

PENSIONS (TRANSFER OF RESPONSIBILITY) (UNITED KINGDOM AGREEMENT) ACT

ARRANGEMENT OF SECTIONS

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Citation

An Act to implement the agreement concluded between the Government of the Federal Republic of Nigeria and the Government of the United Kingdom transferring from Governments in Nigeria to the British Government responsibility for the administration and payment of pensions to certain British subjects who had retired from the public service of the Federation or of a State before 1 July 1979 and those retiring after that date.

[1979 No. 25.]

[1st July, 1979]

[Commencement.)

1. Transfer of responsibility concerning pensions of certain expatriate officers, etc.

(1) As from the commencement of this Act, the payment of pensions to certain British subjects who had retired or hereafter retired from any office in any public service in the Federation specified in the Agreement contained in the Schedule to this Act shall no longer be the responsibility of the Government of the Federation or, as the case may require, the Government of a State but shall devolve upon and shall be the responsibility of the Government of the United Kingdom of Great Britain and Northern Ireland in accordance with the terms of the said Agreement.

[Schedule.]

(2) As from the coming into force of this Act, the provisions of any enactment or law relating to pensions shall not apply to pensions covered by the Agreement and accordingly, the provisions of any such enactment or law shall be read subject to the provisions of this Act.

1. Short title

This Act may be cited as the Pensions (Transfer of Responsibility) (United Kingdom Agreement) Act.

SCHEDULE

[Section 1 (1).]

Agreement between the Government of the Federal Republic of Nigeria and the Government of the United Kingdom of Great Britain and Northern Ireland concerning public officers' pensions

ARTICLE 1

Interpretation

(1) In this Agreement, except where the context otherwise requires-

(a) "**actuary**" means a Fellow of the Institute of Actuaries or of the Faculty in Scotland;

(b) "**the appointed day**" means the day mutually arranged between the Government of the United Kingdom and the Government of Nigeria;

(c) "the British element" in relation to a pension means-

(i) (a) in respect of a pension arising from death resulting from an injury

on duty or a pension or additional pension arising from such an injury, being an injury received before the operative date, the whole cost;

(b) in respect of a widows' and orphans' pensions, the whole cost;

(c) in respect of compensation payable under the Nigeria (Retirement Benefits) Order-in-Council 1960, the whole cost;

(d) in respect of any other pension that proportion of the pension payable to or in respect of an officer which accrues from service before the operative date;

(ii) for the purposes of sub-paragraph (i) of this paragraph the pension benefits shall be calculated according to the pensions laws in force before 1974 and enacted prior to that date;

(iii) for the purposes of sub-paragraph (i) (d) of this paragraph the proportion of a pension which accrues from service before the operative date is that proportion which the total pensionable emoluments enjoyed by the officer from his public service under the Government of Nigeria or of a Region prior to the operative date bears to his total pensionable emoluments enjoyed throughout his public service under such a Government taken into account in determining the amount of such pension;

(d) "**the Nigeria element**" in relation to a pension means the full cost of the pension other than the British element;

(e) **“officer”** means-

(i) an officer so defined in-

(a) the Public Officers (Eastern Nigeria) Agreement 1961 between Her Majesty's Government in the United Kingdom and the Government of Eastern Nigeria signed at Enugu on 5 January 1962; or

(b) the Public Officers (Northern Nigeria) Agreement 1961 between Her Majesty's Government in the United Kingdom and the Government of Northern Nigeria signed at Kaduna on 18 October 1961; or

(c) the Public Officers (Western Nigeria) Agreement 1962 between Her Majesty's Government in the United Kingdom and the Government of Western Nigeria signed at Ibadan on 7 November 1962; hereinafter referred to as “the Public Officers Agreement”; or

(ii) an office who was the substantive holder of a pensionable office in the former public service of Nigeria prior to the Federation or who before 1st October 1960, was the substantive holder of a pensionable office in the public service of the Federation of Nigeria and includes a person who was before that date the substantive holder of a pensionable office in the public service of a Region, being a person-

(a) who was selected for or offered appointment to an office in such former public service of Nigeria or the public service of the Federation of Nigeria or the public service of a Region by a Secretary of State; or

(b) whose appointment to any such office was approved by a Secretary of State; or

(c) who had entered into an agreement with the Crown Agents for Overseas Governments and Administrations to serve in any such office; or

(d) who although not a person falling within subparagraphs (a), (b) or (c) of this paragraph is or has been a member of Her Majesty's Overseas Civil Service or Her Majesty's Overseas Judiciary; or

