



LAWS OF KENYA



LOCAL AUTHORITIES PROVIDENT FUND ACT

CHAPTER 272

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CHAPTER 272

LOCAL AUTHORITIES PROVIDENT FUND ACT

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CHAPTER 272

LOCAL AUTHORITIES PROVIDENT FUND ACT

[Date of assent: 1st July, 1960.]

[Date of commencement: 5th July, 1960.]

An Act of Parliament to establish a provident fund for certain employees of local authorities; to provide for contributions to the fund by such employees and authorities, and for the administration of the fund by a Local Authorities Provident Fund Board; and for matters incidental thereto and connected therewith

[Act No. 44 of 1962, L.N. 2/1964, L.N. 365/1964, Act No. 9 of 1967, Act No. 13 of 1980, Act No. 12 of 1985, Act No. 19 of 1985, Act No. 18 of 1986, Act No. 13 of 1988.]

1. Short title

This Act may be cited as the Local Authorities Provident Fund Act, 1960.

2. Application

This Act shall apply to every local authority which, with the approval of the Minister, resolves to be bound by the provisions of this Act, and shall in the case of each such authority so apply from the date specified in such resolution.

3. Interpretation

In this Act, except where the context otherwise requires—

“**appointed day**”, in relation to a local authority, means the date specified in a resolution by that authority made pursuant to section 2 of this Act;

“**contributor**” means a person—

- (a) who for the time being is the holder of a designated post; or
- (b) in respect of whom any amount is standing to his credit in the Fund;

“**designated post**” means a post for the time being designated under section 7 of this Act;

“**public service**” means service under the Government and such other service as the Minister may determine to be public service for the purposes of this Act;

“**salary**” means the substantive salary payable to a contributor.

“**the Board**” means the Local Authorities Provident Fund Board established by section 5 of this Act;

“**the Fund**” means the Local Authorities Provident Fund established by section 4.

[L.N. 365/1964, Act No. 19 of 1985, Sch.]

4. Establishment of Fund

(1) There is hereby established a fund to be known as the Local Authorities Provident Fund.

(2) There shall be credited to the Fund—

- (a) all assets transferred to the Fund under section 20 of this Act;
- (b) the amounts contributed each month by contributors and local authorities under sections 8 and 10 of this Act;
- (c) all dividends and interest accruing from investments of the Fund made under the provisions of section 6 of this Act;
- (d) sums contributed by local authorities towards the expenses of management and administration of the Fund in accordance with the provisions of this section;
- (e) such other moneys as may from time to time be received by the Board to be credited to the Fund.

(3) There shall be paid out of the Fund—

- (a) all payments which from time to time fall to be made under or by virtue of the provisions of this Act;
- (b) the expenses incurred in the management and administration of the Fund.

(4) The expenses of the management and administration of the Fund including the expenses of the annual audit of the accounts of the Board shall be paid in the first instance from the Fund, and as soon as practicable after the 30th June in each year the local authorities shall reimburse such payments to the Fund, each contributing proportionately to the number of contributors in its employment.

[Act No. 18 of 1986, Sch.]

5. Establishment of the Board

(1) There is hereby established a board to be known as the Local Authorities Provident Fund Board which shall consist of the following members—

- (a) eight members appointed by the Minister, one to represent each province;
- (b) one member appointed by Nairobi City Commission;
- (c) two members appointed by the Association of Local Government Authorities of Kenya (or such other body as may for the time being have succeeded to the functions of that Association);
- (d) three members to represent members of the staffs of local authorities, appointed by the Minister after consultation with such local government associations and trade unions as he considers to be representative of those staffs;
- (e) the Principal Local Government Financial Officer.

(1A) The chairman and vice-chairman shall be appointed from among the members by the Minister.

(2) *Deleted by Act No. 9 of 1967, Sch.*

(3) *Deleted by Act No. 9 of 1967, Sch.*

(4) In the absence of the chairman from any meeting of the Board the vice-chairman shall exercise the functions of chairman.

