



REPUBLIC OF SOUTH AFRICA

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**GOVERNMENT GAZETTE**

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DEPARTMENT OF THE PRIME MINISTER.

DEPARTEMENT VAN DIE EERSTE MINISTER.

No. 1091. 27th June, 1969.

No. 1091. 27 Junie 1969.

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. 88 of 1969: Durban Corporation Telephone Employees' Transfer Act, 1969.

No. 88 van 1969: Wet op die Oorplasing van Telefoonwerknemers van die Durban-korporasie, 1969.

Act No. 88, 1969

DURBAN CORPORATION TELEPHONE EMPLOYEES'  
TRANSFER ACT, 1969.**ACT**

To regulate certain matters arising out of the taking over of the telephone undertaking of the City Council of Durban by the State, and to provide for matters incidental thereto.

*(Afrikaans text signed by the State President.)*  
*(Assented to 19th June, 1969.)*

**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) "Board" means the Post Office Staff Board established by section 7 of the Post Office Re-adjustment Act, 1968 (Act No. 67 of 1968); (v)
  - (ii) "City Council" means the City Council of the city of Durban; (x)
  - (iii) "Department" means the Department of Posts and Telegraphs; (i)
  - (iv) "employee", in so far as it relates to a person employed by the State, means a person referred to in section 3 (1) (c) of the Public Service Act; (xvi)
  - (v) "fixed date" means the 1st April, 1969; (xiii)
  - (vi) "Government Service Widows' Pension Fund" means the Government Service Widows' Pension Fund referred to in section 2 (2) of the Government Service Pensions Act, 1965 (Act No. 62 of 1965); (vi)
  - (vii) "pension fund" means the Durban Corporation Non-European Pension Fund established under section 21bis of the Durban Extended Powers Consolidation Ordinance, 1953 (Ordinance No. 10 of 1953), of the Province of Natal, and provisionally registered under the Pension Funds Act, 1956 (Act No. 24 of 1956); (iii)
  - (viii) "Post Office Fund" means the Post Office Fund established by section 3 (1) of the Post Office Re-adjustment Act, 1968 (Act No. 67 of 1968); (iv)
  - (ix) "previous employee" means any person who was on the day immediately preceding the fixed date in the employment of the City Council in connection with the telephone undertaking; (xv)
  - (x) "provident fund" means the Durban Corporation Provident Fund established under section 10 (11) of the Municipal Corporations and Townships Additional Powers Ordinance, 1916 (Ordinance No. 14 of 1916), of the Province of Natal, and registered under the Pension Funds Act, 1956; (xiv)
  - (xi) "public service" means the public service according to the provisions of section 3 of the Public Service Act; (vii)

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- (xii) "Public Service Act" means the Public Service Act, 1957 (Act No. 54 of 1957), and includes the regulations made under section 26 (1) of that Act; (ix)
- (xiii) "Public Service Pension Fund" means the Public Service Pension Fund referred to in section 2 (1) (a) of the Government Service Pensions Act, 1965 (Act No. 62 of 1965); (viii)
- (xiv) "superannuation fund" means the Durban Corporation Superannuation Fund established under section 41 of Act No. 22 of 1894 of the Province of Natal, and registered under the Pension Funds Act, 1956; (xi)
- (xv) "telephone undertaking" means the telephone undertaking of the City Council as it existed immediately prior to the fixed date; (xii)
- (xvi) "transferred employee" means a previous employee who on or after the fixed date became an employee of the State in the Department; (ii)
- (xvii) "work-days" means any days other than Sundays or public holidays. (xvii)

Conditions of  
service of  
previous  
employees.

2. (1) If any previous employee became an employee of the State in the Department on the fixed date, the continuous employment of such employee under the City Council shall, for the purposes of the Public Service Act, be deemed to be continuous employment under the State: Provided that any sick and accumulative vacation leave which stood to the credit of such person on the day immediately preceding the said date shall be deemed to be leave earned in terms of the said Act.

