

South Africa

Judges Remuneration and Conditions of Employment Act, 2001

Act 47 of 2001

Legislation as at 31 March 2005

Note: There are **outstanding amendments** that have not yet been applied:
Act 66 of 2008, Act 24 of 2015, Act 15 of 2023.

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Judges Remuneration and Conditions of Employment Act, 2001 (Act 47 of 2001)

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South Africa
**Judges Remuneration and
Conditions of Employment Act, 2001**
Act 47 of 2001

Published in Government Gazette 22854 on 22 November 2001

Assented to on 20 November 2001

There are multiple commencements

Provisions	Status
Chapter 1 (section 1); Chapter 2 (section 2–11); Chapter 3, section 12–15, section 16(1)–(3), section 17–18	commenced on 22 November 2001.
Chapter 3, section 16(4)	commenced on 3 May 2002 by Proclamation R34 of 2002 .
Chapter 2, section 2(1)(a)–(b), (2)(i)–(ii), (4)(a)–(b); Chapter 3, section 13(1)(cA)–(cB)	commenced on 1 November 2003.
Chapter 3, section 16(4)(d)–(f)	commenced on 31 March 2005.

[This is the version of this document as it was from 31 March 2005 to 16 February 2009.]

[Amended by [Judicial Officers \(Amendment of Conditions of Service\) Act, 2003 \(Act 28 of 2003\)](#) on 1 November 2003]

[Amended by [Judicial Matters Second Amendment Act, 2003 \(Act 55 of 2003\)](#) on 31 March 2005]

(English text signed by the President.)

ACT

To provide for the remuneration and conditions of employment of judges of the Constitutional Court, the Supreme Court of Appeal and the High Courts; and for matters connected therewith.

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

Chapter 1 Definitions (s 1)

1. Definitions and application of Act

- (1) In this Act, unless the context indicates otherwise—

“active service” means any service performed as a Constitutional Court judge or judge in a permanent capacity, irrespective of whether or not such service was performed prior to or after the date of commencement of this Act, and includes any continuous period—

- (a) of longer than 29 days of such service in an acting capacity prior to assuming office as a Constitutional Court judge or judge in a permanent capacity if such service was performed before the date of commencement of this Act; and
- (b) of such service in an acting capacity prior to assuming office as a Constitutional Court judge or judge in a permanent capacity if such service was performed after the date of commencement of this Act;

“annual salary” means the annual salary referred to in section 2(1)(a) and the allowance referred to in section 2(1)(b) payable to a Constitutional Court judge or a judge;

[definition of “annual salary” substituted by section 14(a) of Act 28 of 2003]

“Constitution” means the Constitution of the Republic of South Africa, 1996;

“Constitutional Court judge” means any person holding the office of—

- (a) Chief Justice of South Africa;
- (b) Deputy Chief Justice; or
- (c) judge of the Constitutional Court,

and includes any person who, since 7 June 1994, held, the office of—

- (i) President of the Constitutional Court;
- (ii) Deputy President of the Constitutional Court; or
- (iii) judge of the Constitutional Court;

“fixed date” is 1 April 1989;

“judge” means any person holding the office of—

- (a) President or Deputy President of the Supreme Court of Appeal;
- (b) judge of the Supreme Court of Appeal;
- (c) Judge President or Deputy Judge President of any High Court; or
- (d) judge of any High Court,

and includes any person who, at or since the fixed date, held the office of—

- (i) Chief Justice of South Africa or Deputy Chief Justice;
- (ii) judge of the Appellate Division of the Supreme Court of South Africa or of the Supreme Court of Appeal;
- (iii) Judge President or Deputy Judge President of any provincial or local division of the Supreme Court of South Africa or of any High Court;
- (iv) judge of any provincial or local division of the Supreme Court of South Africa or of any High Court; or
- (v) judge of any court of a homeland referred to in Item 16 of Schedule 6 to the Constitution, read with Item 1 thereof;

“Minister” means the Cabinet member responsible for the administration of justice;

"partner" means only one person with whom a Constitutional Court judge or judge, who is not legally married, is involved in a permanent heterosexual or same-sex life partnership—

- (a) in which the Constitutional Court judge or judge and the person concerned have undertaken reciprocal duties of support; and
- (b) which is, for the purposes of this Act, registered as such with the Director-General: Justice and Constitutional Development in accordance with the regulations made under section 13;

