

THE REPUBLIC OF KIRIBATI
(No 15 of 1997)

I assent,

Telma

Beretitenti
29/12/1997

AN ACT TO PROVIDE FOR THE CONTINUATION OF PAYMENT OF PENSION,
GRATUITY OR OTHER ALLOWANCE PAYABLE UNDER THE PENSIONS
ORDINANCE AND REPEAL OF THE SAME PENSIONS ORDINANCE;
AND FOR CONNECTED PURPOSES

Commencement:
1997

MADE by the Maneaba ni Maungatabu and Assented to by the Beretitenti.

Short Title

This Act may be cited as the Pensions Act 1997.

Interpretation

In this Act, unless the context otherwise requires -

"the Beretitenti" means the Beretitenti, acting in accordance with the advice of the Public Service Commission;

"pensioner" means an I-Kiribati citizen who has been granted a pension pursuant to the Pensions Ordinance and remain entitled to receive such a pension as at the commencement of this Act.

"Pensions Ordinance" means the Pensions Ordinance (Cap. 10), Nos. 3 of 1941, 2 of 1944, 3 of 1945, 4 of 1946, 4 of 1949, 8 of 1951, 8 of 1952, 1 of 1953, 8 of 1954, 8 of 1955, 2 of 1957 and 14 of 1957, and 5 of 1967 as set out in the Schedule.

Repeal of Cap. 10

The Pensions Ordinance is hereby repealed.

Gratuities and Allowances

All gratuities and allowances previously granted pursuant to the Pensions Ordinance to pensioners shall continue to be paid by the Republic from the Consolidated Fund subject to the provisions of this Act.

Pensions, etc., not of right

- (1) No pensioner shall have an absolute right to compensation for past services or to pension, gratuity or other allowance; nor shall anything in this Act affect the right of the Republic to dismiss any officer at any time and without compensation.
- (2) Where it is established to the satisfaction of the Beretitenti that an officer has been guilty of negligence, irregularity or misconduct the pension, gratuity or other allowance may be reduced or altogether withheld.

Suspension of pensions on re-employment

If an officer to whom a pension has been granted under the Pensions Ordinance or under the Pensions Ordinance 1929 is appointed to employment to another office in the public service the payment of his pension may, if the Beretitenti thinks fit, be suspended during the period of his re-employment.

Pensions, etc., not to be assignable

A pension, gratuity or other allowance granted under the Pensions Ordinance shall not be assignable or transferable except for the purpose of satisfying -

- (a) a debt due to the Government of Kiribati; or
- (b) an order of any court for the payment of periodical sums of money towards the maintenance of the wife or former wife or minor child of the officer to whom the pension gratuity or other allowance was granted.

and shall not be liable to be attached, sequestered or levied upon for or in respect of any debt or claim whatever except a debt due to the Government of Kiribati.

Pensions, etc. to cease on bankruptcy

- (1) If any person to whom a pension or other allowance has been granted under the Pensions Ordinance is adjudicated bankrupt or is declared insolvent by judgment of any competent court, then such pension or allowance shall forthwith cease.
- (2) If any person is adjudicated bankrupt or declared insolvent as aforesaid either -
 - (a) after retirement in circumstances in which he is eligible for pension or allowance under the Pensions Ordinance but before the pension or allowance is granted; or
 - (b) before such retirement, and he shall not have obtained his discharge from bankruptcy or insolvency at the date of retirement;

then, in the former case any pension or allowance eventually granted to him shall cease as from the date of adjudication or declaration as the case may be and, in the latter case, the pension or allowance may be granted, but shall cease forthwith and not become payable.

- (3) Where a pension or allowance ceases by reason of this section, it shall be lawful for the Beretitenti from time to time during the remainder of such person's life, or during such shorter period or periods, either continuous or discontinuous, as the Beretitenti, shall think fit, to direct all or any part of the moneys to which such person would have been entitled by way of pension or allowance, had he not become bankrupt or insolvent, to be paid to, or applied for the maintenance or benefit of, all or any to the exclusion of the other or others, of the following, that is to say, such person and any wife, child or children of his, in such proportions and manner as the Beretitenti, thinks proper, and such moneys shall be paid or applied accordingly.
- (4) Moneys applied for the discharge of the debts of the person whose pension or allowance has so ceased shall, for the purposes of this section, be regarded as applied for his benefit.
- (5) When a person whose pension or allowance has so ceased obtains his discharge from bankruptcy or insolvency, it shall be lawful for the Beretitenti to direct that the pension or allowance shall be restored as from the date of such discharge or any later date, and the pension or allowance shall be restored accordingly.

