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**GOVERNMENT NOTICE**

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**NATIONAL TREASURY**

No. 1073

8 August 2003

**NATIONAL TREASURY: PENSIONS ADMINISTRATION****AMENDMENT OF THE RULES OF THE GOVERNMENT  
EMPLOYEES PENSION FUND**

Under the powers vested in me under sections 29 and 6A of the Government Employees Pension Law, 1996 (Proclamation No.21 of 1996), I hereby amend the rules of the Government Employees Pension Law, as set out in the Schedule.

T. A. MANUEL  
Minister of Finance

**SCHEDULE*****Amendment of the Rules made in terms of the Government  
Employees Pension Law, 1996*****1. Amendment of rule 1 of the Rules****1.1 Rule 1 is hereby amended by -****1.1.1 The insertion of the definition of "eligible child" after the  
definition of "D Factor".**

"eligible child" means the natural or adopted (as meant in the Child Care Act, 74 of 1983 as amended) child of a member or pensioner or a deceased member or pensioner who:

- is alive and under the age of 18; or
- is under the age of 22 and is in the opinion of the Board a full time student; or
- is a child over the age of 18 and who, in the opinion of the Board, is disabled and was factually dependent on the member or pensioner immediately before the death of such member or pensioner.

**1.1.2 The insertion of the definition of "orphan" after the definition of  
"interest".**

"orphan" means an eligible child of whom both parents, natural or adopted, are deceased;

- 1.1.3 The insertion of the following at the end of the definition of "pensionable service":

"or to 366 days in any leap year, whichever is applicable;"

- 1.1.4 The definition of "responsible Minister" is hereby amended by the insertion of the words "public service and" after the word "responsible for" and the deletion of the words "state expenditure".

- 1.1.5 The definition of "spouse" is hereby substituted with the following definition:

"spouse", shall mean the following for the purpose of eligibility to benefits:

A person who is

- a lawful husband or wife; or
- a life partner (including same sex life partner); or
- a husband or wife in terms of the Recognition of Customary Marriages Act, 1998 or the tenets of any religion, of the member or pensioner at the date of the member's or pensioner's death: Provided that a member or pensioner:-

- (a) should register with the Fund his or her spouse;
- (b) should register with the Fund all spouses in terms of the Recognition of Customary Marriages Act, 1998 or the tenets of any religion;
- (c) who has (a) spouse(s) in terms of the Recognition of Customary Marriages Act, 1998 or the Marriages Act, 1961, or the tenets of any religion may not register a life partner with the Fund;

Provided further that registration of a person as a spouse will be *prima facie* proof of being a spouse.

Provided further that a person who is not registered as a spouse may provide proof to the satisfaction of the Board that he or she is a spouse.

- 1.1.6 The insertion of the definition of "transfer benefit" for purposes of the Annexure to the Rules after the definition of "spouse"

"transfer benefit" for purposes of the Annexure to the rules shall mean a transfer benefit to an approved retirement fund payable in terms of the provisions of the Annexure equal to the aggregate of—

- (i) a gratuity calculated at 7,5% of the member's final salary multiplied with the period of his or her pensionable service, and increased by ten percentage points for each full year of pensionable service between 5 and 15 years of pensionable service, which amount shall become an entitlement of the member on the condition that he or she deposits the amount into the approved retirement fund immediately upon becoming entitled thereto; and
- (ii) the difference between the member's actuarial interest in the Fund and the amount referred to in paragraph (i), if any;

subject to such transfer being subject to the rules of the approved retirement fund specifying that, with reference to the transfer benefit, any subsequent lump sum benefit payable by that fund or any successor fund to the member and/or his beneficiaries shall be limited to one third of the said transfer benefit, with interest. The balance of the member's transfer benefit with interest, after deduction of any lump sum payment referred to above, shall be applied for the purchase of an annuity, albeit immediately or upon the member's ultimate retirement.

1.1.7 the renumbering of the sub rules of rule 1.

## **2. Amendment of rule 4 of the Rules**

2.1 Rule 4.1 is hereby substituted by the following rule -

### **"4.1 Board of Trustees**

4.1.1 The Board is responsible for the proper and efficient management of the Fund. The Board shall comply with all the obligations imposed upon it by the rules and do everything necessary to ensure the proper functioning of the Fund.

4.1.2 Subject to the provisions of rule 4.1.7, the term of office of a trustee shall be four years and the Board shall consist of -

- (a) eight persons, referred to in the rules as 'the employer nominees' designated by the responsible Minister, at least one of whom must have expertise (in the opinion of the Minister) in the following:
  - (i) financial management and investments;  
and/or
  - (ii) the management and organisation of pension funds in general;

- (b) eight persons, referred to in the rules as 'the employee nominees', in terms of rule 4.1.3.