[definition of "partner" inserted by section 14(b) of [Act 28 of 2003](#)]

"salary" means the salary payable to a Constitutional Court judge or judge in terms of section 5;

"service" means—

- (a) service as a judge of the Supreme Court of Appeal or a High Court as contemplated in the Supreme Court Act, 1959 ([Act No. 59 of 1959](#)), in the same or a higher office held by the judge concerned on discharge from active service, or, with the approval of the judge concerned, service in a lower office;
- (b) service as a chairperson or a member of a commission as contemplated in the Commissions Act, 1947 ([Act No. 8 of 1947](#));
- (c) service as a chairperson or a member of a body or institution established by or under any law; or
- (d) any other service which the Minister may request him or her to perform.

"spouse" means a person to whom a Constitutional Court judge or judge is legally married;

[definition of "spouse" inserted by section 14(c) of [Act 28 of 2003](#)]

- (2) This Act applies to all Constitutional Court judges and judges—
 - (a) to whom the Judges' Remuneration and Conditions of Employment Act, 1989 ([Act No. 88 of 1989](#)) applied; and
 - (b) to whom corresponding legislation in any homeland, as defined in Item 1 of Schedule 6 to the Constitution, which, immediately before the date of commencement of this Act, had not been repealed, applied.

Chapter 2

Remuneration and conditions of employment of Constitutional Court judges and judges (ss 2-11)

2. Remuneration of Constitutional Court judges and judges

- (1) Any person who holds office as a Constitutional Court judge or as a judge, whether in an acting or permanent capacity, shall in respect thereof, be paid—
 - (a) an annual salary and such allowances or benefits—
 - (i) as determined by the President, from time to time, by notice in the Gazette, after taking into consideration the recommendations of the Independent Commission for the Remuneration of Public Office-bearers, established under section 2 of the Independent Commission for the Remuneration of Public Office-bearers Act, 1997 ([Act No. 92 of 1997](#)); and
 - (ii) approved by Parliament in terms of subsection (4); and
 - (b) an allowance at the rate of R3 500 per annum, which allowance shall not be taxable, unless Parliament expressly provides otherwise.

- (2) The Commission referred to in subsection (1)(a) must, when investigating or considering the salaries, allowances or benefits of Constitutional Court judges and judges—
 - (i) consult with the Minister and the Cabinet member responsible for finance; and
 - (ii) the Chief Justice or a person designated by the Chief Justice.
- (3) A notice in terms of subsection (1)(a) or any provision thereof may commence with effect from a date specified in the notice, which date may not be more than one year before the date of publication of the notice.
- (4)
 - (a) A notice issued under subsection (1)(a) must be submitted to Parliament for approval before publication thereof.
 - (b) Parliament must, by resolution—
 - (i) approve the notice, whether in whole or in part; or
 - (ii) disapprove the notice.
- (5) Any remuneration contemplated in subsection (1), shall be paid as a direct charge against the National Revenue Fund.
- (6) No Constitutional Court judge or judge may, without the consent of the Minister, accept, hold or perform any other office of profit or receive in respect of any service any fees, emoluments or other remuneration apart from his or her salary and any amount which may be payable to him or her in his or her capacity as such a Constitutional Court judge or judge.

[section 2 substituted by section 15 of [Act 28 of 2003](#)]

3. Discharge of Constitutional Court judges and judges from active service

- (1) A Constitutional Court judge who holds office in terms of section 176(1) of the Constitution—
 - (a) must, subject to the provisions of section 4(1) or (2), be discharged from active service as a Constitutional Court judge, on the date on which he or she—
 - (i) attains the age of 70 years; or
 - (ii) has completed a 12-year term of office as a Constitutional Court judge,whichever occurs first;
 - (b) may at any time be discharged by the President from active service as a Constitutional Court judge if he or she becomes afflicted with a permanent infirmity of mind or body which renders him or her incapable of performing his or her official duties; or
 - (c) may at any time on his or her request and with the approval of the President be discharged from active service as a Constitutional Court judge if there is any reason which the President deems sufficient.
- (2) A judge who holds office in a permanent capacity—
 - (a) shall, subject to the provisions of section 4(4), be discharged from active service as a judge on the date on which he or she attains the age of 70 years, if he or she has on that date completed a period of active service of not less than 10 years, or, if he or she has on that date not yet completed a period of 10 years' active service, on the date immediately following the day on which he or she completes a period of 10 years' active service;
 - (b) who has already attained the age of 65 years and has performed active service for a period of 15 years, and who informs the Minister in writing that he or she no longer wishes to perform active service, shall be discharged by the President from active service as a judge;

