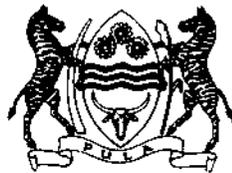


**THE RETIRING BENEFITS (NON-DESIGNATED OFFICERS) ACT, 1967**

No. 43



of 1967

**AN ACT TO PROVIDE RETIREMENT BENEFITS FOR PENSIONABLE OFFICERS WHO ARE NOT DESIGNATED OFFICERS FOR THE PURPOSES OF THE OVERSEAS SERVICE (BECHUANALAND PROTECTORATE) AGREEMENT, 1962, OR LOCAL OFFICERS**

Date of Assent: 19.10.67.

Date of Commencement: 20.10.67.

ENACTED by the Parliament of Botswana.

**Short Title and Application**

1. (1) This Act may be cited as the Retiring Benefits (Non-Designated Officers) Act, 1967.

(2) The provisions of this Act shall apply to persons who were holding permanent pensionable office in the service of the Government of the Bechuanaland Protectorate on the operative date who are –

- (a) not designated officers as defined in clause 1 of the Overseas Service (Bechuanaland Protectorate) Agreement, 1962; and
- (b) not citizens of Botswana; and

- (c) subject to the provisions of the Schedule, not persons serving on probation or serving for a specified term under a contract of employment:

Provided that nothing in paragraph (b) shall render an officer ineligible for the benefits provided for in this Act who is both a citizen of another country and of Botswana and who became a citizen of Botswana under the provisions of section 20 of the Constitution, where such officer has renounced his citizenship of Botswana under the provisions of section 9 of the Citizenship of Botswana (Supplementary Provisions) Law, 1966 (Law No. 39 of 1966) and who ceases to be, or who is deprived of, his Botswana citizenship on or before the 30th September, 1968.

#### **Interpretation**

2. In this Act unless inconsistent with the context –

“Botswana” in relation to any period of time prior to the 30th September, 1966, means the Bechuanaland Protectorate;

“entitled officer” means a person to whom the provisions of this Act apply;

“operative date” means the 1st May, 1966;

“scheme” means the Scheme of Retirement Benefits for Pensionable Non-Designated Expatriate Officers published by the Government of the Bechuanaland Protectorate on the 22nd April, 1966;

“this Act” includes the Schedule thereto.

#### **Application of Schedule**

3. The provisions of the Schedule to this Act shall have effect in relation to the public service of Botswana.

#### **Transitional Provisions**

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

(2) Where any officer has before the commencement of this Act and on or after the operative date in pursuance of any provisions of the scheme given any undertaking or given or received any notice or retired or received any benefit he shall, provided the conditions prescribed or deemed to have been prescribed by

or under the Schedule are satisfied, be deemed to have given that undertaking, to have given or received that notice, or to have retired, or to have been granted or received that benefit, as the case may be, under the corresponding provisions of that Schedule and shall have effect accordingly.

(3) Any officer who was, prior to the 30th September, 1966, required to retire to facilitate the localisation of the public service of the Bechuanaland Protectorate shall, for the purposes of the Schedule be deemed to have retired under section 12 of the Botswana Independence Order, 1966.

#### **Amendment of Schedule**

5. The President may amend the Schedule by order in the *Gazette* :

Provided that the Schedule shall not be amended in a manner inconsistent with the scheme unless no entitled officer is or may be prejudiced by such amendment.

### **SCHEDULE**

(Section 3)

#### **Interpretation, etc.**

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

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

“General Orders” means the General Orders of the Government;

“paragraph” means a paragraph of this Schedule;

“pensionable emoluments” means, subject to the provisions of paragraph 10, the emoluments that may be taken into account in computing the pension of an officer under the appropriate law;

“pensionable service” means the aggregated amount of service that may be taken into account for the purpose of computing the pension of an officer under the appropriate law;

“Public Service Commission” means, in relation to an entitled officer to whom the provisions of section 111 (2) of the Constitution are applicable, the authority which, in terms of the Constitution, is empowered to remove such officer from office;

“subparagraph” means a subparagraph of the paragraph in which the word occurs.

