



# STAATSKOERANT

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REPUBLIC OF SOUTH AFRICA

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KANTOOR VAN DIE STAATSPRESIDENT

STATE PRESIDENT'S OFFICE

No. 1963.

19 September 1986

No. 1963.

19 September 1986

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

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

No. 106 van 1986: Wysigingswet op die Pensioenwette, 1986.

No. 106 of 1986: Pension Laws Amendment Act, 1986.



## PENSION LAWS AMENDMENT ACT, 1986

Act No. 106, 1986

## GENERAL EXPLANATORY NOTE:

- [** Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with solid line indicate insertions in existing enactments.

# ACT

To amend the Government Service Pension Act, 1973, so as to replace certain obsolete designations; to amend the Military Pensions Act, 1976, so as to provide for the payment of allowances to pensioners suffering from serious disabilities; and to authorize the making of regulations with retrospective effect; to amend the Judges' Pensions Act, 1978, so as to include in the definition of "pensionable service" certain periods of service performed in an acting capacity; to amend the General Pensions Act, 1979, so as to further regulate the preservation of pension rights by certain persons; to provide for the transfer of the pension rights of a dormant member to another pension fund; to further regulate the pension rights of persons whose services are terminated under certain circumstances; to empower the Minister of National Health and Population Development to make regulations relating to the financial management of and control over pension funds; and to entrust the auditing of the accounting records of certain pension funds to the Auditor-General; to amend the Temporary Employees Pension Fund Act, 1979, so as to replace certain obsolete designations; to increase certain benefits and special awards payable in terms of the Occupational Diseases in Mines and Works Act, 1973; and to provide for matters connected therewith.

*(English text signed by the State President.)*  
*(Assented to 10 September 1986.)*

**BE IT ENACTED** by the State President and the Parliament of the Republic of South Africa, as follows:—

1. Section 2 of the Associated Institutions Pension Fund Act, 1963, is hereby amended by the deletion of paragraph (c) of sub-5 section (1). Amendment of section 2 of Act 41 of 1963, as amended by section 1 of Act 86 of 1970, section 2 of Act 97 of 1972 and section 1 of Act 97 of 1980.
2. Section 8 of the Associated Institutions Provident Fund Act, 1971, is hereby amended by the deletion of paragraph (a) of subsection (1). Amendment of section 8 of Act 11 of 1971.
3. Section 17 of the Government Service Pension Act, 1973, is 10 hereby amended—
  - (a) by the deletion of paragraph (a) of subsection (1); and
  - (b) by the substitution for subsection (6) of the following subsection:Amendment of section 17 of Act 57 of 1973, as amended by section 5 of Act 15 of 1974.



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“(6) The regulations contemplated in this section shall be made by the Minister with the concurrence of the Minister of Finance and after consultation with the Administrators and the Ministers responsible for the Bureau, the Commission for Administration, the permanent force, the police force, the prisons service and Posts and Telecommunications.”.

4. The following section is hereby inserted in the Military Pensions Act, 1976, after section 13:

Insertion of section 13A in Act 84 of 1976.

10 “Allowances payable to members suffering from serious disability.” **13A. (1)** If the pensionable disability of any member who is entitled to a pension in terms of section 4 in the opinion of the Director-General is such that he is entirely or mainly dependent on the assistance of another person for his physical care, the Director-General may approve that an allowance be paid to the member in addition to the said pension.

15 (2) The amount of the allowance or the basis on which it is to be calculated and the conditions subject to which it is to be paid, shall be determined by the Minister of Finance.”.

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5. (1) Section 23 of the Military Pensions Act, 1976, is hereby amended by the addition of the following subsection:

Amendment of section 23 of Act 84 of 1976, as amended by section 11 of Act 26 of 1977.

“(3) Regulations contemplated in subsection (1) may be made with retrospective effect.”.

25 (2) Subsection (1) shall be deemed to have come into operation on the date of commencement of section 23 of the Military Pensions Act, 1976 (Act No. 84 of 1976).

