

CHAPTER 29:09

LOCAL AUTHORITIES EMPLOYEES (PENSION SCHEMES) ACT

Acts 11/1978, 41/1978 (s. 44), 15/1981 (s. 66), 6/1985 (s. 67), 8/1988 (s. 164).

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AN ACT to provide for one or more pension schemes for employees of local authorities or of the Local Authorities Pension Fund and the dependants of such employees; to provide for the continued operation of the Local Authorities Pension Fund and the establishment and powers of a Management Committee to manage such Fund; to establish a Board of Trustees and to confer functions and impose duties on such Board; and to provide for matters connected with or incidental to the foregoing.

[Date of commencement: 3rd March, 1978.]

1 Short title

This Act may be cited as the Local Authorities Employees (Pension Schemes) Act [*Chapter 29:09*].

2 Interpretation

In this Act—

- “Board” means the Board of Trustees established by section *five*;
- “Committee member” means a member of the Management Committee;
- “contributor” means an employee who is paying contributions to the Fund in terms of the Principal Pension Scheme or any other pension scheme;
- “employee” means a person who is in the full-time employment of a local authority or of the Fund;
- “financial year” means the period fixed by the Management Committee from time to time as being the financial year of the Fund;
- “fixed date” means the 3rd March, 1978;
- “former Committee” means the Management Committee established and constituted in terms of the repealed Act;
- “former Committee Rules” means the rules made in terms of section 8 of the repealed Act which were in force immediately before the fixed date;
- “Fund” means the Local Authorities Pension Fund referred to in section *three*;
- “local authority” means—

- (a) a city, municipality, town or rural district council; or
 - (b) a local authority association approved by the Minister; or
 - (c) any authority established for or in connection with local government purposes which is prescribed to be a local authority for the purposes of this Act;
- “local authority member” means a local authority which is a local authority member in terms of section *sixteen*;
- “Management Committee” means the Management Committee established by section *six*;
- “Management Committee Rules” means rules made in terms of section *seven* which have been registered by the Registrar and includes any rules in force in terms of subsection (6) of that section;
- “Minister” means the Minister of Local Government, Rural and Urban Development or any or such other Minister to whom the President may, from time to time, assign the administration of this Act;
- “pension” means an annual pension payable monthly in arrear during the lifetime of the beneficiary unless, in terms of this Act or the repealed Act or the relevant pension scheme, it is payable for a shorter period;
- “Pension Funds Act” means the Pension and Provident Funds Act [*Chapter 24:09*];
- “pension scheme” means the Principal Pension Scheme or any other pension scheme referred to in section *fourteen*, as amended from time to time, which is registered in terms of the Pension Funds Act;
- “pensioner” means a person who is in receipt of a pension from the Fund;
- “Principal Pension Scheme”, save as otherwise provided in subsection (2) of section *fourteen*, means the pension scheme referred to in paragraph (a) of subsection (1) of section *fourteen*, as amended from time to time or any replacement of that scheme, which is registered in terms of the Pension Funds Act;
- “Registrar” means the Registrar of Pension and Provident Funds;
- “repealed Act” means the Local Authorities Pension Act [*Chapter 209 of 1974*];
- “trustee” means the chairman of, or any other person elected or appointed as a trustee on, the Board;
- “valuator” means the valuator appointed in terms of subsection (1) of section *seventeen*.

3 Local Authorities Pension Fund

(1) The Local Authorities Pension Fund which was established by the repealed Act is hereby incorporated as a body corporate capable of suing and being sued in its corporate name and, subject to this Act, of performing all such acts as a body corporate may by law perform.

(2) The Fund shall be a self-administered pension fund for the purposes of the Pension Funds Act.

(3) All the assets and liabilities which, immediately before the fixed date, were vested in or incurred by the former Committee shall, with effect from the fixed date, be assets and liabilities of the Fund.

(4) Every person who, immediately before the fixed date, was in the employment of the former Committee shall, with effect from the fixed date, be regarded as an employee of the Fund under his existing terms and conditions of service and, for the purpose of determining his rights thereunder, his service with the former Committee prior to the fixed date shall be regarded as service with the Fund.

(5) In respect of any immovable property or any right or obligation under a mortgage, pledge, bond or charge vested in or imposed upon the Fund by virtue of the provisions of subsection (3), the Registrar of Deeds shall make the necessary endorsements on the title deeds and in his registers and no stamp duty, fee of office or other charge shall be payable in respect of anything done by the Registrar of Deeds in terms of this subsection.

4 Accruals to and charges on Fund

(1) The following receipts and accruals shall be recorded in the accounts of the Fund and added to the assets of the Fund—

- (a) the contributions and other amounts paid by contributors in accordance with the provisions of the Principal Pension Scheme or any other pension scheme or the repealed Act; and
- (b) any payments made by a local authority member in accordance with the Principal Pension Scheme or any other pension scheme or of this Act or the repealed Act; and
- (c) any increase in value of any asset of the Fund in any form whatsoever which the Management Committee considers necessary; and
- (d) any other moneys accruing to the Fund, whether from investments or otherwise.