pensions, etc., may cease on conviction

- (1) If any person to whom a pension or other allowance has been granted under the Pensions Ordinance is sentenced to a form of imprisonment by any competent court for any offence, such pension or allowance shall, if the Beretitenti, so directs, cease as from such date as the Beretitenti determines.
- (2) Where a pension or allowance ceases by reason of this section it shall be lawful for the Beretitenti, to direct all or any part of the moneys to which such person would have been entitled by way of pension or allowance had he not been sentenced as aforesaid to be paid, or applied, in the same manner in all respects as prescribed in the preceding section, and such moneys shall be paid or applied accordingly.
- (3) If such person after conviction at any time receives a free pardon, the pension or allowance shall be restored with retrospective effect; but in determining whether arrears of such pension or allowance are payable to such person and in commuting the amount thereof, account shall be taken of all moneys paid or applied under the preceding subsection.

pensions, etc., may cease on accepting certain appointment

If any person to whom a pension or other allowance has been granted under the Pensions Ordinance otherwise than under section 17 of that Ordinance, becomes either a director of any company the principal part of whose business is in any way directly concerned with the Republic, or an officer or servant employed in the Republic by any such company, without the prior permission of the Beretitenti in writing, such pension or allowance shall cease if the Beretitenti so directs:

Provided that it shall be lawful for the Beretitenti, on being satisfied that the person in respect of whose pension or allowance any such direction shall have been given has ceased to be a director of such company or to be employed as an officer or servant of such company in the Republic as the case may be to give directions for the restoration of such pension or allowance, with retrospective effect, if he shall see fit, to such a date as he shall specify, and the pension or allowance shall be restored in accordance with any such directions.

Gratuity where an officer dies in the service or after retirement

Where an officer to whom a pension, gratuity or other allowance has been granted under the Pensions Ordinance dies after retirement and the sum paid or payable to him at his death on account of any pension, gratuity or other allowance in respect of any public service are less than the amount of the annual pensionable emoluments enjoyed by him at the date of his retirement, it shall be lawful for the Beretitenti to grant to his legal personal representative a gratuity equal to the deficiency.

Inflation Adjustments

- (1) Subject to subsection (2), the Beretitenti acting in accordance with the advice of Cabinet may from time to time direct that all pensions, gratuities and allowances granted under the Pensions Ordinance, and which are still payable to pensioners after the passing of this Act, be increased to allow for inflation.
- (2) It shall not be a requirement that where there is inflation over any given period of time there shall necessarily be a corresponding increase in the said pensions, gratuities and other allowances and the amount of any such increase is not required to correspond with the rate of inflation for such period.

SCHEDULE

CHAPTER 10

PENSIONS

Ordinance regulating pensions, gratuities and other allowances to be granted in respect of offices held in His Majesty's civil service of the Colony.

Ordinance Nos
3 of 1941
2 of 1944
3 of 1945
8 of 1946
4 of 1949
8 of 1951
8 of 1952
1 of 1953
8 of 1954
8 of 1955
2 of 1957
14 of 1957
5 of 1967

[2nd June 1941]

Short Title

This Ordinance may be cited as the Pensions Ordinance.

Interpretation

(1) In this Ordinance, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say:-

“inducement allowance” means the inducement allowance referred to in paragraph (a) of Clause 8 of the Schedule to the Overseas Service Agreement (Ratification) Ordinance, 1961;

“pensionable office” means

(a) in respect of service under the Government of the Colony an office which by virtue of provision for the time being in force in an order made by the High Commissioner and published in the Gazette, is declared to be a pensionable office; and any such order may specify the date, whether before or after the coming into operation of this Ordinance, from which any office included therein shall be deemed to have been pensionable and may from time to time be amended, added to, or revoked by an order so made and published; but where by virtue of any such amendment or revocation any office ceases to be a pensionable office, then so long as any person holding that office at the time of the amendment or revocation continues therein, the office shall, as respects that person, continue to be a pensionable office;

Amended by 2 of 1944, s. 2, 3 of 1945, s. 2)

(b) in respect of other public service, an office which is for the time being a pensionable office under the law or regulations in force in such service;

"non-pensionable office" means an office which is not a pensionable office;

"pensionable emoluments"-

(a) in respect of service under the Government of the Colony includes salary, inducement allowance personal allowance and house allowance, but does not include duty allowance, entertainment allowance or any other emoluments whatever (and for the avoidance of doubt it is hereby declared that where any inducement allowance is paid to any officer after deduction of an amount equivalent to the income tax which would normally be payable thereon if it were not exempted from tax, for the purposes of determining the officer's total pensionable emoluments, the inducement allowance shall be deemed to be the gross amount prior to that deduction);

(b) in respect of public service at the same time partly under the Government of the Colony and partly not under the Government of the Colony includes only such portion of the pensionable emoluments as defined in the last preceding subparagraph as have been paid from the funds of the Colony.

