

MALTA

ATT Nru. XIX ta' l-2006

ATT mahruġ b'liġi mill-Parlament ta' Malta.

ATT li jkompli jemenda l-Att dwar is-Sigurtà Soċjali.

ACT No. XIX of 2006

AN ACT enacted by the Parliament of Malta.

AN ACT to further amend the Social Security Act.

I assent.

(L.S.)

EDWARD FENECH ADAMI
President

7th December, 2006

ACT No. XIX of 2006

AN ACT to further amend the Social Security Act.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:

Short title
and
commencement.
Cap. 318.

1. (1) The short title of this Act is the Social Security (Amendment) (No. 2) Act, 2006 and this Act shall be read and construed as one with the Social Security Act, hereinafter referred to as “the principal Act”.

(2) This Act shall come into force on such date as the Minister responsible for social policy may, by notice in the Gazette, appoint and different dates may be so appointed for different purposes and provisions of this Act.

PART I

AMENDMENTS TO THE PRINCIPAL ACT

Amendment
to article 2
of the principal
Act.

2. Article 2 of the principal Act shall be amended as follows:

(a) sub-article (1) thereto shall be amended as follows:

(i) for the definition “pension age” there shall be substituted the following:

“ “pension age” means sixty five years of age:

Provided that:

(i) (a) saving the provisions of paragraph (ii) hereof, in the case of a person born on or before the 31st December 1951, pension age shall be sixty one years;

(b) in the case of a person born during the calendar years 1952 to 1955, pension age shall be sixty two years;

(c) in the case of a person born during the calendar years 1956 to 1958, pension age shall be sixty three years;

(d) in the case of a person born during the calendar years 1959 to 1961, pension age shall be sixty four years;

(ii) in the case of a woman born on or before the 31st December 1951, pension age shall be sixty years;”;

(ii) immediately after the definition “retirement” there shall be inserted the following new definition:

“ “Second Pension” means the mandatory pension scheme referred to in article 64C of this Act;”;

(iii) in the definition “Service Pension” in the proviso thereto, for the words “of such Service Pension;” there shall be substituted the words “of such Service Pension:” and immediately thereafter there shall be added the following new proviso:

“Provided further that the Second Pension or the Third Pension which a person may receive shall not be considered as a Service Pension for the purposes of this Act;”;

(iv) immediately after the definition “single parent” there shall be inserted the following new definition:

“ “Third Pension” means the voluntary pension plan referred to in article 64D of this Act;”;

(b) in sub-article (3) thereof, for the words from “For the purposes of awarding a Survivors’ Pension,” to the words “as the

case may be, was an insured person,” there shall be substituted the following words:

“For the purposes of awarding:

(i) a widows’ pension or a retirement pension, in terms of this Act, a person born on or before the 31st December 1961 and who, during the last ten years ending on the last day of the calendar year immediately preceding such person’s retirement or widowhood; or

(ii) an invalidity pension, in terms of this Act, a person who, during the last ten years ending on the last day of the calendar year immediately preceding such person’s becoming an invalid,

was an insured person,”.

Amendment
to article 16
of the principal
Act.

3. Article 16 of the principal Act shall be amended as follows:

(a) sub-article (2) thereto shall be amended as follows:

(i) in paragraph (b) thereto, for the words “and has not yet reached pension age; and” there shall be substituted the words “and has not yet reached pension age;”;

(ii) in the proviso to paragraph (c) thereto, for the words “consecutive periods starting from the 6th January, 1991 backwards.” there shall be substituted the words “consecutive periods starting from the 6th January 1991 backwards;”;

(iii) immediately after the proviso to paragraph (c) thereto, there shall be inserted the following new paragraph:

“(d) the father or the mother, who have attained the age of eighteen years and born on or after the 1st January 1962, has the legal care and custody of a child who has not attained the age of six years, or the age of ten years in the case of a child who has been certified by a medical consultant as suffering, during the period for which the credit is being requested, from a serious disability:

Provided that the sum total of such credited contributions which may be given with regard of each

child to a parent or to both parents together shall not exceed 104 contributions in any period of two years:

Provided further that in the case of a parent who, to the satisfaction of the Director, presents a certificate from a medical consultant of a child suffering from a serious disability during such period for which credits are requested, the sum total of such credited contributions that may be awarded in respect of each and every such child shall not exceed 208 contributions in any period of four years:

Provided also that such credits shall only be awarded insofar as, prior to the pension age, such father or mother, as the case may be, resumes gainful occupation for a minimum period equivalent to that period for which such number of credits would have been awarded; so however that, in the event of the death of any such parent, such credits shall still be awarded notwithstanding that the minimum period required in terms of this proviso for the award of such credits has not been satisfied.”;

(b) in sub-article (4) thereto, for paragraph (b) there shall be substituted the following:

“(b) a Class One or a Class Two contribution if awarded in terms of paragraph (d) of sub-article (2) of this article, as the case may be;

(c) a Class One contribution in any other case:

Provided that a credit awarded in terms of paragraph (d) of sub-article (2) of this article shall only be valid for the purposes of awarding a pension in terms of Part IV and Part V of this Act.”.

4. Article 26 of the principal Act shall be amended as follows:

Amendment
to article 26
of the principal
Act.

(a) in sub-article (1) thereof, immediately after the words “or the National Minimum Pension” there shall be substituted the words “in terms of article 50 or to the Guaranteed National Minimum Pension in terms of article 50A, as the case may be,”;

(b) for paragraph (iv) of sub-article (2) thereto, there shall be substituted the following:

“(iv) if his Service Pension together with the rate of Invalidity Pension or Increased Invalidity Pension applicable in his case is less than the rate of the National Minimum Pension in terms of article 50 of this Act or the Guaranteed National Minimum Pension in terms of article 50A of this Act as is applicable in his case, then notwithstanding the provisions of the foregoing paragraphs of this sub-article, such person shall be entitled to the National Minimum Pension or the Guaranteed National Minimum Pension, as the case may be, abated by his Service Pension.”;

(c) in sub-article (6) thereto, for the words “A person who is not entitled to a Service Pension” there shall be substituted the words “A person born on or before the 31st December 1961 who is not entitled to a Service Pension”;

(d) immediately after sub-article (6) thereto, there shall be inserted the following new sub-article (7):

“(7) A person born on or after the 1st January 1962 who becomes invalid in terms of this Act and who is not entitled to a Service Pension shall be entitled to a Guaranteed National Minimum Pension in terms of article 50A of this Act.”;

(e) sub-articles (7) and (8) thereto shall be renumbered as sub-articles (8) and (9).

Amendment of article 30 of the principal Act.

5. In sub-article (8) of article 30 of the principal Act, for the word “female” wherever it occurs, there shall be substituted the word “person”.

Amendment of article 44 of the principal Act.

6. In article 44 of the principal Act, immediately after the words “or the National Minimum Pension or Increased National Minimum Pension” there shall be added the words “or the Guaranteed National Minimum Pension, as the case may be,”.

Amendment of article 45 of the principal Act.

7. For article 45 of the principal Act there shall be substituted the following:

“45. (1) A person under the age of sixty-five years, born on or before the 31st December 1961, shall be disqualified from receiving a pension under this Part during any period falling after his pension age and in which he is gainfully occupied if:

(a) he fails to prove to the satisfaction of the Director that his earnings from such gainful occupation do not exceed

a weekly average equivalent to the National Minimum Wage as is applicable to persons of eighteen years of age or over established by a National Standard Order issued under the Employment and Industrial Relations Act; and

(b) the Employment and Training Corporation had been duly informed of such gainful occupation.

(2) For the purposes of sub-article (1) no account shall be taken of earnings derived by such person from membership of any board, committee, commission or council established by or under any law or as the Minister may declare by order published in the Gazette or such classes of earnings as the Minister may declare by order published in the Gazette.”.

8. In article 50 of the principal Act for the words “a person who is not entitled to a Service Pension” there shall be substituted the words “a person born on or before the 31st December 1961 who is not entitled to a Service Pension”.

Amendment
of article 50
of the principal
Act.

9. Immediately after article 50 of the principal Act there shall be inserted the following new article:

Addition
of new
article 50A
to the principal
Act.

“Guaranteed
National
Minimum
Pension.

