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## PROCLAMATION

*by the*

*President of the Republic of South Africa*

No. 21, 1996

### RATIONALISATION OF PENSION FUND AND BENEFITS: REPEAL, AMENDMENT AND REPLACEMENT OF CERTAIN PENSION LAWS

Under the powers vested in me by section 237 (3) of the Constitution of South Africa, 1993 (Act No. 200 of 1993), I hereby repeal and amend the pension laws and replace it with the Law as set out in Annexure 1.

I further determine that the transitional provisions as set out in Annexure 2 be applied as regards the continuation of the pension fund management and administration and human resources arrangements.

I also determine **1 May 1996** as the date on which the said Law and transitional provisions shall commence.

Given under my Hand and the Seal of the Republic of South Africa at Pretoria this Eleventh day of April, One thousand Nine hundred and Ninety-six.

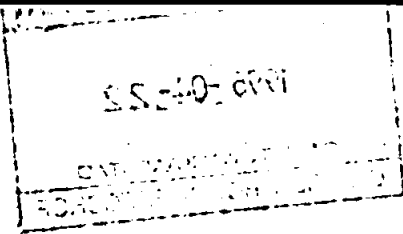
**N. R. MANDELA**

President

By Order of the President-in-Cabinet:

**Z. S. T. SKWEIYA**

Minister of the Cabinet

**ANNEXURE 1****LAW**

**To make provision for the payment of pensions and certain other benefits to persons in the employment of the Government, certain bodies and institutions, and to the dependants or nominees of such persons; to repeal certain laws, and to provide for matters incidental thereto.**

**Definitions**

1. In this Law, unless the context otherwise indicates -

"annuity" means an amount which is paid annually;

"approved retirement fund" means a fund other than a related fund, which has been registered as a pension fund organisation in terms of the Pension Funds Act, 1956 (Act No 24 of 1956) and which has been approved as a pension fund, retirement annuity fund or provident fund in terms of the Income Tax Act, 1962 (Act No. 58 of 1962);

"beneficiary" means the dependant or nominee of a member or pensioner, as the case may be;

"benefit" means an annuity or gratuity, or both an annuity and a gratuity, as the case may be;

"Board" means the Board of Trustees established by section 6;

"Commission" means the Public Service Commission established by section 209 of the

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Constitution of the Republic of South Africa, 1993 (Act No 200 of 1993);

"dependant", in relation to a member or a pensioner, means -

- (a) any person in respect of whom the member or pensioner is legally liable for maintenance;
- (b) any person in respect of whom the member or pensioner is not legally liable for maintenance, if such a person -
  - (i) was, in the opinion of the Board at the time moment of the death of the member or pensioner in fact dependent upon such member or pensioner for maintenance;
  - (ii) is the spouse of the member or pensioner, including a party to a customary union according to indigenous law and custom, or to a union recognised as a marriage under the tenets of any religion; or
- (c) a posthumous child of the member or pensioner; and
- (d) a person in respect of whom the member or pensioner would have been legally liable for maintenance had that person been a minor;

"dormant member" means any person declared as a dormant member in terms of section 27, any person who in terms of section 15 of the General Pensions Act, 1979 (Act No. 29 of 1979), was declared a dormant member of the Government Service Pension Fund and who immediately before the fixed date was still such a member, and any person who in terms of any law mentioned in section 14(5) was declared as a dormant member of a previous fund and who immediately before the date determined in terms of section 14(1) in respect of that previous fund, was still such a member;

"employer", means -

- (a) for purposes of the collection and payment to the Fund of the contributions referred to in section 17(1) and other amounts owing by members to the Fund, the payment to the Fund of the contributions referred to in section 17(2), the administration of membership matters and the payment of benefits to members and their beneficiaries:
- (i) a department or administration referred to in Schedule 1 of the Public Service Act, 1994 (Proclamation No 103 of 1994), or an organisational component referred to in Schedule 2 of that Act, or any other body or institution which employs persons referred to in section 8 of that Act;
  - (ii) the Public Service Commission established by section 209 of the Constitution of the Republic of South Africa, 1993 (Act No 200 of 1993);
  - (iii) a Provincial Service Commission established by a provincial legislature in terms of section 213 of the Constitution of the Republic of South Africa 1993, (Act No 200 of 1993), except where the legislation establishing such a commission specifically excludes its members from membership of the Fund;
  - (iv) the Auditor-General referred to in section 191 of the Constitution of the Republic of South Africa, 1993 (Act No 200 of 1993);
  - (v) the Office of the Auditor-General established in terms of the Audit Arrangements Act, 1992 (Act No. 122 of 1992); or

(vi) any other institution or body, determined by the Board as an employer for the purposes of this Law; and

(b) for all other purposes of this Law in relation to members in the service of the departments, administrations, organisational components, bodies and institutions referred to in paragraph (a), the Government;

"fixed date" means the date of commencement of this Law;

"Fund" means the Government Employees Pension Fund referred to in section 2;

"Government" means the Government of the Republic of South Africa and includes the State;

"gratuity" means a single amount benefit payable in terms of this Law;

"matters of mutual interest" means matters of mutual interest as defined in the Public Service Labour Relations Act, 1994 (Proclamation No 105 of 1994), and in the Education Labour Relations Act, 1993 (Act No 146 of 1993), and all matters dealt with in this Law and the rules;

"member", in relation to the Fund, means any person who in terms of section 4 is a member of the Fund, and includes any member who is absent with or without leave of absence or who has been suspended from duty and who immediately before such absence or suspension was contributing to the Fund, and any dormant member;

"Minister" means the Minister of Finance;

"National Intelligence Agency" means the Agency established by section 3 of the Intelligence Services Act, 1994 (Act No 38 of 1994);

"negotiations" means negotiations between employer and employee organisations in terms of any law or in accordance with processes regarding matters of mutual interest for the purpose of reaching binding agreements in relation to matters of mutual interest;

"pensionable service", in relation to a member, means any period of pensionable service as provided in the rules;

"pensioner" means any person who is entitled to receive an annuity in terms of this Law;

"prescribe" means prescribe by rule;

"previous fund" means a fund mentioned in section 14(5);

"related fund" means any fund established in terms of any law which provides exclusively for retirement benefits, to which the Government contributes financially;

"rule" means a rule made in terms of section 29;

"South African National Defence Force" means the Permanent Force referred to in section 9 of the Defence Act, 1957 (Act No 44 of 1957);

"South African Police Service" means the service established by the South African Police Service Act, 1995 (Act No 68 of 1995);

"South African Secret Service" means the service established by section 3 of the Intelligence Services Act, 1994 (Act No 38 of 1994);

"Temporary Employees Pension Fund" means the fund established by section 3 of the Temporary Employees Pension Fund Act, 1979 (Act No. 75 of 1979);

"this Law" includes the rules;

### **Continued existence, change of name and legal personality of certain fund**

2. (1) The fund established by section 3 of the Government Service Pension Act, 1973 (Act No. 57 of 1973), shall notwithstanding the repeal of that Act by section 34, continue to exist, subject to the provisions of this Law, but shall with effect from the fixed date be known as the Government Employees Pension Fund and shall consist of -

- (a) all amounts standing to the credit of or due to the Fund immediately before the fixed date;
- (b) all money and assets vested in the Fund in terms of section 14(2);
- (c) all money and assets vested in the Fund in terms of section 15(2);
- (d) all contributions paid to the Fund by members in terms of section 17(1);
- (e) all contributions and amounts paid to the Fund by the employer in terms of section 17(2) or (4), 20(2) or 25(2) or by the Government in terms of section 17(4);
- (f) all other amounts which are from time to time credited to the Fund;

(2) The Fund shall be a juristic person.

### **Object of the Fund**

3. The object of the Fund shall be to provide the pensions and certain other related benefits as determined in this Law to members and pensioners and their beneficiaries.

**Members of Fund**

4. (1) Any person who immediately before the fixed date is a member or pensioner of the Fund, shall remain such a member or pensioner.

(2) Any person who on or after the fixed date is appointed in the service of the employer shall subject to section 5 be a member of the Fund with effect from the date of such appointment.

(3) Any person who immediately before the date determined in terms of section 14(1)(a) in respect of a previous fund, is a member or pensioner of that fund, shall with effect from that date be a member or pensioner of the Fund.

(4) Every person who on a date determined by the Minister in terms of section 15(1) is employed in the service of the employer and who immediately before that date was a member of the Temporary Employees Pension Fund, and every person who on that date is a pensioner of that fund who at the time of his retirement was employed in the service of the employer, shall with effect from that date be a member or pensioner, as the case may be, of the Fund.

(5) Any member of an approved retirement fund who is transferred to the Fund in accordance with the rules made in terms of section 29(2)(d)(ii), shall with effect from the date of such transfer be a member of the Fund.

(6) Any person who on the fixed date is employed in the service of the employer and who is not a member of the Fund or a previous fund, but who, in terms of the law regulating his or her employment, may become a member if he or she so elects, and who so elects, shall, subject to the rules, with effect from the date stipulated in or determined by virtue of his election, be a member of the Fund.

**Persons excluded from membership of Fund**

5. Any person who is employed in the service of the employer, but -



- (a) whose remuneration consists solely of fees and allowances, as determined in the rules;
- (b) who is employed for a predetermined period, not exceeding the period specified in the rules;
- (c) who is employed under a contract providing for payment of a pension or similar benefit from a source other than the Fund or a previous fund or the Temporary Employees Pension Fund; or
- (d) is employed under a contract of service which excludes him or her from membership of the Fund,

shall not be eligible for membership of the Fund.

#### **Management of Fund by Board of Trustees**

6. (1) There is hereby established a board which shall be known as the Board of Trustees and which shall be constituted as prescribed.

(2) The Board shall manage the Fund and shall in respect thereof exercise the powers, perform the functions and carry out the duties conferred upon, assigned to or imposed upon it in terms of this Law.

(3) Members and pensioners of the Fund shall be entitled to representation on the Board, which representation shall collectively be equal in number to the representation by the employer as prescribed.

(4) The first meeting of the Board shall take place at a time and place to be determined by the Minister, and any subsequent meeting of the Board shall take place at a time and place determined in terms of the rules.

(5) The procedure to be followed at a meeting of the Board, the quorum for such a meeting, and the majority of votes required for a decision of the Board, shall be as prescribed.

(6) The Board may delegate any of its powers, functions or duties to a management committee, committee or person to be exercised, performed or carried out, subject to such conditions as may be determined by the Board.

(7) The Board, acting in consultation with the Minister, shall determine the investment policy of the Fund.

#### **Administration of Fund**

7. (1) The Board shall take such steps as may be required in order to ensure the effective and efficient administration of the Fund.

(2) The Minister may at the request of the Board make available to the Board the services of officers of his Department and may place at the disposal of the Fund all such facilities under control of that Department as may be necessary for a proper discharge of the activities of the Fund.

(3) The Board may, with a view to the effective and efficient administration of the Fund, determine the nature, form, manner in which and time-limit within which the employer shall in respect of members in its employment, perform any act pertaining to the pension interests of members, the collection of, and paying over to, the Fund of contributions and the paying over of benefits to pensioners who are former employees of the employer.

#### **Board to keep financial and related records**

8. The Board shall in accordance with the rules keep such financial and related records as may be necessary to reflect accurately all acts and transactions of the Board, and to give a true reflection of the state of affairs of the Fund, its financial position and business.

**Annual financial statements**

9. (1) The Board shall in respect of each financial year draw up annual financial statements and shall submit copies of such statements, audited in terms of section 13, to the Minister.

(2) The statements mentioned in subsection (1) shall consist of -

- (a) a statement of funds and net assets;
- (b) a revenue account;
- (c) a cash flow statement;
- (d) notes to explain such statements;
- (e) a report of the Board referred to in section 10; and
- (f) such other statements as may be prescribed.

(3) The statements mentioned in subsection (1) shall be in the prescribed form and shall be accompanied by a report of the auditors referred to in section 13.

(4) The annual financial statements referred to in subsection (1) shall, in conformity with generally accepted accounting practice, fairly present the state of affairs of the Fund and its business and financial position as at the end of the financial year in question.

(5) The annual financial statements referred to in subsection (1) shall by figures, a descriptive report and information explain any other matter relevant to the affairs of the Fund.

(6) The Minister shall, within 30 days of the receipt thereof, submit the financial statements, report and information referred to in this section, to Parliament together with such comments as the Minister may wish to make.

**Report by Board on state of affairs, business and financial position of Fund**

10. (1) The Board of Trustees shall together with its annual financial statements submit to the Minister a report with regard to the state of affairs, the business and the financial position of the Fund and the degree in which the objects of the Fund have been furthered.

(2) Such a report shall in addition -

- (a) set out the functions and objects of the Fund;
- (b) set out the extent to which the objectives of the Fund for the financial year in question have been achieved;
- (c) contain relevant performance information with regard to the economical, efficient and effective application of the resources of the Fund; and
- (d) indicate the total amount of all money received from the Government in respect of the financial year in question and contain information of all financial commitments by the Government in favour of the Fund.

#### **Auditors of Fund : Appointment and discharge of auditors**

11. (1) The Board shall annually appoint the auditors of the Fund.

(2) Auditors appointed in terms of subsection (1) shall be persons who are registered in terms of section 15 of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991), as accountants and auditors, and who are engaged in public practice as such.

(3) An auditor appointed in terms of subsection (1) shall not be discharged by the Board before the expiry of his or her term of appointment except in accordance with subsection (4).

(4) If it appears to the Board that grounds may exist for terminating the appointment of any auditor appointed in terms of subsection (1) it shall in writing inform that auditor of that fact and of the grounds upon which that opinion is based. The Board shall afford the auditor in question an opportunity to submit within a specified period, which shall not be less than 20 days as from the date of the notice, written representations in connection with the intended discharge and may thereupon, if it is still of the opinion that there are grounds for doing so, terminate the appointment of that auditor. The Board shall inform the Minister of the action taken by it and of the grounds upon which that action is based and the auditor shall inform the Minister in writing if in the opinion of the auditor any matter should in the public interest be brought to the attention of the Minister.

### **Powers and duties of auditors of Fund**

12. (1) An auditor appointed in terms of section 11(1) shall exercise his or her powers, perform his or her functions and carry out his or her duties in accordance with section 20 of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991).

