

## POLITICAL OFFICE-BEARERS PENSION FUND – DISTRIBUTION OF DEATH BENEFITS

- If a member of the Fund dies, while she or he is still in office (as an MP or MPL) or after leaving office but before receiving the full benefits due to her/him from the Fund, the Fund will be holding a benefit (an amount of money) that will be allocated to the dependants of the deceased member.
- The benefit amount is calculated in terms of the Fund Rules and includes any insurance cover that the Fund has in place for the member concerned.
- The process of allocating the benefit to the dependants of the deceased member is **governed by the Pension Funds Act – specifically, by Section 37C of the Act**. This lays down the “rules” for the distribution process – the Trustees of the Fund cannot ignore or deviate from these “rules”.
- First, the family members need to be aware that the benefit **does not form part of the estate of the deceased member**. This means that the member cannot give binding instructions in her/his will as to how the Fund benefit must be dealt with. (It also means that, if the estate is insolvent, the creditors of the estate cannot seize the benefit.)
- Allocating the benefit is the responsibility of the Trustee Board, who must use their judgment and discretion to decide on allocations that are **fair and reasonable** – provided they work within the framework laid down by Section 37C of the Act.
- The law gives the Trustee Board **three responsibilities**:
  1. **INVESTIGATE** - to **IDENTIFY** all possible dependants and nominees, and to gather relevant information to decide who qualifies as a dependant and might therefore be allocated part of the benefit. (“Nominees” are the people named by the member who later died, in a valid Expression of Wish form (often called a nomination form) that she/he may have completed while a member of the Fund – there are rules governing what is a valid nomination form.)
  2. **DECIDE**, based on the information gathered, on the **ALLOCATION** of the benefit to the dependents and nominees. This means deciding where there was a legal obligation on the deceased to provide financially, and/or where there now is a need for financial support (now that the member is no longer alive and able to provide support from what she/he was earning), and how **much** support each dependant needs – this will help the Trustees to decide how to divide up the benefit amount between the dependants.
  3. **DECIDE**, based on the information gathered, on **WHAT FORM OF PAYMENT** is in the **BEST INTERESTS** of the beneficiary (the dependant who is receiving part of the benefit amount):
    - Should the benefit amount be paid directly to the beneficiary (as a once-off lump sum amount, after tax)?

- Or should the benefit amount be paid into a Beneficiary Fund (similar to a Trust arrangement), with monthly payments being made to support the beneficiary? (This will often be the case when the beneficiary is under age 18, although sometimes payment in such cases will be made to the surviving parent of the child beneficiary.)
- The law allows the Trustee Board up to **12 months** to complete its investigations and make its decision. Of course, the Board will try to complete its work sooner, but some investigations are more complex and may take up to the full 12 months. Each investigation will be assigned to one suitably trained and experienced Trustee, helped by the Principal Officer where necessary. **Strict confidentiality** will be maintained – personal information given by one possible beneficiary will not be shared with the others. The Trustee will report to the Death Claims Sub-Committee of the Board, which will consider the Trustee’s report and then make a recommendation to the Board. The Board will then consider the proposal and make a final decision.

A letter will then be sent to each of the beneficiaries to whom a benefit amount is allocated. The letter will state the Rand amount of the allocated benefit (before any tax) and what percentage this amount is, out of the total benefit that the Board has allocated. Beneficiaries are thus given a chance to object, but importantly, adult beneficiaries need to advise the Fund whether they want to receive their allocation in cash or whether they want to transfer it to another pension savings vehicle. For allocations to minor children, the letter will advise of any trust arrangements that apply.

Only once all the beneficiaries have made their choices can the Fund apply to SARS for a tax directive so that the necessary tax can be deducted, after which the benefit amounts will be paid.

