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EAST AFRICAN
COMMUNITY



Treaty Series No. 55 (1983) ✓

Agreement

between the Government of the United Kingdom of
Great Britain and Northern Ireland and the
East African Community

concerning Public Officers' Pensions

(The Public Officers' Pensions (East African
Community) Agreement 1978)

London 10 July and Addis Ababa 21 July 1978

[The Agreement entered into force on 9 March 1979]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
September 1983*

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**AGREEMENT
BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF
GREAT BRITAIN AND NORTHERN IRELAND AND THE
EAST AFRICAN COMMUNITY CONCERNING PUBLIC
OFFICERS' PENSIONS**

The Government of the United Kingdom of Great Britain and Northern Ireland and the East African Community have agreed as follows:

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 of Actuaries in Scotland;
 - (b) "the appointed day" means the day mutually arranged between the Government of the United Kingdom and the East African Community. Different days may be arranged in respect of officers as defined in sub-paragraph (1)(e)(i) and (1)(e)(ii) of this Article and in respect of officers as defined in sub-paragraph (i)(e)(iii) of this Article;
 - (c) "the East African Community element" in relation to a pension (other than compensation or interest thereon payable under East African Common Services Organisation (Compensation and Retiring Benefits) Order in Council 1961 or a widows' and orphans' pension) means:
 - (i) 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 a pension which results from an occurrence during relevant service, that proportion of the pension which the rate of the officer's pensionable emoluments other than inducement allowance at the date he received the injury bears to the rate of the officer's total pensionable emoluments at that date;
 - (ii) in the case of any other pension, that proportion of the pension which the total pensionable emoluments other than inducement allowance enjoyed by the officer during his relevant service bears to the total pensionable emoluments enjoyed by him throughout his public service under the East African Community which have been taken into account in determining the amount of that pension;
 - (d) "inducement allowance" means any inducement allowance which is pensionable under the pensions laws enjoyed by an officer under the

Overseas Service (East Africa High Commission) Agreement 1961⁽¹⁾, or any agreement or any arrangement amending or replacing the same;

(e) "officer" means:

(i) an officer to whom the Public Officers' Eastern African Common Services Organisation Agreement 1961⁽²⁾ signed on behalf of the Governments of the United Kingdom, Kenya, Tanganyika and Uganda and on behalf of the East African Common Services Organisation at Nairobi on 18 November 1963, as amended by the Overseas Service and Public Officers (East Africa Common Services Organisation) Amendment Agreement 1965, (hereinafter referred to as "the Public Officers Agreement") applies or applied; or

(ii) a person, not being an officer to whom the provisions of subparagraph (i) of this paragraph applies, who was before 11 December 1961 the substantive holder of a pensionable office in the public service of the East African Community and whose terms of service before that date included an entitlement to free passages from East Africa for the purpose of leave of absence upon the completion of a tour of duty, and who would in the opinion of the Government of the United Kingdom have been appointed to Her Majesty's Overseas Civil Service or designated under the Overseas Service (East Africa High Commission) Agreement 1961 had he remained in the service of the East African Community; or

(iii) a person, not being an officer to whom the provisions of subparagraphs (i) or (ii) of this paragraph applies, who was before 11 December 1961 the substantive holder of a pensionable office in the public service of the East African Community and whose terms of service before that date included an entitlement to free passages from East Africa for the purpose of leave of absence upon the completion of a tour of duty,

and who was not a citizen of Kenya, Tanzania or Uganda on 1 April 1971 or at the time of his death if before that date, or who, having retired from the public service or having died in public service after that date, is not or was not a citizen of Kenya, Tanzania or Uganda at the time of his retirement or death, as the case may be;

(f) "other public service" means public service not under the East African Community;

(g) "pension" means any pension, gratuity, compensation and interest thereon, or any retiring allowance or other like benefit, or any increase of pension, or any contributions repayable to, or interest on contributions payable to, any officer, payable under the pensions laws by the East African Community to or in respect of any officer, or to the widow or child of any officer or to his legal personal representative;

(1) This Agreement replaced by Agreement of 5 March, 1971, Treaty Series No. 84 (1973) Cmnd. 5361, as amended by Treaty Series No. 52 (1976) Cmnd. 6526.