(2) Such an auditor shall for the purpose of exercising his or her powers, performing his or her functions and carrying out his or her duties have -

- (a) the right of access at all reasonable times to the accounting records and all books, vouchers, documents and other property of the Fund, and may require from the Board such information and explanations as he or she thinks necessary;
- (b) the right to investigate whether there are adequate measures and procedures for the proper application of sound economical, efficient and effective management of the Fund and for the utilisation of all the resources under the control of the Board; and
- (c) the right to investigate any matter, including the efficiency and effectiveness of the internal control of the Fund, relating to expenditure by and the revenue of the Fund.

(3) Subsection (2)(b) shall not be construed as entitling the auditor to question the merits of the policy objectives of the Fund.

### **Reports of auditors**

13. (1) The auditors appointed under section 11 shall within a period of six months after the end of the financial year in question prepare a report on the annual financial statements of the Fund.

(2) (a) A report in terms of subsection (1) shall be submitted to the Board not later than six months after the end of the financial year concerned, and shall state separately in respect of each of the following matters whether in the auditor's opinion -

- (i) the annual financial statements fairly present the financial position and the results obtained by the Fund in accordance with generally accepted accounting practice applied on a basis consistent with that of the preceding year;
- (ii) the information furnished in terms of sections 9 and 10 is fair in all material respects and, if applicable, on a basis consistent with that of the preceding year;
- (iii) the transactions of the Fund that had come to the auditor's notice in the course of his or her examination were executed in accordance with the applicable laws and instructions; and
- (iv) the transactions which had come to his or her attention during auditing were in all material respects in accordance with the mandatory functions of the Fund determined by law or otherwise.

(b) The Board shall submit such report together with its comments thereon to the Minister within 30 days of receipt thereof.

(3) The auditor shall report to the Board and the Minister the results of any investigation carried out under section 12(2)(b) or (c).

(4) The auditor shall draw attention to any other matter falling within the scope of the auditor's examination which, in his or her opinion, should in the public interest be brought to the notice of Parliament.

#### **Discontinuance of previous funds : transfer of assets and liabilities**

14. (1) (a) A previous fund shall be discontinued with effect from a date determined in respect of that fund by the Minister.

(b) Different dates may be so determined in respect of the different previous funds.

(2) All assets, including any right to claim any amount, and all liabilities, including any obligation to pay any pension, related benefit or any other amount in terms of any law, of a previous fund in respect of which a date is determined under subsection (1), shall with effect from that date pass to and vest in the Fund.

(3) The Minister shall as soon as possible after the determination

of a date under subsection (1) in respect of a previous fund, take the necessary steps to indicate on the relevant title deeds or other documents pertaining to the assets which passed to the Fund in terms of subsection (2), the change of ownership or the vesting of any other right.

(4) Any person who has in his possession any financial instrument issued in respect of the investment of money of the Fund, or any document in the form of any stock, debenture, security, equity, insurance policy representing the investment, loan or insurance of any money or interest of the Fund, shall for the purposes of subsection (2) submit such instrument or document to the Minister.

(5) For the purposes of subsection (1)(a) "previous fund" means -

- (a) the Government Employees Pension Fund of the Transkei, established in terms of the Government Employees Pensions Act, 1978 (Act No. 15 of 1978), of the former Transkei;
- (b) the Transkeian Government Service Pension Fund, referred to in section 2 of the Transkeian Government Service Pension Fund Act, 1970 (Act No. 4 of 1970);
- (c) the Ciskeian Civil Servants Pension Fund, referred to in the Government Service Pensions Act, 1989 (Act No. 4 of 1989), of the former Ciskei, as amended by the Government Service Pensions Amendment Decree, 1993, of the former Ciskei;
- (d) the Government Pension Fund of Bophuthatswana, established by section 2(1) of the Bophuthatswana Government Service Pensions Act, 1977 (Act No. 14 of 1977), of the former Bophuthatswana;
- (e) the Government Pension Fund of Venda, established by section 2(1) of the Venda Government Service Pensions Act, 1979 (Act No. 4 of 1979), of the former Venda;
- (f) the Government Superannuation Fund of Venda, established by section 2(1) of the Venda Government Service Pensions Act, 1979, of the former Venda;
- (g) the Authorities' Service Superannuation Fund, established by section 2(2) of the Black Authorities' Service Pensions Act, 1971 (Act No. 6 of 1971);
- (h) the Authorities' Service Pension Fund, established by section 2(1) of the Black Authorities' Service Pensions Act, 1971 (Act No. 6 of 1971).

## **Transfer to Fund of certain members and pensioners of the Temporary Employees Pension Fund**

15. (1) All members of the Temporary Employees Pension Fund who are employed in the service of the employer and all pensioners of that Fund who at time of their retirement were employed in such service shall with effect from a date determined by the Minister become members or pensioners of the Fund.

(2) The Temporary Employees Pension Fund shall in respect of members and pensioners of that Fund who in terms of subsection (1) become members and pensioners of the Fund, pay to the Fund an amount, whether in cash or in specie, equal to the funding percentage of that fund multiplied by the actuarial obligation of that fund in respect of such members or pensioners on the date determined in terms of subsection (1) in respect of them, plus interest thereon calculated at the bank rate from that date until the date on which the amount is paid to the Fund.

(3) For purposes of this section -

- (a) "actuarial obligation" means the obligation of the Temporary Employees Pension Fund in respect of the members or pensioners concerned on the date determined in terms of subsection (1), as calculated by an actuary;
- (b) "bank rate" means the rate determined from time to time in terms of section 10(2) of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989); and
- (c) "funding percentage" means the market value of the net assets of the Temporary Employees Pension Fund as on the date determined in terms of subsection (1), expressed as a percentage of the calculated aggregate actuarial obligation.

## **Certain persons to be released from, and to forfeit certain obligations, rights and privileges when becoming members of Fund**

16. In any case where a person who is a member or pensioner of a previous fund, the Temporary Employees Pension Fund or an approved retirement fund, becomes a member of the Fund in terms of section 4(3) or (4) or the rules, as the case may be, such person



shall forfeit all rights and privileges in respect of, and shall be released from all obligations towards the fund in question, except an obligation to pay to the fund in question an amount which was due immediately before the date determined by the Minister or relevant authority in terms of section 14(1) or 15(1) or the rules, as the case may be, in respect of the previous fund, the employees concerned of the Temporary Employees Pension Fund or that approved retirement fund, as the case may be.

### **Funding of Fund**

17. (1) A person who is or becomes a member of the Fund shall continue to contribute or shall with effect from the date on which he or she becomes a member, as the case may be, contribute to the Fund at the prescribed rate, and shall continue so to contribute for as long as he or she is such a member.

(2) The employer shall in respect of every member employed in its service make contributions to the Fund at the rate referred to in subsection (3).

(3) The rate of contributions referred to in subsection (2) shall be determined with due regard to the valuations of the Fund, which shall be performed at intervals not exceeding three years, by an actuary appointed by the Board.

(4) If any action taken by the employer or if any legislation adopted by Parliament places any additional financial obligation on the Fund, the employer or the Government or the employer and the Government, as the case may be shall pay to the Fund an amount which is required to meet such obligation.

### **Implementation of scheme to restore financial soundness of Fund**

18. (1) If an actuarial valuation of the Fund reveals that the Fund is not in a sound financial position, the Board shall after having considered proposals by the actuary who performed such valuation, implement a scheme or arrangement aimed at restoring the Fund to a sound financial position.

(2) No scheme or arrangement shall be implemented under subsection (1) if it adversely affects the benefits which are or will be received by pensioners or members from the Fund or other matters of mutual interest or if it increases the rate of contributions to the Fund, unless such scheme or arrangements has been agreed to after negotiations in terms of any law applying in respect of labour relations arrangements in the Public Service, including Education and negotiations in accordance with any labour relations arrangements applicable to the South African Police Service, the South African National Defence Force, the National Intelligence Agency and the South African Secret Service with regard to their conditions of service.

### **Age of retirement**

19. Subject to the provisions of this Law, a member shall have the right to retire on pension and shall be so retired on reaching the age determined by the law governing his or her employment: Provided that where such a law does not determine such a retirement age, a member -

- (a) who was a member of the Fund on the fixed date shall have the right to retire on pension and shall be so retired on reaching the retirement age provided for in any other law which applied to him or her on the day preceding the fixed date; or
- (b) who became a member of the Fund after the fixed date shall have the right to retire and shall be so retired on reaching the retirement age determined in the rules.

### **Benefits may not be granted or varied except in accordance with an Act of Parliament**

20. (1) Save as is otherwise provided in this Law, no award of a benefit or any increase thereof and no alteration of any condition or condonation of a breach of any condition upon which such benefit is by law earned or to be earned in respect of a pensioner of

the Fund, the Temporary Employees Pension Fund or a previous fund, shall be lawful unless the award,

increase, alteration or condonation is authorized by an Act of Parliament.

(2) If an award contemplated in subsection (1) is granted, the employer shall immediately compensate the Fund in full for the liability incurred by the Fund as calculated by an actuary.

### **Prohibition on cession and attachment of benefits**

21. (1) No benefit or right in respect of a benefit payable under this Act 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), and section 7(8) of the Divorce Act, 1979 (Act No. 70 of 1979), be liable to be attached or subjected to any form of execution under a judgement or order of a court of law.

(2) If any member, pensioner or beneficiary attempts to assign or transfer or otherwise cede or to pledge or hypothecate any benefit to which he or she is entitled under this Law or any right in respect of such benefit, payment of such benefit to such member, pensioner or beneficiary may be withheld, suspended or discontinued if the Board so directs: Provided that the Board may direct that such benefit or part thereof shall be paid to one or more of the dependants of such member or pensioner or to a trustee for such member or pensioner or his or her dependants during such period as the Board may determine.

(3) Notwithstanding the provisions of subsection (1) or of any other law -

- (a) any amount which is payable to the employer or the Fund by any member in the employment of such employer on the date of his or her retirement or discharge, or which the employer is liable to pay in respect of such member;
- (b) any amount which has been paid to any member, pensioner or beneficiary in accordance with the provisions of this Law and to which such member, pensioner or beneficiary was not entitled;

(c) the amount of any loss which has been sustained by the employer through theft, fraud, negligence or any misconduct on the part of any member, pensioner or beneficiary which has been admitted by such member or pensioner in writing or which has been proved in a court of law, may be deducted from the benefit payable to such member, pensioner or beneficiary under this Law in a lump sum or in such instalments as the Board may determine.

(4) Where a member dies before the last day of a period in respect of which any salary or allowance was paid to him or her prior to his or her death, a pro rata part of the amount so paid may be recovered in respect of the unexpired portion of that period by deducting it in a lump sum, or in such instalments as the Board may determine, from the benefit payable to the estate or to a beneficiary of the deceased member, as provided in the rules.

#### **Payment of gratuity to beneficiaries designated by member**

22. (1) If a gratuity is payable on the death of any member to the dependants of such a member or to his or her estate, that member may, on the prescribed form and subject to the prescribed conditions, notify the Board of his or her wish that the said gratuity be paid on his or her death to the beneficiaries mentioned in that form and be divided among such beneficiaries in the proportion mentioned in that form.

(2) Notwithstanding anything to the contrary in any law contained, the Board may on the death of a member who so notified the Board pay at its discretion the gratuity concerned in accordance with the member's wish.

#### **Benefit not asset in insolvent estate**

23. Any benefit payable or received under this Law by any member, pensioner or beneficiary whose estate is sequestrated shall not form part of the assets in his or her insolvent estate.

**Application of benefits for payment of certain debts of pensioner**

24. (1) If the Board is satisfied that any judgement or order for the payment of money given or made by a court of law against a pensioner in any judicial proceedings for the dissolution of the marriage between such pensioner and his or her spouse, has not been satisfied in full, the Board may, notwithstanding anything to the contrary in any law contained, in its discretion direct that so much of any benefit payable to such pensioner under this Law as does not exceed the amount of the judgement or order which has not been satisfied, be paid to such spouse, in such instalments or otherwise and at such times, in such circumstances and on such conditions as the Board, may from time to time determine.

(2) The payment of any benefit or any part thereof in terms of a direction under subsection (1), shall be a complete discharge of any liability to pay such benefit or part to the pensioner concerned.

(3) For the purposes of this section "pensioner" means any person to whom any benefit is payable, but does not include a person to whom any benefit is payable as the widow, widower or dependent of any person.

**Increase of certain annuities and payment of allowances and bonuses**

25. (1) Notwithstanding anything to the contrary in any law contained but subject to the provisions of this section, the Board shall within the financial constraints of the Fund, and acting on the advice of the actuary, regularly -

- (a) authorize the increase of any annuity payable under this Law in order to ensure that the value of annuities is maintained by means of fair adjustments; and
- (b) authorize the payment of any allowance or bonus to any person who is in receipt of an annuity referred to in paragraph (a),

in accordance with such rates or scales, in such circumstances, on such conditions and with effect from such date, which may be a date in the past, as the Board may determine.

(2) Different rates, scales, circumstances and conditions may be determined in terms of subsection (1) in respect of different classes or categories of members, pensioners and beneficiaries.

(3) Any increase of any annuity and any allowance or bonus payable under subsection (1) shall be funded by the Fund.

(4) (a) Notwithstanding the provisions of subsections (1), (2) and (3), the Minister may supplement any benefit payable to a member or pensioner, or grant increases additional to such increases contemplated in subsection (1)(a) in order to protect such benefit from the effects of inflation: Provided that such supplements or increases shall only be effected after consultation with the Board.

(b) If an annuity is supplemented or an increase of an annuity is granted as contemplated in paragraph (4) (a), the employer shall immediately compensate the Fund in full in respect of the liability as calculated by the actuary referred to in section 17(3) incurred by the Fund as a result of the granting of such supplement or increase.

#### **Period within which payment of benefits shall commence**

26. (1) Notwithstanding anything to the contrary in any law contained, a benefit payable in terms of this Law shall be paid to the member, pensioner or beneficiary entitled to such benefit within a period of 60 days after the date on which the Board receives a duly completed statement in the prescribed form or, if the Board receives such statement before the date on which a benefit is payable to the member or pensioner concerned in terms of this Law, within a period of 60 days after the date on which such benefit is so payable.

(2) If a benefit is not paid within the period referred to in subsection (1), interest shall be paid by the Fund to the member, pensioner or beneficiary on any part of the amount of the benefit not paid within the period of 60 days referred to in subsection (1), at the rate prescribed.

(3) For the purpose of section 12(1) of the Prescription Act, 1969 (Act No. 68 of 1969), a benefit payable to a member, pensioner or beneficiary in terms of this Law shall be deemed to be due on the date following the date on which a member's benefit becomes payable in terms of subsection (1) for the period after expiry of 60 days.

