

NO. 69 OF 1996: SPECIAL PENSIONS ACT, 1996

PRESIDENT'S OFFICE

No. 1815.

8 November 1996

NO. 69 OF 1996: SPECIAL PENSIONS ACT, 1996

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

ACT

To give effect to section 189 of the Constitution; to provide for special pensions to be paid to persons who made sacrifices or served the public interest in the cause of establishing a democratic constitutional order; to prescribe rules for determining the persons who are entitled to receive those pensions; to establish a Special Pensions Board and a Special Pensions Review Board; and to provide for related matters.

PLEASE NOTE!
FOOTNOTES ARE AT THE END OF THE TEXT

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PREAMBLE

Section 189 of the Constitution requires that an Act of Parliament shall provide for the payment of pensions to-

persons who, in the establishment of a democratic constitutional order, made sacrifices or served the public interest; and the dependants of those persons.

The Constitution further requires that an Act of Parliament shall prescribe- the qualifications of persons entitled to receive those pensions; the conditions on which those pensions may be granted; and the basis for determining the amount of those pensions.

(Afrikaans text signed by the President.)

(Assented to 30 October 1996.)

In order to give effect to the abovementioned provisions of the Constitution, the Parliament of the Republic of South Africa, enacts as follows:-

PART 1 - BENEFITS

Right to pension

1. (1) A person who made sacrifices or served the public interest in establishing a non-racial, democratic constitutional order and who is a citizen, or entitled to be a citizen, of the Republic(1) of South Africa, has the right to a pension in terms of this Act if that person-

- (a) was at least 35 years of age on the commencement date; and
- (b) was prevented from providing for a pension because, for a total or combined period of at least five years prior to 2 February 1990, one or more of the following circumstances applied:
 - (i) That person was engaged full-time in the service of a political organisation.(2)
 - (ii) That person was prevented from leaving a particular place or area

within the Republic, or from being at a particular place or in a particular area within the Republic, as a result of an order issued in terms of a law mentioned in Schedule 1(3) of this Act.

(iii) That person was imprisoned or detained in terms of any law or for any crime mentioned in Schedule 1 of this Act, or that person was imprisoned for any offence committed with a political objective.

(2) In determining whether a person committed an offence with a political objective as contemplated in subsection (1)(b)(iii), the Board must consider the following factors:

- (a) The person's motive in committing the offence;
- (b) the context within which the offence was committed and, in particular, whether the offence was committed in the course of a political uprising or political event;
- (c) the nature and gravity of the offence;
- (d) the effect of the commission of the offence on a political opponent, State property, State personnel, private property or individuals;
- (e) whether the offence was committed as part of a programme, or with the approval of an organisation which promoted a non-racial democratic constitutional order;
- (f) the relationship, proximity and proportionality of the offence and the political objective pursued in its commission; and
- (g) whether the offence was committed without-
 - (i) personal gain; or
 - (ii) personal malice.

(3) A person who made sacrifices or served the public interest in establishing a non-racial democratic constitutional order and who is a citizen, or entitled to be a citizen, of the Republic, has a right to a pension in terms of this Act if that person was prevented from providing for a pension because, prior to 2 February 1990, that person suffered a permanent and total disability arising out of any of the circumstances listed in subsection (1)(b)(i) or (iii).

(4) A pensioner who qualifies for a benefit in terms of subsection (1) is entitled to receive a pension, payable monthly, commencing on the first day of the month during which that person attains the age of 60.

(5) A pensioner who qualifies for a benefit in terms of subsection (3) is entitled to receive a pension, payable monthly, commencing with effect from 1 April 1995.

(6) For each pensioner, the Board must determine the amount of the monthly pension in accordance with the table in Schedule 3.

(7) For the purpose of applying the table in Schedule 3, the Board must determine each pensioner's qualifying period as follows:

- (a) For persons entitled to a pension in terms of subsection (1), the qualifying period is the total length of time prior to 2 February 1990 that the pensioner spent in the circumstances listed in that subsection

- (b) For disabled persons entitled to a pension in terms of subsection (3), the qualifying period is-
- (i) the total or combined length of time, if any, that the pensioner spent prior to being disabled in any of the circumstances listed in subsection (1) (b); plus
 - (ii) the length of time between the date that the pensioner became disabled and 2 February 1990; or
 - (iii) a period of five years,
- whichever is the longer.

(8) A person referred to in this section is disqualified from receiving or continuing to receive a pension if, after making the sacrifice or serving the public interest as referred to, that person-

- (a) either actively engaged in actions calculated to undermine efforts to establish a nonracial democratic constitutional order;
- (b) or was convicted of a crime committed after 2 February 1990.

(9) For the purposes of subsection (8) (b), "crime" means-

- (a) at any time between 2 February 1990 and 1 May 1994, an offence mentioned in Schedule 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), other than treason and sedition; and
- (b) at any time after 30 April 1994, an offence mentioned in Schedule 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

Right to survivor's lump sum benefit

2. (1) A person has the right to a survivor's lump sum benefit in terms of this Act if that person is a surviving spouse, or if there is no surviving spouse, the surviving dependant, of a person who-

- (a) made sacrifices or served the public interest in establishing a non-racial democratic constitutional order;
- (b) was a citizen, or entitled to be a citizen, of the Republic;
- (c) is not disqualified in terms of section 1(8); and
- (d) (i) either has died but, had he or she survived, would have qualified

in

terms of section 1, based on the circumstances at the time of death;

- (ii) or died prior to 2 February 1990 while he or she was imprisoned or detained for any crime or in terms of any law mentioned in Schedule 1 of this Act;
- (iii) or died prior to 2 February 1990 while he or she was actively engaged in, and from causes arising out of, full-time service to a political organisation;
- (iv) or disappeared prior to 2 February 1990 while he or she was actively engaged in efforts attempting to establish a non-racial democratic constitutional order, and has been presumed in law to be

dead(4).

(2) (a) The surviving spouse or dependant of a deceased person who would have been a qualifying pensioner had that person survived, is entitled to receive a single lump sum amount equal to twice the annual pension that would have been payable to that person had he or she survived until the commencement date.

(b) The surviving spouse or dependant of a deceased or missing person referred to in subsection (1)(d)(ii), (iii) or (iv) is entitled to receive a single lump sum equal to twice the annual pension that would have been payable to a pensioner whose qualifying period equalled-

(i) the total or combined length of time that the deceased or missing person spent prior to 2 February 1990 in any of the circumstances listed in section 1(1)(b); plus

(ii) the length of time between the date that the deceased or missing person died or disappeared and 2 February 1990; or

(iii) a period of five years,

whichever is the longer.

(3) A person referred to in this section who would be eligible for a survivor's benefit is disqualified from receiving that benefit if that person-

(a) either actively engaged in actions calculated to undermine efforts to establish a non-racial democratic constitutional order;

(b) or has been convicted of a crime committed after 2 February 1990.

(4) For the purposes of subsection (3), "crime" means-

(a) at any time between 2 February 1990 and 1 May 1994, an offence mentioned in Schedule 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), other than treason and sedition; and

(b) at any time after 30 April 1994, an offence mentioned in Schedule 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

Payment to survivor on death of pensioner

3. (1) Upon the death of a pensioner referred to in section 1 whose monthly pension payments have already begun, a surviving spouse or, if there is no surviving spouse, a surviving dependant of that pensioner, is entitled to receive a lump sum payment equal to twice the annual amount that was payable to that pensioner immediately before the date of death.

(2) Upon the death of a person not yet 60 years of age, who has been granted a pension which has not commenced, a surviving spouse or, if there is no surviving spouse, a surviving dependant of that pensioner is entitled to receive a lump sum payment equal to twice the annual amount that would have been payable to that pensioner if he or she had been 60 years of age immediately before the date of death.

One benefit only to be granted

4. A person who qualifies for a benefit under both section 1 and section 2, or for more than one benefit under section 2 or 3-

- (a) must be granted the benefit that is most advantageous to that person;
and
- (b) may not be granted any other benefit under either section 1 or 2.

