

1961 No. 1494

OVERSEAS SERVICE

The Overseas Service Superannuation Order, 1961

Made 1st August, 1961

Laid before Parliament 4th August, 1961

Coming into Operation 5th August, 1961

In exercise of the powers conferred on me by section 2 of the Overseas Service Act, 1958(a), I hereby, with the consent of Treasury, make the following Order:—

Citation and
commence-
ment.

1. This Order may be cited as the Overseas Services Superannuation Order, 1961, and shall come into operation on the 5th August, 1961.

Interpre-
tation.

2.—(1) In this Order, unless it is otherwise expressly provided or required by the context—

“the Act” means the Overseas Service Act, 1958;

“the Agreement” means any of the Agreements dated the 25th day of June, 1957, between the Government of the United Kingdom of the one part and the Governments of the Federation of Nigeria, the Government of the Northern Region of Nigeria, the Government of the Eastern Region of Nigeria and the Government of the Western Region of Nigeria of the other part, respectively;

“annuity value” in relation to an additional pension or other sum for which a person is eligible or to which he is entitled means the value thereof computed in accordance with Tables for Immediate Life Annuities framed under Part II of the Government Annuities Act, 1929(b), for the time being in force;

“annual value” in relation to a pension, allowance or other benefit means the total value that would be payable during a year in respect of that pension, allowance or other benefit;

“officer” means an officer appointed under section 1 of the Act in accordance with the arrangements contained in the Agreements;

“overseas service under the United Kingdom Government” means service as an officer to whom the Act applies but excluding any period of such service that may be taken into account in computing a pension payable in respect of other public service under the law or regulations governing that service;

“pensionable emoluments” means—

(a) in respect of service that is pensionable under this Order includes salary, inducement or overseas allowance and personal allowance, but does not include duty allowance, entertainment allowance or any other emoluments; and

(b) in respect of other public service, means emoluments that count for pension in accordance with the law or regulations relating to that service.

“personal allowance” means a special addition to salary, other than a special addition that is granted subject to the condition that it shall not be pensionable.

“pensionable service” means service that may be taken into account in computing pension or gratuity under this Order ;

“public service” means—

(a) service of the Crown in a civil capacity in respect of the government of any country or territory in the Commonwealth ;

(b) service that is pensionable—

(i) under the Oversea Superannuation Scheme ;

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

(iii) in a colonial University College ;

(iv) under a local authority in the United Kingdom ;

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

(c) any other service that the Secretary of State may determine to be public service for the purpose of any provision of this Order ; or

(d) except for the purposes of computation of a pension or gratuity and of paragraph 24 of this Order, service as a Governor-General, Governor or High Commissioner in any country or territory in the Commonwealth.

“other public service” means public service that is not pensionable under this Order.

“qualifying service” means public service that may be taken into account in determining whether an officer is eligible by length of service for pension or gratuity ;

“Scheduled Government” means the Government of any territory, or any authority mentioned in the Schedule to this Order and includes the Government of Ceylon in respect of any officer appointed to the service of that Government prior to the 4th February, 1948, the Government of Palestine, in respect of any officer appointed to the service of that Government prior to the 15th May, 1948, the Government of the Leeward Islands in respect of any officer appointed to that Government prior to the 1st July, 1956, the Government of the Somaliland Protectorate in respect of any officer appointed to the service of that Government prior to the 24th June, 1960, and the Government of Cyprus in respect of any officer appointed to the service of that Government prior to the 16th August, 1960.

(2) The Interpretation Act, 1889(a), shall apply, with the necessary adaptations, for the purpose of interpreting this Order and otherwise in relation thereto as it applies for the purpose of interpreting and otherwise in relation to an Act of Parliament.

PART II—PENSIONS AND GRATUITIES

3. Pensions and gratuities may be granted by the Secretary of State in accordance with the provisions of this Order to officers who have been in overseas service under the United Kingdom Government. Grant of pensions and gratuities.

4. No pension or gratuity shall be granted under this Order to an officer except on his retirement from public service in one of the following cases— Circumstances in which pensions may be granted.

(a) on or after his attaining the age of forty-five years ;

- (b) on his compulsory retirement under the provisions of paragraph 5 of this Order ;
- (c) in the case of an officer for whom the Secretary of State has been unable to arrange other suitable employment, where the Secretary of State, being satisfied that it would be in the public interest, permits him to retire ;
- (d) on medical evidence showing to the satisfaction of the Secretary of State that he is incapable by reason of any infirmity of mind or body of discharging the duties that are, or may be, assigned to him and that the infirmity is likely to be permanent ;
- (e) in the case of an officer who has transferred to other public service, where he is permitted by the law or regulations of the public service in which he is last employed to retire on pension or gratuity ;
- (f) in circumstances not mentioned in the preceding subparagraphs rendering him eligible for a pension under the Governors Pensions Act, 1957(a), or any Act amending or replacing that Act.

Retirement
on ineffici-
ency.

5. Where an officer is removed from his office on the ground of his inability to discharge efficiently the duties thereof, and a pension or gratuity cannot otherwise be granted to him under the provisions of this Order, the Secretary of State may, if he considers it justifiable having regard to all the circumstances of the case, grant such pension or gratuity as he thinks just and proper not exceeding in amount that for which the officer would be eligible if he had retired from the public service in the circumstances described in sub-paragraph (d) of the last preceding paragraph.