6. Section 1 of the Judges' Pensions Act, 1978, is hereby amended by the substitution in subsection (1) for the definition of “pensionable service” of the following definition:

Amendment of section 1 of Act 90 of 1978, as amended by section 1 of Act 66 of 1979, section 15 of Act 97 of 1980 and section 4 of Act 81 of 1982.

30 “‘pensionable service’ means any period of service as a judge in a permanent capacity, as well as—

(a) such service in an acting capacity for any continuous period immediately prior to assuming office as a judge in a permanent capacity; and

35 (b) any other continuous period of longer than 29 days of such service in an acting capacity prior to assuming office as a judge in a permanent capacity.”.

7. Section 15 of the General Pensions Act, 1979, is hereby amended—

Amendment of section 15 of Act 29 of 1979, as amended by section 3 of Act 67 of 1981, section 7 of Act 81 of 1982 and section 8 of Act 123 of 1984.

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

“(1) If the membership of a member of a pension fund is on account of any reason terminated before [attaining] he attains the age at which he would have the right to retire on pension, [is appointed, nominated or elected without a break in his service or after such break in his service as the Director-General may approve, as a member or in the service of any board, institution, establishment or body established by or under any law or of a government or legislative body of a country or area in Africa in respect of which Parliament had previously exercised legislative powers,] the Director-General may—

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55 (a) [in his discretion, declare such member] with the concurrence of such member, declare him a dormant member of such pension fund with effect from the date on which [he was so appointed, nominated or elected] his membership was so terminated if he deems it expedient that his pension-

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able service as such member should be retained for him; or

(b) at any time before the date referred to in paragraph (a), on the written application of such member made through **[such board, institution, establishment or body]** his intended employer, in his discretion, approve that such member shall for all purposes remain a member of such pension fund as if members, or persons in the service, of that **[board, institution, establishment or body]** employer were members of that pension fund, if the **[board, institution, establishment or body]** employer concerned undertakes to contribute to that pension fund in respect of that member to the same extent that an employer is, in terms of the laws on that pension fund, required to contribute to that pension fund in respect of a member.”;

(b) by the substitution for paragraph (e) of subsection (2) of the following paragraph:

“(e) a member referred to in **[paragraph (b) of]** subsection (1) **(b)** shall, notwithstanding anything to the contrary contained in any law, not be competent to become a member of, or to contribute to, a pension or provident fund or scheme in relation to which members, or persons in the service, of the **[board, institution, establishment or body]** employer concerned are or may be required to become members and to contribute as members.”;

(c) by the insertion after paragraph (c) of subsection (4) of the following paragraph:

“(cA) ‘employer’ includes any board, institution, establishment or body established under any law or a government or legislative body of a country or area in Africa in respect of which Parliament had previously exercised legislative powers.”; and

(d) by the substitution for paragraph (d) of subsection (4) of the following paragraph:

“(d) ‘fixed date’ means the date on which a dormant member attains the age at which he, immediately before the date on which **[he was appointed, nominated or elected]** his membership was terminated as contemplated in subsection (1), would have had the right to retire on pension;”.

8. The following section is hereby inserted in the General Pensions Act, 1979, after section 15:

Insertion of section 15A in Act 29 of 1979.

“Transfer of pensionable service of dormant member to another pension fund.

**15A. (1)** If a dormant member becomes a member of another pension fund, the Director-General may, with the concurrence of the dormant member, approve that the dormant member’s pensionable service at an appropriate pension fund be transferred to the other pension fund.

(2) There shall be paid to the other pension fund in respect of pensionable service so transferred such amount as may be determined by the Director-General.

(3) Any amount payable in terms of subsection (2) shall be paid from the appropriate pension fund or, with the concurrence of the Minister of Finance, from the State Revenue Fund or partly from the pension fund and partly from the State Revenue Fund.

(4) Any amount owed by a dormant member to an appropriate pension fund shall be set off against any amount payable in terms of subsection (2), and all rights to the amount owing shall be transferred from



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the appropriate pension fund to the other pension fund.

