

DEMOBILISATION ACT

PRESIDENT'S OFFICE

No. 1898. 27 November 1996

NO. 99 OF 1996: DEMOBILISATION ACT, 1996.

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

ACT

To provide for the demobilisation of some members of former non-statutory forces; in connection therewith to provide for a demobilisation gratuity; to determine the requirements for that gratuity; and to provide for related matters.

(English text signed by the President.) (Assented to 12 November 1996.)

BE IT ENACTED by the Parliament of the Republic of South Africa as follows:-

PART I

DEFINITIONS

Definitions

1. In this Act, unless the context otherwise indicates-

(i) "certified personnel register" means the certified personnel register referred to in section 224(2) of the Constitution; (iv)

(ii) "closing date", for the purposes of section 6(1)(c), means the date 12 months after the date on which this Act comes into operation; (x)

(iii) "Committee" means the Demobilisation Committee, established by section 2; (vi)

(iv) "Constitution" means the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993); (v)

(v) "demobilisation" means the disbanding of members of the former nonstatutory forces who do not enter into agreements for temporary or permanent appointment with the South African Defence Force, as contemplated in section 236(8)(d) of the Constitution; (ii)

(vi) "Department" means the Department of Defence; (iii)

(vii) "dependant", for the purposes of section 5, includes-

(a) any person in respect of whom the deceased was legally liable for maintenance at the time of his or her death;

(b) any child of the deceased born after his or her death;

(c) any surviving spouse of the deceased by virtue of a marriage or a union contracted in accordance with customary law or which is recognized as a marriage in accordance with the tenets of a religion; (i)

(viii) "Minister" means the Minister of Defence; (vii)

(ix) "non-statutory forces" means the armed forces not established by any law and known or formerly known as the Azanian People's Liberation Army and uMkhonto we Sizwe; (viii)

(x) "personnel list" means a list certified and submitted after the commencement of the Constitution, but before the adoption of the new constitutional text, as envisaged in section 73 of the Constitution, by a person duly authorised by the non-statutory force. (ix)

PART 2

DEMOBILISATION COMMITTEE

Establishment of demobilisation committee

2. (1) There is hereby established a demobilisation committee which is accountable to the Minister, and which consists of a Chairperson and no fewer than four other members.

(2) The Chairperson and members shall be appointed by the Minister and shall be officials in the employment of the Department.

Duties and powers of Committee

3. (1) The Committee shall-

(a) consider applications submitted to it in terms of this Act;

(b) determine whether an applicant is eligible to benefit under the demobilisation programme in terms of sections 4 and 5;

(c) determine the benefit payable to each applicant;

(d) pay to an eligible applicant a demobilisation gratuity as provided for in the Schedule;

(e) determine the validity of the mandate of any person to act on behalf of the applicant referred to in section 6(2); and

(f) if it decides that an applicant is not eligible to benefit under the demobilisation programme-

(i) inform the applicant in writing of its decision, giving reasons therefor; and

(ii) inform the applicant in writing of his or her right to appeal against the decision.

(2) To enable it to perform its duties, the Committee shall have power-

(a) if it finds it necessary, to conduct any investigation in relation to any application lodged with it;

(b) to require any person to appear before it to give evidence or produce any document in or under his or her possession or control; and

(c) to conduct the activities which are necessary to carry out or exercise its duties and powers.

(3) The Committee may at any time review its decision if new facts are placed before it.

PART 3

APPLICATION OF ACT

Parliamentary Oversight

4. The Joint Standing Committee of Parliament on Defence shall establish a multiparty subcommittee to oversee the administration and implementation of the demobilisation programme.

Right to be demobilised

5. (1) Any former member of the non-statutory forces-

(a) whose name and particulars appear in the certified personnel register or in a personnel list;

(b) who has not entered into an agreement for temporary or permanent employment with the South African National Defence Force as contemplated in section 236(8)(d) of the Constitution; and

(c) who no longer wishes to continue with a military career or does not satisfy the employment policies or the terms and conditions of service of the South African National Defence Force,

shall have the right, subject to the provisions of this Act, to be demobilised and to receive a demobilisation gratuity determined in the Schedule.

(2) The Minister may on good cause shown order the inclusion in the register or list referred to in subsection (1) the name of any former member of the non-statutory forces which was by reason of an administrative oversight or error or for any other reason not included in or was deleted from that register or list before the date contemplated in paragraph 3 of Annexure D to the Constitution of the Republic of South Africa, 1996. A name so included shall be deemed to have been included before the said date.

