



REPUBLIC OF SOUTH AFRICA

# GOVERNMENT GAZETTE

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# STAATSKOERANT

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PRESIDENT'S OFFICE

No. 1815. 8 November 1996

It is hereby notified that the President has assented to the following Act which is hereby published for general information:—

No. 69 of 1996: Special Pensions Act, 1996.

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KANTOOR VAN DIE PRESIDENT

No. 1815. 8 November 1996

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 69 van 1996: Wet op Spesiale Pensioene, 1996.

# ACT

To give effect to section 189 of the *Constitution*; to provide for special pensions to be paid to persons who made sacrifices or served the public interest in the cause of establishing a democratic constitutional order; to prescribe rules for determining the persons who are entitled to receive those pensions; to establish a Special Pensions Board and a Special Pensions Review Board; and to provide for related matters.

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### PREAMBLE

**Section 189 of the *Constitution* requires that an Act of Parliament shall provide for the payment of pensions to—**

persons who, in the establishment of a democratic constitutional order, made sacrifices or served the public interest; and  
the dependants of those persons.

**The *Constitution* further requires that an Act of Parliament shall prescribe—**

the qualifications of persons entitled to receive those pensions;  
the conditions on which those pensions may be granted; and  
the basis for determining the amount of those pensions.

(Afrikaans text signed by the President.)  
(Assented to 30 October 1996.)

**I**n order to give effect to the abovementioned provisions of the *Constitution*, the Parliament of the Republic of South Africa, enacts as follows:—

### PART 1—BENEFITS

#### Right to pension

1. (1) A person who made sacrifices or served the public interest in establishing a non-racial, democratic constitutional order and who is a citizen, or entitled to be a citizen, of the *Republic*<sup>1</sup> of South Africa, has the right to a *pension* in terms of *this Act* if that person—

- (a) was at least 35 years of age on the *commencement date*; and
- (b) was prevented from providing for a *pension* because, for a total or combined period of at least five years prior to 2 February 1990, one or more of the following circumstances applied:
  - (i) That person was engaged full-time in the service of a *political organisation*.<sup>2</sup>
  - (ii) That person was prevented from leaving a particular place or area within the *Republic*, or from being at a particular place or in a particular area within the *Republic*, as a result of an order issued in terms of a law mentioned in Schedule 1<sup>3</sup> of *this Act*.

1. Words that appear in *italics* in the text of the Act have been specially defined in section 31. The definitions section begins on page 24.

2. "Political organisation" has a special meaning set out in the "definitions section" (section 31). It means an association with either a political or military purpose, which may or may not have been incorporated, and which—

- (i) existed for at least five years prior to 2 February 1990;
- (ii) had a permanent governing and executive structure; and
- (iii) before 2 February 1990, was restricted in terms of any law or was declared to be unlawful in terms of any law.

3. Schedule 1 of this Act lists the offences that are relevant for this section. It should not be confused with Schedule 1 of the Criminal Procedure Act, 1977, which is also referred to in this section. The last-mentioned Schedule contains a very different list of crimes.

- (iii) That person was imprisoned or detained in terms of any law or for any crime mentioned in Schedule 1 of *this Act*, or that person was imprisoned for any offence committed with a political objective.
- (2) In determining whether a person committed an offence with a political objective as contemplated in subsection (1)(b)(iii), the *Board* must consider the following factors: 5
- (a) The person's motive in committing the offence;
  - (b) the context within which the offence was committed and, in particular, whether the offence was committed in the course of a political uprising or political event;
  - (c) the nature and gravity of the offence; 10
  - (d) the effect of the commission of the offence on a political opponent, State property, State personnel, private property or individuals;
  - (e) whether the offence was committed as part of a programme, or with the approval of an organisation which promoted a non-racial democratic constitutional order; 15
  - (f) the relationship, proximity and proportionality of the offence and the political objective pursued in its commission; and
  - (g) whether the offence was committed without—
    - (i) personal gain; or
    - (ii) personal malice. 20
- (3) A person who made sacrifices or served the public interest in establishing a non-racial democratic constitutional order and who is a citizen, or entitled to be a citizen, of the *Republic*, has a right to a *pension* in terms of *this Act* if that person 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). 25
- (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.
- (5) A *pensioner* who qualifies for a *benefit* in terms of subsection (3) is entitled to receive a *pension*, payable monthly, commencing with effect from 1 April 1995. 30
- (6) For each *pensioner*, the *Board* must determine the amount of the monthly *pension* in accordance with the table in Schedule 3.
- (7) For the purpose of applying the table in Schedule 3, the *Board* must determine each *pensioner's* qualifying period as follows: 35
- (a) For persons entitled to a *pension* in terms of subsection (1), the qualifying period is the total length of time prior to 2 February 1990 that the *pensioner* spent in the circumstances listed in that subsection.
  - (b) For disabled persons entitled to a *pension* in terms of subsection (3), the qualifying period is— 40
    - (i) the total or combined length of time, if any, that the *pensioner* spent prior to being disabled in any of the circumstances listed in subsection (1)(b); plus
    - (ii) the length of time between the date that the *pensioner* became disabled and 2 February 1990; or 45
    - (iii) a period of five years, whichever is the longer.
- (8) A person referred to in this section is disqualified from receiving or continuing to receive a *pension* if, after making the sacrifice or serving the public interest as referred to, that person— 50
- (a) either actively engaged in actions calculated to undermine efforts to establish a non-racial democratic constitutional order;
  - (b) or was convicted of a crime committed after 2 February 1990.
- (9) For the purposes of subsection (8)(b), "crime" means— 55
- (a) at any time between 2 February 1990 and 1 May 1994, an offence mentioned in Schedule 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), other than treason and sedition; and