(2) There shall be recorded in the accounts of the Fund and discharged from the Fund—

- (a) all pensions and other benefits payable in terms of the Principal Pension Scheme or any other pension scheme or subsection (2) of section *twenty-three*; and
- (b) all expenses incurred in connection with or incidental to the management and administration of the Fund; and
- (c) any losses incurred on the realization of any asset of the fund; and
- (d) any decrease in value of any asset of the Fund in any form whatsoever which the Management Committee considers necessary.

5 Board of Trustees

(1) There is hereby established a board, to be known as the Board of Trustees, which shall be responsible for exercising the powers conferred on the Board by this Act and for carrying out such duties as may be imposed on the Board by any pension scheme.

(2) The Board shall, subject to subsection (3) of section *twenty-two*, consist of—

(a) a chairman appointed by the Minister from the persons nominated in terms of subsection (3); and

(b) such number of other trustees, being not less than eight, as may be prescribed, of whom—

(i) one-half shall be councillors appointed or elected by local authority members in such manner as may be prescribed; and

(ii) one-half shall be contributors elected by contributors in such manner as may be prescribed.

(3) The trustees referred to in paragraph (b) of subsection (2) shall, when first appointed or elected after the fixed date and thereafter whenever the office of the chairman or his alternate becomes or is about to become vacant, meet for the purpose of nominating three persons, each of whom shall be a person who has been—

(a) a legal practitioner or magistrate for a period of not less than ten years; or

(b) a secretary to a Ministry in the Public Service; and shall submit to the Minister the names of the three persons so nominated for him to appoint the chairman or his alternate, as the case may be.

(4) Subject to regulations made in terms of section *twenty-two*, the term of office of—

(a) the chairman of the Board shall be four years;

(b) the other trustees shall be three years.

6 Management Committee

(1) There is hereby established a committee, to be known as the Management Committee, which shall be responsible for the management and control of the Fund and for carrying out such other duties as may be imposed on the Management Committee by this Act or the Management Committee Rules or any pension scheme.

(2) The Management Committee shall be composed of such number of members, being not less than eight, as may be fixed in the Management Committee Rules who, subject to subsection (3) of section *twenty-two*, shall be appointed or elected as may be provided in such rules:

Provided that until such time as rules are first made in terms of section *seven* and the Committee members have been appointed or elected in terms of such rules—

(a) the Management Committee shall be constituted the same as the former Committee; and

(b) subject to subsection (6) of section *seven*, the members of the former Committee and their alternates shall be Committee members and alternates to Committee members, respectively.

7 Management Committee Rules

(1) Rules, to be known as the Management Committee Rules, shall be made in terms of this section and such rules may at any time be amended or repealed and replaced in terms of this section.

(2) Rules referred to in subsection (1) shall, in addition to any matters required or permitted by or in terms of the Pension Funds Act, provide for—

(a) the composition of the Management Committee with—

(i) one-half the number of Committee members being appointed or elected by local authority members in accordance with a scheme such as that set out in the former Committee Rules or any other scheme based on the ratio between the total of the payments equivalent to ordinary contributions which are paid into the Fund by each of the local authority members in respect of contributors employed by them at a date specified in the rules and the aggregate of such payments by the local authority members concerned; and

(ii) one-half the number of Committee members being elected by contributors in accordance with a scheme based on the vote of each contributor being equivalent to the aggregate of the ordinary contributions he has paid into the Fund, disregarding cents, as at a date specified in the rules;

and

(b) the appointment, nomination, election and terms and conditions of office of Committee members and their alternates, the vacation of office by Committee members and their alternates and the filling of any casual vacancy:

Provided that—

(i) the appointment and election of alternates shall be conducted in the same manner as for Committee members;

(ii) an alternate may be authorized to act in the place of a Committee member who has died or vacated his office until someone has been appointed or elected to fill the vacancy; and

(c) the election by the Committee members of one of their number to be chairman of the Management Committee; and

(d) the method of voting on any proposal before the Management Committee and the circumstances in which a Committee member may require a postal ballot of such members; and

- (e) the determination, for the purposes of this section and any postal ballot, of the voting strength of the various Committee members based—
 - (i) in the case of Committee members appointed or elected by a local authority member or group of local authority members, on the proportion that the total of the payments equivalent to ordinary contributions which have been paid in to the Fund by the local authority member or group of local authority members by which they were appointed or elected, as the case may be, in respect of contributors employed by them at a date specified in the rules bears to the aggregate of such payments by the local authority members;
 - (ii) in the case of Committee members elected by contributors, on the proportion that the total of the ordinary contributions by the contributors from among whom they were elected bears to the aggregate of the ordinary contributions paid by such contributors as at a date specified in the rules:

Provided that the combined voting strength of the Committee members appointed or elected by the local authority members at any time shall be equal to the combined voting strength of the other Committee members; and
- (f) the quorum and procedure to be followed at meetings of the Management Committee; and
- (g) the Management Committee being required to hold annually in each city in Zimbabwe a meeting of contributors;

and may provide for such other matters relating to the regulation, management and administration of the Fund or the operations of the Management Committee as is considered to be necessary or desirable.

