

PENSIONS

Teachers' Pensions Proclamation 39 of 1931.

Summary: This Proclamation governs pensions from the SWA Teachers' Pension Fund.

Amendments: The Proclamation is amended by-

- Proc. 33/1936
- Proc. 33/1937
- Proc. 15/1938
- Proc. 5/1942
- Proc. 3/1943
- Proc. 18/1943
- Proc. 18/1944
- Proc. 1/1945
- Proc. 30/1945
- Proc. 40/1945
- Proc. 19/1946
- Proc. 16/1947
- Ord. 8/1951
- Ord. 8/1953
- Ord. 5/1954
- Ord. 34/1957
- Ord. 21/1959
- Ord. 26/1959
- Ord. 20/1960
- Ord. 17/1962
- Ord. 27/1963
- Ord. 21/1969.

Railways and Harbours Pensions Amendment Act 26 of 1941, as amended in South Africa prior to Namibian independence.

Summary: This Act concerns benefits for employees of the Railway Administration upon retirement and for the dependants of deceased employees.

Applicability to SWA: Section 8A states "This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel."

Transfer of administration to SWA: The relevant Transfer Proclamation is the Executive Powers (Transport) Transfer Proclamation (AG 14/1978), dated 15 March 1978. However, the Act was excluded from transfer by section 3(2)(a) of the General Proclamation, which exempted "those provisions of any law ... which provide for or relate to ... pension rights and privileges or any other conditions of service of any person who is, or is engaged for employment, in the service of the State or the Government of the Republic or any of its departments in terms of that law or any other law".

Ex-Volunteers Assistance Proclamation 2 of 1945.

Summary: This Proclamation covers grants and loans to persons who rendered certain military services.

Amendments: The Proclamation is amended by Proc. 14/1945, Proc. 19/1945, Proc. 25/1946, Proc. 4/1949, Proc. 23/1948 and Proc. 20/1949.

***Railways and Harbours Special Pensions Act 36 of 1955*, as amended in South Africa prior to Namibian independence.**

Summary: This Act provides for the recalculation of benefits payable to certain former members of the various Railways and Harbours pension funds or their dependants. (It applies only to persons who died or retired before October 1953.)

Applicability to SWA: Section 8 states “This Act shall apply to the Territory of South West Africa”. The only amendments to the Act in South Africa prior to Namibian independence -- the *Railways and Harbours Pensions Amendment Act 22 of 1956* and the *Railways and Harbours Act Amendment Act 34 of 1957* -- are both expressly applicable to SWA.

Transfer of administration to SWA: The relevant Transfer Proclamation is the Executive Powers (Transport) Transfer Proclamation (AG 14/1978), dated 15 March 1978. However, the Act was excluded from transfer by section 3(2)(a) of the General Proclamation, which exempted “those provisions of any law ... which provide for or relate to ... pension rights and privileges or any other conditions of service of any person who is, or is engaged for employment, in the service of the State or the Government of the Republic or any of its departments in terms of that law or any other law”.

***Pension Funds Act 24 of 1956*, as amended in South Africa prior to Namibian independence.**

Summary: This Act regulates pension funds.

Amendments: The Short-term Insurance Act 4 of 1998 repeals section 39 insofar as it relates to short-term insurance. The Long-term Insurance Act 5 of 1998 repeals the remainder of section 39. The Namibia Financial Institutions Supervisory Authority Act 3 of 2001 amends section 1, substitutes section 3 and repeals section 3A. The Maintenance Act 9 of 2003 amends section 37.

Applicability to SWA: Section 1 defines “Union” to include “the Territory”, which is defined as “the Territory of South West Africa”. Section 40 states “This Act shall apply also in the Territory.” Although section 40 did not make amendments to the Act in South Africa automatically applicable to SWA, they appear to have applied to SWA by virtue of the definition of “Union” in section 1. (Act 9/1994 supports this assumption by referring to previous amendments made by Act 103 of 1979, Act 86 of 1984 and Act 53 of 1989).

