

## CHAPTER 29:13 RURAL

### DISTRICT COUNCILS ACT

*Acts 8/1988, 18/1989 (s. 45), 11/1991 (s. 31), 3/1992, 15/1994 (s. 25),  
21/1997 (ss 8 to 15), 23/1998, 25/1998 (s. 54), 22/2001 (s. 4), 13/2002 (s. 142), 1/2008 (ss 2 to 4), 3/2009  
(s. 56).*

#### ARRANGEMENT OF SECTIONS PART I

##### PRELIMINARY

###### *Section*

1. Short title.
2. Interpretation.
3. Minister may classify land into categories 4. Areas deemed to be local government areas.
5. Specified areas.

##### PART II

###### DISTRICTS

6. Declaration, naming, alteration and abolition of districts.
7. Consultation before exercise of powers relating to districts.

##### PART III

###### ESTABLISHMENT, NATURE AND MEMBERSHIP OF RURAL DISTRICT COUNCILS

8. Establishment and naming of councils and division of areas into wards.
9. Consultation before exercise of powers relating to establishment of councils. 10. Incorporation of local authority areas into council areas
11. Membership of councils.
12. Councils to be bodies corporate.
13. [Repealed].

##### PART IV

###### QUALIFICATIONS, DISQUALIFICATIONS AND ENROLMENT OF VOTERS

14 - 27 [Repealed].

##### PART V

###### QUALIFICATIONS, DISQUALIFICATIONS AND TERMS OF OFFICE OF ELECTED AND APPOINTED COUNCILLORS

28. [Repealed].
29. [Repealed].
30. Terms of office of elected councillors and re-election of councillors.
31. Appointed councillors.
32. Casual vacancies.

##### PART VI

###### ELECTIONS AND ELECTION PROCEDURE

33. – 44. [Repealed].

##### PART VII

###### PROCEEDINGS OF RURAL DISTRICT COUNCILS

45. Chairman and vice-chairman.
46. Meetings and special meetings of councils.
47. Quorum at meetings.

48. Disability from voting on account of interest in contracts, etc.
49. Validity of proceedings of councils.
50. Meetings open to public.
51. Minutes of proceedings.
52. Rescission or alteration of resolutions.
53. Minister's approval required for certain resolutions.
54. Maximum period of leave of absence of councillors.

## PART VIII

### COMMITTEES OF RURAL DISTRICT COUNCILS

55. Finance committee.
56. Area committees.
57. Town boards.
58. Roads committee.
59. Ward development committees.
60. Rural district development committee.
61. Environment committee and subcommittees.
62. Other committees of council.
63. General provisions applicable to all committees.
64. Subcommittees.

## PART IX

### STAFF OF RURAL DISTRICT COUNCILS

65. Interpretation in Part IX.
66. Appointment of officers and employees of councils.
67. Conditions of service of officers and employees of councils.
68. Delegation of powers to appoint and dismiss employees of councils.
69. Delegation of powers of councils to officers and employees.
70. Corrupt practices by officers and employees of councils.

## PART X

### POWERS OF DUTIES OF RURAL DISTRICT COUNCILS

71. Powers of councils generally.
72. Powers in regard to sewerage and drainage.
73. Enforcement of conditions of title.
74. Development functions of councils.
75. Owners and occupiers of land may be charged for services made available.
76. Charges, rents and deposits by resolution.
77. Powers of entry and inspection.
78. Compulsory acquisition of property.
79. Contracts and tenders of councils.
80. Income-generating projects.
81. Establishment of co-operatives.
82. Co-operation with local authorities and persons.
83. Joint committees: by agreement.
84. Joint committees: Minister's authority.
85. Provisions as to members and proceedings of joint committees.
86. Estate development.
87. Minister's power to act on behalf of councils *re* state development.

## PART XI

### BY-LAWS OF RURAL DISTRICT COUNCILS

88. Making of by-laws.
89. By-laws in relation to certain urban areas.
90. Minister's approval of by-laws.

91. Model by-laws.
92. Effect of repeal or amendment of model by-laws.
93. Model building by-laws.
94. Minister's power to make or adopt by-laws on behalf of councils.

## PART XII

### LEVIES AND OTHER CHARGES

95. Interpretation in Part XII.
96. Levies in rural areas.
97. Special levies in rural areas.
- 97A. Special unit tax on A1 and A2 farms.
98. Urban land which is rateable property.
99. Rates in respect of rateable property.
100. Special rates in respect of rateable property.
101. Application of provisions of Cap. 29:15 relating to valuation and rating.
102. Land development levies on urban land.
103. Notice of intention to impose special levy or special rate.
104. Notice of liability to pay charges.
105. Imposition of and accounting for levies, rates and special rates.
106. When persons liable to pay portion only of charge.
107. Abatements for prompt payment of charges.
108. Interest on unpaid charges.
109. Charges to be paid before transfer of land.
110. Occupiers and agents liable for levies and rates in default of owners.
111. Collection of charges and payment by instalments.
112. Payment of charges by persons who first become liable thereto after fixed date.
113. Councils may require persons liable to pay levy to submit returns.
114. Refusal by occupiers to disclose names and addresses of owners of persons receiving rent.
115. Taxpayers leaving Zimbabwe.
116. Sales and leases of land and cancellations thereof to be reported to councils.

## PART XIII

### FINANCIAL PROVISIONS

117. Interpretation in Part XIII.
118. Funds of councils.
119. Financial year.
120. Books and accounts.
121. Estimates.
122. Elimination or reduction of accumulated deficit.
123. Banking accounts.
124. Borrowing powers.
125. Bank overdrafts.
126. Security for loans.
127. Repayment of loans.
128. Capital development funds.
129. Revenue reserves.
130. Housing account.
131. Investment of moneys.
132. Guarantees of loans to officers and employees.
133. Writing off of bad debts.
134. Appointment of auditors.
135. Duties of councils *re* audit.
136. Powers and report of auditor.
137. Duty of council *re* accounts and report of auditor.
138. Power of Minister to conduct financial inquiry.

## PART XIV

### ALTERATION AND ABOLITION OF RURAL DISTRICT COUNCILS

139. Alteration of councils and wards and abolition of councils.
140. Consultation before exercise of powers relating to alteration or abolition of councils or wards.
141. Continuation in office of councillors representing altered wards.
142. Incorporation of local authority areas into altered council areas.
143. Powers exercisable on abolition of councils.

## PART XV

### GENERAL

144. Exemption of councils, councillors, officers, employees and other persons from liability.
145. Designated officers.
146. Appointment of public servants to be subject to laws relating to Public Service.
147. Copy of Act, regulations and by-laws to be available for inspection.
148. Effect of invalidity of elections on civil proceedings.
149. Execution and authentication of documents.
150. Vesting of property in councils.
151. Recovery of unpaid levies, rates, rents and charges.
152. Books and records to be *prima facie* evidence.
153. Minister to be furnished with reports.
154. Investigations by Minister.
155. Minister may direct certain actions.
156. Minister may rectify omitted acts.
157. Suspension and dismissal of councillors.
158. Minister may appoint commissioner to act as council.
159. Regulations.
160. Obstruction and impersonation.
161. Refusal to obey orders, requirements or directions of Minister.
162. Conviction no bar to further proceedings.
163. Compensation for loss caused through offences.
164. Transitional provisions and savings.
165. Construction of references in enactments.

## SCHEDULES

First Schedule: Powers of Rural District Councils.

Second Schedule: Matters for which Rural District Councils may make by-laws.

Third Schedule: Scales of Development Levies and Special Development Levies. Fourth

Schedule : Special Unit Tax on A1 And A2 Farms.

**AN ACT to provide for the declaration of districts and the establishment of rural district councils; to confer and impose functions upon rural district councils and provide for the administration of their areas; and to provide for matters connected with or incidental to the foregoing.**

[Date of commencement: 19th August, 1988.]

## PART I

### PRELIMINARY

#### 1 Short title

This Act may be cited as the Rural District Councils Act [*Chapter 29:13*].

#### 2 Interpretation

(1) In this Act—

“appointed councillor” means a person appointed to be a councillor in terms of section *thirty-one* or *forty one*;

“area committee” means an area committee appointed in terms of section *fifty-six*;

“auditor” means a person appointed as auditor in terms of subsection (1) or (2) of section *one hundred and thirty-four*;

“building society” means a building society registered in terms of the Building Societies Act [*Chapter 24:02*];

“casual vacancy” means a vacancy in the membership of a council referred to in subsection (1) of section *thirty-two*;

“chairman”, in relation to a council, means the chairman of the council elected or appointed in terms of section *forty-five*;

“charge” means, subject to section *ninety-five*, any fee or charge leviable by or payable to a council in terms of this Act;

“chief executive officer”, in relation to a council, means the chief executive officer of the council appointed in terms of section *sixty-six*;

“commercial bank” means a commercial bank registered in terms of the Banking Act [*Chapter 24:01*];

“commercial ward” means a large-scale commercial ward or a small-scale commercial ward;

“Commission” means the Zimbabwe Electoral Commission appointed in terms of section 61 of the Constitution;

[Definition inserted by section 2 of Act 1 of 2008]

“committee” means a committee appointed or established in terms of Part VIII;

“Communal Land” means—

(a) any land that is Communal Land in terms of the Communal Land Act [*Chapter 20:04*]; and

(b) any other land that was within the area of a district council on the 19th August, 1988;

“communal ward” means a ward consisting wholly or mainly of Communal Land;

“co-operative” means

(a) a co-operative company registered in terms of the Companies Act [*Chapter 24:03*]; or

(b) a co-operative society registered in terms of the Co-operative Societies Act [*Chapter 24:05*], or

(c) any other association of persons which has as its object the promotion of the economic interests of its members in accordance with co-operative principles;

“council” means a rural district council established in terms of this Act;

“council area” means the area for which a council has been established;

“councillor” means an appointed councillor or an elected councillor;

“development levy” means a development levy imposed by a council in terms of subsection (2) of section *ninety-six*;

“district” means an area declared to be a district in terms of section *six*;

“district administrator”, in relation to a council or proposed council, means—

(a) the district administrator within whose district the council area or proposed council area lies; or

(b) any person appointed by the district administrator referred to in paragraph (a) to exercise his functions in terms of this Act in relation to the council or proposed council;

“elected councillor” means a person elected or re-elected as a councillor in terms of Part VI;

“environment committee” means an environment committee appointed in terms of subsection (2) of section *sixty-one*;

“environment subcommittee” means□

(a) an environment subcommittee appointed in terms of subsection (6) of section *sixty-one*; or

(b) a ward development committee or a village development committee designated as an environment subcommittee in terms of subsection (9) of section *sixty-one*;

[Definition inserted by section 142 of Act 13 of 2002]

“finance committee” means a finance committee appointed in terms of section *fifty-five*;

“general election” ...

[Definition repealed by section 8 of Act No. 21 of 1997.]

“intensive conservation area” has the meaning given to it in the Natural Resources Act [*Chapter 20:13*];

“land category” means any of the following categories of land— (a)

Communal Land;

(b) large-scale commercial land;

(c) resettlement land;

(d) small-scale commercial land;

(e) urban land;

“land development levy” means a land development levy imposed by a council in terms of subsection (1) of section *ninety-six*;

“large-scale commercial land” means—

(a) land which—

- (i) immediately before the date of commencement of this Act, was situated within a rural council area; and
  - (ii) is not Communal Land, resettlement land, small-scale commercial land or urban land; or
- (b) land which has been declared in terms of section *three* to be large-scale commercial land;
- “large-scale commercial ward” means a ward consisting wholly or mainly of large-scale commercial land;
- “levy” means a land development levy, a special land development levy, a development levy or a special development levy;
- “local authority” means a municipal council, town council, local board, rural district council or provincial council and, for so long as any such councils remain in existence, includes a rural council established under the Rural Councils Act [*Chapter 211 of 1974*] and a district council established under the District Councils Act [*Chapter 231 of 1974*];
- “local government area” includes any area deemed to be a local government area by virtue of a declaration in terms of section *four*;
- “Minister” means the Minister of Local Government, Rural and Urban Development or any other Minister to whom the President may from time to time assign the administration of this Act; “natural resources conservation committee” ....
- [Definition repealed by section 142 of Act 13 of 2002]
- “natural resources conservation subcommittee” ....
- [Definition repealed by section 142 of Act 13 of 2002]
- “neighbourhood development committee” means a neighbourhood development committee appointed or formed under regulations made in terms of section *one hundred and fifty-nine*;
- “nomination day” ...
- Definition repealed by section 8 of Act No. 21 of 1997.
- “province” means an area declared to be a province in terms of the Provincial Councils and Administration Act [*Chapter 29:11*];
- “rate” means a rate imposed by a council in terms of section *ninety-nine*;
- “Registrar-General” means the Registrar-General of Elections referred to in section 15 of the Electoral Act [*Chapter 2:01*] or, in respect of any particular function vested in the Registrar-General, any person to whom he may have delegated that function in terms of subsection (3) of that section;
- “removals list” ...
- Definition repealed by section 8 of Act No. 21 of 1997.
- “resettlement land” means—
- (a) land acquired or owned by the State for resettlement purposes; or
  - (b) land that has been declared in terms of section *three* to be resettlement land;
- “resettlement ward” means a ward consisting wholly or mainly of resettlement land;
- “returning officer” ...
- Definition repealed by section 8 of Act No. 21 of 1997.
- “road” means any road, street, highway, thoroughfare, sanitary or other lane, cycle track, footpath, pavement, alley, subway, passage, square, bridge or other place of a like nature or any portion thereof, and includes all appurtenances thereto;
- “roads committee” means a roads committee established in terms of section *fifty-eight*;
- “rural district development committee” means a rural district development committee established in terms of section *sixty*;
- “small-scale commercial land” means—
- (a) land that was classified as purchase land on the 1st February, 1979; or
  - (b) land that has been declared in terms of section *three* to be small-scale commercial land;
- “small-scale commercial ward” means a ward consisting wholly or mainly of small-scale commercial land;
- “special development levy” means a special development levy imposed by a council in terms of section *ninety-seven*;
- “special election” ...
- Definition repealed by section 8 of Act No. 21 of 1997.
- “special land development levy” means a special land development levy imposed by a council in terms of section *ninety-seven*;
- “special levy” mean a special land development levy or a special development levy;
- “special rate” means a special rate imposed by a council in terms of section *one hundred*;

“specified area” means an area declared to be a specified area in terms of section five;  
“subcommittee” means a subcommittee appointed by a committee in terms of section *sixty-four*;  
“total membership”, in relation to a council, means the number of councillors which, in terms of this Act, constitutes the council;  
“town area” means four or more continuous urban wards;  
“town ward” means one of the four or more urban wards that constitute a town area;  
“urban land” means—

- (a) land containing stands or plots used or intended to be used for residential, commercial or industrial purposes; or
- (b) land set aside in terms of section 10 of the Communal Land Act [*Chapter 20:04*], for the establishment of a township, village, business centre or industrial area; or
- (c) land that has been declared in terms of section *three* to be urban land; “urban ward” means a ward consisting wholly or mainly of urban land; “vice-chairman”, in relation to a council, means the vice-chairman of the council elected in terms of section *forty-five*;

“village development committee” means a village development committee referred to in section 17 of the Traditional Leaders Act [*Chapter 29:17*];

[Definition substituted by section 142 of Act 13 of 2002]

means a village development committee appointed or formed under regulations made in terms of section *one hundred and fifty-nine*;

“voter” means a person who is entitled to vote and is on a voters’ roll for a ward of a council area;

“voters’ roll” ...

Definition repealed by section 8 of Act No. 21 of 1997.

“ward” means a ward into which a council area is divided or re-divided in terms of section *eight* or *one hundred and thirty-nine*;

“ward development committee” means a village development committee established in terms of section *fiftyeight*.

(2) Where in this Act anything is required to be agreed or done by no fewer than two-thirds or one-half or one-third or any other fraction of a total number of persons, and the total number of persons is not an integral multiple of three or two or the denominator of the other fraction, as the case may be, then the thing shall be duly agreed or done if it is agreed or done by two-thirds or one-half or one-third or any other fraction, as the case may be, of the number next above that of the total number of persons which is an integral multiple of three or two or the denominator of the other fraction, as the case may be.

(3) Where anything is required, in terms of this Act, to be lodged, posted, laid open or made available for inspection or otherwise done at the offices of a council such thing shall be lodged, posted, laid open or made available for inspection, as the case may be, at the office of the chief executive officer of the council or at such other office as the chief executive officer may notify by notice in a newspaper.

(4) Where in terms of this Act any notice is required to be given or published—

- (a) in a newspaper, such notice shall be given or published in a newspaper circulating in the council area or other area concerned;
- (b) in more than one issue of a newspaper, such notice shall be given or published in consecutive weekly issues of a newspaper circulating in the council area or other area concerned.

### **3 Minister may classify land into categories**

After consultation with any council established for the area concerned, the Minister may, subject to any other law, by notice in the *Gazette*, declare that any land shall be— (a) large-scale commercial land; or

- (b) resettlement land; or
- (c) small-scale commercial land; or
- (d) urban land; for the purposes of this Act.

### **4 Areas deemed to be local government areas**

After consultation with the council concerned and, where appropriate, with the approval of the Minister responsible for the administration of the other enactment concerned, the Minister may, by statutory instrument, declare that any area within a council area shall be deemed to be a local government area for the purposes of such provisions of this Act or any other enactment as are specified in the notice, and the provisions so specified shall thereupon apply, *mutatis mutandis*, in relation to such area as though such area were a local government area administered by the council.

## 5 Specified areas

After consultation with any council established for the area concerned, the Minister may, by statutory instrument, declare that any urban land which—

- (a) is within a council area or proposed council area; and
- (b) in the opinion of the Minister, consists wholly or mainly of residential accommodation; shall be a specified area for the purposes of this Act.

## PART II

### DISTRICTS

## 6 Declaration, naming, alteration and abolition of districts

Subject to section *seven*, the President may at any time, by statutory instrument—

- (a) declare any area within a province to be a district;
- (b) assign a name to any district;
- (c) alter the boundaries or name of, or abolish, any district.

## 7 Consultation before exercise of powers relating to districts

(1) Before the President exercises his powers in terms of section *six*, the Minister may appoint a commission from the residents of the area concerned which shall make recommendations to the Minister, within six months or such longer or shorter period as the Minister may authorize or require, upon—

- (a) the proposed exercise of powers by the President; and
- (b) the matters referred to in subsection (1) of section *nine* where it is intended to establish a council for any proposed district and the Minister has required the commission to make recommendations to him upon those matters.

(2) If, before the President exercises his powers in terms of section *six*, the Minister has not appointed a commission in terms of subsection (1), the Minister shall take such steps as are reasonably necessary to give residents of the area concerned notice of the proposal to exercise such powers, and, in addition, shall cause a notice to be published in at least three issues of a newspaper—

- (a) stating that it is proposed to recommend to the President that he should exercise such powers and setting out the nature of the proposals and, in particular, to the extent applicable—
  - (i) the proposed boundaries of the district concerned;
  - (ii) the proposed name of the district concerned;
  - (iii) where the proposals will affect the area of any council or any ward thereof— A. the proposals in relation to the wards and councillors involved;
    - B. the proposed apportionment between any councils concerned of any property, assets, rights and liabilities, including the payment of any moneys and the protection of the rights of employees;
    - C. the nature of any powers proposed to be exercised in terms of subsection (3) of section *ten*;

and

- (b) calling upon any person who wishes to make representations in relation to the proposals to lodge them with the Minister within the period stated in the notice, which period shall be at least thirty days from the date of the last publication of the notice.

