

**REGULATIONS**

**NATIONAL SOCIAL SECURITY  
FUND ACT, 2013**

**NO. 45 of 2013**

**LEGAL NOTICE NO.**  
**THE NATIONAL SOCIAL SECURITY FUND ACT**  
**(No. 45 of 2013)**

**IN EXERCISE** of the powers conferred by section 68 of the National Social Security Fund Act 2013, the Cabinet Secretary for the Ministry of Labour, Social Security and Services makes the following Regulations: -

**REGULATIONS UNDER SECTION 19**

**THE NATIONAL SOCIAL SECURITY FUND (MANDATORY REGISTRATION) REGULATIONS, 2014**

**PART I – PRELIMINARY**

- |                              |   |
|------------------------------|---|
| Citation                     | 1. These Regulations may be cited as the National Social Security Fund (Mandatory Registration) Regulations, 2014.  |
| Application                  | 2. These Regulations shall apply to any person, including:<br>(i) All employers as defined in this Act.<br><br>(ii) All employees as defined in this Act.   |
| Interpretation               | 3. In these Regulations, unless the context otherwise requires –<br><br>“approved form” means such forms as the Managing Trustee may, from time to time, approve for the purposes of making application for registration under the Act and these Regulations. |
| Deemed Registration          | 4. Every member of the Previous Fund other than members making voluntary contributions shall at the commencement of these Regulations be deemed to be registered members of the Pension Fund.   |
| Persons eligible to Register | 5. (1) Subject to the provisions of the Act, every employee who, on or after the commencement of these Regulations, is employed by an employer who has a place of business in Kenya and;<br><br>(a) is working in Kenya;                                      |

- (b) is a citizen of or ordinarily resident in Kenya;
- (c) ordinarily resident in Kenya and is employed outside Kenya;
- (d) has attained the age of eighteen years; and
- (e) has not attained the age of sixty years on the appointed date -

shall register with the Fund and contribute as an employee in accordance with the provisions of the Act and these Regulations.

- (2) Subject to the provisions of the Act, every employer who has a place of business in Kenya, on or after the commencement of these Regulations, shall register with the Fund and contribute as an employer in accordance with the provisions of these Regulations.

## **PART II - REGISTRATION OF EMPLOYERS AND EMPLOYEES**

### Registration of Employers

- 6.(1) An employer liable to be registered under Regulation 5 (2) shall apply for registration within thirty days after the Act begins to apply to him, by completing and forwarding to the Managing Trustee an application in the approved prescribed form.
- (2) The Managing Trustee shall issue an employer registration number to every employer from whom he has received an application and shall notify the employer of such number.
- (3) The employer shall enter the employer registration number on all documents prepared by him in connection with the Act and these Regulations and in all correspondence with the Fund.
- (4) An employer who before or on the commencement of these Regulations was registered as an employer under the Previous Fund shall be deemed to be registered under these Regulations.
- (5) A business entity or organization which consists of several branches, departments, sections, sub-offices, depots, sites, stores or other units, whether situated in the same place or in different places, under single management, shall for the purpose of the Act and these Regulations be deemed to be one management and control under the Act and these Regulations shall apply to all the employees therein accordingly.

(6) A business entity or organization which consists of several branches, departments, sections, sub-offices, depots, sites, stores or other units, whether situated in the same place or in different places, under independent management, shall for the purpose of the Act and these Regulations shall be deemed to be separate employers and these Regulations shall apply to all the employers and employees therein accordingly.

Furnishing of employer Information

7. The employer applying for membership shall be required to fully furnish the Fund in writing with the information detailed in the application form

Registration of Employees

8. (1) An employer shall, immediately after his registration and also on taking on any new employee, direct every employee or the new employee including a daily paid worker(s) to complete an application in the approved form unless the employee produces evidence that he is already registered under these Regulations.

(2) An employer shall sign or stamp every application form completed by an employee under regulation 8(1) and forward it to the Managing Trustee.

(3) The Managing Trustee may with the approval of the Board, require registration of employees in a manner other than that specified in the Regulations and may among other things prescribe forms for recording particulars of employees, direct preparation and issue identification documents and require submission of returns by employers in connection therewith.

Furnishing of employee information

9. The person applying for membership shall be required to fully furnish the Fund in writing with the information detailed in the application form

Membership Identification

10. (1) The Managing Trustee shall cause an identity card in the approved format, to be known as the membership card, to be prepared and issued to the member or forwarded to the member through the employer; or

(2) The Board may adopt the Universal Government Identification Card number to be the membership number.

(3) The Managing Trustee shall provide a membership number for the applicant which shall be entered on his membership card

(4) Every employer to whom such membership card is sent shall forthwith hand it or cause it to be handed over to the employee concerned, or, if the employee is no longer in his employment, he shall return it to the Fund without delay

(5) All membership cards shall remain the property of the Fund.

Evidence of membership **11.** An employee who is already a member of the Fund shall produce his membership card to every new employer, or where the card is lost, he shall produce such other evidence of his membership and registration number as he may possess.

Employer Cessation **12.** An employer to whom the Act applies shall, sixty days before ceasing to be an employer within the meaning of the Act and these Regulations, inform the Managing Trustee of the date of cessation.

Cancellation of Registration as an Employer **13.** The Managing Trustee may upon receipt of notice under regulation 12 or upon otherwise being satisfied that a person has ceased to be an employer for purposes of the Act, cancel the registration of that person as an employer.

Prohibition of deliberate defacing or destroying of cards **14.** Deliberate destroying, defacing, amending or erasing any membership card is prohibited.

Replacement of membership card **15.** Where a membership card of any member is destroyed, lost or defaced in any material particular, the employee shall apply to the Managing Trustee for a new card and the Managing Trustee, on being satisfied as to such destruction, loss or defacement, shall issue a new card upon payment of a fee of Kenya Shillings two hundred and which may be revised by the Managing Trustee from time to time.

Notification of Changes **16.** (1) Each contributing employer shall without delay notify the Managing Trustee of any change of his physical and postal address and telephone contacts.

(2) Every contributing employer shall notify the Fund

when any contributing member first enters, or ceases to be in, his employ and shall furnish such further information as the Managing Trustee may require for the purpose of tracing such member.

- Incorrect card
17. A person who has a membership card containing any particulars which are to his knowledge incorrect shall forthwith inform the Managing Trustee so that a fresh membership card may be issued in lieu thereof.
- Possession of more than one card
18. A person who has in his possession more than one membership card relating to the same person shall forthwith surrender both cards to the Managing Trustee provided that the Managing Trustee shall forthwith issue a new card.
- Membership card upon death of a member
19. On the death of a member any membership card in the custody or possession of any person including an employer shall immediately be forwarded to the nearest office of the Fund for purposes of the Act.
- Found card
20. Any person who finds a membership card shall forthwith deliver it to a responsible officer at a police station, post office or the nearest office of the Fund.

