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OBSERVATIONS
on the
**PROPOSED NATIONAL
PROVIDENT FUND**

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OBSERVATIONS ON THE PROPOSED NATIONAL PROVIDENT FUND

INTRODUCTION

1. In March 1954, a Social Security Committee was appointed under the chairmanship of Mr. W. N. Dolton to investigate the need to provide by legislation for the social security of employees in their old age. The Committee reported on 28th February 1956, and their report was published in 1957. The Committee recommended, *inter alia*, that—

- (a) the introduction of legislation to provide for old age security for all races should no longer be delayed;
- (b) the scheme should apply in the initial stages to urban employment only, but should be extended progressively to cover the whole country;
- (c) the finance to pay benefits should be provided by means of equal contributions from employers and employees, the scheme to operate on the "pay-as-you-go" system whereby the contributors of today pay for the beneficiaries of today; and
- (d) Government should pay the administrative costs.

2. After detailed study of the report the Government announced in 1958 that it considered the establishment of a scheme of the kind recommended would be too expensive for the Government to contemplate at that time and that before any such scheme could be introduced a further detailed investigation would be necessary, itself requiring the expenditure of a substantial sum of money which the Government was not then able to provide. Nevertheless, Government and public concern over the problem of old age security did not diminish and in 1960 Government decided that the inherent importance of the subject required a review of the administrative and financial problems involved in the introduction of a contributory old age pension scheme such as the Dolton Committee had envisaged.

3. Accordingly, the Government obtained the services of two experts from the United Kingdom—Miss S. A. Ogilvie, O.B.E. (Assistant Labour Adviser to the Secretary of State) and Mr. C. E. Clarke, C.B.E. (Principal Actuary in the Government Actuary's Department). Their terms of reference were—

- (a) to advise on the suitability of the scheme recommended by the Dolton Committee, and to make alternative suggestions if thought necessary;
- (b) to advise on the additional information required to enable a decision on an old age security scheme to be taken; and
- (c) to advise upon costs.

4. Their report (unpublished) of April 1961 accepted that there was an urgent need for some form of social security and that the ideal way to provide it was by means of a pension scheme as recommended in the Dolton Report. Nevertheless they considered that the introduction of a contributory pension scheme, whilst acceptable as a long term aim, was not immediately feasible because of—

- (a) the relatively high cost of administering it, bearing in mind the Government's current financial position; and
- (b) the absence of vital statistics regarding the average length of an African's working life and his average expectancy of life—remarking that pension rates cannot be worked out accurately unless it is known how much

money will be coming into the scheme during the working life of the contributors and how long contributors are likely to live after reaching pensionable age.

5. To overcome these difficulties the Clarke/Ogilvie Report recommended, *inter alia*, certain modifications to facilitate the introduction of the scheme and its working during the early years. They recommended the establishment of a Provident Fund Scheme having the following main features:—

- (a) To be financed by equal contributions from employers and workers, with administrative expenses being met from the interest earned by the funds.
- (b) The Government to make no contribution save as an employer.
- (c) All employed persons to be included within the scheme.
- (d) Contributions to be 6 per cent of cash earnings (i.e. 3 per cent from worker and 3 per cent from employer) up to a maximum of monthly earnings of Sh. 1,000.
- (e) The employed person's contributions, with interest, to be returned to him in a lump sum at age 60.
- (f) The employer's contributions, with interest, to be paid in the form of a pension from age 60. (Initially, whilst the amounts were small these too would have to be paid in the form of lump sums.)
- (g) Survivors to receive the employed person's own contributions with interest in the event of the contributor's death before age 60.

6. Government accepted the recommended scheme as sociologically desirable in principle and requested the services of a further expert from the British Ministry of Pensions and National Insurance who, using the Clarke/Ogilvie Report as a guide, would carry out a study of the administrative requirements of such a scheme; evolve a workable scheme in detail; and advise on the legislation necessary to introduce it. The expert, Mr. E. Turner, arrived in Kenya early in 1963 and submitted his report in June 1963. A summary of the recommendations set out in his report appear in the Appendix to this paper. These proposals have been examined by a tripartite working party comprised of representatives of Employers, Trade Unions, the East African Common Services Organization and Government Departments and their views, both written and oral, have been fully taken into account by Government.

GENERAL

7. Before commenting on the detailed provisions of the suggested scheme, Government wishes to place on record its unshakeable belief in the value of such a National Provident Fund to those hundreds of thousands of workers who will eventually benefit from its provisions. Not only will workers benefit, but the country as a whole should profit to a considerable extent, when the scheme gets under way, from the investment of its funds in the development of both industrial and agricultural projects. Government accepts that the scheme now to be introduced has shortcomings from the social point of view in that it does not provide for the pooling of risks, but having regard to the considerable time which has elapsed since the question of providing cash benefits for the aged was first raised, considers that the introduction of some provision, however modest, should be undertaken without delay. It believes that the proposed scheme strikes a balance between affording maximum cover and benefits at the earliest possible date and avoiding the risk of the scheme foundering through attempting too much too quickly, or of making the scheme too complicated.

8. The following factors influenced Government in its decision to establish a National Provident Fund rather than an Insurance Scheme:—

(a) Points against the establishment of an Insurance Scheme at present—

- (i) To introduce an insurance scheme providing pensions for all would require substantial resources and almost certainly a large subsidy from Government in the early stages.
- (ii) Benefits by way of pensions could not be paid out until some years after the first contributions were received and would require an accurate assessment of the age of each claimant.
- (iii) The absence of reliable statistics, particularly on the longevity of Africans, makes it impossible to estimate future costs with an acceptable degree of accuracy.
- (iv) Full compliance is essential, otherwise there is a danger of the scheme being loaded with bad risks. Many Inspectors would be required to secure this.
- (v) The introduction of such a scheme would call for a large number of staff who would have to be very highly trained from the start.
- (vi) The low incomes in certain occupations, such as agriculture, preclude the application to those categories of a scheme exclusively financed by direct contributions.
- (vii) In the ultimate, the successful operation of an insurance scheme depends upon a universal acceptance, by employers and employees, of the fundamental principle of sharing risks. This may take a little time to develop in Kenya.
- (viii) There is, as yet, probably insufficient continuity of paid employment of a large part of the African labour force.

(b) Advantages of starting with a National Provident Fund:—

- (i) It can be made self-sufficient (apart from an initial loan) right from the start.
- (ii) Lump sum benefits may be paid from the inception and do not require the precise determination of the claimant's age.
- (iii) The cost of benefits can never exceed the money in the Fund; provided arrangements are made to see that the income of the Fund is invested in safe stock.
- (iv) Incomplete compliance would not endanger the Scheme since each contributor can draw out only what is credited to his own account by way of contributions and interest.
- (v) The demands for staff and the level of skills required are both lower than those which would be required for a full insurance scheme.
- (vi) A Provident Fund scheme can be extended to persons in receipt of relatively low cash incomes—subject only to the contribution not falling below a level at which it becomes uneconomic to collect it.

- (vii) There is in existence a substantial number of private provident schemes so that the savings principle is already understood and indeed sought after by many workers.
- (viii) Continuity of employment, whilst desirable, is not so essential to the operation of a Provident Scheme for the member will always be entitled to the benefit of his contributions, however small.
- (ix) A Provident Scheme can undoubtedly be established more quickly than a full insurance scheme.
- (x) As the other East African countries are introducing or thinking of introducing National Provident Funds the introduction of such a scheme in Kenya would harmonize with those of neighbouring countries and facilitate linking the schemes subsequently by reciprocal agreements.

PROPOSALS FOR A NATIONAL PROVIDENT FUND

(The bracketed references against the following paragraphs relate to the numbered clauses in the Appendix.)

GENERAL SCOPE (1)

9. In Government's view any National Scheme must apply so far as is possible to all workers in the country and during the early years the emphasis should be on extending the coverage to the maximum extent so that all workers can be covered for old age benefits. Initial coverage should not be restricted to workers in industry or in the towns and urban areas but should extend to all workers in paid employment whether in agriculture or industry; for the needs of all workers in old age are becoming basically the same irrespective of how they have been employed throughout their working lives.