4.1.3 The employee nominees shall consist of:

- (a) one pensioner representative elected by postal ballot by pensioners;
- (b) one person elected by members employed by the South African National Defence Force, the National Intelligence Agency and the South African Secret Service; and
- (c) six representatives elected by the labour representatives in the Public Service Coordinating Bargaining Council to depict proportionate union membership in the Public Service Coordinating Bargaining Council.

4.1.4 The chairperson of the Board is elected by the Board, from its own ranks at the first meeting of such Board by voting in terms of rule 4.1.12: Provided that in the event of an equality of votes, a new round of voting will take place and if such new round of voting also results in an equality of votes the name of each candidate shall in the presence of the meeting be written on a piece of paper and such papers shall be placed in a suitable container and one of these papers shall be drawn from the container. The candidate whose name is so drawn shall be deemed to have been duly elected.

4.1.5 The trustees will be compensated for their services and expenses on the basis determined by the Board.

4.1.6 A substitute is designated for each trustee by the persons, organisations or structures referred to in rule 4.1.2 (a). A substitute acts in the place of the trustee on behalf of whom he or she was designated as substitute in such a trustee's absence, and he or she then has all the competencies and obligations of a trustee.

4.1.7 A trustee or his or her substitute ceases to be a trustee or a substitute, as the case may be, when -

- (a) his or her term of office expires;
- (b) he or she dies;
- (c) he or she resigns from his or her office as trustee or substitute by way of a notice in writing

- addressed to the chairperson of the Board;
- (d) he or she becomes physically or mentally unfit and, due to such unfitness, he or she is not, in the opinion of the Board in consultation with his or her principal, capable of properly performing his or her duties as trustee or substitute;
  - (e) his or her estate is sequestrated or renounced on behalf of his or her creditors;
  - (f) he or she is convicted in the Republic or elsewhere of theft, fraud, forgery or the uttering of a forged document, or perjury, or he or she is sentenced to imprisonment without the option of a fine;
  - (g) he or she is discharged by a court of law from any position of trust on account of misconduct;
  - (h) he or she becomes incompetent to be a director of a company in terms of the Companies Act, 1973 (Act 61 of 1973);
  - (i) he or she contravenes rule 4.1.18 or neglects to conform thereto, should the Board in consultation with his or her principal so decide; and
  - (j) he or she is replaced by another person by his or her principal, which replacement must be conveyed in writing to the chairperson of the Board.

If another person is appointed in the place of a trustee or substitute who ceases to be a trustee or substitute in terms of this rule, such other person, subject to rule 4.1.6, acts in the place of such trustee or substitute for the duration of the term of office of the person in whose place he or she was appointed.

4.1.8 The Board elects a vice-chairperson from its ranks and in this regard the provisions contained in rule 4.1.4 shall apply *mutatis mutandis*. In the absence of the chairperson as well as the vice-chairperson at any meeting of the Board, the trustees present at such a meeting, elect a chairperson from their ranks in which case the arrangement set out in rule 4.1.4 *mutatis mutandis* applies.

4.1.9 Two-thirds of the trustees is a quorum. If a quorum is not present the chairperson postpones the meeting for seven days and informs the trustees of such meeting and trustees present at that meeting then form a quorum.

4.1.10 The Board shall meet regularly to attend to the affairs of the Fund. The chairperson or if he or she is not available

the vice-chairperson may, when he or she deems it necessary, convene a meeting of the Board to discuss matters concerning the Fund.

- 4.1.11 Any trustee may with the written support of two other trustees request the chairperson, or if he or she is not available the vice-chairperson, in writing, to convene a meeting of the Board to deal with the business set out in such a request. The chairperson, or if he or she is not available the vice-chairperson, convenes such a meeting of the Board within 21 days of receiving the request.
- 4.1.12 Every trustee including the chairperson, has one vote at all meetings of the Board and subject to rule 4.1.9, the decision of the majority of trustees present at a meeting shall constitute a decision of the Board.
- 4.1.13 During a meeting of the Board votes are cast by the raising of hands unless the majority of trustees present at the meeting request that voting takes place by way of secret ballot.
- 4.1.14 The Board may adopt any arrangement in its discretion to regulate its proceedings or to delegate the performance of any of its duties to a sub-committee of the Board, subject thereto that such an arrangement must not be inconsistent with any provision contained in the Law.
- 4.1.15 Minutes are kept of every meeting of the Board. During each meeting of the Board the minutes of the previous meeting are signed by the chairperson of that meeting after approval thereof by the meeting.
- 4.1.16 A trustee who, directly or indirectly, has a pecuniary interest in any investment or contemplated investment of the Fund, or an interest in any other matter before the Board, shall disclose such interest and may not be present at that meeting when the particular matter is discussed and decided upon.
- 4.1.17 Notwithstanding any provision to the contrary contained in the rules, a minor or person who is legally incapable cannot be appointed as a trustee.
- 4.1.18 The Board may determine requirements in connection with the attendance of its meetings by trustees and substitutes, and remove from office any trustee or substitute who does not comply therewith in consultation

