

Date Printed: 01/06/2009

---

JTS Box Number: IFES\_17  
Tab Number: 27  
Document Title: GOVERNMENT GAZETTE VOL 344 NO 15468  
STATE PRESIDENTS OFFICE  
Document Date: 1994  
Document Country: SAF  
Document Language: ENG  
IFES ID: EL00442



\* 9 A C 7 5 7 F 8 - 7 3 5 F - 4 1 3 A - B A 4 1 - B B 9 2 B 7 5 4 D 1 D 2 \*



law/SAF/1993/007/eng/af

REPUBLIC OF SOUTH AFRICA

# GOVERNMENT GAZETTE

School for Applied Legal Studies  
University of the Witwatersrand, Johannesburg  
Republic of South Africa  
WITS 2050

## STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

*Registered at the Post Office as a Newspaper*

*As 'n Nuusblad by die Poskantoor Geregistreer*

VOL. 344

CAPE TOWN, 2 FEBRUARY 1994

KAAPSTAD, 2 FEBRUARIE 1994

No. 15468

### STATE PRESIDENT'S OFFICE

No. 187.

2 February 1994

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

No. 209 of 1993: Local Government Transition Act, 1993.

### KANTOOR VAN DIE STAATSPRESIDENT

No. 187.

2 Februarie 1994

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 209 van 1993: Oorgangswet op Plaaslike Regering, 1993.

41

# ACT

To provide for revised interim measures with a view to promoting the restructuring of local government, and for that purpose to provide for the establishment of Provincial Committees for Local Government in respect of the various provinces; to provide for the recognition and establishment of forums for negotiating such restructuring of local government; for the exemption of certain local government bodies from certain provisions of the Act; for the establishment of appointed transitional councils in the pre-interim phase; for the delimitation of areas of jurisdiction and the election of transitional councils in the interim phase; for the issuing of proclamations by the Administrators of the various provinces; for the establishment of Local Government Demarcation Boards in respect of the various provinces; and for the repeal of certain laws; and to provide for matters connected therewith.

*(English text signed by the State President.)  
(Assented to 20 January 1994.)*

**B**E IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

## PART 1

### *Application of Act*

#### Definitions

5

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

- (i) "Administrator" means the Administrator as defined in section 1 of the Provincial Government Act, 1986 (Act No. 69 of 1986): Provided that where the Administrator is required to exercise any power in respect of any local government body which is situate within that part of the province which forms part of a Self-governing Territory, the Administrator shall act after consultation with the Chief Minister of that Self-governing Territory: Provided further that at the establishment of a provincial government for the province concerned in terms of the Constitution of the Republic of South Africa, 1993, any reference to the Administrator shall be construed as a reference to the Executive Council of that province and any reference to a province shall be construed as a reference to the corresponding province; (i)
- (ii) "Board" means the Local Government Demarcation Board established for a province under section 11(1); (xvi)
- (iii) "Committee" means the Provincial Committee for Local Government established for a province in terms of section 3(1)(a); (iii)
- (iv) "interim phase" means the period commencing on the day after elections are held for transitional councils as contemplated in section 9, and ending with the implementation of final arrangements to be enacted by a competent legislative authority; (ii)
- (v) "local government body" means any institution or body contemplated in section 84(1)(f) of the Provincial Government Act, 1961 (Act No. 32 of 1961), and includes—
  - (a) any local government body established by or under any law in force in a Self-governing Territory;
  - (b) any local authority as defined in section 1(1) of the Black Local Authorities Act, 1982 (Act No. 102 of 1982);
  - (c) any local government body established by virtue of the provisions of section 30(2)(a) of the Black Administration Act, 1927 (Act No. 38

35

- of 1927), or any body performing local government functions under the laws referred to in section 15(1) of this Act;
- (d) a board of management or board referred to in section 1 of the Rural Areas Act (House of Representatives), 1987 (Act No. 9 of 1987);
  - (e) any committee referred to in section 17 of the Promotion of Local Government Affairs Act, 1983 (Act No. 91 of 1983);
  - (f) any local council established under section 2 of the Local Councils Act (House of Assembly), 1987 (Act No. 94 of 1987);
  - (g) the Local Government Affairs Council established by section 2 of the Local Government Affairs Council Act (House of Assembly), 1989 (Act No. 84 of 1989);
  - (h) any regional services council established under section 3 of the Regional Services Councils Act, 1985 (Act No. 109 of 1985);
  - (i) any joint services board established under section 4 of the KwaZulu and Natal Joint Services Act, 1990 (Act No. 84 of 1990);
  - (j) any joint decision-making body, joint local authority or single local authority referred to in paragraphs (c), (e) and (f) of section 8 of the Interim Measures for Local Government Act, 1991 (Act No. 128 of 1991), and established by proclamation issued under that Act;
  - (k) any person, institution or body declared under subsection (2) to be a local government body for the purposes of this Act; (xiii)
  - (vi) "local government co-ordinating committee" means a joint committee established to exercise and perform during the pre-interim phase specific powers and duties of local government bodies, as contemplated in section 7(1)(c); (xii)
  - (vii) "metropolitan area" means any area—
    - (a) comprising the areas of jurisdiction of multiple local governments;
    - (b) which is densely populated and has an intense movement of people, goods and services within the area;
    - (c) which is extensively developed or urbanized and has more than one central business district, industrial area and concentration of employment; and
    - (d) which, economically, forms a functional unit comprising various smaller units which are interdependent economically and in respect of services; (iv)
  - (viii) "Minister" means the Minister of Local Government; (vii)
  - (ix) "negotiating forum" means any negotiating forum referred to in section 6; (ix)
  - (x) "Official Gazette" means the "Official Gazette" of the province concerned; (viii)
  - (xi) "pre-interim phase" means the period commencing on the date of commencement of this Act and ending with the commencement of the interim phase; (xiv)
  - (xii) "province" means any existing province, and from the establishment of a provincial government for the province concerned in terms of the Constitution of the Republic of South Africa, 1993, the corresponding province; (xv)
  - (xiii) "Self-governing Territory" means a self-governing territory as defined in section 38(1) of the Self-governing Territories Constitution Act, 1971 (Act No. 21 of 1971); (xvii)
  - (xiv) "town clerk", in relation to a local government body, transitional council or transitional metropolitan substructure, means the chief executive officer of such local government body, transitional council or transitional metropolitan substructure regardless of the designation of the post occupied by that officer; (xviii)
  - (xv) "transitional council" includes a local government co-ordinating committee, a transitional local council and a transitional metropolitan council for the pre-interim phase, and a transitional local council and a transitional metropolitan council for the interim phase; (x)
  - (xvi) "Transitional Executive Council" means the Transitional Executive Council established by section 2 of the Transitional Executive Council Act, 1993 (Act No. 151 of 1993); (xix)
  - (xvii) "transitional local council" means a single council as contemplated in

- section 7(1)(b)(i) for the pre-interim phase, and as contemplated in section 8(1)(a) for the interim phase; (xi)
- (xviii) "transitional metropolitan council" means the council as contemplated in section 7(1)(b)(ii) for the pre-interim phase, and as contemplated in section 8(1)(b) for the interim phase; (v) 5
- (xix) "transitional metropolitan substructure" means a primary local authority for a metropolitan area of local government as contemplated in section 7(1)(b)(ii) for the pre-interim phase, and as contemplated in section 8(1)(b) for the interim phase. (vi)
- (2) The Administrator may, in respect of the province for which he or she is appointed, by notice in the *Official Gazette*— 10
- (a) declare any person who or institution or body which in his or her opinion performs local government functions in respect of a particular area;
- (b) if he or she deems it in the interest of the persons residing within the area of jurisdiction of a traditional authority as contemplated in section 181 of the Constitution of the Republic of South Africa, 1993, declare such traditional authority, 15
- to be a local government body for the purposes of this Act.