50A. Subject to the provisions of this Act, a person born on or after the 1st January 1962 who is not entitled to a Service Pension shall be entitled to a Guaranteed National Minimum Pension which shall be payable at such rate being not less than sixty percent of the National Median Income as the Minister may, with the concurrence of the Minister responsible for finance, by order under this article from time to time establish and in any case, such Guaranteed National Minimum Pension shall not be less than that established for the preceding year.”.

10. In article 51 of the principal Act for the words “less than the rate of National Minimum Pension applicable in his case, such a person shall be entitled to the National Minimum Pension abated by his Service Pension.” there shall be substituted the words “less than the rate of the National Minimum Pension in terms of article 50 of this Act or the Guaranteed National Minimum Pension in terms of article 50A of this Act as is applicable in his case, such person shall be entitled to the National Minimum Pension or the Guaranteed National Minimum Pension as applicable, abated by his Service Pension.”.

Amendment
of article 51
of the principal
Act.

11. Article 53 of the principal Act shall be amended as follows:

Amendment
of article 53
of the principal
Act.

(a) in sub-article (1) thereto, for paragraph (i) there shall be substituted the following:

“(i) of thirty years in the case of a person born on or before the 31st December 1951; or

(ii) of thirty five years in the case of a person born during calendar years 1952 to 1961; or

(iii) of forty years in the case of a person born on or after the 1st January 1962; or”;

(b) in sub-article (1) thereto, paragraphs (ii) and (iii) shall be renumbered as paragraphs (iv) and (v);

(c) in paragraph (a) of the first proviso to sub-article (1) thereto, for the words “the period of years to be taken into account in accordance with this article” there shall be substituted the words “in the case of a person born on or before the 31st December 1961 the period of years to be taken into account in accordance with this article”;

(d) in sub-article (3) thereto, for the words “For the purposes of this article, and with effect from the 22nd January 1979,” there shall be substituted the words “For the purposes of this article, in the case of a person born on or before the 31st December 1961 and with effect from the 22nd January 1979,”;

(e) immediately after sub-article (3) thereto, there shall be inserted the following new sub-article (4):

“(4) For the purposes of this article, in the case of a person born on or after the 1st January 1962, in arriving at the yearly average of contributions in terms of sub-article (1) of this article, the yearly average of contributions required under this Act for the purposes of awarding a Two Thirds Pension shall be assessed on any period of forty years between the first day of his contribution year in which he reaches the age of eighteen and the last day of his last complete contribution year before the beginning of his benefit year which includes the day on which the conditions are required to be satisfied.”.

“(a) less than the full rate of the National Minimum Pension, inclusive of the additional allowance, payable according to such person’s marital status, as is specified in the Twelfth Schedule to this Act; or the Guaranteed National Minimum Pension payable in terms of article 50A of this Act, as the case may be; or”.

13. Article 59 of the principal Act shall be amended as follows: Amendment of article 59 of the principal Act.

(a) for sub-article (1) thereto, there shall be substituted the following:

“(1) In respect of persons born on or before the 31st December 1961, any pension issued under this Part shall be reassessed annually with effect from the first Saturday in January of the year of the reassessment as provided for in sub-articles (2) to (6) of this article.”;

(b) immediately after sub-article (6) there shall be inserted the following new sub-article:

“(7) In respect of persons born on or after the 1st January 1962, pensions under this Part with effect from the first Saturday of January of each year, shall be increased annually by such sum as corresponds to seventy percent of the percentage increase in the national average wage as published by the National Statistics Office established by virtue of article 9 of the Malta Statistics Authority Act, for the previous calendar year plus thirty percent of the inflation rate as published by the said National Statistics Office for the previous calendar year; and the provisions of article 90A of this Act shall not apply to such pensions.”. Cap. 422.

14. Immediately after article 64 of the principal Act there shall be inserted the following new articles 64A to 64D: Addition of new articles 64A to 64D in the principal Act.

“Retirement before pension age.

64A. Notwithstanding the provisions of this Part, a person who has attained the age of sixty one years but has not yet attained pension age, may after attaining sixty one years of age claim a pension payable under this Part before attaining pension age if such person is no longer gainfully occupied and has since reaching his eighteenth birthday had a total of:

(i) 2080 paid or credited contributions in the case of a person born on or after the 1st January 1962; or

(ii) 1820 paid or credited contributions in the case of a person born during calendar years 1952 to 1961.

