

REPUBLIC OF SOUTH AFRICA

SOCIAL ASSISTANCE AMENDMENT BILL, 2018

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

(MINISTER OF SOCIAL DEVELOPMENT)

[B — 2018]

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 or benefits linked to social assistance; 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, is hereby amended by—
- (a) 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) 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) 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;" and
- (d) 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, 2004, 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, 2004:

"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."

Insertion of section 12A in Act 13 of 2004

4. The following section is hereby inserted in the Social Assistance Act, 2004, 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.

(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, 2004:

"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.

(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."

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, 2004, is hereby amended by the substitution in subsection (3)(b) for subparagraph (iii) of the following subparagraph:

"(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 Social Assistance Act, 2004

"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.

(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.

(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.

(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.

(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.

(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

8. Section 24 of the principal Act, 2004, is hereby amended by—

(a) 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**

(b) 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:

"(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, 2004, is hereby amended by—

(a) 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);";

(b) 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 or delegated to him or her in terms of subsection (1)(a);

(b) authorise that 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) 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. Section 32 of the Social Assistance Act, 2004, is hereby amended by—

(a) 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";

(b) 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
- (c) 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 or benefits linked to a social grant, by notice in the Gazette."

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 Bill, 2018.

(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.

(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.

(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.

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.