

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.

*(English text signed by the President.)  
(Assented to 12 January 2006.)*

## ACT

To amend the Special Pensions Act, 1996, so as to provide for the lapsing of provisions regarding rights to pensions and survivor's benefits on 31 December 2006; to introduce a surviving spouse's pension, an orphan's pension, and a funeral benefit; to regulate benefit payments to spouses and dependants; to provide for the reconsideration of determined cases by the Board; to provide for the repayment of any benefit paid to a person that was not entitled to that benefit; to further regulate the dissolution of the Board and the Review Board; to amend Schedule 3 to the Act; to add Schedule 4 to the Act; and to provide for matters connected therewith.

**B**<sup>E</sup> IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

**Substitution of heading in Act 69 of 1996**

1. The following heading is hereby substituted for the heading to Part I of the Special Pensions Act, 1996 (hereinafter referred to as the principal Act):

**"PART 1**

**[BENEFITS] RIGHT TO PENSION AND SURVIVOR'S LUMP SUM BENEFIT"**

**Amendment of section 1 of Act 69 of 1996, as amended by section 1 of Act 75 of 1998**

2. Section 1 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

"(4) A *pensioner* who qualifies for a *benefit* in terms of subsection (1) is entitled to receive a *pension*, payable monthly, commencing on 1 April 1995 or the first day of the month during which that person attains the age of 35 years, whichever is the later date."

**Repeal of section 3 of Act 69 of 1996**

3. Section 3 of the principal Act is hereby repealed.

**Amendment of section 6 of Act 69 of 1996, as amended by section 2 of Act 75 of 1998 and section 1 of Act 21 of 2003**

4. Section 6 of the principal Act is hereby amended-
- (a) by the substitution for the heading of the following heading:  
"Applications for benefits under Part 1";
  - (b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:  
"Any person who applies for a *benefit* in terms of [*this Act*] Part 1 must-".

**Insertion of section 6A in Act 69 of 1996**

5. The following section is hereby inserted in the principal Act after section 6:

**"Lapsing of Part 1, and certain savings**

**6A** (1) Part 1 except for this section lapses on 31 December 2006

(2) Subsection (1) does not affect any *benefit* payable under this Part in respect of which the *Board* has made a determination in terms of section 7 before 31 December 2006.

(3) Any *application* for *benefits* in terms of this Part which has been submitted to the *Board* before 31 December 2006, but on which the *Board* has not made a determination by that date, must be finalised as if this Part had not lapsed."

**Insertion of heading and sections 6B, 6C, 6D, 6E, 6F and 6G in Act 69 of 1996**

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

**"PART 1A****BENEFITS ON DEATH OF PENSIONER****Limitation on benefits payable under Part 1A**

**6B** . A *pensioner* referred to in section 1 whose monthly *pension* payments had already begun by 31 December 2006 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.

**Right to lump sum benefit**

**6C**. Subject to section 6E, upon the death of a *pensioner* a surviving *spouse* or, if there is no surviving *spouse*, a surviving *dependant* of that *pensioner*, is entitled to receive a lump sum payment equal to twice the annual amount that was payable to that *pensioner* immediately before the date of death.

**Right to monthly pension**

**6D**. (1) Subject to section 6E, upon the death of a *pensioner*-

- (a) a surviving *spouse* of that *pensioner* is entitled to receive a monthly *pension* equal to 50% of the *pension* that was payable to that *pensioner* immediately before the date of his or her death for the remainder of the surviving *spouse's* life; or
- (b) where there is no surviving *spouse*, a *dependant* who becomes an *orphan* is entitled to receive a monthly *pension*, equal to the 50% of the *pension* that was payable to that *pensioner* immediately before the date of his or her death-
  - (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

for the remainder *of* the *orphan's* life, if the *orphan* suffers from a permanent and total disability on the date of the *pensioner's* death.

(2) When the first monthly payment is made to a surviving *spouse* or *orphan* in terms of this section, the *Minister* must include a lump sum covering all the *pension* payments due to that person from the date *of* the death of the *pensioner* to the date of that first payment.

#### **Allocation of equal shares in benefit**

6E. 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 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.

