

**NATIONAL ASSEMBLY**  
**QUESTION FOR WRITTEN REPLY**  
**QUESTION NUMBER: 3839 [NW4585E]**  
**DATE OF PUBLICATION: 23 OCTOBER 2015**

**3839. Adv A de W Alberts (VF Plus) to ask the Minister of Finance:†**

- (1) (a)(i) When was the clean break principle instituted that is applicable when a member of the Government Employees Pension Fund (GEPF) gets divorced and (ii) why the stated principle is applicable when a member of the GEPF gets divorced and (b) how many members of the GEPF have been affected by the specified principle to date;
- (2) (a) what is the legal basis on which the specified principle is founded, with specific reference to the relevant (i) legislation (ii) regulations and (iii) administration of justice and (b) why the specified principle is not a violation of the Pension Funds Amendment Act, Act 65 of 2001, and the National Credit Act, Act 34 of 2005;
- (3) (a) what has been the frequency of divorces in the GEPF since the application of the specified principle, (b) what is the estimate regarding divorces for the next five years and (c) regarding how many of the divorces the principle (i) has been applied and (ii) is projected to apply in the future?

NW4585E

**REPLY:**

1. (a) The 'clean break principle' in relation to the Government Employees Pension Law, 1996 (Proclamation No. 21 of 1996) ("the GEP Law"), which regulates the GEPF, was incorporated through the GEP Law Amendment Act, No. 19 of 2011, which came into effect on 14 December 2011. Section 24A was inserted into the GEP Law, to provide for the payment of pension interest upon divorce or dissolution of customary marriage.

It is important to note, that the GEPF is not regulated in terms of the Pension Funds Act, 1956 (Act No. 24 of 1956) ("the Pension Funds Act"), but is regulated in terms of the GEP Law. Section 24A of the GEP Law was modelled on and sought to align the GEP Law with section 37D of the Pension Funds Act, 1956 (Act No. 24 of 1956) in particular, to provide for the implementation of the 'clean break principle', by providing for the payment of a pension interest to a former spouse of a member on divorce or the dissolution of a customary marriage. Prior to the insertion of section 24A in the GEP Law, the GEP Law and the Rules of the GEPF did not allow a former spouse of a member to claim a portion of a member's pension interest, in terms of a divorce order or an order for the dissolution of a customary, soon after the divorce order or the order for the dissolution of a customary marriage was granted. The former spouse could only receive a portion of the member's interest after the exit of the member from the GEPF (on resignation or retirement). With the insertion of section 24A in the GEP Law and

amendments to the Rules of the GEPF, a former spouse now can receive the proportion of a member's pension benefit that is granted in terms of a court order for divorce or the dissolution of a customary marriage, soon after the order is granted.

In order to implement section 24A of the GEP Law, the Rules of the GEPF were amended, to include definitions of "divorce", "divorce debt" and "divorce order", and a new Rule 14.10 was inserted in the Rules of the GEPF with effect from 1 April 2012.

(b) GEPF and GPAA are still in the process of collating the statistics on members whose benefit has been reduced as a result of a divorce order settlement.

2. (a) The legal basis on which the 'clean break principle' is implemented is by virtue of section 24A of the GEP Law and Rule 14.10 of the Rules of the GEPF, as noted in the response to question 1(a) above. In relation to the administration of justice, a court issues a court order that includes an order for the distribution of pension benefits in terms of section 7(8) of the Divorce Act, 1979 (Act No. 70 of 1979). In terms of Rule 14.10 of the GEPF, the court order must then be provided to the GEPF, who then will implement the order in relation to the division of the pension fund benefits in accordance with the terms of the order and Rule 14.10.

(b) The implementation of the "clean break principle" for the GEPF is not in conflict with the Pension Funds Act (as amended by the Pension Funds Amendment Act, 2001 and subsequent amendments) as the GEPF does not fall under this Act. . Section 24A of the GEP Law gives effect to the 'clean break' principle for the GEPF.

It is not clear why the Honourable Member believes that the implementation of the "clean break principle" violates the National Credit Act. It is my understanding that the National Credit Act only applies in relation to "credit agreements" as defined in the National Credit Act. The "clean break principle" applies in relation to the implementation of a court order on divorce or the dissolution of a customary marriage, which is implemented in accordance with the GEP Law and the Rules of the GEPF. The court order does not constitute a "credit agreement" so the National Credit Act does not apply. Even if the court order was made in respect of a "settlement agreement", it is an order of court, and cannot be construed as being a "credit agreement".

3. The GEPF does not estimate the frequency of divorce. The GEPF will continue to honour divorce orders that are presented.