

The law regarding the division of the retirement savings of a retirement fund member on his or her divorce with specific reference to *Cockcroft v Mine Employees Pension Fund*, [2007] 3 BPLR 296 (PFA)

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1 INTRODUCTION

This article analyses the recent amendments to the Pension Funds Act 24 of 1956 relating to the divorce benefit, particularly the amendment of section 37D. This amendment has brought about changes, and will contribute positively to the development of South African retirement law. The allocation and payment of a share of a retirement fund member's retirement savings on divorce has been the subject of intense debate in the retirement funding community, especially in view of the unfairness to non-member former spouses (who are usually women) of the law in this regard before 1 November 2008.

In terms of section 7(8)(a)(i) of the Divorce Act,¹ the former spouse of a member of a retirement fund on divorce could be awarded by the court a portion of the benefits that the member would have received had he or she resigned on the date of the divorce. However, in terms of the Divorce Act, read with the Pension Funds Act,² the former spouse was only entitled to receive that share when the member became entitled to a benefit in terms of the rules of the fund – that is, on his or her later retirement or termination of membership – which could have been many years after the date of the divorce.³

By 1 November 2008 two pieces of legislation had been passed by Parliament to clarify the above position, the Pension Funds Amendment Act,⁴

1 Act 70 of 1979.

2 Act 24 of 1956.

3 The non-member spouse was not entitled to interest in respect of her share of the returns earned by the fund on its investment during the period from the date of divorce to the date on which it was paid to her. Its value accordingly reduced in the interim.

4 Act 11 of 2007.

which came into effect on 13 September 2007 and the Financial Services Laws General Amendment Act⁵ which came into effect on 1 November 2008. Section 28(e) of the Pension Funds Amendment Act stipulates that, for the purposes of the Divorce Act, a benefit is deemed to accrue to the principal member on the date of divorce, thus allowing the non-member spouse the right to claim her share of it. The non-member spouse can elect to have it transferred to another fund or paid to her in cash within 60 days of the date of her election.⁶ Before the enactment of the Financial Services Laws General Amendment Act, lawyers, academics and legal practitioners argued about whether the Pension Funds Amendment Act was applicable to a divorce order granted before 13 September 2007. The Adjudicator has found that it was, but her findings do not constitute a legal precedent. The debate was disposed of by the enactment of the Financial Services Laws General Amendment Act,⁷ which makes it clear that the former spouses of members of retirement funds who divorced those members before 13 September 2007, and to whom shares of the “pension interests” of those members were awarded on divorce, will be entitled to claim them from the funds even if no benefits have yet accrued to the members they divorced.

2 DIVORCE BENEFITS BEFORE THE COMING INTO OPERATION OF THE PENSION FUNDS AMENDMENT ACT 11 OF 2007 AND THE FINANCIAL SERVICES LAWS GENERAL AMENDMENT ACT 22 OF 2008

2.1 Introduction

Prior to the enactment of sections 7(7) and 7(8) of the Divorce Act,⁸ the spouse of a member of a retirement fund had no right to a share of his or her retirement savings in that fund on divorce, unless a benefit had accrued to the member⁹ prior to the divorce. An amendment to the Divorce Act, however, by inserting sections 7(7) and 7(8) changed the position. The relevant sections at present read as follows:

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

(b) The amount so deemed to be part of the party's assets, shall be reduced by any amount of his pension interest which, by virtue of paragraph (a), in a previous divorce –

- (i) was paid over or awarded to another party; or
- (ii) for the purposes of an agreement contemplated in sub-section (1) was accounted in favour of another party.

5 Act 22 of 2008.

6 Section 28 (e) of the Pension Funds Amendment Act 11 of 2007.

7 Section 16(c) of the Act which is inserted by section 37(4)(d) of the Pensions Funds Act.

8 Act 70 of 1979.

9 See *De Kock v Jacobson and Another* 1999 (4) SA 346 (W), where the issue for determination was whether a retirement benefit consisting of a lump sum and a pension for the member (which accrued prior to the divorce date) formed part of the joint estate. The Court held that there was no logical or legal reason why both components of the retirement benefit should not ordinarily form part of the joint estate.

(c) Paragraph (a) shall not apply to a divorce action in respect of a marriage out of community of property entered into on or after 1 November 1984 in terms of an antenuptial contract by which community of property, community of profit and loss and the accrual system are excluded.