**Declaration of certain former members as dormant members of the Fund**

27. If the membership of a member is for any reason terminated before he or she attains the age at which he or she would have had the right to retire on pension, the Board may at the request or with the consent of the member, if the Board deems it expedient that his or her accrued pension interest in the Fund be retained for him or her declare him or her to be a dormant member of the Fund with effect from the date on which his or her membership was so terminated.

**Benefits not property for purposes of estate duty**

28. Notwithstanding anything to the contrary in any law contained, any benefit or any right to a benefit, due and payable in terms of this Law to the beneficiary of a member, on or as a result of or after the death of that member shall for the purposes of the Estate Duty Act, 1955 (Act No. 45 of 1955), be deemed not to be property as defined in section 3(2) of that Act.

**Duty and power of Board to make rules**

29. (1) (a) Subject to the provisions relating to negotiations regarding the terms and conditions of employment contained in any law applying in respect of labour relations arrangements in the Public Service, including Education, and subject to negotiations in accordance with any labour relations legislation or arrangements applicable to the South African Police Service, the South African National Defence Force, the National Intelligence Agency and the South African Secret Service regarding their terms and conditions of employment, the Board shall make rules with regard to -

- (i) the constitution of the Board and the management and administration of the Fund;
- (ii) the payment of contributions to the Fund and the payment of benefits from the

Fund to or in respect of members on their retirement, discharge, resignation or death;

(iii) any matter in respect of dormant members of the Fund;

(iv) any matter required or permitted to be prescribed under this Law,

and, generally, for the better achievement of the objects and purposes of this Law.

(b) The rules contained in Schedule 1 shall be deemed to have been made as required by subparagraph (a) and any such rule shall continue to apply until amended, substituted or repealed by rules made by the Board in terms of subparagraph (a).

(2) The rules referred to in subsection (1), may -

(a) prescribe the classes or categories of persons who shall become members of the Fund and shall contribute to the Fund;

(b) from time to time prescribe the conditions subject to which and the rate at which members shall contribute to the Fund, and the times at which and the manner in which such contributions or any amounts which are payable to the Fund in terms of this Law, shall be deducted from the pensionable emoluments of members and paid over to the Fund;

(c) from time to time prescribe the circumstances in which and the basis and conditions subject to which any period which is not a period of pensionable service as defined in the rules, may be recognised as pensionable service and the amount, including interest, which shall be paid to the Fund in respect of such period by the member concerned or any other person or the employer or any other employer, and the times at which and the manner in which such amount shall be so paid;

(d) prescribe the circumstances in which and the basis and conditions on which the accrued benefits of :

(i) a member of the Fund may be transferred to an approved retirement fund; or

(ii) a member of an approved retirement fund may be transferred to the Fund and the amount, including interest, which shall be paid to the Fund by the member concerned, the approved retirement fund, or the present



or previous employer of the member in respect of such transfer, and the manner in which such amounts shall be calculated and paid;

- (e) from time to time prescribe the contributions, interest or other amounts which shall or may from time to time be paid to the Fund by the employer or any other employer in respect of employees who are members of the Fund and the circumstances in which and the basis and conditions on which and the manner in which the said contributions, interest or other amounts shall be calculated and shall or may be paid to the Fund;
- (f) from time to time prescribe the benefits payable to a member whose service is terminated as a result of injury or ill-health, not occasioned by his or her own fault, arising out of and in the course of his or her employment;
- (g) from time to time prescribe the benefits payable from the Fund to members or their beneficiaries determined in the rules, in respect of the pensionable service of members in cases or classes or categories of cases specified by the rules, and the manner in which such benefits shall be calculated and the times at which and the manner in which such benefits shall be paid;
- (h) provide for the investment of amounts standing to the credit of the Fund and for the periodic valuation by an actuary of the assets and liabilities of the Fund;
- (i) provide for the conditions on which a member of the Fund who is seconded to employment in respect of which he or she is not liable to contribute to the Fund, may continue to contribute to the Fund and receive benefits from the Fund;
- (j) from time to time prescribe formulae for the calculation of benefits payable from the Fund;
- (k) provide that any change to the rules shall satisfy the condition that the real value of the accrued benefits of every member of the Fund, as represented by the Fund's actuarial liability towards the member and his or her beneficiaries, shall be maintained in such change, and provide for the manner in which such value is to be determined.

(3) Different rules may be made under this section in respect of members belonging to different classes or categories.

(4) Any rule, except a rule which increases the rate at which members shall contribute to the Fund or reduces the amount of the benefit payable from the Fund, may be made with retrospective effect.

(5) The Rules shall be binding on the Government, the Fund, its members and pensioners and their beneficiaries or any other person who has a claim against the Fund.

### **Protection of rights of members of previous funds and Temporary Employees Pension Fund**

30. (1) (a) Where a member of a previous fund becomes a member of the Fund, the member's benefits in the Fund on the date determined in terms of section 14(1) in respect of that previous fund shall satisfy the condition that the real value of the accrued benefits of such member on that date as represented by the Fund's actuarial liability towards the member and his or her beneficiaries, shall not be less than the real value of the accrued benefits of such member in that previous fund immediately before that date, as represented by the actuarial liability of that previous fund towards the member and his or her beneficiaries, in accordance with a certificate from an actuary appointed by the Board.

(b) Consistent actuarial bases shall be applied in the calculation of the actuarial liability values referred to in subparagraph (a).

(2) The provisions of subsection (1) shall apply *mutatis mutandis* to a member of the Temporary Employees Pension Fund who becomes a member of the Fund in terms of section 15, and in any such application references in subsection (1) to a previous fund and date determined by the Minister in terms of section 14(1) shall be construed as references to the Temporary Employees Pension Fund and the date determined in terms of section 15(1) respectively.

## **Binding of the State**

31. This Law shall bind the State and the Government shall be responsible for meeting the obligations of the Fund, whether properly funded or not, in favour of its members, pensioners and beneficiaries : Provided that any change in the investment policy of the Fund referred to in section 6(7) or the benefit structure of the Fund, as provided for in the rules which may have an effect on the Government's financial obligation towards the Fund, shall be subject to the approval of the Minister: Provided further that the Minister's approval shall not be required in the event of changes to the benefit structures brought about by agreements reached in the bargaining structures for the Public Service.

## **Withdrawal from the Fund**

32. (1) This Act shall not preclude the establishment by an Act of Parliament of a separate fund for a sector or part of a sector of the Public Service as contemplated in section 8(1)(a) of the Public Service Act, 1994. (Proclamation 103 of 1994).

(2) Subject to the Constitution of the Republic of South Africa, 1993 (Act No 200 of 1993) the creation of such a separate fund shall be subject to agreement between the employer and the employee organisations representing such a sector or part of a sector of the Public Service after negotiations in accordance with the labour relations laws or other arrangements applying to such a sector.

(3) Appropriate financial arrangements regarding the transfer of liabilities and assets from the Fund to such a separate fund referred to in subsection (2) shall be approved by the Minister with the concurrence of the Board : Provided that such arrangements shall not have a detrimental effect on the financial position of the Fund.

(4) This Law shall not prohibit the South African Police Service from providing for pensions for its former members by an Act of Parliament in accordance with section 214(2)(b)(iv) of the Constitution of the Republic of South Africa, 1993 (Act No 200 of 1993).

### **Dissolution of the Fund**

33. (1) The Fund may be dissolved -

- (a) ~~CHUE~~ by the Board acting with the concurrence of the Minister : Provided that the Fund shall not be dissolved unless the dissolution has been agreed to after negotiations as contemplated in section 18(2) have taken place; or
- (b) in terms of a court order.

(2) If the Fund is dissolved in terms of subsection (1), the Board shall appoint a liquidator.

(3) Sections 28 or 29, as the case may be, of the Pension Funds Act, 1956 (Act No. 24 of 1956) shall apply to the dissolution of the Fund and the appointment of the liquidator in terms of subsection (2) shall be subject to the approval of the Registrar of Pension Funds.

### **Repeal and amendment of laws**

34. (1) (a) The laws mentioned in Schedule 2 to this Law are hereby repealed to the extent indicated in the third column of that Schedule.

(b) This section shall, in respect of a particular previous fund, come into operation on the date determined in terms of section 14(1) in respect of that previous fund.

(2) The laws specified in Schedule 3 to this Law are hereby amended to the extent indicated in the third column of that Schedule.

### **Short title and commencement**

35. (1) This Law shall be called the Government Employees Pension Law, 1996, and shall subject to section 34 come into operation on a date fixed by the President by proclamation in the Gazette.

(2) Different dates may be fixed under subsection (1) in respect of different provisions of this Law.

## SCHEDULE 1

## RULES OF THE GOVERNMENT EMPLOYEES PENSION FUND

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**RULES OF THE GOVERNMENT EMPLOYEES PENSION FUND****1. DEFINITIONS**

In the rules words that are defined in the Law, but not defined in this rule, shall have the meaning assigned to them by the Law, and, unless the context otherwise indicates, words indicating the singular include the plural and conversely and also, unless the context otherwise indicates, the words hereunder shall have the following meaning -

- 1.1 "Law", the Government Employees Pension Law, 1996;
- 1.2 "actuary", any Fellow of an institute, faculty, society or chapter of actuaries approved by the Minister, appointed as the actuary of the Fund in terms of rule 4.8;
- 1.3 "agreement", an appropriate written agreement concluded in negotiations between the employer and employee organisations;
- 1.4 "Correctional Services", the Department of Correctional Services established in terms of section 2 of the Correctional Services Act, 1959 (Act No 8 of 1959);
- 1.5 "education service", the teachers or other persons as defined in the Educators' Employment Act performing education functions at a state educational institution, which is an institution (including an office controlling such institution), other than a university or technikon, that is wholly or par-

tially funded by the State and in regard to which the remuneration and service conditions of such teachers or other persons performing education functions are determined by or in terms of a law;

1.6 **"employee organisation"**

1.6.1 an admitted employee organisation referred to in section 1 of the Public Service Labour Relations Act, 1994;

1.6.2 an admitted employee organisation referred to in section 1 of the Education Labour Relations Act, 1993;

1.6.3 an employee organisation or other employee structure formed by personnel appointed in terms of the Intelligence Services Act, 1994 (Act 38 of 1994) the Defence Act, 1957 (Act No 44 of 1957) and the South African Police Service Act, 1995 (Act No 68 of 1995) and which has for negotiation purposes been accepted by the employer;

1.7 **"final salary"**, a member's pensionable emoluments on the day preceding the date with effect from which his or her service terminates;

1.8 **"fund year"**, the first day of April of a year up to the last day of March of the ensuing year;



- 1.9 "interest", compounded interest at a rate as determined from time to time by the Board after consultation with the Actuary : Provided that different rates may be determined in respect of different rules;
- 1.10 "pensionable emoluments", the basic annual salary of a member and any other emoluments to be recognised as pensionable emoluments, after an agreement has been reached between the employer and employee organisations taking into account the actuary's report on the financial implications regarding the inclusion thereof as pensionable emoluments;
- 1.11 "pension-retirement date" the date on which a member is entitled to retire in terms of section 19 of the Law : Provided that in any case where section 19(b) of the Law and rule 14.1.1(h) is applicable it shall be the date when such member attains the age of 65 years : Provided, further, that the pension-retirement date of a member who holds office as contemplated in rule 14.2.3(b) (BB) shall for the purposes of this definition be the date with effect from which he or she would have had the right to retire in terms of section 19 of the Law had he or she not held the said office;
- 1.12 "pensionable service", subject to the provisions of rules 9 to 12 -

- 1.12.1 in respect of a member who was a member of the Government Service Pension Fund or the Temporary Employees Pension Fund immediately prior to the fixed date, the period of time which was recognised as pensionable service of the member under the Government Service Pension Act or the Temporary Employees Pension Act in respect of which no benefit was paid out of the Fund;
- 1.12.2 continuous service of a member on or after the fixed date in respect of which such a member contributes or contributed to the Fund or was liable to contribute to the Fund, and in respect of which no benefit has been paid out of the Fund under the rules; and
- 1.12.3 any other period which is recognised or allowed in terms of the rules as pensionable service of a member;

Provided that a period of pensionable service shall be calculated by the year and any portion of a year shall be determined according to the proportion which the number of days in that portion of a year bears to 365 days;

- 1.13 "principal", the Minister or the relevant employee organisations, as the case may be, who designate the trustees;
- 1.14 "Public Service Act", the Public Service Act, 1994;
- 1.15 "responsible Minister", the Minister : Provided that for the purposes of rules 4.1.2(a) and 4.1.3, it shall mean the Minister in consultation with the Ministers responsible for Administration, State Expenditure, Education, the South African National Defence Force, the South African Police Service, the National Intelligence Agency and the South African Secret Service;
- 1.16 "Services", the National Intelligence Agency, South African National Defence Force, South African Police Service and South African Secret Service as described in section 1 of the Law;
- 1.17 "spouse", means a person who can provide proof to the satisfaction of the Board of Trustees that he or she was the lawful husband or wife of a member or pensioner at the time of that member's or pensioner's death, or, if he or she was not the lawful husband or wife of that member or pensioner, that he or she was the spouse of that member or pensioner according to indigenous law or custom or the tenets of any Asiatic religion;

- 1.18 "the Board, the Board of Trustees;
- 1.19 "trustee", a person designated in terms of rule 4.1.2 and 4.1.4;
- 1.20 "unexpired period of service", the period between the date on which a member ceases or would cease to be a member of the Fund and his or her pension-retirement date : Provided that in the case of a member referred to in section 19(a) of the Law the pension-retirement date shall for this purposes be regarded as the date when he or she attains the age of sixty years.

## 2. NATURE OF THE FUND

The Fund is entitled to sue and be sued as a juristic person, to acquire, possess and alienate movable and immovable property and to acquire rights and incur liabilities and to function separately from its members, pensioners and beneficiaries.

## 3. REGISTERED OFFICE

The registered office of the Fund is situated at 34 Hamilton Street, Pretoria or such address as the Board of Trustees may determine from time to time.

#### 4. MANAGEMENT OF THE FUND

##### 4.1 BOARD OF TRUSTEES

4.1.1 The Board is responsible for the proper and efficient management of the Fund. The Board shall comply with all the obligations imposed upon it by the rules and do everything necessary to ensure the proper functioning of the Fund.

