



Republic of Namibia
Annotated Statutes

Administration Employees Pension Ordinance 19 of 1959

(OG 2199)

came into force on date of publication: 23 June 1959

as amended by

Ordinance 18 of 1960 (OG 2254)

relevant sections deemed to have come into force on 1 April 1959
(section 8 of Ord. 18 of 1960)

Ordinance 23 of 1962 (OG 2409)

deemed to have come into force on 1 April 1959
(section 2 of Ord. 23 of 1962)

ORDINANCE

To provide for pensions and other financial benefits payable upon retirement or discharge to certain employees in the Administration of South West Africa or, at the death of such employees, to their dependants and to provide for matters incidental thereto.

(Assented to 18th June, 1959)
(Afrikaans text signed by the Administrator)

ARRANGEMENT OF SECTIONS

[The provisions in this Ordinance have no headings.]

BE IT ORDAINED by the Legislative Assembly for the Territory of South West Africa as follows:

1. In this Ordinance, unless it is inconsistent with the context -

“actuary” means a Fellow of the Institute of Actuaries of London or the Faculty of Actuaries of Scotland or any other person recognised as an actuary by the Administrator;

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“Administration” means the Administration of South West Africa;

“Administrator” means the Administrator of the Territory of South West Africa acting on the advice and with the consent of the Executive Committee of the said Territory;

“annuity” means an amount which is payable each year during the lifetime of the annuitant;

“arrear contributions” means the amounts paid or due by a member to the fund in respect of past periods of pensionable service;

“contributions” means the amounts paid or due by a member to the fund, excluding interest;

[The definition of “contributory service” (which appeared out of correct alphabetical order in the original Ordinance) is deleted by Ord. 18 of 1960.]

“dependant” means, in relation to any person -

- (a) the widow or a minor child or stepchild of such person; or
- (b) any other relative or person dependent upon such person for his maintenance, as the Administrator may direct;

“fixed date” means the first day of April, 1959;

“fund” means the South West Administration Employees Pension Fund as established under section *two*;

“Government department” includes any Provincial Administration, the Administration of South West Africa and the South African Railway and Harbours Administration;

“institution for higher education” means an institution within the meaning of section *seventeen* of the Financial Relations Consolidation and Amendment Act, 1945 (Act 38 of 1945);

“member” means an employee who contributes to the fund, and includes any person who is entitled to a payment from the fund although no longer a contributor;

“employee” means any person in the service of the Administration not being a member of the Public Service as defined by section *three* of the Public Service Act, 1957 (Act 54 of 1957) or a teacher as defined by section *one* of the Education Proclamation, 1926 (Proclamation 16 of 1926), or any person employed in a temporary capacity or on contract, but shall include any person occupying a post which the Administrator under the provisions of regulation 3 of the regulations published in Government Notice 156 of 1957 in accordance with the provisions of section *three* of the Administration Employees Ordinance, 1957 (Ordinance 17 of 1957) has directed to be classified into Professional (Higher), Professional (Lower), Administrative, Clerical, General and Nursing Divisions as well as all the non-European staff nurses in Government institutions and European nurses on the permanent staff of subsidised hospitals;

[The “Administration of South West Africa” and the “Secretary for South West Africa” were removed from the coverage of the Public Service Act 54 of 1957 by RSA Proc. R 112/1980 (RSA GG 7097). The public service in South West Africa was then governed by the Government Service Act 2 of 1980 (OG 4116), which was re-named the Public Service Act 2 of 1980 and replaced by the Public Service Act 13 of 1995.]

The Education Proclamation 16 of 1926 was repealed by the Education Ordinance 27 of 1962, which was repealed in turn by the Education Act 16 of 2001. which has now been replaced by the Basic Education Act 3 of 2020.]