Allocation of survivor's benefit

5. (1) If a deceased person is survived by more than one spouse, each of whom qualifies for a survivor's benefit in terms of this Act, the Board must determine the proportion of the survivor's benefit that is to be paid to each qualifying spouse; but the total benefits for all the surviving spouses must not exceed the benefit that would have been payable had there been only one surviving spouse.

(2) If a deceased person is not survived by a spouse, but is survived by more than one dependant, each of whom qualifies for a survivor's benefit in terms of this Act, the Board must determine the proportion of the survivor's benefit that is to be paid to each qualifying dependant but the total benefits for all the surviving dependants must not exceed the amount of the benefit that would have been payable had there been only one surviving dependant.

Applications for benefits

6. (1) Any person who applies for a benefit in terms of this Act must-

- (a) complete an application form as set out in Schedule 2;
- (b) have a Commissioner of Oaths certify on the application form that the applicant swore or affirmed that the information contained in that form is correct; and
- (c) submit the application form to the Board on or before the closing date.

(2) If a person who would qualify for a benefit is permanently or temporarily disabled and therefore unable to apply in terms of subsection (1) personally, any person acting on behalf of that disabled person, may submit a curator's application in the prescribed form to the Board.

Determination by Board

7. The Board must-

- (a) consider applications for benefits submitted to it in terms of this Act;
- (b) determine whether an applicant referred to in section 1 qualifies as a pensioner;
- (c) determine whether an applicant referred to in section 2 or section 4 qualifies for a survivor's benefit;
- (d) with respect to an applicant who qualifies for more than one benefit in terms of section 2, determine which entitlement is most advantageous to that applicant;
- (e) with respect to an applicant who qualifies for both a pension, in terms of section 1, and a survivor's benefit, in terms of section 2, determine which entitlement is most advantageous to that applicant by comparing-
 - (i) the actuarial value, at the date of the application, of the monthly pension to which that person is entitled; and
 - (ii) the value of the survivor's lump sum payment to which that person is

entitled;

- (f) determine the benefit payable to each beneficiary;
- (g) report its findings to the Minister and to the applicant; and
- (h) inform the applicant in plain language of the right to appeal against the Board's decision, and include in that advice the form prescribed in Schedule 2 for requesting a review of the decision.

Right to appeal against Board's decision

8. Any applicant who disagrees with any decision of the Board may request a review of that decision by sending a written notice in the form prescribed in Schedule 2 to the Review Board within 60 days of the date of the decision. The Review Board has the discretion to condone late applications.

Payment of benefits

9. (1) The Minister must pay any pension, payable in terms of this Act, on the first day of the month in which the pensioner is entitled to that payment, commencing in the month in which the pensioner is first entitled to a payment.

(2) When the first monthly payment is made to a disabled pensioner in terms of section 1(5) the Minister must include a lump sum covering all the pension payments due to that person from 1 April 1995 to the date of that first payment.

(3) When the first monthly payment is made to a pensioner in terms of subsection 1(4), the Minister must include therein a lump sum covering all the pension payments due to that pensioner from either 1 April 1995, or the pensioner's 60th birthday, whichever is the later, to the date of that first payment.

(4) The monthly payments payable to a pensioner must cease immediately upon the death of the pensioner.

(5) The Minister must pay any survivor's lump sum benefit payable in terms of this Act to the beneficiary within 90 days of the date on which the Board notifies the Minister that a benefit is payable to that beneficiary.

(6) If a survivor's benefit is payable to a person who is either under the age of 21, or mentally incapacitated-

- (a) the Master of the Supreme Court must appoint an appropriate person to administer that benefit on behalf of the beneficiary; and
- (b) the Board, on behalf of the applicant, must take the necessary steps to obtain the required order from the Master of the Supreme Court.

(7) Despite subsections (2) and (3), a beneficiary may not receive any pension payment or lump sum benefit while holding office as a member of any legislature mentioned in the Constitution, but may begin to receive a pension on-

- (a) either that beneficiary's 60th birthday;
- (b) or the date that beneficiary's office as a member of any legislature terminates,

whichever is the later.