#### **PART IV – OBLIGATIONS OF EMPLOYEES AND EMPLOYERS**

- Obligation of an Employee
21. (1) An employee shall provide his employer, on request, with such personal particulars as may be required for the purpose of these Regulations and the employee shall be responsible for the accuracy of the particulars so provided.
- (2) An employee shall be responsible for the safety of his membership card and shall secure replacement from the Managing Trustee if the card is destroyed, lost or defaced.
- Obligation of an Employer
22. (1) An employer shall ensure that every employee in his employment who is liable to register under the Act is so registered within thirty days of the date of commencement of the employment.
- (2) An employer shall, notify the Managing Trustee of the happening of any event which the Board may, from time to time, specify.

Records of employees

- 23.** (1) Every contributing employer shall keep a written record of Fund membership number and records of earnings of each of his contributing employees.
- (2) The Fund shall keep a record of an employee for a period of ten years after the Fund fully discharges obligations to the member.

**LEGAL NOTICE NO.**  
**THE NATIONAL SOCIAL SECURITY FUND ACT**  
**(No. 45 of 2013)**

**IN EXERCISE** of the powers conferred by section 68 of the National Social Security Fund Act 2013, the Cabinet Secretary for the Ministry of Labour, Social Security and Services makes the following Regulations: -

**REGULATIONS UNDER SECTION 19**

**THE NATIONAL SOCIAL SECURITY FUND ACT, 2013 (VOLUNTARY REGISTRATION) REGULATIONS**

**PART I – PRELIMINARY**

- |             |  |
|-------------|--|
| Citation    | 1. These Regulations may be cited as the National Social Security Fund, (Voluntary Registration) Regulations, 2014.                          |
| Application | 2. These Regulations shall apply to-<br>(i) The self-employed as defined in this Act.<br>(ii) Voluntary contributors as defined in this Act. |

**PART II – REGISTRATION OF VOLUNTARY MEMBERS**

- |                                     |   |
|-------------------------------------|---|
| Eligibility of voluntary membership | 3. A person shall be eligible to be registered as a voluntary member if such a person-<br><br>(a) is self employed.<br><br>(b) retires from employment or otherwise ceases to be an employee within the meaning of the Act, otherwise by attaining pensionable age.<br><br>(c) is ordinarily resident in Kenya but is employed outside Kenya under a contract of service entered into by an employer who does not reside in or has no place of business in Kenya. |
|-------------------------------------|---|



(d) is employed in Kenya by a person who is not an employer within the meaning of the Act.

(e) is a member of an organized group of persons invited by the Board to become members of the Fund pursuant to an agreement under Regulation 5 below.

(f) is a Kenyan citizen living and working outside Kenya.

(g) is an exempt person under this Act.

Furnishing of required information

4. The person applying for membership shall be required to furnish the Fund in writing with the information detailed in the application form.

Admission Agreement

5. The Board may enter into an agreement to be known as an admission agreement whereby members of an organized group of persons whether otherwise eligible to become members of the Fund or not, may subject to such conditions as the Board may prescribe become members of the Fund.

Voluntary Member Registration

6. (1) A person may apply to register as a voluntary member by making application in the approved form to become a member of the Provident Fund.

(2) Upon registration, the voluntary member shall pay an initial contribution of not less than two hundred shillings.

(3) Those registering online shall be required to make the initial contribution of not less than two hundred shillings through an authorized mode of payment.

Certificate of membership of voluntary contributor

7. On receipt and approval of an application for voluntary contribution, the Managing Trustee shall issue the applicant with a certificate for voluntary contributions for long-term benefits, and the holder of the certificate shall be liable to pay contributions in respect of those benefits in a manner prescribed by the Board.

Prohibition of deliberate defacing or destroying of certificate

8. Deliberate destroying, defacing, amending or erasing of the certificate is prohibited.

**PART III - CESSATION OF MEMBERSHIP AS VOLUNTARY MEMBER**

Cessation of membership as voluntary member

**9.** A person shall cease to be a voluntary member if-

(a) he becomes an employed contributor; or

(b) he advises the Managing Trustee in writing that he longer wishes to be a voluntary contributor.

Retention of Membership

**10.** A person who advises the Managing Trustee in writing that he no longer wishes to be a voluntary contributor may retain his membership unless he opts to access the benefits.

**LEGAL NOTICE NO.**  
**THE NATIONAL SOCIAL SECURITY FUND ACT**  
**(No. 45 of 2013)**

**IN EXERCISE** of the powers conferred by section 68 of the National Social Security Fund Act 2013, the Cabinet Secretary for the Ministry of Labour, Social Security and Services makes the following Regulations: -

**REGULATIONS UNDER SECTION 20**

**THE NATIONAL SOCIAL SECURITY FUND (MEMBER CONTRIBUTIONS) REGULATIONS, 2014**

**PART I - PRELIMINARY**

- |                |   |
|----------------|---|
| Citation       | 1. These Regulations may be cited as the National Social Security Fund (Member Contribution) Regulations, 2014. |
| Application    | 2. These Regulations shall apply to employers and employees;  |
| Interpretation | 3. In these Regulations, unless the context otherwise requires-   |

“fluctuating emoluments” for the purposes of these Regulations means employee earnings not paid on a fixed basis, but additional to basic wage or salary and includes benefits in kind, acting allowance, special duty allowance, leave allowance, uniform allowance, equipment allowance but does not include bonuses, commissions, overtime, shift pay, house allowance and service charge.

Mandatory Contributions to the Fund

**PART II – MANDATORY CONTRIBUTIONS**

4. The Pension Fund established under the Act on 10<sup>th</sup> January, 2014 with mandatory contributions payable to it from 1<sup>st</sup> June 2014.

5. For the purposes of the Third Schedule of the Act, the second and subsequent years' contribution period will commence on the anniversary of the commencement date of the Act.
6. An employer shall pay contributions to the Pension Fund in respect of each employee in his or her employment as prescribed in Section 20 of the Act.
7. An employer may opt to bear the full burden of the mandatory contributions prescribed in Section 20 of the Act, except that in such a case the employer's contribution shall be 12% of the employee's monthly pensionable earnings excluding fluctuating emoluments.
8. All contributions shall be paid directly to the Fund or the Fund's bank account in such manner as the Managing Trustee may from time to time authorize or through such other means as the Managing Trustee may with the approval of the Board require.
9. For every bounced cheque the Fund shall recover from the employer the bank charges for the bounced cheque.

Submission of monthly returns

10. Each month, every contributing employer shall submit to the Managing Trustee returns in the prescribed format and manner together with the contributions payable.

Agency fee

11. There shall be no agency fee or commission or any deductions whatsoever levied on mandatory contributions remittances.

Making an Early payment  
In cases of retirement

12. The Managing Trustee may in respect of employees due for retirement require an employer to pay the contributions in respect of that employee(s) earlier than the date prescribed to enable the Fund to make an expeditious payment of a benefit due.

Updating of member accounts

13. The Fund shall immediately on receipt of each member's contribution, update the members' account.

Practices calculated to avoid or reduce liability.