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“own contributions” means the amounts paid or due by a member to the fund and the amount representing the contributions paid by a member under the provisions regulating any other pension fund or scheme, which is paid to the fund in respect of such member under the provisions of section *fifteen*, excluding interest;

“pension” means an annuity, gratuity or other benefit;

“pensionable age” means the age of sixty-five years;

“pensionable emoluments” includes a member's pay and any special allowance or any allowance for the cost of living or a climatic allowance, if such special or other allowance is declared by the Administrator to be pensionable, but does not include -

- (a) any special remuneration which a member may receive for performing special duties or while acting in any post; or
- (b) any transport or subsistence allowance; or
- (c) any fees, honoraria or bonuses of any kind; or
- (d) any overtime payments; or
- (e) any other allowance not specified herein and not declared pensionable by the Administrator;

“pensionable service” means pensionable service according to the provisions of section *twelve*;

“revenue” means the Territory Revenue Fund;

“recognised pension or provident fund” means a fund controlled by the Union Treasury, Provincial Administrations, semi-Government and other authorities constituted or approved in terms of any law;

“Secretary” means the Secretary for South West Africa.

2. As from the fixed date there shall be established the Administration Employees Pension Fund which shall consist of -

- (a) the amounts paid to the fund by contributors;
- (b) the amounts paid to the fund out of revenue; and
- (c) any other amounts which are to be credited to the fund.

3. Subject to the provisions of section *five* contributions shall be made to the fund at the rate of six per cent of the pensionable emoluments by -

- (a) every person who is an employee on the fixed date; and
- (b) every person who is appointed as an employee on or after the fixed date.

4. (1) Any person who becomes a member on removal of any disqualification referred to in section *five* shall contribute in respect of any period of his past continuous service approved by the Secretary, unless he intimates in writing within six months of the date of his

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appointment or of the fixed date, whichever is the latest, that he does not wish to contribute with regard to the approved period.

[Subsection (1) is amended by Ord. 18 of 1960.]

(2) Any employee who immediately before the fixed date was not a contributor to any pension or provident fund, and who becomes a member on the fixed date shall contribute in terms of sub-section (1) hereof.

(3) A member, not being a member to whom the provisions of sub-section (2) apply, may, with the approval of the Secretary, and on such terms and conditions as may be specified in such approval, be permitted to contribute to the fund in respect of one or more previous periods of service in respect of which he contributed to a recognised pension or provident fund.

5. No person shall contribute to the fund -

- (a) while under the age of sixteen years;
- (b) while he receives pensionable emoluments on a scale of less than ninety pounds per annum;
- (c) if he has been engaged for the completion or performance of specific work;
- (d) if his remuneration consists solely of fees or allowances;
- (e) if all his time is not at the disposal of the Administration;
- (f) while he is employed for a fixed number of years or months;
- (g) while he is employed temporarily.

6. (1) A member shall have the right to retire on pension on reaching the pensionable age, and shall be so retired on reaching the said age, unless the Administrator considers it desirable in the public interest to retain him in his post beyond that age and in that case he may be retained for a further period or periods which shall in all not exceed five years.

(2) A member may request to be retired on pension on reaching the age of sixty years, and may be so retired: Provided that he shall give written notice of his intention so to retire at least three months before he reaches the age of sixty years.

(3) When a member has reached the age of sixty years he may be retired on pension by the Administrator.

7. (1) A member who has completed at least ten years of pensionable service, shall, on retirement at the pensionable age, be entitled to an annuity based on the annual average of his pensionable emoluments during the last seven years of his pensionable service, calculated on the scale of one-eightieth of such average for every year of pensionable service.

(2) When a member who has completed not less than ten years pensionable service, is retired -

- (a) after reaching the age of sixty years;
- (b) because of ill-health occasioned without his own default;

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- (c) in order to promote efficiency or economy, or because of the abolition of his post;
- (d) because he is unfit for the duties attached to his post, or incapable of performing them efficiently;
- (e)

[Paragraph (e) is deleted by Ord. 18 of 1960.]

he may be granted an annuity in accordance with that provided for in sub-section (1) in respect of his pensionable service up to the date of his retirement: Provided that all payments of annuity to a member who is discharged in terms of paragraphs (a), (c) or (d) of this sub-section shall be made out of revenue until the member attains pensionable age, and thereafter from the fund.

