

**REPUBLIC OF SOUTH AFRICA**

**DRAFT**

**SPECIAL PENSIONS AMENDMENT BILL**

---

*(As introduced in the National Assembly (proposed section 75); explanatory  
summary of Bill and prior notice of its introduction published in Government  
Gazette...)*

*(The English text is the official text of the Bill)*

---

**(MINISTER OF FINANCE)**

**GENERAL EXPLANATORY NOTE:**

[            ]        Words in bold type in square brackets indicate omissions from the existing enactments.  
 \_\_\_\_\_        Words underlined with solid line indicate insertions in existing enactments.

---

**BILL**

**To amend the Special Pensions Act, 1996, so as to provide for the retention of benefits that have been determined before the lapsing of certain provisions; to allow persons who qualify for more than one benefit to be granted the most advantageous benefit; to provide the surviving spouse or beneficiary the right to a survivor's lump sum benefit of persons who have died or presumed dead in law; to provide for condonation of late applications; to repeal a section and to provide for matters connected therewith.**

**BE IT ENACTED** by the Parliament of the Republic of South Africa, as follows:—

**Amendment of section 6A of Act 69 of 1996, as inserted by section 5 of Act 27 of 2005**

1.        Section 6A of the Special Pensions Act, 1996 (in this Act referred to as the principal Act), is hereby amended by the substitution for subsection (2) of the following subsection:

“(2)        The lapsing of Part 1 shall not affect any benefit payable to any pensioner or beneficiary where the designated institution has made a determination in terms of section 7 before 31 December 2006.”.

**Amendment of section 6A*bis* of Act 69 of 1996, as inserted by section 2 of Act 13 of 2008**

2. Section 6A*bis* of the principal Act is hereby amended—

(a) by the substitution for subsection (3) of the following subsection:

“(3) A pensioner who qualifies for a benefit in terms of subsection (1) is entitled to receive a pension, payable monthly, commencing on 1 April **[2001]** 1995.”;

(b) by the substitution for subsection (5) of the following subsection:

“(5) A person who qualified for a benefit under Part 1 and qualifies for another benefit under Part 1AA must be granted the benefit that is most advantageous to that person.”; and

(c) by the substitution for paragraph (b) of subsection (7) of the following paragraph:

“(b) The lapsing of Part 1AA of the Act shall not affect any benefit payable to any pensioner or beneficiary where the designated institution has made a determination in terms of section 6A*bis* before 31 December 2010.”.

**Repeal of section 6B of Act 69 of 1996, as inserted by section 6 of Act 27 of 2005 and amended by section 4 of Act 13 of 2008**

3. Section 6B of the principal Act is hereby repealed.

**Substitution of section 6C of Act 69 of 1996, as inserted by section 6 of Act 27 of 2005**

4. The following section is hereby substituted for section 6C of the principal Act:

**“Right to lump sum benefit**

6C. A person has the right to a survivor’s lump sum benefit if that person is a surviving spouse, or if there is no surviving spouse, is the surviving dependant of a person who has died or presumed dead in law but had that person survived, he or she would have qualified in terms of section 1 or 6Abis(1).”.

**Amendment of section 6D of Act 69 of 1996, as inserted by section 6 of Act 27 of 2005 and amended by section 5 of Act 13 of 2008**

5. Section 6D of the principal Act is hereby amended—

(a) by the substitution for paragraph (c) of subsection (3) of the following paragraph:

“(c) where there is no surviving spouse, a dependant **[who became an orphan,]** is entitled to receive the monthly pension that would have been payable to a surviving spouse in terms of paragraph (a) or (b)—

(i) until the **[orphan]** dependant reaches the age of 18; or

(ii) until the **[orphan]** dependant reaches the age of 23, if the **[orphan]** dependant is a full-time student; or

(iii) for the remainder of the **[orphan's]** dependant's life, if the **[orphan]** dependant suffers from a permanent and total disability on the date of **[such]** the pensioner's death.”; and

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

“(4) A surviving spouse or **[orphan]** dependant who qualifies for a benefit in terms of subsection (3) is entitled to receive a pension, payable monthly, commencing on the date on which his or her application was made.”.

**Amendment of section 6G of Act 69 of 1996, as inserted by section 6 of Act 27 of 2005 and amended by section 8 of Act 13 of 2008**

6. Section 6G of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(b) (i) The form must be submitted to the designated institution for approval as soon as possible after the date on which the spouse or child qualifies to apply for a benefit in terms of this Part, but not later than 36 months thereafter.

(ii) Notwithstanding subparagraph (i), the designated institution may condone any late application if the designated institution is satisfied that, for reasons beyond the control of the applicant, the application could not be submitted before the expiry of the period of 36 months.”.

**Amendment of section 8 of Act 69 of 1996, as amended by section 2 of Act 21 of 2003 and section 11 of Act 12 of 2008**

7. Section 8 of the principal Act is hereby amended by the insertion after subsection (1) of the following subsection:

“(1A) Notwithstanding subsection (1), the Appeal Board may condone any late application if the Appeal Board is satisfied that, for reasons beyond the control of the applicant, the written notice for appeal could not be submitted within 60 days of the date of the decision of the designated institution.”.

**Short title and commencement**

8. (1) This Act is called the Special Pensions Amendment Act, 2024.

(2) This Act takes effect on a date determined by the President by proclamation in the *Gazette*.

## MEMORANDUM ON OBJECTS OF SPECIAL PENSIONS AMENDMENT BILL, 2024

### 1. PURPOSE OF BILL

1.1 The Special Pensions Act, 1996 (“the Act”), makes provision for payment of special pension to persons who made sacrifices or served the public interest in the establishment of the constitutional dispensation. In the implementation of the Act, misalignments have been identified which require amendments to the Act.