- (c) may at any time be discharged by the President from active service as a judge if he or she becomes afflicted with a permanent infirmity of mind or body which renders him or her incapable of performing his or her official duties; or
- (d) may at any time on his or her request and with the approval of the President be discharged from active service as a judge if there is any reason which the President deems sufficient.

4. Continuation of active service by Constitutional Court judges and judges

- (1) A Constitutional Court judge whose 12-year term of office as a Constitutional Court judge expires before he or she has completed 15 years' active service must, subject to subsection (2), continue to perform active service as a Constitutional Court judge to the date on which he or she completes a period of 15 years' active service, whereupon he or she must be discharged from active service as a Constitutional Court judge.
- (2) A Constitutional Court judge who, on attaining the age of 70 years, has not yet completed 15 years' active service, must continue to perform active service as a Constitutional Court judge to the date on which he or she completes a period of 15 years' active service or attains the age of 75 years, whichever occurs first, whereupon he or she must be discharged from active service as a Constitutional Court judge.
- (3) (a) A Constitutional Court judge who is discharged from active service in terms of section 3(1) or subsection (1) or (2) and who is also a judge contemplated in section 174(5) of the Constitution, may continue to perform active service as a judge in the court in which he or she held office as such immediately before he or she was appointed as a Constitutional Court judge if—
 - (i) he or she indicates his or her willingness to do so in writing to the President three months before he or she is so discharged from active service; and
 - (ii) he or she still qualifies to hold office as such a judge in a permanent capacity in terms of section 3(2) or subsection (4).
- (b) Nothing in this Act precludes a Constitutional Court judge—
 - (i) who is discharged from active service in terms of section 3(1) or subsection (1) or (2); and
 - (ii) who is not a judge contemplated in section 174(5) of the Constitution,from being appointed to the office of judge in a court other than the Constitutional Court by the President on the advice of the Judicial Service Commission as contemplated in the Constitution, if he or she still qualifies to hold office as such a judge in a permanent capacity in terms of section 3(2) or subsection (4).
- (c) The holding of office by a judge referred to in paragraph (a) or (b)—
 - (i) interrupts that judge's discharge from active service in terms of section 3(1) or subsection (1) or (2); and
 - (ii) suspends any salary payable in terms of section 5 to that judge pursuant to such discharge from active service.
- (d) The holding of office by a judge referred to in paragraph (a) or (b), entitles such a judge to an annual salary which—
 - (i) is payable in terms of section 2; and
 - (ii) may not be less than the annual salary applicable to the highest office held as a Constitutional Court judge or a judge.

- (4) A judge who on attaining the age of 70 years has not yet completed 15 years' active service, may continue to perform active service to the date on which he or she completes a period of 15 years' active service or attains the age of 75 years, whichever occurs first, whereupon he or she must be discharged from active service as a judge.

5. Salary payable to Constitutional Court judges and judges after discharge from active service

- (1) Subject to subsection (2), a Constitutional Court judge or a judge who on or after the fixed date was or is discharged from active service in terms of section 3 or 4 shall be paid a salary in accordance with the formula—

