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[No. 3059.

DEPARTMENT OF THE PRIME MINISTER.

DEPARTEMENT VAN DIE EERSTE MINISTER.

No. 571.

7th April, 1971.

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

No. 11 of 1971: Associated Institutions Provident Fund Act. 1971.

No. 571.

7 April 1971.

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

No. 11 van 1971: Wet op die Voorsorgfonds vir Ge-assosieerde Inrigtings, 1971.

Act No. 11, 1971

ASSOCIATED INSTITUTIONS PROVIDENT FUND
ACT, 1971.

ACT

To provide for the establishment, control and administration of a joint provident fund for certain persons in the employ of institutions which, by or under the Associated Institutions Pension Fund Act, 1963 (Act No. 41 of 1963), or any other law, are associated institutions or are deemed to be such institutions; for the disestablishment of certain provident funds established by law and the transfer of the assets, liabilities, obligations and members of the said provident funds to the said joint provident fund; for the payment of benefits out of the said joint provident fund to members thereof, their dependants or their estates; for the payment, out of moneys appropriated by Parliament for the purpose, of additional benefits to or in respect of certain persons transferred from the said disestablished provident funds to the said joint provident fund; for the amendment of section 3 of the aforementioned Act; for the repeal of certain laws authorizing the issue of regulations governing such provident funds; for an election by certain persons to become members of the Associated Institutions Pension Fund; and to provide for other incidental matters.

(Afrikaans text signed by the State President.)
(Assented to 22nd March, 1971.)

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

Definitions.**1.** In this Act, unless the context otherwise indicates—

- (i) “additional benefit” means an annuity or a gratuity which, in addition to a benefit payable from the Fund, is payable in terms of the regulations out of the Consolidated Revenue Fund on such basis as may be determined from time to time by the Minister in consultation with the Minister of Finance; (i)
- (ii) “associated institution”—
 - (a) means an institution referred to in the definition of “associated institution” in section 1 of the Associated Institutions Pension Fund Act, 1963 (Act No. 41 of 1963), and any institution which, in terms of any law, has become an associated institution or is deemed to be such institution; and
 - (b) in relation to any person who, notwithstanding his transfer to or employment under any department, in terms of any law other than this Act, elected or was required to remain a member of and to contribute to the Fund or to an old provident fund, as the case may be, and who while in the service of such department so contributes, shall include such department to the extent required for the purposes of this Act;
and any reference in this Act to an associated institution, shall be deemed to include a reference to the council of such institution; (vii)
- (iii) “benefit” means an amount paid out of the Fund in prescribed circumstances to or in respect of a member or a non-contributing member and with which, in pre-

Act No. 11, 1971

ASSOCIATED INSTITUTIONS PROVIDENT FUND
ACT, 1971.

- scribed cases, the return of an endowment assurance policy referred to in section 4 (2) may be coupled; (xix)
- (iv) "Consolidated Revenue Fund", in relation to payments from that fund, means moneys appropriated by Parliament for that purpose; (viii)
- (v) "council" means—
- (a) the council or other body responsible for the control of an associated institution;
 - (b) where no such council or body exists, the person recognized by the Minister as responsible for the control of the associated institution concerned; or
 - (c) a department referred to in paragraph (b) of the definition of "associated institution" in this section;
- and any reference in this Act to a council shall be deemed to include a reference to the associated institution concerned; (xv)
- (vi) "department" means a department as defined in section 1 of the Public Service Act, 1957 (Act No. 54 of 1957); (vi)
- (vii) "fixed date" means the day on which this Act comes into operation; (xviii)
- (viii) "member", in relation to the Fund, means any person contributing or liable to contribute to the Fund, and includes any person absent with or without leave or suspended from duty, who, immediately prior to the commencement of such absence or suspension, so contributed; and for the purposes of this Act "member", in relation to an old provident fund, has a corresponding meaning; (x)
- (ix) "Minister" means the Minister of Social Welfare and Pensions; (xi)
- (x) "non-contributing member" means any person to whom section 6 (2) applies; (xii)
- (xi) "old provident fund" means the technical colleges provident fund or the university institutions provident fund, as the case may be; (xiii)
- (xii) "pensionable age" means the age referred to in section 7 (2); (xiv)
- (xiii) "prescribed" means prescribed by regulation; (xx)
- (xiv) "regulation" means any regulation made and in force under this Act; (xvi)
- (xv) "Secretary" means the Secretary for Social Welfare and Pensions; (xvii)
- (xvi) "the Fund" means the Associated Institutions Provident Fund established by section 3; (ii)
- (xvii) "the old regulations" means—
- (a) the regulations which, in the case of the technical colleges provident fund, were made under section 19 (1) (g) of the Higher Education Act, 1923 (Act No. 30 of 1923), and promulgated by Government Notice No. 977 of 28th April, 1950, as those regulations have been amended from time to time;
 - (b) the regulations which, in the case of the university institutions provident fund, were made under section 12 (1) (a) and (g) of the Higher Education Additional Provision Act, 1917 (Act No. 20 of 1917), and promulgated by Government Notice No. 1134 of 19th May, 1950, as those regulations have been amended from time to time;
 - (c) any other regulation governing the one or the other of the aforementioned provident funds, made under the provisions of the aforementioned laws or under section 19 of the Universities Act, 1955 (Act No. 61 of 1955), and in force on the day before the fixed date; and

