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GENERAL NOTICE

NOTICE 3452 OF 2002**NATIONAL TREASURY****PUBLICATION OF THE GOVERNMENT EMPLOYEES PENSION LAW AMENDMENT BILL, 2003**

The Minister of Finance intends tabling the Government Employees Pension Law Amendment Bill, 2003 in Parliament during the first Parliamentary term. The Bill is published in accordance with Rule 241(1)(c) of the Rules of the National Assembly.

Interested persons and institutions are invited to submit written representation on the Bill to the Secretary to Parliament by no later than 20 January 2003.

All submissions must be addressed to:

**The Secretary to Parliament
c/o Messrs A Hermans/J Michaels/J Russouw
Committee Section
Parliament of the RSA
P.O. Box 15
CAPE TOWN
8000**

You can contact Messrs A Hermans/J Michaels or J Russouw at:

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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 Government Employees Pension Law, 1996, so as to provide for the recognition of service rendered in a non-statutory military force by a member of the Fund as pensionable service; and to provide for matters connected therewith.

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

Amendment of section 1 of Proclamation 21 of 1996

1. Section 1 of the Government Employees Pension Law, 1996, is hereby amended by the insertion, after the definition of “negotiations”, of the following definition: 5

“ ‘former member of a non-statutory force’ means any former Umkhonto we

Sizwe or Azanian People’s Liberation Army members whose names appear on the Certified Personnel Register or Personnel List who joined either of those forces on or before 31 December 1990, and who have entered into an agreement with the Department of Defence (DOD) as civilian (Public Service Act Personnel) or Defence Act Personnel (uniform) members through the integration or normal personnel acquisition process, on or before the date referred to in Section 3 read with Section 5 of the Termination of Integration Intake Act, 2001 and also includes such members who are no longer in the employ of the DOD; 10 15

former Umkhonto we Sizwe or Azanian People’s Liberation Army members within the South African Police Service (SAPS), who joined either of those forces on or before 31 December 1990, and who have entered into an agreement with the South African Police Service as civilian or South African Police Services Act personnel through the integration or normal personnel acquisition process, on or before the date referred to in section 3 read with section 5 of the Termination of Integration Intake Act, 2001 and also includes such members who are no longer in the employ of the SAPS; 20

former members of the former Department of Intelligence and Security of the African National Congress, the former Pan African Security Services of the Pan African Congress, Umkhonhtho we Sizwe and former members of the ANC or Azanian People’s Liberation Army of the PAC whose names appear on the presidential list used for the amalgamation of the former Intelligence Services in 1995, who joined either of those forces on or before 31 December 1990, and who have joined the National Intelligence Agency or the South African Secret Service between 1 January 1995 and 31 March 2003; and persons as defined above, who took up employment with the rest of the 25 30

employer on or before the date referred to in Section 3 read with Section 5 of the Termination of Integration Intake Act, 2001 and also includes such members who are no longer in the employ of the employer. Provided that for purposes of these Rules the following persons are deemed to be NSF members:

- (a) persons who otherwise qualify as NSF members but who were never admitted to membership of the Fund by virtue of the fact that they concluded short term contracts with the employer; and
- (b) persons who otherwise qualify as NSF members who have been paid the benefits owing to them by the Fund upon cessation of their membership, but who would have been entitled to an additional or greater benefit had their NSF service been taken into account.

Insertion of section 30A in Proclamation 21 of 1996

2. The following section is hereby inserted in Government Employees Pension Law, 1996, after section 30:

“Recognition of Pensionable Service for former members of non-statutory forces

30A. (1) Any former member of a non-statutory force may in accordance with the rules apply to the Fund to have any service as a member of a non-statutory force recognized as pensionable service.

(2) If a person contemplated in subsection (1) receives or has received any benefit in terms of the Special Pensions Act, 1996 (Act No. 69 of 1996), other than a benefit received as a dependant, the benefit payable by the Fund shall be reduced in accordance with the rules.”

Short title and commencement

3. This Act is called the Government Employees Pension Law Amendment Act, 2003 and comes into effect on a date fixed by the President by Notice in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE GOVERNMENT EMPLOYEES PENSION LAW AMENDMENT BILL, 2003

The purpose of the Government Employees Pension Law Amendment Bill is to make provision for an increase in pensions payable to certain pensioners of the GEPP or their beneficiaries having regard to such pensioners' service in Non-Statutory Forces.

Section 224 (2) of the Interim Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), provides for the integration of seven former forces constituting the SANDF. (In terms of Schedule 6 item 24(1) of the new Constitution, 1996 (Act No. 108 of 1996), the said section 224 continues in force as if the Interim Constitution has not been repealed.) Former NSF members have not had the opportunity to obtain membership and contribute to a pension fund prior to the integration. This created disparity between members of the former Statutory Forces and former Non-Statutory Forces regarding the recognition of pensionable service. The aim was to place former NSF members in the Department of Defence in a similar position to that of the former Statutory Force members regarding the recognition of previous service for pension purposes.

FINANCIAL IMPLICATIONS

An existing collective agreement of the Public Service Co-ordinating Bargaining Council, PSCBC Resolution 7/98, provides for an increase in the pensionable service of employees disadvantaged by past discrimination. In terms of the agreement, the GEPP set aside an amount of approximately R1.5 billion to fund the additional cost. The abovementioned disparity between former Statutory and Non-Statutory Force members in respect of the calculation of pension benefits falls within the ambit of resolution 7/98.

The total cost amounts to R766 million of which the employer's portion amounts to R501 million and that of the members to R265 million. R501 million of the funds set aside under the PSCBC Resolution 7/98 will be used to finance the employer's responsibility. Affected employees will be responsible for a part of the additional cost. For members who are unable to pay their share of the cost, additional pensionable service granted will be reduced accordingly.

Affected employees will be excluded from any benefits, other than those received as a dependant, payable under the Special Pensions Act, 1996 (Act No. 69 of 1996). Members who have already received benefits under the Special Pensions Act will repay such benefits or have their pensionable service granted reduced.

COMMUNICATION IMPLICATIONS

The Department of Defence and other affected government departments will communicate the contents of the changes brought about by the Bill, to the relevant persons.

CONSTITUTIONAL IMPLICATIONS

The Bill gives effect to section 224 (2) of the Interim Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993). This section provides for the integration of seven former forces constituting the SANDF. In terms of item 24(1) of Schedule 6 to the new Constitution, 1996 (Act No. 108 of 1996), the said section 224 continues in force as if the Interim Constitution had not been repealed.

OTHER PARTIES/BODIES CONSULTED

DPSA
Department of Defence
The South African Police Service
National Intelligence Agency

PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Finance are of the opinion that the Bill must be dealt in accordance with the procedure established by section 75 of the Constitution since it does not contain any provision to which the procedure set out in section 74 or 76 of the Constitution applies.