



# GOVERNMENT GAZETTE

OF THE REPUBLIC OF SOUTH AFRICA

REPUBLIEK VAN SUID-AFRIKA

## STAATSKOERANT

*Registered at the Post Office as a Newspaper*

*As 'n Nuusblad by die Poskantoor Geregistreer*

Selling price • Verkoopprijs  
(GST excluded/AVB uitgesluit)

Local **60c** Plaaslik  
Other countries 95c Buitelands  
Post free • Posvry

VOL. 288

CAPE TOWN, 16 JUNE 1989

KAAPSTAD, 16 JUNIE 1989

No. 11959

STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No. 1280.

16 June 1989

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

No. 88 of 1989: Judges' Remuneration and Conditions of Employment Act, 1989.

No. 1280.

16 Junie 1989

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

No. 88 van 1989: Wet op Besoldiging en Diensvoorwaardes van Regters, 1989.

Act No. 88, 1989

JUDGES' REMUNERATION AND CONDITIONS OF EMPLOYMENT  
ACT, 1989

## GENERAL EXPLANATORY NOTE:

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

**—** Words underlined with solid line indicate insertions in existing enactments.

# ACT

To provide for the remuneration and conditions of employment of judges of the Supreme Court of South Africa; and for matters connected therewith.

*(Afrikaans text signed by the State President.)*  
*(Assented to 1 June 1989.)*

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

## Definitions

1. (1) In this Act, unless the context indicates otherwise—
  - (i) "active service" means any service as a judge in a permanent capacity, and includes—
    - (a) service in an acting capacity for any continuous period immediately prior to assuming office as a judge in a permanent capacity; and
    - (b) any other continuous period of longer than 29 days of such service in an acting capacity prior to assuming office as a judge in a permanent capacity, irrespective of whether or not such service was performed prior to or after the fixed date; (i)
  - (ii) "fixed date" means the date of commencement of this Act; (vii)
  - (iii) "judge" means any person holding, or any person who at the fixed date held, the office of—
    - (a) Chief Justice of South Africa;
    - (b) judge of the Appellate Division of the Supreme Court of South Africa; or
    - (c) judge president, deputy judge president or judge of any provincial or local division of the said court; (v)
  - (iv) "Minister" means the Minister of Justice; (iv)
  - (v) "revenue" means the State Revenue Fund; (iii)
  - (vi) "salary" means, subject to the provisions of subsection (2), the annual salary and the allowance payable to a judge in terms of section 2; (vi)
  - (vii) "service" means service as a judge after that judge has been discharged from active service in terms of this Act; (ii)

(2) If a judge who has been seconded for active service or service as a judge of a state the territory of which formerly formed part of the Republic dies or is discharged from active service while holding the office of chief justice of the High Court of that state in a permanent capacity, his salary shall for the purposes of this Act be deemed to be that of a judge president of a provincial division of the Supreme Court of South Africa.

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## ALGEMENE VERDUIDELIKENDE NOTA:

[ ]      Woorde in vet druk tussen vierkantige hake dui skappings uit bestaande verordenings aan.

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

## WET

Om voorsiening te maak vir die besoldiging en diensvoorwaardes van regters van die Hooggeregshof van Suid-Afrika; en vir aangeleenthede wat daarmee in verband staan.

(Afrikaanse teks deur die Staatspresident geteken.)  
(Goedgekeur op 1 Junie 1989.)

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

## Woordomskrywing

1. (1) In hierdie Wet, tensy uit die samehang anders blyk, beteken—
  - 5 (i) “aktiewe diens” enige diens as regter in 'n permanente hoedanigheid verrig, en ook—
    - (a) diens in 'n waarnemende hoedanigheid verrig vir 'n ononderbroke tydperk onmiddellik voor diensaanvaarding as 'n regter in 'n permanente hoedanigheid; en
    - 10 (b) enige ander ononderbroke tydperk van langer as 29 dae van sodanige diens in 'n waarnemende hoedanigheid verrig voor diensaanvaarding as regter in 'n permanente hoedanigheid, ongeag of sodanige diens voor of na die vasgestelde datum verrig is; (i)
    - 15 (ii) “diens” diens as regter nadat daardie regter ingevolge hierdie Wet van aktiewe diens onthef is; (vii)
    - (iii) “inkomste” die Staatsinkomstefonds; (v)
    - (iv) “Minister” die Minister van Justisie; (iv)
    - (v) “regter” iemand wat die amp beklee, of op die vasgestelde datum beklee het, van—
      - 20 (a) Hoofregter van Suid-Afrika;
      - (b) regter van die Appèlafdeling van die Hooggeregshof van Suid-Afrika; of
      - (c) regter-president, adjunk-regter-president of regter van 'n provinsiale of plaaslike afdeling van daardie hof; (iii)
    - 25 (vi) “salaris”, behoudens die bepalings van subartikel (2), die jaarlikse salaris en die toelae ingevolge artikel 2 aan 'n regter betaalbaar; (vi)
    - (vii) “vasgestelde datum” die datum van inwerkingtreding van hierdie Wet; (ii)
  - (2) Indien 'n regter wat afgestaan is vir aktiewe diens of diens as 'n regter van 'n staat waarvan die grondgebied voorheen deel van die Republiek uitgemaak het, sterf
  - 30 of van aktiewe diens onthef word of van sy amp onthef word terwyl hy die amp van hoofregter van die Hoërhof van daardie staat in 'n permanente hoedanigheid beklee, word sy salaris by die toepassing van hierdie Wet geag dié van 'n regter-president van 'n provinsiale afdeling van die Hooggeregshof van Suid-Afrika te wees.

Act No. 88, 1989 JUDGES' REMUNERATION AND CONDITIONS OF EMPLOYMENT ACT, 1989

(3) For the purposes of subsection (1) "service as a judge" includes service performed by a judge who has been seconded to serve as a judge of a state the territory of which formerly formed part of the Republic, while he is so seconded and so serves.

