



**Regulations
Governing the
KwaZulu-Natal Joint
Municipal Provident
Fund**

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ALL RED NUMBERS IN BRACKETS

** AMENDMENTS TO THE REGULATIONS **

P.N. = Provincial Notice 276 = Provincial Notice Number 1986 = Year of Notice

AMENDMENTS TO REGULATIONS (P/F)

(1)	<i>In terms of P.N. 38/1996 dated 19.09.96 effective from 19.09.96</i>
(2)	<i>In terms of P.N. 242/1997 dated 24.07.97 effective from 04.04.96</i>
(3)	<i>In terms of P.N. 314/1998 dated 29.10.98 effective from 01.04.98</i>
(4)	<i>In terms of P.N. 306/1999 dated 11.11.99 effective from 01.08.99</i>
(5)	<i>In terms of P.N. 167/2000 dated 08.06.2000 effective from 08.06.2000</i>
(6)	<i>In terms of P.N. 167/2000 dated 08.06.2000 effective from 01.07.2000</i>
(7)	<i>In terms of P.N. 261/2001 dated 06.07.2001 effective from 01.07.2001</i>
(8)	<i>In terms of P.N. 227/2002 dated 20.06.2002 effective from 01.07.2002</i>
(9)	<i>In terms of P.N. 231/2002 dated 20.06.2002 effective from 01.07.2002</i>
(10)	<i>In terms of P.N. 398/2002 dated 17.10.2002 effective from 01.07.2002</i>
(11)	<i>In terms of P.N. 1138/2003 dated 18.11.2003 effective from 01.07.2003</i>
(12)	<i>In terms of P.N. 866/2004 dated 29.07.2003 effective from 01.04.2003</i>
(13)	<i>In terms of P.N. 1/2005 dated 06/01/2005 effective from 01.07.2004</i>
(14)	<i>In terms of P.N. 903/2004 dated 30/07/2004 effective from 01/07/2004</i>

The **MINISTER** of Local Government and Housing has in terms of section 4 of the KwaZulu-Natal Joint Municipal Provident Fund Act, 1995 (Act No. 4 of 1995), made the following regulations:

CHAPTER 1

Definitions

1. In these regulations, unless the context otherwise indicates, words defined in the **ACT** and not in these regulations bear the meanings assigned to them in the **ACT**, and-

"ACT" means the Pension Funds Act, 1956 (Act No. 24 of 1956), and the regulations framed thereunder;

"ACTUARY" means a Fellow of an institute, faculty, society or chapter of actuaries approved by the **MINISTER** and appointed by the **COMMITTEE**;

- (3)** **"ADJUDICATOR"** means the person appointed to the office of the Adjudicator mentioned in section 30C of the **ACT**;

"ANNUAL GENERAL MEETING" means a meeting to be convened annually in terms of the rules made in accordance with these regulations and where the business of such meeting shall be the consideration and adoption of the annual report and balance sheet, the appointment of a Chairman, Vice-Chairman and Committee of Management and the transaction of any other competent business;

"AUDITOR", means a public accountant and auditor who is registered as such in terms of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991);

"BENEFIT" means any amount due in terms of these regulations to a **MEMBER, DEPENDANT** or other person;

"CALENDAR MONTH" means the period extending from the first to the last day, both days inclusive, of any one of the twelve named **MONTHS** of the year;

"COMMITTEE" means the committee of management or any sub-committee thereof referred to in regulation 5;

"CONTINUOUS SERVICE" means the last unbroken period of service of a **MEMBER** with any **LOCAL AUTHORITY** or local authorities: Provided that-

- (a) the following shall not constitute a break in service for the purpose of determining the last unbroken period of service -
 - (i) authorised leave of absence;
 - (ii) a break in service regarded as leave without pay or otherwise condoned by the **COMMITTEE** on the recommendation of the **LOCAL AUTHORITY** concerned;
 - (iii) a period of suspension followed by reinstatement in the same or another office or post; or
 - (iv) a break in service whilst transferring from one **LOCAL AUTHORITY** to another **LOCAL AUTHORITY** if condoned by the **COMMITTEE**;
- (b) any period in respect of which a **MEMBER** has not paid **CONTRIBUTIONS** shall not be taken into account in calculating the period of his **CONTINUOUS SERVICE**; and
- (c) the period of **CONTINUOUS SERVICE** shall be calculated by the year and **MONTH** and a fraction of a **MONTH** shall be disregarded;

*"**CONTRIBUTIONS**" when applied to the payments made or to be made by a **MEMBER**, means an amount calculated as if he had completed payment of his arrear **CONTRIBUTIONS** in terms of regulation 18(2);*

*"**DATE OF ASSOCIATION**" means the date as from which a **LOCAL AUTHORITY** becomes associated with the **FUND**;*

*"**DATE OF COMMENCEMENT**" means the operative date of these regulations;*

*"**DEPENDANT**", in relation to a **MEMBER**, means a dependant as defined in section 1 of the Pension Funds Act, 1956 (Act No. 24 of 1956)*

*"**DIRECTOR**" means the person appointed as such by the **COMMITTEE** and who shall also be the principal officer as defined in section 1 of the **ACT**;*

*"**EMPLOYEE**" means any person who is in the service of a **LOCAL AUTHORITY** and who -*

3(a)

(a) *is employed in a full-time capacity in the said service; and*

(b) *has attained the age of seventeen years, but had not at the time of joining the said service reached an age eight years less than the **PENSION AGE** : Provided that -*

- (i) *any person who is employed by a **LOCAL AUTHORITY** and whose services will be terminated on completion of the purpose for which he is employed within a maximum period of three years may be deemed by the **LOCAL AUTHORITY** not to be an **EMPLOYEE**;*
- (ii) *a person joining the service of a **LOCAL AUTHORITY** after having reached an age eight years less than the **PENSION AGE** may elect, with the consent of the employing **LOCAL AUTHORITY**, to be regarded as an **EMPLOYEE**; and*
- (iii) *subject to the approval of the **COMMITTEE**, a person joining the service of a **LOCAL AUTHORITY** in a **PART-TIME CAPACITY** may elect, with the consent of the employing **LOCAL AUTHORITY**, to be regarded as an **EMPLOYEE**;*

*"**FULL BENEFIT**" means the amount determined in terms of regulation 20;*

*"**FUND**" means the KwaZulu-Natal Joint Municipal Provident Fund established in terms of section 2 of the KwaZulu-Natal Joint Municipal Provident Fund Act, 1995 (Act No. 4 of 1995);*

*"**GENERAL COMMITTEE**" means the **GENERAL COMMITTEE** referred to in regulation 5;*

(7)(9)

*"**KZN MUNICIPAL PENSION FUND**" means the **KZN MUNICIPAL PENSION FUND** established for the benefit of municipal employees and registered as such in terms of the Act;*

(7) "**MANAGEMENT BODY**" means the **MANAGEMENT BODY** appointed in terms of section 2(2) of the uMsekeli Municipal Support Services Ordinance, 1941 (Ordinance No. 20 of 1941), as amended;

"**MEMBER**" means a person (not being a **LOCAL AUTHORITY**) who is a contributor to the **FUND**;

(12) "**MINIMUM INDIVIDUAL RESERVE**" means, in relation to each member, the amount determined in accordance with section 14B(2) of the Pension Funds Act, 1956;

"**MINISTER**" means the **MEMBER** of the Executive Council for the Province of KwaZulu-Natal responsible for local government and housing;

"**MONTH**" means a period extending from a day in one **CALENDAR MONTH** to the day preceding the day corresponding numerically to that day in the following **CALENDAR MONTH**, both days inclusive;

(7)(3) "**MUNICIPAL COUNCIL**" means where appropriate according to the context in which the expression occurs -

- (a) a **MUNICIPAL COUNCIL** as defined in section 1 of the Local Government : Municipal Structures Act, 1998 (Act No. 117 of 1998);
- (b) a **MUNICIPALITY**;
- (c) the **MANAGEMENT BODY** of **uMSEKELI**;
- (d) **uMSEKELI**; or
- (e) a municipal entity as defined in section 1 of the Local Government : Municipal Systems Act, 2000 (Act No. 32 of 2000)

5(a)

and any reference in these Regulations to a local authority shall be deemed to be a reference to the appropriate meaning of **MUNICIPAL COUNCIL**;

(7) "**MUNICIPALITY**" means a **MUNICIPALITY** established in terms of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998).

(7) "**MUNICIPAL MANAGER**" means a **MUNICIPAL MANAGER** appointed in terms of section 82 of the Local Government : Municipal Structures Act, 1998 (Act No. 117 of 1998) and includes the chief executive officer of **uMSEKELI**.

