REPUBLIC OF SOUTH AFRICA

SPECIAL PENSIONS AMENDMENT BILL

(As introduced in the National Assembly (proposed section 75); explanatory summary of Bill published in Government Gazette No. of)
(The English text is the official text of the Bill)

(MINISTER OF FINANCE)

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[B - 2008]

GENERAL EXPLANATORY NOTE:

[ ] Words in bold type in square brackets indicate omissions from existing enactments.

---------- Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Special Pensions Act, 1996, to define and further define certain expressions; to extend the right to a pension to persons 30 years of age, but not 35 years of age on 1 December 1996; to extend the surviving spouse's pension, orphan's pension and funeral benefit to certain persons; to regulate the administration of the Act; to amend Schedule 3 to the Act; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

Amendment of section 1 of Act 69 of 1996, as amended by section 1 of Act No. 75 of 1998, as amended by section 1 of Act No. 27 of 2005

1. Section 1 of the Special Pensions Act, 1996 (hereinafter referred to as the principal Act), is hereby amended by the substitution for the heading of Part 1 of the following heading:

"PART 1
RIGHT TO PENSION <u>OF PERSONS 35 AND OLDER ON 1 DECEMBER 1996 AND</u> SURVIVOR'S LUMP SUM BENEFIT"

Insertion of heading and section *6Abis* in Act 69 of 1996

2. The following heading and section are hereby inserted in the principal Act after section 6A:

"<u>PART 1A</u>
<u>RIGHT TO PENSION OF PERSONS BETWEEN THE AGES OF 30 AND 35 ON 1 DECEMBER 1996</u>

<u>Right to pension</u>

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6A*bis*. (1) A person who made sacrifices or served the public interest in establishing a non-racial, democratic constitutional order and who is a citizen, or entitled to be a citizen, of the *Republic* of South Africa, has the right to a *pension* in terms of *this Act* if that person—

(*a*) was at least 30 years of age, but had not attained 35 years of age on the *commencement date*; and

(*b*) was prevented from providing for a *pension* because, for a total or combined period of at least five years prior to *2 February 1990*, one or more of the following circumstances applied:

(i) That person was engaged full-time in the service of a *political organisation*, and did not receive any remuneration from an institution other than that political organization;

(ii) That person was prevented from leaving a particular place or area within the *Republic*, or from being at a particular place or in a particular area within the *Republic*, as a result of an order issued in terms of a law mentioned in Schedule 1 of *this Act*.

(iii) That person was imprisoned or detained in terms of any law or for any crime mentioned in Schedule 1 of *this Act*, or that person was imprisoned for any offence committed with a political objective.

(2) In determining whether a person committed an offence with a political objective as contemplated in subsection (1)(*b*)(iii), the *designated institution* must consider the following factors:

(*a*) The person's motive in committing the offence;

(*b*) the context within which the offence was committed and, in particular, whether the offence was committed in the course of a political uprising or political event;

(*c*) the nature and gravity of the offence;

(*d*) the effect of the commission of the offence on a political opponent, State property, State personnel, private property or individuals;

(*e*) whether the offence was committed as part of a programme, or with the approval of an organisation which promoted a non-racial democratic constitutional order;

(*f*) the relationship, proximity and proportionality of the offence and the political objective pursued in its commission; and

(*g*) whether the offence was committed without—

(i) personal gain; or

(ii) personal malice.

(3) A *pensioner* who qualifies for a *benefit* in terms of subsection (1) is entitled to receive a *pension*, payable monthly, commencing on 1 April 2001.

(4)*(a)* For each *pensioner*, the *designated institution* must determine the amount of the monthly *pension* in accordance with the table in Schedule 3.

(b) For the purpose of applying the table in Schedule 3, the qualifying period is the total length of time prior to *2 February 1990* that the *pensioner* spent in the circumstances listed in that subsection.

(5) A person who qualified for and received a *benefit* under section 2 prior to the lapsing of Part 1 may not be granted a *pension* under this Part.

