

## CHAPTER 16:05

### STATE SERVICE (DISABILITY BENEFITS) ACT

*Acts 22/1971, 57/1972 (s. 26), 11/1973 (s. 15), 14/1973 (s. 49), 4/1974 (Part II), 24/1975 (s. 7), 42/1976 (s. 28), 42/1977 (s. 7), 24/1987; R.G.Ns. 415/1972, 1193/1974, 251/1975, 1135/1975, 244/1976, 468/1978 (ss. 6 and 7), 899/1978 (s. 5), 6/2000 (s. 151); S.I.s 903/1979, 179/1981, 253/1982, 49/1985, 193/1985, 340/1991, 119/1992, 381/1993.*

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**AN ACT to provide for the payment of compensation on the death or injury of persons employed by the State arising out of and in the course of official duties; to provide for payment of compensation on the death or injury of any person whilst assisting the Defence Forces, the Police Force or the Prison Service; to establish a Disablement Benefits Board and a Disablement Benefits Appeal Board and to provide for the functions and powers of those Boards, and to provide for other matters connected with or incidental to the foregoing.**

[Date of commencement: 1st June, 1971.]

## PART I

### PRELIMINARY

#### 1 Short title

This Act may be cited as the State Service (Disability Benefits) Act [*Chapter 16:05*].

#### 2 Interpretation

(1) In this Act—

“Appeal Board” means the Disablement Benefits Appeal Board established by section *ten*;

“appointed day” means the 1st June, 1971;

“Board” means the Disablement Benefits Board established by section *eight*;

“child”, in relation to a disabled person or deceased person, means an unmarried legitimate or legitimated son or daughter of that person, including a posthumous child, a step-child or a child legally adopted, which son or daughter—

(a) has not attained the age of nineteen years and is or was at the date of the injury to or death of that person dependent upon him for support; or

(b) is, in terms of a declaration under subsection (2), a child for the purposes of this Act;

“compensation” means any compensation, allowance or other benefit, including medical aid, which is payable or provided for under this Act;

“deceased person” means a deceased member or former member referred to in subsection (2) of section *four* in respect of whose death the compensation provided for in this Act is payable;

“Defence Act” means the Defence Act [*Chapter 11:02*];

“degree of disablement” means the degree of disablement due to an injury expressed as a percentage of total disablement which shall be taken as one hundred *per centum*;

“dental practitioner” means a person who is registered under the Health Professions Act [*Chapter 27:19*] as a dental practitioner;

“dependant”, in relation to a deceased person, means—

(a) a child or widow of that deceased person; or

- (b) any person not referred to in paragraph (a) who was wholly or partly maintained by that deceased person at the date of his death or of the injury which caused his death and for a reasonable period before that date;
- “disabled person” means a member or former member referred to in subsection (1) of section *four* in respect of whose disablement the compensation provided for in this Act is payable;
- “disablement” means disablement for employment or permanent injury or disfigurement;
- “disablement pension” means a pension payable in terms of section *sixteen*;
- “earnings”, in relation to a disabled person or a deceased person, means the annual rate of earnings of that person as assessed by the Board in terms of section *thirty-six*;
- “emoluments”, in relation to a member or former member—
- (a) who sustains an injury as a result of—
- (i) his being a member of the Police Force as defined in section 2 of the Police Act, other than a Regular Force member as defined in that section: or
- (ii) his being a member of a Reserve Force as defined in subsection (1) of section 2 of the Defence Act;
- means the income, either real or potential, including the value of free quarters, which is assessed by the Board as representing the income of that person immediately prior to his injury from his employment otherwise than with the Police Force or the Defence Forces, as the case may be;
- (b) not referred to in paragraph (a) who is employed on an hourly or daily basis, means the aggregate of fifty-two times the weekly rate of his salary or wages plus, where this is provided for in his conditions of service, the annual value of any food and quarters supplied to him in addition to his pay;
- (c) not referred to in paragraph (a) or (b), means the annual rate of his salary plus, where this is provided for in his conditions of service, the annual value of any quarters, fuel or light which is provided free or any allowance in lieu thereof which is paid to him in addition to his salary:
- Provided that if, in the case of a person to whom paragraph (b) or (c) applies, in the opinion of the Board, the application of paragraph (b) or (c), as the case may be, does not equitably reflect the true income of the person concerned because that person is only employed by the State for part of a working day or part of a month or year, as the case may be, the Board may assess the income which in its opinion represents the income of that person immediately prior to his injury which shall be regarded as his emoluments for the purposes of this Act;
- “injury”, in relation to a member or former member, means ill-health, physical or mental incapacity or personal injury;
- “medical board” means a board composed of medical practitioners appointed and constituted from time to time by the Secretary of the Ministry responsible for health request of the Minister for the purpose of carrying out any functions imposed under this Act on a medical board;
- “medical practitioner” means a person who is registered under the Health Professions Act [*Chapter 27:19*] as a medical practitioner;
- “member” means a person who is employed by the State on an hourly, daily, weekly, monthly or annual rate of pay and includes a member of a uniformed force, whether or not he is receiving payment for his services in that force;
- “Minister” means the Minister of Public Service, Labour and Social Welfare or any other Minister to whom the President may, from time to time, assign the administration of this Act;
- “occupation” includes a profession, calling or trade;
- “pension” means an annual pension payable during the lifetime of the recipient unless, in terms of this Act, it is payable for a shorter period;
- “Police Act” means the Police Act [*Chapter 11:10*];
- “special medical board” means a special medical board appointed in terms of section *twenty*;
- “uniformed force” means—
- (a) the Police Force as defined in section 2 of the Police Act; or
- (b) the Defence Forces as defined in subsection (1) of section 2 of the Defence Act;
- (c) the Prison Service.
- (2) The Board may declare any unmarried person who—
- (a) is an apprentice or artied clerk or otherwise undergoing training and has not attained the age of twenty-one years; or
- (b) is incapable through mental or physical infirmity of earning a livelihood if such infirmity arose before he or she attained the age of nineteen years;

and who is the legitimate or legitimated son or daughter, including a posthumous child, a step-child or a child legally adopted, of a disabled person or a deceased person, to be a child for the purposes of this Act, and such son or daughter shall be regarded for the purposes of this Act as a child of that person until such time as—

- (i) in the case of a person referred to in paragraph (a), he or she attains the age of twenty-one years or ceases to undergo the training, as the case may be; or
- (ii) the Board revokes its declaration; whichever is the earlier.

(3) Any reference in this Act to the date of the injury of a disabled person or deceased person means the date that that person received the injury which caused his disablement or death or the date that the injury first manifested itself, as the case may be:

Provided that, if that date is not established to the satisfaction of the Board, the Board shall, having regard to all the evidence submitted and, if it considers it to be necessary or desirable, after considering the report of a medical board, determine the date of the injury of that person for the purposes of this Act.

(4) In the case of a member of a uniformed force—

(a) if he sustains an injury—

- (i) in an assault occasioned by his membership of the Force or Service concerned; or
- (ii) while participating in any sport, recreational training, display or competition authorized by the Commissioner of Police, the Commander of the Army or the Commissioner of Prisons, as the case may be;

the injury shall be deemed to have arisen out of and in the course of his official duties;

(b) if he sustains an injury whilst he is on active military service or is in the field engaged on operational military or security force operations, that injury shall be deemed to have arisen out of and in the course of his official duties unless the contrary is shown.

(5) If a member of the Force as defined in section 2 of the Police Act, other than a special constable as defined in that section, sustains an injury in circumstances indicating that the injury resulted from action which he had taken or could have been expected to have taken in his official capacity in respect of—

- (a) an offence which had just been committed, was being committed or was clearly about to be or liable to be committed; or
- (b) the preservation of life or property; that injury shall be deemed to have arisen out of and in the course of his official duties unless the contrary is shown.

(6) For the purposes of this Act, an injury of a member or former member shall be deemed to have been aggravated to a material extent arising out of and in the course of his official duties if, where the degree of disablement which would have been applicable had the whole of the condition of the person concerned been caused by his official duties (hereinafter in this subsection called his full degree of disablement) is—

- (a) less than twenty *per centum*, the aggravation in his condition constitutes a degree of disablement of five *per centum* or more which is not less than one-half of his full degree of disablement;
- (b) twenty *per centum* or more, the aggravation in his condition constitutes a degree of disablement of not less than ten *per centum*.