### Remuneration of judges

2. (1) Any person who holds office as a judge, whether in an acting or permanent capacity, shall in respect thereof, in addition to the amounts referred to in section 12 and an allowance at the rate of R3 000 per annum, be paid a monthly salary at a rate determined by the State President by proclamation in the *Gazette*.

(2) A proclamation in terms of subsection (1) may be issued with effect from a date which may not be earlier than one year prior to the date of the proclamation.

(3) (a) A proclamation issued under subsection (1) shall be laid upon the Table in Parliament within 14 days after it was published in the *Gazette* if Parliament is then in session or, if Parliament is not then in session, within 14 days after the commencement of its next ensuing session.

(b) If such a proclamation is rejected by all three Houses of Parliament by resolution passed during the same session in which it was tabled, that proclamation shall lapse on the date on which it was rejected by the last House.

(c) The provisions of paragraph (b) shall not affect the validity of anything done in terms of such a proclamation until the date upon which it lapsed, or any right, privilege, obligation or liability already acquired, accrued or incurred on the said date in terms thereof.

(4) The allowance payable in terms of subsection (1) shall not be taxable, unless Parliament expressly provides otherwise.

(5) If a judge who has been seconded for service as a judge of the High Court of a state the territory of which formerly formed part of the Republic holds the office of chief justice of that High Court in a permanent or acting capacity, and if the amount of the salary and allowance payable to him in terms of subsection (1) is less than the amount of the salary and allowance payable in terms of that subsection to a judge president of a provincial division of the Supreme Court of South Africa, he shall, in addition to the salary and allowance payable to him as aforesaid, be paid an allowance equal to the difference between the amount of the salary and allowance payable to him as aforesaid and the amount of the salary and allowance payable as a judge president.

(6) The amount of any salary and allowance payable in terms of subsections (1) and (5), shall be paid out of revenue.

### Discharge of judges from active service

3. (1) A judge who holds office in a permanent capacity—

(a) shall, subject to the provisions of section 4, be discharged from active service on the date on which he attains the age of 70 years, if he has on that date completed a period of active service of not less than 10 years, or, if he has on that date not yet completed a period of 10 years' active service, on the date immediately following the day on which he completes a period of 10 years' active service;

(b) who has already attained the age of 65 years and has performed active service for a period of 15 years, and who informs the Minister in writing that he no longer wishes to perform active service, shall be discharged by the State President from active service;

(c) may at any time be discharged by the State President from active service if he becomes afflicted with a permanent infirmity of mind or body which renders him incapable of performing his official duties;

(d) may at any time on his request and with the approval of the State President be discharged from active service if there is any reason which the State President deems sufficient.

(2) A judge who has been discharged from active service shall for the purposes of section 3 of the Supreme Court Act, 1959 (Act No. 59 of 1959), not be regarded as a judge of any division.

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(3) By die toepassing van subartikel (1) beteken "diens as regter" ook diens verrig deur 'n regter wat afgestaan is om as regter te dien van 'n staat waarvan die grondgebied voorheen deel van die Republiek uitgemaak het, terwyl hy aldus afgestaan is en aldus dien.

5 **Besoldiging van regters**

2. (1) Aan iemand wat die amp van regter beklee, hetsy in 'n waarnemende of permanente hoedanigheid, word ten opsigte daarvan benewens die in artikel 12 bedoelde bedrae en 'n toelae teen die skaal van R3 000 per jaar, maandeliks 'n salaris betaal teen 'n skaal wat van tyd tot tyd deur die Staatspresident by proklamasie in die *Staatskoerant* bepaal word.

(2) 'n Proklamasie ingevolge subartikel (1) kan uitgevaardig word met ingang van 'n datum wat hoogstens een jaar vroeër as die datum van die proklamasie kan wees.

(3) (a) 'n Proklamasie kragtens subartikel (1) uitgevaardig, moet binne 14 dae nadat dit in die *Staatskoerant* gepubliseer is in die Parlement ter Tafel gelê word indien die Parlement dan in sessie is of, indien die Parlement nie dan in sessie is nie, binne 14 dae na die aanvang van sy eersvolgende sessie.

(b) Indien so 'n proklamasie deur al drie Huise van die Parlement by besluit aangeneem gedurende dieselfde sessie waarin dit ter Tafel gelê is, afgekeur word, verval die proklamasie op die datum waarop dit deur die laaste Huis afgekeur word.

(c) Die bepalinge van paragraaf (b) doen nie afbreuk nie aan die geldigheid van enigiets ingevolge so 'n proklamasie gedoen tot op die datum waarop dit verval het, of aan enige reg, voorreg, verpligting of aanspreeklikheid wat op bedoelde datum reeds ingevolge daarvan verkry, opgeloop of aangegaan is.

(4) Die toelae ingevolge subartikel (1) betaalbaar, is nie belasbaar nie, tensy die Parlement uitdruklik anders bepaal.

(5) Indien 'n regter wat afgestaan is vir diens as 'n regter van die Hoërhof van 'n staat waarvan die grondgebied voorheen deel van die Republiek uitgemaak het, die amp van hoofregter van daardie Hoërhof in 'n permanente of waarnemende hoedanigheid beklee, en indien die bedrag van die salaris en toelae wat ingevolge subartikel (1) aan hom betaalbaar is minder is as die bedrag van die salaris en toelae wat ingevolge daardie subartikel aan 'n regter-president van 'n provinsiale afdeling van die Hooggeregshof van Suid-Afrika betaalbaar is, word daar, benewens die salaris en toelae wat soos voormeld aan hom betaalbaar is, 'n toelae aan hom betaal gelyk aan die verskil tussen die bedrag van die salaris en toelae wat soos voormeld aan hom betaalbaar is en die bedrag van die salaris en toelae wat soos voormeld aan so 'n regter-president betaalbaar is.

(6) Die bedrag van 'n salaris en toelae ingevolge subartikels (1) en (5) betaalbaar, word uit inkomste betaal.

