1963 No. 1969

KENYA

The Kenya (Compensation and Retiring Benefits) Order in Council 1963

Made - - - -	*4th December* 1963
Laid before Parliament	*10th December* 1963
Coming into Operation	*immediately before 12th December* 1963

At the Court at Buckingham Palace, the 4th day of December 1963

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers in that behalf by the British Settlements Acts 1887 and 1945(a) the Foreign Jurisdiction Act 1890(b) or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows :—

Citation and commencement.

1.—(1) This Order may be cited as the Kenya (Compensation and Retiring Benefits) Order in Council 1963.

(2) This Order shall come into operation immediately before 12th December 1963.

Interpretation.

2. The Interpretation Act 1889(c) shall apply, with the necessary adaptations, for the purpose of interpreting this Order and otherwise in relation thereto as it applies for the purpose of interpreting, and in relation to, Acts of Parliament of the United Kingdom.

Application of Schedule.

3. The provisions contained in the Schedule to this Order shall have effect in relation to the public service of Kenya.

Transitional provisions.

4.—(1) Where any officer or authority has before the commencement of this Order in pursuance of any provision of the limited compensation scheme or the general compensation scheme given any permission or consent or prescribed any condition or granted any benefit or made any payment or made any declaration or done any other thing for the purposes of that scheme, that permission, consent, condition, benefit, payment, declaration or other thing shall be deemed to have been given, prescribed, granted, made or done, as the case may be, under the corresponding provision of the Schedule to this Order, and the provisions of that Schedule shall have effect accordingly.

(a) 50 & 51 Vict. c. 54 and 9 & 10 Geo. 6. c. 7.
(b) 53 & 54 Vict. c. 37.
(c) 52 & 53 Vict. c. 63.

(2) Where any officer has before the commencement of this Order in pursuance of any provision in the limited compensation scheme or the general compensation scheme given any undertaking or given or received any notice or retired or received any benefit he shall, provided that any conditions prescribed or deemed to have been prescribed by or under the Schedule to this Order are satisfied, be deemed to have given that undertaking, to have given or received that notice, or to have retired, or to have been granted or received that benefit, as the case may be, under the corresponding provision in that Schedule, and the provisions of that Schedule shall have effect accordingly.

(3) (*a*) Any officer who has, before the commencement of this Order, been required under the provisions of the limited compensation scheme or the general compensation scheme or under the provisions of section 10B of the Kenya Order in Council 1963(**a**), as amended by the Kenya (Amendment) Order in Council 1963(**b**), to retire to facilitate the localisation of the public service of Kenya shall, for the purposes of the Schedule to this Order, be deemed to have retired in the circumstances described in paragraph 5 of that Schedule.

(*b*) For the purposes of paragraph (*a*) of this subparagraph, a person who, being an officer who fulfilled heads (*a*), (*c*) and (*e*) of the definition of "entitled officer" in paragraph 1(1) of the Schedule to this Order, was required to retire as a result of constitutional change and ceased to be the substantive holder of an office before the date on which the limited compensation scheme was introduced, that is to say 20th July 1961, shall be deemed to be an officer who has been required to retire in the circumstances described in paragraph (*a*) of this subparagraph, and in relation to such an officer the expression "operative date" means the date of the officer's retirement.

(4) The notice prescribed by the general compensation scheme to be given by officers who elect to retire from the public service shall be deemed to have been prescribed by the appropriate Service Commission under paragraph 4 of the Schedule to this Order; any declaration made by the Governor under the limited or general compensation scheme as to whether an officer has been or is required to retire in the circumstances described in paragraph 10 of that Schedule shall be deemed to have been made by the appropriate Service Commission under that paragraph; and any permission to retire given by the Governor under the limited compensation scheme in the circumstances described in paragraph 11 of that Schedule shall be deemed to have been given by the appropriate Service Commission under that paragraph.

(5) In this section "the limited compensation scheme" means the Scheme of Retirement Benefits for Pensionable Overseas Officers who Retire in the Interests of Localization that was published by the Government of Kenya on 20th July 1961, and "the general compensation scheme" means the Scheme of Retirement Benefits for Members of Her Majesty's Overseas Civil Service and for Officers Designated under the Overseas Service (Kenya) Agreement 1961 that was published by the Government of Kenya on 1st May 1963.

W. G. Agnew.

(a) S.I. 1963/791 (1963 I, p. 953). (b) S.I. 1963/1047 (1963 II, p. 1795).

SCHEDULE

COMPENSATION AND RETIREMENT BENEFITS FOR CERTAIN OFFICERS IN THE PUBLIC SERVICE OF KENYA

Interpretation.

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

" appropriate law " in relation to an officer in the public service of Kenya means the law in force in Kenya that governs the grant of pensions, gratuities and other like benefits in respect of the service of that officer in the public service of Kenya ;

" appropriate Service Commission "—

(*a*) in relation to an officer who can be removed from his office by the Judicial Service Commission, means that Commission ;

(*b*) in relation to an officer who can be removed from his office by the Police Service Commission, means that Commission ; and

(*c*) in any other case, means the Public Service Commission ;

" entitled officer " means an officer in the public service of Kenya who on the operative date has not attained the age of fifty-five years or, in the case of a judge of the Supreme Court, sixty-two years and who—

(*a*) was before the operative date appointed or selected for appointment to an office in the public service of Kenya, being a pensionable office for the purposes of the appropriate law ;

(*b*) was on the operative date the substantive holder of an office that was at that date a pensionable office for the purposes of the appropriate law ;

(*c*) is a member of Her Majesty's Overseas Civil Service or Her Majesty's Overseas Judiciary, or a designated officer for the purposes of the Overseas Service (Kenya) Agreement 1961 ;

(*d*) has since the operative date been the substantive holder of an office service in which may during his tenure thereof be taken into account in computing his pension under the appropriate law ; and

(*e*) has been confirmed in his appointment, where his appointment is subject to confirmation ;

and includes an officer in the public service of Kenya on and since the operative date to whom the provisions of the Oversea Superannuation Scheme Regulations apply.