## PART II

### BENEFITS AND APPLICATION OF ACT

#### 3 Application of Act

Subject to sections *thirty-seven* and *forty-six*, this Act shall apply in respect of—

- (a) any injury to a member or former member the date of which is on or after the appointed day and of any aggravation to a material extent of an injury which aggravation occurs on or after the appointed day;
- (b) the death of any member or former member which is caused by an injury or aggravation of an injury referred to in paragraph (a).

#### 4 Entitlement to benefits under this Act

(1) Subject to this Act, if a member or former member is found by the Board, in accordance with the provisions of this Act, to be suffering from a disablement which was caused by an injury referred to in paragraph (a) of section *three* arising out of and in the course of his official duties or which was aggravated to a material extent arising out of and in the course of his official duties, whether the injury manifests itself whilst he is a member or after he ceases to be a member, then the compensation provided for in this Act shall be payable.

(2) Subject to this Act, if a member or former member dies and it is found by the Board, in accordance with the provisions of this Act, that his death was caused by an injury referred to in paragraph (a) of section *three* arising out of and in the course of his official duties or which was aggravated to a material extent arising out of and in the course of his official duties, then the compensation provided for in this Act shall be payable.

(3) Payment of compensation in terms of this Act may be refused in any case where it is found by the Board that the injury concerned was caused or aggravated or the death was caused by any serious negligence or serious misconduct on the part of the member or former member.

(4) Compensation payable in terms of this Act shall be in addition to any other pension or benefit payable to a disabled person or the dependants of a deceased person in terms of his conditions of employment with the State.

## **5 Time within which compensation to be claimed**

No claim for compensation under this Act shall be considered unless written notice of the injury or death is lodged with the Deputy Director of Social Services or in the prescribed manner within twelve months after the date of the injury or the date when the injury first manifested itself or, in the case of death, within twelve months after the death:

Provided that the Minister may authorize the acceptance of a claim after the said period of twelve months if he is satisfied that the failure to give notice within that period was occasioned by mistake, absence from Zimbabwe or other reasonable cause.

## **6 Time within which action at common law to be taken and court to take into account compensation paid or payable**

(1) No proceedings in a court of law by a member or former member or any dependant of a member or former member against the State to recover any damages in respect of an injury to that member or former member such as is referred to in paragraph (a) of section *three* arising out of and in the course of his official duties or the death of that member or former member which has been caused by such injury shall be capable of being brought at any time after the expiration of twelve months, or such longer period as the Minister may allow in any particular case, of such injury or death.

(2) In awarding damages in any suit or action referred to in subsection (1) the court shall take into account the amount of compensation which has been paid or, in the opinion of the court, will be paid in accordance with this Act.

## **7 Remedies against both State and third party**

(1) Where an injury or death in respect of which compensation is payable was caused in circumstances creating a legal liability in some person, other than the State, (hereinafter called the "third party") to pay damages to a disabled person or the dependants of a deceased person in respect thereof—

(a) the disabled person or dependant of the deceased person, as the case may be, may both claim compensation under this Act and take proceedings against the third party in a court of law to recover damages:

Provided that where any such proceedings are instituted the court shall, in awarding damages, have regard to the amount which, by virtue of paragraph (b), is likely to become payable to the State by the third party;

(b) the Minister shall have a right of action against the third party for the recovery of the compensation payable under this Act as a result of the injury or death and may exercise such right, either by intervening in proceedings instituted by the disabled person or dependant of the deceased person against the third party or by instituting separate proceedings:

Provided that the amount recoverable in terms of this paragraph shall not exceed the amount of the damages, if any, which, in the opinion of the court, would have been awarded to the disabled person or dependant of the deceased person but for this Act.

(2) Before instituting proceedings under subsection (1), the disabled person or dependant of the deceased person shall notify the Minister in writing of his intention to do so and no proceedings in a court of law to recover damages against a third party may be taken by such person or dependant until he has notified the Minister of his intention to take such proceedings and unless he has lodged a claim for compensation under this Act.

(3) A disabled person or dependant of a deceased person who has instituted proceedings in accordance with subsection (2) shall, if he decides to abandon the proceedings or relinquish or settle his claim for damages, notify the Minister of his intention to do so and shall furnish such particulars in connexion therewith as the Minister may require.

(4) It shall not be lawful for a disabled person or dependant of a deceased person to waive his right to take proceedings against a third party for damages referred to in paragraph (a) of subsection (1) without the consent in writing of the Minister and any purported waiver of such right without such written consent shall be of no force and effect.

(5) For the purposes of this section—

"compensation" includes, in the case of a continuing liability, the capitalized value as determined by the court of the pension and any compensatory leave pay or allowance, as the case may be, which constitutes the liability.

## PART III

### BOARDS

#### 8 Disablement Benefits Board

(1) There is hereby established a board, to be known as the Disablement Benefits Board, which shall have all the powers, duties and functions conferred or imposed upon the Board by or in terms of this Act or any other enactment.

(2) The Board shall consist of—

(a) a chairman who shall be the Deputy Director of Social Services *ex officio*; and

(b) two other persons appointed by the Minister, of whom—

(i) one shall be a person who is or has been employed by the State and is a legal practitioner, a magistrate or a former magistrate; and

(ii) one shall be a person who—

A. if the case to be considered by the Board concerns the injury or death of a person who, at the date of the injury or death, was a member of a uniformed force, is or has been employed in the Force or Service concerned;

B. if the case to be considered by the Board concerns the injury or death of a person not referred to in subparagraph A, is or has been employed on the staff of the Public Service Commission.

(3) A person appointed to the Board in terms of paragraph (b) of subsection (2)—

(a) shall hold office for a period of two years:

Provided that—

(i) such person may at any time be removed from office by the Minister;

(ii) on the termination of his period of office such person shall be eligible for reappointment;

and

(b) if he is not in the full-time employment of the State, may be paid such remuneration and allowances as the Minister may in his case fix.

(4) The Minister may appoint any person to the Board as an alternate member and such person—

(a) shall act as a member of the Board only when the member to whom he is alternate is unable to exercise his functions on the Board by reason of illness, absence from Zimbabwe or other cause;

(b) when acting as a member of the Board shall exercise the functions and powers and perform the duties of the member to whom he is alternate;

(c) if he is not in the full-time employment of the State, may be paid such remuneration and allowances as the Minister may in his case fix.

(5) Subject to subsection (7), all acts, matters or things authorized or required to be done by the Board may be decided by a majority vote at a meeting of the Board at which all three members of the Board or their alternates are present.

(6) At all meetings of the Board each member of the Board shall have one vote on any question before the Board and shall be required to exercise his vote.

(7) Any proposal circulated among all the members of the Board and agreed in writing by a majority of all such members shall be of the same force and effect as a resolution passed at a duly constituted meeting of the Board and shall be incorporated in the minutes of the next succeeding meeting of the Board:

Provided that—

(i) if a member of the Board requires that such a proposal be placed before a meeting of the Board, the provisions of this subsection shall not apply to such proposal;

(ii) a proposal referred to in this subsection shall not be of the same force and effect as a resolution passed at a duly constituted meeting of the Board unless every member of the Board has recorded his decision in connexion with the proposal.

(8) If a member of the Board disagrees with any decision made by the Board he may appeal to the Minister and if the Minister considers it desirable he may direct that the matter be referred to the Appeal Board for its decision.

#### 9 Functions and powers of Board

(1) The function of the Board shall be to determine the right of any person to an award in terms of this Act and the amount of such award.

(2) In determining any question of entitlement based on a degree of disablement, the Board shall consider the report of a medical board and may seek further medical advice from the Secretary of the Ministry responsible for health:

Provided that, where the Board is satisfied that the disability of the member or former member does not permit or justify of his being examined by a medical board, the Board shall consider the report of the Secretary of the Ministry responsible for health in place of the report of a medical board.

- (3) The Board may at any time review, amend or withdraw any pension or award—
- (a) where the Board, whether on the application of the disabled person or otherwise, considers that there has been a variation in the degree of disablement of five or more *per centum* of total disablement, and such pension or award shall thereupon be calculated accordingly; or
  - (b) if the Minister orders the review on the grounds that—
    - (i) the whole or part of such pension or award has been granted in error; or
    - (ii) there is reason to believe that such pension or award has been obtained by improper means;or
  - (c) if a person in receipt of such pension or award is convicted of any offence and is sentenced to undergo a period of imprisonment without the option of a fine, during the whole or part of such period of imprisonment:

Provided that if the Board withdraws a pension or award it may authorize payment of the whole or any portion thereof to or for the benefit of any dependant of the said person as the Board may determine.