(3) The Management Committee may at any time and, if so required by the Board, shall prepare draft rules to be made in terms of this section and shall—

- (a) circulate such draft rules to all local authority members and contributors; and
- (b) call upon the local authority members and contributors to lodge with it in writing any objections or representations within a specified period which shall be not less than six weeks from the date the draft rules are circulated:

Provided that, if in any particular case the Board considers it desirable or expedient that the specified period should be less than six weeks, it may authorize the Management Committee to fix such less period as the Board thinks fit in the circumstances.

(4) After the expiration of the specified period referred to in paragraph (b) of subsection (3), the Management Committee shall consider all objections and representations lodged and shall thereafter submit to the Board—

- (a) the draft rules circulated in terms of subsection (3); and
- (b) all such objections and representations together with any comments the Management Committee has thereon; and
- (c) any recommendation the Management Committee wishes to make as to whether, in view of any such objections or representations or otherwise, the Board should make the rules as drafted or with specified amendments or modifications or should refuse to make any rules.

(5) The Board shall consider any draft rules submitted to it in terms of subsection (4) and, having regard to all objections, representations, comments and recommendations submitted with the draft rules, shall—

- (a) approve the draft rules as submitted or with any amendments or modifications which have been recommended by the Management Committee in terms of subsection (4) and direct the Management Committee—
 - (i) to submit the rules to the Registrar for registration; and
 - (ii) once the rules have been so registered, to send a copy thereof to each local authority member and to each contributor; or
- (b) reject the draft rules and may direct the Management Committee to consider such matters and proposals as the Board thinks fit and to prepare draft rules in terms of subsection (3) based thereon.

(6) Until such time as rules are first approved and registered in terms of subsection (5), the former Committee Rules shall continue in force as though they were rules made in terms of this section.

(7) In this section—

“ordinary contributions” means the monthly contributions paid by a contributor which are matched by an equivalent amount paid into the Fund by his employer, whether paid in terms of the repealed Act or the Principal Pension Scheme or any other pension scheme.

8 Subcommittees of Management Committee

(1) The Management Committee may establish such subcommittees as it considers to be desirable or expedient and may, subject to subsection (3), delegate to any such subcommittee such powers and duties as it thinks fit.

(2) The composition of a subcommittee established in terms of subsection (1) and the procedures to be followed by such subcommittee shall be as laid down from time to time by the Management Committee:

Provided that—

- (i) a subcommittee shall consist of an even number of Committee members or their alternates with—

- (a) one-half being Committee members or their alternates who have been appointed or elected by local authority members; and
- (b) one-half being Committee members or their alternates who have been elected by contributors;
- (ii) a subcommittee shall not exercise any powers or perform any duties delegated to it unless the decision to do so is unanimous and, where any such decision is not unanimous, the matter shall be referred to the Management Committee for determination.
- (3) The Management Committee may not delegate to a subcommittee—
 - (a) any powers conferred on the Management Committee by section *seven, fifteen, seventeen* or *eighteen*; or
 - (b) the power conferred on the Management Committee to make or realize any investment; or
 - (c) the duties imposed on the Management Committee by section *eleven, twelve* or *thirteen*.
- (4) The Management Committee may at any time—
 - (a) abolish any subcommittee established in terms of subsection (1);
 - (b) withdraw any powers delegated to a subcommittee;
 - (c) give directions to a subcommittee as to the manner in which it shall exercise the powers delegated to it, and the subcommittee shall comply with any directions so given.

9 Powers of Management Committee

(1) Subject to this Act and of the Management Committee Rules, the Management Committee shall, for the better exercise of its functions, have power to do or cause to be done, either by itself or through its agents, all or any of the things specified in the First Schedule.

(2) An agreement, contract or instrument may be entered into or executed on behalf of the Fund by any person or persons generally or specially authorized by the Management Committee for that purpose.

10 Principal Officer and other employees of Fund

(1) The Fund shall employ, on such terms and conditions as the Management Committee thinks fit, such persons as are deemed necessary or desirable.

(2) The Management Committee shall appoint a person employed in terms of subsection (1) to be the Principal Officer, who—

- (a) shall be the chief executive officer of the Fund with such powers and duties as may be determined by the Management Committee from time to time; and
- (b) may only be removed from office by resolution of the Management Committee.

(3) If the Principal Officer is for any reason unable to discharge any duties imposed upon him by or under the Pension Funds Act for a period of thirty days or more, the Management Committee shall appoint an employee of the Fund to act as Principal Officer.

(4) The Management Committee shall take out and maintain a policy with a registered insurer in such amount as the Management Committee deems adequate to protect the Fund against acts of dishonesty on the part of any of its employees or agents.

11 Accounts and records of Fund

(1) The Management Committee shall keep proper accounts and other records relating to the operations, financial transactions and property of the Fund.

(2) The Management Committee shall prepare, in respect of each financial year, a balance sheet and a statement of the transactions of the Fund under this Act and, where relevant, the repealed Act.

(3) The balance sheet and statement prepared in terms of subsection (2) shall disclose in sufficient detail the assets and liabilities and the income and expenditure of the Fund.