with his or her principal.

4.1.19 Each trustee or a substitute referred to in rule 4.1.6 shall, notwithstanding the duties as may be determined by the Board-

- (a) take all reasonable steps to ensure that the interests of members in terms of the rules of the Fund and the provisions of the Law are protected at all times, especially in the event of an amalgamation or splitting of the Fund, termination or reduction of contributions by the employer, increase of contributions by members and withdrawal of an employer;
- (b) act at all times with due care and diligence and in good faith;
- (c) avoid conflicts of interest;
- (d) act with impartiality in respect of all members and beneficiaries;
- (e) ensure that proper registers, books and records are kept, inclusive of proper minutes of all resolutions passed by the Board;
- (f) ensure that proper control systems are employed by or on behalf of the Board;
- (g) take all reasonable steps to ensure that the rules of the Fund comply with the Law, and all other applicable laws;
- (h) ensure that adequate and appropriate information is communicated to the members informing them of their rights, benefits and duties in terms of the rules of the Fund;
- (i) take all reasonable steps to ensure that contributions are paid timeously to the Fund in accordance with the provisions of the Law;
- (j) obtain expert advice on matters where Board members may lack expertise;
- (k) ensure that the operation and administration of the Fund comply with the Law, and all other applicable laws; and
- (l) adhere to the principles of privileged information and confidentiality."

2.2 Rule 4.2 is hereby amended by -

2.2.1 the deletion of the word "and" at the end of rule 4.2.8.

2.2.2 the insertion of rules 4.2.10 and 4.2.11 after rule 4.2.9:

"4.2.10 develop policies concerning the registration of



spouses, and

4.2.11 develop policies concerning the payment of benefits in exceptional or extenuating circumstances.”

### **3. Amendment of rule 7 of the Rules**

3.1 Rule 7.2 is hereby substituted with the following rule:

“7.2 The employer shall contribute to the Fund at the rate that is required to ensure that the Fund is able to meet its obligations at all times, subject to a minimum funding level of 90%. This rate shall be determined by the employer in consultation with the Board and with the Minister, with due regard to the recommendations of the most recent actuarial valuation of the Fund.”

### **4. Amendment of rule 10 of the Rules**

4.1 Rule 10.5 is hereby substituted with the following rule:

“10.5 a period during which a member was not eligible for membership of a previous fund or the Temporary Employees Pension Fund, where such period was, in the opinion of the Board, discriminatory to members.”

### **5. Amendment of rule 14 of the Rules**

5.1 Rule 14.2 is hereby amended by -

the insertion of the following rule:

“14.2.2 The member may elect, in writing when he or she retires or is discharged, to have either the gratuity in rule 14.2.1(a) or the annuity in rule 14.2.1(b) reduced in favour of the increased spouse's pension entitlement in terms of rule 14.6.2. In this case either:

- (a) the gratuity in rule 14.2.1(a) will be substituted for a gratuity calculated at 5,85 percent of his or her final salary multiplied by the period of his or her pensionable service; or
- (b) the annuity in rule 14.2.1(b) will be substituted for an annuity of one fifty-seventh of his or her final salary multiplied by the period of his or her pensionable service.”

- 5.2 the renumbering of the subrules.
- 5.3 Rule 14.2.2, renumbered as rule 14.2.3, is hereby amended by -  
the insertion of the following "and rule 14.2.2(a)" after the words "in terms of rule 14.2.1(a)".
- 5.4 Rule 14.2.3, renumbered as rule 14.2.4 is hereby amended by -  
the insertion of the following "and rule 14.2.2" after the words "in terms of rule 14.2.1".
- 5.5 Rule 14.2.4, renumbered as rule 14.2.5, is hereby amended by -  
the substitution of the reference to "rule 14.2.3(b)" in the introductory line to "rule 14.2.4 (b)".
- 5.6 Rule 14.3.3 is hereby amended by -  
the insertion of the following "or 14.2.2:" after the words "in rule 14.2.1".
- 5.7 Rule 14.3.4 is hereby amended by -  
the substitution of the reference to "rule 14.2.5" with rule "14.2.6".
- 5.8 Rule 14.5 is hereby substituted by -  
the following:

#### **14.5 Benefits on the death of a member**

14.5.1 If a member with less than 10 years pensionable service dies, a gratuity shall be paid to his or her beneficiaries or to his or her estate if there is no beneficiary equal to the greater of the member's actuarial interest and his or her final salary.

