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GOVERNMENT GAZETTE

OF THE

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CONTENTS

Page

GOVERNMENT NOTICE

No. 46 Promulgation of National Pensions Act, 1992 (Act 10 of 1992), of the
National Assembly 1

Government Notice

OFFICE OF THE PRIME MINISTER

No. 46

1992

PROMULGATION OF ACT OF THE NATIONAL ASSEMBLY

The following Act which has been passed by the National Assembly and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 10 of 1992: National Pensions Act, 1992.

ACT

To provide for national pensions to be paid to aged, blind and disabled persons; and to provide for matters incidental thereto.

(Signed by the President on 8 April 1992)

BE IT ENACTED by the National Assembly of the Republic of Namibia, as follows:-

Definitions.

1. (1) In this Act, unless the context otherwise indicates -

“aged person” means any person who has attained the age of sixty years;

“allowance” means any allowance paid under section 2 to or on behalf of a pensioner;

“applicant” means any person who applies for a national pension;

“basic state pension” means a pension paid under section 2 to an aged person;

“blind person” means any person who has been registered as a blind person under any law or is deemed to have been registered as such under subsection (2), and has attained the age of 16 years;

“blind person’s pension” means a pension paid under section 2 to a blind person;

“disability pension” means a pension paid under section 2 to a disabled person;

“disabled person” means any person who is, owing to any physical or any mental disability, incapable to obtain from any employment or the practising of any profession or trade, or from the rendering of any service, the means needed to enable him or her to adequately provide for his or her own maintenance, and has attained the age of 16 years;

“district pension officer” means any person appointed under section 11;

“district surgeon” means any full-time medical officer in the public service and includes -

- (a) any part-time medical officer in the public service and employed at a state hospital; and
- (b) any medical officer in the employ of a local authority as defined in section 7 of the Public Health Act, 1919, or any similar authority established by or under any law,

who is authorized by the Minister to carry out any duty, perform any function or exercise any power assigned to a district surgeon under this Act;

“Minister” means the Minister of Health and Social Services;

“national pension” means any basic state pension, blind person’s pension, disability pension or an allowance payable under this Act;

“pensioner” means any person receiving any national pension;

“Permanent Secretary” means the Permanent Secretary: Health and Social Services;

“prescribed” means prescribed by regulation;

“regulation” means any regulation made under this Act;

“this Act” includes the regulations made thereunder.

(2) For the purposes of this Act, a person shall be deemed to have been registered as a blind person if upon examination by a district surgeon such person is certified by such district surgeon as blind in accordance with the criteria prescribed under any law governing the registration of blind persons.

Payment of national pensions.

2. (1) The Minister may, subject to the provisions of this Act, in consultation with the Minister of Finance, and out of moneys appropriated by law for such purpose, pay -

- (a) to aged, blind and disabled persons basic state pensions, blind persons' pensions and disability pensions, respectively;
- (b) to any person to whom such pension is paid, additional and supplementary allowances; and
- (c) to or on behalf of any person to whom such pension is paid who is in such a physical or mental condition that he or she needs to be cared for, an attendant's allowance.

(2) No person shall at any time receive more than one pension referred to in paragraph (a) of subsection (1).

Persons entitled to national pensions.

3. (1) Subject to the provisions of this Act, any person shall be entitled to the national pension concerned if he or she satisfies the Permanent Secretary -

- (a) that he or she is an aged, blind or disabled person, as the case may be;
- (b) that at the time of his or her application for a national pension, he or she is ordinarily resident in Namibia; and
- (c) that he or she -
 - (i) is a Namibian citizen; or
 - (ii) has been lawfully admitted to Namibia for permanent residence and had been so resident in Namibia for a continuous period immediately preceding the date of his or her

NATIONAL PENSIONS ACT, 1992

application for a national pension as may be prescribed.