(2) Notwithstanding any restrictions as to age, health or educational or other qualifications prescribed by or under the Public Service Act, any person referred to in subsection (1) who is a South African citizen, has not yet attained the prescribed age of retirement and was immediately prior to the fixed date a member of the pension fund, the superannuation fund or the provident fund may, on the recommendation of the Board, be appointed to a post on the fixed establishment of the Department, classified in terms of section 3 (1) (a) of the Public Service Act, and shall, if he is not so appointed, be appointed by the Postmaster-General to any post which the Postmaster-General may deem fit, and any such appointment shall be deemed to be an appointment in terms of the Public Service Act and any such post to be a post on the said fixed establishment so classified.

(3) A person referred to in subsection (1) shall not without his own consent be transferred to any post unless the functions attached to such post are to be performed mainly in the area served by means of the telephone undertaking immediately prior to the fixed date.

(4) For the purposes of the appointment of any person referred to in subsection (1) to a post contemplated in subsection (3), such person's lack of proficiency in the use of any of the official languages shall not be taken into account.

(5) The provisions of subsections (1), (2), (3) and (4) shall *mutatis mutandis* apply in respect of any previous employee who—

(a) did not on the fixed date become an employee of the State;

(b) did not prior to 1st May, 1969, receive payment of any moneys due to him by the City Council by virtue of the termination of his employment with the City Council; and

(c) was engaged by the Department prior to the commencement of this Act:

Provided that the number of days of accumulated leave which stood to the credit of such employee with the City Council on 31st March, 1969, shall be reduced by the number of work-

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days between the said 31st March and the date on which he assumed duty with the Department: Provided further that if the said number of days of accumulated leave is less than the said number of work-days he shall be deemed to have been absent on leave without pay on the work-days representing the difference.

(6) The employment by the City Council of any previous employee to whom subsections (1) and (5) do not apply shall, for the purposes of the payment to such person by the City Council of any amount in respect of accumulated leave, be deemed to have been terminated by reason of retirement upon reaching the prescribed age of retirement.

(7) (a) If a previous employee became an employee of the State on the fixed date and, prior to 1st May, 1969, made a request therefor to the City Council, he shall be entitled, in lieu of the granting of any other benefit to which he is by virtue of termination of employment in terms of any other law entitled, to the payment by the City Council of an amount equal to such percentage, not exceeding twenty-five per cent, as may be specified in the request, of the amount representing the value of the number of days of accumulated leave which stood to his credit with the City Council on 31st March, 1969, but subject to the payment of a minimum amount representing the value of twenty-three days of accumulated leave or, if the number of days of accumulated leave is less than twenty-three, of the number of days of accumulated leave which so stood to his credit on the last-mentioned date.

(b) Such amount shall be calculated on the basis of the salary of the person in question on 31st March, 1969.

(c) If any amount has in terms of paragraph (a) been paid to any person the number of days of accumulated leave which stood to his credit on the fixed date shall, for the purposes of this section, be reduced by the number of days in respect of which such amount has been paid.

(d) If any person to whom such an amount has been paid resigns from the service of the Department, he shall not be entitled to any payment in respect of accumulated leave.

(8) (a) A previous employee to whom subsection (1) or (5) applies, may within one month after having been called upon by the Board to do so, or within such further period as the Board may allow, elect in writing, subject to the provisions of paragraph (b), that his conditions of service be determined in accordance with the laws which applied immediately prior to the fixed date to his employment by the City Council, including any amendment thereof on or after the said date.

(b) The conditions of service of any person who has so elected shall, as from the first day of the month following the month in which he made his election, be as provided by the said laws: Provided that any power, duty or function conferred or imposed upon or assigned to—

(i) the City Council;

(ii) any committee or other body;

(iii) any officer of the City Council; or

(iv) any member of the City Council or of any committee or other body,

by such laws, shall, in relation to such person, be exercised or performed by the Postmaster-General or any officer in the Department authorized thereto by him, or, if the Minister of Posts and Telegraphs so directs, by the Board.