Payments to other public pension funds

10. (1) A benefit otherwise payable to a beneficiary but which, because of section 9(7) cannot be paid to that beneficiary, must be paid into a special fund to be established for public representatives' pensions by the Minister by regulation. The amount in such a fund may, together with accrued interest and bonuses declared in respect of that fund, be invested and reinvested.

(2) The value of a special fund created in terms of subsection (1) accrues to the relevant beneficiary upon termination of office as a member of any legislature mentioned in the Constitution, and must be paid to that beneficiary in terms of the rules of that fund.

Optional early pensions

11. A pensioner who is at least 50 years of age has the right to begin to receive the monthly pension at any time. A pensioner who wishes to exercise this right must send the prescribed notice to the Minister at least 60 days before the date on which pension payments are to begin. The amount of the monthly pension for that pensioner must be reduced by an amount equal to-

- (a) 3% of the monthly pension that would be payable if that pensioner were aged 60 at that time; multiplied by
- (b) the number of complete calendar years between the date of the first monthly payment and the date of that pensioner's 60th birthday.

Increases in pension amounts

12. At any time the Minister may increase the pensions payable to pensioners on any basis that the Minister considers appropriate. An increase in terms of this section must apply to every person-

- (a) who is receiving a pension at that date;
- (b) in respect of whom a determination is made that he or she is entitled to a pension that will commence after that date; and
- (c) in respect of whom a determination is subsequently made that he or she is entitled to a pension.

Pensions cannot be assigned or attached

13. (1) A pension, or a right in respect of a pension, payable in terms of this Act cannot be assigned, transferred, pledged, hypothecated or otherwise ceded, is not liable to be attached and is not subject to any form of execution under a judgment or an order of any court of law.

(2) If a beneficiary, or a person acting under the lawful authority of a beneficiary, attempts to assign, transfer, pledge, hypothecate or otherwise cede any pension payable in terms of this Act, the Minister may direct that the pension concerned must be withheld, suspended or discontinued.

(3) The Minister must give notice in plain language of the provisions of this section to every pensioner when the first monthly payment is made to that pensioner.

Qualification for other benefits

14. (1) In addition to any benefits granted in terms of this Act, a beneficiary who qualifies as contemplated in section 1 or 2 may apply for, and if qualified, may receive payments also in terms of either or both-

(a) the Social Pension Act, 1973;

(b) the Military Pension Act, 1973.

(2) Benefits received or to be received in terms of this Act must not be considered for the purposes of administering any income or asset test in terms of either of the Acts referred to in subsection (1).

(3) Benefits received in terms of this Act are taxable.

PART 2 - SPECIAL PENSIONS BOARD

Establishment of Board

15. There is hereby established a Special Pensions Board which is accountable to the Minister, and which consists of a Chairperson and four other members.

Appointment of members

16. (1) The Minister, in consultation with the President, must from persons nominated in accordance with subsection (2) appoint appropriate persons to be either full-time or part-time members of the Board, and must fill any vacancies on the Board as they arise by appointing from the persons so nominated, appropriate persons.

(2) The Minister shall for the purposes of nominating the persons referred to in subsection (1), establish a committee consisting of such number of members of Parliament as may be determined by him or her, and such members shall be appointed in such a manner that all political parties represented in Parliament are represented proportionately in such committee: Provided that in respect of each such party at least one member shall be appointed on such committee.

(3) A vacancy on the Board occurs when a member dies, when a member's resignation takes effect or when a member's appointment is terminated by the Minister in accordance with the regulations.

(4) A vacancy on the Board must be filled in accordance with subsection (1), as soon as practicable. In the meantime, the Board's proceedings and decisions continue to be valid.

Remuneration of members

17. (1) The Minister may determine the salaries, allowances and other conditions of service of any members of the Board who are not in the service of the State. The salaries, allowances and conditions of service of those members may not be reduced or be rendered less favourable without their consent while they remain in office.

(2) Members of the Board who are in the paid service of the State may not receive any additional remuneration for serving on the Board, but may have their additional expenses paid.