**Ontheffing van regters van aktiewe diens**

3. (1) 'n Regter wat sy amp in 'n permanente hoedanigheid beklee—

(a) word, behoudens die bepalinge van artikel 4, van aktiewe diens onthef op die datum waarop hy die ouderdom van 70 jaar bereik, indien hy op daardie datum 'n tydperk van minstens 10 jaar aktiewe diens voltooi het, of, indien hy op daardie datum nog nie 'n tydperk van 10 jaar aktiewe diens voltooi het nie, op die dag wat onmiddellik volg op die dag waarop hy 'n tydperk van 10 jaar aktiewe diens voltooi;

(b) wat reeds die ouderdom van 65 jaar bereik het en aktiewe diens vir 'n tydperk van 15 jaar verrig het, en wat die Minister skriftelik meedeel dat hy nie langer aktiewe diens wil verrig nie, word deur die Staatspresident van aktiewe diens onthef;

(c) kan te eniger tyd deur die Staatspresident van aktiewe diens onthef word indien hy aangetas raak deur 'n permanente geeste- of liggaamswakheid wat hom ongeskik maak om sy ampspligte behoorlik te vervul;

(d) kan te eniger tyd op sy versoek en met die toestemming van die Staatspresident van aktiewe diens onthef word indien daar 'n rede bestaan wat die Staatspresident voldoende ag.

(2) 'n Regter wat van aktiewe diens onthef is, word by die toepassing van artikel 60 3 van die Wet op die Hooggeregshof, 1959 (Wet No. 59 van 1959), nie as 'n regter van enige afdeling beskou nie.

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JUDGES' REMUNERATION AND CONDITIONS OF EMPLOYMENT  
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4. A judge who on attaining the age of 70 years has not yet completed 15 years' active service, may continue to perform active service to the date on which he completes a period of 15 years' active service or attains the age of 75 years, whichever occurs first, whereupon he shall forthwith be discharged from active service. 5

**Salary payable to judges after discharge from active service**

5. (1) A judge who on or after the fixed date was or is discharged from active service in terms of section 3 or 4 shall be paid a salary in accordance with the formula— 10

$$\frac{A}{B} \times C$$

in which formula the factor—

(a) A, subject to the provisions of subsection (2), represents the annual salary applicable to the office held by the judge concerned on discharge from active service; 15

(b) B represents 15; and

(c) C represents the period in years of active service of such judge.

(2) The factor "A" in the formula referred to in subsection (1), shall be adjusted whenever the salary applicable to the office held by the judge concerned on discharge from active service, is increased. 20

(3) (a) Subject to the provisions of subsection (2) and of paragraph (c), the aggregate of the salary payable in terms of subsection (1) to a judge who was or is discharged from active service in terms of section 3 (1) (a), (c) or (d) or 4 shall not be less than 40 per cent of his highest salary during the period of his active service and shall not exceed such salary. 25

(b) Subject to the provisions of subsection (2), the aggregate of the salary payable in terms of subsection (1) to a judge who was or is discharged from active service in terms of section 3 (1) (b), shall be 80 per cent of his highest salary during the period of his active service, plus 2 per cent of that salary for every year of active service which he performs after attaining the age of 65 years. 30

(c) Subject to the provisions of subsection (2), the aggregate of the salary payable in terms of subsection (1) to a judge who was or is discharged from active service in terms of section 3 (1) (c) or (d) before he attains the age of 65 years, shall not be more than 80 per cent of his highest salary during the period of his active service. 35

(4) For the purposes of subsection (1) the period of active service in any particular office shall be calculated by the year and the month, and fractions of a month shall be disregarded.

(5) If a judge to whom a salary is payable in terms of this section dies, the payment of the salary shall cease with effect from the first day of the month following the month in which he died. 40

**Gratuity payable to judges after discharge from active service**

6. (1) Subject to the provisions of subsections (2), (3) and (4), any judge who on or after the fixed date was or is discharged from active service in terms of section 3 or 4, shall, in addition to any salary payable to him in terms of section 5, be paid a gratuity which shall in respect of every office held by him during his active service be calculated in accordance with the formula— 45

$$D \times 2 \times \frac{E}{15}$$

in which formula the factor— 50

(a) D represents the salary which at the time of the discharge of such judge from active service was applicable to the office concerned;

(b) E represents the period in years of active service, but not exceeding 20 years, of such a judge in the office concerned.

(2) After the completion of 15 years' active service a judge shall once be entitled, if he so requests, to be paid the gratuity (or any part thereof) which has until the date of the request accrued in accordance with the formula in subsection (1). 55

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**Sekere regters kan voortgaan om aktiewe diens te verrig**

4. 'n Regter wat by bereiking van die ouderdom van 70 jaar nog nie 15 jaar aktiewe diens voltooi het nie, kan voortgaan om aktiewe diens te verrig tot die datum waarop hy 'n tydperk van 15 jaar aktiewe diens voltooi of die ouderdom van 75 jaar bereik, watter ook al die eerste plaasvind, waarna hy onmiddellik van aktiewe diens onthef word.

**Salaris betaalbaar aan regters na ontheffing van aktiewe diens**

5. (1) Aan 'n regter wat op of na die vasgestelde datum ingevolge artikel 3 of 4 van aktiewe diens onthef is of word, word 'n salaris betaal ooreenkomstig die formule—  

