

CHAPTER 371

THE PUBLIC SERVICE SOCIAL SECURITY FUND ACT

[PRINCIPAL LEGISLATION]

ARRANGEMENT OF SECTIONS

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CHAPTER 371

THE PUBLIC SERVICE SOCIAL SECURITY FUND ACT

An Act to provide for establishment of the Public Service Social Security Scheme; to provide for contributions to and payments of social security benefits in respect of the service of employees in the public service; to repeal the Public Service Retirement Benefit Act, the LAPF Pensions Fund Act, the GEPF Retirement Benefits Fund Act and the PPF Pensions Fund Act and to provide for other related matters.

[1st August, 2018]

[GN. 375 of 2018]

Acts Nos.
2 of 2018
9 of 2021

PART I

PRELIMINARY PROVISIONS

Short title
Act No.
2 of 2018

1.-(1) This Act may be cited as the Public Service Social Security Fund Act.
(2) [Omitted].

Application

2. This Act shall apply in Mainland Tanzania in respect of all employers and employees in the Public Service.

Interpretation

3. In this Act, unless the context otherwise requires-

“actuary” means a person who is professionally qualified as an actuary and approved by the Minister in the manner prescribed in the regulations;

“actuarial valuation” means valuation of assets and liabilities of a scheme of the Fund made by an actuary;

“actuarial valuation report” means a report prepared by an actuary who effected actuarial valuation in accordance with the guidelines issued by the Division;

“administration expenses” means all costs incidental or in relation to registration of members, collection of

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members' contributions and disbursement of members' benefits;

"annual pensionable emoluments" means the emoluments which is taken for the purposes of computing any pension granted to the member under this Act if he had retired from the Service in circumstances described in this Act;

"Bank" means the Bank of Tanzania established under the Bank of Tanzania Act;

"benefit" means a social security benefit payable under this Act;

"Board" means the Board of Trustees of the Public Service Social Security Fund established by section 8;

"child" includes a step-child, a child born out of wedlock and an adopted child;

"commuted pension" means the lump sum payment payable to a member pursuant to section 30;

"compulsory retirement age" means the age referred to in section 25, upon the attainment of which a member shall retire;

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"constitutional office" means an office which is established by or under the Constitution of the United Republic; of Tanzania, 1977

"contract terms" in relation to employment, means the terms whereby a person is employed on contract for a period of service with an eligibility for payment of a sum of money upon satisfactory completion of that period of service;

"dependant" in relation to a deceased member, means-

- (a) where the deceased member was a male, his widow or if he was married to two or more wives, his widows;
- (b) where the deceased member was a female, the husband of such deceased member;
- (c) every child of the deceased member who was wholly or substantially dependent upon the deceased member's income for his livelihood immediately preceding the death of the deceased member; or
- (d) the immediate parents of the deceased member, who satisfies the deceased member's employer that they

were wholly or substantially depend upon the deceased member's income for their livelihood;

“Director General” means the Director General of the Public Service Social Security Fund appointed under section 15;

“Division” means the division responsible for social security within the ministry responsible for social security matters;

“effective date” means the date declared as such by the Minister for commencement of this Act upon the expiration of transition period;

“employee” means a person employed in the Public Service;

“employee's contribution” means that portion of a statutory contribution declared under section 49 to be the employee's contribution;

“employer” means a person or organization in the public service, with whom an employee entered into a contract of service and who is responsible for the payment of salaries of such employee;

“employer's contribution” means a portion of statutory contribution declared under section 49 to be the employer's contribution;

“Fund” means the Public Service Social Security Fund established by section 6;

“former Funds” means the Public Service Pension Fund, GEPF Retirement Benefit Fund, the PPF Pensions Fund and the LAPF Pension Fund;

“former schemes” means the Public Service Pension Scheme, GEPF Retirement Benefit Scheme, the PPF Pensions Scheme and the LAPF Pension Scheme;

“incapable of work” means in relation to any person, incapacity for work by reason of some specific disease or bodily or mental disablement, and also includes references to any person deemed to be so incapable under this Act;

“member” means an employee who is registered by the Scheme under this Act;

“Minister” means the Minister responsible for social security matters;

- Cap. 1 “month” has the meaning ascribed to it under the Interpretation of Laws Act;
- Cap. 50 “National Social Security Fund” means the Fund established under National Social Security Fund Act;
- “paid” means paid in money or money’s worth, and where it has reference to a date of payment means the date on which the payment was made in cash, or as the case may be, the bills of exchange or promissory note was met;
- “pensionable emoluments” means the salary specified to be used in calculating pension or related benefits;
- Cap. 298 “Public Service” has the meaning ascribed to it by the Public Service Act and includes judicial service, parliamentary service, police force and prisons service and service in the specified corporations;
- “qualifying pensionable service” means-
- (a) any period of service rendered by a member since his becoming a member of the scheme and includes periods of absence from duty or leave with not less than half salary; and
 - (b) any period of service rendered by a member immediately prior to his becoming a member of the scheme during which he was employed by a Government on contract terms or on other than temporary terms daily paid or casual basis and during which he was governed by any employees’ terminal benefits scheme under which the terminal benefit or retirement took the form of payment of a pension, and includes any periods of absence from duty or leave with not less than half salary;
- “qualifying period” means service which may be taken into account in determining whether or not that a member is eligible by length of service for a pension or gratuity;
- “reserve account” means a pool of funds built up for payment of obligations of the scheme;
- “salary” means gross salary excluding bonus, commission, cost of living allowance, overtime payments, directors’ fees or any other additional emolument of a member

payable upon rendering service under the contract of service;

“Scheme” means the Public Service Social Security Scheme established by section 4;

“Service” means the service in the Public Service;

“Service of Tanganyika” means Service in a capacity under the Government of Tanganyika or under the then East African Community before the 1st day of July, 1977 on permanent and pensionable terms under the General Fund Service and being a citizen of Tanganyika;

“totalization of periods of contribution” means the totalization of period of contribution and benefits provided for under section 74;

“transition period” means the period referred to under section 86;

“trustee” means a member of the Board including the Chairman;

“voluntary retirement age” means the age referred to in section 25, from which age a member may retire before attaining compulsory retirement age; and

“year” means a period of consecutive twelve months.

PART II

THE PENSION SCHEME

Establishment of Scheme **4.** There is hereby established a Scheme to be known as the Public Service Social Security Scheme.

Composition of Scheme **5.**—(1) The Scheme shall be constituted by—
 (a) all employees in the Public Service employed after the commencement of this Act;
 (b) all employees who at the time of commencement of this Act are members of the former schemes; and
 (c) all employees employed after the commencement of this Act in any specified corporation.

(2) For the purposes of this section-

- (a) all pensioners of the former schemes shall, subject to the provisions of this Act, be deemed to be pensioners of the Scheme; and
- (b) “corporation” means any company or corporation established or registered under the laws of Tanzania which the Government or its agent owns more than thirty percent of the total shares of the company or corporation.

(3) Notwithstanding subsections (1)(c) and 2(b), the Minister may, by notice published in the *Gazette*, specify any other company or corporation in which the Government owns shares to be a corporation whose employees shall be members of the Scheme.

PART III

THE PUBLIC SERVICE SOCIAL SECURITY FUND

Establishment of Fund

6.-(1) There is hereby established a Fund to be known as the Public Service Social Security Fund which shall constitute of-

- (a) all contributions required to be made under this Act;
- (b) the funds of the former Funds vested in the Board under subsection (2);
- (c) assets of the former Funds;
- (d) monies earned by carrying out any project, scheme or enterprise financed pursuant to this Act;
- (e) monies earned or arising from any investments acquired by or vested in the Fund; and
- (f) all other monies or investments which may, in any manner, become payable to or vested in the Board in respect of any matter incidental to its powers and duties.

