

REPUBLIC OF SOUTH AFRICA

SOCIAL ASSISTANCE AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 76); explanatory summary of
Bill published in Government Gazette No. 41530 of 27 March 2018)
(The English text is the official text of the Bill)*

(MINISTER OF SOCIAL DEVELOPMENT)

[B 8—2018]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Social Assistance Act, 2004, so as to insert new definitions; to provide for additional payments linked to social grants; to provide for payment of benefits to a child-headed household; to provide for social relief of distress in the event of a disaster; to repeal the internal reconsideration process; to provide for an Independent Tribunal to consider appeals against decisions of the Agency; to provide for the establishment of the Inspectorate as a government component; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 13 of 2004, as amended by section 99 of Act 75 of 2008

1. Section 1 of the Social Assistance Act, 2004 (“the principal Act”), is hereby amended—

- (a) by the insertion after the definition of “disabled person” of the following definitions:
 - “ **‘disaster’** means “disaster” as defined in section 1 of the Disaster Management Act;”;
 - “ **‘Disaster Management Act’** means the Disaster Management Act, 2002 (Act No. 57 of 2002);”;
- (b) by the insertion after the definition of “grant-in-aid” of the following definition:
 - “ **‘Independent Tribunal’** means the Independent Tribunal appointed by the Minister as contemplated in section 18(1);”;
- (c) by the insertion after the definition of “parent” of the following definition:
 - “ **‘person’** for the purpose of social relief of distress in the event of disaster means the head of the household or anyone within the household acting on his or her behalf or an organisation rendering disaster relief services;”;
- (d) by the substitution for the definition of “social assistance” of the following definition:
 - “ **‘social assistance’** means a social grant, social relief of distress or an additional payment contemplated in section 12A;”.

Amendment of section 4 of Act 13 of 2004

2. Section 4 of the principal Act is hereby amended—

- (a) by the substitution for the heading of the following heading:
“Provision of social [grants] assistance”;
- (b) by the deletion of “and” at the end of paragraph (f), the substitution of the expression “; and” for the full stop at the end of paragraph (g) and the addition of the following paragraph:
“(h) social relief of distress.”.

Substitution of section 6 of Act 13 of 2004

3. The following section is hereby substituted for section 6 of the principal Act: 10

“Child support grant

6. Subject to section 5—

- (a) a person who is the primary care giver of a child; or
 (b) a child who heads a child-headed household, as contemplated in section 137 of the Children’s Act, 2005 (Act No. 38 of 2005),
is eligible for a child support grant.”. 15

Insertion of section 12A in Act 13 of 2004

4. The following section is hereby inserted in the principal Act after section 12:

“Additional payments

- 12A.** (1) The Minister, with the concurrence of the Minister of Finance, may prescribe an additional payment linked to a social grant. 20
 (2) The Minister may, in prescribing an additional payment, differentiate on the basis of need between beneficiaries of social grants.”.

Substitution of section 13 of Act 13 of 2004

5. The following section is hereby substituted for section 13 of the principal Act: 25

“Social relief of distress

- 13.** (1) A person is, subject to section 5, eligible for social relief of distress if the person qualifies as prescribed.
 (2) Notwithstanding subsection (1) and sections 27, 41 and 55 of the Disaster Management Act, any person may qualify for social relief of distress if his or her household has been affected by a disaster. 30
 (3) The Agency must, subject to subsections (1) and (2), disburse the social relief of distress as prescribed.
 (4) Notwithstanding subsection (2), the Agency may in the event of a disaster and depending on the magnitude of the disaster and the availability of resources, determine as prescribed, the needs of the affected communities and disburse the social relief of distress.”. 35

Amendment of section 14 of Act 13 of 2004, as amended by section 2 of Act 5 of 2010

6. Section 14 of the principal Act is hereby amended by the substitution in subsection (3)(b) for subparagraph (iii) of the following subparagraph: 40

- “(iii) of his or her right **[to request reconsideration and his or her rights]** of appeal contemplated in section 18 and of the mechanism and procedure to invoke **[any]** such right.”.

Substitution of section 18 of Act 13 of 2004

7. The following section is substituted for section 18 of the principal Act:

“Appeal against decision of Agency

18. (1) The Minister must appoint an Independent Tribunal comprised of appropriately qualified persons, as may be prescribed, to serve as members of the Independent Tribunal, to consider appeals against decisions of the Agency contemplated in subsection (2), in the prescribed manner. 5

(2) If an applicant or a beneficiary disagrees with the decision of the Agency in relation to an application contemplated in section 14, that person or a person acting on his or her behalf may, within 90 days of the decision being made, lodge a written appeal with the Independent Tribunal in the prescribed manner. 10

(3) The appeal contemplated in subsection (2) must set out the reasons for the appeal against such a decision and why the Independent Tribunal should vary or set aside such decision or make any other decision which is just. 15

(4) The Independent Tribunal must, upon receipt of the written appeal contemplated in subsection (2), request the Agency to provide the reasons and all relevant records which informed the decision, to the Independent Tribunal. 20

(5) The Agency must submit the reasons and all relevant records to the Independent Tribunal in the prescribed manner.