Conduct of members

18. (1) Board members are appointed in their individual capacity. Regardless of personal opinion or party affiliation, they must serve

independently and impartially, and perform their functions in good faith, giving full effect to the spirit and the specific obligations stipulated in this Act.

(2) Board members must give reasons for their decisions.

(3) Board members must avoid personal interests which conflict with the interests of the Board.

(4) If a member has a personal interest in any matter that might keep that member from performing the functions of the Board in a fair and unbiased manner, that member must disclose that interest in writing to the other members of the Board and may not participate in decisions regarding such matter.

Board to be unfettered

19. (1) No person or organ of state may fetter the discretion of the Board or any of its members.

(2) Organs of state must assist the Board to perform its functions.

Board business

20. (1) The Chairperson must determine the time and place of Board meetings.

(2) Subject to the regulations, the Board may establish its own rules of procedure for meetings of the Board.

(3) The Board-

(a) must develop a budget, and a written business plan by which it proposes to achieve its objectives;

(b) within 21 days after being appointed, must submit its first budget and business plan to the Minister for approval; and

(c) must prepare monthly written reports of its activities, and submit those reports to the Minister when the Minister requests them.

Staff and contractors

21. (1) The Board may-

(a) ask the public service to second to the Board any skilled personnel the Board requires to achieve its objectives; and

(b) conclude contracts in order to obtain the services of persons who have the requisite skills but are unavailable through secondment.

(2) When the Minister dissolves the Board-

(a) the secondment of all staff seconded to the Board will terminate; and

(b) all contracts with persons for services in terms of subsection (1)(b) will expire, and neither the Board nor the State will be liable for any damages in respect of the expiration of those contracts.

Chief Executive Officer

22. (1) The Board must appoint a person who has been seconded to it in terms of subsection 21 (1) to be Chief Executive Officer, subject to any

applicable law governing the seconded person's employment.

(2) The Chief Executive Officer must assist the Board in performing its functions, and is accountable to the Minister in respect of the performance of any functions that the Board assigns to the Chief Executive Officer. The Chief Executive Officer is responsible for the management and administrative control of the affairs of the Board.

(3) The Chief Executive Officer must perform the functions of his or her office impartially, subject to-

- (a) any part of any law relating to the public service, to the extent that the Board directs;
- (b) the Exchequer Act, 1975 (Act No. 66 of 1975); and
- (c) the Auditor-General Act, 1995 (Act No. 12 of 1995).

Board finances

23. (1) Benefits payable in terms of Part 1 of this Act must be paid from money appropriated by Parliament for that purpose.

(2) The Board's funds consist of money appropriated by Parliament, which the Board may use only-

- (a) for the defrayal of expenditures relating to its functions or the functions of the Review Board; and
- (b) in accordance with the current statement of estimated expenditures prepared by the Board, and approved by the Minister, in terms of subsection (3).

(3) (a) Each year, at a time that the Minister determines, the Board must submit a statement of its estimated expenditures, and of the estimated expenditures of the Review Board for the following financial year to the Minister for approval.

(b) During a financial year, the Board may submit an adjusted statement of estimated expenditures for that year to the Minister for approval.

(4) The Board may not incur expenditure that causes the total expenditure in that financial year to exceed the total approved expenditure for that financial year.

(5) The Board must open and maintain an account in the name of the Board with a bank registered in the Republic, or with another financial institution approved by the Minister, and must-

- (a) deposit to that account any money that the Board receives; and
- (b) make any payment on behalf of the Board, or the Review Board, from the account.

(6) The Chief Executive Officer-

- (a) is the accounting officer of the Board and is responsible for managing the Board's budget; and
- (b) subject to the Exchequer Act, 1975 (Act No. 66 of 1975), is accountable for all State money that the Board receives or pays, and must keep the records needed to comply with that Act.

(7) The Auditor-General must audit the Boards financial records.

(8) The financial year of the Board extends from 1 April each year to 31 March of the following year.

Duties and powers of Board

24. (1) The Board must take appropriate steps to communicate in plain language to all persons who may have an interest-

- (a) the right to benefits in terms of this Act;
- (b) the qualifications for benefits;
- (c) the procedure to apply for benefits; and
- (d) any other information that may assist a person to apply for a benefit.