(2) The monies of the former Funds shall, with effect from the date of commencement of this Act, be transferred to the Fund and be vested in the Board.

(3) There may be charged on and paid out of the Fund all such sums of monies as may be granted by way of pension or other benefits, including the expenses of administration, as are authorised by this Act.

Objectives of Fund

7. Objectives of the Fund shall be to-

- (a) ensure that every person who is an employee in the Public Service receives his retirement pension benefits as and when due;
- (b) assist improvident individuals by ensuring that they save in order to cater for their livelihood during old age; and
- (c) establish a uniform set of rules, regulations and standards for the administration and payments of retirement pension and other benefits for the Public Service.

PART IV

THE BOARD OF TRUSTEES OF THE FUND

Establishment of Board

8.-(1) There is established a Board to be known as the Board of Trustees of the Fund which shall be composed of members set out in the First Schedule to this Act.

(2) The Board shall be a body corporate with perpetual succession and a common seal and in its corporate name, be capable of-

- (a) suing and be sued;
- (b) purchasing or otherwise acquiring, holding, charging or disposing of its movable and immovable property;
- (c) borrowing and lending;
- (d) entering into contract; and
- (e) performing such other functions under this Act which may be lawfully performed by a body corporate.

(3) Notwithstanding the provisions of subsection (2), the Attorney General shall have the right to intervene in any suit or matter instituted by or against the Board.

Cap. 5 (4) Where the Attorney General intervenes in any matter pursuant to subsection (3), the provisions of the Government Proceedings Act, shall apply in relation to the proceeding of that suit or matter as if it was instituted by or against the Government.

(5) The Board shall have a duty of notifying the Attorney General of any impending suit or intention to institute a suit or matter for or against it.

Functions of Board

9. Functions of the Board shall be to-

- (a) register members;
- (b) collect contributions;
- (c) manage and administer the Fund;
- (d) invest monies available in the Fund;
- (e) be responsible for disbursement of pension, gratuity and other benefits in accordance with the provisions of this Act;
- (f) advise the Minister on matters relating to the administration of this Act;
- (g) do all such acts and things and to enter into all such transactions as, in the opinion of the Board, may be necessary for the proper and efficient administration of the Fund; and
- (h) do all such acts or things as the Division may direct for the purpose of efficient management of the Fund.

Proceedings of Board

10.-(1) The provisions of the Schedule to this Act shall have effect as to the composition, tenure of office, meetings and other procedural matters of the Board.

(2) The Minister may, by order published in the *Gazette*, amend vary or replace the provisions of the Schedule except for the provisions of subparagraph (1).

Management of Fund

11. The Board shall be responsible for the administration and management of the Fund in accordance with the provisions of this Act, the Social Security Act and any guidelines and directives as may be issued pursuant the Social Security Act

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and other relevant written laws for better regulation and monitoring of the activities of the Fund.

Committees of Board

12.—(1) The Board may, for the purpose of facilitation of performance of its functions, establish such number of committees as it may consider necessary.

(2) A committee established under subsection (1) shall perform specific function under such terms and conditions as may be determined by the Board.

Delegation of powers of Board

13.—(1) The Board may, in writing and under its official seal and subject to such terms and conditions as it may specify, delegate to any committee of the Board, the Director General or such other officer of the Fund, any of the functions stipulated under this Act.

(2) No delegation made under this section shall prevent the Board from performing or exercising the functions so delegated.

(3) Notwithstanding subsection (1), the Board shall not have powers to delegate any of its functions relating to the approval of the annual budget, supplementary budget, annual accounts or investments specified in the Fund's investment policy prepared by the Board.

Remuneration and allowances of Board Members

14. The Members of the Board shall be entitled to such fees and allowances for expenses or any other costs incidental to their responsibilities as the Minister may, in consultation with relevant authorities, determine.

Appointment of Director General

15.—(1) There shall be the Director General of the Fund who shall be appointed by the President.

(2) The Director General shall serve upon such terms and conditions to be specified in the instrument of his appointment.

(3) The Director General shall, subject to the directions of the Board, be responsible for the day to day administration of the Fund.

(4) The Director General shall hold office for a term of five years and may, subject to satisfactory performance, be eligible for reappointment.

Other staff of
Fund
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16.—(1) The Board may, subject to the Public Service Act, appoint such other staff of such designation as it may consider necessary for the efficient conduct of the business of the Fund, and upon such terms and conditions as may be determined by the Board.

(2) The staff of the Fund shall, in the performance of their functions, be under the immediate supervision of the Director General and be governed by internal rules and procedures as the Board may determine.

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(3) The Board shall, in making internal rules and procedures, comply with the provisions of the Social Security Act, the guidelines and directives issued by the Division and other relevant laws.

PART V REGISTRATION, CONTRIBUTIONS AND PAYMENTS

Registration and
maintenance
of records by
employer

17.—(1) All employers shall be registered with the Fund.

(2) Every registered employer shall be issued with certificate of registration which shall be displayed at a conspicuous place in the workplace for ease of accessibility by inspectors.

(3) The employer shall, in respect of his employees, keep and maintain such records and submit such returns as the Fund may direct.

Contributions

18.—(1) There shall be a contribution payable to the Fund by employer at the rate of twenty *percentum* of the employee's monthly salary.

(2) The contribution under subsection (1) shall be constituted by-

- (a) the sum equivalent to five *per centum* of monthly salary which shall be deducted by the employer from the member's salary; and
- (b) the sum equivalent to fifteen *per centum* of the member's monthly salary contributed to the member's account by the employer,

or such amount as the Minister may, by order published in the *Gazette*, determine taking into consideration of the actuarial valuation.

(3) The Permanent Secretary in the Ministry responsible for finance shall be responsible for deduction and submission of the amount of statutory contributions deducted at source of the employer.

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(4) Notwithstanding section 26 of the Social Security Act, the Board may recommend to the Authority change of contributions rate payable under subsection (2), subject to findings of the actuarial valuation reports with respect to the Scheme.

(5) Without prejudice to the provisions of this section, a contribution shall be deemed to be paid to the Fund for the purposes of this Act, on the last day of the month in respect of which any payment of a month's salary or any part of a month's salary is made to the member, and the employer shall deduct the contribution from the salaries of the member.

(6) The employer or employee may opt to contribute a greater rate than the rate stipulated under subsection (2), except that the rate of the employee's contribution shall not exceed fifty percent of the total contribution.

Additional contributions for delayed remittance of contributions by employer

19.-(1) Where an employer fails to remit to the Fund the whole or any part of the contributions required to be remitted by him under section 18 within the time prescribed a sum equal to one and a half *per centum* of the amount which such employer has failed to remit shall become due from and payable by such employer by way of additional contribution.

(2) Where such contribution or additional contributions remains unremitted to the Fund for a period of thirty days or more after the same shall have become payable, the employer shall become liable to pay by way of further additional contribution of one and a half *per centum* of the aggregate amount remaining unpaid for each month or part after such date.

Treating
unremitted
contributions as
paid

20. Where the Director General is satisfied that an employee's contribution has been deducted from his earnings, but the employer has failed to remit the contribution together with the paid employer's contribution to the Fund, he shall treat the unremitted contributions as wholly or partially paid for the purposes of any claim to the payment of benefits, provided that this shall be without prejudice to any action to recover the amount due from the employer.

Protection of
contributions

21.—(1) The sum standing to the credit of a member shall, until such time when it is paid out in accordance with the provisions of this Act, remain the property of the Fund.

