

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
SOCIAL ASSISTANCE BILL**

[B 57—2003]

*(As agreed to by the Portfolio Committee on Social Development
(National Assembly))*

[B 57A—2003]

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AMENDMENTS AGREED TO

SOCIAL ASSISTANCE BILL [B 57—2003]

PREAMBLE

1. On page 2, in the third line of the third paragraph, to omit “security” and to substitute “assistance”.

CLAUSE 1

1. On page 3, from line 45, to omit the definition of “administrator”.
2. On page 4, after line 10, to insert:

“child support grant” means a grant made in terms of section 6;
3. On page 4, after line 14, to insert:

“Director-General” means the Director-General: Social Development;
“disability grant” means a grant made in terms of section 9;
“disabled person” means a person contemplated in section 9(b);
4. On page 4, in line 15, to omit the definition of “Executive Director”.
5. On page 4, after line 21, to insert:

“foster child grant” means a grant made in terms of section 8;
6. On page 4, in line 26 to omit the definition of “grant” and to substitute:

“grant-in-aid” means a grant made in terms of section 12;
7. On page 4, after line 29, to insert:

“Inspector-General” means the person appointed in terms of section 27(2);
8. On page 4, from line 30, to omit the definition of “Minister” and to substitute:

“Minister” means the Minister responsible for Social Development;
9. On page 4, after line 31, to insert:

“older person” means a person contemplated in section 10(a) or (b);
“older person’s grant” means a grant made in terms of section 10;
10. On page 4, after line 37, to insert:

“procurator” means a person appointed by a beneficiary or the Agency to receive social assistance on the beneficiary’s behalf;

11. On page 4, in line 39, to omit the definition of “social assistance” and to substitute:

“social assistance” means a social grant including social relief of distress;
12. On page 4, after line 39, to insert:

“social grant” means a child support grant, a care dependency grant, a foster child grant, a disability grant, an older person’s grant, a war veteran’s grant and a grant-in-aid;
 “social relief of distress” means social relief granted in terms of section 14;
13. On page 4, from line 49, to omit the definition of “Treasury”.
14. On page 4, after line 48, to add:

“war veteran” means a person contemplated in section 11(b);
 “welfare organisation” means—

 - (a) an organisation registered in terms of section 13(1) of the National Welfare Act, 1978 (Act No. 100 of 1978);
 - (b) any non profit organisation registered in terms of section 13 of the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997), which in terms of its constitution has developmental welfare services as one of its objectives;
 - (c) an organisation which is not registered in terms of paragraphs (a) or (b) but undertakes or coordinates organised activities, measures or programmes in the field of developmental welfare services.

CLAUSE 2

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Application and implementation of Act

2. (1) This Act applies to a person who is not a South African citizen, if an agreement, contemplated in section 231(2) of the Constitution, between the Republic and the country of which that person is a citizen makes provision for this Act to apply to a citizen of that country who resides in the Republic.

(2) The Agency is responsible for the administration of social assistance in terms of chapter 3 and in terms of any function delegated to it in terms of section 29.

(3) The Agency must offer all reasonable assistance to a person, who, due to his or her age, a disability or an inability to read or write, is unable to understand, appreciate or exercise his or her rights, duties or obligations in terms of this Act, in the official language of the Republic which he or she is likely to understand, in order that he or she may do so.

(4) The Agency, must out of moneys appropriated by Parliament for this purpose or with funds donated for this purpose, publish and distribute to beneficiaries and potential beneficiaries, brochures in all official languages of the Republic setting out in understandable language the rights, duties, obligations, procedures and mechanisms contemplated in this Act, as well as contact details of the Agency or anyone acting on its behalf.

CLAUSE 3

1. On page 5, in line 25, to omit paragraph (a).
2. On page 5, in line 32, to omit “security” and to substitute “assistance”.

