# GOVERNMENT EMPLOYEES PENSION LAW AMENDMENT BILL, 2011

***Presentation to the Select Committee on Finance***

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national treasury

Department:
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REPUBLIC OF SOUTH AFRICA

# BACKGROUND- THE “CLEAN BREAK” PRINCIPLE

- The Government Employees Pension Law (“the GEPL”), currently, does not allow a former spouse of a member to claim a portion of a member’s pension interest, in terms of a divorce order or an order for the dissolution of a customary marriage, soon after the divorce order or the order for the dissolution of a customary marriage is granted. The former spouse can only receive a portion of the member’s interest after the exit of the member from the GEPF.

- The Government Employees Pension Law Amendment Bill, 2011 (“the Bill”) will amend the GEPL to provide for the implementation of the “clean-break” principle.

# The “Clean Break” Principle

- The “clean-break” principle allows for the non-member spouse to claim and receive a portion of the member’s interest that is assigned in terms of the divorce order or the order for the dissolution of a customary marriage, soon after the divorce order or the order for the dissolution of the customary marriage has been granted. The former spouse does not have to wait until the member exits the pension fund.
- A “clean break” can then be made between the parties as far as the non-member’s claim to a portion of the members pension interest is concerned.

# BACKGROUND- THE "CLEAN BREAK" PRINCIPLE (CONT.)

- The Pension Funds Amendment Act, 2007 (Act No. 11 of 2007) incorporated the "clean-break" principle into the Pension Funds Act, 1956 (Act No. 24 of 1956) ("the PFA"), as section 37D(1)*(d)*, (3)*(b)*, (4) and (5).

- Clause 3 of the Bill provides for the insertion of a new section 24A into the GEPL, to provide for the implementation of the "clean-break" principle.

- The new section 24A that will be incorporated in the GEPL will bring the GEPL in line with what is currently provided for in the PFA.

# REVISED NON-STATUTORY FORCES ("NSF") PENSION DISPENSATION

- The Bill also contains amendments to enable the implementation of the Revised Non-Statutory Forces ("NSF") Pension Dispensation.
- On 15 April 2009 and 24 November 2010, Cabinet approved the revision of the NSF Pension dispensation by—
  - abolishing the need for former NSF members to contribute to the funding of the recognition of their NSF Service by the GEPF;
  - recognising the full period of NSF Service by all former NSF members who entered into an employment contract with all Government departments and institutions that contribute to the GEPF; and
  - providing that Special Pension benefits paid to qualifying members who are still in service should cease at exit from the GEPF, and that members should then receive their full pension benefits in accordance with the GEPF Rules.

# REVISED NSF PENSION DISPENSATION (CONT.)

- An amendment to section 30A(2) of the GEPL and a consequential amendment to section 14(4) of the Special Pensions Act, 1996 (Act No. 69 of 1996) ("the Special Pensions Act") will give effect to the Revised NSF Pension Dispensation as approved by Cabinet.
- Section 30A(2) will be amended to provide that a person who has their Non-Statutory Forces service recognised as pensionable service by the GEPF, will not have any benefits that they may have received in terms of the Special Pensions Act deducted from the benefit to which they are entitled to receive from the GEPF.
- It will also be explicitly provided in section 30A(2) of the GEPL and in section 14(4) of the Special Pensions Act (in terms of the consequential amendment contained in the Schedule to the Bill) that a person's entitlement to receive a benefit in terms of the Special Pensions Act would only terminate when they exit the GEPF.

# OBJECTS OF THE BILL

- The Bill will amend the GEPL in order to achieve the following objectives:
  - to provide for the amendment of a definition and the insertion of a new definition;
  - to provide for the payment of a pension interest to a former spouse of a member on divorce or the dissolution of a customary marriage;
  - to amend the powers of the Board to make rules; and
  - to amend the provisions providing for the recognition of pensionable service of former members of non-statutory forces or services.

# CLAUSE BY CLAUSE ANALYSIS

- The Bill is divided into 8 clauses.
- Clause 1 of the Bill provides for the amendment of section 1 by amending the definition of “employer”, which is an important definition in relation to the application of the Revised NSF Pension Dispensation, and inserting a definition for “pension interest”, which is an important term that is used in the Bill.
- **'pension interest'** in relation to a member of the Fund who is a party to an action for divorce action or for the dissolution of a customary marriage, means the benefits to which that member would have been entitled in terms of the rules of the Fund if the member’s membership of the Fund would have been terminated on the date of the divorce or the dissolution of a customary marriage on account of the member’s resignation from the service of the employer;

# CLAUSE BY CLAUSE ANALYSIS (CONT.)

- Clause 2 of the Bill provides for the amendment of section 21 of the GEPL, to extend the potential for the assignment or transfer of benefits. This is achieved by making section 21 subject to the provisions of the proposed new section 24A that would be inserted into the GEPL through clause 3 of the Bill.
- Clause 3 of the Bill provides for the insertion of a new section 24A into the GEPL, to provide for the implementation of the “clean-break” principle upon divorce or the dissolution of a customary marriage.
- Clause 4 of the Bill provides for the amendment of section 29(2)*(g)* of the GEPL, to enable the Board to make rules to provide for the appropriate implementation of the “clean break” principle by the GEPF.