$$\frac{A}{B} \times C$$
  
 in watter formule die faktor—  
 (a) A, behoudens die bepalings van subartikel (2), die jaarlikse salaris verbonde aan die amp wat die betrokke regter by ontheffing van aktiewe diens beklee het, voorstel;  
 (b) B 15 voorstel; en  
 (c) C die tydperk in jare van aktiewe diens van so 'n regter voorstel.  
 (2) Die faktor "A" in die formule in subartikel (1) vermeld, word aangepas telkens wanneer die salaris verbonde aan die amp wat die betrokke regter by ontheffing van aktiewe diens beklee het, verhoog word.  
 (3) (a) Behoudens die bepalings van subartikel (2) en van paragraaf (c), bedra die totaal van die salaris ingevolge subartikel (1) betaalbaar aan 'n regter wat ingevolge artikel 3 (1) (a), (c) of (d) of 4 van aktiewe diens onthef is of word, nie minder nie as 40 persent van sy hoogste salaris gedurende die tydperk van sy aktiewe diens en nie meer as sodanige salaris nie.  
 (b) Behoudens die bepalings van subartikel (2), bedra die totaal van die salaris ingevolge subartikel (1) betaalbaar aan 'n regter wat ingevolge artikel 3 (1) (b) van aktiewe diens onthef is of word, 80 persent van sy hoogste salaris gedurende die tydperk van sy aktiewe diens, plus 2 persent van daardie salaris vir elke jaar van aktiewe diens, wat hy verrig na bereiking van die ouderdom van 65 jaar.  
 (c) Behoudens die bepalings van subartikel (2), bedra die totaal van die salaris ingevolge subartikel (1) betaalbaar aan 'n regter wat ingevolge artikel 3 (1) (c) of (d) van aktiewe diens onthef is of word voordat hy die ouderdom van 65 jaar bereik, nie meer nie as 80 persent van sy hoogste salaris gedurende die tydperk van sy aktiewe diens.  
 (4) By die toepassing van subartikel (1) word die tydperk van aktiewe diens in 'n bepaalde amp by die jaar en die maand bereken en word breukdele van 'n maand buite rekening gelaat.  
 (5) Indien 'n regter aan wie 'n salaris ingevolge hierdie artikel betaalbaar is, te sterwe kom, word die betaling van die salaris gestaak met ingang van die eerste dag van die maand wat volg op die maand waarin hy te sterwe kom.

**Gratifikasie betaalbaar aan regters na ontheffing van aktiewe diens**

6. (1) Behoudens die bepalings van subartikels (2), (3) en (4), word aan 'n regter wat op of na die vasgestelde datum ingevolge artikel 3 of 4 van aktiewe diens onthef is of word, benewens 'n salaris wat ingevolge artikel 5 aan hom betaalbaar is, 'n gratifikasie betaal wat ten opsigte van elke amp deur hom tydens sy aktiewe diens beklee ooreenkomstig die formule—  

$$D \times 2 \times \frac{E}{15}$$
  
 bereken word, in watter formule die faktor—  
 (a) D die salaris voorstel wat ten tyde van so 'n regter se ontheffing van aktiewe diens aan die betrokke amp verbonde is;  
 (b) E die tydperk in jare aktiewe diens, maar hoogstens 20 jaar, van so 'n regter in die betrokke amp voorstel.  
 (2) Na voltooiing van 15 jaar aktiewe diens is 'n regter een maal daarop geregtig dat, indien hy dit versoek, die gratifikasie (of 'n gedeelte daarvan) wat tot op die datum van die versoek ooreenkomstig die formule in subartikel (1) aangegroei het, aan hom betaal word.

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(3) After the completion of 20 years' active service a judge shall once be entitled, if he so requests, to be paid the gratuity (or any portion thereof) which has until that date accrued in accordance with the formula in subsection (1), or the balance available after the exercise of the power in terms of subsection (2).

(4) A judge referred to in section 4 shall once be entitled, when he attains the age of 70 years and has completed not less than 10 years' active service, to be paid, if he so requests, the gratuity (or any portion thereof) which has until the date of that request accrued in accordance with the formula in subsection (1).

(5) The total amount of any gratuity payable in terms of this section to a judge shall not exceed three times his highest salary during the period of his active service.

(6) For the purposes of this section the period of active service shall be calculated by the year and the month, and fractions of a month shall be disregarded.

**Performance of service by judge discharged from active service**

7. (1) A judge who has been discharged from active service, except a judge who has been discharged from active service in terms of section 3 (1) (b), (c) or (d), shall be available to perform service until he attains the age of 75 years, for a period or periods which, in the aggregate, amount to three months a year, if his services are, after consultation with the Minister, requested by the Chief Justice or the judge president in whose area of jurisdiction he resides or of the division to which he was attached when discharged from active service, or with his consent, any other judge president, in consultation with the Chief Justice or the said judge president, as the case may be, and that judge's mental and physical health enable him to perform such service: Provided that a judge shall not be precluded from voluntarily performing more than 3 months' service, if his services are so requested: Provided further that a judge shall perform service as mentioned in paragraph (b), (c), (d) or (e) of subsection (2) only with his consent.

(2) For the purposes of this section "service" means—

- (a) service as a judge of the Supreme Court of South Africa as contemplated in the Supreme Court Act, 1959 (Act No. 59 of 1959), in the same or a higher office held by the judge concerned on discharge from active service, or, with the approval of the judge concerned, service in a lower office;
- (b) service as a chairman or a member of a commission as contemplated in the Commissions Act, 1947 (Act No. 8 of 1947);
- (c) service as a chairman or a member of a body or institution established by or under any law;
- (d) service as a judge of a state the territory of which formerly formed part of the Republic;
- (e) any other service which the Minister may entrust to him.

(3) A judge who performs service in terms of subsection (1) shall monthly be paid an additional salary equal to the salary which at that time is payable to the holder of the office which he holds for that period, or which is payable to the holder of the office which he held at his discharge from active service, whichever salary is the greater.

(4) The salary of a judge who contrary to subsection (1) fails to perform the minimum period of service referred to in that subsection, shall, for every full year during which he so fails, be reduced by two per cent: Provided that such reduction shall, in the aggregate, not amount to more than 10 per cent of such salary.

(5) The registrar of the division of the Supreme Court where a judge performs service in terms of subsection (1), shall notify the Director-General: Justice immediately of the commencement and duration of the service.

(6) The Director-General: Justice shall keep a register of all service performed by judges in terms of subsection (1).