CLAUSE 4

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Provision of social grants

4. The Minister must, with the concurrence of the Minister of Finance, out of moneys appropriated by Parliament for that purpose, make available—

- (a) a child support grant;
- (b) a care dependency grant;
- (c) a foster child grant;
- (d) a disability grant;
- (e) an older person’s grant;
- (f) a war veteran’s grant; and
- (g) a grant-in-aid.

CLAUSE 5

1. On page 5, in line 47, to omit “grant”.
2. On page 5, in line 48, to omit “or”.
3. On page 5, in line 48, after “12” to insert “or 14”.
4. On page 5, in line 49, to omit paragraph (b) and to substitute:
 - (b) subject to section 17, is resident in the Republic;
5. On page 5, in line 52, to omit “and”.
6. On page 5, in line 54, after “(2)” to insert “and”.
7. On page 5, after line 54, to insert:
 - (e) applies for social assistance in accordance with section 15(1).

CLAUSE 7

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Care dependency grant

7. (a) A person is, subject to section 5, eligible for a care dependency grant if he or she is a parent, primary care giver or foster parent of a child who requires and receives permanent care or support services due to his or her physical or mental disability.

(b) A person contemplated in paragraph (a) is not eligible for such a grant if the child is cared for on a 24 hour basis for a period exceeding six months in an institution that is funded by the State.

CLAUSE 10

1. On page 6, in line 34, to omit “ a grant for older persons” and to substitute “an older person’s grant”.

CLAUSE 11

1. On page 6, in line 39, to omit “and” and to substitute “or”.

CLAUSE 12

1. On page 7, from line 12, to omit “due to a physical or mental disability” and to substitute:

that person is in such a physical or mental condition that

CLAUSE 13

1. On page 7, in line 14, after “welfare” to insert “and nonprofit”.
2. On page 7, in line 14, to omit “and persons”.

NEW CLAUSE

1. That the following be a new Clause:

Social relief of distress

14. The Minister may provide social relief of distress to a person who qualifies for such relief as may be prescribed.

CLAUSE 14

1. On page 7, in line 29, to omit “administrator” and to substitute “Agency”.
2. On page 7, from line 31, to omit subsection (3) and to substitute:
 - (3) (a) If the applicant qualifies for social assistance in terms of this Act, the Agency must render the relevant social assistance.
 - (b) If the applicant does not qualify for social assistance in terms of this Act, the Agency must in writing at the applicant’s address or other point of contact stated in the application, inform the applicant—
 - (i) that he or she does not qualify for social assistance in terms of this Act;
 - (ii) the reasons why he or she does not qualify; and
 - (iii) of his or her right of appeal contemplated in section 19 and of the mechanism and procedure to invoke that right.
3. On page 7, after line 37, to insert:
 - (5) If any information supplied by a beneficiary to the Agency in an application for a grant materially changes after that beneficiary has submitted that application, he or she must as soon as is reasonably possible after that change occurs, inform the Agency thereof.

CLAUSE 15

1. On page 7, in line 39, after “may”, to insert “subject to subsection (4)”.
2. On page 7, after line 41, to insert:
 - (2) Nothing in this section prevents a person applying for or receiving social assistance to withdraw a power of attorney made in terms of subsection (1) and to appoint another person as procurator.
3. On page 7, in line 42, to omit “with a disability or an older person who is unable to complete a power of attorney, an administrator” and to substitute:

who is unable to appoint another as his or her procurator, the Agency
4. On page 7, in line 43, after “may” to insert “subject to subsection (4)”.
5. On page 7, in line 43, after “adult” to insert “person or welfare organisation”.
6. On page 7, after line 49, to insert:
 - (5) A procurator who has knowingly failed to inform the Agency of his or her intention to be absent from the Republic for a period exceeding 90 days, as contemplated in section 17(3), is unfit to act as procurator and may not continue to act as procurator or be nominated or appointed as procurator, unless the Agency decides otherwise as provided for in section 17(5).

CLAUSE 16

Clause rejected.