Amendments: Act 4/1994 amends section 36 to allow the imposition of limits on the amount of funds which may be invested outside Namibia.

Regulations: Regulations are contained in RSA GN R.98 of 1962, as amended by-
RSA GN R.2144/1984
RSA GN R.1790/1985
RSA GN R.1037/1986
RSA GN R. 232/1987
RSA GN R.1452/1989
GN 103/1994 (GG 870)
GN 143/1994 (GG 899)
GN 56/1995 (GG 1044)
GN 108/1995 (GG 1095)
GN 30/2008 (GG 3985).

Appointments: A Registrar and Deputy Registrar of Pensions Funds are appointed in General Notice 29/1991 (GG 174).

Cases: *Old Mutual Life Assurance Co Namibia Ltd v Old Mutual Namibia Staff Pension Fund & Another* 2006 (1) NR 211 (HC) (section 37D).

Administration Employees Pension Ordinance 19 of 1959.

Summary: This Ordinance provides for pensions and benefits for certain employees of the administration of South West Africa.

Amendments: This Proclamation is amended by Ord. 18/1960 and Ord. 23/1962. See also the Regulation of Membership of the Union Widows' Pension Fund Ordinance 15 of 1960, which provides for male contributors of the Administration Employees Pension Fund to be members of the Union Widows Pension Fund.

Social Pensions Ordinance 2 of 1965.

Summary: This Ordinance consolidates the laws relating to social pensions. The remaining portions of the Ordinance appear to be superseded by the National Pensions Act 10 of 1992.

Amendments: The Ordinance is repealed in part by the *RSA Aged Persons Amendment Act 14 of 1971* and the *RSA Blind Persons Amendment Act 16 of 1971*.

Members of Statutory Bodies Pension Act 94 of 1969, as amended in South Africa prior to Namibian independence.

Summary: This Act establishes a pension scheme for employees of statutory bodies.

Applicability to SWA: Section 7 states "This Act and any amendment thereof shall, so far as is necessary for the effective application thereof, apply also in the territory." Section 1 defines "territory" as "the territory of South West Africa, including that part of the said territory known as the Eastern Caprivi Zipfel and referred to in section 38(5) of the South West Africa Constitution Act, 1968 (Act No. 39 of 1968)".

Transfer of administration to SWA: The relevant Transfer Proclamation is the Executive Powers (Social Welfare and Pensions) Transfer Proclamation (AG 11/1977), dated 30 November 1977. However, section 3(c) of the Transfer

Proclamation provided that section 3(1) of the General Proclamation 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 SWA.

Black Authorities Service Pensions Act 6 of 1971, as amended in South Africa prior to Namibian independence.

Summary: This Act provides for the establishment and control of a pension fund for the employees of certain “black authorities”.

Applicability to SWA: Section 1 defines the authorities covered by the Act to include “any executive council, tribal authority, community authority or regional authority referred to in the Development of Self-Government for Native Nations in South West Africa Act, 1968 (Act No. 54 of 1968)”. Section 1 defines “the territory as “the territory of South West Africa,” and section 8 states “This Act and any amendment thereof shall apply also in the territory, including the Eastern Caprivi Zipfel.”

Transfer of administration of SWA: The relevant transfer proclamation is the Executive Powers Transfer Proclamation (AG 3/1977, as amended), dated 28 September 1977. However, section 3(1)(e) exempts from transfer “those provisions of any law providing for or relating to... pension rights and privileges of any person who is, or is engaged, in the service of the state...”. Thus, the administration of the Act was not transferred to SWA.

Railways and Harbours Pensions Act 35 of 1971, as amended in South Africa prior to Namibian independence.

Summary: This Act deals with pensions and other retirement benefits for employees of the Administration of Railways and Harbours.

Applicability to SWA: Section 21 states “This Act and any amendment thereof shall apply also in the Territory of South West Africa, including the Eastern Caprivi Zipfel.”