7(8) Notwithstanding the provisions of any other law or the rules of any pension fund –

(a) the court granting a decree of divorce in respect of a member of such a fund, may make an order that –

- (i) any part of the pension interest of that member which, by virtue of subsection (7), is due or assigned to the other party to the divorce action concerned, shall be paid by that fund to that other party when any pension benefits accrue in respect of that member;
- (ii) the registrar of the court in question forthwith notify the fund concerned that an endorsement be made in the records of that fund that that part of the pension interest concerned is so payable to that other party and that the administrator of the pension fund furnish proof of such endorsement to the registrar, in writing, within one month of receipt of such notification;

[sub-para (ii) substituted by section 11 of Act 55 of 2003]?

(b) any law which applies in relation to the reduction, assignment, transfer, cession, pledge, hypothecation or attachment of the pension benefits, or any right in respect thereof, in that fund, shall apply *mutatis mutandis* with regard to the right of that other party in respect of that part of the pension interest concerned."

The effect of section 7(7) is to deem the pension interest of a party to the divorce action to be part of his assets for the purposes of the divorce. Section 7(8) then authorises the court to order that the non-member be paid a share of the pension interest when the member becomes entitled to a benefit in terms of the rules of his fund. The reference to "any divorce action" in section 7(7)(a) indicates that the provision applies to all marriages. However, section 7(7)(c) excludes from the ambit of the section marriages entered into on or after 1 November 1984 where the spouses have opted for a complete separation of their estates without the accrual system. The section thus applies to the three remaining marriage regimes in South African law, namely:

- marriages in community of property;
- marriages to which the accrual system applies; and
- marriages entered into prior to 1 November 1984 in terms of an antenuptial contract excluding community of property and community of profit and loss.

In so far as the effect of section 7(7), read with section 7(8), is to render pension benefits capable of being assigned wholly or in part to another person, it constitutes an exception to the prohibition in section 37A(1) of the Pension Funds Act.

2.2 The definition of "pension interest"

"Pension interest" is defined in the Divorce Act as follows:

"pension interest, in relation to a party to a divorce action who –

- (a) is a member of a pension fund (excluding a retirement annuity fund), means the benefits to which that party as such a member would have been entitled in terms of

the rules of the fund if his membership of the fund would have been terminated on the date of the divorce on account of his resignation from his office;

- (b) is a member of a retirement annuity fund which was bona fide established for the purpose of providing life annuities for the members of the fund, and which is a pension fund, means the total amount of the party's contributions to the fund up to the date of the divorce, together with a total amount of annual simple interest on those contributions up to that date, calculated at the same rate as the rate prescribed as at that date by the Minister of Justice in terms of section 1(2) of the Prescribed Rate of Interest Act, 1975 (Act 55 of 1975), for the purposes of that Act."¹⁰

The pension interest of a member of a pension or provident fund ("an occupational retirement fund") is the withdrawal benefit to which the member spouse would have become entitled had he resigned from employment and terminated his membership of the fund on the date of the divorce.

The pension interest of a member of a retirement annuity fund is defined to mean the total of the contributions to the fund up to the date of divorce, plus simple interest thereon up to that date at the prescribed rate.

The pension interest is the maximum amount which may be assigned to the non-member spouse on divorce, the proportion allocated to the non-member spouse being dependent on the order of the court. It is not permissible to assign to her more than 100% of a member's pension interest.¹¹

Before prescribed minimum benefits became payable by retirement funds registered in terms of the Pension Funds Act on termination of membership before retirement, many paid only the equivalent of the contributions paid to the fund by the member (and not those paid by his employer), plus interest at a low rate.

This meant that the basis on which the pension interest of a member was determined for divorce purposes was iniquitous for non-member spouses, particularly as no provision was made in either the Divorce Act or the Pension Funds Act for the payment to the non-member spouse of interest on the amount of her share, or the returns earned by the fund on its investment before it was paid to her. The inequity is illustrated by the facts on which *Van der Berg v Oranje-Vrystaatse Gemeenskaplike Munisipale Pensioenfonds*¹² was determined by the Pension Fund Adjudicator. In that case, while, only seven months after the date of divorce, the member spouse received his full benefit of over R1 000 000, the non-member received a meagre R35 200.89.

¹⁰ Section 1 of Act 70 of 1979.