14. The Board may, where it believes that there is in existence any practice, in respect of payment of earnings, calculated to avoid or reduce liability for contributions by means of irregular or unequal payments or other irregular pay practice, give

	directions for ensuring that such contributions are payable as if that practice was not followed.
Failure to deduct contributions	<b>15.</b> Where the employer fails to deduct contributions from an employee's wages, the employer shall be required to pay both shares of contributions from his resources.
Payment of arrears	<b>16.</b> Where an employer pays increment of wages or salaries in arrears – <ul style="list-style-type: none"> <li>(a) he shall be obligated to deduct and remit the equivalent pension to the Fund for the month that the wages or salaries are earned.</li> <li>(b) if the arrears are part of a negotiated position under which pension contributions are not payable on wages or salaries arrears, no deduction or remission on the wages or salaries shall be made on the arrears.</li> </ul>
Interest on Contributions	<b>17.</b> All contributions will earn interest per annum accordingly.
Summarized Annual statements	<b>18.</b> For the purpose of this Act, a summarized annual statement, indicating principal amounts, interest earned and total amounts shall be issued to individual members for the Old Provident Fund, New Provident Fund and Pension Fund.
Members employed by more than one employer	<b>19.</b> Where an employee is employed by two or more employers, under any contract of service, each employer shall be liable to pay contributions for the employee as if he were the sole employer.
Remission of penalty on contributions	<b>20.</b> Any penalties waived on unpaid contributions under this Act shall be net of the interest due to a member's account and expenses incurred.
Daily Paid Workers	<b>21.</b> For daily paid workers, the employer shall deduct and remit in accordance with the provisions of the Act.
Employers paying gratuity	<b>22.</b> Where a contract of service provides for gratuity, the employer shall deduct and remit contributions in accordance with provisions of the Act. Provided that an employer may deduct its portion of contribution from the gratuity amount payable to the employee.
Transmission of notices and documents	<b>23.</b> Except as otherwise prescribed, any notice or document required or authorized to be given to any person by the Board under these regulations, shall be deemed to have been given or sent if it was sent by post or electronic mail to that person at his last known

address.

### **PART III – MANAGEMENT OF VOLUNTARY CONTRIBUTORS**

Voluntary contributions	<b>24.</b> The New Provident Fund under the Act, was established with effect from 10 January, 2014 but voluntary contributions to it are payable from 1 June 2014
Waiving of penalty on voluntary contributions	<b>25.</b> No penalty will be levied on late payments received from the self-employed and voluntary contributors
Voluntary contribution arrears	<b>26.</b> No contributions will be credited into a voluntary member's account in arrears.

### **LEGAL NOTICE NO.**

### **THE NATIONAL SOCIAL SECURITY FUND ACT**

**(No. 45 of 2013)**

**IN EXERCISE** of the powers conferred by section 68 of the National Social Security Fund Act 2013, the Cabinet Secretary for the Ministry of Labour, Social Security and Services makes the following Regulations:

### **REGULATIONS UNDER SECTION 32**

### **THE NATIONAL SOCIAL SECURITY FUND ACT, 2013 (CONTRIBUTIONS FROM MEMBER EMPLOYED BY MORE THAN ONE EMPLOYER) REGULATIONS**

#### **PART I – PRELIMINARY**

Citation	<b>1.</b> These Regulations may be cited as the National Social Security Fund (Member employed by more than one employer) Regulations, 2014.
----------	--

Application

2. These Regulations shall apply to members of the Pension Fund who are employed by more than one employer.

**PART II – CONTRIBUTIONS FROM EMPLOYEES WITH MORE THAN ONE EMPLOYER**

Contributions from employees with more than one employer

3. Where an employee is ordinarily employed by two or more employers in a month:-

(a) the employers of such an employee shall, submit to the Managing Trustee an arrangement for the payment of contributions in respect of such employee. If the Managing Trustee is satisfied that the arrangement is secure, he may, approve such an arrangement subject to such terms and conditions as he may think necessary.

Provided that no such an arrangement is made and submitted to or approved by the Managing Trustee, each employer shall be liable towards the employee as if he were the sole employer.

**LEGAL NOTICE NO.**  
**THE NATIONAL SOCIAL SECURITY FUND ACT**  
**(No. 45 of 2013)**

**IN EXERCISE** of the powers conferred by section 68 of the National Social Security Fund Act 2013, the Cabinet Secretary for the Ministry of Labour, Social Security and Services makes the following Regulations: -

**REGULATIONS UNDER SECTION 47**

**THE NATIONAL SOCIAL SECURITY FUND (CLAIMS AND PAYMENTS FOR THE PROVIDENT FUND BENEFITS) REGULATIONS**

**PART I - PRELIMINARY**

- |                |  |
|----------------|--|
| Citation       | 1. These regulations may be cited as the National Social Security Fund (Claims and Payments) (Provident Fund Benefits) Regulations, 2014.  |
| Application    | 2. These regulations shall apply to voluntary members and contributors of the Provident Fund.  |
| Interpretation | 3. In this regulation –<br><br>“approved form” means such forms as the Managing Trustee may, from time to time, approve for the purposes of making application for the payment of benefits under these Regulations;<br><br>“certificate of membership” means a certificate of membership issued under the National Social Security Fund (Registration) Regulations;<br><br>“qualified medical practitioner” means any person registered as a medical practitioner under the Medical Practitioners and Dentists Act and any person who if he were in Kenya would be eligible for registration as a medical practitioner under that Act. |

**PART II – CLAIM APPLICATION**

- |                   |   |
|-------------------|---|
| Claim application | 4. A claim for the payment of any benefit shall be made in writing in the approved form to the Managing Trustee or any person authorized in that behalf by him, and there |
|-------------------|---|



shall be submitted with such form the certificate of membership of the member to whose account in the Fund the claim relates:

Provided that the Managing Trustee may dispense with the production of the certificate of membership where he is satisfied that it is reasonable so to do.

- Claim appropriateness      5. The Managing Trustee may, when considering any claim for the payment of a benefit, treat such claim as a claim appropriate to a description of benefit other than that claimed.
- Conditions when making a benefit claim      6. Every person who makes a claim for the payment of a benefit shall, for the purpose of determining his claim-
- (a) furnish such certificates, documents, information and evidence as may be required by the Managing Trustee including where appropriate-
    - (i) a statutory declaration as to the truth of any statement of fact made by the claimant in his claim or in any evidence submitted by him;
    - (ii) an examination of the member by a properly constituted medical board or certified medical doctor;
    - (iii) in claims for age benefits, production of evidence in support of the claimant's statement that he has retired, or is about to retire, from employment;
    - (iv) in claims for withdrawal benefit evidence that he has been a member for at least of sixty months and he is no longer in self employment;
    - (v) in claims for survivor's benefit, a certificate or other evidence of the death of the member concerned, evidence of the claimant's own identity and relationship to the deceased member and information about other relatives of the deceased; and
    - (vi) in claims for emigration benefit, a claim shall be accompanied by retirement, termination or dismissal letter from the last employer, identity document and evidence that the claimant, who has/is emigrating to a country which does not have a reciprocal agreement with Kenya and has

no present intention of returning to reside in Kenya.