Provided that, in respect of service prior to the commencement of this Ordinance the portion of pensionable emoluments which shall be regarded as having been so paid shall be such as may from time to time be determined by the Secretary of State;

(c) in respect of other public service means emoluments which count for pension in accordance with the law or regulations in force in such service;

"salary" means the salary attached to a pensionable office or, where provision is made for taking service in a non-pensionable office into account, as pensionable service, the salary attached to that office;

"personal allowance" a special addition to salary granted personally to the holder for the time being of the office but does not include such an addition if it is granted subject to the condition that it shall not be pensionable;

"house allowance" means the estimated value of free quarters as defined in regulations under this Ordinance or the allowance paid in lieu thereof to which an officer is entitled;

"month" means a calendar month;

"Secretary of State" means one of His Majesty's Principal Secretaries of State;

"public service" means service in a civil capacity under the Government of the Colony and includes service at the same time partly under the Government of the Colony and partly not under the Government of the Colony, or the Government or any other part of

His Majesty's dominions or of any British Protected State, Protectorate or territory under British Mandate or of the Anglo-Egyptian Sudan, or under the High Commissioner for transport in Kenya and Uganda, and service which is pensionable under the teachers (Superannuation) Act, 1925, or any Act amending or replacing the same, and any such other service as, the Secretary of State may determine to be "public service" for the purpose of any provisions of this Ordinance; and except for the purposes of computation of pension or gratuity and of section 9 of this Ordinance, includes service as a Governor-General, Governor or High Commissioner in any part of His Majesty's dominions, any British Protected State or Protectorate, any territory under British Mandate or the Anglo-Egyptian Sudan;

"other public service" means public service not under the Government of the Colony;

"service under the Government of the Colony" include part service of officers normally stationed outside the Colony, a portion of whose pensionable emoluments are or have been paid from the funds of the Colony;

"revised conditions of service" means the conditions relating to the employment of officers in service under the Government of the Colony, as revised and as approved by the Secretary of State in 1951. (Added by 8 of 1951, s.2)

- (2) For the avoidance of doubts it is hereby declared that, where an officer has been confirmed in a pensionable office and is thereafter appointed to another pensionable office, then unless the terms of such appointment otherwise require, such last mentioned office is, for the purposes of this Ordinance, an office in which he has been confirmed.

Provisions in the case of two holders of same pensionable office

1. When the substantive holder of any office declared pensionable under the provisions of section 2 of this Ordinance is on leave of absence pending relinquishment of his office and another person is appointed substantively to the same office the service of both officers in the same post during the same period will be reckoned as pensionable under the provisions of this Ordinance.

Pension regulations

- (1) Pensions, gratuities and other allowances may be granted by the High Commissioner in accordance with the regulations contained in the Schedule⁺ to this Ordinance to officers who have been in service under the Government of the Colony.

The said regulations may from time to time be amended, added to, or revoked by regulations made by the High Commissioner with the sanction of the Secretary of State, and all regulations so made shall be published in the Gazette.

His Excellency the High Commissioner has delegated to the Resident Commissioner the power to grant gratuities in respect of Local Staff under Section 3 of the Pensions Ordinance (Cap.10)

- (2) All regulations made under this section shall have the same force and effect as if they were contained in the Schedule to this Ordinance, and the expression "this Ordinance" shall, wherever it occurs in this Ordinance, be construed as including a reference to the said Schedule.
- (3) Whenever the High Commissioner is satisfied that it is equitable that any regulation made under this section should have retrospective effect in order to confer a benefit upon or remove a disability attaching to any person that regulation may be given retrospective effect for that purpose. (*Added by 8 of 1946, s. 2.*)
- (4) Any pension or gratuity granted under this Ordinance shall be computed in accordance with the provisions in force at the actual date of an officer's retirement. (*Added by 8 of 1946, s. 2.*);

Pensions, etc., to be charged on revenues of the Colony

There shall be charged on and paid out of the revenues of the Colony all such sums of money as may from time to time be granted by way of pension, gratuity or other allowance in pursuance of this Ordinance.