(3) When any recommendation is submitted to the President concerning the exercise of his powers in terms of section *six*, there shall be submitted to him, together with the recommendation—

- (a) the report of the commission, if any, appointed in terms of subsection (1); or
- (b) the substance and number of the objections, if any, lodged with the Minister in response to a notice published in terms of subsection (2);

as the case may be, together with any comments the Minister may wish to make on the report or objections.

(4) After considering any report or objections submitted to him in terms of subsection (3) in relation to any proposal to declare a district or alter the boundaries of a district, the President may, in the exercise of his powers in terms of section *six*—

- (a) declare a greater or lesser area to be a district; or
- (b) alter the boundaries of the district to a greater or lesser extent; as the case may be, and it shall not be necessary for the Minister to reconvene any commission appointed in terms of subsection (1) or to appoint a further such commission, or to cause a further notice to be published in terms of subsection (2);

Provided that the President shall not declare a greater area to be a district or alter the boundaries of a district to a greater extent unless he is satisfied that there has been adequate consultation with every council, commission and local authority concerned and with the people living in the area concerned.



## PART III

### ESTABLISHMENT, NATURE AND MEMBERSHIP OF RURAL DISTRICT COUNCILS

#### 8 Establishment and naming of councils and division of areas into wards

(1) Subject to this Part, whenever the President considers it desirable he may, by proclamation in the *Gazette*, do any one or more of the following—

- (a) establish a rural district council for any district with effect from a date specified in the proclamation, which date shall be at least sixty days after the publication of the proclamation;
- (b) assign a name to any council;
- (c) after consultation with the Commission, divide a council area into any number of wards.

[Paragraph inserted by section 3 of Act 1 of 2008]

(2) In dividing a council area into wards in terms of subsection (1), the President may define wards in Communal Land by reference to their boundaries or to a plan or in any other manner that he thinks appropriate.

[Subsection substituted by section 2 of Act 23 of 1998.]

#### 9 Consultation before exercise of powers relating to establishment of councils

(1) Before the President exercises his powers in terms of section *eight*, the Minister may appoint a commission from residents of the district concerned which shall, within six months or such longer or shorter period as the Minister may authorize or require, make recommendations to the Minister upon the following matters, to the extent that they are applicable—

- (a) the potentiality of the district for local government;
  - (b) the extent of the proposed council area and, in particular, whether or not it should extend to the whole district;
  - (c) the ward boundaries within the proposed council area;
- [Paragraph substituted by section 4 of Act 1 of 2008]
- (d) the number of councillors to be elected or appointed in terms of this Act;
  - (e) the need for area committees for any area within the proposed council area;
  - (f) the name of the proposed council;
  - (g) the headquarters of the proposed council and the number and location of, or need for, sub-offices within the proposed council area;
  - (h) the staff required to carry out the functions of the proposed council;
  - (i) where it is proposed to include within the proposed council area the whole or part of the area of any local authority, the allocation or apportionment of the assets, liabilities and staff of such local authority; (j) any other matters relevant to the establishment of the proposed council.

(2) Subject to subsection (3), if before the President exercises his powers in terms of section *eight* the Minister has not appointed a commission in terms of subsection (1), the Minister shall take such steps as are reasonably necessary to give residents of the district concerned notice of the proposal to exercise such powers, and, in addition, shall cause a notice to be published in at least three issues of a newspaper—

- (a) stating that it is proposed to recommend to the President that he should exercise such powers and setting out the nature of the proposals and, in particular, to the extent applicable—
  - (i) the area of the proposed council;
  - (ii) the number of wards of the proposed council area and their boundaries;
  - (iii) the number of councillors, if any, proposed to be appointed by the Minister;
  - (iv) the proposed name of the council;
  - (v) the location of the headquarters of the proposed council;
  - (vi) where it is proposed to include within the council area the whole or part of the area of any other local authority, the proposed allocation or apportionment of the assets, liabilities and staff of that local authority;
  - (vii) the nature of any powers proposed to be exercised in terms of subsection (3) of section *ten*; and
- (b) calling upon any person who wishes to make representations in relation to the proposals to lodge them with the Minister within the period stated in the notice, which period shall be at least thirty days from the date of the last publication of the notice.

(3) Where any question or matter has been—

- (a) reported upon by a commission appointed in terms of subsection (1) of section *seven*; or
- (b) specified in a notice published in terms of section (2) of section *seven*; it shall not be necessary for the Minister to appoint a commission in terms of subsection (1) to report upon that question or matter or to cause a notice to be published in terms of subsection (2) specifying that question or matter.

(4) When any recommendation is submitted to the President concerning the exercise of his powers in terms of section *eight*, there shall be submitted to him, together with the recommendation— (a) the report of the commission, if any, appointed in terms of subsection (1); or

(b) the substance and number of the objections, if any, that have been lodged with the Minister in response to the notice in terms of subsection (2);

as the case may be, together with any comments the Minister may wish to make on the report or objections.

(5) After considering any report or objections submitted to him in terms of subsection (4) in relation to any proposal to establish a council or to divide a council area into wards, the President may, in the exercise of his or her powers in terms of section 8 and after consultation with the Commission—

(a) declare a greater or lesser area within a district to constitute the council area; or

(b) divide the council area into different wards from those proposed; as the case may be, and it shall not be necessary for the Minister to reconvene any commission appointed in terms of subsection (1) or to appoint a further such commission, or to cause a further notice to be published in terms of subsection (2):

Provided that the President shall not declare a greater area within a district to constitute a council area unless he is satisfied that there has been adequate consultation with every local authority concerned and with people living in the area concerned.

[Section amended by section 4 of Act 1 of 2008.]

## **10 Incorporation of local authority areas into council areas**

(1) In this section—

“former local authority” means the local authority in which the jurisdiction, control or management of a former local authority area was vested immediately before the former local authority area became a council area or part of a council area;

“former local authority area” means any area which, immediately before becoming a council area or part of a council area, was under the jurisdiction, control or management of some other local authority.

(2) Notwithstanding anything contained in the Urban Councils Act [*Chapter 29:15*], the establishment of a council for a district in which there are one or more areas under the jurisdiction of a local authority shall have the effect of incorporating those areas within the council area and of vesting in the council the administration, control or management of any local government area within that district, unless the proclamation establishing the council expressly provides the contrary.

(3) Subject to subsection (4), where the whole or part of a council area is a former local authority area, the President may, either at the time the council is established or at any time thereafter—

(a) make such apportionment of property, assets, rights and liabilities, and give such directions as to any matters or things, including the payment of moneys and the protection of the rights of employees, as he considers necessary or desirable to do justice between the council and the former local authority concerned; and

(b) by statutory instrument, exercise all or any of the following powers—

(i) direct that all or any of the by-laws, regulations, rules or orders existing in respect of the former local authority area shall remain in force and shall apply within the whole or any part of the council area, as if they were by-laws made by the council in terms of this Act;

(ii) authorize the council to suspend the operation of all or any of its by-laws within the whole or any part of the former local authority area;

(iii) authorize the council to make such special by-laws as it deems advisable for the whole or part of the former local authority area;

(iv) declare that any existing valuation roll in respect of the whole or any part of the former local authority area which has been prepared in accordance with this Act or any other law shall be deemed to be the valuation roll or a portion of the valuation roll of the council as though it had been prepared in accordance with the provisions of this Act;

(v) declare that any existing voters' roll in respect of the whole or any part of the former local authority area which has been prepared in accordance with this Act or any other law shall be deemed to be the voters' roll or a portion of the voters' roll of the council as though it had been prepared in accordance with the Electoral Act [*Chapter 2:01*];

Subparagraph as amended by section 15 of Act No. 21 of 1997.

(vi) authorize the council to waive the collection of any levy, rate or special rate or to impose different levies, rates or special rates or different reductions in levies, rates or special rates in respect of different classes of persons or property and properties of different values within the whole or part of the former local authority area, as he may deem equitable, and for such purpose he may

- fix the method by which each such levy, rate or special rate or reduction in levies, rates or special rates shall be assessed from time to time;
- (vii) authorize the council to impose such levy, rate, special rate or other charge as he may direct to apply within any part of the former local authority area, and for such purposes he may exercise either or both of the following powers—
    - A. fix the amount of the levy, rate, special rate or charge;
    - B. declare that such provisions of this Act or any other law as he may specify shall apply, *mutatis mutandis*, in relation to such levy, rate, special rate or charge;
  - (viii) declare the whole or any part of the former local authority area to be a temporary ward or wards for the purpose of elections to the council, define the period for which the councillor to be elected for any such temporary ward is to hold office and authorize the holding of an election of such councillor; Subparagraph as amended by section 15 of Act No. 21 of 1997.
  - (ix) authorize or direct the council to recover, from taxpayers or ratepayers or former taxpayers or ratepayers within the former local authority area, such of the liability of the former local authority as the President considers equitable and attributable to the former local authority area;
  - (x) where the former local authority is a rural council or a district council, abolish such former local authority;
  - (xi) as to any matter or thing of any description whatsoever, whether or not it is of a similar nature to any matter or thing referred to in this subsection, give such directions, including the application non-application, suspension or modification, wholly, partly or subject to any variation or restriction of any provision of this Act, other than this section, or any other law, as he may consider equitable and necessary for the proper administration of the former local authority area or for the proper merging of the former local authority area into the council area.

(4) Where the whole or part of a council area is a former local authority area, the following provisions shall apply in addition to any apportionment, direction, authority, declaration or requirement made or given in terms of subsection (3)—

- (a) all rates, special rates, rents, taxes, levies and other charges due or payable to or recoverable by the former local authority shall be vested in and recoverable by the council;
- (b) all works and undertakings authorized to be executed, all rights, liabilities and engagements existing, and all actions, suits and proceedings pending, by or against or in respect of the former local authority, shall be vested in and attached to and may be enforced, carried on and prosecuted by or against the council, and no such action, suit or proceeding shall terminate or be discontinued or prejudicially affected by the substitution of the council for the former local authority;
- (c) all property, movable or immovable, and all moneys of or vested in the former local authority shall be vested in and belong to the council, without formal conveyance or assignment of the estate and interest of the former local authority, and, in the case of immovable property so vested, a Registrar of Deeds shall, without payment of any fee or duty, at the request of the council and on being satisfied with the title of the council to such property, register the council as owner of such property in lieu of the former local authority and shall make the appropriate amendments in his registers and on the title deeds relating to such property;
- (d) the reserves or reserve funds of the former local authority and the reserves or reserve funds of any other body which are taken over by the council shall be used only for those purposes and within those areas for which they were raised by the former local authority or such other body, as the case may be:
  - Provided that such reserves or reserve funds may, with the consent of the Minister, be used— (i) for purposes other than such purposes; or
  - (ii) outside such areas;
- (e) any cemetery established or maintained by the former local authority shall be taken over by the council, which shall be the trustees of such cemetery in terms of the Cemeteries Act [*Chapter 5:04*].

## 11 Membership of councils

- (1) Subject to this Act, every council shall consist of— (a) one elected councillor for each ward of the council area; and
- (b) such number of appointed councillors representing special interests, not exceeding one-quarter of the number of elected councillors, as the Minister may fix in respect of the council by statutory instrument.

(2) After consultation with the council concerned, the Minister may vary from time to time, by statutory instrument, the number of appointed councillors of a council:

Provided that the number of appointed councillors shall not exceed one-quarter of the elected councillors of the council.

## 12 Councils to be bodies corporate

Every council established in terms of this Act shall be a body corporate with perpetual succession and, in its own name, shall be capable of suing and being sued and, generally, of doing, suffering and performing all things which, in terms of this Act or any other law, it may do, suffer and perform.

## 13 First voters' rolls and election and appointment of first councillors

Section repealed by section 9 of Act No. 21 of 1997.

## PART IV

### QUALIFICATIONS, DISQUALIFICATIONS AND ENROLMENT OF VOTERS

Whole Part (ssection 14 to27) repealed by section 10 of Act No. 21 of 1997.

## PART V

### QUALIFICATIONS, DISQUALIFICATIONS AND TERMS OF OFFICE OF ELECTED AND APPOINTED COUNCILLORS

## 28 Qualifications of elected councillors

Section repealed by section 11 of Act No. 21 of 1997.

## 29 Disqualifications of elected councillors

Section repealed by section 11 of Act No. 21 of 1997.

## 30 Terms of office of elected councillors and re-election of councillors

(1) Every elected councillor shall assume office as a councillor on the day following the day of his election, and subject to section *thirty-two* shall hold such office until the day following the day on which a new councillor is elected for the ward concerned.

(2) A councillor elected otherwise than at a general election to fill a casual vacancy shall hold office for the remainder of the term for which the elected councillor whom he is replacing would have remained in office.

(3) Before undertaking any duty as such, a councillor shall take and subscribe before the chief executive officer of the council such oath of loyalty and office as may be prescribed.

Subsection as substituted by section 12 of Act No. 21 of 1997.

## 31 Appointed councillors

(1) Subject to this section, as soon as possible after the first election of councillors, the Minister, by notice in writing addressed to the chief executive officer of the council concerned, shall appoint such number of persons to be councillors as he may have fixed in terms of section *eleven*.

(2) Any person who—

(a) is ordinarily resident in the council area; and

(b) is not disqualified from election as an elected councillor in terms of section 103G of the Electoral Act [*Chapter 2:01*]; shall be qualified to be appointed as a councillor in terms of subsection (1).

Paragraph as amended by section 15 of Act No. 21 of 1997.

(3) Subject to section *thirty-two*, an appointed councillor shall hold office for such period as the Minister may fix on his appointment.

(4) Whenever there is a vacancy in the office of an appointed councillor, the Minister shall either re-appoint the councillor concerned or appoint another suitably-qualified person to fill the vacancy.

(5) When appointing a person to be a councillor in terms of subsection (1), the Minister may impose such conditions on the appointment, including conditions restricting the appointed councillor's right to vote at any meeting of the council or a committee thereof, as the Minister thinks fit, and the appointed councillor shall hold office subject to such conditions.

(6) The Minister shall notify the chief executive officer of the council concerned of any conditions he has imposed in terms of subsection (5).

## 32 Casual vacancies

(1) Subject to this section, a councillor shall vacate his office and his office shall become vacant— (a) in the case of an elected councillor, if he—

(i) resigns his office by notice in writing to the chief executive officer of the council; or

(ii) becomes disqualified in terms of section 103G of the Electoral Act [*Chapter 2:01*] from continuing as an elected councillor; Or Subparagraph as amended by section 15 of Act No. 21 of 1997.

(b) in the case of an appointed councillor—

- (i) one month after he gives notice in writing to the Minister and to the chief executive officer of the council of his intention to resign his office, or after the expiration of such shorter period of notice as the councillor concerned and the Minister, after consultation with the chairman of the council, may agree; or
- (ii) upon his becoming disqualified in terms of the proviso to subsection (2) of section *thirty-one* from being appointed a councillor; or
- (iii) if the Minister, after consultation with the chairman of the council, and upon being satisfied that the councillor—
  - A. has been guilty of conduct which renders him unsuitable as a councillor; or
  - B. is mentally or physically incapable of carrying out his duties as a councillor; requires him to vacate his office;

or

- (c) in the case of any councillor, whether elected or appointed, if—
  - (i) he dies; or
  - (ii) subject to subsection (2), he is absent without the permission of the council from three consecutive ordinary meetings of the council or, except in the case of the chairman of the council in his capacity as an *ex officio* member of a committee or subcommittee, from three consecutive ordinary meetings of a committee or subcommittee to which he has been appointed; or
  - (iii) subject to subsection (2), he is absent from ordinary meetings of the council for a continuous period exceeding six months, whether or not his absence has been authorized by the council; or
  - (iv) he ceases in terms of paragraph (b) of subsection (1) of section 22 of the Provincial Councils and Administration Act [*Chapter 29:11*], to be a councillor.

(2) Where a vacancy in the office of a councillor would, but for the provisions of this subsection, occur by reason of the absence of the councillor from meetings, the Minister, upon application by the council and on good cause shown, may excuse such absence for such period or periods and on such terms and conditions as he may fix.

(3) As soon as possible after he becomes aware that the office of an appointed councillor has become vacant in terms of subparagraph (ii) of paragraph (b) of subsection (1) or in terms of paragraph (c) of that subsection, the chief executive officer of the council shall give written notification to the Registrar-General of the vacancy.

Subsection as amended by section 15 of Act No. 21 of 1997.

## PART VI

### ELECTIONS AND ELECTION PROCEDURE

Whole Part (ssection 33 to 44) repealed by section 13 of Act No. 21 of 1997.

## PART VII

### PROCEEDINGS OF RURAL DISTRICT COUNCILS

#### 45 Chairman and vice-chairman

(1) At the first meeting of a council and at the first meeting after every general election, the councillors shall elect from among their number—

- (a) a chairman of the council who shall preside over all meetings of the council and perform such other functions as a chairman is required by this Act to perform; and
- (b) a vice-chairman of the council who shall perform all the functions of the chairman of the council whenever the office of chairman becomes vacant or the chairman is absent or incapacitated or refuses or fails to act.

(2) If at any time a council fails to elect a chairman or vice-chairman, the Minister may appoint any councillor to be chairman or vice-chairman, as the case may be, to hold office until the council elects a person to the office concerned.

(3) A chairman or vice-chairman of the council elected in terms of subsection (1) shall be entitled to hold office until the election of his successor in office unless he sooner vacates his office, and, in the event of such a vacancy, the councillors shall as soon as is practicable elect a successor to serve as chairman or vice-chairman of the council, as the case may be, for the unexpired term of office of his predecessor.

(4) If at any meeting at which the chairman or vice-chairman of the council is to be elected, more than one candidate is nominated for that office—

- (a) the election shall be by secret ballot; and

(b) if two or more candidates receive the same number of votes and the addition of one vote would entitle any of those candidates to be declared elected, the result as between those candidates shall be determined by the drawing of lots at that meeting.

(5) At the first meeting of a council the district administrator shall take the chair until the councillors have elected a chairman of the council, whereupon the person so elected as chairman shall immediately take over the chairmanship.

(6) The district administrator shall have no deliberative or casting vote at the meeting referred to in subsection (5).

(7) If for any reason referred to in paragraph (b) of subsection (1) the vice-chairman of the council is by this Act required to perform the functions of the chairman of the council but the vice-chairman is absent or incapacitated or refuses or otherwise fails to act as chairman, all the functions that may or are required to be performed by the vice-chairman may lawfully be performed by any councillor whom the council may appoint for the purpose or, failing such appointment by the council, by such other person, whether or not he is qualified to become a councillor, as the Minister may appoint.

#### **46 Meetings and special meetings of councils**

(1) A council may meet together for the dispatch of business, adjourn and otherwise regulate its meetings and proceedings as it thinks fit:

Provided that every council shall meet as soon as is practicable after each election and, subject to any other law, shall thereafter meet at least once in every three months, at such time and place as it may determine.