$$\frac{A}{B} \times C$$

in which formula the factor—

- (a) A represents the annual salary applicable to the highest office held by the Constitutional Court judge or judge concerned in a permanent capacity during the period of his or her active service; Provided that, subject to section 11(3)(a) and (5)(a), the factor 'A' in the said formula must be adjusted whenever the annual salary applicable to the highest office held by the Constitutional Court judge or judge concerned during the period of his or her active service, is increased;
- (b) B represents 15; and
- (c) C represents the period in years of active service of such Constitutional Court judge or judge.
- (2) The aggregate of the salary payable in terms of subsection (1) to a Constitutional Court judge or judge who was or is discharged from active service—
- (a) in terms of section 3(1), 3(2)(a), (c) or (d) or 4(1), (2) or (4) shall not be less than 40 per cent of his or her highest annual salary during the period of his or her active service and shall not exceed such salary;
- (b) in terms of section 3(1) or 3(2) and has performed active service for a period of not less than 20 years, shall be equivalent to the annual salary' applicable to the highest office held by him or her in a permanent capacity during his or her period of active service;
- (c) in terms of section 3(2)(b), shall, subject to paragraph (b), be 80 per cent of his or her highest annual salary' during the period of his or her active service, plus two per cent of that salary for every year of active service which he or she performs after attaining the age of 65 years;
- (d) in terms of section 3(1)(b) or (c) or 3(2)(c) or (d) before he or she attains the age of 65 years, shall, subject to paragraph (b), be not more than 80 per cent of his or her highest annual salary during the period of his or her active service.
- (3) For the purposes of subsection (1) the period of active service in any particular office shall be calculated by the year and the month, and fractions of a month shall—
- (a) in respect of any active service performed before the date of commencement of this Act, be disregarded; and
- (b) in respect of any active service performed after the date of commencement of this Act be taken into account.
- (4) If a Constitutional Court judge or a judge to whom a salary is payable in terms of this section dies, the payment of the salary shall cease with effect from the first day of the month following the month in which he or she died.

6. Gratuity payable to Constitutional Court judges and judges after discharge from active service

- (1) Subject to the provisions of subsections (2), (3) and (4), any Constitutional Court judge or judge who on or after the fixed date was or is discharged from active service in terms of section 3 or 4, shall, in addition to any salary payable to him or her in terms of section 5, be paid a gratuity which shall in respect of every office held by him or her in a permanent capacity during his or her active service be calculated in accordance with the formula—

$$D \times 2 \times \frac{E}{15}$$

in which formula the factor—

- (a) D represents the annual salary which at the time of the discharge of such Constitutional Court judge or judge from active service was applicable to the office concerned;
- (b) E represents the period in years of active service, but not exceeding 20 years, of such a Constitutional Court judge or judge in the office concerned.
- (2) After the completion of 15 years' active service a Constitutional Court judge or judge shall once be entitled, if he or she so requests, to be paid the gratuity (or any part thereof) which has until the date of the request accrued in accordance with the formula in subsection (1).
- (3) After the completion of 20 years' active service a Constitutional Court judge or judge shall once be entitled, if he or she so requests, to be paid the gratuity (or any portion thereof) which has until that date accrued in accordance with the formula in subsection (1), or the balance available after the exercise of the power in terms of subsection (2).
- (4) A judge referred to in section 4(4) shall once be entitled, when he or she attains the age of 70 years and has completed not less than 10 years' active service, to be paid, if he or she so requests, the gratuity (or any portion thereof) which has until the date of that request accrued in accordance with the formula in subsection (1).
- (5) The total amount of any gratuity payable in terms of this section to a Constitutional Court judge or judge shall not exceed three times his or her highest annual salary during the period of his or her active service.
- (6) For the purposes of this section the period of active service shall be calculated by the year and the month, and fractions of a month shall be taken into account,
- (7) Notwithstanding anything to the contrary contained in any other law, the gratuity payable to Constitutional Court judges or judges under this section shall not be taxable.

7. Performance of service by Constitutional Court judges and judges discharged from active service

- (1) (a) A Constitutional Court judge or judge who has been discharged from active service, except a Constitutional Court judge or judge who has been discharged in terms of section 3(1)(b) or (c) or 2(b), (c) or (d), who—
- (i) has not attained the age of 75 years must, subject to paragraph (c), be available to perform service until he or she attains the age of 75 years, for a period or periods which, in the aggregate, amount to three months a year: Provided that such a Constitutional Court judge or judge may voluntarily perform more than three months' service a year, if his or her services are so requested; or