Compulsory
retirement.

6. The Secretary of State may require an officer to retire from overseas service under the United Kingdom Government—

- (a) at any time after his attaining the age of fifty-five years ;
- (b) where the officer, having enjoyed periods of additional leave amounting in the aggregate to five years or more, is notified by the Secretary of State that the Secretary of State is unable to arrange suitable employment for him ; or
- (c) in the case of a woman officer, on her marriage.

Rate of
pension.

7.—(1) Subject to the provisions of this Order, an officer who has ten years or more qualifying service may be granted on retirement a pension in respect of his overseas service under the United Kingdom Government calculated in accordance with the provisions of this paragraph.

(2) The pension that may be granted shall be the appropriate proportion of the officer's total pension, which shall be ascertained as follows—

- (a) the total pension of the officer shall be a pension calculated at the rate of one six-hundredth of his pensionable emoluments for each complete month of his pensionable service ; and
- (b) the appropriate proportion shall be the proportion that the aggregate amount of his pensionable emoluments during his overseas service under the United Kingdom Government bears to the aggregate amount of his pensionable emoluments throughout his overseas service under the United Kingdom Government and one or more of the Scheduled Governments.

(3) In determining for the purposes of this paragraph the total pension of an officer—

- (a) in the application of paragraph 16 of this Order his pensionable emoluments shall be determined by reference to the pensionable emoluments enjoyed by him at the date of his retirement from public service or during the three years preceding that date, as the case may be, except that where the officer is not serving in overseas service under the United Kingdom Government or under a Scheduled Government at that date, the date upon which he was last transferred from such service shall be deemed to be the date of his retirement for the purposes of this paragraph ;
- (b) no regard shall be had to an additional pension under paragraph 11, 12 or 13 of this Order ;
- (c) regard shall be had to the condition that the pension may not exceed two-thirds of his highest pensionable emoluments ; and
- (d) no period of public service under a Scheduled Government in respect of which no pension or gratuity is granted to him shall be taken into account.

(4) For the purposes of this paragraph the aggregate amount of an officer's pensionable emoluments shall be taken as the total amount of pensionable emoluments that he would have received or enjoyed had he been on duty on full pay in his substantive office or offices throughout his period of service in overseas service under the United Kingdom Government and under Scheduled Governments subsequent to his attainment of the age of 20 years.

Provided that—

- (a) in calculating the aggregate amount of his pensionable emoluments, no account shall be taken of any public service under a Scheduled Government in respect of which no pension or gratuity is granted to him ; and
- (b) where a proportion only of any service in a civil capacity otherwise than in a pensionable office is taken into account as pensionable service, only such proportion of the officer's aggregate pensionable emoluments during that service shall be taken into account for the calculation aforesaid.

(5) Where a part only of the other public service of an officer has been under one or more of the Scheduled Governments the preceding provisions of this paragraph shall apply but in calculating the amount of pension and aggregate pension regard shall only be had to overseas service under the United Kingdom Government and service under a Scheduled Government.

8.—(1) This paragraph applies to—

- (a) an officer who has retired from overseas service under the United Kingdom Government in pensionable circumstances but has not completed the minimum period of qualifying service ; or
- (b) an officer who has transferred to other public service from overseas service under the United Kingdom Government and who retires from the public service in which he is last employed in circumstances in which he is permitted by the law or regulations relating to that service to retire on pension or gratuity but has not completed the minimum period of public service qualifying him for a pension.

Gratuity.

(2) An officer to whom this paragraph applies may be granted on retirement a gratuity calculated at the rate of one eighth of a month's

pensionable emoluments for each complete month of his overseas service under the United Kingdom Government.

Marriage
gratuity.

9.—(1) This paragraph applies to a woman officer who has been in public service for not less than five years and has been confirmed in a pensionable office and who—

- (a) retires from overseas service under the United Kingdom Government for the reason that she has married, or is about to marry; or
- (b) having been transferred to other public service from overseas service under the United Kingdom Government retires from the service in which she is last employed for the reason that she has married or is about to marry in circumstances in which she is eligible for the grant of a gratuity under the law or regulations of the public service in which she is last employed.

(2) An officer to whom this paragraph applies may, if she is not eligible for the grant of a pension under this Order nor eligible for a gratuity under paragraph 8 of this Order, be granted a gratuity of an amount that shall be the appropriate proportion of the officer's total gratuity ascertained as follows—

- (a) the total gratuity of the officer shall be an amount calculated at the rate of one eighth of a month's pensionable emoluments for each complete month of pensionable service; and
- (b) the appropriate proportion shall be the proportion that the officer's overseas service under the United Kingdom Government bears to her total public service.

(3) In computing an officer's total public service for the purposes of this paragraph no regard shall be had to any public service under a Government that does not grant a gratuity to her in consequence of her retirement.

Death
gratuity.