(5) For the purposes of this section—

- 5 (a) 'appropriate pension fund' means the pension fund of which a dormant member is a dormant member;
- (b) 'dormant member' means any person who has been declared a dormant member of a pension fund under a pension law;
- 10 (c) 'other pension fund' means any pension fund which the Director-General may approve for the purposes of this section on such terms and conditions as may be agreed upon between the Director-General and the management of the pension fund concerned."
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9. The following section is hereby substituted for section 20 of the General Pensions Act, 1979:

Substitution of section 20 of Act 29 of 1979, as amended by section 20 of Act 96 of 1983.

- 20 "Pension benefits of persons whose service are terminated in certain circumstances.
- 25 20. (1) If the service of a person who is a member of a pension fund on the fixed establishment of any employer, is terminated by himself or his employer before that person attains the retirement age, and the Minister is satisfied that the underlying reason for that termination of service was—
- (a) that the employer, if it was a university, wanted to appoint a member of the national unit served by that university in the place of that person;
- (b) that the university institution referred to in section 17 of the Vista University Act, 1981 (Act No. 106 of 1981), through no fault of the person concerned has made it impossible for that person to remain seconded to that university institution; or
- (c) that it became impossible for that person to remain in that service on account of threats of force against him, his family or his property,
- 35 such person shall, subject to subsection (2), for the purposes of the relevant pension law be deemed with effect from the date determined by the Minister to have been discharged from his service on attaining the retirement age.
- (2) Subsection (1) shall not apply to a person referred to in that subsection who—
- (a) (i) within a reasonable time after the termination of his service has been offered employment elsewhere; or
- 45 (ii) within a period of six months from the termination of his service in the opinion of the Minister is likely to obtain employment elsewhere,
- 50 at a salary not less than that which the person concerned received immediately before the termination of his service, and in terms of which employment he will be obliged to contribute to a pension fund; or
- 55 (b) has been declared a dormant member under section 15.
- (3) In the calculation of the benefit to which a member of a pension fund who in terms of subsection (1) is deemed to have been discharged from his service is entitled, there shall be added to his pensionable service a period equal to—
- (a) one-third of his pensionable service;
- (b) the period from the date on which he is in terms of subsection (1) deemed to have been discharged from his service up to the date on which he attains the retirement age; or
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(c) a period of five years,  
whichever is the shortest period.

(4) There shall be recovered from the employer from whose service the member is deemed to have been discharged, or from the State Revenue Fund in the case of a member referred to in subsection (1) (b)—

(a) the amount of any annuity paid in terms of the relevant pension law to or in respect of such member up to the last day of the month in which he attains the retirement age;

(b) with effect from the first day of the month following upon the month referred to in paragraph (a), the amount by which such annuity is increased by reason of the period which is added in terms of subsection (3) to the pensionable service of the member concerned;

(c) the amount by which any gratuity is increased by reason of the period so added to the pensionable service of the member concerned; and

(d) if the member concerned has died, the amount by which any benefit in favour of his widow, dependant or estate is increased by reason of the period so added to the pensionable service of that member.

(5) For the purpose of this section—

(a) 'Minister', in relation to a member of a pension fund who is in the service of a council, an institution, an establishment or a body established by or under any law, means the Minister acting after consultation with the Minister responsible for the administration of the relevant law;

(b) 'national unit' means a national unit referred to in section 2 (1) of the Promotion of Black Self-government Act, 1959 (Act No. 46 of 1959);

(c) 'retirement age', in relation to a member, means the age at which he is entitled to retire on pension under the relevant pension law;

(d) 'university' means a university established by the University of Zululand Act, 1969 (Act No. 43 of 1969), the University of the North Act, 1969 (Act No. 47 of 1969), the Medical University of Southern Africa Act, 1976 (Act No. 78 of 1976), or the Vista University Act, 1981 (Act No. 106 of 1981)."

10. The following section is hereby inserted in the General Pensions Act, 1979, after section 22:

Insertion of section 22A in Act 29 of 1979.

"Financial management of and control over pension funds, and auditing.

22A. (1) The Minister may, after consultation with the Minister of Finance, make regulations providing for the management of and control over pension funds.