10. On the question of restricting the application of the scheme to nationals of Kenya it is Government's view that provided entry into the country is controlled by the issue of work permits, as at present, once a worker had been admitted to the country he should, for social security purposes, be treated as any other worker in the country. If non-nationals were to be excluded from the scheme this might provide some financial incentive to employers to use such labour rather than Kenyans.

SPECIAL GROUPS (2)

11. In any scheme covering the whole nation a certain degree of flexibility will be required to cover those special categories of workers which do not fall into the normal pattern of employment, e.g. seamen, Ministers of Religion and casual workers.

INITIAL EXEMPTIONS (3)

12. The principle which Government considers should be applied here is that there must be a minimum of exceptions if the scheme is to be truly national. Government also recognizes that it is administratively expensive in any large organization to deal with small groups of exempted persons. Government's observations on the individual proposals are as follows:—

- (i) Those accorded Diplomatic Status must be exempted under accepted International Convention.
- (ii) The exemption of University Staff who are covered by the Superannuation Scheme for Universities is desirable to avoid erecting any barriers which would impede the recruitment and free interchange of such staff.
- (iii) For a Government servant employed on pensionable terms it is accepted that the existing provision is normally adequate for old age provided the officer has been employed long enough to qualify for a pension. In view of the adequacy of these benefits which are in effect already provided out of taxation it is agreed that Government, and indirectly the taxpayer, should not be called upon to provide extra benefits for its employees by contributing to a National Provident Fund in addition to providing benefits at the existing rates. It is felt that the same considerations apply to workers in Statutory Public Bodies and the East African Common Services Organization.

(iv) Not all officers in pensionable Government service have qualified for a pension when they leave and in these cases Government agrees that the worker should not be penalized by leaving him with no cover at all. Government therefore accepts the retrospective compulsory payment of the employer's contribution as proposed. In addition, it believes that the worker should be given an opportunity of restoring his full benefit rights by permitting him to make a voluntary payment of a sum not exceeding the amount paid by the employer.

(v) and (vi) Whilst Government has accepted that there should be no discrimination based solely on nationality grounds it believes that there is a case for special treatment of those persons, usually non-nationals, who are not ordinarily resident in Kenya but who come for limited tours before returning again to their own country. In such cases Government considers that the administrative expenses and inconvenience of opening and closing accounts in the National Provident Fund for such individuals are not warranted.

EXTENSION OF SCHEME TO PERSONS ABROAD (4)

13. Although Government considers that little use may be made of such provision in the early days, with the continued expansion of overseas trading it will become a valuable right as more and more Kenyans travel abroad in search of business.

INTRODUCTION OF SCHEME BY STAGES (5)

14. With the best of intentions it will not be possible to bring all workers in paid employment into the scheme at once as the administrative task of registering about 10,000 employers and enrolling 450,000 workers as members would prove too large a task to be undertaken in a limited space of time. Accordingly, it is envisaged that Ministerial orders will restrict the rate of intake of Fund members so that the organization will be able to cope without any risk of breakdown. Provision on these lines has been made in most National Provident Schemes established in recent years.

INITIAL COVERAGE (6)

15. Whilst Government endorses the view that the scheme should extend to all workers in paid employment, for practical reasons it does not consider it desirable to attempt this during the early days of the scheme, not even with the phased programme envisaged in the foregoing paragraph. By restricting the first stage of the scheme to male employees in non-pensionable Government Service and those in private establishments employing ten or more male workers it will be possible to cover nearly 90 per cent of the potential adult male members, but confine the number of employers covered to about 40 per cent, thereby simplifying the collection of contributions.

16. To expedite the widest possible coverage of male workers Government agrees to the temporary deferment of the inclusion of women within the scheme, but undertakes to see that there is no avoidable delay in bringing them in as soon as the Fund organization is able to cope.

BORDERLINE ESTABLISHMENTS (7)

17. Experience gained in schemes which have been set up in other countries has shown the need for some provision on the lines suggested, otherwise workers and employers are liable to find themselves in an impossible position, being covered by the Scheme one month and outside it the next. As it is Government's

intention to extend the scope of the Scheme to cover all employers, irrespective of their size, as soon as possible, Government hopes that once a firm is brought within the ambit of the Scheme it will remain covered and not apply for exemption. The two months' notice to workers of the employer's intention to apply for exemption is considered necessary to give them an opportunity, if they so desire, of seeking alternative employment covered by the National Provident Fund.

VOLUNTARY ADMISSION OF EMPLOYERS (8)

18. As some time must elapse before it will be possible to extend the Scheme to cover the smallest firms in the country, Government concurs with the proposal that employers should be permitted, with the consent of their workers, to enter into voluntary membership of the National Provident Fund. This provision will, for example, permit enlightened employers of domestic servants to provide cover for them before it would be possible to extend the compulsory coverage of the scheme to such workers.

VOLUNTARY MEMBERSHIP OF WORKERS (9)

19. Government believes that saving for old age should be given every encouragement. However, as those responsible for setting up the Scheme will have no shortage of problems for some years to come it is considered administratively undesirable to burden them with the additional work which could arise from permitting unrestricted individual voluntary membership of the Fund. The proposal set out in the Appendix permits a reasonable degree of continuity of membership but ensures that the Fund organization will not be faced with the practical problem for at least two years.

CASUAL WORKERS (10)

20. The number of casual workers in the country has been falling steadily during recent years—between 1962 and 1963 the number of adult males so employed fell from 37,000 to 29,000. Government agrees that such workers cannot initially be brought within the scheme on the normal basis because of the considerable movement of such workers between employers and the relatively small sums which would have to be collected and recorded in the Fund accounts. These circumstances would give rise to uneconomic operations on the part of employers and the Fund organization. However, Government accepts that where casual employment has lasted for a continuous period of at least one month such a casual worker should be brought within the scheme—but without any retrospective effect.

SEAMEN (11)

21. The inauguration of the Kenya Navy will encourage more and more workers to look to the sea as a source of employment. It is therefore considered necessary to include such workers within the proposed Scheme after making any necessary adjustments to take account of the special circumstances of their employment, e.g. the payment of wages at the end of their articles which may cover more than one voyage, and the discharge of seamen at ports outside Kenya.

MEMBERS OF EXISTING SCHEMES (12)

22. With a view to stabilizing their labour forces and making some provision for workers when they retire many progressive employers have introduced provident or gratuity schemes. Although some of these were introduced originally

to cover key workers only there have been considerable extensions during recent years and in many firms all but casual workers are now covered. Most of these schemes have qualifying periods to be served before a worker is admitted to membership and contributions are levied as a percentage (normally 5 per cent) of wages with a matching contribution by the employer. When a member leaves a firm within three years, but sometimes as long as ten years, he is entitled to a refund of only his own share of the contributions with accrued interest. After longer service he may become entitled to a part of the employer's matching contribution but may not establish title to all the employer's contributions and interest until he has served with the employer for a period ranging between three and twenty years. One of the reasons advanced for prescribing lengthy periods of service before a member becomes entitled to the employer's contributions is that, where shorter periods operate, workers tend to cash in on their entitlement immediately they qualify in full for the employer's share—in some cases being actuated by the fear of subsequently losing the employer's share due to dismissal for misconduct.

23. The fullest praise is due to those employers who have introduced such schemes so successfully into the life of the country and thereby—

- (a) helped to stabilize the labour force;
- (b) provided some measure of protection to retired workers; and
- (c) demonstrated the advantages of saving for the future.

Nevertheless, an examination of those schemes has revealed several weaknesses from the national standpoint, especially as in the majority of schemes there is no reference to any set age for retirement; a worker being able to "retire" at any age he chooses. In these cases, provided the appropriate period for full benefit has been served, he will receive the total amount standing to his credit and there will be a very strong risk of the money being spent long before he reaches his old age—so forcing him to rely for his support on the generosity of his family or clan. Considerable evidence exists to show that many members regard existing provident schemes simply as saving schemes, the money so saved to be cashed when required. Other features of the schemes which can be criticized from the national standpoint are the investment of funds outside Kenya, an employer's absolute right to terminate his scheme and the lengthy periods to be served before a worker becomes entitled to the employer's contributions.