10.—(1) Subject to the provisions of sub-paragraph (2) of this paragraph, where an officer who has been in public service for not less than three years and has been confirmed in his appointment dies while in overseas service under the United Kingdom Government there may be granted to his personal representative a gratuity of whichever is the greater of the following amounts—

- (a) an amount not exceeding his annual pensionable emoluments; or
- (b) an amount equal to the gratuity, if any, that would be payable to him in accordance with the provisions of paragraph 20 of this Order if—
 - (i) he had retired at the date of his death;
 - (ii) he had exercised an option to be paid a reduced pension and a gratuity in accordance with the provisions of that paragraph; and
 - (iii) the amount of his pension were equal to his total pension for the purposes of paragraph 7 of this Order.

(2) Where compensation is payable to the personal representative of an officer upon his death in accordance with the provisions of sub-paragraph (e) of paragraph 1 of the Agreement, no gratuity shall be granted under this paragraph in respect of that officer.

(3) For the purpose of this paragraph "annual pensionable emoluments" means the emoluments that would be taken for the purpose of computing any pension or gratuity payable to the officer if he had retired at the date of his death in the circumstances described in sub-paragraph (d) of paragraph 4 of this Order.

11.—(1) This paragraph applies to—

- (a) an officer who is required by the Secretary of State to retire in the circumstances set out in sub-paragraph (b) of paragraph 6 of this Order ; or
- (b) an officer who immediately before his transfer to overseas service under the United Kingdom Government was an entitled officer for the purposes of the First, Second, Third or Fourth Schedule to the Nigeria (Retirement Benefits) Order in Council, 1960(a), and who retires from such service in the circumstances set out in sub-paragraph (c) or (d) of paragraph 4 of this Order.

Addition to pension.

(2) Subject to the provisions of sub-paragraph (3) of this paragraph, an officer to whom this paragraph applies may be granted, in addition to any pension for which he may be eligible under paragraph 7 of this Order, a pension calculated at the annual rate of one one-hundred-and-eightieth of his pensionable emoluments for each complete period of one year of pensionable service :

Provided that the additional pension shall not exceed such annual sum as would, if it were added to such pension as could be granted to him under paragraph 7 of this Order, make an annual sum equal to the pension for which he would have been eligible under that paragraph if he had continued to hold the office held by him on the date of his retirement until he had attained the age of fifty-five years and had then retired having been granted all increments of salary for which he would have been eligible by that date.

(3) Where an officer to whom this paragraph applies is eligible in accordance with sub-paragraph (e) of paragraph 1 of the Agreement to receive compensation for loss of career and elects to be paid that compensation he shall not be entitled to be granted an additional pension under this paragraph.

12. An officer who retires from overseas service under the United Kingdom Government in the circumstances set out in sub-paragraph (d) of paragraph 4 of this Order and at the date of retirement has completed ten but not more than twenty years' public service may be granted, in addition to the pension which he may be granted under paragraph 7 of this Order, a pension at the rate of one six-hundredth of his pensionable emoluments on retirement for each period of three months by which his public service at the date of retirement falls short of twenty years, or by which his age at such date falls short of fifty years, whichever is less :

Officers retiring on account of ill-health.

Provided that no addition under this paragraph shall be granted in the case of an officer to whom an award on account of injuries is made in accordance with paragraph 23 of this Order.

13.—(1) This paragraph shall apply to an officer who :

- (a) is injured in the actual discharge of his duty by some injury specifically attributable to the nature of his duty which is not wholly or mainly due to, or seriously aggravated by, his own serious and culpable negligence or misconduct ; or
- (b) contracts a disease to which he is specifically exposed by the nature of his duty, not being a disease wholly or mainly due to, or seriously aggravated by, his own serious and culpable negligence or misconduct.

Officers injured or contracting diseases in the discharge of their duties.

(2) In this paragraph, unless the contrary intention appears, references to an officer's being injured and to the date on which an injury is

sustained shall respectively be construed as including references to his contracting such a disease as is mentioned in sub-paragraph (1) of this paragraph and to the date on which such disease is contracted.

(3) An officer to whom this paragraph applies may—

- (a) if his retirement is necessitated or materially accelerated by his injury and he has been in the public service for less than ten years, be granted in lieu of any gratuity under paragraph 8 of this Order, a pension under paragraph 7 of this Order which shall for that purpose be construed as if the words "who has ten years or more qualifying service" were omitted;
- (b) if he was injured while in overseas service under the United Kingdom Government be granted on retirement an additional pension at the annual rate of the proportion of his actual pensionable emoluments at the date of his injury appropriate to his case as shown in the following table—

When his capacity to contribute to his own support is—

Slightly impaired	five sixtieths ;
impaired	ten sixtieths ;
materially impaired	fifteen sixtieths ;
totally destroyed	twenty sixtieths ;

Provided that the amount of the additional pension may be reduced to such an extent as the Secretary of State shall think reasonable where the injury is not the cause or the sole cause of retirement.

(4) (a) If, for the purpose of assessing the amount of any additional pension or pension to be granted under sub-head (b) of sub-paragraph (3) of this paragraph to any officer to whom this paragraph applies, the degree of permanent impairment of his capacity to contribute to his support is in doubt, he may be granted a provisional award to have effect until such time as the degree of permanent impairment can be determined.

(b) the provisions of paragraph 20 of this Order shall not apply to an award made under this paragraph.