"**MUNICIPAL YEAR**" means the period commencing on 1 July in any year and terminating on 30 June in the following year or such other period as may be determined by the **MINISTER** from time to time;

"**PART-TIME CAPACITY**" means employment for an agreed proportion of not less than one-half but less than four-fifths of the normal working hours, or such other proportions as may be decided from time to time by the **COMMITTEE**;

"**PENSION OR PENSIONABLE AGE**" means the age of 65 years;

"**PENSIONABLE EMOLUMENTS**" means, subject to the provisions of these regulations, the emoluments on which **CONTRIBUTIONS** shall be paid, and shall include-

(a) salaries or wages;

- (b) *cost of living allowance, long service allowance and any other allowance approved by the **COMMITTEE** for inclusion in the **MEMBER'S PENSIONABLE EMOLUMENTS***
- (c) (i) *any allowance granted in lieu of the provision of free quarters; or*
- (ii) *one-sixth of the amounts in paragraphs (a) and (b) whenever, as a portion of the **MEMBER's** emoluments, occupation of quarters, whether belonging to the **LOCAL AUTHORITY** or not, is allowed rent free; but shall not include -*
- (d) *any special remuneration which may be received for performing special duties or while acting in an office, whether permanently or temporarily vacant; or*
- (e) *any locomotion or subsistence allowance; or*
- (f) *any fees, honoraria or bonuses of any kind; or*
- (g) *any overtime payment; or*
- (h) *any other allowance not herein specified;*

"PRIME RATE" means the lending rate as applied from time to time by the **FUND's** bankers to the current account of the **FUND**;

(12) **"REGISTRAR"** means the Registrar of Pension Funds referred to in the Act;

"RESERVE ACCOUNT" means the account contemplated in regulation 21;

"RETIREMENT FUND" means the Natal Joint Municipal Pension Fund (Retirement);

"SALARY" or **"WAGES"** means the annual, monthly, weekly, daily or hourly pay, including the remuneration for piece-work, but shall not include payment for overtime or any bonus;

"SUPERANNUATION FUND" means the Natal Joint Municipal Pension Fund (Superannuation);

(12) **"SURPLUS APPORTIONMENT DATE"** means 31 March 2003

"THE ORDINANCE" means the Local Government Superannuation Ordinance, 1973 (Ordinance No. 24 of 1973) and any word or expression defined therein shall, when used in these regulations, have the meaning so defined or assigned.

(7) **"uMSEKELI"** means the body constituted in terms of the uMsekeli Municipal Support Services Ordinance, 1941 (Ordinance 20 of 1941), as amended.

CHAPTER II

Obligatory association with the Fund

(7) 2. Every **MUNICIPAL COUNCIL**, with the exception of that portion of the Durban Metropolitan Municipality formerly constituted as the North and South Central Councils in terms of the Local Government Transition Act, 1993 (Act No. 209 of 1993), whose employees are members of the Durban Pension Fund, shall be associated with the **FUND** from the **DATE OF ESTABLISHMENT** and every future **MUNICIPAL COUNCIL** shall be associated with the **FUND** within six **MONTHS** from the date of becoming a **MUNICIPAL COUNCIL**.

(7) ? **Application of Chapters II, III and IV**

?2A The provisions of these regulations shall not apply to that portion of the Durban Metropolitan Municipality formerly constituted as the North and South Central Local Councils in terms of the Local Government Transition Act, 1993 whose employees were members of the Durban Pension Fund unless it makes application to that end in terms of regulation 37.

7(a)

Preparation, adoption and approval of a scheme

3. (1) *Subject to the provisions of regulation 2, each **LOCAL AUTHORITY** not associated with the **FUND** at the **DATE OF COMMENCEMENT** shall prepare a scheme which shall provide -*
 - (a) *the date from which the association with the **FUND** is to commence: Provided that such date shall not be later than provided in regulation 2;*

- (9) (b) that all **EMPLOYEES** who do not elect, in terms of regulation 12, to become **MEMBERS** of the **SUPERANNUATION, RETIREMENT** or **KZN MUNICIPAL PENSION FUNDS** shall become **MEMBERS** of the **FUND** as from the **DATE OF ASSOCIATION**.
- (2) Such scheme, after adoption at a statutory meeting of the **LOCAL AUTHORITY**, shall require the approval of the **COMMITTEE**.

Sources of the Fund

4. The **FUND** shall consist of -
- (a) **CONTRIBUTIONS** and interest paid into the **FUND** in accordance with the relevant provisions of these regulations;
 - (b) income derived from the investment of any monies of the **FUND**; and
 - (c) any other sums or assets to which the **FUND** may become entitled.

Committee of Management

- (5) 5. A **GENERAL COMMITTEE** shall be constituted in accordance with the Rules made in terms of Regulation 6. A **COMMITTEE OF MANAGEMENT** in which shall be vested the management and direction of the **FUND** shall be elected annually in accordance with Rules 5A and 7 of the Rules for the Management and Administration of the Natal Joint Municipal Pension Fund (Superannuation), the Natal Joint Municipal Pension Fund (Retirement) and the KwaZulu-Natal Joint Municipal Provident Fund.

Power of Committee to make rules

6. Subject to the approval of the **MINISTER**, and a report from an **ACTUARY** where any rule is, in the opinion of the **MINISTER**, likely to affect the financial position of the **FUND**, the **GENERAL COMMITTEE** may make rules, not inconsistent with the provisions of these regulations, as to -
- (a) the number of Members of any **COMMITTEE**;
 - (b) the method of appointment of a chairman of any **COMMITTEE**;
 - (c) the mode and time of appointing and electing members of any **COMMITTEE**;
 - (d) the quorum necessary for the transaction of business at a meeting of any **COMMITTEE**;
 - (e) the method of appointment of a sub-committee of any **COMMITTEE**;
 - (f) the management, administration and transaction of any business of the **FUND**; and
 - (g) any matter which it considers necessary or expedient in order that the purposes of these regulations may be achieved.

Powers of Committee and disputes

7. (1) Subject to the provisions of these regulations the **COMMITTEE** shall have the following powers:
- (a) to decide whether any person is qualified to be a **MEMBER** of the **FUND**;
 - (b) to determine the method whereby the annual **PENSIONABLE EMOLU-MENTS** of hourly paid, daily paid and other workers shall be calculated and to give such directions in connection therewith as it may deem fit;

- (c) *to settle all questions not otherwise herein provided for in respect of **CONTRIBUTIONS**;*
- (d) *to decide upon the periods of service in respect of which **CONTRIBUTIONS** may be made, or which may be included for **BENEFIT** purposes;*
- (e) *to adjust and decide upon all claims made upon the **FUND**;*
- (f) *to authorise the payment of claims made upon the **FUND**;*
- (g) *to authorise the payment of all **BENEFITS**;*
- (3) (h) *to open banking accounts in the name of the **FUND** and operate thereon in the customary manner;*
- (i) *to obtain bank overdraft facilities;*
- (j) *to institute and defend legal proceedings of every kind in any court of law;*
- (k) *to perform any act relating to any registration in any deeds office;*
- (l) *to buy in any property mortgaged to the **FUND** and to lease, maintain, control, sell, dispose of or otherwise turn to account the said property;*
- (m) *to prescribe the terms and conditions of service of employees of the **FUND** and to engage professional or other assistance for the **FUND**;*
- (n) *to acquire and maintain premises for its own use and to let any part of such premises as is not required;*
- (o) *to accept any property on behalf of the **FUND** by way of donation or bequest;*

(p) *to subscribe to any association of municipal or other funds having for its object the improvement and promotion of matters of common or mutual interest to such funds and their members; and*

(q) *to do all such things as are, in the opinion of the **COMMITTEE**, incidental or conducive to the proper management, administration and promotion of the **FUND**, and to the attainment of the objects of **THE ORDINANCE** and these regulations.*

(4) (r) *to furnish guarantees or grant loans pursuant to such guarantees, in accordance with the provisions of section 19(5), read with section 37D of the Act, to any bank or financial institution registered as such under the Banks Act No. 94 of 1990 or the Mutual Banks Act No. 124 of 1993 upon such terms and conditions as the Committee may deem fit, including the renunciation of the benefits of excussion and division.*

(2) *Any dispute which may arise in regard to claims or interpretations under these regulations shall be decided by the **COMMITTEE**: Provided that if any party to such dispute is dissatisfied with the decision, the **COMMITTEE** shall, at the*

(3) *request of such party, refer the dispute to the **ADJUDICATOR** for decision. Any*

(3) *decision of the **ADJUDICATOR** may be made with retrospective effect.*

(3) *The **COMMITTEE** and all officials of the **FUND** shall be indemnified by the **FUND** against all proceedings, costs and expenses incurred by reason of any claim in connection with the **FUND**, not arising from their negligence, dishonesty or fraud.*

Investment of funds

(3) 8. *Subject to the provisions of section 19 and regulation 28 of the **ACT**, the **COMMITTEE** may in its discretion invest any monies not required to meet the current charges upon the **FUND** in any of the following ways:*

11(a)

(a) *In the Post Bank (a division of the South African Post Office Limited), or in the savings bank of any bank or institution which is governed by the laws of the Republic of South Africa, or on fixed deposit or at call with any such bank or institution or with any **LOCAL AUTHORITY** in the Republic.*

(3)

(b)

- (c) *In Treasury Bills, National Savings Certificates or Savings Bank Certificates issued by or on behalf of the Government of the Republic, or in stocks, securities or funds issued or guaranteed by the Government of the Republic.*
- (d) *In stocks, funds, debentures and shares of, or in loans to any provincial administration, **LOCAL AUTHORITY** not associated with the **FUND** or public body in the Republic authorised by law to borrow money.*
- (e) *On first mortgage upon first class immovable property in the Republic, the amount of the mortgage in any case not to exceed 75 per cent of the value of such immovable property as assessed to the satisfaction of the **COMMITTEE** at the date of the advance.*
- (f) *In participation mortgage bonds under any registered participation mortgage bond scheme as provided for in the Participation Mortgage Bonds Act, 1981 (Act No. 55 of 1981).*
- (g) *In the purchase of immovable property, including the purchase of land and the erection of buildings thereon for the purpose of regulation 7(1)(n).*
- (h) *In debentures, preference shares, unsecured notes, ordinary shares or similar forms of investment.*
- (i) *In units of any company registered under the Unit Trusts Control Act, 1981 (Act No. 54 of 1981).*
- (j) *In such other security or securities as provided in the **ACT**.*

(3) (k)

(3) **Delegation of powers to make investments**

(3) 8A The **COMMITTEE** may delegate its powers to make investments of any nature to a financial institution as defined in the Financial Institutions (Investment of Funds) Act, 1984 or to a person approved in terms of section 4(1)(f) of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), and may defray expenses incurred as a result of such delegation out of the monies of the **FUND**.