(2) The Board may-

- (a) undertake or arrange for research relating to its objectives and functions; and
- (b) conduct any investigation that is required to perform its functions.

(3) (a) If an applicant does not qualify for a benefit in terms of this Act, the Board must consider whether the Truth and Reconciliation Commission, established by section 2 of the Promotion of National Unity and Reconciliation Act, 1995 (Act No. 34 of 1995), or any other organ of the State, may be able to assist the applicant, and if so, the Board must-

that
of
State; and

(i) forward the relevant application, together with the particulars the Board has compiled relative to the application, to that organ of State; and

(ii) advise the applicant that it has been done.

(b) Any organ of state receiving an application forwarded by the Board in terms of this subsection must accept and process that application as if it had been submitted to it as an application in terms of, and in the form prescribed by, any applicable law.

(4) If an applicant might qualify for a benefit in terms of section 2(1)(d)(iv), but, at the time of application, no court of law has made an order presuming the missing person to be dead, the Board, on behalf of the applicant, must take the necessary steps to obtain the appropriate court order.

Board investigations

25. (1) The Board, by written notice, may require a person to appear before it, to answer questions, and to produce any article or document in or under that person's possession, custody or control that might be relevant to an investigation. The notice must-

- (a) be in the prescribed form; and
- (b) be served on the person concerned either by registered letter addressed

to the person's last known address, or in the same manner that a summons is served on a witness to appear in a magistrate's court.

(2) The Board may administer an oath to, or take an affirmation from, and then question-

(a) a person who has been requested to appear under subsection (1); and

(b) a person who could have been so requested and who is present at the place where the Board's investigation is held, whether or not that person was required to appear before the Board.

(3) Any person questioned in terms of subsection (2) may refuse to answer any question if the answer could reveal that the person-

(a) had committed an offence; or

(b) had done or omitted to do anything that could expose that person to a claim for damages.

(4) The Board may request any person or political organisation to provide to the Board any relevant information, including information relating to an applicant in terms of this Act.

(5) Any person or political organisation from whom the Board has requested information in terms of subsection (4) must provide the Board with any relevant information at their disposal.

Legal proceedings against Board

26. (1) The State Liability Act, 1957 (Act No. 20 of 1957), applies, with the changes required by context, in respect of the Board, except that any reference in that Act to "the Minister of the department concerned" must be read as referring to the Chairperson of the Board.

(2) Members of the Board, or of the Boards staff, and persons contracted by the Board, are not liable for any cause of action arising out of anything reflected in any report, finding, point of view or recommendation that they make or express in good faith to Parliament, or any other person in terms of the Constitution or this Act.

(3) Members of the Board, or of the Boards staff, and persons contracted by the Board must not disclose any information revealed to them in the performance of their functions in terms of this Act, except as specifically required or permitted by this Act or any other law.

Dissolution of Board

27. (1) The Minister may dissolve the Board at any time after the Board has completed its activities, but not later than 2 years after the commencement date.

(2) Upon dissolution of the Board-

(a) the Pensions Administration of the Department of Finance is responsible for the performance for the administrative functions of the Board in terms of this Act; and

(b) the Minister must assume responsibility for the discretionary functions of the Board in terms of this Act, but the Minister may delegate

responsibility to the head of the said Pension Administration.

Review Board

28. (1) There is hereby established a Special Pensions Review Board, consisting of a judge of the Supreme Court as its Chairperson and two other members, one of whom must be an actuary.

(2) The Minister must appoint the members of the Review Board, and fill any vacancies on the Review Board as they arise.

(3) The Review Board must determine its own rules of procedure.

(4) The Review Board must consider every appeal submitted to it and may confirm the decision of the Board or may replace it with another decision.

(5) The provisions of sections 16, 17, 18, 19, 25 and 26 apply to the Review Board, with the changes required by context.

PART 3-GENERAL PROVISIONS

Minister's powers

29. (1) The Minister may make regulations-

(a) required to achieve the objects and purposes of this Act; or

(b) regarding any matter required or permitted to be prescribed in terms of this Act.