(b) if reasonably so required, attend at such office or place as the Managing Trustee may direct.

Referring of claims      **7.** If, in the opinion of the Managing Trustee any claim is incomplete or defective at the date of its receipt he may refer the claim to the claimant and if the form is returned duly completed or rectified within twenty-one (21) days from the date on which it is so referred, the Managing Trustee may treat the claim as if it has been duly made in the first instance.

Determination of age      **8.** In the absence of evidence to the contrary the date of birth of a member of the Fund as recorded by the Fund shall be conclusive and where no date of birth is recorded for a member or his dependants or is disputed the Managing Trustee may require such further evidence of age (including medical evidence) as may be obtainable. If there is a dispute a doctor will determine the age of the member.

Mode of paying benefits      **PART III – CLAIM PAYMENT**

**9.** (1) Any sum payable by way of benefit shall be paid to the claimant in a manner prescribed by the Managing Trustee from time to time.

(2) When any cheque or other document payment has been sent by ordinary or registered post, delivery thereof shall, unless the contrary is proved, be deemed to have been effected at the time at which a letter would be delivered in the ordinary course of the post;

Provided that the Managing Trustee is satisfied that a cheque or other document of payment has been lost or destroyed he may on receipt of a duly executed indemnity issue a duplicate of such cheque or other document of payment.

Apportioning of survivor's benefit

**10.** Where there is more than one person having under the Act an equal claim to survivor's benefit such benefit shall be apportioned equally among such persons, unless in a particular case the Managing Trustee is satisfied that a different apportionment would be appropriate.

Receipt of benefit

Payment of benefit of  
Unsound mind  
beneficiaries

**11.** The receipt of a member of the Fund or his legal representative or of a person authorized to receive the benefit on his behalf shall be a full and sufficient discharge to the Fund for the sum specified therein.

**12.(a)**Where the Managing Trustee is satisfied that a beneficiary is of unsound mind or for any reason is unfit to manage his own affairs he may pay the benefit, or any part thereof, due to that beneficiary to any other person who, in the opinion of the Managing Trustee, is a proper person to receive the sum of the beneficiary's behalf and will apply the sum for the maintenance and benefit of the said beneficiary; and any receipt given by such person shall be a good and sufficient discharge to the Fund for the sum so paid.

(b) A person paid under regulation 12 shall execute a deed binding him or her to use the benefits for the sole benefit of the beneficiary.

**LEGAL NOTICE NO.**  
**THE NATIONAL SOCIAL SECURITY FUND ACT**  
**(No. 45 of 2013)**

**IN EXERCISE** of the powers conferred by section 68 of the National Social Security Fund Act 2013, the Cabinet Secretary for the Ministry of Labour, Social Security and Services makes the following Regulations: -

**REGULATIONS UNDER SECTION 47**

**NATIONAL SOCIAL SECURITY FUND (CLAIMS AND PAYMENTS FOR THE PENSION FUND BENEFITS) REGULATIONS**

**PART I - PRELIMINARY**

Citation

**1.** These Regulations may be cited as the National Social Security Pensions Fund (Pension Fund Benefits) Regulations, 2014.

Application

**2.** These Regulations shall apply to the members of the Pension Fund.

Interpretation

**3.** In these Regulations, unless the context otherwise requires -

“approved form” means such forms as the Managing Trustee may, from time to time, approve for the purposes of making application for the payment of benefits under these Regulations;

“benefit” means a benefit payable under the Act

“Beneficiary” means in relation to a particular Member, for payment of benefit means or includes the Member's Spouse, adopted children, sons, daughters, grandsons, granddaughters, step-children, parents, grand-parents, nephews, nieces, uncles, aunts, brothers and sisters in each case whether related in the whole or the half blood, living at the time of the Member's death and such other person or persons as were, in the opinion of the Board, immediately before the Member's death substantially dependent upon the Member (whether alone or with others) for the provision of

the necessities of life provided that the class shall be closed at the death of the Member except that it shall include persons *en ventre sa mere* who if already born would have been dependants

“Board” means the National Social Security Fund Board of Trustees established under the Act.

“dependent relative” means, in relation to a deceased member of the Fund, any relative of the deceased who survives the deceased and who, on the date of the deceased's death was-

- (a) a wife or husband of the deceased;
- (b) a son or daughter of the deceased who had not attained the age of twenty five years; or
- (c) parent, grandparent, grandchild, brother, sister son, daughter or such other relative who was wholly or substantially dependent on the deceased for the provision of the ordinary necessities of life suitable for a person of his station;
- (d) nominated beneficiary.

“medical board” means medical boards already established under the County Government for purposes of examining persons who have claims to any benefit under the Act;

“medical doctor” means any person registered as a medical practitioner under the Medical Practitioners and Dentists Act and appointed by the Board for the purposes of examining persons who have claims to any benefits under the Act.

## **PART II – PENSION CLAIM APPLICATION**

Form of claims

**4.** A claim for the payment of a benefit under these Regulations shall be made in writing to the Managing Trustee in the approved form, which shall be supplied free of charge by the Board.

Eligibility for making pension benefit claims

**5.** A claim for a Pension Fund Benefit shall be made:

- (1) In the case of an invalidity pension within three months of the date the member was declared invalid by the medical board;
- (2) In case of a retirement pension upon attaining the pensionable age;

- (3) In case of a survivor's benefit upon the death of the member; and
  - (4) In the event that a member dies without nominating dependants the processing of the survivor benefit claims shall be deferred for 60 days after death of member to allow all potential beneficiaries for time to lodge their claim.
- Effect of the claims
- 6.** Where a claim for invalidity pension, is made after the lapse of the application window provided in sub regulation 5(1), as the case may be, the claimant shall be required to seek fresh re-examination by the medical board and a new certificate of invalidity be issued.
- General Information to be furnished by claimant
- 7.** Every person who makes a claim for the payment of a benefit shall, for the purpose of determining his claim furnish such certificates, documents, information and evidence as may be required by the Managing Trustee including a statutory declaration as to the truth of any statement of fact made by the claimant in his claim or in any evidence submitted by him.
- Information and documents to accompany specific claims
- 8.** A claim for a retirement pension shall be accompanied by retirement, termination or dismissal letter from the last employer.
- 9.** A claim for a survivor's pension shall be accompanied by an original death certificate, a copy of deceased identity document. Evidence of the claimant's own identity and relationship to the deceased member and information about other relatives of the deceased, confirmation from county administration and -
- (1) Where a member dies abroad the beneficiary shall be required to provide a death certificate of the member who died abroad.
  - (2) Where a member dies abroad and is buried abroad the beneficiary shall be required to provide an authenticated death certificate.
  - (3) Where a member is presumed dead a claim for a

survivor's pension shall be accompanied by an original decree of court presuming the member death not less than seven years from the date the member was reported lost, evidence of the claimant's own identity and relationship to the deceased member and information about other relatives of the deceased, confirmation from county administration.