- (ii) has already attained the age of 75 years, may voluntarily perform further service, if his or her services are so requested,
- if that Constitutional Court judge's or judge's mental and physical health enable him or her to perform such service.
- (b) Service contemplated in paragraph (a) of the definition of "service" in section 1 may only be performed if—
- (i) after consultation with the Judicial Service Commission, such service is requested by the Chief Justice, President of the Supreme Court of Appeal or the judge president in whose area of jurisdiction the Constitutional Court judge or judge resides or of the court to which he or she was attached when discharged from active service, or with his or her consent, any other judge president, in consultation with the Chief Justice or the said judge president, as the case may be; and
- (ii) the Minister so approves.
- (c) Service as mentioned in paragraph (b), (c) or (d) of the definition of "service" in section 1 may be performed only with the consent of the Constitutional Court judge or judge concerned.
- (2) (a) A Constitutional Court judge or judge who performs service in terms of subsection (1), as contemplated in paragraph (a) of the definition of "service" in section 1, shall, subject to paragraph (b)(ii), monthly be paid an additional amount in remuneration which is equal to the amount which at that time is payable to the holder of the office which he or she holds for that period.
- (b) A Constitutional Court judge or judge who performs service in terms of subsection (1) as contemplated in—
- (i) paragraphs (b) to (d) of the definition of "service" in section 1; and
- (ii) the proviso to subsection (1)(a)(i) or in subsection (1)(a)(ii), read with paragraph (a) of the definition of "service" in section 1,
- shall monthly be paid such remuneration as the President may determine.
- (3) The salary of a Constitutional Court judge or judge who contrary to subsection (1)(a)(i) fails to perform the minimum period of service referred to in that subsection if so requested, shall, for every full year during which he or she so fails, be reduced by two per cent: Provided that such reduction shall, in the aggregate, not amount to more than 10 per cent of such salary.
- (4) The registrar of the Supreme Court of Appeal or a High Court where a Constitutional Court judge or judge performs service in terms of subsection (1), shall notify the Director-General: Justice and Constitutional Development immediately of the commencement and duration of the service.
- (5) The Director-General: Justice and Constitutional Development shall keep a register of all service performed by Constitutional Court judges or judges in terms of subsection (1).

8. Performance of service as Chief Justice by Chief Justice or as President of Supreme Court of Appeal by President of Supreme Court of Appeal in certain circumstances

- (a) A Chief Justice who becomes eligible for discharge from active service in terms of section 3(1)(a) or 4(1) or (2), may, at the request of the President, from the date on which he or she becomes so eligible for discharge from active service, continue to perform active service as Chief Justice of South Africa for a period determined by the President, which shall not extend beyond the date on which such Chief Justice attains the age of 75 years.
- (b) A President of the Supreme Court of Appeal who becomes eligible for discharge from active service in terms of section 3(2)(a) or 4(4), may, at the request of the President, from the date on which he or she becomes so eligible for discharge from active service, continue to perform active service as

President of the Supreme Court of Appeal for a period determined by the President, which may not extend beyond the date on which such President of the Supreme Court of Appeal attains the age of 75 years.

9. Amount payable to surviving spouse or partner of Constitutional Court judge and judge

- (1) The surviving spouse or partner of a Constitutional Court judge or judge who on or after the fixed date was or is discharged from active service in terms of section 3 or 4 or who died or dies while performing active service, shall be paid with effect from the first day of the month immediately succeeding the month in which he or she dies an amount—
 - (a) in the case of a surviving spouse or partner of a Constitutional Court judge or judge who was so discharged from active service, equal to two thirds of the salary which was in terms of section 5 payable to that Constitutional Court judge or judge; or
 - (b) in the case of a surviving spouse or partner of a Constitutional Court judge or judge who died while performing active service as a Constitutional Court judge or judge, equal to two thirds of the amount to which that Constitutional Court judge or judge would have been entitled in terms of section 5 if he or she was discharged from active service in terms of section 3(1)(a) or (2)(a) on the date of his or her death:

Provided that if the Constitutional Court judge or judge is survived by more than one spouse, the amount envisaged in paragraph (a) or (b) shall be divided equally between the spouses concerned, unless the judge concerned determined otherwise in accordance with a regulation made under section 13(1)(cB).

- (2) The amount payable to the surviving spouse or partner of a Constitutional Court judge or judge in terms of subsection (1) shall be payable with effect from the first day of the month immediately succeeding the day on which he or she died, and shall be payable until the death of such spouse or partner.

