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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF SOCIAL DEVELOPMENT

NO. 1362

01 NOVEMBER 2016

SOCIAL ASSISTANCE ACT, 2004 (ACT NO. 13 OF 2004) AS AMENDED**CALL FOR COMMENTS ON THE SOCIAL ASSISTANCE AMENDMENT BILL**

I, Bathabile Olive Dlamini, Minister responsible for Social Development, under Section 32(1) and (2) of the Social Assistance Act, 2004 (Act No.13 of 2004) intend to make amendments to the Social Assistance Act, 2004 as set out in the Schedule.

Interested persons or organisations are hereby invited to submit written comments on the draft Bill within 30 calendar days from the date of publication. Comments shall be forwarded to Mr. M Ratshisusu; Director: Legal Services by:

(a) Post to:

The Department of Social Development
Private Bag X901,
Pretoria
0001;

(b) Hand to:

The Department of Social Development
Chief Directorate: Legal Services
134 Pretorius Street
HRSC Building
PRETORIA
0001;

(c) fax to:

+27 (0) 86 214 6857

(d) by email to:

SAABill@dsd.gov.za



B. O. DLAMINI (MP)
MINISTER OF SOCIAL DEVELOPMENT
DATE:

REPUBLIC OF SOUTH AFRICA

SOCIAL ASSISTANCE AMENDMENT BILL, 2016

*(As introduced in the National Assembly (proposed section 76);
explanatory summary of Bill published in Government Gazette No. 40391
of 1 November 2016)
(The English text is the official text of the Bill)*

(MINISTER OF SOCIAL DEVELOPMENT)

[B — 2016]

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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.
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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 establish the Supplementary Benefits Fund; to provide for social relief of distress in the event of a disaster; to repeal the internal reconsideration process; 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 (hereinafter referred to as "the principal Act"), 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, 2002";

" '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 members appointed by the Minister to consider appeals contemplated in sections 14 and 18 of this Act in the prescribe manner;"

(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;"

(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 or benefit contemplated in section 12A;"; and

(e) the insertion after the definition of "South African citizen" of the following definition:

" 'Supplementary Benefits Fund' means the Fund established by section 13A;".

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

"Provision of social [grants] assistance";

(b) by the deletion of "and" at the end of paragraph (f), the substitution of a semi-colon for the full stop at the end of paragraph (g) and the addition of the following paragraphs:

"(h) social relief of distress; and

(i) allocations for the Supplementary Benefits Fund."

Substitution of section 6 of Act 13 of 2004

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

"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 principal Act, after section 12:

"Additional payments or benefits

12A. (1) The Minister, with the concurrence of the Minister of Finance, may prescribe—

(a) an additional payment;

(b) a funeral benefit; or

(c) any other benefit,

linked to a social grant or social relief of distress.

(2) The Minister may, in prescribing an additional payment or benefit under subsection (1), differentiate on the basis of need between beneficiaries of social grants or social relief of distress.

(3) A benefit contemplated in subsection (1) (b) and (c) must be made available out of the Supplementary Benefits Fund."

Substitution of section 13 of Act 13 of 2004

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

"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) The Agency may in the event of a disaster, subject to subsection (2) and depending on the magnitude of the disaster and the availability of resources, determine the needs of the affected communities and disburse the social relief of distress."

Insertion of Chapter 2A in Act 13 of 2004

6. The following heading and sections are hereby inserted in the principal Act, after section 13:

"CHAPTER 2A
SUPPLEMENTARY BENEFITS FUND

Establishment of Supplementary Benefits Fund

13A. (1) The Supplementary Benefits Fund is hereby established.

(2) The Fund must be credited with—

(a) moneys appropriated by Parliament;

(b) interest earned on investments contemplated in section 13C;

(c) donations to the Fund; and

(d) money received or payable from any other source.

Use of Fund

13B. Moneys in the Fund may be used only for a benefit as contemplated in section 12A (1) (b).

Administration and control of Fund

13C. (1) The Chief Executive Officer of the South African Social Security Agency is the accounting officer of the Fund in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999), and must—

(a) control the Fund;

(b) keep proper records of all financial transactions, assets and liabilities of the Fund; and

(c) as soon as possible after the end of each financial year, prepare accounts of all payments into and out of the Fund and a balance sheet in respect of that year.

(2) Any moneys in the Fund, not required for immediate use, may be invested with the Public Investment Corporation Limited established by section 2 of the Public Investment Corporation Act, 2004 (Act No. 23 of 2004), or with a financial institution approved by the Minister.

(3) Any unexpended balance in the Fund at the end of the financial year must be carried forward to the next financial year as a credit to the Fund."

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

7. Section 14 of the principal Act, 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

8. The following section is substituted for section 18 of Social Assistance Act, 2004

"Appeal against decision of Agency

18. (1) An Independent Tribunal consisting of at least three persons appointed by the Minister following a transparent process must, in the prescribed manner, hear appeals lodged under this section.

(2) An applicant or a beneficiary who disagrees with the decision of the Agency under this Act may, within 90 days of the decision being made, lodge a written appeal with the Independent Tribunal referred to in subsection (1) in the prescribed manner.

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

(4) The Independent Tribunal must, in the prescribed manner, 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 referred to in subsection (1) to the Independent Tribunal.

(5) The Agency must, within 30 days from receipt of the request contemplated in subsection (4), submit the reasons and all relevant records to the Independent Tribunal.

(5) The Independent Tribunal must, within 60 days of receipt of the reasons and all relevant records contemplated in subsection (4),

consider the appeal and may confirm, vary or set aside the decision of the Agency or make any other decision which is just.

(6) 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

9. Section 24 of the principal Act, 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

10. Section 29 of the principal Act, 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

11. Section 32 of the principal Act, 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 or benefit contemplated in section 12A; and
- (e) differentiation on the basis of need between beneficiaries of social grants or social relief of distress 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*."

Short title and commencement

12. (1) This Act is called the Social Assistance Amendment Act, 2016, 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.

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