(2) Notwithstanding anything to the contrary contained in any written law no-

- (a) sum deducted from the salary of the member as contribution;
- (b) amount payable by the employer as his contribution in respect of a member; and

(c) amount standing otherwise to the credit of a member, shall be assignable, transferable or liable to be attached or levied upon for or in respect of any debt or claim against a member, unless such sum relates to home mortgage secured pursuant to section 42 of the Act in which case the mortgagee shall have right to attach any portion of contribution which is the subject of collateral.

Refund of excess contributions **22.** Any monies paid to the Fund in excess of the amount for which any employer is liable to pay in respect of an employee or in excess of the contribution payable for a contribution period may be refunded to the employer, employee or both, as the case may be, in such manner as the Board may determine.

Accounts of members **23.**—(1) The Board shall establish and maintain for each member an account to which shall be credited all contributions made to the Fund in respect of such member.

(2) All the payments made by the member and all interest credited under this Act shall be charged all the benefits granted or refund made in respect of the member.

(3) It shall be the duty of the Director General to inform the member on request about the welfare of the member's statement of account.

Authority to withdraw from Fund **24.**—(1) No sum of monies standing to the credit of a member may be withdrawn from the Fund except with the authority of the Board and such authority shall not be given unless the Board is satisfied that the member has met the qualifying conditions provided for under this Act.

(2) Where a withdrawal under subsection (1) has been made of any amount standing to the credit of the member, the member shall not thereafter be treated as a member.

PART VI

BENEFITS UNDER THE SCHEME

Retirement age **25.**—(1) The compulsory age of retirement shall be sixty years whereas a member may opt to voluntary retire from the age of fifty five years which is voluntary age of retirement.

(2) Notwithstanding subsection (1), members whose statutory terms of employment prescribe an age of retirement shorter or longer than the age provided for under subsection (1) shall retire in accordance with such prescribed terms.

Qualifying conditions

26.—(1) Except for payments made pursuant to sections 27, 31 and 33, pension or similar benefits shall not be granted to any member except on his retirement from the Public Service in any of the following cases—

- (a) on attaining the age of sixty years which is compulsory age of retirement;
- (b) on or after attaining the age of fifty five years which is voluntary age of retirement;
- (c) on medical evidence to the satisfaction of the employer that he is incapable of discharging the duties of his office by reason of becoming invalid;
- (d) on termination of employment due to abolition of office;
- (e) on termination of employment in the public interest; or
- (f) upon cessation to hold office pursuant to the provisions of Article 72 of the Constitution.

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(2) Notwithstanding subsection (1), a member shall not be entitled to retirement benefit unless he has completed the minimum qualifying period of fifteen years of contribution.

Special lump sum

27. A member who—

- (a) has attained retirement age and has retired from employment but does not meet the qualifications provided for under section 26;
- (b) has emigrated from the United Republic in accordance with section 31;
- (c) has been transferred to other public office, in circumstances in which he is permitted by law or regulations of the service in which he is last employed to retire; or
- (d) has retired on abolition of his office,

shall, unless qualified for other benefits under this Act, be entitled to the payment of a special lump sum prescribed in the regulations made by the Minister pursuant to section 27 of the Social Security Act.

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Rights to benefits **28.**—(1) A member shall be entitled to be paid benefits by the Fund provided that he meets the qualifying conditions provided for under this Act.

(2) Subject to subsection (1), the contribution of a member and the employer to the pension shall, to the extent that a member retires, be of right.

Benefits payable **29.**—(1) The following benefits shall be payable under this Act:

- (a) retirement benefit;
- (b) survivors benefit;
- (c) invalidity benefit;
- (d) maternity benefit;
- (e) unemployment benefit;
- (f) sickness benefit; and
- (g) death gratuity.

(2) The benefit under paragraphs (e) and (f) shall be provided in accordance with the regulations made by the Minister pursuant to the Social Security Act.

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(3) Without prejudice to subsection (1), the Board may design and introduce other benefits payable to members from time to time, except that such benefits shall not be implemented without the written approval of the Division.

Rates of retirement pension

30. A member who has attained the age of retirement and has contributed to the Fund for the period of not less than one hundred and eighty months shall be entitled to a full pension constituted of a commuted pension and a monthly pension calculated and payable in accordance with the formula prescribed in the regulations made by the Minister pursuant to section 27 of the Social Security Act.

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Refund of contributions due to emigration

31. A member who proves to the satisfaction of the Director General that—

- (a) he is emigrating from and has no present intention of returning to the United Republic; and

(b) the country to which he migrates has no bilateral agreement with the United Republic that allows portability of benefits,
 may terminate his membership with the Scheme and upon such termination shall be entitled to a payment of special lump sum.

Maternity
 benefits

32.—(1) A member shall be entitled to the following types of maternity benefits, namely:

- (a) cash benefit at the rate prescribed by the Board upon consultation with the Division; and
- (b) medical care during pre-natal and post-natal period by an accredited medical practitioner or midwife:

Provided that, such medical care is not covered by the National Health Insurance Fund.

(2) Maternity benefit shall be payable-

- (a) to a member who has made at least thirty six months contributions;
- (b) upon receipt by the Director General of a medical certificate from an accredited medical provider certifying that the woman expects delivery of a child; and
- (c) to a member who has still-birth at a rate to be prescribed by the Board upon consultation with the Division.

(3) Notwithstanding the provisions of this section, a member shall not be paid maternity benefits for more than four times in the member's employment cycle.

(4) Notwithstanding the provisions under this section, the Board may, in consultation with the Division, review the conditions and rate of maternity benefit payable under this section.

Invalidity benefit

33. An invalidity benefit granted under this Act shall be payable to a member who is recommended by competent authority that by reason of physical or mental disablement cannot perform his duties:

Provided that, the cause of his disability is not related to occupational diseases contracted out of, or in the course of the members' employment.

Rate of invalidity pension **34.** The rate of invalidity pension and duration of payment of invalidity pension shall be as prescribed in the regulations.

Unemployment benefits **35.**-(1) A member of a pension scheme who ceases to be employed shall, subject to the provisions of subsection (2), be entitled to unemployment benefit.

(2) Unemployment benefit shall not be paid unless the applicant-

- (a) has been a contributing member for a period not less than eighteen months;
- (b) is terminated or ceased to be employed in the circumstances other than resignation;
- (c) is a citizen of the United Republic;
- (d) is not qualified for pension, gratuity or any other long-term benefits payable under this Act;
- (e) proves to the Director General that he has not secured another employment;
- (f) is below fifty five years old.

(3) Unemployment benefit shall be payable in a manner and at the rate to be prescribed in the regulations.

Death gratuity **36.**-(1) Where a member dies while in the service, the Director General shall grant the dependants a special lump sum of an amount not exceeding either his annual pensionable emoluments or his commuted pension gratuity, if any, whichever is greater.

(2) Where a deceased member leaves a child or children who are wholly dependent upon him for support at the time of his death, the Director General shall grant to a child or children pension of the amount not exceeding the pension which might have been granted to the widow or widower until that child or children attains the age of twenty one years and in the case of

child or children who is incapable of work by reason of bodily or mental disablement, for life.

(3) Where a deceased member is not survived by a widow, widower or dependent child or children and if his parents were wholly or mainly dependent on him for support and without adequate means of support, the Director General shall grant to his parents an amount not exceeding the pension which might have been granted to his widow or her widower.

(4) The provisions of this section shall apply subject to compliance with procedures of the court relating to devolution of deceased property or estate.

