

CHAPTER 04:07
JUDGES' PENSIONS
ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Application of Act
4. Qualification for pension
5. Payment of reduced pension
6. When pension not payable
7. Computation of pension on retirement or resignation
8. Removal from office under section 97 of the Constitution
9. Payment of gratuity where judge dies while in judicial service
10. Pension payable to surviving spouse
11. Payment of gratuity in lieu of pension
12. Service after retirement
13. Payment of lump sum of money on retirement
14. Pension or gratuity not liable for attachment
15. Taxation
16. Medical aid
17. Pension chargeable on Consolidated Fund
18. Power to make regulations
19. Transitional provisions

Act 13, 2007.

An Act to make provision for pensions for judges of the Court of Appeal, the High Court and the Industrial Court and for matters connected therewith.

[Date of Commencement: 12th October, 2007]

1. Short title

This Act may be cited as the Judges' Pensions Act.

2. Interpretation

In this Act, unless the context otherwise requires-

"**age of retirement**" means the age prescribed as the age of retirement of a judge by the Constitution or enactment under which he or she is or was appointed;

"**dependent children**" includes step children;

"**full pension**" has the meaning assigned to it under section 7;

"**judge**" means-

- (a) the President and any judge of the Court of Appeal;
- (b) the Chief Justice and any judge of the High Court;
- (c) the President or any judge of the Industrial Court; or
- (d) such person as the President may by order declare to be included in the definition of a judge for the purposes of this Act;

"**judicial service**" means service as-

- (a) President or judge of the Court of Appeal;
- (b) Chief Justice or judge of the High Court;
- (c) President or judge of the Industrial Court;
- (d) person holding a post created by an enactment designated as judicial service;

"**resigns**" means to cease to be a judge otherwise than by retirement or death;

"**retires**" means to cease to be a judge by reason of having attained the age of retirement;

"salary" means the salary for the time being payable to a serving judge.

3. Application of Act

(1) The provisions of this Act shall apply to a person appointed as a judge and holding a judicial service post on permanent and pensionable terms immediately before or after the commencement of this Act.

(2) The application of this Act in relation to a judge referred to in subsection (1) shall have effect from the date of appointment of the judge on permanent and pensionable terms under the Constitution or enactment under which he or she is or was appointed.

4. Qualification for pension

A person appointed as a judge in the judicial service on permanent and pensionable terms under the Constitution or enactment under which he or she is or was appointed shall, on attaining the age of retirement, after having served as a judge for a continuous period of 15 years, be eligible for payment of full pension.

5. Payment of reduced pension

(1) Where a judge resigns after serving continuously in the judicial service for a period of not less than 10 years but less than 15 years, he or she shall be entitled to receive a reduced pension proportionate to the period he or she served in relation to 15 years.

(2) Where a judge resigns after serving continuously in the judicial service for a period of 15 years but has not attained the age of retirement, he or she shall be entitled to receive a reduced pension proportionate to the age of the judge in relation to the age of retirement.

6. When pension not payable

A pension under this Act is not payable to or in respect of a judge who is first appointed a judge within the period of five years immediately preceding the day on which he or she would attain the age of retirement.

7. Computation of pension on retirement or resignation

Where a judge-

- (a) retires; or
- (b) having had not less than 15 years judicial service and having attained the age of 65 years resigns,

the judge shall be entitled to a pension at a rate equal to the sum of 80 per cent of the salary for the time being payable to a serving judge (in this Act referred to as "full pension").

8. Removal from office under section 97 of the Constitution

(1) Where a judge is removed from office under section 97 of the Constitution for any reason other than misbehaviour, after serving continuously in the judicial service for a period of 15 years but has not attained the age of retirement, the judge shall be entitled at his or her option to elect to be paid a pension or gratuity.

(2) Where a judge is removed from office for misbehaviour, after serving continuously in the judicial service for a period of 15 years but has not attained the age of retirement, the judge shall be entitled to a gratuity at the rate of 15 per cent of his or her salary during his or her period of service.

(3) Where a judge referred to in subsection (1)-

- (a) elects to be paid a pension, the judge shall be entitled to receive a reduced pension proportionate to the age of the judge in relation to the age of retirement; or
- (b) otherwise elects to be paid a gratuity, the judge shall be entitled to payment of gratuity at the rate of 30 per cent of his or her salary during his or her period of service.

(4) Where a judge is removed from office-

- (a) in accordance with section 97 of the Constitution for any reason other than misbehaviour, after serving for a period of service less than the period of service served by a judge referred to in subsection (1), he or she shall be entitled to a payment of gratuity at the rate of 30 per cent of his or her salary during his or her period of service; or

- (b) for misbehaviour, after serving for a period of not less than five years but less than 15 years he or she shall be entitled to payment of gratuity at the rate of 15 per cent of his or her salary during his or her period of service.