#### **Funeral benefits**

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

(2) Section 6E applies with the necessary changes in respect of subsection (1)(b) and (c).

#### **Applications for benefits under Part 1A**

6G. (1) (a) Any person who applies for a *benefit* under Part 1A must-

- (i) complete an *application* form in such format as the *Board* may determine; and
  - (ii) supply the *Board* with such additional information as it may require.
- (b) The form must be submitted to the *Board* 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 *Board* in such format as the *Board* may determine."

#### **Insertion of heading in Act 69 of 1996**

7. The following heading is hereby inserted in the principal Act after section 6G:

#### **"PART IB**

#### **DETERMINATION BY BOARD AND APPEAL"**

**Act No. 27, 2005 SPECIAL PENSIONS AMENDMENT ACT, 2005****Amendment of section 7 of Act 69 of 1996**

8. Section 7 of the principal Act is hereby amended by the addition of the following subsection, the current section becoming subsection (1):

"(2) The *Board* may on application reconsider and amend or withdraw its determination in respect of any application if it is satisfied that material facts exist that were not considered by it and that may have resulted in a different determination had the facts been considered when it made the determination."

**Insertion of heading and of section 8A in Act 69 of 1996**

9. The following heading and section is hereby inserted in the principal Act after section 8:

**"PART 1C****MATTERS RELATING TO BENEFITS****Moneys for payment of *benefits***

**8A.** Benefits payable in terms of this Act must be paid from money appropriated by Parliament for that purpose."

**Amendment of section 9 of Act 69 of 1996, as amended by section 3 of Act 75 of 1998**

10. Section 9 of the principal Act is hereby amended

(a) by the substitution for subsection (1) of the following subsection

"(1) The Minister must pay any pension, payable in terms of *[this Act]* section 1 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." ;

(b) by the substitution for subsection (3) of the following subsection:

"(3) When the first monthly payment is made to a *pensioner* in terms of ~~[subsection]~~ section 1 (4), the *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* ~~[60th]~~ 35th birthday, whichever is the later, to the date of that first payment..";

(c) by the substitution for subsection (5) of the following subsection:

"(5) The *Minister* must pay any *survivor's* lump sum benefit payable in terms of *this Act* any monthly pension referred to in section [61] or any funeral benefit referred to in section 6F to the *beneficiary* within 90 days of the date on which the *Board* notifies the *Minister* that a *benefit* is payable to that *beneficiary*."; and

(d) by the substitution in subsection (6) for paragraphs (a) and (b) of the following paragraphs, respectively :

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

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

**Repeal of section 10 of Act 69 of 1996**

11. Section 10 of the principal Act is hereby repealed

**Amendment of section 14 of Act 69 of 1996, as amended by section 3 of Act 21 of 2003 and section 1 of Act 30 of 2003**

12. Section 14 of the principal Act is hereby amended

(a) by the substitution for subsection (1) of the following subsection

"(1) In addition to any *benefits* granted in terms of *this Act*, a *beneficiary* who qualifies as contemplated in ~~[section 1 or 2]~~ section 1, 2

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- or 6D may apply for, and if qualified, may receive payments also in terms of either or both-
- (a) the [Social Pension Act, 1973] Social Assistance Act 1992
  - (b) the Military Pensions Act, 1976."
- (h) by the substitution for subsection (3) of the following subsection:
- "(3) *Benefits* received in terms of *this Act* are taxable unless exempted under any applicable law."-
- (c) by the substitution in subsection (4) for paragraph (a) of the following paragraph:
- "(a) Subject to paragraph (b), any person's right to a *pension* in terms of *this Act* ceases on the day on which that person's right to a *pension*-
- (i) in terms of the Government Employees Pension Law, 1996 (Proclamation No. 21 of 1996), is recognised as contemplated in section 30A of that Law; or
  - (ii) is recognised in terms of the rules of any other employee pension or provident fund or scheme established by or under any pension law."

**Insertion of section 14A in Act 69 of 1996**

13. The following sections are hereby inserted in the principal Act after section 14:

**"Re-consideration and allocation of *benefit* paid**

**14A.** (1) Any *benefit* paid to a surviving *spouse*, *dependant* or *orphan* is subject to reconsideration and allocation of *benefits* in accordance with section 6E in the event that another surviving *spouse*, *dependant* or *orphan* not known at the time of the payment applies and qualifies for the same *benefit*.