(9) The conditions of service, excluding conditions of service relating to pensions, of a previous employee referred to in

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paragraph (a) of subsection (8) and who has not made an election in terms of that paragraph shall, subject to the provisions of subsection (10), be as provided by the Public Service Act.

(10) The remuneration of a previous employee referred to in subsection (8) (a) immediately prior to the fixed date shall not be reduced, and the salary scale in accordance with which such an employee was then remunerated shall not without his consent be altered to his prejudice.

## Pension rights.

3. (1) Notwithstanding anything to the contrary contained in any law, but subject to the provisions of this section—

(a) every transferred employee who on the day immediately preceding the fixed date was a member of the pension fund, the provident fund or the superannuation fund, shall retain all the rights and privileges and remain subject to all the obligations acquired or incurred by him for retirement and pension purposes under the rules of such a fund to which he was subject on the said day; and

(b) such rules (including any amendment thereof made on or after the fixed date) shall for such purposes continue to apply to and in respect of him.

(2) (a) Any power conferred on or function assigned to—

- (i) the City Council;
  - (ii) any committee;
  - (iii) any official appointed by any committee in terms of the said rules;
  - (iv) any official of the said City Council,
- by the said rules, shall, in relation to a transferred employee, be exercised or performed by the Postmaster-General or any officer in the Department or the Department of Social Welfare and Pensions acting under his authority or, if the Minister of Posts and Telegraphs so directs, by the Board.

(b) Any application or notification which a transferred employee is, in terms of the said rules, permitted or required to make or to give to a body or person referred to in paragraph (a) (i), (ii), (iii) or (iv) shall be made or given to the Postmaster-General.

(3) As from the fixed date—

(a) any contributions, interest or other amount which in terms of the rules referred to in subsection (1), a transferred employee is required to pay to the pension fund, the provident fund or the superannuation fund shall be paid to the Post Office Fund;

(b) any pension or other benefit which in terms of the said rules is payable to or in respect of a transferred employee, shall be paid out of moneys appropriated by Parliament out of the Post Office Fund for the purpose;

(c) the City Council shall cease to pay any contributions or other amount which in terms of the said rules it is required to pay to the pension fund, the provident fund or the superannuation fund in respect of any transferred employee.

(4) (a) If a transferred employee was immediately prior to the fixed date a member of the pension fund or the superannuation fund, there shall be paid from the appropriate fund to the Post Office Fund in respect of such employee—

- (i) an amount equal to the transfer value which at that date would have been paid in terms of paragraph (d) of subsection (1) of section 46 of the

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Local Government Superannuation Ordinance, 1966 (Ordinance No. 25 of 1966), of the Province of Natal, had that subsection applied in his case; and

- (ii) interest on the said amount at the rate of five per cent per annum, compounded annually as at the thirty-first day of March and calculated from the fixed date up to the date of payment.
- (b) If a transferred employee was immediately prior to the fixed date a member of the provident fund there shall be paid from that fund to the Post Office Fund an amount equal to the full benefit standing to his credit in the said provident fund at that date together with interest thereon at the rate of four per cent per annum, calculated from the date on which interest was last added to that benefit in terms of the rules of the said provident fund and up to the date of payment.
- (5) If a transferred employee to whom subsection (1) applies, has in terms of section 2 been appointed to a post classified in one of the divisions of the public service, he may, subject to the approval of the Secretary for Social Welfare and Pensions, elect in writing within one hundred and eighty days after the date on which he received notification of such appointment, or within such further period as the said Secretary may in special circumstances allow, to be freed from all the obligations and relinquish all the rights and privileges referred to in subsection (1) and to become a member of the Public Service Pension Fund.
- (6) If a transferred employee elects in terms of subsection (5) to become a member of the Public Service Pension Fund—
  - (a) he shall become a member of and shall contribute to that fund with effect from the first day of the month immediately following the month in which the election is made; and
  - (b) he shall be deemed to have elected to reckon the following period of service as pensionable service for the purposes of the said fund, namely—
    - (i) if he was a member of the pension fund or the superannuation fund immediately prior to the fixed date, the period of his service recognized as pensionable under the rules of the fund concerned including any period of service on and after the fixed date in respect of which he has paid contributions in terms of the said rules;
    - (ii) if he was a member of the provident fund immediately prior to the fixed date, the period of service in respect of which he paid contributions in terms of the rules of that fund, including any period of service on and after the fixed date in respect of which he has in terms of this Act so paid contributions.
- (7) There shall be paid to the Public Service Pension Fund from the Post Office Fund in respect of any transferred employee to whom subsection (6) applies—
  - (a) an amount equal to the amount which would have been payable in terms of sub-regulation (2) of regulation 9 of the regulations published by Government Notice No. R.1969 of the 15th December, 1965, as amended, if the period of service referred to in subsection (6) (b) (i) or (ii) had been a period of past pensionable service and he had elected in terms of the said sub-regulation to reckon such period as pensionable service for the purposes of the Public Service Pension Fund; and
  - (b) interest on the amount payable in terms of paragraph (a) at the rate of four and one-half per cent per annum, compounded annually as at the thirty-first day of March and calculated from the date on which such