4.1.2 Subject to the provisions of rule 4.1.9, the term of office of a trustee shall be four years and the Board shall consist of -

(a) six persons, referred to in the rules as "the employer nominees", designated by the responsible Minister, at least one of whom must have proven expertise in the following:

- (i) financial management and investments; and/or
- (ii) the management and organisation of pension funds in general;

- (b) six persons, referred to in the rules as "the employee nominees", in terms of rules 4.1.3, 4.1.4 and 4.1.5.

4.1.3 The employee nominees shall be calculated as follows:

- (a) The education service.

$$\frac{A \times 6}{D} = N$$

- (b) The services excluding Correctional Services.

$$\frac{B \times 6}{D} = N$$

- (c) Employers not mentioned in (a) or (b).

$$\frac{C \times 6}{D} = N$$

where -

A = the number of education service members as determined by the Public Service Commission after consultation with the responsible Minister and based on the information available to the Public Service Commission.

B = the number of services members excluding members of Correctional Services, as determined by the Public Service Commission after consultation with the responsible Minister and based on the information available to the Public Service Commission.

C = the number of members other than members included in A and B as determined by the Public Service Commission after consultation with the responsible Minister and based on the information available to the Public Service Commission.

D = the sum of A, B and C.

N = the number of the relevant employee nominees on the Board, and in calculating N a fraction shall be rounded off to the nearest whole number provided that if the sum of the three numbers represented by N in respect of (a), (b) and (c) above do not add up to 6 an additional member shall be added to the variable N in which the largest fraction not rounded off to a whole number occurred.

4.1.4 The employee nominees referred to in 4.1.3 shall be designated by the employee organisations as follows:

(a) As regards 4.1.3(a) above by the employee organisations contemplated in rule 1.6.2.

(b) As regards 4.1.3(b) above by the employee organisation or structure contemplated in rule 1.6.3.

(c) As regards 4.1.3(c) above by the employee organisations contemplated in rule 1.6.1.

4.1.5 The calculation of A, B and C in the formulae contained in rule 4.1.3 shall be done by the Public Service Commission after consultation with the Department of Finance to come into operation on the fixed date and the results of such calculations shall be valid and remain in force for a period of four years from such date. Thereafter the calculations as referred to above shall be done anew every four years.

4.1.6 The chairperson of the Board is elected by the Board, from its own ranks at the first meeting of such Board by voting in terms of rule 4.1.14 : Provided that in the event of an equality of votes, a new round of voting



will take place and if such new round of voting also results in an equality of votes the name of each candidate shall in the presence of the meeting be written on a piece of paper and such papers shall be placed in a suitable container and one of these papers shall be drawn from the container. The candidate whose name is so drawn shall be deemed to have been duly elected.

4.1.7 The trustees will be compensated for their services and expenses on the basis determined by the Board.

4.1.8 A substitute is designated for each trustee by the persons, organisations or structures referred to in rules 4.1.2(a) and 4.1.4. A substitute acts in the place of the trustee on behalf of whom he or she was designated as substitute in such a trustee's absence, and he or she then has all the competencies and obligations of a trustee.

4.1.9 A trustee or his or her substitute ceases to be a trustee or a substitute, as the case may be, when -

(a) his or her term of office expires;

(b) he or she dies;

(c) due to any recalculation in terms of rule 4.1.3, the number of representatives allocated to one of the sectors referred

to in the said rule is reduced and, as a result thereof, the designation of a trustee or a substitute is terminated by his or her principal;

(d) he or she resigns from his or her office as trustee or substitute by way of a notice in writing addressed to the chairperson of the Board;

(e) he or she becomes physically or mentally unfit and, due to such unfitness, he or she is not, in the opinion of the Board in consultation with his or her principal, capable of properly performing his or her duties as trustee or substitute;

(f) his or her estate is sequestrated or renounced on behalf of his or her creditors;

(g) he or she is convicted in the Republic or elsewhere of theft, fraud, forgery or the uttering of a forged document, or perjury, or he or she is sentenced to imprisonment without the option of a fine;

(h) he or she is discharged by a court of law from any position of trust on account of misconduct;

(i) he or she becomes incompetent to be a

director of a company in terms of the Companies Act, 1973 (Act No 61 of 1973);

(j) he or she contravenes rule 4.1.20 or neglects to conform thereto, should the Board in consultation with his or her principal so decide; and

(k) he or she is replaced by another person by his or her principal, which replacement must be conveyed in writing to the chairperson of the Board.

If another person is appointed in the place of a trustee or substitute who ceases to be a trustee or substitute in terms of this rule, such other person, subject to rule 4.1.8, acts in the place of such trustee or substitute for the duration of the term of office of the person in whose place he or she was appointed.

4.1.10 The Board elects a vice-chairperson from its ranks and in this regard the provisions contained in rule 4.1.6 shall apply mutatis mutandis. In the absence of the chairperson as well as the vice-chairperson at any meeting of the Board, the trustees present at such a meeting, elect a chairperson from their ranks in which case the arrangement set out in rule 4.1.6 mutatis mutandis applies.

- 4.1.11 Two-thirds of the trustees is a quorum. If a quorum is not present the chairperson postpones the meeting for seven days and informs the trustees of such meeting and trustees present at that meeting then form a quorum.
- 4.1.12 The Board shall meet regularly to attend to the affairs of the Fund. The chairperson or if he or she is not available the vice-chairperson may, when he or she deems it necessary, convene a meeting of the Board to discuss matters concerning the Fund.
- 4.1.13 Any trustee may with the written support of two other trustees request the chairperson, or if he or she is not available the vice-chairperson, in writing, to convene a meeting of the Board to deal with the business set out in such a request. The chairperson, or if he or she is not available the vice-chairperson, convenes such a meeting of the Board within 21 days of receiving the request.
- 4.1.14 Every trustee including the chairperson, has one vote at all meetings of the Board and subject to rule 4.1.11, the decision of the majority of trustees present at a meeting shall constitute a decision of the Board.
- 4.1.15 During a meeting of the Board votes are cast by the raising of hands unless the majority

of trustees present at the meeting request that voting takes place by way of secret ballot.

- 4.1.16 The Board may adopt any arrangement in its discretion to regulate its proceedings or to delegate the performance of any of its duties to a sub-committees of the Board, subject thereto that such an arrangement must not be inconsistent with any provision contained in the Law.
- 4.1.17 Minutes are kept of every meeting of the Board. During each meeting of the Board the minutes of the previous meeting are signed by the chairperson of that meeting after approval thereof by the meeting.
- 4.1.18 A trustee who, directly or indirectly, has a pecuniary interest in any investment or contemplated investment of the Fund, or an interest in any other matter before the Board, shall disclose such interest and may not be present at that meeting when the particular matter is discussed and decided upon.
- 4.1.19 Notwithstanding any provision to the contrary contained in the rules, a minor or person who is legally incapable cannot be appointed as a trustee.

4.1.20 The Board may determine requirements in connection with the attendance of its meetings by trustees and substitutes, and remove from office any trustee or substitute who does not comply therewith in consultation with his or her principal.

4.1.21 Each trustee or a substitute referred to in rule 4.1.8 shall, notwithstanding the duties as may be determined by the Board -

- (a) take all reasonable steps to ensure that the interests of members in terms of the rules of the Fund and the provisions of the Law are protected at all times, especially in the event of an amalgamation or splitting of the Fund, termination or reduction of contributions by the employer, increase of contributions by members and withdrawal of an employer;
- (b) act at all times with due care and diligence and in good faith;
- (c) avoid conflicts of interest;
- (d) act with impartiality in respect of all members and beneficiaries;
- (e) ensure that proper registers, books and records are kept, inclusive of proper minutes of all resolutions passed by the Board;

- (f) ensure that proper control systems are employed by or on behalf of the Board;
- (g) take all reasonable steps to ensure that the rules of the Fund comply with the Law, and all other applicable laws;
- (h) ensure that adequate and appropriate information is communicated to the members informing them of their rights, benefits and duties in terms of the rules of the Fund;
- (i) take all reasonable steps to ensure that contributions are paid timeously to the Fund in accordance with the provisions of the Law;
- (j) obtain expert advice on matters where Board members may lack expertise;
- (k) ensure that the operation and administration of the Fund comply with the Law, and all other applicable laws; and
- (l) adhere to the principles of privileged information and confidentiality.

#### 4.2 POWERS OF THE BOARD

Save for the appropriate provisions of the Law, the Board shall in the exercise of its powers and duties be entitled to -

- 4.2.1 raise money for the purposes of the Fund or borrow money as bridging facilities for a temporary cash deficit or to complete an investment, or to loan money;
- 4.2.2 invest, loan, advance on interest and place on deposit moneys not needed immediately for the current expenditure of the Fund or to deal therewith in any other way against such securities and in such a way as the Board may determine and to convert into money, adjust such securities, re-invest the proceeds thereof or to deal therewith in any other way as determined by the Board;
- 4.2.3 purchase, erect, sell, let or alienate movable or immovable property for purposes of the Fund;
- 4.2.4 prescribe in which way claims must be lodged against and handled by the Fund;
- 4.2.5 appoint any person, committee or body to perform such investigation, research or any other duty as instructed by the Board, subject to such conditions as the Board may determine and pay such person, committee or body from the Fund;
- 4.2.6 employ personnel or make any other suitable arrangements to administer the Fund and to manage the investments of the Fund;



- 4.2.7 determine the remuneration and other conditions of service of the personnel referred to in rules 4.2.5 and 4.2.6 and make such rules as in its discretion are necessary to regulate personnel matters;
- 4.2.8 pay from the Fund the expenditure connected with the management of the Fund's business; and
- 4.2.9 in general take any steps necessary or perform any actions which are advantageous for the achievement of the Fund's objectives.

#### 4.3 SIGNING AUTHORITY

The Board may authorise persons from time to time to sign any contract or other document which binds the Fund or any other document which authorises any action on behalf of the Fund or any cheque or letter on such conditions as it may deem fit.

#### 4.4 BANK ACCOUNT

The Board shall open an account or accounts in the name of the Fund at any registered bank or the South African Reserve Bank. All moneys received by or on behalf of the Fund, shall be paid into such account or accounts.

#### 4.5 PERSONAL LIABILITY

A trustee and any person or body to whom powers have been delegated by the Board is not personally liable for any costs or loss originating from his or her conduct, except in the case of negligence, dishonesty or fraud.

#### 4.6 FIDELITY INSURANCE

The Board may take out insurance for such an amount as is considered sufficient from time to time to provide for losses as a result of negligence, fraud or dishonesty on the part of persons receiving or handling money or assets of the Fund.

#### 4.7 REGISTRATION AND SAFE KEEPING OF SECURITIES

All title deeds and securities of the Fund are registered in the name of the Fund or in the name of a nominee company or institution approved by the Board and no security is transferred, amended, ceded, or otherwise alienated. All mortgage bonds, title deeds and other securities that belong to the Fund or are held by the Fund, are kept in safe custody in a vault or strongroom at the registered office of the Fund or at any registered financial institution approved by the Board for this purpose, unless they are temporarily held in another place with the approval of the Board.

#### 4.8 ACTUARY

The Board appoints an actuary who is the valuator of the Fund. Such appointment remains valid until it is terminated by the Board.

#### 4.9 ACTUARIAL VALUATIONS

4.9.1 The Fund is valuated at least every three years by the actuary and the actuary reports thereon to the Board.

4.9.2 A copy of the actuary's report, which contains recommendations in respect of any surplus or deficit existing in the Fund on the valuation date, must be submitted to the Board within such period as prescribed by the Board. The actuary's report must comply with the provisions of section 16 of the Pension Funds Act, 1956 (Act 24 of 1956).

4.9.3 The Board submits a copy of the actuary's report referred to in rule 4.9.2 to the Minister within 21 days of the receipt of such report.

#### 4.10 REPORT TO OR BY THE BOARD

4.10.1 Within eight months after the end of each fund year, subject to section 10 of the Law, the Board shall cause to be published in the Government Gazette a report on the

activities of the Fund, which includes the annual financial statements of the Fund.

4.10.2 Remuneration paid to trustees, during a particular period under review, must be reflected in the financial statements.

4.10.3 On request of a member or any other person who has an interest in the Fund, a copy of the report of the Board is furnished on payment of such fee as determined by the Board provided that such fee shall relate to the cost of producing the report.

## 5. MEMBERSHIP

5.1 A person becomes a member of the Fund in terms of section 4 of the Law.

5.2 Subject to the provisions of section 4 of the Law and the rules, a member ceases to be a member of the Fund if -

5.2.1 he or she is retired or discharged in terms of an act which determines his or her conditions of service;

5.2.2 he or she resigns from his or her employer's service;

5.2.3 he or she dies;

5.2.4 he or she is obliged to join an approved retirement fund or a related fund as a result of a change in his or her conditions of service, whether in terms of legislation or for another reason; or

5.2.5 his or her employment circumstances change to the effect envisaged in section 5 of the Law unless his or her and the employers' contributions in terms of rule 7 are continued to be paid to the Fund,

whichever occurs first.

## 6. FURNISHING OF PROOF BY MEMBER, PENSIONER OR BENEFICIARY

The Board is entitled to require satisfactory proof of the right of any member, pensioner or his or her beneficiaries to any benefit and the Fund is not obliged to pay benefits to a member, pensioner or their beneficiaries until such proof has been submitted to the Board.

## 7. CONTRIBUTIONS

7.1 Every member contributes to the Fund at a rate of 7,5% of his or her pensionable emoluments.

7.2 The employer contributes to the Fund at the rate of 18 % of the member's pensionable emoluments.

7.3 The employer, in respect of each member to whom a service bonus of 93 % of his or her full basic monthly pensionable salary (excluding any allowances irrespective of whether it is pensionable or not) is payable, pays to the Fund -

7.3.1 7 % of such full basic monthly pensionable salary for the month in which his or her service bonus pay date falls; and

7.3.2 three times the contribution in terms of rule 7.3.1.

## 8. COLLECTION OF CONTRIBUTIONS

8.1 Subject to the provisions of the Law -

8.1.1 the amount which a member contributes to the Fund in terms of rule 7.1 shall be deducted from his or her pensionable emoluments monthly and from his or her annual service bonus when it is paid to the member as the case may be, or at such times as the Board may, from time to time, determine;

8.1.2 any amount which the employer contributes to the Fund in terms of rule 7.2 shall be determined simultaneously with the contributions of the members in the employer's service; and

8.1.3 any amount which a member or an employer is obliged to pay to the Fund in terms of rules 11 or 12 shall be recovered from the member's pensionable emoluments or from the employer as the case may be, monthly or in such manner and at such times and in such instalments as the Board may determine;

and immediately paid to the Fund : Provided that if any employer does not pay the contributions to the Fund within seven days after it becomes due, interest shall be paid by the employer to the Fund at the rate prescribed as from such due dates.