24. In view of the limitations of these schemes when related to the provisions to be included in a National Provident Fund designed specifically to cover the needs of aged workers, Government has given very careful consideration to their future. It would have been possible:—

- (i) To allow the existing schemes to continue unchanged and the members to be exempted from the National Provident Fund.
- (ii) To modify the existing schemes to eliminate the weaknesses referred to above and to insist on the schemes being kept in step with the National Scheme before allowing members to be exempted from that Scheme.
- (iii) For the National Scheme to take over the assets and liabilities of existing schemes.
- (iv) To ban any further contributions to private schemes and compel everyone to join the National Scheme.

- (v) To compel everyone to join the National Scheme but to authorize employers to voluntarily modify their existing schemes to take full account of the contributions which have to be paid to the National Scheme.

25. Government accepts the proposal set out in the Appendix, having rejected the alternatives for, *inter alia*, the following reasons:—

- (i) Unless the private schemes are prepared to keep fully in step with the National Scheme as it develops the members of those schemes could eventually find themselves much worse off than members of the National Scheme.
- (ii) Each time an advance is made in the benefits or cover provided by the National Scheme a review of all exempted schemes would have to be undertaken to make sure they were still entitled to remain exempted or were making the changes necessary to remain exempt. This would become progressively more difficult to operate if, as is expected, the National Scheme is extended ultimately to cover other contingencies such as sickness and unemployment. The necessary inspection and oversight of private schemes which would be required would involve an appreciable amount of highly skilled actuarial work for the officers of the National Scheme.
- (iii) Although taking over the assets of the existing schemes would have the advantage of providing an assured source of income immediately, the standardization of the multiplicity of records and the realization of the varied assets of these schemes would be a tremendous task. A further problem would be to determine how much should be paid over as the employer's share of the contributions where a member had not completed the minimum period of service with the firm to secure the return of all the employer's contributions. To compel the employer to pay over his full contribution would be to impose upon him a higher liability than he might otherwise have had to face, yet to leave behind the employer's contribution in such cases could equally deprive the worker of money he might later have secured. Members of existing schemes would certainly be entitled to protest if the National Scheme then held back the payment of private scheme benefits until the age prescribed in the National Scheme in circumstances in which they would have been entitled to those benefits under the rules of the private schemes.
- (iv) To ban all further contributions to private schemes and compel everyone to join the National Scheme would secure uniformity, but only at the expense of depriving some workers of the advantages of "living on top" of the National Scheme, especially where, in the early days, their existing scheme is better than the State Scheme.

26. The basic principle upon which Government intends to proceed is to compel all but the exempted classes referred to previously to join the State Scheme, but to allow the modification of existing schemes, to take account of the contributions which employees and their workers will have to pay into the National Scheme. Government has no intention of restricting or otherwise prescribing the circumstances under which payments may be made to members from private schemes either before or after the National Scheme has been set up. Accordingly, a member of an existing scheme will have the same rights to benefit under that scheme after the National Scheme has been set up as he has now: a worker leaving his employer either before or after the establishment of a National Scheme will be able to receive whatever benefits he has title

to under the rules of the existing scheme, irrespective of any age prescribed for the payments of benefits under the National Scheme. This will ensure that all contributions paid into an existing scheme whether before or after the start of the National Scheme will be repaid to members under the existing rules of the scheme to which they belong. From this it will be readily apparent that as the benefit rights of members of existing schemes are not being altered in any way on the introduction of a National Scheme, the winding up of private schemes ostensibly to safeguard the rights of workers is difficult, if not impossible, to justify. The valuable rights of members are not being disturbed.

27. The way in which the proposals in the Appendix will operate will depend upon whether or not the level of contribution to the existing scheme exceeds that to be made to the National Scheme:—

(i) Where the contribution to the existing scheme is the same or less than that due to the National Provident Fund it is anticipated that in the majority of cases the contributions to the existing scheme by both worker and employer will cease when they begin to contribute to the National Scheme; recruitment of new members is also likely to cease. In these circumstances it would appear to be in the best interests of existing members of such schemes to allow them to run down by paying out the amounts due to members under the normal rules, i.e. on retirement or otherwise leaving the firm. The advantages to members of proceeding on these lines would be three-fold:—

- (a) their credits in the existing scheme would continue to earn interest;
- (b) their continuing service with the employer could count towards the qualifying periods required to establish title to the employer's share of the contributions; and
- (c) there would be no risk of deflating the value of the assets of the scheme by flooding the market with the stocks held.

The advantages from the employer's point of view are less tangible but apart from avoiding the administrative inconvenience of paying out all members at once the line of action suggested would preserve for some considerable time that valuable link between worker and employer which has been a product of most existing schemes.

(ii) Where the level of contribution to the existing scheme is greater than that to be made to the National Provident Fund the position is fairly straightforward, for worker and employer could continue to contribute at the same overall rate as before leaving only the balance of the contribution in excess of that paid to the National Scheme to be paid into the existing scheme. For example, if an existing scheme is operating at present on the basis of a 10 per cent a side contribution by worker and 10 per cent by employer, and the National Provident Fund is established on the basis of a 5 per cent a side contribution, the worker and his employer would each continue to make a 10 per cent contribution. However, 5 per cent of the worker's wage would go to the National Scheme and 5 per cent to the existing scheme. The employer's contribution would be similarly allocated. No matter what conditions are laid down for the payment of benefit under the National Scheme the member's credit in the existing scheme will remain available for repayment under the normal rules of that scheme. Many of the existing provident fund schemes which have recently been approved by the Ministry of Labour already contain provisions on these lines.

28. Any National Social Security Scheme, being of universal application, must be shaped to meet the requirements of the country as a whole. Accordingly it will not always be possible for the National Scheme to meet the specific needs of individuals or perhaps even industries. In these circumstances Government considers that there will always be a place for private schemes to exist alongside the State Scheme to provide additional supplementary benefits. It is significant to note that even in Great Britain with its comprehensive State Social Welfare Schemes about 40 per cent of the members are also covered by employers' retirement benefit schemes.

CONTRIBUTIONS

CONTRIBUTIONS—GENERAL (13)

29. Government accepts the recommendation that contributions should be assessed as a percentage of wages even though a flat rate system would be simpler to operate both by employers and the Fund organization. The major problem of a flat rate contribution system in a country where there are widely differing wage rates is to fix a rate of contribution which can be paid by the lower paid workers and yet produce a worthwhile Scheme for the middle classes. A further disadvantage of a flat rate system is its inability to cope with rising wages—each time wage rates go up it is necessary to review the contributions being paid. Another important factor is that a flat rate system is less likely to produce as much income as a percentage system because even with broad-banding a flat rate contribution must be capable of being paid by the lowest wage earner in the group whereas a percentage based contribution is more closely related to the wage of each individual worker, so bearing more equitably on all.

30. The suggested contribution rate of 5 per cent a side is acceptable to Government as a compromise between (a) making the contribution rate high enough to provide worthwhile benefits in a short time and (b) avoiding imposing too heavy a burden on the economy. It is observed that the majority of existing schemes already operate on this basis and significantly there has been no agitation to increase wage rates because of the introduction of these private schemes. The combined contribution of 10 per cent is also the level at which most National Schemes operate, e.g. Malaya, Nigeria, Singapore and Tanzania.

31. After consultation with interested parties Government has come to the conclusion that accounting would become a simpler and more accurate operation for both employers and the Fund Organization if an element of broad-banding were to be adopted on the following lines:—

<i>Wage</i>	<i>Combined Contribution</i>	<i>Wage</i>	<i>Combined Contribution</i>
Up to 15/-	1/-	106/- to 115/-	11/-
16/- to 25/-	2/-	116/- to 125/-	12/-
26/- to 35/-	3/-	126/- to 135/-	13/-
36/- to 45/-	4/-	136/- to 145/-	14/-
46/- to 55/-	5/-	146/- to 155/-	15/-
56/- to 65/-	6/-	156/- to 165/-	16/-
66/- to 75/-	7/-	166/- to 175/-	17/-
76/- to 85/-	8/-	176/- to 185/-	18/-
86/- to 95/-	9/-	186/- to 195/-	19/-
96/- to 105/-	10/-	196/- to 205/-	20/-
		and so on.	

This would have the advantage of ensuring that the combined contribution for each member would be a whole number of shillings.

32. In defining the earnings to be taken into account for contribution purposes it is possible to—

- (a) evaluate the whole of the remuneration, i.e. both cash and kind, provided to a worker;
- (b) have regard only to his basic pay; or
- (c) take into account all money paid to a worker, i.e. including basic pay and all fluctuating emoluments.