¹¹ *Old Mutual Life Assurance Company (SA) Limited and Another v Swemmer* [2004] 4 BPLR 5581 (SCA) 5588A-E. In this matter the divorce order purported to transfer the entire proceeds of the retirement annuity benefit. In terms of the definition of "pension interest" the non-member spouse is only entitled to the total of the contributions to the fund up to the date of divorce, plus simple interest thereon at the prescribed rate. See also *Mashilo v Basil Read Group Provident Fund*, Case No. PFA/NP/3044/2001/NJ, 17 August 2001, an unreported determination of the Pension Funds Adjudicator.

¹² [2001] 3 BPLR 1804 (PFA).

2.3 Giving effect to the divorce order

The effect of an order in terms of section 7(8) is that the non-member spouse acquires a claim against the fund subject to the conditions that—

- (a) The court has ordered the payment of the benefit by the fund; and
- (b) The fund is notified of the court order.

There have been cases where the fund has not been notified of the divorce order. When a benefit has accrued to the member spouse, and the portion of the pension interest allocated to the non-member spouse becomes payable, the fund, ignorant of the divorce order, then paid the entire benefit to the member spouse. If no fault can be attributed to the fund, there is no recourse against it. However, if the fund is at fault, it may be liable for damages to the non-member spouse.

2.4 Protection of the non-member spouse's share against the claims of creditors

The reference in section 7(8)(b) of the Divorce Act to the applicability, *mutatis mutandis*, of “any law which applies in relation to the reduction...”, is a reference, *inter alia*, to section 37A of the Pension Funds Act prohibiting the alienation of pension benefits. The assigned pension interest is thereby afforded the same protection as any other pension benefit.

2.5 Disclosure of information by funds to non-member spouses

In *Smith v Smith en 'n Ander*¹³ the non-member spouse had been allocated a portion of the member spouse's pension interest in terms of the divorce order. The fund, however, refused to disclose any information with regard to its value to the non-member spouse, relying on what it regarded as the member's right to privacy. The Court, however, ordered the fund to provide the information requested as it was required by the non-member spouse for the enforcement of her rights.

In fulfilling their duty of good faith, funds are obliged to disclose to members and other persons such information as is reasonable for the exercise and protection of their rights. The failure or refusal to do so without appropriate justification would amount to an improper exercise of the fund's powers.¹⁴ Therefore, the non-member spouse has a right to access information relevant to the amount due to the member spouse, including how the amount is calculated, and the terms and conditions governing payment of the benefits.

¹³ [2004] 2 BPLR 5431 (SCA).

¹⁴ See *Noordien v Metal Industries Provident Fund* [2002] 3 BPLR 3236 (PFA).

2.6 Joinder

In *Old Mutual Life Assurance Company (SA) Limited and Another v Swemmer*,¹⁵ the Supreme Court of Appeal stated that the fund need not be joined as a party to the divorce proceedings. The reason for this is that the fund has no direct or substantial interest in the matter.¹⁶

3 SHARING OF PENSION BENEFITS AFTER THE COMING INTO OPERATION OF THE PENSION FUNDS AMENDMENT ACT 11 OF 2007 AND THE FINANCIAL SERVICES LAWS GENERAL AMENDMENT ACT 22 OF 2008.

3.1 Introduction

The Pension Funds Amendment Act,¹⁷ read with the Financial Services General Laws Amendment Act,¹⁸ has introduced amendments which allow a fund to deduct from the amount held by it in respect of a member's unaccrued benefit, the share of the pension interest allocated to the non-member spouse on the basis that, for the purposes of the Divorce Act,¹⁹ a benefit is deemed to accrue to the member on the date of divorce. The non-member spouse now has the option to take her share in cash or to require that it be transferred to an approved pension fund within sixty days of the election being exercised.²⁰

The fact that non-member spouses were, in many cases, required to wait for many years before they became entitled to their share of the pension interest, the value of which had diminished in the interim, was unfair, and undermined the core values of our Constitution. These values include equality and human dignity, which are supposed to be protected by law. While the amendment was intended to allow all divorcees, whenever they were divorced, to have immediate access to their share of their former spouses' pension interest awarded to them by way of a divorce order, whether it had that effect for those

15 [2004] 2 BPLR 5431 (SCA).