(2) For the purposes of this Schedule –

- (a) a person shall not be regarded as holding any office on the operative date if on that date he was on leave of absence pending his retirement otherwise than under this Schedule;
- (b) a person whose office has been abolished and who retires in consequence of the abolition of his office shall be deemed to be the substantive holder of that office during the period between the date on which the office was abolished and the date of expiration of any leave of absence granted to him pending his retirement.

(3) Where an officer who is serving on probation or under a probationary agreement and who would, if confirmed in his appointment, be an entitled officer, is required to retire under section 12 of the Botswana Independence Order, 1966, or is superseded in the manner described in paragraph 3 he shall, on being required, or on being given permission, to retire be confirmed in his appointment, whereupon he shall become an entitled officer.

(4) For the purposes of this Schedule resident service shall include, and shall not be deemed to have been interrupted by, not more than fourteen days vacation leave in any one calendar year utilized as casual or local leave.

#### **Entitlement to Pension**

2. (1) Subject to the provisions of the Schedule every entitled officer who –
- (a) elects to retire from the pensionable service under this Schedule; or
  - (b) is required to retire under section 12 of the Botswana Independence Order, 1966, or is superseded in the manner described in paragraph 3;
  - (c) retires on the grounds enumerated in subparagraphs (ii) to (v) inclusive of section 7(1) (a) of the Pensions (Consolidation) Law, 1965;

on or after the operative date, shall be entitled to a pension at the rate of one sixhundredth of his pensionable emoluments in respect of each month of pensionable service.

(2) An entitled officer on his retirement under this Schedule may be granted at his option (such option to be exercised in accordance with the provisions of regulation 24 of the Second Schedule to the Pensions (Consolidation) Law, 1965) either –

- (a) a pension in the amount prescribed in subparagraph (1); or
- (b) a reduced pension equal to such fraction as he may desire of the pension that may be granted (being not less than three quarters) in terms of subparagraph (1) together with a gratuity equal to the annual amount of the remaining fraction of that pension multiplied by the appropriate factor prescribed in the Appendix.

(3) Notwithstanding the provisions of subparagraph (2) (b) where an entitled officer remains in the service on pensionable terms for not less than two year's resident service (inclusive of the period of notice but exclusive of any vacation leave due to him) he may be granted a reduced pension equal to such fraction as he may desire of the pension that may be granted in terms of subparagraph (1), being not less than three quarters less an additional one sixteenth for every completed year of service after the operative date (excluding any deferred leave accumulated prior to the operative date), together with a gratuity calculated in the manner prescribed in that subparagraph.

#### **Superseded Officers**

3. (1) Where an entitled officer qualified for promotion to a vacant post is, in the opinion of the Public Service Commission, the person best qualified to fill that post and would have been recommended for appointment to it had he been a citizen of Botswana, but is not so recommended, and a citizen of Botswana is, thereafter, appointed to the post, the Public Service Commission shall notify the entitled officer accordingly.

(2) An officer who is superseded in the manner described in subparagraph (1) shall be entitled, on receiving notice under subparagraph (1), to give notice forthwith to the Public Service Commission of his retirement under this Schedule:

Provided that the provisions of (1) to (3) of paragraph 6 shall apply in relation to the giving of notice if the officer fails, within six months of the receipt of notification under subparagraph (1) to give notice under the provisions of this subparagraph.

(3) An officer who retires under the provisions of this paragraph shall be entitled to the following benefits –

- (a) a pension or reduced pension and gratuity in accordance with the provisions of paragraph 2;
- (b) an additional allowance in accordance with the provisions of paragraph 5;
- (c) the benefits prescribed in paragraph 6(6).

#### **Officers Required to Retire under Section 12 of the Botswana Independence Order, 1966**

4. An entitled officer who is required to retire under the provisions of section 12 of the Botswana Independence Order, 1966 shall be entitled to the following benefits –

- (a) a pension or reduced pension and gratuity in accordance with the provisions of paragraph 2;
- (b) an additional allowance in accordance with the provisions of paragraph 5;
- (c) the benefits prescribed in paragraph 6(6).

#### **Additional Allowance for Officers to Whom Paragraphs 2(3), 3 and 4 Apply**

5. (1) The provisions of this paragraph shall apply to an entitled officer –
- (a) who is required to retire under section 12 of the Botswana Independence Order, 1966;
  - (b) to whom the provisions of paragraph 3 apply;
  - (c) to whom the provisions of paragraph 2(3) apply.