The first course (a) would produce maximum revenue for the Fund but would be the most difficult to administer; the second method (b) would prove the simplest to operate but would produce the minimum Fund income; whilst the last (c) would produce more income than the second course and would also minimize the risk of manipulation of payments to reduce the employer's and worker's liability to the Fund, e.g. by preventing an employer calling an increase in wages a bonus to avoid paying a contribution on it. Government therefore accepts this last course.

MAXIMUM ASSESSABLE EARNINGS (14)

33. The problem of whether to exclude from the Scheme those workers in receipt of very low incomes exercised Government considerably but it decided that as such workers are in much greater need than any other class they should not be excluded from the Scheme. If their present wages are indeed too low to stand a 5 per cent contribution then some way must be found of overcoming this. At the other end of the scale consideration was given to the position of workers in receipt of relatively high incomes. It would have been possible to leave them completely outside the Scheme on the grounds that they could make adequate provision for their own future but Government rejected this because even though such workers should be able to make such provision there is no guarantee that they will in fact do so. Although not all highly paid workers have made provision for their future retirement many have done so and Government considers that they should be left in a position to maintain their insurance premiums. In Government's view this can best be achieved by providing that no contribution to the State Scheme shall be due on that part of a worker's wages which exceeds Sh. 800 a month. Although there is no special significance about this cut-off level any lower limit would have the effect of reducing the income of the Fund and of increasing the number of workers making supplementary payments into private provident schemes operating on a 5 per cent a side contribution, but with no income limit.

EMPLOYER'S RESPONSIBILITY FOR CONTRIBUTIONS (15, 16 AND 17)

34. Government agrees that the responsibility for making the appropriate deductions from a worker's earnings and of remitting to the Fund those sums together with an employer's matching contribution must be placed squarely upon the employer. Deductions must be made from wages at the proper time otherwise the employer will become responsible for the full combined contribution. Under no circumstances will the employer be able to recover his share of the contribution from the worker. Provided proper contributions have been deducted from a worker's wages by his employer there shall be no further contribution liability on the part of that worker.

CASUAL WORKERS—EMPLOYERS' CONTRIBUTIONS (18)

35. Although Government has accepted that casual workers can only be brought within the Scheme as members if there is a measure of continuity of employment, it is considered desirable to eliminate any financial incentive to employers to deliberately manipulate the terms of employment of such casual labour. Government agrees that this can best be done by making the employer's liability for a casual worker the same whether the worker is a member of the Scheme or not, i.e. by providing that a contribution of 5 per cent of the total wage bill in respect of casual workers who are engaged in covered employments but who are not themselves members should be paid by the employer into the Fund each month.

PAYMENT OF CONTRIBUTIONS (19 AND 20)

36. As the administrative expenses of the Fund and the interest to be credited to members' accounts are to be met out of the interest earned by the Fund's investments, it is of vital importance to ensure that all sums due are collected and banked as quickly as possible. Since wages and deductions must have been calculated before the payment of wages at the end of each month Government considers that fifteen days should normally be sufficient to enable firms to remit their contributions to the Fund. Where contributions are still unpaid after a further fifteen days a penalty of 5 per cent of the sum outstanding will be added for each month or part of a month it remains outstanding.

CONTRIBUTIONS FOR SPECIAL CASES (21, 22 AND 23)

37. To simplify the task of employers when dealing with the contributions of workers who do not work for them for a full contribution period, or who work for two employers at the same time, it is considered that each employer should have regard only to the individual's employment with him and pay contributions accordingly. As this could lead to excess contributions being paid by the member it will be necessary to provide for the refund of such excess contributions. Government accepts *in toto* the recommendations set out in paragraphs 22 and 23 of the Appendix, and in particular feels most strongly that members should not be penalized by the failure of a defaulting employer to remit to the Fund the contributions due from him, provided there has been no collusion on the part of the member.

REGISTRATION

REGISTRATION OF ESTABLISHMENTS (24 AND 25)

38. As firms and organizations are brought within the Scheme it will be necessary to set up records to ensure that the requirements of the Scheme are observed by employers, and in particular, to check that the appropriate contributions are sent in regularly. A useful by-product of this registration should be the provision of much valuable statistical information which could supplement and even, eventually, replace that at present provided by the Annual Enumeration of Employees. Government considers that as it may be advantageous to both the Fund Organization and to employers to have direct links with accounting or pay-points rather than the registered or central office of a firm, registration on the basis of wage-paying offices will be permitted if requested by a firm.

REGISTRATION OF WORKERS (26, 27 AND 28)

39. The principal aim in registering workers is to establish sufficient identity particulars to enable a member's contributions to be credited to his account throughout his working life and, when the time comes for him to claim benefit, to make sure he is the right person to receive it. At present all males over the age of 16 years should have been registered under the Registration of Persons Act (Cap. 107) and be in possession of an identity certificate bearing an identity number. (Registration under the Act is based upon the full fingerprinting of each applicant and so provides a positive and fool-proof check on identity.) It is therefore intended to use this identity number as the member's registration number in the National Provident Fund thus simplifying the Fund registration procedure.

40. Despite the intended use of the identity number as the basis of registration for the National Provident Fund, it will still be necessary to show that a person has in fact been registered as a Fund member. Accordingly, it is intended to issue a simple membership card bearing only the worker's name and membership number. This can be very simple because its main functions will be (a) to reveal to an employer that a worker has been registered as a member of the Fund and (b) to get the member's contributions credited to the right account. Whenever benefit is claimed a full check on identity (by means of fingerprinting) can be carried out.

41. Whilst a worker will be expected to produce his Fund membership card to his new employer, if this is not done it will be that employer's responsibility to arrange for the worker's registration, if he is not already registered, or obtain sufficient particulars from that worker to enable his Fund particulars to be traced. Pending completion of registration action normal deductions will have to be made from the worker's wages.

MEMBERS' ACCOUNTS (29 AND 30)

42. Government attaches the utmost importance to the setting up of a recording system which will guarantee the greatest possible speed and accuracy in recording the payment of contributions against each individual member's account. Speed is essential so that the Fund Organization will be able to pay out benefits with a minimum of delay, e.g. in the event of the death of member. Accuracy is important in any financial organization but it is vital in one which may be dealing with perhaps 400,000 accounts involving contributions totalling over £3,000,000 a year. It is proposed that each contributing member will receive an annual statement showing the sum standing to his credit in the Fund.

43. The rate of interest to be credited to a member's account will determine to a considerable extent the value of the benefit he will ultimately receive. It is worthy of note that within twenty-five years the yearly addition for interest could exceed the combined employer-worker contribution in that year. Whilst it is clearly desirable for members to receive as high a rate of interest as possible it is important to relate this to the overall objectives of the Scheme, for as it is Government's intention to develop a Scheme covering more than lump sum payments in old age it will be necessary to retain some of the interest to build up a reserve fund to support the launching of these other benefits.

BENEFITS

BENEFITS RELATED TO AGE (31 (i) AND (iii))

44. In Government's view the most important benefits which any scheme of social security can provide are those for old age, for inability to follow gainful employment due to disablement, and for the assistance of the dependants of a

deceased worker—the proposed scheme will supply them all from the start without any necessity to serve waiting periods.

45. So far as the provision of benefits in old age is concerned Government accepts the proposals made in the Appendix with minor reservations. It considers that the proposal for an Age Benefit at age 60 and a Withdrawal Benefit at age 55 must be examined together. The former represents the long-term aim, the latter being perhaps more closely related to present-day conditions. The current lack of vital statistics concerning the number of aged Africans in employment together with the rapidly changing ways of life due to improved medical services, better water supplies and the nation-wide higher standards of living make it extremely difficult to produce any quantitative assessment of the problem, although when the Fund is established much of the missing information will become available from its records. Until then caution must be exercised in the payment of benefits.

46. In 1957 the Dolton Committee reported as follows:—

“51. After much consideration and discussion we have decided to recommend 60 as the age at which the basic pension should be granted. If this seems high it should be remembered that the scheme is primarily for future generations and that in the matter of longevity the African is fast approaching European standards. It is also important to remember that if experience proves it to be too high it is easier subsequently to reduce the age of benefit than to increase it. If it should seem too low it should be remembered that Africans in increasing numbers are steadily emerging from the ranks of the low paid employees and that eventually there will be only one level of contributions and benefits for all sections of the community and the pension age will then be 65 for all.”