Exclusion of recipients of demobilisation gratuity from Permanent Force

6. No person shall be appointed to any position in the permanent force component of the South African National Defence Force if he or she has accepted a demobilisation gratuity.

Dependant's benefit

7. (1) Notwithstanding the provisions of any other law, a surviving dependant of any person who, but for his or her death, would have been eligible for demobilisation in terms of section 4, shall, subject to subsection (3), be entitled to receive the demobilisation gratuity to which that person would have been entitled, had he or she survived.

(2) For the purposes of this section, section 4(c) shall not apply in determining the eligibility of the deceased.

(3) The demobilisation gratuity referred to in subsection (1) shall, if the person referred to in that subsection-

(a) is survived by a spouse, be paid to that spouse;

(b) is survived by more than one spouse, be paid to those spouses in equal proportions;

(c) is not survived by a spouse but by a dependant or dependants, be paid to that dependant, or those dependants in equal proportions.

(4) A dependant's benefit shall only be paid out after the closing date for the submission of applications.

Applications for benefits

8. (1) Any person wishing to apply for a benefit under the demobilisation programme shall-

(a) complete an application in the form determined by the Committee;

(b) have a commissioner of oaths certify on the form that the applicant swore or affirmed that the information in that form is true and correct; and

(c) submit the application form to the Committee on or before the closing date.

(2) If a person who is eligible to a benefit under the demobilisation programme is unable to apply in person in terms of subsection (1) because of mental illness or any other disability, another person may submit the application on his or her behalf.

PART 4

APPEAL MECHANISMS

Right of appeal

9. (1) Any applicant who is dissatisfied with any decision of the Committee may appeal to the Minister by serving a written notice within 30 days after being informed of the Committee's decision. A copy of the notice of appeal shall be lodged with the Committee.

(2) Within 21 days after the service of the notice of appeal, the applicant shall submit to the Minister his or her written grounds of appeal.

Procedure on appeal

10. (1) After receiving the applicant's notice of appeal, the Committee shall, without delay, send to the Minister and the applicant a report of its findings.

(2) On receipt of the Committee's report, the Minister or any other person designated by the Minister shall inform the applicant in writing of the date on which the appeal is to be considered.

(3) The applicant or another person acting on his or her behalf shall be given an opportunity to make representations to the Minister or any other person designated by the Minister.

(4) After considering all the relevant information the Minister may-

(a) confirm, vary or withdraw the decision of the Committee;

(b) refer the matter back to the Committee for further consideration together with such instructions as are necessary to enable the Committee to deal with the application; or

(c) make such findings as he or she may deem necessary.

(5) The applicant and the Committee shall be informed in writing of the Minister's decision.

(6) The decision of the Minister shall be final.

PART 5

COMMUNICATIONS RELATING TO DEMOBILISATION

Duty of Committee to inform

11. The Committee shall take all necessary steps in order to inform the public as to-

(a) the existence of the programme;

(b) the establishment of the Committee;

(c) the grounds for eligibility;

(d) the closing date for the submission of applications; and

(e) any other matter that may assist applicants in understanding the demobilisation programme and procedural matters relating thereto.

PART 6

MISCELLANEOUS

Tax liability

12. The provisions of section 10(1)(x)(iv) of the Income Tax Act, 1962 (Act No. 58 of 1962), shall apply to a benefit paid in terms of this Act.

Support mechanisms

13. The Department shall provide the Committee with logistical, technical and administrative support.

Indemnity

14. No act or omission of the Minister or the Committee in terms of this Act shall render the Minister or the Committee liable in respect of anything arising from such act or omission, unless that act or omission was in bad faith or constituted gross negligence.

Retrospectivity

15. All demobilisation gratuities that have been paid before the commencement of this Act and which could have been paid in terms of this Act, shall be deemed to have been paid in terms of this Act.

Short title and commencement

16. This Act shall be called the Demobilisation Act, 1996, and shall come into operation on a date fixed by the President by proclamation in the Gazette.

SCHEDULE

GRATUITIES PAYABLE TO MEMBERS OF NON-STATUTORY FORCES ON DEMOBILISATION

GROUP	REGISTERED WITH NON-STATUTORY FORCE	AMOUNT
A	On or between 1 January 1961-31 December 1972	R42 058
B	On or between 1 January 1973-31 December 1976	R34 313
C	On or between 1 January 1977-31 December 1982	R28 721
D	On or between 1 January 1983-31 December 1989	R20 201
E	On or between 1 January 1990-26 April 1994	R12 734