(2) Save as otherwise provided in this Act, any question before a meeting of a council shall be decided by resolution passed by a majority of the councillors present at the meeting and, in the event of an equality of votes, the chairman of the council shall have a casting vote in addition to his deliberative vote:

Provided that the chairman shall not have a casting vote where the question concerns the rescission or alteration of a previous resolution of the council.

(3) The chairman of a council may at any time and, at the request of no fewer than one-third of the councillors, shall, call a special meeting of the council.

(4) Written notice of any special meeting called in terms of subsection (3) shall be sent to each councillor at least six days before the meeting and shall specify the object of the meeting, and no subjects other than those specified in such notice shall be discussed at such meeting.

(5) At least seven days before any ordinary meeting of a council a notice shall be sent to each councillor and shall be displayed by the chief executive officer at the places at which, and in the manner in which, the notices of the council are normally displayed and in such other places as may be prescribed, stating the day, time and place of the meeting and the business to be transacted thereat.

#### **47 Quorum at meetings**

Except where any other enactment requires a different number of councillors to be present, all powers vested in a council by this Act may be exercised at any duly convened meeting thereof at which there are present no fewer than one-third of the total number of the councillors entitled to sit on the council and, in addition, the chairman of the council or, in his absence, the vice-chairman or a councillor or person appointed in terms of subsection (7) of section *forty-five*.

#### **48 Disability from voting on account of interest in contracts, etc.**

(1) If a councillor has any direct or indirect pecuniary interest in any contract or proposed contract or other matter and is present at a meeting of the council or any committee of the council at which the contract or other matter is the subject of consideration, he shall at the meeting, as soon as practicable after the commencement thereof, disclose the fact and shall withdraw from the meeting while the contract or other matter is under consideration or being voted upon and shall not vote on any question relating thereto:

Provided that this section shall not apply to an interest in a contract or other matter which a councillor may have as an inhabitant of the council area or as a payer of any levy or charge, or as an ordinary consumer of water, or to an interest in any matter relating to the terms on which the right to participate in any service, including the supply of goods, is offered to the public.

(2) For the purposes of this section, a person shall be treated as having an indirect pecuniary interest in a contract or other matter if—

- (a) he or any nominee of his is a member of a company or other body with which the contract is made or is proposed to be made or which has a direct pecuniary interest in such other matter; or
- (b) he is a partner, or is in the employment, of a person with whom the contract is made or is proposed to be made or who has a direct pecuniary interest in such other matter: Provided that—
  - (i) this subsection shall not apply to membership of, or employment under, any statutory body or commission;

(ii) a member of a company or other body shall not, by reason only of his membership, be treated as being so interested if he has no beneficial interest in any shares or stock of that company or other body.

(3) In the case of married persons who are— (a) married in community of property; or

(b) married out of community of property and living together; the interest of one spouse, if it is known to the other, shall be deemed for the purposes of this section to be also an interest of that other spouse, and in any prosecution for a contravention of this section it shall be presumed unless the contrary is shown that the interests of each such spouse were known to the other.

(4) The Minister may remove, subject to such conditions as he may think fit to impose, any disability imposed by this section in any case in which the number of councillors so disabled at any one time would be so great a proportion of the whole as to impede the transaction of business, or in any other case in which it appears to the Minister that it is in the interests of the inhabitants of the council area that the disability should be removed.

(5) Any councillor who knowingly contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001.]

(6) A councillor shall not be prosecuted for an offence in terms of this section without the authority of the Attorney-General.

#### **49 Validity of proceedings of councils**

(1) No decision, act or proceedings of a council shall be invalid by reason only of the fact that—

(a) there was a vacancy in the number of councillors of the council; or

(b) a person who was not a councillor acted as councillor, when the decision was taken or the act was done or authorized or the proceedings took place, as the case may be.

(2) No decision or act of any person acting as chairman, chief executive officer, employee or auditor of a council shall be invalid by reason only of there being some defect in the election, appointment or qualification of such person.

#### **50 Meetings open to public**

(1) Every meeting of a council shall be open to the public unless the council has resolved itself into committee, in which event the public shall be excluded from the meeting:

Provided that the council in committee may invite any person to attend any meeting of the council in committee as observers.

(2) Any resolution adopted by a council in committee shall have full force and effect as a resolution of the council.

#### **51 Minutes of proceedings**

(1) A council shall cause minutes to be made in the English language of all proceedings of the council and of its committees and shall cause to be recorded therein the names of the chairman of the council and all councillors attending any meetings and the names of the councillors voting respectively for or against any matter for the decision of which a division is called.

(2) The minutes kept of proceedings of a council or a committee shall be recorded in a book kept for the purpose, or on loose sheets of paper which shall subsequently be bound into a book.

(3) The minutes of a meeting of a council or a committee shall, if in order, be confirmed as soon as possible and when so confirmed shall be signed by the chairman of the meeting at which they are confirmed.

(4) A document purporting to be—

(a) the minutes of a meeting of a council or of a committee and signed as provided in subsection (3); or

(b) a copy of extract from such minutes certified by the secretary as correct; shall, on its mere production in a court of law by any person, be prima facie proof of the facts set out therein, and all matters relating to the meeting of which the said minutes purport to be the record shall be presumed to have been done and executed with the due formalities until the contrary is proved.

(5) All minute books shall be kept by the chief executive officer.

(6) After they have been confirmed in terms of subsection (3), the minutes of proceedings of a council and its committees shall at all reasonable times be open to inspection by any inhabitant of the council area or creditor of the council, who may obtain a copy thereof or an extract therefrom on payment of a fee, not exceeding such amount as may be prescribed in regulations, fixed by resolution of the council: Provided that—

(i) minutes of proceedings conducted in committee in terms of subsection (1) of section *fifty* shall not be open to inspection;

(ii) minutes of proceedings of committees relating to any legal proceedings or property negotiations to which the council is or may become a party and the disclosure of which is considered by the committee to be prejudicial to the general interest shall not be open to inspection;

(iii) where any minute contains a reference to a document, such document shall not be open to inspection without the permission of the council.

(7) At any meeting of a council, upon a request by a councillor, the chief executive officer shall record the dissent of such councillor to any resolution passed by the meeting and the reasons for his dissent:

Provided that the chief executive officer shall not refer in such reasons, whether by name or designation of office, to any other councillor.

(8) A copy of all minutes referred to in this section shall be sent to the Minister within six weeks of the date on which the meeting to which they relate was held.

## **52 Rescission or alteration of resolutions**

(1) Subject to subsection (3), a resolution passed at a meeting of a council shall not be rescinded or altered at a subsequent meeting of the council— (a) unless—

- (i) a committee has recommended that that resolution should be rescinded or altered; or
- (ii) a notice of motion to rescind or alter that resolution has been given to the chief executive officer of the council at least seven days before the subsequent meeting and the notice of motion has been signed by no fewer than one-third of the total membership of the council;

and

(b) if the rescission or alteration occurs within a period of six months from the date of the passing of the original resolution and the number of councillors present at the subsequent meeting does not exceed the number of councillors present when the original resolution was passed, unless at least two-thirds of the councillors present at the subsequent meeting vote in favour of that rescission or alteration.

(2) The chief executive officer to whom any notice of motion has been given in terms of subsection (1) shall send a copy thereof to each councillor at least two days before the subsequent meeting at which such motion is to be moved.

(3) The Minister may at any time, by notice in writing to the council concerned, direct a council to rescind or alter any resolution passed at a meeting of the council, and the council shall comply with any such direction at its next meeting.

(4) Nothing in subsection (1) shall be construed as precluding a council from rescinding or altering a resolution passed at a previous meeting in a manner other than that recommended by the committee or specified in a notice of motion, as the case may be.

## **53 Minister's approval required for certain resolutions**

(1) The Minister may, by notice in writing to the council concerned, direct that any resolution of a council dealing with such matters or class of matters as are specified in the notice shall be submitted to him for approval.

(2) Where the Minister has issued a notice in terms of subsection (1), no resolution passed by the council concerned and dealing with any matter specified in the notice shall be of any force or effect as a resolution of the council until the Minister has signified in writing to the council that he approves the resolution.

(3) For the avoidance of doubt it is declared that a notice issued by the Minister in terms of this section shall not affect the validity of—

- (a) any resolution passed by the council concerned before the date on which the notice was received by the council; or
- (b) anything done in terms of a resolution referred to in paragraph (a), whether it was done before or after the notice was issued.

## **54 Maximum period of leave of absence of councillors**

A council may grant any councillor leave to absent himself from the meetings of the council during a period not exceeding one hundred and eighty days in aggregate in any continuous period of three hundred and sixty-five days:

Provided that—

- (i) not more than one-third of the total number of councillors shall be absent on leave at any one time for a period in excess of two months;
- (ii) not more than one-half of the total number of councillors shall be absent on leave at any one time.

## **PART VIII**

### COMMITTEES OF RURAL DISTRICT COUNCILS

## **55 Finance committee**

(1) Every council shall appoint a committee, to be known as the finance committee, to regulate—

- (a) the collection of all income and the expenditure of all moneys authorized in the confirmed estimates or supplementary estimates of the council; and



(b) the overall financial affairs of the council and its committees; in accordance with standing orders or by-laws, if any, of the council.

(2) The finance committee shall consist of—

(a) such number of councillors, not exceeding five, as the council may appoint; and

(b) such number of councillors, not exceeding one fewer than the number appointed by the council in terms of paragraph (a), as the Minister may appoint.

(3) Unless otherwise directed by the Minister, the finance committee shall meet at least once a month.

(4) At least once every three months, or at such shorter intervals as the council may direct, the finance committee shall submit at an ordinary meeting of the council a schedule of all payments made by or on behalf of the council and any committee thereof.

(5) As soon as possible after the end of every financial year, the finance committee shall submit at an ordinary meeting of the council an interim report showing the financial transactions and affairs of the council during that financial year.

## 56 Area committees

(1) A council may appoint a committee, to be known as an area committee, to exercise any function of the council within any area of urban land within the council area.

(2) An area committee shall consist of the councillor representing each ward which falls wholly or partly within the area for which the committee has been established, together with—

(a) the members of every village development committee and neighbourhood development committee within the area concerned, where that area constitutes or forms part of one or more communal or resettlement wards;

(b) not more than two co-opted members, selected in terms of subsection (3), for every ward or part of a ward which falls within the area concerned, where those wards are not communal or resettlement wards.

(3) In order to select the co-opted members for an area committee in terms of paragraph (b) of subsection (2), the chief executive officer of the council shall call a public meeting of voters in each ward or part of a ward concerned and at such meeting the co-opted members shall be elected in a manner agreed upon by the meeting:

Provided that, where at such meeting no members or insufficient members are so elected, the council may appoint the number of co-opted members required.

(4) The chairman of an area committee shall be chosen by the members of the area committee from among the councillors appointed to the committee:

Provided that, if there is only one such councillor, that councillor shall be the chairman.

(5) Subject to subsection (6), an area committee shall have such powers and exercise such functions in relation to the area for which it has been established as the council may delegate to it.

(6) A council shall not delegate to an area committee—

(a) power to impose levies, rates, special rates, rents or charges, to borrow money, to expropriate property or to make by-laws; or

(b) unless the Minister has authorized such delegation, any power specified in paragraph 31, 35, 38, 39 or 45 of the First Schedule.

## 57 Town boards

(1) For each town area of a council area there shall be a committee, to be known as a town board, consisting of—

(a) the councillors elected for the town wards which constitute the town area concerned; and

(b) such number of other persons or councillors, not exceeding one fewer than the number of councillors referred to in paragraph (a), as the Minister may appoint.

(2) A council shall delegate to a town board the powers held by the council which are solely concerned with the town area for which the town board is appointed, except—

(a) the power to impose levies, rates, special rates, rents or charges, to borrow money, to expropriate property or to make by-laws; or

(b) the powers specified in paragraph 20, 27, 28 or 30 of the First Schedule:

Provided that the Minister, after consultation with the council concerned, may authorize a town board to exercise, wholly or in part, any power specified in paragraph 20, 27, 28 or 30 of the First Schedule.

(3) Prior to the establishment of a council within whose area there is to be a town area, the commission appointed in terms of section *nine* or, where a commission is not so appointed, such member of the Public Service as the Minister may designate, shall draw up—

(a) a list of functions and services which are to be financed from moneys raised within the town area, to be known as local functions, and apportion thereto the proportion of the cost to the council directly or

indirectly involved in performing such functions and services which will be required to be met from such moneys; and

- (b) a list of functions and services benefiting the council area as a whole, the costs of which will be required to be met partly from moneys raised within the town area, to be known as common functions, and show the amount to be charged to the town area.
- (4) No area under the jurisdiction of a town council shall be wholly or partly included within a town area until lists drawn up in terms of subsection (3) and relating to that town area have been approved by that town council.
- (5) Where after a council has been established, any part of its area becomes a town area, the council shall— (a) with the approval of the town board concerned, draw up the list of local functions; and (b) in consultation with the said town board, draw up the list of common functions.
- (6) A council may amend any list drawn up in terms of subsection (3) or (5)— (a) with the approval of the town board, in the case of a list of local functions; (b) in consultation with the town board, in the case of a list of common functions.
- (7) In cases of dispute as to items included in a list of common functions the matter shall be referred to the Minister, whose decision shall be final.

### **58 Roads committee**

- (1) A council shall appoint a roads committee for the consideration of all matters relating to the construction and maintenance of roads in the council area.
- (2) A roads committee shall consist of—
  - (a) such number of councillors as the council may appoint; and
  - (b) such number of other persons or councillors, not exceeding one fewer than the total number of councillors referred to in paragraph (a), as the Minister may appoint.
- (3) Subject to subsection (4), a roads committee shall have such powers relating to the construction and maintenance of roads as are delegated to it by the council.
- (4) A roads committee shall not—
  - (a) have power to impose levies, rates, special rates, rents charges, to borrow money, to expropriate property or to make by-laws; or
  - (b) unless the Minister, after consultation with the council has authorized the roads committee to do so, purchase any plant or machinery or exercise any power specified in paragraph 20, 21, 22, 23 or 50 of the First Schedule.

### **59 Ward development committees**

- (1) For each ward of a council area there shall be a committee, to be known as a ward development committee, consisting of—
  - (a) the councillor for the ward, who shall be the chairman of the committee; and
  - (b) the chairman and secretary of every village development committee and neighbourhood development committee in the ward:

Provided that, in the case of a ward in which there is neither a village development committee nor a neighbourhood development committee, the Minister shall appoint persons to the ward development committee from a list of names prepared by the councillor for the ward.

- (2) Where for any reason a ward development committee cannot be constituted for lack of representation, the Minister may appoint such persons as he thinks fit to constitute the committee.
- (3) A ward development committee shall, on or before the 31st March in each year, prepare and submit a ward development plan to the rural district development committee of the council.

### **60 Rural district development committee**

- (1) For each council area there shall be a committee, to be known as the rural district development committee, consisting of—
  - (a) the district administrator; and
  - (b) the chairman of every other committee established by the council; and
  - (c) the chief executive officer of the council and such other officers of the council as the council may determine; and
  - (d) the senior officer in the district of—
    - (i) the Zimbabwe Republic Police; and
    - (ii) the Zimbabwe National Army; and
    - (iii) the President's Department; and
  - (e) the district head of each Ministry and department of a Ministry within the district that the Minister may designate by notice in writing to the district administrator; and

(f) such further persons representing other organizations and interests as the Minister, on the recommendation of the district administrator, may permit.

(2) If there is no officer who is the senior officer or district head of any force, department or Ministry referred to in paragraph (d) or (e) of subsection (1), or if there is doubt as to which officer is the senior officer or district head, as the case may be, the Commander of the force or the head of the department or the Secretary of the Ministry, as the case may be, shall, at the request of the district administrator concerned, designate an officer in his force, department or Ministry to be the senior officer or district head of the force, department or Ministry in the district concerned.

(3) The persons appointed as members of a rural district development committee in terms of paragraph (f) of subsection (1) shall hold office at the pleasure of the Minister.

(4) The district administrator shall preside at all meetings of a rural district development committee at which he is present and, in his absence, the members present shall elect a district head of a Ministry or department referred to in paragraph (e) of subsection (1) to preside at the meeting.

(5) The functions of a rural district development committee shall be—

(a) to consider ward development plans submitted to it in terms of section *fifty-nine*; and

(b) to make recommendations to the council as to matters to be included in the annual development and other long-term plans for the district within which the council area is situated; and

(c) to prepare the annual district development plan for approval by the council and assist in the preparation of other long-term plans for the council area; and

(d) when instructed to do so by the council, to investigate the implementation of the annual development and other long-term plans for the council area; and

(e) to exercise such other functions in relation to the annual development and other long-term plans for the district as may be assigned to it from time to time by the council.

(6) A district development plan referred to in paragraph (c) of subsection (5) shall be prepared and presented to the council before the 31st May in every year.

(7) Subject to subsection (9), the district administrator shall fix the times and places of all meetings of a rural district development committee, and subsection (11) shall apply *mutatis mutandis*, to the convening of such meetings.

(8) A majority of the members referred to in subsection (1) shall form a quorum at any meeting of a rural district development committee.

(9) The chairman of the council may at any time direct that a joint meeting be held between the council and its rural district development committee for the purpose of considering and approving the district development plan referred to in paragraph (c) of subsection (5).

(10) A joint meeting referred to in subsection (9) shall be held at such place and time as the council chairman may direct, and he shall be the chairman of any such joint meeting.

(11) At least twenty-one days before a joint meeting referred to in subsection (9), the chief executive officer of the council shall send a notice stating the date, time and place of the joint meeting and the business to be transacted thereat to each member of the council and the rural district development committee, and shall display the notice at the places at which and in the manner in which notices of the council are normally displayed or in such other place and manner as may be prescribed in regulations.

(12) At any joint meeting referred to in subsection (9) every councillor and member of the rural district development committee who is present shall be entitled to one vote on every question before the meeting:

Provided that only councillors may vote on the final approval of an annual district development plan referred to in paragraph (c) of subsection (5).

## **61 Environment committee and subcommittee**

(1) In this section—

“Minister” means the Minister as defined in section 2 of the Environmental Management Act [*Chapter 20:27*].

(2) Every council shall appoint a committee, to be known as the environment committee, to exercise the following functions□

(a) to recommend to the council measures for the management and protection of the environment in the council area; and

(b) to recommend to the council ways of implementing environmental measures which the council is authorised or required to undertake in terms of any other law; and

(c) to prepare and recommend to council environmental plans required in terms of the Environmental Management Act [*Chapter 20:27*]; and

(d) generally, to co-operate with the Minister in carrying out the objects and purposes of the Environmental Management Act [*Chapter 20:27*].

(3) An environment committee shall consist of such number of members as the council may fix in consultation with the Minister, and of those members—

- (a) half shall be councillors appointed by the council; and
- (b) half shall be persons other than councillors, appointed by the council in consultation with the Minister.

(4) The persons appointed as members of an environment committee in terms of paragraph (b) of subsection (3) shall hold office for such period and subject to such terms and conditions as the council may fix with the approval of the Minister.

(5) Persons authorised by the Minister shall be entitled to attend any meeting of an environment committee but shall have no vote on any question to be decided at the meeting.