12 Appointment and duties of auditor

(1) The Management Committee shall annually appoint an auditor who is registered as a public auditor in terms of the Public Accountants and Auditors Act [*Chapter 27:12*] and such appointment as an auditor may be made in the name of a partnership.

(2) The auditor appointed under subsection (1) shall audit the accounts of the Fund and shall make a report to the Management Committee on the accounts examined by him and on the balance sheet and the statement of the transactions under this Act or the repealed Act which were prepared for the financial year for which he is appointed.

(3) The report in terms of subsection (2) shall state whether, in his opinion, the balance sheet and statement of transactions of the Fund are properly drawn up in accordance with the provisions of this Act, the Principal Pension Scheme and any other pension scheme based on the Fund and, where relevant, of the repealed Act so as to give a true and fair view of the state of the Fund's affairs at the date of the balance sheet.

(4) The auditor shall include in his report statements which, in his opinion, are necessary if—

- (a) he has not obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purposes of his audit; or

- (b) so far as appears from his examination, proper accounts and other records have not been kept in respect of the Fund; or
- (c) the balance sheet and statement of transactions of the Fund are not in agreement with the accounts or other records.

(5) In the event of the auditor being unable to make a report in terms of this section or to make it without further qualification, he shall inscribe upon or attach to the balance sheet a statement of that fact or of the nature of the qualification, as the case may be, and he shall set forth therein the facts or circumstances which prevent him from making the report or from making it without qualification.

13 Annual report

(1) As soon as possible after the end of each financial year, the Management Committee shall prepare a report on the operations and transactions of the Fund during the financial year.

(2) As soon as possible after the accounts of the Fund have been audited in terms of section *twelve*, the Management Committee shall send a copy of the report prepared in terms of subsection (1), together with a copy of the balance sheet and statement of the transactions referred to in subsection (2) of section *eleven* and a copy of any report made by the auditor on that statement or on the accounts relating to the Fund—

- (a) to the Board; and
- (b) to each local authority member; and
- (c) to each contributor; and
- (d) to each pensioner.

14 Pension schemes

(1) Subject to this section and of the Pension Funds Act—

(a) a pension scheme, to be known as the Local Authorities Employees Principal Pension Scheme, shall be prepared in terms of section *fifteen* for those employees of local authority members or of the Fund who—

- (i) were contributors immediately before the fixed date and continued to be contributors on and after that date; or
- (ii) after the fixed date, are required in terms of subsection (2) or of the said scheme to become contributors in terms thereof;

(b) one or more other pension schemes may be prepared in terms of section *fifteen* for classes of employees not referred to in paragraph (a) or for employees referred to in paragraph (a) who are contributors and who elect to join such pension scheme.

(2) Until such time as the scheme referred to in paragraph (a) of subsection (1) has been registered in terms of the Pension Funds Act, provisions of the repealed Act relating to—

- (a) the payment of contributions to the Fund; and
- (b) the payment of pensions and other benefits to former contributors or to the dependants of former contributors; and
- (c) the payments to be made to the Fund by local authority members;

as read with any scheme of absorption in operation in terms of section 14, or interchange scheme or agreement in operation in terms of Part V, or rules made under section 33, of the repealed Act, shall continue to apply in relation to employees as though the repealed Act had been amended with effect from the fixed date as specified in the Second Schedule and had not been repealed and any reference in this Act to the Principal Pension Scheme shall be construed as a reference to the provisions so continued in force, as amended by the Second Schedule.

(3) Subject to this section, in addition to any matters required or permitted by or in terms of the Pension Funds Act, a pension scheme shall, *inter alia*, provide for—

- (a) defining the classes of employees who shall be required or permitted to become members of the pension scheme;
- (b) the compulsory payment of contributions by persons who are members of the pension scheme, the rate of such contributions and the deduction of the contributions payable by a member from any salary, wages or other moneys due to that member;
- (c) the amount to be paid by each local authority member, whether in relation to contributions referred to in paragraph (b) or to meet any additional liability imposed on the Fund in terms of section *nineteen* or of any pension scheme;
- (d) the circumstances in which a pension or other benefit shall become payable;
- (e) fixing the formulae according to which any pension or other benefit shall be calculated and the commutation of any pension or a portion thereof;
- (f) the conditions on which deferred pensions or other benefits, or both, shall become payable in the case of members who cease to contribute before reaching retiring age;
- (g) the circumstances in which a pension that is payable to the widow, child or other dependant of a former member or person in receipt of a pension shall cease to be payable;