### **10 Disablement Benefits Appeal Board**

(1) There is hereby established a board, to be known as the Disablement Benefits Appeal Board, which shall have all the powers, duties and functions conferred or imposed upon it by or in terms of this Act or any other enactment.

(2) The Appeal Board shall consist of—

- (a) a chairman, who shall be president of the Administrative Court *ex officio*; and
- (b) not less than two other persons appointed by the Minister, of whom—
  - (i) one shall be a person who is or has been employed in the Treasury; and
  - (ii) one shall be a person who—
    - A. if the case to be considered by the Appeal Board concerns the injury or death of a person who, at the date of the injury or death, was a member of a uniformed force, is or has been employed in the Force or Service concerned;
    - B. if the case to be considered by the Appeal Board concerns the injury or death of a person not referred to in subparagraph A, is or has been employed on the staff of the Public Service Commission.

(3) Subsections (3) to (6) of section *eight* shall apply, *mutatis mutandis*, in relation to the Appeal Board.

### **11 Functions and powers of Appeal Board**

(1) The function of the Appeal Board shall be to consider any appeal made to it in terms of or by virtue of this Act.

(2) In considering an appeal referred to in subsection (1) the Appeal Board shall act in such manner and on such principles as it deems best fitted to do substantial justice and to give effect to and carry out the objects and provisions of this Act.

(3) The Appeal Board may receive evidence orally or by affidavit and may hear arguments and adjourn any meeting as it considers desirable.

(4) At the hearing of his appeal by the Appeal Board the person who has made the appeal may appear in person and additionally, or alternatively, may be represented by a legal practitioner.

(5) When the Appeal Board considers it necessary or desirable to take oral evidence in any matter, such evidence may be taken on oath which the chairman of the Appeal Board is hereby empowered to administer, and such evidence shall be recorded.

(6) For the purposes of considering any appeal, the Appeal Board shall have the same powers, rights and privileges as are conferred upon a commissioner by the Commissions of Inquiry Act [*Chapter 10:07*], other than the power to order a person to be detained in custody, and sections 9 to 13 and 15 to 19 of that Act shall apply, *mutatis mutandis*, in relation to an appeal heard by the Appeal Board and to any person summoned to give evidence or giving evidence before the Appeal Board.

(7) A record of the proceedings of the Appeal Board at every meeting shall be kept.

### **12 Appeals to Appeal Board**

(1) An appeal shall lie to the Appeal Board against any decision of the Board, other than—

- (a) the assessment by the Board in terms of subsection (1) of section *fifteen* of the degree of disablement resulting from an injury; or
  - (b) a refusal by the Board in terms of subsection (6) of section *fifteen* of an application by a disabled person for a determination by the Board as to his degree of disablement to be reviewed by a special medical board;
- or

(c) a requirement by the Board in terms of subsection (1) of section *nineteen* to undergo medical examination or treatment.

(2) Any person who wishes to appeal against a decision of the Board shall, within six months of having been notified of the decision of the Board against which he wishes to appeal, forward—

(a) to the Appeal Board, a notice of the appeal setting out the grounds of his appeal; and

(b) to the Board, a copy of the notice referred to in paragraph (a):

Provided that the Appeal Board may, on good cause shown, permit the giving of notice of appeal after the period of six months has elapsed.

(3) A notice of appeal in terms of subsection (2) shall state shortly and clearly the grounds on which the appeal is based.

(4) Notwithstanding the provisions of subsection (1), the chairman of the Appeal Board may reject any appeal against a decision of the Board if, in his opinion, the appeal is frivolous or vexatious.

### **13 Decision of Appeal Board**

(1) On the determination of any appeal, the Appeal Board may—

(a) confirm the decision of the Board; or

(b) subject to the provisions of this Part, vary the decision of the Board; or

(c) set aside the decision of the Board and refer the matter back to the Board for further consideration with such instructions as to the taking of further evidence or otherwise as the Appeal Board considers necessary or desirable.

(2) If the Appeal Board varies a decision of the Board, the decision of the Appeal Board shall, for the purposes of this Act, be deemed to be the decision of the Board and, subject to the provisions of subsections (3) and (4), such decision shall be final and binding:

Provided that—

(i) if, with the leave of the Appeal Board, an appeal is noted against the decision of the Board more than six months after the date the appellant was notified of that decision, any benefit or increased benefit which may become payable in the event of the appeal being successful shall take effect from the date of the lodging of the appeal unless the Appeal Board is satisfied that the delay in lodging the appeal was due to circumstances beyond the appellant's control;

(ii) where the decision of the Appeal Board necessitates any cancellation or reduction of any benefit, such cancellation or reduction shall take effect as from the first day of the month immediately following the month in which that decision was made;

(iii) if any person subsequently produces fresh material evidence in support of his claim and the Board is of the opinion that such evidence warrants the reconsideration of his case, such case shall be considered *de novo* by the Board.

(3) If the Appeal Board reverses a decision of the Board on any question affecting a point of law, any case to which a contrary view has previously been applied shall be reviewed by the Board if such review is requested by the person receiving the benefits.

(4) Where in the opinion of the Appeal Board any matter to be determined by it rests wholly or partly on a point of law, the Appeal Board may on application by the appellant or the Board state a case for the determination of such question of law by the Supreme Court.

## **PART IV**

### **COMPENSATION FOR DISABLEMENT**

#### **14 Compensatory sick leave and leave pay**

(1) The Minister may, subject to the provisions of this section, authorize the grant of compensatory sick leave to a member in the employment of the State who is unable to work as the result of an injury.

(2) Compensatory sick leave may be granted to a member in the employment of the State—

(a) for a period of or for periods not exceeding in the aggregate ninety days on production of a medical certificate given by a medical practitioner or dental practitioner, as the case may be, or, if the Minister so requires, by a medical practitioner or dental practitioner nominated by the Minister;

(b) in addition to any leave granted under paragraph (a), for a further period not exceeding ninety days or further periods not exceeding in the aggregate ninety days on production of a medical certificate given by a Government medical officer or, if the Minister so requires, by a medical board;

(c) in addition to any leave granted under paragraphs (a) and (b), for such further periods each not exceeding one hundred and eighty days as may be recommended by a medical board:

Provided that no such further periods of compensatory sick leave shall be granted if the Minister is satisfied, after considering the report of a medical board, that—

- (a) the member will be unlikely to be able to resume duty in his former occupation within a reasonable period; or
- (b) the degree of disablement of the member has reached a final and stationary condition; or
- (c) the member is fit to resume work.

(3) In the case of a member referred to in paragraph (a) of the proviso to paragraph (c) of subsection (2), the member shall be discharged from his employment with the State unless another post can be found to which he can be appointed.

(4) A member who is granted compensatory leave shall be entitled to leave pay calculated at the rate of the emoluments he would have received had he not been absent from duty:

Provided that, if he is provided free of charge with food, quarters, fuel or light during the period of such leave or paid an allowance in lieu thereof, the value thereof or the rate of the allowance, as the case may be, shall be deducted in calculating the rate of his leave pay.

(5) If a member of the Police Force as defined in section 2 of the Police Act, other than a Regular Force member as defined in that section, or a member of a Reserve Force as defined in subsection (1) of section 2 of the Defence Act, is unable to work as the result of an injury referred to in section *three* and, during the period of his inability to work, his earnings, if any, are less than his earnings immediately prior to the date of his injury, the Board may award leave pay to him—

- (a) in respect of the period for which he is so unable to work; and
- (b) calculated at the rate of pension he would receive if, as a result of such disablement, his degree of disablement were one hundred *per centum*:

Provided that, if during the period concerned any earnings of the person, together with the leave pay payable in terms of this section, exceed his earnings immediately prior to the date of his injury, the amount of such leave pay shall be reduced by such excess.

## 15 Assessment of degree of disablement

(1) The degree of disablement resulting from an injury shall, for the purposes of assessing compensation in terms of this Act, be assessed by the Board and shall be—

- (a) in the case of a disability specified in the First Schedule, not less than the percentage specified in the First Schedule in respect of that disability;
- (b) in the case of a disability not specified in the First Schedule, such percentage as may be assessed after considering the report of a medical board.