(5) If an officer in overseas service under the United Kingdom Government proceeding by a route approved by the Secretary of State to or from an overseas territory at the commencement or termination of his service therein, or of a period of leave therefrom, is injured as a result of damage to the vessel, aircraft or vehicle in which he is travelling, or of any act of violence directed against any such vessel, aircraft or vehicle, and the Secretary of State is satisfied that such damage or act is attributable to circumstances arising out of any war in which Her Majesty may be engaged, such officer shall be deemed for the purpose of this rule to have been injured in the circumstances described in sub-paragraph (1) of this paragraph.

(6) An officer who is injured while travelling by air in pursuance of official instructions, and whose injury is not wholly or mainly due to, or seriously aggravated by, his own serious and culpable negligence or misconduct, shall be deemed for the purpose of this paragraph to have been injured in the circumstances described in sub-paragraph (1) of this paragraph.

Provided that in such a case the rates of pension prescribed in subhead (b) of sub-paragraph (3) of this paragraph shall be seven-and-a-half sixtieths, fifteen sixtieths, twenty-two-and-a-half sixtieths and thirty sixtieths respectively.

(7) Where compensation in consequence of the injury is payable under any law that provides for the payment of workmen's compensation, or where benefits corresponding to an additional pension or pension under sub-paragraph (3) or sub-paragraph (4) of this paragraph are payable, under the Oversea Superannuation Scheme or under the law or regulations in force in respect of any other public service, in consequence of the injury, the Secretary of State may reduce or withhold any additional pension or pension payable under either sub-paragraph (3) or sub-paragraph (4) aforesaid in such manner as he may consider reasonable.

(8) (a) The amount of any additional pension or pension which may be granted to an officer under sub-paragraph (3) or (4) of this paragraph shall be reduced by the value or, as may be appropriate, the annuity value or the annual value of any rights that may have accrued to the officer from that injury in respect of industrial injury benefit, industrial disablement benefit or sickness benefit.

(b) For the purposes of this sub-paragraph the value of any such right shall be the amount which the Secretary of State may determine to be either its value, or, as the case may be, its annuity value or annual value.

(c) For the purposes of this sub-paragraph no account shall be taken of so much of a disablement pension as represents an increase payable under section 15 of the National Insurance (Industrial Injuries) Act, 1946(a).

(d) In this sub-paragraph the expressions "industrial injury benefit", "industrial disablement benefit", and "sickness benefit" have the same meanings as in the National Insurance Acts, 1946.

(9) (a) Where the Secretary of State is satisfied that damages have been or will be recovered by an officer in respect of an injury for which an additional pension or pension may be granted under sub-paragraph (b) of sub-paragraph (3) or under sub-paragraph (4) of this paragraph, the Secretary of State may take those damages into account against such additional pension or pension in such manner and to such extent as he may think fit and may withhold or reduce the additional pension or pension accordingly.

(b) For the purpose of this sub-paragraph an officer shall be deemed to recover damages whether they are paid in pursuance of a judgment or order of the court or by way of settlement or compromise of his claim and whether or not proceedings are instituted to enforce that claim.

PART III—SUPPLEMENTARY PROVISIONS FOR CALCULATION OF BENEFITS

14.—(1) Subject to the provisions of this Order, qualifying service shall be the inclusive period between the date on which an officer begins to draw salary in respect of public service and the date of his leaving the public service, without deduction of any period during which he has been absent on leave.

(2) No period that is not qualifying service by virtue of the foregoing paragraph shall be taken into account as pensionable service.

(3) No period during which the officer was not in public service shall be taken into account as qualifying service or as pensionable service.

General
rules as to
qualifying
service and
pensionable
service.

Continuity
of service.

15.—(1) Except as otherwise provided in this Order, only continuous service shall be taken into account as qualifying service or as pensionable service:

Provided that any break in service caused by temporary suspension of employment not arising from misconduct or voluntary resignation shall be disregarded for the purposes of this paragraph.

(2) An officer—

- (a) whose pension has been suspended under paragraph 19 of this Order or under a corresponding provision in any law or regulations relating to the grant of pensions in respect of public service; or
- (b) who has retired from the public service without pension on account of ill health, abolition of office, or reorganisation designed to effect greater efficiency or economy, and has subsequently been re-employed in the public service; or
- (c) who has left pensionable service under the Teachers (Superannuation) Act, 1925(a), with a view to entering public service not being service pensionable under that Act and has, not later than three months, or such extended period as the Secretary of State may in any particular case approve, after leaving such first-mentioned service, received any salary in respect of employment in public service not so pensionable, may, if the Secretary of State thinks fit, be granted the pension or gratuity for which he would have been eligible if any break in his public service immediately prior to such suspension, re-employment or employment had not occurred, such pension to be in lieu of—
 - (i) any pension previously granted to him under this Order; and
 - (ii) any gratuity so granted that is required to be refunded as a condition of the application to the officer of this paragraph,
 but additional to any gratuity so granted that is not required to be refunded as aforesaid.

Emoluments
to be taken
for com-
putation of
pensions, etc.