" operative date " means 1st June 1963 ;

" Oversea Superannuation Scheme Regulations " means any Regulations so entitled made by a Secretary of State ;

" pensionable emoluments " means emoluments that may be taken into account in computing the pension of an officer under the appropriate law or the Oversea Superannuation Scheme Regulations, as the case may be ;

" pensionable service " means the aggregate amount of service that may be taken into account for the purpose of computing the pension of an officer under the appropriate law or the Oversea Superannuation Scheme Regulations, as the case may be, and in the case of an officer to whom the Oversea Superannuation Scheme Regulations apply includes service that could be taken into account for the purpose of computing pensions under the Pensions Ordinance of Kenya ;

" pound " means twenty East African shillings ;

" substantive holder " in relation to any office includes a person serving in that office on probation but does not include a person (other than a person serving under a probationary agreement) serving in that office for a specified term under a contract.

(2) For the purposes of the definition of " entitled officer " in sub-paragraph (1) of this paragraph, a person who was before the operative date selected for appointment to an office in the public service of Kenya, being a pensionable office for the purposes of the appropriate law, but was appointed to that office on transfer or probation after the operative date, he shall be deemed, in the case of an appointment on transfer, to have been the substantive holder of that office and, in the case of an appointment on probation, to have been serving in that office on probation, on the operative date and until the date of his appointment.

(3) For the purposes of this Schedule—

(*a*) a person shall not be regarded as holding any office on the operative date if on that date he was on leave of absence pending his retirement otherwise than under this Schedule ;

(*b*) a person whose office has been abolished and who retires in consequence of the abolition of his office shall be deemed to be the substantive holder of that office during the period between the date on which the office was abolished and the date of expiration of any leave of absence granted to him pending his retirement ;

(*c*) when an officer on probation is required to retire—

(i) under section 14 of the Kenya Independence Order in Council 1963(a) ;

(ii) to facilitate the introduction of constitutional changes ;

(iii) because of the abolition of his office ; or

(iv) on the grounds of age in accordance with the provisions of the appropriate law,

he shall be deemed to have been confirmed in his appointment immediately before the day upon which he was given notice requiring him to retire ;

(*d*) subject to the provisions of head (*a*) of this sub-paragraph, an officer who satisfies the conditions specified in heads (*a*) (*b*), (*c*) and (*e*) of the definition of " entitled officer " in sub-paragraph (1) of this paragraph, and who has, before the date of the commencement of this Order, retired or died, shall be deemed to have become entitled to compensation under paragraph 2 or paragraph 10, as the case may be, of this Schedule and the provisions of this Schedule shall have effect in relation to such officer as if he were an entitled officer immediately before such retirement or death.

(4) Where an officer was on any date appointed or selected for appointment to an office in the public service of Kenya upon transfer from pensionable employment under the Government of the United Kingdom in a public office as defined by the Superannuation Act 1892(b) and for any period thereafter was entitled to return to such pensionable employment he shall not for the purposes of this Schedule be regarded as having been on that date appointed or, as the case may be, selected for appointment as the substantive holder of an office in

(a) S.I. 1963/1968 (1963 III, p. 3846). (b) 55 & 56 Vict. c. 40.

the public service of Kenya but shall for those purposes be regarded as having been so appointed or selected on the date on which he ceases to be entitled to return to such pensionable employment if on that date he was holder of an office in that public service.

Entitlement to compensation.

2.—(1) Subject to the provisions of this Schedule, every entitled officer shall, on the operative date or, in the case of a person who becomes an entitled officer after that date, at the date on which he becomes an entitled officer, become entitled to compensation, which shall be assessed in accordance with the provisions of this paragraph and at each assessment shall be calculated by multiplying the amount of his annual pensionable emoluments on the date taken for calculation by the appropriate factor and the resulting amount, or twelve thousand pounds, whichever is the less, shall be the amount to which he is entitled:

Provided that an officer seconded to the service of another government or authority on the date taken for calculation shall, for the purposes of this paragraph, be deemed to have such annual pensionable emoluments on that date as he would have had on that date if he had not been so seconded but had continued until that date to hold the office in the public service of Kenya that he was holding immediately before his secondment and had been granted all increments and other increases of salary for which he would thus have been eligible.

(2) The compensation of each entitled officer under this paragraph shall be provisionally assessed as soon as is reasonably practicable after the commencement of this Order or, in the case of a person who becomes an entitled officer after the commencement of this Order, as soon as is reasonably practicable after that person becomes an entitled officer and for that purpose the date to be taken for calculation shall be the operative date or, in the case of a person who becomes an entitled officer after the operative date, the date on which that person became an entitled officer.

(3) The compensation under this paragraph of each person who is serving as an entitled officer shall be provisionally reassessed upon each anniversary of the date in relation to which his compensation was assessed under sub-paragraph (2) of this paragraph and shall be finally assessed upon his retirement or death while still serving as an entitled officer and for the purposes of this sub-paragraph the date to be taken for calculation shall be such date (not being earlier than the date in relation to which his compensation was assessed under sub-paragraph (2) of this paragraph or later than the date upon which his compensation is provisionally reassessed or finally assessed, as the case may be) as is most advantageous in relation to the officer.

(4) In this paragraph " the appropriate factor " in relation to an officer means the factor obtained from Table I of the Annex to this Schedule (or, in the case of a judge of the Supreme Court, Table II of that Annex) that is appropriate to the age and pensionable service of that officer on the date taken for calculation reckoned in completed years and months or, if it is more favourable to the officer, reckoned in completed years without regard to parts of a year.

Payment of compensation.

3.—(1) When the compensation of an entitled officer has been provisionally assessed under paragraph 2(2) of this Schedule, a payment shall be made to that officer, which—

(*a*) in the case of an entitled officer who has undertaken, otherwise than in relation to his promotion in the public service, to serve as

such for any period (not being less than two years beginning on the operative date, or, if he was not an entitled officer on the operative date, on the date on which he became an entitled officer, exclusive of any period in which he is on leave of absence) shall be an amount equal to the amount of the compensation or two thousand pounds, whichever is the less;

(*b*) in any other case, shall be an amount equal to the amount of the compensation as so assessed or, if that amount exceeds one thousand pounds, then one-sixth of the amount of compensation or one thousand pounds, whichever is the greater:

Provided that if an entitled officer gives such an undertaking after a payment has been made to him under this sub-paragraph, but not later than twelve months after the operative date, he shall be paid as soon as is reasonably practicable after the date on which he gave that undertaking, an amount which when added to the amount already paid to him equals the amount he would have been paid under this sub-paragraph if he had given that undertaking before any payment had been made to him under this sub-paragraph.