**Amount payable to surviving spouse of judge**

8. (1) Subject to the provisions of subsection (2) the surviving spouse of a judge who on or after the fixed date was or is discharged from active service in terms of section 3 or 4 or who died or dies while performing active service, shall be paid

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(3) Na voltooiing van 20 jaar aktiewe diens is 'n regter een maal daarop geregtig dat, indien hy dit versoek, die gratifikasie (of 'n gedeelte daarvan) wat tot op die datum van die versoek ooreenkomstig die formule in subartikel (1) aangegroei het, of die balans wat na die uitoefening van die bevoegdheid ingevolge subartikel (2) beskikbaar is, aan hom betaal word.

(4) 'n Regter bedoel in artikel 4 is, wanneer hy die ouderdom van 70 jaar bereik en minstens 10 jaar aktiewe diens voltooi het, een maal daarop geregtig dat, indien hy dit versoek, die gratifikasie (of 'n gedeelte daarvan) wat tot op die datum van daardie versoek ooreenkomstig die formule in subartikel (1) aangegroei het, aan hom betaal word.

(5) Die totale bedrag van 'n gratifikasie ingevolge hierdie artikel aan 'n regter betaalbaar, bedra nie meer as drie maal sy hoogste salaris gedurende die tydperk van sy aktiewe diens.

(6) By die toepassing van hierdie artikel word die tydperk van aktiewe diens by die 15 jaar en die maand bereken en word breukdele van 'n maand buite rekening gelaat.

**Verrigting van diens deur regter wat van aktiewe diens onthef is**

7. (1) 'n Regter wat van aktiewe diens onthef is, uitgesonderd 'n regter wat ingevolge artikel 3 (1) (b), (c) of (d) van aktiewe diens onthef is, moet totdat hy die ouderdom van 75 jaar bereik, beskikbaar wees om diens te verrig vir 'n tydperk of 20 tydperke wat jaarliks in totaal drie maande beloop, indien sy dienste na oorleg met die Minister, deur die Hoofregter of die regter-president in wie se regsgebied hy woonagtig is of van die afdeling waaraan hy verbonde was toe hy van aktiewe diens onthef is, of met sy instemming, 'n ander regter-president, in oorleg met die Hoofregter of voormelde regter-president, na gelang van die geval, aangevra sou word en daardie regter se geestes- en liggaamsgesondheid hom geskik vir sodanige diens maak: Met dien verstande dat niks 'n regter belet om vrywillig meer as 3 25 maande diens te verrig indien sy dienste aldus aangevra word nie: Met dien verstande voorts dat 'n regter slegs met sy instemming diens soos vermeld in paragraaf (b), (c), (d) of (e) van subartikel (2) verrig.

(2) By die toepassing van hierdie artikel beteken "diens"—

- (a) diens as regter van die Hooggeregshof van Suid-Afrika soos beoog in die Wet op die Hooggeregshof, 1959 (Wet No. 59 van 1959), in dieselfde of 'n hoër amp wat die betrokke regter by ontheffing van aktiewe diens bekleë het, of, met die instemming van die betrokke regter, diens in 'n laer amp;
- 35 (b) diens as voorsitter of lid van 'n kommissie soos beoog in die Kommissiewet, 1947 (Wet No. 8 van 1947);
- (c) diens as voorsitter of lid van 'n by of kragtens wet ingestelde liggaam of instelling;
- (d) diens as regter van 'n staat waarvan die grondgebied voorheen deel van die 40 Republiek uitgemaak het;
- (e) enige ander diens wat die Minister aan hom mag opdra.

(3) Aan 'n regter wat ingevolge subartikel (1) diens verrig, word maandeliks 'n bykomende salaris betaal gelykstaande met die salaris wat op daardie tydstip aan die bekleër van die amp wat hy vir daardie tydperk bekleë, betaalbaar is of wat aan die 45 bekleër van die amp wat hy by sy ontheffing van aktiewe diens bekleë het, betaalbaar is, watter salaris ook al die grootste mag wees.

(4) Die salaris van 'n regter wat strydig met subartikel (1) versuim om die minimum tydperk diens in daardie subartikel bedoel, te verrig, word vir elke jaar waartydens hy aldus versuim met twee persent verminder: Met dien verstande dat sodanige vermin- 50 dering nie meer as 10 persent in totaal van bedoelde salaris beloop nie.

(5) Die griffier van die afdeling van die Hooggeregshof waar 'n regter ingevolge subartikel (1) diens verrig, moet die Direkteur-generaal: Justisie onverwyld van die aanvang en duur van die diens in kennis stel.

(6) Die Direkteur-generaal: Justisie moet 'n register hou van alle diens deur 'n 55 regter ingevolge subartikel (1) verrig.

**Bedrag betaalbaar aan oorlewende gade van regter**

8. (1) Behoudens die bepalinge van subartikel (2), word aan die oorlewende gade van 'n regter wat op of na die vasgestelde datum ingevolge artikel 3 of 4 van aktiewe diens onthef is of word of te sterwe gekom het of kom terwyl hy aktiewe diens verrig,

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with effect from the first day of the month immediately succeeding the month in which he dies an amount—

- (a) in the case of a surviving spouse of a judge who was so discharged from active service, equal to two thirds of the salary which was in terms of section 5 payable to that judge; 5
- (b) in the case of a surviving spouse of a judge who died while performing active service as a judge, equal to two thirds of the amount to which that judge would have been entitled if he was discharged from active service on the date of his death.

(2) For the purposes of subsection (1) the amount payable to a surviving spouse shall be adjusted whenever the salary applicable to the office held by the judge concerned on his discharge or at his death, is increased. 10

(3) The amount payable to the surviving spouse of a judge in terms of subsection (1) shall be payable with effect from the first day of the month immediately succeeding the day on which he died, and shall be payable until the death of such spouse. 15

**Gratuity payable to surviving spouse of judge**

9. If a gratuity referred to in section 6 would have been payable to a judge who died or dies on or after the fixed date had he not died but, on the date of his death, was discharged from active service in terms of section 3 or 4, there shall— 20

- (a) if such judge is survived by a spouse, be payable to such spouse, in addition to any amount payable to that spouse in terms of section 8; or
- (b) if such judge is not survived by a spouse, be payable to the estate of such judge,

a gratuity which shall be equal to the amount of the gratuity which would have been so payable to such judge had he not died but was, on the date of his death, discharged from active service as aforesaid. 25

**Removal of judge from office**

10. (1) A judge who holds office in a permanent capacity, who already has attained the age of 65 years and has performed 15 years' active service and who informs the Minister in writing that he no longer wishes to serve in the office of judge, shall be removed by the State President from that office. 30

(2) A judge referred to in subsection (1) shall be paid—

- (a) a salary in accordance with the provisions of section 5: Provided that the provisions of subsection (2) of that section shall not apply in respect of him; 35
- (b) a gratuity in accordance with the formula set out in section 6 (1).