9. Payment of gratuity where judge dies while in judicial service

Where a judge holding a judicial service post dies while in the judicial service, and is survived by a spouse, there shall be paid to the surviving spouse of the deceased judge a gratuity at the rate of 30 per cent of his or her salary during the period of service of such deceased judge, and where there is no surviving spouse, the gratuity shall be payable to any dependent children of the deceased judge under 21 years of age, and in the absence of any dependent children, the gratuity shall be paid to the estate of the deceased judge.

10. Pension payable to surviving spouse

(1) Where a judge entitled to payment of a pension on retirement or on resignation dies and is survived by a spouse, the spouse shall, subject to subsection (2), be entitled to a pension for life at the rate of 50 per cent of such judge's pension.

(2) A pension payable to a surviving spouse under subsection (1) shall, if there is no surviving spouse or if the surviving spouse dies, be payable to any dependent children of the deceased judge under 21 years of age.

11. Payment of gratuity in lieu of pension

Where a judge resigns after serving for a period of not less than five years but not more than 10 years, he or she shall be entitled to payment of gratuity at the rate of 30 per cent of his or her salary during his or her period of service.

12. Service after retirement

(1) A judge who has retired on attaining the age of retirement, or who has resigned on full pension, and is receiving his or her pension shall make himself or herself available to perform such judicial or quasi judicial functions as may be assigned to him or her by the President or the Chief Justice, for a period or periods which in the aggregate, amount to three months in a year, without any further remuneration until the judge attains the age of 75 years: Provided that such a judge is in good health.

(2) Where a judge is required and agrees to perform or do work for more than three months during any year, the judge shall be entitled to claim time credit for such excess in the subsequent years.

(3) A judge referred to in subsection (1) who, without lawful excuse, refuses, fails or neglects to undertake or perform any functions assigned to him or her shall be liable to forfeit his or her pension during the period which he or she refused or failed to undertake the function required of him or her.

13. Payment of lump sum of money on retirement

On retirement of a judge or resignation of a judge entitled to full pension, there shall be payable to the judge a non-taxable lump sum of money which shall be equivalent to 24 months of the salary the judge earned at the date of retirement or resignation, as the case may be, which amount shall be recoverable on terms and conditions to be agreed with the judge.

14. Pension or gratuity not liable for attachment

A pension payable in terms of this Act shall not be capable of being assigned or ceded or otherwise transferred or of being pledged or hypothecated nor shall it be liable to be attached or subjected to any form of execution under a judgment or order of court except for the purpose of satisfying-

- (a) a debt due to the Government of Botswana; or
- (b) an order of any competent court for the payment of periodical sums of money towards the maintenance of the spouse or former spouse or minor child of the judge to whom the pension is payable.

15. Taxation

(1) A judge's pension shall be taxable as in the case of any other Taxation serving judge

of the judicial service.

(2) Any gratuity paid or payable under this Act shall not be taxable except a gratuity paid or payable under section 11.

16. Medical aid

A judge who retires or resigns on full pension shall be eligible to Medical aid remain on the medical aid scheme applicable to serving judges, on the same terms and conditions for the time being applicable to judges.

17. Pension chargeable on Consolidated Fund

The pension and other benefit conferred by this Act shall be a charge on the Consolidated Fund.

18. Power to make regulations

The Minister may, by statutory instrument, make regulations for the purpose of giving effect to the provisions of this Act.

19. Transitional provisions

(1) Any judge who, immediately before the commencement of this Act, is in receipt of gratuity in terms of the Judges (Miscellaneous Provisions) Act or any other enactment, shall have the option to transfer to pensionable terms under this Act by exercising the option within six months of the date of publication of this Act in the *Gazette* by writing addressed to the Judicial Service Commission.

(2) On the date of the exercise of such option the judge shall immediately thereafter cease to be entitled to gratuity under the provisions of the Judges (Miscellaneous Provisions) Act or any other enactment for any period subsequent to the exercise of that option and the judge shall be entitled to pension in terms of subsection (3).

(3) Where a judge receiving gratuity decides to opt to be paid a pension under this Act, the amount of the pension payable to such a judge shall be equivalent to the amount of the pension payable to a judge who retires in accordance with the provisions of this Act, which amount the judge opting to be paid a pension would have been entitled to receive had no gratuity been paid, less 10 per cent of the pension payable for every two years for which the judge had been paid a gratuity, but the reduction shall be such that a minimum of 40 per cent of the amount of the pension shall be payable in any event.