Transfer of administration to SWA: The relevant Transfer Proclamation is the Executive Powers (Transport) Transfer Proclamation (AG 14/1978), dated 15 March 1978. However, the Act was excluded from transfer by section 3(2)(a) of the General Proclamation, which exempted “those provisions of any law ... which provide for or relate to ... pension rights and privileges or any other conditions of service of any person who is, or is engaged for employment, in the service of the State or the Government of the Republic or any of its departments in terms of that law or any other law”.

Amendments: The Act is amended by Act 5/1984.

Parliamentary Service and Administrators’ Pensions Act 81 of 1971, as amended in South Africa prior to Namibian independence.

Summary: This Act covers pensions for members of parliament, administrators, certain members of the diplomatic service and commissioners-general.

Applicability to SWA: Section 25 states “This Act and any amendment thereof which may be made from time to time, shall, in so far as is necessary for the effective application thereof, apply also in the territory”, which is defined as SWA.

Transfer of administration to SWA: The relevant Transfer Proclamation is not clear from the face of the Act, as it is administered by “a person who is or was appointed as Minister in terms of section 20 of the Constitution Act or a provision of any law repealed by that Act”. However, the administration of laws relating to pensions was generally not transferred to SWA. (See section 3(1)(g) of AG 3/1977 and section 3(2)(a) of the General Proclamation, AG 7/1977.)

Government Service Pension Act 57 of 1973, with one South African amendment.

Summary: This Act provides for pensions and other financial benefits for certain persons employed by the South African Government, the Administration of South West Africa, and provincial administrations.

Applicability to SWA: Section 1 defines “Republic” to include “the territory”, which is defined as “the territory of South West Africa”. Section 19 states “This Act shall apply also in the territory, including the Eastern Caprivi Zipfel.” The wording of section 19 did not make amendments to the Act automatically applicable to SWA, but they may be applicable by virtue of the definition of “Republic” in section 1. However, since one of the several amendments to the Act was made expressly applicable to SWA, it would appear that the other South African amending acts do not apply to SWA.

Transfer of administration to SWA: The relevant transfer proclamation is the Executive Powers (Social Welfare and Pensions) Transfer Proclamation (AG 11/1977), dated 30 November 1977. However, section 3(c) of the transfer proclamation provided that section 3(1) of the General Proclamation 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 SWA.

Amendments: Only one South African amending act -- the *Pensions Laws Amendment Act 83 of 1976* -- is expressly applicable to SWA.

Railways and Harbours Pensions for Non-Whites Act 43 of 1974, as amended in South Africa prior to Namibian independence.

Summary: This Act provides for pensions and other retirement benefits to non-white employees of the Administration of Railways and Harbours.

Applicability to SWA: Section 18 states “This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel.”

Transfer of administration to SWA: The relevant transfer proclamation is the Executive Powers (Transport) Transfer Proclamation (AG 14/1978), dated 15 March 1978. However, the Act was excluded from transfer by section 3(2)(a) of the General Proclamation, which exempted “those provisions of any law ... which provide for or relate to ... pension rights and privileges or any other conditions of service of any person who is, or is engaged for employment, in the service of the State or the Government of the Republic or any of its departments in terms of that law or any other law”.

Second Pension Laws Amendment Act 77 of 1974, section 16.

Summary: This section deals with pensions of local authority employees who become employees of government.

Applicability to SWA: Section 16(6) states “This section shall also apply to the territory of South West Africa, including the Eastern Caprivi Zipfel”.

Military Pensions Act 84 of 1976, as amended in South Africa prior to Namibian independence.

Summary: This Act provides benefits and medical treatment in regard to disablement caused or exacerbated by military service under the Defence Act. It also consolidates other war pensions.

Applicability to SWA: Section 1 defines “Republic” to include “the territory of South West Africa”. Section 25 states “This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel.”

Transfer of administration to SWA: The relevant transfer proclamation is the Executive Powers (Social Welfare and Pensions) Transfer Proclamation (AG 11/1977), dated 30 November 1977. However, section 3(c) of the transfer proclamation provided that section 3(1) of the General Proclamation 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 SWA.