16.—(1) For the purpose of computing the amount of the pension or gratuity of an officer who has had a period of not less than three years' pensionable service before his retirement—

- (a) in the case of an officer who has held the same office for a period of three years immediately preceding the date of his retirement, the full annual pensionable emoluments enjoyed by him at that date in respect of that office shall be taken;
- (b) in the case of an officer who at any time during such period of three years has been transferred from one office to another, but whose pensionable emoluments have not been changed by reason of such transfer or transfers, otherwise than by the grant of any scale increment, the full annual pensionable emoluments enjoyed by him at the date of his retirement in respect of the office then held by him shall be taken;
- (c) in other cases one-third of the aggregate pensionable emoluments enjoyed by the officer in respect of his service during the three years of his service immediately preceding the date of his retirement shall be taken;

Provided that—

- (i) if such one-third is less than the highest annual pensionable emoluments enjoyed by him at the date of any transfer

within such period of three years those annual pensionable emoluments shall be taken ; and

- (ii) if such one-third is less than the annual pensionable emoluments that would have been enjoyed by him at the date of his retirement, if he had continued to hold any office from which he has been transferred at any time during such period of three years, and had received all scale increments which, in the opinion of the Secretary of State, would have been granted to him, the annual pensionable emoluments that would have been so enjoyed shall be taken.

(2) For the purposes of determining under sub-paragraph (1) of this paragraph the pensionable emoluments that an officer has enjoyed or would have enjoyed, as the case may be, he shall be deemed—

(a) to have been on duty on full pensionable emoluments throughout the period of three years immediately preceding the date of his retirement ; and

(b) to have enjoyed the benefit of any increase due to a revision of salaries in the pensionable emoluments of any office held by him as if such increase had been payable throughout such period of three years.

(3) For the purpose of computing the amount of the pension or gratuity of an officer who has had a period of less than three years' pensionable service before his retirement—

(a) the average annual pensionable emoluments enjoyed by him during such period shall be taken ;

(b) he shall be deemed to have been on duty on full pensionable emoluments throughout such period ; and

(c) he shall be deemed to have enjoyed the benefit of any increase due to a revision of salaries in the pensionable emoluments of any office held by him as if such increase had been payable throughout such period.

17. A pension, gratuity, or other allowance granted under this Order shall not be assignable or transferable except for the purpose of satisfying— Pensions, etc., not to be assignable.

(1) a debt due to the United Kingdom Government, or

(2) an order of any court for the payment of periodical sums of money towards the maintenance of the wife or former wife or minor child of the officer to whom the pension, gratuity, or other allowance has been granted,

and shall not be liable to be attached, sequestered or levied upon for or in respect of any debt or claim whatever except a debt due to the United Kingdom Government.

18. No period during which an officer shall have been absent from duty on leave without salary shall be taken into account as pensionable service unless such leave shall have been granted on grounds of public policy with the approval of the Secretary of State. Leave without salary.

PART IV—GENERAL

19. If an officer to whom a pension has been granted under this Order is appointed to another office in the public service, the payment of his pension may, with his consent, if the Secretary of State thinks fit, be suspended during the period of his re-employment. Re-employment.

Gratuity and reduced pension.

20.—(1) Subject to the provisions of sub-paragraph (3) of this paragraph, any officer to whom a pension is granted under this Order may, at his option exercisable before the date of his retirement, be paid in lieu of such pension a pension at the rate of three-fourths of such pension together with a gratuity equal to twelve and one-half times the amount of the reduction so made in his pension.

Provided that in the application of this paragraph to cases where the limitation prescribed by sub-paragraph (2) of paragraph 24 of this Order operates the words "such pension" shall mean the amount of pension that the officer might have drawn from the funds payable under the Act if he had not exercised his option under this paragraph.

(2) Subject to the provisions of sub-paragraph (3) of this paragraph, an officer who has exercised his option under sub-paragraph (1) may revoke his option at any time before the date of his retirement.

(3) The Secretary of State may, if he thinks fit, allow an officer—

(a) who has not exercised his option before the date of his retirement ; or

(b) who has exercised his option but has revoked it before the date of his retirement,

to exercise or revoke the option, as the case may be, at any time between the date of his retirement and the date of the award of a pension under this Order.

(4) If an officer who has not exercised his option dies after he retires but before a pension has been awarded to him under this Order, the Secretary of State may grant a gratuity and a reduced pension as if the officer before his death had exercised his option under sub-paragraph (1) of this paragraph.

(5) Any option exercised or revocation of an option made under the provisions of this paragraph shall be effected by a notice in writing addressed to the Secretary of State.

Pensions, etc., to cease on bankruptcy.

21.—(1) If any person to whom a pension has been granted under this Order is adjudicated bankrupt or is declared insolvent by judgment of any competent court, then such pension shall forthwith cease.

(2) If any person is adjudicated bankrupt or declared insolvent as aforesaid either—

(a) after retirement in circumstances in which he is eligible for pension under this Order but before the pension is granted ; or

(b) before such retirement, and he shall not have obtained his discharge from bankruptcy or insolvency at the date of retirement, then, in the former case any pension eventually granted to him shall cease as from the date of adjudication or declaration, as the case may be, and, in the latter case, the pension may be granted, but shall cease forthwith and not become payable.

(3) Where a pension ceases by reason of this paragraph, it shall be lawful for the Secretary of State, from time to time during the remainder of such person's life, or during such shorter period or periods, either continuous or discontinuous, as the Secretary of State shall think fit, to direct all or any part of the moneys to which such person would have been entitled by way of pension had he not become bankrupt or insolvent, to be paid to, or applied for the maintenance or benefit of, all or any to the exclusion of the other

or others, of the following, that is to say, such person and any wife, child or children of his, in such proportions and manner as the Secretary of State thinks proper, and such moneys shall be paid or applied accordingly.