(3) The surviving spouse of a judge referred to in subsection (1) shall, with effect from the first day of the month immediately succeeding the month in which he dies, be paid an amount equal to two thirds of the salary which was payable to that judge in terms of subsection (2) (a), which amount shall be payable until the death of such spouse. 40

**Making available of motor vehicles to judges**

11. A motor vehicle owned by the State may, on such conditions as the Minister may determine with the concurrence of the Minister of Transport Affairs, be made available to any person who holds office as a judge in a permanent or acting capacity, whether he performs active service or service, for use, in accordance with the conditions so determined, in the course of his official functions as well as for his private purposes. 45

**Regulations**

12. (1) The State President may, after consultation by the Minister with the Chief Justice and the judges president of the respective divisions, make regulations as to— 50

- (a) arrangements regarding administrative recesses;
- (b) the periods for which and the circumstances under which and conditions upon which leave of absence may be granted to judges or acting judges;

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met ingang van die eerste dag van die maand wat onmiddellik volg op die maand waarin hy te sterwe kom, 'n bedrag betaal wat—

- (a) in die geval van 'n oorlewende gade van 'n regter wat aldus van aktiewe diens onthef is, gelykstaan met twee derdes van die salaris wat ingevolge artikel 5 aan daardie regter betaalbaar was;
  - (b) in die geval van 'n oorlewende gade van 'n regter wat te sterwe gekom het terwyl hy aktiewe diens as regter verrig het, gelykstaan met twee derdes van die bedrag waarop daardie regter geregtig sou gewees het indien hy op die datum van sy afsterwe van aktiewe diens onthef is.
- (2) By die toepassing van subartikel (1) word die bedrag wat aan 'n oorlewende gade betaalbaar is, aangepas telkens wanneer die salaris verbonde aan die amp wat die betrokke regter by sy ontheffing of afsterwe bekleë het, verhoog word.
- (3) Die bedrag betaalbaar aan die oorlewende gade van 'n regter ingevolge subartikel (1) is betaalbaar met ingang van die eerste dag van die maand wat onmiddellik volg op die datum waarop hy te sterwe kom, en bly betaalbaar tot by so 'n gade se dood.

**Gratifikasie betaalbaar aan oorlewende gade van regter**

9. Indien 'n gratifikasie in artikel 6 bedoel aan 'n regter wat op of na die vasgestelde datum te sterwe gekom het of kom, betaalbaar sou gewees het indien hy nie te sterwe gekom het nie maar, op die datum van sy afsterwe, ingevolge artikel 3 of 4 van aktiewe diens onthef is, word daar—
- (a) indien so 'n regter deur 'n gade oorleef word, aan sodanige gade, benewens enige bedrag wat ingevolge artikel 8 aan daardie gade betaalbaar is; of
  - (b) indien so 'n regter nie deur 'n gade oorleef word nie, aan die boedel van so 'n regter,
- 'n gratifikasie betaal wat gelykstaan met die bedrag van die gratifikasie wat aldus aan bedoelde regter betaalbaar sou gewees het indien hy nie te sterwe gekom het nie maar, op die datum van sy afsterwe, van aktiewe diens onthef is soos voormeld.

**Ontheffing van regter van amp**

10. (1) 'n Regter wat sy amp in 'n permanente hoedanigheid bekleë, wat reeds die ouderdom van 65 jaar bereik het en 15 jaar aktiewe diens verrig het en wat die Minister skriftelik meedeel dat hy nie langer in die amp van regter wil dien nie, word deur die Staatspresident van daardie amp onthef.
- (2) Aan 'n regter in subartikel (1) bedoel, word—
- (a) 'n salaris betaal ooreenkomstig die bepalings van artikel 5: Met dien verstande dat die bepalings van subartikel (2) van daardie artikel nie ten opsigte van hom van toepassing is nie;
  - (b) 'n gratifikasie betaal ooreenkomstig die formule in artikel 6 (1) uiteengesit.
- (3) Aan die oorlewende gade van 'n regter in subartikel (1) bedoel, word met ingang van die eerste dag van die maand wat onmiddellik volg op die maand waarin hy te sterwe kom 'n bedrag betaal wat gelykstaan met twee derdes van die salaris wat ingevolge subartikel (2) (a) aan daardie regter betaalbaar was, watter bedrag tot by so 'n gade se dood betaalbaar is.

**Beskikbaarstelling van motorvoertuie aan regters**

11. 'n Motorvoertuig waarvan die Staat die eienaar is, kan, op die voorwaardes wat die Minister met die instemming van die Minister van Vervoerwese bepaal, aan iemand wat die amp van regter in 'n permanente of waarnemende hoedanigheid bekleë, hetsy hy aktiewe diens of diens verrig, beskikbaar gestel word vir gebruik, ooreenkomstig die voorwaardes aldus bepaal, in die loop van sy amptelike werksaamhede sowel as vir sy private doeleindes.