[The proviso at the end of subsection (2) is inserted by Ord. 18 of 1960.
A colon has been added accordingly before the proviso.]

8. (1) A member who retires in terms of the provisions of section *seven*, shall, in addition to his annuity, be paid a gratuity calculated at five per cent of the average pensionable emoluments during the last seven years in respect of each year of his pensionable service: Provided that if a member is retired in terms of paragraphs (a), (c) or (d) of sub-section (2) of section *seven*, the amount of his gratuity shall be paid partly out of the fund and partly out of revenue in accordance with the recommendation of an actuary.

[The proviso at the end of subsection (1) is inserted by Ord. 18 of 1960.
A colon has been added accordingly before the proviso.]

(2) If a member is retired in terms of the provisions of section *seven* before having completed ten years pensionable service, he shall be paid a gratuity equal to double the amount of his contributions paid into the fund.

(3) If a member dies while in service, his dependants shall receive a gratuity of ten per cent of the member's average pensionable emoluments during the last seven years of service in respect of every year of pensionable service: Provided that, in the case of members with less than ten years service, a minimum gratuity equal to one year's average pensionable salary during the last seven years, or during his whole period of service, if it is less than seven years, shall be payable. If he leaves no dependants his own contributions shall be paid into his estate. The gratuity shall be allocated amongst his dependants as the Secretary determines, and the Secretary may, in the case of dependants other than the widow of a deceased member, reduce such gratuity to the extent which, having regard to the circumstances of such dependants, appears to him to be reasonable.

(4) A female member who is discharged on her marriage or who resigns in contemplation of marriage and marries within three months thereafter having completed at least five years of pensionable service, shall receive the greater of the following amounts:-

- (a) her own contributions;
- (b) a percentage of the amount of the monthly average of her pensionable emoluments for the last seven years of her pensionable service, or for the whole period of such service, whichever is the shorter period, in respect of each completed year of pensionable service calculated according to the following scale:-

Number of completed average of pensionable service.	Percentage of the monthly years of pensionable emoluments.
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Less than 5 years	Own contributions
5	50
6	60
7	70
8	80
9	90
10 and more.	100

(5) Notwithstanding any provision in this Ordinance a member who is a student nurse or a student auxilliary nurse, whose services are terminated and who resigns before she has passed the prescribed examination qualifying her for appointment as nurse or auxilliary nurse, shall be entitled only to payment of the amount of her contributions.

9. If a pensioner dies within five years after retirement and leaves dependants, his pension shall; subject to the provisions of section *twenty seven*; be paid out to his dependants, either until the five years have elapsed, or immediately in a lump sum equalling five times his annuity as defined in Section *seven* less the amount of such annuity already paid out to him.

[The capitalisation of “Section” in its second use is reproduced as in the *Official Gazette*.]

10. (1) If a member resigns or if he leaves the service of the Administration in circumstances not elsewhere referred to in. this Ordinance, the following amounts are payable to him:-

- (a) the total amount of his own contributions to the fund; and
- (b) four per cent of (a) for each completed year of pensionable service beyond ten years.

(2) If a member is dismissed from the service of the Administration as a result of misconduct, dishonesty, fraud, or negligence, or if he is allowed to retire or resign in order to avoid dismissal, he shall receive a gratuity equal to the amount of his contributions: Provided that if such misconduct, dishonesty, fraud or negligence has involved the Administration in financial loss, the amount of such loss shall be deducted from such gratuity and shall be paid to the Administration.

[Section 10 is amended by Ord. 18 of 1960, which inserts subsection (2) as well as making other amendments.]