(6) A person referred to in this section is disqualified from receiving or continuing to receive a *pension* if, after making the sacrifice or serving the public interest as referred to, that person—

(*a*) either actively engaged in actions calculated to undermine efforts to establish a non-racial democratic constitutional order;

(*b*) or was convicted of a crime committed after *2 February 1990.*

(7) For the purposes of subsection (6)(*b*), **"crime"** means—

(*a*) at any time between 2 February 1990 and 1 May 1994, an offence mentioned in Schedule 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), other than treason and sedition; and

(*b*) at any time after 30 April 1994. an offence mentioned in Schedule 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

(8) (a) Any person who applies for a *benefit* in terms of Part 1A must—

(i) complete the *application* form as determined by the *designated institution*;

(ii) have a Commissioner of Oaths certify on the *application* form that the *applicant* swore or affirmed that the information contained in that form is correct; and

(iii) submit the *application* form to the *designated institution* for approval on or before the *closing date*.

(b) If a person who would qualify for a *benefit* is permanently or temporarily disabled and therefore unable to apply in terms of paragraph *(a)* personally, any person acting on behalf of that disabled person, may submit a curator's application in the prescribed form to the *designated institution.*

(9)*(a)* This Part 1A, except for this subsection, lapses on 31 December 2010.

(b) Subsection (1) does not affect any *benefit* payable under this Part in respect of which the *designated institution* has made a determination in terms of section *6Abis* before 31 December 2010.

(c) Any *application* for *benefits* in terms of this Part which has been submitted to the *designated institution* before 31 December 2010, but on which the *designated institution* has not made a determination by that date, must be finalised as if this Part had not lapsed.".

Amendment of section 6B of Act 69 of 1996, as inserted by section 6 of Act No. 27 of 2005

3. Section 6B of the principal Act is hereby amended by -

(a) the substitution for the heading of Part 1A of the following heading:

PART 1B**[A]**
SURVIVOR BENEFITS, BENEFITS ON DEATH OF PENSIONER AND FUNERAL BENEFITS"; and

(b) the substitution for section 6B of the following section:

"Limitation on benefits payable under Part 1B[A]

6B. A *pensioner* referred to in section 1 whose monthly *pension* payments had already begun by 31 December 2006 or will begin before or on 31 December 2010 **[or a person referred to in section 2 who had already received a *survivor's* lump sum *benefit* by that date,]** may not be granted any *benefit* other than a funeral *benefit* under this Part.".

Amendment of section 6D of Act 69 of 1996, as inserted by section 6 of Act No. 27 of 2005

4. Section 6D of the principal Act is hereby amended by the insertion after subsection (2) of the following subsections -

"(3) Subject to section 6E, from the date on which the Special Pensions Amendment Act, 2008, takes effect -

(a) a surviving *spouse* of a person referred to in section 6A*bis* who died prior to the date on which the Special Pensions Amendment Act takes effect is entitled to receive a monthly *pension* equal to 50% of the *pension* that would have been payable to the deceased person who would have been a qualifying *pensioner* in terms of section 6A*bis* had that person survived until the date on which the Special Pensions Amendment Act, 2008 takes effect;

(b) a surviving *spouse* referred to in section 2 who received a *survivor's* lump sum *benefit* is entitled to receive a monthly *pension* equal to 50% of the *pension* that would have been payable to the deceased person who would have been a qualifying *pensioner* had that person survived until 31 December 2006;

(d) where there is no *surviving spouse*, a *dependant,* who became an *orphan,* is entitled to receive the monthly *pension* that would have been payable to a surviving spouse in terms of paragraph *(a), (b)* or *(c)* -

(i) until the *orphan* reaches the age of 18; or

(ii) until the orphan reaches the age of 23, if the orphan is a full-time student; or

(iii) for the remainder of the *orphan's* life, if the *orphan* suffers from a permanent and total disability.

