

No. 7332

**UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND
and
KENYA**

Public Officers Agreement. Signed at Nairobi, on 16 January 1964

Official text : English.

Registered by the United Kingdom of Great Britain and Northern Ireland on 2 July 1964.

**ROYAUME-UNI DE GRANDE-BRETAGNE
ET D'IRLANDE DU NORD
et
KENYA**

Accord relatif aux fonctionnaires. Signé à Nairobi, le 16 janvier 1964

Texte officiel anglais.

Enregistré par le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord le 2 juillet 1964.

No. 7332. PUBLIC OFFICERS AGREEMENT¹ BETWEEN HER MAJESTY'S GOVERNMENT IN THE UNITED KINGDOM AND THE GOVERNMENT OF KENYA. SIGNED AT NAIROBI, ON 16 JANUARY 1964

Her Majesty's Government in the United Kingdom and the Government of Kenya have agreed as follows :

INTERPRETATION

1. (1) In this Agreement, unless the context otherwise requires—
 - (a) "the appointed day" means the 12th day of December, 1963 ;
 - (b) "conditions of service" means the laws, rules, regulations, orders and other instruments that regulate the terms of service of an overseas officer relating to his tenure of office, disciplinary control, salary (including salary scales), pensionable allowances and passages ;
 - (c) "overseas officer" means an officer whose conditions of service before the appointed day included an entitlement to free passages from East Africa for the purpose of leave of absence upon the completion of a tour of duty and who was before that day the substantive holder of a pensionable office in the Public Service of Kenya, being a person—
 - (i) who was selected for or offered appointment to the Public Service of Kenya by a Secretary of State ; or
 - (ii) whose appointment to the Public Service of Kenya was approved by a Secretary of State ; or
 - (iii) who had entered into an agreement with the Crown Agents for Oversea Governments and Administrations to serve in the Public Service of Kenya ; or
 - (iv) who (although not an officer falling within heads (i), (ii) or (iii) of this sub-paragraph) is or has been a member of Her Majesty's Overseas Civil Service or Her Majesty's Overseas Judiciary, or has been a member of a former Colonial Unified Service, or is or was a designated officer for the purposes of the Overseas Service (Kenya) Agreement, 1961 ;

(d) "non-designated officer" means an officer, not being an overseas officer, whose conditions of service before the appointed day included an entitlement to free

¹ Came into force on 16 January 1964, upon signature, in accordance with Section 10.

passages from East Africa for the purpose of leave of absence upon the completion of a tour of duty and who was before that day the substantive holder of a pensionable office in the Public Service of Kenya ;

(e) "officer" means an overseas officer or a non-designated officer ;

(f) "pension" means any pension, gratuity, compensation and interest thereon, retiring allowance or other like benefit payable by the Government of Kenya to or in respect of any officer or to the widow or children of any officer or their legal personal representatives, including any increase of pension, and any contributions repayable and interest payable to any officer under any law providing for payment of pensions to widows and children of officers.

(2) "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 the office for a specified term under a contract.

(3) References in this Agreement to the widow or children of an officer shall be deemed to include a reference to the widow or child of—

(a) any person in the Public Service of Kenya not being an overseas officer or a non-designated officer whose conditions of service before the appointed day included an entitlement to free passages from East Africa for the purpose of leave of absence upon the completion of a tour of duty ; and

(b) any person who, if he had been in the Public Service of Kenya, would have been an overseas officer or a non-designated officer and who continues to be on or after the appointed day in the service of the East African Common Services Organisation or has been prior to that day in the service of any authority or body now forming part of that Organisation.

(4) In the definitions of 'overseas officer' and, non-designated officer' and in Article 3, except for the purposes of that part of that Article which relates to an entitlement to retire, and in Article 4, the references to the Public Service of Kenya shall be deemed to include a reference to the service of any authority or body for or in respect of which pensions have been or may be awarded under the laws of Kenya relating to pensions for public service.

CONDITIONS OF SERVICE

2. The conditions of service applicable to an overseas officer who continues to be the substantive holder of a pensionable office in the Public Service of Kenya on or after the appointed day shall not be less favourable than those which were applicable to him immediately before the appointed day.