11. To the widow of a member who was in the Administration’s service before becoming a member of the Union Widow’s Pension Fund, additional benefits in respect of such prior service may be paid out of revenue on a basis determined by the Secretary.

[Section 11 is amended by Ord. 18 of 1960.]

12. (1) The pensionable service in respect of which the pension is to be calculated, shall be continuous or otherwise such service as is approved by the Secretary in terms of sub-section (3) of section *four*.

- (2) Subject to the provisions of sub-section (3) pensionable service shall include -
 - (a) actual service;
 - (b) leave of absence;
 - (c) suspension, if followed by reinstatement in the same or another post,

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and shall not be deemed to be interrupted by leave of absence without pay.

(3) No period of employment, leave or suspension of a member shall be included in his pensionable service unless he has contributed to the fund in respect of that period, or unless his contributions in respect of that period are deducted from the pension in terms of sub-section (3) of section *thirteen*.

(4) The period of pensionable service shall be calculated by the year and month, and fractions of a month shall be discounted.

13. (1) A member's contributions to the fund shall be collected by deductions from his emoluments at the end of each month or at such times, and on such conditions, which shall include the levying of interest charges where necessary, as the Administrator may determine.

(2) Any contributions which a member is required to make, or has elected to make in terms of section *four* shall, except where otherwise provided in this Ordinance, be paid in instalments, and the deductions to be made in respect thereof from a member's pensionable emoluments shall be calculated at the rate of two per cent of those emoluments or at such higher rate as the member may desire.

(3) If a member who is paying contributions in terms of section *four* or *fifteen* dies or retires or is retired or discharged before the total amount of such contributions has been paid, the amount which remains unpaid shall be set off against the pension payable to him or his dependants from the fund or from revenue, as the case may be, and such pension shall be calculated on the whole period of pensionable service in respect of which he is required, or has elected, to contribute.

(4) A member shall continue to contribute to the fund while on sick or other leave with full or half pay, or in respect of any period of leave without pay of fourteen days or less, and his contributions during such leave shall be based on his full pensionable emoluments.

(5) A member shall contribute in respect of any period of sick or other leave without pay longer than fourteen days unless he gives written notice that he does not wish so to contribute.

(6) A member who has been suspended or discharged from his post and reinstated in that post or another post shall, on such conditions as the Administrator may determine, contribute to the fund from the date of his suspension or discharge and his contributions in respect of that period shall be based on his full pensionable emoluments immediately before his suspension or discharge.

14. A member who is seconded to a Government department or any board, institution or body established by law, may, subject to the Administrator's approval, continue while so seconded to make contributions to the fund: Provided that the contributions which would otherwise be made to the fund from revenue in respect of such member shall be made either by the said Government department, board, institution or body to which such member has been seconded or by the member himself, and such contributions shall be credited to revenue: Provided, further, that the contributions so continuing to be made shall be based upon such amount, not being less than the pensionable emoluments which such member would have drawn had he not been seconded, as the Administrator may determine from time to time, and any such amount shall, for the purposes of this Ordinance, be deemed to be the pensionable emoluments of such member during the period concerned.

15. (1) Any person in the service of a Government department or of an institution for higher education or other institution or body approved by the Administrator for this purpose, in

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which he has to contribute to a pension or provident fund and who is appointed without a break in his service as an employee or who without a break in his service becomes liable to contribute to such fund, shall, subject to the provisions of section *five*, contribute to the fund according to the scale set forth in section *three*.