(2) Cmnd. 2244.

(h) "pensionable emoluments"

(i) in respect of public service under the East African Community, means emoluments which count for pension under the pensions laws;

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

(i) "pensions laws" means :

(i) in relation to pensions other than widows' and orphans' pensions :

(a) any law providing for pensions in respect of public service under, or deemed to have been under, the East Africa High Commission, the East African Common Services Organisation, the East African Community, the East African Posts and Telecommunications Administration, the East African Posts and Telecommunications Corporation, including such service under the East African Railways and Harbours Administration, the East African Railways Corporation, the East African Harbours Corporation, and service as the holder of the office of the President, Vice-President, Justice of Appeal, Registrar, officer or servant of the Court of Appeal for Eastern Africa or, with effect from 1 December 1967, the Court of Appeal for East Africa, and in force at any time prior to 13 November 1972 and enacted prior to that date;

(b) the East African Common Services Organisation (Compensation and Retiring Benefits) Order in Council 1961;

(ii) in relation to widows' and orphans' pensions, the East African Railways Corporation Widows' and Orphans' Pensions Regulations 1970 and any amendments thereto in force at any time prior to 13 November 1972 and enacted prior to that date (hereinafter referred to as "the East African Railways Corporation Widows' and Orphans' Pensions Regulations"), the East African Harbours Corporation Widows' and Orphans' Pensions Regulations 1970 and any amendments thereto in force at any time prior to 13 November 1972 and enacted prior to that date (hereinafter referred to as "the East African Harbours Corporation Widows' and Orphans' Pensions Regulations"), and in so far as it applies to pensions payable by the East African Community, the Widows' and Orphans' Pensions Ordinance, Chapter 192 of the Laws of Kenya and any amendment thereto in force at any time prior to 13 November 1972 and enacted prior to that date (hereinafter referred to as "Chapter 192") and the Widows' and Orphans' Pensions Ordinance, Chapter 54 of the Revised Edition 1959 of the Laws of Tanganyika and any amendments thereto in force at any time prior to 13 November 1973 and enacted prior to that date (hereinafter referred to as "Chapter 54"); and

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

(j) " public service " means :

(i) service in a civil capacity under, or deemed in accordance with the pensions laws of the East African Community to be under, the East Africa High Commission, the East African Common Services Organisation, the East African Community, the East African Posts and Telecommunications Administration, the East African Posts and Telecommunications Corporation, including such service under the East African Railways and Harbours Administration, the East African Railways Corporation, the East African Harbours Corporation, and 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 or, with effect from 1 December 1967, the Court of Appeal for East Africa, or under any country or territory in the Commonwealth;

(ii) service which is pensionable :

(aa) under the Oversea Superannuation Scheme; or

(bb) under any Acts relating to the superannuation of teachers in the United Kingdom; or

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

(dd) under the National Health Service of the United Kingdom;

(iii) any other service accepted by the Government of the United Kingdom and the East African Community to be public service for the purposes of this Agreement;

(iv) 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;

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

(k) " relevant service " means public service in a civil capacity under the East African Community on or after 1 July 1962;

(l) " the taxation element " means the sum accepted by the Government of the United Kingdom and the East African Community as being equivalent to the proceeds of income tax or any similar tax received by the Partner States of the East African Community on any sums which are reimbursable in accordance with sub-paragraph (1)(d) of Article 3;

(m) " widows' and orphans' pensions " means pensions payable under the East African Railways Corporation Widows' and Orphans' Pensions Regulations, the East African Harbours Corporation Widows' and Orphans' Pensions Regulations, Chapter 192 or Chapter 54.

(2) For the purposes of this Agreement references to the East African Community shall be construed as including references to the East Africa

High Commission, the East African Common Services Organisation, the East African Posts and Telecommunications Administration, the East African Posts and Telecommunications Corporation, the East African Railways and Harbours Administration, the East African Railways Corporation, the East African Harbours Corporation and any of their predecessor organisations.