Annual audit

9. (1) The **COMMITTEE** shall cause the books and accounts of the **FUND** to be balanced as at the thirty-first day of March in each year and financial statements prepared for audit.
- (2) The audit of the accounts and records shall be carried out under the direction and control of an **AUDITOR** or any other person, subject to the provisions of section 14 of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991), whom from time to time the **MINISTER** may appoint to carry out such audit.
- (3) Where an audit is carried out under the direction and control of such other person so appointed, he shall certify the accounts in accordance with the requirements of sub-regulation (9) and shall transmit the originals and such copies of the financial statements and of his report on the accounts as may be required from time to time to the **AUDITOR**, who may call upon him to furnish such further information or comment, and after consultation with the appointed **AUDITOR**, require the report to be presented in accordance with the policy of the **MINISTER**.
- (4) The **AUDITOR** shall thereafter furnish such financial statements and report to the **MINISTER** and the **COMMITTEE**.

13(a)

- (5) *Any appointment made by the **MINISTER** under the provisions of subregulation (2) shall be subject to such terms and conditions and for such period as shall be specified in the letter of appointment.*

- (6) *The **DIRECTOR** shall produce and lay before the **AUDITOR** the financial statements, the minute books and all accounts of the **FUND**, with all vouchers in support of the same, and all books, reports, certificates, papers and writings relating thereto.*
- (7) *Where it appears to the **AUDITOR** that any adjustment is required in the financial statements or records referred to in subregulation (6) in order to reflect therein any transaction in a true and proper manner, he shall inform the **COMMITTEE** thereof and request the **COMMITTEE** for its comments. After consideration of such comments the **AUDITOR** may make such order as to adjustments as he may deem desirable and thereupon the **COMMITTEE** shall, through the **DIRECTOR**, give effect thereto: Provided, however, that before doing so, the **COMMITTEE** may refer the matter to the **MINISTER**, whose decision shall be final.*
- (8) *The **AUDITOR** shall, not less than once in every year, audit and examine the financial statements, and shall certify whether or not -*
- (a) *the accounts of the **FUND** are in order;*
 - (b) *the accounts present a true and correct record of the financial position of the **FUND** and of its transactions;*
 - (c) *all items of revenue and expenditure and all known liabilities and assets have been brought to account;*
 - (d) *all his requirements and recommendations, as **AUDITOR**, have been complied with and carried out.*
- (9) *The **AUDITOR**, when certifying as provided in subregulation (8), shall at the same time furnish to the **MINISTER** and the **COMMITTEE** a report as to any matters of importance or interest arising out of the audit of accounts.*

- (10) *Within forty-five days after receipt thereof, or such extended period as the **MINISTER** may approve, the **COMMITTEE** shall consider the **AUDITOR'S** certificate and report, together with the financial statements. If the **AUDITOR** has reported any irregularities the **COMMITTEE** shall decide what action shall be taken in regard to such irregularities.*
- (11) *The **COMMITTEE** shall, within twenty-one days of the meeting held for the purposes of subregulation (10) submit to the **MINISTER** a statement of the action which it proposes to take in regard to any irregularities revealed in the **AUDITOR'S** report. The **MINISTER** may, after considering such statement, require the **COMMITTEE** to provide explanation of any matter contained in the **AUDITOR'S** report.*
- (12) *The **AUDITOR** shall prepare and submit annually to the **MINISTER**, a signed report on the financial aspects of the **FUND** which the **MINISTER** shall present to the Provincial Legislature.*
- (13) *For the purpose of any audit under these regulations the **AUDITOR** may hear and examine witnesses upon oath and by summons under his hand require such persons as he may think fit to appear before him at a time and place to be stated in the summons and to produce all such books and papers and reports as may be necessary for the audit.*
- (14) *Any person who shall without lawful excuse refuse or neglect to attend in obedience to such summons or to be sworn or examined, or to produce any such book, paper or report or to answer such questions as are put to him to the best of his knowledge, shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding three **MONTHS** or to both such fine and such imprisonment. A conviction under this subregulation shall not be deemed to excuse the person convicted from the obligation to do any act or thing required of him or from being again liable to be convicted for any further or repeated commission of the act or offence.*

- (15) *The above references to an oath include any form of declaration allowed by law to be administered to witnesses.*
- (16) *Where at any time the **AUDITOR** is of the opinion that -*
- (a) *any payment or exemption was made without due authority according to law or a charge has been improperly incurred or a payment or charge is not duly vouched;*
 - (b) *any deficiency has occurred in collecting, accounting for, receiving, issuing or preserving any money or other property of or under the control of the **COMMITTEE**; or*
 - (c) *the failure to carry out a specific duty has caused damage or loss to the **FUND**,*
- then, if a proper explanation is not furnished within a period specified by him, he may disallow the amount as assessed by him of any money improperly paid or charge improperly incurred, or payment or charge not duly vouched or deficiency or damage or loss as aforesaid, such amount being hereinafter referred to as a disallowance.*
- (17) *If the **COMMITTEE** is dissatisfied with a disallowance by the **AUDITOR** it may make application to the **MINISTER** for relief therefrom, and if the **MINISTER** is satisfied that in all the circumstances relief should be granted, he may grant relief in whole or in part as he may deem fit and the disallowance shall be removed or reduced accordingly.*
- (18) *Where, within a period to be specified by the **AUDITOR**, no relief has been obtained in terms of subregulation (17) and no disallowance has been recovered in terms of subregulation (22) and the **AUDITOR** is of the opinion that any member of the **COMMITTEE** or employee of the **FUND** is personally responsible because of his negligence or misconduct for making good to the*

FUND the disallowance or part thereof, he may, subject to the provisions of subregulation (21), surcharge such member of the **COMMITTEE** or employee of the **FUND** with the amount requiring adjustment and shall thereupon report such surcharge and all necessary particulars to the **MINISTER** and to the **COMMITTEE**.

- (19) Where the **AUDITOR** is of the opinion that more than one person is responsible for the whole or any part of a disallowance not adjusted as aforesaid, he may, subject to the provisions of subregulation (21) surcharge pro rata such of the persons responsible and shall thereupon report the surcharge and all necessary particulars to the **MINISTER** and to the **COMMITTEE**.
- (20) (a) Should any person surcharged by the **AUDITOR** feel aggrieved, he may within one **MONTH** from the date of the surcharge or such longer period as the **MINISTER** may in any particular case allow, appeal against the surcharge to the **MINISTER**.
- (b) Any such appeal shall be forwarded through the **COMMITTEE** which shall as soon as possible forward the appeal to the **MINISTER** together with its recommendations thereon, and the **MINISTER**, after due enquiry, may relieve the appellant either wholly or partially of the amount surcharged or may sue or direct the **COMMITTEE** to sue him in any court of competent jurisdiction for the recovery of any amount in respect of which relief is not granted, and the **COMMITTEE**, if so directed, shall sue such person according to law. Any such suit may be brought on behalf of the **MINISTER** by the Director-General of the KwaZulu-Natal Provincial Administration and he shall be paid by the **COMMITTEE** his reasonable costs and expenses incurred in such proceedings.