(2) Notwithstanding the provisions of paragraph (c) of subsection (1), but subject to the other provisions of that subsection, any person who satisfies the Permanent Secretary that he or she was ordinarily resident in Namibia on 21 March 1990 and that he or she has applied for Namibian citizenship under any law, shall be deemed, for the purposes of this Act to be such a citizen: Provided that proof by such person of his or her citizenship shall be furnished to the Permanent Secretary within a period of twelve months or such further period as the Permanent Secretary may determine, after his or her application for a national pension has been granted.

Application for a national pension.

4. (1) Any person who claims a national pension shall apply in the form determined by the Permanent Secretary to the district pension officer of the district or area where he or she is ordinarily resident, and shall furnish such particulars as may be prescribed or as such district pension officer may require.

(2) The district pension officer may upon receipt of an application in terms of subsection (1), make such enquiries in respect of such applicant as he or she may deem necessary.

(3) When a person applies for a disability pension, the district pension officer concerned shall have such applicant examined by a district surgeon and shall submit to the Permanent Secretary a medical report by such district surgeon which report shall be in the form determined by the Permanent Secretary.

(4) All applications for national pensions submitted to a district pension officer shall, together with his or her recommendations, be submitted by such district pension officer to the Permanent Secretary.

(5) The Permanent Secretary shall consider the application submitted to him or her in terms of subsection (4) and, in the case of a medical report submitted in terms of subsection (3), such medical report, and may grant or refuse such application and shall, upon granting such application, and subject to the provisions of this Act, determine the amount of any national pension to which such applicant may be entitled.

Suspension, cancellation
and administration of
national pensions.

5. (1) The Permanent Secretary may, at his or her discretion, suspend payment of any national pension, excluding a basic state pension, from a date determined by the Permanent Secretary if the pensioner to whom such national pension is payable is absent from Namibia for a continuous period exceeding six months: Provided that the Permanent Secretary may resume, for any reason, such suspended payments, with effect from a date determined by the Permanent Secretary, which date may be a date earlier than the date of such determination.

(2) The Permanent Secretary may cancel the payment of any national pension from a date determined by the Permanent Secretary if any pensioner, for any reason -

(a) has ceased to be a Namibian citizen; or

(b) in the case of a pensioner who was admitted to Namibia for permanent residence, has ceased to be ordinarily resident in Namibia; or

(c) in the case of a pensioner referred to in subsection (2) of section 3, has failed to furnish the Permanent Secretary with proof of his or her Namibian citizenship within the period or further period referred to in that subsection.

(d) has failed to collect his or her national pension for a continuous period exceeding six months.

(3) The Permanent Secretary may, if he or she is of the opinion that the pensioner abuses his or her national pension, order that such pension be administered subject to such conditions as he or she may determine.

(4) The Permanent Secretary may, if he or she deems it advisable, order that any national pension not be paid directly to the pensioner but to any other person to administer such pension on behalf of that pensioner subject to such conditions as the Permanent Secretary may determine.

Refund of national pensions.

6. (1) If any person received any amount of money in terms of this Act which was paid to him or her by virtue of the fact that he or she was a pensioner or was regarded as a pensioner, and to which he or she was not entitled, he or she or, if he or she dies, his or her estate, shall be liable to refund that amount to the Minister.

(2) The Minister may, in consultation with the Minister of Finance, at his or her discretion, write off the amount or any part thereof refundable in terms of subsection (1).

(3) Any such amount refundable under subsection (1) may, in the discretion of the Permanent Secretary at any time and without prejudice to any other remedy, be recovered by means of deduction from any national pension due to the person liable to refund such amount.

(4) The provisions of this section shall apply *mutatis mutandis* to any person receiving a national pension on behalf of a pensioner.

Appeal to Minister.

7. Any decision made or action taken by the Permanent Secretary in the administration of this Act shall be subject to appeal to the Minister.

National pensions not assignable or executable.

8. (1) No national pension, or any right to such a pension shall be capable of being assigned or transferred or ceded or of being pledged or hypothecated, nor shall it be liable to attachment or any form of execution under any judgment or order of any court of law.

(2) If a pensioner assigns, transfers, cedes, pledges or hypothecates his or her national pension, or any right to such pension, or attempts to do so, payment of such pension may by order of the Permanent Secretary be withheld, suspended or cancelled.