Pensions, etc., not of right

- (1) No officer shall have an absolute right to compensation for past services or to pension, gratuity or other allowance; nor shall anything in this Ordinance affect the right of the Crown to dismiss any officer at any time and without compensation.

Included in Part II. qv

- (2) Where it is established to the satisfaction of the High Commissioner that an officer has been guilty of negligence, irregularity or misconduct, the pension, gratuity or other allowance may be reduced or altogether withheld.

His Excellency the High Commissioner has delegated to the Resident Commissioner the power to reduce gratuities of local staff by a maximum of fifteen per cent under Section 5(2) of the Pensions Ordinance (Cap.10).

Refer desp. 114/58 in P. 75/5 p.187)

Circumstances in which pension may be granted

- (1) No pension, gratuity or other allowance shall be granted under this Ordinance to any officer except on his retirement from the public service in any one of the following cases:-
 - (a) on or after attaining the age of fifty-five years or in special cases, with the approval of the Secretary of State, of fifty years;
 - (b) where the officer is serving in accordance with the revised conditions of service, on or after his attaining the age of forty-five years;

(c) on compulsory retirement under the provisions of section 8;

(d) in the case of transfer to other public service, on or after attaining the age at which he is permitted by the law or regulations of the service in which he is last employed to retire on pension or gratuity:

Provided that if his service in such other public service is superannuated under the Federated Superannuation System for Universities or a similar insurance scheme, he has retired on one of the grounds mentioned in (a), (b), (c), (e), (f), (g) or (h):

(e) on the abolition of his office;

(f) on compulsory retirement for the purpose of facilitating improvement in the organization of the department to which he belongs, by which greater efficiency or economy may be effected;

(g) on medical evidence to the satisfaction of the High Commissioner or the Secretary of State 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;

(h) in the case of termination of employment in the public interest as provided in this Ordinance;

(i) on retirement in circumstances, not mentioned in the preceding paragraphs of this section, rendering him eligible for a pension under the Pensions (Governors of Dominions, etc.) Acts, 1911 to 1947, or any Act amending or replacing those Acts:

Provided that a gratuity may be granted to a female officer, in accordance with the provisions of this Ordinance, who retires for the reason that she has married or is about to marry, notwithstanding that she is not otherwise eligible under this section for the grant of any pension, gratuity or other allowance.

(2) No pension, gratuity or other allowance shall be granted under paragraph (b) of the preceding subsection to an officer retiring before he has attained the age of fifty-five years unless such officer has given to the High Commissioner notice in writing of his intention to retire not less than six months prior to the date upon which such retirement is to take effect:

* Delegated to Resident Commissioner under Section 29(1) of Interpretation and General Clauses Ordinance, 1955 by Despatch No.161 from the High Commissioner from F.156/3/1 dated 26th July, 1958 now at page 31 in F.49/3/12.

Provided that the High Commissioner may in his discretion in any case waive the provisions of this subsection.

(Substituted by 8 of 1951, s. 3.)

Termination of appointment in the public interest

Where an officer's service is terminated on the ground that, having regard to the conditions of the public service, the usefulness of the officer thereto and all the other circumstances of the case, such termination is desirable in the public interest, and a pension gratuity or other allowance cannot otherwise be granted to him under the provisions of this ordinance, the High Commissioner may, if he thinks fit, grant such pension, gratuity or other allowance as he thinks just and proper, not exceeding in amount that for which the officer would be eligible if he retired from the public service in the circumstances described in sub-para (v) of para (3) of subsection (1).

Compulsory retirement

It shall be lawful for the High Commissioner to require an officer to retire from service under the Government of the Colony-

- (a) at any time after such officer attains the age of fifty-five years; or
- (b) in special cases, with the approval of the Secretary of State, at any time after such officer attains the age of fifty years; or
- (c) where such officer is serving in accordance with the revised conditions of service, at any time after the officer attains the age of forty-five years:

Provided that no officer under the age of fifty-five years shall be retired under the provisions of paragraph (c) hereof unless he has been given notice in writing of the intention to retire him not less than six months before the date upon which such retirement is to take effect:

And provided further that an officer in receipt of a salary of not less than one thousand pounds per annum shall not be retired under this section without the prior approval of the Secretary of State.

(Substituted by 8 of 1951, s. 4.)