[section 9 substituted by section 16 of [Act 28 of 2003](#)]

10. Gratuity payable to surviving spouse or partner of Constitutional Court judge and judge

If a gratuity referred to in section 6 would have been payable to a Constitutional Court judge or judge who died or dies on or after the fixed date had he or she not died but, on the date of his or her death, was discharged from active service in terms of section 3 or 4, there shall—

- (a) if such Constitutional Court judge or judge is survived by a spouse or partner, be payable to such surviving spouse or partner, in addition to any amount payable to that spouse or partner in terms of section 9; or
- (b) if such Constitutional Court judge or judge is not survived by a spouse or partner, be payable to the estate of such Constitutional Court judge or judge,

a gratuity which shall be equal to the amount of the gratuity which would have been so payable to such Constitutional Court judge or judge had he or she not died but was, on the date of his or her death, discharged from active service as aforesaid: Provided that if the Constitutional Court judge or judge is survived by more than one spouse, the gratuity calculated in terms of of this section shall be divided equally between the spouses concerned, unless the judge concerned determined otherwise in accordance with a regulation made under section 13(1)(cB).

[section 10 substituted by section 16 of [Act 28 of 2003](#)]

11. Resignation of Constitutional Court judges and judges from office in certain circumstances

- (1) Any resignation by a Constitutional Court judge or judge which is not contemplated in this Act precludes the payment of any benefits to such person in terms of this Act to which a Constitutional Court judge or judge would otherwise be entitled on discharge from active service.
- (2) A Constitutional Court judge who is a judge contemplated in section 174(5) of the Constitution or a judge who holds office in a permanent capacity, who already has attained the age of 65 years and has performed 15 years' active service may resign from office by notice in writing to the President that he or she no longer wishes to serve in the office of such judge, and shall vacate his or her office upon acceptance of such resignation.
- (3) A Constitutional Court judge or a judge referred to in subsection (2) shall be paid—
 - (a) a salary in accordance with the provisions of section 5: Provided that the proviso in section 5(1)(a) shall not apply in respect of him or her;
 - (b) a gratuity in accordance with the formula set out in section 6(1).
- (4) A Constitutional Court judge who is not a judge contemplated in section 174(5) of the Constitution who has completed a 12 year term of office as a Constitutional Court judge or who has attained the age of 70 years, whichever occurs first, may resign from office by notice in writing to the President and must vacate his or her office upon acceptance by the President of such resignation.
- (5) A Constitutional Court judge referred to in subsection (4) must be paid—
 - (a) a salary in accordance with the provisions of section 5: Provided that the proviso in section 5(1)(a) does not apply in respect of him or her;
 - (b) a gratuity in accordance with the formula set out in section 6(1).
- (6) The provisions of section 6(7) apply with the necessary changes in respect of any gratuity payable in terms of this section.
- (7) The surviving spouse or partner of a Constitutional Court judge or judge referred to in subsection (2) or (4) must, with effect from the first day of the month immediately succeeding the month in which he or she dies, be paid an amount equal to two thirds of the salary which was payable to that Constitutional Court judge or judge in terms of subsection (3)(a) or (5)(a), which amount shall be payable until the death of such spouse or partner: Provided that if the Constitutional Court judge or judge is survived by more than one spouse, the amount concerned shall be divided equally between the spouses concerned, unless the judge concerned determined otherwise in accordance with a regulation made under section 13(1)(cB).

[subsection (7) substituted by section 31 of Act 55 of 2003]

Chapter 3 General provisions (ss 12-18)

12. Making available of motor vehicles to Constitutional Court judges and judges

A motor vehicle owned by the State may, on such conditions as the Minister may determine with the concurrence of the Minister of Transport, be made available to any person who holds office as a Constitutional Court judge or judge in a permanent or acting capacity, whether he or she performs active service or service, for use, in accordance with the conditions so determined, in the course of his or her official functions as well as for his or her private purposes.

