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REPUBLIC OF SOUTH AFRICA

**GOVERNMENT GAZETTE**

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**STAATSKOERANT**

**VAN DIE REPUBLIEK VAN SUID-AFRIKA**

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DEPARTMENT OF THE PRIME MINISTER

DEPARTEMENT VAN DIE EERSTE MINISTER

No. 2230. 29 November 1974.

No. 2230. 29 November 1974.

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

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

No. 86 of 1974: Members of the South African Indian Council Pensions Act, 1974.

No. 86 van 1974: Wet op Pensioene vir Lede van die Suid-Afrikaanse Indiërraad, 1974.

MEMBERS OF THE SOUTH AFRICAN INDIAN  
COUNCIL PENSIONS ACT, 1974

Act No. 86, 1974

**ACT**

**To provide for the payment of pensions and other benefits to members of the South African Indian Council and to their widows and children; and for incidental matters.**

*(English text signed by the State President.)  
(Assented to 11 November 1974.)*

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

- 1.** In this Act, unless the context otherwise indicates—
- Definitions.**
- (i) "arrear contributions" means any amount which is due by a member in terms of section 3 (2) or (3); (i)
  - (ii) "child" means any unmarried child, step-child or legally adopted child who is under the age of eighteen years or who in the opinion of the Secretary is, by reason of mental or physical infirmity, unable to maintain himself; (v)
  - (iii) "contributions" means contributions which have been deducted in terms of section 2 (3), but does not include arrear contributions; (ii)
  - (iv) "Council" means the South African Indian Council established by section 1 of the South African Indian Council Act, 1968 (Act No. 31 of 1968); (x)
  - (v) "fixed date" means the date of commencement of this Act; (xiii)
  - (vi) "member" means a member of the Council; (vi)
  - (vii) "Minister" means the Minister of Indian Affairs; (vii)
  - (viii) "pensionable salary" means—
    - (a) in relation to any member other than a member occupying an office referred to in paragraph (a), (b) or (c) of section 7 (1), the allowance payable to the former member, as determined in terms of section 12 of the South African Indian Council Act, 1968 (Act No. 31 of 1968); and
    - (b) in relation to a member occupying an office referred to in paragraph (a), (b) or (c) of section 7 (1), the amount which would have been payable to him by way of allowance, as determined in terms of section 12 of the South African Indian Council Act, 1968 had he been a member referred to in paragraph (a) of this definition; (ix)
  - (ix) "pensionable service" means service in respect of which a member is compelled or has elected to contribute to revenue in terms of this Act; (viii)
  - (x) "revenue" means—
    - (a) in relation to any amount to be paid to revenue, the Consolidated Revenue Fund; and
    - (b) in relation to any amount to be paid from revenue, moneys appropriated by Parliament for the purpose of such payment; (iv)

MEMBERS OF THE SOUTH AFRICAN INDIAN  
COUNCIL PENSIONS ACT, 1974

Act No. 86, 1974

- (xi) "salary" means the allowance determined in respect of a member and paid to him in terms of section 12 of the South African Indian Council Act, 1968 ; (xi)
- (xii) "Secretary" means the Secretary for Indian Affairs; (xii)
- (xiii) "service", in relation to any service of a member in any capacity and to any other service of a member, service as certified by the Secretary; (iii)
- (xiv) "widow" shall not include the widow of a person whom she married after he ceased to be a member. (xiv)

2. (1) Subject to the provisions of this Act, a member shall, Contributions by members.  
from the fixed date or from the date on which he becomes a member, whichever is the later date, and as long as he remains a member, contribute to revenue at the rate of eight per cent of his pensionable salary.

(2) No contributions shall be payable in terms of the provisions of subsection (1) by a member who has, before or after or before as well as after the fixed date, had pensionable service which in the aggregate amounts to not less than twelve years and who has contributed in respect of a period of not less than twelve years in terms of the provisions of this Act.

(3) Contributions due by a member in terms of this section shall be deducted by the Secretary from the member's salary in monthly instalments, and shall be paid to revenue.

3. (1) Any member who has had service prior to the fixed date as a member, may elect in writing within ninety days of the fixed date or, if he is not a member on that date, within ninety days of the date on which he makes and subscribes the oath referred to in section 4 of the South African Indian Council Act, 1968 (Act No. 31 of 1968), or the solemn affirmation referred to in section 15 of that Act, to count any period of such service as pensionable service. Option to count certain service as pensionable service.

(2) A member who makes an election in terms of subsection (1) shall contribute to revenue an amount calculated at the rate of twenty-seven rand for every full month of the period in respect of which he has so elected.

(3) Any person to whom an amount has been paid under section 6 upon the termination of any period of pensionable service under this Act, and who again becomes a member, may elect in writing within ninety days of the date on which he makes and subscribes the oath or affirmation referred to in subsection (1), to repay to revenue the amount so paid to him, and to pay to revenue any arrear contributions for which he ceased to be liable in terms of section 6 (2), and if he makes such an election the period or periods of his service which was or were previously pensionable service shall again become pensionable service.

4. Any amount or arrear contributions which may become Contributions in respect of prior service.  
due by a member in terms of section 3 (2) or (3) may, if he so desires, be deducted by the Secretary from his salary in monthly instalments of not less than the amount referred to in section 3 (2), and shall be paid to revenue.

5. (1) Subject to the provisions of this section, there shall, on Pension payable to members.  
the termination of his service, be payable to a member whose service terminates on or after the fixed date and who has had not less than eight years of pensionable service, a pension calculated at the rate of one-fifteenth of his highest annual pensionable salary in respect of each year of his pensionable service: Provided that such pension shall not exceed the said salary.

MEMBERS OF THE SOUTH AFRICAN INDIAN  
COUNCIL PENSIONS ACT, 1974

Act No. 86, 1974

(2) For the purposes of this section a member who, at the date of termination of any period of his service, has had more than seven years and six months but less than eight years of pensionable service, shall be deemed to have completed eight years of pensionable service on that date.

(3) Any member who is in terms of subsection (2) deemed to have completed eight years of pensionable service, shall contribute in terms of section 2 in respect of such a period as, together with any period in respect of which he has already contributed or is liable to contribute, is equal to a period of eight years.

(4) For the purposes of subsection (1) the period of pensionable service shall be calculated by the year and the month, and fractions of a month shall be disregarded.

6. (1) A member, other than a member to whom section 5 (2) applies, whose service terminates before the completion of eight years of pensionable service, shall be entitled to the repayment to him of an amount equal to the aggregate of his contributions and any arrear contributions which have been paid by him or deducted from his salary in terms of this Act, together with an amount equal to five per cent of that amount. Refund of contributions.

(2) A member who becomes entitled to an amount in terms of subsection (1) shall cease to be liable for any arrear contributions which may still be due by him but which are unpaid at the date of the termination of his service.

7. (1) Subject to the provisions of subsection (2), a member who has occupied the office of— Special pensions to members who occupy certain offices.

(a) chairman of the executive committee of the Council;

(b) any other member of the said executive committee; or

(c) chairman of the Council,

and whose service as a member terminates on or after the fixed date, shall, in addition to any other pension or benefit payable to him in terms of this Act, be entitled to a pension calculated in accordance with the formula—

$$\left( \frac{A}{B} - C \right) \times D$$

in which formula—

- (i) A represents the annual salary applicable to the office concerned at the time of the termination of the member's service as a member;
- (ii) B represents 12;
- (iii) C represents the pension payable to the member in terms of section 5 in respect of a full year of his pensionable service; and
- (iv) D represents the period for which such member served in the office concerned.

(2) The aggregate of any pensions payable in terms of this Act to any member referred to in subsection (1) shall not exceed the highest annual salary of the member during any period of his service.

(3) For the purposes of subsection (1) the period of service shall be calculated by the year and the month, and fractions of a month shall be disregarded and any portion of a year not being less than six months shall be deemed to be a completed year.

8. (1) There shall be paid to the widow of a person to whom section 5 or 7 applied, a pension equal to three-fourths of the pension paid under any of the said sections to such person immediately prior to his death or which would have been so payable to him if he had, on the date of his death, been entitled to such a pension or would have been entitled to such a pension if he had not died but had ceased to be a member on such date. Pensions and other benefits payable to widows.

MEMBERS OF THE SOUTH AFRICAN INDIAN  
COUNCIL PENSIONS ACT, 1974

Act No. 86, 1974

(2) Whenever any pension becomes payable to the widow of a member under subsection (1)—

- (a) any unpaid balance of any arrear contributions or any other amount due by such member under any provision of this Act, and
- (b) in the case of a member referred to in subsection 5 (2), any contributions for which such member would under section 5 (3) have been liable had he not died but had ceased to be a member at the date of his death,

shall be set off against the pension payable to her.

(3) If a member (other than a member to whom section 5 (2) applies) has had less than eight years of pensionable service and dies while he is still a member, there shall be paid to his widow an amount equal to the aggregate of his contributions and any arrear contributions which have been paid by him or deducted from his salary under this Act, together with an amount equal to five per cent of that amount, and any amounts which are still due in terms of any provision of this Act but which are unpaid at the date of his death shall cease to be payable.

9. (1) If any person dies who is receiving a pension under section 5 or 7 or who would have been entitled to such a pension if he had not died but had ceased to be a member on the date of his death, and is not survived by a widow to whom a benefit is payable under section 8 or, if such person is survived by such a widow and she dies, there shall, subject to the provisions of this section, be payable to each of his children a pension of an amount equal to two-ninths of the pension which he has so received or would have so been entitled to or of an amount obtained by dividing four-ninths of such last-mentioned pension by the number of such children, whichever may be the lesser amount.

Pensions and other benefits to children.