Act No. 11, 1971

ASSOCIATED INSTITUTIONS PROVIDENT FUND
ACT, 1971.

- (d) any Act of Parliament other than an Act referred to in paragraph (a), (b) or (c), by or in terms of which any regulation referred to in any of the aforementioned paragraphs has been amended; (iii)
- (xviii) "the technical colleges provident fund" means the Technical Colleges Provident Fund which existed on the day before the fixed date under regulations framed in terms of section 19 (1) (g) of the Higher Education Act, 1923 (Act No. 30 of 1923), and in force on the said day; (iv)
- (xix) "the university institutions provident fund" means the University Institutions Provident Fund which existed on the day before the fixed date under regulations framed under section 12 (1) (a) and (g) of the Higher Education Additional Provision Act, 1917 (Act No. 20 of 1917), or section 19 of the Universities Act, 1955 (Act No. 61 of 1955), and in force on the said day; (v)
- (xx) "this Act" includes the regulations made and in force thereunder. (ix)

Disestablishment
of old provi-
dent funds.

2. The technical colleges provident fund and the university institutions provident fund are, subject to the other provisions of this Act, hereby disestablished with effect from the fixed date.

Establishment of
the Fund.

3. There is hereby established, with effect from the fixed date, a fund to be known as the Associated Institutions Provident Fund and consisting of—

- (a) the moneys transferred to that fund in terms of section 4;
- (b) the amounts paid by members to that fund in terms of the regulations;
- (c) the amounts, as prescribed, paid by a council or out of the Consolidated Revenue Fund to that fund;
- (d) any other amounts which are to be credited to that fund.

Transfer of Assets.

4. (1) The assets of the technical colleges provident fund and the assets of the university institutions provident fund shall, with effect from the fixed date, be transferred to the Fund.

(2) An endowment assurance policy in respect of any member referred to in section 6 (1), which, on the day before the fixed date, in terms of the old regulations, was in the possession of the Secretary for the purposes of an old provident fund, shall, subject to the regulations, remain in his possession for the purposes of the Fund.

(3) An amount equal to the amount which on the day before the fixed date was available in an old provident fund for the calculation of dividends in respect of and for the payment of a benefit to or in respect of any member or non-contributing member referred to in section 6 (1) or (2), shall, in terms of the regulations, on the transfer of assets referred to in subsection (1), be set apart in the Fund in respect of the member or non-contributing member concerned.

(4) Any amount which was owing to an old provident fund on the day before the fixed date, and has not been paid, shall, with effect from the fixed date, be deemed to be a debt due to the Fund.

Act No. 11, 1971

ASSOCIATED INSTITUTIONS PROVIDENT FUND
ACT, 1971.

Transfer of obligations and liabilities.

5. (1) An amount which in terms of any law was due by an old provident fund to any person on the day before the fixed date and has not been paid from such fund, shall be paid out of the Fund.