### Inclusion of Self-governing Territories

2. The provisions of this Act or any proclamation or regulation made thereunder— 20
- (a) shall, notwithstanding anything to the contrary contained in the Self-governing Territories Constitution Act, 1971 (Act No. 21 of 1971), be of force and effect in any Self-governing Territory;
- (b) shall be construed as if the legislative assembly and the executive government of any Self-governing Territory do not have legislative and executive powers over matters dealt with in this Act or in any such proclamation or regulation. 25

## PART II

### *Provincial Committee for Local Government*

30

### Establishment of Provincial Committee for Local Government

3. (1) (a) The Transitional Executive Council shall establish for each province as contemplated in section 124 of the Constitution of the Republic of South Africa, 1993, a committee to be known as the Provincial Committee for Local Government, which shall exercise the powers and perform the duties conferred or imposed upon it by this Act. 35
- (b) For as long as the Transitional Executive Council is in existence, the Committee shall, subject to the provisions of this Act, be deemed to be a subcommittee contemplated in section 7(1)(h) of the Transitional Executive Council Act, 1993 (Act No. 151 of 1993). 40
- (c) The Committee shall be disestablished on the day immediately preceding the day determined in terms of section 9(1) of this Act.
- (2) The Committee shall be broadly representative of stakeholders in local government in the province concerned and consist of not more than six members initially appointed by the Transitional Executive Council: Provided that— 45
- (a) a member shall have knowledge of matters concerning local government and reside within the province concerned; and
- (b) not more than one representative of any such stakeholder shall be appointed as a member of the Committee.
- (3) The Committee shall from among its members appoint a chairperson and a vice-chairperson and other office-bearers either on a permanent or rotational basis. 50

(4) When the chairperson is absent or unable to perform his or her functions in terms of this section, the vice-chairperson shall act in his or her stead, and while so acting he or she may exercise all the powers and shall perform all the duties of the chairperson.

(5) (a) A member of the Committee shall hold office as a member during the pleasure of the Transitional Executive Council, and, at the establishment of a provincial government for the province concerned in terms of the Constitution of the Republic of South Africa, 1993, during the pleasure of the Executive Council of that provincial government. 5

(b) Any vacancy in the membership of the Committee shall be filled by a person appointed by the Transitional Executive Council in accordance with the provisions of subsection (2): Provided that if any vacancy occurs when the Transitional Executive Council is not in existence, it shall be filled by a person appointed by the Executive Council of the province concerned: Provided further that any person so appointed shall have knowledge of matters concerning local government and shall reside within the province concerned. 10 15

(6) Sections 2, 3, 4, 5 and 6 of the Commissions Act, 1947 (Act No. 8 of 1947), shall apply *mutatis mutandis* to the Committee in so far as they are applicable to the functions of the Committee.

(7) (a) Meetings of the Committee shall be held at such times and places as the chairperson may determine. 20

(b) A decision of the Committee shall be taken by a two-thirds majority of all the members referred to in subsection (2).

(c) The Committee may make rules in relation to the holding of and procedure at meetings of the Committee. 25

(8) (a) The conditions of service, remuneration, allowances and other benefits of members of the Committee shall be determined by the Administrator with the concurrence of the Minister of Finance.

(b) Any member of the Committee who receives remuneration, allowances or other benefits by virtue of his or her employment by or position in any government or public service or any transitional executive structure and who continues to receive such remuneration, allowances or other benefits while serving on the Committee shall not receive any remuneration, allowance or other benefits in terms of paragraph (a), except to the extent required to place such member in the position in which he or she would have been were it not for such employment or position. 30 35

(9) (a) The Committee may appoint one or more subcommittees consisting of such members of that Committee and such other persons as the Committee may deem fit, to serve on any such subcommittee to advise and make recommendations in writing to the Committee regarding the exercise of any power or the performance of any duty conferred or imposed upon the Committee by this Act, subject to the directions of the Committee. 40

(b) Where more than one member of the Committee serves on a subcommittee, the Committee shall designate one of those members as chairperson of the subcommittee, but where only one member of the Committee serves on a subcommittee, such a member shall be the chairperson thereof. 45

(c) The provisions of subsections (6), (7) and (8) shall apply *mutatis mutandis* in relation to a subcommittee appointed under paragraph (a) and to any member of such subcommittee.

(10) The administrative work incidental to the performance of the functions of the Committee shall be performed by officers of the respective provincial administrations designated for this purpose by the Director-General concerned. 50

#### Administrator shall act with concurrence of Committee

4. (1) Where the Administrator is required to exercise any power or perform any duty conferred or imposed upon him or her by this Act, he or she shall act with the concurrence of the Committee. 55

(2) (a) The Administrator shall in writing notify the Committee of his or her intention to exercise any power or to perform any duty conferred or imposed upon

him or her by this Act: Provided that such notice shall set out the views of the Administrator on the matter.

(b) On receipt of a notice referred to in paragraph (a), a meeting of the Committee shall be held as soon as practicable for the purpose of furnishing the Administrator with the written decision of the Committee in regard to the exercise of a power or the performance of a duty referred to in paragraph (a). 5

(3) (a) Where the Administrator and the Committee do not concur with regard to the exercise of a power or the performance of a duty referred to in subsection (2)(a), the Administrator shall refer the matter to the Special Electoral Court established by section 32 of the Independent Electoral Commission Act, 1993 (Act No. 150 of 1993), for decision, and may only proceed to exercise such power or perform such duty, as the case may be, if or in so far as the Special Electoral Court authorizes him or her to do so. 10

(b) When the Administrator refers any matter to the Special Electoral Court in terms of paragraph (a), that Court shall as soon as practicable consider the matter and give its decision, having due regard to— 15

- (i) the views expressed on the matter by the Administrator in his or her written notice to the Committee referred to in subsection (2)(a);
- (ii) the decision of the Committee referred to in subsection (2)(b);
- (iii) the written representations of any local government body, transitional council or transitional metropolitan substructure which may be affected by the exercise of a power or the performance of a duty referred to in subsection (2)(a); and 20
- (iv) any other matter considered by the Special Electoral Court to be relevant for its decision. 25

(c) The Special Electoral Court may make such findings and give such instructions or directions as it may consider appropriate in the circumstances.

(d) The findings of the Special Electoral Court shall be final and binding and shall not be subject to further appeal.

### PART III

30

#### *Exemption from certain provisions*

Administrator may exempt certain local government bodies from certain provisions of Act

5. (1) The Administrator may in writing exempt any local government body from the provisions of Parts IV and VI of this Act if the Administrator is satisfied that such local government body is non-racial and inclusive and has brought about stability at local level through effective government, orderly financial management and a single local government administration. 35

(2) From the date of an exemption granted by the Administrator as contemplated in subsection (1)— 40

- (a) Parts IV and VI of this Act shall not apply to an exempted local government body referred to in subsection (1), and any proclamation issued under the Interim Measures for Local Government Act, 1991 (Act No. 128 of 1991), whereby such local government body was established, shall, subject to the provisions of this Act, continue to be of force up to the day immediately preceding the day determined in terms of section 9(1); and 45
- (b) the provisions of section 16 of this Act shall apply *mutatis mutandis* in relation to such local government body.

## PART IV

*Pre-interim phase: Negotiating forums***Recognition and establishment of forums**

6. The Administrator shall, if he or she is satisfied on a balance of probabilities on the evidence contained in a written application made to him or her by any forum established before or after the commencement of this Act, that such forum has been established substantially in accordance with the principles and procedures contained in Schedule 1, recognize such forum, whereupon such forum shall be deemed to be a negotiating forum for the purposes of this Act. 5

**Negotiating matters**

10

7. (1) Notwithstanding anything to the contrary contained in any other law, a negotiating forum shall—

- (a) negotiate with regard to the area of a forum as contemplated in paragraph 1 of Schedule 1;
- (b) subject to the principles and procedures embodied in Schedule 1, negotiate on the establishment of—
  - (i) any transitional local council for a non-metropolitan area of local government;
  - (ii) any transitional metropolitan council with transitional metropolitan substructures for a metropolitan area of local government, within the area of a forum by a proclamation contemplated in section 10(1), as a possible option for the pre-interim period: Provided that where any such option is agreed upon, the following matters shall, where applicable, also be negotiated:
    - (aa) The powers and duties of any transitional metropolitan council and transitional metropolitan substructure: Provided that—
      - (aaa) the powers and duties of any transitional metropolitan council shall, subject to section 126 of the Constitution of the Republic of South Africa, 1993, and, in the case of the functions water and electricity, unless otherwise determined by national legislation, be at least the powers and duties listed in Schedule 2; and
      - (bbb) any transitional metropolitan council may, in its discretion, decide not to exercise any such power or perform any such duty;
    - (bb) the total number of seats in a transitional local council or transitional metropolitan council and a transitional metropolitan substructure, taking the number of existing seats of all local government bodies within the area of the forum as a point of departure;
    - (cc) the nomination of persons for appointment as members of a transitional local council or transitional metropolitan council and transitional metropolitan substructure;
- (c) subject to the principles and procedures contained in Schedule 1, negotiate on the establishment of a local government co-ordinating committee for the local government bodies within the area of the forum for a non-metropolitan area of local government by a proclamation contemplated in section 10(1), as a possible option for the pre-interim period, having certain specified powers and duties with the individual councils of the local government bodies retaining all other powers and duties within their areas of jurisdiction: Provided that where such option is agreed upon, the following matters shall also be negotiated:
  - (i) The powers and duties of the local government co-ordinating committee: Provided that the powers and duties of any local government co-ordinating committee shall be at least the following powers and duties:



- (aa) To ensure access by all persons residing within the areas of jurisdiction of the individual local government bodies to the following services: Water supply, sewerage purification, electricity if so agreed by all the individual local government bodies, refuse removal, roads and stormwater drainage, health services, emergency services, financial administration, and any other service agreed upon: Provided that if the individual local government bodies do not have the ability, jointly or severally, to ensure access to electricity themselves, the local government co-ordinating committee shall negotiate for such access thereto to be provided on its behalf by any other competent body: Provided further that any such arrangement shall not relieve the local government co-ordinating committee of its responsibilities as contemplated in this item; 5
- (bb) the approval of the budget for the local government co-ordinating committee in respect of the powers and duties of the local government co-ordinating committee: Provided that— 15
- (aaa) such budget shall be prepared in accordance with the applicable law;
- (bbb) all available and applicable resources shall be utilized on an efficient and equitable basis; 20
- (ccc) such budget shall at least include an amount of not less than ten per cent of the total assessment rates of the individual local government bodies for the 1993/94 budget, which shall be employed for the improvement and restoration of such services as identified and arranged in order of priority by the local government co-ordinating committee; and 25
- (ddd) the local government co-ordinating committee shall receive intergovernmental grants as well as funds from the local government bodies referred to in paragraphs (h) and (i) of the definition of local government body to allocate and distribute such grants and funds to any individual local government body to address service and developmental backlogs as identified and arranged in order of priority by the local government co-ordinating committee; 30 35
- (cc) to investigate the rationalization of the administration and personnel of the individual local government bodies in the area of the forum and, subject to applicable labour law, implement a programme of rationalization to be completed at the commencement of the interim phase; 40
- (ii) the total number of seats in such local government co-ordinating committee and the representation on such committee of the local government bodies within the area of the forum and such other persons nominated by the forum; 45
- (iii) the nomination of persons for appointment as members of such local government co-ordinating committee, 50
- and shall submit any agreement reached to the Administrator within a period of 90 days after the date of commencement of this Act or within such extended period as the Administrator may allow, whereupon the Administrator shall exercise the powers conferred upon him or her by section 10(1) incorporating the provisions of such agreement in the proclamation contemplated in the said section.
- (2) (a) Where an agreement as contemplated in subsection (1) is not submitted to the Administrator within the period referred to in that subsection, or within such extended period as the Administrator may allow, the Administrator shall, within a period of 30 days, facilitate a process of independent mediation, the result of which shall be referred to the forum for a decision. 55
- (b) Where the forum arrives at a decision taken by the required majority

contemplated in subsection (3), the Administrator shall exercise the powers conferred upon him or her by section 10(1), incorporating the provisions of such decision in the proclamation contemplated in the said section.

(c) Where the forum is unable to arrive at a decision as contemplated in paragraph (b), the Administrator shall—

- (i) in the case of any local government body in the area of the forum concerned which, in terms of Board Notice No. 127 of 1993 of the Board on the Remuneration and Service Benefits of Town Clerks, as published in *Government Gazette* No. 15250 of 12 November 1993, is classified as a grade 8 local authority or lower, determine that the option referred to in paragraph (c) of subsection (1) shall be applied to such local government body; and
- (ii) in the case of any local government body in the area of the forum concerned which, in terms of Board Notice No. 127 of 1993 of the Board on the Remuneration and Service Benefits of Town Clerks, as published in *Government Gazette* No. 15250 of 12 November 1993, is classified as a grade 9 local authority or higher, determine that the option referred to in paragraph (b) or (c) of subsection (1) shall be applied to such local government body,

and shall exercise the powers conferred upon him or her by section 10(1), incorporating the provisions of such determination in the proclamation contemplated in the said section.

(3) Any agreement contemplated in subsection (1) shall be approved and any decision contemplated in subsection (2) shall be taken by a concurrent majority of two-thirds of both the statutory and non-statutory components of the forum: Provided that any such agreement or decision relating to the application of the option referred to in paragraph (b) of subsection (1) to any local government body within the area of the forum concerned which, in terms of Board Notice No. 127 of 1993 of the Board on the Remuneration of Service Benefits of Town Clerks, as published in *Government Gazette* No. 15250 of 12 November 1993, is classified as a grade 8 local authority or lower, shall only be approved or taken by a concurrent majority of four-fifths of both the statutory and non-statutory components of the forum.

(4) For the purposes of this section, the expressions "statutory" and "non-statutory" shall, in relation to a forum, bear the meaning assigned to them in Schedule 1.

## PART V

### *Interim Phase: Transitional Councils*

#### **Delimitation of areas of jurisdiction and establishment of transitional councils**

8. (1) A transitional council for which elections shall be held as provided for in section 9, shall be known as—

- (a) a transitional local council for a non-metropolitan area of local government, which may include the area of jurisdiction of a traditional authority contemplated in section 181 of the Constitution of the Republic of South Africa, 1993;
- (b) a transitional metropolitan council with transitional metropolitan substructures for a metropolitan area of local government.

(2) After due consideration of—

- (a) the written representations of any transitional council or transitional metropolitan substructure which may be affected; and
- (b) the advice and written recommendations of the Board,

the Administrator shall—

- (i) delimit the areas of jurisdiction of transitional councils and transitional metropolitan substructures;
- (ii) determine the powers and duties of any transitional metropolitan council and transitional metropolitan substructure: Provided that—
  - (aa) the powers and duties of any transitional metropolitan council shall, subject to section 126 of the Constitution of the Republic of

South Africa, 1993, and, in the case of the functions water and electricity, unless otherwise determined by national legislation, be at least the powers and duties listed in Schedule 2;

- (bb) any transitional metropolitan council may, at its discretion, decide not to exercise any such power or perform any such duty; 5
  - (iii) determine the number of seats in a transitional local council or transitional metropolitan council and transitional metropolitan substructure; and
  - (iv) delimit the area of jurisdiction of any transitional local council and transitional metropolitan substructure into wards in accordance with Schedule 3. 10
- (3) After making a delimitation and determination contemplated in subsection (2), the Administrator shall exercise the powers conferred upon him or her by section 10(1) incorporating the provisions of such delimitation and determination in the proclamation contemplated in the said section. 15

#### Elections for transitional councils

9. (1) Notwithstanding anything to the contrary contained in any law, the first election, after the commencement of this Act, of the members of any transitional council and any transitional metropolitan substructure in the province concerned, shall take place on a day determined by the Minister by notice in the *Gazette*, after consultation with the respective Administrators. 20

(2) Notwithstanding anything to the contrary contained in any law, the Administrator may by proclamation in the *Official Gazette*—

- (a) make regulations, not inconsistent with this Act and the Constitution of the Republic of South Africa, 1993, regarding— 25
    - (i) the determination of wards and polling districts;
    - (ii) voters and voters' lists, including the determination of the qualifications of voters;
    - (iii) members of transitional councils and transitional metropolitan substructures, including the qualifications and terms of office of members; 30
    - (iv) the conducting of and procedures at the election;
    - (v) election expenses;
    - (vi) corrupt and illegal practices and other related offences; and
    - (vii) any other matter which the Administrator may deem necessary or expedient to prescribe in order to achieve or promote the objects of this section, 35
- and the generality of this provision shall not be limited by the preceding subparagraphs of this paragraph;
- (b) declare that any law or any provision of any law pertaining to the election of members of any local government body in the province concerned shall, subject to the adjustment or amendment thereof set out in that proclamation, for the purposes of an election referred to in subsection (1), apply to any transitional council or transitional metropolitan substructure referred to in subsection (1). 40 45

(3) Regulations made under subsection (2)(a) may prescribe penalties for a contravention thereof or a failure to comply therewith, of a fine, or imprisonment for a period not exceeding two years.