- (b) at any time after 30 April 1994, an offence mentioned in Schedule 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

### Right to survivor's lump sum benefit

2. (1) A person has the right to a *survivor's lump sum benefit* in terms of *this Act* if that person is a surviving *spouse*, or if there is no surviving *spouse*, the surviving *dependant*, of a person who— 5

- (a) made sacrifices or served the public interest in establishing a non-racial democratic constitutional order;
- (b) was a citizen, or entitled to be a citizen, of the *Republic*;
- (c) is not disqualified in terms of section 1(8); and 10
- (d) (i) either has died but, had he or she survived, would have qualified in terms of section 1, based on the circumstances at the time of death;
  - (ii) or died prior to 2 February 1990 while he or she was imprisoned or detained for any crime or in terms of any law mentioned in Schedule 1 of *this Act*; 15
  - (iii) or died prior to 2 February 1990 while he or she was actively engaged in, and from causes arising out of, full-time service to a *political organisation*;
  - (iv) or disappeared prior to 2 February 1990 while he or she was actively engaged in efforts attempting to establish a non-racial democratic constitutional order, and has been presumed in law to be dead<sup>4</sup>. 20

(2) (a) The surviving *spouse* or *dependant* of a deceased person who would have been a qualifying *pensioner* had that person survived, is entitled to receive a single lump sum amount equal to twice the annual *pension* that would have been payable to that person had he or she survived until the *commencement date*. 25

(b) The surviving *spouse* or *dependant* of a deceased or missing person referred to in subsection (1)(d)(ii), (iii) or (iv) is entitled to receive a single lump sum equal to twice the annual *pension* that would have been payable to a *pensioner* whose qualifying period equalled—

- (i) the total or combined length of time that the deceased or missing person spent prior to 2 February 1990 in any of the circumstances listed in section 1(1)(b); plus 30
- (ii) the length of time between the date that the deceased or missing person died or disappeared and 2 February 1990; or
- (iii) a period of five years, 35  
whichever is the longer.

(3) A person referred to in this section who would be eligible for a *survivor's benefit* is disqualified from receiving that *benefit* if that person—

- (a) either actively engaged in actions calculated to undermine efforts to establish a non-racial democratic constitutional order; 40
- (b) or has been convicted of a crime committed after 2 February 1990.

(4) For the purposes of subsection (3), "crime" means—

- (a) at any time between 2 February 1990 and 1 May 1994, an offence mentioned in Schedule 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), other than treason and sedition; and 45
- (b) at any time after 30 April 1994, an offence mentioned in Schedule 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

### Payment to survivor on death of pensioner

3. (1) Upon the death of a *pensioner* referred to in section 1 whose monthly *pension* payments have already begun, 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. 50

4. Section 24(4) gives the Board the power to apply on behalf of an applicant for a "presumption of death order" in cases where no such order has previously been made.

(2) Upon the death of a person not yet 60 years of age, who has been granted a *pension* which has not commenced, 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 would have been payable to that *pensioner* if he or she had been 60 years of age immediately before the date of death. 5

#### One benefit only to be granted

4. A person who qualifies for a *benefit* under both section 1 and section 2, or for more than one *benefit* under section 2 or 3—  
 (a) must be granted the *benefit* that is most advantageous to that person; and  
 (b) may not be granted any other *benefit* under either section 1 or 2. 10

#### Allocation of survivor's benefit

5. (1) If a deceased person is survived by more than one *spouse*, each of whom qualifies for a *survivor's benefit* in terms of *this Act*, the *Board* must determine the proportion of the *survivor's benefit* that is to be paid to each qualifying *spouse*; but the total *benefits* for all the surviving *spouses* must not exceed the *benefit* that would have been payable had there been only one surviving *spouse*. 15