(2) The Minister may, by notice in the Government Gazette, amend or replace the amounts mentioned in Schedule 3, subject to the appropriation by Parliament of money required to finance any increases of such amounts.

(3) Any power, function or duty conferred, assigned or imposed upon the Minister by this Act, may be delegated or assigned by the Minister, in writing, to any officer in the public service, but the delegation or assignment of such power, function or duty does not divest the Minister of that power, function or duty.

Offences

30. (1) A person or political organisation is guilty of an offence if that person or organisation-

(a) prevents or obstructs the performance of any activity contemplated by this Act;

(b) refuses, or without sufficient cause fails, to comply with an obligation imposed in terms of this Act; or

(c) intentionally submits false or misleading information to the Board.

(2) A person who intentionally fails to notify the Department of Finance of the-death of a person who was receiving benefits in terms of this Act, and as a result of that failure is benefited in any way, is guilty of an offence.

(3) Except as is otherwise provided in subsection (4), a person or political organisation convicted of an offence in terms of subsection (1) is liable for a maximum fine of R5000.

(4) A person or political organisation convicted of an offence in terms of subsection (1) in circumstances in which such person or organisation has benefited in any way, or who is convicted in terms of subsection (2), is liable to the same penalty as that applicable in respect of the crime of fraud.

Definitions

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

- or
- (i) "actuary" means a Fellow of the Institute of Actuaries of England the Faculty of Actuaries in Scotland or the Society of Actuaries of America; (iv)
 - (ii) "applicant" means a person who submits a completed application as contemplated in section 6; (ii)
 - (iii) "application" means-
 - (a) in respect of a person seeking benefits as a pensioner, a completed and sworn statement set out in form 1 of Schedule 2;
 - (b) in respect of a person seeking a benefit as a spouse or dependant of a deceased person, a completed and sworn statement set out in form 2 prescribed in Schedule 2; (i)
 - (iv) "beneficiary" means a person who in terms of a determination of the Board qualifies for a benefit; (v)
 - (v) "benefit" means a sum of money payable in terms of Part 1; (xiii)
 - (vi) "Board" means the Special Pensions Board, established by section 15; (xvii)
 - (vii) "closing date" means the date 12 months after the commencement date; (xx)
 - (viii) "commencement date" means the date on which this Act comes into operation in terms of section 32(2); (vii)
 - (ix) "Constitution" means the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993); (ix)
 - (x) "dependant" means an applicant who-
 - (a) is the natural child or parent of a deceased person on whom the applicant financially depended for maintenance at the time the person died; and
 - (b) at the application date is either not yet 21 years of age, or is unable to provide adequately for his or her maintenance; (iii)
 - (xi) "Minister" means the Minister of Finance; (xii)
 - (xii) "pension" means a right to the monthly payment of a pension determined in terms of section 1; (xiv)

his

- (xiii) "pensioner" means a person entitled to a pension; (xv)
- (xiv) "permanent and total disability" means any physical or mental condition that renders a person unable to provide adequately for or her own maintenance; (vi)
- (xv) "political organisation" means an association of persons formed with either a political or military purpose, whether or not that association was incorporated, and which-
 - (a) existed for at least five years prior to 2 February 1990;
 - (b) had a permanent governing and executive structure; and
 - (c) before 2 February 1990, was restricted in terms of any law or was declared to be unlawful in terms of any law; (xvi)
- (xvi) "public service" means a department 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 the Public Service Act; (xxi)
- (xvii) "regulation" means a regulation made in terms of section 29(1); (xviii)
- (xviii) "Republic" means the national territory as referred to in section 1 of the Constitution; (xix)
- (xix) "Review Board" means the Special Pensions Review Board, established by section 28(1) of this Act; (x)
- (xx) "spouse" means an applicant who, at the date on which another person died or disappeared, was the partner of that person in a marriage relationship; (viii)
- (xxi) "survivor" means a spouse or dependant or a deceased person; (xiii)
- (xxii) "this Act" includes the section numbers, the Schedules and any regulations made in terms of section 29, but does not include the page headers, headings or footnotes; (xi)
- (xxiii) "2 February 1990" means, with respect to any person, 2 February 1990, or the first date after 2 February 1990 on which that person was released from prison or detention in terms of any law mentioned in Schedule 1 of this Act, or from the terms of an order referred to in section 1(1)(b)(ii), or, in the case of a person who was engaged in the full-time service of a political organisation, the day on which that person was repatriated or indemnified, whichever was the earlier. (xxii)