- (h) the method by which the Fund or the fund to which the scheme relates, as the case may be, may be dissolved, the procedures to be followed and the appointment and powers of a liquidator.
- (4) In a pension scheme referred to in paragraph (b) of subsection (1)—
- (a) provision may be made for the establishment of a separate fund for the employees who will be members of that scheme;
 - (b) provision shall not be made requiring contributors who are members of a scheme already in operation to become members of the first-mentioned scheme unless they have consented thereto or the first-mentioned scheme merely repeals and replaces the scheme already in operation without any change in the provisions thereof.
- (5) Notwithstanding anything to the contrary contained in this Act but subject to section *nineteen* or any equivalent provision that may be contained in a pension scheme, the benefits conferred in terms of—
- (a) the Principal Pension Scheme on a contributor or pensioner or the wife, child or other dependant of a contributor or pensioner shall not be less favourable to the person receiving or entitled to such benefits than the benefits conferred at the fixed date or the date the person concerned first became a contributor, whichever is the later;
 - (b) a pension scheme other than the Principal Pension Scheme on a member of, or person in receipt of a pension in terms of, that scheme or the wife, child or other dependant of such a member or person in receipt of such a pension shall not be less favourable to the person receiving or entitled to such benefits than the benefits conferred on the date the person concerned first became a member of that scheme.
- (6) Notwithstanding anything to the contrary contained in this Act, save as otherwise provided in subsection (7) of section *seventeen* or any equivalent provision that may be contained in a pension scheme, the rate of contributions payable by a contributor or member of that scheme shall not be increased at any time after he became a contributor or member, as the case may be, unless he consents thereto.
- (7) The Principal Pension Scheme may provide that any benefits conferred by that scheme on pensioners shall apply to any person who was in receipt of a pension immediately before the fixed date or who is a dependant of such a person if that person consents thereto.
- (8) Any amendment to the Principal Pension Scheme which has the effect of precluding employees who would otherwise be eligible for membership thereof from becoming members thereof after a particular date shall not come into operation unless another pension scheme is or will be in operation on that date and such employees will be required or permitted to become members of that other pension scheme.

15 Preparation and registration of pension scheme

- (1) A proposed pension scheme or any proposal to amend or repeal and replace a pension scheme—
- (a) shall not come into operation until it has been registered in terms of the Pension Funds Act; and
 - (b) shall not be submitted to the Registrar for such registration unless the requirements of this section have been complied with.
- (2) The Management Committee may at any time and, if so required by the Board, shall prepare a draft of a proposed pension scheme, whether it is a new pension scheme or a repeal and replacement of an existing pension scheme, or of a proposed amendment to a pension scheme, and shall—
- (a) submit such draft to the valuator for his report thereon; and
 - (b) circulate such draft, together with the report referred to in paragraph (a), to all local authority members and to all contributors or members of the scheme, as the case may be; and
 - (c) call upon the local authority members and contributors or members of the scheme to lodge with the Management Committee in writing any objections or representations within a specified period which shall be not less than two months from the date the draft is circulated in terms of paragraph (b):
- Provided that, if in any particular case the Board considers it desirable or expedient that the specified period should be less than two months, it may authorize the Management Committee to fix such less period as the Board thinks fit in the circumstances.
- (3) After the expiration of the specified period referred to in paragraph (c) of subsection (2), the Management Committee shall consider all objections and representations lodged and shall thereafter submit to the Board—
- (a) the draft circulated in terms of subsection (2) and the report of the valuator thereon; and
 - (b) all such objections and representations, together with any comments the Management Committee has thereon; and
 - (c) any recommendation the Management Committee wishes to make as to whether, in view of any such objections or representations or otherwise, the Board should approve the draft as circulated or with specified amendments or modifications or should refuse to approve the draft:
- Provided that if the Management Committee wishes to recommend any such amendments or modifications, it shall first obtain a report from the valuator on the proposed amendments or modifications.

(4) The Board shall consider any draft submitted to it in terms of subsection (3) and, having regard to all objections, representations, comments and recommendations submitted and the report of the valuator on the draft and on any amendment or modification which is recommended, shall—

- (a) approve the proposed pension scheme or amendment as submitted or with any amendments or modifications which have been recommended by the Management Committee in terms of subsection (3) and direct the Management Committee—
 - (i) to submit it to the Registrar for registration; and
 - (ii) once it has been so registered, to send a copy thereof to each local authority member and to each contributor or member of the scheme, as the case may be;
- (b) reject the proposed pension scheme or amendment and may direct the Management Committee to consider such matters and proposals as the Board thinks fit and to prepare a draft in terms of subsection (2) based thereon.

16 Local authority members

(1) A local authority which has adopted Part I of the repealed Act shall continue to be a local authority member.

(2) A local authority not referred to in subsection (1) which wishes to be a local authority member may apply in writing to the Management Committee to be accepted as a local authority member and, if so accepted—

- (a) shall become a local authority member with effect from such date as may be agreed by the Management Committee; and
- (b) may not thereafter rescind its decision and cease to be a local authority member:

Provided that the Management Committee shall not refuse to accept an application in terms of this subsection by a city, municipality, town or rural district council.

17 Appointment and recommendations of valuator

(1) The Management Committee shall appoint a valuator as defined in section 2 of the Pension Funds Act to carry out the duties imposed by the Pension Funds Act or this Act in relation to the Fund and for such other purposes as may be required.

(2) The Board and the Management Committee shall have due regard to any recommendation made by the valuator in his valuation report in terms of section 17 of the Pension Funds Act or any other report relating to the Fund.