(2) Any benefit or additional benefit which, if this Act had not been passed, would in terms of the old regulations have become payable out of an old provident fund or out of the Consolidated Revenue Fund, as the case may be, on or with effect from the fixed date, shall be payable on or with effect from the said date in accordance with the provisions of the said old regulations out of the Fund or out of the Consolidated Revenue Fund, as the case may be.

(3) An annuity payable out of the Consolidated Revenue Fund in terms of the old regulations on the day before the fixed date, shall remain so payable as if this Act had not been passed.

(4) Any amount held in an old provident fund on the day before the fixed date on behalf of any council in connection with any liability incurred by such council in relation to that fund or in connection with the payment of an additional benefit, shall, on the transfer of assets referred to in section 4 (1), be transferred to the Fund and held therein in terms of the regulations for the aforementioned purpose.

Membership.

6. (1) Any person who on the day before the fixed date was a member of and contributed to an old provident fund in terms of the old regulations, shall with effect from the fixed date become a member of and contribute to the Fund unless any benefit or additional benefit becomes payable to him in terms of section 5 (2) on or with effect from the said date.

(2) Any person who on the day before the fixed date was not liable to contribute to an old provident fund but in respect of whom there was on that day an amount available in such fund to which annual dividends had or would have been added, shall, unless a benefit is payable to him in terms of section 5 (2) on the fixed date, on that date become a non-contributing member of the Fund.

(3) Any person who on or after the fixed date is in the service or is appointed to the service of an associated institution in a temporary capacity or on contract for a fixed period, may, provided he has not attained the pensionable age, in terms of section 3 (1) (b) of the Associated Institutions Pension Fund Act, 1963 (Act No. 41 of 1963), become a member of and contribute to the Fund with effect from a date determined by the Secretary, which date may be determined with retrospective effect from a date not earlier than the date on which such person's continuous service in one of the aforementioned capacities under the council concerned commenced.

(4) Subject to sections 4 (4) and 5 (1), a person who in terms of subsection (1) or (2) of this section becomes a member or a non-contributing member of the Fund shall with effect from the fixed date be released from all obligations towards and relinquish all rights and privileges in respect of the old provident fund of which he was a member or out of which, in terms of the old regulations, he was entitled to a benefit on the basis of non-contributing participation.

Ages for retirement.

7. (1) The age (which shall not be lower than the pensionable age) at which a member or a non-contributing member shall be required or shall have the right to retire from the service of an associated institution shall be determined by or under any law governing the conditions of service of such member or, failing such law, in accordance with the declared policy of the council concerned, and such law or determination may make provision for—

- (a) different ages for the retirement of different classes or categories of persons;
- (b) the retirement of any class or category of persons at alternative ages and for the conditions on which such

Act No. 11, 1971

ASSOCIATED INSTITUTIONS PROVIDENT FUND
ACT, 1971.

persons may be permitted or required to retire at any such age;

- (c) the retirement, by order of the council concerned, of any person who has attained an age preceding his pensionable age by not more than five years, and any person so retired shall for the purpose of the payment of a benefit or an additional benefit be deemed to have attained his pensionable age,

and, failing such law or determination, the pensionable age shall be deemed to be the age at which a member or non-contributing member has the right or may be required to retire.

(2) A member and a non-contributing member shall, notwithstanding anything to the contrary contained in any law or determination referred to in subsection (1), be deemed to have attained the pensionable age when he has attained the age of sixty years: Provided that a female member or a female non-contributing member, who—

- (a) with effect from any date preceding the first day of January, 1956, up to and including the day before the fixed date, had been subject to the old regulations governing the technical colleges provident fund; or

- (b) with effect from any date preceding the first day of January, 1960, up to and including the day before the fixed date, had been subject to the old regulations governing the university institutions provident fund,

shall be deemed to have attained the pensionable age when she has attained the age of fifty-five years.

(3) A member who attains any age referred to in this section on any day of any month shall be deemed to have attained such age on the first day of the first ensuing month, or, if it is so determined in terms of subsection (1), on the first day of any later month.

Regulations.