- (c) *In addition to any action that the **MINISTER** may take or direct the **COMMITTEE** to take in terms of paragraph (b), he may, if he is satisfied that the surcharge was attributable to the negligence or misconduct of any employee of the **FUND**, order the **COMMITTEE** to take disciplinary action against that officer in terms of the conditions of service and the **COMMITTEE** shall upon such direction forthwith give effect thereto which it shall have power to do and shall report the result thereof to the **MINISTER**.*
- (d) *Any person against whom a surcharge has been raised, may apply to any court of competent jurisdiction within a period of one **MONTH** after he has been notified in writing by the **AUDITOR** of the surcharge, or of the decision of the **MINISTER** in terms of subregulation (20)(a), or within such further period as the court may allow, for an order setting aside or reducing the surcharge, and such court may on such application, if not satisfied by the **AUDITOR** on the merits of the case that the surcharge was rightly imposed, or that the amount thereof is correct, make an order setting aside the surcharge or reducing it, as the case may be.*
- (e) *The amount of any surcharge not appealed against as herein provided, or if appealed against, the amount in respect of which relief is not granted, shall be a debt due to the **FUND** from the person against whom the surcharge was made.*
- (21) *If any member of the **COMMITTEE** or employee of the **FUND** liable to a surcharge ceases to be a member of the **COMMITTEE** or employee of the **FUND** as the case may be, he shall be discharged from such liability and surcharge unless the surcharge is made before the expiry of three years from the date on which he ceased to be a member of the **COMMITTEE** or employee of the **FUND**.*

- (22) *Every disallowance or surcharge raised by the **AUDITOR** in terms of these regulations, shall be recovered by the **COMMITTEE** unless relief has been granted in terms of subregulations (17) and (20). Nothing herein contained shall prevent the **COMMITTEE** from taking proceedings for the recovery of any disallowance or surcharge by way of action or any other competent procedure in any court of competent jurisdiction.*
- (23) *Any disallowance or surcharge may at any time, before the **MINISTER** or the court has decided in regard thereto, be wholly or partially withdrawn by the **AUDITOR** in the case of disallowances, or surcharges, if the proper vouchers or information or an explanation showing that the disallowance or surcharge should be so withdrawn, are supplied to the **AUDITOR**, and the **MINISTER** or the court and the **COMMITTEE** advised of such withdrawal.*
- (24) (a) *Any amount included in the charges in the accounts of the **FUND** which has been disallowed by the **AUDITOR** or surcharged by the **AUDITOR** shall be held in suspense in the accounts pending adjustment in terms of these regulations.*
- (b) *Any disallowance or surcharge not in respect of a charge in the accounts shall be introduced into the accounts and be held in suspense therein pending adjustment in terms of these regulations.*
- (25) *For the purpose of this regulation the persons making or authorizing an illegal payment shall include all members of the **COMMITTEE** or the members of any subcommittee who were present at the time when the resolution authorizing such payment was carried and who notwithstanding that such irregularity was pointed out to them, did not cast their votes against that resolution and cause such votes to be recorded in the minutes.*
- (26) *The **COMMITTEE** shall, in respect of the service rendered by the **AUDITOR**, pay to the **AUDITOR** yearly within three **MONTHS** from the date of the **AUDITOR'S** signing his yearly certificate, such sum as the **AUDITOR** may from time to time determine, in consultation with the **COMMITTEE**: Provided that*

any service of an accounting or non-auditing nature performed by the **AUDITOR** for the **COMMITTEE** at its request, shall not be regarded as part of the service rendered by the **AUDITOR** as aforementioned and the actual cost thereof, as calculated by the **AUDITOR**, shall be paid by the **COMMITTEE** to the **AUDITOR** within the said period of three **MONTHS**.

- (27) It shall be lawful for the **COMMITTEE** at any time, upon a resolution being passed at a meeting thereof, to have an examination or audit made of the **FUND's** accounts, or any part thereof, by such persons as it may think proper, but this shall not affect the holding of the audit hereinbefore provided for.

Actuarial investigation of the Fund

- (12)** 10. (1) The Fund shall in terms of the Act be valued by an actuary at intervals not exceeding three years, for the purpose of determining whether it continues to be capable of meeting the benefits and other commitments provided for in these regulations. The actuary carrying out the investigation shall submit a report direct to the Committee.
- (12)** (2) The valuation referred to in subregulation (1) shall be made in respect of the position as at the expiration of a financial year and the report on such valuation shall be deposited with the **MINISTER** and the Registrar, as provided for in section 16 of the Act.
- (12)** (3) If the **ACTUARY** in such report certifies that there is a deficit the **COMMITTEE** shall submit to the **MINISTER** and to the Registrar a scheme, which shall be approved by the **ACTUARY**, subject to the provisions of the Act and the practice of the Registrar, for making good the deficit. If the actuary in such report certifies that there is a disposable surplus, the provisions of subregulation (4) shall apply.

- (12)** (4) (a) *If the valuation as at the surplus apportionment date discloses a disposable surplus, a local authority surplus account and a member surplus account shall be established. Such surplus shall be equitably apportioned between the stakeholders contemplated in the Act, in accordance with a scheme for apportionment to be submitted to the Registrar within eighteen months after the surplus apportionment date, or such date as approved by the Registrar*
- (12)** (b) *If the valuation after the implementation of a scheme for surplus apportionment in terms of subregulation (a) discloses a disposable surplus, such amount shall be credited to the member surplus account.*
- (12)** (5) (a) *There shall be established a local authority surplus account which shall be credited with -*
- (i) the amount if any, apportioned to the local authority in terms of the surplus apportionment scheme approved by the Registrar in terms of section 15B of the Act;*
 - (ii) any amount which is required to be transferred to such an account in terms of an application made in accordance with section 15F of the Act and approved by the Registrar; and*
 - (iii) any amount contemplated in subregulation (4)(b).*
- (b) *The amount standing to the credit of the local authority surplus account shall be increased or decreased by the investment return earned by the assets within this account, including any investment income (received and accrued) less an allowance for any tax and if applicable, part or all of any expenses (paid and accrued) together with capital appreciation, realized or unrealized.*

21(a)

(c) *The amount standing to the credit of the local authority surplus account may be used by the local authority at their discretion for any of the purposes set out in section 15E of the Act.*

(12)

6. (a) *There shall be established a member surplus account which shall be credited with -*

(i) *any amount allocated in terms of section 15B of the Act to be used for the benefit of members in terms of a surplus apportionment scheme approved by the Registrar; and*

(ii) *any amount contemplated in subregulation (4)(b)*

(b) *The amount standing to the credit of the member surplus account shall be increased or decreased by the investment return earned by the assets within this account, including any investment income (received and accrued) less an allowance for any tax and if applicable, part or all or any expenses (paid and accrued) together with capital appreciation, realized and unrealized.*

(c) *The amount standing to the credit of the member surplus fund may be used in the manner and for any of the purposes set out in section 15D of the Act.*

Expenses of management of the Fund

11. *The whole of the expenses in connection with or incidental to the management and administration of the **FUND**, including the cost of the audit and actuarial investigations, shall be borne by the **FUND**.*

CHAPTER III

ADMISSION OF MEMBERS TO THE FUND AND CONTRIBUTIONS TO SUCH FUND

Membership of Fund

(9) 12. (1) An **EMPLOYEE** of a **LOCAL AUTHORITY** which becomes associated with the **FUND** on or after the **DATE OF COMMENCEMENT** shall elect, in writing, to become a **MEMBER** with effect from the **DATE OF ASSOCIATION** of either -

- (a) the **FUND**;
- (b) the **SUPERANNUATION FUND**;
- (c) the **RETIREMENT FUND**; or
- (d) the **KZN MUNICIPAL PENSION FUND**:

*Provided that he may elect, in writing, within a period of six **MONTHS** of the **DATE OF ASSOCIATION**, to amend such original election retrospectively to the **DATE OF ASSOCIATION**, but provided, further, that such right of an election shall not apply to an **EMPLOYEE** electing to become a **MEMBER** of the **KZN MUNICIPAL PENSION FUND**.*

(9) (2) A person who becomes an **EMPLOYEE** on or after the **DATE OF COMMENCEMENT** shall, subject to his conditions of service, elect, in writing, to become a **MEMBER** of either-

- (a) the **FUND**;
- (b) the **SUPERANNUATION FUND**;
- (c) the **RETIREMENT FUND**; or
- (d) the **KZN MUNICIPAL PENSION FUND** if the **EMPLOYEE** is employed by a **LOCAL AUTHORITY** associated with such **FUND** in terms of its regulations:

22(a)

*Provided that he may elect, in writing, within a period of six **MONTHS** of the date of becoming an **EMPLOYEE**, to amend such original election retrospectively to date of becoming an **EMPLOYEE**, but provided, further, that such right of election shall not apply to an **EMPLOYEE** electing to become a **MEMBER** of the **KZN MUNICIPAL PENSION FUND**.*

- (3) *A person who is a **MEMBER** of the **SUPERANNUATION FUND** or the **RETIREMENT FUND** may elect, in writing, to become a **MEMBER** of the **FUND** in terms of the regulations of those Funds.*

- (4) (a) A **LOCAL AUTHORITY** becoming associated with the **FUND** in accordance with regulation 2 after the **DATE OF COMMENCEMENT**, shall provide in the scheme prepared in accordance with the provisions of regulation 3 that -
- (i) the **CONTINUOUS SERVICE** of its **EMPLOYEES** shall commence as from the **DATE OF ASSOCIATION**; or
- (ii) such **CONTINUOUS SERVICE** shall commence from a prior date to be agreed upon, such date being not earlier than the date upon which respective **EMPLOYEES** entered the service of the **LOCAL AUTHORITY**.
- (b) If the method described in paragraph (a)(ii) applies then -
- (i) the **ACTUARY** shall calculate the cost of providing for **CONTINUOUS SERVICE** prior to the **DATE OF ASSOCIATION**;
- (ii) the **LOCAL AUTHORITY** may require the **EMPLOYEE** to bear a part but not exceeding fifty per cent of such cost, in which case the **EMPLOYEE's** share shall be paid in one lump sum or together with interest at the rate of five and one-half per cent per annum compounded yearly from the **DATE OF ASSOCIATION** in such instalments as shall be determined by the **COMMITTEE**;
- (iii) the share due by the **LOCAL AUTHORITY** may be paid in one lump sum at the **DATE OF ASSOCIATION** or together with interest at the rate of five and one-half per cent per annum compounded yearly from the **DATE OF ASSOCIATION** by equal instalments of principal and interest over a period not exceeding twenty years.

