



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

SPECIAL PENSIONS AMENDMENT BILL

Briefing to the Select Committee on Finance

25 June 2008

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Structure of briefing

- Overview of the SP A/B
- The SP A/B:
 - Most significant amendments
 - Brief clause by clause discussion



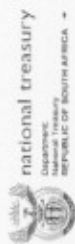
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Background

- Special Pensions Act, 1996 gave effect to section 189 of the Interim Constitution, 1993
- The Act provides for the payment of 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

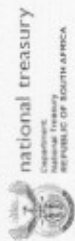


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Background

- Amendments to the Act were passed in 1998, 2003 and 2005
- The amendments primarily –
 - increased benefits
 - Extended access to benefits
 - addressed technical and implementation difficulties
- Despite amendments inequities remain in the treatment of survivors & pensioners



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Objective of Bill

- The main objective of the Bill is to alleviate and, where possible, remove these inequities within available resources
- A number of technical amendments are also proposed to improve the administration of the Act

Summary of amendments

- The amendments provide for –
 - the right to a pension for persons who were 30 but not yet 35 on 1 December 1996
 - the right to a spouse's or orphan's pension for –
 - surviving spouses or orphans of a person who was 30, but under 35, on 1 December 1996 and had died prior to the date on which the amendments takes effect
 - surviving spouses or orphans who received a survivor's lump sum benefit only in terms of the Act

Summary of amendments

- The amendments provide for –
 - the right to funeral benefits for persons referred to above
 - the migration of pensioners from lower to higher pensions as they reach the age threshold recognised in the schedules
 - the correction of an error that occurred in Schedule 3 during the processing of the Special Pensions Amendment Act, 2005
 - the effective administration of the Act
 - a number of technical amendments

THE AMENDMENTS: DETAILED DISCUSSION

Right to pension: 30 but not yet 35 on 1 Dec 1996 (clause 6A*bis*)

- The Act provided that only persons 35 and older on 1 December 1996 were entitled to a pension
- The rationale for the age qualification was that the Act intended to make provision for pensions to persons whose ability to make provision for a pension was impacted by their full time involvement in the struggle for democracy
- It was Parliament's view that persons under the age of 35 still had sufficient opportunity to obtain employment and to make provision for a pension
- It, however, has become apparent that significant numbers of younger persons have not secured adequate alternative livelihoods

Right to pension: 30 but not yet 35 on 1 Dec 1996 (clause 6A*bis*)

- The revised age-criteria of 30 is informed by the fact that in qualifying for a pension an applicant would have had to be at least 19 in 1985
 - The 1985-date relates to the existing requirement that a person must have been prevented from providing for a pension for a total or combined period of at least five years prior to 2 February 1990
 - The age of 19 in 1985 appears to be reasonable given the fact that, according to general trends in the pension environment, persons normally only start providing for a pension at the age of 25 years

Right to pension: 30 but not yet 35 on 1 Dec 1996 (clause 6Abis)

- A limited period for applications is provided; persons who qualify must apply by 31 December 2010
- At the time that the Act was passed in 1996 and subsequently on 8 November 2005 and 16 November 2006 the National Assembly requested the Executive to develop alternate mechanisms to address the plight of those who meet all the qualification criteria, except the age criterion, provided for in the Act
 - The income security of such persons will be addressed by extending the right to a pension to such persons

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Extension of right to spouse's and orphan's pensions

- The 2005-Amendment Act introduced a monthly pension for surviving spouses or orphans of pensioners (persons who were in receipt of a special pension at the time of their death)
- Surviving spouses and orphans of persons who received a survivor's lump sum benefit in terms of the Act because of the death of a person during the struggle were not entitled to this benefit
- Amendments are proposed to remove this anomaly
- Further amendments are proposed to extend these benefits to spouses or orphans of a person who was 30 but under 35 on 1 December 1996 and had died prior to the date on which this A/B takes effect

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Extension of right to funeral benefits

- The funeral benefits of pensioners and surviving spouses or orphans are entitled to be extended to –
 - persons who received a survivor's lump sum benefit only in terms of the Act; and
 - surviving spouses or orphans of a person who was 30, but under 35, on 1 December 1996 and had died prior to the date on which this A/B takes effect

Migration of pensioners between different age categories

- An error occurred during the certification of the Special Pensions Amendment Act, 2005
- The error related to the pension payable to persons in the age category 50 to 65
- In resolving the error the significant disparity in pension payable to those persons who were under the age of 65 and those above 65 on 1 December 1996 was highlighted
- An amendment to Schedule 3 of the Act that provides for pensions payable, is therefore proposed