(2) In making a report for the purposes of paragraph (b) of subsection (1), the medical board shall make a comparison of the condition of the disabled person with the condition of a normal healthy person of the same age and sex, without taking into account the earning capacity in his disabled condition of the disabled person in his own or any other occupation.

(3) Where a disabled person has two or more disabilities which are the result of one or more injuries in respect of which compensation is payable by the State, the degree of disablement shall be determined in relation to the combined disabilities but shall in no case exceed one hundred *per centum*.

(4) Notwithstanding subsection (1), if the Board, by reason of the particular consequences of an injury in relation to the special nature of the occupation of a particular disabled person, considers the degree of disablement as determined in terms of subsection (1) or (3) to be inadequate, the Board may increase the degree of disablement to such percentage, being not more than one hundred *per centum*, as it considers to be equitable in the circumstances:

Provided that, if there is subsequently any material improvement in the earning capacity of the disabled person, the Board shall reduce or vary the assessment made under this subsection so, however, that in no case shall the degree of disablement be reduced or varied to such an extent that it is less than the degree of disablement as determined in terms of subsection (1) or (3), as the case may be.

(5) If a disabled person is aggrieved by the determination by the Board as to his degree of disablement, he may apply in writing to the Board, within six months of the decision of the Board having been communicated to him, for the determination to be reviewed by a special medical board.

(6) On receipt of an application in terms of subsection (5), the Board may allow the application or refuse to allow the application and it shall not be necessary for the Board to give any reason for its decision.

(7) If the Board allows an application in terms of subsection (6), it shall refer the matter to a special medical board and—

- (a) the decision of the special medical board shall be final;
- (b) the award of any disablement pension shall be adjusted accordingly with effect from such date and for such period as may be fixed by that special medical board.

## 16 Disablement pension

(1) Subject to subsections (3) and (4) and section *seventeen*, a disabled person whose degree of disablement is one hundred *per centum* shall be entitled to a disablement pension calculated as follows—

- (a) if the person continues in his employment with the State or carries on his normal occupation or is receiving compensatory leave pay in terms of subsection (4) of section *fourteen*, as an amount equal to the aggregate of—
  - (i) forty-five *per centum* of his earnings immediately prior to the date of his injury which are not in excess of \$26 092 per annum;
  - (ii) thirty *per centum* of his earnings immediately prior to the date of his injury which are in excess of \$26 092 per annum and which are not in excess of \$40 754 per annum;
- (b) if, as a result of his disablement, the person is discharged from his employment with the State or, in the opinion of the Board, is compelled to change his normal occupation or to follow a lower standard of occupation, as an amount equal to the aggregate of—
  - (i) ninety *per centum* of his earnings immediately prior to the date of his injury which are not in excess of \$13 451 per annum; and
  - (ii) sixty *per centum* of his earnings immediately prior to the date of his injury which are in excess of \$13 451 per annum up to and including \$26 092 per annum; and
  - (iii) fifty *per centum* of his earnings immediately prior to the date of his injury which are in excess of \$26 092 per annum and which are not in excess of \$49 311 per annum;

Provided that—

- (i) where the person is discharged from his employment with the State or carries on another occupation for reasons other than his disablement, the annual rate of pension shall be calculated in accordance with the provisions of paragraph (a);
- (ii) where the person has not changed his normal occupation but has a reduced earning capacity as a result of his disablement, the Board may vary the rate of pension to a rate not exceeding that calculated in terms of paragraph (b) as it considers equitable in the circumstances.

(2) Subject to subsections (3) and (4) and of section *seventeen*, a disabled person whose degree of disablement is less than one hundred *per centum* shall be entitled to a disablement pension which bears the same proportion to the pension which would have been payable in terms of subsection (1) had his degree of disablement been one hundred *per centum* as his actual degree of disablement bears to one hundred *per centum*.

(3) If a disabled person is suffering from an injury which has been aggravated to a material extent arising out of and in the course of his official duties, the pension payable to him shall be assessed in respect of such aggravation only.

(4) Where the degree of disablement of a disabled person has not, in the opinion of the Board, reached a final and stationary condition, the disablement pension payable to that person shall be assessed on the degree of disablement as determined from time to time by the Board after considering the report of a medical board and such assessment shall be effective—

- (a) from the first day of the month immediately following that on which the medical board met to consider the matter; and
- (b) for such period, being not less than six months, as the medical board may fix in each particular case.

### 17 Date of accrual of disablement pension

(1) Subject to subsection (2), where the degree of disablement of a disabled person has, in the opinion of the Board, reached a final and stationary condition, the disablement pension shall be payable with effect from the date of the injury:

Provided that, where the disabled person has been discharged from his employment with the State in terms of subsection (3) of section *fourteen* before the expiry of a period of five hundred and forty days from the date of the injury, the disablement pension shall be payable in accordance with the degree of disablement as assessed on or after the date of the discharge.

(2) Where the degree of disablement of a disabled person as not, in the opinion of the Board, reached a final and stationary condition within a period of five hundred and forty days from the date of the injury, the disablement pension—

- (a) shall be payable in accordance with the degree of disablement as assessed on or after that date with effect from the date of the injury; and
- (b) shall be subject to variation or withdrawal according to the degree of disablement as assessed from time to time with effect from the first day of such month as is determined in terms of subsection (4) of section *sixteen*.

### 18 Commutation of disablement pension

(1) Where—

- (a) the degree of disablement of a disabled person has been accepted by the Board as being final and stationary condition; and
- (b) the degree of disablement has been assessed at less than twenty *per centum* or the disablement pension payable to the disabled person is less than \$1 225 per annum;

the Minister may direct that the disablement pension be commuted in accordance with the appropriate factor as set out in the Second Schedule.

(2) Notwithstanding the commutation of a pension in terms of subsection (1), if—

- (a) the degree of disablement of the disabled person deteriorates by five or more *per centum* of total disablement; or
- (b) the pension payable to the disabled person would have been reviewed in terms of this Act had it not been commuted;

the provisions of this Act providing for the increase of a disablement pension shall apply as if the disabled person were in receipt of, and had not commuted, the disablement pension payable to him.

### **19 Disabled person to submit to medical examination and treatment**

(1) A disabled person may be required by the Board to undergo such reasonable medical examination or treatment as the Board considers necessary or desirable in the circumstances.

(2) If a disabled person fails or refuses to undergo any medical examination or treatment required in terms of subsection (1) and does not, within six weeks from the date he was required to undergo that examination or treatment, furnish to the Board a satisfactory explanation for his failure or refusal to do so, his right to the disablement pension shall be suspended with effect from the expiration of the said period of six weeks or such later date as the Board may determine.

(3) If a disabled person whose disablement pension is suspended in terms of subsection (2) subsequently undergoes the medical examination or treatment, as the case may be—

- (a) within a period of six months from the date on which his disablement pension was suspended, and as a result of the medical examination or treatment—
  - (i) there is no change in the degree of disablement, the disablement pension shall be restored with effect from the date on which it was suspended;
  - (ii) the degree of disablement is reduced, the disablement pension shall be restored with effect from the date it was suspended at the rate appropriate to such reduced degree of disablement;
  - (iii) the degree of disablement is increased, the disablement pension shall be restored with effect from the date it was suspended at the rate at which it was payable immediately before it was so suspended and shall be adjusted with effect from the first day of the month following that in which the disabled person undergoes the medical examination or treatment to the rate appropriate to the degree of disablement as so increased;
- (b) after a period of six months from the date on which the disablement pension was suspended, the disablement pension shall be restored with effect from the first day of the month following that in which the disabled person undergoes the medical examination or treatment at the rate appropriate to the degree of disablement determined as a result of such medical examination or treatment.

(4) If a disabled person is aggrieved at being required by the Board to undergo a medical examination or treatment in terms of subsection (1), he may apply to the Board in writing to refer to a special medical board the question of whether the medical examination or treatment he is required to undergo is reasonable in the circumstances, and the Board shall refer the matter to a special medical board.

(5) The opinion of a special medical board as to whether any medical examination or treatment which a disabled person is required to undergo in terms of subsection (1) is reasonable shall be final and if such board is of the opinion that the treatment—

- (a) is not reasonable; or
- (b) will not have the effect of reducing the degree of disablement of the disabled person;

the disablement pension of the disabled person shall not be suspended by virtue of his refusal to undergo the medical treatment and, if it has already been suspended, it shall be restored with effect from the date on which it was so suspended.