**Regulasies**

12. (1) Die Staatspresident kan, na oorlegpleging deur die Minister met die Hoofregter en die regters-president van die onderskeie afdelings, regulasies uitvaardig betreffende—
- (a) reëlins rakende administratiewe resesse;
  - (b) die tydperke waarvoor, die omstandighede waaronder en die voorwaardes waarop verlof aan regters of waarnemende regters verleen kan word;

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- (c) the method of transport of such judges, and of judges on their discharge from active service or removal from office, and of the members of their families and of the effects of judges or judges who have been discharged from active service or removed from office or deceased judges, the amounts to be paid to judges or acting judges in connection with transport and subsistence, and the circumstances in which any such transport may be provided and any such amounts may be paid; 5
- (d) the amounts which may be paid to acting judges in connection with the maintenance by them of their practices as advocates; and
- (e) the amounts payable to judges of the Appellate Division in connection with their accommodation. 10

(2) A regulation under subsection (1) may provide that an amount referred to in paragraph (c) or (d) of that subsection shall be calculated either in accordance with a scale or having regard to the expenses actually incurred in connection with the matter concerned. 15

**Administration of Act**

13. The Director-General: Justice shall, subject to the directions of the Minister, be charged with the general administration of this Act.

**Method of payment of salaries**

14. Salaries payable under this Act shall be paid monthly from revenue and on such dates and in such manner as the Minister may from time to time determine. 20

**Application of Act**

15. (1) The provisions of this Act shall, subject to the provisions of subsection (2), apply to all judges who on the fixed date have in terms of section 10 of the Supreme Court Act, 1959 (Act No. 59 of 1959), been appointed as judges or who are thereafter thus appointed. 25

(2) Any person serving as a judge immediately prior to the date of publication of this Act in the *Gazette*, may within one month after the publication of the first regulations under section 12 or such longer period, but not exceeding three months after that publication, determined in writing by the Minister at the request of a judge, in writing inform the Minister that he elects that this Act shall not apply in respect of him, in which case he shall retire in terms of the Judges' Pensions Act, 1978 (Act No. 90 of 1978), as that Act existed immediately prior to the repeal thereof by section 17. 30

(3) Any person referred to in subsection (2) who on the date referred to in that subsection has not yet attained the age of 65 years and has not yet completed 8 years' service as a judge, shall be deemed to have attained that age and to have completed that number of years: Provided that in calculating his pension benefits, only the period during which he actually served as a judge shall be taken into account. 35

**Amendment of section 10 of Act 59 of 1959, as amended by section 1 of Act 85 of 1963, section 1 of Act 41 of 1970, section 2 of Act 3 of 1977, section 1 of Act 18 of 1985, section 2 of Act 87 of 1985 and section 3 of Act 98 of 1987** 40

16. Section 10 of the Supreme Court Act, 1959, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) (a) The Chief Justice, the judges of appeal, the judges president, the deputy judges president and all other judges of the Supreme Court shall be fit and proper persons appointed by the State President under his hand and the Seal of the Republic of South Africa, and shall receive such remuneration as may be prescribed by or under the Judges' Remuneration and Conditions of Employment Act, [1978 (Act No. 91 of 1978)] 1989, and their remuneration shall, subject to the provisions of section 7 (4) of the said Act, not be reduced during their continuance in office: Provided that the rejection by all three Houses of Parliament of a proclamation under section 50

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- (c) die wyse van vervoer van sodanige regters, en van regters by hul ontheffing van aktiewe diens of hul amp, en van die gesinslede en besittings van regters of regters wat van aktiewe diens of hul amp onthef is of afgestorwe regters, die bedrae wat aan regters of waarnemende regters betaal moet word in verband met vervoer en verblyf, en die omstandighede waaronder sodanige vervoer verskaf en sodanige bedrae betaal kan word;
- (d) die bedrae wat aan waarnemende regters betaal kan word in verband met die instandhouding deur hulle van hul praktyke as advokaat; en
- (e) die bedrae wat aan regters van die Appèlafdeling in verband met hul huisvesting betaalbaar is.
- (2) 'n Regulasie kragtens subartikel (1) kan bepaal dat 'n bedrag in paragraaf (c) of (d) van daardie subartikel bedoel, bereken moet word of ooreenkomstig 'n skaal of met inagneming van die uitgawes werklik in verband met die betrokke aangeleentheid aangegaan.

## 15 Uitvoering van Wet

13. Die Direkteur-generaal: Justisie word, onderworpe aan die voorskrifte van die Minister, met die uitvoering van die bepalings van hierdie Wet belas.

## Wyse van betaling van salarisse

14. Salarisse kragtens hierdie Wet betaalbaar, word maandeliks uit inkomste betaal op die datums en wyse wat die Minister van tyd tot tyd bepaal.

## Toepassing van Wet

15. (1) Die bepalings van hierdie Wet is behoudens die bepalings van subartikel (2) van toepassing op alle regters wat op die vasgestelde datum ingevolge artikel 10 van die Wet op die Hooggeregshof, 1959 (Wet No. 59 van 1959), as regter aangestel is of daarna aangestel word.

(2) Iemand wat onmiddellik voor die datum van publikasie van hierdie Wet in die *Staatskoerant* as regter dien, kan binne een maand na die publikasie van die eerste regulasies kragtens artikel 12 of sodanige langer tydperk, maar hoogstens drie maande na daardie publikasie, wat die Minister op versoek van 'n regter skriftelik bepaal, die Minister skriftelik meedeel dat hy verkies dat hierdie Wet nie ten opsigte van hom van toepassing moet wees nie, in watter geval hy uit diens tree ingevolge die bepalings van die Wet op die Pensioene van Regters, 1978 (Wet No. 90 van 1978), soos genoemde Wet bestaan het onmiddellik voor die herroeping daarvan deur artikel 17.

(3) Iemand bedoel in subartikel (2) wat op die datum in daardie subartikel bedoel nog nie die ouderdom van 65 jaar bereik het en 8 jaar diens as regter voltooi het nie, word geag daardie ouderdom te bereik het en daardie aantal jare diens te voltooi het: Met dien verstande dat by die berekening van sy pensioenvoordele slegs die tydperk wat hy werklik as regter gedien het in aanmerking geneem word.

