

REPUBLIC OF SOUTH AFRICA

SPECIAL PENSIONS AMENDMENT BILL

*(As introduced in the National Assembly as a section 75 Bill; published in
Government Gazette No. 27981 of 30 August 2005)
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

[B 28—2005]

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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.

BILL

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 March 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.

BE 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 1 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 Section 3 of the principal Act is hereby repealed.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 March 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 March 2006.

(3) Any *application* for *benefits* in terms of this Part which has been submitted to the *Board* before 31 March 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 March 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 other *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 21, if the *orphan* is a full-time student on the date of the *pensioner’s* death; or

- (iii) 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 *wives*, 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 *wives*, *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*, but not later than three months thereafter.

(2) Notwithstanding subsection (1)(b), the *Board* may condone any late *application* if the *Board* is satisfied that, for reasons beyond the control of the *applicant*, the *application* could not be submitted on or before the lapsing of the period referred to in subsection (1), but no *applications* received after six months of the death of the *pensioner* may be condoned.

(3) 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 1B

DETERMINATION BY BOARD AND APPEAL”

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 the Board 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.”.

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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:

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“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.”.

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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.”;

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(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.”;

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(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 6D 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

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

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“(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.”.

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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

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12. Section 14 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“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 or 6D may apply for, and if qualified, may receive payments also in terms of either or both—”;

- (b) by the substitution in subsection (4) for paragraph (a) of the following paragraph: 5

“(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 10
 (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 15

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

“Reconsideration 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*. 20

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

Repayment of *benefit* to which person was not entitled 25

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— 30

- (a) allow repayment in instalments; 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— 35

- (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: 40

“(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).”. 45

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. 1 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.”. 5

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** 10

27. (1) The *Minister* must dissolve the *Board* [after the *Board* has completed its activities] as soon as possible after the commencement of the Special Pensions Amendment Act, 2005, but not later than 60 days after 31 March 2006.

(2) Upon dissolution of the *Board*— 15

- (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]. 20**

(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*. 25

(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 30

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). 35

(7) Upon dissolution of the *Review Board*, the *Minister* is responsible for the performance of all the functions 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: 40

“‘*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: 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); or

(c) an *application* on the form referred to in section 6G;” 50

- (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 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
- (e) by the insertion after the definition of “*Minister*” of the following definition:
 ‘*orphan*’ means a child of the deceased *pensioner*, including a posthumous child, an adopted child and a child born out of wedlock, that has no surviving parent responsible for his or her maintenance;”.

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] until death	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 at the commencement date	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
Natural 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:

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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. 10

**MEMORANDUM ON THE OBJECTS OF THE SPECIAL PENSIONS
AMENDMENT BILL, 2005**

1. BACKGROUND

- 1.1 The Special Pensions Act, 1996 (Act No. 69 of 1996), gives effect to section 189 of the Interim Constitution, 1993 (Act No. 200 of 2003), in that it provides for the payment of special pensions to persons (and survivor's lump sums to their eligible dependants), who made sacrifices or served the public interest in establishing a non-racial democratic constitutional order and as a result were unable to or prevented from providing for pensions for a significant period.
- 1.2 A period of more than eight years has elapsed since the promulgation of the Special Pensions Act on 1 December 1996. The period provided for applications in terms of the Act is 12 months from the commencement date of the Act. That period expired on 1 December 1997. Subsequent to 1 December 1997 a number of late applications have been condoned in terms of the Act.
- 1.3 It is assumed that most persons that qualified for a pension or survivor's lump sum in terms of the Act would have applied in the extended period allowed for late applications. An extension of the period for application, or continued consideration of late applications, is no longer prudent because of the risk of fraudulent claims. This risk is increasing as a result of a lack of information and difficulties experienced in the verification of information, due to the time lapse since 1996.
- 1.4 The Special Pensions Amendment Bill therefore proposes the lapsing of the provisions providing for the qualification for pensions and survivor's lump sums on 31 March 2006. This means that the consideration of new applications for pension or survivor's lump sums after this date will no longer be possible.
- 1.5 The Special Pensions Amendment Bill further provides for better alignment of special pensions to benefits afforded to spouses and dependants of pensioners under other pension schemes, taking into account equity and affordability. In this regard provision is made in the Bill for a spouse's and orphan's pension, and for funeral benefits.

2. OBJECTS OF THE BILL

The Bill seeks to amend the Special Pensions Act, 1996 (Act No. 69 of 1996), by providing for—

- 2.1 the lapsing of Part 1 of the Act, providing for pensions and survivor lump sums, on 31 March 2006;
- 2.2 a new Part that provides for an additional benefit to be paid to pensioners and the extension of benefits for which surviving spouses and orphans may qualify on the death of pensioners. These benefits are:
 - lump sum benefits for surviving spouses or dependants on the death of a pensioner;
 - monthly pension for surviving spouses or orphans on the death of a pensioner, which will apply retrospectively from 1 December 1996; and
 - funeral benefits for pensioners, surviving spouses and orphans;
- 2.3 the disestablishment of the Board 60 days (and Review Board 90 days) after the lapsing of part 1 of the Act, and for the head of pensions administration in the National Treasury and the Minister respectively to take over the Boards' responsibilities;
- 2.4 the resolution of administrative and legal difficulties relating to the implementation of the Act. The Bill allows the Board and the Review Board to

reconsider and amend a determination made by it under certain circumstances and to recover any pension or benefit paid to which a person was not entitled; and

2.5 technical and consequential amendments.

3. ORGANISATIONS AND INSTITUTIONS CONSULTED

All relevant political organisations whose members will be affected by the amendment Bill have been consulted.

4. FINANCIAL IMPLICATIONS TO THE STATE

The funeral benefit to be paid to pensioners and the extension of benefits for which surviving spouses and orphans may qualify on the death of pensioners, as provided for in the Bill will have financial implications for the State.

5. PARLIAMENTARY PROCEDURE

- 5.1 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.
- 5.2 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.