**10.** A claim for invalidity pension shall be supported by, treatment records, comprehensive doctors report, certificate of invalidity by the medical board, evidence of retirement on medical grounds, identity document and where a doctor, an employer or medical institution holds such medical records, in respect of the employee, he shall furnish those records to the medical board.

**11.** A member who receives invalidity pension shall avail himself/herself before the same medical board for review every six months.

**12.** A claim for an Emigration Grant for Pension Fund members shall be accompanied by retirement, termination or dismissal letter from the last employer, identity document and evidence that the claimant, has/is emigrating to a country which does not have a reciprocal agreement with Kenya and that he has no present intention of returning to reside in Kenya.

Citizens of East African Community

**13.** Regulation 12 will not apply to members who are citizens of East Africa Community member states.

Funeral grant

**14.** A claim for funeral grant made in an approved form shall be accompanied by a death certificate or burial permit in respect of the deceased person, claimant and the deceased person's identity documents.

Exportability of contributions and benefits

**15.** Members who are citizens of East African Community shall apply in a prescribed form for his/her contributions or benefits to be exported to the social security scheme of the country of migration.

**16.** The Managing Trustee shall co-ordinate with the social

security schemes or similar schemes of other states to ensure the exportability of the totalized contributions and benefits of Kenyan citizens in those countries and actual physical transmission of the funds to the Fund for crediting to the appropriate member account.

Additional information      **17.** The claimant or the employer, as the case may be, shall furnish the Board with such other particulars as the Board may, from time to time require.

Medical certificate      **18.** (1) Where, under these Regulations, a claim is required to be supported by a medical certificate issued by a medical board for the purpose of establishing the claimant's or beneficiary's incapacity to work, the certificate shall be in such form as the Board may, from time to time, determine and shall include:

(a) In the case of invalidity pension, the condition causing such incapacity for work giving an indication of the disease, disability or injury by which the claimant is, in the opinion of the medical board rendered permanently and totally incapable of further employment;

(b) The date of the medical examination on which the certificate is based;

(c) The signatures of the members of the medical board with their names and addresses printed there under.

(2) A medical certificate shall be issued on the date of the examination on which it is based and no further certificate based on the same examination shall be issued other than a duplicate certificate to replace the original certificate which has been lost, in which case such certificate shall be clearly marked "duplicate".

Defective medical Certificate      **19.** The Board may, in its discretion, reject any medical certificate which does not comply with these Regulations and may suspend the determination of a claim until a proper medical certificate is submitted.

Appointment Of Medical Boards      **20.** For the purpose of this Act, the District or County medical boards composed under the Public Health Act shall be deemed to have been appointed under this act.

**21.** The Medical Boards shall appoint a chairperson for



each county.

22. The Medical Board shall have the power to determine-
  - (a) Whether there is medical evidence to support the claims of a claimant; and
  - (b) The date of onset of any medical condition claimed by the claimant.
23. The Medical Board shall consider all cases referred to it by the Board of Trustees of the Fund.
24. The members of the Medical Board shall in each case determine the medical status of a claimant.
25. The Medical Board shall have the following powers to-
  - (a) Hold hearings.
  - (b) Order medical and non medical examinations.
  - (c) Request medical records.
  - (d) Interview or examine the claimant.
26. The County Medical Board shall decide on each case by a majority of members.
- Conflict of interest  
In a member of the  
Medical board 27. A member of the Medical Board shall not participate in the determination of a claim in any case where-
  - (i) He or she has or may have a material interest therein; or
  - (ii) He or she has or had any professional responsibility in respect to the condition out of which the claim has arisen.
- Evidence of age 28. In the absence of evidence to the contrary the date of birth of a member of the Fund entered in the records of the Fund shall be conclusive and where no date of birth is recorded for a member or his dependants or is disputed the Managing Trustee may require such further evidence of age (including medical evidence) as may be obtainable.
- Amendment of claim 29. A claimant may, by notice in writing addressed to the Board, amend the type of claim at any time before a decision is given thereon and any claim so amended shall be treated as if it had been duly made in the first instance

- Simultaneous entitlement to benefits 30. Where a person is at the same time entitled to more than one benefit and receipt of one disqualifies him from receipt of the other, the person shall be entitled to choose the benefit to claim and the benefit so chosen shall be paid to him.
- Alternative benefit 31. Where it appears that a claimant is entitled to a benefit other than the one claimed, the Board may treat the claim as a claim for alternative to that other benefit if the necessary particulars and documents are attached.
- Defective claim 32. If a pension benefit claim form is defective at the date of its receipt, the Board may refer it back to the claimant, and if the form is returned to the Board properly completed within twenty one days from the date on which it is so referred, the claim may be treated as if it had been duly made in the first instance.

### **PART III – PAYMENT OF PENSION BENEFIT CLAIMS**

- Place and manner of payment of benefits 33. (1) A benefit payable by Fund under these regulations may be paid at any designated office of the Fund or at such other place as the Board may decide.
- (2) Any sum payable by way of benefit shall, unless the Board otherwise directs, be paid through appropriate modes of payment as may be determined by the Managing Trustee from time to time
- (3) Where payments have been effected through payment modes in sub regulation 33(2) unless the contrary is proved, be deemed to have been effected at the time at which the transfer was successfully done.
- Provided that where** the Managing Trustee is satisfied that transfer of funds has failed or bounced he may on receipt of a duly executed indemnity issue an approval for resumption of transaction.
- (4) Where there is more than one person having under the Act an equal claim to survivor's benefit such benefit shall be apportioned equally among such persons, unless in a particular case the Managing Trustee is satisfied that a different apportionment would be appropriate.
- Payment of lumpsum 34. (1) Where a person is entitled to a benefit, but the

benefit amount claimed is trivial, a lumpsum payment shall be made.

- (2) Benefits payable under sub regulation (1), having regard to the interests of a beneficiary or any other relevant circumstances, be paid in such manner as the Board may determine.

Obligation of person receiving benefit

- 35.** (1) The Board may require a beneficiary to submit himself for medical examination by a medical board.
- (2) The Board may through the paying insurer require a beneficiary to furnish, from time to time, documented evidence that he is alive and if such evidence is not given to the Board within the time specified, the Board may suspend the payment of the benefit until the date on which the evidence is given.
- (3) Before payment of a benefit is made a beneficiary shall, at the request of the Board, produce evidence of entitlement to the benefit and his identity in support thereof.

Revision of benefits

- 36.** (1) The Board may at any time, after notice to the beneficiary and having given him opportunity to be heard review the benefit granted on any of the following grounds:
  - (a) That the beneficiary has not submitted himself for medical examination when required to do so; or
  - (b) That the incapacity for employment which gave rise to the award has ceased to operate, or is operational only because of the unreasonable refusal or willful neglect of the beneficiary to submit himself for medical; or
  - (c) That the beneficiary absented himself in such manner that no notice can be served on him or that his whereabouts are unknown; or
  - (d) That the beneficiary no longer satisfies the conditions for entitlement to the benefit, and may make an order confirming, discontinuing, suspending, reducing or increasing the benefit as

the case may require.