(2) If a deceased person is not survived by a *spouse*, but is survived by more than one *dependant*, each of whom qualifies for a *survivor's benefit* in terms of *this Act*, the *Board* must determine the proportion of the *survivor's benefit* that is to be paid to each qualifying *dependant*; but the total *benefits* for all the surviving *dependants* must not exceed the amount of the *benefit* that would have been payable had there been only one surviving *dependant*. 20

#### Applications for benefits

6. (1) Any person who applies for a *benefit* in terms of *this Act* must—  
 (a) complete an *application* form as set out in Schedule 2; 25  
 (b) 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) submit the *application* form to the *Board* on or before the *closing date*. 30

(2) If a person who would qualify for a *benefit* is permanently or temporarily disabled and therefore unable to apply in terms of subsection (1) personally, any person acting on behalf of that disabled person, may submit a curator's application in the prescribed form to the *Board*.

#### Determination by Board

7. The *Board* must— 35  
 (a) consider *applications* for *benefits* submitted to it in terms of *this Act*;  
 (b) determine whether an *applicant* referred to in section 1 qualifies as a *pensioner*;  
 (c) determine whether an *applicant* referred to in section 2 or section 4 qualifies for a *survivor's benefit*; 40  
 (d) with respect to an *applicant* who qualifies for more than one *benefit* in terms of section 2, determine which entitlement is most advantageous to that *applicant*;  
 (e) with respect to an *applicant* who qualifies for both a *pension*, in terms of section 1, and a *survivor's benefit*, in terms of section 2, determine which entitlement is most advantageous to that *applicant* by comparing— 45  
 (i) the actuarial value, at the date of the *application*, of the monthly *pension* to which that person is entitled; and  
 (ii) the value of the *survivor's* lump sum payment to which that person is entitled; 50  
 (f) determine the *benefit* payable to each *beneficiary*;  
 (g) report its findings to the *Minister* and to the *applicant*; and  
 (h) inform the *applicant* in plain language of the right to appeal against the

*Board's* decision, and include in that advice the form prescribed in Schedule 2 for requesting a review of the decision.

### Right to appeal against Board's decision

8. Any *applicant* who disagrees with any decision of the *Board* may request a review of that decision by sending a written notice in the form prescribed in Schedule 2 to the *Review Board* within 60 days of the date of the decision. The *Review Board* has the discretion to condone late *applications*. 5

### Payment of benefits

9. (1) The *Minister* must pay any *pension*, payable in terms of *this Act*, 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. 10

(2) When the first monthly payment is made to a disabled *pensioner* in terms of section 1(5) the *Minister* must include a lump sum covering all the *pension* payments due to that person from 1 April 1995 to the date of that first payment.

(3) When the first monthly payment is made to a *pensioner* in terms of subsection 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 birthday, whichever is the later, to the date of that first payment. 15

(4) The monthly payments payable to a *pensioner* must cease immediately upon the death of the *pensioner*. 20

(5) The *Minister* must pay any *survivor's* lump sum *benefit* payable in terms of *this Act* to the *beneficiary* within 90 days of the date on which the *Board* notifies the *Minister* that a *benefit* is payable to that *beneficiary*.

(6) If a *survivor's* *benefit* is payable to a person who is either under the age of 21, or mentally incapacitated— 25

(a) the Master of the Supreme 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 Court.

(7) Despite subsections (2) and (3), a *beneficiary* may not receive any *pension* payment or lump sum *benefit* while holding office as a member of any legislature mentioned in the *Constitution*, but may begin to receive a *pension* on— 30

(a) either that *beneficiary's* 60th birthday;

(b) or the date that *beneficiary's* office as a member of any legislature terminates, whichever is the later. 35

### Payments to other public pension funds

10. (1) A *benefit* otherwise payable to a *beneficiary* but which, because of section 9(7) cannot be paid to that *beneficiary*, must be paid into a special fund to be established for public representatives' pensions by the *Minister* by regulation. The amount in such a fund may, together with accrued interest and bonuses declared in respect of that fund, be invested and reinvested. 40

(2) The value of a special fund created in terms of subsection (1) accrues to the relevant *beneficiary* upon termination of office as a member of any legislature mentioned in the *Constitution*, and must be paid to that *beneficiary* in terms of the rules of that fund. 45

**Optional early pensions**

11. A *pensioner* who is at least 50 years of age has the right to begin to receive the monthly *pension* at any time. A *pensioner* who wishes to exercise this right must send the prescribed notice to the *Minister* at least 60 days before the date on which *pension* payments are to begin. The amount of the monthly *pension* for that *pensioner* must be reduced by an amount equal to—
- (a) 3% of the monthly *pension* that would be payable if that *pensioner* were aged 60 at that time; multiplied by
  - (b) the number of complete calendar years between the date of the first monthly payment and the date of that *pensioner's* 60th birthday.