(3) In any civil proceedings against any pensioner, his or her income or means shall not include any national pension received by him or her by virtue of the provisions of this Act.

(4) No national pension payable to any pensioner in terms of this Act shall, in the event of the sequestration of his or her estate, form part of the assets in his or her insolvent estate.

Offences relating to false statements and improper receipt of national pensions.

9. Any person who, for the purpose of procuring or retaining a national pension, whether for himself or herself or for any other person, or for the purpose of procuring such a pension for himself or herself or for any other person at a higher rate than that appropriate to the case -

- (a) makes any statement or representation which he or she knows to be false; or
- (b) receives in respect of any such pension payment of any amount of money which he or she is to his or her knowledge not entitled to receive,

shall be guilty of an offence.

Exemption from stamp duty.

10. No stamp duty shall be payable in respect of any power of attorney furnished by -

- (a) an applicant to any person to apply for a national pension on his or her behalf; or
- (b) any pensioner to any person to receive payment of any such pension on his or her behalf.

District pension officers.

11. The Minister shall appoint for every district or area determined by him or her, an officer in the public service as district pension officer who shall be charged with -

- (a) the receipt and registration of applications for national pensions;
- (b) the investigation of such applications; and
- (c) the submission of every such application, with his or her report thereon to the Permanent Secretary.

Inquiry by Permanent Secretary or district pension officer.

12. (1) The Permanent Secretary or the district pension officer, as the case may be, may conduct an inquiry into any matter relating to any national pension.

(2) For the purpose of any inquiry in terms of subsection (1), the Permanent Secretary or the district pension officer, as the case may be, may subpoena witnesses to give evidence, require the production of any book, record or document he or she may consider relevant to the inquiry, administer an oath or an affirmation to any witness, examine any such witness and examine such book, record or document.

(3) A subpoena to appear before the Permanent Secretary or a district pension officer, or to produce any book, record or document, shall be in the form prescribed

NATIONAL PENSIONS ACT, 1992

for such purpose and shall be signed by the Permanent Secretary or the district pension officer concerned.

(4) A subpoena under subsection (3) shall be served by registered post on the person concerned, or personally on him or her by any person authorized for such purpose by the Permanent Secretary or the district pension officer, as the case may be, or in any other manner as may be prescribed.

(5) Any expenses and allowances payable to any witness who is lawfully obliged to attend any inquiry in terms of this section shall be on the same tariff and subject to the same conditions which are prescribed from time to time in respect of any witness obliged to attend criminal proceedings in any magistrate's court.

(6) Any person who, without lawful excuse, at the time and place specified in a subpoena served upon him or her in terms of subsection (4) fails to attend, or to remain in attendance at such inquiry, or to attend at the time and place to which such inquiry may be adjourned, or to produce any book, record or document in terms of any such subpoena, or refuses to be sworn or to make an affirmation when called upon in terms of subsection (2) to do so, or when being examined in terms of that subsection refuses to answer fully and satisfactorily any question lawfully put to him or her, shall be guilty of an offence.

(7) A witness who after having been duly sworn or having made an affirmation, gives false evidence at any inquiry under this section, knowing such evidence to be false, shall be guilty of an offence and on conviction be liable to the penalties prescribed by law in respect of perjury.

(8) Any person who gives evidence at any inquiry under this section shall be entitled to all the privileges to which a witness who gives evidence in the High Court of Namibia is entitled.

Information to be furnished to Permanent Secretary.

13. Notwithstanding anything to the contrary in any law contained, any registrar of births and deaths, registrar of deeds, registrar of companies or any other officer, as may be prescribed, shall at the request of the Permanent Secretary furnish him or her with such information relating to any applicant as may be determined by the Permanent Secretary.

Delegation of powers.

14. (1) The Minister may delegate to the Permanent Secretary or any other officer in his or her Ministry any power conferred upon him or her by this Act, except a power conferred by section 7 or 16.

(2) The Permanent Secretary may, with the approval of the Minister, authorize any officer in his or her Ministry to exercise on his or her behalf any power conferred upon him or her by this Act, and may, with such approval and with the approval of the Minister of any other Ministry, authorize any officer in such other Ministry so to exercise any such power.