(2) The accounting records of a pension fund shall be audited by the Auditor-General.

(3) For the purpose of this section 'pension fund' includes the Stabilization Account for Civil Pensions referred to in section 8A, but does not include a pension scheme."

11. Section 8 of the Temporary Employees Pension Fund Act, 1979, is hereby amended—

Amendment of section 8 of Act 75 of 1979.

(a) by the deletion of paragraph (a) of subsection (1); and  
(b) by the substitution for subsection (6) of the following subsection:

"(6) Regulations made under this section shall be



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made by the Minister with the concurrence of the Minister of Finance after consultation with the **[Minister of the Interior and Immigration and the Minister of]** Ministers responsible for the Commission for Administration, and **[the Minister of]** Posts and Telecommunications.”.

12. (1) Subject to the provisions of subsection (2), a benefit as defined in section 1, and a special award referred to in section 101, of the Occupational Diseases in Mines and Works Act, 1973 (Act No. 78 of 1973), which are payable in terms of the said Act, and which were increased by the Occupational Diseases in Mines and Works Amendment Act, 1974 (Act No. 67 of 1974), the Occupational Diseases in Mines and Works Amendment Act, 1975 (Act No. 45 of 1975), the Occupational Diseases in Mines and Works Amendment Act, 1977 (Act No. 117 of 1977), the Occupational Diseases in Mines and Works Amendment Act, 1979 (Act No. 83 of 1979), the Occupational Diseases in Mines and Works Amendment Act, 1980 (Act No. 83 of 1980), the Occupational Diseases in Mines and Works Amendment Act, 1981 (Act No. 85 of 1981), the Occupational Diseases in Mines and Works Amendment Act, 1983 (Act No. 106 of 1983), the Pension Laws Amendment Act, 1984 (Act No. 123 of 1984), and the Pension and Related Matters Amendment Act, 1985 (Act No. 105 of 1985), shall be further increased with effect from 1 October 1986—

Increase of certain benefits and special awards.

- (a) in the case of such a benefit, irrespective of whether it became or becomes payable before, on or after 1 October 1986, by the applicable percentage; and
- (b) in the case of such a special award, by an amount which the commissioner, as defined in section 1 of the Occupational Diseases in Mines and Works Act, 1973, may in his discretion determine, but not exceeding 15 per cent of any such special award payable immediately prior to 1 October 1986:

Provided that in the calculation of any such benefit or special award, a fraction of a rand shall be calculated to the next complete rand.

(2) The provisions of subsection (1) shall not apply with reference to any one-sum benefit, as defined in section 1 of the Occupational Diseases in Mines and Works Act, 1973, to which a person became or becomes entitled before 1 October 1986.

(3) For the purpose of this section “applicable percentage” means, in the case of such a benefit payable in the form of—

- (a) a monthly pension, 15 per cent; and
- (b) a one-sum benefit—
  - (i) five per cent in the case of such a benefit payable to Whites, Coloureds and Indians certified to be suffering from tuberculosis or from a compensatable disease in the first degree and such a benefit referred to in section 79 (4) (a) of the Occupational Diseases in Mines and Works Act, 1973;
  - (ii) ten per cent in the case of such a benefit payable to Whites, Coloureds and Indians certified to be suffering from a compensatable disease in the second degree and such a benefit referred to in section 79 (4) (b) of the Occupational Diseases in Mines and Works Act, 1973;
  - (iii) fifteen per cent of such a benefit referred to in sections 83 (1) (a) and (b) and 91 (1) (a) and (b) of the Occupational Diseases in Mines and Works Act, 1973; and
  - (iv) twenty per cent in the case of Blacks certified to be suffering from tuberculosis or from a compensatable disease or from more than one compensatable disease together with or without tuberculosis.



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**13.** (1) This Act shall be called the Pension Laws Amendment Act, 1986. Short title and commencement.

(2) The provisions of sections 4 and 12 shall come into operation on 1 October 1986, and the provisions of section 9 shall be deemed to have come into operation on 1 June 1986.