(2) Subject to the provisions of paragraph 14 of this Schedule, a further payment shall be made to every person who has become entitled to compensation under paragraph 2 of this Schedule and who has not already received the whole of that compensation (whether that person is serving as an entitled officer or has retired) upon each anniversary of the date in relation to which his compensation was assessed under sub-paragraph (2) of that paragraph, which—

(*a*) in the case of a payment made upon the first, second, third or fourth anniversary, shall be an amount equal to the appropriate fraction of the balance of compensation then outstanding; and

(*b*) in the case of a payment made upon the fifth or any later anniversary, shall be an amount equal to the balance of compensation then outstanding:

Provided that—

(i) where the balance of compensation outstanding upon the first, second, third or fourth anniversary exceeds five hundred pounds and, in the case of an officer to whom sub-paragraph (1)(*a*) of this paragraph applies, where that balance, if added to the amount of compensation already paid under this paragraph, would exceed two thousand pounds, an amount equal to the appropriate fraction of that balance or four hundred pounds, whichever is the greater, shall be paid;

(ii) where the balance so outstanding is less than five hundred pounds, or, in the case of an officer to whom sub-paragraph (1)(*a*) of this paragraph applies, where that balance exceeds five hundred pounds but would not, if added to the amount of compensation already paid under this paragraph, exceed two thousand pounds, an amount equal to that balance shall be paid.

(3) In this section "the appropriate fraction"—

(*a*) in relation to an assessment made upon the first anniversary, means one-fifth;

(*b*) in relation to an assessment made upon the second anniversary, means one-quarter ;

(*c*) in relation to an assessment made upon the third anniversary, means one-third ; and

(*d*) in relation to an assessment made upon the fourth anniversary, means one-half.

Right to retire at any time.

4.—(1) Subject to the provisions of this paragraph, an entitled officer may, after giving such notice as may be prescribed by the appropriate Service Commission, retire at any time.

(2) An entitled officer who has given notice of his intention to retire under this paragraph on any date may, with the consent of the appropriate Service Commission, withdraw the notice at any time before that date.

(3) No entitled officer shall retire under this paragraph without the permission of the appropriate Service Commission:

Provided that the Commission shall not withhold permission unless disciplinary proceedings are being taken, or are about to be taken, against the officer and those proceedings might lead to his dismissal.

(4) An entitled officer—

(*a*) who is permitted to retire by reason of injury or ill health ;

(*b*) who is required to retire on or after his attainment of any age prescribed by law ;

(*c*) who is required to retire in consequence of the abolition of his office or for the purpose of facilitating improvements in the organization of the part of the public service to which he belongs by which greater economy or efficiency may be effected ;

(*d*) who is required to retire in the public interest ; or

(*e*) in the case of a woman officer, who is required to retire upon her marriage,

shall be deemed to have retired under this paragraph.

(5) The proviso to paragraph 5(1) of this Schedule shall apply in the case of the retirement of an entitled officer who is required to retire in the circumstances described in sub-paragraph (4)(*b*) or (*c*) of this paragraph as it applies in the case of the retirement of an officer in the circumstances described in that paragraph.

Compulsory retirement.

5. The provisions of this Schedule shall apply to an officer required to retire under section 14 of the Kenya Independence Order in Council 1963 as if he were an entitled officer retiring under this Schedule:

Provided that—

(*a*) in the case of the retirement under that section of an officer who is on leave of absence after completing a tour of residential service—

(i) he shall, if the period of leave on full pensionable emoluments for which he is eligible on the date upon which he is given notice under that section requiring him to retire is less than six months, be granted such additional leave on full pensionable emoluments as will bring the aggregate period of such leave of absence from that date up to six months ;

(ii) he shall be provided by the Government of Kenya with a passage to Kenya for his own use as if he were returning to Kenya for a further tour of residential service and such passages (if he returns to Kenya) and such baggage facilities as an officer of similar status is entitled to under the Code of Regulations for Officers of that Government when retiring from the public service, having attained the age of fifty-five years and having completed a final tour of residential service; and

(*b*) in the case of the retirement under that section of an officer in any other circumstances—

(i) he shall not be required to depart from Kenya on leave of absence pending his retirement until the expiration of a period of six months from the date upon which he was given notice under that section requiring him to retire;

(ii) he shall be provided by the Government of Kenya with such passages and baggage facilities as an officer of similar status is entitled to under the Code of Regulations for Officers of that Government when retiring from the public service, having attained the age of fifty-five years and having completed a final tour of residential service;

(iii) he shall, if the period of leave on full pensionable emoluments for which he is eligible is less than six months, be granted such additional leave on full pensionable emoluments as will bring the aggregate period of such leave of absence pending his retirement up to six months.

Special gratuity on the death of certain officers.

6.—(1) Where an entitled officer dies and it is lawful under the provisions of the appropriate law for a gratuity to be granted to his personal representatives, there shall be granted to his personal representatives either that gratuity or a gratuity equal to the maximum gratuity that could have been granted to that officer under the provisions of paragraph 12 of this Schedule if he had retired under this Schedule at the date of his death, whichever is the greater:

Provided that, in the case of an officer to whom Part III of the Pensions Regulations of Kenya applied, in respect of that proportion of the pension for which he would have been eligible, if he had retired under this Schedule at the date of his death and which is attributable to his pensionable service otherwise than in the public service of Kenya, the provisions of paragraph 12(1)(*c*) of this Schedule shall not apply and the permitted fraction referred to in that paragraph shall not be less than three-quarters.

(2) For the purposes of the proviso to sub-paragraph (1) of this paragraph the proportion of a pension which is attributable to the pensionable service of an officer otherwise than in Kenya shall be that proportion of the pension for which the officer would have been eligible if his pensionable service had been wholly in Kenya as the aggregate amount of his pensionable emoluments during his pensionable service otherwise than in Kenya bears to the aggregate amount of his pensionable emoluments throughout his pensionable service.

(3) Where an entitled officer to whom the Oversea Superannuation Scheme Regulations apply dies and a gratuity is payable to his personal representatives under those Regulations, there shall be

granted to his personal representatives a gratuity equal to the amount produced by subtracting the amount of the gratuity payable under those Regulations from the amount of the maximum gratuity which could have been granted to that officer under paragraph 12 of this Schedule if that paragraph and the Pensions Ordinance of Kenya had applied to him and he had retired under this Schedule at the date of his death.

(4) The Permanent Secretary to the Treasury may direct that instead of being paid to the personal representative, any gratuity payable under this paragraph shall be paid to one of the dependants of the deceased or to two or more of those dependants in such proportions as the Permanent Secretary may think fit.

Officers reappointed to U.K. service.

7.—(1) This paragraph applies to an entitled officer or an officer to whom paragraph 10 or 11 of this Schedule applies, who has retired under this Schedule and—

(*a*) who was transferred to the public service of Kenya from pensionable employment under the Government of the United Kingdom either in a public office as defined by the Superannuation Act 1892 or in employment pensionable under the Federated Superannuation System for Universities ; and

(*b*) who not later than twelve months after he retired has (other than as the result of a competition conducted by the Civil Service Commissioners of the United Kingdom) returned to such pensionable employment.

(2) A person to whom this paragraph applies shall cease to be entitled to compensation under paragraph 2 or paragraph 10 or paragraph 11 of this Schedule, as the case may be, but shall be entitled to compensation of an amount equal to—

(*a*) one-half of the amount he would receive if he were entitled to compensation under paragraph 2 of this Schedule ; or

(*b*) the amount he would receive if he were entitled to compensation under paragraph 8 of this Schedule, having been transferred to the pensionable employment referred to in sub-paragraph (1)(*b*) of this paragraph on the date on which he retired,

whichever is the greater.

(3) If the provisions of this paragraph become applicable to any person, his compensation shall forthwith be reassessed, and—

(*a*) if the amount of compensation as so reassessed exceeds the amount he has already received under this Schedule, the balance of compensation then outstanding shall be paid, together with any unpaid interest that has accrued under this Schedule before the reassessment, in the manner prescribed by paragraph 3 of this Schedule for the payment of compensation assessed under paragraph 2 of this Schedule ; or

(*b*) if the amount of compensation he has already received under this Schedule exceeds the amount of compensation to which he is entitled under this paragraph, the excess shall forthwith become repayable, but in any such case any interest received on account of such excess shall not be repayable.

Transfer to other public service.

8.—(1) This paragraph applies to an entitled officer who is transferred from the public service of Kenya—

(*a*) to the service of a government or authority that is a Scheduled Government for the purposes of Part III of the Pensions Regulations of Kenya in circumstances in which he remains eligible for the grant of a pension under the appropriate law or the Oversea Superannuation Scheme Regulations, as the case may be, upon his eventual retirement; or

(*b*) to service in the office of Governor in such circumstances that he is or may become eligible for a pension under the Governors' Pensions Act 1957(a).

Provided that—

(*a*) it does not apply to an officer to whom paragraph 7 of this Schedule applies;

(*b*) it applies to any officer who, but for the provisions of paragraph 1(4) of this Schedule, would be an entitled officer and who, in the opinion of the appropriate Service Commission, would have had a reasonable prospect of becoming an entitled officer if no constitutional changes had been introduced as if he were an entitled officer and who, unless prevented by circumstances beyond his control, serves for a period of not less than two years residential service beginning on the operative date.

(2) An officer to whom this paragraph applies shall cease to be entitled to compensation under paragraph 2 of this Schedule, but if the amount of his annual pensionable emoluments immediately before his transfer exceeds the amount of the annual emoluments payable to him immediately after his transfer (being emoluments that may be taken into account for the purposes of his pension under the law or regulations relating to his service in that other public service) he shall be entitled to compensation equal to—

(*a*) the amount of the excess multiplied by the appropriate factor; or

(*b*) the amount he would receive if he were entitled to compensation under paragraph 2 of this Schedule, having retired on the date of his transfer,

whichever is the less.

(3) If the provisions of this paragraph become applicable to any person, his compensation shall forthwith be reassessed, and—

(*a*) if the amount of compensation as so reassessed exceeds the amount he has already received under paragraph 3 of this Schedule, the balance of compensation then outstanding shall be paid, together with any unpaid interest that has accrued under that paragraph before the reassessment, in the manner prescribed by paragraph 3 of this Schedule for the payment of compensation assessed under paragraph 2 of this Schedule; or

(*b*) if the amount of compensation which has already been received under that paragraph exceeds the amount of compensation to which he is entitled under this paragraph, the excess shall forthwith become repayable, but in any such case any interest received on account of such excess shall not be repayable.

(a) 5 & 6 Eliz. 2. c. 62.

(4) In this paragraph "the appropriate factor" in relation to an officer means the factor obtained from Table III of the Annex to this Schedule that is appropriate to the age of the officer at the date of his transfer reckoned in completed years and completed months.

Penalties for breach of undertakings.

9.—(1) If an entitled officer who has given an undertaking for the purposes of paragraph 3(1)(*a*) of this Schedule ceases to serve in accordance with the terms of that undertaking at any time before the end of the period to which the undertaking relates otherwise than with the consent of the Government of Kenya or by reason of his death, his retirement in circumstances beyond his control or his transfer to other public service in the circumstances described in paragraph 8 of this Schedule, then the amount of compensation to which he would otherwise be entitled under paragraph 2 of this Schedule shall be reduced by one-half per centum for each month or part of a month during that period in which he has not served in accordance with the undertaking.

(2) If an entitled officer has been granted promotion in the public service of Kenya (whether before or after the operative date) upon his giving an undertaking to serve upon such conditions as may be prescribed by the appropriate Service Commission for any period ceases to serve in accordance with the terms of that undertaking at any time before the end of the period to which the undertaking relates otherwise than with the consent of the Government of Kenya or by reason of his death or his retirement in circumstances beyond his control, then the amount of compensation to which he is entitled under paragraph 2 of this Schedule shall, notwithstanding any other provision of this Schedule, be calculated as if his annual pensionable emoluments on the date taken for calculation were equal to his annual pensionable emoluments immediately before his promotion or were equal to the average of his annual pensionable emoluments during the three years immediately preceding his so ceasing to serve, whichever is the greater; and in determining the average of such pensionable emoluments the provisions of the appropriate law relating to the determination of the average of annual pensionable emoluments for the purposes of pension (other than proviso (ii) to Regulation 20(1)(*c*) of the Pensions Regulations of Kenya) shall be applied; and in the case of a judge of the Supreme Court promoted to that office after the commencement of this Order on the basis that the appropriate factor is that obtained from Table 1 of the Annex to this Schedule.

(3) If any of the provisions of this paragraph become applicable to any entitled officer, his compensation shall be reassessed accordingly and paid in accordance with paragraph 3 of this Schedule and if the amount of compensation he has already received under that paragraph exceeds the amount of compensation to which he is entitled under the reassessment the excess shall forthwith become repayable.

Retirement to facilitate constitutional changes.

10.—(1) This paragraph applies—

(*a*) to any officer in the public service of Kenya who has been declared by the appropriate Service Commission to be an officer required before the operative date to retire to facilitate the reconstitution of the Government; and

(*b*) to any entitled officer who is declared by the appropriate Service Commission to be an officer required to relinquish the duties of his office and thereafter to retire in order to facilitate the introduction of constitutional changes.

(2) An officer to whom this paragraph applies shall retire at the expiration of the period of leave of absence for which he is eligible:

Provided that if the period of leave of absence on full pensionable emoluments for which he is eligible is less than six months he shall (except in the case of an officer to whom paragraph 17 of this Schedule applies) be granted such additional leave on full pensionable emoluments as will bring the aggregate period of such leave of absence up to six months and shall retire at the expiration of that additional leave of absence.

(3) An officer to whom this paragraph applies shall not be entitled to compensation under paragraph 2 of this Schedule but shall (except in the case of an officer to whom paragraph 17 of this Schedule applies) be entitled to and shall forthwith be paid—

(*a*) compensation equal to the amount he would be entitled to upon his retirement if he were entitled to compensation under that paragraph ; and

(*b*) a disturbance grant equal to one-quarter of his annual pensionable emoluments at his retirement.

(4) An officer to whom this paragraph applies shall be provided by the Government of Kenya with such passages and baggage facilities as an officer of similar status is entitled to under the Code of Regulations for Officers of that Government when retiring from the public service, having attained the age of fifty-five years and having completed a final tour of residential service.

(5) The provisions of paragraphs 6, 12, 13 and 17 of this Schedule shall apply to an officer to whom sub-paragraph (1)(*a*) of this paragraph applies as if that officer were an entitled officer.

(6) For the purposes of paragraph 12 of this Schedule an officer who retires under this paragraph, not being an officer to whom paragraph 17 of this Schedule applies, shall be deemed to have retired in the circumstances described in paragraph 5 of this Schedule.

(7) For the purposes of this Schedule and the appropriate law, an officer to whom this paragraph applies who, immediately before being required to retire acted for a period of six months to the satisfaction of the appropriate Service Commission in a pensionable office, the pensionable emoluments of which were higher than those of the pensionable office of which he was the substantive holder, shall be deemed to have been confirmed in the first mentioned pensionable office.

Voluntary retirement on permission given before operative date.

11.—(1) This paragraph shall apply to an officer in the public service of Kenya who has before the operative date been given permission to retire from that public service by the appropriate Service Commission on the ground that his retirement will enable a qualified local candidate to be appointed to an office in that public service, or that that officer has been superseded for promotion by a local officer in pursuance of the policy of the Government of Kenya of giving preference to local officers in respect of promotion:

Provided that if the appropriate Service Commission declare that officer to whom this paragraph applies could have been permitted to retire by reason of injury or ill-health, the provisions of this paragraph shall cease to apply to that officer if he so elects in writing within one month of the date of the declaration, and the provisions of

this Schedule relating to entitled officers shall apply to him as if he were an entitled officer who is permitted to retire by reason of injury or ill-health, as the case may be.

(2) An officer to whom this paragraph applies shall not be entitled to compensation under paragraph 2 of this Schedule but shall (except in the case of an officer to whom paragraph 17 of this Schedule applies), on the date upon which he was given permission to retire by the appropriate Service Commission, be entitled to compensation calculated by multiplying the amount of his annual pensionable emoluments on the date to be taken for calculation by the appropriate factor and the resulting amount or twelve thousand pounds, whichever is the less, shall be the amount to which he is entitled.

(3) For the purposes of this paragraph the date to be taken for calculation shall be such date (not being earlier than the date upon which the officer was given permission to retire by the appropriate Service Commission or later than the date of the expiration of his leave of absence pending retirement) as is most advantageous to the officer.

(4) Subject to the provisions of paragraph 14 of this Schedule, the compensation to which an officer to whom this paragraph applies becomes entitled under this paragraph shall be paid to him in the manner following, that is to say—

(*a*) a payment to be made at least three months before the date upon which such officer departs from Kenya on leave of absence pending retirement, which payment shall be an amount equal to the amount of compensation to which the officer is entitled or if that amount exceeds one thousand pounds then one-sixth of the amount of that compensation or one thousand pounds, whichever is the greater;

(*b*) a second payment to be made to every such officer who has not already received the whole of that compensation, at the expiration of six months from the date upon which his leave of absence pending retirement commenced, and further payments on the first, second, third and fourth anniversaries of the date upon which the second payment was made, which—

(i) in the case of the second payment and the payment made on the first, second or third anniversary shall be an amount equal to the appropriate fraction of the balance of compensation then outstanding; and

(ii) in the case of the payment made on the fourth anniversary, shall be equal to the balance of compensation then outstanding:

Provided that—

(*a*) where the balance of compensation outstanding at the date when the second payment is due to be made or upon the first, second or third anniversary of that date exceeds five hundred pounds an amount equal to the appropriate fraction of that balance or four hundred pounds, whichever is the greater, shall be paid; and

(*b*) where the balance so outstanding is less than five hundred pounds an amount equal to that balance shall be paid.

(5) In this paragraph—

(*a*) " the appropriate factor " has the same meaning as in paragraph 2 of this Schedule ·

(*b*) " the appropriate fraction "—

(i) in relation to the second payment means one-fifth ;

(ii) in relation to the first anniversary means one-quarter ;

(iii) in relation to the second anniversary means one-third ; and

(iv) in relation to the third anniversary means one-half.

(6) Subject to the provisions of paragraph 14 of this Schedule, if an officer to whom this paragraph applies does not retire from the public service of Kenya in accordance with the permission given to him by the appropriate Service Commission he shall cease to be entitled to compensation under this paragraph and any compensation that may have been paid to him under the provisions of sub-paragraph (4) of this paragraph shall be repaid by him to the Government of Kenya.

(7) The provisions of paragraphs 6, 12, 13, 14, 16 and 17 of this Schedule shall apply in relation to an officer to whom this paragraph applies as if that officer were an entitled officer.

Grant of pensions and gratuities.

12.—(1) Subject to the provisions of paragraphs 17 and 18 of this Schedule, an entitled officer, on his retirement under this Schedule, may be granted at his option (such option to be exercised before the date of retirement or, in the case of an officer to whom paragraph 4(4) of this Schedule applies, within one month after that date) either—

(*a*) a pension of such amount as may be granted under the appropriate law ;

(*b*) a reduced pension equal to such fraction as he may desire of the pension that may be granted under the appropriate law (not being, in the case of an officer who retires within twelve years of the operative date, less than the permitted fraction) together with a gratuity equal to the annual amount of the remaining fraction of that pension multiplied by the appropriate factor ; or

(*c*) in the case of an officer who retires not less than twelve years after the operative date, a gratuity equal to the annual amount of the pension that may be granted under the appropriate law multiplied by the appropriate factor.

(2) For the purposes of this paragraph an officer shall be deemed to be eligible for the grant of a pension under the appropriate law—

(*a*) notwithstanding that he may have retired before attaining the age specified in the appropriate law as qualifying him for the grant of a pension ; and

(*b*) notwithstanding that he may not have completed at the date of his retirement the period of qualifying service required by the appropriate law to render him eligible for the grant of a pension.

(3) Where an officer retires by reason of injury or ill health in circumstances in which he could under the appropriate law be granted an additional pension the provisions of this paragraph shall have effect in relation to that officer as if references to the pension that may be granted under the appropriate law included references to that additional pension.

(4) Where an officer to whom this paragraph applies retires in consequence of the abolition of his office or for the purpose of facilitating improvements in the organisation of the part of the public service to which he belongs by which greater economy or efficiency may be

effected in circumstances in which he could under the appropriate law be granted an additional pension, the provisions of this paragraph shall have effect in relation to that officer as if references to the pension that may be granted under the appropriate law did not include references to that additional pension.

(5) For the purposes of this paragraph the amount of the pension or gratuity that an officer who is required to retire in the circumstances described in paragraph 4(4)(*b*) or (*c*), paragraph 5 or paragraph 10 of this Schedule may be granted under the appropriate law shall be calculated by reference to the full annual pensionable emoluments enjoyed by him on the date immediately prior to his retirement.

(6) If an officer has not exercised the option conferred upon him by sub-paragraph (1) of this paragraph within the period in which it is required to be exercised he shall be deemed to have opted for the grant of a pension of such amount as may be granted under the appropriate law.

(7) In this paragraph—

" the appropriate factor " in relation to an officer means the factor obtained from Table IV of the Annex to this Schedule that is appropriate to the age of that officer at his retirement reckoned in completed years and completed months ;

" the permitted fraction "—

(*a*) in relation to an officer who retires within one year of the operative date, means three-quarters ;

(*b*) in relation to an additional pension granted on account of injury under regulation 25(1)(ii) of the Pensions Regulations of Kenya, means three-quarters ; and

(*c*) subject to head (*b*) of this definition, in relation to an officer who retires within not less than one and not more than twelve years of the operative date, means such fraction as is obtained by subtracting one-sixteenth for each complete year of his pensionable service after the operative date from three-quarters ;

Provided that in reckoning for the purposes of this sub-paragraph the years of pensionable service of an officer who is granted leave of absence pending his retirement, leave of absence granted in respect of service prior to the operative date the enjoyment of which had on the operative date been deferred shall not be taken into account.

Special gratuity for certain officers.

13.—(1) Subject to the provisions of paragraphs 17 and 18 of this Schedule, where any entitled officer to whom Part III of the Pensions Regulations of Kenya applies retires under this Schedule and is granted by any government or other authority that is a Scheduled Government for the purposes of that Part both a pension and a gratuity, having elected to receive that pension and that gratuity in lieu of a pension of greater amount, he may be granted (in addition to any gratuity that may be granted to him under paragraph 12 of this Schedule) a gratuity equal to the amount (if any) by which the amount produced by—

(*a*) substracting the annual amount of the pension granted to him by the Scheduled Government from the annual amount of the pension that would have been granted to him by that Government had he not elected to receive the gratuity granted to him by the Scheduled Government ; and

(*b*) multiplying the resulting amount by the appropriate factor,

exceeds the amount of the gratuity granted to him by the Scheduled Government.

(2) Subject to the provisions of paragraphs 17 and 18 of this Schedule, where an entitled officer to whom the provisions of the Oversea Superannuation Scheme Regulations apply retires under this Schedule and is granted under those Regulations a pension and a lump sum—

(*a*) he may be granted a gratuity equal to the amount produced by subtracting that lump sum from the sum arrived at by multiplying by the appropriate factor one quarter of the annual amount of the pension he would have received if his pension had been calculated under the Pensions Ordinance of Kenya ; and

(*b*) he may be granted (in addition to any gratuity that may be granted to him under head (*a*) of this sub-paragraph) at his option—

(i) on assigning to the Kenya Government a part of the annual amount of the pension granted to him under those Regulations (not being in the case of an officer who retires within twelve years of the operative date, more than the permitted fraction) ; or

(ii) in the case of an officer who retires not less than twelve years after the operative date, on assigning the whole of the annual amount of such pension,

a gratuity equal to the amount of his pension so assigned multiplied by the appropriate factor ; such option to be exercised before the date of retirement or, in the case of an officer to whom sub-paragraph (4) of paragraph 4 of the Schedule applies, within one month after that date.

(3) In this paragraph—

" the appropriate factor " has the same meaning as in paragraph 12 of this Schedule ;

" the permitted fraction "—

(*a*) in relation to an officer who retires within not less than one year but within two years of the operative date, means one twelfth ;

(*b*) in relation to an officer who retires within not less than two years of the operative date, means the fraction obtained by adding one twelfth for each completed year of his pensionable service after the operative date to one twelfth:

Provided that in reckoning for the purposes of this sub-paragraph the years of pensionable service of an officer who is granted leave of absence pending his retirement leave of absence granted in respect of service prior to the operative date enjoyment of which had on the operative date been deferred shall not be taken into account.