(4) Moneys applied for the discharge of the debts of the person whose pension or allowance has so ceased shall, for the purposes of this paragraph, be regarded as applied for his benefit.

(5) When a person whose pension has so ceased obtains his discharge from bankruptcy or insolvency, it shall be lawful for the Secretary of State to direct that the pension shall be restored as from the date of such discharge or any later date, and the pension shall be restored accordingly.

22.—(1) If any person to whom a pension has been granted under this Order is sentenced to death or a term of imprisonment by any competent court for any offence, such pension shall, if the Secretary of State so directs, cease as from such date as the Secretary of State determines.

Pensions, etc., may cease on sentence of imprisonment.

(2) If any person is sentenced as aforesaid after retirement in circumstances in which he is eligible for pension under this Order but before the pension or allowance is granted, then the provisions of the foregoing paragraph shall apply as respects any pension that may be granted to him.

(3) Where a pension ceases by reason of this paragraph it shall be lawful for the Secretary of State to direct all or any part of the moneys to which such person would have been entitled by way of pension had he not been sentenced as aforesaid to be paid, or applied, in the same manner in all respects as prescribed in the preceding paragraph, and such moneys shall be paid or applied accordingly.

(4) If such person after conviction at any time receives a free pardon, the pension shall be restored with retrospective effect; but in determining whether arrears of such pension are payable to such person and in computing the amount thereof, account shall be taken of all moneys paid or applied under the preceding sub-paragraph.

23.—(1) Where an officer while in overseas service under the United Kingdom Government—

(a) is injured in the actual discharge of his duty by some injury specifically attributable to the nature of his duty which is not wholly or mainly due to, or seriously aggravated by, his own serious and culpable negligence or misconduct; or

(b) contracts a disease to which he is exposed by the nature of his duty, not being a disease wholly or mainly due to, or seriously aggravated by, his own serious and culpable negligence or misconduct,

Pensions to dependants when an officer dies as a result of injuries received or disease contracted in the discharge of his duties.

and dies as a direct result thereof, and such death occurs within seven years of the date when he was injured or contracted the disease, there may be granted, in addition to the grant, if any, made to his legal personal representative under paragraph 10 of this Order—

(i) if the deceased officer leaves a widow, a pension to her, while unmarried, at a rate not exceeding ten-sixtieths of his annual pensionable emoluments at the date of the injury or fifteen pounds a year, whichever is the greater;

- (ii) if the deceased officer leaves a widow to whom a pension is granted under sub-head (i) of this subparagraph and a child or children, a pension in respect of each child, until such child attains the age of twenty-one years, of an amount not exceeding one-eighth of the pension prescribed under sub-head (i) of this sub-paragraph ;
- (iii) if the deceased officer leaves a child or children, but does not leave a widow, or no pension is granted to the widow, a pension in respect of each child, until such child attains the age of twenty-one years, of double the amount prescribed by sub-head (ii) of this sub-paragraph ;
- (iv) if the deceased officer leaves a child or children and a widow to whom a pension is granted under sub-head (i) of this subparagraph, and the widow subsequently dies, a pension in respect of each child as from the date of the death of the widow until such child attains the age of twenty-one years, of double the amount prescribed in sub-head (ii) of this sub-paragraph ;
- (v) if the deceased officer does not leave a widow, or if no pension is granted to his widow and if his mother was wholly or mainly dependent on him for her support, a pension to the mother while without adequate means of support of an amount not exceeding the pension that might have been granted to his widow ;
- (vi) if the deceased officer does not leave a widow or mother, or if no pension is granted to his widow or mother, and if his father was wholly or mainly dependent on him for his support, a pension to the father of an amount not exceeding the pension which might have been granted to his widow ;
- (vii) if the deceased officer does not leave a child or children who is or are eligible for a pension under the provisions of this subparagraph, and if any brother or sister was wholly or mainly dependent on him for support, a pension to any such brother or sister until he or she attains the age of twenty-one years, of the same amount and subject to the same conditions as the pension that might have been granted under sub-head (ii), (iii) or (iv) of this sub-paragraph, as the case may be :

Provided that—

- (a) if in the opinion of the Secretary of State there are compassionate grounds for so doing, he may grant to any child of a deceased officer being a child who at the date of the death of the officer was wholly or mainly dependent on him for support and who has attained the age of twenty-one a pension for such period as the Secretary of State may determine, of an amount not exceeding the pension that may be granted under sub-head (ii), (iii) or (iv) of this sub-paragraph, as the case may be ;
- (b) where a deceased officer leaves a child who was incapacitated at the time of the officer's death (hereinafter in this paragraph referred to as an "incapacitated child") the Secretary of State may, notwithstanding any pension which may have been granted under sub-head (ii), (iii) or (iv) of this sub-paragraph grant an additional pension in respect of such incapacitated child after he has attained the age of twenty-one years and so long as his incapacity shall continue, of an amount not exceeding one-half the pension that might have been granted under sub-head (ii), (iii) or (iv) aforesaid, as the case may be ;