NEW CLAUSE

1. That the following be the new Clause:

Discontinuation of payments to beneficiaries absent from Republic

17. (1) If a beneficiary intends to be absent from the Republic for a period exceeding 90 days, he or she must inform the Agency thereof before leaving the Republic and the Agency must, subject to subsections (2) and (3), suspend payment of a grant until that beneficiary or procurator, as the case may be, appears in person before the Agency and informs the Agency that the beneficiary has returned permanently to the Republic.

(2) Despite subsection (1), the Agency may upon written request by a beneficiary or a procurator, in circumstances prescribed by the Minister by notice in the *Gazette*, continue payment of a grant or a portion thereof to that beneficiary or procurator subject to such conditions and for such a period as the Agency may determine.

(3) If a beneficiary—

- (a) is absent from the Republic for a period not yet exceeding 90 days and has not informed the Agency of his or her absence as contemplated in subsection (1); and
- (b) due to a medical, safety or family emergency is likely to be absent from the Republic for a period exceeding 90 days, the beneficiary or procurator, as the case may be, or anyone acting on his or her behalf or in his or her interest, must immediately after such emergency has arisen, submit an affidavit or affirmation to the Agency informing it—

- (i) of the date when the beneficiary left the Republic, the place where he or she is and any other information the Minister may prescribe by notice in the *Gazette*;
- (ii) that the beneficiary is, due to an emergency contemplated in this subsection, likely to be absent from the Republic for a period exceeding 90 days;
- (iii) of the details of the emergency which prevent the beneficiary's return to the Republic within 90 days of the date referred to in paragraph (a) and verifiable proof thereof;
- (iv) of the date when the beneficiary intends to return to the Republic; and
- (v) of an address where the beneficiary, or the person acting on his or her behalf or in his or her interest, as the case may be, can be readily contacted.

(4) The Agency must, after receipt of the statement and proof referred to in subsection (3)(b)—

- (a) enter the details of these circumstances on the records of the beneficiary or procurator, as the case may be;
- (b) consider the statement and such proof before deciding, subject to subparagraphs (i), (ii) and (iii) whether or not to suspend payment of the relevant grant as contemplated in subsection (1);
- (c) in writing, in the official language of the Republic in which the application for that grant was made, inform the beneficiary or procurator, or the person acting on his or her behalf or in his or her interest, as the case may be, of the Agency's decision whether or not to suspend payment of that grant and if it has been decided to continue payment, subject to which conditions such payment will be continued,

but the Agency may in exceptional circumstances continue payment of the relevant grant subject only to conditions in respect of—

- (i) the maximum period in respect of which such payment will be continued;
 - (ii) the frequency with which further statements must be submitted to the Agency, the facts to be addressed in those statements and the nature and level of proof required; and
 - (iii) any matter relevant to the payment of social assistance which the Minister may prescribe by notice in the *Gazette*.
- (5) If a beneficiary or procurator fails to inform the Agency as contemplated in subsections (1) or (3), the Agency may—
- (a) immediately suspend payment of the relevant grant;
 - (b) note that failure or refusal and any other information relevant to the absence of that beneficiary or procurator on his or her records;
 - (c) record that the beneficiary's right to social assistance or procurator's right to act as a procurator, as the case may be, has, subject to subsection (6), been suspended;
 - (d) take the prescribed steps in terms of the Public Finance Management Act, 1996, to recover any payment made to the beneficiary or procurator, as the case may be, the period exceeding 90 days, during which the beneficiary was absent from the Republic;
 - (e) take any further action contemplated in this Act or other law.
- (6) If the Agency has taken action contemplated in subsection (5), it must in writing, by registered mail at the last known address in the Republic or by verifiable notification at a point of contact with that beneficiary, inform the beneficiary in the official language of the Republic which he or she is most likely to understand that—
- (a) his or her right to social assistance in terms of this Act has been suspended, and the reasons therefor; and
 - (b) he or she has the right to inform the Agency within 90 days from the date of postage of the registered mail, of the circumstances or reasons why he or she so failed to inform the Agency of his or her absence, and an alternative address where he or she could have received physical mail.
- (7) The Agency must after receipt of information, if any, submitted by a beneficiary or procurator in terms of subsection (6)(b)—
- (a) consider such information and decide, whether or not to re-instate, that beneficiary's or procurator's rights in terms of this Act;
 - (b) in writing by registered mail at the last known address of that beneficiary in the Republic or at an alternative address supplied by that beneficiary or procurator, as the case may be, inform him or her in the official language of the Republic in which he or she submitted that information—
 - (i) of the Agency's decision;
 - (ii) the reasons for that decision; and
 - (iii) that he or she has a right of appeal contemplated in section 19 and of the mechanism and procedure to invoke that right.