(2) If a member dies who would have been entitled to a benefit and interest in terms of section 6 if he had not died but had ceased to be a member on the date of his death and is not survived by a widow to whom a benefit is payable under section 8, there shall, subject to the provisions of this section, be payable to his children an amount to be divided amongst them in such manner as the Secretary may determine, equal to the amount of any benefit and interest to which such member would have been so entitled.

(3) Any pension or other benefit payable to a child in terms of this section may, in the discretion of the Secretary and for reasons deemed by him to be sufficient in the interests of the child—

- (a) be paid to the child either in instalments or in such other manner as the Secretary may direct;
- (b) be invested or applied from time to time in such manner as the Secretary may direct;
- (c) be paid to a Master of the Supreme Court, a trustee or other person, to be used subject to such conditions as the Secretary may impose;
- (d) be applied partly in one and partly in any other manner referred to in this subsection.

(4) Any pension payable in terms of this section may, at the discretion of the Secretary and on such basis and conditions as he may determine, be commuted into a single cash payment.

(5) Whenever any pensions become payable in terms of subsection (1) to the children of a person referred to in that subsection—

- (a) the unpaid balance of any arrear contributions or any other amount due by such person under any provision of this Act; and

MEMBERS OF THE SOUTH AFRICAN INDIAN  
COUNCIL PENSIONS ACT, 1974

Act No. 86, 1974

- (b) in the case of a member referred to in section 5 (2) any contributions for which that member would under section 5 (3) have been liable if he had not died but had ceased to be a member at the date of his death,

shall be set off against such pensions.

(6) Whenever any amount becomes payable to the children of a member in terms of subsection (2), any amounts which are still due by the member in terms of any provision of this Act but which are unpaid at the date of the member's death, shall cease to be payable.

10. A pension in terms of this Act shall be payable—

Date from which pensions are payable.

- (a) in the case of a member, with effect from the day following the day on which his service as a member terminated;
- (b) in the case of a widow or child of a deceased member, with effect from the day following the day of the said member's death.

11. Whenever a member becomes entitled to a pension in terms of section 5 before the total amount of arrear contributions due by him has been paid by him, the amount of the said arrear contributions which remains unpaid, shall be set off against the pension payable to him.

Amounts due form first charge on pension.

12. (1) If any person (other than the widow of a member) who is under this Act in receipt of a pension, again becomes a member, such pension shall cease to be paid to him, and if he thereafter ceases to be a member, his pension shall be recalculated in terms of section 5 or 7 on the combined periods of his service if, on the date on which he again became a member, he was not entitled to the maximum pension or pensions payable to him under this Act.

Abatement of pensions.

(2) If any widow who is in receipt of or entitled to a pension in terms of this Act, becomes a member, such pension shall cease to be paid or payable to her during the period of her service as a member.

13. All pensions and benefits for which this Act makes provision, shall be paid from revenue.

Pensions and other benefits to be paid from revenue.

14. (1) No pension or benefit payable under this Act, and no right in respect of any such pension or benefit, shall be capable of being assigned or transferred or otherwise ceded or of being pledged or hypothecated or, save as is provided in section 11 (2) of the Maintenance Act, 1963 (Act No. 23 of 1963), be liable to be attached or subject to any form of execution under a judgment or order of a court of law.

Pensions and other benefits not assignable or executable.

(2) If any person attempts to assign or transfer or otherwise cede or to pledge or hypothecate any such pension or benefit to which he is entitled or any right in respect of such pension or benefit, payment of such pension or benefit may, if the Minister so directs, be withheld, suspended or discontinued: Provided that the Minister may direct that such pension or benefit or a part thereof be paid during such period as the Minister may determine, to one or more of the dependants of such person or to a trustee or other person on behalf of such person or such of his dependants as the Minister may determine.

MEMBERS OF THE SOUTH AFRICAN INDIAN  
COUNCIL PENSIONS ACT, 1974

Act No. 86, 1974

15. If the estate of any person who is in receipt of a pension under this Act, is sequestrated or surrendered, such person's pension shall not be deemed to form part of the assets in his insolvent estate. Effect of insolvency.
16. Any member may make any election which he is entitled to make under this Act, by notice in writing to the Secretary. Method of making election.
17. (1) The Secretary shall, subject to the control of the Minister, be charged with the general administration of this Act. Administration of Act.  
(2) The Minister may delegate any power conferred on him by this Act to the Secretary or any other officer in the Department of Indian Affairs and may authorize the Secretary or any such officer to perform any function or duty so entrusted to or imposed on the Minister.  
(3) The Secretary may delegate to any officer in the said Department any power conferred on him by this Act and may authorize any such officer to perform any function or duty so entrusted to or imposed on the Secretary.
18. Subject to the provisions of this Act, all pensions under this Act shall be paid in such instalments and on such dates and in such manner as the Minister may determine. Method of payment of pensions.
19. This Act shall be called the Members of the South African Indian Council Pensions Act, 1974, and shall be deemed to have come into operation on 6 November 1974. Short title and commencement.