- (2) Where a person is required under these regulations to submit himself for a medical treatment he shall not be disqualified for any benefit by refusal to undergo a surgical operation which might, in the opinion of the medical doctor, be dangerous to his life.

Re-calculation Of  
survivor's Pension

- 37.** When a beneficiary of a survivor's pension is deceased or otherwise disqualified from receiving the benefit, the Board shall as part of the conditions for securing an annuity or drawdown plan from the insurer re-calculate the survivor's pension and share the pension between the survivor's beneficiaries, equally or in such proportions as the Board in its discretion, may determine.

Cessation of Benefit

- 38.** Any unpaid benefit shall be distributed in accordance with these Regulations among the dependants of the deceased beneficiary, if any, in such proportions as the Board, in its discretion, may determine.

Persons unable to Act

- 39.** (1) Where a beneficiary is a child or a person who is otherwise unable to act at the time, and has no representative authorized or duly appointed under the law to act for him, the Board may, upon written application being made to it, appoint a person to exercise on behalf of that child or other person any right to which that child or person may be entitled under these Regulation:

Provided that-

- (a) Any such appointment by the Board shall terminate immediately on the date the Board is notified that a person or an authority has been duly appointed to act for that child or person.
- (b) A person who has not attained the age of 18 years may not act or be appointed to act under this sub regulation.
- (c) The Board may at any time in its discretion revoke the appointment under this sub regulation.
- (d) Any person appointed under this sub regulation may terminate this appointment on giving one month's notice in writing to the Board.

- (e) Any such appointment shall terminate immediately upon that child attaining the age of 18 years or where.
  - (f) In case a person in sub regulation 39 (1) becomes able to act for himself, or has a representative authorized or duly appointed under the law to act for him.
  - (g) Provided that the person receiving the benefits on behalf of the minor or a person who is otherwise unable to act as per sub regulation 39 (1) Shall be required to open an account in the name of the beneficiary and shall apply the funds exclusively for the education, medication and upkeep of the beneficiary.
- (2) Anything required by the provisions of sub regulation 39 (1) to be done by any person who is a child or person who is otherwise unable to act may be done by any person appointed under the regulation and the receipt of any sum paid in respect of any benefit shall be a proper discharge by the Board of its obligations under the Fund.
- (3) Where any sum has been authorized to be paid received by beneficiary out of the fund by way of benefit to any person and such person has not obtained payment within six months after the date of authorization, such sum shall be credited back to the original account of the member.

Provided that where such sums are credited back to the members account, such sums shall not qualify for interest for the six months when the payments had been authorised and beneficiary shall be required to make an applications for resumption of the funds.

Payment of Benefit to legal Representative

**40.** The receipt of a member of the Fund or his legal representative or of a person authorized to receive the benefit on his behalf shall be a full and sufficient discharge to the fund for the sum specified therein.

Payment of Benefit due to Incapacitated Person

**41.** Where the Managing Trustee is satisfied that the beneficiary is of unsound mind or for any reason is unfit to manage his own affairs he may pay the benefit, or any part thereof, due to that beneficiary to any other person who, in the opinion of the Managing Trustee is

the rightful person to receive the sum on the beneficiary's behalf and will apply the sum for the maintenance and benefit of the said beneficiary; and any receipt given to such person shall be a good and sufficient discharge to the Trust for the sum so paid.

- |                                       |   |
|---------------------------------------|---|
| Pension Funds credit                  | <b>42.</b> Transfer of Pension Fund Credit and receiving of Protected Rights in a contracted out scheme. The member shall apply in a prescribed manner for transfer of funds from contracted out scheme to the fund and vice versa for securing a pension.                              |
| Mis-representation of facts           | <b>43.</b> Any person who receives a benefit through misrepresentation of any material fact, non disclosure or fraudulently shall be required to repay such benefits within 21 days failure to which the Fund shall be compelled to take legal action at his cost .                     |
| Biometrics                            | <b>44.</b> Beneficiaries/claimants shall be required to append their fingerprints or be available for any other means of identification as prescribed.<br><b>45.</b> The Managing Trustee shall regularly update the list of registered and approved insurers for the Fund's members.   |
| Transmission of notices and documents | <b>46.</b> Except as otherwise prescribed, any notice or document required or authorized to be given to any person by the Board under these regulations, shall be deemed to have been given or sent if it was sent by post or electronic mail to that person at his last known address. |

**LEGAL NOTICE NO.**  
**THE NATIONAL SOCIAL SECURITY FUND ACT**  
**(No. 45 of 2013)**

**IN EXERCISE** of the powers conferred by Section 68 of the National Social Security Fund Act 2013, the Cabinet Secretary for the Ministry of Labour, Social Security and Services makes the following Regulations: -

**REGULATIONS UNDER SECTION 21**

**THE NATIONAL SOCIAL SECURITY FUND (CONTRACTING OUT BY EMPLOYERS) REGULATIONS, 2014**

**PART I – PRELIMINARY**

- Citation           **1.** These Regulations may be cited as The National Social Security Fund (Contracting Out by Employers) Regulations, 2014.
- Application       **2.** These Regulations shall apply to:
- i) an employer who wishes to opt to pay Tier II contributions to a contracted out scheme;
- ii) a contracted-out scheme.
- Interpretation   **3.** (1) In these Regulations unless the context otherwise requires:
- “Authority” means the Retirement Benefits Authority established under section 3 of the Retirement Benefits Act;
- “Contracting-out Certificate” means the certificate issued by the Authority to an employer authorising the employer to remit Tier II Contributions to a contracted-out scheme;
- “Contracted-out employment” means in relation to an employee any period in which:
- (a) he is under pensionable age;
- (b) his employer makes minimum payments in respect of his employment to a contracted-out scheme; and
- (c) there is in force a contracting-out certificate issued by the Authority in accordance with these Regulations stating that the employment is contracted-out employment by reference to the

scheme.

“Effective Date” means the effective date of implementation of sections 20 and 21 of the Act;

“Minimum payments” mean an amount equal to the employer’s and employee’s Tier II Contributions which an employer must pay into a contracted-out scheme for the benefit of each employee who is contracted-out by reference to that scheme;

“Reference Scheme Test Certificate” means a certificate signed by an actuary for a defined benefit scheme or an actuary or an administrator for a defined contribution scheme confirming compliance with the scheme-based Reference Scheme Test;

“Reference Scheme Certificate” means the certificate issued by the Authority to a scheme which meets the Reference Scheme Test to qualify it to receive Tier II Contributions.