- (5) *Subject to the provisions of regulation 13(1), a **MEMBER** may not withdraw from membership while he remains in the service of a **LOCAL AUTHORITY** which is associated with the **FUND**.*
- (6) *When a **MEMBER** ceases to be in the employ of a **LOCAL AUTHORITY** which is associated with the **FUND** he shall, subject to the provisions of these regulations, forthwith cease to be a **MEMBER** .*

(10)

- (7) *If a person becomes a **MEMBER** on transfer from the **SUPERANNUATION FUND** or the **RETIREMENT FUND** in terms of subregulation (3), the following conditions shall apply -*

(1)

- (a) *for all purposes except those referred to in paragraphs (d) and (e), a period in respect of his membership of the **SUPERANNUATION FUND** or the **RETIREMENT FUND** as determined by the **COMMITTEE** acting on the advice of the **ACTUARY**, shall be included in his **CONTINUOUS SERVICE** in the **FUND**;*
- (b) *his **CONTRIBUTIONS** to the **SUPERANNUATION FUND** or the **RETIREMENT FUND** shall be included in his **CONTRIBUTIONS** to the **FUND**;*
- (c) *any restriction on his membership of the **SUPERANNUATION FUND** or the **RETIREMENT FUND** in terms of regulations corresponding to subregulations (2) and (3) of regulation 15 shall apply **mutatis mutandis** to his membership of the **FUND**;*

24(a)

- (d) *for the purpose of the qualifying period of **CONTINUOUS SERVICE** in regulations 15(2)(ii)(b), 22(3), 23(1), 25(4) and 27(1), his **CONTINUOUS SERVICE** in the **SUPERANNUATION FUND** or the **RETIREMENT FUND** shall be included in his **CONTINUOUS SERVICE** in the **FUND**; and*

- (e) for the purposes of regulation 25(1) or 27(1), his **CONTINUOUS SERVICE** in **SUPERANNUATION FUND** or the **RETIREMENT FUND** shall be included in his **CONTINUOUS SERVICE** in the **FUND**.

Transfer of membership

- (7) 13. (1) A **MEMBER** may elect to terminate his membership of the **FUND** and to become a **MEMBER** of either the **SUPERANNUATION FUND**, the **RETIREMENT FUND** or the **KZN MUNICIPAL PENSION FUND** if the **LOCAL AUTHORITY** employing such **MEMBER** is associated with that **FUND** in accordance with its regulations (hereinafter referred to as a "transfer election"), subject to the provisions of subregulation (2) or (3), as the case may be.
- (9)
- (7) (2) The **MEMBER** shall give twelve **MONTHS'** written notice of a transfer election to the **FUND** and the operative date of such transfer shall be at least five years after the date of last becoming a **MEMBER** of the **FUND**; provided that a **MEMBER** who became a **MEMBER** of the **FUND** on or before 1 July 1996 may elect to transfer to either the **SUPERANNUATION FUND** or the **RETIREMENT FUND** with effect from 1 July 2001 without giving 12 months written notice of such transfer election.
- (3)
- (7)(9) (3) If a **MEMBER** elects to become a **MEMBER** of the **RETIREMENT FUND**, the **SUPERANNUATION FUND** or the **KZN MUNICIPAL PENSION FUND** in terms of subregulation (1), an amount equal to his full benefit in the **FUND** at the date of transfer of membership, shall be transferred to the **RETIREMENT FUND**, the **SUPERANNUATION FUND** or the **KZN MUNICIPAL PENSION FUND**, as the case may be.
- (10)

Contributions by members

- (6) 14. Every **MEMBER** shall contribute to the **FUND** as from the date of becoming a **MEMBER** 5 per cent of his **PENSIONABLE EMOLUMENTS**; provided that

25(a)

- (d) *each person becoming a **MEMBER** on or after 1 July 2000 shall have the option, to be elected in writing to the **FUND** on becoming a **MEMBER**, instead of contributing at the aforementioned rate of 5 per cent to contribute at a rate of 7 per cent or a rate of 9,25 per cent.*
- (b) *any other **MEMBER** shall have the option, to be elected in writing to the **FUND** on or before 30 June 2000, instead of contributing at the aforementioned rate of 5 per cent to contribute at a rate of 7 per cent or a rate of 9,25 per cent with effect from 1 July 2000.*
- (c) *a **MEMBER** electing an option in terms of paragraph (a) shall be entitled to cancel the said election, or to elect the alternative option, by written notice to the **FUND** during the first 6 months of membership. Such cancellation or amendment may not have retrospective effect.*
- (d) *a **MEMBER** electing an option in terms of paragraph (b) shall be entitled to cancel the election, or to elect the alternative option, by written notice to the **FUND** during the period 1 July 2000 to 31 December 2000. Such cancellation or amendment may not have retrospective effect.*
- (e) *subject to the provisions of paragraphs (c) and (d), a **MEMBER** who has elected an option in terms of paragraph (a) or paragraph (b) may not cancel the election or elect the alternative option within a period of 5 years commencing on the effective date of election, and shall give not less than 12 months written notice to the **FUND** of any such cancellation or amendment.*

Evidence of age to be produced, etc.

15. (1) *Evidence of age satisfactory to the **COMMITTEE** shall be produced by each **MEMBER** at the **DATE OF COMMENCEMENT** of his **CONTRIBUTIONS** to the **FUND** and failing such production the age of such **MEMBER** shall be as determined by the **COMMITTEE**.*
- (2) *An **EMPLOYEE** referred to in subregulation (1), shall produce to the **COMMITTEE**, at the equal cost of the **FUND** and the **LOCAL AUTHORITY**, within three **MONTHS** of becoming a **MEMBER**, such evidence of health as the **COMMITTEE** may require, and upon its being satisfied that he is -*
- (i) *in a sound state of health, he shall be eligible for the **BENEFITS** granted under these regulations, or*
- (ii) *not in a sound state of health, it shall notify him in writing that his membership shall be subject to the restrictions, which may be withdrawn at a later date that -*
- (a) *if he dies in the service of a **LOCAL AUTHORITY** after less than ten years' **CONTINUOUS SERVICE** from an illness which, in the opinion of the **COMMITTEE**, is or is the result of the illness or condition that caused it to find that he was not in a sound state of health, no **BENEFIT** shall be payable in terms of subparagraph (b) of regulation 28(1); and*
- (b) *if he leaves the service of a **LOCAL AUTHORITY** associated with the **FUND** after less than ten years' **CONTINUOUS SERVICE** while the restriction referred to in subparagraph (a) is still in force he shall not be entitled to transfer his pension rights to any other fund except with the consent of that fund, and if this transfer is not effected, he shall be entitled to a **BENEFIT** in terms of regulation 25.*

- (3) An **EMPLOYEE** who fails to produce such evidence of health as is required in terms of subregulation (2) shall be deemed to be not in a sound state of health for the purpose of that subregulation unless the **COMMITTEE** shall otherwise decide.

How contributions by members are to be paid

16. (1) The **CONTRIBUTIONS** to be paid by a **MEMBER** in terms of regulation 14 shall be a first charge upon the **SALARY or WAGE** payable to such **MEMBER**, and shall be deducted monthly or weekly by the **LOCAL AUTHORITY** concerned and paid to the **FUND** as provided in regulation 17.
- (2) The **LOCAL AUTHORITY** shall within seven days after the expiration of the period in respect of which the contribution is being paid certify in writing to the **DIRECTOR** the amount of the **CONTRIBUTIONS** and interest paid by the **MEMBERS** to the **FUND** in the preceding **CALENDAR MONTH** and shall further supply to the **DIRECTOR** such information as the **COMMITTEE** may require for the purpose of these regulations.

Contributions by local authorities

17. (1) A **LOCAL AUTHORITY** shall pay to the **FUND** within seven days after the expiration of the period in respect of which the contribution is being paid-
- (a) the **CONTRIBUTIONS** paid by the **MEMBERS** in the preceding **CALENDAR MONTH**; and
- (b) an amount equal to one comma nine five times the **CONTRIBUTIONS** paid by the **MEMBERS** in terms of regulation 14, which **CONTRIBUTIONS** shall be apportioned as follows:

- (6)**
- (i) in respect of a **MEMBER** contributing to the **FUND** at the rate of 5 per cent of his **PENSIONABLE EMOLUMENTS**:
- (a) one comma two times the **CONTRIBUTIONS** paid by **MEMBERS** for **FULL BENEFITS**;
- (b) nought comma seven five times the **CONTRIBUTIONS** paid by **MEMBERS** for the **RESERVE ACCOUNT**.
- (6)**
- (ii) in respect of a **MEMBER** contributing to the **FUND** at the rate of 7 per cent of his **PENSIONABLE EMOLUMENTS**:
- (a) one comma four one times the **CONTRIBUTIONS** paid by **MEMBERS** for **FULL BENEFITS**;
- (b) Nought comma five four times the **CONTRIBUTIONS** paid by **MEMBERS** for the **RESERVE ACCOUNT**.
- (iii) in respect of a **MEMBER** contributing to the **FUND** at the rate of 9,25 per cent of his **PENSIONABLE EMOLUMENTS**:
- (a) one comma five four times the **CONTRIBUTIONS** paid by **MEMBERS** for **FULL BENEFITS**;
- (b) Nought comma four one times the **CONTRIBUTIONS** paid by **MEMBERS** for the **RESERVE ACCOUNT**:

Provided that if the **MEMBER** is paying by instalments, the **LOCAL AUTHORITY** may make a lump sum payment to the **FUND** in lieu of its instalments.

