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**GENERAL NOTICES • ALGEMENE KENNISGEWINGS**

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**DEPARTMENT OF LABOUR****NOTICE 964 OF 2015****CORRECTION NOTICE**

**National Extraordinary Gazette No. 39246 of 2 October 2015 is hereby withdrawn and replaced with the following:**

**UNEMPLOYMENT INSURANCE AMENDMENT BILL, 2015****PUBLICATION OF EXPLANATORY SUMMARY OF THE UNEMPLOYMENT INSURANCE  
AMENDMENT BILL, 2015****NOTICE IN TERMS OF RULE 241(1)(b) READ WITH RULE 241(1)(c) OF THE RULES OF  
THE NATIONAL ASSEMBLY OF PARLIAMENT: THE INTENTION TO INTRODUCE THE  
UNEMPLOYMENT INSURANCE AMENDMENT BILL, 2015 IN THE NATIONAL  
ASSEMBLY**

- 1 I, **Mildred Nelisiwe Oliphant**, The Minister of Labour, intends to introduce the Unemployment Insurance Amendment Bill in accordance with Rule 241(1)(b) of the Rules of the National Assembly of Parliament. The explanatory summary of the Bill is also published in accordance with Rule 241(1)(c) of the Rules of the National Assembly.

The Bill seeks to amend the Unemployment Insurance Act, 2001, so as to provide for the extension of the unemployment insurance benefit to learners who are undergoing learnership training and civil servants; to adjust the accrual rate of a contributor's entitlement to unemployment insurance benefits; to finance employment services; to extend a contributor's entitlement to benefits under certain circumstances; to provide for the process of application for maternity benefits; to repeal some enforcement provisions; to empower the Unemployment Insurance Board to provide in its constitution for the functions of regional appeals committees; to amend the schedule 2 to the Unemployment Insurance Act, 2001 so as to provide for the adjustment of the Income Replacement Rate; and to provide for matter connected therewith.

- 2 A copy of the Bill and the Memorandum on the objects of the Bill can be obtained from c/o the Department of Labour, The Unemployment Insurance Fund Commissioner.

**By Post or Fax or Hand Deliveries**

Department of Labour

The Unemployment Insurance Fund Commissioner

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MN OLIPHANT, MP

MINISTER OF LABOUR

23/09/2015

**REPUBLIC OF SOUTH AFRICA**

**UNEMPLOYMENT INSURANCE AMENDMENT BILL**

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*(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)*  
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**(MINISTER OF LABOUR)**

**[B — 2014]**

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## MEMORANDUM ON THE OBJECTS OF THE UNEMPLOYMENT INSURANCE AMENDMENT BILL, 2015

### 1. BACKGROUND

The Unemployment Insurance Act, 2001 (Act No. 63 of 2001) (the Act), came into operation on 1 April 2002. The purpose of the Act is to establish an Unemployment Insurance Fund (UIF) to which employers and employees contribute and from which employees who become unemployed, or their dependents, as the case may be, can benefit. In that regard, the harmful economic and social effects of unemployment can be alleviated. In order to improve service delivery by the Fund, the Unemployment Insurance Board decided to recommend to the Minister that the Act should be amended so as to meet these demands.

### 2. OBJECTS OF BILL

The Bill seeks to—

- (a) adjust contributor's entitlement to benefits and extend the unemployment insurance benefits so as to benefit the employees who are under contract of employment contemplated in section 18(2) of the Skills Development Act, 1998 (Act No. 97 of 1998) and employees as defined in section 1 of the Public Service Act, 1994 (Proclamation No. 103 of 1994); and
- (b) make certain adjustments in respect of Income Replacement Rate (IRR) and also amend the constitution of the Unemployment Insurance Board so as to provide for the functions of the regional appeals committee.

### 3. OVERVIEW OF BILL

#### Clause 1

- 3.1 Clause 1 of the Bill also seeks to delete the definition of the Director-General.
- 3.2 Furthermore, through consequential amendment, there are various clauses in the Bill which seek to replace the role that was played by the Director-General in accounting for the monies of the Funds with that of the Commissioner. Furthermore, it is demonstrated throughout the Bill that the Commissioner replaces the Director-General in accounting for the monies of the Funds and other aspects which sought to place the Commissioner as the accounting officer of the Fund.