(5) The chairman at any meeting shall have a casting vote in addition to a deliberative vote.

(6) Six members of the Board shall form a quorum.

(7) The Minister shall appoint a secretary to the Board.

(8) The Board shall be a body corporate having perpetual succession and a common seal, and may in its corporate name sue and be sued, and may, for and in connection with the purposes of this Act, purchase, hold, manage and dispose of land and other property and enter into such contracts as it may consider to be necessary or expedient.

(9) The common seal of the Board shall be authenticated by the signature of the chairman or of some other member authorized by the Board to act in that behalf.

(10) All documents, other than those required by law to be under seal, made by, and all decisions of, the Board may be signified under the hand of the chairman or such other person as the Board may authorize in that behalf.

[Act No. 9 of 1967, Sch., Act No. 19 of 1985, Sch., Act No. 18 of 1986, Sch.]

6. Powers and duties of the Board

The powers and duties of the Board shall be—

- (a) to supervise, control and manage all the assets of the Fund;
- (b) subject to the directions of the Minister, to establish and operate in the name of the Board such bank accounts as it deems necessary or convenient;
- (c) from time to time to invest the moneys of the Fund which are not for the time being required for any of the purposes of this Act in securities or any form of property in which trustees are authorized law to invest, or in such other manner as may be approved by the Minister;
- (d) generally to do any other act or perform any other duty necessary or expedient for the carrying out of the provisions of this Act.

7. Designated posts

(1) A local authority may from time to time, by resolution, designate any post within its establishment for the purposes of this Act with effect from such date as shall be specified in the resolution.

(2) A local authority may by a subsequent resolution revoke such designation, but may in its discretion allow the holder of such a post on the date of such revocation to continue to contribute to the Fund for so long as he continues to hold such post.

(3) In the event of a local authority not allowing the holder of a formerly designated post to continue to contribute as provided in subsection (2) of this section, he shall be paid at any time on his request the full amount of the balance standing to his credit in the Fund.

8. Liability to contribute and amounts of contribution

(1) Every contributor shall, so long as he remains the holder of a designated post, and subject to the provisions of section 7(2) of this Act, contribute to the Fund in the manner prescribed by section 9 of this Act, such sum as represents the balance between his contributions under the National Social Security Fund Act (Cap. 258) and seven and a half percent of his gross salary.

(2) In the ascertainment of salary for the purposes of subsection (1)—

- (a) during any period for which the contributor is temporarily in receipt of a reduced salary or no salary he may, in the discretion of the local authority, nevertheless be deemed to be in receipt of full salary:

Provided that where the period exceeds two consecutive months the contributor may, within thirty days after the end of the second month, elect to contribute in respect of the excess of the period at the rate of one shilling and fifty cents for each twenty shillings of the salary which he actually receives;

- (b) where the salary is not an exact multiple of twenty shillings, then if the residual fraction is less than ten shillings the fraction shall be disregarded, but if it is ten shillings or more it shall be treated as if it were twenty shillings.

(3) Every local authority shall contribute to the Fund monthly, in addition to the sums deducted from its employees pursuant to section 9 of this Act, a further sum equal to the total of such deductions:

Provided that no contribution by a local authority in respect of any one employee under this subsection shall exceed limits imposed as a condition of the approval of provident funds for income tax purposes by the provisions of the East African Income Tax (Management) Act, 1958.

(4) An account shall be kept in respect of each contributor to which the contributions, specified in this section shall be credited as at the 30th June in each year, and, in the event of an account being closed under section 13 of this Act, all contributions received in respect of the contributor since the preceding 30th June shall be credited to that account as at the date of closure.

[Act No. 13 of 1980, Sch., Act No. 19 of 1985, Sch., Act No. 18 of 1986, Sch.]

9. Method of contribution by contributors

(1) A contribution required to be made under section 8(1) of this Act shall be deducted by the local authority from the salary of the contributor on each occasion on which his salary is paid and shall be paid into the Fund within such period as the Board may prescribe.