Maximum pension

- (1) Except in cases provided for by subsection (2) of this section, a pension granted to an officer under this Ordinance shall not exceed two-thirds of the highest pensionable emoluments drawn by him at any time in the course of his service under the Government of the Colony.
- (2) An officer who shall have been granted a pension in respect of other public service shall not at any time draw from the funds of the Colony an amount of pension which, when added to the amount of any pension or pensions drawn in respect of other public service, exceeds two-thirds of the highest pensionable emoluments drawn by him at any time in the course of his public service:

Provided that where an officer receives in respect of some period of public service both a gratuity and a pension, the amount of such pension shall be deemed for the purpose of this subsection to be two-thirds of its actual amount.

delegated, in respect of local service appointments only to Resident Commissioner under section (1) of Interpretation and General Clauses Ordinance, 1955 by Despatch No.161 from the High Commissioner from F.156/3/1 dated 26th July, 1958 now at page 31 in F.49/3/12.

- (3) Where the limitation prescribed by the preceding subsection operates, the amount of the pension to be drawn from the funds of the Colony shall be subject to the approval of the Secretary of State, in order that it may be determined with due regard to the amount of any pension or pensions to be drawn in respect of other public service.
- (4) For the purposes of the preceding subsections an additional pension granted in respect of injury shall not be taken into account; but where the officer is granted such an additional pension under this Ordinance, the amount thereof together with the remainder of his pension or pensions shall not exceed five-sixths of his highest pensionable emoluments at any time in the course of his public service.

Ability of pensioners to be called upon to take further employment

(Repealed by 8 of 1952).

Suspension of pensions on re-employment

If an officer to whom a pension has been granted under this Ordinance or under the Pensions Ordinance 1929 is appointed to another office in the public service the payment of his pension may, if the High Commissioner thinks fit, be suspended during the period of his re-employment.

Pensions, etc., not to be assignable

A pension, gratuity or other allowance granted under this Ordinance shall not be assignable or transferable except for the purpose of satisfying -

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

and shall not be liable to be attached, sequestered or levied upon for or in respect of any debt or claim whatever except a debt due to the Government.

Pensions, etc., to cease on bankruptcy

- (1) If any person to whom a pension or other allowance has been granted under this Ordinance is adjudicated bankrupt or is declared insolvent by judgment of any competent court, then such pension or allowance shall forthwith cease.
- (2) If any person is adjudicated bankrupt or declared insolvent as aforesaid either-

- (a) after retirement in circumstances in which he is eligible for pension or allowance under this Ordinance but before the pension or allowance is granted; or
- (b) before such retirement, and he shall not have obtained his discharge from bankruptcy or insolvency at the date of retirement;

then, in the former case any pension or allowance eventually granted to him shall cease as from the date of adjudication or declaration as the case may be and, in the latter case, the pension or allowance may be granted, but shall cease forthwith and not become payable

(3) Where a pension or allowance ceases by reason of this section, it shall be lawful for the Secretary of State, or if the person in question is resident in the Colony, the *High Commissioner from time to time during the remainder of such person's life, or during such shorter period or periods, either continuous or discontinuous as the Secretary of State or the *High Commissioner, as the case may be, shall think fit, to direct all or any part of the moneys to which such person would have been entitled by way of pension or allowance had he not become bankrupt or insolvent to be paid to, or applied for the maintenance or benefit of, all or any to the exclusion of the other or others, of the following, that is to say, such person and any wife, child or children of his, in such proportions and manner as the Secretary of State or the *High Commissioner, as the case may be, thinks proper, and such moneys shall be paid or applied accordingly.

(4) Moneys applied for the discharge of the debts of the person whose pension or allowance has so ceased shall, for the purposes of this section, be regarded as applied for his benefit.

(5) When a person whose pension or allowance has so ceased obtains his discharge from bankruptcy or insolvency, it shall be lawful for the Secretary of State or, if such person is resident in the Colony, the High Commissioner to direct that the pension or allowance shall be restored as from the date of such discharge or any later date, and the pension or allowance shall be restored accordingly.

pensions, etc., may cease on conviction

(1) If any person to whom a pension or other allowance has been granted under this Ordinance is sentenced to a term of imprisonment by any competent court for any offence, such pension or allowance shall, if the Secretary of State, or if such person is resident in the Colony; the *High Commissioner, so directs, cease as from such date as the Secretary of State or the High Commissioner, as the case may be, determines.