#### Clause 2

- 3.4 The Bill seeks to amend section 3 of the Act by extending unemployment insurance benefits to employees who are under contract of employment contemplated in section 18(2) of the Skills Development Act, 1998 (Act No. 97 of 1998), employees as defined in section 1 of the Public Service Act, 1994 (Proclamation No. 103 of 1994) and foreign workers who are within the country.
- 3.5 Clause 2 also seeks to amend the Act by excluding members of Parliament, Cabinet Ministers, Deputy Ministers, members of provincial legislatures and municipal councillors from benefiting from the application of the Act.

#### Clause 3

- 3.6 Clause 3 seeks to amend section 4 of the Act by replacing the role of the Director-General with that of a Commissioner. Section 4(2)(f) of the Act provides that the Fund consist of the monies that were erroneously deposited to the Fund which, in the opinion of the Director-General cannot be refunded.
- 3.7 The Bill seeks to amend section 4(2)(f) of the Act by giving the powers of discretion to the Commissioner to decide whether those monies should be refunded or not.

- 3.8 The Bill as a whole seeks to replace the Director-General with the Commissioner in respect of various roles which were previously played by the Director-General in terms of the Act.

**Clause 4**

- 3.11 The Bill seeks to amend section 5 of the Act so as to make provision for the Fund to finance the job creation schemes approved by the Director-General in terms of the Act for the benefit of the unemployed contributors.

**Clause 5**

- 3.9 The Bill seeks to amend section 7(1) of the Act which deals with the investment of money of the Unemployment Insurance Fund. The Bill also seeks to provide for the money of the Unemployment Insurance Fund, other than the money required to meet the current expenditure of the Fund to be deposited on behalf of the Fund with the Public Investment Corporation in accordance with the Public Investment Corporation Act, 2004 (Act No. 23 of 2004) and other applicable legislation.

**Clause 6**

- 3.10 Clause 6 of the Bill seeks to amend section 8 of the Act by providing that the Commissioner may accept the donations and bequest for and on behalf of the Fund.

**Clause 7**

- 3.11 Clause 7 of the Bill seeks to amend section 9 of the Act by giving powers to the Commissioner to appoint the actuaries for the preparation of the annual review of the finances of the Fund.

**Clause 8**

- 3.12 Clause 8 seeks to amend section 10 of the Act by giving the Commissioner powers to give financial report to the Minister and make recommendations the financial state of the Fund.

**Clause 9**

- 3.13 Clause 9 seeks to amend section 11 of the Act by proving that the Commissioner must be an accounting authority as contemplated in terms of the Public Finance Management act, 1999 (Act No.1 of 1999).

**Clause 10**

- 3.14 Clause 10 of the Bill seeks to amend section 12 of the Act by making provisions for the contributors with reduced working hours. The clause provides that, despite the reduced working time, the contributor is entitled to benefits if the contributor's total income falls below benefit level that the contributor would have received if he or she had become wholly unemployed subject to that contributor having enough credits. The clause also provides for the rate of 66 percent.

**Clause 11**

- 3.15 Section 13(3) of the Act provides that a contributor's entitlement to benefits accrues at a rate of one day's benefit for every completed four days of employment as a contributor subject to a maximum accrual of 365 days. It has been found that the maximum of 238 days is not in line with Schedule 2 as proposed in the Act. In order to address this anomaly, an amendment to section 13 of the Act is proposed to provide for 365 days instead of 238 days.

- 3.16 Clause 11 of the Bill further seeks to amend section 13 of the Act by the insertion of a provision which will allow contributors to claim benefits if they have credits regardless of whether they claimed or not within that four year circle.

#### Clause 12

- 3.17 Clause 12 of the Bill seeks to delete section 14(a) of the Act. Section 14(a)(ii) and (iii) of the Act provides that, among other things, a contributor is not entitled to benefits for any period that a contributor was in receipt of benefits from the Compensation Fund or any benefits from any unemployment fund or scheme established by a statutory council under section 28 (g) or 43 (1) (c) of the Labour Relations Act, 1995 (Act No. 66 of 1995).