(6) The Independent Tribunal must, upon receipt of the reasons and all relevant records contemplated in subsection (5), consider the appeal and may confirm, vary or set aside the decision of the Agency or make any other decision which is just. 25

(7) Notwithstanding subsection (2), the Independent Tribunal may, in the prescribed manner, condone any late lodgement of an appeal.”

Amendment of section 24 of Act 13 of 2004, as amended by section 43 of Act 30 of 2007 30

8. Section 24 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) **[The] There is an Inspectorate for Social Assistance [is hereby established as a national department contemplated in Schedule 1 to] which must be a national government component contemplated in section 7(2)(c) of the Public Service Act, 1994 (Proclamation No. 103 of 1994), [and is headed by a person designated as Executive Director] and established in accordance with section 7(5)(c) of that Act.”; and 35**

(b) by the deletion in subsection (5) of the word “and” at the end of paragraph (a), the substitution for the full-stop at the end of paragraph (b) of the expression “; and”, and the addition of the following paragraph: 40

“(c) furnish him or her with recommendations with regard to any matter relating to the functions of the Inspectorate.”.

Amendment of section 29 of Act 13 of 2004

9. Section 29 of the principal Act is hereby amended— 45

(a) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) delegate to a staff member **[of the Inspectorate]** or any officer of the Department any power delegated to him or her in terms of subsection (1)(a);” 50

(b) by the insertion after subsection (2) of the following subsection:

“(2A) The Executive Director may in writing—

(a) delegate to a staff member or any officer of the Inspectorate any power conferred upon the Executive Director by this Act;

- (b) authorise a staff member or officer of the Inspectorate to perform any duty which he or she has been authorised to perform by this Act or in terms of subsection (1)(b).”; and
- (c) by the substitution for subsection (3) of the following subsection:
 “(3) Any person to whom a power has been delegated or who has been authorised to perform a duty in terms of subsections (1) [or], (2) or (2A), must exercise that power or perform that duty subject to the conditions determined by the person who effected the delegation or granted the authorisation.”.

Amendment of section 32 of Act 13 of 2004 10

- 10.** Section 32 of the principal Act is hereby amended—
- (a) by the substitution in subsection (2) for paragraph (a) of the following paragraph:
 “(a) the application for and payment of [grants, including maximum amounts of such grants] social assistance;”; 15
- (b) by the substitution at the end of subsection 2(c) for the full stop of a semicolon; and the addition of the following paragraphs:
 “(d) additional requirements or conditions in respect of a payment contemplated in section 12A; and
 (e) differentiation on the basis of need between beneficiaries of social grants as contemplated in section 12A (2).”; and 20
- (c) by the addition of the following subsection:
 “(3) The Minister, with the concurrence of the Minister of Finance—
 (a) must determine amounts payable in respect of social assistance; and
 (b) may determine additional payments linked to a social grant, by notice in the *Gazette*.”. 25

Transitional arrangements

11. (1) For the purposes of this section, unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Social Assistance Act, 2004 (Act No. 13 of 2004), has the meaning assigned to it in that Act, and—“this Act” means the Social Assistance Amendment Act, 2018. 30

(2) Notwithstanding the amendment to section 14(3)(b)(iii) of the Social Assistance Act, 2004 (Act No. 13 of 2004), by section 6 of this Act which repeals the reconsideration provisions of the Agency, the Agency must reconsider any application received from an applicant, beneficiary or person acting on his or her behalf in relation to a decision which was made by the Agency before the commencement of this Act. 35

(3) The Agency must reconsider any application contemplated in subsection (2) within 90 days of receipt thereof.

(4) If an application for reconsideration contemplated in subsection (2) was not lodged within 90 days of the date of the decision by the Agency during grant application or review, such applicant, beneficiary or person acting on his or her behalf must lodge a new application for a social grant with the Agency. 40

(5) An appeal contemplated in section 18 of the Social Assistance Act, 2004 (Act No. 13 of 2004), in respect of a decision made by the Agency during a grant application or review after the commencement of this Act, must be lodged directly with the Independent Tribunal. 45

Short title and commencement

12. (1) This Act is called the Social Assistance Amendment Act, 2018, and takes effect on a date fixed by the President by proclamation in the *Gazette*.