28(a)

(9) (2) Whenever a **LOCAL AUTHORITY** fails to make payment in accordance with the provisions of subregulation (1), it shall pay to the **FUND** interest on the amount payable at the rate prescribed by the national Minister of Finance in terms of section 13A(7) of the Act from time to time.

(3) (3)

Contributions whilst on leave

18. (1) When a **MEMBER** is on leave with full pay or with pay less than full pay, he shall continue to contribute to the **FUND** on the basis of his full **PENSIONABLE EMOLUMENTS**.

- (2) When a **MEMBER** is on leave without pay he may, on application to the **COMMITTEE**, be permitted to contribute to the **FUND** on the basis of his full **PENSIONABLE EMOLUMENTS** for the **CALENDAR MONTH** immediately preceding the commencement of his leave without pay, but such application shall be made and the amount due in respect thereof shall be paid by the **MEMBER** within one **MONTH** of his return to duty: Provided that the **MEMBER** may be permitted by the **COMMITTEE** to refund the amount in six or less monthly instalments which may be deducted from the emoluments payable to him: Provided further that absenteeism shall not be regarded as leave without pay.

**How reduction in pensionable emoluments
or hours of duty to be treated**

19. (1) Subject to the provisions of subregulation (2), if the **PENSIONABLE EMOLUMENTS** of a **MEMBER** are reduced for any reason other than misconduct, he may elect to contribute to the **FUND** on the basis of his **PENSIONABLE EMOLUMENTS** as they were immediately before such reduction took place, in which event his **PENSIONABLE EMOLUMENTS**, for so long as they are less than they were before such reduction, shall, for all purposes of these regulations, be his **PENSIONABLE EMOLUMENTS** as they were immediately before such reduction.
- (2) If a **MEMBER** leaves the service of a **LOCAL AUTHORITY**, and enters the service of another **LOCAL AUTHORITY**, and his **PENSIONABLE EMOLUMENTS** in the latter **LOCAL AUTHORITY** are lower than his **PENSIONABLE EMOLUMENTS** in the former **LOCAL AUTHORITY**, the provisions of subregulation (1) shall apply, **mutatis mutandis**: Provided that -
- (a) he did not leave the service of the former **LOCAL AUTHORITY** on account of misconduct;
- (b) he entered the service of the latter **LOCAL AUTHORITY** within six **MONTHS** after leaving the service of the former; and

- (c) *the consent of the latter **LOCAL AUTHORITY** is first obtained.*
- (3) *When the ordinary **SALARY** or **WAGES** or working hours of duty of a section of **MEMBERS** have been reduced as a measure of economy, such **MEMBERS** may contribute on the basis of the **PENSIONABLE EMOLUMENTS** on which they were contributing immediately before the reduction.*

CHAPTER IV

BENEFITS

Full benefit

20. (1) *An account shall be kept for each **MEMBER** of his **FULL BENEFIT**, which shall consist of the **MEMBER's** portion and **LOCAL AUTHORITY's** portion.*
- (2) *Each **MEMBER's** portion shall consist of -*
- (i) *his share of an amount transferred from the **SUPERANNUATION FUND** or the **RETIREMENT FUND** or any other fund, as determined by the **COMMITTEE**, acting on the advice of the **ACTUARY**;*
 - (ii) *the total amount contributed by him;*
 - (iii) *the share of profits allocated in terms of subregulation (5); and*
 - (iv) *interest credited in terms of subregulation (4).*
- (3) *The **LOCAL AUTHORITY's** portion for a **MEMBER** shall consist of -*

- (i) *the **LOCAL AUTHORITY's** share of an amount transferred from the **SUPERANNUATION FUND** or the **RETIREMENT FUND** or any other fund, as determined by the **COMMITTEE**, acting on the advice of the **ACTUARY**;*
 - (ii) *the total amount contributed by the **LOCAL AUTHORITY** in respect of him in terms of regulation 17(1)(b)(i);*
 - (iii) *the share of profits allocated in terms of subregulation (5); and*
 - (iv) *interest credited in terms of subregulation (4).*
- (4) *There shall be added to the **MEMBER's** portion and the **LOCAL AUTHORITY's** portion of each **FULL BENEFIT** interest at such rate as the **COMMITTEE**, acting on the advice of the **ACTUARY**, may determine for the period since the end of the previous financial year.*
- (2)** (5) *As at the end of each financial year (or at such shorter intervals as the **COMMITTEE**, acting upon the advice of the **ACTUARY**, may decide), the **COMMITTEE**, acting on the advice of the **ACTUARY**, shall determine the profits of the **FUND** as -*
- (i) *the sum for the year of -*
 - (a) *income on investments;*
 - (8)** (b)
 - (c) *any net profit on the realization of investments;*
 - (d) *such amount of appreciation in the value of investments as the **COMMITTEE**, acting on the advice of the **ACTUARY**, decides; and*

(e) such amount as the **COMMITTEE**, acting on the advice of the **ACTUARY**, transfers from the **RESERVE ACCOUNT**;

less

(ii) the sum for the year of -

(f) any interest paid;

(g) interest credited in terms of subregulation (4);

(h) any net loss on the realization of investments;

(i) such amount of depreciation in the value of investments as the **COMMITTEE**, acting on the advice of the **ACTUARY**, decides; and

(j) such amount as the **COMMITTEE**, acting on the advice of the **ACTUARY**, transfers to the **RESERVE ACCOUNT**.

(6) As soon as possible after the profits have been computed, the **COMMITTEE** shall allocate the profits to the **MEMBER's** portion and the **LOCAL AUTHORITIES'** portion of the **FULL BENEFITS** in respect of each **MEMBER** in proportion to the amount of such portions immediately before the apportionment: Provided that

(8) such portions of items (e) and (j) as the **COMMITTEE**, acting on the advice of the **ACTUARY**, decides shall be apportioned only to the **LOCAL AUTHORITIES'** portion of the **FULL BENEFITS**.

(7) The **COMMITTEE** shall, not less than once in any year, inform each **MEMBER** of the **MEMBER's** portion and the **LOCAL AUTHORITIES'** portion in respect of him.

Reserve Account

21. The **RESERVE ACCOUNT** shall consist of -

(i) the sum of -

- (a) the **CONTRIBUTIONS** received in terms of regulation 17(1)(b)(ii);
- (b) amounts transferred in terms of regulation 20(5)(j); and
- (c) any other credit item not included in this regulation or regulation 20(5);

less

(ii) the sum of -

- (d) the **BENEFITS** paid in terms of regulation 28(1)(b);
- (e) the cost of administration and management of the **FUND**;
- (f) amounts transferred in terms of regulation 20(5)(e); and
- (g) any other debit item not included in this regulation or regulation 20(5).

Retirement at or within seven years of pension age

22. (1) A **MEMBER** shall be deemed to have retired from the service of a **LOCAL AUTHORITY** on the last day of the **MONTH** in which he attains the **PENSION AGE**, in which event he shall be granted a **FULL BENEFIT** determined in terms of regulation 20.

- (2) A **MEMBER** who has attained an age seven years earlier than the **PENSION AGE**, and who has had at least ten years' **CONTINUOUS SERVICE**, may be required by the **LOCAL AUTHORITY** to retire, in which event he shall be granted a **FULL BENEFIT** determined in terms of regulation 20.
- (7) (3) Notwithstanding the provisions of subregulations (1) and (2), a **MEMBER** who has had at least ten years' **CONTINUOUS SERVICE** and who has attained an age ten years younger than the **PENSIONABLE AGE**, shall have the right to retire, in which event he shall be granted a **FULL BENEFIT** determined in terms of regulation 20.
- (1)

Retirement owing to ill health

- (2) 23. (1) If a **MEMBER** or the **LOCAL AUTHORITY** in whose service such **MEMBER** is, is of opinion that such **MEMBER** is permanently incapable of efficiently discharging his duties by reason of any bodily or mental infirmity, the following documents shall be submitted by the **LOCAL AUTHORITY** to the **COMMITTEE** -
- (a) an affidavit in a form approved by the **COMMITTEE** setting out the state of health of the **MEMBER** and sworn to by the **MEMBER**;
- (b) a report by the **LOCAL AUTHORITY** in a form approved by the **COMMITTEE**, setting out the **MEMBER's** state of health, the manner in which his work is performed and the amount of sick leave granted to the **MEMBER** during the immediately preceding two years and conveying such other information as the **COMMITTEE** may require; and

- (1) (c) reports concerning the **MEMBER's** state of health completed independently by two medical practitioners one of whom shall be selected by the **LOCAL AUTHORITY**, and the other shall be selected by the **MEMBER**.
- (2) Upon receipt of the affidavit and reports contemplated in subregulation (1) the **COMMITTEE** may require the **MEMBER** to be further examined by medical practitioners appointed by the **COMMITTEE**.
- (3) If the **COMMITTEE**, after consideration of all information at its disposal, is of opinion that the **MEMBER** is permanently incapable of discharging his duties and that his state of health was not occasioned by his own wilfulness or negligence, such **MEMBER** shall, on the termination of his service with the **LOCAL AUTHORITY**, be entitled to receive a **FULL BENEFIT** determined in terms of regulation 20.
- (8) (4)
- (5) The fees payable to medical practitioners in regard to the examination of a **MEMBER** for the purposes of this regulation shall be paid by the **FUND**: Provided that in the circumstances contemplated by subregulation (4) or where the **COMMITTEE** is of opinion that the **MEMBER** is not permanently incapable of discharging his duties, such fees shall be payable by the **MEMBER** or **LOCAL AUTHORITY**, as the case may be, at whose request the **MEMBER's** state of health was examined.