**Increases in pension amounts**

12. At any time the *Minister* may increase the *pensions* payable to *pensioners* on any basis that the *Minister* considers appropriate. An increase in terms of this section must apply to every person—
- (a) who is receiving a *pension* at that date;
  - (b) in respect of whom a determination is made that he or she is entitled to a *pension* that will commence after that date; and
  - (c) in respect of whom a determination is subsequently made that he or she is entitled to a *pension*.

**Pensions cannot be assigned or attached**

13. (1) A *pension*, or a right in respect of a *pension*, payable in terms of *this Act* cannot be assigned, transferred, pledged, hypothecated or otherwise ceded, is not liable to be attached and is not subject to any form of execution under a judgment or an order of any court of law.
- (2) If a *beneficiary*, or a person acting under the lawful authority of a *beneficiary*, attempts to assign, transfer, pledge, hypothecate or otherwise cede any *pension* payable in terms of *this Act*, the *Minister* may direct that the *pension* concerned must be withheld, suspended or discontinued.
- (3) The *Minister* must give notice in plain language of the provisions of this section to every *pensioner* when the first monthly payment is made to that *pensioner*.

**Qualification for other benefits**

14. (1) In addition to any *benefits* granted in terms of *this Act*, a *beneficiary* who qualifies as contemplated in section 1 or 2 may apply for, and if qualified, may receive payments also in terms of either or both—
- (a) the Social Pension Act, 1973;
  - (b) the Military Pension Act, 1973.
- (2) *Benefits* received or to be received in terms of *this Act* must not be considered for the purposes of administering any income or asset test in terms of either of the Acts referred to in subsection (1).
- (3) *Benefits* received in terms of *this Act* are taxable.

**PART 2—SPECIAL PENSIONS BOARD****Establishment of Board**

15. There is hereby established a Special Pensions Board which is accountable to the *Minister*, and which consists of a Chairperson and four other members.

**Appointment of members**

16. (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.
- (2) The *Minister* shall for the purposes of nominating the persons referred to in subsection (1), establish a committee consisting of such number of members of

Parliament as may be determined by him or her, and such members shall be appointed in such a manner that all political parties represented in Parliament are represented proportionately in such committee: Provided that in respect of each such party at least one member shall be appointed on such committee.

(3) A vacancy on the *Board* occurs when a member dies, when a member's resignation takes effect or when a member's appointment is terminated by the *Minister* in accordance with the *regulations*. 5

(4) A vacancy on the *Board* must be filled in accordance with subsection (1), as soon as practicable. In the meantime, the *Board's* proceedings and decisions continue to be valid. 10

### Remuneration of members

17. (1) The *Minister* may determine the salaries, allowances and other conditions of service of any members of the *Board* who are not in the service of the State. The salaries, allowances and conditions of service of those members may not be reduced or be rendered less favourable without their consent while they remain in office. 15

(2) Members of the *Board* who are in the paid service of the State may not receive any additional remuneration for serving on the *Board*, but may have their additional expenses paid.

### Conduct of members

18. (1) *Board* members are appointed in their individual capacity. Regardless of personal opinion or party affiliation, they must serve independently and impartially, and perform their functions in good faith, giving full effect to the spirit and the specific obligations stipulated in *this Act*. 20

(2) *Board* members must give reasons for their decisions.

(3) *Board* members must avoid personal interests which conflict with the interests of the *Board*. 25

(4) If a member has a personal interest in any matter that might keep that member from performing the functions of the *Board* in a fair and unbiased manner, that member must disclose that interest in writing to the other members of the *Board* and may not participate in decisions regarding such matter. 30

### Board to be unfettered

19. (1) No person or organ of state may fetter the discretion of the *Board* or any of its members.

(2) Organs of state must assist the *Board* to perform its functions.

### Board business 35

20. (1) The Chairperson must determine the time and place of *Board* meetings.

(2) Subject to the *regulations*, the *Board* may establish its own rules of procedure for meetings of the *Board*.

(3) The *Board*—

(a) must develop a budget, and a written business plan by which it proposes to achieve its objectives; 40

(b) within 21 days after being appointed, must submit its first budget and business plan to the *Minister* for approval; and

(c) must prepare monthly written reports of its activities, and submit those reports to the *Minister* when the *Minister* requests them. 45

### Staff and contractors

21. (1) The *Board* may—

(a) ask the *public service* to second to the *Board* any skilled personnel the *Board* requires to achieve its objectives; and

(b) conclude contracts in order to obtain the services of persons who have the requisite skills but are unavailable through secondment. 50

(2) When the *Minister* dissolves the *Board*—

(a) the secondment of all staff seconded to the *Board* will terminate; and

- (b) all contracts with persons for services in terms of subsection (1)(b) will expire, and neither the *Board* nor the State will be liable for any damages in respect of the expiration of those contracts.