CLAUSE 17

1. On page 8, in line 8, after "if" to insert "the Agency pays".
2. On page 8, in line 8, to omit "is paid".

3. On page 8, from line 12, to omit subsection (2) and to substitute:
 - (2) The Agency must recover the amounts to which a person was not entitled, as contemplated in subsection (1), in accordance with the Public Finance Management Act, 1999.
4. On page 8, after line 15, to insert:
 - (3) The Minister shall remit an amount owing by a person in terms of subsection (1) if such a person satisfies the Minister that he or she received the amount without knowing that he or she was not entitled thereto.
 - (4) The Inspectorate shall investigate all complaints of fraudulent withholding of the full or partial benefit due to a beneficiary, the holding of such an investigation must not affect the right of a beneficiary to receive the full value of the benefit from date of accrual.

CLAUSE 18

1. On page 8, in line 17, to omit “an administrator” and to substitute “the Agency”.
2. On page 8, in line 22, after the third “the” to omit “administrator’s” and to substitute “Agency’s”.
3. On page 8, in line 24, after “(a)” to insert “confirm,”.
4. On page 8, from line 25, to omit “the prescribed conditions” and to substitute:

such conditions as the Minister may prescribe by notice in the *Gazette*
5. On page 8, in line 26, after “matter,” to insert “confirm,”.

CLAUSE 19

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Abuse of social assistance

19. (1) Where the Agency has reasonable grounds to suspect that a beneficiary, parent, procurator, or a primary care giver is abusing the social grant, the Agency may appoint a person to investigate such suspected abuse.

(2) If such person finds on objective grounds that such abuse has taken place, the Agency must appoint a person to receive the social grant on behalf of the beneficiary and to use it for the benefit of that beneficiary subject to any prescribed conditions.

(3) The Agency may—

- (a) suspend payment of a child support grant, foster child grant or a care dependency grant to a parent, primary care giver, foster parent or procurator, where the parent, primary care giver, foster parent or procurator—

- (i) is convicted of abuse or neglect of the child in respect of whom he or she receives a grant; or
 - (ii) is found by the Agency or the Inspectorate to be incapable of using a grant for the benefit of the child in respect of whom he or she received it; and
- (b) appoint a person to receive the grant in respect of such a beneficiary or child pending the substitution of such parent, primary care giver, foster parent or procurator as the case may be.

CLAUSE 20

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Restrictions on transfer of rights and payments of social assistance

21. (1) A grant may not be transferred, ceded, pledged or in any other way encumbered or disposed of unless the Minister on good grounds in writing consents thereto.

(2) Any act in contravention of subsection (1) is void and if the Minister becomes aware of any such act, he or she may order that payment of the relevant grant be terminated or suspended immediately and the Agency must, in writing by registered mail at the last known address of that beneficiary or procurator, as the case may be, inform him or her in the official language of the Republic in which he or she made the application for the grant—

- (a) of the Minister's decision;
- (b) of the reasons for that decision; and
- (c) that he or she has a right of appeal contemplated in section 19 and of the mechanism and procedure to invoke that right.

(3) A beneficiary must without limitation or restriction receive the full amount of a grant to which he or she is entitled before any other person may exercise any right or enforce any claim in respect of that amount.

(4) Despite subsection (3), the Minister may prescribe circumstances under which deductions may be made directly from social assistance grants: Provided that such deductions are necessary and in the interest of the beneficiary.