(2) If any person is sentenced as aforesaid after retirement in circumstances in which he is eligible for pension or allowance under the Ordinance but before the pension or allowance is granted, then the provisions of the foregoing paragraph shall apply as respects any pension or allowance which may be granted to him.

(3) Where a pension or allowance ceases by reason of this section it shall be lawful for the Secretary of State or the High Commissioner, as the case may be, to direct all or any part of the

moneys to which such person would have been entitled by way of pension or allowance had he not been sentenced as aforesaid to be paid, or applied, in the same manner in all respects as prescribed in the preceding section, and such moneys shall be paid or applied accordingly.

- (4) If such person after conviction at any time receives a free pardon, the pension or allowance shall be restored with retrospective effect; but in determining whether arrears of such pension or allowance are payable to such person and in computing the amount thereof, account shall be taken of all moneys paid or applied under the preceding subsection.

Delegated in respect of local service appointments only to Resident commissioner under Sec.29(1) of Interpretation & General clauses ord., 1955 by despatch No.161 from the High Commissioner from 156/3/1 dated 26th July, 1958 now at page 31 in F.49/3/2.

pensions, etc., may cease on accepting certain appointments

5. If any person to whom a pension or other allowance has been granted under this Ordinance otherwise than under section 17 becomes either a director of any company the principal part of whose business is in any way directly concerned with the Colony, or an officer or servant employed in the Colony by any such company, without the prior permission of the High Commissioner in writing, such pension or allowance shall cease if the High Commissioner so directs:

Provided that it shall be lawful for the High Commissioner, on being satisfied that the person in respect of whose pension or allowance any such direction shall have been given has ceased to be a director of such company or to be employed as an officer or servant of such company in the Colony, as the case may be, to give directions for the restoration of such pension or allowance, with retrospective effect, if he shall see fit, to such a date as he shall specify, and the pension or allowance shall be restored in accordance with any such directions.'

Gratuity where an officer dies in the service or after retirement

16. (1) (a) Where an officer holding a pensionable office who is not on probation or agreement, or an officer holding a non-pensionable office to which he has been transferred from a pensionable office in which he has been confirmed dies while in service under the Government of the Colony, it shall be lawful for the High Commissioner to grant to his personal legal representative a gratuity of an amount not exceeding either his annual pensionable emoluments, or his commuted pension gratuity if any, whichever is the greater.

(b) For the purposes of this subsection-

(i) "annual pensionable emoluments" means the emoluments which would be taken for the purpose of computing any pension or gratuity granted to the officer if he had retired at the date of his death in the circumstances described in paragraph (g) of section 6 of this Ordinance.

(ii) "commuted pension gratuity" means the gratuity, if any, which might have been granted to the officer under Regulation 25 of the Schedule of this Ordinance if his public service had been wholly in the Colony and if he had retired at the date

of his death in the circumstances described in paragraph (g) of section 6 of this Ordinance and had elected to receive a gratuity and reduced pension.

- (2) Where any such officer to whom a pension, gratuity or other allowance has been granted under this Ordinance dies after retirement from the service of the Colony, and the sums paid or payable to him at his death on account of any pension, gratuity or other allowance in respect of any public service are less than the amount of the annual pensionable emoluments enjoyed by him at the date of his retirement, it shall be lawful for the High Commissioner to grant to his legal personal representative a gratuity equal to the deficiency.
- (3) The provisions of this section shall not apply in the case of the death of any officer when benefits corresponding to the benefits which may be granted under this section are payable under the Colonial Superannuation Scheme in respect of such death.

Provisions to dependents when an officer is killed on duty

(1) Where an officer dies as a result of injuries received -

- (a) in the actual discharge of his duty, and
- (b) without his own default, and
- (c) on account of circumstances specifically attributable to the nature of his duty,

while in service under the Government of the Colony, it shall be lawful for the *High Commissioner to grant, in addition to the grant, if any, made to his legal personal representative under section 16 of this Ordinance -

- (i) if the deceased officer leaves a widow; a pension to her, while unmarried and of good character, at a rate not exceeding ten-sixtieths of his annual pensionable emoluments at the date of the injury or fifteen pounds a year, whichever is the greater;
- (ii) if the deceased officer leaves a widow to whom a pension is granted under the preceding paragraph and a child or children, a pension in respect of each child, until such child attains the age of eighteen years, of an amount not exceeding one-eighth of the pension prescribed under the preceding paragraph;
- (iii) if the deceased officer leaves a child or children, but does not leave a widow or no pension is granted to the widow, a pension in respect of each child until such child attains the age of eighteen years, of double the amount prescribed by the preceding paragraph;
- (iv) if the deceased officer leaves a child or children, and a widow to whom a pension is granted under paragraph (i) of this subsection, and the widow subsequently dies, a pension in respect of each child as from the date of the death of the widow until such child attains the age of eighteen years, of double the amount prescribed in paragraph (ii) of this subsection;

- (v) if the deceased officer does not leave a widow, or if no pension is granted to his widow, and if his mother was wholly or mainly dependent on him for her support, a pension to the mother, while of good character and without adequate means of support, of an amount not exceeding the pension which might have been granted to his widow.