### Chief Executive Officer

22. (1) The *Board* must appoint a person who has been seconded to it in terms of subsection 21(1) to be Chief Executive Officer, subject to any applicable law governing the seconded person's employment. 5

(2) The Chief Executive Officer must assist the *Board* in performing its functions, and is accountable to the *Minister* in respect of the performance of any functions that the *Board* assigns to the Chief Executive Officer. The Chief Executive Officer is responsible for the management and administrative control of the affairs of the *Board*. 10

(3) The Chief Executive Officer must perform the functions of his or her office impartially, subject to—

- (a) any part of any law relating to the *public service*, to the extent that the *Board* directs; 15  
 (b) the Exchequer Act, 1975 (Act No. 66 of 1975); and  
 (c) the Auditor-General Act, 1995 (Act No. 12 of 1995).

### Board finances

23. (1) *Benefits* payable in terms of Part 1 of *this Act* must be paid from money appropriated by Parliament for that purpose. 20

(2) The *Board's* funds consist of money appropriated by Parliament, which the *Board* may use only—

- (a) for the defrayal of expenditures relating to its functions or the functions of the *Review Board*; and  
 (b) in accordance with the current statement of estimated expenditures prepared by the *Board*, and approved by the *Minister*, in terms of subsection (3). 25

(3) (a) Each year, at a time that the *Minister* determines, the *Board* must submit a statement of its estimated expenditures, and of the estimated expenditures of the *Review Board* for the following financial year to the *Minister* for approval.

(b) During a financial year, the *Board* may submit an adjusted statement of estimated expenditures for that year to the *Minister* for approval. 30

(4) The *Board* may not incur expenditure that causes the total expenditure in that financial year to exceed the total approved expenditure for that financial year.

(5) The *Board* must open and maintain an account in the name of the *Board* with a bank registered in the *Republic*, or with another financial institution approved by the *Minister*, and must— 35

- (a) deposit to that account any money that the *Board* receives; and  
 (b) make any payment on behalf of the *Board*, or the *Review Board*, from the account.

(6) The Chief Executive Officer— 40

- (a) is the accounting officer of the *Board* and is responsible for managing the *Board's* budget; and  
 (b) subject to the Exchequer Act, 1975 (Act No. 66 of 1975), is accountable for all State money that the *Board* receives or pays, and must keep the records needed to comply with that Act. 45

(7) The Auditor-General must audit the *Board's* financial records.

(8) The financial year of the *Board* extends from 1 April each year to 31 March of the following year.

### Duties and powers of Board

24. (1) The *Board* must take appropriate steps to communicate in plain language to all persons who may have an interest— 50

- (a) the right to *benefits* in terms of *this Act*;  
 (b) the qualifications for *benefits*;  
 (c) the procedure to apply for *benefits*; and



(d) any other information that may assist a person to apply for a *benefit*.

(2) The *Board* may—

(a) undertake or arrange for research relating to its objectives and functions; and

(b) conduct any investigation that is required to perform its functions.

(3) (a) If an *applicant* does not qualify for a *benefit* in terms of *this Act*, the *Board* 5  
must consider whether the Truth and Reconciliation Commission, established by section  
2 of the Promotion of National Unity and Reconciliation Act, 1995 (Act No. 34 of 1995),  
or any other organ of the State, may be able to assist the *applicant*, and if so, the *Board*  
must—

(i) forward the relevant *application*, together with the particulars that the *Board* 10  
has compiled relative to the *application*, to that organ of State; and

(ii) advise the *applicant* that it has been done.

(b) Any organ of state receiving an *application* forwarded by the *Board* in terms of  
this subsection must accept and process that *application* as if it had been submitted to it  
as an application in terms of, and in the form prescribed by, any applicable law. 15

(4) If an *applicant* might qualify for a *benefit* in terms of section 2(1)(d)(iv), but, at the  
time of *application*, no court of law has made an order presuming the missing person to  
be dead, the *Board*, on behalf of the *applicant*, must take the necessary steps to obtain  
the appropriate court order.

### Board investigations 20

25. (1) The *Board*, by written notice, may require a person to appear before it, to  
answer questions, and to produce any article or document in or under that person's  
possession, custody or control that might be relevant to an investigation. The notice  
must—

(a) be in the prescribed form; and 25

(b) be served on the person concerned either by registered letter addressed to the  
person's last known address, or in the same manner that a summons is served  
on a witness to appear in a magistrate's court.

