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Government Notice

OFFICE OF THE PRIME MINISTER

No. 85

1990

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. 21 of 1990: Members of the National Assembly and other Office-bearers Pensions Act, 1990.

Act No. 21, 1990

**MEMBERS OF THE NATIONAL ASSEMBLY
AND OTHER OFFICE-BEARERS
PENSIONS ACT, 1990**

ACT

To provide for the payment of pensions and gratuities to members of the National Assembly, other office-bearers and their widows, widowers and dependants; to regulate the payment of contributions by members and office-bearers; and for matters connected therewith.

(Signed by the President on 3 December 1990)

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

Definitions.

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

“dependant”, in relation to a member or office-bearer, means any minor child, including any step-child, legally adopted child or child born out of a marriage by customary law, of such member or office-bearer, who is not self-supporting, or any such a child who is not a minor, but who is not self-supporting by reason of any permanent physical or mental disability;

“fixed date” means -

- (a) in relation to a person who is a member or office-bearer on the date of commencement of this Act, the date on which such person became a member or was appointed to the office concerned, as the case may be;
- (b) in relation to any person declared as an office-bearer under subsection (2), the date with effect from which the person concerned has been so declared; and

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(c) in relation to any other person who becomes a member or office-bearer, the date on which such person becomes a member or is appointed to the office concerned, as the case may be;

“gratuity” means a single amount payable in terms of section 3(1)(a)(ii) or 4(2);

“member” means any member of the National Assembly of the Republic of Namibia;

“Minister” means the Minister of Finance;

“office-bearer” means any person declared as an office-bearer under subsection (2) for the purposes of this Act;

“pension” means any amount payable in terms of section 3(1)(a)(i) or 4(1) at an annual rate in equal monthly payments;

“pensionable salary” means the amount of the taxable annual salary payable to a member or office-bearer by way of remuneration and allowances in his or her capacity as member or office-bearer;

“pensionable service” means a period of service, calculated by the year and a portion of a year, in respect of which a member or office-bearer has contributed to the State Revenue Fund in terms of this Act;

“pensioner” means a former member or office-bearer to whom a pension is payable in terms of this Act;

“Permanent Secretary” means the Permanent Secretary: Finance; and

“prescribe” means prescribe by regulation.

(2) The President may by proclamation in the *Gazette* declare any person who by or under any law holds an office in the service of the Republic of Namibia as an office-bearer for the purposes of this Act, with effect from a date specified in such proclamation, which may be a date prior to the date of such proclamation, but not prior to the date of the person’s appointment to the office concerned.

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Contributions by mem-
bers and office-bearers.

2. (1) Any member or office-bearer shall with effect from the fixed date until the end of the month in which he or she completes a period of 12 years pensionable service, contribute to the State Revenue Fund an amount equal to 10 percent of his or her pensionable salary.

(2) Subject to the provisions of subsection (3), the contribution payable by a member or office-bearer in terms of subsection (1) shall be deducted in monthly instalments from the salary of the member or office-bearer concerned.

(3) Any amount which a member or office-bearer is liable to contribute in terms of subsection (1) -

- (a) in respect of a period of service prior to the date of commencement of this Act; or
- (b) pursuant to a proclamation contemplated in section 1(2), in respect of a period of service prior to the date of such proclamation,

shall be deducted from the salary of such member or office-bearer in such instalments as the Minister may direct.

Benefits payable to mem-
ber or office-bearer on
termination of member-
ship or tenure of office.

3. (1) There shall be paid to any member or office-bearer who ceases to be a member or to hold the office concerned, as the case may be -

- (a) where such member or office-bearer has had 5 years or more pensionable service -
 - (i) a pension calculated at the rate of one-fifteenth of the highest pensionable salary received by such member or office-bearer during his or her pensionable service, multiplied by the period of his or her pensionable service: Provided that such pension shall not exceed such highest pensionable salary; and
 - (ii) a gratuity equal to 1 year's pension calculated in accordance with subparagraph (i); or

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(b) where such member or office-bearer has had less than 5 years pensionable service -

(i) an amount equal to the aggregate of his or her pension contributions in terms of section 2; and

(ii) 5 percent interest on such aggregate multiplied by the period of his or her pensionable service.

(2) For the purpose of this section, a member or office-bearer who, at the date of termination of any period of his or her service, has had more than 4 years and 6 months, but less than 5 years pensionable service, shall be deemed to have completed 5 years of pensionable service on that date.

Benefits payable on death of member, office-bearer or pensioner.

4. (1) If a member, office-bearer or pensioner dies and he or she is survived by a widow or widower, there shall be paid to such widow or widower -

(a) in the case of the death of a member or office-bearer, a pension equal to 75 percent of the pension which would have been payable to such member or office-bearer in terms of section 3(1)(a)(i), had he or she ceased to be a member or to hold the office concerned on the date of his or her death for any other reason;

(b) in the case of the death of a pensioner, a pension equal to 75 percent of the pension which was payable to such pensioner immediately prior to his or her death.

(2) If any member or office-bearer dies, there shall be paid -

(a) to the widow or widower of such member or office-bearer; or

(b) if there is no widow or widower, to the dependants of such member or office-bearer; or

(c) if there are no dependants, to the estate of such member or office-bearer,

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a gratuity equal to 6 times the amount of the gratuity which would have been payable to such member or office-bearer in terms of section 3(1)(a)(ii), had he or she ceased to be a member or to hold the office concerned on the date of his or her death for any other reason.

(3) For the purposes of subsections (1) and (2), a member or office-bearer who has had less than 5 years pensionable service on the date of his or her death, shall be deemed to have completed 5 years pensionable service on that date.