(6) To assist its environment committee in carrying out its functions, a council may, in consultation with the Environment Board established in terms of section 19 of the Environmental Management Act [*Chapter 20:27*], and shall, if directed to do so by the Minister—

- (a) appoint one or more environment subcommittees to exercise functions relating to the environment and natural resources within one or more wards or one or more villages in the council area; and
- (b) delegate to any such environment subcommittee all or any of the functions of an environment committee.

(7) An environment subcommittee appointed in terms of subsection (6) shall consist of the following members—

- (a) a chairman, who shall be the councillor for the ward or one of the councillors for the wards, as the case may be, for which the subcommittee is established; and
- (b) a person nominated by the Secretary; and
- (c) not more than two co-opted members, selected in terms of subsection (8), for every ward or village which falls within the area for which the subcommittee is established; and
- (d) such other persons as are appointed or elected in terms of regulations made by the Minister with the consent of the Minister responsible for the administration of the Environmental Management Act [*Chapter 20:27*].

(8) In order to select the co-opted members for an environment subcommittee in terms of paragraph (c) of subsection (7), the council's chief executive officer shall call a public meeting of the voters in each ward concerned and, at such meeting, the co-opted members shall be elected in a manner agreed upon by the meeting:

Provided that, if such a meeting fails to elect the required number of members, the council may appoint them.

(9) The Minister may, if he considers it expedient, designate a ward development committee or a village development committee as an environment subcommittee for purposes of this section.

(10) The council shall ensure that the boundaries of the area for which every environment subcommittee is appointed in terms of subsection (6) coincide with the boundaries of one or more wards or villages of the council area.

[Section inserted by section 142 of Act 13 of 2002]

## **62 Other committees of council**

(1) Subject to this Act, a council may appoint such committees, whether of a general, special or local nature, as it may think fit, and may delegate to any such committee, subject to such terms and conditions as the council may think fit, any power that may be exercised by the council: Provided that—

(i) the council shall appoint a committee whenever directed to do so by the Minister and shall delegate to the committee such functions as the Minister may direct; (ii) the council shall not delegate to any committee—

- (a) power to impose levies, rates, special rates, rents or charges, to borrow money, to expropriate property or to make by-laws; or
- (b) unless the Minister has authorized such delegation, any power specified in paragraph 1 of the First Schedule.

(2) Subject to this Part, a council may continue, alter or discontinue a committee appointed in terms of subsection (1):

Provided that a council shall not alter or discontinue a committee referred to in proviso (i) to subsection (1) without the consent of the Minister.

(3) Every committee referred to in subsection (1) shall consist of— (a) two or more councillors appointed to the committee by the council;

(b) such persons, other than councillors, who are enrolled on any voters' roll for a ward of the council area as the council may, in consultation with the committee; co-opt to be members of the committee:

Provided that the number of co-opted members shall not exceed the number of councillors.

(4) A person co-opted to be a member of a committee in terms of paragraph (b) of subsection (3)— (a) shall hold office for such period and subject to such conditions as the council may fix; and

- (b) shall not be eligible for appointment as the chairman of the committee; and
- (c) shall be subject to section *forty-eight*, which shall apply, *mutatis mutandis*, to such member.

### **63 General provisions applicable to all committees**

- (1) In this section—

“committee” includes a natural resources conservation sub-committee.

(2) The chairman of the council shall be an *ex officio* member of every committee appointed or established by a council under this Act, but unless he has been specifically appointed or elected to a committee he shall not be entitled to vote or be elected as chairman of the committee.

(3) All powers vested in a committee in terms of this Act may be exercised at any duly convened meeting thereof at which no fewer than one-half of the whole number of members and, in any case, no fewer than two members, are present:

Provided that the presence of the chairman of the council solely in his capacity as an *ex officio* member of the committee shall be disregarded for the purposes of this subsection.

- (4) Subject to sections *fifty-nine*, *sixty* and *sixty-one*, every committee— (a) shall elect a chairman; and

(b) may elect a vice-chairman; from among its members who are councillors.

- (5) If, at any meeting of a committee—

(a) the chairman of the committee is absent, the vice-chairman shall act as chairman;

both the chairman and vice-chairman of the committee are absent or the chairman is absent and no vice-chairman has been elected, the committee shall elect one of its members who is a councillor or, if there is no such councillor present, one of its other members, to act as chairman at that meeting.

(6) Any question before a meeting of a committee shall be determined by resolution passed by a majority of the members thereof present at the meeting and, in the event of an equality of votes, the chairman of the committee shall have a casting vote in addition to his deliberative vote.

(7) A committee shall hold its first meeting on such date and at such place as the council may fix and thereafter the committee shall meet for the dispatch of business and adjourn, close or otherwise regulate its meetings and procedure as it thinks fit, subject to the provisions of any standing orders or by-laws of the council.

(8) Every committee shall report its proceedings to the council at such intervals as the council may direct, but, to the extent to which the council directs, the acts and proceedings of a committee shall not require the approval of the council.

(9) A council shall not take any action on matters relating to the functions of its finance committee or its roads committee until the committee concerned has had an opportunity to consider and report upon the matter to the council.

(10) Unless it has already been ratified by the council, a resolution passed at a meeting of a committee may be rescinded or altered at any subsequent meeting of the committee.

(11) Subject to this Part, sections *fifty* and *fifty-four* shall apply, *mutatis mutandis*, to any committee established or appointed in terms of this Act in the same way as those sections apply to a council.

#### **64 Subcommittees**

(1) In this section—

“parent committee”, in relation to a subcommittee, means the committee that has appointed the subcommittee.

(2) Any committee may appoint one or more subcommittees, which shall—

(a) report to the parent committee on such matters as the parent committee may assign to it or them; or

(b) take no action on any matter without prior approval of the parent committee; and (c) be subject

to—

(i) such terms of reference as may be determined by the parent committee; and (ii) such conditions as the parent committee may fix.

(3) Each subcommittee shall elect a chairman from among its members

(4) Where the council chairman is not appointed as a member of a subcommittee; he shall—

(a) be a member *ex officio* of the subcommittee; and

(b) not be entitled to vote nor to be elected chairman of the subcommittee.

(5) Subject to any regulations made in terms of section *one hundred and fifty-nine* and to any resolution passed by the council or parent committee concerned, no provision of this Act relating to the procedure to be adopted by a committee shall apply to a subcommittee of that committee.

### **PART IX**

#### **STAFF OF RURALDISTRICT COUNCILS**

#### **65 Interpretation in Part IX**

In this Part—

“employee” means a person, other than an officer, who is employed by a council in terms of this Part;

“officer” means the chief executive officer, treasurer, engineer, medical officer of health or any other head of department employed by a council in terms of this Part.

#### **66 Appointment of officers and employees of councils**

(1) Subject to this section, a council shall appoint a person approved by the Minister to be the chief executive officer of the council.

(2) If a council has not appointed a chief executive officer in terms of subsection (1) or if the office of chief executive officer of a council is for any reason vacant, the Minister, subject to the laws relating to the Public Service and after consulting the council may appoint a member of the Public Service to be the chief executive officer of the council for such definite or indefinite period as the Minister may fix.

(3) Subject to this section, a council may appoint such other officers and employees as it considers to be necessary or desirable for exercising the functions of the council: Provided that no person shall be—

(a) appointed as or promoted to become an officer; or

(b) appointed as an employee of such class or grade as the Minister may designate for the purposes of this section by notice in writing to the council; without the approval of the Minister

(b)

### **67 Conditions of service of officers and employees of councils**

(1) Subject to this section and to regulations made in terms of section *one hundred and fifty-nine*, the conditions of service of officers and employees of a council shall be fixed by the council with the approval of the Minister given after consultation with the Public Service Commission and the Parastatals Commission.

(2) A council shall ensure that each contract of employment entered into between the council and any officer is in writing.

### **68 Delegation of powers to appoint and dismiss employees of councils**

(1) With the approval of the Minister and subject to any other enactment, a council may delegate to—

- (a) the chairman of the council power to appoint or dismiss employees; or
- (b) an officer the power to appoint or dismiss employees to or from, as the case may be, his department.

(2) Upon any delegation in terms of subsection (1), the provisions of this Act relating to the appointment or dismissal of employees which are appropriate shall apply, *mutatis mutandis*, to the chairman of the council or the officer, as the case may be, as if he were the council.

### **69 Delegation of powers of councils to officers and employees**

(1) Subject to this section and to any conditions that the council may impose, a council may delegate to any of its officers and employees such of the powers vested in it by or under this Act or any other enactment as it considers to be necessary or desirable.

(2) A council shall not delegate to any officer or employee—

- (a) any power which the Minister, by written notice to the council, has directed shall not be delegated; or
- (b) any power conferred upon it by any other enactment, unless the proposed delegation has been approved by the Minister responsible for the administration of the enactment concerned and any conditions fixed by that Minister are complied with; or
- (c) the powers conferred by subsections (4) and (5).

(3) A council may at any time, and shall, if the Minister so directs, amend or withdraw any delegation of powers in terms of subsection (1):

Provided that no such amendment or withdrawal shall affect the validity of anything done in pursuance of a decision lawfully taken by the officer or employee concerned before the amendment or withdrawal.

(4) A council may at any time amend or rescind a decision of an officer or employee in the exercise of powers delegated to him in terms of subsection (1).

(5) Any person who is aggrieved by the decision of an officer or employee acting under powers delegated to him in terms of subsection (1) may bring the matter to the appropriate head of department in the first instance and, failing satisfaction, to the council for re-examination.

(6) The delegation of any powers by a council in terms of subsection (1) shall not preclude the council from itself exercising the powers so delegated.

### **70 Corrupt practices by officers and employees of councils**

Without prejudice to any other penalty to which he may become liable in terms of any other law, if any officer or employee—

- (a) solicits, exacts or accepts or agrees to accept or attempts to obtain any fee or reward whatsoever, other than any remuneration or allowance paid to him by the council, as an inducement or reward for doing or forbearing to do or having done or forborne to do anything in connection with his employment or the affairs of the council; or
- (b) negotiates or enters into any contract on behalf of the council without disclosing to the council any financial or other interest he may have in the subject matter of the contract or any personal relationship he may have with any of the parties to the contract; or
- (c) steals any money or property of the council; and is discharged in terms of this Part, the officer or employee shall not afterwards be capable of being employed by that council or by any other local authority unless the Minister, by notice in writing to the council or local authority concerned, permits such employment.

## **PART X**

### **POWERS AND DUTIES OF RURAL DISTRICT COUNCILS**

### **71 Powers of councils generally**

(1) A council shall have power to undertake or carry out any or all of the matters and things set out in the First Schedule, subject to this Act and any law to the contrary.

(2) In addition to any powers that are provided for by this Act or any other law, or as an extension of any such power, a council may be authorized by the Minister to do or carry on any act or thing which, in his opinion, is—

- (a) incidental to the exercise of the council's powers; or

necessary or desirable in the interests of all or some of the inhabitants of the council area.

(3) A council may incur such expenditure as may be necessary for any purpose—  
(a) which it is authorized to carry out by this Act or any other law; or (b) which, although not expressly authorized by this Act, is—

- (i) incidental to the exercise by the council of its functions under this Act; or
- (ii) necessary or desirable in the interests of the inhabitants of the council area generally;

Provided that the amount expended in terms of this subparagraph for any one purpose shall not exceed two hundred dollars except with the approval of the Minister.

## **72 Powers in regard to sewerage and drainage**

Within any urban land a council may exercise all the powers in relation to sewerage and drainage that are conferred upon town councils by Part XII of the Urban Councils Act [*Chapter 29:15*].

## **73 Enforcement of conditions of title**

(1) Subject to this section, a council shall do all things necessary to ensure that the conditions of the establishment of any township within the council area and the conditions of title to any land in the council area are properly observed and, without derogation from the generality of the foregoing, may, for such purposes—

- (a) without compensation, cause any building wilfully erected in contravention of any such condition to be demolished and recover from any person responsible for such contravention the expenses incurred by the council in connection with such demolition;
- (b) prohibit the use of any building or land which contravenes any such condition;
- (c) execute any work which under any such condition it is the duty of any person to execute and recover from such person the expenses incurred by the council in executing such work.

(2) Before taking any action in terms of subsection (1), the council shall serve notice on the owner and on the occupier of the building or land in respect of which the action is proposed to be taken, specifying the nature of the action proposed and the grounds upon which the council proposes to take that action.

(3) If—

- (a) the notice in terms of subsection (2) relates to a condition which imposes—
  - (i) restrictions on the purposes for which the property may be used; or
  - (ii) any requirements to be complied with or to be observed in connection with the erection of any building on the property; or
  - (iii) any restriction or requirement to be observed not referred to in subparagraphs (i) and (ii), which is the subject of control under an approved scheme, operative master plan or operative local plan as defined in the Regional, Town and Country Planning Act [*Chapter 29:12*], that relates to the area in which that property is situated;

and

(b) the person upon whom the notice has been served is aggrieved by the action proposed to be taken in terms of subsection (1); he may, within twenty-eight days after the date of the service of such notice, appeal to the Administrative Court and no action thereafter shall be taken by the council until the appeal has been determined by that court or the appeal has been withdrawn or abandoned.

(4) If on an appeal in terms of subsection (3) the Administrative Court—

- (a) is satisfied that the council is entitled to take the proposed action on the grounds specified in the notice, it shall dismiss the appeal;
- (b) is not satisfied that the council is entitled to take the proposed action on the grounds specified in the notice, it shall allow the appeal.

## **74 Development functions of councils**

(1) Subject to this Act, a council shall have power and authority to—

- (a) promote the development of the council area; and
- (b) formulate policies, both long-term and short-term, for the council area; and
- (c) prepare annual development and other plans for the council area; and
- (d) monitor the implementation of development plans and policies within the council area; and
- (e) exercise any other functions in relation to development that may be conferred upon it by or in terms of this Act or any other enactment.

(2) Before the 1st August in each year, a council shall consider the annual district development plan which has been prepared for it by its rural district development committee in terms of paragraph (c) of subsection (5) of section *sixty*.

(3) A council may amend or modify any district development plan referred to in subsection (2) and shall approve such plan, whether amended or otherwise, before the 1st August in each year.



(b)

(4) The council shall forward a district development plan approved in terms of subsection (3) to the provincial development committee established for the province concerned in terms of the Provincial Councils and Administration Act [*Chapter 29:11*], together with a copy of the latest council estimates approved in terms of subsection (5) of section *one hundred and twenty-one* before the 1st August in any year.

**75 Owners and occupiers of land may be charged for services made available** Where—

- (a) any stand, lot, premises or other area, whether with or without improvements, within the council area is or could reasonably be connected to any sewer, water main or electricity main of the council; or
- (b) a service for the removal of refuse has been made available by the council to any stand, lot, premises or other area, whether with or without improvements, within the council area; the owner of such stand, lot, premises or area or, if there is no owner, any person having a right to use such stand, lot, premises or area—
  - (i) shall be deemed to be the user of the service in question, whether or not he makes use of it; and (ii) may be charged by the council such amount as the council may fix in respect of the service:

Provided that the amount so fixed shall not exceed the minimum amount payable to the council by actual users of the service concerned for the time being.

**76 Charges, rents and deposits by resolution**

- (1) A council may, by resolution passed by a majority of the total membership of the council—
  - (a) fix charges and tariffs of charges payable in respect of certificates, licences or permits issued, inspections carried out, services rendered or any act, matter or thing done by the council in terms of this Act;
  - (b) fix rents and other charges payable in respect of property let by the council;
  - (c) fix deposits payable in connection with any services provided by the council in terms of this Act:

Provided that, in any specified area or in such other part of the council area as may be prescribed or as may be notified to the council by the Minister—

- (a) no charges, rents or deposits of any kind, other than those in connection with the supply of electricity, may be fixed by a council in respect of residential accommodation or services provided specifically to or in connection with such accommodation, otherwise than by by-laws made or in force in terms of this Act;
- (b) a council may, subject to the approval of the Minister, fix in any lease or agreement entered into by it the charges, rents or deposits which shall be payable by the lessee in respect of the occupation of any premises.

(2) Before any charges, rents or deposits fixed in terms of subsection (1) come into operation, a statement setting out the proposed charges, rents or deposits and any existing such charges, rents or deposits for the same matters shall, for a period of not less than thirty days, be posted in the manner in which notices are usually posted in the council area and published in a newspaper or in such other manner as the Minister may direct.

(3) If, during the period of thirty days referred to in subsection (2), thirty or more voters lodge objections to the proposed charges, rents or deposits, such charges, rents or deposits shall be reconsidered by the council together with such objections and shall not come into operation unless passed by a majority of the total membership of the council.

(4) The notice to councillors of any meeting at which charges, rents or deposits are to be reconsidered in terms of subsection (3) shall contain a copy of the objections lodged with the council.

(5) Where charges, rents or deposits to be fixed in terms of subsection (1) are in respect of an area for which an area committee or town board has been established, such charges, rents or deposits shall—

- (a) be considered by the area committee or town board concerned prior to the publication in terms of subsection (2); and
- (b) if there are any objections thereto lodged in terms of subsection (3), be reconsidered by the area committee or town board together with such objections; and
- (c) be recommended to the council if passed by a majority of the total membership of the area committee or town board following such consideration and, as the case may be, reconsideration;

and on receipt of such recommendation the council shall be deemed to have passed in terms of subsection (1) a resolution to fix such charges, rents or deposits for such area committee or town board in accordance with such recommendation.

(6) No resolution made in terms of this section varying any charges, rents or deposits which are provided in any by-law shall come into effect until such by-law has been repealed.

**77 Powers of entry and inspection**

(1) Subject to subsection (1), any officer or other employee of the council duly authorized for the purpose by the council may at all reasonable times enter any premises within the area of the council for the purpose of any inspection or inquiry, or the execution of any duty, carried out in terms of this Act.

(2) No person shall in terms of this section be subjected to entry of his premises without his consent, except at reasonable times and to the extent that such entry is necessary—

- (a) in the interests of public safety, public health or town and country planning; or  
for the enforcement of the law in circumstances where there are reasonable grounds for believing that the entry is necessary for the prevention, investigation or detection of an offence, for the seizure of any property that is the subject-matter of an offence or for the enforcement of and levy, rate or special rate; or
- (c) for the purposes of any compulsory acquisition of property in terms of section *seventy-eight*; or
- (d) for the inspection of the premises or anything thereon for the purposes of any levy, rate or special rate; or
- (e) in order to carry out work connected with any property of the council which is lawfully on the premises.

### **78 Compulsory acquisition of property**

(1) Subject to subsection (2), a council may, with the written consent of the Minister, by compulsion acquire land or any right over land, with or without buildings, whether inside or outside the council area, for the purpose of executing any work or undertaking authorized by this Act where the acquisition is reasonably necessary in the interests of public health or town and country planning or the utilization of the property concerned or any other property for a purpose beneficial to the public generally or any section thereof.

(2) Parts III, V and VIII of the Land Acquisition Act [*Chapter 20:10*], shall apply, *mutatis mutandis*, to the exercise by a council of its powers in terms of subsection (1).

### **79 Contracts and tenders of councils**

(1) Subject to this Act, in the exercise of its functions, a council may enter into contracts and may require and take security from any person for the due performance of his obligations under any such contract.