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employee became a member of the Public Service Pension Fund in terms of subsection (6) (a) up to the date of payment.

(8) If the amount payable in terms of subsection (7) (a) is less than—

- (a) in the case of a transferred employee who was a member of the pension fund or the superannuation fund immediately prior to the fixed date, an amount equal to the transfer value which, in terms of paragraph (d) of subsection (1) of section 46 of the Local Government Superannuation Ordinance, 1966, of the Province of Natal, would have become payable in respect of him on the date on which he became a member of the Public Service Pension Fund in terms of subsection (6) (a), had the said subsection (1) applied in his case; or
- (b) in the case of a transferred employee who was a member of the provident fund immediately prior to the fixed date, an amount equal to the full benefit which would have been payable to him in terms of the rules of that fund had he ceased to be an employee of the State with effect from the date on which he became a member of the Public Service Pension Fund in terms of subsection (6) (a),

an amount equal to the difference, together with interest thereon at the rate of five per cent per annum, compounded annually as at the thirty-first day of March and calculated from the date on which the transferred employee concerned became a member of the Public Service Pension Fund in terms of subsection (6) (a) up to the date of payment, shall be paid out of the Post Office Fund to—

- (i) the Government Service Widows' Pension Fund if the transferred employee is a male person and was a member of the superannuation fund immediately prior to the fixed date;
  - (ii) the transferred employee if he is not a person to whom subparagraph (i) applies.
- (9) (a) If a transferred employee to whom subsection (6) applies—
- (i) was immediately prior to the fixed date a member of the superannuation fund; and
  - (ii) by reason of the fact that he is a male person, becomes a member of the Government Service Widows' Pension Fund,
- he shall, for the purpose of calculating any annuity which may become payable to his widow from the Government Service Widows' Pension Fund, be deemed to have commenced to contribute to the last-mentioned fund on the date on which his service recognized as pensionable under the rules of the superannuation fund commenced.
- (b) If a transferred employee to whom paragraph (a) applies, ceases to be a member of the Government Service Widows' Pension Fund prior to his death, there shall be paid to him out of that fund, in addition to any other benefit which may be payable to him in terms of the regulations governing the said fund, an amount equal to the amount (other than interest) which in terms of subsection (8) was paid to that fund in respect of him, together with interest thereon at the rate of five per cent per annum, compounded annually as at the thirty-first day of March and calculated from the date on which the last-mentioned amount was so paid up to the date on which the first-mentioned amount is paid in terms of this paragraph.

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(c) If a transferred employee to whom paragraph (a) applies dies without leaving a widow and while he is a member of the Government Service Widows' Pension Fund, there shall be added to any benefit which in terms of the regulations governing that fund may be payable to his children, step-children or legally adopted children, an amount and interest calculated *mutatis mutandis* in terms of paragraph (b).

