



Treaty Series No. 87 (1981)

Agreement

between the Government of the United Kingdom of
Great Britain and Northern Ireland and the
Government of Malawi
concerning Public Officers' Pensions
(Public Officers' Pensions (Malawi) Agreement 1975)

Lilongwe, 26 November 1975

[The Agreement entered into force on 26 November 1975]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
December 1981*

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

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

ARTICLE 1

Interpretation

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 Government of Malawi;
- (c) "inducement allowance" means any inducement allowance enjoyed by an officer under the Overseas Service (Nyasaland) Agreement 1961⁽¹⁾, or any agreement or arrangement amending or replacing the same⁽²⁾;
- (d) "the Malawi element" in relation to a pension (other than compensation or interest thereon payable under the Malawi (Compensation and Retiring Benefits) Order 1964 as amended by the Malawi (Compensation and Retiring Benefits) (Amendment) Order 1964 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 Government of Malawi which have been taken into account in determining the amount of that pension;
- (e) "other public service" means public service not under the Government of Malawi;

⁽¹⁾ Malawi No. 1 (1968), Cmnd. 3533.

⁽²⁾ Treaty Series No. 109 (1972), Cmnd. 5113.

(f) "officer" means:

- (i) an overseas officer to whom the Public Officers Agreement between Her Majesty's Government in the United Kingdom and the Government of Nyasaland signed at Zomba on 7 January 1964^(*) and in London on 20 February 1964 (hereinafter referred to as "the Public Officers Agreement") applies or applied; or
- (ii) a non-designated officer to whom the Public Officers Supplementary Agreement between Her Majesty's Government in the United Kingdom and the Government of Malawi signed at Zomba on 7 August 1964^(*) and in London on 28 August 1964 applies or applied

and who was not a citizen of Malawi on 1 April 1971 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 Malawi at the time of his retirement or death, as the case may be;

(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 Government of Malawi to or in respect of any officer, or to the widow or child of any officer;

(h) "pensionable emoluments":

(i) in respect of public service under the Government of Malawi, 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 laws or regulations in force in such service;

(i) "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 Malawi at any time prior to 9 December 1971 and enacted prior thereto;

(ii) in relation to widows' and orphans' pensions, the Widows' and Orphans' Pensions Ordinance, Chapter 61 of the Revised Edition of the Laws of Nyasaland, 1957 and any amendments thereto in force at any time prior to 9 December 1971 and enacted prior thereto (hereinafter referred to as "Chapter 61 (1957 Ed.)"); and

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

(*) Cmnd. 2341.

(*) Cmnd. 2475.

(j) "public service" means:

- (i) service in a civil capacity under the Government of Malawi 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:
 - (aa) under the Oversea Superannuation Scheme; or
 - (bb) under any Act 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;
 - (iv) any other service accepted by the Government of the United Kingdom and the Government of Malawi 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;
- (k) "relevant service" means public service in a civil capacity under the Government of Malawi on or after 1 November 1963;
- (l) "widows' and orphans' pensions" means pensions payable under Chapter 61 (1957 Ed.).

ARTICLE 2

Assumption of Responsibility by the Government of the United Kingdom

As from the appointed day^(c) the Government of the United Kingdom shall assume from the Government of Malawi the responsibility for the control, administration and payment of pensions which have been awarded

(c) The appointed day is 1 December 1975.

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 and widows' and orphans' 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 and widows' and orphans' 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 Malawi should be adjudged by the order of a competent court of law having jurisdiction in Malawi to be liable to pay to or in respect of an officer or the widow or child 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 Malawi 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 Malawi

(1) The Government of Malawi undertake:

- (a) that they shall remain responsible for any instalments of pension granted to or in respect of an officer 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 (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 Malawi 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 Malawi 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; and
 - (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;
 - (iii) in respect of widows' and orphans' pensions, such stocks, funds, securities or moneys as represent the interest in the Widows' and Orphans' Pensions Fund established under Chapter 61 (1957 Ed.) of contributory officers and their potential beneficiaries alive on the appointed day and the widows and orphans alive on the appointed day of deceased contributory officers;

(2) The sums payable under sub-paragraphs (1)(c)(i) and (1)(c)(ii)(aa) and (1)(c)(iii) of this Article shall be actuarially determined by an actuary nominated by the Government of the United Kingdom and acceptable to the Government of Malawi and shall be reduced by a sum accepted by the two Governments as representing the tax which the Government of Malawi would have received in respect of the Malawi 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 (Nyasaland) Agreement 1961 and any agreement or arrangement amending or replacing the same, and any other agreement or arrangement relating to the reimbursement of the Government of Malawi 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, 7 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 8(2) and Articles 8(3) and 9 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 Government of Malawi 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 the Agreement, and this Agreement shall enter into force on the date of the later of these two notifications⁽⁹⁾.

ARTICLE 9

Citation

This Agreement may be cited as the Public Officers' Pensions (Malawi) Agreement 1975. In witness whereof, the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

⁽⁹⁾ The Agreement entered into force on 26 November 1975.

Done in duplicate at Lilongwe this 26th day of November, 1975.

For the Government of the United Kingdom of Great Britain and Northern Ireland

For the Government of Malawi

O. G. GRIFFITH

D. T. MATENJE

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