Much of this reasoning carries the same force today.

47. Other significant factors are—

- (i) it has been estimated by an eminent actuary that an increase in contributions of about 60 per cent would be necessary to pay the same rate of pension at age 55 instead of 60, and
- (ii) the evidence of a leading authority on life assurance indicated that the expectation of life of a male African at age of 55 was 13 years as compared with 17 or 18 years expectancy of an Englishman of the same age. Since the British National Insurance Scheme provides pensions for males from the age of 65 an Age Benefit level of 60 years in Kenya would appear about right.

48. Government acknowledges that in relation to a pure provident fund the precise age at which benefit is paid is not of vital importance since the Fund's liability is restricted to the sum standing to the credit of a member. However, since it is Government's intention to press on with the development of the Scheme as quickly as possible and convert the initial lump sum payments into recurrent payments the matter is of more than academic interest. The 1962 Population Census revealed that there were more than 420,000 persons over the age of 60 and this figure can certainly be expected to rise, thus giving the lie to the fallacious argument that “an African is an old man at 40”. Government asks all who may think that the 60 age limit is too high to remember that the intention of the Scheme is to provide for persons who are too old to work and not to supply money to persons to enter self-employment.

49. The further condition that a person must have retired from regular employment to draw Age Benefit has been written into the Scheme to avoid having to pay a benefit at age 60 and a further one a little later on to a worker who continues in employment after that age. It also simplifies the contribution position by making possible the application of the normal contribution conditions to a worker over that age, so avoiding any financial incentive to employ retired workers rather than younger persons for whom contributions are due.

50. Government believes that the qualifying period of two years' absence from paid employment suggested in the Appendix before allowing a member to become entitled to Withdrawal Benefit can safely be reduced to one year. This is because after one year's absence from paid employment at age 55 it is most unlikely, under present employment conditions, that such a worker would be able to re-enter the ranks of those in paid employment.

51. In all cases Government supports the recommendation that benefits should be the full balance of the member's account at the relevant time, i.e. including all the contributions paid by the worker and his employers, together with the accrued interest.

The following table gives an indication of the values in shillings of these benefits to a person who is earning on average only Sh. 100 a month (Interest being compounded at 3 per cent). For persons in receipt of higher incomes the sums will be proportionately higher.

<i>Year</i>	<i>Member's Total Contributions</i>	<i>Employers Total Contributions</i>	<i>Total Interest</i>	<i>Member's Total Credit</i>
1	60	60	—	120
2	120	120	3	243
3	180	180	10	370
4	260	260	21	501
5	300	300	36	636
6	360	360	55	775
7	420	420	78	918
8	480	480	105	1,065
9	540	540	137	1,217
10	600	600	173	1,373
11	660	660	214	1,534
12	720	720	260	1,700
13	780	780	311	1,871
14	840	840	367	2,047
15	900	900	428	2,228
16	960	960	495	2,415
17	1,020	1,020	567	2,607
18	1,080	1,080	645	2,805
19	1,140	1,140	729	3,009
20	1,200	1,200	819	3,219
21	1,260	1,260	915	3,435
22	1,320	1,320	1,018	3,658
23	1,380	1,380	1,128	3,888
24	1,440	1,440	1,245	4,125
25	1,500	1,500	1,369	4,369

INVALIDITY BENEFIT (31 (ii))

52. One of the unfortunate events which a worker may have to face is that of becoming incapable of further work through disablement. If this occurs in the course of his employment the worker will normally become entitled to payments

under the Workmen's Compensation Scheme, but if it occurs otherwise then there is little likelihood of any payments being made to him. In Government's view the provision suggested is too restrictive and places too much emphasis on age. Government accordingly proposes to pay Invalidity Benefit to any member, irrespective of age, who is rendered permanently incapable of work because of incapacity. In cases of permanent disability resulting in partial incapacity a similar benefit will be paid at age 50 with discretion to pay at a lower age in case of hardship.

BENEFITS ON THE DEATH OF A MEMBER (31 (iv))

53. Government endorses the proposal to pay over the full amount standing to the credit of a member to his dependants in the event of his death. As some order of priority must be laid down to resolve conflicting claims Government proposes to do this on the following lines:—

Priority will be given to a wife, or wives, husband, children, step-children or adopted children. In the event of there being no claimants in the foregoing category claims will be considered from a father, brother or sister who is wholly or substantially dependent upon the member, or who but for some incapacity or accident resulting in the death of the member would have been so dependent, at the time of his death.

Finally, but only in the absence of other claims, any other person who was wholly dependent upon the member for support and maintenance, or who but for some incapacity or accident resulting in the death of the member would have been so dependent.

Where children are involved special arrangements will have to be made to see that the benefit is used to their best advantage.

EMIGRATION GRANT (31 (v))

54. As Government has accepted that the Scheme should apply to all workers in Kenya irrespective of their nationality it agrees that when immigrant workers are eventually repatriated it would not be unreasonable to pay the full amount standing to their credit and so completely close their accounts—provided no reciprocal arrangement has been made with their country of origin. This would satisfy the relevant International Labour Convention. Under these arrangements there would still be a small net financial gain to the Fund from the limited participation of such workers in the Scheme.

CONVERSION OF BENEFITS INTO ANNUITIES (32)

55. Although there is no alternative to the initial payment of all benefits in the form of lump sums, Government firmly believes that periodical payments, first in the form of annuities and later in the shape of monthly pensions, should be introduced as quickly as possible. Only in this way will it be possible to provide for the continuing needs of the aged and so avoid the principal objection to lump sum payments, viz. that in inexperienced hands the money is often frittered away and quickly exhausted without providing for the future of the recipient.

BENEFITS—GENERAL (33, 34 AND 35)

56. Government agrees with the recommendations set out in the Appendix. It will do all it can to keep the procedure for establishing title to benefit as simple as possible subject only to introducing adequate safeguards to deter and

prevent fraudulent claims. Unlike many existing private provident funds all unclaimed members' balances will be applied for the benefit of members. Government also agrees that for some years to come the information recorded under the Registration of Persons Act will prove of value to the Fund Organization and should be used to the maximum extent.

ORGANIZATION AND FINANCES

NATIONAL PROVIDENT FUND (36)

57. Since there is to be no direct Government contribution by way of an Exchequer Supplement to the contributions of workers and employers or any subsidy towards the cost of administering the Scheme Government accepts the recommendation that the National Provident Fund should be financially autonomous and that its funds should not form part of Government Revenue. In this way Government hopes to engender confidence in the Scheme and show conclusively that the Scheme's assets will not be used for other than social security purposes.

ADMINISTRATION (37)

58. Government considered the possibility of appointing a Board of Control to manage the Scheme but came to the conclusion that in the early days the advantages to be derived from having one officer in charge with authority to take decisions and, subject to the approval of the Minister for Labour and Social Services, implement them, outweighed the advantages which might accrue from the more considered, but much slower, decisions to be expected from a Board which might not be able to sit continuously.

ADVISORY COUNCIL (38)

59. The greatest importance is attached by Government to the proposal to set up a Council representing Government, Workers and Private Employers. To prevent the Council becoming too cumbersome it is considered that the membership should be restricted to five representatives from each group. The main functions of the Council should be to examine, wherever time permits, all draft subsidiary legislation and to investigate the general impact of the Scheme and make recommendations for any necessary changes.

FUND ACCOUNTS (39-44)

60. Government approves the suggested financial arrangements whereby all income derived from contributions which can be allocated to individual workers' accounts should be paid into the Contribution Account of the National Provident Fund; this income to be invested as appropriate and the resulting interest paid into an Interest Suspense Account. Part of this interest should be allocated (*see* para. 43) in proportion to members' accounts. From the remaining interest the expenses of administration should be met and any surplus transferred to a Reserve Account. This Reserve Account should also be credited with all fines and penalties imposed under the Act and any contributions which cannot be allocated to individual accounts, including those paid by employers in respect of their non-covered casual workers. Ultimately the Reserve Account should be credited with the balances of any unclaimed accounts.