(2) A council shall not enter into—

- (a) a contract in terms of which or in connection with which credit is extended to the council by the other party to such contract or by any other person for a period exceeding ninety days where the value of goods or services obtained by the council in terms of such contract exceeds such sum as may be prescribed; or
- (b) a contract in terms of which the council—
  - (i) hires or acquires the use of any plant or equipment; and
  - (ii) acquires the ownership of, or a right to acquire the ownership of, any plant and equipment at some future date;

or any similar type of contract, where the aggregate payments for the hire or use of the plant or equipment by the council in terms of such contract exceeds such sum as may be prescribed; unless the council has given notice in writing to the Minister of its intention to enter into such a contract

(3) Before a council enters into a contract for—

- (a) the execution for the council of any work which involves the payment by the council of an amount exceeding such sum as may be prescribed; or
- (b) the supply to the council of any goods or material which supply is likely to involve payment by the council of an amount exceeding any financial year such sum as may be prescribed; or
- (c) the sale of any property of the council; the council shall call for tenders by notice posted at the office of the council and advertised in two issues of a newspaper:

Provided that—

- (i) in the case of a proposed contract for a sale of any property of the council, the council may— (a)  
resolve to dispense with tenders; and

- (b) sell the property concerned by public auction or private treaty; (ii)

this subsection shall not apply to—

- (a) any contract in which the council by resolution sets forth the circumstances and declares that it would be against the best interests of the council to invite tenders; or
- (b) any contract relating to the publication of advertisements and notices of the council; or
- (c) purchases by the council at sales by public auction; or
- (d) purchases by the council where the seller has called tenders; or (e) any contract entered into by the council with—
  - (i) the State, any other local authority or any statutory corporation, fund or agency established directly by any enactment;
  - (ii) subject to the approval of the Minister, any person other than a body corporate, fund or agency referred to in subparagraph (i); or
- (f) any contract entered into by the council for the provision of professional services.

(4) A notice referred to in subsection (3) shall specify—

- (a) the nature of the proposed contract, giving such particulars thereof as the council considers to be desirable; and

(b)

(b) the closing time and date for the receipt of tenders for the proposed contract, which time and date shall not be later than twenty-eight days after the date of the last publication of the advertisement referred to in subsection (3):

Provided that, if in any case the execution of the work or the supply of the goods or materials is considered by the council to be urgent, the duration of such notice may be reduced by the council to not less than fourteen days.

(5) Tenders received after having been called for in terms of subsection (3) shall be opened in public on the closing date referred to in paragraph (b) of subsection (4) forthwith after the closing time referred to in that paragraph.

(6) A council shall accept wholly or in part the tender opened in terms of subsection (5) which in all the circumstances appears to it to be most advantageous: Provided that—

(i) nothing in this subsection shall prevent the council from rejecting all tenders;

(ii) the tender of any person who canvasses or solicits or causes to be canvassed or solicited in support of his tender any councillor, officer or employee of the council shall not be considered.

(7) If any tender received after having been called for in terms of subsection (3), other than the lowest such tender, is accepted, the council shall cause the reasons or its decision to be recorded.

(8) A council shall advise every tenderer in writing whether or not his tender has been accepted.

### **80 Income-generating projects**

(1) With the written approval of the Minister and subject to such terms and conditions as he may impose, a council may engage in any commercial, industrial, agricultural or other activity for the purpose of raising revenue for the council.

(2) The Minister, after consultation with the council concerned, may revoke any approval given in terms of subsection (1) or amend any term or condition of such approval and, where he has done so, may give the council such directions as he considers necessary in regard to the disposal of any assets or undertakings acquired or used by the council in carrying on the activity concerned.

(3) A council shall comply with any directions given by the Minister in terms of subsection (2).

### **81 Establishment of co-operatives**

(1) Subject to any other enactment, with the written approval of the Minister and subject to such terms and conditions as he may impose, a council may—

(a) establish and foster co-operatives to carry on any commercial industrial, agricultural or other activity; and

(b) advance moneys and give other assistance to any co-operative.

(2) The Minister, after consultation with the council concerned, may give a council such directions as he considers necessary in regard to the carrying on of any activity by a co-operative referred to in subsection (1) or as to the winding up of any such co-operative.

(3) A council shall comply with any directions given by the Minister in terms of subsection (2).

### **82 Co-operation with local authorities and persons**

(1) Subject to this section, a council may by agreement co-operate with the State or with any council local authority or other person for the better or more economic carrying out, either by any of the contracting parties or by the use of joint facilities, of any matter which the council may by law perform and in which the contracting parties are mutually interested.

(2) The terms and conditions of any agreement referred to in subsection (2) shall be embodied in a deed of agreement to be entered into and subscribed to by the contracting parties and shall, *inter alia*, as far as may be necessary or expedient, provide for—

(a) the date upon which the agreement shall come into force, the period for which it shall endure and the terms and conditions on which—

(i) any of the parties thereto may withdraw therefrom; and

(ii) the State or another local authority or other person may become a party thereto; and

(iii) the agreement may, during its currency, be terminated; and

(b) the money, material, land, buildings or other property or things to be provided by each of the contracting parties, and the payment, if any, to be made therefor; and

(c) the charges, if any, to be borne by, and the revenue or profit, if any, payable to, each of the contracting parties; and

(d) the apportionment between the contracting parties of the revenues, profits, assets, losses and liabilities arising out of the operation of the agreement; and

- (e) the raising of loans, subject to the approval of the Minister, either jointly or separately by the contracting parties, and the determination of their liability under, and generally the terms and conditions of, any such loan; and
- (f) the management, control and execution of any matter forming the subject of the agreement; and
- (g) the rights, powers, privileges and duties of each contracting party; and
- (h) the amount of and the manner of fixing and collecting the charges, if any, to be paid in regard to any matter forming the subject of the agreement; and
- (i) the making of regulations subject to any law, including this Act, conferring the power thereof, in regard to any matter forming the subject of the agreement; and
- (j) the delegation by the contracting parties of any matter forming the subject of the agreement to one of their number or to a joint committee appointed by them.

(3) Where the Minister considers that the co-operation of any council with the State or with any other council, local authority or person for any purpose which they may by law perform would be of public or local advantage, he may make an order for the drawing up of an agreement for the purposes specified therein, and any such agreement shall, subject to subsection (4), be framed in accordance with subsection (2).

(4) Where any council, local authority or person objects to the exercise of the Minister's powers under subsection (3), the Minister shall appoint investigators in terms of section *one hundred and fifty-four* to hold an investigation into the objections and to report to him thereon, and provisions of that section shall apply accordingly.

(5) On receiving the report in terms of subsection (4), the Minister may make such order as he thinks fit.

(6) If the Minister has ordered a council in terms of subsection (5) to draw up an agreement such as is referred to in subsection (2) or (3), and the council fails or refuses to do so within such period as the Minister may direct, the Minister may enter into such an agreement on behalf of the council, and such agreement shall be binding on the council and the other party or parties thereto if it had been entered into by the council.

(7) If the agreement concerned so provides, a joint committee referred to in paragraph (j) of subsection (2) shall be a body corporate capable of suing and being sued in its own name and having such powers as may be conferred upon it by the agreement concerned.

### **83 Joint committees: by agreement**

(1) Subject to this section, any council may, on such terms and conditions as may be agreed between the parties concerned, combine with any other council or local authority for any purpose which the parties may by law perform and in which they are jointly interested, including without prejudice to the generality of the foregoing, the purpose of conducting and managing their business and the employment of their officers and employees.

(2) Any agreement in terms of subsection (1) may, *inter alia*, provide for any or all of the following—

- (a) the appointment of a joint committee of the councils and local authorities concerned, consisting of such number of councillors or members as is specified in the agreement, and the delegation to such committee of any function relating to any purpose of such combination;
- (b) the joint exercise in any other manner by the councils and local authorities concerned of any of their functions;
- (c) the supply by any one of the councils or local authorities concerned to or on behalf of the other councils or local authorities concerned or any service for which the combination has effect, on terms and conditions specified in the agreement, which may in addition provide that, notwithstanding anything in this Act or any other law, councillors or members of other councils or local authorities may be appointed members of any committee or subcommittee of the local authority providing the service for the purpose of dealing with matters arising from the provision of the service.

(3) The expenses of any joint committee appointed under any agreement or combination of councils or local authorities in terms of subsection (1) shall be defrayed by the councils and local authorities concerned in the proportions specified in the agreement, and the proportion of the expenses falling to be defrayed by any council or local authority shall be defrayed by that council or local authority.

(4) The Minister, on the application of all the councils and local authorities concerned, may, by statutory instrument, declare a joint committee appointed in terms of this section to be a body corporate with such name as may be determined by him, and such joint committee shall thereupon be a body corporate, to be known as a joint board, and shall have the powers that are conferred upon it by the agreement concerned.

(5) Where under any enactment local authorities may, with the consent of a Minister, enter into any combination, the provisions of this section shall apply in relation to such combination so far as it is not inconsistent with such other enactment.

#### **84 Joint committees: Minister's authority**

(1) Subject to this section, if it appears to the Minister that it would be of advantage to combine a council with any other council or local authority with which it may combine in terms of section *eighty-three* for any purpose which they may by law perform, the Minister may, on the application of the council, make an order combining the local authorities as respects their areas or parts thereof for such purpose:

Provided that no such order shall be made except after an investigation referred to in section *one hundred and fifty-four* unless all the councils and local authorities concerned consent.

(2) In relation to any order in terms of subsection (1), subsection (2) of section *eighty-three* shall apply, *mutatis mutandis*, as if such order were an agreement referred to in the said subsection (2).

(3) An order in terms of subsection (1) shall define the powers, rights, duties, liabilities and obligations of the councils and local authorities concerned and the mode of defraying the expenses of the combination, and may provide for any other matter or thing which the Minister considers to be necessary or proper to regulate for the better carrying into effect of the order.

(4) The Minister, after consultation with all the councils and local authorities concerned, may, by statutory instrument, declare a joint committee appointed in terms of an order under this section to be a body corporate with such name as may be determined by him, and such joint committee shall thereupon be a body corporate and shall have such powers as may be conferred upon it by the said order.

#### **85 Provisions as to members and proceedings of joint committees**

(1) This section shall apply in respect of joint committees appointed in terms of section *eighty-two*, *eightythree* and *eighty-four*.

(2) The members of a joint committee shall be appointed at such times and in such manner and shall hold office for such period as may be provided in the agreement or order, as the case may be, regulating the combination, and failing any such provisions the members shall hold office for such period as may be fixed by the council, local authority or person that they represent.

(3) Every member of a joint committee who at the time of his appointment is a councillor or member of the local authority or body by which he is appointed shall, if he ceases to be a councillor or member of that local authority or body, cease on the expiry of two months thereafter or on the appointment of his successor whichever first occurs, to be a member of the joint committee.

(4) Subject to the agreement or order regulating the combination concerned—

- (a) a joint committee shall elect a chairman who shall hold office for such period as shall be fixed at the time of his election;
- (b) the proceedings and place of meeting of a joint committee shall be such as the joint committee may determine;
- (c) a joint committee may appoint subcommittees and delegate to any such subcommittees any of its functions, and every such subcommittee shall, as soon as is reasonably practicable, report its proceedings to the joint committee;
- (d) the chairman or other person presiding at a meeting of a joint committee or a subcommittee thereof shall have a casting vote as well as a deliberative vote;
- (e) the quorum at meetings of a joint committee shall not be less than one-half of the total number of the members thereof.

(5) Where a joint committee fails to elect a chairman, at any meeting of the committee until a chairman is elected, such member of the committee as shall be selected by the meeting shall preside.

#### **86 Estate development**

(1) Subject to this section, a council may—

- (a) lay out and service any State land or council land for residential, commercial or industrial purposes; and
- (b) construct buildings on such land for residential, commercial or industrial purposes; and
- (c) sell, let or otherwise dispose of such land, buildings or improvements for residential, commercial or industrial purposes; whether inside or outside the council area.

(2) Subject to this section, a council may purchase or hire land or buildings for the purposes of subsection (1).

(3) Before exercising any power in terms of subsection (1) or (2), a council shall submit the proposal to exercise such power to the Minister for his approval in terms of this section.

(4) Where a proposal referred to in subsection (3) relates to an area for which no master plan or local plan is operative in terms of the Regional, Town and Country Planning Act [*Chapter 29:12*], or for which there is no approved scheme as defined in section 2 of that Act, the council shall—

- (a) before it submits its proposal to the Minister, publish a notice in two issues of a newspaper circulating in the area—
  - (i) outlining the proposal; and
  - (ii) stating a place where details of the proposal may be inspected; and
  - (iii) giving any further information considered by the council to be relevant to the proposal; and
  - (iv) stating that objections to the proposal may be submitted in writing to the chief executive officer of the council within such period, being at least twenty-one days after the date of the last publication of the notice in the newspaper, as may be stated in the notice;
- (b) after the expiration of the period referred to in subparagraph (iv) of paragraph (a), submit with its proposal to the Minister a copy of the notice given and of any objection submitted in terms of the said subparagraph (iv), together with any comments of the council thereon.

(5) After consideration of a proposal referred to in subsection (3) and any objection thereto submitted in terms of subparagraph (iv) of paragraph (a) of subsection (4), the Minister may—

- (a) refuse to approve the proposal or approve the proposal in whole or in part subject to such directions or terms and conditions as he may think fit to give or impose, as the case may be, either at the time of approval or subsequently;
- (b) without derogation from the generality of paragraph (a), exercise all or any of the following powers either at the time of approval of the proposal or subsequently—
  - (i) authorize or direct the council concerned to make by-laws or the whole or any part of the area to which the proposal relates for all or any of the matters specified in section *eighty-nine*;
  - (ii) require that any land in the area to which the proposal relates shall be reserved for the purposes of a police station or school and any land so reserved shall, upon the request of the Minister and at the cost of the council, be transferred to the President, and the council shall not be entitled to any payment or compensation for any land so transferred but shall be entitled to recover the costs incurred by the council in surveying such land;
  - (iii) authorize the council to—
    - A. sell buildings upon security of a first mortgage over each property;
    - B. lend money for the construction of buildings and the acquisition of land therefor;
    - C. guarantee loans from building societies for the construction of buildings, not exceeding ninety *per centum* in each case of the estimated value of the land and the buildings to be built thereon;

in accordance with the proposal;

- (c) call for further details or information before considering the proposal any further.

(6) Where a council has made by-laws in terms of this section imposing a supplementary charge in respect of any property situated within an area to which the proposal concerned relates, the council shall, notwithstanding the provisions of this Act—

- (a) not be required to value that property for the purposes of any levy, rate or special rate; (b) not impose any levy, rate or special rate in respect of that property in terms of Part XII.

(7) The Minister may at any time revoke or amend any directions or terms and conditions given or imposed, as the case may be, in terms of subsection (5).

(8) Where the administration of any area, to which a proposal which has been approved in terms of this section relates, is vested in another council, the proposal shall be deemed to have been approved in relation to that other council with the same directions, terms and conditions to which it was previously subject.

### **87 Minister's power to act on behalf of councils re state development**

(1) Where the Minister considers that serviced stands, land or buildings are required for the purposes of subsection (1) or (2) of section *eighty-six*, he may direct the council concerned to exercise its powers in terms of those provisions.

(2) If a council fails to comply with any direction given in terms of subsection (1) or any direction given or term or condition imposed in terms of section *eighty-six* in relation to any proposal which has been approved in terms of that section, the Minister may, subject to subsection (3) and after notice in writing to the council do any one more of the following—

- (a) take possession of any undeveloped council land, including surveyed land—
  - (i) which is zoned or the appropriate purpose in terms of a master plan or local plan operative in terms of the Regional, Town and Country Planning Act [*Chapter 29:12*], or in terms of an approved scheme as defined in section 2 of that Act; or
  - (ii) in respect of which no plan or scheme referred to in subparagraph (i) is operative, but which is suitable for the appropriate purpose;

- (b) compulsorily acquire, in accordance with section *seventy-eight*, in the name of the council or the State, any land—
    - (i) which is zoned for the appropriate purpose in terms of a master plan or local plan operative in terms of the Regional, Town and Country Planning Act [*Chapter 29:12*], or in terms of an approved scheme as defined in section 2 of that Act: or
    - (ii) in respect of which no plan or scheme referred to in subparagraph (i) is operative, but which is suitable for the appropriate purpose;
  - (c) provide serviced stands or erect buildings on any land such as is referred to in paragraph (a) or (b) or on State land;
  - (d) recover from the council concerned any expenses incurred in the exercise of the powers referred to in paragraph (a), (b) or (c) by all or any of the following methods—
    - (i) by action in a competent court;
    - (ii) by declaring that any income of such council shall be applied to the payment of such expenses and by appointing a receiver who is hereby authorized to attach so much of such income as will meet such expenses;
    - (iii) by assessing and imposing a levy, rate, special rate, charge or rent within the council area over such period as the Minister may think necessary, which levy, rate, special rate, charge or rent shall be assessed or imposed, *mutatis mutandis*, as if it were a levy, rate, special rate, charge or rent imposed by the council,
  - (e) transfer to the council at its expense any State land serviced in terms of paragraph (c) or any land expropriated in terms of paragraph (b) in the name of the State, together with any buildings thereon;
  - (f) make by-laws in terms of section *ninety-four* for any area in which any land referred to in paragraph (a), (b) or (c) is situated or to which the proposal concerned relates, as the case may be, for any of the purposes set out in section *eighty-nine* and, in such event, where there is a conflict between by-laws made by the council and by-laws made by the Minister, the latter shall prevail.
- (3) Before taking any action in terms of subsection (2), the Minister shall—
- (a) publish in at least three issues of a newspaper notice of his intention to take such action and calling for representations to be made thereon; and
  - (b) consider any representations made in terms of paragraph (a).

## PART XI

### BY-LAWS OF RURAL DISTRICT COUNCILS

#### 88 Making of by-laws

(1) Subject to this section and section *ninety* and any enactment to the contrary, a council may make by-laws in relation to any matter specified in the Second Schedule or in relation to anything that is incidental to or connected with a matter so specified.

(2) Without derogation from section 21 of the Interpretation Act [*Chapter 1:01*], the power of a council to make by-laws—

- (a) may be exercised in respect of the whole council area or any part thereof;
- (b) in so far as it allows the issue or grant of a licence or permit for any person, establishment, premises, activity or thing, may be exercised so as to provide for the circumstances in which a licence or permit may be refused, suspended or cancelled.

(3) Before passing a resolution for the making of by-laws relating to the functions of its roads committee or a town board or area committee, a council shall submit the proposed by-laws to the committee or board concerned and give the committee or board an opportunity to consider and report upon the proposed by-laws.

(4) After passing a resolution for the making of any by-laws, a council shall cause—

- (a) a copy of the proposed by-laws to be deposited at the offices of the council or at any other place where notices of the council are usually displayed or published, there to be open to inspection by any person for a period of fourteen days during the normal office hours of the council; and
- (b) a notice to be published once in a newspaper and to be posted at some prominent place in the council area—
  - (i) describing the general effect of the proposed by-laws and the area to which they will apply; and
  - (ii) stating that a copy of the proposed by-laws is open for inspection as provided in paragraph (a); and

- (iii) inviting persons who have objections to the proposed by-laws to lodge their objections, in writing with the council within fourteen days after the last day on which the proposed by-laws are open for inspection in terms of paragraph (a).