Five
yearly
review.

64B. (1) The Minister shall within intervals not exceeding the period of five years lay on the Table of the House a report reviewing the workings of Part V of this Act within the previous five years together with recommendations, if any, with a view of achieving further adequacy, sustainability and social solidarity:

Provided that the first report shall not be submitted later than the 31st December 2010.

(2) The report mentioned in sub-article (1) of this article shall be discussed by the Social Affairs Committee of the House or any other committee substituting the same.

Mandatory
Second
Pension.

64C. (1) It shall be lawful for the Minister, in concurrence with the Minister responsible for finance, from time to time, to make and when made vary any regulations under this article requiring persons who have not reached pension age and their employers as the case may be, to make contributions into Second Pension funds which provide for the payment of a regular income or other benefits to such persons and, or their dependants after or upon reaching pension age and may in particular by such regulations provide for the rate of contributions payable as well as the method and times when such payments are to be made.

(2) Any sum or other benefit payable by Second Pension funds to which such regulations may refer shall not be considered as Service Pensions for the purposes of this Act.

Cap. 450.

(3) Second Pension funds shall be funds governed by the Special Funds (Regulation) Act.

(4) No regulation, or any amendment thereto or any substitution or revocation thereof, made under this article shall have effect unless it has received the prior approval of the House signified by resolution.

Voluntary
Third
Pension.

64D. (1) The Minister may, with the concurrence of the Minister responsible for finance, provide for exemptions from income tax in respect of contributions made by any person to Third Pension funds which provide for the payment

of a regular income or other benefits to such persons and, or their dependants after or upon reaching pension age.

(2) Any sum or other benefit payable by Third Pension funds referred to in this article shall not be considered as Service Pensions for the purposes of this Act.

(3) Third Pension funds shall be funds governed
 Cap. 450. by the Special Funds (Regulation) Act, or the Insurance
 Cap. 403. Business Act, as applicable.”.

15. In article 116 of the principal Act, in paragraph (ii) of sub-article (5) thereto for the words “from the time when the proper rate of contribution was due, whichever is the earlier.” there shall be substituted the words “from the time when the proper rate of contribution was due, whichever is the earlier:” and immediately after there shall be inserted the following new proviso:

Amendment
 of article 116
 of the principal
 Act.

“Provided that in the case of a person born on or after the 1st January 1962, any contribution payable in terms of this article shall be payable at the rate at which the contribution will be payable at the time of payment.”.

16. The Thirteenth Schedule to the principal Act shall be amended as follows:

Amendment of
 the Thirteenth
 Schedule of
 the principal
 Act.

(a) for paragraph (1) thereto there shall be substituted the following:

“(1) In the case of a person:

(a) born on or before the 31st December 1951 who is to be treated as an employed person, the yearly average of the basic wage or salary during the best three consecutive calendar years within the last ten consecutive calendar years immediately preceding his retirement or invalidity in terms of this Act, as the case may be; or

(b) born during the calendar years 1952 to 1955 who is to be treated as an employed person, the yearly average of the basic wage or salary during the best three consecutive calendar years within the last eleven consecutive calendar years immediately preceding his retirement or invalidity in terms of this Act, as the case may be; or

(c) born during the calendar years 1956 to 1958 who is to be treated as an employed person, the yearly average of the basic wage or salary during the best three consecutive calendar years within the last twelve consecutive calendar years immediately preceding his retirement or invalidity in terms of this Act, as the case may be; or

(d) born during the calendar years 1959 to 1961 who is to be treated as an employed person, the yearly average of the basic wage or salary during the best three consecutive calendar years within the last thirteen consecutive calendar years immediately preceding his retirement or invalidity in terms of this Act, as the case may be,

on which the required contribution had been paid or deemed to have been paid in terms of this Act or, if he has been in employment for less than three consecutive calendar years within the said last ten, eleven, twelve or thirteen calendar years, as applicable in terms of this paragraph, during any such number of consecutive calendar months as may be the best in his case within the said period, as may be increased by the applicable wage increases required by law to be awarded generally in respect of each subsequent year of each of the said last ten, eleven, twelve or thirteen years, as applicable.”;