(4) A *surviving spouse* or *orphan* who qualifies for a *benefit* in terms of subsection (3) is entitled to receive a *pension*, payable monthly, commencing on the date on which his or her application was made.".

Substitution of section 6E of Act 69 of 1996, as inserted by section 6 of Act No. 27 of 2005

5. The following section is hereby substituted for section 6E of the principal Act:

"Allocation of equal shares in benefit

6E. (1) If a *pensioner* is survived by more than one *spouse* or, if there are no surviving *spouses*, by more than one *dependant* or *orphan*, each of whom qualifies for a lump sum *benefit* or a monthly *pension* or both, the *designated institution* **[Board]** must allocate an equal share of the lump sum *benefit* and the monthly *pension* to each qualifying *spouse, dependant* or *orphan*, as the case may be, but the total *benefits* for all the surviving *spouses, dependants* or *orphans* must not exceed the *benefit* that would have been payable had there been only one surviving *spouse, dependant* or *orphan.*

(2) If a deceased person referred to in section 6D(3) was survived by more than one *spouse* or, if there are no surviving *spouses*, by more than one *orphan*, each of whom qualifies for a monthly *pension*, the *designated institution* must allocate an equal share of the monthly *pension* to each qualifying *spouse* or *orphan*, as the case may be, but the total *benefits* for all the surviving *spouses* or *orphans* must not exceed the *benefit* that would have been payable had there been only one surviving *spouse* or *orphan.*".

Substitution of section 6F of Act 69 of 1996, as amended by section 6 of Act No. 27 of 2005

6. Section 6F of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"6F. (1) A funeral *benefit* as set out in Schedule 4 is payable to—

(*a*) a *pensioner* on the death of his or her *spouse* or *child*;

(*b*) a surviving *spouse* upon the death of a *pensioner* or *child* of a deceased *pensioner*; **[or]**

(bA) a surviving *spouse* upon the death of a *child* of a deceased person referred to in sections 6D(3);

(*c*) any *dependant* who becomes an *orphan* upon the death of a *pensioner* or surviving *spouse* of a deceased *pensioner***[.]**; or

(d) any *dependant* who becomes an *orphan* upon the death of a *surviving spouse* of a deceased person referred to in sections 6D(3).”.

Substitution of section 6G of Act 69 of 1996, as amended by section 6 of Act No. 27 of 2005

7. The following section is hereby substituted for section 6G of the principal Act:

“Applications for benefits under Part 1B[A]

6G. (1)(*a*) Any person who applies for a *benefit* under Part 1B**[A]** must—

(i) complete an *application* form in such format as the *designated institution* **[Board]** may determine; and

(ii) supply the *designated institution* **[Board]** with such additional information as it may require.

(*b*) The form must be submitted to the *designated institution* **[Board]** for approval as soon as possible after the death of the *pensioner*, spouse or *child*, but not later than 12 months thereafter.

(2) If a person who would qualify for a *benefit* is permanently or temporarily disabled and therefore unable to apply for a *benefit* personally under this part, any person acting on behalf of that disabled person may submit a curator’s *application* to the *designated institution* **[Board]** in such format as the *designated institution* **[Board]** may determine.”.

Substitution of section 7 of Act 69 of 1996, as amended by sections 7 and 8 of Act No. 27 of 2005

8. Section 7 of the principal Act is hereby amended by -

(a) the substitution for the heading of Part 1B of the following heading:

“PART 1C**[B]**
ADMINISTRATION **[DETERMINATION BY BOARD]** AND APPEAL”; and

(b) the substitution for section 7 of the following section:

“**Administration of Act**

7. (1) The Director-General of the National Treasury is responsible for the administration of this Act.

(2) The Minister may, despite subsection (1), by notice in the *Gazette* designate any of the following institutions to administer the Act to ensure the effective and efficient implementation thereof –

(a) a national department or government component listed in the Public Service Act, 1994 (Proclamation No. 103 of 1994); or

(b) a public entity responsible for the administration of public pensions, listed in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999).".