(5) If any objections to any proposed by-laws are lodged with a council within fourteen days after the last day on which the proposed by-laws are open for inspection in terms of paragraph (a) of subsection (4), the council shall not pass a resolution to make the proposed by-laws until it has reconsidered them in the light of the objections, and the notice to councillors of any meeting at which the proposed by-laws are to be reconsidered shall contain a copy of such objections.

(6) If any by-laws that are being reconsidered in terms of subsection (5) are in their nature divisible, the council may pass a resolution to make them in part and reject them in part.

(7) A council may, before passing a resolution to make any by-laws, modify or amend them if such modification is not opposed to the true spirit and intent of the by-laws and resolve to make them as modified or amended, without their again being deposited or laid open to inspection or any further notice regarding them being published or posted.

### **89 By-laws in relation to certain urban areas**

(1) In this section—

“service charge” means a charge such as is referred to in paragraph (f) of subsection (3);

“supplementary charge” means a charge such as is referred to in paragraph (g) of subsection (3).

(2) Subject to this section and section *ninety* and any enactment to the contrary, a council may make by-laws applicable within—

- (a) any specified area; or
- (b) any town area or part thereof, if the council considers that sections *ninety-nine* and *one hundred* should not apply thereto; or
- (c) any area for which an area committee has been established; or
- (d) any other area of urban land; in respect of any matter referred to in subsection (3).

(3) By-laws made in terms of subsection (2) in respect of any area may provide for—

- (a) the terms and conditions under which persons may be permitted to reside in premises owned by the council in the area concerned, the collection of rents therefor payable to the council and the procedure for the summary eviction from such premises of tenants who fail to pay such rent;
- (b) the maintenance of health, cleanliness and good order of all council houses and buildings within the area concerned;
- (c) the maintenance in good order of sanitary fixtures maintaining cleanliness and sanitation generally;
- (d) regulating the registration of lodgers residing in council houses and prescribing the charges to be paid by lodgers or by the occupiers of council premises providing accommodation for such lodgers to the council in respect of services provided by it in the area concerned;
- (e) fixing the rents to be charged for accommodation provided by the council in the area concerned, which rents may be related to the type and standard of the accommodation;
- (f) fixing the charges to be made for any services amenities or facilities provided by the council in the area concerned, either for certain premises, residential or other, or for the whole of such area, and such charges may, in respect of water charges, include a provision that a minimum charge shall be payable in respect of premises connected with the water supply, whether the water is used or not;
- (g) fixing and imposing in respect of immovable property in the area concerned, except such property as may be exempted in regulations made by the Minister, a supplementary charge to cover the expenses incurred by the council in the maintenance and administration of the area concerned;
- (h) the proper administration of any water supply, sewerage services, rubbish removal services or other like services within the area concerned and, without derogation from the generality of the foregoing, for—
  - (i) the protection of metres, appliances, fittings, plant and equipment and the like;
  - (ii) the imposition and collection of fees and charges for such services;
  - (ii) the cutting off of any supply or service where the payment of any fee or charge is outstanding or overdue;
- (i) any other matter referred to in the Second Schedule.

(4) By-laws in terms of subsection (2) which provide for matters referred to in paragraphs (e), (f) and (g) of subsection (3)—

- (a) shall specify the persons who are liable to pay the rents, service charges or supplementary charges provided for; and
- (b) may provide that service charges or supplementary charges shall be included in rents or charged separately; and



- (c) may divide the persons who are liable to pay rents, service charges or supplementary charges into classes according to their means and correspondingly charge different amounts for different classes; and
- (d) may vary service charges according to the use to which the premises concerned are put; and
- (e) shall base any supplementary charge upon a unit of land and additionally, or alternatively, a unit of residential or business accommodation, as the case may be, determined by the Council and may vary such charges according to any or all of the following—
  - (i) the type of tenure under which the property is held;
  - (ii) the value of the property, whether based upon the value of the land or the improvements, or both;
  - (iii) the area of the property, being either that of the land or of the improvements; (iv) the use to which the property is put.

(5) A council shall not make by-laws in terms of this section levying or increasing any rents, fees, service charges or supplementary charges within—

- (a) any town area, except upon the recommendation of the town board responsible for carrying on any local service therein; or
- (b) any area for which an area committee has been established, except upon the recommendation of the area committee; or
- (c) any other area except upon the recommendation of the ward development committee established for every ward within which the area is situated:

Provided that the council may make such by-laws without the recommendation of such board or committee if the account into which the rents, fees, service charges or supplementary charges concerned are paid is in deficit or is liable to go into deficit within the current financial year if the rents, fees, service charges or supplementary charges, as the case may be, are not levied or increased.

(6) Where a council has made by-laws in terms of this section, it shall not in respect of the same area impose any levy, rate or special rate in terms of Part XII.

### **90 Minister's approval of by-laws**

(1) After a council has resolved to pass any proposed by-laws, they shall be submitted to the Minister for his approval together with a copy of any objections thereto that have been lodged and the comments or recommendations of the council thereon.

(2) On receipt of any proposed by-laws in terms of subsection (1) the Minister may approve them or withhold his approval as he thinks fit: Provided that—

- (i) if the proposed by-laws are by their nature divisible, the Minister may approve part of them and withhold his approval of the other part;
- (ii) if, in the opinion of the Minister, the proposed by-laws are substantially the same as any model by-laws made by him in terms of section *ninety-one* or referred to in section *ninety-three*, he may refuse to approve the proposed by-laws and, after consulting the council, direct that the council shall adopt, in terms of section *ninety-one* or *ninety-three*, as the case may be, model by-laws either wholly or in part and with or without modification;
- (iii) before approving the proposed by-laws the Minister may, after consulting the council, modify or amend them if such modification or amendment appears to him to be advisable and not opposed to the true spirit and intent of the proposed by-laws as advertised;
- (iv) if, within six months after receiving the proposed by-laws, the Minister has not notified the council that he has approved them or withheld his approval, he shall be deemed to have approved them.

(3) Where the Minister approves only part of any proposed by-laws submitted to him in terms of subsection (1) or modifies or amends them in terms of subsection (2), it shall not be necessary again to deposit or lay them open for inspection or to publish or post any further notice regarding them.

(4) Once the Minister has approved any proposed by-laws submitted to him in terms of subsection (1), either wholly or in part and with or without modification or amendment, he shall cause them to be published in a statutory instrument, and they shall have the force of law within the area to which they apply with effect from the date of such publication or such later date as may be specified therein.

### **91 Model by-laws**

(1) The Minister may publish in a statutory instrument model by-laws for any matter for which a council may make by-laws.

(2) A council may, in accordance with sections *eighty-eight* and *ninety*, make by-laws adopting by reference wholly or in part and with or without modification any model by-laws, which have been made in terms of subsection (1) and which relate to any matter in respect of which the council may make by-laws, and the model by-laws as adopted shall have effect as if they were by-laws made by the council.

## 92 Effect of repeal or amendment of model by-laws

(1) Where the whole or part of any model by-laws made in terms of section *ninety-one* or referred to in section *ninety-three* have been adopted by or on behalf of a council, such model by-laws or part thereof shall, notwithstanding the repeal or substitution *in toto* of such model by-laws or part thereof by the Minister, remain of full force and effect within the council area until by-laws are made by or on behalf of the council repealing such adoption.

(2) Any amendment by the Minister, not amounting to a repeal or substitution *in toto*, of model by-laws made in terms of section *ninety-one* shall not have force or effect in any council area where such model by-laws have been adopted by or on behalf of a council until such amendment has been adopted by or on behalf of that council in terms of section *ninety-one* or *ninety-four*.

## 93 Model building by-laws

(1) In this section—

“model building by-laws” means model building by-laws made by the Minister in terms of section 232 of the Urban Councils Act [*Chapter 29:15*].

(2) A council may, in accordance with sections *eighty-eight* and *ninety*, make by-laws adopting by reference either the complete model building by-laws without any modification or any complete Chapter or chapters of the model building by-laws without any modification:

Provided that in so adopting the model building by-laws or any complete Chapter or chapters thereof, the council may—

- (a) provide that the provisions adopted shall apply only to a specified part or to specified parts of the council area or to a specified class or to specified classes of buildings therein; and
- (b) make provision for the gradual or phased introduction of the provisions adopted within the council area or any part or parts thereof, including the saving, for any period and subject to any conditions, of any other by-laws of the council in force within that area or part or parts thereof.

(3) Where a council has not adopted the whole of the model building by-laws and applied them to the whole of the council area, if he considers it necessary or desirable, the Minister may, after the council has been consulted, on behalf of the council adopt, in accordance with section *ninety-four*, the model building by-laws in whole or in part in respect of the whole council area or any specified part or parts thereof or any specified class or classes of buildings therein, as the case may be, and may make provision for the gradual or phased introduction of the model building by-laws or part thereof within such area, and where he has done so—

- (a) he may likewise amend, repeal or replace any existing by-laws referred to in subsection (2) made by the council; and
- (b) subsection(5) shall not apply.

(4) Subject to subsection (5), any amendment to a Chapter of the model building by-laws made by the Minister in terms of section 232 of the Urban Councils Act [*Chapter 29:15*] shall be of force—

- (a) within any council area where that Chapter has been adopted; or
- (b) where a council has provided that the Chapter concerned shall apply only to a part of its area or to a class of buildings, within that part of its area or to that class of buildings, as the case may be; without the council adopting such amending by-laws.

(5) If a council to which any proposed amendment of the model building by-laws would apply—

- (a) does not wish that amendment to apply within its area, it may, with the approval of the Minister, amend its by-laws adopting the model building by-laws so as to provide that the particular Chapter of the model building by-laws that is to be or has been amended is no longer applicable within its area and may make alternative provision; or
- (b) wishes that amendment to be introduced gradually or in stages within its area or any part thereof, it may amend its by-laws adopting the model building by-laws so as to provide for the gradual or phased introduction of that amendment within that area or part thereof and for the saving, for any period and subject to any conditions, of any other by-laws of the council in force within that area or part thereof.

(6) The Minister may, in respect of such building or such areas and on such terms and conditions as he may determine, after the council concerned has been consulted, by notice in the *Gazette* require a council to suspend the operation of any by-laws in force within the council area which provide for the matters for which he may make model building by-laws in terms of subsection (1) of section 232 of the Urban Councils Act [*Chapter 29:15*].

(7) Where model building by-laws are in force in any council area and there is any conflict or inconsistency between any provision of the model building by-laws, as applied, and any other by-laws of the council in force in that area, the provision of the model building by-laws as applied shall prevail.

## 94 Minister's power to make or adopt by-laws on behalf of councils

(1) Where—

- (a) a council has not made by-laws for any matter in respect of which it may make by-laws; and
  - (b) the Minister considers that the matter should be controlled or regulated by by-laws; he may direct the council to make by-laws or to adopt model by-laws in relation to that matter within such period as he may specify, and if the council fails to do so the Minister may, subject to this section—
    - (i) make by laws on behalf of the council in respect of that matter; or
    - (ii) make by-laws adopting the appropriate model by-laws on behalf of the council.
- (2) If the Minister proposes to make by-laws on behalf of a council in terms of paragraph (i) or (ii) of subsection (1), he
- (a) cause a notice to be published in two issues of a newspaper—
    - (i) describing the general effect of the proposed bylaws and, where appropriate, the model by-laws concerned and the area within which such by-laws or model by-laws will apply; and
    - (ii) stating that—
      - A. copies of the proposed by-laws and, where appropriate, of the model by-laws concerned will be open to inspection at the State offices specified in the notice and at the offices of the council for a period of thirty days from the date of the last publication of the notice in the newspaper; and
      - B. objections to the proposed by-laws or, where appropriate, to the adoption of the model bylaws may be lodged with the Secretary of the Ministry for which the Minister is responsible, before a specified date, which date shall be at least thirty days after the date of the last publication of the notice in the newspaper;
- and
- (b) ensure that copies of the proposed by-laws and, where appropriate, the model by-laws concerned, are open to inspection at the State offices specified in the notice referred to in paragraph (a) and at the office of the council.

## PART XII

### LEVIES, RATES AND OTHER CHARGES

#### 95 Interpretation in Part XII

In this Part—

“charge” means— (a) any levy; or

(b) any rate or special rate; or

(c) any charge made in terms of section *seventy-five*; or

(d) any supplementary charge levied by the council concerned in terms of by-laws made under section *eighty-nine*;

(e) any minimum charge fixed in terms of paragraph (f) of subsection (3) of section *eighty-nine*;

“fixed date” means the date upon which any charge becomes due and payable to the council concerned;

“head of household” means a person who occupies or uses—

(a) Communal Land for agricultural or residential purposes in terms of subsection (1) or (3) of section 8 of the Communal Land Act [*Chapter 20:04*], otherwise than as a spouse, child or dependant of any other person who occupies the same land; or

(b) any resettlement land for agricultural or residential purposes by virtue of an agreement, whether written, oral or tacit, between himself and the State;

“licence” means—

(a) a licence issued in term of the Shop Licences Act [*Chapter 14:17*], which is not restricted to the sale of specified goods as defined in the Third Schedule to that Act; or

(b) a bottle liquor licence, a bar liquor licence or a hotel liquor licence issued in terms of the Liquor Act [*Chapter 14:12*];

“licensed dealer” means the holder of a licence;

“occupier” has its ordinary meaning;

“owner” means—

(a) the person in whose name private land is registered in a Deeds Registry; or

(b) a person who is party to an agreement which, on the fulfilment by him of the conditions prescribed by such agreement, entitles him to obtain transfer of private land; or (c) a person who lawfully holds under an agreement of lease land which is—

(i) the property of the trustees of the Rhodes Estates; or

- (ii) State land; or
- (iii) Communal Land set aside in terms of section 10 of the Communal Land Act [*Chapter 20:04*];

or

- (d) a person in whose name a mining location such as is referred to in paragraph (b) of subsection (1) of section *ninety-six* is registered with the Secretary for Mines:

Provided that, if such person has let or assigned his rights in such mining location to any other person, such other person shall be deemed to be the owner,

“private land” means—

- (a) land the ownership of which has by law, grant or title deed become vested in any person other than the President or the trustee of the Rhodes Estates; and
- (b) land which is held by any person in accordance with the provisions of any enactment or agreement whereby such person is entitled, on the fulfilment by him of the conditions prescribed by such enactment or agreement, to obtain from the President title thereto;

but does not include—

- (i) any piece of land on which is situated any public hospital, cemetery or showground or any church or school which is maintained by any religious or other body, society or association which has as its objects the spiritual, physical, intellectual or industrial welfare or the vocational guidance of persons, if the whole of such piece of land does not exceed one hundred and twenty hectares in extent;
- (ii) any mining location;
- (iii) railway property used for railway purposes;
- (iv) land which is owned by a local authority and is less than five hectares in extent and on which works of a public nature have been erected;

“rateable property” has the meaning given to it by section *ninety-eight*;

“registered owner”, in relation to any land, means the person in whose name the land is registered in a Deeds Registry;

“rural land” means any land other than urban land;

“specified business” means the business of—

- (a) extracting sand; or
- (b) extracting gravel; or
- (c) extracting clay or making bricks or clay products or some or all of them; or
- (d) extracting and additionally, or alternatively, crushing stone; or
- (e) operating a saw-mill; whether carried on as a principal business or incidentally to or in connection with any other business: Provided that the carrying on of any such business by—

(a) the owner of a mining location for the purpose of using all of the products of such business on his mining location; or

- (b) a farmer for the purpose of using all of the products of such business on any farm on which he conducts farming operations;

shall not be regarded as the carrying on of a specified business;

“subdivision” means any—

- (a) stand in a township approved in terms of Part III of the Town and Country Planning Act [*Chapter 213 of 1974*]; or
- (b) subdivision of a property approved in terms of Part IV of the Town and Country Planning Act [*Chapter 213 of 1974*]; or
- (c) subdivision approved in terms of Part VI of the Regional, Town and Country Planning Act [*Chapter 29:12*].

## 96 Levies in rural areas

(1) Subject to this Part, a council may impose a land development levy upon all persons who, on the fixed date, are or who, at any time during the period of twelve months next following the fixed date, become— (a) owners of rural land within the council area:

Provided that—

- (i) if a person is liable to a land development levy by virtue of being an owner referred to in paragraph (b) of the definition of “owner” in section *ninety-five*, the council may impose the land development levy either on the person referred to in paragraph (a) of that definition or on the person referred to in paragraph (b) thereof but not on both;

- (ii) if a registered owner of rural land holds any State land, which is within the council area and contiguous with his own land, in accordance with any enactment or agreement whereby such owner is entitled, upon the fulfilment by him of the conditions laid down in such enactment or agreement, as the case may be, to obtain title to such State land, such State land shall be deemed to form part of the land of such owner for the purposes of the land development levy;

or

- (b) owners of mining locations situated on rural land within the council area, mining for— (i) gold, silver, platinum or precious stones and employing more than five workers; or
  - (ii) base minerals as defined in the Mines and Minerals Act [*Chapter 21:05*] and declaring an output in tonnes in accordance with the provisions of that Act;

or

- (c) licensed dealers who carry on the business in respect of which their licences are issued on rural land within the council area; or
- (d) owners of land which is deemed to be rural land by virtue of a resolution of the council in terms of section *one hundred and two*; or
- (e) either persons who carry on a specified business on rural land within the council area or the owners of rural land within the council area on which a specified business is carried on:

Provided that a land development levy may be imposed in respect of any particular specified business upon either the owner of the rural land concerned or upon the person who carries on the specified business but not upon both such owner and such person; or

- (f) holders of permits issued in terms of section 9 of the Communal Land Act [*Chapter 20:04*], authorizing the occupation and use of any portion of rural land within a communal ward of the council.

(2) Subject to this Part, a council may impose a development levy upon all persons who, on the fixed date, are heads of household within any communal or resettlement ward of the council or who, at any time during the period of twelve months next following the fixed date, become heads of household within any such ward.

(3) A levy shall—

- (a) be assessed upon the persons upon whom it is imposed in terms of subsection (1) or (2)—

- (i) in the case of a land development levy— A.  
in accordance with the Third Schedule;

or

B. if the Minister so directs, in the same manner as a rate, in which event this Part shall apply, *mutatis mutandis*, as if the rural land concerned were urban land; (ii) in the case of a development levy, at a *per capita* rate fixed by the council:

Provided that, with the approval of the Minister, a council may fix different rates in respect of different classes of heads of household;

and

- (b) subject to this Part, be imposed upon all persons referred to in subsection (1) or (2), as the case may be; and
- (c) be imposed in order to meet expenditure on matters which are prescribed in regulations and reflected in estimates or supplementary estimates prepared and approved in terms of Part XIII; and
- (d) not be imposed more than once in each financial year; and (e) become due and payable on a date fixed by the council.

(4) Whenever a council imposes a land development levy which is to be assessed in accordance with the Third Schedule, the council shall fix an amount which shall be the unit of land development levy for the purposes of that Schedule:

Provided that a council—

- (a) may, with the approval of the Minister; and

(b) shall, if so directed by the Minister; fix different amounts in respect of different classes of persons liable to pay the land development levy.

(5) Where the council is satisfied that the business of a licensed dealer or a specified business has not been carried on or will not be carried on, as the case may be, during one or more calendar months within the period in respect of which a land development levy has been raised, the council may grant a refund of the land development levy which has been paid or a reduction of the levy which is to be paid, as the case may be, in respect of any such business at the rate of one-twelfth thereof for each complete such month.