(2) An officer to whom the provisions of this section apply shall be entitled to an annual allowance calculated at the rate of one two-thousand-one-hundred and-sixtieth of his unaveraged annual pensionable emoluments at the date of his retirement for each complete month of his pensionable service:

Provided that such allowance shall not, when added to the officer's pension under paragraph 2 (2) (a) exceed either the pension for which he would have been eligible under the Pensions (Consolidation) Law, 1965, if he had continued to hold the office held by him at the date of his retirement until he had reached the age of fifty-five years and then retired having been granted all increments of salary for which he would have been eligible by that date, or two-thirds of the highest pensionable emoluments enjoyed by him during his service with the Government of Botswana, whichever is the lesser amount.

(3) An officer entitled to an allowance under subparagraph (1) may be granted at his option (such option being exercised in accordance with the provisions of regulation 24 of the Second Schedule to the Pensions (Consolidation) Law, 1965) either –

- (a) such allowance;
- (b) a reduced allowance equal to such fraction as he may desire of such allowance together with a gratuity equal to the annual amount of the remaining fraction of that allowance multiplied by the appropriate factor prescribed in the Appendix;
- (c) a gratuity calculated by multiplying such allowance by the appropriate factor prescribed in the Appendix.

#### **Retirement**

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

Provided that notice may not be given during a period of vacation leave save with the consent of the Public Service Commission which may, as a condition of giving such consent, require the officer to complete a period of six months' resident service prior to retirement.

(2) An entitled officer who has given notice of his intention to retire under

this paragraph on any date may, with the consent of the Public Service Commission, withdraw the notice at any time before that date.

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

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

(4) An entitled officer –

- (a) who is permitted to retire by reason of injury or ill health;
- (b) who is required to retire on or after his attainment of any age prescribed by law, being under the age of fifty-five years;
- (c) who is required to retire in consequence of the abolition of his office or for the purpose of facilitating improvements in the organisation of the part of the public service to which he belongs by which greater economy or efficiency may be effected;
- (d) who is required to retire in the public interest;
- (e) who is required to retire under section 12 of the Botswana Independence Order 1966; or,
- (f) in the case of a woman officer, who is required to retire upon her marriage,

shall be deemed to have retired under this paragraph.

(5) In the case of an entitled officer who retires under subparagraph (1) of this paragraph and —

- (a) who is on leave of absence after completing a tour of residential service –
  - (i) if he returns to Botswana for further duty at the requirement of the Government he shall be provided with such passages for himself and his family and such baggage facilities as an officer of similar status is entitled to under General Orders when returning to Botswana for a tour of duty, and when retiring from the public service having attained the age of fifty-five years and having completed a final tour of resident service;
  - (ii) if he returns to Botswana to settle his affairs and on his return completes a tour of resident service of not less than twelve months, he will be paid the cost of passages for himself and his family and of transporting his baggage to Botswana (but not exceeding the cost of such passages and baggage facilities as an officer of similar status is entitled to under General Orders when returning to Botswana for a tour of duty) and provided with such passages for himself and his family and such baggage facilities as an officer of similar status is entitled to under

General Orders when retiring from the public service having attained the age of fifty-five years and having completed a final tour of resident service;

- (iii) if he does not return to Botswana, he shall be provided with such baggage facilities as an officer of similar status is entitled to under General Orders when retiring from the public service having attained the age of fifty-five years and having completed a final tour of resident service;

(b) who retires in any other circumstances –

- (i) he shall not be required to depart from Botswana on leave of absence pending his retirement until the expiration of a period of six months from the date upon which he gave notice under the provisions of this paragraph;
- (ii) he shall be provided with such passages and baggage facilities as an officer of similar status is entitled to under General Orders when retiring from the public service having attained the age of fifty-five years and having completed a final tour of resident service.