(2) Any person so appointed or becoming liable as aforesaid, may elect in writing within sixty days after he has been called upon by the Secretary to do so, to reckon his past service as pensionable service under this Ordinance, and if he so elects, he shall pay to the fund an amount which would have been payable by him to the fund during his previous service had he during that period been a member of the fund. An amount equal to such amount together with interest on both such amounts at the rate of five per cent per annum shall be deposited into the fund from revenue. Such interest shall be compounded annually as at the thirty-first day of March and calculated according to the dates on which the contributions would have been payable: Provided that -

- (i) from the amount payable by the member plus the amount equal to that amount and the interest on both such amounts payable from revenue there shall be deducted any sum paid to the fund by such Government Department, institution or body in respect of such past pensionable service; and
- (ii) if such sum is less than the amount payable by the member to the fund in terms of this sub-section, the balance, after the amount equal to the amount and the interest as aforesaid, have been deposited into the fund from revenue, may be paid in instalments by the member within the period and upon the conditions determined by the Secretary.

[Subsection (2) is substituted by Ord. 23 of 1962.]

16. (1) If a member is appointed without a break in his service to a Government department or an institution for higher education or any other institution or body approved by the Administrator for this purpose, in which he is subject to a pension or provident fund and becomes a contributor to another fund as from the date of such appointment and is permitted and elects to contribute to the other fund in respect of his past pensionable service, there shall be transferred from the fund to such other fund an amount equal to twice his own contributions together with interest at the rate of five per cent on such contributions, and such interest shall be compounded annually as at the thirty-first day of March, and calculated according to the dates upon which the contributions became payable. If the amount so to be transferred exceeds the amount which is required in respect of such past pensionable service by the other fund, then only the amount so required by such other fund shall be transferred and the excess dealt with as the Secretary may direct. Any shortfalls shall be dealt with as the Secretary may direct.

(2) If a member who is appointed to any such service is not permitted to contribute in respect of his past pensionable service, or, if so permitted, does not so contribute, he may elect in writing within one month after he has been called upon to do so by such Government department, institution or body, either -

- (a) to be dealt with under the provisions of this Ordinance as if he had retired voluntarily; or
- (b) if for any reason he should retire, or be retired or discharged from the service of such department, administration, institution or body, that he, or in the event of his death, his dependants, be granted out of the fund or from revenue the pension to which he would have been entitled on the date of such appointment in respect of his pensionable service, had he, on that date retired, or been retired or discharged for the same reason, or had he died on that date: Provided that if such member so retires or is discharged by reason of the age which he has attained, any such pension shall only

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be payable as from the date on which he attains an age at which he could have claimed to be pensioned.

(3) If such member fails to make an election in terms of sub-section (2) he shall be deemed to have elected to accept the benefits referred to in paragraph (a) of the said sub-section.

17. There shall be paid out of revenue to the fund, with effect from the fixed date -

(1) at the end of each month an amount equal to the aggregate of the contributions paid to the fund by members during that month in terms of section *three*;

(2) on the thirty-first day of March in each year -

(a) an amount equal to the aggregate of the contributions in respect of past pensionable service for which members may have become liable in terms of section *four*;

(b) interest at the rate of four per cent per annum on -

(i) twice the amount of the contributions referred to in sub-paragraph (a), such interest to be compounded annually and calculated according to the dates on which the said contributions would have become payable had the members been contributors as from the beginning of the periods of their past pensionable service;

(ii) the amount of any contributions due by members in terms of sections *four* and *fifteen* which remain unpaid at the end of each month during the period in respect of which the interest is paid, such interest to be calculated on a monthly basis; and

(iii) the average of the uninvested amounts in the fund at the end of each month during the period in respect of which the interest is paid.

18. (1) All the amounts paid to the fund shall be lodged with the Administration to the credit of the fund.

(2) So much of the amounts so lodged as is not required for current purposes shall be deposited with the Public Debt Commissioners for investment.

(3) If the total investments of the fund produce during any financial year an average annual rate of interest lower than four per cent, a sum equal to the deficit shall, as soon as the deficit is ascertained, be paid to the fund from revenue.

19. (1) The Administrator shall cause full and true accounts of the fund to be kept, showing particulars in connection with -

(a) all amounts paid or due -

(i) to the fund by members;

(ii) out of the fund to members or their dependants, or to other persons;

(iii) to the fund from revenue or to revenue from the fund;

(iv) to or from the fund in terms of sections *fifteen* and *sixteen*; and

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- (b) any other matter for which it is necessary to keep an account for the purposes of this Ordinance, or in order that an actuarial valuation of the fund may be made at any time.