1.2 The Special Pensions Amendment Bill (“the Bill”) proposes amendments to the Act so as to—

- provide for the retention of benefits that have been determined before the lapsing of certain provisions;
- allow persons who qualify for more than one benefit to be granted the most advantageous benefit;
- provide the surviving spouse or beneficiary the right to a survivor’s lump sum benefit of persons who have died or presumed dead in law;
- provide for condonation of late applications;
- repeal a provision; and
- provide for matters connected therewith.

### 2. CLAUSE-BY-CLAUSE SUMMARY OF PROPOSED AMENDMENTS

2.1 *Clause 1* of the Bill provides for the substitution of section 6A(2) of the Act so as to provide that the lapse of Part 1 of the Act may not affect any benefit

payable to any pensioner or beneficiary where the designated institution has made a determination in terms of section 7 before 31 December 2006.

- 2.2 *Clause 2* of the Bill provides for the amendment of section 6A*bis*(3) of the Act by the substitution of the year “2001” with “1995” to align the dates for commencement of entitlement to a pension benefit for a person who is 30 years of age and a person who is 35 years of age. It provides for the substitution of section 6A*bis*(5) to allow a person who qualifies for a benefit under different parts of the Act to be granted the most advantageous pension benefit. Furthermore, it substitutes section 6A*bis*(7)(b) to provide that the lapse of Part 1AA of the Act does not affect any benefit payable to any pensioner or beneficiary where the designated institution has made a determination in terms of section 6A*bis* before 31 December 2010.
- 2.3 *Clause 3* of the Bill proposes the repeal of section 6B of the Act in its entirety. This section is unfair particularly to spouses. There is no justification for why a surviving spouse should not receive a survivor's lump sum benefit in respect of a deceased spouse, or why a child should not receive a survivor's lump sum benefit if both are receiving special pension in their own rights.
- 2.4 *Clause 4* of the Bill substitutes section 6C of the Act so as to provide that a person has the right to a survivor's lump sum benefit in terms of the Act if that person is a surviving spouse, or if there is no surviving spouse, the surviving dependent, of a person who has died or presumed in law to be dead but had he or she survived, would have qualified in terms of section 1 or 6A*bis*(1).
- 2.5 *Clause 5* of the Bill replaces “orphan” with “dependent” in section 6D(3)(c) and (4) of the Act. The current wording of the provision is restrictive and therefore, fails to capture all the people who may be dependent on the pensioner. This is

unfair and may be unconstitutional. The basis upon which children of a deceased veteran should be made to qualify for a monthly pension in respect of their deceased parent should not be whether a surviving parent is wealthy or indigent or whether she is deceased or alive. The only consideration should be that because the parents of the deceased were not married a monthly pension should be paid to all the children of the deceased equally.

2.6 *Clause 6* of the Bill amends section 6G(1) of the Act to ensure that the designated institution may condone any late application.

2.7 *Clause 7* of the Bill amends section 8 of the Act to provide that notwithstanding section 8(1) of the Act, the Appeal Board may condone any late application if the Appeal Board is satisfied that, for reasons beyond the control of the applicant, the notice of appeal could not be submitted within 60 days of the date of the decision of the designated institution.

2.8 *Clause 8* of the Bill provides for the short title and commencement of the Bill.

### **3. ORGANISATIONS AND INSTITUTIONS CONSULTED**

Government Pension Administration Agency

### **4. FINANCIAL IMPLICATIONS FOR STATE**

The implementation of the proposed amendments to the Act is estimated to cost R98 133 124 in respect of back payments and R847 606 in respect of future costs (in respect of children's pensions).

### **5. PARLIAMENTARY PROCEDURE**



- 5.1 The Constitution of the Republic of South Africa, 1996 (“the Constitution”) regulates the manner in which legislation may be enacted by the legislature and thus prescribes the different procedures to be followed for such enactment. The national legislative process is governed by sections 73 to 77 of the Constitution.
- 5.2 The test for tagging is not concerned with determining the sphere of government that has competence to legislate on a matter, nor the process concerned with preventing interference in the legislative competence of another sphere of government. In *Tongoane v Minister of Agriculture and Land Affairs* 2010 (6) SA 214 (CC), the Constitutional Court ruled on the test to be used when tagging a Bill. The Court held, in paragraph 70, that the “*test for determining how a Bill is to be tagged must be broader than that for determining legislative competence*”. Whether a Bill is a section 76 Bill is determined in two ways. First by the explicit list of legislative matters in section 76(3), and second by whether the provisions of a Bill in substantial measure fall within a concurrent legislative competence (see paragraphs 70-72 of the judgment). The Court held that the tagging test focuses on all provisions of the Bill in order to determine the extent to which they substantially affect functional areas listed in Schedule 4, and not on whether any of its provisions are incidental to its substance.
- 5.3 We have considered all the provisions in the Bill in light of Schedules 4 and 5 to the Constitution and found that the Bill does not provide for the amendment of the Constitution or money matters, as stated in section 77 of the Constitution and therefore we do not regard it necessary, to consider sections 74 and 77 of the Constitution.

- 5.4 The State Law Advisers and the National Treasury are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.
- 5.5 The State Law Advisers and the National Treasury are of the opinion that it is not necessary to refer the Bill to the National House of Traditional and Khoi-San Leaders in terms of section 39(1)(a) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), since it does not contain provisions pertaining to traditional or KhoiSan communities or customary law or customs of traditional or Khoi-San communities, nor any matter referred to in section 154(2) of the Constitution.