Substitution of section 8 of Act 69 of 1996, as substituted by section 2 of Act No. 21 of 2003

9. The following section is hereby substituted for section 8 of the principal Act:

"Right to appeal against *designated institution*'s [Board's] decision

8. (1) Any *applicant* who disagrees with any decision of the *designated institution* may request a review of that decision by sending a written notice in the form determined by the *designated institution* **[prescribed in Schedule 2]** to the *appeal board* **[Review Board]** within 60 days of the date of the decision.

(2) An appeal under subsection (1) shall take place on the date and at the place and time fixed by the appeal board **[The *Review Board* has the discretion to condone any request for a review received after the period of 60 days referred to in subsection (1)]**.

(3) The appeal board may for the purposes of an appeal under subsection (1) -

(a) summon any person who, in its opinion, may be able to give information for the purposes of the appeal or who it believes has in his or her possession or custody or under his or her control any document which has any bearing upon the decision under appeal, to appear before it at a time and place specified in the summons, to be questioned or to produce that document, and retain for examination any document so produced;

(b) administer an oath to or accept an affirmation from any person called as a witness at the appeal; and

(c) call any person present at the appeal proceedings as a witness and interrogate such person and require such person to produce any document in his or her possession or custody or under his or her control, and such a person shall be entitled to legal representation at his or her own expense.

(4) The procedure at the appeal shall be determined by the chairperson of the appeal board.

(5) The appeal board may confirm, set aside or vary the relevant decision of the *designated institution*.

(6) The decision of a majority of the members of the appeal board shall be the decision of that board.

(7) The decision of the appeal board must be in writing, and a copy thereof must be made available to the appellant and the *designated institution*.".

Insertion of section 8AA in Act 69 of 1996

10. The following section is hereby inserted in the principal Act after section 8:

"**Establishment and appointment of appeal board**

8AA. (1) *(a)* An appeal board is hereby established.

(b) The appeal board consists of at least three members appointed by the Minister.

(2) The Minister must appoint competent persons as members of the appeal board, who must include, at least one person that is an advocate or attorney with at least 10 years' experience in the practice of law as the chairperson.

(3) A member of the appeal board shall hold office for a period of three years and is on the expiration of such member's term of office eligible for reappointment.

(4) The Minister may terminate the period of office of a member of the appeal board -

(*a*) if the performance of the member is unsatisfactory; or

(*b*) if the member, either through illness or for any other reason, is unable to perform the functions of office effectively.

(5) The Minister may, if the performance of the appeal board is unsatisfactory, terminate the period of office of all the members of the Regulatory Board.

(6) In the event of the dismissal of all the members of the appeal board, the Minister may appoint persons to act as caretakers until competent persons are appointed in terms of subsection (1).

(7) The Minister must, subject to subsection (1), appoint a temporary replacement member for an appeal, if before or during an appeal it transpires that any member of the appeal board –

(a) has any direct or indirect personal interest in the outcome of that appeal; or

(b) will, due to illness, absence from the Republic or for any other bona fide reason be unable to participate or continue to participate in that appeal.

(8) A member of the appeal board may be paid the remuneration and allowances as the Minister may from time to time determine.

(9) Administrative support for the appeal board must be provided by *the designated institution*.

(10) The *designated institution* is responsible for the expenditure of the appeal board.".

Substitution of section 8A of Act 69 of 1996, as inserted by section 9 of Act No. 27 of 2005

11. Section 8A of the principal Act is hereby amended by the substitution for the heading of Part 1C of the following heading:

"PART 1D**[C]**
MATTERS RELATING TO BENEFITS".