20. (1) The assets and liabilities of the fund as at the thirty first day of March, 1964, and every five years thereafter, shall be valued by an actuary who shall declare any surplus or deficit which appears therein and report thereon to the Administrator. His report shall be laid upon the Table of the Legislative Assembly within one month of the Administrator's receipt thereof if the Legislative Assembly is then in session, or, if it is not then in session, within fourteen days of its next ensuing session.

(2) If the actuary certifies in such report that there is a substantial surplus or that there is a substantial deficit, the contributions payable by or in respect of members, or of any class of members, may be reduced or increased, as the case may be, to such an extent and from such a date as the Administrator, on the recommendation of the actuary, may determine. The rates at which contributions are payable in respect of members from revenue shall not, however, be reduced to less than the rates at which contributions are payable by members.

(3) The decision of the Administrator under subsection (2) shall be laid upon the Table of the Legislative Assembly within one year after the actuary's report.

21. The business of the fund shall be conducted by the Administrator and the costs in connection therewith and of any actuarial investigation and matters incidental thereto shall be paid from revenue.

22. All pensions payable under this Ordinance shall, except where otherwise provided, be paid out of the fund.

23. (1) If an annuitant is convicted of any offence, and sentenced therefor to any term of imprisonment exceeding twelve months without the option of a fine, payment of the annuity to him shall be discontinued.

(2) During such annuitant's imprisonment, the annuity or portion thereof shall be paid to, or for the benefit of, one or more of his dependants and according to such allocation amongst them as the Administrator may determine.

(3) On the discharge of such annuitant from prison the payment to him of the annuity shall be resumed and he shall also be paid any portion of his annuity which may have been withheld.

24. If an annuitant's estate is sequestrated or assigned, the annuity shall not form part of the assets in his insolvent or assigned estate.

25. (1) No right in respect of a pension may be ceded or hypothecated, and any such right shall not be liable to be attached or to be subject to any form of execution under a judgment or order of the court.

(2) If a person attempts to cede or hypothecate any rights in respect of any such pension, the payment of such pension may, if the Administrator so directs, be withheld, suspended or discontinued. The Administrator may, however, direct that such pension or a part thereof be paid to one or more of such person's dependants during such period as he may determine.

26. If a benefit due to or in respect of a member in terms of this Ordinance has not been claimed within a period of twelve months from the date of retirement, resignation, discharge or death of the member, such benefit shall, as soon as may be feasible thereafter, be paid to revenue,

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and if such member or his dependants subsequently claim payment thereof, an amount equal to the said benefit shall be paid out of revenue to or for the benefit of the person entitled to it.

27. (1) If the Secretary is satisfied that it is for any reason undesirable to pay the whole amount of any pension due to any person under this Ordinance, to that person, the Secretary may direct that the pension or a part thereof be paid to some other person on such conditions relating to its control in favour of such pensioner or his dependants as the Secretary may determine.

(2) Notwithstanding any provision in this Ordinance, or any other law, any amount due to the Administration by a member arising out of any cause whatsoever including the amount of any deficiency, loss or damage caused by any wrongful act of such member, may, in such manner as the Administrator may determine, be deducted from the pension payable to such member under this Ordinance.

[Subsection (2) is amended by Ord. 18 of 1960.]

28. The Administrator and the Secretary may delegate all or any of the powers conferred upon them by this Ordinance, to any officer on such conditions as they may determine.

29. The Administrator may make regulations not inconsistent with this Ordinance in respect of any such matters as he may deem necessary or expedient to provide for in order that the provisions of this Ordinance may be effectively and conveniently administered.

30. This Ordinance shall be called the Administration Employees Pension Ordinance 1959.