

PROPOSED AMENDMENTS TO GOVERNMENT EMPLOYEES PENSION LAW TO PROVIDE
FOR TWO POT RETIREMENT SYSTEM FOR INCLUSION IN PENSION FUND AMENDMENT
BILL [B 3-2024]

To amend the Government Employees Pension Law, 1996, so as to insert certain definitions in order to provide for the introduction of the savings withdrawal benefit; to provide for the appropriate account of a member's interest in the savings, retirement and vested components, to provide for deductions that may be made; and to provide for matters connected therewith.

Amendment of section 1 of Proclamation 21 of 1996, as amended by section 1 of Act 35 of 2003, section 1 of Act 21 of 2004, section 1 of Act 19 of 2011, section 53 of Act 11 of 2013 and section 11 of Act 9 of 2023

1. Section 1 of the Government Employees Pension Law, 1996 (Proclamation No. 21 of 1996) (herein referred to as "the Government Employees Pension Law"), is hereby amended—

(a) by the insertion after the definition of "dependent" of the following definition:

"**Divorce Act**" means the Divorce Act, 1979 (Act No. 70 of 1979);

(b) by the insertion after the definition of "member" of the following definitions:

"**Income Tax Act**" means the Income Tax Act, 1962 (Act No. 58 of 1962;

'**member's interest in the retirement component**' has the meaning as defined in section 1(1) of the Income Tax Act;

'**member's interest in the savings component**' has the meaning as defined in section 1(1) of the Income Tax Act;

'**member's interest in the vested component**' has the meaning as defined in section 1(1) of the Income Tax Act;";

(c) by the substitution for the definition of "pension interest" of the following definition:

"**pension interest**", in relation to a court order granted under section 7(8)(a) of the Divorce Act or a court order granted in respect of the division

of assets of a marriage according to the tenets of a religion, means, in relation to a party who is a member of a fund, that member's share of the value of the fund, determined in terms of the rules of that fund, on the date of the court order;”;

(d) by the insertion after the definition of “related fund” of the following definition:

“**retirement component**’ has the meaning as defined in section 1(1) of the Income Tax Act subject to the applicable *provisos* in item 6B of the Second Schedule to the Income Tax Act;”;

(e) by the insertion after the definition of “rule” of the following definitions:

“**savings component**’ has the meaning as defined in section 1(1) of the Income Tax Act subject to the applicable *provisos* in item 6B of the Second Schedule to the Income Tax Act;

‘**savings withdrawal benefit**’ has the meaning as defined in section 1(1) of the Income Tax Act);”;

(f) by the substitution for the definition of “this Law” of the following definitions:

“**this Law**’ includes the rules[.]; and

‘**vested component**’ has the meaning as defined in section 1(1) of the Income Tax Act subject to the applicable *provisos* in item 6B of the Second Schedule to the Income Tax Act;”.

Insertion of section 1A in Proclamation 21 of 1996

2. The following section is hereby inserted in the Government Employee Pension Law after section 1:

“Application of Act

1A. In the event of a conflict between the provisions of this Act and the Divorce Act, the provisions of this Act prevail.”.

Substitution of section 21 of Proclamation 21 of 1996, as substituted by section 45 of Act 99 of 1998, section 2 of Act 19 of 2011 and as amended by section 2 of Act 21 of 2004

3. The following section is hereby substituted for section 21 of the Government Employees Pension Law:

“Withdrawals and deductions from member’s pension benefits

21. (1)(a) 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, except for in terms of a court order in terms of section 26 or 40 of the Maintenance Act, 1998 (Act No. 99 of 1998), section 7(8) of the Divorce Act or a court order granted in respect of the division of assets of a marriage according to the tenets of a religion.

(b) In the event of the beneficiary attempting to cede, pledge or hypothecate a benefit or right thereto, payment of the benefit may be withheld, be liable to be attached or subjected to any form of execution under a judgment 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, the Fund may—

(a) permit a member to take a savings withdrawal benefit where—

(i) a loan or guarantee has been furnished by an employer; or

(ii) there is a judgment contemplated in paragraph (c)(iii)(bb) in favour of the employer that has not yet been executed:

Provided that the withdrawal will not result in there being insufficient remaining funds to repay the loan or guarantee or to comply with the judgment:

(b) suspend a savings withdrawal benefit where the employer has not obtained a judgment contemplated in paragraph (c)(iii)(bb), and the withdrawal will result in there being insufficient remaining value to comply with the pending order, if granted, for a period of 12 months pending the judgment by any court including a magistrate's court;

(c) deduct any amount due by the member to the member's employer on the date of retirement or the date on which the member ceases to be a member of the Fund, in accordance with the Income Tax Act and the Tax Administration Act, 2011 (Act No. 28 of 2011), and requirements prescribed by the rules, in relation to how deductions in terms of this section and savings withdrawal benefits must be applied by the Fund, in respect of—

(i) 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;

(ii) 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;

(iii) the amount of any loss which has been sustained by the employer through theft, dishonesty, 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 has been proved in a court of law in respect of which—

(aa) the member has in writing admitted liability to the employer;

or

(bb) judgment has been obtained against the member in any

court, including a magistrate's court, and includes a compensation order granted in terms of section 300 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

- (iv) any amount, plus interest at the rate determined by the Board after any other written agreement between the member and the employer in respect of a study bursary from any benefit payable to the member or a beneficiary in terms of the rules of the Fund, and pay such amount to the employer concerned; or
- (v) any amount, plus interest at the rate determined by the Board after consultation with the actuary, due to the Fund in respect of an amount for which the Fund becomes liable under a guarantee furnished in respect of a member for a loan granted by some other person to that member in terms of the rules from—
 - (aa) the amount of the benefit to which a member becomes in terms of the rules of the fund;
 - (bb) in the case of a transfer of the member to another fund, the amount of the benefit which the fund is so entitled to transfer, if the board of the transferor fund is satisfied that it is not otherwise reasonably possible to negotiate the repayment or to transfer the loan or guarantee; or
 - (cc) in the case of default on the repayment of any such loan by the member concerned in circumstances where his or her membership of the fund is not terminated, the amount of the benefit which the member would have received on termination of the membership on the date of default, if the deduction is only effected as a last resort after the board of the fund is satisfied that no other arrangement for the required repayment can be made;
- (d) deduct any amount payable in terms of a maintenance order as defined in section 1 of the Maintenance Act, 1998 (Act No. 99 of 1998); or
- (e) deduct any amount payable as maintenance in terms of an interim

maintenance order granted by the court in terms of rule 43 of the High Court rules or rule 58 of the Magistrates' Court rules, made under section 6 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985).

(4) In respect of a deduction referred to in subsection (3)(d), the Fund must pay the maintenance, as directed by the maintenance order as a lump sum in respect of arrear maintenance or future maintenance from the benefit to which the member becomes entitled upon termination of his or her membership of the Fund or on retirement from the fund.

(5) For the purposes of paragraph (c)(iv)(bb) and (cc) of subsection (3), the amounts so deducted shall be deemed to be a benefit to which the member becomes entitled upon termination of his or her membership of the fund for reasons other than as a result of retirement or death arising at the date of the transfer or the default.

(6) 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."

Substitution of section 24A of Proclamation 21 of 1996, as inserted by section 3 of Act 19 of 2011 and substituted by section 12 of Act 18 of 2019

4. The following section is hereby substituted for section 24A of the Government Employees Pension Law:

"Payment of pension interest upon divorce or dissolution of marriage according to tenents of religion

24A. (1) The Fund must reduce a member's pension interest by any amount assigned from the member's pension interest to the member's former spouse in terms of a decree of divorce granted under section 7(8)(a) of the

Divorce Act or a court order granted in respect of the division of assets of a marriage according to the tenets of a religion.

(2) A pension fund may not, without the consent of the former spouse, grant a loan or guarantee or permit a savings withdrawal benefit to be taken by a member if—

(a) the fund received a formal notification from the former spouse that a divorce has been instituted, as defined in the Divorce Act; or

(b) an application has been made for a court order in respect of the division of assets of a marriage in accordance with the tenets of any religion.

(3) The prohibition in terms of subsection (2) applies until a court order is issued.

(4) (a) Subject to paragraph (k), for purposes of section 7(8)(a) of the Divorce Act or in terms of or a court order granted in respect of the division of assets of a marriage according to the tenets of a religion, the portion of a member's pension interest assigned to the member's former spouse is deemed to accrue to the member on the date on which the decree of divorce or court order is granted.

(b) The amount of the member's pension interest in the Fund must be determined and the amount of the member's pension interest that is assigned to the former spouse must be calculated by the Fund in accordance with the rules as at the date of the decree of divorce or the date of the court order granted in respect of the division of assets of a marriage according to the tenets of a religion.

(c) Prior to determining the amount of the member's pension interest that is assigned to the former spouse, the amount of the member's pension interest referred to in paragraph (b) must first be reduced in accordance with the rules by any amount of the member's pension interest which, in a previous divorce or a previous court order granted in respect of the division of assets of a marriage according to the tenets of a religion, was paid over or awarded to another party.

(d) (i) The benefit that is subsequently payable to the member shall,

as provided in the rules, be decreased by reducing the member's years of pensionable service to take into account the pension interest of the member which was assigned to any former spouse of the member.

(ii) The rules referred to in subparagraph (i) shall be made on the advice of an actuary.

(e) The Fund must, within 45 days of the submission of the court order by the former spouse of a member, request the former spouse to elect whether the amount to be deducted must be—

(i) paid directly to the former spouse; or

(ii) transferred to an approved retirement fund on behalf of the former spouse.

(f) The former spouse must, within 120 days of being requested to make a choice—

(i) inform the Fund of the manner in which the amount referred to in paragraph (e) must be dealt with; and

(ii) if the former spouse chooses that the amount must be—

(aa) paid to the former spouse directly, provide the Fund with the details that are necessary to effect the payment; or

(bb) if the former spouse chooses that the amount must be transferred to an approved pension fund on his or her behalf, provide the Fund with the details of that approved retirement fund;

(g) The Fund must pay or transfer the amount in the circumstances contemplated in—

(i) paragraph (f)(ii), within 30 days; or

(ii) paragraph (f)(iii), within 60 days,

in accordance with the former spouse's choice, failing which interest becomes payable on such amount at a rate determined in the rules.

(h) In the event that the former spouse fails to make a choice or identify the approved retirement fund to which the amount must be transferred within the period referred to in paragraph (f), the Fund must pay

the amount directly to the former spouse within 30 days of the expiry of that period, failing which interest becomes payable on such amount at a rate determined in the rules.

(i) Despite paragraph (h), in the event that the Fund cannot reasonably ascertain the manner in which the payment to the former spouse must be effected, the Fund must retain the amount plus interest as determined in the rules of the Fund, until such time as details of the manner in which that payment must be effected is made available to the Fund by the member, the former spouse or any other person whom the Fund is satisfied has the necessary authority and capacity to instruct the Fund in that respect;

(j) A former spouse—

- (i) is not a member or beneficiary in relation to the fund; and
- (ii) is entitled to the accrual of fund return from the date of the court order until payment or transfer of the deduction contemplated in subsection (1)(b).

(k) Any portion of a member's pension interest assigned to a former spouse in terms of a decree of divorce or a court order granted prior to the enactment of this subsection must, for purposes of any law other than the Income Tax Act including, but not limited to, section 7(9)(a) of the Divorce Act or a court order granted in respect of the division of assets of a marriage according to the tenets of a religion, be deemed to have accrued to the member on the date of enactment of this subsection, and must be paid or transferred in accordance with paragraphs (a) to (j)."