8.2 A member shall continue to contribute to the Fund -

8.2.1 while he or she is absent on sick- or other leave with full or less than full pay calculated on his or her full pensionable emoluments; or

8.2.2 while he or she is absent on leave without pay for a continuous period of 120 days or less calculated on his or her full pensionable emoluments on the day immediately prior to the day on which such leave of absence commenced;

8.3 With due consideration of the contents of rule 10.1(a), if a member is absent on leave without pay for a continuous period of more than 120 days, he or she remains a member of the Fund after the expiry of

the first 120 days of such period, and no contributions are payable to the Fund by or in respect of the member after expiry of the period of 120 days.

**9. NON-RECOGNITION OF PREVIOUS AND OTHER PERIODS OF SERVICES AS PENSIONABLE SERVICE**

9.1 Notwithstanding provisions to the contrary in the rules, any period which -

9.1.1 in terms of section 9(1) of the Pension Laws Amendment Act, 1957 (Act No 62 of 1957); or

9.1.2 in terms of rule 10.4;

was recognised as pensionable service of a member, shall be excluded when calculating a benefit which shall be paid in terms of the rules to a member on his or her resignation or discharge in terms of rule 14.3.1 or on his or her death without dependants.

9.2 No period during which a member is -

9.2.1 absent on leave without pay;

9.2.2 suspended from his or her employer's duty;  
or

9.2.3 seconded to the service of any other Government or to a board, institution or body established by or under any act or to any other body or person;



shall be taken into account in the calculation of a benefit which is payable to him or her in terms of the rules, unless his or her and the employers' contributions in terms of rule 7 are paid to the Fund for the said period or such period is recognised or allowed as pensionable service of such a member in terms of rule 10.

**10. RECOGNITION OF PREVIOUS AND OTHER PERIODS OF SERVICE AS PENSIONABLE SERVICE**

Subject to the provisions of the rules any part or the whole of any of the undermentioned periods may at the written request of a member and with the approval of the Board be recognised as pensionable service -

10.1 a period during which a member was -

- (a) absent on leave without pay for a period in excess of 120 days;
- (b) suspended from his or her employer's duty; or
- (c) seconded to the service of any other Government or to a board, institution, establishment or body established by or under an act or to any other body or person approved by the Board,

and in respect of which he or she did not contribute to the Fund;

10.2 in the case of a member who was re-admitted to the Fund, and who at an earlier stage received a benefit (excluding a benefit payable for a reason referred to in rule 14.1.1) from the Fund, the Temporary Employees Pension Fund or a previous fund, such earlier period of pensionable service in respect of which a benefit as aforesaid was paid to him or her: Provided that -

- (a) the recognition of such earlier period of pensionable service shall be subject to the provisions of rule 17, mutatis mutandis;
- (b) if such a person was a member of the Government Service Pension Fund immediately prior to the fixed date, his or her written request was received by the Fund within the twelve month period immediately following the fixed date;
- (c) if such a person was a member of the Temporary Employees Pension Fund or a previous fund, as the case may be, immediately prior to the date determined in terms of section 14(1) or 15(1) of the Law, his or her written request was received by the Fund within the twelve month period immediately following that date : Provided that the regulations pertaining to the Temporary Employees Pension Fund or the previous fund provided for the

recognition of such period of service as pensionable service;

(d) if such a member was so re-admitted to the Fund after the fixed date or the date determined in terms of section 14(1) or 15(1) of the Law, as the case may be, the re-admittance took place within a period of thirty-six months after the member had terminated his or her membership of the Fund, the Temporary Employees Pension Fund or a previous fund : Provided, further, that such written request by the member was received by the Fund within the twelve month period immediately following his or her re-admittance to the Fund;

(e) the member referred to in (b), (c) or (d) above submits proof to the satisfaction of the Board of such previous pensionable service and offers payment of the amount of such benefit to the Board;

10.3 a period intended in rule 10.2 during which the member was a member of the Associated Institutions Pension Fund, established under section 2 of the Associated Institutions Pension Fund Act, 1963 (Act No. 41 of 1963), in which case the provisions of rule 10.2 will mutatis mutandis apply; or

10.4 a period which is not pensionable service and which follows on the date on which a member attained the

age of eighteen years, as well as a period of previous pensionable service to be recognised in respect of a member in terms of rule 10.2, other than a member referred to in rule 10.2(b), (c) or (d).

## 11. PAYMENTS IN RESPECT OF PENSIONABLE SERVICE

11.1 In respect of service recognised as pensionable service in terms of rule 10.1 the following amounts shall be paid to the Fund -

11.1.1 by the member concerned, an amount calculated as:

$$R \times N \times S \times D,$$

where:

R is the rate of seven and a half percent;

N is the period of service recognised as pensionable;

S is the member's pensionable emoluments, on the day on which he or she became a member of the Fund or the date on which the period of his or her leave or suspension expires, or on the day on which he or she resumes duty after a period of secondment, whichever is applicable; and

D has the same meaning as in rule 14.3.1;  
and

11.1.2 by the Government or the employer or the Government and the employer, an amount equal to the residue (if any) of the costs incidental to the recognition of such service as pensionable service, as determined by the Board after consultation with the actuary, in excess of the amount calculated in terms of rule 11.1.1.

11.2 In respect of previous service recognised as pensionable service in terms of rule 10.2, the member shall pay back to the Fund the benefit previously paid to him or her in terms of the said rule, with interest from the date on which the benefit was paid to him or her up to the date on which it is repaid to the Fund.

11.3 In respect of previous service recognised as pensionable service in terms of rule 10.3, the provisions of rule 11.2 shall apply mutatis mutandis.

11.4 In respect of service recognised as pensionable service in terms of rule 10.4, the member shall pay an amount calculated in accordance with the following formula :

$$N \times S \times F(X),$$

where:

N is the period of service recognised as pensionable service;

S is the member's pensionable emoluments on the date on which he or she applies for the recognition of such service as pensionable service; and

F(x) is a factor determined by the Board after consultation with the actuary.

11.510 The following further provisions apply with regard to payment in respect of the recognition of pensionable service in terms of rules 11.1 to 11.4:

11.5.1 The member may, with the approval of the Board, redeem the amount that he or she must pay in respect of such a service recognition, in instalments as determined by the Board in which case interest shall be added to the outstanding amount of debt.

11.5.2 Notwithstanding any provision to the contrary in the rules -

(a) any amount still owing by a member in respect of additional pensionable service that has been recognised as pensionable service in terms of rule 10, shall, unless other arrangements are made with the Board, on the termination of his or her membership

be deducted from any benefit payable to him or her, except a benefit payable to a member whose membership is terminated for a reason contemplated in rule 14.3 or 14.4.2 and whose additional pensionable service is recognised in terms of rule 10.4; and

- (b) if a member referred to in subparagraph (a), redeem the costs of such additional pensionable service in instalments such pensionable service vests at any time only to the degree to which the costs thereof were redeemed on the date of termination of such member's service : Provided further that such pensionable service is vested in full if arrangements were made by the member to the satisfaction of the Board for the settlement of the outstanding amount of debt.

11.6 If additional pensionable service was recognised in respect of a member before the fixed date or the date determined in terms of section 14(1) or 15(1) of the Law, as the case may be, in terms of similar provisions as contained in rule 10, and the member has not redeemed the full costs thereof on the fixed date or date determined in terms of section 14(1) or 15(1) of the Law, as the case may be, the terms on

which such an outstanding amount of debt would have been redeemed, are, notwithstanding the provisions of rule 11.5, taken over by the Board, without change except if such terms are changed with the consent of such member.

## 12. TRANSFERS BETWEEN FUNDS

12.1 The following provisions are applicable upon the transfer of members of the Fund to a related fund, or conversely:

12.1.1 If a person who was a member of a related fund, excluding a fund referred to in rule 12.1.2, becomes a member of the Fund immediately after the termination of his or her membership of the related fund, or after such an interruption in his or her service as the Board in its discretion may condone, the following provisions are applicable:

- (a) The period of pensionable service of such a person in the related fund, is recognised to be pensionable service for the purposes of the Fund : Provided that if the pensionable emoluments of such person on admission to the Fund are higher than his or her pensionable emoluments on his or her termination of membership of the related fund, except if his or



her employer requests otherwise, the period of pensionable service in the related fund of such a person is reduced in proportion to his or her pensionable emoluments at his or her termination of membership of the related fund to his or her pensionable emoluments on his or her admission to the Fund : Provided further that no such a proportional reduction shall take place if such a person's employer or such a person pays to the Fund the additional costs for the Fund as determined by the Board, resulting from the non-application of the reduction referred to in the proviso above.

- (b) The related fund shall pay, subject to the provisions of subparagraph (c), to the Fund the amount that the related fund had at it's disposal in respect of the person at his or her withdrawal from the related fund together with interest as from the date on which the person ceased to be a member of the related fund up to and including the date on which the said amount is paid.
- (c) If a member referred to in this rule 12.1.1 owes an amount to the related

fund, the amount is deducted by the related fund from the amount referred to in subparagraph (b), and all rights of the related fund in respect of the amount owing pass on to the Fund and the member in question shall pay the amount due to the Fund in such a manner as determined by the Board and in such a case the provisions of rule 11.5 shall apply mutatis mutandis.

12.1.2 If a person who was a member of the Associated Institutions Provident Fund, established under section 3 of the Associated Institutions Provident Fund Act, 1971 (Act No. 11 of 1971), or a related fund of which the benefits are determined on a similar basis as that in respect of the aforesaid fund, becomes a member of the Fund immediately after the termination of his or her membership of the funds referred to above, or after such an interruption in his or her service as the Board in its discretion may condone the following provisions apply:

- (a) The Associated Institutions Provident Fund or related fund concerned pays to the Fund the amount standing to the credit of the member in such a fund.

(b) If the amount referred to in subparagraph (a) is less than the amount required by the Fund as determined by the Board in consultation with the actuary for the full recognition of his or her period of pensionable service in the Associated Institutions Provident Fund or related fund as pensionable service in the Fund, the member's pensionable service is reduced in the ratio which the amount referred to in subparagraph (a) bears to the amount that the Fund requires for the full recognition of such period as pensionable service.

(c) The member may request in writing that his or her period of pensionable service in the Associated Institutions Provident Fund or related fund be recognised as pensionable service in the Fund on condition that the difference between the amount mentioned in subparagraph (a) and the amount required for the full recognition of his or her pensionable service period in the Associated Institutions Provident Fund or related fund as pensionable service in the Fund, be paid by him or her to the Fund in which case the

provisions of rule 11.5 shall apply mutatis mutandis.

12.1.3 If a member of the Fund becomes a member of a related fund within six months of his or her terminating his or her membership of the Fund, the following provisions apply:

- (a) No benefit is paid to the member on his or her termination of membership of the Fund.
- (b) The Fund pays, subject to the provisions of subparagraph (c), to the related fund the amount that the Fund had at its disposal in respect of the member upon his or her termination of membership of the Fund, as determined by the Board after consultation with the actuary, together with interest as from the date on which the person ceased to be a member of the Fund up to and including the date on which the amount is paid.
- (c) If such member owes an amount to the Fund, the amount due is deducted by the Fund from the amount mentioned in subparagraph (b) and all rights of the Fund in respect of the amount owed pass on to the related fund.

12.2. If a person who was a member of an approved retirement fund becomes a member of the Fund, the Board may, in consultation with the actuary, approve special arrangements for the protection of such a member's accrued pension benefits. Such an arrangement may include the recognition of a previous period of service as pensionable service in terms of the rules, provided that the approved retirement fund pays an amount, as determined by the Board in consultation with the actuary, on behalf of the member to the Fund.

### 13. CHANGE IN WORKING STATUS

13.1 If a member's working status is changed from full-time to part-time employment or vice versa, or if the working hours of a member who is employed on a part-time basis are changed (other than due to a general change in working hours) the member's period of pensionable service immediately before the date of such change is adjusted in accordance with the following formula :

$$N = \frac{S \times M}{T} \quad \text{where}$$

N = member's adjusted period of pensionable service

S = member's working hours per day immediately prior to the change in working status

T = member's working hours per day immediately after the change in working status

S = member's period of pensionable service immediately before the date of change in working status

13.2 In the calculation of such a member's average pensionable emoluments for the purposes of the rules, the pensionable emoluments earned by the member prior to such change in working status is adjusted by the ratio of T divided by S, where T and S have the meanings assigned to them in rule 13.1.

#### 14. BENEFITS PAYABLE TO MEMBERS

##### 14.1 RETIREMENT OR DISCHARGE PRIOR TO 10 YEARS PENSIONABLE SERVICE

14.1.1 If a member who has less than 10 years pensionable service to his or her credit is retired, or discharged -

- (a) on attaining his or her pension-retirement date;
- (b) on account of ill-health not occasioned by his or her own fault;
- (c) owing to the abolition of his or her post or the reduction or the reorga-

nisation or the restructuring of the activities of his or her employer;

(d) on the grounds that his or her discharge will promote efficiency or economy or otherwise be in the interest of his or her employer;

(e) on account of his or her incapability to carry out his or her duties efficiently excluding cases where such incapability and inefficiency result in such a person being discharged on grounds of misconduct;

(f) on the grounds that the President or the Premier of a province appointed him or her in terms of the provisions of an act to an office and his or her pensionable service cannot be recognised as pensionable service for the purposes of a superannuation, pension, relief or provident fund or scheme established by or under any law for the holders of such office;

(g) in terms of section 16(6)(a) or 17(4) of the Public Service Act, 1994 or in terms of section 17(7) of the Post Office Service Act, 1974 (Act No 66 of 1974);

(h) due to the lapse of his or her service contract; or

(i) as a result of injury or ill-health, not occasioned by his own fault, arising out of and in the course of his employment;

there shall be paid to him or her a gratuity which shall be calculated at 15,5 percent of such a member's final salary, multiplied by the period of his or her pensionable service.

14.1.2 If a member is discharged for a reason mentioned in rule 14.1.1(b), (c), (d), (f) or (i), the amount of the gratuity which is payable to him or her in terms of rule 14.1.1, shall be increased by one-third of the said amount.