(2) The *Board* may administer an oath to, or take an affirmation from, and then  
question— 30

(a) a person who has been requested to appear under subsection (1); and

(b) a person who could have been so requested and who is present at the place  
where the *Board's* investigation is held, whether or not that person was  
required to appear before the *Board*.

(3) Any person questioned in terms of subsection (2) may refuse to answer any 35  
question if the answer could reveal that the person—

(a) had committed an offence; or

(b) had done or omitted to do anything that could expose that person to a claim for  
damages.

(4) The *Board* may request any person or *political organisation* to provide to the 40  
*Board* any relevant information, including information relating to an *applicant* in terms  
of *this Act*.

(5) Any person or *political organisation* from whom the *Board* has requested  
information in terms of subsection (4) must provide the *Board* with any relevant  
information at their disposal. 45

### Legal proceedings against Board

26. (1) The State Liability Act, 1957 (Act No. 20 of 1957), applies, with the changes  
required by context, in respect of the *Board*, except that any reference in that Act to "the  
Minister of the department concerned" must be read as referring to the Chairperson of  
the *Board*. 50

(2) Members of the *Board*, or of the *Board's* staff, and persons contracted by the  
*Board*, are not liable for any cause of action arising out of anything reflected in any

report, finding, point of view or recommendation that they make or express in good faith to Parliament, or any other person in terms of the *Constitution* or *this Act*.

(3) Members of the *Board*, or of the *Board's* staff, and persons contracted by the *Board* must not disclose any information revealed to them in the performance of their functions in terms of *this Act*, except as specifically required or permitted by *this Act* or any other law. 5

### Dissolution of Board

27. (1) The *Minister* may dissolve the *Board* at any time after the *Board* has completed its activities, but not later than 2 years after the *commencement date*.

(2) Upon dissolution of the *Board*— 10

(a) the Pensions Administration of the Department of Finance is responsible for the performance for the administrative 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. 15

### Review Board

28. (1) There is hereby established a Special Pensions Review Board, consisting of a judge of the Supreme Court as its Chairperson and two other members, one of whom must be an *actuary*. 20

(2) The *Minister* must appoint the members of the *Review Board*, and fill any vacancies on the *Review Board* as they arise.

(3) The *Review Board* must determine its own rules of procedure.

(4) The *Review Board* must consider every appeal submitted to it and may confirm the decision of the *Board* or may replace it with another decision. 25

(5) The provisions of sections 16, 17, 18, 19, 25 and 26 apply to the *Review Board*, with the changes required by context.

## PART 3—GENERAL PROVISIONS

### Minister's powers

29. (1) The *Minister* may make *regulations*— 30

(a) required to achieve the objects and purposes of *this Act*; or

(b) regarding any matter required or permitted to be prescribed in terms of *this Act*.

(2) The *Minister* may, by notice in the Government Gazette, amend or replace the amounts mentioned in Schedule 3, subject to the appropriation by Parliament of money required to finance any increases of such amounts. 35

(3) Any power, function or duty conferred, assigned or imposed upon the *Minister* by *this Act*, may be delegated or assigned by the *Minister*, in writing, to any officer in the *public service*, but the delegation or assignment of such power, function or duty does not divest the *Minister* of that power, function or duty. 40

### Offences

30. (1) A person or *political organisation* is guilty of an offence if that person or *organisation*—

(a) prevents or obstructs the performance of any activity contemplated by *this Act*; 45

(b) refuses, or without sufficient cause fails, to comply with an obligation imposed in terms of *this Act*; or

(c) intentionally submits false or misleading information to the *Board*.

(2) A person who intentionally fails to notify the Department of Finance of the death

of a person who was receiving *benefits* in terms of *this Act*, and as a result of that failure is benefited in any way, is guilty of an offence.

(3) Except as is otherwise provided in subsection (4), a person or *political organisation* convicted of an offence in terms of subsection (1) is liable for a maximum fine of R5 000.

(4) A person or *political organisation* convicted of an offence in terms of subsection (1) in circumstances in which such person or *organisation* has benefited in any way, or who is convicted in terms of subsection (2), is liable to the same penalty as that applicable in respect of the crime of fraud.