### **20 Special medical board**

(1) The Board may from time to time request the Minister to appoint a special medical board consisting of three medical practitioners for the purposes of this Act.

(2) A member of a special medical board who is not in the full-time employment of the State shall be entitled to be paid such remuneration and allowances as the Minister may in his case fix.

(3) Any person who is to be examined or whose case is to be considered by a special medical board shall have the right to nominate one of the medical practitioners appointed thereto:

Provided that, if any fee demanded by such medical practitioner exceeds the remuneration and allowances fixed in terms of subsection (2), the person who nominated that medical practitioner shall be liable to pay the excess.

### **21 Medical expenses**

(1) Subject to the provisions of this section, a disabled person shall be entitled to be paid a refund of any expenses reasonably and necessarily incurred by him as a result of his injury in respect of—

- (a) dental, medical, surgical or hospital treatment; or
- (b) skilled nursing services; or
- (c) the supply of medicines or surgical dressings; or
- (d) the supply, maintenance, repair or renewal of artificial limbs or apparatus:

Provided that, if any treatment, service or thing referred to in paragraphs (a) to (d) is supplied to the disabled person by the State free of charge as part of his conditions of service, he shall not be entitled to a refund in terms of this subsection for any expense incurred by him for that treatment, service or thing.

(2) The question whether any expenses referred to in subsection (1) have been reasonably and necessarily incurred shall be determined by the Board.

(3) In the case of a disabled person who has suffered an injury which has been aggravated to a material extent arising out of and in the course of his official duties, the Board may authorize payment of all or part of the expenses referred to in subsection (1) as it considers equitable in the circumstances of the particular case.

## 22 Widow's pension

(1) Subject to the provisions of this section, if a deceased person leaves a widow, his widow shall be entitled to a pension calculated at the rate of sixty *per centum* of the earnings of the deceased person immediately prior to the date of his death:

Provided that—

- (i) if the death of the deceased person was the result of an injury which had been aggravated to a material extent arising out of and in the course of his official duties, the pension payable to the widow shall be at a rate which bears the same proportion to the rate of pension specified in this subsection as the degree of disablement due to such aggravation bears to the total degree of disablement;
  - (ii) the maximum rate of pension shall be \$21 047 per annum.
- (2) A pension payable in terms of subsection (1)—
- (a) shall be payable from the day following the date of the death of the deceased person; and
  - (b) shall cease with effect from the date on which the widow remarries.

(3) Where the pension payable to a widow in terms of subsection (1) has ceased in terms of paragraph (b) of subsection (2) and—

- (a) the husband of the widow by that subsequent marriage dies; or
- (b) the subsequent marriage is dissolved;

the Board may restore the pension that was payable in terms of subsection (1) in whole or in part according to the financial circumstances of the woman and any other factors which the Board considers to be appropriate.

## 23 Children's pension

(1) If a deceased person leaves a widow and child, there shall be paid in respect of each such child, subject to a maximum of five children, a pension at the appropriate rate specified in Part I of the Third Schedule:

Provided that—

- (i) on the death or remarriage of the widow the pension payable in respect of each such child shall be at the appropriate rate specified in Part II of the Third Schedule;
- (ii) if any pension is increased in terms of proviso (i) and the pension payable to the widow is subsequently restored in terms of subsection (3) of section *twenty-two*—
  - (a) in full, the pension payable in respect of the children shall, with effect from the date of such restoration, be payable at the appropriate rate specified in Part I of the Third Schedule;
  - (b) in part, the pension payable in respect of the children shall, with effect from the date of such restoration, be payable at such rate, being greater than the appropriate rate specified in Part I and not greater than the appropriate rate specified in Part II of the Third Schedule, as the Board may determine.

(2) If a deceased person leaves a child and no widow, there shall be paid in respect of each such child, subject to a maximum of five children, a pension at the appropriate rate specified in Part II of the Third Schedule.

(3) If a child in respect of whom a pension is payable in terms of subsection (1) or (2)—

- (a) dies or otherwise ceases to be a child as defined in subsection (1) of section *two*, the pension payable under subsection (1) or (2), as the case may be, shall, with effect from the day following, cease or, if there is another child or children, be adjusted accordingly;
- (b) attains the age of six or twelve years, the pension payable under subsection (1) or (2), as the case may be, shall be adjusted accordingly.

(4) A pension payable under subsection (1) or (2) shall be paid to such person or persons as shall in each case be determined by the Board.

(5) The pension payable under this section shall be payable from the day following the date of the death of the deceased person.

(6) Notwithstanding anything contained in this section, the Board may at its discretion increase the rate of children's pension up to an amount not exceeding the maximum rates specified in Part I or II, as the case may be, of the Third Schedule as it may deem fit.

(7) If a deceased person leaves more than five children, the pensions payable in terms of this section in respect of the children shall be calculated in relation to the five eldest who are children as defined in subsection (1) of section *two*.

#### **24 Pension for dependant other than widow or child**

(1) Subject to subsection (2), if a deceased person leaves a dependant who is not his widow or child and who—

(a) is wholly or partly incapable of supporting himself; and

(b) is in need of support;

the Board may award to that dependant a pension or other benefit calculated in terms of subsection (2) for such period and subject to such terms and conditions as the Board considers equitable in the circumstances.

(2) Where the dependant referred to in subsection (1)—

(a) is a parent of the deceased person and wholly dependent upon him for support, a pension equal to one-third of the pension which would have been payable to the deceased person under paragraph (b) of subsection (1), as read with subsection (3), of section *sixteen* had the injury which caused his death resulted in a permanent degree of disablement of one hundred *per centum* shall be payable:

Provided that, if both parents are alive, the pension shall be payable to them jointly unless the Board in any particular case otherwise determines;

(b) is not the parent of the deceased person or is the parent of the deceased person but was only partly dependent upon him for support, a pension or gratuity as may be considered appropriate by the Board shall be payable:

Provided that the benefit shall not exceed—

(a) in the case of a pension, the rate of pension calculated in terms of paragraph (a);

(b) in the case of a gratuity, three times the rate of pension calculated in terms of paragraph (a).

#### **25 Supplementary benefits payable on death of deceased person**

(1) If a deceased person leaves a widow or other dependant, there shall be paid to that widow or, if there is no widow, to the dependant or dependants, as the case may be, in accordance with subsection (2), for each month for a period of three months after the death of that deceased person an amount equal to the difference between—

(a) in the case of a deceased person who at the time of his death was a member of a force referred to in paragraph (a) or (b) of the definition of "uniformed force" in subsection (1) of section *two*, the monthly rate of his earnings which are not in excess of a rate of nine thousand dollars per annum or the monthly rate of pay received by him as such member immediately prior to the date of his death, whichever is the greater;

(b) in the case of a deceased person not referred to in paragraph (a), the monthly rate of his earnings immediately prior to the date of his death which are not in excess of a rate of nine thousand dollars per annum;

and the aggregate of the monthly rate of all pensions payable in terms of this Act to the dependants of the deceased person:

Provided—

(i) that no additional payment in terms of this subsection shall be payable to the widow or other dependant of a deceased person to whom a similar benefit is payable in terms of regulations made under the State Service (Pensions) Act [*Chapter 16:06*] or in terms of the Public Service (Pensions) Regulations, 1992;

(ii) where an additional payment in terms of this subsection is payable to a dependant who was only partly maintained by the deceased person at the date of his death, the additional payment may be reduced by such amount as the Minister considers to be reasonable in the circumstances.

(2) Any amount payable in terms of subsection (1) in respect of a dependant or dependants, other than the widow, shall be paid to such person or persons as shall in each case be determined by the Minister and shall, in accordance with his determination, be paid in respect of one dependant or apportioned between two or more dependants.

#### **26 Vocational training**

(1) If—

(a) a disabled person has applied therefor; or

(b) the Board considers it to be desirable;

the Board may investigate any case of a disabled person to determine whether or not that disabled person should receive vocational training in a hospital or elsewhere.

(2) If the Board considers that a disabled person should, in consequence of his disablement, receive vocational training in a hospital or elsewhere, it may order him to undergo such training and may award him, in addi-

tion to any other benefits to which he is entitled under this Act, a temporary allowance in respect of the period during which he undergoes such training at a rate not exceeding the rate of the pension which would have been paid to him under paragraph (b) of subsection (1) of section *sixteen* had his degree of disablement been one hundred *per centum*.

(3) A temporary allowance awarded in terms of subsection (2) shall be paid for such period and subject to such conditions and deductions in respect of the earnings of the disabled person while he is undergoing vocational training as the Board may determine.