(3) If, in his valuation report referred to in subsection (2), the valuator recommends—

- (a) an increase or reduction in the rates of contributions payable to the Fund by contributors or any class of contributors in terms of a pension scheme; or
- (b) an increase or reduction in the rates of payment payable to the Fund by local authority members in terms of a pension scheme; or
- (c) an increase in the pensions or other benefits payable from the Fund in terms of a pension scheme or subsection (2) of section *twenty-three* to any class of persons;

the Management Committee may, and if so directed by the Board shall, prepare in terms of subsection (2) of section *fifteen* a draft of proposals designed to give effect to the recommendation of the valuator.

(4) If, in his valuation report referred to in subsection (2), the valuator recommends that a local authority member should be required to pay into the Fund a specified amount to recover a deficiency which is directly attributable to the action of that local authority, the Management Committee may, and if so required by the Board shall, require the local authority member concerned to pay into the Fund the amount specified by the valuator.

(5) Where the valuator has made a recommendation referred to in subsection (3) or (4), the Management Committee shall incorporate in its next annual report the action it has taken or is taking to implement such recommendation or the reasons why it has not taken or is not taking any action to implement such recommendation, as the case may be.

(6) If at any time the valuator makes a report recommending that a local authority member should be required to pay into the Fund a specified amount to cover the amount of any additional liabilities of the Fund which are directly attributable to the consolidation by that local authority of a cost of living or other allowance into the pensionable emoluments of any contributor, the Management Committee may require the local authority member concerned to pay into the Fund the amount specified by the valuator.

(7) Any increase or reduction in the rates of contribution or of payments payable into the Fund or any increase in the pensions or other benefits referred to in subsection (3) which has been recommended by the valuator in his valuation report may be implemented in terms of section *fifteen*, notwithstanding anything to the contrary contained in this Act or any pension scheme.

18 Payments into Fund by local authority members

(1) A local authority member which has been required in terms of subsection (4) or (6) of section *seventeen* to pay any amount into the Fund shall make such payment at such time or times and in such manner as the Management Committee may determine.

(2) If the amount of the income in any financial year from investments of the Fund is less than five *per centum* of the mean fund, the local authority members shall pay into the Fund a sum equal to the difference between such amounts.

(3) The sum payable by each local authority member in terms of subsection (2) shall be—

(a) such proportion of the total sum payable in terms of subsection (2) as the aggregate amount paid by that local authority member into the Fund as the equivalent of the ordinary contributions, as defined in subsection (7) of section *seven* as at the 31st December in that financial year bears to the total of such payments by all the local authority members as at that date; and

(b) paid at such time or times and in such manner as the Management Committee may determine.

(4) Where any amount referred to in subsection (1) or (3) is not paid in full at the appropriate time determined in terms of that subsection, the local authority member shall pay interest thereon at such rate as may be determined by the Management Committee.

(5) For the purposes of subsection (2)—

“mean fund” means one-half of the aggregate of the value of the assets of the Fund at the beginning of the financial year and the value of the assets of the Fund at the end of the same financial year, less one-half of the income derived from the investments of the Fund during that financial year.

19 Adjustment of pensions for inflation or deflation

The Management Committee shall, in accordance with a pension scheme, after consulting the valuator, adjust any pension payable from the Fund in terms of a pension scheme or subsection (2) of section *twenty-three* to counter the effects of any rise or fall there may have been in the cost of living:

Provided that no such adjustment shall have the effect of reducing the pension below the amount of the pension when it first became payable.

20 Protection of pensions

(1) Subject to subsections (4) and (5), no pension or other benefit payable in terms of a pension scheme or subsection (2) of section *twenty-three* or right thereto shall be capable of being assigned or transferred or otherwise ceded or of being pledged or hypothecated, nor shall the same or any contributions made under a pension scheme or the repealed Act be liable to be attached or subjected to any form of execution under a judgment or order of a court of law and any attempt to assign, transfer, cede, pledge or hypothecate any such benefit or right thereto shall be invalid and of no effect.

(2) If the estate of any pensioner is or has been sequestrated or assigned, the pension payable to him in terms of a pension scheme or subsection (2) of section *twenty-three* shall not form part of the assets of his insolvent or assigned estate.

(3) If a pensioner is serving a term of imprisonment, the Management Committee may, if it thinks fit, pay his pension to or for the benefit of his dependants during his term of imprisonment and the section of such dependants shall be in the discretion of the Management Committee.

(4) Subsection (1) shall not preclude any cession, pledge or hypothecation which is permitted by regulations made in terms of the Pension Funds Act.

(5) Notwithstanding anything to the contrary contained in this section, sections 46 and 47 of the repealed Act shall continue to apply, *mutatis mutandis*, in relation to—

(a) any debt referred to in subsection (1) or (2) of the said section 46 which was owed by the contributor or pensioner immediately prior to the fixed date; and

(b) any pecuniary loss referred to in subsection (2) of the said section 46 which had been suffered by the local authority prior to the fixed date.

21 Special provisions for transferred contributors

Notwithstanding anything to the contrary contained in this Act or the Pension Funds Act, where a contributor has been transferred to the employment of the Zimbabwe Electricity Supply Authority in terms of the Electricity Act [*Chapter 13:05*] all the obligations relating to the payment of contributions to the Fund which vested in his employer immediately before the date of his transfer shall, on and after that date, vest in the Zimbabwe Electricity Supply Authority.