Substitution of section 9 of Act 69 of 1996, as inserted by section 10 of Act No. 27 of 2005

12. The following section is hereby substituted for section 9 of the principal Act:

"Payment of benefits

9. (1) The *designated institution* **[Minister]** must pay any *pension*, payable in terms of section 1 or 6A*bis*, on the first day of the month in which the *pensioner* is entitled to that payment, commencing in the month in which the *pensioner* is first entitled to a payment.

(2) When the first monthly payment is made to a disabled *pensioner* in terms of section 1 (5) the *designated institution* **[Minister]**must include a lump sum covering all the *pension* payments due to that person from 1 April 1995 to the date of that first payment.

(3) When the first monthly payment is made to a *pensioner* in terms of section 1 (4), the *designated institution* **[Minister]**must include therein a lump sum covering all the *pension* payments due to that *pensioner* from either 1 April 1995, or the *pensioner's* 35th birthday, whichever is the later, to the date of that first payment.

(4) The monthly payments payable to a *pensioner* must cease immediately upon the death of the *pensioner*.

(5) The *designated institution* **[Minister]** must pay any *survivor's* lump sum *benefit* payable in terms of *this Act*, any monthly *pension* referred to in section 6D or any funeral *benefit* referred to in section 6F to the *beneficiary* within 90 days of the date on which an *application* is approved **[the *Board* notifies the *Minister* that a *benefit* is payable to that *beneficiary*]**.".

(6) If a **[*survivor's*]** *benefit* is payable to a person who is either under the age of 21, or mentally incapacitated—

(*a*) the Master of the High Court must appoint an appropriate person to administer that *benefit* on behalf of the *beneficiary*; and

(*b*) the *designated institution* ***[Board]***, on behalf of the applicant, must take the necessary steps to obtain the required order from the Master of the High Court.".

Substitution of section 12 of Act 69 of 1996

13. The following section is hereby substituted for section 12 of the principal Act:

"Increases in pension amounts

12. (1) The *Minister* may in April of each year, by notice in the *Gazette*, **[At any time the *Minister* may]** increase the *pensions* payable to *pensioners*, *surviving spouses* or *orphans* on any basis that the *Minister* considers appropriate, subject to the appropriation by Parliament of money required to finance any increases of such amounts.

(2) An increase in terms of this section must apply to every person—

(*a*) who is receiving a *pension* at that date;

(*b*) in respect of whom a determination is made that he or she is entitled to a *pension* that will commence after that date; and

(*c*) in respect of whom a determination is subsequently made that he or she is entitled to a *pension*.

(3) An increase in the pension payable to a person who was 50 years of age at the commencement date because of the amendment of Schedule 3 by the Special Pensions Amendment Act, 2008 is payable from the date on which the Special Pensions Amendment Act, 2008 takes effect, irrespective of the date on which that pensioner attained the age of 65.

(4) The *designated institution* must place any notice referred to in subsection (1) on its official website.".

Amendment of section 13 and amendment of section 14A, as inserted by section 13 of Act 27 of 2005

14. Subsections (2) and (3) of section 13 and subsection (2) of section 14A of the principal Act is hereby amended by the substitution for the phrase *"Minister"* of the phrase *"designated institution"* wherever it may occur in these subsections.

Substitution of section 14B of Act 69 of 1996, as inserted by section 13 of Act No. 27 of 2005

15. The following section is hereby substituted for section 14B of the principal Act:

"Repayment of *benefit* to which person was not entitled

14B. (1) Any amount paid to a person as a *benefit* to which that person was not entitled or which was in excess of the amount to which that person was entitled, must be refunded by the person to the *designated institution* **[*Board*]** within 30 days of written demand by the *designated institution* **[*Board*]**.

(2) Despite subsection (1) the *designated institution* **[*Board*]** may—

(*a*) allow repayment in instalments;

(*b*) set off any amount due to the *designated institution* **[*Board*]** against any *benefit* payable in terms of *this Act* to the person concerned;

[(3) Despite subsection (1) the *Review Board* may on the recommendation of the *Board* and if it would be just and equitable to do so -]

*(c)***[*(a)*]** allow repayment of a lesser amount; or

*(d)***[*(b)*]** absolve a person from repayment of the whole amount or any part thereof.".