16 Van Heerden AJA made the following comments (para 26):

"This case cogently illustrates the importance of deeds of settlement and divorce orders relating to pension interests being formulated very carefully indeed in order to ensure that they fall within the ambit of subsections 7(7) and 7(8) of the Act. If this is done, then all that would be required of the pension fund in question is to perform administrative functions to give effect to the order, without the rights of the fund or the relationship between the fund and the member spouse being affected in any way, **and it would not be necessary to join the fund as a party to the divorce proceedings.**" (my emphasis)

17 Act 11 of 2007.

18 Act 22 of 2008.

19 Act 70 of 1979.

20 As the judgments of the High Court and the Pension Funds Adjudicator reveal, the old position with regard to divorce benefits was unsatisfactory for the non-member spouse in that it undermined the "clean break" principle following divorce (see *Mashilo v Basil Read Provident Fund* [2005] 1 BPLR 51 (PFA), *Mouton v Southern Staff Pension Fund* [2003] 4 BPLR 4581(PFA), *Maharaj v Maharaj and Others* [2002] 2 BPLR 3030 (D), *Sempapalele v Sempapalele & Another* [2002] 2 BPLR 3035 (O) and *Schenk v Schenk* 1993 (2) SA 346 (E)). It appears that the intention of the legislature, when it amended the Pension Funds Act in 2007, was to remedy the problems evident in the operation of the Divorce Act and the Pension Funds Act with regard to what, for many couples, is their most valuable "asset", the retirement savings of the fund member.

who were divorced before 13 September 2007 remained controversial, until the Financial Services Laws General Amendment Act came into effect on 1 November 2008.

3.2 The law governing pre- 1 November 2008 divorcees: *Cockcroft v Mine Employees Pension Fund*

*Cockcroft v Mine Employees Pension Fund*²¹ is a leading case on pension sharing on divorce following the amendment of the Pension Funds Act by the Pension Funds Amendment Act 11 of 2007. In this case the complainant was the former spouse of Mr Cockcroft, who was a member of the fund. The complainant and Mr Cockcroft were divorced in terms of an order of court on 7 July 2003. The divorce order provided that the complainant would be entitled to 50 percent of Mr Cockcroft's pension interest in the fund, and that this amount was required to be paid to her on the finalisation of the divorce proceedings, or when a benefit accrued to Mr Cockcroft in terms of the rules of the fund, whichever event occurred first.

After the Pension Funds Amendment Act came into effect on 13 September 2007, the complainant sought payment of her portion of the pension interest. The fund refused to pay the benefit, and argued that, in terms of the legislation applicable as at the date of divorce, the benefit could only be paid once a benefit had accrued to the principal member (Mr Cockcroft) in terms of the fund's rules. As no benefit had yet accrued to him, the fund argued, the complainant was not entitled to payment of her portion of the member's pension interest.

The Pension Funds Adjudicator found that the amendments to the Pension Funds Act, in terms of the Pension Funds Amendment Act, applied to all divorces, whether concluded prior to, or after, 13 September 2007. In her judgment she pointed out that, from that date, section 37D (a section dealing with permissible deductions from pension benefits) of the Pension Funds Act had been amended by, *inter alia*, the addition to subsection (1) of the following paragraph:

“(e) for the purposes of section 7(8)(a) of the Divorce Act, 1979 (Act 70 of 1979), the pension benefit referred to in that section is deemed to accrue to the member on the date of the court order.”

The Pension Funds Adjudicator said that the re-worded provision was intended “to convert an unquantifiable, future entitlement into a precise present day amount” in order that it can be apportioned and paid (or transferred) pursuant to the non-member spouse's election. This finding is odd, in that the amount of the share of the pension interest to which a non-member

21 [2007] 3 BPLR 296 (PFA). The ruling in *Swart v South African Retirement Annuity Fund and Two Others*, Case No. PFA/GA/19440/2007/RM (unreported), concerned the mode of payment of the non-member spouse's pension interest in a retirement annuity fund in light of the recent amendments to section 37D of the Pension Funds Act 24 of 1956 brought about by the Pension Funds Amendment Act 11 of 2007. In this determination, the Pension Funds Adjudicator confirmed the *Cockcroft* decision.

spouse would be entitled on the accrual of a benefit to the member was never in doubt, because it was determinable as at the date of divorce.

What the amendment did do, was to change the date of “accrual” of the benefit to the member for the purposes of the Divorce Act,²² by deeming “accrual” to have taken place on the date of divorce.