“the Act” means the National Social Security Fund Act, No. 45 of 2013;

“the RBA” means the Retirement Benefits Act, 1997;

## **PART II – APPLICATION FOR CONTRACTING-OUT BY THE EMPLOYER**

Application  
for  
Contracting-  
Out by  
Employer

- 4.** (1) An application for contracting-out by an Employer shall be made in writing to the Authority and shall include the particulars specified in Regulation 7.
- (2) Subject to subsections (3) and (4), an employer may elect that the application for contracting-out by reference to a scheme shall apply in relation to all employees in its employment or in relation only to a particular description of employees.
- (3) An employer shall not, in making or abstaining from making any election under this section, discriminate between different employees on any grounds other than the nature of their employment.
- (4) If the Authority considers that an employer is contravening subsection (3) in relation to any scheme, it may—
- (a) refuse to give effect to any election made by the employer in relation to that scheme; or
- (b) cancel any contracting-out certificate held by the employer in respect of it.



Notification by employer of intended application to contract out

5. (1) The employer who opts to contract out shall notify,—
- (a) the employees in respect of whose employment the election is proposed to be made and those whom the employer is not electing;
  - (b) the trustees and administrator of the scheme to which the election is to relate; and
  - (c) all independent trade unions recognised in relation to the employees concerned-
- of its intention to apply to contract out in the manner prescribed in subsection (3).
- (2) Notification given under this Regulation shall be in writing and shall—
- (a) specify the scheme and the categories or descriptions of the employees so affected;
  - (b) specify effective date of the intended contracting out;
  - (c) describe the contributions by and benefits payable to the employees by the scheme and the changes (if any) which would be made to those benefits and contributions as a result of contracting-out;
  - (d) explain where further information about the scheme and the benefits and contributions provisions mentioned in subsection (c) can be obtained.
- (3) A notification under this Regulation shall be given—
- (a) to any employee concerned by—
    - (i) sending or delivering it to him, or
    - (ii) exhibiting it conspicuously at the place of work or employment so that it may be read conveniently by him and by drawing his attention to it in writing;
  - (b) to any other person, by sending or delivering it to that person

Time for making an

6. The application for the issue of a contracting-out certificate shall be submitted to the Authority at least sixty (60) days prior to the intended

application                      date of contracting-out.

Information  
and  
documents to  
accompany  
application

7. (1) An application shall include the following particulars—
- (a) a duly completed application in the prescribed form C1;
  - (b) the name and address of the employer;
  - (c) the name of the scheme to which the application relates;
  - (d) the categories or descriptions of the employees intended to be included in the certificate and those intended to be excluded and the reasons thereof;
  - (e) confirmation that notification was given under Regulation 5;
  - (f) List of employees together with their NSSF registration numbers.
  - (g) the effective date of the intended contracting out;
  - (h) the names and addresses of the trustees and administrator of the scheme to which the application relates;
  - (i) a resolution by the employer's board/governing body of the application for contracting-out and the desired date of contracting-out;
  - (j) undertaking by the employer that it will comply with obligations concerning minimum payments in accordance with the Act and these Regulations;
  - (k) a resolution by the trustees of the scheme accepting to receive Tier II Contributions into the scheme as assets of the scheme and to exercise fiduciary responsibility over the discharge of the obligations in respect of Tier II Contributions as provided for in the Act;
  - (l) undertaking by the administrator that it will comply with the provisions of the Act and these Regulations in relation to the administration of Protected Rights in the scheme;
  - (m) for a scheme existing prior to the date of making the application, a deed of amendment to the trust deed and rules amending the rules to conform with the requirements of the Act and these Regulations in relation to contracting-out;
  - (n) for a new scheme which the employer wishes to establish for the

purposes of contracting-out, a trust deed and rules with the rules conforming with the requirements of the Act and these Regulations in relation to contracting-out;

- (o) Reference Scheme Test Certificate in respect of the scheme to which the application relates; and
- (p) The employer's National Social Security Fund registration number.

Determination of Contracting-Out by the Authority

**8.** (1) The Authority shall within thirty (30) days from the date of receipt of an application for contracting-out from an employer, determine whether the employer has fulfilled the requirements for contracting-out, and in such case, it shall issue and send to the employer concerned a contracting-out certificate with a copy to the National Social Security Fund.

(2) The contracting-out certificate shall specify—

- (a) the name and address of the employer;
- (b) the name of the scheme;
- (c) the categories or descriptions of the employees to whom it relates; and
- (d) the effective date.

Rejection of a Contracting-Out Application

**9.** Where an employer fails to fulfill the requirements for contracting-out, the Authority shall within thirty (30) days of receipt of the application, decline to issue the Contracting Out and advise the Applicant the reasons thereof in writing.

Variation or surrender of contracting-out certificate

**10.** (1) An election by an employer to vary or surrender a contracting-out certificate shall be made in writing to the Authority, after giving thirty (30) days notice.

(2) Where a proposed variation is a change -

- (a) in the name of the employer; or
- (b) in the address of the employer; or
- (c) in the name of the scheme -

Provisions of subsection 4 shall not apply.

(3) Where a proposed variation is a change -

- (a) the categories or descriptions of the employees affected by the certificate; or
- (b) the Protected Rights or the benefits provided by the scheme; or
- (c) the contributions payable by those employees to the scheme -

Provisions of subsection 4 shall apply.

(4) Notices given under this Regulation shall be given in writing and shall—

- (a) specify the scheme and the employments concerned and, if the election is not intended to be in relation to all employees in those employments, the categories or descriptions of the employees to be so affected;
- (b) specify the date from which it is intended that the variation or surrender is to have effect;
- (c) specify the name and business address of the person to whom enquiries may be made with respect to the matters included in the notice; and
- (d) explain (whether or not by reference to another document) how, if the proposed variation or surrender took place, the benefits and rates at which contributions payable by those employees would be affected.

(5) The Authority shall within thirty (30) days from the date of receipt of the election for variation or surrender of contracting-out certificate grant approval in writing to the employer or decline and advise in writing of its reasons thereof.

**11.** (1) These Regulations shall also apply to-

- (a) where employees are employed by-
  - (i) one of a group of companies consisting of a holding

company and one or more subsidiaries, or

(ii) one of a group of employers who are associated employers.

(2) Any notice by a holding company pursuant to these Regulations shall be deemed to have been issued on behalf of its subsidiaries unless stated otherwise.

Duration of certificates

**12.** A Contracting out certificate issued in respect of a scheme shall be valid from the date of issue and shall remain in force until the scheme is deregistered or wound up or the contracting out certificate is cancelled in accordance with regulations, the scheme rules or the provisions of the written law under which the scheme is established.

Circumstances in which the Authority may cancel a contracting-out certificate

**13.** (1) Where the Authority has reason to believe that any employment to which a contracting-out certificate applies should not continue to be contracted-out employment and the employer has not shown to the satisfaction of the Authority that it should so continue, the Authority shall cancel the certificate with effect from such date as it may specify, subject to subsection (2) and shall notify the employer in writing of its determination and reasons thereof.

(2) The cancellation date shall be the effective date, save where -

(a) in a case where the Authority discovers that the scheme did not satisfy the contracting out requirements the effective date of the contracting out certificate shall be the date of cancellation.

(b) in a case where the Authority considers that the scheme has ceased to satisfy the requirements for being a contracted-out scheme, the cancellation date shall be the date the scheme ceased to satisfy the requirements.