(2) Notwithstanding the actual date on which the deduction is made pursuant to subsection (1) of this section, each contribution shall be deemed for the purposes of this Act to be credited to the contributor's account in the Fund on the last day of the month in respect of which the salary is due.

10. Option to contribute in respect of past service

A contributor may, with the agreement of the local authority which employs him and subject to the approval of the Minister, make contributions to the Fund

by one or more deductions from salary in respect of any period of service with that authority prior to the appointed day, in which event—

- (a) the amount of his contributions shall be calculated in accordance with section 8(1) and (2) of this Act;
- (b) the local authority shall on each occasion on which a contribution is made forthwith contribute to the Fund a further sum equal to his contribution;
- (c) each contribution of the employee and each contribution of the local authority under the provisions of this section shall be deemed for the purposes of this Act to be credited to the contributor's account in the Fund on the last day of the month in respect of which the deduction is made.

11. Profit and loss account and reserve fund

(1) The annual income from investments of the Fund, together with any profit or loss on realization of investments, shall be carried to a profit and loss account maintained by the Board.

(2) Subject to any special or general directions of the Minister, the Board may from time to time transfer from the profit and loss account to a reserve fund such sums of money as appear to the Board to be reasonably sufficient, and may from time to time, in order to keep the fund within proper limits, re-transfer any sums from the fund to the profit and loss account.

12. Annual distribution of profits

From the profit and loss account referred to in section 11 of this Act interest shall be credited in respect of each financial year, to contributors' account as follows—

- (a) in the case of a contributor whose contributions commenced on or after the 1st July in that year, interest shall be credited to his account on the 30th June in that year at the rate of two and one-half per centum per annum for the period from the date of commencement of contributions to the said 30th June, calculated upon the total credit in his account at the said 30th June;
- (b) in the case of a contributor whose contributions cease before the 30th June in any year, interest shall be credited to his account on the date of such cessation at the rate of two and one-half per centum per annum for the period from the 1st July in that year to the date of cessation, calculated upon the total credit in his account at the date of cessation;
- (c) after payment of the interest provided for in paragraphs (a) and (b) of this section the balance of the profit and loss account shall be divided among the remaining contributors by credits to their respective accounts as at the close of the financial year, the division being made in proportion to the total accrued benefits shown in each contributor's account respectively as at the 1st July in the same year.

[Act No. 44 of 1962, Sch., Act No. 13 of 1980, Sch., Act No. 18 of 1986, Sch.]

13. Closing of accounts

(1) Subject to the provisions of this Act, on the death of a contributor or on his ceasing to make contributions to the Fund, his account shall be closed.

(2) Where an account is closed under this section, notice of closure and of the amount standing to the credit of the account shall be given—

- (a) if the contributor is living, to the contributor; or
- (b) if the contributor is dead, to the person or persons appearing to the local authority to be entitled to the personal estate of the contributor,

and in either case to such other persons as, in the opinion of the Board, should be given notice.

14. Where account closed on satisfactory termination of service

Subject to the provision of this Act, if a contributor leaves the service of a local authority in any of the following circumstances, that is to say—

- (a) on or after attaining the age of fifty-five years, or such other age as may have been resolved by the local authority and approved by the Board;
- (b) on retirement on medical evidence which satisfies the local authority that he is incapable by reason of infirmity of mind or body of discharging the duties of his office, such incapacity being likely to be of such duration that the local authority considers retirement desirable;
- (c) on termination of his service by a local authority by reason of reorganization or redundancy or for any other reason not due to the contributor's misconduct or inefficiency;
- (d) in the case of voluntary resignation after ten years' contributing service or more,

the full amount of the balance standing to the credit of the contributor's account in the Fund at the date of the closing of the account shall be paid to the contributor or to any other person to whom by virtue of this Act or otherwise payment may lawfully be made.