61. It has been estimated that when the Scheme has been extended to cover firms employing ten or more workers the income by way of contributions in respect of the 90,000 contributors in the Public Sector will be about £1m. a year, and the 250,000 contributors in the Private Sector about £2m. a year. Since the amount of benefit paid out in the early years will be small, most of the contribution income will become available for investment. If this is assumed to produce a return of 5 per cent (a low estimate under present conditions) and 3 per cent interest is credited yearly to members' accounts the Reserve Account is expected to exceed £3m. within ten years. Although it must not be overlooked that the purpose of the Reserve Account is to act as a buffer against temporary interruptions in the contribution income of the Fund, e.g. in the event of a nation-wide strike, or a reduction in the interest earned by the Fund's investments, the magnitude of the Reserve Account should undoubtedly permit of some modest extension of the benefits provided by the Scheme in the not too distant future without any increase in the rate of contributions.

INVESTMENTS (45 AND 46)

62. The safe investment of the contributions received by the Fund—members' money—will be a vital function of the organization, which with about £3m. becoming available for investment each year will be one of the largest investors in the country. It is proposed that the Investment Committee to control the investments of the Fund should be composed initially of representatives of the Ministry of Finance, the Ministry of Economic Planning and Development, the Ministry of Commerce and Industry, a representative of the major commercial banks and the Director of the Fund.

63. Government approves in principle the provision for enabling the Fund to erect its own office building when money becomes available for this purpose.

ACCOUNTS AND AUDIT (47)

64. The financial integrity of the Scheme is of the utmost importance and so a fully independent audit should be carried out each year by the Controller and Auditor General and laid before Parliament together with the Annual Report of the Fund Organization.

MISCELLANEOUS

RELIEF FROM TAX AND DUTY (48-50)

65. Government agrees with the recommendation that employers' contributions should be allowed as a deduction for tax purposes but considers that the needs of members of the Fund will be best met by providing that the lump sum payments made to beneficiaries shall be free of tax—as a corollary the workers' contributions will be from taxable income. The proposals regarding exempting the Fund's assets and income from taxation and documents from Stamp Duty are acceptable to Government.

DETERMINATION OF QUESTIONS AND APPEALS (51)

66. In later years it may become necessary to establish a full appeals organization with independent authorities to adjudicate upon claims and decide contribution questions but in the initial stages the number of cases emerging

will be so small as to make it impossible to set up a viable independent unit. It is therefore proposed in the first instance to empower the Director of the Fund to decide these questions.

INSPECTION AND PENALTIES (52 AND 53)

67. As the fullest co-operation of both Trade Unions and Employers' Organizations has been promised in the establishment of the National Provident Fund it is not anticipated that an army of Inspectors will be required to enforce it. Government expects that the merits of the Scheme will commend it unreservedly to all workers and employers in the country so that the principal role of the Inspectors will be advisory. However, where persuasion is not sufficient power is to be taken to impose penalties to enforce the provisions of the Scheme.

RECIPROCAL AGREEMENTS (54)

68. The power to conclude reciprocal agreements with other countries is considered of considerable importance—particularly in an East African context. Some of the countries which have schemes capable of being linked by reciprocal agreements at an early date are Tanzania, Nigeria, Ceylon, and India.

PUTTING THE PROPOSALS INTO EFFECT

69. It is Government's declared intention to introduce the National Provident Fund at the earliest possible date and so it is hoped to pass the necessary main legislation shortly. Registration of the first group of employers and their workers could then commence in the second-half of 1965 and the collection of contributions early in 1966. As it will take at least 12 months to register all the employers and workers included in the group of firms employing ten or more workers it may well be 1967 before contributions commence to be paid into the National Provident Fund by some of the smaller firms in this category.

70. At this stage with the many problems of acquiring suitable accommodation, staff and equipment for the organization still unresolved it is not possible to issue any firm timetable. As soon as this becomes feasible it will be given the fullest publicity.

PROPOSALS FOR A NATIONAL PROVIDENT FUND SCHEME

Coverage

- | | |
|---|--|
| <p>1. In principle the scheme should include all persons of sixteen years or over employed in Kenya under a contract of service or of apprenticeship whether written or implied and regardless of the method of fixing and payment of remuneration. There should be no discrimination on the grounds of sex, nationality, religion or race.</p> | General scope. |
| <p>2. The Minister for Labour and Social Services should be empowered to make regulations to grant exemptions and deal with any special classes of employees, e.g. seamen, persons abroad and casual workers.</p> | Special groups. |
| <p>3. The following categories should be exempted from the provisions of the scheme:—</p> | Initial exemptions. |
| <p>(i) Persons accorded diplomatic or equivalent status.</p> | |
| <p>(ii) Persons in any University or College who are covered by the Superannuation Schemes for Universities.</p> | |
| <p>(iii) All public servants in Government pensionable employment who are subject to the Pensions Act (Cap. 189), as well as employees of Statutory Public Authorities who are entitled to the benefit of any pension scheme on terms substantially similar to those prescribed in the above-mentioned Pensions Act.</p> | |
| <p>(iv) If a person exempted under (ii) or (iii) above leaves his employment without becoming entitled, or prospectively entitled, to a pension his employer should pay into the National Provident Fund such sum as he would have paid (i.e. the employer's share only) had that person's exempted employment been subject to this scheme.</p> | |
| <p>(v) Persons, not being ordinarily resident in Kenya, who are employed in Kenya for temporary periods not exceeding three years, or such longer period as the Director in his discretion may allow.</p> | |
| <p>(vi) The foregoing provision should apply only where the Director is satisfied that the worker is liable to contribute to or is prospectively entitled to benefits from the social security scheme of some country other than Kenya, or under the terms of his employment, at rates not less favourable than those provided under this scheme.</p> | |
| <p>4. (i) Any person, ordinarily resident in Kenya, who is not in exempted employment, and whose foreign contract of service or terms of engagement provide that he is to be employed outside Kenya for a period not exceeding three years should continue to be covered by the scheme and contributions paid accordingly.</p> | Extension of scheme to persons abroad. |

(ii) This provision should not apply where the Director is satisfied that the worker has or will become liable to contribute to the social security scheme of the country in which he is working.

Introduction of scheme by stages.

5. To facilitate the introduction of the scheme the Minister should be empowered to lay down a series of appointed days, bringing within the scheme on each appointed day such category or categories of workers as he deems expedient.

Initial coverage.

6. The coverage in the first stages should be restricted to male employees in non-pensionable Government service and those in the bigger establishments employing ten or more male persons. For this purpose any establishment which has employed ten or more male persons within the period of twelve months before the relevant appointed day should be covered by the scheme.

Any establishment not covered at the outset which later employs ten or more male persons should come within the scope of the scheme from the first day of the month following that in which ten or more male persons first became employed.

Borderline establishments.

7. Once an establishment has become subject to the scheme it should continue to be so covered even if the number of male employees falls below ten. Provision should be made for it to be exempted, however, if during two consecutive calendar years the number of male persons employed has remained at less than ten throughout. When the employer applies in writing for such an exemption during the first month of the following calendar year exemption should be granted from the beginning of that year. Applications made outside the first month should take effect only as from the commencement of the next calendar month. Two months' notice of the employer's intention to apply for exemption should be given to each covered worker.

Voluntary admission of employers.

8. If an establishment is not covered an employer should be permitted to apply for voluntary membership of the Fund, provided that a majority of the employees concerned agree. In such a case, membership should start on the first day of the calendar month following that in which application is made and both the employer and all his employees should then be subject to the provisions of the scheme with the same rights and obligations as employers and employees compulsorily covered. Termination of voluntary membership of an establishment should be permitted only at the end of a calendar year provided that notification has been lodged with the Fund not later than 1st December of that year. Where application for termination is made after that date it should become effective only as from such date as may be determined by the Director. In all cases at least two months' notice of the employer's intention to apply for exemption should be given to each covered worker.

Voluntary membership of workers.

9. A person whose coverage, whether compulsory or voluntary, is terminated after not less than two years' membership should have the right to continue his membership on payment of voluntary contributions which should be not less than the worker's last contribution nor more than the last

combined worker-employer contribution. The Minister for Labour and Social Services should have power to make detailed regulations for voluntary continuation of membership, e.g. prescribing the time limit for making application.

