

REPUBLIC OF SOUTH AFRICA

SPECIAL PENSIONS AMENDMENT BILL

*(As introduced in the National Assembly as a section 75 Bill;
Bill published in Government Gazette No 23735 of 13 August 2002)
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

[B 35—2002]

REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP SPESIALE PENSIOENE

*(Soos ingedien by die Nasionale Vergadering as 'n artikel 75-wetsontwerp;
Wetsontwerp in Staatskoerant No 23735 van 13 Augustus 2002 gepubliseer)
(Die Afrikaanse teks is die amptelike vertaling van die Wetsontwerp)*

(MINISTER VAN FINANSIES)

[W 35—2002]

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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.
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BILL

To amend the Special Pensions Act, 1996, so as to authorise the Special Pensions Board to condone certain applications for benefits received after the closing date contemplated in that Act; to effect technical corrections; to provide for the repayment or recovery of any benefit paid in error; to determine the quorum for meetings of the Special Pensions Board; to extend the powers of the Chief Executive Officer; to provide afresh for the dissolution of the Special Pensions Board; to remove the requirement that one of the members of the Review Board must be an actuary; and to validate certain acts and decisions purportedly performed and taken in terms of the Act; to amend the Military Pensions Act, 1976, so as to change the definition of "military service"; and to provide for the retrospective effect of certain amendments; and to provide for matters connected therewith.

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

Amendment of section 6 of Act 69 of 1996, as amended by section 2 of Act 75 of 1998

1. Section 6 of the Special Pensions Act, 1996 (hereinafter referred to as "the principal Act"), is hereby amended by the addition of the following subsection: 5

"(3) Notwithstanding subsection (1)(a)(iii), 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 closing date."

Substitution of section 8 of Act 69 of 1996

2. The following section is hereby substituted for section 8 of the principal Act: 10

"Right to appeal against Board's decision

8. (1) 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. 15

(2) The Review Board has the discretion to condone [late applications] any request for a review received after the period of 60 days referred to in subsection (1)."

Amendment of section 14 of Act 69 of 1996

3. Section 14 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) the Military [**Pension Act, 1973**] Pensions Act, 1976.”.

Insertion of section 14A in Act 69 of 1996

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4. The following section is hereby inserted in Part 1 of the principal Act, after section 14:

“Repayment and recovery of benefit paid in error

14A. (1) Any amount paid to a person as a *benefit* to which the payee was not entitled or which was in excess of the amount to which the payee was entitled, must be refunded by the payee to the *Board* within 30 days of written demand by the Board. 10

(2) Despite subsection (1), the *Board* may—

- (a) allow repayment in instalments;
- (b) allow repayment of a lesser amount; or 15
- (c) absolve a person from repayment of the whole amount or any part thereof if it would be just and equitable to do so.

(3) Instead of any refund as contemplated in subsection (1) or any repayment as contemplated in subsection (2)(a) and (b), the *Board* may set off any amount due to the *Board* against any benefit payable in terms of *this Act* to the person concerned.”. 20

Amendment of section 20 of Act 69 of 1996

5. Section 20 of the principal Act is hereby amended by the addition of the following subsection:

“(4) Three members of the Board form a quorum for any meeting thereof.” 25

Amendment of section 22 of Act 69 of 1996

6. Section 22 of the principal Act is hereby amended by the addition of the following subsection:

“(4) If a benefit was paid in error or the Board erred in taking a particular decision, the Chief Executive Officer may submit the matter to the Review Board as if it were an appeal in terms of section 8.” 30

Amendment of section 27 of Act 69 of 1996, as amended by section 6 of Act 75 of 1998

7. Section 27 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 35

“(1) The *Minister* may dissolve the *Board* at any time after the *Board* has completed its activities[, **but not later than four years after the commencement date**].”.

Amendment of section 28 of Act 69 of 1996, as amended by section 7 of Act 75 of 1998

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8. Section 28 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) There is hereby established a Special Pensions Review Board consisting of a person with appropriate legal experience as its Chairperson and two other members[, **one of whom must be an actuary**].”; and 45

(b) by the substitution for subsection (5) of the following subsection:

“(5) The provisions of sections 16, 17, 18, 19, 22(2), 25 and 26 apply to the *Review Board*, with the changes required by the context.”.

Validation of certain acts performed in terms of principal Act and condonation of applications received after closing date

9. (1) The condonation by the Review Board of any late application for a benefit in terms of the principal Act, purporting to have been granted in terms of section 8 of that Act, and any subsequent decision on such an application, is hereby validated. 5

(2) Anything done by the Board after 30 November 2000, which could have been done validly on or before that date in terms of the principal Act, is hereby validated.