15. Resignation or dismissal

(1) Subject to the provisions of this Act, a contributor who voluntarily resigns from, is dismissed, or leaves the service of a local authority for any reason or in any circumstances other than those specified in section 14 of this Act shall be paid such proportion of the balance standing to the credit of his account in the Fund as is specified hereunder, according to the circumstances—

- (a) in the case of voluntary resignation after more than five years', but less than ten years', contributing service, three-quarters of the credit balance in the contributor's account:

Provided that, in the case of a female contributor who resigns after more than five years' contributing service on or with a view to marriage or who is required to retire on account of marriage after a similar period of service, the Board may, on the recommendation of the local authority, pay to such female contributor the full amount of the balance standing in credit in her account;

- (b) in the case of voluntary resignation after less than five years' contributing service, one-half of the credit balance in the contributor's account;

- (c) in the case of dismissal from the service of a local authority for misconduct or inefficiency, one-half of the credit balance in the contributor's account:

Provided that—

- (i) where the dismissal is in consequence of an offence of a fraudulent character, or of grave misconduct, the person dismissed shall forfeit all claim to any payment under this Act;
- (ii) notwithstanding paragraph (i) of this proviso, the Board may, on the recommendation of the local authority, return to him out of the Fund, or pay to his wife or family out of the Fund, a sum equal to the amount of all his contributions thereto under this Act, or to such part thereof as the local authority shall think fit.

(2) (a) In the circumstances specified in paragraphs (a) and (b) of subsection (1) of this section, the sum remaining to the credit of a contributor in his account, after payment to the contributor of such sum as he is entitled to thereunder, shall remain in the Fund for a period of twelve months and thereafter, subject to the provisions of section 16 of this Act, shall be paid to the local authority in whose employment the contributor was serving immediately before his resignation.

(b) In the circumstances provided for in paragraph (c) of subsection (1) of this section, the sum remaining to the credit of a contributor in his account, after payment to the contributor of such sum as he is entitled to thereunder, shall forthwith be paid to the local authority in whose employment the contributor was serving immediately before his dismissal:

Provided that where the contributor has served more than one local authority as a contributor to the Fund, the sum so remaining shall be allocated to the respective local authorities in proportion to each local authority's contribution to the Fund in respect of that contributor.

16. Reappointment to a designated post within twelve months of ceasing to be employed by a local authority

Where a contributor ceases (otherwise than by being dismissed for misconduct or inefficiency) to be employed by a local authority to which this Act applies, but within twelve months after so ceasing is appointed to a designated post under the same or another such local authority, he shall be entitled, upon repaying to the Fund any payment made to him therefrom, to reckon the period of former employment as contributing service for the purposes of sections 14 and 15 of this Act.

17. Transfer to public service

(1) When a contributor transfers from service with a local authority to an office in the public service—

- (a) his account shall be closed in accordance with the provisions of section 13 of this Act; and
- (b) the amount of the contributions standing to his credit in his account at the time of closure shall not then be paid to the contributor, but shall be dealt with in accordance with subsection (2) of this section:

Provided that notwithstanding that the account is closed, interest on the full amount standing to his credit in his account shall continue to be credited in accordance with section 12 of this Act.

(2) Subject to the provisions of this Act, upon termination of such public service in any of the circumstances mentioned in sections 14 and 15 of this Act, the amount standing to the contributor's credit in his account in the Fund up to the end of the month preceding such termination shall be paid out of the Fund in accordance with the provisions of the said sections, and for the purposes of those sections any period of public service shall be deemed to be contributing service.

18. Transfer from public service

When a person in the public service transfers to service with a local authority and becomes a contributor, his period of public service shall be deemed to be contributing service for the purposes of sections 14 and 15 of this Act.

19. Payment on death of contributor

(1) Subject to the provisions of this Act, on the death of a contributor the Board shall pay the total amount standing to the credit of his account to the local authority by which he was last employed, for payment to be made as follows—

- (a) if the amount does not exceed five hundred shillings, it shall be paid to such person or persons as may have been nominated for the purpose by the contributor, or if no such nomination has been made to the person or persons appearing to the authority to be entitled to the personal estate of the contributor;
- (b) if the amount exceeds five hundred shillings it shall be paid to the legal personal representative of the contributor:

Provided that the authority may make an immediate payment, not exceeding three hundred shillings in any one case, out of the amount aforesaid in order to give immediate relief to the widow or children or other dependants of the deceased if in the opinion of the authority relief is required.