14.5.2 If a member with at least 10 years pensionable service dies, a gratuity shall be paid to his or her beneficiaries or to his or her estate if there is no beneficiary which is equal to the sum of the gratuity and five times the annuity which would have been payable to him or her in terms of rules 14.2.1(a) and (b) respectively, if he or she had retired for a reason referred to in rule 14.1.1(a) on the day of his or her death.

- 14.5.3 If a member dies and the total of such a member's period of pensionable service and his or her unexpired period of service is at least ten years, there shall be paid to the surviving spouse, if any, a spouse's pension which is equal to half of the annuity and the supplementary amount which the member would have received in terms of the provisions of rule 14.2.1 if he or she had retired on the date of his or her death in terms of a reason mentioned in rule 14.3.1(a): Provided that "pensionable service" for this purpose also includes the member's unexpired period of service. Provided further that where there is more than one spouse, the spouse's pension will be divided equally among the spouses. In the event of spouses and orphans being eligible for benefits, the deceased parent of the orphans will also be treated as a spouse for the purpose of apportioning the spouse's pension.
- 14.5.4 An orphan's pension will be payable to any eligible children equal to the following percentages of either
- (A) the annuity and the supplementary amount which the spouse was receiving immediately prior to his or her death, or
  - (B) the benefit that the deceased parent of the orphan has been allocated in terms of rule 14.5.3:
    - (a) forty percent for one eligible child;
    - (b) sixty percent for two eligible children; and
    - (c) eighty percent for three or more eligible children.
- 14.5.5 An orphan's pension payable in terms of rule 14.5.4 ceases when the child ceases to be eligible in terms of rule 1.8.
- 14.5.6 A spouse's pension which is payable to a spouse in terms of rule 14.5.3, shall not be affected in the case of a re-marriage.
- 14.5.7 The spouse's and orphan's pensions payable in terms of these rules shall be payable with effect from the last day of the month immediately following the date on which the member or pensioner concerned dies.
- 14.5.8 Annuities are payable in equal monthly instalments on or before the last day of each month.

14.5.9 If a gratuity referred to in rules 14.5.1 and 14.5.2 is payable to two or more beneficiaries, such gratuity shall be paid to any such beneficiaries and in such proportions as the Board may determine."

5.9 Rule 14.6 is hereby substituted with -

the following rules:

**"14.6 Benefits on the death of a pensioner**

- 14.6.1 If a pensioner dies within a period of five years after he or she had retired or was retired or discharged, a benefit shall be paid to his or her beneficiaries or to his or her estate if there is no beneficiary equal to the sum of the annuity which would have been payable to him or her during the period as from the first day of the month immediately following the date on which he or she dies up to and including the last day of the month in which the said period of five years would have expired had he or she not died, based on the amount of his or her annuity at his or her death. For the purpose of calculation of the benefit the additional amount payable in terms of rule 14.2.1 (c) is not taken into account. If a benefit referred to in this rule is payable to two or more beneficiaries, such gratuity shall be paid to any such beneficiaries and in such proportions as the Board may determine.
- 14.6.2 If a pensioner dies and he or she is survived by a spouse, there shall be paid to such spouse a spouse's pension which is equal to one-half of the annuity which the pensioner received on the date of his or her death: Provided that for members who opted for a reduced annuity or gratuity in terms of rule 14.2.2, the spouse's pension will be increased to three quarters of the annuity which the pensioner received on the date of his or her death. Provided further that where there is more than one spouse, the spouse's pension will be divided equally among the spouses. In the event of spouses and orphans being eligible for benefits, the deceased parent of the orphans will also be treated as a spouse for the purpose of apportioning the spouse's pension.
- 14.6.3 If a pensioner, whose pension commenced on or after 1 December 2002 dies and there is no surviving

spouse or where a spouse who receives benefits in terms of rule 14.6.2 subsequently dies, an orphan's pension will be payable to eligible children, if any, equal to the following percentages of the annuity which the pensioner received on the date of his or her death:

- (a) twenty percent for one eligible child;
- (b) thirty percent for two eligible children; and
- (c) forty percent for three or more eligible children.