Migration of pensioners between different age categories

- The amendment provides for upward adjustment of pensions on attainment of specific age thresholds
- Persons aged 50 – 65 on 1 December 1996 will qualify for a higher pension with effect from the age of 65
- Persons aged 30 to 50 on 1 December 1996 will migrate to the 50 – 65 pension level with effect from the age of 50

Cost associated with the amendments

- Extension of the right to a pension to persons who were 30 but not 35 on 1 December 1996
 - R1.4 billion over the expected lifespan of pensioners
- Extension of the right to a spouse's or orphan's pension to persons who received a survivor's lump sum benefit only in terms of the Special Pensions Act
 - R600 million over the expected lifespan of beneficiaries
- Extension of the right to a spouse's or orphan's pension to surviving spouses or orphans of a person who was 30, but under 35, on 1 December 1996 and had died prior to the date on which the Amendment Act takes effect
 - R200 million over the expected lifespan of beneficiaries

Cost associated with the amendments

- The costs associated with the extension of the right to funeral benefits are included in the amounts above
- Migration of pensioners between the different categories provided for under Schedule 3 as they age
 - R1,5 billion over the expected lifespan of pensioners
 - This means that a person who was –
 - 30 on 1 December 1996 will on reaching the age of 50, migrate to the 50 to 65 category
 - 50 on 1 December 1996 will on reaching the age of 65, migrate to the 65 and older category

Effective administration & technical amendments

- The 2005-Amendment Act provided for the dissolution of the Special Pensions Board and Review Board and for their functions to be performed by the National Treasury and the Minister of Finance, respectively
- Subsequent to the dissolution of these boards a number of provisions relating to their functions created legal uncertainty or became redundant
- The proposed amendments remove all redundant provisions, provide legal certainty, and improve the provisions relating to the administration of the Act

Effective administration & technical amendments

- The National Treasury is made responsible for administering the Act and a new appeal board appointed by the Minister is provided for
- The Minister is empowered to designate another department, government component or public entity to administer the Act in the place of the National Treasury should this be deemed appropriate
- A number of consequential amendments to clarify the Minister's powers in light of the new administrative arrangements are also made

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General comments

- It needs to be noted that new applications for persons 35 years and older on 1 December 1996 are not provided for in the proposed amendments
- The 2005-Amendment Act provided for 31 December 2006 as the cut-off date for new applications from these persons
- This provision was informed by policy principles endorsed by Cabinet in July 2005, passed by Parliament in November 2005 and enacted by the President in January 2006
- The policy principles were informed by, amongst others, the fact that a period of more than 10 years had lapsed since the promulgation of the Special Pensions Act in 1996

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General comments

- Former liberation movements, as well as relevant Military Veterans Associations, have continuously been urged to inform their members of the Act and its provisions
- A significant number of fraudulent applications have been received over the past years
- During 2005, the Directorate of Special Operations arrested several people in this regard
- As a result, the National Treasury has initiated a forensic investigation to uncover further fraudulent applications
- The Special Investigating Unit through proclamation by the President is conducting this investigation
- An extension of the period for application is no longer prudent as the risk of fraudulent claims is increasing

Consultation process

- These amendments take into account representations by former liberation movements and relevant Military Veterans Associations
- Published in the *Gazette* on 9 May 2008 and placed on the NT's website inviting interested parties to comment to Parliament

Amendments effected by PCOF: A-Bill

- Disqualification because of conviction removed as it does not find application in the pension environment and affects vested rights without adhering to the principles of fair administrative justice.
- Period within which spouses and orphans must apply for benefits extended from 12 months to 36 months.

Contact details

NATIONAL TREASURY	
Andrew Donaldson Deputy Director-General: Public Finance andrew.donaldson@treasury.gov.za Tel: (012) 315 5727	Jo-Ann Ferreira Chief Director: Legislation Jo-ann.ferreira@treasury.gov.za Tel: (012) 315 5263
Marion Mbina Mthembu Chief Director: Administration Services marion.mbinda@treasury.gov.za Tel: (012) 315 5005	
SPECIAL PENSIONS ADMINISTRATION	
Mongezi Mngqibisa General Manager- Programme 8 mongezi.mngqibisa@gepf.co.za Tel: (012) 319 1261	