#### 14.2 RETIREMENT OR DISCHARGE AFTER AT LEAST 10 YEARS PENSIONABLE SERVICE

14.2.1 If a member who has at least 10 years pensionable service to his or her credit retires or is discharged on account of a reason mentioned in rule 14.1.1 there shall be paid to him or her -

(a) a gratuity calculated at 6,72 percent of his or her final salary multiplied by the period of his or her pensionable service;



(b) an annuity calculated at one fifty-fifth of his or her final salary multiplied by the period of his or her pensionable service; and

(c) a supplementary amount of R360 per year.

14.2.2 Notwithstanding anything to the contrary contained in the rules, a gratuity which is payable in terms of rule 14.2.1(a) to a member who is a member of the South African National Defence Force and who retires or is discharged in terms of any law before he or she attains the age of 53 years, shall be increased by 12 percent of such gratuity.

14.2.3 For the purposes of the calculation of a gratuity and annuity in terms of rule 14.2.1, the period of pensionable service -

(a) of a member who is a member of the South African Police Service, the Correctional Services, the South African National Defence Force, the National Intelligence Agency or the South African Secret Service, shall be increased by a period which is equal to one quarter of the period by which his or her pensionable service exceeds the period of 10 years;

(b) of a member -

- (i) who is discharged or retired on account of a reason mentioned in rule 14.1.1(b), (c), (d), (f) or (i); or
- (ii) who, in terms of section 16(5) of the Public Service Act, 1994, section 17(2C) of the Post Office Service Act, 1974 or section 31(5) of the Audit Arrangements Act, 1992 or section 45(4) of the South African Police Service Act, 1995 (Act No 68 of 1995) is allowed to retire during an extended term of office in any of the sections concerned; or
- (iii) mentioned in section 3(4) of the Public Service Commission Act, 1984 or sections 211 and 213 of the Constitution of the Republic of South Africa, 1993, who, during a period or extended period contemplated in section 2(5) of the Public Service Commission Act, 1984 or in terms of similar

provisions regulating the conditions of service of a provincial service commission contemplated in section 213 of the Constitution of the Republic of South Africa, 1993 -

(aa) is allowed to vacate his office in terms of section 4(2) of the Public Service Commission Act, 1984 or in terms of similar provisions regulating the conditions of service of a provincial service commission contemplated in section 213 of the Constitution of the Republic of South Africa, 1993 in order to promote efficiency; or

(bb) is removed from office in terms of sections 211(1)(e) or 213(2) of the Constitution of the Republic of South Africa, 1993 in order to promote efficiency; or

- (iv) who is allowed to vacate his or her office in terms of section 3(a) of the Auditor-General Act, 1995 in order to promote efficiency,

shall be increased by a period equal to -

- (AA) one third of the period of his or her pensionable service or by his or her unexpired period of service whichever period is the shorter, but not exceeding five years; and

- (BB) one half of the period during which he or she held an office referred to in section 12(1) of the Public Service Act, 1994, or section 10A of the Post Office Service Act, 1974, or sections 191(4), 211 or 213 of the Constitution of the Republic of South Africa, 1993, or section 27(2) of the Audit Arrangements Act, 1992 or section 6 and 7 of the South African Police Service Act, 1995 (Act No 68 of 1995) :

Provided that the total of a member's pensionable service, the period whereby it is increased in terms of this rule and the period during which a member held any office referred to in section 12(1) of the Public Service Act, 1994, or section 10A of the Post Office Service Act, 1974, or sections 191(4), 211 or 213 of the Constitution of the Republic of South Africa, 1993, or section 27(2) of the Audit Arrangements Act, 1992 or section 6 and 7 of the South African Police Service Act, 1995 (Act No 68 of 1995), shall not exceed 55 years : Provided, further, that the period of 55 years shall be adjusted in accordance with the formula as set out in rule 13.1 if a member's working status is changed from full-time to part-time employment.

14.2.4 For the purpose of rule 14.2.3(b) -

- (a) 'pensionable service' shall not include a period during which a member

held an office referred to in section 12(1) of the Public Service Act, 1994, section 10A of the Post Office Service Act, 1974, sections 191(4), 211 or 213 of the Constitution of the Republic of South Africa, 1993 or section 27(2) of the Audit Arrangements Act, 1992 or section 6 and 7 of the South African Police Service Act, 1995 (Act No 68 of 1995) : Provided that a period during which a member held an office as referred to above and which can not be regarded as a completed period in accordance with paragraph (b) shall be included as pensionable service in terms of this rule;

- (b) 'one half of the period', save as provided for in paragraphs (d) to (i) of this rule, shall mean one half of a completed period and also one half of a completed extended period referred to in section 12(1) of the Public Service Act, 1994, section 10A of the Post Office Service Act, 1974, section 2(5) of the Public Service Commission Act, 1984, section 27(2) of the Audit Arrangements Act, 1992, section 6 and 7 of the South African Police Service Act, 1995 (Act No 68 of

1995) or in terms of similar provisions regulating the conditions of service of a provincial service commission contemplated in section 213 of the Constitution of the Republic of South Africa, 1993;

- (c) the uncompleted portion of the said extended period referred to in subparagraph (b) shall not be taken into account;
- (d) a member mentioned in Proclamation 130, 1994, of the President of the Republic of South Africa, shall at the expiry of the term mentioned in the said Proclamation be deemed to have occupied the office of a head of department mentioned in section 12(1) of the Public Service Act, 1994, until the date on which that term would have expired if such member was not transferred to a post to which the provisions of section 12(1) of the Public Service Act, 1994, do not apply;
- (e) if the President or a Premier appoints a person who is an officer or employee in the public service as defined in section 8 of the Public Service Act, 1994, in the public

interest under any law to an office outside the public service, it shall, subject to the provisions of the Law and these rules, be regarded that such person has been discharged from the public service for a reason contemplated in rule 14.1.1(f): Provided that if such a person is appointed as a member of the Public Service Commission referred to in sections 209, 210 and 211 of the Constitution or to a provincial service commission contemplated in section 213 of the Constitution or to the office of Auditor-General referred to in section 191 of the Constitution or as Deputy Auditor-General contemplated in section 27(2) of the Audit Arrangements Act, 1992 (Act No 122 of 1992) the period of his or her service as such a member or as Auditor-General or as Deputy Auditor-General shall be recognised as part of and continuous with his employment in the public service for purposes of these rules and these arrangements shall mutatis mutandis continue to apply unless such a member's membership of the Fund terminates;



(f) a person who is appointed as a member of the Public Service Commission or a provincial service commission or as Auditor-General or as Deputy Auditor-General and who immediately prior to such appointment held an office referred to in section 12(1) of the Public Service Act, 1994, section 10A of the Post Office Service Act, 1974, section 27(2) of the Audit Arrangements Act, 1992 or section 6 and 7 of the South African Police Service Act, 1995 (Act No 68 of 1995), shall with effect from the date of such an appointment be regarded to have completed such term of office and the duration of such completed term of office shall be calculated from the date of commencement thereof up to and including the date preceding the date with effect from which he or she is appointed as a member of the Public Service Commission or a provincial service commission or as Auditor-General or as Deputy Auditor-General;

(g) if a member of the Public Service Commission is appointed as a member of a provincial service commission or vice versa or if a member of the

Public Service Commission or a member of a provincial service commission is appointed as Auditor-General or if the Auditor-General is appointed as a member of the Public Service Commission or a provincial service commission or if the Deputy Auditor-General is appointed as a member of the Public Service Commission or a provincial service commission or as Auditor-General the measures set out in rules (e) and (f) above shall mutatis mutandis apply;

- (h) subject to section 17(4) of the Law the measures set out in rules (e), (f) and (g) above shall be subject to any provisions contained in the laws regulating the conditions of service of members of the Public Service Commission, provincial service commission, the Auditor-General and the Deputy Auditor-General including conditions of service determined in terms of such provisions which have a bearing on the pension position of such members of the Public Service Commission, provincial service commissions, Auditor-General or the Deputy Auditor-General; and

- (i) subject to rule (h) the measures set out in rules (e), (f) and (g) shall mutatis mutandis apply to the determination and calculation of the pension benefits of members of the Fund who were appointed to offices as contemplated in this rule before the fixed date.

14.2.5 A member or his or her beneficiary may request in writing that the whole or part of his or her gratuity be transferred to an approved retirement fund.

14.2.6 Notwithstanding anything to the contrary there shall be paid to a member of the education service -

- (a) who has reached the age of 50 years;
- (b) who has completed 10 years of service which service must be continuous pensionable service actually rendered by the member; and
- (c) who in terms of an act and also a regulation that determines his or her service conditions, may retire with pension before he or she reaches his or her age for retirement as contemplated in section 19 of the Law, which for purposes of

this rules is recognised as early retirement by his or her employer;

the benefits in terms of rule 14.2.1 :  
Provided that -

- (i) if retirement takes place within 10 years before the member's age for retirement as contemplated in section 19 of the Law, such benefits shall be reduced by 0,4 per cent for every month or portion of a month between the date of the member's retirement and his or her age for retirement;
- (ii) if retirement takes place between 10 and 15 years before the member's age for retirement as contemplated in section 19 of the Law, such benefits shall be reduced by 48 percent plus 0,1 per cent for every month or portion of a month between the date of the members' retirement and a date 10 years before his or her age for retirement as contemplated in section 19 of the Law.

14.2.7 Annuities are payable in equal monthly instalments before or on the last day of each month. The first annuity-payment to a retired member is payable at the end of the

calendar month which follows the month in which the member is retired or discharged.

### 14.3 BENEFITS ON RESIGNATION OR DISCHARGE

14.3.1 A member who resigns from his or her employer's service or is discharged from his or her employer's service because of misconduct or ill-health occasioned by his or her own doing or for a reason not specifically mentioned in the Rules and who is not entitled to receive benefits provided elsewhere in the rules, receives, subject to the provisions of rules 9.1 and 14.3.2, a gratuity calculated as follows:

- (a) If such a person joined the Fund subsequent to the fixed date in terms of the provisions of section 4(2) or 4(6) of the Law, an amount equal to -

$$7,5\% \times N \times Z \times D,$$

plus 2,5% of such amount for each completed year of the member's pensionable service;

where -

N = the period of the member's pensionable service;

Z = the member's average pensionable emoluments during the last 36 months of his or her pensionable service or during the whole period of such service, whichever is the shorter; and

D = determined by subtracting a number calculated in accordance with the undermentioned table from 10 000 and dividing the result by 10 000:-

**TABLE**

Completed months  
of pensionable  
service

Calculation of number

0 to 36	0;
37 to 120	0 plus 26 for each completed month of pensionable service in excess of 36 months;
121 to 240	2 184 plus 17 for each completed month of such service in excess of 120 months;

241 to 360	4 224 plus 11 for each completed month of such service in excess of 240 months;
361 to 480	5 544 plus 7 for each completed month of such service in excess of 360 months;
481 and over	6 384 plus 5 for each completed month of such service in excess of 480 months;

- (b) In respect of a member other than a member referred to in (a) above, an amount equal to -

A + B,

where -

A = an amount equal to the member's cash resignation benefit as at the fixed date in the event of a person who was a member of the Government Service Pension Fund immediately prior to the fixed date, or such cash resignation benefit as at the date determined in terms of section 14(1) or 15(1) of the Law if he or she was a member of the Temporary Employees Pension Fund or a previous

fund immediately prior to the date determined in terms of section 14(1) or 15(1) of the Law : Provided that the cash resignation benefit referred to above shall be increased with interest as from the fixed date or the date determined in terms of section 14(1) or 15(1) of the Law, as the case may be, to the date of the member's resignation or discharge

B = an amount determined in accordance with the provisions of (a) above : Provided that the member's pensionable service for this purpose shall be equal to such part of his or her period of pensionable service that was rendered subsequent to the fixed date or the date determined in terms of section 14(1) or 15(1) of the Law, as the case may be.

14.3.2 For the purpose of rule 14.3.1, a member's period of pensionable service shall exclude any period so recognised in terms of the provisions of rule 10.4. Instead, such a



member's gratuity in terms of rule 14.3.1 shall be increased by the total of all amounts paid by him or her to the Fund in terms of rule 11.5, with interest from the dates such amounts were paid to the date of the member's resignation or discharge.

#### 14.4 BENEFITS ON THE DEATH OF A MEMBER

14.4.1 If a member with less than 10 years pensionable service dies, and leaves behind a dependant, a gratuity is paid which is equal to such a member's pensionable emoluments.

14.4.2 If a member referred to in rule 14.4.1 dies and is not survived by a dependant, a gratuity which shall be calculated as if the member had resigned from his or her employment with effect from the date of his or her death, shall be paid.

14.4.3 If a member with at least 10 years pensionable service dies, a gratuity is paid which is equal to the sum of the gratuity and five times the annuity which would have been payable to him or her in terms of rules 14.2.1(a) and (b), if he or she had retired for a reason referred to in rule 14.1.1(b) on the day of his or her death.

14.4.4 If a member dies and the total of such a member's period of pensionable service and

his or her unexpired period of service is at least ten years, there shall be paid to the surviving spouse, if any, a spouse's pension which is equal to half of the annuity and the supplementary amount which the member would have received in terms of the provisions of rule 14.2.1(c) if he or she had retired on the date of his or her death in terms of a reason mentioned in rule 14.1.1(a), or was retired or discharged : Provided that "pensionable service" for this purpose also includes the member's unexpired period of service.

14.4.5 A spouse's pension which is payable to a spouse in terms of rule 14.4.4, shall not be affected in the case of a re-marriage.

14.4.6 A spouse's pension payable in terms of this rules shall be payable with effect from the first day of the month immediately following the date on which the member or pensioner concerned dies.

14.4.7 Annuities are payable in equal monthly instalments on or before the last day of each month.

#### 14.5 BENEFITS ON THE DEATH OF A PENSIONER

14.5.1 If a pensioner dies within a period of five years after he or she had retired or was

retired or discharged, a benefit is paid which is equal to the sum of the annuity which would have been payable to him or her during the period as from the first day of the month immediately following the date on which he or she dies up to and including the last day of the month in which the said period of five years would have expired had he or she not died, based on the amount of his or her annuity at his or her death. For the purpose of calculation of the benefit the additional amount payable in terms of rule 14.2.1(c) is not taken into account.

14.5.2 If a pensioner dies and he or she is survived by a spouse, there shall be paid to such spouse a spouse's pension which is equal to one-half of the annuity which the pensioner received on the date of his or her death.

14.5.3 The provisions of rules 14.4.5, 14.4.6 and 14.4.7 shall apply mutatis mutandis to the benefit in terms of rule 14.5.2.