- Survivors benefits **37.**—(1) Subject to the provisions of section 36, where a survivors' benefit is payable, and no notice provided for under subsection (4) has been received, the Director General may, upon satisfaction on the basis of evidence as may be required—
- (a) pay the monies direct to the widow or widower for the maintenance of herself or himself and the member's children who were dependent on him or her at the time of death;
 - (b) where there is no widow or widower, pay the monies, in such proportions as he may think fit, direct to a guardian of the children of the member to be applied—
 - (i) to the maintenance of the child or children of the deceased;
 - (ii) to any child of the member who is of full age but who is incapable of work by reason of bodily or mental disablement; and
 - (iii) to any other dependant;
 - (c) pay the monies to the executor or administrator of the deceased's estate where there are more claims than one coming from the widow, widower or dependants; or
 - (d) in any other case, pay the monies to the Administrator-General who shall hold them on trust for the members of the family or other persons found to be entitled under this section.

- (2) The provisions of subsection (1) shall not apply-
- (a) to any case in which an interested party has given notice to the Director General before he has made payment of benefit; and
 - (b) where an application has been or is being made to court for the estate of the deceased member to be dealt with in accordance with the law of inheritance:

Provided that, where a notice is not issued or an application is not made within three months from the date of death of the deceased member, the Director General may proceed to deal with the benefits under subsection (1).

(3) For the purposes of this section “maintenance” shall be deemed to include, in the case of a child, education suited to the child’s future welfare.

(4) Where any monies is paid to the Administrator-General under this section, the Administrator-General shall, by such appropriate means issue public notice of the payment, having regard to the amount of payment and claims made after the time limited by notice and the amount may be paid accordingly to the members of the family and other entitled persons who have given notice of their claims to the Administrator-General within the time limited.

Basis and duration of survivors’ benefit

38. Survivors benefit shall be payable on the basis and duration to be prescribed by the Minister in the regulations.

Cessation of payment of pension

39.-(1) Where a member dies while receiving retirement or invalidity pension, his dependants shall be paid a lump sum equal to the deceased’s member monthly pension times thirty six.

(2) For the purposes of this section “dependants” includes spouse, a child under twenty one years receiving full time education or a child under eighteen years.

Pensions, gratuity
and allowances
for persons
holding certain
public offices
Act No.
9 of 2021 s. 38

40.—(1) When any person who is holding a constitutional office is transferred, appointed, nominated or elected—

- (a) to another constitutional office, then when he retires, the highest salary received by him during his service shall be taken into account when computing his pension, gratuity and other allowances; or
- (b) to a non-constitutional office, then when he retires, the salary he received while holding a constitutional office shall be, if it is the highest, taken into account when computing his pension, gratuity and other allowances.

(2) A person holding a constitutional office shall not be granted the pension, gratuity or other terminal benefits applicable to the holder of that office, if when he relinquishes that office he enters upon another constitutional office or a non-constitutional office, until the time when he finally retires from the service, upon which occasion the pension, gratuity or other terminal benefits shall be granted to him, subject to the provisions of subsection (1).

(3) Notwithstanding the provisions of this Act—

- (a) Justice of Appeal and a Judge;
- (b) the Attorney General, the Chief Secretary, the Director-General of Intelligence and Security, Clerk of the National Assembly, the Controller and Auditor-General, the Deputy Attorney General and the Director of Public Prosecutions; and
- (c) the Inspector General of Police, the Commissioner General of Prisons, the Commissioner General of Immigration, Commissioner General of Fire and Rescue Force and the Director-General of Prevention and Combating of Corruption Bureau,

shall each retire on a pension which shall be equal to eighty percent of the salary of the incumbent holder of the office in which he was serving and from which he retires.

(4) A person who after being transferred or appointed to a constitutional office or such other public office mentioned under this section and section 42 shall continue to be a

member and the provisions which relate to the contributions to pension shall apply as if that person has not been transferred or appointed to a constitutional office or such other public office-

- (a) if the person is qualified for payment of pension or gratuity under this Act, be entitled to grant of pension or gratuity in accordance with the provisions of this Act; or
- (b) if the person is not qualified for payment of pension or gratuity under this Act shall grant special lump sum in addition to pension granted under subsection (3).

(5) The pension, gratuity, allowances and services granted under this section shall be paid out of the Consolidated Fund and shall not be subject to income tax.

Provided that, in paying the amount under subsection (3), the Paymaster-General shall take into consideration the amount of pension paid by the Fund in accordance with subsection (4)(a).

Benefits
conferred on
Chief Justice

41.-(1) A person who held the office of the Chief Justice shall, upon ceasing to hold the office, be granted-

- (a) an annual pension granted monthly of a sum equal to eighty percent of the salary of the incumbent Chief Justice; and
- (b) where such-
 - (i) Chief Justice was immediately before his appointment to the office of Chief Justice, a public officer for fifteen years or more, a gratuity of a sum computed in accordance with the rules made under this Act;
 - (ii) Chief Justice was immediately before his appointment to the office of Chief Justice, a public officer but had not qualified for pension, a gratuity of a sum computed in accordance with the rules made under this Act.

(2) Payments for pension, gratuity and other retirement pension benefits in respect of the Chief Justice in pursuance of this section shall be paid out of the Consolidated Fund and shall not be subject to income tax.

Collateral for
home mortgage

Cap. 135

42. A member may use part of his benefit entitlements as collateral for home mortgage in accordance with regulations made under section 40 of the Social Security Act.

Delayed payment
of benefits

43.—(1) An employer shall, within six months before the date of retirement of his employee and in writing, notify the Fund about the date of retirement of his employee.

(2) Subject to subsection (1), the Fund shall, within sixty days after the date of retirement, pay to the member the due retirement pension benefits.

(3) Where the Fund fails to pay retirement pension benefits to a member within a period specified under subsection (2), and the member is not responsible for that failure, the Fund shall pay the member the principal sum that is due for payment as retirement pension benefits plus a penalty of five percent of that sum per annum.

Restriction on
double benefits

44. A person being a member shall not be entitled at any time to receive more than one benefit and in the event of a member qualifying for more than one benefit at the same time, the Board may in its discretion approve or seek the opinion of a member so qualified as to which one of the benefit is suitable to a member and the decision of the Board shall be final:

Provided that, the benefit to be granted shall be limited to an amount not exceeding the aggregate of his pensionable emoluments.

Pension when
serving sentence

45.—(1) Where any member to whom benefits have been granted under this Act is sentenced to a term of imprisonment, it shall be lawful for the Board, to direct all or any part of the monies to which the member would have been entitled by way

of pension or other benefit had he not been sentenced, to be paid or applied, for the maintenance or benefit of, all or any to the exclusion of the others, that is to say, such member and his wife, child or children in such proportions and manner as the Board may, upon consultation in writing with the member, determine, and such monies shall be paid or applied accordingly.

(2) Where that person after conviction at any time receives a free pardon, the benefits shall be restored with retrospective effect, but in determining amount of benefits payable to that person, account shall be taken of all monies paid or applied under subsection (1).

President may
exempt from
certain conditions

46.-(1) A member may, by application to the President, supported by an affidavit and on the recommendation of a specified authority, apply for exemption from the application to him of any condition under this Act.

(2) For the purpose of subsection (1), the expression “specified authority” means-

- (a) in relation to a member serving under a District or Regional Administration, the Regional Administrative Secretary;
- (b) in relation to a member serving in a Ministry, the Permanent Secretary;
- (c) in relation to a member serving in an extra-Ministerial Department or Public Institution, the Head of the Department or the public institution; and
- (d) in relation to a member serving in a local government authority, the City Director, Municipal Director, Town Director or the District Executive Director.

(3) Upon recommendation by the specified authority, the application shall be submitted by the specified authority to the Division for determination and recommendation to the President pursuant to section 41 of the Social Security Act.