(4) Any regulation made under paragraph (a) of subsection (2) and any declaration contemplated in paragraph (b) of that subsection, shall be in accordance with the principles contained in Schedule 4. 50

#### PART VI

##### *Transitional measures for both pre-interim and interim phases*

#### Powers of Administrator

10. (1) For the purposes of this Act the Administrator concerned may in respect of the area of jurisdiction of the province for which he or she is appointed— 55

- (a) by proclamation in the *Official Gazette*, make enactments not inconsistent with this Act with a view to the transitional regulation of any matter relating to local government;
- (b) provide in any such enactment for the amendment or repeal of any law, including any Act of Parliament or the legislative assembly of any Self-governing Territory, in so far as it relates to any such matter and applies in the province; and 5
- (c) provide in any such enactment that any law, including any Act of Parliament or the legislative assembly of a Self-governing Territory, or any provision of any such law, pertaining to local government affairs shall, subject to the adjustment or amendment of such law or provision as he or she may make in such enactment, apply to any local government body, transitional council or transitional metropolitan substructure referred to in section 16, or to any category of such local government body, transitional council or transitional metropolitan substructure, 10 15
- and he or she may make different such enactments in respect of different areas, local government bodies, transitional councils or transitional metropolitan substructures.
- (2) The Administrator may in like manner amend or repeal a proclamation made under subsection (1). 20
- (3) Without derogating from the generality of the powers conferred by subsection (1), a proclamation contemplated in that subsection may provide for—
- (a) the establishment, under a name set out in the proclamation, of any transitional council or transitional metropolitan substructure;
- (b) the termination of the terms of office of members of any local government body and the appointment of persons as members of any transitional council or transitional metropolitan substructure; 25
- (c) the termination of the terms of office of members of any local government body, transitional council or transitional metropolitan substructure and the appointment of one or more persons or any body to manage and control the affairs of such local government body, transitional council or transitional metropolitan substructure, and on behalf of such local government body, transitional council or transitional metropolitan substructure to exercise and perform the powers and duties, rights and obligations of such local government body, transitional council or transitional metropolitan substructure; 30 35
- (d) the application to any such local government body, transitional council or transitional metropolitan substructure of any law which in the opinion of the Administrator relates to local authorities or local authority matters to the extent stated in the proclamation, or the regulation with reference to any such local government body, transitional council or transitional metropolitan substructure of any matter contained in any such law; 40
- (e) the suspension of or exemption from any provision of any law which relates to the establishment, dissolution or combination of local government bodies, or the determination or alteration of the areas or regions thereof; 45
- (f) the dissolution of any local government body, including—
- (i) the transfer or admission of persons to or in the service of any transitional council or transitional metropolitan substructure, 50 subject to—
- (aa) conditions not less favourable than those under which they serve; and
- (bb) applicable labour law;
- (ii) the winding-up or transfer of the assets, liabilities, rights and obligations of any local government body, including the protection of such assets from attachment and sale in execution; and 55
- (iii) the continued application of the resolutions, by-laws or regulations of such local government body;

- (g) the delimitation of the area of jurisdiction of any local government body, transitional council or transitional metropolitan substructure into wards;
- (h) the disestablishment of any local government body referred to in paragraph (h) or (i) of the definition of local government body and the establishment of a transitional metropolitan council with transitional metropolitan substructures for a metropolitan area of local government, including the delimitation of such an area, and the constitution, functioning, powers, duties, assets, rights, employees and financing of such transitional metropolitan council and transitional metropolitan substructures: Provided that—
  - (i) the powers and duties of any transitional metropolitan council shall, subject to section 126 of the Constitution of the Republic of South Africa, 1993, and, in the case of the functions water and electricity, unless otherwise determined by national legislation, be at least the powers and duties listed in Schedule 2;
  - (ii) any transitional metropolitan council may, at its discretion, decide not to exercise any such power or perform any such duty; and
  - (iii) such transitional metropolitan council shall have the power to levy and claim the regional services levy and the regional establishment levy referred to in section 12(1)(a) of the Regional Services Councils Act, 1985 (Act No. 109 of 1985), or section 16(1)(a) of the KwaZulu and Natal Joint Services Act, 1990 (Act No. 84 of 1990), as the case may be, which the disestablished local government body referred to in paragraph (h) or (i) of the definition of local government body would, but for its disestablishment, have levied and claimed;
- (i) the disestablishment of any local government body referred to in paragraph (h) or (i) of the definition of local government body and the establishment of a body to be known as a services council, sub-regional council or district council to jointly exercise the powers and perform the duties in relation to certain local government functions for a non-metropolitan area of local government by transitional local councils, local government co-ordinating committees or local government bodies within such areas, including the delimitation of such an area after due consideration of the advice and written recommendations of the Board, and the constitution, functioning, powers, duties, assets, rights, employees and financing of such body: Provided that such services council, sub-regional council or district council shall have the power to levy and claim the regional services levy and the regional establishment levy referred to in section 12(1)(a) of the Regional Services Councils Act, 1985, or section 16(1)(a) of the KwaZulu and Natal Joint Services Act, 1990, as the case may be, which the disestablished local government body referred to in paragraph (h) or (i) of the definition of local government body would, but for its disestablishment, have levied and claimed;
- (j) the protection of the rights and benefits, including the remuneration, allowances and pension benefits, of employees of a local government body, subject to applicable labour law and due consultation between employer and employee bodies.

## PART VII

### *Local Government Demarcation Boards*

#### **Establishment of Local Government Demarcation Boards**

11. (1) There is hereby established for each province as contemplated in section 124 of the Constitution of the Republic of South Africa, 1993, a board to be known as the Local Government Demarcation Board.

(2) The Board shall consist of such number of members as may from time to time be determined and appointed by the Administrator in accordance with the criteria listed in Schedule 5.

(3) The Administrator shall designate a member of the Board as chairperson and another member as vice-chairperson.

(4) When the chairperson is absent or unable to perform his or her functions in terms of this section or if no person has been designated as chairperson, the vice-chairperson shall act as chairperson, and while so acting he or she may exercise all the powers and shall perform all the duties of the chairperson.

(5) A member of the Board shall hold office as a member, and a member designated as chairperson or vice-chairperson shall hold office as chairperson or vice-chairperson, during the pleasure of the Administrator.

(6) (a) Notwithstanding anything to the contrary contained in any law, the Board shall at the request of the Administrator investigate and make recommendations in writing to him or her regarding any demarcation, redemarcation or withdrawal of the demarcation of any area pertaining to local government affairs, including the area of any negotiating forum and the area of jurisdiction of any local government body, transitional council or transitional metropolitan substructure and the delimitation of wards within the area of jurisdiction of any local government body, transitional council or transitional metropolitan substructure.

(b) When the Board makes recommendations to the Administrator as contemplated in paragraph (a), it shall do so within a reasonable time after having been requested to do so and take into account the criteria listed in Schedule 6.

(7) Sections 2, 3, 4, 5 and 6 of the Commissions Act, 1947 (Act No. 8 of 1947), shall apply *mutatis mutandis* to the Board in so far as they are applicable to the functions of the Board.

(8) (a) Meetings of the Board shall be held at such times and places as the chairperson may determine.

(b) The majority of the members of the Board shall form a quorum for a meeting.

(c) The decision of the majority of the members of the Board present at any meeting thereof, shall be a decision of the Board: Provided that in the event of an equality of votes the chairperson shall have a casting vote in addition to his or her deliberative vote.

(d) The Board may make rules in relation to the holding of and procedure at meetings of the Board.

(9) The provisions of section 3(8) shall apply *mutatis mutandis* in relation to the remuneration, allowances and other benefits of a member of the Board.

(10) (a) The Board may appoint one or more committees consisting of such members of the Board and such other persons as the Board may deem fit to serve on any such committee to investigate any matter referred to in subsection (6)(a).

(b) Where more than one member of the Board serves on a committee, the Board shall designate one of those members as chairperson of the committee, but where only one member of the Board serves on a committee such member shall be the chairperson thereof.

(c) A committee appointed under paragraph (a), shall for the purposes of any such investigation exercise all the powers conferred and perform all the duties imposed upon the Board in respect of any such investigation.

(d) A committee appointed under this subsection shall submit to the Board a written report in respect of any investigation by it in regard to any matter which the Board is in terms of subsection (6) required to investigate, and the Board may thereupon act in regard to that matter as if the Board had itself conducted such investigation.

(e) The provisions of subsections (7), (8) and (9) shall apply *mutatis mutandis* in relation to a committee appointed under paragraph (a) and to any member of such committee.

(11) The administrative work incidental to the performance of the functions of the Board shall be performed by officers of the respective provincial administrations designated for such purpose by the Director-General concerned.