## Definitions

31. (1) In *this Act*, unless the context otherwise indicates—
- (i) “*actuary*” means a Fellow of the Institute of Actuaries of England or the Faculty of Actuaries in Scotland or the Society of Actuaries of America; (iv)
  - (ii) “*applicant*” means a person who submits a completed *application* as contemplated in section 6; (ii)
  - (iii) “*application*” means—
    - (a) in respect of a person seeking *benefits* as a *pensioner*, a completed and sworn statement set out in form 1 of Schedule 2;
    - (b) in respect of a person seeking a *benefit* as a *spouse* or *dependant* of a deceased person, a completed and sworn statement set out in form 2 prescribed in Schedule 2; (i)
  - (iv) “*beneficiary*” means a person who in terms of a determination of the *Board* qualifies for a *benefit*; (v)
  - (v) “*benefit*” means a sum of money payable in terms of Part 1; (xxiii)
  - (vi) “*Board*” means the Special Pensions Board, established by section 15; (xvii)
  - (vii) “*closing date*” means the date 12 months after the *commencement date*; (xx)
  - (viii) “*commencement date*” means the date on which *this Act* comes into operation in terms of section 32(2); (vii)
  - (ix) “*Constitution*” means the *Constitution* of the Republic of South Africa, 1993 (Act No. 200 of 1993); (ix)
  - (x) “*dependant*” means an *applicant* who—
    - (a) is the natural child or parent of a deceased person on whom the *applicant* financially depended for maintenance at the time the person died; and
    - (b) at the *application* date is either not yet 21 years of age, or is unable to provide adequately for his or her maintenance; (iii)
  - (xi) “*Minister*” means the Minister of Finance; (xii)
  - (xii) “*pension*” means a right to the monthly payment of a *pension* determined in terms of section 1; (xiv)
  - (xiii) “*pensioner*” means a person entitled to a *pension*; (xv)
  - (xiv) “*permanent and total disability*” means any physical or mental condition that renders a person unable to provide adequately for his or her own maintenance; (vi)
  - (xv) “*political organisation*” means an association of persons formed with either a political or military purpose, whether or not that association was incorporated, and which—
    - (a) existed for at least five years prior to 2 February 1990;
    - (b) had a permanent governing and executive structure; and
    - (c) before 2 February 1990, was restricted in terms of any law or was declared to be unlawful in terms of any law; (xvi)
  - (xvi) “*public service*” means a department referred to in Schedule 1 of the Public Service Act, 1994 (Proclamation No. 103 of 1994), or an organisational component referred to in Schedule 2 of the Public Service Act; (xxi)
  - (xvii) “*regulation*” means a regulation made in terms of section 29(1); (xviii)

- (xviii) “*Republic*” means the national territory as referred to in section 1 of the *Constitution*; (xix)
- (xix) “*Review Board*” means the Special Pensions Review Board, established by section 28(1) of *this Act*; (x)
- (xx) “*spouse*” means an *applicant* who, at the date on which another person died or disappeared, was the partner of that person in a marriage relationship; (viii) 5
- (xxi) “*survivor*” means a *spouse* or *dependant* or a deceased person; (xiii)
- (xxii) “*this Act*” includes the section numbers, the Schedules and any *regulations* made in terms of section 29, but does not include the page headers, headings or footnotes; (xi) 10
- (xxiii) “*2 February 1990*” means, with respect to any person, *2 February 1990*, or the first date after *2 February 1990* on which that person was released from prison or detention in terms of any law mentioned in Schedule 1 of *this Act*, or from the terms of an order referred to in section 1(1)(b)(ii), or, in the case of a person who was engaged in the full-time service of a political organisation, the day on which that person was repatriated or indemnified, whichever was the earlier. (xxii) 15
- (2) In the application of the definition of—
- (a) “*spouse*” mentioned in subsection (1) “*marriage relationship*” means— 20
- (i) a marriage;
- (ii) a union contracted in accordance with customary law or which is recognised as marriage in accordance with the tenets of any religion;
- (iii) a continuous cohabitation in a homosexual or heterosexual partnership for a period of at least 5 years;
- (b) “*political organisation*” mentioned in that subsection, a particular political party may be recognised as such under one name only. 25

#### Short title and commencement

32. (1) *This Act* is called the Special Pensions Act, 1996.

(2) *This Act* comes into operation on a date to be set by the President by proclamation in the Government Gazette. 30

**SCHEDULE 1****CRIMES AND LIST OF ACTS****(Section 1(1)(b)(iii))**

(1) The common law in respect of the crimes of treason, sedition and *crimen laesae majestatis*<sup>5</sup>.