(4) The President may grant the exemption if he is satisfied that the application of such condition under the Act to a member would unfairly disqualify that member from grant of benefits.

(5) For avoidance of doubt, the difference of benefits resulted from the exemption granted under this section shall be paid out of the Consolidated Fund.

Prohibition on
cession and
attachment of
benefits

47.—(1) A benefit or right in respect of a benefit payable under this Act shall not be capable of being assigned or transferred or otherwise ceded or of being pledged or hypothecated.

(2) Subject to subsection (1), a pension or other benefits granted under this Act may be assigned or transferred for the purposes of satisfying-

- (a) debt due to the Government;
- (b) a mortgage created pursuant to section 42; or
- (c) an order of any court for the periodical payment of the sums of monies towards the maintenance of the spouse, former spouse or child of a member.

(3) A pension, gratuity or any allowance granted under this Act, shall not be attached, sequestered or levied upon for or in respect of any debt, mortgage or claim other than a claim of income tax due to the Government but, the Director General shall make arrangement necessary for satisfying it or any debt arising from, discharging a mortgage created or an order of the court issued consequent upon a loan granted to a member.

Unclaimed
benefits

48.—(1) Where any benefit remains unclaimed for a period of three years from the date of death or any other cause, the whole amount shall be credited to a special reserve account.

(2) Where any benefits remains unclaimed for ten years, the account shall be frozen and the amount standing in the account shall be transferred to the reserve account.

(3) Notwithstanding subsections (1) and (2), the Board may on application by the member or any other beneficiary, order that a member be paid in accordance with the provisions of this Act.

PART VII

FINANCIAL PROVISIONS

Sources of funds **49.**—(1) The sources of funds shall, without prejudice to section 6, include—

- (a) employee and employers' contributions;
- (b) monies accrued from investments;
- (c) such sums as may be appropriated by the Parliament for the purpose of the Fund;
- (d) any sums borrowed by the Board in accordance with the provisions of this Act;
- (e) monies accrued from grants and donations; and
- (f) such sum as may in any manner become payable to or vested in the Fund.

(2) The funds shall be applied for—

- (a) payment of benefits;
- (b) investments of the Fund;
- (c) administration of the Fund; and
- (d) other uses as may be allowed for better administration of this Act.

(3) The administration expenses of the Fund shall not exceed limit prescribed by the Authority.

Fund to be held
by Board

50.—(1) For the avoidance of doubt, it is hereby declared that the monies in the Fund shall, for the purposes of this Act and all other written laws, be deemed to be funds held by the Board in trust for the members of the Scheme and shall be administered by the Board in accordance with the provisions of this Act.

(2) Notwithstanding subsection (1), it shall be lawful for the Board to authorise payments out of the Fund for any of the purposes for which payments out of the Fund are expressly authorised by this Act.

Annual budget estimates

51.—(1) The Director General shall, before the commencement of any financial year, prepare or cause to be prepared for the consideration of the Board estimates of the revenue and expenditure of the Fund for the ensuing financial year.

(2) The Board shall, after receiving the estimates report under subsection (1), consider and adopt the estimates subject to such modifications and amendments as the Board may consider appropriate.

(3) The annual budget estimates shall contain provisions for all the estimated expenditure during the ensuing financial year and in particular-

- (a) for payment of benefits to members;
- (b) for payment of salaries, allowances and other expenses in respect of the Board, committees of the Board and the staff of the Fund;
- (c) for payment of construction, improvement, maintenance and replacement of any building or other immovable properties of the Fund;
- (d) for the proper maintenance and replacement of the furniture, equipment and other supplies of the Fund; and
- (e) for creation of such reserve funds to meet future contingency liabilities as the Board may think fit.

(4) Expenditures shall not be incurred for purposes of the Fund except in accordance with the provisions of the annual budget estimates or any supplementary estimates adopted by the Board.

(5) A copy of annual estimates shall, after the Board's adoption, be forwarded to the Minister.

(6) A budget approved by the Board shall be binding upon the Fund, and shall warrant the disbursement of funds within the items and the amounts contained in the approved budget or supplementary budget.

(7) Notwithstanding subsection (6)-

- (a) the Board may-
 - (i) transfer a sum from the amount of expenditure provided for any capital budget in respect of any

item, to any other item contained in the recurrent budget and vice versa; or

(ii) adjust expenditure limits to take account of circumstances not reasonably foreseeable at the time the budget was prepared, subject to submitting a supplementary budget to the Board within two months of such alteration of expenditure;

(b) the Director General may make reallocation of funds from one budget item to another within the appropriate administrative expenditure.

Accounts and
Supplementary
Budget

52.—(1) In this section “financial year” means any period not exceeding twelve consecutive months designated in that behalf by the Board, except the first financial year may be of a period shorter or longer than twelve months.

(2) In not less than one month before the beginning of any financial year, other than the first financial year after the commencement of this Act, the Board shall, at its meeting especially convened for that purpose, pass the annual budget of the amount expected to be received and disbursed during that financial year.

(3) Where in any financial year the Board requires to make any disbursement not provided for, or of an amount in excess of that provided for in the annual budget for that year, the Board shall at a meeting, pass a supplementary budget detailing the disbursement.

(4) The annual budget and every supplementary budget shall be in such form and include such details as the Minister may direct.

(5) Upon the passing of the annual budget or supplementary budget, the Board shall submit the same to the Minister for approval.

(6) The Minister shall, upon receipt of the annual budget or supplementary budget, approve or disapprove the same or may approve subject to such amendment as he may deem fit.

(7) Where the Minister has approved the annual budget or supplementary budget, the budget shall be binding on the Board which, subject to the provisions of subsection (8), confines its disbursements within the items and the amounts contained in the applicable estimates as approved by the Minister.

(8) The Board may-

- (a) with the sanction in writing by the Minister, make disbursement notwithstanding that the disbursement is not provided for in the annual budget;
- (b) from the amount of expenditure provided for in the annual budget in respect of an item, transfer a sum not exceeding fifty *per centum* of the amount so budgeted to any other item contained in the annual budget; or
- (c) adjust expenditure limits to take account of circumstances not reasonably foreseeable at the time the budget was prepared, subject to submitting a supplementary budget to the Minister within two months of the alteration of expenditure limits becoming necessary.

Investment of monies of Fund

53.-(1) The Board may, subject to the guidelines issued by the Division and the Bank, invest monies of the Fund, in any viable economic venture it considers appropriate, and the investment shall be done having regard to its financial and economic viability.

(2) The Board shall, in considering the appropriateness of the venture for investment, take into account the economic and commercial viability of that venture and guidelines as may be issued under the Social Security Act.

(3) Where an investment is made in breach of subsection (1), each member of the Board, Director General, director, manager or any officer of the Fund taking part of the decision to invest shall be personally liable to a fine of not less than one hundred million shillings but not exceeding five hundred million shillings or to imprisonment for a term not less than one year but not exceeding five years or to both.

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- (4) Notwithstanding the penalty imposed under subsection (3), the Bank or Division as the case may be shall have power to-
- (a) direct the Fund to comply with the investment procedure;
 - (b) discontinue the investment; or
 - (c) take any other measure it considers appropriate.

Annual accounts
and audit

54.-(1) The Board shall cause to be kept and maintained proper books of accounts and records with respect to-

- (a) the receipt and expenditure of monies and other financial transactions of the Fund;
- (b) the assets and liabilities of the Fund,

and shall cause to be made out, for every financial year, a balance sheet and a statement showing details of the income and expenditure of the Fund and all its assets and liabilities.

