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OF THE REPUBLIC OF SOUTH AFRICA

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## STAATSKOERANT

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STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No. 426.

15 March 1989

It is hereby notified that the acting State President has assented to the following Act which is hereby published for general information:—

No. 7 of 1989: Divorce Amendment Act, 1989.

No. 426.

15 Maart 1989

Hierby word bekend gemaak dat die waarnemende Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 7 van 1989: Wysigingswet op Egskeiding, 1989.

Act No. 7, 1989

DIVORCE AMENDMENT ACT, 1989

**GENERAL EXPLANATORY NOTE:**

Words underlined with solid line indicate insertions in existing enactments.

**ACT**

To amend the Divorce Act, 1979, so as to provide that a party to a divorce action may share in the pension interest of the other party; and to provide for matters connected therewith.

*(English text signed by the acting State President.)  
(Assented to 1 March 1989.)*

**B**E IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

**Amendment of section 1 of Act 70 of 1979**

1. Section 1 of the Divorce Act, 1979, is hereby amended by the addition to subsection (1) of the following definitions:

“‘pension fund’ means a pension fund as defined in section 1 (1) of the Pension Funds Act, 1956 (Act No. 24 of 1956), irrespective of whether the provisions of that Act apply to the pension fund or not;

‘pension interest’, in relation to a party to a divorce action who—

(a) is a member of a pension fund (excluding a retirement annuity fund), means the benefits to which that party as such a member would have been entitled in terms of the rules of that fund if his membership of the fund would have been terminated on the date of the divorce on account of his resignation from his office;

(b) is a member of a retirement annuity fund which was *bona fide* established for the purpose of providing life annuities for the members of the fund, and which is a pension fund, means the total amount of that party’s contributions to the fund up to the date of the divorce, together with a total amount of annual simple interest on those contributions up to that date, calculated at the same rate as the rate prescribed as at that date by the Minister of Justice in terms of section 1 (2) of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975), for the purposes of that Act;

‘rules’, in relation to a pension fund, means rules as defined in section 1 (1) of the Pension Funds Act, 1956.”.

**Amendment of section 7 of Act 70 of 1979, as amended by section 36 of Act 88 of 1984**

2. Section 7 of the Divorce Act, 1979, is hereby amended by the addition of the following subsections:

“(7) (a) In the determination of the patrimonial benefits to which the parties to any divorce action may be entitled, the pension interest of a party shall, subject to paragraphs (b) and (c), be deemed to be part of his assets.

## ALGEMENE VERDUIDELIKENDE NOTA:

\_\_\_\_\_ Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

## WET

Tot wysiging van die Wet op Egskeiding, 1979, ten einde voorsiening te maak dat 'n party in 'n egskeidingsgeding in die pensioenbelang van die ander party kan deel; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

(Engelse teks deur die waarnemende Staatspresident geteken.)  
(Goedgekeur op 1 Maart 1989.)

**D**AAR WORD BEPAAL deur die Staatspresident en die Parlement van die Republiek van Suid-Afrika, soos volg:—

## Wysiging van artikel 1 van Wet 70 van 1979

1. Artikel 1 van die Wet op Egskeiding, 1979, word hierby gewysig deur die 5 volgende omskrywings by subartikel (1) te voeg:

“‘pensioenbelang’, met betrekking tot 'n party in 'n egskeidingsgeding wat—

- 10 (a) 'n lid is van 'n pensioenfonds (uitgesonderd 'n uittredingsannuïteitsfonds), die voordele waarop daardie party as so 'n lid ingevolge die statute van daardie fonds geregtig sou gewees het as sy lidmaatskap van die fonds op die datum van die egskeiding beeindig sou geword het weens sy bedanking uit sy betrekking;
- 15 (b) 'n lid is van 'n uittredingsannuïteitsfonds wat *bona fide* ingestel is met die oogmerk om lyfrentes vir die lede van die fonds beskikbaar te stel, en wat 'n pensioenfonds is, die totale bedrag van daardie party se bydraes tot die fonds tot op die datum van die egskeiding, tesame met 'n totale bedrag van jaarlikse enkelvoudige rente op dié bydraes tot op dié datum, bereken teen dieselfde koers as die koers wat op daardie datum deur die Minister van Justisie ingevolge artikel 1 (2) van die Wet op die Voorgeskrewe Rentekoers, 1975 (Wet No. 55 van 1975), vir die doeleindes van daardie Wet voorgeskryf is;
- 20 ‘pensioenfonds’ 'n pensioenfonds soos omskryf in artikel 1 (1) van die Wet op Pensioenfondse, 1956 (Wet No. 24 van 1956), ongeag of die bepalings van daardie Wet op die pensioenfonds van toepassing is of nie;
- 25 ‘statute’, met betrekking tot 'n pensioenfonds, statute soos omskryf in artikel 1 (1) van die Wet op Pensioenfondse, 1956.”