(10) If a transferred employee was not immediately prior to the fixed date a member of the pension fund, the provident fund or the superannuation fund, the period of his continuous service under the City Council immediately prior to that date shall, for pension purposes, be deemed to be service under the Government: Provided that no such employee shall contribute to any fund referred to in section 2 of the Government Service Pensions Act, 1965 (Act No. 62 of 1965), or to the Government non-White Employees' Pension Fund established in terms of section 2 (2) of the Government non-White Employees Pensions Act, 1966 (Act No. 42 of 1966), from a date earlier than the fixed date.

(11) (a) If a person referred to in section 2 (5) was paid an amount from the superannuation fund, and the transfer value payable in respect of him in terms of subsection (4) of this section is for that reason less than the transfer value which would have been so payable had he not been paid such amount, he shall pay an amount equal to the deficiency to the Post Office Fund.

(b) If such person is unable to liquidate, in one payment, the amount due by him in terms of paragraph (a), such amount shall be recovered from him in such manner and in such instalments as the Postmaster-General in consultation with the Secretary for Social Welfare and Pensions may determine, and such person shall pay to the Post Office Fund interest at the rate of five per cent per annum, compounded annually as at the thirty-first day of March, on that portion of such amount which remains unpaid on the last day of each month.

Unfinished  
expropriations.

4. (1) If the City Council expropriated any property for the purposes of the telephone undertaking but the compensation payable in respect of such expropriation was not determined prior to the fixed date, such compensation shall be determined as if the said telephone undertaking still belonged to the City Council, and the amount of the compensation so determined shall, in so far as it does not exceed one hundred thousand rand, be paid by the City Council and, in so far as it exceeds the said amount, by the State.

(2) If any immovable property contemplated in subsection (1) has not yet been transferred to the City Council, transfer thereof to the State shall be effected as if the State had expropriated it.

Passing of rights  
and obligations  
in connection  
with telephone  
undertaking.

5. (1) All rights and obligations acquired or incurred by the City Council by virtue of any agreement in connection with the telephone undertaking and the employees in its service in connection therewith shall, except in so far as is otherwise provided by this Act, pass to the State.

(2) The City Council shall remain liable for any expenditure incurred by it prior to the fixed date in terms of any such agreement.

(3) The obligations of the City Council in respect of loans negotiated for the purposes of the telephone undertaking, and the rights and obligations of holders of stocks and securities issued by the City Council in connection therewith, shall not be affected by the transfer of the telephone undertaking to the State.

(4) Any right or obligation referred to in subsection (1) and which relates to a telephone service shall be subject to the pro-



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visions of the Post Office Act, 1958 (Act No. 44 of 1958), and the regulations made thereunder.

Validation of agreement in connection with telephone undertaking.

6. The agreement entered into by the City Council with the State in connection with the transfer of the telephone undertaking to the State is hereby validated in so far as it may be invalid by reason of the absence of authority to have entered into it.

Amendment of section 6 of Act 62 of 1965.

7. Section 6 of the Government Service Pensions Act, 1965, is hereby amended by the insertion after subsection (13) of the following subsection:

“(13A) Notwithstanding anything to the contrary contained in subsection (2) or in any other law, the provisions of subsection (4) shall *mutatis mutandis* apply in respect of any person who has elected in terms of section 3 (5) of the Durban Corporation Telephone Employees' Transfer Act, 1969, to become a member of the Public Service Pension Fund and who was an employee of the City Council of the city of Durban continuously from a date prior to the twenty-fourth day of June, 1955, and up to and including the day immediately preceding the date of commencement of that Act, as if subsection (3) of this section applied in respect of such person.”

Repeal of Act 31 of 1897, Act 19 of 1909 and Ordinance 15 of 1936 of Natal.

8. The City of Durban Telephones Consolidated Laws, 1897, 1909 and 1936, of the Province of Natal are hereby repealed.

Short title.

9. This Act shall be called the Durban Corporation Telephone Employees' Transfer Act, 1969.