(b) for paragraph (2) thereto there shall be substituted the following:

“(2) In the case of a person:

(a) born on or before the 31st December 1951 who is to be treated as a self-employed person, the yearly average of his net income on which the required contribution has been paid during the last ten calendar years, or part thereof if he has not been in self-employment for the whole said ten year period, immediately preceding his retirement or invalidity in terms of this Act, as the case may be; or

(b) born during the calendar years 1952 to 1955 who is to be treated as a self-employed person, the yearly average of his net income on which the required contribution has been paid during the best ten consecutive calendar years of the last eleven calendar years, or part

thereof if he has not been in self-employment for the whole said eleven year period, immediately preceding his retirement or invalidity in terms of this Act, as the case may be; or

(c) born during the calendar years 1956 to 1958 who is to be treated as a self-employed person, the yearly average of his net income on which the required contribution has been paid during the best ten consecutive calendar years of the last twelve calendar years, or part thereof if he has not been in self-employment for the whole said twelve year period, immediately preceding his retirement or invalidity in terms of this Act, as the case may be; or

(d) born during the calendar years 1959 to 1961 who is to be treated as a self-employed person, the yearly average of his net income on which the required contribution has been paid during the best ten consecutive calendar years of the last thirteen calendar years, or part thereof if he has not been in self-employment for the whole said thirteen year period, immediately preceding his retirement or invalidity in terms of this Act, as the case may be,

as may be increased by the applicable wage increases required by law to be awarded generally, as long as each such increase is less than the net increase obtaining from year to year between one net income and another in respect of each subsequent year of each of the said last ten, eleven, twelve or thirteen calendar years, as applicable in terms of this paragraph, or part thereof during which he was in self-employment; so however that, where during the said last ten, eleven, twelve or thirteen calendar years he had paid a contribution on a net income that was higher than that actually received, the net income taken for the purposes of this calculation in respect of any such particular calendar year shall be the higher of such net income.”;

(c) for paragraph (3) thereto there shall be substituted the following:

“(3) In the case of a person:

(a) born on or before the 31st December 1951 who is to be treated as a self-occupied person, the yearly

average of his net earnings on which the required contribution has been paid during the last ten calendar years, or part thereof if he has not been in self-occupation for the whole said ten year period, immediately preceding his retirement or invalidity in terms of this Act, as the case may be; or

(b) born during the calendar years 1952 to 1955 who is to be treated as a self-occupied person, the yearly average of his net earnings on which the required contribution has been paid during the best ten consecutive calendar years of the last eleven calendar years, or part thereof if he has not been in self-occupation for the whole said eleven year period, immediately preceding his retirement or invalidity in terms of this Act, as the case may be; or

(c) born during the calendar years 1956 to 1958 who is to be treated as a self-occupied person, the yearly average of his net earnings on which the required contribution has been paid during the best ten consecutive calendar years of the last twelve calendar years, or part thereof if he has not been in self-occupation for the whole said twelve year period, immediately preceding his retirement or invalidity in terms of this Act, as the case may be; or

(d) born during the calendar years 1959 to 1961 who is to be treated as a self-occupied person, the yearly average of his net earnings on which the required contribution has been paid during the best ten consecutive calendar years of the last thirteen calendar years, or part thereof if he has not been in self-occupation for the whole said thirteen year period, immediately preceding his retirement or invalidity in terms of this Act, as the case may be,

as may be increased by the applicable wage increases required by law to be awarded generally, as long as each such increase is less than the net increase obtaining from year to year between one net earning and another in respect of each subsequent year of each of the said ten, eleven, twelve or thirteen calendar years, as applicable in terms of this paragraph, or part thereof during which he was in self-occupation. So however that for the purposes of this paragraph, in the case of a person who prior to the 1st January 1996, was

a gainfully occupied self-employed person, his annual net income for each calendar year prior to the aforementioned date shall be deemed to be as if it were his net earnings.”; and

(d) paragraph (4) thereto shall be deleted and immediately after paragraph (3) there shall be inserted the following new paragraphs (4) and (5):