The crisp issue for determination was whether this new provision also applied to divorce orders granted prior to its effective date, 13 September 2007; the concern was whether this would amount to the retrospective application of a statutory amendment. In particular, it was argued that a member who, but for the amendment, would have enjoyed the benefit of the returns earned on the investment of the share of the pension interest awarded to his ex-spouse until a benefit accrued to him, would by the amendment have the period, and thus the value, of his entitlement to that benefit reduced. This, it was argued, gave the amendment a retrospective effect, in that it alters the consequences of a divorce order granted in the past, before the law was amended.²³ Does the fact that such order existed prior to the enactment of the amendment render it retrospective in operation? For the reasons that follow, it is submitted that it does not.

Section 28(b) of the new Act²⁴ only applies with effect from 13 September 2007. Only from that date is the non-member spouse entitled to have the divorce benefit deducted from the amount held by the fund as a provision for the member's future benefit, and paid to the non-member or transferred to another fund for his or her benefit. The benefit of the returns earned on the investment of the non-member's share to the date on which the non-member's election is conveyed to the fund, remains with the member. All that is forfeited by him are the future returns that might otherwise have been earned on that share. The non-member spouse, on the other hand, is not entitled to any interest or investment return in respect of the period before her election is conveyed to the fund.

With regard to the above, it appears that the interpretation of the Pension Funds Adjudicator does not properly address the point that the amendment stated that the benefit accrued from the date of divorce – and as the divorce took place several years before the amendment, it could not have been the legislature's intention that it be applicable to such an order.

In the *Cockcroft* case, the Pension Funds Adjudicator ordered the complainant to exercise her election in terms of section 37D(1)(e)(iii) of the Pension Funds Act, and to notify the fund whether she wanted her share of the pension interest paid to her in cash or transferred to another pension fund. Furthermore, the fund was ordered to implement her election within 60 days of the receipt of her notification. It is apparent from the operation of the amendment that it is prospective in effect, even if it may reduce what would otherwise have been the value of the member's benefit when it accrues to him.

22 Act 70 of 1979.

23 See *Bareki v Gencor* 2006 (1) SA 432 (T).

24 Pension Funds Amendment Act 11 of 2007.

The legislature has accepted that the current wording of section 37D does not make it clear that the amendment to it was intended to apply to divorce orders whether they were granted before or after 13 September 2007.²⁵ The Financial Services Laws General Amendment Act²⁶ came into effect on 1 November 2008, and has amended section 37D by inserting the following provision as section 37D(4)(d):

“Any portion of the pension interest assigned to the non-member spouse in terms of a decree of divorce or a decree for the dissolution of a customary marriage granted prior to 13 September 2007 are (sic) for purposes of any law other than the Income Tax Act, 1962, including, but not limited to, section 7(8)(a) of the Divorce Act, 1979, deemed to have accrued to the member on 13 September 2007 and must be paid or transferred in accordance with paragraphs (a) and (b).”

Section 37D(4)(d) now states clearly that any portion of the pension interest that is payable to a non-member spouse that was granted a divorce prior to 13 September 2007 is deemed to have accrued to the non-member spouse on 13 September 2007. Section 37D(4)(a), in turn, states that the pension interest that is assigned to the non-member spouse is deemed to accrue to the member spouse on the date on which the divorce order was granted.

It is clear from the provisions of the amended section 37D of the Act that it applies to divorce orders that were granted prior to 13 September 2007, which is the commencement date of the Pension Funds Amendment Act 11 of 2007.²⁷ The intention of the legislature, by inserting section 37D(4)(d) in the Act, was to address the issue of the alleged retrospective application of the Pension Funds Amendment Act 11 of 2007, that had been raised by various stakeholders in the pension industry, including pension funds and administrators of funds, with regard to matters relating to divorce benefits.

4 THE GOVERNMENT EMPLOYEES PENSION FUND AND DIVORCE BENEFITS

The Government Employees Pension Fund (GEPF) is the largest pension fund in Africa, with approximately 1,16 million contributing members and 311 345 pensioners and beneficiaries. The GEPF is acknowledged as amongst the 10 largest pension funds in the world, with more than R707 billion of assets under management.²⁸

Established on 1 May 1996 through the amalgamation of a number of pension funds serving government employees and, therefore, now in existence for 12 years, the GEPF is a juristic entity managed by a Board of Trustees. The law which governs the GEPF is the Government Employees Pension Law 1996 which came into effect on 1 May 1996.