(4) The Board may grant to a disabled person a refund of the whole or any part of the charges, fees or expenses incurred by him in respect of the vocational training, subject to such conditions as the Board may deem fit.

(5) At the termination of any period of vocational training undergone in terms of this section, the Board may grant to the disabled person such sum as the Board considers to be reasonable for the purchase of tools or other equipment required by him in the vocation in which he has been trained.

(6) If a disabled person refuses to undergo any vocational training ordered under this section, the Board may reduce or withdraw any disablement pension payable to him under this Act.

## **27 Funeral expenses**

The Board may grant in respect of the expenses of the funeral of a deceased person and any reasonable expenses incurred in the transportation of the deceased person and his effects, such amount as the Board considers reasonable in the circumstances:

Provided that no award shall be payable in respect of the expenses of the funeral of a deceased person who is buried at State expense.

## **28 Travelling and subsistence allowances**

(1) Subject to this section, where a disabled person is required to make a journey in connection with or at the request of the Board, the Appeal Board, a medical board or a special medical board or for treatment or attention necessitated by his injury, he shall be paid an allowance—

- (a) if he is or was at the date of his injury a member of the Police Force as defined in section 2 of the Police Act, other than a Regular Force member as defined in that section, at the appropriate rate payable to Regular Force members;
- (b) if he is or was at the date of his injury a member of a Reserve Force as defined in subsection (1) of section 2 of the Defence Act, at the appropriate rate payable to members of the appropriate Regular Force as defined in that subsection;
- (c) if he is or was at the date of his injury a member not referred to in paragraph (a) or (b), at the appropriate rate payable in terms of his conditions of service at that date in relation to travelling on duty.

(2) The Board may grant to a disabled person who is receiving treatment as an in-patient at an institution or hospital an allowance at such rate as the Board considers equitable in the circumstances.

(3) No allowance in terms of subsection (1) shall be payable in respect of a journey of the disabled person to or from an institution or hospital outside Zimbabwe unless the Minister, on the recommendation of a medical board, had authorized that journey.

## **29 Benefit where disabled person sustains financial loss**

Where a disabled person who has left the service of the State sustains a financial loss as a result of undergoing a medical examination or treatment in a hospital or otherwise on account of his disability, the Minister may, if the disabled person—

- (a) is in receipt of a disablement pension, increase his pension;
- (b) is not in receipt of a disablement pension, award him such pension as the Minister considers equitable:

Provided that any disablement pension increased in terms of paragraph (a) or awarded in terms of paragraph (b) shall not exceed the disablement pension that would have been payable under paragraph (b) of subsection (1) of section *sixteen* had the degree of disablement of the disabled person been one hundred *per centum* for any period during which the disabled person undergoes the examination or treatment or while travelling in connection therewith.

## **30 Constant attendance allowance**

Where—

- (a) the injury of a disabled person is of a serious nature; and
- (b) the Board is satisfied that the disability of that person necessitates the constant and continued attendance of a nurse or other attendant;

the Board may award to that disabled person, in addition to any other benefits payable in terms of this Part, an allowance not exceeding the reasonable expenditure actually incurred in respect of such attendance.

## **31 Clothing allowance**

If—

(a) a disabled person is in receipt of a disablement pension in respect of a disability which requires him regularly to wear an artificial limb or to use crutches or any other appliance; and  
(b) in the opinion of the Board, excessive wear and tear of his clothing is thereby caused;

the Board may award to that disabled person for the wear and tear of his clothing an allowance at a rate not exceeding the rate prescribed.

### **32 Children's allowances**

(1) Subject to this section, where a disabled person is discharged from his employment with the State or is compelled to change his normal occupation or to follow a lower standard of occupation and, in the opinion of the Board, his discharge, change of occupation or lower standard of occupation was a result of his disablement, he shall be paid in respect of his children an allowance—

- (a) if his degree of disablement is one hundred *per centum*, at the appropriate rates specified in Part I of the Third Schedule;
- (b) if his degree of disablement is less than one hundred *per centum*, at one-hundredth of the appropriate rates specified in Part I of the Third Schedule multiplied by the degree of disablement of the disabled person as assessed from time to time.

(2) An allowance payable in terms of subsection (1) shall be paid with effect from such date as the Board may determine.

(3) The amount of an allowance payable in terms of subsection (1) may be increased by the Board if it considers it equitable in the circumstances to an amount not exceeding the maximum rate prescribed in Part I of the Third Schedule.

(4) If the aggregate of the children's allowances payable in terms of subsection (1) and any disablement pension payable to a disabled person exceeds the rate of earnings of the member at the date of his injury, the children's allowances shall be reduced by the amount of the excess.

### **33 Educational allowance**

(1) If any pension or allowance payable in terms of this Part in respect of the child of a disabled person or deceased person has ceased because the child has reached the age of nineteen or twenty-one years, as the case may be, and that child continues to receive full-time education at an educational institution, the Board may, having due regard to the circumstances of the case and taking into consideration the amount of assistance from any other source towards the further education of that child, award an allowance—

- (a) if that child attends at a university, at a rate not exceeding \$2 862 per annum;
- (b) if that child attends at an educational institution other than a university, at a rate not exceeding \$1 621 per annum or, if the Board considers that there are special circumstances warranting a greater allowance, not exceeding one thousand two hundred and seventeen dollars per annum.

(2) Subject to subsection (3), an allowance in terms of subsection (1) shall be payable with effect from such date and for such period as may be fixed by the Board:

Provided that payment of such allowance shall depend on the progress of the child at the educational institution being satisfactory to the Board.

(3) An allowance in terms of subsection (1) shall not be payable in respect of any period after the child attains the age of—

- (a) in the case of a child attending at a university, twenty-four years;
- (b) in the case of a child attending at an educational institution other than a university, twenty-one years:

Provided that, if the Board considers that there are special circumstances warranting the payment of the allowance or part thereof after the child attains the age specified in paragraph (a) or (b), as the case may be, the Board may authorize the payment of the allowance or part thereof for such further period as the Board deems fit.

## **PART V**

### **GENERAL**

### **34 Payment of reduced compensation to elderly or infirm members**

(1) Notwithstanding anything to the contrary contained in this Act, in the case of a member who, by reason of old age, prior injury, serious physical defect or infirmity or pre-existing diseased condition which renders him specially liable to sustain an injury, has been appointed to the service of the State subject to the condition that any compensation payable in terms of this Act shall be less than the rates provided for in this Act, any compensation payable in terms of this Act as a result of an injury suffered by or the death of that person which was caused or contributed to by the old age, prior injury, physical defect or infirmity or pre-existing diseased condition, as the case may be, of that person shall be reduced by such percentage, not exceeding fifty *per centum*, as the Minister, on the recommendation of the Board, may determine.

(2) No compensation shall be payable in terms of this Act in respect of any injury to or death of a member or former member if the injury or death would not have resulted but for—

- (a) a prior injury; or
- (b) a physical defect or infirmity; or
- (c) a pre-existing diseased condition; the existence of which was known to the member at the time of his appointment to employment with the State but unknown to the State:

Provided that the Board may award such compensation as it deems fit if in its opinion the injury materially increased the extent of the disablement or materially accelerated the death of the member or former member.

(3) For the purposes of subsection (2), a member shall be presumed to have known of any prior injury, physical defect or infirmity or pre-existing diseased condition unless he satisfies the Board to the contrary.

### **35 Benefits payable under insurance policy effected by State**

Notwithstanding anything to the contrary in this Act, where on the injury or death of a member or former member any benefits become payable to that member or former member or his dependants under a policy of insurance entered into by the State, the Board may determine that no compensation under this Act shall be payable or that the compensation payable under this Act shall be reduced by such amount as the Board may determine:

Provided that, if the member or former member or his dependants, as the case may be, cede to the State his or their right to any benefits payable under the policy of insurance, the compensation that would otherwise be payable under this Act shall be paid.

### **36 Assessment of earnings**

(1) Subject to subsection (2), where any compensation payable in terms of this Act is to be calculated in relation to the earnings of any person, the Board shall assess the earnings of that person by taking into account—

- (a) in the case of a member or former member of the Police Force as defined in section 2 of the Police Act, other than a Regular Force member as defined in that section, or of a Reserve Force as defined in subsection (1) of section 2 of the Defence Act, the income, either real or potential, including the value of free quarters, received by him in respect of his employment otherwise than with the Police Force or the Defence Forces, as the case may be, and any other income of his which the Board considers to be relevant;
- (b) in the case of a person not referred to in paragraph (a), the annual rate of his salary plus the annual value of any quarters, fuel or light which is provided free or any allowance in lieu thereof which is paid to him in addition to his salary:

Provided that, if in the case of a person to whom paragraph (a) or (b) applies, in the opinion of the Board, the application of the provisions of paragraph (a) or (b), as the case may be, does not equitably reflect the true income of the person concerned, the Board may assess the earnings as being those which, in its opinion, represent the true income of that person and may, for the purpose of calculating the earnings of that person immediately prior to the date of his injury or death, calculate his average income over such period, not exceeding four years, immediately prior to that date as the Board considers to be equitable in the circumstances.

(2) In assessing the earnings of a person who, at the time of his injury or death, was under the age of twenty-five years or was employed under a contract of apprenticeship or learnership, the Board shall calculate the income received by him or which would have been received by him had he been employed as being the income which, had he not died or been injured, he would, in the opinion of the Board, probably have been receiving from employment—

- (a) four years after the date of his injury or death; or
- (b) in the case of a person who was employed under a contract of apprenticeship or learnership, had he been a journeyman or operator who had completed his apprenticeship or learnership at the date of his injury or death;

whichever calculation is more favourable to the person or any dependant to whom compensation is payable, as the case may be:

Provided that the amount calculated shall not exceed the income which the person would, in the opinion of the Board, probably have been receiving at the age of twenty-five years.

### **37 Application of Act to certain persons**

(1) If—

- (a) any person suffers an injury or dies whilst, in the opinion of the Minister, he was assisting the Defence Forces in military or counter-insurgency operations or the Police Force or Prison Service in the execution of its public duties; and
- (b) that person was not a member at the time or, was a member but the injury or death did not arise out of and in the course of his official duties;

the Minister may declare that the compensation provided for in this Act shall be payable to or in respect of that person as if he were a member and his injury had arisen out of and in the course of official duties without any serious negligence or serious misconduct on his part or his death had occurred as a result of such an injury, as the case may be.

(2) Where any compensation is payable in terms of subsection (1) in respect of a person who was not a member—

- (a) the compensation shall be calculated on the actual civil earnings or income, either real or potential, including the value of free quarters, as is assessed by the Board fairly to represent the earnings of that person immediately prior to the injury or death, as the case may be;
- (b) the person appointed to the Board in terms of subparagraph (ii) of paragraph (b) of subsection (2) of section *eight* or to the Appeal Board in terms of subparagraph (ii) of paragraph (b) of subsection (2) of section *ten* shall be a person who is or has been employed in the Treasury;
- (c) any allowances referred to in section *twenty-eight* shall be calculated as if that person had been employed in the Public Service.

(3) In fixing the terms and conditions of service of a person appointed by the President, a Minister or other authority of the State in terms of any Act, the authority responsible for fixing such conditions of service may apply all or any of the provisions of this Act, *mutatis mutandis*, and with such modifications as may appear to that authority to be necessary or desirable.

(4) For the avoidance of doubt, it is declared that, if provision is made in pursuance of subsection (4) of section 48 of the Constitution applying, with such modifications as are deemed necessary or expedient, all or any of the provisions of this Act to persons appointed to the staff of Parliament, effect shall be given to those provisions as applied as if those persons were members.

### **38 Polygamous wives**

(1) Where any compensation is payable in terms of this Act to the widow of a deceased person and that person at the time of his death had more than one wife, the compensation payable shall be paid to the widow designated by the Minister for the purposes of this Act or shall be apportioned between the widows in such proportions as the Minister considers equitable in the circumstances, as the Minister directs.

(2) Where a pension has been apportioned in terms of subsection (1) between two or more widows and the pension payable to one of those widows ceases because of her death or remarriage or otherwise, the pension or pensions payable to the other widow or widows shall not be increased.

(3) If a deceased person leaves two or more widows and any children, any pension payable in respect of such children shall not be increased in terms of proviso (i) to subsection (1) of section *twenty-three* until such time as all the widows have died or remarried, as the case may be.

### **39 Payment of allowances and pensions in respect of step-children**

Notwithstanding any provision to the contrary contained in this Act, if a pension or allowance has been paid in terms of this Act to or for the benefit of a child—

- (a) because of the death of or injury to the father of the child, no further pension or allowance shall be payable under this Act in respect of the child on the death of or injury to the step-father of that child;
- (b) because of the death of or injury to the step-father of that child, no further pension or allowance shall be payable under this Act in respect of the child on the death of or injury to the father of that child.

### **40 Widower of deceased person**

If a deceased person was a female and—

- (a) leaves a widower who is incapable of supporting himself due to physical or mental incapacity occasioned without his default; or
- (b) leaves one or more children who are incapable of supporting themselves and have no father who is both willing and able to support them;

the Board may award to such widower or in respect of such children the compensation that would have been payable in terms of this Act had the deceased person been a male and left a widow or children, as the case may be, in those circumstances.

### **41 Compensation not to be pledged or ceded**

Subject to the Maintenance Act [*Chapter 5:09*], Part VI of the Children's Act [*Chapter 5:06*] and section *eighteen*, no compensation payable in terms of this Act or right to such compensation shall—

- (a) be capable of being assigned or ceded or otherwise transferred or of being pledged or hypothecated;
- (b) be liable to be attached or subjected to any form of execution under a judgment or order of a court.

### **42 Insolvency of pensioner**

If a person in receipt of any compensation in terms of this Act is adjudged to be insolvent, the compensation shall not form part of the assets in his insolvent estate.

### **43 Proof of age, etc.**

No payment of a pension or other benefit in terms of this Act—

- (a) to a widow or widower shall be made until proof of the marriage to and the date of the death of the spouse has been furnished;

(b) in respect of a child shall be paid until proof has been furnished of the eligibility of that child for the pension or other benefit;  
and such proof shall be to the satisfaction of the Board.

#### **44 Compensation, remuneration or allowances to be paid from Consolidated Revenue Fund**

Any compensation, remuneration, allowances or other moneys payable in terms of this Act shall be paid from the Consolidated Revenue Fund which is hereby appropriated for the purpose.

#### **45 Regulatory powers**

The Minister may by regulation provide for all matters which by this Act are required or are permitted to be prescribed or which, in his opinion, are necessary or convenient to be provided for in order to carry out or give effect to the provisions of this Act.

#### **46 Savings**

(1) Notwithstanding the repeal of the laws specified in the Fourth Schedule, in the case of a member or former member who—

- (a) has suffered an injury the date of which was prior to the appointed day; or
- (b) has died as a result of an injury referred to in paragraph (a), whether the death occurs before, on or after the appointed day;

in circumstances where benefits in respect of that injury or death were payable in terms of a law specified in the Fourth Schedule before the appointed day or would become payable in terms of such a law on or after the appointed day, the appropriate law specified in the Fourth Schedule shall, subject to subsections (2), (3) and (5), continue to apply and the benefits provided for in that law shall continue to be paid or shall be paid, as the case may be, to that person or his dependants in accordance with that law, as read with subsection (2), as though that law had not been repealed.

(2) In the application of any law specified in the Fourth Schedule to a person referred to in subsection (1) any reference to—

- (a) a disablement benefits board, the Commissioner for Employees' Compensation or other such authority shall be read and construed as a reference to the Board;
- (b) a medical board shall be read and construed as a reference to a medical board established under this Act;
- (c) a disablement benefits appeal board or other authority to whom an appeal is made shall be read and construed as a reference to the Appeal Board.

(3) Where any pension referred to in subsection (1) is payable in respect of an injury the date which was prior to the appointed day but on or after the 1st January, 1966—

- (a) in the case of a pension which immediately before the appointed day was payable to the widow or in respect of any child of a former member, it shall be calculated, subject to subsection (4), in accordance with this Act and payable at the appropriate rate with effect from the appointed day;
- (b) in the case of a pension not referred to in paragraph (a) which is payable to a person who elects by notice in writing to the Minister to be governed by this Act, it shall be calculated, subject to subsection (4), in accordance with this Act and payable at the appropriate rate, if such election is received by the Minister—
  - (i) within six months after the appointed day, with effect from the appointed day or such later date as the person making the election may specify;
  - (ii) later than six months after the appointed day, with effect from the first day of the month following that in which the election is received by the Minister.