(6) If land is owned, occupied or used in undivided shares by two or more persons, such owners, holders or users shall for the purposes of subsection (1)— (a) be regarded as a single person; and

(b) inform the council concerned which one of them will be liable for the payment of land development levy and, if they fail so to inform such council, any land development levy may be recovered from any one of them.

(7) A council may, if an area of land—

(a) exceeds one hundred and twenty hectares in extent; and

(b) has upon it any church or school maintained by a religious or other body, society or association which has as its objects the spiritual, physical, intellectual or industrial welfare or vocational guidance of persons; reduce by one unit the land development levy in respect of such land.

(8) If a person—

(a) holds or occupies private land in accordance with the provisions of any agreement whereby he is entitled, upon the fulfilment by him of the conditions laid down in such agreement, to obtain title to such land; or

(b) leases State land or land which is the property of the trustees of the Rhodes Estates; or

(c) occupies or uses any rural land within Communal Land in accordance with a permit issued in terms of section 9 of the Communal Land Act [*Chapter 20:04*];

and the area of such rural land has not been ascertained by survey, the council concerned may estimate the area thereof for the purpose of assessing a land development levy on such land, and the area as so estimated shall be deemed to be the area of such land until it has been ascertained by survey.

(9) If the area of land referred to in subsection (8) ascertained by survey is

(a) greater than the estimated area of such land, the person concerned shall not be liable to pay retrospectively any additional land development levy in respect of the excess; or

(b) less than the estimated area of such land, the council shall not be liable to refund any land development levy in respect of the shortfall.

## 97 Special levies in rural areas

(1) Subject to this section, a council— (a) may, with the approval of the Minister; and

(b) shall, if directed to do so by the Minister; impose a special levy for either or both the following purposes—

(i) recovering, wholly or in part, expenses which have been incurred or which the council considers may reasonably be expected to be incurred in carrying out any development project or service within the council area;

(ii) meeting expenses which are of an unusual nature or which arises from unusual circumstances or conditions or from an unequal demand on services provided by the council.

(2) Subject to sections *eighty-seven*, *one hundred and twenty two* and *one hundred and twenty-six*, a special levy may be imposed—

(a) in the case of a special land development levy, only upon the persons referred to in subsection (1) of section *ninety-six*;

(b) in the case of a special development levy, only upon the heads household referred to in subsection (2) of section *ninety-six*;

and a council may impose a special levy—

(i) throughout the council area; or

(ii) within any particular ward or area where—

(i) the development project concerned is carried out or is to be carried out within that ward or area; or

(ii) the service concerned is carried out or is to be carried out within that ward or area; or

(iii) the unusual expenses or unusual circumstances or unequal demand have been incurred or have occurred, as the case may be, within that ward or area.

(3) A special levy may be assessed in any one or more of the following ways—

(a) in the case of a special land development levy, in accordance with the Third Schedule; or (b) in the case of a special development levy, at a *per capita* rate fixed by the council:

Provided that, with the approval of the Minister, a council may fix different rates in respect of different classes of heads of household; or

(c) as a levy based on the area of land owned, occupied or used by the person concerned; or (d)

as a levy on livestock, buildings or other property owned or used by the person concerned; or (e)

in any other form approved by the Minister.

(4) Subject to sections *eighty-seven*, *one hundred and twenty-two* and *one hundred and twenty-six*, a special levy shall—

(a) be imposed at a level to meet expenditure reflected in estimates or supplementary estimates prepared and approved in terms of Part XIII; and

(b) not be imposed more than once in any financial year; and (c) become due and payable on a date fixed by the council.

(5) Where a special levy is assessed in accordance with paragraph (a) of subsection (3), the council shall fix an amount which shall be the unit of special land development levy for the purposes of the Third Schedule: Provided that a council—

(a) may, with the approval of the Minister; and

(b) shall, if so directed by the Minister; fix different amounts in respect of different classes of persons liable to pay the special land development levy.

(6) Subsections (6) to (9) of section *ninety-six* shall apply, *mutatis mutandis*, in respect of a special land development levy.

### **97A Special unit tax on A1 and A2 farms**

(1) In this section and the Fourth Schedule—

“farm” means a Model A1 farm or a Model A2 farm;

“holder”, in relation to an offer letter, means the holder of an offer letter who has indicated that he or she has accepted the offer of an A1 or A2 farm described in the letter but who is not yet a party to a land settlement lease or the holder of a land settlement permit, as the case may be;

“land settlement lease” means a ninety-nine year lease of a Model A2 farm;

“land settlement permit” means a permit relating to the occupation of a Model A1 farm;

“lessee” means the lessee under a land settlement lease;

“Model A1 farm” means a farm allocated by the State on the basis of a village settlement concept as envisaged by the Land Reform and Resettlement Programme published in 2001 and amended from time to time;

“Model A2 farm” means a farm allocated by the State under the Commercial Farm Settlement Scheme administered under the Agricultural Land Settlement Act [*Chapter 20:01*];

“offer letter” means a letter issued by or on behalf of the Minister responsible for the Gazetted Land (Consequential Provisions) Act [*Chapter 20:28*] (No. 8 of 2006) that offers to allocate an A1 or A2 farm to the person to whom the letter is addressed;

“special unit tax” means the unit tax payable in terms of this section and the Fourth Schedule.

(2) Every council shall impose a special unit tax upon all persons who, on or after the date of commencement of the Finance Act, 2009, are or become lessees or holders of offer letters or land settlement permits.

(3) Notwithstanding section 41 of the Reserve Bank of Zimbabwe Act [*Chapter 22:15*] and the Exchange Control Act [*Chapter 22:05*], the special unit tax shall only be payable in United States dollars, euros, British pounds, South African rand or Botswana pula:

Provided that where a person wishes to tender payment of the special unit tax in euros, British pounds, South African rand or Botswana pula, the amount of special unit tax payable shall be that obtained by applying the international cross rate of exchange of the currency in question for the United States dollar prevailing on the day the tax is paid.

(4) The special unit tax shall be assessed upon the persons upon whom it is imposed in terms of subsection (1) in accordance with the Fourth Schedule.

(5) The special unit tax shall be imposed in order to meet expenditure (duly reflected in estimates or supplementary estimates prepared and approved in terms of Part XIII) on the following matters—

(a) gully reclamation and other works related to soil conservation and the prevention of soil erosion; and (b) the provision, operation and maintenance of—

(i) hospitals, clinics and dispensaries; and

(ii) schools and other educational institutions and facilities and amenities connected therewith; and

(c) the provision and maintenance of dipping tanks; and

(d) the provision, development and maintenance of roads.

(6) Persons who are liable to pay special unit tax shall not be liable to pay any land development levy imposed in terms of section 96 or any special land development levy imposed in terms of section 97 in respect of—

(a) the ownership or leasing of rural land within the council area; or

(b) the occupation and use under a permit issued in terms of section 9 of the Communal Land Act [*Chapter 20:04*], of any portion of rural land within a communal ward of the council.

(7) Section 151 applies to the recovery of any unpaid special unit tax.

[Section inserted by Act 3 of 2009]

### **98 Urban land which is rateable property**

(1) For the purposes of this Part, all urban land shall be rateable property, other than urban land which is—

(a) vested in the State; or

- (b) vested in and occupied by or on behalf of the council concerned; or
  - (c) less than ten hectares in extent and owned by a local authority and upon which the local authority has works of a public nature; or
  - (d) exempt from the payment of rates in terms of any enactment; or (e) used for, or as, as the case may be—
    - (i) a public library or public museum of natural history or of fine arts; or
    - (ii) public religious worship or public religious purposes; or
    - (iii) a school, including any hostel or residence occupied by pupils, teachers or any members of the staff thereof; or
    - (iv) a public hospital or public institution for mentally disordered or defective persons; or
    - (v) an orphanage or charitable institution supported entirely by voluntary contributions or payments by the inmates towards their maintenance; or
    - (vi) a public cemetery; or
    - (vii) sport or recreation, including horse-racing; or
    - (viii) agricultural show purposes; or
  - (f) a mining location which is used exclusively for mining purposes as defined in the Mines and Minerals Act [Chapter 21:05]; or
  - (g) deemed to be rural land by virtue of a resolution passed by the council in terms of section *one hundred and two*.
- (2) If urban land is used, whether at the same time or at different times in any year, for—
- (a) any of the purposes referred to in paragraph (e) of subsection (1); and
  - (b) one or more purposes other than a purpose referred to in paragraph(e); such urban land may be regarded as—
    - (i) rateable in one part and not rateable in another part; or
    - (ii) rateable during a portion of the year; or
    - (iii) rateable in one part and not rateable in another part and during a portion of the year; as the case may be, and the council may accordingly apportion the valuation or rate concerned or both such valuation and such rate with respect to the land or the improvements thereon or both, as the case may be, in accordance with such principles as the council may from time to time determine.
- (3) If urban land is used for—
- (a) any of the purposes referred to in paragraph (e) of subsection (1); and
  - (b) one or more purposes other than a purpose referred to in paragraph (e) and merely incidental to a purpose so referred to; such urban land shall be deemed not to fall within the provisions of subsection (2).
- (4) For the purposes of subsection (3), a purpose which is incidental within the meaning of that subsection shall include the occupation of immovable property by any person who is engaged upon work on such property, which work necessitates such occupation.

### **99 Rates in respect of rateable property**

(1) Subject to section *eighty-nine* and this Part, a council may impose a rate upon all owners of rateable property within the council area:

Provided that no such rate shall be imposed within any specified area.

- (2) A rate shall—
- (a) be assessed upon the value of the rateable property concerned in respect of— (i) land only; or
    - (ii) improvements only; or
    - (iii) both land and improvements; and
  - (b) subject to this Part be imposed upon all owners of rateable property within the council area; and
  - (c) be imposed in order to meet expenditure reflected in estimates or supplementary estimates prepared and approved in terms of Part XIII; and
  - (d) not be imposed more than once in each financial year; and (e) become due and payable on a date to be fixed by the council.

(3) Notwithstanding anything contained in this section, if a council imposes a rate which the council by resolution declares covers the cost of defraying, wholly or partly, the expenses which have been incurred or which the council considers might reasonably be expected to be incurred in—

- (a) providing, undertaking, executing, maintaining or extending any scheme of sewerage or drainage within any area; or



(b) providing sewerage, sanitary or rubbish removal services within any area; the owner of any urban land referred to in paragraph (e) of subsection (1) of section *ninety-eight* which is situated within the area concerned shall pay to the council for such scheme or services, as the case may be, a portion of the rate, and such portion shall be calculated on—

- (i) the valuation of all improvements on such land; and
- (ii) the valuation of such portion of such land as the council may determine.

(4) Subject to subsection (7), a council may, with the approval of the Minister, reduce a rate in respect of specified classes of rateable property:

Provided that, where a minimum rate is imposed in terms of subsection (6), no rate lower than the appropriate minimum rate shall be imposed.

(5) In classifying rateable property for the purposes of subsection (4), a council shall have regard to—

- (a) the area and situation of the rateable property, and
- (b) the use of which the rateable property is put; and
- (c) the services made available by the council to the rateable property; and any factors, other than the factors referred to in paragraph (a), (b) and (c), warranting a reduction in the rate concerned.

(6) Notwithstanding anything contained in this Act, a council may— (a) with the approval of the Minister—

(i) determine that a different rate shall be imposed in respect of commercial, industrial or residential properties or in respect of different classes of commercial, industrial or residential properties;

(ii) impose a minimum rate in respect of any class or classes of property;

(b) impose different rates and different minimum rates in different town areas.

(7) Where a minimum rate is imposed in terms of subsection (6)—

(a) and where subsection (3) applies, the council may determine that a proportion of the minimum rate, calculated as set out in that subsection with reference to the minimum rate, shall be payable by the owners of land referred to therein;

(b) subsections (2), (3) and (4) of section *ninety-eight* shall apply, *mutatis mutandis*, to the minimum rate;

(c) and where, as a result of a supplementary valuation or amendment or correction of a valuation in terms of Part XVIII of the Urban Councils Act [*Chapter 29:15*] as read with section *one hundred and one*, the rate payable in respect of any property is varied—

(i) if such rate is thereby increased above the minimum rate, the council shall recover the amount by which the rate as increased exceeds the minimum rate;

(ii) if such rate is thereby decreased below the minimum rate, the council shall refund the difference between the rate assessed on the former valuation and the minimum rate.

### **100 Special rates in respect of rateable property**

(1) Subject to this section, a council— (a) may, with the approval of the Minister; and

(b) shall, if directed to do so by the Minister; impose a special rate upon owners of rateable property within the council area, for either or both the following purposes—

(i) recovering, wholly or in part, expenses which have been incurred or which the council considers may reasonably be expected to be incurred in carrying out any development project or service within the council area;

(ii) meeting expenses which are of an unusual nature or which arise from unusual circumstances or conditions or from an unequal demand on services provided by the council.

(2) Subject to sections *eighty-seven*, *one hundred and twenty-two* and *one hundred and twenty-six*, a special rate may be imposed upon owners of rateable property situated—

(a) throughout a council area; or

(b) within any ward or area within a council area, where—

(i) the development project concerned is carried out or is to be carried out within that ward or area; or

(ii) the service concerned is carried out or is to be carried out within that ward or area; or

(iii) the unusual expenses or unusual circumstances or unequal demand have been incurred or have occurred, as the case may be, within that ward or area.

(3) A special rate shall—

(a) be assessed in accordance with paragraph (a) of subsection (2) of section *ninety-nine*; and

(b) be imposed at a level to meet expenditure reflected in estimates or supplementary estimates prepared and approved in terms of Part XIII; and

(c) not be imposed more than once in any financial year; and (d) become due and payable on a date fixed by the council.

(4) With the approval of the Minister, a council may reduce a special rate in respect of specified classes of rateable property.

(5) In classifying rateable property for the purposes of subsection (4), a council shall have regard to the factors referred to in subsection (5) of section *ninety-nine* as if the reference in that subsection to a rate were a reference to a special rate.

### **101 Application of provisions of Chapter 29:15 relating to valuation and rating**

Part XVIII and sections 266 to 278 of the Urban Councils Act [*Chapter 29:15*] shall apply, *mutatis mutandis*, in relation to—

(a) the valuation of rateable property by councils; and

(b) the assessment and imposition of rates and special rates by councils; as they do respectively to the valuation of rateable property and the assessment and imposition of rates by town councils.

### **102 Land development levies on urban land**

(1) Notwithstanding any other provision of this Part, a council may resolve that any rateable property situated outside a town area shall be deemed to be rural land for the purposes of this Part, and thereupon—

(a) a land development levy or special land development levy may be imposed upon the owner of such land in accordance with section *ninety-six* or *ninety-seven*, as the case may be; and

(b) no rate or special rate shall be imposed in terms of this Part upon the owner of such land in respect of any year for which he is required to pay a land development levy.

(2) A council may at any time revoke or amend a resolution in terms of section (1):

Provided that, where the effect of such a revocation or amendment is that any rateable property is no longer deemed to be rural land, the council shall not impose a rate or special rate on the owner of such property until the end of the last year in which a land development levy is payable in terms of section *ninety-six* in respect of that property.

### **103 Notice of intention to impose special levy or special rate**

(1) Before imposing a special levy or special rate a council shall—

(a) send to all— (i) owners; and

(ii) persons carrying on a specified business; and

(iii) holders of permits issued in terms of section 9 of the Communal Land Act [*Chapter 20:04*]; who will be liable to pay the special levy or special rate concerned; and

(b) publish in three issues of a newspaper; notice in writing of its intention to impose such a special levy or special rate.

(2) In giving notice referred to in subsection (1), a council may specify that the special levy or special rate concerned is proposed to be imposed for a particular financial year or for any number of consecutive financial years not exceeding ten.

(3) After the expiry of a period of thirty days from the date of the last publication referred to in paragraph (b) of subsection (1), the council concerned, if it still wishes to impose the proposed special levy or special rate, shall forward details thereof, together with any objections received and its observations thereon, to the Minister.

(4) On receipt of the details and any objections and observations forwarded in terms of subsection (3), the Minister shall consent or refuse to consent to the imposition of the proposed special levy or special rate as he thinks fit.

(5) If—

(a) the council concerned does not wish to impose the proposed special levy or special rate after the expiry of the period referred to in subsection (3); or

(b) the Minister refuses to consent in terms of subsection (4) to the imposition to the special levy or special rate; the council concerned shall give notice to that effect in one issue

of a newspaper.

(6) If the Minister consents to the imposition of the special levy or special rate concerned in terms of subsection (4), sections *one hundred and four* and *one hundred and seven* shall apply in respect of the special levy or special rate concerned as if the date of assessment thereof referred to in subsection (1) of that section were the date on which the Minister consented to the imposition thereof.

### **104 Notice of liability to pay charges**

(1) Not later than thirty days after it has assessed a charge, a council shall publish in a newspaper and at the office of the council and in such other manner as the Minister may direct or as the council may think appropriate, a notice stating—

(a) the amount of the charge; and

- (b) the period in respect of which the charge is levied; and (c) the date on which the charge becomes due and payable.

(2) At least thirty days before the date on which any levy, rate, special land development levy or special rate becomes due and payable, the council concerned shall send written notification to every— (a) owner; and

- (b) person carrying on a specified business; and

(c) holder of a permit issued in terms of section 9 of the Communal Land Act [*Chapter 20:04*];  
who is liable to pay the levy or rate of the amount payable by him:

Provided that the council shall not be obliged to give such notice to any person who first becomes liable to pay a levy or rate after the fixed date.

(3) A failure by any person to receive notice in terms of subsection (2) shall not invalidate the fixing and imposition of the levy or rate concerned or affect the liability of the person to pay the levy or rate.

### **105 Imposition of and accounting for levies, rates and special rates**

(1) Notwithstanding anything to the contrary contained in this Part—

- (a) no rate or special rate may be imposed in respect of any property in respect of which a land development levy or special land development levy is imposed;
- (b) no land development levy or special land development levy may be imposed in respect of any land in respect of which a rate or special rate is imposed;
- (c) no levy, rate or special rate may be imposed in respect of any property in respect of which a supplementary charge is payable in terms of by-laws in force under section *eighty-nine*;
- (d) where a special levy or special rate is imposed, it may be imposed more than once in each financial year if it is not imposed more than once on the same persons or class of persons, or if it is imposed for a different purpose.

(2) All levies, rates and special rates imposed by a council shall be recorded in such separate accounts of the council as will ensure that the amount of such levies, rates and special rates may be ascertained separately from any other revenue accruing to the council.

(3) Where a special levy or special rate has been imposed for one year and the council decides not to incur the expenses or full expenses in respect of which the special levy or special rate was imposed, the council shall not waive or remit back the special levy or special rate or any portion thereof, but the excess shall be taken into account in framing estimates for the following financial year.

(4) Where a special levy or special rate has been imposed for a period of consecutive years and during that period the council anticipates that the amount the council will receive from that special levy or special rate during that period is less than the estimated expenditure in respect of which that special levy or special rate was imposed, the council after due compliance with section *one hundred and three*, may impose an appropriate increase in the special levy or special rate.