(2) The *Minister* must on payment of a *benefit* inform the surviving *spouse*, *dependant* or *orphan* in writing of the provisions of subsection (1).

**Re-payment 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 *Board* within 30 days of written demand by the *Board*.

- (2) Despite subsection (1) the *Board* may-
- (a) allow repayment installments; or
  - (b) set off any amount due to the 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-
- (a) allow repayment of a lesser amount; or
  - (b) absolve a person from repayment of the whole amount or any part thereof."

**Amendment of section 22 of act 69 of 1996**

- 14.** Section 22 of the principal act is hereby amended by the substitution in subsection (3) for paragraphs (b) and (c) of the following paragraphs, respectively:

- "(b) the [Exchequer Act, 1975 (Act no. 66 of 1975)] Public Finance Management Act, 1999 (Act No. 1 of 1999); and
- (c) the [Auditor General Act, 1995 (Act no. 12 of 1995)] Public Audit Act, 2004 (Act No. 25 of 2004)."

**Amendment of section 23 of Act 69 of 1996**

- 15.** Section 23 of the principal Act is hereby amended-
- (a) by the repeal of subsection (1); and

- (b) by the substitution in subsection (6) for paragraph (b) of the following paragraph:

"(b) subject to the **[Exchequer Act, 1975 (Act No. 66 of 1975)]** Public Finance Management Act 1999 (Act No I of 1999) is accountable for all State money that the *Board* receives or pays, and must keep the records needed to comply with that Act."

**Substitution of section 27 of Act 69 of 1996, as amended by section 6 of Act 75 of 1998 and section 5 of Act 21 of 2003**

16 The following section is hereby substituted for section 27 of the principal Act:

**"Dissolution of Board**

27. (1) The *Minister* must dissolve the *Board* **[after the Board has completed its activities]** not later than 60 days after 31 December 2006

(2) Upon dissolution of the *Board*:-

(a) **the Head of Pensions Administration [of the department of Finance] in the National Treasury** is responsible for the performance **[for the administrative] of all** functions of the *Board* in terms of *this Act* **]; and**

(b) **the Minister must assume responsibility for the discretionary functions of the Board in terms of this Act, but the Minister may delegate responsibility to the head of the said Pension Administration].**

(3) (a) The Head of Pensions Administration may in writing delegate or assign any of the functions contemplated in subsection (2) to an officer in the public service.

(b) A delegation or assignment contemplated in paragraph (a) does not divest the Head of Pensions Administration of the power delegated or duty assigned."

**Amendment of section 28 of Act 69 of 1996, as amended by section 7 of Act 75 of 1998 and section 6 of Act 21 of 2003**

17. Section 28 of the principal Act is hereby amended by the addition of the following subsections:

"(6) The Minister must dissolve the Review Board within a period of 90 days after dissolving the Board in terms of section 27(1).

(7) Upon dissolution of the Review Board, the Minister is responsible for the performance of all the junctions of the Review Board."

**Amendment of section 31 of Act 69 of 1996, as amended by section 9 of Act 75 of 1998**

18. Section 31 of the principal Act is hereby amended-

- (a) by the substitution for the definition of "*applicant*" of the following definition:

"'applicant' means a person who submits a completed application as contemplated in section 6 or section 6G;"

- (b) by the substitution for the definition of "*application*" of the following definition:

"'application' means-

- (a) a completed and sworn statement in the form set out in Schedule 2; or
- (b) an *application* on the form referred to in section 6(1)(b); or
- (c) an application on the form referred to in section 6G;"

- (c) by the substitution for the definition of "*benefit*" of the following definition:  
"'benefit' means a sum of money payable in terms of Part 1 or Part 1A;"

- (d) by the insertion after the definition of '*Board*' of the following definition:

"(viA) '*child*' means a child of the pensioner, including a posthumous child, an adopted child and a child born out of wedlock, that-

- (a) is under the age of 18;