“(4) In the case of a person born on or after the 1st January 1962 the yearly average of the basic wage or salary, or the net income or the net earnings, as the case may be, during the best ten calendar years within the last forty calendar years immediately preceding his retirement or invalidity in terms of this Act, as the case may be, on which the required contribution has been paid or deemed to have been paid in terms of this Act or if he has been in employment or self-employment or has been self-occupied for less than ten calendar years within the last forty calendar years, during any such number of calendar months as may be the best in his case within the said last forty calendar years, as may be increased by the applicable wage increases required by law to be awarded generally in respect of each subsequent year of each of the said last forty calendar years:

Provided that for the purposes of this paragraph, in the case of a self-occupied person who prior to the 1st January 1996, was a gainfully occupied self-employed person, his annual net income for each calendar year prior to the aforementioned date shall be deemed to be as if it were his net earnings.

(5) (a) For the purposes of this Act, in the case of a person born on or before the 31st December 1961 whose retirement occurs on or after the 1st January 2007, the basic wage or salary or the net income or the net earnings as the case may be, and the resultant pensionable income or any amount substituted therefor under the provisions of this Act shall not exceed Lm6,958 increased by such sum that the Government may award as a cost of living increase, in the rate of the national minimum wage as is payable to persons of eighteen years of age or over under the provisions of the Employment and Industrial Relations Act; hereinafter in this paragraph referred to as the “cost of living increase” as from the effective date of such increase: Cap. 452.

Provided that in the case of a person born on or before the 31st December 1951, the resultant pensionable income including any such cost of living increase shall not exceed the sum of Lm7,500:

Provided further that in the case of a person born during calendar years 1952 to 1961, the resultant pensionable income including any such cost of living increase shall not exceed the sum of Lm9,000.

(b) For the purposes of this Act, in the case of a person born on or after the 1st January 1962 whose retirement occurs on or after the 1st January 2007, the basic wage or salary or the net income or the net earnings as the case may be, and the resultant pensionable income or any amount substituted therefor under the provisions of this Act shall not exceed:

(i) Lm6,958 increased by such sum that the Government awards as a cost of living increase, in respect of the years 2007 to 2010 as from the effective dates of such increases;

(ii) the sum referred to in (i) increased as on the 1st January of each year, between 2011 and 2013 by one third of the difference between the sum referred to in (i) and Lm9,000;

(iii) with effect from the 1st January 2014, Lm9,000 increased annually by such sum as corresponds to seventy percent of the percentage increase in the national average wage for the previous calendar year as published by the National Statistics Office established by virtue of article 9 of the Malta Statistics Authority Act, plus thirty percent of the inflation rate as published by the said National Statistics Office for the previous calendar year.”.

Cap. 422.

PART II

CONSEQUENTIAL AMENDMENTS

Amendment of the
Pensions Ordinance,
Cap. 93.

17. The Pensions Ordinance shall be amended as follows:

(a) the whole article 2 thereof shall be renumbered as sub-article (1) of the article and immediately thereafter there shall be added the following new sub-article (2):

“(2) Nothing in this Ordinance or in any amendment made thereto from time to time shall, unless the contrary intention is explicitly stated, be interpreted as granting, or as ever having granted, a right, to any person who has been in the service of Malta or to his legal representatives or dependants, to a pension, gratuity or other allowance under this Ordinance, that is not, or that was not at any time, qualified by the requirement of a creditable performance by such person.”; and

(b) in sub-article (1) of article 8E thereof, immediately after the words “referred to in sub-article (2)” there shall be inserted the words “after having served for at least twelve months in such an office”, and immediately after the words “the pensionable emoluments of such officer on retirement shall be,” there shall be inserted the words “, when such officer accomplishes a creditable performance,”.

18. In sub-article (14) of article 36 of the Employment and Industrial Relations Act, for the second proviso thereto there shall be substituted the following:

Amendment
to the
Employment
and Industrial
Relations Act,
Cap. 452.

“Provided further that:

(a) saving the provisions of paragraph (b) hereof, the employer can terminate the employment of an employee when the employee reaches pension age as defined in the Social Security Act;

(b) notwithstanding the provisions of paragraph (a) hereof, an employer may not terminate the employment of a female employee born on or before the 31st December 1951 before she reaches the age of sixty one years.”.

Passed by the House of Representatives at Sitting No. 474 of 5th December, 2006.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives