



Treaty Series No. 111 (1977)

# Agreement

between the Government of the  
United Kingdom of Great Britain and Northern Ireland  
and the Government of the Republic of Kenya  
concerning Public Officers' Pensions  
(Public Officers' Pensions (Kenya) Agreement 1977)

Nairobi, 29 March 1977

[The Agreement entered into force on 26 October 1977]

*Presented to Parliament  
by the Secretary of State for Foreign and Commonwealth Affairs  
by Command of Her Majesty  
December 1977*

LONDON

HER MAJESTY'S STATIONERY OFFICE

25p net

Cmnd. 7026

**AGREEMENT  
BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM  
OF GREAT BRITAIN AND NORTHERN IRELAND AND THE  
GOVERNMENT OF THE REPUBLIC OF KENYA  
CONCERNING PUBLIC OFFICERS' PENSIONS**

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Kenya have agreed as follows:

**ARTICLE 1**

**Interpretation**

In this Agreement, except where the context otherwise requires:

- (a) "actuary" means a Fellow of the Institute of Actuaries or of the Faculty of Actuaries in Scotland;
- (b) "the appointed day" means the day mutually arranged between the Government of the United Kingdom and the Government of Kenya<sup>(1)</sup>;
- (c) "inducement allowance" means any inducement allowance which is pensionable under the pensions laws enjoyed by an officer under the Overseas Service (Kenya) Agreement 1961<sup>(2)</sup>, or any agreement or arrangement amending or replacing the same;
- (d) "the Kenya element" in relation to a pension (other than compensation or interest thereon payable under the Kenya Compensation and Retiring Benefits Order 1963 or a widows' and orphans' pension awarded under Chapter 192 or Chapter 193 or Chapter 194) means:
  - (i) in respect of a pension arising from death resulting from an injury on duty, or a pension or additional pension arising from such an injury, being a pension which results from an occurrence during relevant service, that proportion of the pension which the rate of the officer's pensionable emoluments other than inducement allowance at the date he received the injury bears to the rate of the officer's total pensionable emoluments at that date;
  - (ii) in the case of any other pension, that proportion of the pension which the total pensionable emoluments other than inducement allowance enjoyed by the officer during his relevant service bears to the total pensionable emoluments enjoyed by him throughout his public service under the Government of Kenya which have been taken into account in determining the amount of that pension;
- (e) "officer" means an officer to whom the Public Officers' Agreement between Her Majesty's Government in the United Kingdom and the Government of Kenya signed at Nairobi on 16 January 1964<sup>(2)</sup> (hereinafter referred to as "the Public Officers' Agreement") applies or applied and who was not a citizen of Kenya on 1 April 1971 or

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<sup>(1)</sup> The appointed day is 1 November, 1977.

<sup>(2)</sup> Not published in Treaty Series.

at the time of his death if before that date, or who, having retired from the public service or having died in public service after that date, is not or was not a citizen of Kenya at the time of his retirement or death, as the case may be;

- (f) "other public service" means public service not under the Government of Kenya;
- (g) "pension" means any pension, gratuity, compensation and interest thereon, or any retiring allowance or other like benefit, or any increase of pension, or any contributions repayable to, or interest on contributions payable to, any officer, payable under the pensions laws by the Government of Kenya to or in respect of any officer, or to the widow or child of any officer or to his legal personal representative;
- (h) "pensionable emoluments":
  - (i) in respect of public service under the Government of Kenya means emoluments which count for pension in accordance with the pensions laws;
  - (ii) in respect of other public service, means emoluments which count for pension in accordance with the law or regulations in force in such service;
- (i) "pensions laws" means:
  - (i) in relation to pensions other than widows' and orphans' pensions, any law, regulation or administrative direction providing for the payment of pensions to officers in respect of public service and in force in Kenya at any time prior to 13 January 1972 and enacted prior to that date;
  - (ii) in relation to widows' and orphans' pensions, the Widows' and Orphans' Pensions Act, Chapter 192 (in this Agreement referred to as "Chapter 192"), the Asiatic Widows' and Orphans' Pensions Act Chapter 193 (in this Agreement referred to as "Chapter 193") and the Asian Officers' Family Pensions Act Chapter 194 (in this Agreement referred to as "Chapter 194"), and any amendments to those Acts in force at any time prior to 13 January 1972 and enacted prior to that date;
  - (iii) in relation both to pensions and to widows' and orphans' pensions, any other law, regulation or administrative direction accepted by the Government of the United Kingdom and the Government of Kenya for the purposes of this Agreement;
- (j) "public service" means:
  - (i) service in a civil capacity under the Government of Kenya or any other country or territory in the Commonwealth;
  - (ii) service under the East Africa High Commission, the East African Common Services Organization, the East African Posts and Telecommunications Administration, the East African Railways and Harbours Administration, the East African Community, the

East African Harbours Corporation, the East African Posts and Telecommunications Corporation or the East African Railways Corporation;

- (iii) service which is pensionable:
    - (aa) under the Overseas Superannuation Scheme; or
    - (bb) under any Act relating to the superannuation of teachers in the United Kingdom; or
    - (cc) under a local authority in the United Kingdom; or
    - (dd) under the National Health Service of the United Kingdom;
  - (iv) any other service accepted by the Government of the United Kingdom and the Government of Kenya to be public service for the purposes of this Agreement;
  - (v) except for the purposes of computation of a pension, gratuity or other allowance and of determination of the maximum pension grantable, service as a Governor in respect of which a pension may be granted under the Overseas Pensions Act 1973, or any Act amending or replacing that Act;
  - (vi) service as the holder of the Office of President, Vice-President, Justice of Appeal, Registrar, officer or servant of the Court of Appeal for Eastern Africa established by the Eastern Africa Court of Appeal Order in Council, 1961 (United Kingdom S.I. 1961 No. 2323) or the Court of Appeal for East Africa;
  - (vii) service in the service of the Interim Commissioner for the West Indies;
- (k) "relevant service" means public service in a civil capacity under the Government of Kenya on or after 1 June 1963;
- (l) "widows' and orphans' pensions" means pensions payable under Chapter 192, Chapter 193 or Chapter 194.

## ARTICLE 2

### **Assumption of responsibility by the Government of the United Kingdom**

As from the appointed day the Government of the United Kingdom shall assume from the Government of Kenya the responsibility for the control, administration and payment of pensions which have been awarded before the appointed day and for the award, control, administration and payment of pensions which would fall to be awarded on or after the appointed day.

## ARTICLE 3

### **Obligations of the Government of the United Kingdom**

The Government of the United Kingdom undertake:

- (a) that they shall award, control, administer and pay the pensions referred to in Article 2 of this Agreement to or in respect of the persons concerned in accordance with the principles and rules

contained in the pensions laws, with such modifications as may be necessary in consequence of the transfer of responsibility under this Agreement, or in accordance with such other principles and rules as the Government of the United Kingdom consistently with the next following paragraph may from time to time determine;

- (b) that apart from any modifications arising from the pensions being payable out of public monies of the United Kingdom they shall not apply to or in respect of any officer different provisions from those contained in the pensions laws (other than any provisions, express or implied, relating to the currency and method of payment of a pension) so as to make such provisions less favourable to any beneficiary or potential beneficiary than the provisions applicable to him on the appointed day; Provided that if a beneficiary or potential beneficiary elects to have any provision applied to him, that provision shall be taken to be more favourable to him;
- (c) that if the Government of Kenya should be adjudged by the order of a competent court of law having jurisdiction in Kenya to be liable to pay to or in respect of an officer or the widow or child or legal personal representative of an officer any sum in respect of a pension for which the Government of the United Kingdom have assumed responsibility under this Agreement, the Government of the United Kingdom shall repay to the Government of Kenya any sum paid to such person for the purpose of complying with the order of the court; but in this event the Government of the United Kingdom shall be free to reduce by corresponding sums, or totally to withhold, any payments of the same pension to or in respect of that person which would otherwise fall to be made by them under this Agreement.

#### ARTICLE 4

##### **Obligations of the Government of Kenya**

- (1) The Government of Kenya undertake:
  - (a) that they shall remain responsible for any instalments of pension which remain unpaid on the appointed day;
  - (b) that they shall as from the appointed day relinquish responsibility for the award, control, administration and payment of any pension otherwise than in accordance with the terms of this Agreement;
  - (c) that they shall pay to the Government of the United Kingdom in accordance with such arrangements as may be accepted by the two Governments:
    - (i) in respect of any pension (other than a widows' and orphans' pension) awarded before the appointed day to or in respect of an officer, a sum representing the cost, if any, calculated as on the appointed day, of the Kenya element of such pension;
    - (ii) in respect of any pension (other than a widows' and orphans' pension) awarded on or after the appointed day to or in respect of an officer.

(aa) the sum representing the value on the appointed day of that part of the Kenya element of the pension which would be payable in respect of an officer's relevant service up to the day immediately preceding the appointed day; and

(bb) 25% of the officer's pensionable emoluments, other than inducement allowance, earned during that part of his relevant service which occurs on or after the appointed day;

(iii) in respect of widows' and orphans' pensions, such stocks, funds, securities or monies as represent the interest in the Asian Officers' Family Pensions Fund established under Chapter 194, of contributory officers and their potential beneficiaries alive on the appointed day and the beneficiaries alive on the appointed day of deceased contributory officers.

(2) The sums payable under sub-paragraphs (1) (c) (i), (1) (c) (ii) (aa), and (1) (c) (iii) of this Article shall be actuarially determined by an Actuary nominated by the Government of the United Kingdom and acceptable to the Government of Kenya and shall be reduced by a sum accepted by the two Governments as representing the tax which the Government of Kenya would have received in respect of the Kenya element of the pensions.

#### ARTICLE 5

Each of the Parties to this Agreement shall whenever requested to do so by the other Party supply to that Party such information in connection with the operation of the arrangements contained in this Agreement as may be specified in such request.

#### ARTICLE 6

##### **Modification of previous Agreements**

(1) On and after the appointed day the provisions of the Overseas Service (Kenya) Agreement 1961, and any agreement or arrangement amending or replacing the same and any other agreement or arrangement relating to the reimbursement of the Government of Kenya by the Government of the United Kingdom of a proportion of the cost of a pension shall cease to apply to any pension payable to or in respect of an officer to whom this Agreement applies in respect of any period beginning on the appointed day.

(2) On and after the appointed day the provisions of Articles 3, 4, 5, 6, 7 and the words "and shall take any action that may be necessary to preserve his pension rights when he is so transferred or promoted" in Article 8 (2) and Articles 8 (3) and 9 of the Public Officers' Agreement shall cease to apply to or in respect of officers to whom this Agreement applies.

#### ARTICLE 7

##### **Modification of this Agreement**

If the Government of the United Kingdom and the Government of Kenya mutually decide that this Agreement should be modified in any particular case or class of cases, the foregoing provisions of this Agreement shall be

applied to such case or cases with such modifications, additions or exceptions as may be necessary to give effect to such mutual decision.

## ARTICLE 8

### Entry into Force

Each of the Parties to this Agreement shall notify the other Party in writing as soon as it has completed the domestic legislation and other arrangements necessary to enable it to carry out the Agreement, and this Agreement shall enter into force on the date on the later of these two notifications<sup>(3)</sup>.

## ARTICLE 9

### Citation

This Agreement may be cited as the Public Officers' Pensions (Kenya) Agreement 1977.

In witness whereof the undersigned, duly authorised thereto by their respective Government, have signed this Agreement.

Done in duplicate at Nairobi this 29th day of March 1977.

For the Government of the United Kingdom of Great Britain and Northern Ireland:      For the Government of Kenya  
MWAI KIBAKI.

S. J. G. FINGLAND.

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<sup>(3)</sup> The Agreement entered into force on 26 October, 1977.