(3) In this section the words "application" "benefit", "Board" and "Review Board", defined in section 31 of the principal Act, have the meanings ascribed to them in that section. 10

Amendment of section 1 of Act 84 of 1976, as amended by section 1 of Act 26 of 1977, section 4 of Act 97 of 1980, section 17 of Act 96 of 1983, section 1 of Act 49 of 1996, and section 11 of Act 75 of 1998

10. (1) Section 1 of the Military Pensions Act, 1976, is hereby amended by the substitution in the definition of "military service" for paragraph (b) of the following paragraph: 15

"(b) military service or training performed or undergone by any person in a political organisation [**by any person entitled to a pension in terms**] as defined in section 31 of the Special Pensions Act, 1996 (Act No. 69 of 1996)];". 20

Date of commencement of certain sections

11. Sections 6, 7 and 8 must be regarded as having come into operation on 1 December 1996.

Short title

12. This Act is called the Special Pensions Amendment Act, 2002. 25

MEMORANDUM ON THE OBJECTS OF THE SPECIAL PENSIONS AMENDMENT BILL, 2002

1. SUMMARY

The main object of the Special Pensions Amendment Bill, 2002 ("the Bill"), is to revise certain sections of the Special Pensions Act, 1996 (Act No. 69 of 1996) ("the Act"), so as to facilitate the achievement of the Act's primary objective as envisaged in section 189 of the Interim Constitution, 1993 (Act No. 200 of 1993). That objective is to provide for the payment of special pensions to persons (or their eligible dependants) who made sacrifices or served the public interest in the cause of establishing a non-racial democratic constitutional order in the Republic of South Africa.

2. DISCUSSION

2.1 **Clause 1** is intended to allow the Special Pensions Board ("the Board") to condone applications for pension benefits which were received after the closing date contemplated in the Act.

2.2 **Clause 2** seeks to clarify the position regarding the power of the Special Pensions Review Board ("the Review Board") to condone a request for the review of a decision of the Board received later than 60 days after the Board's decision. This clarification is necessary since the current wording is misleading — see paragraph 2.9 hereunder.

2.3 **Clause 3** contains a technical correction.

2.4 **Clause 4** is intended to ensure the recovery and repayment of benefits paid in error. It also makes provision for corrective measures to be taken where it is established that a benefit was paid in error.

2.5 **Clause 5** seeks to prescribe the quorum for any meeting of the Board.

2.6 **Clause 6** seeks to extend the power of the Chief Executive Officer to bring to the attention of the Review Board those cases where the CEO is convinced that a benefit was paid in error or that the Board erred in taking a particular decision.

2.7 **Clause 7** intends removing the limitation of the Board's existence to four years after the commencement date of the Act. This provision is necessary since the Board has not yet completed its functions. (See also paragraph 2.9 hereunder.)

2.8 **Clause 8** seeks to remove the requirement that one member of the Board must be an actuary. The costs of having an actuary sitting on every appeal, including those appeals that do not require actuarial expertise, will be saved.

2.9 **Clause 9** is intended to rectify a technical error which led to an incorrect interpretation by the Review Board of the expression "late applications", as it appears in section 8 of the Act. The expression "late applications" was interpreted to mean "late applications to the Board for benefits". The expression "late applications" as it appears in section 8, should however have been interpreted to mean "late applications for the review of the Board's decisions". As a result of this the Review Board condoned late applications for benefits and the Board decided on these and granted benefits. The amendment envisaged in subclause (1) is intended to validate condonation of late applications for benefits by the Review Board and subsequent decisions taken by the Board. Subclause (2) seeks to validate all operations of the Board taken after 30 November 2000. This provision is necessary since the Board should have been dissolved by 1 December 2000 (see section 27(1) of the Act).

2.10 **Clause 10** seeks to remove certain words from the definition of "military service" contained in section 1 of the Military Pensions Act, 1976 (Act No. 84 of 1976). The effect of the current wording of the definition is that a person who is not entitled to a pension in terms of the Act may not claim benefits in terms of the Military Pensions Act, 1976. Consequently a number of people who served in political organisations contemplated in the Special Pensions Act, 1996, are disqualified from claiming benefits

in terms of the Military Pensions Act. The proposed amendment seeks to rectify this situation.

2.11 **Clause 11** is intended to provide for the retrospective effect of clauses 6, 7 and 8. This would mean that the Act will have to be read as if, from 1 December 1996 (the commencement date of the Act) it allowed the Chief Executive Officer to refer matters to the Review Board and did not require—

- (a) the Board to complete its activities within four years from that date; and
- (b) an actuary to be a member of the Board.

3. FINANCIAL IMPLICATIONS FOR STATE

3.1 No undue financial implications could be identified with regard to the proposed amendments. However, there might be some long-term financial implications in respect of **clause 1**, which gives the Board the discretion to condone late applications, although this will depend mainly on the number of late applications condoned. The Special Pensions Administration will request the actuaries to take this into account when performing the actuarial valuation of the fund and to provide the necessary projections in the subsequent financial years.

3.2 **Clause 8**, which seeks to remove the requirement that an actuary must be a member of the Review Board, will effect an immediate financial saving.

4. CONSULTATION

The objects of the Bill are of an administrative nature, therefore wide consultation is not necessary.

5. PARLIAMENTARY PROCEDURE

The State Law Advisers and the National Treasury are of the view that this Bill must be dealt with in accordance with the procedure established 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.