13. Regulations

- (1) The President may, after consultation by the Minister with the Chief Justice, the President of the Supreme Court of Appeal and the judges president of the respective High Courts, make regulations as to—
 - (a) arrangements regarding administrative recesses;
 - (b) the periods for which and the circumstances under which and conditions upon which leave of absence may be granted to Constitutional Court judges or acting Constitutional Court judges, judges or acting judges;
 - (c) the method of transport of such Constitutional Court judges or judges, and of Constitutional Court judges or judges on their discharge from active service or their vacation of office and of Constitutional Court judges or judges in the performance of service in terms of section 7, and of the members of their families and of the effects of Constitutional Court judges or judges or Constitutional Court judges or judges who have been discharged from active service or who have vacated their offices or Constitutional Court judges or judges who perform service in terms of section 7 or deceased Constitutional Court judges or judges, the amounts to be paid to Constitutional Court judges or judges or acting Constitutional Court judges or judges in connection with transport and subsistence, and the circumstances in which any such transport may be provided and any such amounts may be paid;
 - (cA) the requirements for, and the registration of, not more than one person and the deregistration of that person as a partner of a Constitutional Court judge or a judge with the Director-General: Justice and Constitutional Development;
[paragraph (cA) inserted by sections 17(a) and 18 of Act 28 of 2003]
 - (cB) the determination, for the purposes of the proviso to section 9(1), 10(1) or 11(7), by a Constitutional Court judge or judge who has more than one spouse, of the division of the amounts referred to in those sections between those spouses in the event of his or her death;
[paragraph (cB) inserted by sections 17(a) and 18 of Act 28 of 2003]
 - (d) the amounts which may be paid to acting Constitutional Court judges or acting judges in connection with the maintenance by them of their practices as advocates or attorneys; or
 - (e) *[paragraph (e) deleted by section 17(b) of Act 28 of 2003]*
- (2) A regulation under subsection (1) may provide that an amount referred to in paragraph (c) or (d) of that subsection shall be calculated either in accordance with a scale or having regard to the expenses actually incurred in connection with the matter concerned.

14. Administration of Act

The Director-General: Justice and Constitutional Development shall, subject to the directions of the Minister, be charged with the general administration of this Act.

15. Method of payment of salaries, allowances and benefits

Salaries, allowances and benefits payable in terms of sections 2, 5, 6, 7, 9, 10 and 11 of this Act shall be paid as a direct charge against the National Revenue Fund and on such dates and in such manner as the Minister may from time to time determine.

16. Transitional provisions

- (1) Notwithstanding the repeal of—
 - (a) the Judges' Remuneration and Conditions of Employment Act, 1989 ([Act No. 88 of 1989](#));

- (b) the Judges' Remuneration and Conditions of Employment Act, 1989 ([Act No. 27 of 1989](#)) (Bophuthatswana); and
- (c) Decree No. 19 (Judges' Remuneration and Conditions of Service) of 1990 ([Decree No. 19 of 1990](#)) (Transkei),

by section 17 of this Act, the regulations which were made under the said Acts and were in force immediately before the date of commencement of this Act and which are not inconsistent with this Act, continue in force in respect of those judges to which the regulations applied immediately prior to the commencement of this Act until they are repealed, withdrawn or amended by regulations made under section 13 of this Act.

- (2) (a) Any active service or service referred to in—
 - (i) section 1 of the Judges' Remuneration and Conditions of Employment Act, 1989 ([Act No. 27 of 1989](#)) (Bophuthatswana); or
 - (ii) section 1 of Decree No. 19 (Judges' Remuneration and Conditions of Service) of 1990 ([Decree No. 19 of 1990](#)) (Transkei),

performed by a judge referred to in section 1 prior to the commencement of this Act is, for the purposes of this Act, deemed to be active service or service as contemplated in section 1(1) of this Act.
 - (b) For the purposes of section 1(1) of this Act the word "service" in the definition of "active service" in section 1(1), preceding paragraph (a) thereof, is construed to include service performed by—
 - (i) a judge of the Republic of South Africa, prior to the commencement of the Interim Constitution, who was seconded to serve as a judge in any court of a homeland referred to in Item 16 of Schedule 6 to the Constitution, read with Item 1 thereof, while he or she was so seconded and so served; or
 - (ii) a judge in the former South West Africa prior to its independence and who, at the commencement of this Act, holds office as a judge of a High Court.
 - (c) If a judge who has been seconded for active service or service as a judge of a High Court or Supreme Court of a homeland as defined in Item 1 of Schedule 6 to the Constitution, dies or is discharged from active service while holding the office of chief justice of such a High Court or Supreme Court of such a homeland in a permanent capacity, his or her salary shall for the purposes of this Act be deemed to be that of a judge president of a High Court.
 - (d) If a judge who has been seconded for service as a judge of a High Court or Supreme Court of a homeland as defined in Item 1 of Schedule 6 to the Constitution, holds the office of chief justice of such a High Court or Supreme Court in a permanent or acting capacity, and if the amount of the salary and allowance payable to him or her in terms of section 2(1) is less than the amount of the salary and allowance payable in terms of that subsection to a judge president of a High Court, he or she shall, in addition to the salary and allowance payable to him or her as aforesaid, be paid an allowance equal to the difference between the amount of the salary and allowance payable to him or her as aforesaid and the amount of the salary and allowance payable as aforesaid to such a judge president.
- (3) Section 4 of Decree No. 19 (Judges' Remuneration and Conditions of Service) of 1990 ([Decree No. 19 of 1990](#)) (Transkei) continues to apply to any person to whom it applied at the date of commencement of this Act as if it had not been repealed.
 - (4) (a) Any person who retired as a judge in terms of the Judges' Pensions Act, 1978 ([Act No. 90 of 1978](#)), and who, at the commencement of this section, receives a pension in terms of the said Judges' Pensions Act, 1978, is, from the date of commencement of this section, entitled to an amount equal to two thirds of the salary payable to a judge contemplated in section 5(1) of this Act who held the same or a similar office to that of the retired judge on the date of the

