



Treaty Series No. 95 (1975)

Agreement

between the Government of the
United Kingdom of Great Britain and Northern Ireland
and the Government of the Kingdom of Lesotho
concerning Public Officers' Pensions

Maseru, 27 February 1975

[The Agreement entered into force on 13 May 1975]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
August 1975*

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

The Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter referred to as "the Government of the United Kingdom") and the Government of the Kingdom of Lesotho (hereinafter referred to as "the Government of Lesotho") 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"⁽¹⁾ means the day mutually arranged between the Government of the United Kingdom and the Government of Lesotho;
- (c) "the Lesotho element" in relation to a pension (other than compensation or interest thereon payable under the Lesotho (Compensation and Retiring Benefits) Order 1966 or a widows' and orphans' pension) means:
 - (I) In respect of a pension arising from death resulting from an injury on duty, or from contracting a disease, or a pension or additional pension arising from such an injury or from such a disease, being a pension which results from an occurrence during relevant service, that proportion of the pension which the rate of the overseas officer's pensionable emoluments other than inducement allowance at the date he received the injury or contracted the disease bears to the rate of the overseas 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 overseas officer during his relevant service bears to the total pensionable emoluments enjoyed by him throughout his public service under the Government of Lesotho which have been taken into account in determining the amount of that pension;
- (d) "inducement allowance" means any inducement allowance enjoyed by an overseas officer under the Overseas Service (Basutoland) Agreement 1962 or any agreement or arrangement amending or replacing the same;
- (e) "other public service" means public service not under the Government of Lesotho;

⁽¹⁾ The appointed day is 1 June 1975.

- (f) "overseas officer" means an officer to whom the Public Officers Agreement between Her Majesty's Government in the United Kingdom and the Government of Lesotho signed at Maseru on the seventeenth day of February 1967⁽²⁾ (hereinafter referred to as "the Public Officers Agreement") applies or applied and who was not a citizen of Lesotho on 1 April 1971 or who, having retired from the public service or having died in the public service after that date, is not or was not a citizen of Lesotho 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 thereon payable to, any overseas officer, payable under the pensions laws by the Government of Lesotho to or in respect of any overseas officer, or to the widow or child of any overseas officer or to his legal personal representative;
- (h) "pensionable emoluments".

(I) In respect of services under the Government of Lesotho, includes:

- (aa) salary;
- (bb) inducement allowance;
- (cc) personal allowance;

but does not include entertainment allowance or any other emoluments whatever; provided that where an officer's date of retirement is after 1 January 1947, pensionable emoluments shall include house allowance in respect of service prior to 1 January 1947;

(II) In respect of other public service, means emoluments which count for pension in accordance with the law or rules in force in such public service;

(i) "pensions law" means:

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

(aa) any law, regulation or administrative direction providing for the payment of pensions in respect of public service (including service which is so defined under the Basutoland (Benefits under Retirement Scheme) Order 1966) and in force in Lesotho at any time prior to 6 November 1972 and enacted prior to that date; and

(bb) the Lesotho (Compensation and Retiring Benefits) Order 1966, the Limited Compensation Scheme for Non-Designated Non-Local Officers, published under the Chief Establishment Officer's circular No. 7 dated 15 June 1965 and the General Scheme of Retirement Benefits for Non-Designated Non-Local Officers published under the Chief Establishment Officer's circular No. 6 dated 16 June 1965;

⁽²⁾ Treaty Series No. 74 (1967), Cmnd. 3393.

- (ii) In relation to widows' and orphans' pensions, the Widows' and Orphans' Pensions Order 1966, and any amendments thereto in force at any time prior to 6 November 1972 and enacted prior to that date (hereinafter referred to as "the Widows' and Orphans' Pensions Order"); 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 Lesotho for the purposes of this Agreement;
- (j) "public service" means:
- (i) service in a civil capacity under the Government of Lesotho or any other country or territory in the Commonwealth and, in relation to any time at which the office of the High Commissioner for Basutoland, the Bechuanaland Protectorate and Swaziland existed, includes service in that office;
 - (ii) service under the East Africa High Commission, the East African Common Service 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 Lesotho 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 in respect of which a pension may be granted under the Governor's Pensions Act 1957 (1957 c. 62) 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 under the Government of Lesotho on or after 1 January 1966;
- (l) "widows' and orphans' pensions" means pensions payable under the Widows' and Orphans' Pensions Order.

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 Government of Lesotho the responsibility for the control, administration and payment of pensions and widows' and orphans' pensions which have been awarded before the appointed day and for the award, control, administration and payment of pensions and widows' and orphans' pensions which would fall to be awarded on or after the appointed day, to or in respect of overseas officers or the widows or children or legal personal representatives of overseas officers in relation to the public service of such overseas officers in Lesotho.

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 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 Lesotho should be adjudged by the order of a competent court of law having jurisdiction in Lesotho to be liable to pay to or in respect of an overseas officer or the widow or child or legal personal representative of an overseas officer any sum in respect of a pension or widows' and orphans' 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 Lesotho 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 or widows' and orphans' 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 Lesotho

(1) The Government of Lesotho undertake:

- (a) that they shall remain responsible for any instalments of pension or widows' and orphans' pension granted to or in respect of an overseas officer or a widow or child or legal personal representative of an overseas officer which remains 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 or widows' and orphans' pension to or in respect of an overseas officer or a widow or child or legal personal representative of an overseas 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 overseas officer, a sum representing the cost, if any, of the Lesotho 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 overseas officer, that part of the sum which would represent the Lesotho element of such pension if the service of the overseas officer ceased on the appointed day, which is attributable to the overseas officer's relevant service up to the day immediately preceding 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 the Widows' and Orphans' Pensions Order of contributory overseas officers and their potential beneficiaries alive on the appointed day and the beneficiaries alive on the appointed day of deceased contributory officers;
- (d) that they shall whenever requested to do so by the Government of the United Kingdom, supply to that Government such information in connection with the operation of the arrangements contained in this Agreement as may be specified in such request.

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

ARTICLE 5

Modification of previous Agreements

(1) On and after the appointed day the provisions of the Overseas Service (Basutoland) Agreement 1962 and any agreement or arrangement amending or replacing the same and any other agreement or arrangement relating to the reimbursement of the Government of Lesotho 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 overseas 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 transferred or promoted" in Article 8 (2) and Articles 8 (3) and 9 of the Public Officers Agreement⁽²⁾ shall cease to apply to or in respect of overseas officers to whom this Agreement applies.

ARTICLE 6

Modification of this Agreement

If the Government of the United Kingdom and the Government of Lesotho 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 7

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.⁽³⁾

ARTICLE 8

Citation

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

In witness whereof the undersigned, duly authorised thereunto by their respective Governments, have signed this Agreement.

Done in duplicate at Maseru this 27th day of February 1975 in the English language.

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

JOHN GRANT

For the Government of the Kingdom of Lesotho:

PATRICK MOTA

⁽³⁾ The Agreement entered into force on 13 May 1975.