Provided that -

- (a) pension shall not be payable under this subsection at any time in respect of more than six children; and
- (b) in the case of a pension granted under paragraph (v) of this subsection, if the mother is a widow at the time of the grant of the pension and subsequently remarries such pension shall cease as from the date of re-marriage; and if it appears to the Secretary of State at any time that the mother is adequately provided with other means of support, such pension shall cease as from such date as the Secretary of State may determine; a pension granted to a female child under this section shall cease upon the marriage of such child under the age of eighteen years
- (c) a pension granted to a female child under this section shall cease upon the marriage of such child under the age of eighteen years.
- (2) In the case of an officer not holding a pensionable office, the expression "pensionable emoluments" in the proceeding subsection shall mean the emoluments enjoyed by him which would have been pensionable- emoluments if the office held by him had been a pensionable office.
- (3) For the purposes of this section the word "child" shall include -
- (a) a posthumous child;
- (b) a step-child or illegitimate child born before the date of the injury and wholly or mainly dependent upon the deceased officer for support; and
- (c) an adopted child, adopted in a manner recognized by law, before the date of the injury, and dependent as aforesaid.
- (4) If an officer proceeding by a route approved by the *High Commissioner to or from the Colony at the commencement or termination of his service therein, or of a period of leave therefrom, dies as the result of damage to the vessel, vehicle or aircraft in which he is traveling, or of any act of violence directed against such vessel, vehicle or aircraft, and the High Commissioner is satisfied that such damage or act is attributable to circumstances arising out of war in which His Majesty may be engaged, such officer shall be deemed, for the purposes of this section, to have died in the circumstances described in subsection (1) of this section. (*Added by 2 of 1944, s. 3.*)
- (5) An officer who dies as a result of injuries received while traveling by air in pursuance of official instructions shall be deemed to have died in the circumstances detailed in (a) and (c) of subsection (1) of this section:

Provided that in such a case and if (b) is also satisfied the rates of pension prescribed in (i) and (ii) of that subsection shall be fifteen-sixtieths and one-sixth respectively. (Added by 4 of 1949, s. 2.)

War service to count for pension purposes

8. Where an officer shall have served with His Majesty's Forces in time of war, with the approval of the High Commissioner or of the Governor of the territory in the service of which he was last employed before so serving or of the Secretary of State, the following provisions shall have effect:-

(i) during the period of such service in His Majesty's Forces, including any period after the termination of the war (in this section referred to as "military service"), he shall be deemed, for the purposes of this Ordinance, to have been on leave on full salary from the public service in which he was last employed and to have held the substantive office last held by him in that service, prior to military service;

(ii) during any period between his leaving the public service for the purpose of serving in His Majesty's Forces and the date of his commencing military service, he shall, for the purposes of this Ordinance, be deemed to be on leave without pay, not granted on grounds of public policy, from the public service in which he was last employed and to have held the substantive office last held by him in that service, prior to military service; and during any period between the termination of his military service and the date of his re-entering the public service he shall for the said purposes, be deemed to be on leave as aforesaid from the service, and to have held the substantive office, in which he is re-employed:

Provided that -

(a) this section shall not apply when either period mentioned in paragraph (ii) of this section exceeds three months, or such longer period as the High Commissioner, with the approval of the Secretary of State, may in any special case determine; or if the officer fails, after serving with His Majesty's Forces, to reenter the public service otherwise than in circumstances in which he would be permitted under the law applicable to the public service in which he is last employed prior to military service, to retire on pension or gratuity, such circumstances arising not later than the expiration of three months, or such longer period as may be determined as aforesaid, after the termination of his military service;

(b) if during any period mentioned in paragraph (i) of this section the officer shall have qualified for pension, or received emoluments in lieu of pension rights, actually in respect of military service, paragraph (i) of this section shall, as respects that period, have effect as if the words "leave without salary not granted on grounds of public policy" were substituted for the words "leave on full salary";

(c) if during his military service the officer shall be injured or killed, he shall not, for the purposes of section 17 of this Ordinance and regulation 23 in the Schedule to this Ordinance, be deemed to have been injured or killed in the discharge of his duty,

(d) the provisions of this section which require that the officer shall be deemed to have held a specified office and to have been on leave from a specified service shall not apply in

respect of any period during which he shall actually have held any other substantive office and have been on leave from any public service;

- (e) save where in any particular case the High Commissioner otherwise directs, this section shall not apply where the office in the public service last held by the officer prior to military service was not a pensionable office.