8. (1) Notwithstanding anything to the contrary contained in any other law, the Minister may, in consultation with the Minister of Finance, from time to time make regulations—

- (a) for the management and control of the Fund;
(b) providing for the payment of contributions to the Fund and of benefits from the Fund or additional benefits from the Consolidated Revenue Fund to or in respect of members or categories of members of the Fund on their retirement, discharge, resignation or death;
(c) in regard to any matter required or permitted to be prescribed by regulation under this Act,

and generally for the better achievement of the objects and purposes of this Act.

(2) Without prejudice to the generality of the provisions of subsection (1) such regulations may—

- (a) provide for the classification of members and non-contributing members on the basis of dates on which they became or become members of an old provident fund or of the Fund, as the case may be, or on such other basis as may be specified in the regulations;
(b) provide for the determination of the periods which, in regard to any member or non-contributing member, may be reckoned as service for the purpose of the calculation of a benefit and of an additional benefit, respectively;
(c) prescribe the conditions on which any person—
(i) who for any period was a member of any other pension or provident fund recognized for the purpose in terms of the regulations; and
(ii) who without a break in the continuity of his service or after such break as a prescribed authority may, with regard to the circumstances of each case, consider to be reasonable and necessary, has, in terms of section 6 (3) become a member of the Fund,

Act No. 11, 1971

ASSOCIATED INSTITUTIONS PROVIDENT FUND
ACT, 1971.

- may be permitted or required by such authority to include such period or any portion of such period in his service referred to in paragraph (b);
- (d) provide for the determination of an amount to be paid to the Fund as a condition for the inclusion of a period referred to in paragraph (c) in the service referred to in paragraph (b);
 - (e) provide for the payment of an amount out of the Fund to any other pension or provident fund referred to in the regulations in the event of a member or non-contributing member becoming liable under any law to contribute to such other fund;
 - (f) prescribe the conditions on which a member who voluntarily retires from the service of one associated institution, and without interruption of the continuity of his service or after such interruption as an authority referred to in the regulations may deem necessary and reasonable, enters into the service of another associated institution, may be required or permitted to remain a member of the Fund;
 - (g) prescribe the rate or scale (determined on the basis of emoluments payable to a member over any period or on such other basis as may be specified in the regulations) in accordance with which persons who are or become members or certain classes or categories of members shall contribute to the Fund, provide for the deduction of contributions and such other amounts as may be due to the Fund from the emoluments of the persons concerned, and designate the authority empowered to make such deductions and required, at such times as may be fixed by or under the regulations, to pay to the Fund the amounts of contributions due;
 - (h) prescribe the contributions to be paid to the Fund by councils in respect of members in their service and the times at which such payments shall be made;
 - (i) prescribe the salaries, wages or allowances in respect of which contributions shall be paid to the Fund and provide for the determination of the emoluments on which additional benefits shall be based;
 - (j) prescribe any amounts which shall be paid to the Fund out of the Consolidated Revenue Fund, and the circumstances in which, the basis on which and the manner in which the said amounts shall be so paid;
 - (k) provide for the investment of amounts standing to the credit of the Fund;
 - (l) provide that a board may pay moneys to the Fund to the credit of the board, in connection with any obligation incurred by such board in relation to the Fund or in connection with the payment of additional benefits, and provide for the withdrawal of such moneys or any portion thereof by such board and for the application of such moneys by the Secretary to the purpose for which the moneys have so been paid;
 - (m) provide for the payment out of the Fund of premiums in respect of an endowment assurance policy which is in the possession of the Secretary in terms of section 4 (2);
 - (n) prescribe conditions on which an endowment assurance policy in the possession of the Secretary in terms of section 4 (2), may be ceded by the member concerned to the Secretary for the benefit of the Fund or may be returned to such member or be converted into a paid-up policy if the member does not so cede the policy;
 - (o) prescribe conditions on which an endowment assurance policy which has been ceded in terms of a regulation made under paragraph (n), may, at the request of the member concerned, either be converted into a paid-up policy or be returned to such member against payment of an amount determined in terms of the regulations;

Act No. 11, 1971

ASSOCIATED INSTITUTIONS PROVIDENT FUND
ACT, 1971.