Penalties.

15. Any person convicted of any offence under this Act, shall, except where this Act provides otherwise, be liable to a fine not exceeding R2 000,00 or to imprisonment for a period not exceeding 6 months, or to both such fine and such imprisonment.

Regulations.

16. (1) The Minister may, in consultation with the Minister of Finance, make regulations as to -

- (a) the form of any application, authority, certificate, consent, order, register, process or subpoena which is to or may be made, granted, given, issued or kept under this Act, and any further or other form or document required in the administration of the provisions of this Act;
- (b) the payment of national pensions including the maximum amount to be paid, the determination of the amount to be paid in any particular case, the method of payment, payment to any person other than the pensioner personally and the suspension or termination of payments;
- (c) the requirements or conditions, in addition to those specified in this Act, to be complied with by any person in order to be entitled to a national pension, and also the circumstances under which any person shall not be so entitled;
- (d) applications for the different national pensions, including the particulars and information to be furnished by applicants and the procedures to be followed;
- (e) the consideration, granting or refusal of any application for a national pension;

NATIONAL PENSIONS ACT, 1992

- (f) the income and assets of any applicant to be taken into account in determining any national pension including the value of any asset alienated in any manner within a stated period immediately before application for such a pension;
- (g) the payment of national pensions to persons detained or receiving treatment in State or State-aided institutions, including the suspension of such payments;
- (h) the date of accrual of any national pension;
- (i) the procedures to be adopted at any inquiry under this Act;
- (j) the administration of national pensions;
- (k) information which may from time to time be required of any pensioner;
- (l) the refund under section 6 of any amount overpaid;
- (m) the manner in which and period within which an appeal may be lodged against any decision of the Permanent Secretary;
- (n) information to be furnished in terms of section 13; and
- (o) any other matter which shall or may be prescribed in terms of any provision of this Act, or in respect of which, in the opinion of the Minister, it is necessary or expedient to make regulations for achieving the objectives of this Act.

(2) Subject to the provisions of section 17(3), no regulation which reduces the aggregate amount of any national pension to which any pensioner has at any time been entitled in terms of the provisions of this Act, shall be made without the approval, by resolution, of the National Assembly.

(3) Regulations made under subsection (1) may provide for different pensions to be paid to different categories of aged persons according to their income and other assets.

(4) Regulations made under subsection (1) may be made with retrospective effect.

Act No. 10, 1992

NATIONAL PENSIONS ACT, 1992

Repeal of Laws and savings.

17. (1) Subject to the provisions of subsection (2), the laws specified in the Schedule are hereby repealed to the extent set out in the third column thereof.

(2) Subject to the provisions of subsection (3), any regulation, made, or any act done under any provision of any law repealed by subsection (1), shall be deemed to have been made or done under the corresponding provisions of this Act: Provided that in the case of any regulation made in relation to any old age pension or veteran's pension, as the case may be, such regulation shall be deemed to have been made in relation to a basic state pension payable under this Act.

(3) Notwithstanding the provisions of section 16(2), the Minister may, in view of the provisions of Article 10 of the Namibian Constitution, from time to time by notice in the *Gazette*, and from such date as he or she may specify in such notice, reduce the amount of any pension paid, or purporting to have been paid, under any law repealed by subsection (1) of this section, as applied by subsection (2) of this section.

Short title and commencement.

18. This Act shall be called the National Pensions Act, 1992, and shall come into operation on a date to be determined by the President by proclamation in the *Gazette*.

SCHEDULE

Laws Repealed
(Section 17(1))

No. and year of law	Short title	Extent of repeal
Ordinance 3 of 1965	German War Veterans' Pensions Ordinance, 1965	The whole
Act 37 of 1973	Social Pensions Act, 1973	The whole
Act 77 of 1974	Second Pension Laws Amendment Act, 1974	Section 15
Ordinance 5 of 1988 of the former Legislative Assembly of the Whites.	Social Pensions Amendment Ordinance, 1988	The whole