#### 14.6 BENEFITS IN TERMS OF A SEVERANCE PACKAGE

If a member's service is terminated prior to his or her retirement date as a result of an initiative by his or her employer in terms of a severance package offered to him or her, which offer he or she voluntarily accepts, there shall be paid to him or her

the pension benefits offered to him or her in terms of the severance package as set out in the Annexure to the rules : Provided that -

- (a) such benefits or arrangements have been agreed to after negotiations in terms of any law applicable in respect of labour relations arrangements in the Public Service, including Education, or negotiations in accordance with labour relations arrangements applicable to the South African Police Service, the South African National Defence Force, the National Intelligence Agency and the South African Secret Service concerning his or her conditions of service; and
- (b) payment of such benefits shall be subject to section 17(4) of the Law.

## 15. COMPENSATION OF MEMBERS FOR INJURIES ON DUTY

15.1 If a member is retired or discharged as a result of a reason mentioned in rule 14.1.1(i) there shall be paid to him or her out of the Fund a gratuity calculated in accordance with formula A or B set out in rule 15.9 according to which one of such formulas shall be more beneficial for such member.

15.2 If a member is thus retired or discharged and the percentage of his disablement is more than 30 percent, there shall be paid to him or her, out of

the Fund, in addition to the gratuity which is paid to him or her in terms of rule 15.1 an annuity calculated in accordance with formula C or D set out in rule 15.9 according to which one of such formulas shall be more beneficial for such member.

- 15.3 Any gratuity or annuity payable in terms of rule 15.1 or 15.2 shall be reduced by the amount by which a gratuity or annuity payable from the Fund is increased in terms of rule 14.1.2 or, 14.2.3.
- 15.4 If a member dies as a result of injury or ill-health not occasioned by his or her own fault, arising out of and in the course of his or her employment, before a gratuity or an annuity has been paid to him or her in terms of rule 15.1 or 15.2 there shall be paid to his or her beneficiaries, an amount out of the Fund, which is equal to the gratuity and five times the annuity which would have been payable to such member in terms of rule 15.1 or 15.2 if he or she had not died in that manner.
- 15.5 If a member to whom an annuity has been awarded in terms of rule 15.2 dies within a period of five years after the said annuity has been awarded to him or her, there shall be paid to his or her beneficiaries, an amount out of the Fund, which is equal to the total of the annuity which would have been paid to him or her during the period from the first day of the month which follows immediately on the date of his or her death up to and including the last day of the month in which the said period of five years expires, if he or she had not died.

15.6 If any gratuity referred to in rule 15.4 or 15.5 is payable to two or more beneficiaries, such gratuity shall be paid to such beneficiaries in such proportions as the Board may determine.

15.7 The Government shall compensate the Fund for any benefit payable in terms of this rule.

15.8 For the purpose of this rule, unless the context indicates otherwise -

"average salary", means the average annual salary or wages of the member concerned which is taken into account for determining the benefit which is payable in terms of the rules on his or her death, retirement or discharge;

"Compensation Commissioner", means the Compensation Commissioner appointed under section 2 of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993);

"disablement", means disablement as determined by the Compensation Commissioner in terms of the Compensation for Occupational Injuries and Diseases Act, 1993;

"formula A", in relation to a matter to be calculated in accordance with formula A, means -

$E \times F \times G$

in which -

factor E is equal to 6,72 percent;

factor F is the average salary of the member concerned;

factor G is equal to 5;

"formula B", in relation to a matter to be calculated in accordance with formula B, means -

$E \times F \times H \times J$

in which -

factor H is the period which follows immediately on the date of the retirement or discharge or death of the member concerned up to and including the last day of the month on which or in which he or she, if he or she is or was then alive, shall attain the age of 65 years;

factor J is the percentage of disablement of the member concerned; and

factors E and F, respectively have the same meaning as factors E and F in the definition of formula A;

"formula C", in relation to a matter to be calculated in accordance with formula C, means -

$$F \times G \times K$$

in which -

factor K is equal to one fifty-fifth; and factors F and G respectively have the same meaning as factors F and G in the definition of formula A;

"formula D", in relation to a matter to be calculated in accordance with formula D, means -

$$F \times H \times J \times K$$

in which -

factors F, H, J and K respectively have the same meaning as factors F, H, J and K in the definition of formulas A, B and C;

## 16. DORMANT MEMBERS

16.1 Subject to the provisions of section 27 of the Law -

- (a) no contributions in respect of a dormant member shall be payable to the Fund for the period during which he or she is a dormant member;



- (b) no benefit shall be payable to a dormant member before the effective date;
- (c) a dormant member shall, with effect from the effective date, be entitled to an annuity and a gratuity which shall be calculated in accordance with the formula;
- (d) the spouse or beneficiaries or estate of a dormant member who has died before the effective date shall, with effect from the date of his or her death, be entitled to an annuity and a gratuity which shall be calculated in accordance with the formula defined in rule 16.3(c); and
- (e) the provisions of rules 12.1.3 apply mutatis mutandis to a dormant member referred to in this rule.

16.2 If a dormant member becomes or again becomes a contributing member of the Fund he or she shall, with effect from the date on which he or she so becomes or again becomes a contributing member, cease to be a dormant member and his or her pensionable service shall be deemed not to have been interrupted by the period during which he or she was a dormant member and the aggregate of all the periods of his or her pensionable service shall be taken into account for the purposes of this rules.

## 16.3 For the purposes of this rule -

- (a) "contributing member" means any member contributing to the Fund;
- (b) "effective date" means-
  - (i) the date on which a dormant member (excluding a member referred to in subparagraph (ii)) attains the age at which he or she, immediately before the date on which his or her membership was terminated as contemplated in section 27 of the Law, would have had the right to retire on pension; or
  - (ii) the date determined by the Board in the case of a dormant member who has not yet attained the age referred to in subparagraph (i) and whose circumstances are in the opinion of the Board of such a nature that he or she would have retired or would have been retired or discharged on pension on the grounds of continued ill-health which has not been occasioned by his or her own default or any other prescribed reason had he or she been a contributing member of the Fund;

(c) "the formula", in relation to an annuity or a gratuity to be calculated in accordance with the formula, means -

$A \times 1,10^n$

in which-

A represents-

- (i) in the case of an annuity or a gratuity referred to in rule 16.1(c) the annual amount of the annuity or the amount of gratuity, as the case may be, to which the dormant member concerned would have been entitled in terms of the pension law concerned if he or she had on the effective date been a contributing member of the pension fund of which he or she was a dormant member;
- (ii) in the case of the annuity or a gratuity referred to in rule 16.1(d) the annual amount of the annuity or the amount of the gratuity, as the case may be, to which such spouse, dependant or estate would have been entitled in terms of the applicable pension law if the dormant member concerned had been a contributing member at the time of his or her death

of the pension fund of which he or she was a dormant member; and

" represents -

the number of years (including any portion of a year expressed as a fraction of a year) during which a member concerned was a dormant member.

#### 17. ACCRUED PENSIONABLE BENEFITS MAINTAINED

17.1 The real value of the accrued benefits of a member of the Temporary Employees Pension Fund or a previous fund, as represented by such fund's actuarial liability towards such a member and his or her beneficiaries, shall be maintained by adjusting the period of pensionable service standing to the credit of such member on the day preceding the date determined in terms of section 14(1) or 15(1) of the Law by a factor which shall be determined in accordance with accepted actuarial principles and practices, and such adjustment shall have the result that the amount of the relevant actuarial liability of the Fund on the date mentioned above is not less than the amount of the Temporary Employees Pension Fund's or previous fund's relevant actuarial liability on the day preceding that date.

17.2 In the case of any changes to the Law or rules governing the Fund after the fixed date which

affect the benefits of a member or his or her beneficiaries, the real value of the accrued benefits of a member of the Fund, as represented by the Fund's actuarial liability towards such a member and his or her beneficiaries, shall be maintained by adjusting the period of pensionable service standing to the credit of such member on the effective date of such changes by a factor which shall be determined in accordance with accepted actuarial principles and practices and such adjustment shall have the result that the amount of the Fund's relevant actuarial liability on the date with effect from which the changes to the Law or rules referred to above take place is not less than the amount of the Funds's relevant actuarial liability on the day preceding the date with effect from which the changes referred to above take place.

17.3 Notwithstanding the provisions of rules 17.1 and 17.2, the benefits of a member may be changed in another way by the Board, provided that the real value of the member's benefits, as represented by the actuarial liability towards the member and his or her beneficiaries, is maintained in such change.

17.4 The Board of Trustees shall obtain a certificate from an actuary appointed by them that the provisions of rule 17.1, 17.2 or 17.3, whichever may apply, will be satisfied.

17.5 If the adjustment of accrued pensionable service of a member in terms of rule 17.1 or 17.2 causes such a member to have less than ten years of pensionable service to his or her credit when he or she is retired or discharged in circumstances set out in rule 14.1.1, or dies, such a member shall nevertheless qualify for the benefits in terms of rule 14.2 or 14.4.3, as the case may be.

17.6 If the adjustment of accrued pensionable service of a deceased member in terms of rule 17.1 or 17.2 has the result that the total of his or her period of pensionable service and his or her unexpired period of service is less than ten years, benefits shall nevertheless be paid in terms of rule 14.4.4.

17.7 In case of an adjustment of a member's pensionable service in terms of rule 17.1 or 17.2, which causes such a member to have more than 55 years of pensionable service to his or her credit, the proviso in rule 14.2.3, which limits the period of pensionable service to 55 years, shall not apply to the said member.

## 18. PAYMENT OF BENEFITS

18.1 A lump sum benefit payable to a minor dependant or minor nominee may, with regard being had to the testamentary dispositions of a deceased member and in consultation with the Master of the Supreme Court be paid in more than one payment in such

amounts as the Board may from time to time consider appropriate and in the best interests of such dependant or nominee: Provided that interest shall be added to the outstanding balance of such benefit from time to time, at a reasonable rate having regard to the investment return earned by the Fund: Provided further that any balance owing to such a dependant or nominee at the date on which he or she attains majority or dies, whichever occurs first, shall be paid in a lump sum.

18.2 A lump sum benefit payable to a major dependant or major nominee may be paid in more than one payment if the dependant or nominee has consented thereto in writing: Provided that -

(a) the amount of the payment, intervals of payment and interest to be added and other terms and conditions are disclosed in a written agreement; and

(b) the agreement may be cancelled by either party on written notice not exceeding 90 days.

18.3 If, in a specific case, a benefit other than an annuity is paid in instalments, interest is added to the remaining portion of the benefit in the Fund.

18.4 If a deceased member or pensioner leaves behind more than one spouse, the Board decides to which of them and, if to more than one, in which ratio the

spouse's pension shall be paid: Provided that such ratio shall not be changed thereafter.

18.5 Contributions and benefits under the rules are payable at or by the registered office of the Fund in the legal tender of the Republic of South Africa : Provided that the Board may pay benefits elsewhere on such conditions as it may deem fit.

18.6 Any decision of the Board in terms of this rule, may from time to time be changed at it's discretion provided it does not prejudice the member, pensioner or beneficiary.

#### 19. ACCESS TO DOCUMENTS OF THE FUND

A member, pensioner or beneficiary has the right to have access, at all reasonable times at the registered office of the Fund, to the rules, the latest financial documents and the latest valuation report of the Fund. The above-mentioned persons may obtain a copy of the rules, the latest annual financial statements and the latest valuation report of the Fund on payment of fees as determined by the Board from time to time, provided that such fee shall relate to the production of such documents.



20. **COMPENSATION TO THE FUND ON RETIREMENT OR DISCHARGE OF A MEMBER PRIOR TO ATTAINMENT OF THE MEMBER'S PENSION-RETIREMENT DATE**

Without detracting from the generality of section 17(4) of the Law, the Government or the employer or the Government and the employer shall, if a member for any reason mentioned in rule 14.1.1 except a reason in rule 14.1.1(b), retires, or is discharged prior to his or her pension-retirement date and at such retirement or discharge in terms of the rules becomes entitled to the payment of an annuity or gratuity or both an annuity and a gratuity in terms of the rules, and any of these actions result in an additional financial liability to the Fund, immediately pay to the Fund the additional financial obligation as decided by the Board acting on the advice of the actuary.

21. **WITHDRAWAL OF AN INSTITUTION OR BODY OR PART OR FUNCTION THEREOF**

21.1 An institution or body referred to in paragraph (a) and (c) of the definition of employer in section 1 of the Law or part of such an institution, body or function, which has members of the Fund in its service may, after negotiation and agreement, subject to a notice period of three months (or such shorter period as the Board approves) request the Board to cease participating in the Fund as regards membership of the Fund of members in its service or a part thereof subject to the provisions of the Law in which case the Board deals with the appropriate

part of the market value of the assets of the Fund which relate to such members on a basis decided by the Board acting on the advice of the actuary in terms of the wishes of such an institution or body or such part of such an institution or body and the affected members : Provided that the value of each member's interest will not exceed the funded position of such member's accrued interest in the Fund, based on market values, as determined by the actuary.

21.2 The provisions of rule 21.1 shall apply mutatis mutandis in the event of an action of commercialisation, privatisation or similar action pertaining to an institution or body, part or function thereof as contemplated in rule 21.1.

## 22. COMMUNICATION

For purposes of communication in regard to membership of the Fund, payment of member and employer contributions to the Fund, payment of other monies owing by members and the employer to the Fund, and related matters, the Fund shall communicate with the departments, administrations, institutions and bodies where members are or were in service : Provided that where any such matter or any other matter cannot be effectively dealt with by means of such communications the Fund shall communicate with the Minister : Provided further that a member or pensioner shall have the right to communicate direct with the Fund in regard to any matter which affects him or her personally.

## ANNEXURE

## PENSION BENEFITS IN TERMS OF SEVERANCE PACKAGE

The following pension benefits are payable:

- (i) Members of Government pension funds who have attained the age of 55 years and who have completed at least 10 years' pensionable service: A gratuity and an annuity determined in terms of the formula that applies at the member's pension age. The benefits will not be scaled down, nor will any additional period of pensionable service be added.
- (ii) All members who have not yet attained the age of 50 years, as well as those who have attained age 50 but have less than 10 years' pensionable service: A gratuity equal to the greater of:
- the cash resignation benefit in terms of the rules of the Government Employees Pension Fund; or
  - the cash resignation benefit payable in terms of the formula set out below:

$$\text{GRATUITY} = [(R1 \times N1) + (R2 \times N2)] \times Z \times D \times \text{INTFAC} \times \text{SEVFAC},$$

where -

- R1 = member's actual rate of contribution (as % of salary) as at 30/04/1996
- N1 = member's actual (unadjusted) period of pensionable service as at 30/04/1996
- R2 = the rate of 7,5 %
- N2 = member's period of pensionable service rendered subsequent to 1/05/1996
- Z = average annual pensionable salary of member during his/her last 36 months of pensionable service. Should the member have less than 36 months' pensionable service, it will be the average annual

pensionable salary during his/her full period of pensionable service

D = factor equal to or less than 1, as set out in rule 14.3.1 of the rules of the Government Employees Pension Fund

INTFAC = 100%, plus 2,5 % for each full year of the member's pensionable service

SEVFAC = 100%, plus 10 % for each full year of pensionable service up to 20 years, 15 % for each full year of pensionable service between 20 and 30 years and 20 % for each full year of pensionable service in excess of 30 years.