25 See also these determinations of the Pension Funds Adjudicator: *Barnard v Municipal Gratuity Fund*, PFA/GA/24186/2008/SM (unreported) and *Lessing v Evergreen Pension Fund and Another* [2007] 3 BPLR 334 (PFA). (Available at www.pfa.org.za in the section containing Determinations 2008.)

26 Act 22 of 2008.

27 See *Barnard v Municipal Gratuity Fund*, PFA/GA/24186/2008/SM (unreported).

28 See, *GEPF Annual Report, 2007/2008*, at www.gepf.co.za.

The GEPF is committed to effectively and efficiently provide benefits to members, pensioners and beneficiaries. Core functions include: member admissions, contribution collections, members roll maintenance, withdrawals (exits) and benefit payments, and the oversight of the investment of the Fund's assets to match future liabilities.

The administration of the GEPF also administers benefits on behalf of the National Treasury, including, medical subsidies, special pensions, military pensions and other sundry benefits. The government owned Public Investment Corporation (PIC) manages the investment of GEPF funds, which comprise 91,7% of the total investments under its administration. The Fund is committed to creating a business environment for its 705 employees that is conducive to their wellbeing and productivity, with efficient and fair human resource practices. Its Employment Equity Forum consists of employee, management and trade union representatives, and identifies and addresses issues as needed on an ongoing basis.

All government employees are required to become members of the GEPF, except where membership is excluded according to the provisions of the Government Employees Pension Law, as amended,²⁹ and the Rules of the Fund. When a member becomes divorced, then depending on the nature of the divorce order, in the majority of cases the non-member spouse will be entitled to 50% of the member's pension interest. This benefit will also accrue to the non-member as a result of the member spouse's resignation, retirement, and discharge in the case of ill-health. This means that the GEPF is still applying laws which were applied by all pension funds before the coming into operation of the two important statutes, the Pension Funds Amendment Act and the Financial Services Laws General Amendment Act. The amendments which were introduced by these two statutes apply to all pension funds registered with the Registrar of Pension Funds, and which are also governed by the Pension Funds Act. All the funds which fall outside the above category, including the GEPF, are not affected by the amendments, unless the laws or rules which govern them are amended.

5 CONCLUSION

The Pension Funds Act³⁰ is 52 years old, and has required significant amendment in recent years to reduce its inconsistencies with the values underpinning the Constitution,³¹ particularly with regard to the rights of women to equality and dignity. The 2007 and 2008 amendments to the Pension Funds Act have been valuable in reducing the inequalities that the former spouses of pension

29 By Government Employees Law Proclamation 57 of 1996, the Maintenance Act 99 of 1998, the Government Employees Pension Amendment Act 35 of 2003 and the Government Employees Pension Amendment Act 21 of 2004.

30 Act 24 of 1956.

31 South African Constitution Act 108 of 1996.

fund members face on divorce. I welcome them since they promote fairness and reasonableness in our law.³²

Based on the amendments, a question which needs to be clarified will be: what will happen to the investment preserved in a preservation fund or retirement annuity, since those rules make it clear that the benefit accrues on the date of retirement. This means that, in the case of divorce, the non-member spouse has to wait for the member spouse to retire for her benefit to accrue. This implication means that there is a need to amend the Income Tax Act³³ to be in line with the recent amendments.

The exclusion of GEPP members from the application of this Act is unfair, and it needs to be taken into account with a view to future amendments. The South African Constitution, particularly the Bill of Rights, stipulates that everyone is equal before the law, and that no one may be unfairly discriminated against, either directly or indirectly, on all grounds.³⁴ The Pension Funds Act protects the marginalised, the majority of whom, in most cases, are women. While the non-member spouse, whose husband or wife belongs to the GEPP, has to wait for a benefit to accrue to claim their share, the non-member spouse in the private sector, in respect of funds which are registered under the Pension Funds Act, receive their benefit within sixty days from the date of divorce.

I just hope that the legislature or policy makers will realise the impact of the exclusion from the provisions of the Pension Funds Act of GEPP members, Post Office Retirement Fund members, Transnet Pension Fund members, and those members of other pension funds which are not governed by the Pension Funds Act. This is a good law, which will, of course, protect non-member spouses and eradicate poverty, since these people were suffering before the amendments were enacted; but others will have to wait for more years for their benefits to accrue.

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