



Republic of Namibia
Annotated Statutes

Pension Laws Amendment Act 83 of 1976 (RSA), sections 1-5 and 8

(RSA GG 5173)

section 10 of the Act applied certain sections of the Act to South West Africa, with effect from commencement dates set forth in section 11 of the Act:

- sections 1, 2 and 5 came into force on 1 July 1976;
 - section 3 was deemed to have come into force on 1 July 1975;
 - section 4 was deemed to have come into force on 1 July 1973;
 - section 8 came into force on 26 October 1976
- (sections 1-4 of the Act are amendments to other laws)

APPLICABILITY TO SOUTH WEST AFRICA: Section 10 states that sections 1, 2, 3, 4, 5 and 8 “shall also apply in the territory of South West Africa, including the Eastern Caprivi Zipfel”. The wording of section 10 did not make amendments to the Act in South Africa prior to Namibian independence automatically applicable to South West Africa.

TRANSFER TO SOUTH WEST AFRICA: The relevant Transfer Proclamation is the Executive Powers (Social Welfare and Pensions) Transfer Proclamation, AG 11 of 1977, dated 30 November 1977. However, section 3(c) of the Transfer Proclamation provided that section 3(1) of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, shall not apply to “the provisions of any law relating to any pension or provident fund or scheme which is administered by the Minister of Social Welfare and Pensions or is otherwise controlled by him ...”. Therefore, the administration of the Act was not transferred to South West Africa.

Section 8 of the Act was amended in South Africa prior to Namibian independence by the *Pension Laws Amendment Act 40 of 1978* (RSA GG 5965), which was not made independently applicable to South West Africa. The *General Pensions Act 29 of 1979* (RSA GG 6390), which was also not made independently applicable to South West Africa, repealed sections 1-4, 8 and 11(a)-(d) in South Africa – as well as section 10 of the Act which made the selected sections of the Act applicable to South West Africa. However, since section 10 did not make amendments to the Act in South Africa automatically applicable to South West Africa, and since these amendments were not independently applicable to South West Africa, the Act appeared to remain in force in South West Africa as it stood prior to these amendments.

Sections 10-12 of the Act are also reproduced here as they affect the applicability of the cited sections to South West Africa.

ACT

To amend sections 5 and 7 of the Government Service Pension Act, 1973, so as to admit certain employees of the Government as members to the Government Service Pension Fund and to determine the age of retirement of such employees; to amend section 2 of the Pension Laws Amendment Act, 1974, so as to apply the provisions of that section to certain officers and employees of the Government; to amend section 16 of the Second

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Pension Laws Amendment Act, 1974, so as to apply the provisions thereof to certain persons in certain territories which no longer form part of the Republic, and to amend the definition of “applicable pension fund”; to provide for the consolidation and payment of pensions of certain former employees at the Simonstown Naval Base; to terminate the membership of the Government Service Pension Fund of certain members and to provide for the payment of certain moneys; to provide for the disestablishment of the University College of Fort Hare Employees Pension Fund; to create certain presumptions for the purposes of applying laws relating to social pensions in respect of persons resident in territories which no longer form part of the Republic; and to provide for incidental matters.

*(English text signed by the State President)
(Assented to 18 June 1976)*

ARRANGEMENT OF SECTIONS

1. Amendment of section 5 of Act 57 of 1973
2. Amendment of section 7 of Act 57 of 1973
3. Amendment of section 2 of Act 15 of 1974
4. Amendment of section 16 of Act 77 of 1974, as amended by section 7 of Act 50 of 1975
5. Consolidation of certain benefits and payment of other benefits
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8. Presumptions and definitions for the purposes of laws relating to social pensions
- ***
10. Application of certain sections in South West Africa
11. Commencement of certain provisions
12. Short title

BE IT ENACTED by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:-

Amendment of section 5 of Act 57 of 1973

1. Section 5 of the Government Service Pension Act, 1973, is hereby amended -
 - (a) by the insertion after the word “regulation” in paragraph (c) of subsection (2) of the word “or”; and
 - (b) by the addition of the following paragraph to the said subsection:

“(d) referred to in section 2(1) of the Simonstown Naval Base Employees’ Transfer Act, 1956 (Act No. 72 of 1956), and who occupies a post referred to in paragraph (a) of this subsection;”.

[The Simonstown Naval Base Employees’ Transfer Act 72 of 1956 (SA) does not appear to have been applicable to South West Africa. It was repealed by section 9 of this Act, which was not applied to South West Africa.]