Substitution of section 15 of Act 69 of 1996

16. Section 15 of the principal Act is hereby amended by the substitution for the heading of Part 2 of the following heading:

"PART 2
POWERS AND FUNCTIONS OF DESIGNATED INSTITUTION **[SPECIAL PENSIONS BOARD]**".

Amendment of sections 24 and section 25

17. Sections 24 and 25 of the principal Act are hereby amended by the substitution for the phrase *"Board"* of the phrase *"designated institution"* wherever it may occur in these subsections.

Repeal of sections 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27 and 28 of Act 69 of 1996 as amended by section 5 of Act No. 75 of 1998, section 4 of Act No. 21 of 2003 and sections 14 and 15 of Act No. 27 of 2005

18. Sections 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27 and 28 of the principal Act are hereby repealed.

Amendment of section 29 of Act 69 of 1996, as inserted by section 8 of Act No. 75 of 1998

19. Section 29 of the principal Act is hereby amended by -

(a) the substitution for the heading of section 29 of the following heading:

"**Regulations [Minister's powers]**"; and

(b) the deletion of subsections (2) and (3).

Insertion of sections 29A and 29B in Act 69 of 1996

20. The following sections are hereby inserted in the principal Act after section 8:

"Fair administrative action

29A. Any decision or other step of an administrative nature taken by the *designated institution* that affects the rights of another person must comply with the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

Indemnity

29B. No employee, consultant, contractor or agent of the *designated institution* or appeal board incurs any liability in respect of any act or omission performed in good faith under or by virtue of a provision in this Act, unless that performance was grossly negligent.".

Amendment of section 30

21. Section 30 of the principal Act is hereby amended by -

(a) the substitution for paragraph (c) of subsection (1) of the following paragraph:

"(*c*) intentionally submits false or misleading information to the *designated institution* **[*Board*]**."; and

(b) the substitution for subsections (2) and (3) of the following subsections:

"(2) A person who intentionally fails to notify the *designated institution* **[Department of Finance]** of the death of a person who was receiving *benefits* in terms of *this Act*, and as a result of that failure is benefited in any way, is guilty of an offence.

(3) Except as is otherwise provided in subsection (4), a person or *political organisation* convicted of an offence in terms of subsection (1) is liable for a maximum fine of R15 000 **[R5000]**.".

Amendment of section 31 of Act 69 of 1996, as amended by 9 of Act No. 75 of 1998 and section 18 of Act No. 27 of 2005

22. Section 31 of the principal Act is hereby amended by -

(a) the deletion of the definition of ***"actuary"***;

(b) the substitution for paragraph (c) of the definition of **"application"** of the following paragraph:

"(*c*) an application on the form referred to in section 6Abis or 6G;";

(c) the substitution for the definition of **"beneficiary"** of the following definition:
"**"*beneficiary*"** means a person who in terms of a determination of the *designated institution***[Board]** qualifies for a *benefit*;";

(d) the substitution for the definition of **"benefit"** of the following definition:

"**"*benefit*"** means a sum of money payable in terms of Part 1, Part 1A or Part 1B**[A]**;";

(e) the deletion of the definition of **"*Board*"***;

(f) the insertion after the definition of ***"dependant"*** of the definition of ***"designated institution"***:

"***"designated institution"*** means –
(a) the *National Treasury*; or
(b) the institution designated by the Minister under section 7;";

(g) the insertion after the definition of ***"Minister"*** of the definition of ***"National Treasury"***:

"**"*National Treasury*"** means the National Treasury established by section 5 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);";

(h) the substitution for the definition of **"pension"** of the following definition:

"**"*pension*"** means a right to the monthly payment of a *pension* determined in terms of section 1, section 6A*bis* or section 6D;";

(i) the deletion of the definition of **"*public service*"***; and

(j) the deletion of the definition of **"*Review Board*"**.