#### Clause 13

- 3.18 Clause 13 of the Bill seeks to amend section 16 of the Act by providing that the contributor is not entitled to benefit in to the Fund if he or she refuses to undergo training or the vocational counselling for employment under any scheme approved by the Commissioner.

#### Clause 14.

- 3.19 Clause 14 of the Bill seeks to amend section 17 of the Act in order to increase the period of submitting application for unemployment benefits. Currently applications must be submitted within six months and this clause proposes that the period for submission of application for unemployment benefits must be from six to 12 months.

#### Clause 15

- 3.20 Clause 15 of the Bill seeks to amend section 18 of the Act by giving powers to the Commissioner to pay benefits to the contributor at the employment office at which the application was made or any other employment office determined by the applicant.

#### Clause 16

- 3.21 Clause 16 of the Bill seeks to amend section 20 of the Act by providing that a contributor is not entitled to illness benefits if the days of illness are less than seven days. Clause 16 seeks to reduce these days of illness benefits from 14 to seven days.

#### Clause 17

- 3.22 Clause 17 of the Bill seeks to amend section 23 of the Act by giving powers to the Commissioner to pay illness benefits to the contributor.

#### Clause 18

- 3.23 Clause 18 of the Bill seeks to amend section 24 of the Act so as to provide for a period when a contributor is entitled for maternity benefits in case of miscarriage.

#### Clause 19

- 3.24. Clause 19 of the Bill seeks to amend section 25(1) of the Act. Section 25 of the Act provides that an application for maternity benefits must be made in a prescribed form at an employment office at least eight weeks before childbirth. Clause 11 seeks to amend section 25 of the Act by doing away with the requirement of the time period of eight weeks in which an application may be made before childbirth.



**Clauses 20 and 21**

- 3.25 Clauses 20 and 21 of the Bill seek to amend sections 26 and 29 of the Act respectively by replacing the roles that were played by the Director-General in terms of the Act to be played by the Commissioner in respect of the powers to pay maternity benefits and dependant's benefits.

**Clause 22**

- 3.26. Clause 22 of the Bill seeks to amend section 30 of the Act by extending a period in which the dependents may apply for benefits on behalf of the deceased from six months to 18 months.

**Clause 23**

- 3.27 Clause 23 of the bill seeks to amend section 32 of the Act by providing that the Commissioner must pay the dependent's benefits at an office where an application for those benefits was made.

**Clause 24**

- 3.28 Clause 24 of the Bill seeks to amend section 33 of the Act by prohibiting the Fund or any person purporting to be acting on behalf of the contributor to charge fees to the contributor when applying for benefits.

**Clause 25**

- 3.29 Clause 25 of the bill seeks to amend section 36A of the Act by providing that the Board must appoint a regional appeals committee for each region determined by the Minister.

**Clause 26**

- 3.30 The Bill seeks to repeal sections 38, 39, 40 and 41 of the Act.

**Clause 27**

- 3.31 Clause 27 of the Bill seeks to amend section 43 of the Act by providing that the Minister powers to appoint the Commissioner without having to designate an employee of the Department as it is currently provided in terms of the Act.

**Clause 28**

- 3.32 Clause 28 of the Bill seeks to amend section 44 of the Act by providing that the Commissioner must furnish the minister with a report on the activities of the Fund during the preceding financial year within six months of the end of each financial year.

- 3.33 This clause also provides that the Commissioner may delegate any duty assigned to him or her by the Minister.

**Clause 29**

- 3.4 This clause seeks to amend section 46 of the Act by giving the Commissioner the powers to appoint the claims officers and other officers required for the operation of the Fund.

**Clause 30**

3.35 Section 50 of the Act deals with the adoption of a constitution by the Board which must provide for the establishment and function of committees of the Board. Clause 30 of the Bill seeks to amend section 50(2)(a)(i) of the Act by giving powers to the Board to stipulate functions of the regional appeals committee.

**Clause 31**

3.33 Clause 31 of the Bill seeks to amend section 56 of the Act by providing that every employer must, before seventh day of each month provide Commissioner with all information for previous month.