10. Casual workers in covered establishments should not become contributors in the first stages. A "casual worker" being defined as "any person the terms of whose engagement provide for his payment at the end of each day and who is not engaged for a longer period than twenty-four hours at a time".

Casual workers.

Any worker who has been considered as a casual worker and who is employed continuously by the same employer for a period longer than one month should automatically become a contributor retrospectively to the first day of his continuous employment. In this connexion periods of interruption of work not exceeding seven consecutive days should not be deemed to interrupt the continuity.

11. A person ordinarily resident in Kenya who is employed as a master or member of the crew of any ship the owners of which have a place of business, or have agents in Kenya, should be treated as a member of the Fund. Contributions payable in respect of a seaman for the period during which he is serving under articles should be calculated according to the number of calendar months in such period.

Seamen.

12. (i) Except as provided elsewhere members of existing provident and pensions schemes should not be exempted from compulsory coverage under the National Scheme. It should be made possible, however, to adjust the existing schemes so that they may supplement the National Provident Fund Scheme, even if the rules and regulations of the existing schemes do not specifically provide for such an adjustment.

Members of existing schemes.

(ii) In any existing contributory provident fund or pension scheme the contributions paid by the employee and his employer, respectively, may be reduced by amounts equal to their respective contributions to the National Scheme and—

- (a) any lump sum payment reduced by the amount of the benefit payable under the National Scheme and/or, as appropriate;
- (b) any pension reduced by the amount of a life annuity which is the actuarial equivalent of the benefit payable under the National Scheme.

(iii) In all cases where this results in no contributions being payable under the supplementary scheme, the period during which the employment continues after the appointed day should be reckoned as a period of continuing membership of the supplementary scheme.

(iv) Where an existing scheme is non-contributory, the cost of the gratuities and/or pensions being entirely borne by the employer, a procedure similar to that mentioned above may be adopted, but account should be taken only of that part of the benefit under the National Scheme which corresponds to the employer's contribution.

(v) For all the adjustments referred to above only those periods of employment which are covered simultaneously by the National Scheme and the other scheme may be taken into account.

Contributions

Contributions.

13. Every member should pay to the Fund a monthly contribution of five per cent of his assessable earnings, fractions of a shilling being disregarded (worker's contribution) and his employer should pay to the Fund an equal amount (employer's contribution).

Assessable earnings should be the total remuneration, i.e. including bonuses, commissions, premiums and overtime, paid by way of cash in each calendar month irrespective of the period to which it relates. The Minister for Labour and Social Services should have power to make special arrangements where earnings are paid at intervals of other than one month or where difficulties would otherwise arise in assessing earnings.

Maximum earnings assessable.

14. That part of assessable earnings which is above Sh. 800 per month should be disregarded. The Minister for Labour and Social Services should have power to raise this limit in the event of a substantial rise in the level of earnings.

Employer's responsibility for contributions.

15. The employer should be responsible for the payment to the Fund of the total contributions in respect of each contributor employed by him, i.e. for the worker's and the employer's contribution.

The employer should be entitled to deduct the worker's contribution from his earnings at the time of payment or not later than the last payment due in the same calendar month. Where for reasons other than negligence this is not possible he may within six months thereafter make any deductions necessary in one amount, or by instalments, as may be agreed by the worker.

Employer's contribution not to be charged to worker.

16. The employer should be debarred from deducting from the earnings of a worker, or from otherwise recovering from him, the employer's contribution. Any contract or agreement, written or oral, contrary to this principle, should be deemed in respect of such a provision to be null and void.

Worker's contribution in trust.

17. Any sum deducted by the employer from the wages of an employee in respect of the worker's contribution should be deemed to have been entrusted to the employer for the purpose of paying the contribution for the contributor in respect of whom it was deducted.

Casual workers. Employer's contribution.

18. Every employer whose workers are subject to the provisions of this scheme but whose casual workers are for the time being excluded should make a contribution of five per cent of the total wages of all his excluded casual workers for that month, disregarding any fraction of a shilling, and for this purpose he should make returns, as required, of the number of his casual workers excluded and of the total amounts paid to them.

19. The employer should pay the total amount due for each calendar month not later than the fifteenth day of the month immediately following and should forward to the Fund such covering form as may be prescribed by the Director of the Fund. Date for payment.
20. Where a contribution is not paid by the last day of the month following that to which the contribution relates a sum equal to five per cent of the amount unpaid should be added for each month or part of a month after the date when payment should have been made. The Director should be given discretion to remit in whole or in part any penalty imposed under this arrangement. Penalty for late payment.
21. If a contributor is successively or concurrently employed in two or more establishments in a contribution period each employer should be required to pay the total contributions corresponding to the earnings paid by himself. Worker employed by two or more employers.
22. Where a worker dies during a contribution period no contribution should be due from his wages for that contribution period; but if any contribution is deducted and paid into the Fund it should be retained and dealt with under the rules of the Fund. Death of workers.
23. Where the Director is satisfied that any contribution to the Fund has been deducted from the wages of a worker, but the employer has failed to pay the money to the Fund the Director should credit the amount of the worker's contribution out of the general revenues of the Fund, and recover the amount from the employer as a debt to the Government. Credit of unpaid worker's contribution.
- Registration**
24. There should be initial registration of every covered establishment. This should be in a prescribed form showing such particulars as are necessary for the proper implementation of the scheme. Registration of establishments.
25. Where an establishment first becomes liable for coverage after the appointed day the application for registration should be presented immediately and registration should become effective from the beginning of the month following that in which the establishment first employed the requisite number of persons.
26. Every person liable to become a contributor should be registered with the Fund on or before the day appointed in his case; if a worker later becomes liable he should be registered forthwith. Registration of contributors.
27. The Director should forward to every worker through his employer on first registration a certificate of membership of the Fund. Worker's certificate of membership.
28. A worker who is registered with the Fund should on commencing work for a new employer produce his certificate of registration to his employer. If he is unable to do so and cannot give his membership number the employer should regard him as liable for registration unless he can furnish such particulars as may enable the Director to trace his membership Change of employment.

number and issue to him a new membership card marked "Duplicate" (for which a charge may be made).

Contributor's
account and
interest.

29. The Director should establish and maintain for each registered contributor a contributor's account to which the total contributions (worker's and employer's) actually paid should be credited and from which all benefits paid to or in respect of him should be charged.

Interest on
accounts of
contributors.

30. The Minister for Labour and Social Services should fix at the end of the Fund's accounting year the rate of interest which should be credited to contributors' accounts on the balances standing to their credit at the beginning of that year.

Benefits

Benefits
payable.

31. Benefits payable to or in respect of a member should be—

(i) an AGE BENEFIT payable to a member of the Fund who satisfies the Director—

- (a) that he has attained the age of sixty years; and
- (b) that he has retired from regular employment.

The amount of benefit payable shall be the balance of the member's account in the Fund at the date of payment with interest accrued up to the end of the last completed accounting year of the Fund.

Invalidity
benefit.

(ii) An INVALIDITY BENEFIT payable to a member of the Fund who satisfies the Director—

- (a) that he has attained the age of 50 years; and
- (b) that he is incapable of work, and likely to remain so incapable, through any physical or mental disability.

The amount of such benefit should be calculated as for Age Benefit.

Withdrawal
benefit.

(iii) A WITHDRAWAL BENEFIT payable to a member of the Fund who satisfies the Director—

- (a) that he has attained the age of 55 years; and
- (b) that for at least two years immediately preceding the application he has not been employed as a worker.

The amount of such benefit should be calculated as for Age Benefit.

Survivor's
benefit.

(iv) A SURVIVOR'S BENEFIT payable on the death of a member where the Director is satisfied that the claimant was a member of the family of the deceased contributor and was wholly or partly dependent upon his earnings at the time of his death, or but for some incapacity or

accident resulting in the death of the contributor would have been so dependent. The amount of benefit should be calculated as for Age Benefit.

- (v) An EMIGRATION GRANT payable where a member satisfies the Director that he is emigrating from Kenya for permanent settlement abroad, outside the East African Territories, and has no intention of returning. The amount payable should be the balance of the member's account in the Fund calculated as for Age Benefit.

Emigration grant.

32. Any benefit, other than Emigration Grant, may be paid either in a lump sum or, with the approval of the Director, may be converted and paid as an annuity, provided that the amount so converted shall not be below a prescribed minimum.