Amendment of Schedule 3 of Act 69 of 1996

23. Schedule 3 to the principle Act is hereby amended by substitution Schedule 3 with the following schedule:

Schedule 3
PENSIONS PAYABLE IN TERMS OF SECTIONS 1(6) AND 6Abis(4)

Age Category as at 1 December 1996	***Current Age***	***Annual pension amount in Rands payable as at 1 April 1995***
At least 30 but younger than 50	Younger than 50	6 000.
	Older than 50	12 000 plus 1 200 for each year of service exceeding 5 years, not exceeding a total amount of 30 000
At least 50 but younger than 65	Younger than 65	12 000 plus 1 200 for each year of service exceeding 5 years, not exceeding a total amount of 30 000
	Older than 65	24 000 plus 1 200 for each year of service exceeding 5 years, not exceeding a total amount of 42 000.
65 and older		24 000 plus 1 200 for each year of service exceeding 5 years, not exceeding a total amount of 42 000. Where years of service exceed 25 years, a fixed amount of 84 000.

Short title and commencement

24. This Act is called the Special Pensions Amendment Act, 2008, takes effect on a date determined by the Minister by notice in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE SPECIAL PENSIONS AMENDMENT BILL, 2008

1. BACKGROUND TO BILL

1.1 The Special Pensions Act, 1996 (Act No. 69 of 1996) gave effect to section 189 of the Interim Constitution, 1993 (Act No. 200 of 2003), in that it provides for the payment of pensions to persons who made sacrifices or served the public interest in establishing a non-racial democratic constitutional order and as a result where unable to or prevented from providing for pensions for a significant period, and for the payment of survivor's lump sums to their eligible dependants.

1.2 Amendments to the Act were passed in 1998, 2003 and 2005. The amendments primarily increased benefits, improved accessibility of benefits and addressed technical and implementation difficulties. Despite these amendments inequities remain a cause for concern in the treatment of survivors and pensioners.

1.3 Amendments to the Special Pensions Amendment Act are proposed to alleviate and, where possible, remove these inequities within available resources.

2. OBJECTS OF THE BILL

The primary objective of the Bill is to extend pensions and benefits provided for under the Special Pensions Act to a wider group of deserving persons.

3. SUMMARY OF BILL

The following amendments to the Special Pensions Amendment Act are proposed:

3.1 <u>Extension of the right to a pension to persons who were 30 but not yet 35 on 1 December 1996</u>

3.1.1 The Special Pensions Act, 1996 provided that only persons 35 and older on 1 December 1996 were entitled to a pension. The rationale for the age qualification was that the Act intended to make provision for pensions to persons at pensionable age whose ability to make provision for a pension was impacted by their full time involvement in the struggle for democracy. It was argued that persons under the age of 35 still had sufficient opportunity to obtain employment and to make provision for a pension. (The original qualifying age proposed was 40, but this was lowered during the Parliamentary process to 35).

3.1.2 An amendment is proposed to extend the right to a pension to persons 30 year of age on 1 December 1996, but not yet 35 years of age.

All other criteria that were applicable to persons 35 years of age and older on 1 December 1996 must be met by these persons.

A qualifying person will be entitled to receive a pension retrospectively from 1 April 2001. This date was informed by the fact that persons who were 35 years of age and older on 1 December 1996 (commencement date of the Special Pensions Act) qualified for a pension from 1 April 1995. Retrospective provision is therefore made to the April preceding the year in which a person who was 30 years of age on 1 December 1996 would have reached the age of 35.

A limited period for applications is provided; persons who qualify must apply by 31 December 2010.

3.1.3 The revised age-criterion of 30 is informed by the fact that in qualifying for a pension an applicant would have had to be at least 19 in 1985. The 1985-date relates to the existing requirement that a person must have been prevented from providing for a pension for a total or combined period of at least five years prior to 2 February 1990. The age of 19 in 1985 appears to be reasonable taking into account that, according to general trends in the pension environment, persons typically only start providing for a pension at the age of 25 years.