(iii) an officer who served in a West African Inter-Territorial Research Organisation who would have been an officer to whom sub-paragraphs (i) or (ii) of this paragraph applied if his office had been a pensionable office in the public service of Eastern or Western Nigeria before 8 August 1957, or in

the public service of Northern Nigeria before 15 March, 1959 or in the public service of the Federation of Nigeria before 1 October 1960; and who was not a citizen of Nigeria on 1 April 1971 or having retired from the public service or having died in public service after that date, is not or was not a citizen of Nigeria at the time of his retirement or death as the case may be;

(f) **“the operative date”** means-

(i) in respect of public service under the Government of Eastern Nigeria or the Government of Western Nigeria, 1 April 1958;

(ii) in respect of public service under the Government of Northern Nigeria, 15 March 1959;

(iii) in respect of public service under the Government of the Federation of Nigeria, 1 October 1960;

(g) **“other public service”** means public service not under the Government of Nigeria or of a Region;

(h) **“pension”** means pension, gratuity, compensation or any retiring allowance or other like benefit, or any increase of pension, or any contributions repayable to, or interest on contributions payable to any officer, payable under the pensions laws by the Government of Nigeria or a Region or by the Government of the United Kingdom to or in respect of any officer, or to the widow or child of any officer or to his legal personal representative;

(i) **“pensionable emoluments”** means-

(i) in respect of public service under the Government of Nigeria or of a Region, emoluments which count for pension under the pensions law;

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

(j) **“pensions laws”** means-

(i) in relation to pensions other than widows' and orphans' pensions, any law, regulation or administrative direction providing for the payment of pensions to officers in respect of public service and in force in Nigeria at any time prior to the appointed day and enacted prior to that date, including the Nigeria (Retirement Benefits) Order in Council 1960;

(ii) in relation to widows' and orphans' pensions' the Widows' and Orphans' Pensions Ordinance, Chapter 220 of the Laws of the Federation of Nigeria and Lagos and any amendments thereto in force at any time prior to the appointed day and enacted prior to that date (thereinafter referred to as "Chapter 220"); and

[Cap. 220.]

(iii) in relation to both widows' and orphans' and other pensions, includes the Special List Agreements;

(k) "**public service**" means-

(i) service in a civil capacity under the Government of Nigeria or of a Region or any other country or territory in the Commonwealth;

(ii) service under the East Africa High Commission, the East African Common Services Organisation, the East African Posts and Telecommunications Administration, the East African Railways and Harbours Administration, the East African Community, the East African Harbours Corporation, the East African Posts and Telecommunications Corporation or the East African Railways Corporation;

(iii) service which is pensionable-

(a) under the Overseas Superannuation Scheme; or

(b) under any Act relating to the superannuation of teachers in the United

Kingdom; or

(c) under a local authority in the United Kingdom; or

(d) under the National Health Service of the United Kingdom; or

(e) under the Post Office, United Kingdom of Great Britain and Northern Ireland;

(iv) any other service accepted by the Government of the United Kingdom and the Government of Nigeria to be public service for the purposes of this Agreement;

(v) except for the purposes of computation of a pension, gratuity or other allowance and of determination of the maximum pension grantable, service

as a Governor in respect of which a pension may be granted under the Overseas Pensions Act 1973, or any Act amending or replacing that Act;

(vi) service as the holder of the office of President, Vice-President, Justice of Appeal, Registrar, Officer or servant of the Court of Appeal for Eastern Africa established by the Eastern Africa Court of Appeal Order in Council, 1961 (United Kingdom S.I. 1961 No. 2323) or the Court of Appeal for East Africa;

(vii) service in the service of the Interim Commissioner for the West Indies;

(l) **“Special List Agreements”** means-

(i) the Special List A Agreements made in 1957 between the Government of the United Kingdom and respectively the Government of the Federation of Nigeria, the Government of the Eastern Region of Nigeria, the Government of the Northern Region of Nigeria and the Government of the Western Region of Nigeria; or

(ii) the Special List B Agreements made in 1960 between the Government of the United Kingdom and respectively the Government of the Federation of Nigeria, the Government of Eastern Nigeria, the Government of Northern Nigeria and the Government of Western Nigeria; or

(iii) the Special Lists A and B Agreements which were accepted by the Government of Mid-Western Nigeria;

(m) **“widows’ and orphans’ pensions”** means pensions payable under Chapter 220.

[1958 Laws of Nigeria.]

(2) References to the Federal Military Government of the Federal Republic of Nigeria, the Government of the Federation of Nigeria or the Government of a Region shall be construed as including references to any predecessor Government or successor Government as appropriate, and reference to public service under any such Government shall be construed as including public service on secondment to such Government under a Special List Agreement.