Application of Ordinance

9. (1) The provisions of this Ordinance shall apply -

(a) to every officer first appointed to the public service under the Government of the Colony -

(i) after the commencement of this Ordinance; or

(ii) before the commencement of this Ordinance, to whom it was intimated before appointment that he would be liable to be affected by any change in the pensions law of the Colony; and

(b) to every other officer serving under the Government of the Colony at the commencement of this Ordinance or transferred from the Colony to any other public service before the date of such commencement and still in the public service on that date, unless not later than twelve months after such commencement or within such further period as the High Commissioner may in any special case allow, he gives notice in writing to the Resident Commissioner of his desire that the provisions of the Ordinances and regulations referred to in section 20 of this Ordinance shall apply to him, in which case they shall continue to apply accordingly:

Provided that notwithstanding the provisions of the Pensions Ordinance, 1929 and the Pensions Ordinance, 1932 and of the regulations made thereunder, the provisions of paragraph (b) of subsection (1) of section 6 of this Ordinance and of paragraph (c) of section 8 of this Ordinance shall apply to an officer who has given such notice in writing and who is serving in accordance with the revised conditions of service.

(2) If any officer who shall have given notice under paragraph (b) of the preceding subsection is thereafter re-appointed to the service under the Government of the Colony the provisions of this Ordinance shall apply to him in respect of his whole service:

Provided that, except where such an officer shall eventually become eligible for a pension or gratuity under this Ordinance in respect of his service both before and after his re-employment, a pension or gratuity granted to him solely in respect of service prior to such re-employment shall not be re-computed.

Substituted by 2 of 1944, s. 4.)

repealed Nos. 10 of 1929, 2 of 1932

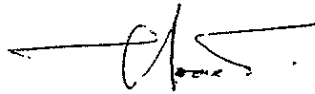
Without prejudice to the provisions of section 19 of this Ordinance, the Pensions Ordinance 1929 and the Pensions(Amendment) Ordinance 1932 are hereby repealed and all regulations made thereunder are hereby revoked.

SCHEDULE

(included in Part II, q.v.)

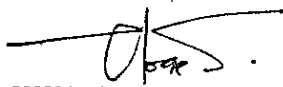
CERTIFICATE BY THE CLERK OF THE MANEABA NI MAUNGATABU

This printed impression has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on the 17th of November 1997 and is found by me to be a true and correctly printed copy of the said Bill.



Teaiaki Koa
Clerk of Parliament

PUBLISHED BY EXHIBITION AT THE MANEABA NI MAUNGATABU THIS
30th DAY OF DECEMBER 1997



CLERK
OF THE MANEABA NI MAUNGATABU

THE PENSIONS ACT 1997

EXPLANATORY MEMORANDUM

The principal object of this Act is to empower the government to adjust according to inflation any amount of pensions, gratuities and allowances already granted under the Pensions Ordinance 1941 (Cap. 10) and which are still payable to pensioners after the passing of this Act (Section 12).

Further the Act retains certain provisions of the Pensions Ordinance 1941 (as amended) which are still in force and applicable to pensioners before and after independence and up to now. These relate to gratuities and allowances which shall continue to be paid by the Republic from the Consolidated Fund (Section 4); Pensions etc. not of right (section 5); Suspension of pension on re-employment (section 6); Pensions not to be assignable (section 7); Pensions to cease on bankruptcy (section 8); Pensions may cease on conviction (section 9); Pensions may cease on accepting certain appointment (section 10); and Payment of gratuity to a pensioner's legal representative after his or her death (section 11).

The Pensions Ordinance 1941 (No 3 of 41) is repealed (section 3) and for the avoidance of any doubt as regards the rights and entitlements of pensioners under that Ordinance the full texts of that Ordinance is set out in the Schedule (Section 2).

Michael N. Takabwe
Attorney General
27 October 1996