(2) Not later than six months after the closure of every financial year, the accounts including the balance sheet of the Fund relating to that financial year shall be audited by the Controller and Auditor-General.

(3) As soon as the accounts of the Fund have been audited, and in any case not later than six months after such audit, the Board shall submit to the Minister and the Division a copy of the audited statement of accounts, together with a copy of the report made by the auditors.

(4) As soon as practicable after receipt by him of the copy of the statement together with the copy of the report submitted pursuant to subsection (3), the Minister shall lay before the National Assembly a report containing-

- (a) a copy of the audited accounts of the Fund; and
- (b) a copy of the report regarding the activities of the Fund in the preceding financial year.

Reserve account

55.-(1) The Board shall establish, maintain and manage a Reserve Account into which shall be paid-

- (a) all portion of the income from the investments;
- (b) all contributions collected pursuant to this Act;

- (c) any other money received by the Fund pursuant to sections 6 and 49;
- (d) other monies authorised to be paid into the Reserve Account by any provisions of this Act; and
- (e) fines and penalties which may be paid under this Act.

(2) The payment into and out of the Reserve Account shall be determined by the Board.

Exemption from tax

56.—(1) All contributions and benefits payable under this Act shall not be subject to income tax.

(2) Subject to tax laws, stamp duty and value added tax shall not be payable on any receipt, contract, instrument or other document given or executed by the Board on behalf of the Fund or by any person in respect of benefits or refunds of contributions under this Act.

(3) Notwithstanding subsection (2), nothing in this section shall be construed to exempt any person from liability to pay stamp duty on any power of attorney or on any document otherwise liable under the Stamp Duty Act.

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Actuarial valuation report

57.—(1) The Board shall, at intervals of three years or at any other intervals as the Division may direct and subject to guidelines issued by the Division, cause the assets and liabilities of the Fund to be evaluated by an actuary.

(2) Notwithstanding subsection (1), the Board may, owing to the nature and circumstances of the business of the Fund, request to the Division for the waiver of the requirement under subsection (1).

(3) A report of the valuation shall be submitted to the Division and the Minister.

(4) Upon receipt of the report, the Division may direct the Fund to take measures as may be necessary to rectify an anomaly revealed in the report.

Restoration of financial soundness of Fund

58.—(1) Where an actuarial valuation of the Fund reveals that the Fund is not in a sound financial position, the Board shall after having considered proposals by the actuary who performed

such valuation, implement a scheme or arrangement aimed at restoring the Fund to a sound financial position.

(2) Any scheme or arrangement recommended by actuary under subsection (1) shall not be implemented unless approved by the Division.

Bank accounts of Fund

59. Notwithstanding the provisions of any other written law, the Fund shall maintain one or more bank accounts as the Board shall approve, subject to the guidelines issued by the Division into which all monies payable to the Fund and income derived from investments of the Fund shall be deposited.

Government guarantee

60.—(1) Where the Fund by reason of insufficient funds at its disposal is unable to meet its liability to any member for any benefit to which such member is entitled under this Act, or any portion of any such benefit, the entitlement of such member to that benefit or that portion of benefit shall constitute a charge on and be paid out of the Consolidated Fund:

Provided that, the insufficiency of funds shall not constitute charge to the Consolidated Fund unless the Fund has exhausted all means to meet its liability to members.

(2) Where the money paid to the member under subsection (1) was charged out of Consolidated Fund, the Fund shall, as soon as practicable, repay to the Government the sum so advanced.

Reports

61.—(1) The Board shall, within six months after the end of each financial year, make a report to the Minister on the operations of the Fund during that financial year, and the Minister shall lay a copy of that report before the National Assembly together with a copy of the statement of accounts required to be laid before the National Assembly by section 54.

(2) The Board shall, annually or at such other time as the Division may require, submit to the Division financial report and other reports on the activities of the Fund as necessary for better management of the Fund, regulation and monitoring of the activities of the Fund.

(3) Financial reports referred to under subsection (1) shall contain-

- (a) financial position of the Fund at that time;
- (b) assets and liabilities;
- (c) results of the Fund's operations;
- (d) statement of cash flow; and
- (e) other information as may be required by the Division.

PART VIII LEGAL PROCEEDINGS, OFFENCES AND PENALTIES

Contributions to
be debt to Board

62.-(1) Every statutory contribution and other contributions payable under this Act shall be a debt due to the Board, and may be recovered by way of summary suit at the instance of the Director General at any time within twelve years after the date on which it was due.

(2) In a case where a defendant applies for leave to defend, the trial court shall, before granting leave, require the defendant to deposit a sum equal to the contributions being claimed in the suit as security for due performance of the decree that may be entered against the defendant.

Certificates as
evidence

63. A copy of entry in the accounts of the Fund or other extract from the record of the Fund shall, when certified by the Director General or any other member nominated by the Board in that behalf in writing under the seal of the Board, be received in all courts as *prima facie* evidence of the truth of the contents therein and of the debt due to the Fund by any person.

Summary
recovery

64.-(1) Any action for recovery of contributions and additional contributions may be instituted by the Board of Trustees, and where an action is instituted before any court, any officer of the Fund or an advocate appointed by the Fund in that behalf may appear and conduct the proceedings.

Cap. 33 (2) Every contribution and additional contributions due to the Fund may be recovered by a summary suit under order XXXV of the Civil Procedure Code at any time within twelve years after the date on which it is due.

(3) Where an offence is committed by reasons of non payment of statutory contribution, no prosecution shall be commenced without the consent of the Director of Public Prosecutions.

Joinder of cases of non-payment of contributions **65.**—(1) Notwithstanding anything to the contrary contained in any other law, in any proceedings against an employer in respect of contributions due for more than one member, the magistrate may permit one plaint or charge sheet to be made or filed by a person authorized to lay the charge or institute a suit in respect of all contributions claimed to be due.

(2) The charge or plaint shall have a schedule annexed setting forth the names of the members, their addresses, descriptions and details of the contributions due for each member.

(3) All claims shall rank equal between themselves and shall be deposited in full to the members' accounts, unless the amount recovered from the employer is less, in that case after payment of costs, all such claims shall subject to marginal adjustments among themselves, be credited to the members' accounts accordingly.

Notice of claim **66.** Subject to the provisions of this Act, and upon finalization of a civil claim, the Director General may issue a written notice of claim to the court for the purpose of realization of property against the employer.

Priority for payment of contributions **67.** Where the Director General has filed in court a written notice of a claim under section 66-

(a) any attachment is issued against the property of an employer in execution of a decree against him so that any such property is seized or sold or otherwise realized in pursuance of such execution;

(b) on the application by the Board, the property of the employer is sold, the proceeds of the sale or other realization of that property shall not be distributed to any person entitled thereto until the court ordering the sale or realization has made provision for the payment after the payment of costs of sale or realization, or any accounts due in respect of contributions payable by the employer under this Act before the date of such order.

Offences and penalties

68.—(1) A person who-

- (a) for the purpose of evading payment of any contribution by himself or any other person knowingly-
 - (i) makes any false statement or representation; or
 - (ii) produces or furnishes or causes to be produced or furnished any document or information which that person knows to be false in any material particular;
- (b) for the purposes of obtaining any benefit or refund for himself or some other person knowingly-
 - (i) makes any false statement or representation;
 - (ii) produces or furnishes or causes to be produced or furnished any document or information which that person knows to be false in any material particular;
- (c) misrepresents or fails to disclose any material fact;
- (d) fails to pay to the Board within the prescribed period any contribution, interest or penalty which he is liable to pay under this Act;
- (e) obstructs or assaults any member or staff of the Fund in the discharge of his duties;
- (f) fails to comply with any regulations made under this Act as a result of which there is a loss to the Fund or as a result of which the members' accounts cannot be credited with their contributions or his records cannot be maintained;
- (g) fails without lawful excuse to produce documents required to be produced under this Act;

(h) knowingly deducts from the members' salary a sum in respect of a contribution to the Fund, greater than the members' share of the statutory contribution, commits an offence and on conviction shall be liable to a fine of not less than fifty million shillings but not exceeding one hundred million shillings or to imprisonment for a term not less than one year but not exceeding five years or to both.