Special provisions as to compensation

14.—(1) Whenever—

(*a*) a person who has become entitled to compensation under paragraph 2 or paragraph 11 of this Schedule but who has not already received the whole of that compensation (and in the case of an entitled officer whether he is still serving as such or has already retired) attains the age of fifty-five years or, in the case of a person who is or was when he retired a Judge of the Supreme Court, sixty-two years, or dies before attaining that age ;

(*b*) an entitled officer who has not already received the whole of the compensation to which he is entitled under paragraph 2 retires in the circumstances described in paragraph 4(4)(*a*), (*c*) or (*d*) of this Schedule before he has attained that age or is required to retire in the circumstances described in paragraph 4(4)(*b*) of this Schedule ; or

(*c*) an entitled officer who has not already received the whole of the compensation to which he is entitled under paragraph 2 of this Schedule retires in any other circumstances before he has attained that age but on or after the fifth anniversary of the operative date,

the balance then outstanding of the compensation to which he is entitled shall be paid to that person or, if that person is dead, to his personal representatives.

(2) Whenever an entitled officer, who has not already received the whole of the compensation to which he is entitled under paragraph 2 of this Schedule, is required to retire in the circumstances described in paragraph 5 of this Schedule before attaining the age of fifty-five years, the balance then outstanding of the compensation to which he is entitled under that paragraph shall be paid to him—

(*a*) if notice requiring him to retire is given to him while he is engaged upon a tour of residential service, before his departure from Kenya ; or

(*b*) if such notice is given to him while on leave of absence after completing a tour of residential service, as soon as possible after the date upon which such notice is given to him.

(3) The Permanent Secretary to the Treasury may direct that instead of any payment being made to the personal representatives of a deceased person payment shall be made to one of the dependants of the deceased or to two or more of those dependants in such proportions as the Permanent Secretary may think fit.

(4) Whenever any payment of compensation is made under paragraph 3 or paragraph 11 of this Schedule, interest at the rate of five per centum per annum shall accrue from day to day during the period beginning at the date by reference to which that compensation was calculated and ending at the date of the next following assessment of compensation under any of the provisions of this Schedule (or, if the compensation has been finally assessed, at the date when any balance of compensation that is outstanding becomes payable) upon any part of that compensation that did not become payable under this Schedule when the earlier assessment was made (or at the date of the final assessment, as the case may be) and that interest shall become payable at the end of that period:

Provided that in the case of compensation payable under paragraph 11 of this Schedule the period during which interest accrues shall begin at the date upon which the first payment of compensation becomes payable under paragraph 11(4)(*a*) of this Schedule or the date on which the officer was given permission to retire under that paragraph, whichever is the later.

Disciplinary proceedings and dismissal.

15.—(1) When disciplinary proceedings are taken, or are about to be taken, against any person who is serving as an entitled officer and those proceedings might lead to his dismissal, the payment of compensation under this Schedule and interest thereon shall be withheld pending the determination of those proceedings.

(2) Where any person who is serving as an entitled officer is dismissed, any compensation that he has not already received may, with the approval of the appropriate Service Commission, be withheld.

Place of payment and rate of exchange.

16. Any compensation or gratuity payable under this Schedule to an officer or to his personal representatives or dependants shall be paid, in accordance with any request made from time to time by such officer, his personal representatives or his dependants, as the case may be, in any of the following countries—

(*a*) in the United Kingdom;

(*b*) in Kenya;

(*c*) in the country from which the officer was recruited or where he intends to reside;

(*d*) in the case of payment to the personal representatives of an officer or his dependants, in the country in which the personal representatives or the dependants, as the case may be, reside; or

(*e*) in such other country as the officer or his personal representatives or dependants may, with the concurrence of the Permanent Secretary to the Treasury, select,

in the currency of the country in which payment is to be made; and, where payment is to be made in a country other than Kenya, the amount of the payment shall be such as would produce, at the official rate of exchange prevailing at the date of the payment, the amount in sterling of the compensation or gratuity as calculated at the official rate of exchange prevailing on the operative date.

Right to opt for abolition terms.

17.—(1) An entitled officer may at his option (such option to be exercised within three months of the commencement of this Order or, in the case of an officer who was not an entitled officer on the operative date, within three months of the date on which he became an entitled officer) become an officer to whom this paragraph applies.

(2) An officer to whom this paragraph applies shall not be entitled to compensation under this Schedule or be granted a pension or gratuity under this Schedule but, subject to the provisions of paragraph 18 of this Schedule may, on his retirement under this Schedule, be granted such benefits as may be granted under the appropriate law to an officer whose office has been abolished.

(3) An officer to whom this paragraph applies shall repay the amount of any compensation that may have been paid to him.

Application of appropriate law.

18. The provisions of the appropriate law shall, subject to the provisions of this Schedule, apply in relation to the grant of any pension or gratuity under this Schedule and to any pension or gratuity granted thereunder as they apply in relation to the grant of a pension or gratuity, and to any pension or gratuity granted, under the appropriate law:

Provided that—

(*a*) section 10 of the Pensions Ordinance of Kenya or any law amending or replacing that section shall not apply in relation to any pension granted under the provisions of this Schedule;

(*b*) section 14 of that ordinance shall not apply in relation to a pension granted under the provisions of this Schedule to a person who, on ceasing to be an entitled officer, continued in the public service of Kenya.

Exemption from tax.

19. Any compensation, gratuity or disturbance grant payable under any of the provisons of this Schedule shall be exempt from tax under any law in force in Kenya relating to the taxation of incomes or imposing any other form of taxation.

Exercise of options.

20. Any option exercisable by any person for the purposes of this Schedule—

(*a*) shall be irrevocable after the end of the period within which it is to be exercised;

(*b*) shall be exercised by notice in writing to the appropriate Service Commission;

(*c*) shall be deemed to have been exercised on the date on which the notice is received:

Provided that the appropriate Service Commission may, if it thinks fit, generally or in respect of a particular person and subject or not to conditions, extend the period for the exercise of an option.

Modified application of Schedule.

21. If the Government of the United Kingdom and the Government of Kenya agree that, in their application to any entitled officer, the foregoing provisions of this Schedule shall have effect subject to such modifications or exceptions as those Governments may agree, then the provisions of this Schedule shall have effect accordingly.