Retirement owing to re-organization etc.

24. (1) If the employment of a **MEMBER** is discontinued owing to -

- (a) *the abolition of his office or post;*
- (b) *a reduction in or re-organization of staff;*
- (c) *retrenchment generally; or*
- (d) *in order to facilitate improvements in efficiency or organization,*

*then, unless such **MEMBER** is offered a commensurate office or post, he shall be entitled to receive a **FULL BENEFIT** determined in terms of regulation 20.*

- (7)** (2) *Notwithstanding the provisions of subregulation (1), if there is any alteration in the continued existence of any **MUNICIPAL COUNCIL** as a result of the provisions of the Local Government : Municipal Structures Act, 1998 (Act No. 117 of 1998), the provisions of subregulation (1) shall apply to those **MEMBERS** whose positions become redundant as a result of said alteration.*

***Voluntary retirement or leaving service of local authority
in circumstances not elsewhere provided for***

25. (1) *If a **MEMBER** retires voluntarily from the service of a **LOCAL AUTHORITY**, or leaves the service for any reason not elsewhere provided for in these regulations, he shall be entitled to receive a **BENEFIT** equal to his **FULL BENEFIT** at the date of leaving service.*
- (8)** (2) *Notwithstanding anything contained in subregulation (1), if a **MEMBER** retires voluntarily from or leaves the service of a **LOCAL AUTHORITY** in order to enter the service of another **LOCAL AUTHORITY** whether associated with the **FUND** or not in such circumstances that the relevant provisions of regulations 26 or 32 apply to him, he shall not be entitled to a **BENEFIT** in terms of subregulation (1).*

- (3) The **BENEFIT** in terms of subregulation (1) shall be paid as soon as administratively possible, but not later than three **MONTHS** after the end of the **MONTH** in which the **MEMBER** leaves the service of the **LOCAL AUTHORITY**.
- (4) Notwithstanding anything contained in subregulation (1), when a **MEMBER** who has had at least ten years' **CONTINUOUS SERVICE** becomes entitled to a **BENEFIT** in terms of that subregulation, he may elect to receive the full benefit at an age before the pension age but not before age 55, determined in terms of regulations 20 at that time: Provided that if he dies before attaining the pension age, the **BENEFIT** payable from the **FUND** shall be a **FULL BENEFIT** determined in terms of regulation 20 at the date of his death.

Member rejoining service of same or another local authority

- (3) 26. If a **MEMBER** leaves the service of a **LOCAL AUTHORITY** for any reason other than retirement as contemplated in regulation 22, 23 or 24 or dismissal in terms of regulation 27 and receives a **BENEFIT** in terms of regulation 25, and if he is re-employed before he has attained the pension age by the same **LOCAL AUTHORITY** or by another **LOCAL AUTHORITY** associated with the **FUND**, then, if the date of his re-employment is within twelve **MONTHS** from the date of his having left such service, he may elect, not more than four months after the date on which he is so re-employed, to refund any **BENEFIT** received from the **FUND** in one sum, or by instalments approved by the **COMMITTEE**, together with interest at a rate decided by the **COMMITTEE**, compounded yearly from the date he received such **BENEFIT** to the date or dates of repayment, whereupon the break in service shall be condoned and he shall again contribute to the **FUND** as from the date of re-employment: Provided that if the date of re-employment is more than twelve **MONTHS** but less than twenty-four **MONTHS** after
- (3) the date of his having left such service, he may elect, not more than four **MONTHS** after the date on which he rejoins the service and with the consent of the **COMMITTEE**, to refund any **BENEFIT** received from the **FUND** and the provisions of this regulation shall apply: Provided further that if a **BENEFIT** has been paid in terms of regulation 27, the **COMMITTEE**, in its absolute discretion, may decide that the exclusion from the provisions of this regulation shall not apply.

Dismissal and other forms of termination of service

27. (1) *If a **MEMBER** is dismissed from the service of a **LOCAL AUTHORITY** due to a criminal offence, misconduct, negligence, dereliction of duty or other act prejudicial to the good and proper working of the **LOCAL AUTHORITY's** service, or if he is allowed to retire or resign in order to avoid dismissal, he shall be entitled to receive an amount equal to his **FULL BENEFIT** at the date of leaving service and shall cease to be a **MEMBER** of the **FUND**: Provided that if his conduct shall have involved the **MUNICIPAL COUNCIL** in financial loss, the amount of such loss, as certified by the **MUNICIPAL MANAGER** or **CHIEF EXECUTIVE OFFICER**, as the case may be, shall, subject to the provisions of section 37D of the **ACT**, be deducted from such refund and be paid over to the **MUNICIPAL COUNCIL** as a preferential charge.*
- (7)
- (8)
- (2) *Any resignation tendered during an enquiry into the conduct of a **MEMBER** before the result of such enquiry is announced shall be deemed to be a resignation in order to avoid dismissal.*
- (3) *If the services of a **MEMBER** are terminated or dispensed with for reasons not solely within his control, other than those specified in subregulation (1) or elsewhere in these regulations, he shall be entitled to receive a **FULL BENEFIT** determined in terms of regulation 20, and he shall cease to be a **MEMBER** of the **FUND**: Provided that the final decision as to whether or not this regulation shall apply shall rest with the **COMMITTEE**.*

Death

28. (1) *If a **MEMBER** dies while in the service of a **LOCAL AUTHORITY** there shall be paid to his **DEPENDANTS** a **BENEFIT** equal to the sum of -*
- (a) *his **FULL BENEFIT**; and*

(12)

- (b) zero comma seven percent of his annual **PENSIONABLE EMOLUMENTS** at the date of his death for each complete **MONTH** of the period from the date of his death to the date on which he would have attained the pension age had he lived, subject to a maximum of two comma one times such annual **PENSIONABLE EMOLUMENTS**.
- (2) If, in the discretion of the **COMMITTEE**, no claim is made within a reasonable period of time (which shall not be less than twelve **MONTHS**) after the death of a **MEMBER** it shall be presumed that no **DEPENDANT** exists, and an amount equal to his **FULL BENEFIT** shall, subject to the provisions of section 37C of the **ACT**, be paid to his estate, and there shall thereafter be no claim on the **FUND** in respect of him.

Benefits not assignable or executable

29. No **BENEFIT** or right to a **BENEFIT** shall be capable of being assigned or transferred or otherwise ceded or of being pledged or hypothecated, nor shall the same or any **CONTRIBUTIONS** made by a **MEMBER** or on his behalf be liable to be attached or subjected to any form of execution under the judgement or order of any court of law, and in the event of the beneficiary attempting to assign, transfer or otherwise cede or to pledge or hypothecate a **BENEFIT** or right to a **BENEFIT**, payment of the same may be withheld, or suspended, if the **COMMITTEE** so determine: Provided that the **COMMITTEE** may direct the payment of a **BENEFIT** or part thereof to any one or more **DEPENDANTS** of the beneficiary or to a trustee for such **DEPENDANT** or **DEPENDANTS** during such period as it may think fit.

Deductions from benefit of debt due to local authority

30. (1) For the purpose of this regulation -
- (a) "debt" means a money debt due by a **MEMBER** to a **LOCAL AUTHORITY**; and

- (7) (b) any such debt shall be deemed to be so due, if it is certified by the **MUNICIPAL MANAGER** or **CHIEF EXECUTIVE OFFICER**, as the case may be, of the **MUNICIPAL COUNCIL** to be so due.
- (2) Notwithstanding anything to the contrary contained in these regulations or in any other law, any debt due by a **MEMBER** to a **LOCAL AUTHORITY** may, subject to the provisions of section 37D of the **ACT**, be deducted in a lump sum from the **BENEFIT** payable to or in respect of him and the amounts so deducted shall be paid by the **FUND** to such **LOCAL AUTHORITY**.
- (3) If more than one claim for the payment of debts is received by the **COMMITTEE**, the **COMMITTEE** shall decide the order of priority of the payment of such claims or the apportionment between such claims of the amount available for payment in terms of this regulation.

Unclaimed benefits

- (3) 31. Any benefit which is due but not paid to a beneficiary, shall be retained by the Fund, pending a claim by such beneficiary or any other person in respect of such beneficiary (subject to the provisions of Regulations 28(2) *mutatis mutandis*) and the benefit so retained shall attract interest at a rate to be decided by the Committee from time to time, from the date when such benefit became due and payable until the date of payment provided that the Fund shall be entitled to deduct from the benefits so retained any necessary and reasonable costs incurred by it in the administration of such benefit and the determination of the beneficiaries and provided further that this regulation shall not apply to any benefit lawfully withheld by the Fund in terms of these regulations or Act.