Amendment of section 7 of Act 57 of 1973

2. Section 7 of the Government Service Pension Act, 1973, is hereby amended by the addition of the following paragraph:

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“(n) any person referred to in section 5(2)(d).”

Amendment of section 2 of Act 15 of 1974

3. Section 2 of the Pension Laws Amendment Act, 1974, is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) Notwithstanding anything to the contrary in any law contained -

- (a) any increase of a pension or other benefit effected under section 5(1)(bA) of the Government Service Pensions Act, 1965, or in terms of any regulation made under that Act on or after 1 July 1973, but before the date of commencement of this section, shall be deemed to be compensation in terms of the regulations promulgated under subsection (1);
- (b) any military service as defined in section 1 of the Military Pensions Act, 1976, and rendered by an officer or employee, shall, for the purposes of this section and the regulations made thereunder, be deemed to have been service in the Government or in the administration of the province or of the territory of South West Africa in whose service he was during the time he rendered such military service;
- (c) an officer or employee who renders military service or undergoes training within the meaning of the Defence Act, 1957 (Act No. 44 of 1957), shall, for the purposes of the Workmen’s Compensation Act, 1941 (Act No. 30 of 1941), be deemed to be a workman while rendering such military service or undergoing such training.”

[Section 2 of the Pension Laws Amendment Act 14 of 1974 (RSA) – although not the rest of the Act – was applicable to South West Africa. The Workmen’s Compensation Act 30 of 1941 was re-named the Employees’ Compensation Act in 1995.]

Amendment of section 16 of Act 77 of 1974, as amended by section 7 of Act 50 of 1975

4. Section 16 of the Second Pension Laws Amendment Act, 1974, is hereby amended -

(a) by the insertion after subsection (3A) of the following subsection:

“(3B) If any person who was in the employ of a local authority, without a break in his service or after such a break in his service as the Secretary for Social Welfare and Pensions may approve, becomes a member of the Government Service Pension Fund and is seconded for service to a local authority in a country or area which, immediately prior to the commencement of this section, was a part of the Republic, the Minister, in consultation with the Minister of Finance, may declare that the provisions of this section shall apply with reference to such person, and such provisions shall thereupon *mutatis mutandis* apply with reference to such person as if a take-over referred to in subsection (1) took place on the date on which he was so seconded for service and such person is an affected officer and such date is the fixed date referred to in subsection (4).”; and

(b) by the substitution in subsection (4) for the definition of “applicable pension fund” of the following definition:

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“‘applicable pension fund’, in relation to a specified affected officer, means a superannuation, pension or provident fund or scheme established by or under any law or otherwise for the benefit of the employees of the local authority in whose service such affected officer was immediately prior to the fixed date, or established for the benefit of the employees of such local authority and of any other local authority or local authorities, and to which such affected officer contributed immediately prior to the fixed date and which has been approved by the Minister for the purposes of this section;”.

[Section 16 of the Second Pension Laws Amendment Act 77 of 1974 (although not the rest of the Act) was applicable to South West Africa, but it was repealed by the Members of Parliament and Political Office-Bearers Pension Scheme Act 112 of 1984 (RSA GG 9362), which was relevant to South West Africa by virtue of its coverage of “the Administrator-General for the territory of South West Africa appointed under Proclamation No. 180 of 19 August 1977” (section 1(1) of Act 112 of 1984). The analogous law in independent Namibia is the Members of Parliament and other Office-bearers Pension Fund Act 20 of 1999, which replaced the Members of Parliament and other Office-bearers Pensions Act 21 of 1990.]

Consolidation of certain benefits and payment of other benefits

5. (1) If, immediately prior to 1 July 1976, any person was entitled to a pension or other benefit in terms of the regulations made under the Simonstown Naval Base Employees’ Transfer Act, 1956 (Act No. 72 of 1956), and to an allowance or bonus in terms of any other law -

- (a) such pension and such allowance or bonus shall, with effect from the said date, be consolidated into one amount (in this section referred to as the consolidated pension) which shall, with effect from the said date, be paid to that person as an annuity in lieu of such pension, allowance or bonus;
- (b) such other benefit shall, notwithstanding the repeal of the said Act by section 9 of this Act, be paid to that person.

[The Simonstown Naval Base Employees’ Transfer Act 72 of 1956 (SA) does not appear to have been applicable to South West Africa. It was repealed by section 9 of this Act, which was not applied to South West Africa.]

(2) If any person who receives a consolidated pension dies and leaves a widow, there shall be paid to his widow, with effect from the first day of the month immediately following the date on which he died, a widows’ pension which is equal to one half of such consolidated pension, including any increase thereof.