ANNEX

Instructions for Obtaining the Appropriate Factor From Table I

I. Read off from the table the factors for officer's age at his last birthday and his—

(*a*) completed years of service,

(*b*) completed years of service plus one year.

II. Subtract I(*a*) from I(*b*), divide the difference by twelve and multiply the result by the number of completed months of service, if any, in excess of the completed years of service.

III. Add I(*a*) and II.

IV. Repeat steps to III for the officer's age at his next birthday.

V. Divide the difference between III and IV by twelve and multiply by the number of completed months of age, if any, since the officer's last birthday.

VI. If IV is greater than III, add V to III,
if IV is less than III subtract V from III.
VI is the factor required.

Instructions for Obtaining the Appropriate Factor From Table II, III or IV

I. Read off from the Table the factors for the officer's age—

(*a*) at his last birthday;

(*b*) at his next birthday.

II. Divide the difference between I(*a*) and I(*b*) by twelve and multiply by the number of completed months of age since the last birthday.

III. If I(*b*) is greater than I(*a*), add II to I(*a*).
If I(*b*) is less than I(*a*), subtract II from I(*a*).
III is the factor required.

In calculating factors by interpolation in respect of Tables I to IV the calculations should be rounded off to two decimal points and where this results in a difference of point nought one in either direction such difference should be ignored.

TABLE I

THE SCHEDULE, PARAGRAPHS 2, 9(2) AND 11

AGE OF OFFICER	FACTOR WHEN LENGTH OF SERVICE IS								
	2 years	3 years	4 years	5 years	6 years	7 years	8 years	9 years	10 years or more
21	·11	·16							
22	·12	·19	·25						
23	·14	·21	·28	·36					
24	·16	·24	·32	·40	·49				
25	·18	·27	·36	·46	·55	·64			
26	·20	·31	·41	·51	·61	·71	·82		
27	·23	·34	·45	·56	·68	·79	·90	1·02	
28	·25	·38	·50	·63	·76	·88	1·01	1·13	1·26
29	·28	·42	·56	·70	·85	·99	1·13	1·27	1·41
30	·32	·48	·64	·80	·97	1·13	1·29	1·45	1·61
31	·37	·56	·75	·94	1·12	1·31	1·50	1·68	1·87
32	·43	·65	·87	1·08	1·30	1·52	1·74	1·95	2·17
33	·50	·75	1·00	1·26	1·51	1·76	2·01	2·26	2·51
34	·57	·86	1·15	1·44	1·72	2·01	2·30	2·58	2·87
35	·64	·97	1·29	1·61	1·93	2·25	2·58	2·90	3·22
36	·71	1·06	1·41	1·76	2·12	2·47	2·82	3·18	3·53
37	·76	1·14	1·52	1·90	2·28	2·66	3·04	3·42	3·80
38	·80	1·21	1·61	2·01	2·41	2·81	3·22	3·62	4·02
39	·84	1·26	1·68	2·10	2·51	2·93	3·35	3·77	4·19
40	·86	1·29	1·72	2·14	2·57	3·00	3·43	3·86	4·29
41	·87	1·30	1·73	2·16	2·60	3·03	3·46	3·90	4·33
42	·86	1·29	1·72	2·14	2·57	3·00	3·43	3·86	4·29
43	·83	1·25	1·66	2·08	2·50	2·91	3·33	3·74	4·16
44	·79	1·18	1·58	1·97	2·36	2·76	3·15	3·55	3·94
45	·73	1·10	1·47	1·84	2·20	2·57	2·94	3·30	3·67
46	·68	1·01	1·35	1·69	2·03	2·37	2·70	3·04	3·38
47	·62	·92	1·23	1·54	1·85	2·16	2·46	2·77	3·08
48	·56	·83	1·11	1·39	1·67	1·95	2·22	2·50	2·78
49	·49	·74	·99	1·24	1·48	1·73	1·98	2·22	2·47
50	·43	·64	·86	1·08	1·29	1·50	1·72	1·94	2·15
51	·36	·54	·72	·90	1·09	1·27	1·45	1·63	1·81
52	·29	·43	·57	·72	·86	1·00	1·14	1·29	1·43
53	·20	·30	·40	·50	·60	·70	·80	·90	1·00
54	·10	·15	·20	·25	·30	·35	·40	·45	·50
55 and above	NIL	NIL	NIL	NIL	NIL	NIL	NIL	NIL	NIL

TABLE II

THE SCHEDULE, PARAGRAPHS 2 AND 11

AGE OF OFFICER	FACTOR	AGE OF OFFICER	FACTOR
40	3·80	55	2·50
41	4·01	56	2·27
42	4·18	57	2·04
43	4·28	58	1·76
44	4·33	59	1·42
45	4·31	60	1·00
46	4·23	61	·50
47	4·11	62	NIL
48	3·96	and above	
49	3·79		
50	3·61		
51	3·41		
52	3·19		
53	2·96		
54	2·73		

NOTE.—These factors apply where the judge has at least ten years service.

TABLE III

THE SCHEDULE, PARAGRAPH 8

AGE	FACTOR
30 and below	5·00
31	5·08
32	5·21
33	5·47
34	5·90
35	6·56
36	7·44
37	8·10
38	8·53
39	8·79
40	8·92
41	9·00
42	8·92
43	8·77
44	8·40
45	7·61
46	6·39
47	5·60
48	5·23
49	5·08
50 and above	5·00

TABLE IV

THE SCHEDULE, PARAGRAPHS 12 AND 13

AGE OF OFFICER	FACTOR	AGE OF OFFICER	FACTOR
25 or under	17·08	40	15·07
26	16·97	41	14·90
27	16·86	42	14·73
28	16·74	43	14·55
29	16·62	44	14·36
30	16·50	45	14·17
31	16·38	46	13·97
32	16·25	47	13·76
33	16·12	48	13·54
34	15·98	49	13·32
35	15·84	50	13·08
36	15·70	51	12·84
37	15·55	52	12·59
38	15·40	53	12·50
39	15·24	54	12·50

EXPLANATORY NOTE

(This Note is not part of the Order, but is intended to indicate its general purport.)

This Order makes provision for compensation and retiring benefits for certain officers in the public service of Kenya.