## PART VIII

*General***Regulations**

12. The Minister may, after consultation with the Administrator, make regulations concerning any matter referred to in this Act which in his or her opinion are necessary or expedient for the effective carrying out or furtherance of the provisions and objects of this Act. 5

**Repeal of Act 102 of 1982, and transitional measures**

13. (1) Subject to the provisions of this section the Black Local Authorities Act, 1982 (Act No. 102 of 1982), is hereby repealed. 10

(2) Where the Administrator has in terms of section 8 of the Local Authority Affairs Amendment Act, 1991 (Act No. 127 of 1991), declared certain provisions of the Black Local Authorities Act, 1982, applicable to any other local authority or committee contemplated in that section, such provisions shall form part of the law applying to such local authority or committee. 15

(3) Notwithstanding the provisions of subsection (1), any council or committee established under the provisions of the Black Local Authorities Act, 1982, shall continue to exist subject to the provisions of this Act, and shall be deemed to be an institution or body contemplated in section 84(1)(f) of the Provincial Government Act (Act No. 32 of 1961). 20

(4) The provisions of any law applying to local authorities in the province concerned shall, subject to the provisions of a proclamation contemplated in section 10(1), apply *mutatis mutandis* to any local government body referred to in paragraph (b) of the definition of local government body. 25

(5) Any resolution, by-law or regulation of a local government body referred to in subsection (4), shall continue to be of force until amended or repealed by a proclamation contemplated in section 10(1) or by a resolution, by-law or regulation of a transitional council or transitional metropolitan substructure. 30

(6) (a) The Administrator may by notice in the *Official Gazette* define for the purposes of this subsection an area outside the area of a local government body referred to in paragraph (b) of the definition of local government body, and exercise in such area the powers conferred upon a local authority in a local authority area under the laws applicable to local authorities in the province concerned. 35

(b) An area defined by the Administrator in terms of section 2(11) of the Black Local Authorities Act, 1982, and an area deemed to be so defined in terms of section 2(12) of that Act, shall, subject to the provisions of this Act, be deemed to be an area defined in terms of paragraph (a) of this subsection. 40

(c) Any reference in any law, including this Act, to a local government body referred to in paragraph (b) of the definition of local government body shall be deemed, in respect of an area referred to in paragraph (a) of this subsection, also to be a reference to the Administrator of the province concerned. 45

**Repeal of Act 128 of 1991 and sections 28 and 29 of Act 134 of 1992, and transitional measures**

14. (1) Subject to the provisions of subsection (2), the Interim Measures for Local Government Act, 1991 (Act No. 128 of 1991), and sections 28 and 29 of the Provincial and Local Authority Affairs Amendment Act, 1992 (Act No. 134 of 1992), are hereby repealed. 50

(2) Notwithstanding the provisions of subsection (1), any proclamation issued under the Interim Measures for Local Government Act, 1991, in connection with

any matter referred to in section 8 of that Act, shall, subject to the provisions of this Act, continue to be of force until amended or repealed by a proclamation contemplated in section 10(1) of this Act.

#### Repeal of other laws, and transitional measures

15. (1) (a) Subject to the provisions of paragraph (b), the Regulations for the Administration and Control of Certain Urban Areas in Natal, 1982 (Proclamation No. 86 of 1982), and the Regulations for the Administration and Control of Certain Urban Areas in Natal, 1983 (Proclamation No. 67 of 1983), are hereby repealed.

(b) Notwithstanding the provisions of paragraph (a), any council or committee established under the provisions of the laws referred to in paragraph (a), shall continue to exist subject to the provisions of this Act, and shall be deemed to be an institution or body contemplated in section 84(1)(f) of the Provincial Government Act 1961, (Act No. 32 of 1961).

(2) The provisions of any law applying to local authorities in the province concerned shall, subject to the provisions of a proclamation contemplated in section 10(1), apply *mutatis mutandis* to any body performing local government functions under the laws referred to in subsection (1)(a).

(3) Any resolution, by-law or regulation of a body referred to in subsection (2), shall continue to be of force until amended or repealed by a proclamation contemplated in section 10(1) or by a resolution, by-law or regulation of a transitional council or transitional metropolitan substructure.

(4) (a) Subject to the provisions of paragraph (b), the Regulations Governing the Administration and Control of the Areas Clermont and Edendale, 1974 (Proclamation No. 163 of 1974), and the Regulations for Local Authorities, 1988 (Government Notice No. 405 of 1988), are hereby repealed.

(b) Any area in respect of which the laws referred to in paragraph (a) applied immediately before the commencement of this Act, shall, subject to the provisions of this Act, be deemed to be a defined area referred to in section 13(6)(a).

#### Transitional provisions

16. (1) Any transitional council or transitional metropolitan substructure established by a proclamation contemplated in section 10(1), shall be deemed to be an institution or body contemplated in section 84(1)(f) of the Provincial Government Act, 1961 (Act No. 32 of 1961).

(2) Subject to the provisions of this Act and any proclamation issued thereunder, the provisions of the laws applying to local authorities in the province concerned shall *mutatis mutandis* apply to any transitional council or transitional metropolitan substructure referred to in subsection (1).

(3) Any reference in any law to a local authority shall, unless clearly inappropriate, be deemed also to be a reference to any transitional council or transitional metropolitan substructure referred to in subsection (1).

(4) Any Bill of a competent legislature which affects the status, boundaries, powers, duties or structure of any transitional council or transitional metropolitan substructure referred to in subsection (1), shall only be introduced after consultation with organized local government and the transitional council or transitional metropolitan substructure concerned.

(5) Notwithstanding anything to the contrary in any law contained—

(a) any resolution of any transitional council or transitional metropolitan substructure referred to in subsection (1) pertaining to the budget of such transitional council or transitional metropolitan substructure shall be taken by a two-thirds majority of the members of such council or substructure, and any resolution of any transitional council or transitional metropolitan substructure pertaining to town planning shall be taken by a majority of the members of such council or substructure: Provided that any such transitional council or transitional metropolitan



- substructure may delegate the power to take any decision on any matter pertaining to town planning to the committee referred to in subsection (6) or to any other committee appointed for this purpose; and
- (b) if such transitional council or transitional metropolitan substructure—
- (i) on the last day of June in any financial year has failed to approve a budget for the subsequent financial year; or
  - (ii) on the last day of April in any financial year has failed to take steps to prepare a budget for the subsequent financial year,
- the Administrator may exercise any power or perform any duty conferred or imposed upon such transitional council or transitional metropolitan substructure by this Act or any other law in relation to the approval or preparation of a budget, as the case may be.
- (6) Notwithstanding anything to the contrary in any law contained, a transitional council or transitional metropolitan substructure referred to in subsection (1) shall elect according to a system of proportional representation from among its members an executive committee to exercise such powers and perform such duties as such transitional council or transitional metropolitan substructure may determine: Provided that—
- (a) the transitional council or transitional metropolitan substructure shall determine the system of proportional representation and the number of members of and the quorum for the executive committee;
  - (b) the executive committee shall endeavour to exercise its powers and perform its duties on the basis of consensus; and
  - (c) if consensus on any matter cannot be achieved, such matter may be decided by the committee by resolution of a majority of at least two-thirds of its members, or the committee may, if a majority of the committee so decides, submit a report and recommendation on the matter to the transitional council or transitional metropolitan substructure for a decision.
- (7) Any member of any transitional council or transitional metropolitan substructure referred to in subsection (1) shall be guilty of misconduct if he or she contravenes or fails to comply with any provision of the Code of Conduct for Councillors contained in Schedule 7, and his or her membership may, on application by the transitional council or transitional metropolitan substructure concerned or any member of such transitional council or transitional metropolitan substructure, be terminated by any Provincial Division of the Supreme Court within the area of jurisdiction of which such transitional council or transitional metropolitan substructure is situated.

#### Short title

17. This Act shall be called the Local Government Transition Act, 1993.

## SCHEDULE 1

*Principles and procedures referred to in section 6***Area of forum**

1. (1) Subject to the provisions of this Act, a forum shall be established for each economically and historically bound area, ranging from a stand-alone town with or without satellites to a complex metropolis.

(2) Criteria for the establishment of a forum include commercial and industrial linkage, daily commuting patterns, provision of services within the area, and the areas of jurisdiction of local government bodies, including areas of jurisdiction of such local government bodies existing before 1971, if any.

2. (1) Where a negotiating forum is not recognized by the Administrator as contemplated in section 6 of this Act, the Administrator may determine the area of a forum and submit it to the town clerks of the local government bodies falling within the area of such forum.

(2) In determining the area of a forum, the Administrator shall take into consideration the criteria referred to in paragraph 1(2), including—

- (a) the area of any existing forum;
- (b) the area of jurisdiction of any body or authority referred to in paragraph (j) of the definition of local government body in section 1(1) of this Act.