(6) In the case of the retirement of an entitled officer who is required to retire in the circumstances described in subparagraph (4) (c) or (e) of this paragraph or who retires under paragraph 3 –

(a) who is on leave of absence after completing a tour of resident service –

- (i) he shall, if the period of leave on full pensionable emoluments for which he is eligible on the date upon which he is given notice requiring him to retire or upon which he gives notice is less than six months, be granted such additional leave on full pensionable emoluments as will bring the aggregate period of such leave of absence from that date up to six months; and
- (ii) he shall (if he returns to Botswana to settle his affairs) be provided with a passage to Botswana for his own use as if he were returning to Botswana for a further tour of resident service and such passage and such baggage facilities as an officer of similar status is entitled to under General Orders when retiring from the public service having attained the age of fifty-five years and having completed a final tour of resident service;
- (iii) in the case of the retirement of an entitled officer in the circumstances described in subparagraph (4) (e) of this paragraph and who returns to Botswana to settle his affairs, he shall be paid a subsistence allowance at the rate prescribed by General Orders for the period (but not exceeding twenty-one days) of his stay in Botswana;

(b) who retires in any other circumstances –

- (i) he shall not be required to depart from Botswana on leave of absence pending his retirement until the expiration of a period of six months from the date upon which he was given notice requiring him to retire ;
- (ii) he shall be provided with such passages and baggage facilities as an officer of similar status is entitled to under General Orders when retiring from the public service having attained the age of fifty-five years and having completed a final tour of resident service.

(7) Subject to the provisions of this paragraph and of paragraph 13 an entitled officer shall, on retirement under the provisions of this Schedule, be entitled to all vacation leave on full pensionable emoluments as may have accrued to him under General Orders at the date of his retirement.

#### **Death of Entitled Officer**

7. (1) Where an entitled officer dies there may be granted to his personal representative the gratuity prescribed in section 16 of the Pensions (Consolidation) Law, 1965 :

Provided that –

- (a) in computing such gratuity no account shall be taken of any moneys payable under paragraph 5 ;
- (b) any reference in section 16 –
  - (i) to pensionable emoluments shall be construed as a reference to pensionable emoluments defined in paragraph 1 ;
  - (ii) any reference to a pension or gratuity granted under the provisions of the Pensions (Consolidation) Law, 1965, (other than to a gratuity under section 16), shall be construed as a reference to the analogous pension or gratuity granted under this Schedule.

(2) Where an entitled officer, who has been given permission to retire, or has been given notice of compulsory retirement or who has remained in the service for a period of not less than two years from the operative date in circumstances entitling him to an additional allowance in accordance with the provisions of paragraph 5 dies in office or on leave prior to retirement, his personal representatives shall, in addition to any benefits to which they may otherwise be entitled under this paragraph, receive such additional allowance as the officer would have been entitled to receive had he retired under this Schedule at the date of his death and elected to commute the allowance.

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

### **Disciplinary Proceedings and Dismissal**

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

(2) Where any person who is serving as an entitled officer is found guilty of misconduct, the Financial Secretary may, with the concurrence of the appropriate commission in accordance with the provisions of section 118 of the Constitution, withhold, reduce in amount or suspend any benefit under this Schedule which such officer has not already received.

(3) For the purposes of this Schedule the provisions of section 11 of the Botswana Independence Order, 1966, shall apply in relation to any decision of the nature described in subsection (1) of that section, including a decision of the nature described in subparagraph (2), as if references in that section to benefits were construed as references to benefits under this Schedule and as if the entitled officer were an officer of the class described in subsection (7) of section 11.

### **Place of Payment and Rate of Exchange**

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

- (a) in the United Kingdom;
- (b) in Botswana;
- (c) in the country from which the officer was recruited or where he intends to reside;
- (d) in the case of payment to the personal representatives of an officer or his dependants, in the country in which the personal representatives or the dependants, as the case may be, reside; or
- (e) in such other country as the officer or his personal representatives or dependants may, with the concurrence of the Financial Secretary, select;

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

### **Application of Appropriate Law**

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

Provided that –

- (a) notwithstanding anything to the contrary in the Pensions (Consolidation) Law, 1965, but subject to the provisions of paragraph 15, the pensionable emoluments of an entitled officer who –
  - (i) is required to retire under section 12 of the Botswana Independence Order 1966 ; or
  - (ii) retires under paragraph 3 ; or
  - (iii) on or after the operative date has been required as a condition of an offer of promotion to undertake to serve the Government of Botswana for a period of not less than twenty-four months' resident service beginning from the effective date of promotion, or the operative date, whichever is the later ;
  - (iv) has his office abolished under section 7(1) (a) (ii) of the Pensions (Consolidation) Law, 1965 ;
  - (v) is compulsorily retired under section 7(1) (a) (iii) of the Pensions (Consolidation) Law, 1965 ;
  - (vi) is required to retire under section 9 (b) of the Pensions (Consolidation) Law, 1965, only ;shall be calculated solely on the basis of the emoluments which the officer was drawing at the date of his retirement ;
- (b) section 11 of the Pensions (Consolidation) Law, 1965, shall not apply in relation to any pension granted under the provisions of this Schedule.