latter's retirement from office and who has the same number of years' service in an acting or permanent capacity.

- (b) After 3 May 2002, any surviving spouse of a retired judge referred to in paragraph (a) shall be paid with effect from the first day of the month immediately succeeding the day on which the retired judge dies or died, an amount equal to three quarters of the amount to which his or her deceased spouse would have been entitled under paragraph (a).

[paragraph (b) substituted by section 32(a) of [Act 55 of 2003](#)]

- (c) Any surviving spouse of a judge who retired as a judge in terms of the Judges' Pensions Act, 1978, and who, on or after 3 May 2002, receives a pension in terms of the said Act, is, from 3 May 2002 or any later date from which such surviving spouse is entitled to such a pension, entitled to an amount equal to three quarters of the amount to which his or her deceased spouse would have been entitled under paragraph (a).

[paragraph (c) substituted by section 32(a) of [Act 55 of 2003](#)]

- (d) The amounts payable to a surviving spouse contemplated in paragraphs (b) and (c) shall be payable until the death of such spouse.

[paragraph (d) added by section 32(b) of [Act 55 of 2003](#)]

- (e) The amounts payable to persons in terms of this subsection shall be adjusted whenever the annual salary payable to a Constitutional Court judge or a judge, as the case may be, is increased.

[paragraph (e) added by section 32(b) of [Act 55 of 2003](#)]

- (f) In applying this subsection, no person may be paid an amount which is less than that which he or she received before any adjustment was made under this subsection.

[paragraph (f) added by section 32(b) of [Act 55 of 2003](#)]

17. Repeal of laws

The laws mentioned in the Schedule are hereby repealed to the extent set out in the third column thereof.

18. Short title and commencement

- (1) This Act shall be called the Judges' Remuneration and Conditions of Employment Act, 2001.
- (2) Section [16\(4\)](#) comes into operation on a date fixed by the President by proclamation in the *Gazette*.

Schedule

No. and year of law	Title	Extent of repeal
Act 27 of 1989	Judges' Remuneration and Conditions of Employment Act, 1989 (Bophuthatswana)	The whole
Act 88 of 1989	Judges' Remuneration and Conditions of Employment Act, 1989	The whole

No. and year of law	Title	Extent of repeal
Decree 19 of 1990	Judges' Remuneration and Conditions of Service Decree, 1990 (Transkei)	The whole
Decree 43 of 1990	Supreme Court Decree, 1990 (Ciskei)	Section 5(1), (2) (3) and (4)
Act 139 of 1992	General Law Amendment Act, 1992	Sections 27 and 28
Act 91 of 1993	Judges' Remuneration and Conditions of Employment Amendment Act, 1993	The whole
Act 129 of 1993	General Law Third Amendment Act, 1993	Section 71
Act 157 of 1993	General Law Fifth Amendment Act, 1993	Section 8
Act 204 of 1993	General Law Sixth Amendment Act, 1993	Section 15
Act 10 of 1994	Judges' Remuneration and Conditions of Employment Amendment Act, 1994	The whole
Act 104 of 1996	Judicial Matters Amendment Act, 1996	Section 14
Act 77 of 1997	Judges' Remuneration and Conditions of Employment Amendment Act, 1997	The whole