ARTICLE 2

Assumption of responsibilities by the Government of the United Kingdom

As from the appointed day the Government of the United Kingdom shall assume from the Government of Nigeria and from the Governments of the Regions, or, in the case of pensions payable under the Special List Agreements, maintain the responsibility for the control,

administration and payment of pensions which have been awarded before the appointed day and for the award, control, administration and payment of pensions which would fall to be awarded on or after the appointed day.

ARTICLE 3

Obligations of the Government of the United Kingdom

The Government of the United Kingdom undertake-

(a) that they shall award, control, administer and pay the pensions referred to in Article 2 of this Agreement to or in respect of the persons concerned in accordance with the principles and rules contained in the pensions laws, with such modification as may be necessary in consequence of the transfer of responsibility under this Agreement, or in accordance with such other principles and rules as the Government of the United Kingdom consistently with the next following paragraph may from time to time determine;

(b) that apart from any modifications arising from the pensions being payable out of public moneys of the United Kingdom they shall not apply to or in respect of any officer different provisions from those contained in the pensions laws (other than any provisions, express or implied, relating to the currency and method of payment of a pension) so as to make such provisions less favourable to any beneficiary or potential beneficiary than the provisions applicable to him on the appointed day:

Provided that if a beneficiary or potential beneficiary elects to have any provision applied to him, that provision shall be taken to be more favourable to him;

(c) that if the Government of Nigeria or of a Region should be adjudged by the order of a competent court of law having jurisdiction in Nigeria to be liable to pay to or in respect of an officer or the widow or child or legal personal representative of an officer any sum in respect of a pension for which the Government of the United Kingdom have assumed responsibility under this Agreement, the Government of the United Kingdom shall repay to the Government of Nigeria any sum paid to such person for the purpose of complying with the order of the court; but in this event the Government of the United Kingdom shall be free to reduce by corresponding sums, or totally to withhold, any payments of the same pension to or in respect of that person which would otherwise fall to be made by them under this Agreement.

ARTICLE 4

Obligations of the Government of Nigeria

(1) The Government of Nigeria undertake-

(a) that they shall remain responsible for any instalments of pension granted to or in respect of an officer, other than a pension payable under a Special List Agreement which remain unpaid on the appointed day;

(b) that they shall as from the appointed day relinquish responsibility for the award, control, administration and payment of any pension to or in respect of an officer otherwise than in accordance with the terms of this Agreement;

(c) that they shall pay to the Government of the United Kingdom in accordance with such arrangements as may be accepted by the two Governments-

(i) in respect of any pension awarded before the appointed day to or in respect of an officer, a sum representing the cost, if any, of the Nigeria element of such pension;

(ii) in respect of any pension (other than a widows' and orphans' pension) awarded on or after the appointed day to or in respect of an officer-

(a) that part of the sum which would represent the Nigeria element of such pension if the public service of the officer ceased on the appointed day, which is attributable to the officer's public service under the Government of Nigeria or of a Region up to the day immediately preceding the appointed day; and

(b) a sum representing forty per cent of the pensionable emoluments earned by an officer during any part of his public service under the Government of Nigeria or of a Region which occurs on or after the appointed day;

(iii) in respect of a widows' and orphans' pension awarded on or after the appointed day, a sum representing the cost, if any, of the Nigeria element of such pension.

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

ARTICLES

Supply of information

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

ARTICLE 6

Modification of previous agreement

(1) On and after the appointed day the provisions of any arrangement relating to the reimbursement of the Government of Nigeria by the Government of the United Kingdom of a proportion of the cost of a pension shall cease to apply to any pension payable to or in respect of an officer to whom this Agreement applies in respect of any pension beginning on the appointed day.

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

(3) On and after the appointed day the words "and recovered" in subparagraph (1) (b) (i) to the end of that subparagraph, and paragraphs (2) (e) (i), (2) (e) (iii), (2) (i) and (3) (j) of the Special List A Agreements shall cease to apply to or in respect of officers to whom this Agreement applies.

(4) On and after the appointed day the words "and, subject to the other provisions of this Memorandum, will be recovered from the Nigerian Government concerned" in paragraph 3, and paragraph 6 of the Special List B Agreements shall cease to apply to or in respect of officers to whom this Agreement applies.

ARTICLE 7

Modification of this agreement

If the Government of the United Kingdom and the Government of Nigeria mutually decide that this Agreement should be modified in any particular case or class of cases, the foregoing provisions of this Agreement shall be applied to such case or cases with such modifications, additions or exceptions as may be necessary to give effect to such mutual decision.

ARTICLE 8

Entry into force

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

ARTICLE 9

Citation

This Agreement may be cited as the Public Officers' Pensions (Nigeria) Agreement 1979.

SUBSIDIARY LEGISLATION

No Subsidiary Legislation