22 Regulatory powers of Minister

(1) The Minister may make regulations prescribing any thing which under this Act is to be prescribed.

(2) Regulations made in terms of subsection (1) may provide for—

(a) the appointment, nomination, election and conditions of office of trustees, other than the chairman, and their alternates, the vacation of office by such trustees and their alternates and the filling of any casual vacancy for the unexpired portion of the term of office of the trustee whose office has become vacant:

Provided that—

(i) the appointment and election of trustees, other than the chairman, and their alternates shall be based on the provisions of paragraph (a) of subsection (2) of section *seven*; and

- (ii) an alternate may be authorized to act in the place of a trustee who has died or vacated his office until someone has been appointed or elected to fill the vacancy;
- (b) some of the trustees first appointed or elected in terms of this Act to hold office for a period of less than three years;
- (c) the conditions of office of, and the vacation of office by, the chairman of the Board and his alternate;
- (d) the appointment by the Minister of a Committee member or trustee or an alternate where the contributors, local authority members or trustees, as the case may be, for any reason fail or refuse to elect or appoint a Committee member or trustee or an alternate or to nominate three persons for appointment as chairman of the Board or his alternate, as the case may be, when required to do so;
- (e) the quorum and procedure to be followed at meetings of the Board.

(3) A person who, in terms of regulations referred to in paragraph (d) of subsection (2), is appointed by the Minister as a Committee member, trustee or chairman of the Board or as an alternate shall be deemed, for the purposes of this Act, to have been duly elected or appointed by the contributors or local authority members or nominated by the trustees who failed or refused to make the election, appointment or nomination, as the case may be, and shall hold office as though he had been duly elected, appointed or nominated.

23 Repeals and savings

(1) Subject to sections *seven* and *fourteen*, the Local Authorities Pension Act [*Chapter 209 of 1974*] and the subsidiary legislation made thereunder is repealed.

(2) Notwithstanding subsection (1), any pension which, immediately before the fixed date, was payable in terms of the repealed Act, including any scheme, agreement or rules made thereunder, hereinafter called the repealed provisions, shall, subject to subsection (7) of section *seventeen* and section *nineteen*, continue to be paid on and after the fixed date in accordance with the repealed provisions and if, on the death of the pensioner concerned, any pension becomes payable in terms of the repealed provisions to any dependant of that pensioner, such pension shall be paid in accordance with the repealed provisions.

(3) The modification to section 40 of the repealed Act made by paragraph 6 of the Second Schedule shall apply in relation to any widow's pension which—

- (a) ceased to be paid in terms of the said section 40 prior to the fixed date; or
- (b) continued to be paid on and after the fixed date in terms of subsection (2) and thereafter ceased to be paid in terms of the said section 40:

Provided that if, in the case of a pension referred to in paragraph (a) the widow concerned was again widowed or became legally separated or divorced prior to the fixed date, her pension shall only be reinstated in terms of the said section 40, as modified, with effect from the fixed date.

(4) If, prior to the fixed date, the former Committee has prepared a draft of a proposed pension scheme such as is referred to in paragraph (a) of subsection (1) of section *fourteen* and has complied with the requirements of subsection (3) of section *fifteen*, the Management Committee may, after the fixed date, submit the draft to the Board in terms of subsection (4) of that section, together with all objections, representations, comments and recommendations such as are referred to in the said subsection (3) and the valuator's report thereon.

FIRST SCHEDULE (Section 9)

POWERS OF MANAGEMENT COMMITTEE

1. To acquire, on behalf of the Fund, by way of purchase, loan, hire, lease or exchange, movable or immovable property.
2. To maintain, alter or improve the property of the Fund.
3. To sell, exchange, lease, dispose of, turn to account or otherwise deal with any property of the Fund for such consideration as the Management Committee may determine.
4. Subject to the Pension Funds Act, to lend, invest, place on deposit or otherwise deal with any moneys of the Fund available for investment, including investment by way of the acquisition of immovable property.
5. Subject to the proviso to subsection (4) of section 18 of the Pension Funds Act, to grant loans such as are referred to in the said subsection (4).
6. To realize any investment of the Fund.
7. To obtain an advance from any bank or other source upon the credit of the Fund or borrow money on the security of any assets of the Fund and, for this purpose, may pledge or mortgage any such assets:
Provided that, except with the approval of the Board, no advance or loan may be obtained which would result in the aggregate of the advances and loans exceeding fifty *per centum* of the value of all the assets of the Fund at the date on which such advance or loan is to be obtained.
8. To insure against any loss, risk or liability which the Fund may incur or any damage which the Fund may suffer.
9. To enter into agreements and to modify or rescind such agreements.

10. To draw, make, accept, endorse, discount, execute and issue, for the purpose of the business of the Fund, promissory notes, bills of exchange, securities and other negotiable and transferable instruments.
11. Generally, to do all such things as are incidental or conducive to the exercise of the functions or the performance of the duties of the Management Committee or which are incidental to the powers specified in this Schedule or which are calculated, directly or indirectly, to enhance the value of, or to develop, the property of the Fund.