- (c) where compensation in respect of the death is payable under any law or regulation that provides for the payment of workmen's compensation, or where benefits corresponding to benefits granted under this paragraph are payable under the Oversea Superannuation Scheme or under the law in force in respect of any other public service, in respect of death, the Secretary of State may reduce or withhold any pension that may be payable under this sub-paragraph in such manner as he may consider reasonable ;
- (d) no pension shall be payable under this sub-paragraph at any time in respect of more than six children exclusive of incapacitated children, and where there are more than six such children, in respect of whom, but for this proviso, a pension would be payable, then the amount payable in respect of six children shall be divided equally among all such children during the period in which there are more than six children of pensionable age ;
- (e) in the case of a pension granted under sub-head (v) of this sub-paragraph, if the mother is a widow at the time of the grant of the pension and subsequently remarries such pension shall cease as from the date of remarriage ;
- (f) a pension granted to a female child under this sub-paragraph shall cease upon her marriage under the age of twenty-one years ;
- (g) in the case of a pension granted under sub-head (v), (vi) or (vii) of this sub-paragraph, if it appears to the Secretary of State at any time that the mother or father, or any brother or sister, is adequately provided with other means of support, such pension shall cease as from such date as the Secretary of State may determine.
- (h) any benefits to which a person is eligible under this sub-paragraph shall be reduced by the value or, as may be appropriate, the annuity value or annual value of—
- (i) any allowance payable in respect of that person under the Family Allowances Act, 1945(a) ; and
 - (ii) any rights that may accrue to or in respect of that person in respect of industrial death benefit payable under the National Insurance (Industrial Injuries) Act, 1946.
- (2) For the purposes of paragraph (h) of the proviso to the preceding sub-paragraph the value of any allowance or right therein referred to shall be the amount which the Secretary of State shall determine to be either its value, or, as the case may be, its annuity value or annual value.
- (3) If an officer in overseas service under the United Kingdom Government proceeding by a route approved by the Secretary of State to or from an overseas territory at the commencement or termination of his service therein or of a period of leave therefrom, dies as a result of damage to the vessel, aircraft or vehicle in which he is travelling, or of any act of violence directed against such vessel, aircraft or vehicle, and the Secretary of State is satisfied that such damage or act is attributable to circumstances arising out of war in which Her Majesty may be engaged, such officer shall be deemed, for the purposes of this paragraph, to have died as a result of the circumstances described in sub-head (a) of sub-paragraph (1) of this paragraph.

(4) An officer who dies as a result of an injury received while travelling by air in pursuance of official instructions, which injury is not wholly or mainly due to, or seriously aggravated by, his own serious and culpable negligence or misconduct, shall be deemed for the purposes of this paragraph to have died in the circumstances described in sub-head (a) of sub-paragraph (1) of this paragraph:

Provided that in such a case the rates of pension prescribed in sub-head (i) and (ii) of sub-paragraph (1) of this paragraph shall be fifteen-sixtieths and one-sixth respectively.

(5) (a) Where the Secretary of State is satisfied that damages have been or will be recovered in respect of the death for which a pension may be granted under sub-paragraph (1) of this paragraph, the Secretary of State may take those damages into account against such pension in such manner and to such extent that he may think fit and may withhold or reduce the pension accordingly;

(b) For the purposes of this sub-paragraph a person shall be deemed to recover damages whether they are paid in pursuance of a judgment or order of a court or by way of settlement or compromise of his claim and whether or not proceedings are instituted to enforce that claim.

(6) For the purposes of this paragraph the following words have, in relation to an officer, the meanings hereby respectively assigned to them—

(a) "brother" includes, in relation to a person, every male child of his father or his mother;

(b) "child" includes—

(i) a posthumous child;

(ii) a step-child or illegitimate child born before the date of the injury or contracting the disease, as the case may be, and wholly or mainly dependent upon the officer for support; and

(iii) an adopted child, adopted by the officer in a manner recognised by law, before the date of the injury or contracting the disease, as the case may be, and dependent as aforesaid;

(c) "incapacitated" means in relation to a child, incapable by reason of some specific bodily or mental disability of earning his own living, and a child who is in any event too young to earn his own living shall be treated as incapacitated for the purposes of this paragraph if it appears that, by reason of any specific bodily or mental disability, he will be incapable of earning his own living when he attains the age at which he would otherwise be capable of doing so;

(d) "father" includes, in relation to a person, his step-father and a male person by whom he has been adopted;

(e) "mother" includes, in relation to a person, a stepmother and a female person by whom he has been adopted;

(f) "sister" includes, in relation to a person, every female child of his father or his mother.

Maximum
pension.

24.—(1) Except in cases provided for by sub-paragraph (2) of this paragraph, a pension granted to an officer under this order shall not exceed two-thirds of the highest pensionable emoluments drawn by him at any time in the course of his overseas service under the United Kingdom Government.

(2) An officer who has been granted a pension in respect of other public service shall not draw at any time from funds payable under the Act an amount of pension that, when added to the amount of any pension or pensions drawn in respect of other public service exceeds two-thirds of the highest pensionable emoluments drawn by him at any time in the course of his public service:

Provided that where an officer receives in respect of some period of public service both a gratuity and a pension, the amount of such pension shall be deemed for the purpose of this sub-paragraph to be what it would have been if part of it had not been commuted or, in the case of a pension granted under the Superannuation Acts, 1834 to 1961, or under the Oversea Superannuation Scheme, to four-thirds of its actual amount.