(4) Any pension calculated in terms of subsection (3) which is payable in respect of any injury the date of which was prior to the 1st January, 1969, shall be calculated—

- (a) if the date was prior to the 1st January, 1968, on the earnings of the former member as though they had been increased by ten *per centum*;
- (b) if the date was on or after the 1st January, 1968, but prior to the 1st July, 1968, on the earnings of the former member as though they had been increased—
  - (i) in the case of a former member of a uniformed force other than the Prison Service, by ten *per centum*;
  - (ii) in the case of a former member not referred to in subparagraph (i), by five *per centum*;
- (c) if the date was on or after the 1st July, 1968, on the earnings of the former member as though they had been increased by five *per centum*.

(5) Where any pension is payable in terms of subsection (3) to a member or former member or the dependants of a former member, such member, former member or dependants shall be entitled to any other compensation provided for in this Act and the provisions of this Act shall apply accordingly and not the provisions of the appropriate law specified in the Fourth Schedule.

**FIRST SCHEDULE (Section 15)**

DEGREE OF DISABLEMENT

*Degree of  
Disablement,  
per centum*

*A*

*General*

- |    |   |     |
|----|---|-----|
| 1. | Loss of hand and foot above the site of Symes amputation .....  | 100 |
| 2. | Injury resulting in the member being permanently bedridden..... | 100 |

*B*

*Injury to upper limb*

- |     |  |     |
|-----|--|-----|
| 1.  | Loss of both hands or loss of both arms at higher sites .....  | 100 |
| 2.  | Loss of remaining arm by a member who has previously had one arm amputated .....                               | 100 |
| 3.  | Loss of arm at shoulder or below shoulder with stump of less than 20 centimetres from tip of acromion .....    | 100 |
| 4.  | Loss of arm from 20 centimetres below tip of acromion to less than 11 centimetres below tip of olecranon ..... | 70  |
| 5.  | Loss of arm 11 centimetres below tip of olecranon .....  | 68  |
| 6.  | Loss of hand at wrist .....  | 65  |
| 7.  | Loss of four fingers and thumb of one hand .....   | 60  |
| 8.  | Loss of four fingers on one hand .....   | 60  |
| 9.  | Loss of thumb—   |     |
|     | (a) both phalanges .....   | 35  |
|     | (b) one phalanx .....  | 25  |
| 10. | Loss of index finger—  |     |
|     | (a) three phalanges .....  | 10  |
|     | (b) two phalanges .....  | 8   |
|     | (c) one phalanx .....  | 4   |
|     | (d) tip and nail, no bone .....  | 2   |
| 11. | Loss of middle finger—   |     |
|     | (a) phalanges .....  | 6   |
|     | (b) two phalanges .....  | 4   |
|     | (c) one phalanx .....  | 2   |
|     | (d) tip and nail, no bone .....  | 1   |
| 12. | Loss of ring finger—   |     |
|     | (a) three phalanges .....  | 5   |
|     | (b) two phalanges .....  | 4   |
|     | (c) one phalanx .....  | 2   |
|     | (d) tip and nail, no bone .....  | 1   |
| 13. | Loss of little finger—   |     |
|     | (a) three phalanges .....  | 4   |
|     | (b) two phalanges .....  | 3   |
|     | (c) one phalanx .....  | 2   |
|     | (d) tip and nail, no bone .....  | 1   |
| 14. | Loss of metacarpals—   |     |
|     | (a) first or second (additional) .....   | 3   |
|     | (b) third, fourth or fifth (additional) .....  | 2   |
| 15. | Ankylosis in optimum position—   |     |
|     | (a) shoulder .....   | 35  |
|     | (b) elbow .....  | 35  |
|     | (c) wrist .....  | 35  |

*Note—*

- (i) In the case of a right-handed person, an injury to the left arm or hand, and, in the case of a left-handed person, an injury to the right arm or hand, shall be rated at ninety *per centum* of the percentages shown above.
- (ii) The loss of the thumb and four fingers of one hand shall be equivalent to the loss of a hand.
- (iii) When there are two or more injuries to the hand, the following basis of computing the degree of disablement shall be adopted and for this purpose a thumb shall be regarded as a finger—
  - (a) where two fingers have been injured, the aggregate of the percentages for each finger shall be increased by twenty *per centum* of such aggregate;
  - (b) where three fingers have been injured, the aggregate of the percentages for each finger shall be increased by thirty *per centum* of such aggregate;
  - (c) where four fingers have been injured, the aggregate of the percentages for each finger shall be increased by forty *per centum* of such aggregate.

*C*

*Injury to lower limb*

- |    |   |     |
|----|---|-----|
| 1. | Loss of both feet above site of Symes amputation or loss of both legs at higher sites .....   | 100 |
| 2. | Loss of remaining leg by member who has previously had one leg amputated .....  | 100 |
| 3. | Loss of leg at hip or below hip with stump not exceeding 13 centimetres in length measured from tip of great trochanter .....               | 70  |
| 4. | Loss of leg below hip with stump exceeding 13 centimetres in length measured from tip of great trochanter but not beyond middle thigh ..... | 60  |
| 5. | Loss of leg below middle thigh to 10 centimetres below knee .....   | 50  |
| 6. | Loss of leg below knee with stump exceeding 10 centimetres .....  | 30  |
| 7. | Modified Symes operation—   |     |
|    | (a) one foot .....  | 25  |
|    | (b) two feet .....  | 70  |

8. Loss of foot at tarso-metatarsal joint .....	25
9. Loss of all toes of both feet proximal to the proximal interphalangeal joint .....	25
10. Loss of all toes of one foot proximal to the proximal interphalangeal joint .....	15
11. Loss of all toes of both feet distal to the proximal interphalangeal joint .....	15
12. Loss of all toes of one foot distal to the distal interphalangeal joint .....	10
13. Loss of great toe—	
(a) both phalanges .....	5
(b) one phalanx .....	2
14. Loss of toe other than great toe if more than one toe lost, each	1
15. Ankylosis in optimum position—	
(a) hip .....	50
(b) knee .....	25
(c) ankle .....	15

*D*

*Injury to eyes*

1. Total loss of sight .....	100	
2. Loss of remaining eye by person who previously had the sight of only one eye .....	100	
3. Loss of one eye, the other being normal .....	30	
4. Total loss of vision of one eye, the other being normal .....	30	
5. Other degrees of defective vision based on the visual defects as measured after correction with glasses—		
<i>When best visual acuity is in one eye</i>	<i>Other eye</i>	<i>Assessment, per centum</i>
6/6 or 6/9	6/24	15
6/6 or 6/9	6/36	20
6/6 or 6/9	6/60	20
6/6 or 6/9	3/60	20
6/12	Nil	30
6/18	6/18	15
6/18	6/24	30
6/18	6/36	40
6/18	6/60	40
6/18	3/60	40
6/18	Nil	50
6/24	6/24	30
6/24	6/36	40
6/24	6/6	50
6/24	3/60	50
6/24	Nil	70
6/36	6/36	50
6/36	6/60	60
6/36	3/60	60
6/36	Nil	70
6/60	6/60	80
6/60	3/60	80
6/60	Nil	90
3/60	3/60	80
3/60	Nil	90
Nil	Nil	100

*E*

*Injury to ears (defective hearing)*

<i>Grade</i>	<i>Degree of hearing</i>	<i>Assessment for both ears used together, per centum</i>
0	Total deafness .....	50
1	Shout not beyond 1 metre .....	40
2	Conversational voice not over 30 centimetres .....	30
3	Conversational voice not over 1 metre .....	20
4	Conversational voice not over 2 metres .....	10
5	Conversational voice not over 3 metres .....	7

**SECOND SCHEDULE (Section 18)**

TABLE FOR CALCULATING COMMUTATION OF PENSION

*Single cash payments in commutation of each \$1 per annum of pension*

<i>Age of person at the date of commutation</i>	<i>Cash payment in commutation for each \$1 per annum of pension</i>
	\$ c
20 years or more but less than 25 years .....	15 50
25 years or more but less than 30 years .....	15 00
30 years or more but less than 35 years .....	14 50
35 years or more but less than 40 years .....	14 00
40 years or more but less than 45 years .....	13 00
45 years or more but less than 50 years .....	12 00
50 years or more but less than 55 years .....	11 00
55 years or more but less than 60 years .....	10 00
60 years or more but less than 65 years .....	8 50