(4) Any gratuity payable in terms of this section to the dependants of a member or office-bearer, shall be divided among them in equal shares.

(5) The Minister shall, upon the death of any member, office-bearer or pensioner, by notice published in the *Gazette* and in such other manner as in his or her opinion is best calculated to bring it to the attention of the persons concerned, call upon the surviving spouse of the deceased member, office-bearer or pensioner, or if there is no such surviving spouse, the dependants of the deceased member, office-bearer or pensioner, as the case may be, to lodge with the Permanent Secretary, within a period of 30 days from the date of publication of such notice, any claims which they may have for the payment of any pension or gratuity, as the case may be, as a result of the death of the member, office-bearer or pensioner concerned.

Payment of pension and gratuity to curator or guardian in certain circumstances.

5. If, in the opinion of the Minister, any pension or gratuity payable in terms of this Act is payable to -

- (a) any person who is unable to administer his or her own affairs; or
- (b) any dependant who has no parent or guardian,

the Minister may direct that payment of such pension or gratuity be withheld until, in the case of paragraph (a), a curator, and, in the case of paragraph (b), a guardian has been appointed for the person or dependant concerned.

Supplement of pensions.

6. Any pension shall be supplemented in accordance with such rates or scales and in such circumstances and on such conditions and with effect from such date, which may

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be a date in the past, as may be determined by the Minister from time to time.

Abatement of pension and gratuity.

7. (1) If any person who is a pensioner, once again becomes a member or office-bearer, any pension which was payable to him or her in terms of this Act immediately prior to the date on which he or she so became a member or office-bearer, shall cease to be payable to him or her with effect from that date.

(2) When the person referred to in subsection (1) ceases to be a member or office-bearer, his or her pensionable service shall, for the purposes of the calculation of his or her pension and gratuity in accordance with the provisions of section 3, be the aggregate of the periods that he or she served as a member or office-bearer: Provided that the amount of the gratuity previously paid to such person in terms of this Act shall be set off against the gratuity payable to him or her in accordance with the calculation thereof pursuant to the provisions of this subsection.

Date from which pensions are payable and ceased and method of payment of pensions.

8. (1) Subject to the provisions of section 7, payment of a pension -

(a) in terms of section 3(1)(a), shall, subject to the provisions of section 4(5), commence on the first day of the month following the month in which the member or office-bearer concerned ceases to be a member or office-bearer;

(b) in terms of section 4(1), shall, subject to the provisions of section 4(5), commence on the first day of the month following the month in which the member, office-bearer or pensioner, as the case may be, died,

and shall terminate on the last day of the month in which the person to whom such pension is payable, dies.

(2) All pensions shall be paid on such dates and in such manner as the Minister may prescribe.

Prohibition of cession and attachment of pension or gratuity.

9. (1) No pension or gratuity, or right in respect of any pension or gratuity, shall be capable of being assigned or transferred, or otherwise ceded or of being pledged or hypothecated or, save as provided in section 11(2) of the Maintenance Act, 1963 (Act 23 of 1963), be liable to be

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attached or subjected to any form of execution in terms of any judgement or order of any court of law.

(2) Notwithstanding the provisions of subsection (1) or any other law, the Permanent Secretary may from time to time deduct from the pension or gratuity of any person any amount which is due to the State Revenue Fund.

Pension or gratuity not an asset in insolvent estate.

10. Any pension or gratuity received by any person whose estate has been sequestrated, shall not form part of the assets in the insolvent estate.

Time limit in respect of certain actions.

11. (1) Any legal proceedings in respect of any act performed in terms of this Act or in respect of any failure to perform any act in terms thereof, shall be commenced within 12 months from the date upon which the plaintiff had knowledge or could reasonably have had knowledge of such act or failure.

(2) No legal proceedings referred to in subsection (1) shall be commenced before the expiry of 30 days after the service of a notice in writing on the defendant stating clearly and fully the intention of instituting such proceedings and particulars in regard to the alleged act or failure constituting the cause of action.

Regulations.

12. The Minister may make regulations relating to all matters which are by this Act required or permitted to be prescribed, or which are necessary or expedient to be prescribed in order to achieve the purposes of this Act.

Delegation of powers.

13. (1) The Minister may, on such conditions as he or she may deem fit, delegate to the Permanent Secretary any of the powers conferred upon him or her by this Act, excluding any power referred to in section 6, and may authorize the Permanent Secretary to perform any of the functions or to carry out any of the duties which are assigned to or imposed on the Minister by this Act.

(2) The Permanent Secretary may, on such conditions as he or she may deem fit, with the approval of the Minister, delegate to the holder of any post on the establishment of the Ministry of Finance any of the powers conferred upon the Permanent Secretary by or under this Act and may authorize any such holder to perform any of the functions and carry out any of the duties assigned to or imposed on the Permanent Secretary by or under this Act.

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Payment of pensions,
gratuities and benefits
from State Revenue
Fund.

14. Any pension, gratuity or benefit payable to any person in terms of this Act, shall be paid from the State Revenue Fund out of moneys appropriated by the National Assembly for that purpose.

Repeal of laws.

15. The laws specified in the Schedule are hereby repealed.

Short title.

16. This Act shall be called the Members of the National Assembly and other Office-bearers Pensions Act, 1990.

SCHEDULE

**REPEAL OF LAWS
(Section 15)**

Number and year of law	Short title
Act 11 of 1981.	Members of the National Assembly and of Legislative and Executive Authorities Pensions Act, 1981.
Act 7 of 1989.	Members of the National Assembly and of Legislative and Executive Authorities Pensions Amendment Act, 1989.