(3) For the purposes of the preceding sub-paragraph an additional pension granted in respect of injury shall not be taken into account; but when the officer is granted such an additional pension under this Order, the amount thereof together with the remainder of his pension or pensions shall not exceed five-sixths of his highest pensionable emoluments at any time in the course of his public service.

(4) For the purposes of this paragraph no account shall be taken of any increase in pension granted under any legislation increasing the pension to which a public officer became entitled at the date of his retirement.

25.—(1) No officer shall have an absolute right to compensation for past services or to pension or gratuity; nor shall anything in this Order affect the right of the Crown to dismiss any officer at any time and without compensation. Pension, etc., not of right.

(2) When it is established to the satisfaction of the Secretary of State that an officer has been guilty of negligence, irregularity or misconduct, his pension or gratuity may be reduced or altogether withheld.

26.—(1) This paragraph applies to an officer who, immediately before he ceases to be employed in overseas service under the United Kingdom Government, was employed in non-participating employment. Officers employed in non-participating employment.

(2) Where a pension payable under this Order is granted to an officer to whom this paragraph applies so much of his pension as is equal to the amount of his notional graduated retirement benefit shall, notwithstanding anything contained in this Order, not be capable of being terminated, suspended, assigned, reduced or withheld (including the provisions of sub-paragraph (2) of paragraph 25 appertaining to the reducing or withholding of a pension and the provisions of paragraph 20 appertaining to the option exercisable by an officer which would cause a pension to be paid at a lower rate) except in the case of termination or suspension of pension for such causes as may be prescribed under paragraph (c) of subsection (1) of Section 8 of the National Insurance Act, 1959(a).

(3) For the purpose of this paragraph—

(a) "non-participating employment" has the meaning assigned to it by subsection (2) of Section 7 of the National Insurance Act, 1959.

- (b) "notional graduated retirement benefit" means the amount, expressed as a yearly rate, of the graduated retirement benefit which would be payable under the National Insurance Act, 1959, to an officer in return for an amount of graduated contributions equal to one such contribution paid in each week of the period of his non-participating service in respect of a weekly payment of remuneration of fifteen pounds;
- (c) "graduated contributions" means graduated contributions under the National Insurance Act, 1959.
- (d) "non-participating service" means, in relation to an officer, so much of his service in a non-participating employment after the 5th day of April, 1961, as is pensionable service under this Order.
- (g) references to the provisions of the National Insurance Act, 1959, are references to those provisions as amended or re-enacted by any subsequent enactment.

Iain Macleod,
One of Her Majesty's Principal
Secretaries of State.

31st July, 1961.

We consent.

W. Whitelaw,
David Gibson-Watt,
Two of the Lords Commissioners
of Her Majesty's Treasury.

1st August, 1961.

SCHEDULE

paragraph 2

Aden.
Antigua.
Bahamas.
Barbados.
Basutoland.
Bechuanaland Protectorate.
Bermuda.
British Guiana.
British Honduras.
British Solomon Islands Protectorate.
Brunei.
Cayman Islands.
Crown Agents for Oversea Governments and Administrations.
Dominica.
East Africa High Commission.
East African Railways and Harbours Administration.
Employing Authorities under the Oversea Superannuation Scheme.
Eastern Nigeria.
Eastern Region of Nigeria.
Falkland Islands.
Federated Malay States.
Federation of Malaya.
Federation of Nigeria.
Federation of Rhodesia and Nyasaland.
Fiji.
Gambia.
Ghana.
Gibraltar.
Gilbert and Ellice Islands Colony.
Gold Coast.
Grenada.
Hong Kong.
Jamaica.
Kenya.
Kenya and Uganda Railways and Harbours Administration.
Malayan Establishment.
Malayan Union.
Malta.
Mauritius.
Montserrat.
Nigeria.
North Borneo.
Northern Nigeria.
Northern Region of Nigeria.
Northern Rhodesia.
Nyasaland.

Overseas Audit Department (Home Establishment).
St. Christopher, Nevis and Anguilla.
St. Helena.
St. Lucia.
St. Vincent.
Sarawak.
Seychelles.
Sierra Leone.
Singapore.
Somaliland Protectorate.
Southern Cameroons.
Straits Settlements.
Swaziland.
Tanganyika.
The West Indies.
Trinidad and Tobago.
Turks and Caicos Islands.
Uganda.
Unfederated Malay States.
United Kingdom of Great Britain and Northern Ireland.
Western Nigeria.
Western Region of Nigeria.
Virgin Islands.
Zanzibar.

EXPLANATORY NOTE

(This Note is not part of the Order, but is intended to indicate its general purport.)

Section 2 of the Overseas Service Act, 1958, empowers the Secretary of State for the Colonies, with the consent of the Treasury, to make provision by order for the payment of pensions or gratuities to or in respect of officers to whom the Act applies, in respect of their service under the United Kingdom Government.

This Order gives effect to the above provisions of the Act in respect of officers appointed under section 1 of the Act in accordance with the arrangements contained in Agreements dated the 25th June, 1957, relating to Nigeria.