(3) Upon receipt of a submission contemplated in subparagraph (1), the town clerks concerned shall—

- (a) arrange an inaugural meeting of the forum with all potential members and observers contemplated in paragraph 3: Provided that the Administrator may nominate a town clerk to arrange such meeting; and
- (b) submit the submission to their respective councils for information.

(4) Within 30 days after receipt of a submission contemplated in subparagraph (1), the forum shall either confirm the area of the forum determined by the Administrator, or, subject to the provisions of paragraph 1(2), propose a new area for the forum and submit such proposal to the Administrator, who may—

- (a) confirm the proposed area; or
- (b) refer the matter to the Board established in terms of section 11(1) of this Act to investigate the matter and make written recommendations to him or her as contemplated in section 11(6) of this Act.

(5) The decision of the Administrator—

- (a) to confirm the proposed area of the forum as contemplated in subparagraph (4)(a); or
- (b) to require written recommendations of the Board as contemplated in subparagraph (4)(b),

shall be final and binding on the forum.

**Membership of forum**

3. (1) Membership of a forum shall be in accordance with the principle of inclusivity and representativity: Provided that the process shall continue despite the refusal or failure of any person, body or organization to participate in any such forum.

(2) Observers, who or which shall be entitled to attend and to participate fully in forum meetings, without the right to vote, may be appointed to a forum.

(3) To qualify for membership or observer status, any prospective member or observer shall, where applicable, submit in writing to the forum its constitution, a list of office-bearers and details of activities and membership as contemplated in subparagraph (4).

(4) (a) Membership of a forum shall be available to—

- (i) members of local government bodies;
- (ii) persons representing local organizations which are representative of substantial sectors of the wider community having a vested interest in the political restructuring of local government, including civic associations, residents' associations and the local structures of political parties.

(b) Bodies such as local chambers of commerce and industry, the Development Bank of Southern Africa and supplier bodies such as Eskom and Water Boards, may have observer status.

(5) Members of the forum shall be required to indicate whether they are to be regarded as part of—

- (a) the statutory component, comprising members of the existing local government bodies and persons representing bodies or organizations approved by the forum as being part of such component; or
- (b) the non-statutory component, comprising persons representing any other bodies or organizations not contemplated in item (a) having a vested interest in the political restructuring of local government and approved by the forum as being part of such component.

(6) If the forum fails to reach agreement on whether a member is to be regarded as part of the statutory or non-statutory components contemplated in items (a) and (b) of subparagraph (5), the forum shall refer the matter to the Administrator for a final decision, which shall be binding on the forum.

#### Negotiating matters and objectives

4. (1) A forum shall negotiate on the matters referred to in section 7(1) of this Act.

(2) A forum may generally, as local circumstances dictate, explore and propose short, medium and long term practical solutions to the problems of local government in the area of such forum to be submitted to the Administrator for consideration.

#### Nomination by forum of persons for appointment as members of transitional councils

5. (1) For the purposes of negotiating the nomination of members of a transitional council and transitional metropolitan substructure as contemplated in section 7(1)(b) and (c) of this Act, the statutory and the non-statutory components of the forum shall each complete a list of potential candidates, whereupon a representative committee comprising members from each component shall meet to attempt to reach consensus on the persons to be nominated by the forum for appointment as members of any transitional council and transitional metropolitan substructure: Provided that at least half the persons nominated should be acceptable to the statutory component and at least half to the non-statutory component: Provided further that a list of additional candidates in order of preference, shall be submitted by the statutory and non-statutory components to facilitate the filling of any vacancy which may occur.

(2) (a) One half of the nominations shall include members of the local government bodies concerned and shall comprise equitably weighted representation of the local government bodies concerned which shall not disturb the pre-existing relationships within and between those local government bodies.

(b) The other half of the nominations shall comprise equitable representation of all those sectors of society which in the past did not participate in the electoral process in the area of that forum.

(3) Any person nominated as a member of any transitional council or transitional metropolitan substructure shall meet the qualifications of a member of one of the participating local government bodies.

(4) Lists of persons nominated as members of a transitional council or transitional metropolitan substructure by the forum shall be submitted to the Administrator as part of an agreement contemplated in section 7(1) of this Act.

(5) If the forum fails to reach agreement on the nomination of persons as contemplated in subparagraph (2), the forum shall refer the matter to the Administrator, who may appoint a mediator or mediators to assist the forum to reach consensus.

#### Secretarial services

6. (1) The forum shall appoint a secretariat to provide secretarial services.

(2) The local government bodies concerned shall be jointly and severally responsible for the expenses incurred by the secretariat.

(3) The secretariat shall submit certified copies of all resolutions passed by the forum pertaining to matters referred to in section 7(1)(a) to (c) of this Act to the Administrator.

#### Procedures at meetings of forum

7. The standard rules of procedure contained in the Annexure may be adopted by each forum as its rules of procedure at meetings.

**ANNEXURE TO SCHEDULE 1*****Standard rules of order for forum*****Chairperson**

1. (1) The inaugural meeting of a forum shall be convened by a person nominated by the Administrator for that purpose.

(2) At its first meeting the forum shall designate a chairperson or co-chairpersons, who need not be members of the forum: Provided that any reference in this annexure to the chairperson shall also be deemed to be a reference to the co-chairpersons.

(3) A chairperson may for sufficient reasons be removed from office by the forum by a vote of no confidence, and if a chairperson is so removed from office, another person shall be designated in his or her place.

(4) Whenever both the chairperson and the co-chairpersons are for any reason absent or unable to act at a meeting, the forum shall by majority of the members present at the meeting, designate a person from among its members to take the chair at that meeting.

**Meetings**

2. (1) Members and observers may be accompanied by officials and advisers to meetings of the forum, hereinafter referred to as "participants", and such persons may with the consent of the chairperson participate in the proceedings, without having the right to vote.

(2) Meetings of the forum shall be open to the media and the public, unless the forum in respect of a particular occasion otherwise decides.

(3) If negotiations on any matter are contemplated, any member may request that the meeting go into committee and, if the forum so agrees, the meeting shall comply.

(4) The agenda for any meeting of the forum may be made available to the public or the media before or at that meeting, but the secretariat may at its discretion withhold any particular document from the press and the public unless otherwise directed by the chairperson or the meeting.

(5) The forum shall, from time to time, set a programme of dates, times and venues for its ordinary meetings.

(6) Leave of absence from any meeting may be applied for by or on behalf of a member or observer either before or at the meeting concerned.

**Notices of meetings**

3. (1) The secretariat shall give written notice of a meeting to each member and observer.

(2) The notice shall set out the time, date and place of such meeting and shall include an agenda and such other information as the secretariat may deem necessary to enable the participants to prepare for the meeting.

(3) Meetings shall be convened on not less than seven calendar days' notice.

(4) Not fewer than one quarter of the members of the forum may submit to the secretariat a written request for a special meeting to be convened on the grounds set out in the request, and the secretariat shall within seven calendar days after receipt of such request issue a notice convening such a meeting.

(5) (a) Service of such notices shall be by hand or by telefacsimile to numbers supplied to the secretariat by members: Provided that notices may be mailed to members whose offices are situated more than 10 kilometres from the secretariat's office and who have not provided telefacsimile addresses.

(b) Changes of address shall be notified to the secretariat in writing.

(6) The accidental omission to notify any member or observer shall not affect the validity of the meeting concerned.

**Quorum**

4. (1) The quorum for a meeting of the forum shall be at least half the total number of members of such forum.

(2) Whenever during a meeting there is no quorum, the chairperson shall suspend proceedings for 20 minutes, and if at the end of that period there is still no quorum, he or she may declare the meeting to be adjourned.

**Attendance register**

5. The secretariat shall keep an attendance register, in which every participant present at a meeting shall sign his or her name.

**Order of business**

6. (1) The order of business at a meeting shall be as follows:
- (a) Opening;
  - (b) application for leave of absence;
  - (c) statements and communications by the chairperson;
  - (d) finalizing the agenda, including decisions on the release of documents to the media and the public;
  - (e) confirmation of minutes of previous meeting;
  - (f) matters arising from the minutes (if not covered by agenda item);
  - (g) consideration of report by a joint technical committee referred to in paragraph 12, including its working groups and task teams (if any);
  - (h) consideration of any matters of common concern or interest relating to the area of the forum;
  - (i) matters of urgency or necessity in terms of subparagraph (4);
  - (j) possible press statement.
- (2) The chairperson may give preference to any item on the agenda with the consent of the meeting.
- (3) No business shall be transacted at a meeting other than that specified in the agenda relating thereto.
- (4) The chairperson may as a matter of urgency or necessity accept a request to discuss a matter which request could not have been notified to the secretariat in terms of paragraph 7, in which case a properly motivated written request in this regard shall be directed to the secretariat a reasonable time before the meeting.
- (5) The chairperson shall rule on the acceptability of any urgent request, and on the need for other participants to be given appropriate time to prepare for discussion thereof.

