

FOURTH SCHEDULE**(S. 21)****REFERENCE SCHEME TEST**

(1) A Reference Scheme is an occupational retirement benefits scheme including an umbrella retirement benefits scheme or an individual retirement benefits scheme which:

- (a) is registered by the authority and has a valid registration certificate;
- (b) is registered with the Kenya Revenue Authority as an exempt scheme;
- (c) complies with sub-sections (2) and (3) below as applicable to the type of scheme;
- (d) maintains an accurate record of Protected Rights in the manner prescribed by the Authority;
- (e) complies with the Investment Guidelines in the Retirement Benefits Act;
- (f) complies with any prescribed requirements by the Authority.

(2) In relation to a defined contribution scheme Reference Scheme is one which:

- (a) Provides benefits in respect of Protected Rights in the same manner as benefits in respect of Tier II Contributions provided for in the Act and more specifically shall ensure that the benefits are provided in the form of a pension or income drawdown as provided for in the Act and subject to the same rules on preservation of benefits in respect of Tier II Contributions as provided for in the Act;
- (b) Provides for Protected Rights to be portable on transfers of employment provided that Protected Rights may only be transferred to a contracted-out scheme or to the Pension Fund established under the Act as a Tier II Credit;
- (c) On a winding up of the scheme, provides for Protected Rights to be either transferred to an alternative contracted-out scheme or to the Pension Fund as a Tier II Credit;

(3) In relation to a defined benefit scheme, a Reference Scheme is one which provides benefits which are EITHER :

- (a) broadly equivalent to, or better than, the benefits based on the standard below as certified by the Actuary, Provides a pension to members of the scheme at a normal pension age of 60 and continuing for life with and:

For the annual rate of pension at that age to be 1/80ths of average Pensionable Earnings in respect of that portion of Pensionable Earnings above the Lower Earnings Limit in the last three years preceding the end

of pensionable service multiplied by the number of years and complete months during which Tier II contributions were made; or

(b) Provides for the benefits in respect of Protected Rights to be provided in the same manner as in subsection (3) above with the defined benefit benefit adjusted for the pension equivalent of the benefits in respect of the Protected Rights.

(4) For the avoidance of doubt, the benefits in respect of Protected Rights are in respect of the retirement pension, invalidity pension, survivors' benefit and emigration benefit as set out in Sections 34 to 39 of the Act and do not extend to the funeral grant or any other benefit that may subsequently be introduced under the Act.

(5) For the purposes of this schedule, all terms shall have the meanings defined in the Act and the following additional definitions apply:

“defined contribution scheme” has the meaning assigned to it under the Retirement Benefits Act

“defined benefits scheme” has the meaning assigned to it under the Retirement Benefits Act

“exempt scheme” is a scheme approved by the Kenya Revenue Authority as an exempt scheme under the Income Tax Act.

(2) In considering whether a scheme satisfies the Reference Scheme test, the Authority shall require a Reference Scheme Test Certificate from an Actuary for a defined benefit scheme or an Actuary or an Administrator for any other scheme in accordance with the Act.

(3) The Authority shall issue a Reference Scheme Certificate to a scheme which meets the Reference Scheme Test to qualify it to receive Tier II Contributions.

(4) A Contracting-out Certificate issued by the Authority is an employer's authority to remit Tier II Contributions to a contracted-out scheme.

(5) The Cabinet Secretary shall, in consultation with the Authority, make regulations for the proper management of contracting-out, including the manner of making applications to the Authority by Reference Schemes and for contracting-out by employers and the communication of approval or otherwise to such scheme or employer.