(iii) Members who are between the ages of 50 and 55 years, and who have completed at least 10 years' pensionable service: A choice of either of the following benefits:

- A gratuity and an annuity calculated as in par (i) above: Provided that these benefits are reduced by 0,3% for each month between the member's age and the age of 55 years; or
- a gratuity calculated as in par. (ii) above.

(Note: Reference to "pensionable service" above is also regarded as reference to a "pensionable period".)

**SCHEDULE 2****Laws repealed**

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<b>Number and year of law</b>	<b>Short title</b>	<b>Extent of repeal</b>
Act No. 4 of 1970	Transkeian Govern- ment Service Pen- sion Act, 1970	The whole
Act No. 6 of 1971	Black Authorities' Service Pensions Act, 1971	The whole
Act No. 20 of 1972	Black Education Account Abolition Act, 1972	The repeal of section 26
Act No. 23 of 1972	Black Laws Amendment Act, 1972	The repeal of section 11
Act No. 57 of 1973	Government Service Pension Act, 1973	The whole
Act No. 4 of 1976	Black Laws Amendment Act, 1976	The repeal of sections 22 and 23

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Act No. 14 of 1977 (Bophuthatswana)	Bophuthatswana Government Service Pensions Act, 1977	The whole
Act No. 119 of 1977	Black Laws Amendment Act, 1977	The repeal of sections 10 and 11
Act No. 15 of 1978 (Transkei)	Government Employees Pensions Act, 1978	The whole
Act No. 4 of 1979 (Venda)	Venda Government Service Pensions Act, 1979	The whole
Act No. 97 of 1980	Pensions Laws Amend- ment Act, 1980	The repeal of section 3
Act No. 106 of 1986	Pension Laws Amend- ment Act, 1986	The repeal of sections 3 and 11
Act No. 89 of 1988	Pensions Laws Amend- ment Act, 1988	The repeal of sections 2 to 6 and section 19
Act No. 4 of 1989 (Ciskei)	Government Service Pension Act, 1989	The whole
Decree No. 9 of 1993 (Ciskei)	Government Service Amendment Decree, 1993	The whole

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## SCHEDULE 3

## Laws amended

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Number and year of law	Short title	Extent of amendment
Act No. 29 of 1979	General Pensions Act, 1979	1. The substitution for section 1 of the following section:  "Definitions  1. In this Act, unless the context otherwise indicates - 'annuity' means an amount which is payable each year and includes a pension or an allowance; 'benefit' means an amount of money; 'Director-General' means the Director-General: Finance; 'Minister' means the Minister of Finance; 'pension fund' means a pension or provident fund or scheme established by or under any pension law;

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'pension law' means any law, including this Law, relating to a pension fund administered by or under the control of the Minister, and includes any regulation made under any such law, but excluding the Government Employees Pension Law, 1996".

2. The amendment of section 11 -

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

"(a)(i) for the payment of compensation to or in respect of, or to a dependant of, an employee who dies or is retired or discharged as a result of injury or ill-health, not occasioned by his own fault, arising out of and in the course of his employment; and

(ii) for the rendering of medical treatment (including surgical or hospital treatment, skilled nursing services and the supply and repair of any artificial part of the body or any device) to



any officer or employee in respect of injury or ill-health, not occasioned by his own fault, arising out of and in the course of his employment by the Government or by any provincial administration;"

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

"(b) for the payment of annuities or benefits to or in respect of, or to a dependant of, any employee referred to in paragraph (a)(i) according to the degree of any such employee's permanent disablement as determined by the Compensation Commissioner in terms of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993);"

(c) by the deletion of paragraph (b) of subsection (3);

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

"(4)(a) For the purposes of section 1(a)(i)-

"employee" means any member of the Police Reserve established under section 48 of the South African Police Service Act, 1995 (Act No 68 of 1995).

(b) For the purposes of section 1(a)(ii)-

"officer or employee" means any member of the Police Reserve established under section 48 of the South African Police Service Act, 1995, (Act No 68 of 1995), and also any member of the Government Employees Pension Fund in the employ of the Government or any provincial administration;"

3. The repeal of section 12.

4. The repeal of section 19.

## ANNEXURE 2

## REPUBLIC OF SOUTH AFRICA

**GOVERNMENT EMPLOYEES PENSION LAW TRANSITIONAL PROVISIONS****Definitions**

1. In this proclamation, unless the context otherwise indicates -

"Board" means the Board contemplated in section 6 of the Government Employees Pension Law, 1996;

"fixed date" means the date contemplated in section 1 of the Government Employees Pension Law, 1996;

"Government Service Pension Fund" means the fund established by section 3 of the Government Service Pension Act, 1973 (Act No. 57 of 1973);

"Previous funds" means the previous funds contemplated in section 1 of the Government Employees Pension Law, 1996;

"Temporary Employees Pension Fund" means the fund established by section 3 of the Temporary Employees Pension Fund Act, 1979 (Act No. 75 of 1979)

"the Law" means the Government Employees Pension Law, 1996;

"the Fund" means the Government Employees Pension Fund contemplated in section 2 of the Government Employees Pension Law, 1996;

"own pension fund", means a fund contemplated in section 3(4)(c).

"transfer date", means the date contemplated in section 14(1) of the Government Employees Pension Law, 1996.

#### **Determination of the transfer date**

2. The transfer date shall be as soon as possible but not later than 12 months after the fixed date unless arranged otherwise by the Minister of Finance in terms of a proclamation in the Gazette.

#### **Continuation of the pension fund management and administration**

3. As from the fixed date -

(1) the authority responsible by law for the administration of the Government Service Pension Fund as on the day preceding the fixed date, shall notwithstanding the repeal of the Government Service Pension Act, 1973 (Act No. 57 of 1973), administer the Fund until such time the Board determines otherwise in terms of section 7 of the Law;

(2) the authorities or bodies responsible by law or contract for the management and administration of the previous funds, as on the day preceding the fixed date, shall, where applicable subject to the relevant contract, continue to manage and administer the said funds until the date determined in section 14(1) and 15(1) of the Law; and

(3) all property, equipment and goods, other than those referred to in sections 2 and 14 of the Law, at the disposal of the Government Service Pension Fund, the Temporary Employees Pension Fund and the previous funds as on the day preceding the fixed date, shall on such terms and conditions as agreed upon by the Board and the Minister of Finance be at the disposal of the Board until such time as the Board in consultation with the Minister of Finance determines otherwise.

**Human resources arrangements**

4. (1) A person in the employ of an authority of body responsible by law for the management and administration of a fund referred to in section 3(1) or (2) on the day preceding the fixed date, shall, as from the fixed date, continue to perform his or her duties, on such terms and conditions as agreed upon by the Board and the Minister but not for a period longer than 12 months after the fixed date.

(2) A person in the employ of an authority of body responsible by law for the management and administration of a fund referred to in sections 3(1) and (2) above shall, notwithstanding the provisions of the Law or the provisions of any other law, but subject to the provisions of the acts governing such person's employment and conditions of service, with his or her written consent, on such terms and conditions as agreed upon in negotiations, be transferred and appointed to the administration instituted by the Board in terms of section 7 of the Law, from a date determined by the Minister of Finance in consultation with the Board, and as from that date he or she shall be deemed to have been appointed in terms of section 7(1) of the Law in an applicable position in the said administration: Provided that -

- (a) his or her salary and salary scale and other conditions of service in the employ of the administration instituted by the Board and his or her terms and conditions of employment in respect of the post to be occupied, shall not be less favourable than the salary or salary scale and conditions of service which was applicable to him or her before his or her date of transfer as a person employed by such authority;
- (b) any sick or vacation leave which stood to the credit of such person immediately prior to his or her date of transfer and appointment to the administration instituted by the Board, shall be deemed to be leave credited to him or her in the employ of such administration. Accrued vacation leave with full pay shall be regarded as a right and which accumulated vacation leave with full pay or the remainder of such leave, shall be discounted in full to such personnel in their own right or their beneficiaries or their estate in the event of the termination of their service for whatsoever reasons;
- (c) if applicable, pensionable service performed or bought back by such person before his

- or her date of appointment to the administration instituted by the Board shall be deemed to be pensionable service performed by him or her in the service of such administration;
- (d) no person shall as a consequence of such appointment acquire a retirement age which is higher than that which applied to him or her as a person employed by such authority or body before such transfer; and
  - (e) probationary appointment shall not apply to any person who in terms of subsection (2) is appointed to the administration instituted by the Board and whose appointment was confirmed by an authority contemplated in section 3(1) or (2).

(3) The salary, salary scale and other conditions of service contemplated in subsection (2), shall, subject to negotiations and conclusion of agreements, not be altered without the written consent of the person concerned, and such salary and salary scale shall for two ensuing years from the date contemplated in subsection (2) not be less favourable than the salary and salary scales for relevant personnel in the Public Service.

(4) A person contemplated in subsection (1) who is a member of the Government Service Pension Fund or the Temporary Employees Pension Fund or a previous fund or the Fund or any other relevant fund who is appointed to the administration instituted by the Board shall, before a date determined by the Minister, in consultation with the Board, if applicable, exercise an option to -

- (a) remain a member of such fund; or
- (b) become if applicable a dormant member of the fund concerned as contemplated in section 15 of the General Pensions Act, 1979, and become a member of a pension fund referred to in subparagraph (c) or (d) or approved retirement annuity fund referred to in paragraph (e); or
- (c) become a member of an own pension fund if such a pension fund is, subject to negotiations and in accordance with the agreement reached, established by the Board;
- (d) become a member of the Fund if a pension fund referred to in subparagraph (c) is not established by the Board;
- (e) become a member of an approved retirement annuity fund of his or her choice if an own fund is not established by the Board.

(5) Subject to subsection (11), the obligation of a pension fund contemplated in subsection (4)(c) or (e) to any person on the date on which he or she becomes a member of such fund, shall in respect of his or her previous pensionable service referred to in subsection (2)(c) above, not be less than the sum of the amounts referred to in subsection (7) and (8).

(6) In the case where a person becomes a member of a pension fund referred to in subsection (4)(c) or approved retirement annuity fund referred to in subsection (4)(e) and who was a member of the Government Service Pension Fund or the Temporary Employees Pension Fund or a previous fund or the Fund immediately prior to his or her appointment to the administration instituted by the Board, he or she shall -

- (a) cease to be a member of the pension fund concerned;
- (b) except in respect of any amount which was due by him or her to the pension fund concerned immediately prior to his or her date of appointment be released from all obligations towards, and shall relinquish all rights and privileges in respect of the pension fund concerned;
- (c) subject to the provisions of the rules become a member of a fund referred to in subsection (4)(c) or (e) with effect from the date of his or her appointment; and
- (d) with effect from the date of his or her appointment contribute to a fund referred to in subsection (4)(c) or (e) as provided by the rules of such fund.

(7) Notwithstanding anything to the contrary in any law contained -

- (a) the Government Service Pension Fund or the Temporary Employees Pension Fund or a previous fund or any relevant fund shall, in respect of a person contemplated in subsection (1) who is a member of one of these funds and who elects to become a member of an own pension fund, in terms of subsection (4)(c), if such a fund is established by the Board or an approved retirement annuity fund referred to in subsection

- (4)(e), make an amount, whether in cash or in specie, equal to the funding percentage of the pension fund concerned multiplied by the actuarial obligation of the pension fund concerned in respect of that person on the date of his or her appointment, plus interest thereon calculated at the bank rate from his or her date of appointment until the date on which the said amount is paid, available to the member: Provided that the member shall undertake to deposit the full amount plus any interest thereon, immediately into the own established pension fund or approved retirement annuity fund: Provided further that such member, whilst employed by the Board, shall not be entitled to any benefits from the aforesaid own established fund; and
- (b) the employer concerned shall pay to the own pension fund of the Fund or approved retirement annuity fund an amount equal to the difference between the actuarial liability of the pension fund concerned and the amount paid in terms of paragraph (a), plus interest calculated at the bank rate from the date of his or her transfer to the date of payment.

(8) For purposes of subsection (7) -

- (a) "actuarial obligation" means the actuarial obligation of the pension fund concerned with regard to the member concerned on the date of his or her appointment, as calculated by an actuary;
- (b) "funding percentage" means the market value of the net assets of the pension fund concerned on the date of his or her appointment, expressed as a percentage of the calculated aggregate actuarial obligation of the pension fund concerned on the date of his or her appointment, as determined by an actuary; and
- (c) "bank rate" means the rate determined from time to time in terms of section 10(2) of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989)."

(9) The provisions of subsection (7) shall *mutatis mutandis* apply to an employee who under subsection (4)(b) elected to be a dormant member and, at a later stage, elects to have his or her accrued pension benefits transferred to the own pension fund contemplated in subsection (4)(c) or approved retirement pension fund contemplated in subsection (4)(e) in



accordance with subsection (7) and (8).

(10) Notwithstanding the provisions of subsection (2), those persons who elected not to be transferred and appointed to the administration instituted by the Board may, after the period contemplated in subsection (1) subject to their acts of employment be seconded to the administration instituted by the Board.

(11) In the event of a defined contribution fund, the pension entitlement in the case of the termination of service of a member referred to in subsection (2) in respect of pensionable service referred to in subsection (2)(c), shall be his or her accrued benefits in such fund.

(12) The authorities contemplated in section 3(1) and (2) and the Board shall comply with the terms and conditions of any transfer and appointment in terms of section 4(2) and such authorities and the Board shall offer any person concerned employment on the terms as were agreed upon by the relevant parties in the Departmental Chamber (Finance) of the Public Service Bargaining Council.

#### **Responsibility and powers of the Minister of Finance**

5. The Minister of Finance shall have the responsibility and power to enforce on any person, body or institution the application of the transitional provisions regarding the Fund and its human resources as contained in sections 1,2,3 and 4.

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