(2) Any of the Acts mentioned in the following table:

<b>NO. AND YEAR OF ACT</b>	<b>SHORT TITLE</b>
Act 27 of 1914	Riotous Assemblies and Criminal Law Amendment Act, 1914
Act 38 of 1927	Native Administration Act, 1927
Act 44 of 1950	Suppression of Communism Act, 1950
Act 3 of 1953	Public Safety Act, 1953
Act 8 of 1953	Criminal Law Amendment Act, 1953
Act 17 of 1956	Riotous Assemblies Act, 1956
Act 76 of 1962	General Law Amendment Act, 1962
Act 37 of 1963	General Law Amendment Act 1963
Act 62 of 1966	General Law Amendment Act, 1966
Act 83 of 1967	Terrorism Act, 1967
Act 94 of 1974	Second General Law Amendment Act, 1974
Act 74 of 1982	Internal Security Act, 1982

**SCHEDULE 2****APPLICATION FORM FOR PENSION  
(UNDER SPECIAL PENSIONS ACT, 1996)**

**Instructions:** If you were a member of a political organisation and are applying on your own behalf, please complete section 1.1. If you have been permanently disabled, please complete section 1.2. If you are the spouse or dependant of a deceased or missing person, please complete section 1.3. If you apply on behalf of a deceased or missing person, please complete the political history of the deceased or missing person, as indicated in section 1.4.

**1. PERSONAL INFORMATION****1.1 APPLICANT**

- (a) Surname ..... (b) Title .....
- (c) Full names .....
- (d) Identity number (ID) ..... (e) Age (in years) .....
- (f) Date of birth .....
- (g) Citizenship .....
- (h) Home address .....
- (i) Postal address ..... (j) Postal code .....
- (k) Are you a member of any legislative body? Yes  No
- (l) Telephone number of office or home .....

**Certified copies of identity document (ID) must be provided**

5. A person commits this crime by unlawfully and intentionally taking on the authority which belongs only to the President or government and performs acts which undermine the supreme power of the State.

## 1.2 DISABILITIES SUFFERED ARISING OUT OF POLITICAL ACTIVITY BEFORE 2 FEBRUARY 1990

- (a) Description of disability .....
- (b) Date on which injury was suffered .....
- (c) Was injury sustained while actively engaged in political activity?  
Yes  No

Please supply on a separate page the details of how injury was sustained

## 1.3 SPOUSE/DEPENDANT

- (a) Surname .....
- (b) Full names .....
- (c) Identity number (ID) ..... (d) Age (in years) .....
- (e) Date of birth .....
- (f) Citizenship .....
- (g) Home address .....
- (h) Relationship to applicant .....
- (i) Postal Code .....
- (j) Telephone number of office or home .....

Certified copies of marriage certificate and/or birth certificates must be supplied

## 1.4 PERSONAL DETAILS OF DECEASED/MISSING PERSON

- (a) Surname .....
- (b) Full names .....
- (c) Identity number (ID) ..... (d) Age (in years) .....
- (e) Date of birth .....
- (f) Citizenship .....
- (g) Last address .....
- (h) Date of death .....
- (i) Cause of death: (i) Civil (ii) Military (iii) Executed (iv) Unknown
- (j) Relationship to applicant .....

Certified copies of death certificate must accompany this application

## 2. POLITICAL HISTORY

### 2.1 Service of record in political organisation

- (a) Name of organisation of which you were a full-time active serving member before 2 February 1990 .....
- (b) When did you join the organisation? .....
- (c) Where did you serve? .....
- (d) Under which name did you operate (if not your own)? .....
- (e) Who was your immediate superior .....
- (f) Dates served (period(s)) .....

### 2.2 Banning order

- (a) Were you ever banned/banished? Yes  No
- (b) Periods of banning orders: From ..... to .....  
From ..... to .....
- (c) Place(s) of restriction: (i) ..... (ii) ..... (iii) .....

### 2.3 Imprisonment for political activities

- (a) Period(s) of imprisonment: From ..... to .....  
From ..... to .....
- (b) Place(s) where sentence was served (i) ..... (ii) .....  
(iii) .....



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SPECIAL PENSIONS ACT, 1996

(c) Periods spent in detention or while awaiting trial:

From ..... to .....

From ..... to .....

**3. IMPRISONMENT AFTER 2 FEBRUARY 1990**

(a) Were you convicted of a criminal offence after 2 February 1990?

Yes  No 

(b) What were you convicted of? .....

**4. BANKING DETAILS**

(a) Bank name .....

(b) Account number .....

(c) Branch name .....

(d) Type of account .....

.....  
Signature of applicant.....  
Commissioner of Oaths.....  
Date.....  
Political officer**Please supply documentary evidence where requested. When completed, this form must be returned to:****The National Co-ordinator: Special Pensions, Private Bag X63, Pretoria, 0001****SCHEDULE 3****PENSIONS PAYABLE IN TERMS OF SUBSECTION (6)  
OF SECTION 1**

AGE CATEGORY IN YEARS	ANNUAL PENSION AMOUNT IN RANDS
35 but younger than 45	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 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