Provided that where an orphan's pension only commences after the subsequent death of the spouse who receives benefits in terms of rule 14.6.2, the orphan's pensions will be based upon the annuity which the pensioner received on the date of his or her death, increased by the ratio of the spouse's pension at the date of his or her death to the initial spouse's pension.

14.6.4 An orphan's pension payable in terms of rule 14.6.3 ceases when the child ceases to be eligible in terms of rule 1.8.

14.6.5 The provisions of rules 14.5.5, 14.5.6, 14.5.7 and 14.5.8 shall apply *mutatis mutandis* to the benefit in terms of rule 14.6.2 and 14.6.3.

5.10 Rule 14.7.3(a) is hereby amended by -

the substitution of the reference to "rules 14.2.2 and 14.2.3 (a)" with "rules 14.2.3 and 14.2.4(a)".

5.11 Rule 14.8 is hereby amended by -

the insertion of the word "applicable" before the word "Annexure".

5.12 Rule 14 is hereby amended by -

insertion of the following new rule:

**“14.9 FUNERAL BENEFITS**

14.9.1 In the case of a member or a pensioner who became entitled to a gratuity and annuity on or after 1 December 2002, the funeral benefits payable upon the death of such member or pensioner and/or his or her spouse and/or eligible children, are as follows:

- (a) in the case of the member or pensioner, a payment of R7 500;
- (b) in the case of a spouse, a payment of R7 500;
- (c) in the case of an eligible child, a payment of R3 000 per child.

14.9.2 The benefits payable in terms of rule 14.9.1 are payable irrespective of the order in which deaths occur so that funeral benefits will be paid in respect of the spouse and each eligible child even after the death of the member.”

**6. Amendment of rule 15 of the Rules**

6.1 Rule 15.1 is hereby substituted by -

the following rule:

“15.1 If a member is retired or discharged as a result of a reason mentioned in rule 14.1.1 (f) there shall be paid to him or her out of the Fund a gratuity calculated in accordance with formula A or B set out in rule 15.8 whichever one of such formulas shall be more beneficial for such member.”

6.2 Rule 15.2 is hereby substituted by -

the following rule:

“15.2 If a member is thus retired or discharged and the percentage of his disablement is more than 30 percent, there shall be paid to him or her, out of the Fund, in addition to the gratuity which is paid to him or her in terms of rule 15.1 an annuity calculated in accordance with formula C or D set out in rule 15.8 whichever one of such formulas shall be more beneficial for such member.”

6.3 Rule 15.3 is hereby amended by-  
substitution of the reference to rule "14.2.3" with "14.2.4".

6.4 Rule 15.6 of the rules is hereby amended by -  
substitution of the word "of" with the word "or".

**7. Amendment of rule 17 of the Rules**

Rule 17.6 is hereby amended by –  
insertion of "and 14.5.4" at the end of the rule.

**8. Amendment of rule 18 of the Rules**

8.1 Rule 18 is hereby amended by –  
deletion of rule 18.4.

8.2 The renumbering of the sub rules.

**9. Amendment of rule 20 of the Rules**

Rule 20 is hereby amended by –  
insertion of the word "for" after the words "if a member, except".

**10. Insertion of Rule 23**

The rules are hereby amended by –

the insertion of the following new rule:

**23 Annual increases in annuities**

23.1 Annuities are to be increased with effect from 1 April every year.

23.2 Subject to section 25 of the Government Employees Pension Law, 1996 as amended, such increases shall consist of:

23.2.1 a basic increase at a rate of at least 75% of the average percentage increase in the Consumer Price Index (All Items) over a period of twelve

- months (1 December to 30 November of the previous year); and
- 23.2.2 an additional increase, if applicable, to be granted every year, commencing on 1 April 2002. For this purpose, any annuity which is less than the minimum level is to be brought up to that level. The minimum level is defined as 75% of the annuity at retirement adjusted for full inflationary increases.
- 23.3 For the purpose of rule 23.2.2, inflation is defined as the change in the Consumer Price Index (All Items) over the period under consideration. To allow for implementation and publishing delays, the index value four months prior to the applicable date will be used (30 November where the increase is with effect from 1 April).
- 23.4 Annuities for pensioners who have retired in the year prior to any increase date will receive a pro-rata increase.

#### **11. Commencement dates**

All the amendments to and deletions and insertions of rules shall commence retrospectively on 1 December 2002, except for amendments to rule 7 and insertion of rule 23 which shall commence retrospectively on 1 April 2002.