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STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No. 426.

15 March 1989

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15 Maart 1989

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

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

No. 7 of 1989: Divorce Amendment Act, 1989.

No. 7 van 1989: Wysigingswet op Egskeiding, 1989.

Act No. 7, 1989

DIVORCE AMENDMENT ACT, 1989

GENERAL EXPLANATORY NOTE:

Words underlined with solid line indicate insertions in existing enactments.

ACT

To amend the Divorce Act, 1979, so as to provide that a party to a divorce action may share in the pension interest of the other party; and to provide for matters connected therewith.

*(English text signed by the acting State President.)
(Assented to 1 March 1989.)*

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

Amendment of section 1 of Act 70 of 1979

1. Section 1 of the Divorce Act, 1979, is hereby amended by the addition to subsection (1) of the following definitions:

“‘pension fund’ means a pension fund as defined in section 1 (1) of the Pension Funds Act, 1956 (Act No. 24 of 1956), irrespective of whether the provisions of that Act apply to the pension fund or not;

‘pension interest’, in relation to a party to a divorce action who—

(a) is a member of a pension fund (excluding a retirement annuity fund), means the benefits to which that party as such a member would have been entitled in terms of the rules of that fund if his membership of the fund would have been terminated on the date of the divorce on account of his resignation from his office;

(b) is a member of a retirement annuity fund which was *bona fide* established for the purpose of providing life annuities for the members of the fund, and which is a pension fund, means the total amount of that party’s contributions to the fund up to the date of the divorce, together with a total amount of annual simple interest on those contributions up to that date, calculated at the same rate as the rate prescribed as at that date by the Minister of Justice in terms of section 1 (2) of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975), for the purposes of that Act;

‘rules’, in relation to a pension fund, means rules as defined in section 1 (1) of the Pension Funds Act, 1956.”

Amendment of section 7 of Act 70 of 1979, as amended by section 36 of Act 88 of 1984

2. Section 7 of the Divorce Act, 1979, is hereby amended by the addition of the following subsections:

“(7) (a) In the determination of the patrimonial benefits to which the parties to any divorce action may be entitled, the pension interest of a party shall, subject to paragraphs (b) and (c), be deemed to be part of his assets.

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- (b) The amount so deemed to be part of a party's assets, shall be reduced by any amount of his pension interest which, by virtue of paragraph (a), in a previous divorce—
- (i) was paid over or awarded to another party; or
 - (ii) for the purposes of an agreement contemplated in subsection (1), was accounted in favour of another party. 5
- (c) Paragraph (a) shall not apply to a divorce action in respect of a marriage out of community of property entered into on or after 1 November 1984 in terms of an antenuptial contract by which community of property, community of profit and loss and the accrual system are excluded. 10
- (8) Notwithstanding the provisions of any other law or of the rules of any pension fund—
- (a) the court granting a decree of divorce in respect of a member of such a fund, may make an order that—
 - (i) any part of the pension interest of that member which, by virtue of subsection (7), is due or assigned to the other party to the divorce action concerned, shall be paid by that fund to that other party when any pension benefits accrue in respect of that member; 15
 - (ii) an endorsement be made in the records of that fund that that part of the pension interest concerned is so payable to that other party; 20
 - (b) any law which applies in relation to the reduction, assignment, transfer, cession, pledge, hypothecation or attachment of the pension benefits, or any right in respect thereof, in that fund, shall apply *mutatis mutandis* with regard to the right of that other party in respect of that part of the pension interest concerned.”. 25

Short title and commencement

3. This Act shall be called the Divorce Amendment Act, 1989, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.