(2) Different dates may, under subsection (1), be so fixed in respect of different provisions of this Act. 50

**MEMORANDUM ON THE OBJECTS OF THE SOCIAL ASSISTANCE
AMENDMENT BILL, 2018**

1. PURPOSE OF BILL

The Social Assistance Amendment Bill (“the Bill”) seeks to amend the Social Assistance Act, 2004 (Act No. 13 of 2004) (“the principal Act”), so as—

- to empower the Minister responsible for social development (“the Minister”), with the concurrence of the Minister of Finance, to make additional amounts available to social grants;
- to streamline and improve the process of internal appeals against decisions of the South African Social Security Agency (“the Agency”) to be made to the Independent Tribunal; and
- to constitute the Inspectorate for Social Assistance (“the Inspectorate”) as a Government component, instead of as a Government Department as currently provided for in the principal Act.

2. SUMMARY OF PROVISIONS OF BILL

- 2.1 Clause 1 of the Bill seeks to insert certain definitions, and to substitute a definition, in section 1 of the principal Act.
- 2.2 Clause 2 of the Bill seeks to amend section 4 of the principal Act, so as to make provision for social relief of distress.
- 2.3 Clause 3 of the Bill seeks to substitute section 6 of the principal Act, so as to provide for the payment of a social grant to a child responsible for a child-headed household.
- 2.4 Clause 4 of the Bill seeks to insert a new section 12A into the principal Act to empower the Minister, with the concurrence of the Minister of Finance, to prescribe an additional payment linked to a social grant. The Minister is further empowered, in prescribing an additional payment, to differentiate on the basis of need between beneficiaries of social grants.
- 2.5 Clause 5 of the Bill seeks to substitute section 13 of the principal Act. The proposed section 13 seeks to provide for persons to be eligible for social relief of distress if the person qualifies as prescribed. In addition, the section seeks to allow a person to qualify for social relief of distress if his or her household has been affected by a disaster. The section further provides for the Agency to disburse the social relief of distress as prescribed.
- 2.6 Clause 6 of the Bill seeks to amend section 14 of the principal Act in order to do away with a requirement for the Agency to reconsider its own decision. This is in view of the improved provisions relating to the internal appeals to the Independent Tribunal.
- 2.7 Clause 7 of the Bill seeks to substitute section 18 of the principal Act, so as to provide anew for appeals against decisions of the Agency. The proposed section provides for the Minister to appoint members of the Independent Tribunal to hear appeals. The section further provides for the process of lodging of appeals and the consideration of appeals by the Independent Tribunal.
- 2.8 Clause 8 of the Bill seeks to amend section 24 of the principal Act in order to provide for the Inspectorate to be constituted as a national Government component in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994).
- 2.9 Clause 9 of the Bill seeks to amend section 29 of the principal Act in order to make further provision with regard to the powers of the Executive Director of the Inspectorate.

2.10 Clause 10 of the Bill seeks to amend section 32 of the principal Act, so as to make provision for the Minister to issue regulations in respect of certain matters to assist the implementation of the principal Act.

2.11 Clause 11 of the Bill seeks to make provision for transitional arrangements with regard to pending matters, once the Bill is promulgated as an Act of Parliament and it commences its operation, relating to decisions of the Agency and appeals to the Independent Tribunal.

2.12 Clause 12 of the Bill provides for the short title and commencement of the Act.

3. DEPARTMENT/ BODIES/ PERSONS CONSULTED

The following bodies, entities or persons were consulted during the Department's development of the Bill:

- The South African Social Security Agency;
- Technical Cluster Committee;
- Social Protection, Community and Human Development (SPCHD) Cluster of Directors-General;
- Department of Public Service and Administration;
- various welfare services and non-governmental organisations; and
- the general public.

4. FINANCIAL IMPLICATIONS FOR STATE

The Department should be able to implement all the amendments within the existing budget allocations. National Treasury has made a provisional allocation of R524m and R1,487bn for implementation of the additional payments for the Child Support Grant (CSG top up) during the 2019/20 and 2020/21 financial years, respectively. However, this policy will only be implemented if funding is approved.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers and the Department of Social Development are of the opinion that the Bill should be dealt with in terms of the procedure prescribed by the provisions of section 76 of the Constitution since it falls within a functional area listed in Schedule 4 to the Constitution, namely "welfare services".

5.2 The principles in the case of *Tongoane and Others v National Minister for Agriculture and Land Affairs and Others* 2010 (8) BCLR 741 (CC) (the "*Tongoane case*") are important when determining if a Bill ought to be tagged as either a section 75 or 76 Bill. The test laid down in that case for determining the procedure to be followed in enacting a Bill is whether the provisions of the Bill fall within a functional area listed in Schedule 4 or, in substantial measure, affect the interests of the provinces.

5.3 The tagging of the Bill requires firstly, considering all the provisions of the Bill and determining whether they substantially impact the interests of the provinces. Thereafter a consideration of whether or not the impact of these provisions is not so small as to be regarded as trivial, must be carried out. The tagging of Bills before Parliament must be informed by the need to ensure that provinces fully and effectively exercise their appropriate role in the process of considering national legislation that substantially affects them.

5.4 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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