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- (b) is under the age of 23 and a full-time student; or  
 (c) suffers from a permanent and total disability on the date of the pensioner's death irrespective of his or her age;  
 (e) by 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 or section 6D;" and  
 (f) by the insertion after the definition of "Minister" of the following definition:  
 "(xiA) 'orphan means a child of the deceased pensioner that -  
 (a) has no surviving parent or of whom the other parent is unknown;  
 (b) has a surviving parent but the whereabouts of that parent are unknown or  
 (c) has a surviving parent but has been abandoned by that parent;"

**Amendment of Schedule 3 to Act 69 of 1996**

19. The following Schedule is hereby substituted for Schedule 3 to the principal Act:

**Schedule 3**

**PENSIONS PAYABLE IN TERMS OF SECTION 1(6)**

Age category in years	Annual pension amount in Rands
35 but younger than 50	6 000
50 [but younger than 65] <u>until death</u>	12 000 Plus 1 200 for each year of service exceeding 5 years with maximum amount of 42 000. Where years of service exceed 25 years, a fixed amount of 84 000.
65 and older <u>at the commencement date</u>	24 000 Plus 1 200 for each year of service exceeding 5 years with maximum amount of 42 000. Where years of service exceed 25 years, a fixed amount of 84 000.

**Addition of Schedule to Act 69 of 1996**

20. The principal Act is hereby amended by the addition of the following Schedule:

**Schedule 4**

**FUNERAL BENEFITS PAYABLE IN TERMS OF SECTION 6F**

Pensioner	R7 500
Surviving spouse of pensioner	R7 500
Child	R3 000

**Substitution of Table of Contents of Act 69 of 1996**

21. The following Table of Contents is hereby substituted for the Table of Contents of the principal Act:

**"TABLE OF CONTENTS**

*Section Contents*

**PART 1**

**[BENEFITS] RIGHT TO PENSION AND SURVIVOR'S LUMP SUM BENEFIT**

1. Right to pension
2. Right to a survivor's lump sum benefit
3. **[Payment to survivor on death of pensioner]**
4. One benefit only to be granted
5. Allocation of survivor's benefit



- 6. Applications for benefits under Part 1
- 6A. Lapsing of Part I, and certain savings

### **PART 1A**

#### **BENEFITS ON DEATH OF PENSIONER**

- 6B Limitation on benefits payable under Part 1A
- 6C Right to lump sum benefit
- 6D Right to monthly pension
- 6E Allocation of equal shares in benefit
- 6E Funeral benefits
- 6G Applications for benefits under Part 1A

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#### **DETERMINATION BY BOARD AND APPEAL**

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- 8. Right of appeal against Board's decision

### **PART 1C**

#### **MATTERS RELATING TO BENEFITS**

- 8A Moneys for payment of benefits
- 9. Payment of benefits
- 10. [Payments to other public pension funds]
- 11. ...
- 12. Increases in pension amounts
- 13. Pensions cannot be assigned or attached
- 14. Qualification for other benefits
- 14A Reconsideration and re-allocation of benefit paid
- 14B Repayment of benefit to which person was not entitled

### **PART 2**

#### **SPECIAL PENSIONS BOARD**

- 15. Establishment of Board
- 16. Appointment of members
- 17. Remuneration of members
- 18. Conduct of members
- 19. Board to be unfettered
- 20. Board business
- 21. Staff and contractors
- 22. Chief Executive Officer
- 23. Board finances
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- 25. Board investigations
- 26. Legal proceedings against Board
- 27. Dissolution of Board
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#### **GENERAL PROVISIONS**

- 29. Minister's powers
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- 31. Definitions
- 32. Short title and commencement



**SCHEDULES****Schedule 1: CRIMES AND LIST OF ACTS****Schedule 2: APPLICATION FORM FOR PENSIONS****Schedule 3: PENSIONS PAYABLE IN TERMS OF SECTION 1(6)****Schedule 4: FUNERAL BENEFITS PAYABLE IN TERMS OF SECTION 6F"****Retrospective application of certain section**

22. Section 6D of the principal Act must be regarded as having come into operation on 1 December 1996.

**Short title and commencement**

23. This Act is called the Special Pensions Amendment Act, 2005.