### **Exemption from Tax**

11. (1) Any gratuity payable under any of the provisions of this Schedule shall be exempt from tax under any law in force in Botswana relating to the taxation of incomes or imposing any other form of taxation.

(2) For the purposes of this section a gratuity shall not include an additional allowance payable under paragraph 5 or a pension.

### **Exercise of Options**

12. Subject to the provisions of paragraph 6(2) any option exercisable by any person for the purposes of this Schedule –

- (a) shall be irrevocable after the end of the period within which it is to be exercised;
- (b) shall be exercised by notice in writing to the Public Service Commission;
- (c) shall be deemed to have been exercised on the date on which the notice is received;

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

#### **Re-engagement on Contract**

13. (1) Where an entitled officer who intends to retire is re-engaged on contract terms the contract shall commence with effect from the first day of the month following the officer's acceptance of the offer of contract employment and the day immediately preceding the date of the commencement of the contract shall be regarded as the date of retirement for the purposes of this Schedule and any leave due to the officer on such date shall not form part of the pensionable service of the officer for the purposes of such Schedule but shall be deemed to have accrued under the contract.

(2) An entitled officer who has retired under this Schedule and who is re-engaged on contract terms shall be entitled during the period of the contract both to any pensions or allowance payable to him under this scheme and to his remuneration under the contract.

#### **Special Gratuity for Certain Officers**

14. (1) Where any entitled officer to whom Part III of the Second Schedule to the Pensions (Consolidation) Law, 1965, applies retires under this Schedule and is granted by any government or other authority that is a Scheduled Government for the purposes of that Part both a pension and a gratuity, having elected to receive that pension and that gratuity in lieu of a pension of greater amount, he may be granted (in addition to any gratuity which may otherwise be granted him under this Schedule) a gratuity equal to the amount (if any) by which the amount produced by --

- (a) subtracting the annual amount of the pension granted to him by the Scheduled Government from the annual amount of the pension that would have been granted to him by that Government had he not elected to receive the gratuity granted to him by the Scheduled Government; and
- (b) multiplying the resulting amount by the appropriate factor prescribed in the Appendix;

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

### Penalty for Breach of Undertakings

15. Notwithstanding anything to the contrary in this Schedule, where an entitled officer has on or after the operative date been required as a condition of an offer of promotion to undertake to serve the Government of Botswana for a period of not less than twenty-four months' resident service beginning from the effective date of promotion or the operative date, whichever is the later, and who has accepted such offer, breaks his undertaking, his pensionable emoluments for the purposes of this Schedule (other than for the purposes of paragraph 5) shall be calculated in accordance with the provisions of the Pensions (Consolidation) Law, 1965, and the provisions of the first proviso to paragraph 10 shall not apply in relation to such officer.

### APPENDIX

#### Commutation of Pension Under Compensation Arrangements

Table Showing the Lump Sum to be paid for the  
Commutation of Each £1 p.a. of Pension

<i>Age of Officer</i>	<i>Factor</i>	<i>Age of Officer</i>	<i>Factor</i>
25	17.08	40	15.07
26	16.97	41	14.90
27	16.86	42	14.73
28	16.74	43	14.55
29	16.62	44	14.36
30	16.50	45	14.17
31	16.38	46	13.97
32	16.25	47	13.76
33	16.12	48	13.54
34	15.98	49	13.32
35	15.84	50	13.08
36	15.70	51	12.84
37	15.55	52	12.59
38	15.40	53	12.50
39	15.24	54 or over	12.50

#### INSTRUCTIONS FOR OBTAINING THE APPROPRIATE FACTOR FOR COMMUTATION

- I. Read off the table the factor for the officer's age –
  - (a) at his last birthday;
  - (b) at his next birthday;

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

III. Subtract II from I(a) which is the factor required.

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

Passed by the National Assembly this day, the 31st August, 1967.

G.T. MATENGE,  
Clerk of the National Assembly.