(5) An amount that accrues or has accrued to a beneficiary or his or her estate in terms of this Act may not be attached or subjected to any form of execution under a judgment or order of a court or by law, or form part of his or her insolvent estate.

(6) Notwithstanding the provisions of subsection (1), in the case of death of a parent, procurator or primary care giver receiving a grant on behalf of or in respect of another person or child as the case may be, the Agency must appoint a person to receive the grant on behalf or in respect of such person or child, and to use it for his or her benefit without suspending the grant, subject to prescribed conditions.

CLAUSE 21

1. On page 9, in line 6, after “thereto,” to insert:

or is not entitled to the full amount which he or she is receiving, and he or she fails to inform the Agency thereof,
2. On page 9, after line 6, to insert:

(3) A beneficiary who knowingly fails to inform the Agency of any material change of information contemplated in section 15(5), is guilty of an offence.

CLAUSE 22

1. On page 9, in line 7, to omit “administrator” and to substitute “Agency by third parties”.
2. On page 9, in line 9, to omit “Minister” and to substitute “Agency”.
3. On page 9, in line 9, to omit “the Minister” and to substitute “it”.
4. On page 9, from line 9, to omit “the prescribed” and to substitute “all relevant”.
5. On page 9, from line 10, to omit “and with any additional information requested if such information is necessary for a decision on an application”.
6. On page 9, in line 14, to omit “Minister” and to substitute “Agency”.
7. On page 9, in line 15, to omit “the Minister with the prescribed” and to substitute “the Agency with all relevant”.
8. On page 9, in line 19, after “who” to insert “in terms of subsections (1) or (2)”.
9. On page 9, in line 20, to omit “Minister in terms of subsections (1) and (2)” and to substitute “Agency”.
10. On page 9, in line 25, to omit “Minister” and to substitute “Agency”.

CLAUSE 23

1. On page 9, in line 26, to omit “administrator” and to substitute “Agency”.
2. On page 9, in line 27, to omit “an administrator” and to substitute “The Agency”.
3. On page 9, in line 27, to omit “his or her” and to substitute “its”.
4. On page 9, from line 32, to omit “him or her” and to substitute “it”.
5. On page 9, in line 35, after “(b)” to insert “through its representative,”.
6. On page 9, in line 38, after “(c)” to insert “through its representative,”.

CHAPTER 4

Chapter rejected.

CLAUSE 25

1. On page 10, in line 13, to omit “An” and to substitute “The”.
2. On page 10, in line 13, to omit “and functions independently of both the Department and the Agency” and to substitute:

as an organisational component contemplated in Schedule 3 to the Public Service Act, 1994 (Act No. 103 of 1994) and is headed by a person designated as Inspector-General
3. On page 10, from line 15, to omit subsection (2) and to substitute:

(2) The Inspectorate functions independently of both the Department and the Agency.
4. On page 10, in line 21, to omit “Executive Director” and to substitute “Inspector-General”.
5. On page 10, in line 23, to omit “Executive Director” and to substitute:

Inspector-General, an inspector or any other employee of the Inspectorate
6. On page 10, from line 25, to omit “Executive Director” and to substitute “Inspector-General, an inspector”.
7. On page 10, in line 26, after “any” to insert “other”.

CLAUSE 27

1. On page 10, from line 38, to omit “Executive Director” and substitute “Inspector-General”.
2. On page 10, in line 40, to omit “Executive Director” and to substitute “Inspector-General”.
3. On page 10, in line 41, to omit “Executive Director” and to substitute “Inspector-General”.
4. On page 10, in line 43, after “Minister” to insert:

, and that establishment must differentiate between employees who are to be appointed as inspectors exercising powers in terms of section 28 and other employees who are to be appointed to perform other functions within the Inspectorate
5. On page 10, in line 46, to omit “Executive Director” and to substitute “Inspector-General”.
6. On page 10, in line 47, to omit “employee” and to substitute “inspector”.
7. On page 10, in line 48, to omit “this Act” and to substitute “sections 28 and 29”.
8. On page 10, in line 50, after “The” to omit “Executive Director” and to substitute “Inspector-General”.