RETIREMENT AND PENSIONS

3. The entitlement to retire and the eligibility to receive a pension of any officer who continues to be the substantive holder of a pensionable office in the Public Service of Kenya on or after the appointed day or of his widow, children, dependants or personal representatives shall be as provided for in the laws, regulations and administrative directions in force immediately before the appointed day or in such other laws, regulations and administrative directions made thereafter as are not less favourable; and pensions shall be granted and paid to such officers and other persons accordingly.

PRESERVATION OF PENSIONS

4. The pension of any officer who has ceased to be the substantive holder of a pensionable office in the Public Service of Kenya before the appointed day, or of the widow, children, dependants or personal representatives of any such officer, shall be granted and paid, or if granted before that date shall continue to be paid, in accordance with the laws, regulations and administrative directions governing those pensions immediately before the appointed day or in accordance with such other laws, regulations and administrative directions made thereafter that are not less favourable.

PAYMENT OF PENSIONS

5. (1) A pension shall, at the option of the person to whom it is payable, be paid 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 legal personal representatives of an officer or his dependants, in the country in which the legal 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 Kenya Government, select, in the currency of the country in which payment is made.
- (2) An option exercised under paragraph (1) of this Article—
- (a) may be revoked at any time and a fresh option be exercised ;
 - (b) shall be exercised or revoked by notice in writing ;
 - (c) shall take effect on the first day of the next succeeding month, or at the person's election on the first day of any subsequent month after the date on which the notice is received by the Secretary to the Kenya Treasury.

(3) Pensions payable outside Kenya after the appointed day shall be paid in the currency of the country in which payment is to be made, and 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 pension calculated as at the official rate of exchange prevailing on the appointed day :

Provided that if there is a general revision of salaries consequent upon the revaluation of the currency in use in Kenya as a result of which the pensionable emoluments of an officer may be increased the Government of Kenya may require that officer to agree that any pension that may be granted to him shall be calculated at the rate of exchange prevailing at the date of the revision of salaries before granting him the benefit of the increase of pensionable emoluments.

(4) Where the person to whom a pension is payable is a minor, his or her lawful guardian may exercise the option conferred by this paragraph.

INCREASE OF PENSIONS

6. The Government of Kenya undertakes that, in any future schemes to increase pensions payable to any class or description of pensioner, there shall be no discrimination against officers or their widows or children.

OPTIONS

7. For the purposes of this Agreement, in so far as the law, regulations or administrative directions applicable to the grant of a pension or to other conditions of service depends on the option of the person to or in respect of whom the pension is granted, or is to be granted, or of the officer to whom the conditions of service apply, the law, regulations or administrative directions for which such person or officer opts shall be taken to be more favourable to him than any other law, regulations or administrative direction for which he might have opted.

OFFICERS IN H. M. O. C. S. and H. M. O. J.

8. (1) Overseas officers who are members of Her Majesty's Overseas Civil Service or of Her Majesty's Overseas Judiciary shall continue to be eligible for consideration by Her Majesty's Government in the United Kingdom for transfer or promotion to employment in the Public Service of some other territory.

(2) The Government of Kenya shall comply with any reasonable request that may at any time be made by Her Majesty's Government in the United Kingdom for the release of an overseas officer for transfer or promotion in pursuance of paragraph(1) of this Article and shall take any action that may be necessary to preserve his pension rights when he is so transferred or promoted.

(3) Before he is released an overseas officer shall be required to make arrangements satisfactory to the Government of Kenya for the repayment to that Government of any compensation or instalments of compensation he may be required to make under the Kenya Compensation Scheme, but not of any interest paid on outstanding instalments.

APPEALS BOARD

9. Section 13 of the Kenya Independence Order-in-Council, 1963, relating to benefits to which Section 196 of the Constitution of Kenya established by that Order-in-Council applies that may be granted or that may have been granted to or in respect of any officer, shall not be revoked or amended to the prejudice of the interests of any officer.

CITATION AND COMMENCEMENT

10. This Agreement may be cited as the Public Officers (Kenya) Agreement, 1963, and shall come into operation on the date of signature.

DONE in duplicate at Nairobi this sixteenth day of January 1964.

Signed on behalf of Her Majesty's Government
in the United Kingdom :

Geoffrey DE FREITAS

Signed on behalf of the Government of Kenya :

Jomo KENYATTA