3.2 <u>Extension of the right to a spouse's or orphan's pension</u>

3.2.1 The Special Pensions Amendment Act, 2005 introduced a monthly pension for surviving spouses or orphans of pensioners (persons who were in receipt of a special pension at the time of their death).

3.2.2 Surviving spouses and orphans of persons who received a survivor's lump sum benefit in terms of the Act because of the death of a person during the struggle were not entitled to this benefit.

3.2.3 Amendments are proposed to remove this anomaly. Further amendments are proposed that extend these benefits to surviving spouses or orphans of a person who was 30 but under 35 on 1 December 1996 and had died prior to the date on which the Amendment Act takes effect.

3.2.4 A qualifying spouse or orphan will be entitled to receive these benefits on application and, if the application is approved, from the date on which the application was made.

3.3 Extension of the right to funeral benefits for persons referred to in paragraphs 5.5 and 5.6

3.3.1 The same funeral benefits are extended to pensioners, the surviving spouses or orphans of a pensioner, persons who received a survivor's lump sum benefit only in terms of the Special Pensions Act and surviving spouses or orphans of a person who was 30, but under 35, on 1 December 1996 and had died prior to the date on which the Amendment Act takes effect.

3.3.2 A qualifying pensioner, spouse or orphan will be entitled to receive these benefits on application and, if the application is approved, from the date on which the application was made.

3.4 Effective administration of the Act and technical amendments

3.4.1 The Special Pensions Amendment Act, 2005 provided for the dissolution of the Special Pensions Board and Appeal Board and for their functions to be performed by the National Treasury and the Minister of Finance, respectively. Subsequent to the dissolution of these boards a number of provisions relating to their functions created legal uncertainty or became redundant.

3.4.2 The proposed amendments remove all redundant provisions, provide legal certainty, and improve the provisions relating to the administration of the Act. The National Treasury is made responsible for administering the Act and a new appeal board appointed by the Minister is provided for. The Minister is further empowered to designate another department, government component or public entity to administer the Act in the place of the National Treasury should this be deemed appropriate.

3.4.3 A number of consequential amendments to clarify the Minister's powers in light of the new administrative arrangements are also made.

3.5 Migration of pensioners between the different categories provided for under Schedule 3 as they age and the correction of an error that occurred in Schedule 3 during the processing of the Special Pensions Amendment Act, 2005

3.5.1 An error occurred during the certification of the Special Pensions Amendment Act, 2005 Act No. 27 of 2005) by the Office of the State Law Advisor. The error caused an increase in the pension payable to persons in the age category 50 to 60. In resolving the error, the significant disparity in pension payable to those persons who were under the age of 65 and those above 65 on 1 December 1996 was highlighted.

3.5.2 An amendment to Schedule 3 of the Act that provides for pensions payable, is therefore proposed. The amendment provides for persons to migrate between the different categories provided for in Schedule 3 as they age. The Act currently locks persons into the 50 to 65 category until death and does not allow for migration to the 65 and older category.

3.5.3 The amendment will allow persons in the 35 (now also 30) to 50 category to migrate to the 50 to 65 category once they attain the age of 50 and for persons in the 50 to 65 category (meaning 50 years of age on 1 December 1996) to migrate to the 65 and older category once they attain the age of 65.

4. ORGANISATIONS AND INSTITUTIONS CONSULTED

The amendments are the result of requests from veteran groups and political parties.

5. FINANCIAL IMPLICATIONS FOR STATE

The anticipated total cost associated with the amendments is R6.86bn in present value terms.

6. CONSTITUTIONAL IMPLICATIONS

None.

7. PARLIAMENTARY PROCEDURE

7.1 The State Law Advisers and the National Treasury are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

7.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)*(a)* of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.