**Notice of matters for discussion**

7. (1) Written notice of any matter contemplated in paragraph 6(1)(h) shall be given to the secretariat not less than three days prior to the date of each meeting of the forum and such notice shall be sent by the secretariat to each member in terms of paragraph 3.
- (2) A notice of matters for discussion shall deal with one matter only and shall be relevant, which relevance shall be determined by the chairperson at the meeting where the matter is to be considered.

**Proposals during course of meeting**

8. (1) The following proposals may also be made during a meeting:
- (a) To amend a motion, proposal or recommendation of a joint technical committee or a working group;
  - (b) that the forum adjourns;
  - (c) that a debate be adjourned;
  - (d) that a matter be referred back to the joint technical committee or a working group;
  - (e) that consideration of the matter be deferred or held over;
  - (f) that a decision be taken on the matter under consideration;
  - (g) that it be accepted that consensus cannot be reached;
  - (h) that the meeting go into committee, and thereby exclude the media and the public;
  - (i) that the media and the public be allowed back into the meeting.
- (2) Every proposal in terms of subparagraph (1) shall be seconded.
- (3) Any business uncompleted at the adjournment of a meeting shall be dealt with at the next meeting unless the forum decides otherwise or the chairperson convenes a special meeting to dispose of such business.
- (4) Any proposal to refer a matter back for reconsideration shall indicate to which body the matter shall be referred and the aspect on which reconsideration is required.

**Proceedings at meetings**

9. (1) The chairperson shall control and conduct a meeting and may for such purpose issue directions to any participant or person, and at his or her discretion adjourn the meeting at any time.
- (2) Whenever the chairperson speaks during a meeting, any participant then speaking or intending to speak shall be silent and all persons present shall be silent so that the chairperson may be heard without interruption.
- (3) A participant who speaks shall confine his or her speech strictly to the motion or proposal under discussion or to an explanation or point of order and no discussion shall be allowed which will anticipate any matter on the agenda.

- (4) Any participant may ask the chairperson for permission to address the meeting—
- (a) on a point of order with a view to calling attention to any departure from the prescribed procedure; or
  - (b) in personal explanation, in order to explain some material part of his or her former speech which may have been misunderstood,

and any participant so asking shall be heard forthwith unless the chairperson rules the point of order or explanation to be inadmissible.

(5) (a) If a participant misconducts himself or herself, behaves in an unseemly manner or obstructs the business of any meeting or challenges any ruling of the chairperson; the chairperson shall direct such person to conduct himself or herself properly and if speaking to discontinue his or her speech.

(b) In the event of a persistent disregard by any person of the directions of the chairperson, the chairperson shall direct such person to retire from the place where the meeting is being held, for the remainder of the meeting, failing which the chairperson may direct that he or she be removed from such place.

(6) Any other person who misconducts himself or herself, behaves in an unseemly manner or interrupts proceedings at any meeting, shall, if the chairperson so directs, leave the place where the meeting is being held, failing which the chairperson may direct that he or she be removed from such place.

(7) Any interpretation by the chairperson of these Rules of Order shall, if any participant present so requests, be recorded in the minutes.

#### Decision-making

10. (1) In carrying out its functions, the forum shall seek to achieve consensus.

(2) Should consensus not be achieved on any matter at a subsequent meeting, such matter shall, unless otherwise provided for in this Act, be decided by a concurrent majority of two-thirds of both the statutory and non-statutory components of the forum.

(3) Each member shall be entitled to one vote.

(4) Where a vote has to be taken on any matter, such vote shall be by a show of hands unless any member requests a secret ballot.

#### Minutes

11. (1) The secretariat shall keep an attendance register, and proper minutes or other appropriate records of the forum's decisions and transactions in a minute book and other appropriate books, and copies of such minutes shall, unless other arrangements are made with any member, be sent to each member as soon as possible after each meeting, but at the latest with the agenda for the next meeting.

(2) A copy of minutes certified by the chairperson as a true copy or extract of minutes, confirmed by the forum, shall constitute *prima facie* proof of the accuracy thereof.

#### Joint Technical Committee and working groups

12. (1) A standing committee to be known as the Joint Technical Committee (hereinafter referred to as JTC) may be appointed by the forum from both the statutory and non-statutory components to advise and make recommendations in writing to the forum regarding any matter referred to the JTC by the forum.

(2) The JTC shall attempt to reach consensus on all matters, but where this cannot be achieved, any dissenting views shall be recorded.

(3) The JTC shall designate, and may remove from office, a chairperson by resolution passed by a majority of members present at a meeting, each member having one vote.

(4) The JTC may, subject to review by the forum, co-opt any person to serve on it for one or more meetings or part of a meeting.

(5) The JTC or, if there is no JTC, the forum, may establish working groups, task teams and subcommittees.

(6) The JTC shall meet as often as is necessary and shall determine the dates of meetings.

(7) The chairperson of the JTC may, and shall at the request of two members, call a special meeting of the JTC.

(8) Meetings of the JTC and of its working groups, task teams and sub-committees shall not be open to the public or the media.

(9) Notice of a JTC meeting shall be given by the secretariat to members at least 48 hours prior to the meeting, in the manner referred to in paragraph 3(2).

(10) A majority of all the members represented on the JTC shall constitute a quorum.

(11) The JTC shall regulate its own procedure, which shall as far as practicable be the same as that of the forum.

**SCHEDULE 2***Powers and duties of a transitional metropolitan council referred to in sections 7(1)(b), 8(2) and 10(3)(h)*

1. Bulk supply of water.
2. Bulk supply of electricity.
3. Bulk sewerage purification works and main sewerage disposal pipelines for the metropolitan area.
4. Metropolitan co-ordination, land usage and transport planning.
5. Arterial metropolitan roads and stormwater drainage.
6. Passenger transport services.
7. Traffic matters.
8. Abattoirs.
9. Fresh produce markets.
10. Refuse dumps.
11. Cemeteries and crematoriums.
12. Ambulance and fire brigade services.
13. Hospital services.
14. Airports.
15. Civil protection.
16. Metropolitan libraries.
17. Metropolitan museums.
18. Metropolitan recreation facilities.
19. Metropolitan environment conservation.
20. Metropolitan promotion of tourism.
21. Metropolitan promotion of economic development and job creation.
22. The establishment, improvement and maintenance of other metropolitan infrastructural services and facilities.
23. The power to levy and claim—
  - (a) the regional services levy and the regional establishment levy referred to in section 12(1)(a) of the Regional Services Councils Act, 1985 (Act No. 109 of 1985), or section 16(1)(a) of the KwaZulu and Natal Joint Services Act, 1990 (Act No. 84 of 1990), as the case may be;
  - (b) levies or tariffs from any transitional metropolitan substructure in respect of any function or service referred to in items 1-22; and
  - (c) an equitable contribution from any transitional metropolitan substructure based on the gross or rates income of such transitional metropolitan substructure.
24. The receipt, allocation and distribution of intergovernmental grants.
25. The power to borrow or lend money, with the prior approval of the Administrator, for the purposes of or in connection with the exercise or performance of any power or duty.

**SCHEDULE 3***Delimitation of wards referred to in section 8(2)*

The area of jurisdiction of any transitional local council and transitional metropolitan substructure shall be divided into wards in accordance with the applicable laws: Provided that where the area of jurisdiction of any such transitional local council or transitional metropolitan substructure includes—

- (a) the area of jurisdiction of any institution or body contemplated in section 84(1)(f) of the Provincial Government Act, 1961 (Act No. 32 of 1961); and
- (b) any other area not falling within the area of jurisdiction of the institution or body referred to in paragraph (a),

no area referred to in paragraph (a) or (b) shall be allocated less than half the total number of wards of such transitional local council or transitional metropolitan substructure: Provided further that for the purposes of delimitation of wards in terms of section 8(2) of this Act, no area referred to in paragraph (a) shall include any area for which a local government body referred to in paragraphs (a), (b) and (c) of the definition of local government body has been established.

## SCHEDULE 4

*Principles referred to in section 9(4)*

1. Any natural person who is—

- (a) eligible to vote in terms of section 6 of the Constitution of the Republic of South Africa, 1993; and
- (b) ordinarily resident within the area of jurisdiction of a local government, or under law liable for the payment of assessment rates, rent, service charges or levies to the local government concerned,

shall be entitled to be included in the voters' roll of that local government and shall thereupon be entitled to vote in an election for members of the council of such local government: Provided that any person shall be entitled to exercise only one vote for any local government.

