negotiations, regard shall be had to the protection of the employees' benefits already earned under such employees' terminal benefits scheme:

Provided that any negotiation concluded under this subsection shall not take effect without the prior approval of the Minister.

(5) No member shall be entitled to object to the application of the provisions of this section in relation to him on the ground that the cessation of his membership of any other employees' terminal benefits scheme is contrary to any rights conferred upon him by any other written law.

[s. 45]

[PCh372s52]52. Exemption from National Social Security Fund Act No. 25 of 2001 s. 13

A person who becomes a member of the scheme established by this Act shall, if immediately before he became such a member was also a member of the National Social Security Fund, be excepted from making any statutory contribution to the National Social Security Fund and his employer shall likewise be exempted.

[s. 46]

[PCh372s53]53. Exemption from stamp duty Acts Nos. 8 of 1998 s. 48; 25 of 2001 s. 13

(1) No stamp duty shall payable on any receipt, contract, given or executed by the Board on behalf of the Fund or by any person in respect of benefits or refund of contributions under this Act.

(2) Notwithstanding the provisions of subsection (1) the exemption granted under this section shall apply to the money.

[s. 47]

[PCh372s54]54. Exemption from tax Acts Nos. 8 of 1998 s. 48; 25 of 2001 s. 13

No income tax shall be charged on the members' contributions to the Fund, but any other earnings, gains or profit accruing to the Fund shall be subject to income tax.

[s. 47A]

[PCh372s55]55. Liability of members Act No. 25 of 2001 ss. 3 and 13

Without prejudice to the provisions of section 284A of the Penal Code * or of the Public Officers (Recovery of Debts) Act *, no act or thing done, or omitted to be done by any trustee or by any officer, servant or agent of the Board or the Fund shall, if done or omitted bona fide in the execution or purported execution of his duties as such a trustee, officer, servant or agent, subject any such person to any action, liability or demand.

[s. 48]

[PCh372s56]56. Exemption Act No. 25 of 2001 s. 13

The Minister may, subject to such terms and conditions as he may determine, by order in the Gazette, exempt any employee, employer or category of employees or employers from all or any of the provisions of this Act or modify the application of all or any of the provisions of this Act in relation to any employee, employer or category of employees or employers.

[s. 49]

[PCh372s57]57. Regulations Act No. 25 of 2001 s. 13

The Minister may make regulations for carrying into effect the purposes and provisions of this Act, and may make regulations—

- (a) prescribing anything which under the provisions of this Act may be prescribed;
- and
- (b) prescribing forms in which particulars and returns shall be submitted.

[s. 50]

[PCh372s58]58. Fund guarantee Act No. 25 of 2001 s. 14

Where the Fund by reason of insufficient funds at its disposal is unable to meet its liability to any member for any benefit to which such member is entitled under this Act, or for any portion of any such benefit, the entitlement of such member to that benefit or that portion of benefit shall constitute a charge on and be paid out of the Consolidated Fund.

[s. 51]

SCHEDULE

COMPOSITION AND PROCEEDINGS OF THE BOARD

(Section 17(3))

1. Composition of the Board Ministry ex officio

(1) The Board shall consist of–

(a) the Permanent Secretary in the of Finance who shall be the Chairman; and

(b) not less than four and not more than eight other members appointed by the Minister.

(2) The majority of the appointments to be made by the Minister shall be made from amongst the employers and employees who will be covered by the Scheme.

2. Proceedings not to be invalid by reason of irregularity

No act or proceedings of the Board shall be invalid by reason only of the number of members not being complete at the time of such act or proceeding or of any defect in the appointment of any member or any of the fact that any member was at the time disqualified or disentitled as such.

3. Tenure of appointment

Every member of the Board shall continue to hold office for three years and shall be eligible for re-appointment.

4. Absence from three consecutive meetings

Where any member absents himself from three consecutive meetings of the Board without reasonable excuse, the Board shall advise the Minister of the fact and the Minister may terminate the appointment of the member and appoint another member in his place.

5. Appointment of temporary member

Where any member is by reason illness, infirmity or absence from the United Republic unable to attend any meeting of the Board, the Minister may appoint a temporary member in his place and such temporary member shall cease to hold office on the resumption of office of the substantive member.

6. Secretary to the Board Act No. 25 of 2001 s. 3

The Fund shall act as Secretary to the Board.

7. Meetings

(1) An ordinary meeting of the Board, shall be convened by the Chairman and the notice specifying the place, date and time of the meeting shall be sent to each member at his usual place of business or residence not less than fourteen days before the date of such meeting.

(2) The Chairman shall be bounded to convene a special meeting of the Board upon receipt of a request in writing in that behalf signed by not less than three members of the Board. Not less than fourteen days' notice of such meeting shall be given to all members of the Board in the manner prescribed in subparagraph (1).

(3) The Chairman or the temporary Chairman elected in accordance with the provisions of paragraph 8(2) presiding at any meeting or the Board may invite any person who is not a member to participate in the deliberations of the Board, but any such person who is not a member to participate in the deliberations of the Board, but any such person shall not be entitled to vote.

8. Procedure

(1) Three members shall form a quorum for a meeting of the Board.

(2) In the absence of the Chairman from a meeting of the Board, the members present shall elect one of their number to be a temporary Chairman of that meeting.

(3) At any meeting of the Board a decision of the majority of the members present and voting shall be deemed to be a decision of the Board. In the event of an equality of votes the Chairman of the meeting shall have a casting vote in addition to his deliberative vote.

9. Decision by circulation of papers

Notwithstanding the provisions of paragraph 8, where the Chairman so directs a decision may be made by the Board without a meeting by circulation of the relevant papers among all the members and the expression in writing of their views; but any member shall be entitled to require that any such decision shall be deferred until the subject matter shall be considered at a meeting of the Board.

10. Minutes of meetings

Minutes in proper form of each meeting of the Board shall be kept and shall be confirmed by the Board at the next meeting and signed by the Chairman of the meeting.

11. Board may regulate its own proceedings

Subject to the provisions of this Schedule, the Board shall have power to regulate its own proceedings.