Conversion to annuities.

Regulations should be made by the Minister for Labour and Social Services determining the actuarial equivalents to be used for such conversions, as well as any other necessary conditions and provisions.

33. When a benefit has been paid the member's account should be closed and no further rights should be allowed to arise from the contribution periods covered by it.

Closing contributor's account.

If the member later re-enters covered employment his future rights should be exclusively determined as if he were a new member from the date of his re-entry.

34. Claimants should be required to submit to the Fund such evidence and documents as the Director may consider necessary or proper for deciding claims.

Evidence for claims.

If a claimant for Age Benefit cannot produce a birth certificate or other satisfactory evidence of age his date of birth should ordinarily be accepted as that given on registration under the provisions of the Registration of Persons Act (Cap. 107). Such date of birth should not be refuted otherwise than by the production of a birth certificate.

35. Where a benefit becomes payable to or in respect of a member and it has not been claimed within five years after the event under which it became payable the rights of the member, or his survivors, should cease and the balance of the member's account should become forfeit to the Fund.

Unclaimed benefits.

Organization and Finance

36. For the purposes of implementing the scheme a special fund should be established called "The National Provident Fund" (referred to elsewhere in this document as the "Fund") which should be financially autonomous quite independent of all other Government finances and with its own administration.

National Provident Fund.

37. The Fund should be administered by a Director who should be the chief executive head with security of tenure. The Director should be subject to the general control and supervision of the Minister for Labour and Social Services.

Director.

National
Provident
Fund Advisory
Council.

38. An advisory body called "The National Provident Fund Advisory Council" should be appointed by the Minister who should also nominate the Chairman and Vice-Chairman. The Council should be a tripartite body composed of representatives in equal number of Government, Employers and Contributors. The Employers' and Contributors' members should be appointed after consultation with employers' and employees' professional or similar organizations.

The Advisory Council should have power to advise the Minister for Labour and Social Services on any of the activities of the Fund and put forward proposals which it thinks proper for the successful implementation of the scheme. It should be a sounding board for public opinion on matters of general interest.

The Minister should make rules for governing the proceedings of the Advisory Council and in particular for the terms of office of its members; for their resignation, removal or disqualification from office; for their travelling and other expenses; and for the convening of meetings, quorum, voting, minutes, etc.

Payments into
and out of Fund.

39. There should be paid into the Fund all contributions, including any increases, together with interest and all other income earned on assets or investments of the Fund.

There should be paid out of the Fund all benefits and other authorized payments.

Fund
Accounts.

40. The Fund should establish separate accounts for the following—

- (i) Contributors' Account;
- (ii) Interest Suspense Account; and
- (iii) Administration Account.

Contributors'
Account.

41. The Contributors' Account should be credited with all amounts received as workers' and employers' contributions and with the accrued amount of interest allotted to the individual contributors' accounts. It should be debited with all benefits paid under the scheme and with the balance of individual contributors' accounts forfeited to the Fund.

Interest
Suspense
Account.

42. All interest and other income from the investments and the assets of the Fund should be credited to the Interest Suspense Account. Net losses or profits from investments should be debited or credited, as the case may be, to this account.

The interest allotted to individual contributors' accounts should be debited to the Interest Suspense Account, as well as any allocations transferred to the Administration Account and the Reserve Fund. The Minister should thereby be able to ensure that the Interest Suspense Account is not overdrawn.

Administration
Account.

43. All administrative expenses of the Fund should be debited to the Administration Account which should be credited with such allocation from the Interest Suspense Account as may be approved by the Minister for Labour and Social Services.

44. There should be a Reserve Fund of the National Provident Fund into which should be paid all fines and penalties under the law, all contributions of employers or workers which cannot be allocated to individual accounts in the Fund and such allocation from the Interest Suspense Account as may be approved by the Minister for Labour and Social Services. This latter allocation should be approved only if the Administration Account is not in deficit.

Reserve Fund.

Moneys in the Reserve Fund should not be appropriated without the authority of Parliament.

45. The assets of the Fund in excess of the amounts required for the meeting of current liabilities should be invested as prescribed by Investment Regulations to be made by the Minister for Labour and Social Services in consultation with the Minister for Finance.

Investment of funds.

Investment should be permitted only on the condition of absolute safety of the investment, with preference for securities, bonds and loans which enjoy the full guarantee of Government and which provide an interest yield as favourable to the Fund as possible. Investment in property should be limited, at least in the early days, to the buildings necessary for the direct administrative purposes of the Fund.

46. There should be appointed by the Minister for Labour and Social Services, in consultation with the Minister for Finance, an Investment Committee composed of members with appropriate experience. Investments should be made on the advice of the Investment Committee by the Director.

Investment Committee.

The Minister for Labour and Social Services should make rules for regulating the proceedings of the Investment Committee and, in particular, for the terms of office of members; for their removal from office, resignation or disqualification; for the convening of meetings, quorum, voting, minutes, etc.

47. The accounts of the National Provident Fund should be prepared in such form, in such manner and at such times as the Minister for Labour and Social Services may direct and the Auditor-General should examine and certify them. The Minister should lay before the National Assembly copies of the accounts together with the Auditor's and his own reports.

Accounts and audit.

Miscellaneous

48. Income Tax relief should be provided on both the employers' and employees' contributions to the Fund.

Relief from income tax.

49. All the assets of the Fund and income on investments should be exempt from any taxation.

Exemption of assets of fund from taxes.

50. Stamp duty should not be levied upon such documents used in connexion with the purposes of the scheme as may be prescribed.

Exemption from stamp duty.

51. Regulations may provide by whom and in what manner questions arising in connexion with liability to pay contributions

Determination of questions and appeals.

or title to benefits should be determined, in what cases an appeal should lie against a decision given and by whom and in what manner such an appeal should be decided.

Inspection.

52. For the purposes of the scheme the Minister for Labour and Social Services should be authorized to appoint such inspectors as he may with the consent of the Minister for Finance determine and pay them such salaries or remuneration as may be so determined.

An inspector should have power—

- (i) to enter at all reasonable times any premises or places liable to inspection;
- (ii) to make such examination and enquiry as may be necessary for ascertaining whether the provisions of the Act establishing the scheme are being or have been complied with in any such premises or places;
- (iii) to examine, either alone or in the presence of any other person, as he thinks fit, with respect to any matters under the scheme on which he may reasonably require information, every person whom he finds in any such premises or places, or whom he has reasonable cause to believe to be or have been a covered worker, and to require every such person to be so examined.
- (iv) To exercise such other powers as may be necessary for carrying into effect the Act establishing the scheme.

The occupier of any premises or places liable to inspection and any person who is or had been employing any person, and the servants and agents of any such occupier or other person, and any insured person, shall be required to furnish to an inspector all such information, and produce for inspection, all such documents as the inspector may reasonably require for the purpose of ascertaining whether contributions are or have been payable, or have been duly paid, by or in respect of any person, or whether benefit is or was payable to or in respect of any person.

Every inspector should be furnished with a certificate of his appointment, and on applying for admission to any premises or place for the purposes of the scheme should, if so required, produce the said certificate.

The premises and places liable to inspection should be any premises or places where an inspector appointed has reasonable grounds for supposing that any persons are employed.

The Minister for Labour and Social Services may make arrangements with other Government Departments for any of the powers or duties of inspection under the scheme to be carried out within that Department by an inspector or officer employed by that Government Department.

53. Any person who—

Penalties.

- (i) for the purpose of obtaining any benefit under the scheme whether for himself or some other person, knowingly makes any false statement or representation, or produces or furnishes or causes to be produced or furnished any document or information which he knows to be false in a material particular; or
- (ii) commits any serious breach of the rules and regulations in regard to registration or recovery of contributions should be liable on summary conviction to a fine not exceeding 400 shillings or to imprisonment not exceeding three months or to both such fine and imprisonment.

54. Subject to the approval of Parliament reciprocal arrangements may be made with the Government of any other territory in which a similar Fund or Scheme has been established. Provision should be made for the reciprocal agreement to cover such matters as—

Reciprocal arrangements.

- (i) treating of periods of membership in one Fund as periods of membership in the other; and
- (ii) transferring the amount standing to the credit of a member in one Fund to the credit of that member in the other Fund.