SECOND SCHEDULE (Sections 14 (2) and 22 (3))

MODIFICATION OF THE REPEALED ACT

1. Any reference in the provisions continued in force by subsection (2) of section *fourteen* to the Management Committee shall be read and construed as a reference to the Management Committee established by this Act.
2. The proviso to section 25 of the repealed Act shall be read and construed as though it required a member to retire or to be retired not later than the last day of the month in which he attains the age of sixty-five years.
3. Section 28 of the repealed Act shall be read and construed as though subsection (1) had been amended by the insertion, after, "pensionable service", where it occurs for the first time, of "or his employer".
4. Part II of the repealed Act shall be read and construed as though the following sections had been inserted after section 34—

"34A. Optional pension or supplementary pension for widow or other dependant of contributor referred to in section 23, 27, 28 or 32

(1) Notwithstanding the provisions of sections *twenty-three*, *twenty-seven*, *twenty-eight* and *thirty-two*, a contributor referred to in any of the said sections may at the time of his retirement, by notice in writing to the Management Committee, surrender the whole or part of the benefit referred to in subsection (3) of section *twenty-three*, subsection (2) of section *twenty-seven*, subsection (3) of section *twenty-eight* or subsection (2) of section *thirty-two*, as the case may be, subject to the condition that if on his death he leaves a widow or any other dependant specified by him, with the approval of the Management Committee she or that other dependant, as the case may be, shall be entitled to a pension or supplementary pension, as the case may be.

(2) Where a contributor who has surrendered the whole or part of a benefit referred to in subsection (1) dies and leaves a widow or other dependant specified in terms of subsection (1), she or that other dependant, as the case may be, shall be entitled, with effect from the date of his death, to a pension or supplementary pension, as the case may be, at the rate fixed by the actuary at the date the benefit is so surrendered, having regard to the age of the contributor and of his wife or other dependant, as the case may be, on the date of his retirement and, in the case of a widow, the provisions of section *forty* as modified by paragraph 6 of the Second Schedule to the Local Authorities Employees (Pension Schemes) Act [*Chapter 29:09*] shall apply, *mutatis mutandis*, in relation to the payment of such pension or supplementary pension, as the case may be.

34B. Limitation of amounts that may be paid as a lump sum

Notwithstanding the provisions of sections *twenty-seven*, *twenty-eight*, *thirty-two* and *thirty-four* and of section 4 of the Local Authorities Pension Fund (Deferred Pensions) Rules, 1972, in the case of a person who became a contributor referred to in any of the said sections on or after the 3rd March, 1978, the said section shall apply to him as though it contained the limitations and qualifications set out in subsections (1) and (2) of section 20 of the Pension and Provident Funds Regulations, 1976, as amended.

34C. Payments of minimum gratuity to certain members

If a member would, in terms of an industrial agreement or determination or employment regulations made in terms of the Labour Relations Act [*Chapter 28:01*], have been eligible for a gratuity on his resignation, discharge, death or retirement had he not been a member, then if any lump sum or the capital value, as determined by the actuary, of any pension payable to or in respect of such member under this Part and Part III is less than the aggregate of—

- (a) the contributions and payments made after the 1st July, 1976, by such member to the fund with simple interest at the rate of two *per centum* per annum; and
- (b) the gratuity that would have been paid to or in respect of such member in terms of such agreement, determination or employment regulations on his resignation, discharge, death or retirement had he not been a member;

an amount equal to the difference shall be paid to or in respect of him, and such amount shall be recoverable by the Fund from the local authority which employed such member at the date of his resignation, discharge, death or retirement."

5. Section 38 of the repealed Act shall be read and construed as though subsection (1) had been amended by the deletion of "pensionable emoluments of such contributor during the twelve months immediately preceding his death or, if such contributor dies before he has completed twelve months' contributory service, a pension equal to twenty-five *per centum* of the amount calculated by multiplying his pensionable emolu-

ments during the period of such service by three hundred and sixty-five and dividing the product by the period of such service reckoned in days, or” and the substitution of “annual rate of the pensionable emoluments of such contributor at the date he died or,”.

6. Section 40 of the repealed Act shall be read and construed as though the following subsection had been inserted, the existing section becoming subsection (1)—

“(2) If a pension has ceased to be payable in terms of subsection (1) and the widow concerned subsequently is again widowed or becomes legally separated or divorced, the pension shall be reinstated with effect from the date of the death of her husband or her legal separation or divorce, as the case may be, at the rate at which it would have been paid at the date had it not ceased.”.

7. Section 54 of the repealed Act shall be read and construed as though the following subsection had been inserted after subsection (2)—

“(3) A contributor shall notify the Management Committee in writing—

- (a) whether or not he will become entitled to any benefit from any other fund registered in terms of the Pension and Provident Funds Act [*Chapter 24:09*] other than a retirement annuity fund as defined in that Act; and
- (b) if he will become entitled to such a benefit, of the name of the fund concerned and, if possible, the amount of the benefit.”.

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