Pensions Laws Amendment Act 83 of 1976, sections 1-5 and 8.

Summary: Sections 1-4 amend other laws. Section 5 relates to persons entitled to pensions or benefits as employees of Simonstown Naval Base. Section 8 contains presumptions and definitions for purposes of laws relating to social pensions.

Applicability to SWA: Section 10 states that the listed sections “shall also apply in the territory of South West Africa, including the Eastern Caprivi Zipfel”.

Temporary Employees Pension Fund Act 75 of 1979, as amended in South Africa prior to Namibian independence.

Summary: This Act provides pensions and other benefits to certain temporary employees and their dependants.

Applicability to SWA: Section 9A (added by RSA Proclamation R.217 of 1979) states “This Act and any amendment thereof shall apply also in the Territory of South West Africa, including the Eastern Caprivi Zipfel.” This section also provides special definitions for “revenue” and “Government” in regard to South West Africa.

Transfer of administration to SWA: The relevant transfer proclamation is the Executive Powers (Social Welfare and Pensions) Transfer Proclamation (AG 11/1977), dated 30 November 1977. However, section 3(c) of the transfer proclamation provided that section 3(1) of the General Proclamation 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 SWA.

Pension Matters of Government Institutions Proclamation, AG 56 of 1989.

Summary: This Proclamation deals with issues related to the termination of the Statutory Institutions Pensions Fund established in terms of Statutory Institutions Pensions Act 3 of 1980, which was repealed in its entirety by AG 6/1989.

Amendments: Act 5/1990 repeals section 3 and amends section 4, so as to remove the right of persons to invest their accrued pension benefits in retirement annuity funds of life insurance companies.

Application: Section 10(4)(c) of the Namibia Wildlife Resorts Company Act 3 of 1998 deals with the application of the Government Institutions Pension Fund to employees of that company.

Pension Gratuities to Former Members of the National Assembly and of Legislative and Executive Authorities Proclamation, AG 8 of 1990.

Summary: This Proclamation, issued on the eve of independence, provided for pension gratuities to persons entitled to annuities or payments upon vacation of office in terms of the Members of the National Assembly and of Legislative and Executive Authorities Pensions Act 11 of 1981 (since repealed). It also exempted the gratuities from the Income Tax Act 24 of 1981. It has no ongoing application.

Judges Pensions Act 28 of 1990.

Summary: This Act provides for the payment of pensions and gratuities to judges who retire or are removed from office, and for the payment of pensions to the widows or widowers of such judges. It came into operation on 20 November 1995 (GN 220/1995, GG 1197).

National Pensions Act 10 of 1992.

Summary: This Act provides for national pensions to be paid to aged, blind and disabled persons. It came into force on 1 October 1994 (Proc. 25/1994).

Regulations: All national pensions were equalised at N\$135/month by GN 201/1994 (GG 962).

Members of Parliament and Other Office-Bearers Pension Fund Act 20 of 1999.

Summary: This Act establishes a pension fund for Members of Parliament and other office-bearers. It came into operation on 4 January 2000 (GN 284/1999, GG 2253), replacing the Members of Parliament and other Office-Bearers Pensions Act 21 of 1990 which was repealed with effect from the same date (GN 285/1999, GG 2253).

Regulations: The pension fund established under this Act was registered in terms of the *Pension Fund Act 24 of 1956*. The rules approved by the Registrar of Pension Funds and the announcement of the registration are contained in GN 269/2000 (GG 2443).

Certain officials are named as office-bearers for purposes of the Act from time to time, but these designations have not been recorded here.

See also Presidential Emoluments and Pensions Act 17 of 1990 and Former Presidents' Pension and Other Benefits Act 18 of 2004 (**PRESIDENT**).

See also Social Security Act 34 of 1994 (re: National Pension Fund) (**SOCIAL SECURITY**).

See also Veterans Act 2 of 2008 (**SOCIAL WELFARE**).