(2) A payment made by the Board or a local authority under this section shall be valid and effectual against a demand made upon the Board or the authority by any person in respect of the amount standing to the credit of the contributors' account in the Fund.

20. Provident fund managed prior to appointed day

Where a local authority has immediately prior to the appointed day, established and managed a provident fund for its employees, such fund shall, with effect from the appointed day, be closed in so far as it relates to employees who on that day are in the employment of the local authority in designated posts, and all moneys, assets and liabilities of that fund, or vested in trustees for the purposes of that fund, pertaining to such employees (including all contributions, by whatever name called, made by such authority to the account of such employees in such fund) shall be thereupon transferred to, and shall vest in, the Fund.

21. Accounts and audit

(1) The Board shall cause to be kept proper books of account, records and vouchers in relation to all its funds and activities, and shall, within four months or such longer period as the National Assembly may by resolution appoint, after the end of each financial year, cause to be prepared, signed and transmitted to the auditor—

- (a) a balance sheet;

- (b) a statement of income and expenditure;
- (c) the profit and loss account referred to in section 11 of this Act; and
- (d) such other accounts as the Minister may require.

(2) The accounts of the Board shall be examined, audited and reported upon annually by the auditor, and the expenses of and incidental thereto shall be borne by the Board.

(3) The Board shall, when required by the auditor so to do, produce and lay before the auditor all accounts of the Board, with all vouchers in support thereof, and all books, papers and writings in its possession or control relating thereto, and the auditor shall be entitled to require from all members, officers and servants of the Board such information and explanation as he may deem necessary for the performance of his duties as auditor.

(4) The Board shall, within a period of seven months, or such longer period as the National Assembly may by resolution appoint, after the end of each financial year, submit to the Minister a report of its operations during that year, together with the accounts referred to in paragraphs (a), (b), (c) and (d) subsection (1) of this section and the auditor's report thereon, and the Board shall, if the Minister so requires, publish such reports and accounts in such manner as the Minister may direct.

(5) In this section—

“**auditor**” means a person appointed by the Board for the purposes of this section being either the Auditor-General (Corporations) or the holder of a practising certificate issued pursuant to section 21 of the Accountants Act (Cap. 531);

“**financial year**” means the period from 1st July to 30th June, or such other period as the Minister may at any time, by writing addressed to the Board, appoint for the purposes of this section.

[Act No. 44 of 1962, Sch., Act No. 12 of 1985, Sch., Act No. 18 of 1986, Sch., Act No. 13 of 1988, Sch.]

22. Contributions, etc., not to be assigned or attached

Subject to the provisions of this Act, no benefits under, and no right to receive money from the Fund shall be capable of being assigned or transferred to any person, nor of being attached, sequestered or levied upon for or in respect of any debt, claim, judgment or order whatsoever.

23. Decision of questions, and appeals to the Minister

Any question concerning the rights or liabilities of an employee of a local authority, or of a person claiming to be treated as such an employee, under any of the provisions of this Act or of any regulations made under this Act, shall be decided in the first instance by the authority concerned, and, if the employee or person aforesaid is dissatisfied with any such decision or with the authority's failure to come to a decision, shall be determined by the Minister, and the Minister's determination shall be final.

24. Presumption of age

Where it appears that there is no satisfactory proof of the correct age of a contributor the Board may, upon such evidence as it thinks fit, determine the age

of the contributor, and the age so determined shall be presumed to be the correct age of the contributor for all purposes of this Act.

25. Regulations

The Board may, with the approval of the Minister, make regulations generally for the better carrying out of the provisions of this Act, and, without prejudice to the generality of the foregoing, such regulations may provide that a contributor entitled to receive an amount out of the Fund may elect to receive it either in a lump sum or by periodic payments, or in such other manner as may be prescribed.