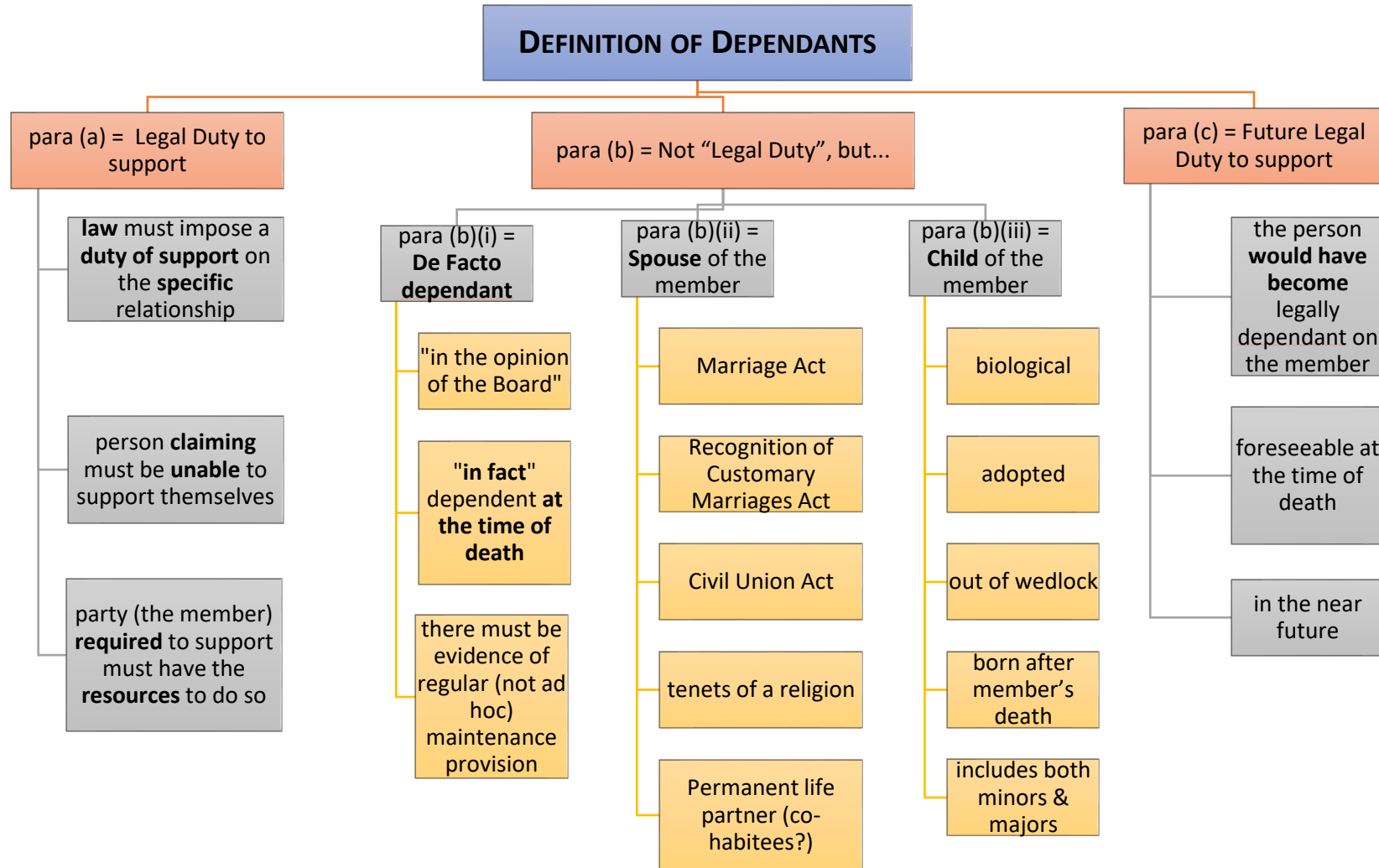
If it happens that a possible beneficiary has financial hardship while this process is under way, they can apply to the Fund for a possible **advance** against the benefit that they are expected to receive. This will be considered by the Management Sub-committee of the Board. The Fund will advise what documents are needed to support a request for an advance (e.g. to cover a child’s school fees) – note that in some cases such as car or bond repayments, the family should first check with the executor whether the deceased member’s estate is able to cover these.

- Who are the **DEPENDANTS**?

**DEPENDANTS** are defined in Section 2 of the Pension Funds Act to include the late member’s **spouse(s), children**, and persons for whom the late member had, or could have had, a **legal responsibility** to provide for – and also **people who were “in fact” dependant** on the member. This is illustrated in the diagram on the next page. The benefit available must be applied to meet the reasonable needs of dependants and, where possible, to nominees, who are not also dependants.

A **NOMINEE** is someone listed by the late member on a valid Expression of Wish form (nomination form), addressed to the Fund and signed, for consideration by the Board to **possibly** receive part of the death benefit. Very often, the people nominated will also meet the definition of “dependants” – and will therefore be considered and treated as dependants. Occasionally, though, a member will nominate someone who does not

meet the definition of dependants, e.g. a friend or a more distant relative that the member was not supporting – such people **may** receive a portion of the death benefit, but only if the total amount is **more** than enough to meet the needs of the people who do qualify as dependants.



- What is the legal status of the member's **Expression of Wish Form (nomination form)**?

The wishes of the late member, as documented in a valid Expression of Wish form, will be used by the Trustee Board as a source of information, rather than a guide to how the allocation must be made. Section 37C of the Act is clear that the Board may only follow the wishes of the deceased mechanically **where there are no dependants**, as defined – i.e. if none of the people nominated qualify as dependants, **and** there are no other dependants. **This almost never happens in practice.**

In practice, therefore, the Trustee Board will use the nomination form as a source of information, but will make its own decision after doing a full investigation – the Board will (almost always) **NOT** be legally bound by the nomination form.

- **Factors that the Board will consider** in making a fair and reasonable allocation of the death benefit

It is now well established (e.g. arising from cases settled by the Courts or the Pension Funds Adjudicator) that there are **four criteria** that the Trustees should use to assess each potential beneficiary – taking account of the total amount of the benefit that is available to provide for their needs:

