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**REPUBLIC OF SOUTH AFRICA**

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**SPECIAL PENSIONS  
AMENDMENT ACT**

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**REPUBLIEK VAN SUID-AFRIKA**

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**No           , 1998**

**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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## ACT

To amend the Special Pensions Act, 1996, so as to extend the right to a pension to persons who suffer from terminal diseases; to advance the payment of benefits to the date on which a pensioner attains the age of 35 years; to validate certain applications; to further regulate the payment of benefits to pensioners holding office in a legislature; to do away with optional early pensions; to further regulate the appointment of members of the Special Pensions Board; to further regulate the dissolution of the Board; to further regulate the composition of the Special Pensions Review Board; to further regulate the Minister's powers to make regulations; and to amend certain definitions; and to provide for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

### Amendment of section 1 of Act 69 of 1996

1. Section 1 of the Special Pensions Act, 1996 (hereinafter referred to as the principal Act), is hereby amended by the substitution for subsections (3) and (4) of the following subsections, respectively: 5

“(3) A person who made sacrifices or served the public interest in establishing non-racial democratic constitutional order and who is a citizen, or entitled to be a citizen, of the *Republic*, has the right to a *pension* in terms of *this Act* if that person— 10

(a) was prevented from providing for a *pension* because, prior to 2 February 1990, that person suffered a *permanent and total disability* arising out of any of the circumstances listed in subsection (1)(b)(i) or (iii); or

(b) complies with the criteria contemplated in subsection (1), and submits proof to the satisfaction of the *Board* that he or she suffers from a terminal disease. 15

(4) A *pensioner* who qualifies for a *benefit* in terms of subsection (1) is entitled to receive a *pension*, payable monthly, commencing on the first day of the month during which that person attains the age of [60] 35 years.”.

### Amendment of section 6 of Act 69 of 1996

2. (1) Section 6 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 20

“(1) Any person who applies for a *benefit* in terms of *this Act* must—

- (a) (i) complete an *application* form as set out in Schedule 2;
- [(b)](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
- [(c)](iii) submit the *application* form to the *Board* on or before the *closing date*; or 5
- (b) on or before the *closing date* complete and submit to the *Board* a form with the heading ‘BIOGRAPHICAL PROFILE OF MEMBERS OF EX-BANNED POLITICAL ORGANISATIONS’ which was issued by the Department of Finance.”.
- (2) Subsection (1) must be regarded as having taken effect on 1 December 1996. 10

#### **Amendment of section 9 of Act 69 of 1996**

3. Section 9 of the principal Act is hereby amended by the deletion of subsection (7).

#### **Repeal of section 11 of Act 69 of 1996**

4. Section 11 of the principal Act is hereby repealed.

#### **Amendment of section 16 of Act 69 of 1996** 15

5. Section 16 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:  
“(1) The *Minister*, in consultation with the President, must **[from persons nominated in accordance with subsection (2)]** appoint appropriate persons to be either full-time or part-time members of the *Board*, and must fill any vacancies on the *Board* as they arise by appointing **[from the persons so nominated]** appropriate persons.”; and 20
- (b) by the deletion of subsection (2).

#### **Amendment of section 27 of Act 69 of 1996**

6. Section 27 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 25
- “(1) The *Minister* may dissolve the *Board* at any time after the *Board* has completed its activities, but not later than **[2] four** years after the *commencement date*.”.

#### **Amendment of section 28 of Act 69 of 1996** 30

7. Section 28 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:
- “(1) There is hereby established a Special Pensions *Review Board* consisting of a **[judge of the Supreme Court]** person with appropriate legal experience as its Chairperson and two other members, one of whom must be an *actuary*.”. 35

#### **Amendment of section 29 of Act 69 of 1996**

8. Section 29 of the principal Act is hereby amended by the deletion of the word “and” at the end of paragraph (a) of subsection (1) and the insertion after the said paragraph (a) of the following paragraph:
- “(aA) prescribing alternative measures which may be followed if it is impossible for an *applicant* to provide a certified copy as contemplated in Schedule 2 to accompany his or her *application*; or”.

#### **Amendment of section 31 of Act 69 of 1996**

9. Section 31 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for the definition of “application” of the following definition: 45
- “ ‘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);” and  
 (b) by the substitution in subsection (1) for the definition of “dependant” of the following definition:  
 “ ‘dependant’ means an *applicant* in respect of whom a deceased person—  
 (a) was legally liable for maintenance;  
 (b) was not legally liable for maintenance, if the *applicant*—  
 (i) was at the time of the death of the deceased in fact dependant on the deceased for maintenance;  
 (ii) is the spouse of the deceased, including a party to a customary union or a union recognised as a marriage under any Asian religion;  
 (iii) is a child of the deceased, including a posthumous child, an adopted child and a child born out of wedlock; or  
 (c) would have become legally liable for maintenance, had the deceased not died;”.

### Substitution of Schedule 3 to Act 69 of 1996

10. 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 [45] 50	6 000 [PLUS 1 200 for each year of service exceeding 5 years but less than or equal to 20 years with maximum amount of 24 000]
[45] 50 but younger than 65	12 000 PLUS 1 200 for each year of service exceeding 5 years but less than or equal to 20 years, with maximum amount of 30 000
65 and older	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”.

#### Amendment of law

11. The law referred to in the second column of the Schedule is hereby amended to the extent set out in the third column of the Schedule.

#### Short title and commencement

12. This Act is called the Special Pensions Amendment Act, 1998, and takes effect on a date determined by the President by proclamation in the *Gazette*.

**SCHEDULE**

(Section 9)

No. and year of law	Short title	Extent of repeal
Act No. 84 of 1976	Military Pensions Act, 1976	The amendment of section 1 by the substitution in subsection (1) for the definition of “military service” of the following definition: “ <b>‘military service’</b> includes— <i>(a)</i> <u>naval, air or military service or training being performed or undergone by a member in terms of the Defence Act;</u> <i>(b)</i> <u>military service or training performed or undergone in a political organisation by any person entitled to a pension in terms of the Special Pensions Act, 1996 (Act No. 69 of 1996);”</u> .

## **MEMORANDUM ON THE OBJECTS OF THE SPECIAL PENSIONS AMENDMENT BILL, 1998**

Since the commencement of the Special Pensions Act, 1996 (Act No. 69 of 1996) ("the Act"), on 1 December 1996, several problems have been experienced with the application of the Act. The Bill proposes certain amendments to the Act in order to overcome those problems. The principal amendments introduced by the Bill are the following:

### **Clause 1**

1.1 Section 1(3) of the Act provides that a person who suffered a permanent or total disability arising out of circumstances listed in section 1(1)(b)(i) or (iii) has a right to a pension in terms of the Act. A great number of applications received, qualify in terms of section 1(1)(b)(i) or (iii), but the permanent and total disability did not arise from such circumstances and the persons are therefore not eligible to receive benefits. The persons concerned suffer from or have terminal diseases such as cancer or HIV and are unable to sustain themselves. Access to their special benefits will result in great relief both to them and their families. Clause 1 seeks to extend the benefits to all totally and permanently disabled citizens who made sacrifices or served the public interest in establishing a non-racial and democratic order in South Africa, irrespective whether or not the disability was as a result of circumstances listed in section 1(1)(b)(i) or (iii) of the Act.

1.2 In terms of section 11 of the Act members aged 35 to 49 years may only receive a special pension from the age of 50 years. This early pension is then reduced according to a formula set out in that section. The reason for the qualifying age of 50 years relates to the underlying aim of special pensions, namely to compensate for the loss of opportunity to ensure adequate pension provision and not for loss of income. In practice, however, many of the beneficiaries are destitute and in need of their entire pension benefit. They are also significantly disadvantaged by the prescribed reduction. It is proposed in clause 1 that all dormant pensioners older than 35 years and younger than 50 years be paid the minimum annual pension of R6 000 per annum until the age of 50 years, upon which the normal pension benefits will be payable excluding the 3% downward adjustment.

### **Clause 2**

2. During the initial phase of the special pensions initiative, a biographical form was distributed to potential applicants for the purpose of gathering information on the profile of the special pensioners population. After the commencement of the Act, the biographical form was accepted as an application form for a special pension. However, a different form is prescribed in the Act. The acceptance of the biographical form is not legal and clause 2 seeks to retrospectively validate the acceptance of the biographical form.

### **Clause 3**

3. Section 9(7) of the Act determines that a person serving as a member on any legislature and who qualifies for a special pension may not receive the special pension benefit before his or her 60th birthday or until his or her term of office terminates, whichever is the later. These persons are disadvantaged if they are compared to other persons who are 60 years and older and who have other occupations since they may receive pension benefits whether they work, or not. Clause 3 seeks to remedy such disadvantage.

### **Clause 4**

4. The amendment proposed in clause 4 is as a result of the amendment explained in 1.2 above.

**Clause 5**

5. In terms of section 16 of the Act the Minister appoints the members of the Special Pensions Board from persons nominated by a committee which the Minister establishes for that purpose. The prescribed procedure results in delays in the appointment of members of the Board. In order to avoid delays, it is proposed in clause 5 that the Minister be empowered to appoint members without first having to establish a committee and obtain nominations therefrom.

**Clause 6**

6. Seeing that the age group 35 to 49 years now qualifies for a special pension, and taking into account the backlog, it is proposed that the term of office of the Board be extended to four years.

**Clause 7**

7. The extent of the activities of the Special Pensions Review Board does not justify the appointment of a judge as chairperson and it is proposed that a person with appropriate legal experience would suffice.

**Clause 8**

8. Clause 8 seeks to extend the Minister's power to make regulations in order that the Minister may prescribe alternative measures which may be followed in cases where it is impossible for an applicant to furnish the Board with certified copies of his or her identification document, marriage certificate, etc.

**Clause 9**

9. Clause 9 seeks to extend the definition of "dependant" to include ascendants and descendants. At present a dependant is limited to a natural child or parent of a deceased pensioner.

**Clause 10**

10. The amendment proposed in clause 10 is also as a result of the amendment explained in 2.2 above.

**Clause 11**

11. In terms of section 14 of the Act a person who receives a special pension benefit may also apply for and receive a military pension in terms of the Military Pensions Act, 1973 (Act No. 84 of 1973). Military service is defined in the Military Pensions Act, 1973, to include naval, air or military service being performed or undergone by a member in terms of the Defence Act, 1957 (Act No. 44 of 1957). Clause 11 seeks to amend the definition to include persons who performed or underwent military service or training in a political organisation and who are entitled to a pension in terms of the Act.

**PARLIAMENTARY PROCEDURE**

The State Law Advisers and the Department of Finance are of the opinion that this Bill must be dealt with in accordance with 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.