2. Voters' rolls shall be prepared by the local government concerned and divided according to wards delimited as contemplated in section 8(2) of this Act.

3. A voters' roll shall lie for inspection, but the onus to be enrolled as a voter shall rest on the voter concerned.

4. Only a competent court shall be entitled to make alterations to an approved voters' roll, which shall be updated at regular prescribed intervals.

5. Identification for voting purposes shall be by production of a voter's eligibility document as defined in section 1 of the Electoral Act, 1993.

6. Any person who is entitled to be included in the appropriate voters' roll as contemplated in paragraph 1, shall be entitled to be nominated and elected as a member of the council of the local government unless—

- (a) he or she is an elected member of the National Assembly or the Senate;
- (b) he or she is disqualified to be elected as a member of the National Assembly in terms of the Constitution of the Republic of South Africa, 1993;
- (c) he or she is disqualified to be elected by any competent court;
- (d) at 15:00 on the day immediately preceding nomination day, he or she is indebted to the local government concerned in respect of any assessment rates, rent, service charges or any other monies for a period longer than three months; or
- (e) he or she is an employee of the local government concerned or any other local government: Provided that the Administrator may exempt any such person if the Administrator is satisfied that such exemption is in the public interest and proof of such exemption accompanies the nomination.

7. Sixty per cent of the members of a transitional local council or a transitional metropolitan substructure shall be elected on the basis that each such member shall represent a ward of such transitional local council or transitional metropolitan substructure and forty per cent of the members shall be elected according to a system of proportional representation.

8. Forty per cent of the members of a transitional metropolitan council shall be elected according to the system of proportional representation contemplated in paragraph 7, and sixty per cent of the members shall be nominated by the transitional metropolitan substructures from among their members on a *pro rata* basis according to the number of registered voters in the areas of jurisdiction of such transitional metropolitan substructures: Provided that each such transitional metropolitan substructure shall be entitled to at least one representative.

## SCHEDULE 5

*Criteria referred to in section 11(2)*

1. The chairperson of the Board shall be a person with extensive experience in law or matters relating to local government.

2. The other members of the Board shall jointly have knowledge of—

- (a) rural, town and regional planning;
- (b) development economics, including development needs of local communities;
- (c) municipal finance;
- (d) municipal services and administration; and
- (e) other disciplines and skills as may be necessary.

3. The membership of the Board shall be structured in such a manner as to be balanced, representative, non-racial and gender inclusive.



## SCHEDULE 6

*Criteria referred to in section 11(6)(b)*

1. Topographical and physical characteristics of the area concerned.
2. Population distribution within the area concerned.
3. Existing demarcation of areas pertaining to local government affairs and services, including existing areas of local government bodies and areas existing before 1971 as areas of such local government bodies (if any) as well as areas of regional services councils and joint services boards.
4. Existing and potential land usage, town and transport planning, including industrial, business, commercial and residential usage and planning.
5. Economy, functionality, efficiency and financial viability with regard to the administration and rendering of services within the area concerned.
6. Development potential in relation to the availability of sufficient land for a reasonably foreseeable period to meet the spatial needs of the existing and potential residents of the proposed area for their residential, business, recreational and amenity use.
7. Interdependence of and community of interest between residents in respect of residency, work, commuting and recreation.
8. The integrated urban economy as dictated by commercial, industrial and residential linkages.

## SCHEDULE 7

*Code of Conduct for Councillors referred to in section 16(7)***Attendance of meetings**

1. A councillor shall attend each meeting of the council of which he or she is a member or of any committee of such council to which he or she is appointed or elected, except where leave of absence has been granted to him or her in terms of the applicable law.

**Misleading or influencing council, and certain other acts prohibited****2. No councillor shall—**

- (a) mislead or attempt to mislead the council of which he or she is a member in its consideration of and decision on any matter serving before it;
- (b) influence or attempt to influence the council of which he or she is a member in its consideration of and decision on any matter serving before it so as to gain some direct or indirect benefit, whether in money or otherwise, for himself or herself or any other person to whom he or she is related or any other person or body with whom or which he or she is associated;
- (c) directly or indirectly encourage, advocate, incite or participate in the taking of any unlawful decision by the council of which he or she is a member; or
- (d) directly or indirectly encourage, advocate, incite or participate in any debate, consultation, meeting or decision with any other person or body the aim or effect of which would be the abrogation by the council of which he or she is a member, of any right in its favour or the breach by such council of any agreement or the breach by any other person or body of any agreement with such council or any other breach or loss of any right or the neglect of any obligation to the extent that the local authority concerned suffers loss or is in any way prejudiced or improperly or unlawfully burdened with any obligation.

**Pressure on employees prohibited****3. No councillor shall, directly or indirectly—**

- (a) coerce or put any pressure on any employee of the council of which he or she is a member to insert in or to omit from any document prepared by such employee, any fact, view or information, or to frame a recommendation in any such document in a particular manner; or
- (b) instruct or order any employee of the council of which he or she is a member not to implement any decision of that council or any decision of any committee of that council or to implement any such decision contrary to the intent and purpose thereof.

**Unauthorized disclosure of information prohibited**

4. No councillor shall, by himself or herself or through the agency of any other person, disclose to any unauthorized person or body or the representative of such person or body, any privileged or confidential information.

**Solicitation for reward, and acceptance of gifts and favours prohibited**

5. No councillor shall, directly or indirectly—

- (a) request, solicit or demand from any person or body any direct or indirect reward or favour; or
- (b) accept any gift, reward or favour,

whether in money or otherwise, as a consideration for voting in a particular manner on any matter before the council of which he or she is a member, or from refraining from voting on any matter, or for the purpose of persuading or convincing such council in regard to the exercise or performance of any power or duty that such council is required to exercise or perform, or for the disclosure of any privileged or confidential information to any unauthorized person or body or the representative of such person or body.

**Intervention in administration of council prohibited**

6. No councillor shall—

- (a) intervene directly or through the agency of any other person in the management or administration of any department, branch, section or division of the council of which he or she is a member;
- (b) directly or through the agency of any other person, issue or attempt to issue an executive order to any employee of the council of which he or she is a member; or
- (c) directly or indirectly encourage, advocate, incite or participate in any debate, decision or act the result of which would be to cause or contribute to maladministration within the council of which he or she is a member or in any department, branch, section or division of such council.

**Appropriation or misuse of council property prohibited**

7. (1) No councillor shall—

- (a) appropriate for his or her personal use or benefit or for the use or benefit of any other person to whom he or she is related or any other person or body with whom or which he or she is associated, any movable or immovable property or asset owned, controlled or managed by the council of which he or she is a member; or
- (b) unlawfully or improperly acquire any benefit from or right, title or interest to, in, or over such property or asset.

(2) No councillor shall use—

- (a) municipal office facilities; or
- (b) municipal equipment, including telephones or motor vehicles,

for his or her personal use or for the conducting of his or her business affairs outside his or her authorized functions as a councillor.

**Duties of councillor**

8. Whenever any member of any council becomes aware of any contravention of or failure to comply with any provision of this Code of Conduct, or whenever any allegation or statement is made to him or her in writing, to the effect that any member of the council of which he or she is a member has allegedly contravened or failed to comply with any provision of this Code of Conduct, he or she shall forthwith inform the town clerk thereof in writing, setting out the particulars of any facts of which he or she is aware or the particulars of any statements or allegations made to him or her.

**Duties of town clerk**

9. (1) Whenever the town clerk of any council becomes aware of any contravention of or failure to comply with any provision of this Code of Conduct, or whenever any allegation or statement is made to him or her in writing, to the effect that any member of the council has allegedly contravened or failed to comply with any provision of this Code of Conduct, he or she shall—

- (a) investigate the facts and circumstances;
- (b) obtain the written comments of the councillor concerned; and
- (c) if he or she is satisfied that *prima facie* a contravention of or failure to comply with any provision of this Code of Conduct has occurred, he or she shall submit a report thereon to the council:

Provided that if the councillor concerned ~~does not~~ furnish the town clerk with his or her written comments as contemplated in item (b), within a reasonable time after being requested to do so, the town clerk shall proceed to submit a report to the council as contemplated in item (c).

(2) The town clerk of every council shall ~~ensure~~—

- (a) that each member of the council shall upon being elected as a member be furnished with a copy of this Code of Conduct and every amendment thereof; and
- (b) that a copy of this Code of Conduct is available in every room or place where the council concerned or any committee of such council meets.