(3) Any amount payable in terms of this section shall be paid from the State Revenue Fund.

(4) Any amount which, immediately prior to 1 July 1976, was owing to the State Revenue Fund in terms of the Act referred to in subsection (1) or a regulation made thereunder, shall, notwithstanding the repeal of the said Act by section 9 of this Act, remain so owing and shall be paid to the State Revenue Fund.

Presumptions and definitions for the purposes of laws relating to social pensions

8. (1) For the purposes of any law relating to social pensions in the case of a White person or a Coloured person who is a South African citizen and who is resident in a country or area which, immediately prior to the commencement of this section, was a part of the Republic

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and which has been designated by the Minister of Social Welfare and Pensions by notice in the *Gazette* for the purposes of this section -

- (a) such person shall be deemed to be resident in the Republic;
 - (b) any application for a pension or grant by such person in terms of such a law, which has been submitted to the Secretary for Social Welfare and Pensions or the Secretary for Coloured, Rehoboth and Nama Relations, as the case may be, shall be deemed to have been submitted to a district pensions officer;
 - (c) “attesting officer” includes a person who in such country or area occupies a post which has been so designated by the said Minister for the purposes of this section;
 - (d) “medical officer” or “district surgeon” includes any person who practises as a medical officer or who carries on the profession of a medical practitioner in such country or area and who has been so designated by the said Minister as a “medical officer” or a “district surgeon”, as the case may be, for the purposes of this section.
- (2) For the purposes of this section, unless the context otherwise indicates -
- (a) “Coloured” means a person classified as a member of the Cape Coloured, Malay or Griqua group or the Other Coloured group in terms of the Population Registration Act, 1950 (Act No. 30 of 1950);

[The Population Registration Act 30 of 1950 (SA) (SA GG 4422) was not directly applicable to South West Africa. Section 22 of Act 30 of 1950 stated “The Governor-General may, after consultation with the Extension of Executive Committee of the territory of South-West Africa, application by proclamation in the *Gazette* and subject to such conditions, of Act, modifications and exceptions as may be prescribed in the proclamation, apply the provisions of this Act to the said territory.” No such Proclamation has been located. Section 22 was repealed by the Population Registration Amendment Act 29 of 1970 (RSA), although other amendments made to Act 30 of 1950 by Act 29 of 1970 provided that the register maintained under Act 30 of 1950 would include all persons to whom identity documents were issued in terms of the Identity Documents in South-West Africa Act 37 of 1970 (RSA) (RSA GG 2789).]

- (b) “law relating to social pensions” means the Aged Persons Act, 1967 (Act No. 81 of 1967), the War Veterans’ Pensions Act, 1968 (Act No. 25 of 1968), the Blind Persons Act, 1968 (Act No. 26 of 1968), the Disability Grants Act, 1968 (Act No. 27 of 1968), the Social Pensions Act, 1973 (Act No. 37 of 1973), or the regulations made under any such Act;

[Portions of the Aged Persons Act 81 of 1967 (RSA) and the Blind Persons Act 26 of 1968 (RSA) remain in force, but the parts of these Acts pertaining to pension matters were repealed by the Social Pensions Act 37 of 1973 (RSA). The Disability Grants Act 27 of 1968 (RSA) was repealed by the Social Pensions Act 37 of 1973 (RSA). The Social Pensions Act 37 of 1973 (RSA) was repealed by the National Pensions Act 10 of 1992. All remaining portions of the War Veterans’ Pensions Act 25 of 1968 (RSA) were repealed by the Veterans Act 2 of 2008.]

- (c) “White” means a White person as defined in section 1 of the Population Registration Act, 1950,

[As noted above, the Population Registration Act 30 of 1950 (RSA) was not directly applicable to South West Africa.]

and any word to which any meaning has been assigned in the applicable law with reference to social pensions, shall have that meaning.

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Application of certain sections in South West Africa

10. Sections 1, 2, 3, 4, 5 and 8 shall also apply in the territory of South West Africa, including the Eastern Caprivi Zipfel.

Commencement of certain provisions

11. The provisions of -

- (a) sections 1, 2, 5 and 9 shall come into operation on 1 July 1976;
- (b) section 3 shall be deemed to have come into operation on 1 July 1975;
- (c) section 4 shall be deemed to have come into operation on 1 July 1973;
- (d) sections 6 and 8 shall come into operation on 26 October 1976;
- (e) section 7 shall be deemed to have come into operation on 1 April 1976.

Short title

12. This Act shall be called the Pension Laws Amendment Act, 1976.