**Clause 32**

3.34 Clause 32 of the Bill seeks to amend section 58 of the Act by providing for powers and duties of the Commissioner.

**Clause 33**

3.35 Clause 33 of the Bill seeks to amend section 60 of the Act providing for powers of the Commissioners to take appropriate steps in the event when an employee of the Fund causes loss or damage to the Fund.

**Clause 34.**

3.36 Clause 34 seeks to amend section 61 of the Act by providing for the powers of the Commissioner in the event of the general recovery of losses in favour of the Fund.

**Clause 35**

3.37 Clause 35 of the Bill seeks to amend section 62 of the Act so as to provide with essential aspect of producing evidence before the court of law.

**Clause 36**

3.38 Clause 36 of the Bill seeks to amend section 63 of the Act by providing that subject to the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), the information obtained by that person in the performance of functions contemplated in this Act may only be disclose such information at the request of the Minister, the Commissioner or any other person entitled to the information.

**Clause 37**

3.39 Clause 37 of the Bill seeks to amend section 67 of the Act by proving for the case which may be stated by the Commissioner to the Labour Court or the Labour Appeal Court.

**Clause 38**

3.40 Clause 38 of the Bill seeks to amend section 68 of the Act by providing for the powers which may be delegated by the Minister to the Commissioner or any other employees and the powers which may not be delegated by the Minister.

**Clause 39.**

3.21 Clause 39 of the Bill seeks to amend Schedule by amending the IRR rate. Clause 18 also provides that the Minister may from time to time vary the IRR rate by regulations.



#### 4. CONSULTATION

The following bodies were consulted:

- The Unemployment Insurance Board.
- National Treasury.

#### 5. FINANCIAL IMPLICATIONS FOR STATE

The Bill has the following financial implications for the State—

- The Actuaries has issued a report on the proposed amendments and their findings is that the proposed amendments are not going to have a negative impact on the Financial status of the Fund and that the Fund will be able to cover the cost of the proposed amendments without any difficulties.
- The inclusion of Public servants will not affect the budget of the State since the UIF will pay benefits and Government reimburse the actual expenses paid as benefits.

#### 6. PARLIAMENTARY PROCEDURE

- 6.1 The State Law Advisers and the Department of Labour are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution of the Republic of South Africa, 1996, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.
- 6.2 When considering the classification of the Bill, we have taken into account the clauses of the Bill, section 76(3) of the Constitution and the Constitutional Court judgment in *Tongoane v Minister of Agriculture and Land Affairs* (CT 100/09[2010] ZACC 10).
- 6.3 Our view is based on the fact that, in the main, the Bill relates to labour matters and regulates payment of benefits from the Fund.
- 6.4 Labour is not listed in any of the Schedules to the Constitution. Furthermore, the Bill does not include any provision affecting the interests of the provincial sphere or local sphere of the government (our emphasis). The provisions of the Bill do not in a substantial manner affect the functional area of concurrent national and provincial competence as provided in Schedule 4 to the Constitution. Thus, section 76 does not apply.
- 6.5 Furthermore, with regard to implementation, the Bill will be implemented by the national Minister of Labour and the national Department.
- 6.6 When considering the clauses of the Bill, we are of the view that the Bill is not a money Bill as envisaged in section 77 of the Constitution. Section 77(1)(a),(b) and (c) of the Constitution provides that a Bill is a money Bill if it appropriates money, imposes national taxes, levies, duties or surcharges, abolishes national taxes, levies, duties and surcharges. Section 77(1)(d) provides that a Bill is a money Bill if it authorises direct charges against the National Revenue Fund, except a Bill envisaged in section 214 of the Constitution authorising direct charges.
- 6.7 Unlike the Unemployment Insurance Act, 2001 (Act No.63 of 2001), section 5 of the Unemployment Insurance Contribution Act, 2002 read with section 6 of that Act determine who must be charged, and how much must be charged respectively, whilst the Unemployment Insurance Act, 2002 administers the payment of benefits to the employees determined by the Unemployment Insurance Contribution Act, 2002.

- 6.8 Since this Bill is not a money Bill as envisaged in section 77 of the Constitution, we are of the view that the Bill may be introduced by the Minister of Labour or Deputy Minister of Labour.
- 6.9 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 1(1)(a) of the Traditional Leadership and Government Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.