- (p) provide for the disposal, in circumstances other than those envisaged by paragraphs (n) and (o), of an endowment assurance policy in the possession of the Secretary in terms of this Act or of the proceeds of such policy if such policy matures or if the member concerned dies before such policy has matured;
 - (q) provide for the determination of the amount which may accrue in relation to the calculation of a dividend in respect of and the payment of a benefit to or in respect of a member or a non-contributing member and for the setting apart in the Fund of such amount for that purpose;
 - (r) prescribe the circumstances in which and the conditions on which benefits may be paid out of the Fund in particular cases or classes of cases, and provide for the determination of the value (which may be less than the amount referred to in paragraph (q)) of the benefits which are payable in any such case or class of cases;
 - (s) provide for the reduction by an authority referred to in the regulations of a benefit payable to or in respect of a member whose service has, owing to his serious misconduct, been terminated by his resignation, retirement or discharge, for the deduction from such benefit of an amount in respect of any loss which, in the opinion of the said authority, was suffered by any council on account of the theft, fraud or dishonesty of such member, and for the payment to the council concerned of the amount so deducted;
 - (t) provide for the appropriation of moneys in the Fund (other than moneys set apart in terms of the regulations for the payment of a benefit to or in respect of a member or a non-contributing member, or held in the Fund on behalf of any council) for—
 - (i) the annual declaration of a dividend (at a rate determined by a prescribed authority) which shall be calculated on the basis of the amount set apart in the Fund in terms of the regulations in respect of a member or a non-contributing member and be added to such amount;
 - (ii) the payment of interest, at a rate determined by the regulations, on moneys so held on behalf of any council, and the addition of the amount of such interest to the said moneys;
 - (iii) the payment of interest, at a rate determined by the regulations, on the amounts of benefits which may become payable at any time after the declaration of a dividend but before the declaration of the next ensuing dividend;
 - (u) determine how an additional benefit shall be calculated, provide for the use in connection with the calculation of such benefit (and of any other benefit which may be paid in terms of the regulations) of formulae or tables submitted by an actuary and approved by the Minister and prescribe the classes of members or non-contributing members or other persons who were members of an old provident fund, to or in respect of whom additional benefits may be paid and the conditions on and the circumstances in which such additional benefits may be paid;
 - (v) provide for the exercise or performance by the Secretary of such powers or functions as the Minister may deem necessary for the achievement of the objects of this Act.
- (3) Different regulations may be made in respect of persons belonging to different population groups, sexes, classes or categories who become members of the Fund in terms of section 6 of this Act.

Act No. 11, 1971

ASSOCIATED INSTITUTIONS PROVIDENT FUND
ACT, 1971.

(4) Any regulation or any amendment of a regulation other than an amendment increasing the rate of contributions to the Fund or substituting any less favourable benefit or additional benefit for a prescribed benefit or additional benefit or abolishing any benefit or additional benefit may be made with retrospective effect from a date not earlier than the fixed date.

Delegation.

9. (1) The Minister may delegate any power conferred on him by this Act, other than the power under section 8 to make regulations, to the Secretary or any other officer of the Department of Social Welfare and Pensions and may authorize the Secretary or such officer to perform any of the functions or duties thus entrusted to or imposed on the Minister.

(2) The Secretary may, with the approval of the Minister, delegate to any officer in his Department any of the powers conferred on him by this Act and may authorize any such officer to perform any of the functions or duties thus entrusted to or imposed on the Secretary.

Deductions from
benefits and addi-
tional benefits.

10. Notwithstanding the provisions of section 14 of the Government Service Pensions Act, 1965 (Act No. 62 of 1965), or any other law—

(a) any amount which, on the date on which any benefit or any additional benefit becomes payable in terms of the regulations to any person who is or was in the service of any council, is payable by such person to such council; or

(b) any amount which, on the said date, such council is liable to pay in respect of such person,

may be deducted from the benefit or additional benefit so payable in a lump sum or in such instalments as the Secretary may determine.

Amendment of section 3 of Act 41 of 1963, as amended by section 14 of Act 26 of 1966 and substituted by section 5 of Act 98 of 1969.