9. On page 10, in line 52, to omit “Executive Director” and to substitute “Inspector-General”.
10. On page 10, in line 55, after “years” to insert “or to both a fine and such imprisonment”.
11. On page 11, in line 3, to omit “the Department or the Agency”.

CLAUSE 28

1. On page 11, in line 9, to omit “, within the Agency”.
2. On page 11, in line 10, after “(a)” to insert “conduct investigations to”.
3. On page 11, in line 10, to omit “security” and to substitute “assistance frameworks and”.
4. On page 11, in line 11, to omit “internal financial audits and”.
5. On page 11, in line 11, to omit “with regulations” and to substitute:
by the Agency with regulatory and policy measures and instruments
6. On page 11, in line 13, to omit “; and” and to substitute:
and criminal activity, within the Agency and in connection with its functions, duties and operations
7. On page 11, after line 13, to insert:
(d) establish a complaints mechanism; and
8. On page 11, in line 18, after “Service” to insert “, the Agency”.
9. On page 11, in line 20, after “(1998)” to insert:
or any other organ of state established by law which has the appropriate powers to investigate and act on any alleged contravention of this Act
10. On page 11, in line 24, to omit “may, at the request of and” and to substitute “must,”.
11. On page 11, from line 24, to omit “Executive Director” and to substitute “Inspector-General, in writing,”.
12. On page 11, from line 25, to omit “identified by the Executive Director” and to substitute “appointed as inspectors”.
13. On page 11, in line 28, after “law,” to insert “by notice in the *Gazette*”.

CLAUSE 29

1. On page 11, in line 32, to omit “Executive Director” and substitute “Inspector-General”.
2. On page 11, in line 33, to omit “Executive Director” and to substitute “Inspector-General”.
3. On page 11, in line 37, to omit “Executive Director” and substitute “Inspector-General or an inspector”.

4. On page 11, from line 37, to omit “the Executive Director” and to substitute “him or her”.
5. On page 11, in line 47, to omit “Executive Director” and to substitute “Inspector-General”.

CLAUSE 30

Clause rejected.

CLAUSE 31

Clause rejected.

CLAUSE 32

Clause rejected.

CLAUSE 33

1. On page 14, in line 5, to omit “Director-General: of the Department, an administrator” and to substitute:

Member of the Executive Council responsible for social development in a province, the Director-General, the Agency
2. On page 14, in line 8, to omit “of the Department, an administrator” and substitute “the Agency”.
3. On page 14, in line 11, to omit “of the Department”.
4. On page 14, in line 25, after “be” to insert “amended or”.

CLAUSE 34

1. On page 14, in line 29, to omit “of the Department,” and to substitute “or”.
2. On page 14, in line 30, to omit “an administrator” and to substitute “the Agency”.
3. On page 14, in line 33, to omit “administrator” and to substitute “Agency”.
4. On page 14, in line 35, after “furnishes” to omit “the administrator or”.
5. On page 14, in line 40, to omit “the administrator or”.

CLAUSE 35

1. On page 14, in line 45, to omit “10” and to substitute “15”.

CLAUSE 36

1. On page 14, in line 48, after “Minister” to insert:
must make regulations regarding any matter that must be prescribed in terms of this Act and
2. On page 14, in line 49, to omit “must or”.

CLAUSE 37

1. On page 15, in line 7, to omit “legislation” and to substitute “laws and transitional arrangements”.
2. On page 15, after line 13, to insert:
(3) Any regulation or notice issued, any appointment made, any grant awarded, any moneys paid, or anything else done by a provincial sphere of government under the Social Assistance Act, 1992, insofar as it has been assigned to that sphere of government, is deemed to have been issued, made, granted, paid or done under the corresponding provisions of this Act in the event that a provincial legislature repeals the Social Assistance Act, 1992, insofar as it has been assigned to that sphere of government, or amends the Act in such a way that it conflicts with this Act.