(2) The court before which any person is convicted of an offence under this Act may, without prejudice to any civil remedy, order that person or employer to pay to the Fund the amount which is-

- (a) due for contribution together with any interest or penalty thereon; and
- (b) certified to be due from such person or employer at the date of conviction,

and the amount may be recovered in the same manner as a fine.

(3) Notwithstanding anything to the contrary contained in any law relating to the jurisdiction of such magistrate, a magistrate other than a primary court magistrate shall have jurisdiction to try any offence under this section.

General penalty

69. A person who contravenes any provision of this Act where no specific penalty is provided, commits an offence and on conviction shall be liable to a fine not exceeding fifty million shillings or to imprisonment for a term not exceeding four years or to both.

Liability for acts of bodies of persons

70. Where an offence is committed under this Act by an association of persons, whether corporate or unincorporated and such association is found to have committed an offence with the knowledge or connivance of, or is attributable to any act or default on the part of any person or persons in apparent control of the association of persons, such person or persons shall be deemed to have committed the offence.

Protection for
acts done in good
faith
Cap. 16
Cap. 76

71. Without prejudice to the provisions of section 284A of the Penal Code or section 3 of the Public Officers (Recovery of Debts) Act, no act or thing done or omitted to be done by any trustee or by any member, servant or agent of the Board shall, if done or omitted to be done in good faith in execution or purported execution of his duties as a trustee, member, servant or agent, shall subject that person to any action, liability or demand.

Suits against
Board

72.—(1) The suit shall not be commenced against the Board without issuance of a three months written notice of the intention to commence the suit served upon the Board by the intending plaintiff or his agent.

(2) The notice under this section shall state the cause of action, the name and address of place of abode of the intending plaintiff and the relief sought.

(3) Notwithstanding the provisions of any written law to the contrary, where any judgment or order is obtained against the Board, no execution or attachment or process of that nature shall be issued against the Board, or against any property of the Fund, except that the Director General shall cause to be paid out of the revenue of the Fund the amount as may by judgment or order be awarded against the Board to the person entitled to it.

PART IX

GENERAL PROVISIONS

Contribution
under former
schemes

73. In computing benefits of members, the Scheme shall treat the contributions of such members in the repealed Schemes as if it were contributions made in accordance with this Act.

Totalisation of
periods and
benefits
Cap. 50

74.—(1) A member who has changed his employment from public service to any employer in private sector his membership shall be transferred to the National Social Security Fund and shall become a member subject to the provisions of the National Social Security Fund Act.

(2) Notwithstanding the transfer of membership under subsection (1), the contributions and his proportional share to the assets of the Fund of such member shall not be transferred to the National Social Security Fund:

Provided that, member's benefits and contribution periods in the Fund and the National Social Security Fund shall be totalised in accordance with the totalisation guidelines prescribed by the Division.

Inspectors

75.–(1) The Board may appoint inspectors from amongst employees of the Fund.

(2) An inspector appointed for the purpose of administration of the Fund under this Act may, in execution of his duties, enter at all reasonable times, any premises or place of trade or business where he has reasonable cause to believe that persons are being employed in respect of whom contributions are payable under this Act, and may-

- (a) make any examination or inquiry to satisfy himself that the provisions of this Act are being complied with;
- (b) question any employer, employee or any other person on any matter concerning the application of or compliance with any of the provisions of this Act; or
- (c) require the production for examination of any book, register, account, receipt or other document relating to contributions or to liability to register or contribute under this Act, and may make a copy of or an extract from any such document.

(3) Notwithstanding subsection (1), the Minister may appoint any public officer to be an inspector for the purposes of this Act and may, subject to such conditions and limitations as he may specify in the appointment, confer on that public officer all or any of the functions of an inspector under this Act.

(4) Every inspector shall be furnished with a certificate of his appointment issued by appointing authority, and, if so required, on applying for admission to any premises or place for the purposes of this Act, shall produce the certificate to

the occupier or the person holding a responsible position of management at such premises or place.

- (5) Any person who-
- (a) obstructs an inspector in the exercise of his powers under this Act;
 - (b) refuses or neglects to answer any question; or
 - (c) refuses to furnish any information or to produce any documents when required to do so,

commits an offence and on conviction shall be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding six months or to both.

(6) A refusal by the employer to allow a member of the Fund to access records shall constitute an offence.

Powers to make regulations

- 76.** The Minister may, make regulations prescribing for-
- (a) the manner of payment of benefit and collection of contributions;
 - (b) forms in which particulars and returns shall be submitted;
 - (c) the procedure of dealing with unclaimed monies in the Fund; and
 - (d) anything which may be necessary for the better carrying out of any of the provisions of this Act.

PART X REPEALS, SAVINGS AND TRANSITIONAL PROVISIONS

Repeal and savings
Acts Nos.
2 of 1999
14 of 1978
8 of 2013
9 of 2006

77.-(1) Repeals the Public Service Retirement Benefit Act, the PPF Pensions Fund Act, the GEPF Retirement Benefits Fund Act and the LAPF Pensions Fund Act.

(2) Notwithstanding the repeal of the Public Service Retirement Benefit Act, the PPF Pensions Fund Act, the GEPF Retirement Benefits Fund Act and the LAPF Pensions Fund Act-

- (a) all regulations, rules, orders and any other subsidiary legislation made under the Public Service Retirement

Benefit Act, the PPF Pensions Fund Act, the GEPF Retirement Benefits Fund Act and the LAPF Pensions Fund Act and which were in force before the effective date shall, in so far as they are consistent with this Act, remain in force until they are revoked;

- (b) all appointments and directions made, issued or given under the provisions of the Public Service Retirement Benefit Act, the PPF Pensions Fund Act, the GEPF Retirement Benefits Fund Act and the LAPF Pensions Fund Act shall continue to be valid unless they are revoked, cancelled or otherwise cease by reason of affluxion of time; and
- (c) unless the context requires otherwise any reference in any written law to Public Service Retirement Benefit Act, the PPF Pensions Fund Act, the GEPF Retirement Benefits Fund Act and the LAPF Pensions Fund Act shall be construed as references to this Act.

Existing contracts **78.** Subject to the provisions of this Act, all deeds, bonds, agreements, instruments and working arrangements subsisting immediately before the commencement date affecting any of the property transferred shall be of full force and effect against or in favour of the Fund and enforceable as fully and effectually as if the Fund has been named therein or had been a party thereto instead of former schemes.

Pending disciplinary proceedings **79.** Where immediately before the commencement date-

- (a) any disciplinary proceedings have been initiated against any employee of the former schemes and such proceedings are still pending before the former schemes or in the course of being heard or investigated by the former schemes or had been heard or investigated by the former schemes and no order or decision had been rendered thereon; or
- (b) any such employee or an officer has been interdicted or suspended,

the Board shall-

- (i) in the case of paragraph (a), carry on and complete the hearing, investigation and make an order or render a decision, as the case may be; and
- (ii) in the case of paragraph (b), deal with such employee or officer in such manner as it deems appropriate, having regard to the offence against him, including the institution and completion of disciplinary proceedings and the making of any order or the rendering of a decision as the case may be, as if those disciplinary proceedings had been commenced by the Board to which the employee or an officer would be employed.