Transfer of employee from one local authority to another

- (3) 32. Subject to the provisions of section 14 of the **ACT**, the provision of regulation 47 of the Regulations Governing the Natal Joint Municipal Pension Fund made in terms of section 4 of the Local Government Superannuation Ordinance, 1973 (Ordinance No. 24 of 1973) and published under Provincial Notice No. 246 dated 24 May 1974, shall apply **mutatis mutandis** to the **FUND**.

Transfer of operation or service

33. *If any part of the operation or service provided by a **LOCAL AUTHORITY** is transferred to any person, body or institution, each **MEMBER** employed in that operation or service whose **CONTINUOUS SERVICE** is discontinued as a result of that transfer shall elect either -*
- (a) to be paid an amount equal to his **FULL BENEFIT** determined in terms of regulation 20; or*
 - (b) to have an amount equal to the amount referred to in paragraph (a) transferred to a retirement annuity fund or the pension fund or provident fund established for the **BENEFIT** of the **EMPLOYEES** of that person, body or institution.*

Closure of operation or service

34. *If any part of the operation or service provided by a **LOCAL AUTHORITY** is closed, each **MEMBER** employed in that operation or service whose **CONTINUOUS SERVICE** is discontinued as a result of that closure shall elect either -*
- (a) to be paid an amount equal his **FULL BENEFIT** determined in terms of regulation 20; or*
 - (b) to have an amount equal to the amount referred to in paragraph (a) transferred to a retirement annuity fund or a pension fund or provident fund of which he becomes a **MEMBER**.*

Winding-up of local authorities

35. (1) *If all the **LOCAL AUTHORITIES** associated with the **FUND** cease to exist, the **COMMITTEE** shall, subject to the approval of the Registrar, appoint a liquidator, who shall, as from the date of the approval of his appointment, liquidate the **FUND** by dividing the moneys of the **FUND** among the **MEMBERS** in a manner recommended by the **ACTUARY** and approved by the liquidator: Provided that -*
- (a) *if a person to whom an amount is payable cannot be traced, it shall be disposed of in accordance with provisions included in the scheme of liquidation of the **FUND**: Provided that no payment shall be made to a **LOCAL AUTHORITY**; and*
- (b) *every **MEMBER** who left the service of a **LOCAL AUTHORITY** during such period immediately before the date of liquidation as may be determined by the liquidator, either voluntarily or due to a reduction or reorganization of staff, shall for the purposes of this regulation be regarded as being a **MEMBER** on the date of liquidation of the **FUND**, but the **BENEFIT** already paid to him shall be taken into consideration in determining the amount payable to him:*
- Provided further that if the **LOCAL AUTHORITIES** cease to exist but are reconstructed in a similar or amended form, the reconstructed entities or organizations shall take the place of **LOCAL AUTHORITIES** and the **FUND** shall not be affected except that "**LOCAL AUTHORITIES**" shall then mean the entities or organizations as reconstructed.*
- (2) *If one of the **LOCAL AUTHORITIES** associated with the **FUND** ceases to exist, then, unless a reconstructed entity or organization or another **LOCAL AUTHORITY** takes the place of that **LOCAL AUTHORITY**, the **COMMITTEE** shall instruct the **ACTUARY** to determine the interest in the **FUND** of the **MEMBERS** in the service of that **LOCAL AUTHORITY**, subject to paragraph (b) of the first proviso to subregulation (1) **mutatis mutandis**, on a*

date determined by the **COMMITTEE**, and the amount of each such **MEMBER's** interest shall, as the **COMMITTEE**, in its absolute discretion, decides, be transferred to a retirement annuity fund or another pension fund or provident fund for his benefit or paid to him, and that **LOCAL AUTHORITY** shall cease to be associated with the **FUND** and those **MEMBERS** shall cease to be **MEMBERS** with effect from that date.

Termination of Fund

36. Notwithstanding anything in these regulations and subject to the approval of the **MINISTER**, the **GENERAL COMMITTEE** may terminate the **FUND**: Provided at least 90% of the members of the **GENERAL COMMITTEE** present and voting at a special meeting of the **GENERAL COMMITTEE** called for the purpose vote in favour of such termination, in which case the provisions of regulation 35(1) shall apply **mutatis mutandis**.

(2)

Delayed Payment of Benefits

- (3) 36A If payment of a **BENEFIT**, is not made to the former **MEMBER** or beneficiary on the date on which payment became due, interest shall be added to the **BENEFIT** for the period from the due date of payment to the actual date of payment at a rate determined by the **COMMITTEE** acting on the advice of the **ACTUARY**.

Local authority with separate fund becoming associated with the Fund

37. The provisions of regulation 46 of the Regulations governing the Natal Joint Municipal Pension Fund made in terms of section 4 of the Local Government Superannuation Ordinance, 1973 (Ordinance No. 24 of 1973) and published under Provincial Notice 246 dated 24 May 1974, shall apply **mutatis mutandis** to the **FUND**.

(12)

Minimum Benefits

- 38A If a person ceases to be a member of the Fund prior to retirement, in circumstances other than the liquidation of the Fund, the benefit paid to or in respect of him or her shall not be less than his minimum individual reserve.

CHAPTER V***SPECIAL CONDITIONS APPLICABLE TO PERSONS WHO ARE CONTRACT EMPLOYEES IN ACCORDANCE WITH THE MUNICIPAL SYSTEMS ACT***

- (13)** 38. *In this Chapter -*
- "Contract Employee"** means a person who is in the service of a Local Authority on a fixed period contract in accordance with the provisions of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);
- "Municipal Systems Act"** means Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000); and
- "Pensionable emoluments"** means a percentage of the total remuneration package of a contract employee, being the total cost to the employer of employing a contract employee as his pensionable emoluments amounted to at the commencement of this Chapter: Provided that such contract employee shall not be entitled to adjust his pensionable emoluments during the period of his membership of the Fund save for any inflation linked adjustments to his total package remuneration pursuant to his fixed period contract and: Provided further that at all times the pensionable emoluments may be adjusted by the Committee at their sole discretion after consultation with the actuary and: Provided further that pensionable emoluments of contract employees who concluded fixed period contracts prior to the commencement of this Chapter shall not be adjusted retrospectively.
- (13)** 39. *Notwithstanding the provisions of these regulations, the provisions of this Chapter shall apply only to persons who are in the service of a Local Authority for a fixed period in accordance with the provisions of the Municipal Systems Act.*
- (13)** 40. (1) *No contract employee shall be obliged on the commencement of his contract to retain membership of the Fund, and in the event of the contract employee electing to remain a member, the provisions of Regulation 12 shall apply with the necessary changes to his membership.*

- (2) *The benefits payable to a contract employee who makes an election in terms of subregulation (1) shall be in accordance with Chapter IV read together with this Chapter.*
- (3) *A percentage required to be contributed in terms of Regulations 14, 16, 17 and 18 together with any additional contribution or surcharge in terms of Regulation 10 shall be deducted in full from the contract employee=s total package remuneration.*

(13) 41. *The provisions of Regulation 24 shall not apply to contract employees.*

(13) 42. *In the event that a contract employee ceases to be a member in circumstances other than those referred to in Regulations 22, 23, or 28 and who is a member of the Fund in terms of Regulation 40, the provisions of Regulations 25(b) shall apply.*

(13) 43. *Upon any renewal of a contract employee=s fixed period contract by the Local Authority there shall be deemed to be a continuance of the contract employees membership of the fund and there shall not be a termination of membership at the expiration of the initial period and any renewal thereafter of such fixed period contract.*

(13) 44. (1) *If a fixed period contract is terminated by either the member or the Local Authority, or is not renewed, the member shall be entitled to the benefits provided for in Regulation 42.*

(2) *There shall be excluded from the calculation of any benefit payable to a contract employee in accordance with subregulation (1) any administration charges of the Fund, including any costs in respect of death or disability cover, in an amount as determined from time to time by the Committee upon the advice of the actuary.*

(13) 45. (1) *A member who becomes a contract employee, shall inform the Fund thereof within two months of the commencement of the contract with the Local Authority or such longer period as the Committee may determine.*

- (2) *The contract employee may also within such period of two months apply to the Fund that his contributions shall not be based on his pensionable emoluments as defined in terms of Regulation 38, but upon such pensionable emoluments as may be determined by such contract employee.*
- (3) *Any approval of such application may be subject to such conditions as the Committee may determine.*

(13)

46. *The provisions of this Chapter shall apply to all contract employees notwithstanding that their fixed period contracts were concluded with the Local Authorities concerned prior to the commencement of this Chapter.*

(13)

47. *In an event that a contract employee who was compelled to become a member of the Fund in accordance with Regulation 12(2) elect, after the commencement of this Chapter, not to remain a member of the Fund, the benefits payable to such member shall be in accordance with Regulation 42.*

(13)

48. *Nothing contained in this Chapter shall derogate from any greater right acquired by or accrued to any contract employee in terms of these Regulations: Provided that proof of the greater right shall be upon the contract employee who shall establish same to the satisfaction of the Committee in consultation with the Actuary and if so established, shall thereupon be entitled to any such additional benefits.*