ARTICLE 2

Assumption of Responsibility by the Government of the United Kingdom

As from the appointed day^(*) the Government of the United Kingdom shall assume from the East African Community 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

(1) 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 modifications 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 provisions applied to him, that provision shall be taken to be more favourable to him;
- (c) that if the East African Community should be adjudged by the order of a competent court of law having jurisdiction in Kenya, Tanzania or Uganda 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 East African Community any sum paid to such person for the purpose of complying with the order of the court; but in this event the Govern-

(*) The appointed day is 1 April 1979.

ment 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;

- (d) that they shall reimburse the East African Community, on such date and in accordance with such procedure as may be mutually arranged between the Government of the United Kingdom and the East African Community, the aggregate amount, less the taxation element, of any payments due on or after 1 April 1971, (being amounts due under the pensions laws, and made by the East African Community to or in respect of officers to whom sub-paragraph (1)(e) (iii) of Article 1 refers) which represent that proportion of a pension or gratuity payable to or in respect of an officer which accrues from public service under the East African Community before 1 July 1962.

(2) For the purposes of sub-paragraph (1)(d) of this Article the proportion of a pension or gratuity which accrues from public service under the East African Community before 1 July 1962 is that proportion which the total pensionable emoluments received by an officer from public service under the East African Community prior to 1 July 1962 bears to his total pensionable emoluments received from all his public service under the East African Community.

ARTICLE 4

Obligations of the East African Community

- (1) The East African Community undertake:
 - (a) that they shall remain responsible for any instalments of pension 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 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 Government of the United Kingdom and the East African Community:
 - (i) in respect of any pension (other than a widows' and orphans' pension) awarded before the appointed day to or in respect of an officer, a sum representing the cost, if any, of the East African Community 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:
 - (aa) that part of the sum which would represent the East African Community element of such pension if the public service of the officer ceased on the appointed day, which is attributable to the officer's relevant service up to the day immediately preceding the appointed day;

(bb) 25% of the officer's pensionable emoluments, other than inducement allowance, earned during that part of his relevant service which occurs on or after the appointed day.

(2) The sums payable under sub-paragraphs (1) (c) (i) and (1) (c) (ii) (aa) of this Article shall be actuarially determined by an actuary nominated by the Government of the United Kingdom and acceptable to the East African Community and shall be reduced by a sum accepted by the Government of the United Kingdom and the East African Community as representing the tax which the Partner States of the East African Community would have received in respect of the East African Community element of the pensions.

ARTICLE 5

Supply of Information

Each of the Parties to this Agreement shall whenever requested to do so by the 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 Agreements

(1) On and after the appointed day the provisions of the Overseas Service (East Africa High Commission) Agreement 1961⁽²⁾, and any agreement or arrangement amending or replacing the same, and any other agreement or arrangement relating to the reimbursement of the East African Community 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 period beginning on the appointed day.

(2) On and after the appointed day the provisions of Articles 3, 4, 5, 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), and Articles 7 (3) and 8, of the Public Officers Agreement 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 East African Community 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 preliminary arrangements necessary to enable it to carry out the Agreement, and this Agreement shall enter into force on the date on the later of these two notifications⁽¹⁾.

ARTICLE 9

Citation

This Agreement may be cited as the Public Officers' Pensions (East African Community) Agreement 1978.

In witness whereof the undersigned, duly authorised thereto, have signed this Agreement.

Done in quadruplicate at London this Tenth day of July 1978 and at Addis Ababa this Twenty-first day of July 1978.

For the United Kingdom of Great
Britain and Northern Ireland :

JUDITH HART

For the Republic of Kenya :

ROBERT OUKO

For the United Republic of Tanzania :

E. I. M. MTEI

For the Republic of Uganda :

H. I. MARIJAN

⁽¹⁾ The Agreement entered into force on 9 March 1979.

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