Wysiging van artikel 10 van Wet 59 van 1959, soos gewysig deur artikel 1 van Wet 85 van 1963, artikel 1 van Wet 41 van 1970, artikel 2 van Wet 3 van 1977, artikel 1 van Wet 18 van 1985, artikel 2 van Wet 87 van 1985 en artikel 3 van Wet 98 van 1987

16. Artikel 10 van die Wet op die Hooggeregshof, 1959, word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

"(1) (a) Die Hoofregter, die appèlregters, die regters-president, die adjunk-regters-president en alle ander regters van die Hooggeregshof moet geskikte persone wees wat die Staatspresident onder sy hand en die Seël van die Republiek van Suid-Afrika aanstel, en ontvang die besoldiging wat by of kragtens die Wet op Besoldiging en Diensvoorwaardes van Regters, [1978 (Wet No. 91 of 1978)] 1989, voorgeskryf word, wat behoudens die bepalings van artikel 7 (4) van genoemde Wet nie solank hulle die amp beklee, verminder mag word nie: Met dien verstande dat die afkeuring deur al drie Huise van die Parlement van 'n proklamasie kragtens artikel

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**[1 (1A)]** 2 (3) (b) of the said Act shall for the purposes of this section be deemed not to be a reduction of such remuneration.”.

**Repeal of laws**

17. The laws mentioned in the Schedule are hereby repealed to the extent set out in the third column thereof.

5

**Short title and commencement**

18. This Act shall be called the Judges' Remuneration and Conditions of Employment Act, 1989, and shall be deemed to have come into operation on 1 April 1989.

**Schedule**

| No. and year of law | Title                                           | Extent of repeal   |
|---------------------|-------------------------------------------------|--------------------|
| Act No. 90 of 1978  | Judges' Pensions Act, 1978                      | The whole          |
| Act No. 66 of 1979  | Judges' Pensions Amendment Act, 1979            | The whole          |
| Act No. 97 of 1980  | Pension Laws Amendment Act, 1980                | Sections 15 and 16 |
| Act No. 81 of 1982  | Pension Laws Amendment Act, 1982                | Sections 4 and 5   |
| Act No. 85 of 1985  | Judges' Pensions Amendment Act, 1985            | The whole          |
| Act No. 106 of 1986 | Pension Laws Amendment Act, 1986                | Section 6          |
| Act No. 91 of 1978  | Judges' Remuneration Act, 1978                  | The whole          |
| Act No. 63 of 1979  | Judges' Remuneration Amendment Act, 1979        | The whole          |
| Act No. 47 of 1980  | Judges' Remuneration Amendment Act, 1980        | The whole          |
| Act No. 52 of 1981  | Judges' Remuneration Amendment Act, 1981        | The whole          |
| Act No. 73 of 1982  | Judges' Remuneration Amendment Act, 1982        | The whole          |
| Act No. 55 of 1984  | Judges' Remuneration Amendment Act, 1984        | The whole          |
| Act No. 121 of 1984 | Income Tax Act, 1984                            | Section 49         |
| Act No. 86 of 1985  | Judges' Remuneration Amendment Act, 1985        | The whole          |
| Act No. 76 of 1986  | Judges' Remuneration Amendment Act, 1986        | The whole          |
| Act No. 16 of 1987  | Judges' Remuneration Amendment Act, 1987        | The whole          |
| Act No. 98 of 1987  | Judges' Remuneration Second Amendment Act, 1987 | The whole          |

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**[1 (1A)] 2 (3) (b)** van genoemde Wet, vir die doeleindes van hierdie artikel nie geag word 'n vermindering van sodanige besoldiging te wees nie.”.

**Herroeping van wette**

17. Die wette in die Bylae genoem, word hierby herroep in die mate in die derde 5 kolom daarvan aangedui.

**Kort titel en inwerkingtreding**

18. Hierdie Wet heet die Wet op Besoldiging en Diensvoorwaardes van Regters, 1989, en word geag op 1 April 1989 in werking te getree het.

**Bylae**

| No. en jaar van wet  | Titel                                                | In hoeverre herroep |
|----------------------|------------------------------------------------------|---------------------|
| Wet No. 90 van 1978  | Wet op Pensioene van Regters, 1978                   | Die geheel          |
| Wet No. 66 van 1979  | Wysigingswet op Pensioene van Regters, 1979          | Die geheel          |
| Wet No. 97 van 1980  | Wysigingswet op die Pensioenwette, 1980              | Artikels 15 en 16   |
| Wet No. 81 van 1982  | Wysigingswet op die Pensioenwette, 1982              | Artikels 4 en 5     |
| Wet No. 85 van 1985  | Wysigingswet op Pensioene van Regters, 1985          | Die geheel          |
| Wet No. 106 van 1986 | Wysigingswet op die Pensioenwette, 1986              | Artikel 6           |
| Wet No. 91 van 1978  | Wet op Besoldiging van Regters, 1978                 | Die geheel          |
| Wet No. 63 van 1979  | Wysigingswet op Besoldiging van Regters, 1979        | Die geheel          |
| Wet No. 47 van 1980  | Wysigingswet op Besoldiging van Regters, 1980        | Die geheel          |
| Wet No. 52 van 1981  | Wysigingswet op Besoldiging van Regters, 1981        | Die geheel          |
| Wet No. 73 van 1982  | Wysigingswet op Besoldiging van Regters, 1982        | Die geheel          |
| Wet No. 55 van 1984  | Wysigingswet op Besoldiging van Regters, 1984        | Die geheel          |
| Wet No. 121 van 1984 | Inkomstebelastingwet, 1984                           | Artikel 49          |
| Wet No. 86 van 1985  | Wysigingswet op Besoldiging van Regters, 1985        | Die geheel          |
| Wet No. 76 van 1986  | Wysigingswet op Besoldiging van Regters, 1986        | Die geheel          |
| Wet No. 16 van 1987  | Wysigingswet op Besoldiging van Regters, 1987        | Die geheel          |
| Wet No. 98 van 1987  | Tweede Wysigingswet op Besoldiging van Regters, 1987 | Die geheel          |