11. Section 3 of the Associated Institutions Pension Fund Act, 1963, is hereby amended—

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

“(b) any person appointed to the service of an associated institution on or after the specified date in a temporary capacity or on contract for a fixed period, may at the request of the council concerned and with the approval of the Secretary, subject to the provisions of the Associated Institutions Provident Fund Act, 1971, be permitted to become a member of and to contribute to the Associated Institutions Provident Fund established by section 3 of the said Act.”; and

(b) by the repeal of paragraph (c) of the said subsection.

Repeal of laws.

12. The laws referred to in the Schedule to this Act are hereby repealed to the extent set out in the third column of the said Schedule, and all regulations made or in force under the provisions of any of the said laws so repealed are, in so far as they do not lapse, hereby withdrawn.

Election to become a member of the Associated Institutions Pension Fund.

13. (1) Notwithstanding anything to the contrary contained in this Act or any other law, but subject to the provisions of subsections (2), (3) and (4), any person who, on the day immediately preceding the fixed date, contributed to an old provident fund in respect of service in a permanent capacity with any council and who in terms of section 6 (1) becomes a member of the Fund, may elect in writing to be released of his obligations and to relinquish his rights and privileges in the Fund and to become a member of the pension fund established in terms of section 2 (1) (b) of the Associated Institutions

Act No. 11, 1971

ASSOCIATED INSTITUTIONS PROVIDENT FUND
ACT, 1971.

Pension Fund Act, 1963 (Act No. 41 of 1963), and if he so elects, he shall, for the purposes of such election be deemed—

- (a) to have remained a member of the old provident fund to which he so contributed, and
- (b) to have exercised such election in terms of regulation 24 (1) of the regulations made in terms of section 2 (2) of the lastnamed Act and promulgated by Government Notice No. 1064 of the third day of July, 1970,

and he shall become a member of the said pension fund in accordance with the provisions of the said regulations.

(2) Every male person who has so elected shall, in addition to any amount payable by him in terms of the aforementioned regulations to the pension fund referred to in subsection (1), pay to the said pension fund an amount equal to the total of—

- (a) contributions at the rate of contribution of one per cent, calculated in respect of the period from the "specified date" as defined in section 1 of the said Associated Institutions Pension Fund Act, 1963, up to and including the day immediately before the date on which he becomes a member of the aforementioned pension fund, and
- (b) two and one-half per cent of twice the amount calculated in terms of paragraph (a) in respect of each completed year in such period, and, in respect of a portion of a year in such period, a percentage of twice the amount so calculated which bears to two and one-half per cent the same ratio as the number of days in such portion bears to three hundred and sixty-five,

and the amount of such total shall be paid on the conditions determined by the Secretary in relation to the payment thereof and of any interest thereon in instalments or otherwise, whether in general or in any specified case.

(3) A council in whose service any person referred to in subsection (2) is, shall pay an amount calculated in terms of paragraph (a) of that subsection to the pension fund referred to in subsection (1) as soon as such person becomes a member of such pension fund.

(4) Any person referred to in subsection (1) shall exercise the election therein referred to within one hundred and twenty days after having been called upon to do so by the council in whose service he is, or within such longer period as the Secretary may approve in exceptional circumstances, and if any moneys are, in terms of the regulations referred to in that subsection, payable by any old provident fund pursuant to such election, such moneys shall be paid out of the Fund.

Short title and commencement.

14. This Act shall be called the Associated Institutions Provident Fund Act, 1971, and shall come into operation on a date to be fixed by the State President by proclamation in the *Gazette*.

Schedule.

LAWS REPEALED.

No. and year of law.	Short title.	Extent of repeal.
Act No. 30 of 1923	Higher Education Act, 1923	Section 19 (1) (g).
Act No. 61 of 1955	Universities Act, 1955 ..	(1) Section 19. (2) Paragraph (c) of the proviso to section 29 in so far as it applies to any regulation relating to the University Institutions Provident Fund and Pension Scheme made in terms of section 12 (1) (g) of the Higher Education Additional Provision Act, 1917 (Act No. 20 of 1917).