## Wysiging van artikel 7 van Wet 70 van 1979, soos gewysig deur artikel 36 van Wet 88 van 1984

2. Artikel 7 van die Wet op Egskeiding, 1979, word hierby gewysig deur die volgende subartikels by te voeg:

- 30 “(7) (a) By die bepaling van die vermoënsregtelike voordele waarop die partye in enige egskeidingsgeding geregtig is, word 'n party se pensioenbelang, behoudens paragrawe (b) en (c), geag deel van sy bates te wees.

## Act No. 7, 1989

## DIVORCE AMENDMENT ACT, 1989

- (b) The amount so deemed to be part of a party's assets, shall be reduced by any amount of his pension interest which, by virtue of paragraph (a), in a previous divorce—
- (i) was paid over or awarded to another party; or
  - (ii) for the purposes of an agreement contemplated in subsection (1), was accounted in favour of another party. 5
- (c) Paragraph (a) shall not apply to a divorce action in respect of a marriage out of community of property entered into on or after 1 November 1984 in terms of an antenuptial contract by which community of property, community of profit and loss and the accrual system are excluded. 10
- (8) Notwithstanding the provisions of any other law or of the rules of any pension fund—
- (a) the court granting a decree of divorce in respect of a member of such a fund, may make an order that—
    - (i) any part of the pension interest of that member which, by virtue of subsection (7), is due or assigned to the other party to the divorce action concerned, shall be paid by that fund to that other party when any pension benefits accrue in respect of that member; 15
    - (ii) an endorsement be made in the records of that fund that that part of the pension interest concerned is so payable to that other party; 20
  - (b) any law which applies in relation to the reduction, assignment, transfer, cession, pledge, hypothecation or attachment of the pension benefits, or any right in respect thereof, in that fund, shall apply *mutatis mutandis* with regard to the right of that other party in respect of that part of the pension interest concerned.”. 25

**Short title and commencement**

3. This Act shall be called the Divorce Amendment Act, 1989, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

## WYSIGINGSWET OP EGSKEIDING, 1989

Wet No. 7, 1989

- (b) Die bedrag wat aldus geag word deel van 'n party se bates te wees, word verminder met enige bedrag van sy pensioenbelang wat, uit hoofde van paragraaf (a), by 'n vorige egskeiding—
- 5 (i) aan 'n ander party oorbetal of toegewys is; of
- (ii) vir die doeleindes van 'n ooreenkoms bedoel in subartikel (1), ten voordele van 'n ander party in berekening gebring is.
- (c) Paragraaf (a) is nie van toepassing nie op 'n egskeidingsgeding ten opsigte van 'n huwelik buite gemeenskap van goed wat op of na 1 November 1984 gesluit is ingevolge huweliksvoorwaardes waardeur gemeenskap van goed,
- 10 gemeenskap van wins en verlies en die aanwasbedeling uitgesluit is.
- (8) Ondanks die bepalinge van enige ander wet of van die statute van enige pensioenfonds—
- (a) kan die hof wat 'n egskeidingsbevel ten opsigte van 'n lid van so 'n fonds verleen, 'n bevel gee dat—
- 15 (i) enige deel van die pensioenbelang van daardie lid wat uit hoofde van subartikel (7) die ander party in die betrokke egskeidingsgeding toekom of aan hom toegewys word, deur daardie fonds aan daardie ander party betaal moet word wanneer enige pensioenvoordele ten opsigte van daardie lid toeval;
- 20 (ii) 'n aantekening in die rekords van daardie fonds gemaak word dat daardie deel van die betrokke pensioenbelang aldus aan daardie ander party betaalbaar is;
- (b) is enige wet wat van toepassing is met betrekking tot die vermindering, oormaking, oordrag, sedering, verpanding, verhipotekering of inbeslag-
- 25 neming van die pensioenvoordele, of enige reg ten opsigte daarvan, in daardie fonds, *mutatis mutandis* van toepassing met betrekking tot daardie ander party se reg ten opsigte van daardie deel van die betrokke pensioenbelang.”.

**Kort titel en inwerkingtreding**

- 30 3. Hierdie Wet heet die Wysigingswet op Egskeiding, 1989, en tree in werking op 'n datum wat die Staatspresident by proklamasie in die *Staatskoerant* bepaal.

