

No. 14937

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

**Agreement concerning public officers' pensions. Signed at
Mbabane on 4 August 1975**

Authentic text: English.

*Registered by the United Kingdom of Great Britain and Northern Ireland
on 27 July 1976.*

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

**Accord relatif aux pensions des fonctionnaires. Signé à
Mbabane le 4 août 1975**

Texte authentique : anglais.

*Enregistré par le Royaume-Uni de Grande-Bretagne et d'Irlande du
Nord le 27 juillet 1976.*

AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE KINGDOM OF SWAZILAND CONCERNING PUBLIC OFFICERS' PENSIONS

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of Swaziland 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 Swaziland;
- (c) "the Swaziland element" in relation to a pension (other than compensation or interest thereon payable under the Swaziland (Compensation and Retiring Benefits) Order 1968 or a widows' and orphans' pension) means:
- (i) in respect of a pension arising from death resulting from an injury on duty, or from contracting a disease, or a pension or additional pension arising from such an injury or from such a disease, being a pension which results from an occurrence during relevant service, that proportion of the pension which the rate of the overseas officers' pensionable emoluments other than inducement allowance at the date he received the injury or contracted the disease bears to the rate of the overseas 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 overseas officer during his relevant service bears to the total pensionable emoluments enjoyed by him throughout his public service under the Government of Swaziland (including service which is so defined under the Swaziland (Benefits under Retirement Scheme) Order 1966) which have been taken into account in determining the amount of that pension;
- (d) "inducement allowance" means any inducement allowance enjoyed by an overseas officer under the Overseas Service (Swaziland) Agreement 1962 or any agreement or arrangement amending or replacing the same;
- (e) "other public service" means public service not under the Government of Swaziland;
- (f) "overseas officer" means an officer to whom the Public Officers Agreement between Her Majesty's Government in the United Kingdom and the Government of Swaziland signed at Mbabane on 8 September 1968² (hereinafter referred

¹ Came into force on 4 August 1975, the date of the later of the written notifications by which the Parties informed each other that they had completed their domestic legislation and other necessary arrangements, in accordance with article 7.

² United Nations, *Treaty Series*, vol. 661, p. 111.

to as “the Public Officers Agreement”) applies or applied and who was not a citizen of Swaziland on 1 April 1971 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 Swaziland at the time of his retirement or death, as the case may be;

(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 overseas officer, payable under the pensions laws by the Government of Swaziland to or in respect of any overseas officer, or to the widow or child of any overseas officer or to his legal personal representative;

(h) “pensionable emoluments”

(i) in respect of public service under the Government of Swaziland, includes:

(aa) salary;

(bb) inducement allowance;

(cc) personal allowance;

but does not include entertainment allowance or any other emoluments whatever; Provided that where an officer’s date of retirement is after 1 January 1947, pensionable emoluments shall include house allowance in respect of service prior to 1 January 1947;

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

(i) “pensions laws” means:

(i) in relation to pensions other than widows’ and orphans’ pensions,

(aa) any law, regulation or administrative direction providing for the payment of pensions to officers in respect of public service (including service which is so defined under the Swaziland (Benefits under Retirement Scheme) Order 1966) and in force in Swaziland at any time prior to 13 October 1972 and enacted prior to that date; and

(bb) the Swaziland (Compensation and Retiring Benefits) Order 1968 and the Non-Designated Expatriate Pensionable Officers (Retirement Benefits) Act 1968;

(ii) in relation to widows’ and orphans’ pensions, the Widows’ and Orphans’ Pensions Act, 1966 and any amendments thereto in force at any time prior to 13 October 1972 and enacted prior to that date (hereinafter referred to as “the Widows’ and Orphans’ Pensions Act”); and

(iii) in relation both to widows’ and orphans’ pensions and to other pensions, any other law, regulation or administrative direction accepted by the Government of the United Kingdom and the Government of Swaziland for the purposes of this Agreement;

(j) “public service” means:

(i) service in a civil capacity under the Government of Swaziland or any other country or territory in the Commonwealth and, in relation to any time at which the office of the High Commission for Basutoland, the Bechuanaland Protectorate and Swaziland existed, includes service in that office;

- (ii) service under the East Africa High Commission, the East African Common Services Organisation, 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 Oversea 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 Swaziland 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 East 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 under the Government of Swaziland on or after 1 April 1968;
 - (l) "widows' and orphans' pensions" means pensions payable under the Widows' and Orphans' Pensions Act.

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 Swaziland 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 modification 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 moneys of the United Kingdom they shall not apply to or in respect of any overseas 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 Swaziland should be adjudged by the order of a competent court of law having jurisdiction in Swaziland to be liable to pay to or in respect of an overseas officer or the widow or child or legal personal representative of an overseas 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 Swaziland 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 SWAZILAND

(1) The Government of Swaziland undertake:

- (a) that they shall remain responsible for any instalments of pension granted to or in respect of an overseas officer 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 to or in respect of an overseas officer 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 overseas officer, a sum representing the cost, if any, of the Swaziland 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 overseas officer;
 - (aa) that part of the sum which would represent the Swaziland element of such pension if the service of the overseas officer ceased on the appointed day, which is attributable to the overseas officer's relevant service up to the day immediately preceding the appointed day; and

- (bb) 25% of the overseas 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 moneys as represent the interest in the Widows' and Orphans' Pensions Fund established under the Widows' and Orphans' Pensions Act of contributory overseas officers and their potential beneficiaries alive on the appointed day and the beneficiaries alive on the appointed day of deceased contributory overseas officers;
- (iv) in respect of any overseas officer who continues in relevant service on or after the appointed day, the contributions of the Government of Swaziland to the scheme for widows' and orphans' pensions which would but for the provisions of this Agreement have been payable during such relevant service under the provisions of the Widows' and Orphans' Pensions Act;
- (d) that they shall whenever requested to do so by the Government of the United Kingdom, supply to that Government such information in connection with the operation of the arrangements contained in this Agreement as may be specified in such request.

(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 Swaziland and shall be reduced by a sum accepted by the two Governments as representing the tax which the Government of Swaziland would have received in respect of the Swaziland element of the pensions.

Article 5. MODIFICATION OF PREVIOUS AGREEMENTS

(1) On and after the appointed day the provisions of the Overseas Service (Swaziland) Agreement 1962 and any agreement or arrangement amending or replacing the same and any other agreement or arrangement relating to the reimbursement of the Government of Swaziland 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 overseas 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 overseas officers to whom this Agreement applies.

Article 6. MODIFICATION OF THIS AGREEMENT

If the Government of the United Kingdom and the Government of Swaziland 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 7. 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 of the later of these two notifications.

Article 8. CITATION

This Agreement may be cited as the Public Officers' Pensions (Swaziland) Agreement 1975.

IN WITNESS WHEREOF, the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at Mbabane this 4th day of August 1975.

For the Government
of the United Kingdom of Great Britain
and Northern Ireland:

E. G. LE TOCQ

For the Government
of the Kingdom of Swaziland:

R. P. STEPHENS