

REPUBLIC OF SOUTH AFRICA

**JUDGES' REMUNERATION AND
CONDITIONS OF EMPLOYMENT
AMENDMENT BILL**

(As introduced)

(MINISTER OF JUSTICE)

[B 70—97]

REPUBLIEK VAN SUID-AFRIKA

**WYSIGINGSWETSONTWERP OP
BESOLDIGING EN
DIENSVOORWAARDES VAN
REGTERS**

(Soos ingedien)

(MINISTER VAN JUSTISIE)

[W 70—97]

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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.
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BILL

To amend the Judges' Remuneration and Conditions of Employment Act, 1989, so as to amend the definition of "salary" and to make provision for the payment of an annual allowance to certain judges of the Constitutional Court; to further regulate the salaries of judges discharged from active service; to further regulate the performance of service by judges who have been discharged from active service; to make provision for the payment of a gratuity to the estate of a judge of the Constitutional Court who dies in office and is not survived by a spouse; and to provide for matters in connection therewith.

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

Amendment of section 1 of Act 88 of 1989, as amended by section 1 of Act 10 of 1994

1. Section 1 of the Judges' Remuneration and Conditions of Employment Act, 1989 (hereinafter referred to as the principal Act), is hereby amended by the substitution for the definition of "salary" of the following definition: 5

“ 'salary' means—

- (a) in Chapter 2, subject to the provisions of subsection (2)—
 - (i) the annual salary and the allowance payable to a judge in terms of section 2; and 10
 - (ii) where applicable, the annual allowance payable to a constitutional judge in terms of section 10A(2); and
- (b) in Chapter 3, the annual salary and the allowance payable to a constitutional judge in terms of section 10A;”.

Amendment of section 5 of Act 88 of 1989, as amended by section 27 of Act 139 of 1992 15

2. Section 5 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3)(a) Subject to the provisions of subsection (2) and of paragraph (c), the aggregate of the salary payable in terms of subsection (1) to a judge who was or is 20

discharged from active service in terms of section 3(1)(a), (c) or (d) or 4 shall not be less than 40 per cent of his or her highest salary during the period of his or her active service and shall not exceed such salary.

(b) Subject to the provisions of subsection (2) and of paragraph (d), the aggregate of the salary payable in terms of subsection (1) to a judge who was or is discharged from active service in terms of section 3(1)(b), shall be 80 per cent of his or her highest salary during the period of his or her active service, plus 2 per cent of that salary for every year of active service which he or she performs after attaining the age of 65 years.

(c) Subject to the provisions of subsection (2) and of paragraph (d), the aggregate of the salary payable in terms of subsection (1) to a judge who was or is discharged from active service in terms of section 3(1)(c) or (d) before he or she attains the age of 65 years, shall be not more than 80 per cent of his or her highest salary during the period of his or her active service.

(d) Subject to the provisions of subsection (2), the aggregate of the salary payable in terms of subsection (1) to a judge who was or is discharged from active service in terms of section 3(1) and has performed active service for a period of not less than 20 years, shall be equivalent to the salary applicable to the office held by him or her on discharge from active service.”.

Amendment of section 7 of Act 88 of 1989, as amended by section 4 of Act 10 of 1994

3. Section 7 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) (a) A judge who has been discharged from active service—

(i) except a judge who has been so discharged [**from active service**] in terms of section 3(1)(b), (c) or (d), shall, subject to subsection (2A), be available to perform service until he or she attains the age of 75 years, for a period or periods which, in the aggregate, amount to three months a year; or

(ii) who has already attained the age of 75 years, may perform further service, if his or her services are, after consultation with the Minister, requested by the Chief Justice or the judge president in whose area of jurisdiction he or she resides or of the division to which he or she was attached when discharged from active service, or with his or her consent, any other judge president, in consultation with the Chief Justice or the said judge president, as the case may be, and that judge’s mental and physical health enable him or her to perform such service [**Provided that a judge shall not be precluded from voluntarily performing more than three months’ service, if his or her services are so requested: Provided further that a judge shall perform service as mentioned in paragraph (b), (c), (d) or (e) of subsection (2) only with his or her consent**].

(b) A judge may voluntarily perform more than three months’ service a year, if his or her services are so requested.

(c) Service as mentioned in paragraph (b), (c), (d) or (e) of subsection (2) may be performed only with the consent of the judge concerned.”.

Amendment of section 10A of Act 88 of 1989, as inserted by section 7 of Act 10 of 1994

4. Section 10A of the principal Act is hereby amended—

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

“(1) Any person who is not a judge of the Supreme Court and who holds office as a constitutional judge shall in respect thereof, in addition to the amounts referred to in section 12 and an allowance at the rate of R3 500 per annum, be paid a monthly salary at a rate determined from time to time by the President by proclamation in the *Gazette*: Provided that such salary shall not be less than that of a judge of the Appellate Division of the Supreme Court.”; and

(b) by the insertion after subsection (4) of the following subsection:

“(4A) The allowance payable in terms of subsection (1) shall not be taxable, unless Parliament expressly provides otherwise.”.

Amendment of section 10D of Act 88 of 1989, as inserted by section 7 of Act 10 of 1994

5. Section 10D of the principal Act is hereby amended by the addition of the following subsection, the existing section becoming subsection (1):

“(2) If such constitutional judge is not survived by a spouse, the amount referred to in subsection (1) shall be payable to his or her estate.” 5

Short title and commencement

6. (1) This Act shall be called the Judges’ Remuneration and Conditions of Employment Amendment Act, 1997.

(2) Sections 1, 4 and 5 shall be deemed to have come into operation on 13 July 1994. 10

**MEMORANDUM ON THE OBJECTS OF THE JUDGES’
REMUNERATION AND CONDITIONS OF EMPLOYMENT
AMENDMENT BILL**

The Bill purports to amend the Judges’ Remuneration and Conditions of Employment Act, 1989 (Act No. 88 of 1989), so as—

- (a) to include an allowance payable to certain judges of the Constitutional Court into their salaries for purposes of the calculation of their gratuities and salaries after removal from active service;
- (b) to provide that a judge who is discharged from active service and who has performed 20 years’ active service, will continue to receive the full salary applicable to the office held by him or her on discharge from active service;
- (c) to provide that a judge who has attained the age of 75 years may voluntarily perform service in certain circumstances;
- (d) to provide for the payment of an annual non-taxable allowance of R3 500 to judges of the Constitutional Court who are not judges of the “Supreme Court”; and
- (e) to provide that the gratuity of a judge of the Constitutional Court who dies in office and who is not survived by a spouse, shall be payable to his or her estate.

In the opinion of the Department and the State Law Advisers this Bill should be dealt with in terms of section 75 of the Constitution. The judiciary of the Constitutional Court, the Supreme Court of Appeal and the High Courts have been consulted regarding the provisions of the Bill.