(3) In any case where the Authority has cancelled a certificate under the provisions of subsection (1) it may require the employer to give notice of the cancellation, in the manner specified in

Regulation 5 to –

- (a) the employees in relation to whom the employment was contracted-out by virtue of the certificate immediately before its cancellation;
  - (b) the trustees and administrator of the scheme by reference to which the employment was contracted-out immediately before the cancellation of the certificate;
- and-

the Authority may require any such notice to include such particulars as it may consider appropriate.

### **PART III – REFERENCE SCHEMES PRESCRIBED REQUIREMENTS**

Further prescribed requirements for Reference Schemes

**14.** A scheme shall be a Reference Scheme for the purposes of contracting-out if it satisfies the conditions stipulated in the Fourth Schedule of the Act and the requirements of Regulations 16 – 20 herein below.

Requirements as to Reference Scheme rules

**15.** The rules of the Reference Scheme shall provide for:

- (1) the trustees of the scheme to accept minimum payments in respect of tier II Contributions as forming part of the assets of the scheme and to exercise fiduciary responsibility over the discharge of the obligations in respect of tier II Contributions as provided for in the Act;
- (2) an undertaking from the employer(s) to the trustees to make minimum payments to the scheme within thirty days after the end of the month in which the minimum payments relate;
- (3) payment of penalties for default in payment and incorrect contributions as stipulated in Section 27 of the Act;
- (4) an employer is not entitled to recover any minimum payments paid by it on behalf of an employee otherwise than by deduction in accordance with the Act;

- (5) separate identification of Protected Rights in respect of each member in each individual member's account in the scheme;
- (6) full and immediate vesting of minimum payments in the members account in the scheme;
- (7) the value of Protected Rights to be calculated in a manner no less favourable than that in which the value of any other rights of the member to benefits under the scheme are calculated;
- (8) interest to be allocated on Protected Rights at least annually having regard to the income on the scheme's assets;
- (9) a member's Protected Rights to be discharged only in accordance with the Act and these Regulations;
- (10) any liabilities in respect of Protected Rights and accrued rights to Protected Rights to be accorded priority on a winding up over other liabilities under the scheme in respect of benefits attributable to any period of service after the rules has taken effect.

**Requirement as to resources of the scheme**     **16.** For a defined benefit scheme, the amount of the resources of the scheme must be sufficient either to enable the scheme to meet the minimum funding requirement provided for in the RBA, or the actuary to the scheme must have certified that in his opinion the rates of contributions are adequate for the purpose of securing that the minimum funding requirement will be met by the end of the period prescribed in the RBA.

**Alteration of rules of contracted-out schemes**     **17.** (1) The rules of a defined benefit contracted-out scheme cannot be altered unless—

- (a) the trustees of the scheme have informed the actuary in writing of the proposed alteration to the scheme rules;
- (b) the actuary has considered the proposed alteration and has confirmed to the trustees of the scheme in writing that he is

satisfied that the scheme will continue to satisfy the statutory standard in accordance with Regulation 16 of the RBA Occupational Scheme Rules and Regulations after the alteration is made, and

(c) the alteration is not one which would otherwise prevent the scheme from satisfying the conditions of the Fourth Schedule of the Act.

(2) The rules of a defined contribution contracted-out scheme cannot be altered in relation to any protected rights to contravene the provisions of the Fourth Schedule of the Act or any Regulations made there under,

Transfers of  
Tier II Fund  
Credits and  
Protected  
Rights

**18.** (1) An employer who has been issued with a Contracting-out Certificate will make application in writing to the National Social Security Fund for transfer of Tier II Fund Credits from the National Social Security Fund to the contracted-out scheme. On receipt of the application the Fund shall:

- (a) transfer the Tier II Fund Credits in respect of each of the employees in the contracted-out scheme;
- (b) such transfer shall be accompanied with a schedule showing each individual employee's breakdown of Tier II contributions and Tier II Fund credit;
- (c) the transfer will be made within 60 days of the application for transfer; and
- (d) the transfer payment shall not include interest.

(2) An employee in contracted-out employment may on termination of employment with an employer apply to have his Protected Rights in the contracted-out scheme transferred to another contracted-out scheme as a Protected Rights credit in that scheme or to the National Social Security Fund Pension Fund as a Tier II Credit and on receipt of such application the trustees of the contracted-out scheme shall:

- (a) after confirmation of the contracted-out status of the



alternative contracted-out scheme from the Authority transfer the Protected Rights in respect of the employee to that contracted-out scheme;

(b) such transfer shall be accompanied with a schedule showing a breakdown of the Protected Rights;

(c) the transfer shall be made within 90 days of the application for transfer; and

(d) the transfer payment shall include interest to the date of transfer.

(3) The provisions of Regulation 2 shall, *mutatis mutandis*, apply to bulk transfer of Protected Rights from a contracted-out scheme may be made to another contracted-out scheme or to the Pension Fund;

(4) The provisions of Regulation 2 shall, *mutatis mutandis*, apply to transfer of Protected Rights to an alternative contracted-out scheme or to the Pension Fund upon winding up of a contracted-out scheme or the cancellation of a contracting-out certificate.

Information and submissions to Authority

**19.** (1) A Contracted out scheme or an employer to whom a contracting-out certificate has been issued including any certificate which has been surrendered or cancelled provide written confirmation and such other evidence as the Authority may require pursuant to the provisions of the RBA, the Act and Regulations. This shall include:

(a) a quarterly record of contributions showing the aggregate Tier II Contributions received by the scheme;

(b) a quarterly confirmation either that the Tier II contributions were received by the scheme by the due date or that interest at the applicable rates was received on delayed Tier II Contributions to the scheme;

(2) The Authority shall provide a quarterly report to the Fund advising it of the status of Tier II contributions and arrears if any.

(3) An Contracted out employer to whom a contracting-out certificate has been issued shall allow the National Social Security

Fund compliance officers to inspect records relating to Tier II contributions the provisions of Section 17 of the Act shall, *mutatis mutandis*, apply.

- (4) The NSSF shall provide a list of all contracted out Employers to the Cabinet Secretary.

Requirements  
in relation to  
administration  
of Protected  
Rights

**20.** The administrator of a contracted-out scheme shall:

- (a) ensure it has systems capable of maintaining an accurate record of Protected Rights in respect of each member of the scheme including a record of Tier II Contributions received, Tier II Fund Credits and Protected Rights transfer credits if any;
- (b) ensure it is able based on earnings records furnished by the employer to verify that Tier II Contributions received are based on the correct earnings;
- (c) show the Tier II amounts separately on the annual benefit statement issued to members of the scheme;
- (d) provide a benefit statement to a member on request and upon being given sufficient notice in writing;
- (e) ensure obligations in respect of Protected Rights are discharged in the manner provided in the Act and these Regulations; and
- (f) advise and provide details to the Authority and the National Social Security Fund of any arrears in remittance of Tier II contributions to a contracted-out scheme on a monthly basis .