Members,
pensioners and
beneficiaries of
former schemes

80.-(1) A member, pensioner or beneficiary of a former scheme shall be transferred to the Fund and shall, with effect from the date of transfer, be deemed to be a member, pensioner or beneficiary of the Fund as if he was registered under this Act.

(2) A member, pensioner or beneficiary who at the time of commencement of this Act was in receipt of pension or any other benefit from the former schemes shall receive such pension or other benefit from the Fund as if he was a member, pensioner or beneficiary of the Fund.

Voluntary
schemes

81. All voluntary schemes and their respective funds, members and beneficiaries which were administered by the former schemes shall be transferred to the Fund and their respective trust deeds shall be deemed to have been entered by the Board.

Vesting of assets
and liabilities
Acts Nos.
2 of 1999
14 of 1978
8 of 2013
9 of 2006

82. The Fund shall, with effect from the effective date, take over all the assets and liabilities which, immediately before the commencement date were exercisable in accordance with the provisions of the Public Service Retirement Benefit Act, the PPF Pensions Fund Act, the GEPF Retirement Benefits Fund Act and the LAPF Pensions Fund Act.

Rights and obligations Acts Nos. 2 of 1999 14 of 1978 8 of 2013 9 of 2006

83. Powers, rights, privileges, duties or obligations which, immediately before the commencement date were exercisable in accordance with the provisions of Public Service Retirement Benefit Act, the PPF Pensions Fund Act, the GEPF Retirement Benefits Fund Act and the LAPF Pensions Fund Act shall, as from that day, devolve to the Fund.

Investments

84. The Fund shall, with effect from the effective date, take over-

- (a) investments of the former schemes; and
- (b) legal entities that were incorporated or owned by the former schemes,

and shall be deemed to be owned by the Fund under this Act.

Pending legal proceedings

85.—(1) Any legal proceedings pending before any court or other tribunal which were commenced immediately before the effective date and to which former scheme is a party may, in so far as they relate to any property, right, liability or obligation vested or deemed to have been vested in the Fund by this Act which, after the commencement of this Act, be continued by or against the Fund.

(2) Where any proceedings were instituted by or against the former scheme before the commencement of this Act, in respect of any right, liability or obligation vested in former scheme, the Fund and every other party to those proceedings may take all objections and exceptions as might have been taken in proceedings by or against the former scheme.

(3) All complaints and claims lodged to or against the former schemes shall be presumed to be complaints under this Act.

Transition period

86.—(1) There shall be a transition period of six months commencing from the date of commencement of this Act.

(2) Subject to this Act and not later than the expiration of the transition period, all legal and other necessary measures shall be taken to facilitate the winding up of the affairs and business of the Public Service Pension Fund, the PPF Pensions

Fund, the GEPF Pension Fund and the LAPF Pensions Fund and the effectual transfer and vesting in the Fund of its assets and liabilities.

(3) Notwithstanding subsection (1), the Minister may extend the transition period for a further period as may be required.

Provision
regarding
employees
Cap. 298

87. The provisions of the Public Service Act shall apply in relation to matters relating to employees of the former schemes.

PART XI CONSEQUENTIAL AMENDMENTS

Omitted

88-127. [Omitted.]

SCHEDULE

(Made under section 10(1))

PROVISIONS RELATING TO THE BOARD

Composition of
Board

- 1.**—(1) The Board shall be composed of-
- (a) a Chairman who shall be appointed by the President;
 - (b) a member representing the Ministry responsible for social security;
 - (c) a representative from the Ministry responsible for local government authorities;
 - (d) a representative of the Ministry responsible for finance;
 - (e) a law officer representing the Attorney General;
 - (f) two members representing most representative employers organisation;
 - (g) two members representing the most representative employees organisation; and
 - (h) one member appointed by the Minister from amongst persons who possess knowledge and experience in social security matters.
- (2) The members referred to under paragraph (b) to (g) shall be appointed by the Minister upon recommendation by the respective institutions.
- (3) In appointing members under paragraph (1)(g) the Minister shall ensure that the members are appointed from different associations.

- Inability to attend meetings 2.-(1) Where any member appointed pursuant to paragraph 1(1) is by reason of illness, infirmity or absence from the United Republic unable to attend any meeting of the Board, the Minister may appoint a temporary member in his place and the temporary member shall cease to hold office on the resumption of office of the substantive member.
- (2) When attending meetings of the Board in place of a member, the temporary member appointed under subparagraph (1) shall for all purposes be deemed to be a member of the Board.
- Tenure of office 3. Every member of the Board shall hold office for a term not exceeding three years and shall be eligible for reappointment.
- Secretary of the Board 4. The Director General shall be the Secretary to the Board and may take part in all proceedings of the Board but shall not be entitled to vote.
- Resignation and revocation of appointment 5. Any member of the Board may at anytime resign his office by a written notice addressed to the Chairman and, in the case of the Chairman, by a written notice addressed to the Minister.
- Delegation of powers 6. Notwithstanding any provisions of this Act, the Board may appoint any person or establish any committee in respect of any matter relating to the management, investment and administration of the Fund.
- Power to grant loans 7. The Board may grant loans and make advances to its officers and employees on such terms and conditions as it may determine.
- Disqualification from membership of the Board 8. A person shall be disqualified from being appointed as a member of the Board and shall cease to be as such if that person-
- (a) is of unsound mind or is otherwise incapable of performing duties of a member;
 - (b) has been convicted of an offence and sentenced to imprisonment for a term of not less than one year;
 - (c) who has been convicted of an offence involving fraud or dishonesty; or
 - (d) is declared bankrupt by the court of law.
- Duty to disclose conflict of interest 9.-(1) Every member of the Board, or committee, having directly or indirectly by himself, his spouse or children, any interest in any matter under discussion by the Board or any committee of which he is a member, shall disclose to the Board or committee, as the case may be, the fact of his interest and the nature thereof as soon as practicable after the relevant fact has come to his knowledge.
- (2) Any member of the Board or committee who fails to disclose his interest as provided under subparagraph (1), commits an offence and on conviction, shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding five million shillings or to both.

(3) Every declaration under this paragraph shall be recorded in the meeting of the Board or committee, and after any such declaration the member of the Board or committee, as the case may be, shall-

- (a) not take part nor be present in the decision of the Board or committee on the matter; and
- (b) be disregarded for the purposes of constituting a quorum of the Board, or committee for such deliberation or decision.

(4) No act or proceedings of the Board or committee shall be invalidated on the ground that a member of the Board or committee has contravened the provisions of this paragraph.

Proceedings of
Board

10.-(1) In the performance of its functions, the Board shall meet four times in a year but the Chairman may, as and when deemed expedient, call for an extraordinary meeting of the Board.

(2) The Board may upon such terms as it may determine, invite to its meetings, any person who is qualified or necessary to contribute to the proper and efficient discharge of the functions of the Board as provided under this Act.

(3) A half of the total number of members in the meeting shall constitute the quorum at that meeting.

(4) The Board shall elect one of its members to become the Vice Chairman during their tenure.

(5) The Chairman shall preside over the meetings of the Board and in his absence the Vice Chairman.

(6) In the event of both the Chairman and Vice Chairman being absent, members present shall appoint one of the members to preside over the meeting.

(7) At a meeting of the Board, a decision of the majority of the members present and voting shall be deemed to be decision of the Board and, in the event of an equality of votes the person presiding over the meeting, shall have a casting vote.

(8) Subject to this Act, the Board shall have powers to regulate its procedure in relation to its meetings and the transactions of its business.