# CLAUSE BY CLAUSE ANALYSIS (CONT.)

- Clause 5 of the Bill provides for the amendment of section 30A(2) of the GEPL, in order to enable the implementation of the Revised NSF Pension Dispensation that was approved by Cabinet.
- Clause 6 of the Bill provides for a transitional provision.
- Clause 7 and the Schedule of the Bill provide for the consequential amendment of section 14(4) of the Special Pensions Act, which is necessary to enable the implementation of the Revised NSF Pension dispensation that was approved by Cabinet.
- Clause 8 of the Bill provides for the short title and commencement.

# FINANCIAL IMPLICATIONS

- The implementation of the “clean break” principle is not anticipated to have financial implications for government. It will be sought to implement the “clean break” principle in a manner that will have, as far as possible, a “revenue neutral” effect for the GEPF.

- It is estimated (by the GEPF actuary) that the additional liability owed to the GEPF by the respective Departments and/or Institutions is R4, 735 billion as at 31 December 2011. In order to maintain the Fund’s funding requirements, the Board of the GEPF has requested that in respect of members who have already exited the Fund, a lump sum payment of R1, 378 billion be made (as per the actuary calculations).

- The GEPF will require a cash injection of R1, 378 billion for the payment of lump sums to members who have already exited.

# Determination of Financial Implications

The costing of the financial implications relating to the implementation of the Revised NSF Pension Dispensation was done as follows:

The GEPF supplied data in respect of the 23 250 members. The details supplied for these members included:

- Pension number;
- Name and Initials;
- Date of birth;
- Date joined NSF *("NSF date");*
- Integration date;
- Date of appointment into the GEPF *("Service date");*
- Exit date (if applicable);
- Exit reason (if applicable);
- Employer code; and
- Average salary.

# CALCULATION OF FINANCIAL IMPLICATIONS (CONT.)

- The cost is based on the current list of employers provided by the GPAA. The cost may change in the future as more members come forward who qualify for NSF service, or if the employer on record is incorrect.
- **METHODOLOGY**: Active members as at 31 December 2010
  - The cost involved in changing the dispensation was calculated as the difference between:
    - The Actuarial Interest a member receives based on his pensionable service including the additional NSF service the member is entitled to receive; and
    - The Actuarial Interest a member receives based on his pensionable service excluding any NSF service the member is entitled to receive.

# CALCULATION OF FINANCIAL IMPLICATIONS (CONT.)

- **METHODOLOGY**: Exits as at 31 December 2010
  - The cost involved in changing the dispensation was calculated as the difference between:
    - The benefits a member receives (depending on the exit reason of the particular member) based on his pensionable service including the additional NSF service the member is entitled to receive; and
    - The benefits a member receives (depending on the exit reason of the particular member) based on his pensionable service excluding any NSF service the member is entitled to receive.
- The results have then been accumulated with interest, from the particular date of exit of each member to 31 December 2010.

# CALCULATION OF FINANCIAL IMPLICATIONS (CONT.)

- Interest has been calculated as follows:
  - *Short-term interest*: The cost at the date of exit has been accumulated with late payment interest, in accordance with the late payment interest rate policy of the GEPF to 30 March 1998 (the earliest date at which the NPI is available);
  - *Market-related interest*: It was estimated that the funds backing the GEPF earned an investment return in line with the growth of the Notional Portfolio Index *("NPI").* The cost has then been accumulated with investment returns approximated by the NPI from 31 March 1998 until 30 September 2010, the latest date at which the NPI is available;
  - *Short-term interest*: Late payment interest, in accordance with the late payment interest rate policy of the GEPF, was then added from 1 October 2010 to 31 December 2010.

# SUMMARY OF COSTS

The total cost as at **31 December 2010** for all departments, can be summarized as follows:

| | Department of Defence | All other Departments | Total |
|---|---|---|---|
| Number of members 19 669 3 581 23 250 | 19 669 | 3 581 | 23 250 |
| Cost for Exits as at 31 December 2010 (R' m) | 2 727.72 | 989.70 | 3 717.42 |
| Cost for Active members as at 31 December 2010 (R' m) | 2 759.05 | 914.25 | 3 673.30 |
| Total (R' m) | 5 486.77 | 1 903.95 | 7 390.72 |
| Less: Amount already paid by Employers (R' m) | 492.59* | 1 151.86** | 1 644.45 |
| Less: Reserve Account Balance for NSF Past Discriminatory Practices (R' m) | 1 011.55*** | - | 1 011.55 |
| Total (R' m) | 3 982.63 | 752.09 | 4 734.72 |

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# ADDRESSING THE FINANCIAL IMPLICATIONS

- The National Treasury's position on the reimbursement of the GEPF for the additional liability arising out of the revised NSF pension dispensation is that it is dependent on the appropriation of funds for this purpose by Parliament. A submission will be made to the Ministers Committee on the budget this year, for inclusion of the required funding in the 2012 MTEF allocations.
- The costs for the NSF dispensation will be centrally budgeted for under the National Treasury Vote (Programme 7) as opposed to each department budgeting for it directly".
- However, the National Treasury will need to conduct an appropriate actuarial diligence exercise to verify the costs. Documentation/information has been requested from the GEPF for this purpose.

# THANK YOU

# QUESTIONS?