to

- (2) In the application of the definition of-
 - (a) "spouse" mentioned in subsection (1) "marriage relationship" means-
 - (i) a marriage;
 - (ii) a union contracted in accordance with customary law or which is recognised as marriage in accordance with the tenets of any religion;

(iii) a continuous cohabitation in a homosexual or heterosexual partnership for a period of at least 5 years;

(b) "political organisation" mentioned in that subsection, a particular political party may be recognised as such under one name only.

Short title and commencement

32. (1) This Act is called the Special Pensions Act, 1996.

(2) This Act comes into operation on a date to be set by the President by proclamation in the Government Gazette.

SCHEDULE 1

CRIMES AND LIST OF ACTS

(Section 1(1)(b)(iii))

(1) The common law in respect of the crimes of treason, sedition and crimen laesae majestatis(5).

(2) Any of the Acts mentioned in the following table:

NO. AND YEAR OF ACT	SHORT TITLE
Act 27 of 1914	Riotous Assemblies and Criminal Law Amendment Act, 1914
Act 38 of 1927	Native Administration Act, 1927
Act 44 of 1950	Suppression of Communism Act, 1950
Act 3 of 1953	Public Safety Act, 1953
Act 8 of 1953	Criminal Law Amendment Act, 1953
Act 17 of 1956	Riotous Assemblies Act, 1956
Act 76 of 1962	General Law Amendment Act, 1962
Act 37 of 1963	General Law Amendment Act 1963
Act 62 of 1966	General Law Amendment Act, 1966
Act 83 of 1967	Terrorism Act, 1967
Act 94 of 1974	Second General Law Amendment Act, 1974
Act 74 of 1982	Internal Security Act, 1982

SCHEDULE 2

APPLICATION FORM FOR PENSION (UNDER SPECIAL PENSIONS ACT, 1996)

[NOT REPRODUCED HERE]

SCHEDULE 3

PENSIONS PAYABLE IN TERMS OF SUBSECTION (6) OF SECTION 1

AGE CATEGORY IN YEARS

ANNUAL PENSION AMOUNT IN RANDS

<p>-</p> <p>35 but younger than 45 service</p> <p>000</p>	<p>6 000 PLUS 1 200 for each year of exceeding 5 years but less than or equal to 20 years with maximum amount of 24</p>
<p>45 but younger than 65</p> <p>amount</p>	<p>12 000 PLUS 1 200 for each year of\$ service exceeding 5 years but less than or equal to 20 years, with maximum of 30 000</p>
<p>65 and older</p> <p>000</p>	<p>24 000 PLUS 1 200 for each year of service exceeding 5 years with maximum amount of 42 000. Where years of service exceed 25 years, a fixed amount of 84</p>

FOOTNOTES:

1. Words that appear in italics in the text of the Act have been specially defined in section 31. The definitions section begins on page 24.

2. "Political organisation" has a special meaning set out in the "definitions section" (section 31). It means an association with either a political or military purpose, which may or may not have been incorporated, and which-

- (i) existed for at least five years prior to 2 February 1990;
- (ii) had a permanent governing and executive structure; and
- (iii) before 2 February 1990, was restricted in terms of any law or was declared to be unlawful in terms of any law.

3. Schedule 1 of this Act lists the offences that are relevant for this section. It should not be confused with Schedule 1 of the Criminal Procedure Act, 1977, which is also referred to in this section. The last-mentioned Schedule contains a very different list of crimes.

4. Section 24(4) gives the Board the power to apply on behalf of an applicant for a "presumption of death order" in cases where no such order has previously been made.

5. A person commits this crime by unlawfully and intentionally taking on the authority which belongs only to the President or government and performs acts which undermine the supreme power of the State.