### **106 When persons liable to pay portion only of charge**

(1) When a person who is—

- (a) the owner of immovable property in respect of which a charge has been levied; or

(b) the holder of any other right which renders him liable to a charge; ceases to be such an owner or right holder, as the case may be, before the end of the period for which the charge was levied—

- (i) he shall be liable to pay a portion only of the charge, proportionate to the time during which he continued to be such owner or right holder, as the case may be; and
- (ii) any person who becomes the owner of such immovable property or the new holder of the right, as the case may be, during the remainder of such period shall be liable to pay a portion of the charge, proportionate to the time during which he is such owner, or right holder, and the portion shall be recovered from him in the same manner as if he had been originally charged in respect of such immovable property or in respect of such right.

(2) Subsection (1) shall not apply to the liability of a head of household to pay any development levy or special development levy.

### **107 Abatements for prompt payment of charges**

(1) Subject to subsections (2) and (3), when a council fixes a date on which a charge becomes due and payable, the council may by resolution allow all persons liable for the charge such abatement of the amount of the charge as the council thinks fit if the charge, less any such abatement, is paid at the office of the council on or before the date so fixed.

(2) An abatement allowed in terms of subsection (1) shall apply equally to all persons who are liable for the charge concerned and shall be calculated as a percentage of the amount fixed as the unit or level of the charge.

(3) A council may refuse to allow an abatement in terms of subsection (1) if arrear charges are due and payable by the person who is liable to pay the charge or in respect of the property in respect of which the charge is levied.

### **108 Interest on unpaid charges**

(1) If a charge remains unpaid after a period of thirty days from the fixed date relating to that charge, the council concerned may charge and recover interest upon that charge at such rate as the council may fix: Provided that—

- (i) the rate of such interest shall not exceed—
  - (a) more than one *per centum* above the rate of interest charged by the State in respect of loans made to local authorities at the time the interest becomes payable; or
  - (b) the prescribed rate; whichever is the higher;
- (ii) such interest shall be calculated from the date of expiry of the aforesaid period of thirty days, and with a minimum of thirty days' interest.

### **109 Charges to be paid before transfer of land**

(1) No transfer of land shall be registered in, and no certificate of consolidated or registered title to any land shall be issued by, a Deeds Registry if the land concerned is in a council area, unless there is produced to a Registrar of Deeds a valid certificate issued in terms of this section by the council concerned stating—

- (a) that all charges made and imposed in respect of the land during the period of five years immediately preceding the date on which the certificate, in terms of subsection (3), ceases to be valid have been paid; or
- (b) where all or any of the charges imposed in respect of the land during the period of five years immediately preceding the date of issue of the certificate have not been paid, that such charges have not been paid and that they are, in the opinion of the council, irrecoverable;

as the case may be:

Provided that this section shall not apply to land which— (a) is being transferred from; or

(b) is the subject of a certificate of consolidation or registered title in favour of; a council or the State, as the case may be.

(2) A certificate which purports to be issued in terms of subsection (1) by a council in respect of any land shall be *prima facie* evidence that such certificate has been duly issued in accordance with the provisions of this section.

(3) A certificate referred to in subsection (1) shall specify the date up to which all charges made and levied in respect of the land concerned have been paid or written off, as the case may be, and shall be valid until the date so specified.

(4) Nothing in this section shall be construed as a derogation from the rights of the council to recover unpaid charges which—

- (a) have not been included in a certificate issued by the council in terms of subsection (1); or
- (b) may become payable as a result of an amended or supplementary valuation in respect of the land concerned.

(5) A fee not exceeding such amount as may be prescribed shall be payable for the issue of a certificate in terms of subsection (1).

(6) This section shall not apply in respect of the transfer of an undivided share in land coupled with an exclusive right of occupation to which section 27 of the Deeds Registries Act [*Chapter 20:05*] applies.

### **110 Occupiers and agents liable for levies and rates in default of owners**

(1) In this section—

“owner”, in relation to any land, includes—

- (a) a person who carries on a specified business on the land, where a land development levy, special land development levy, rate or special rate has been imposed on him in terms of this Part;
- (b) the holder of a permit issued in terms of section 9 of the Communal Land Act [*Chapter 20:04*], in respect of the land concerned, where a land development levy, special land development levy, rate or special rate has been imposed on him in terms of this Part.

(2) If a land development levy, special land development levy, rate or special rate has been imposed upon an owner of land, the owner shall be liable for such levy or rate on the fixed date.

(3) If, on the expiry of a period of three months from the fixed date, the owner has failed to pay the levy or rate referred to in subsection (2), the council concerned shall serve on the owner a demand in writing requiring him to pay the amount stated therein within a period of fourteen days from the date of service thereof.

(4) If an owner served with a demand in terms of subsection (3) fails to comply with such demand, any person who, at any time during any period in respect of which the land development levy, special land development levy, rate or special rate concerned is imposed—

- (a) is the occupier of the property concerned, shall be liable for such levy or rate, together with any other unpaid levy, rate or special rate in respect of such property, not exceeding the amount of any rent in respect of such property due by him but not yet paid; or
- (b) as agent or otherwise receives any rent in respect of such property shall, on the request in writing of the council concerned, be liable for such levy or rate, together with any other unpaid levy, rate or special rate in respect of such property, not exceeding the amount of any such rent paid to him after such request, subject to the deduction by such person or any commission due to him for the collection of the rent:

Provided that no person shall be liable in terms of this subsection for arrear levies, rates or special rates for more than one year.

(5) The persons referred to in paragraphs (a) and (b) of subsection (4) shall be liable for the whole or any part, as the case may be, of the levies, rates or special rates referred to in those paragraphs jointly and severally with each other and with the owner concerned.

(6) No legal proceedings shall be instituted against any person referred to in paragraph (a) or (b) of subsection (4) for the recovery of any levy, rate or special rate unless—

- (a) a demand in writing has been served on him by the council concerned, requiring him to pay the amount stated therein within a period of fourteen days from the date of service thereof; and
- (b) he has failed to comply with the requirements referred to in paragraph (a).

(7) A person who has paid any levy, rate or special rate in terms of paragraph (a) or (b) of subsection (4) may, subject to any agreement entered into by him to the contrary, deduct the amount so paid from any rent payable by him to the owner concerned in respect of the property in respect of which the levy, rate or special rate has been paid.

(8) The production of the receipts for a levy, rate or special rate paid in terms of paragraph (a) or (b) of subsection (4) shall, subject to any agreement referred to in subsection (7), be a good and sufficient discharge for the amount of the levy, rate or special rate as payment of rent to the owner concerned.

### **111 Collection of charges and payment by instalments A**

council may—

- (a) authorize persons to collect charges on its behalf; and
- (b) accept payment of any charge by instalments in such equal or varying amounts as may be determined by the council:

Provided that the acceptance of such instalments shall not affect the right of the council to charge interest on unpaid charges.

### **112 Payment of charges by persons who first become liable thereto after fixed date**

Notwithstanding any other provision of this Part, in the case of a person who first becomes liable after the fixed date to pay a charge—

- (a) the date on which the charge shall become due and payable by him shall be the day which is thirty days after the day he first became liable to pay the charge;
- (b) any reference in this Part to “the fixed date”, other than in subsection (1) of section *ninety-six* and in section *one hundred and four*, shall be construed, *mutatis mutandis*, as referring to the date on which the charge is due and payable in terms of paragraph (a);
- (c) such person shall be entitled to any abatement allowed in terms of section *one hundred and seven* on or before the date on which the charge is due and payable in terms of paragraph (a).

### **113 Councils may require persons liable to pay levy to submit returns**

(1) For the purposes of—

- (a) assessing or imposing any levy; or

(b) estimating the probable return from any levy proposed to be imposed; a council may require all persons or any class of persons liable to pay the levy or proposed levy to submit a return setting out the information specified in subsection (3).

(2) Where a council requires persons to submit returns in terms of subsection (1), notice of the requirements shall be published or sent in such manner as the council considers best calculated to reach all the persons liable to pay the levy or proposed levy concerned.

(3) A return submitted by a person in terms of subsection (1) shall specify— (a) his postal and residential addresses; and

- (b) in the case of an owner of rural land or land that is deemed to be rural land, the area of each piece of such rural land within the council area which is owned or held by him, and whether or not any person is carrying on specified business on such rural land; and

- (c) in the case of the owner of a mining location mining for—

- (i) gold, silver, platinum or precious stones, the number of workers employed by him during the period of three months immediately preceding the date of the notice referred to in subsection (2); or
- (ii) base minerals as defined in the Mines and Minerals Act [*Chapter 21:05*], the total output in tonnes declared in respect of such mining location in accordance with the provisions of that Act for the period of twelve months immediately preceding the fixed date;

and

- (d) in the case of a registered owner of any private land, the name and address of any person who, in terms of paragraph (b) of the definition of “owner” in section *ninety-five*, is the owner of the whole or any part of such private land; and
- (e) in the case of an owner of rural land on which the business of a licensed dealer is carried on, the number and description of the licences held by the licensed dealer; and
- (f) in the case of a person carrying on any specified business, such particulars of such activity and such sales or returns as the council may require; and
- (g) in the case of the holder of a permit issued in terms of section 9 of the Communal Land Act [*Chapter 20:04*], the area of rural land occupied or used by him in terms of the permit and the nature of any activity carried on by him or any one else on such rural land; and
- (h) in the case of a head of household, the nature of his occupation and use of the land concerned, the nature and extent of any buildings on such land and the number and nature of his livestock or other property; and
- (i) in the case of any such person, such other information as may be prescribed.

(4) If a person referred to in subsection (1) refuses, fails or neglects to forward a return required in terms of that subsection or is suspected of forwarding an inaccurate return, the council may at its own expense appoint some competent and disinterested person to be an inspector to ascertain upon solemn declaration the particulars sought by the council.

(5) An inspector appointed in terms of subsection (4) shall have power—

- (a) to enter at all reasonable times in the day-time upon any property of any person referred to in subsection (1) for the purpose of obtaining the particulars referred to in subsection (3); and
- (b) to put to the person referred to in paragraph (a) or to any person in charge of the property of such person, as the case may be, questions upon all such matters as may be relevant to the purpose referred to in that paragraph:

Provided that no such entry shall be effected unless it is necessary for the enforcement of the levy or proposed levy concerned or for the inspection of the premises or anything thereon for the purposes of such levy or proposed levy.

(6) A person who—

- (a) refuses, fails or neglects to forward a return required in terms of subsection (1) or forwards such a return which is inaccurate; or
- (b) obstructs an inspector in the exercise of his powers in terms of subsection (5); or
- (c) refuses or wilfully omits to answer to the best of his knowledge and belief any question lawfully put to him by an inspector appointed in terms of subsection (4) or wilfully makes any false answer or statement in reply to such question;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001.]

#### **114 Refusal by occupiers to disclose names and addresses of owners of persons receiving rent**

If, on the request of a council or person acting on behalf of a council, the occupier of any property— (a) refuses or wilfully omits to disclose; or

(b) wilfully mis-states; to the council or such person, as the case may be, the name and address of the owner or any person receiving or authorized to receive rent in respect of the property, he shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001.]

#### **115 Taxpayers leaving Zimbabwe**

(1) A person who is liable to pay any levy, rate or special rate and who intends to leave Zimbabwe for more than six months shall—

- (a) appoint a person resident in Zimbabwe to his agent for the purpose of receiving notification of any assessment for such levy, rate or special rate; and

(b) notify the council concerned of the name and address of the agent appointed in terms of paragraph (a).

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level three.

[Subsection amended by section 4 of Act 22 of 2001.]

### **116 Sales and leases of land and cancellations thereof to be reported to councils**

(1) If a registered owner of private land within a council area enters into an agreement with any person whereby—

(a) such person is, on the fulfilment by him of the conditions laid down in such agreement, entitled to obtain transfer of the private land; or

(b) any subdivision of the private leased to any person; such registered owner shall, immediately on the making of such agreement or on the cancellation thereof, notify in writing the council concerned.

(2) A registered owner who fails to comply with the provisions of subsection (1) shall—

(a) be liable for any charge levied in respect of the private land concerned which, by reason of such failure, has not been recovered; and

(b) be guilty of an offence and liable to a fine not exceeding level three.

[Paragraph amended by section 4 of Act 22 of 2001.]

## **PART XIII**

### **FINANCIAL PROVISIONS**

### **117 Interpretation in Part XIII**

In this Part—

“borrowing power” means the authority to borrow money which has been granted by the Minister in terms of subsection (4) of section *one hundred and twenty-four* and which has not been cancelled in terms of subsection (8) of section *one hundred and twenty-four* or exercised;

“committee estimates” means the estimates prepared, approved and submitted in terms of subsection (1) of section *one hundred and twenty-one*;

“council estimates” means the estimates drawn and presented in terms of subsection (3) of section *one hundred and twenty-one*.

### **118 Funds of councils**

The funds of a council shall consist of—

(a) moneys paid to the council which have been appropriated for the purpose by Parliament;

(b) any levies, rates, special rates or rents paid to the council;

(c) charges paid to the council in respect of any services provided by it;

(d) interest on moneys invested by the council;

(e) revenue received from any activity engaged in by the council in terms of section *eighty*;

(f) amounts received by the council in terms of the Parks and Wild Life Act [*Chapter 20:14*];

(g) amounts received by the council in terms of the Communal Land Forest Produce Act [*Chapter 19:04*];

(h) all other moneys and assets that may vest in or accrue to the council whether in the exercise of its functions or otherwise.

### **119 Financial year**

The financial year of a council shall be the period of twelve months ending on the 30th June in each year:

Provided that the first financial year after the establishment of a council shall be the period ending on the 30th June in the calendar year next after the date of its establishment.

### **120 Books and accounts**

(1) A council shall cause to be kept such books of account as may be necessary to maintain a true and proper record of all matters relating to the financial transactions of the council including, without derogation from the generality of the foregoing—

(a) all moneys received and paid; and

(b) income earned or accrued but not received; and

(c) expenditure incurred but not paid; clearly distinguishing in each case between capital, revenue and special funds and clearly showing the assets and liabilities of the council.

(2) The books referred to in subsection (1) shall be kept on the basis of double-entry accounting principles in such a manner as to facilitate the preparation of—

(a) such balance sheets as may be required by or under this Act or any other enactment, which shall clearly distinguish between capital and revenue, assets and liabilities and special funds; and

(b) income and expenditure accounts; and

- (c) such accounts, other than accounts referred to in paragraphs (a) and (b), as the Minister may direct.
- (3) A council shall maintain a permanent record of all movable and immovable assets of the council, together with records of the sources of funds expended on their acquisition and the discharged and undischarged liabilities relating thereto.
- (4) The books and records referred to in subsections (1) and (3) shall— (a) be kept by the chief executive officer in the offices of the council; and  
(b) not be removed except by leave of the council or by order of a competent court.
- (5) A council shall— (a) prepare—
- (i) a balance sheet which reflects a true and fair view of the state of affairs of the council; and
  - (ii) such separate balance sheet and income and expenditure accounts as may be necessary to reflect fairly the financial position and transactions of any housing account of the council referred to in section *one hundred and thirty*;
  - (iii) separate income and expenditure accounts and such balance sheets as may be necessary, to represent fairly the transactions of—
    - A. any controlled liquor money account;
    - B. any roads account;
    - C. any account, other than the accounts referred to in subparagraphs A and B, which the council or the Minister may consider desirable;
- and
- (b) ensure that the balance sheets and income and expenditure accounts referred to in subsection (2) show a summary of the transactions, under separate headings, of funds and reserves unless such a summary is shown separately as an annexure thereto.
- (6) In the books and accounts referred to in this section—  
“fund” means any amount set aside for a specific purpose or for general purposes, and invested solely—
- (a) in interest-bearing advances to one or more funds or accounts of the council; or
  - (b) in accordance with section *one hundred and thirty one*; or
  - (c) partly as mentioned in paragraph (a) and partly as mentioned in paragraph (b);
- “provision” means any amount set aside for the purpose of meeting, either in whole or in part, a known liability the amount of which cannot be calculated with substantial accuracy;
- “reserve” does not include any amount retained by way of provision for any known liability.

## 121 Estimates

- (1) Before the 30th April in each year, every committee shall—
- (a) prepare detailed estimates of the income and expenditure on revenue and capital accounts of the committee for the next succeeding financial year; and
  - (b) submit the estimates referred to in paragraph (a) to the finance committee.
- (2) Estimates referred to in subsection (1) shall set out the details of— (a) all moneys to be raised to meet the expenditure concerned; and (b) proposed expenditure on any service carried on by the committee.
- (3) Before the expiry of each financial year, the financial committee shall prepare and present at a meeting of the council detailed estimates of the income and expenditure on revenue and capital accounts of the council for the next succeeding financial year, and shall incorporate in such estimates the committee estimates submitted to it in terms of subsection (1), together with any comments and recommendations the finance committee may wish to make thereon.
- (4) The council estimates shall show in respect of the officers and employees of the council—
- (a) the total number of such officers and employees and the aggregate of the salaries and wages payable to them; and
  - (b) the total number of such officers and employees in each department of the council, and the aggregate of the salaries and wages payable to them; and
  - (c) the information referred to in paragraphs (a) and (b) in respect of the financial year prior to the financial year to which the council estimates relate, and
  - (d) the posts held by such officers and employees in each department of the council; and there shall be attached to copies of the council estimates made available to councillors an annexure showing the salary scales applicable to each class of such officers or employees.
- (5) Not later than the 30th June in each year council estimates shall be approved by the council and signed by the chairman of the council, and the council shall ensure that—
- (a) copies of such estimates are forthwith made available—
    - (i) for inspection by the public free of charge at the council offices; and



- (ii) for the purchase by the public at the council offices at a price fixed by the council, which price shall not exceed such amount, if any, as may be prescribed;

and

- (b) three copies of such estimates are forwarded within two months to the Minister for his information; and  
(c) one copy of such estimates is forwarded within two months to the provincial development committee of the provincial council established in terms of the Provincial Councils and Administration Act [Chapter 29:11], for the province within which the council area is situated.

(6) In any financial year supplementary estimates may be drawn up and presented in the manner specified in this section in respect of further income and expenditure for the financial year not provided for or inadequately provided for in the council estimates approved in terms of subsection (5), and subsection (5) shall apply, *mutatis mutandis*, in relation to such supplementary estimates.

(7) All expenditure incurred by a council shall be in accordance with council estimates or supplementary estimates approved in terms of this section.

(8) Committee estimates and council estimates shall contain both the capital and revenue estimates.

### **122 Elimination or reduction of accumulated deficit**

(1) If the final accounts of a council for any financial year reveal an accumulated deficit on the revenue account of the council, and the council has not provided to the satisfaction of the Minister for the elimination or reduction of such deficit, the Minister, after giving the council an opportunity to submit any representations it may wish to make on the matter, may direct the council to take such action as he considers necessary within a period specified by him.

(2) If a council fails to comply with a direction made in terms of subsection (1) within the period specified in terms of that subsection, the Minister may assess and impose a levy, rate, special rate, charge or rent within the council area or any part thereof over such period as the Minister may think fit for the purpose of eliminating or reducing the deficit concerned.

(3) A levy, rate, special rate, charge or rent referred to in subsection (2) shall be assessed or imposed, *mutatis mutandis*, as if it were a levy, rate, special rate, charge or rent assessed or imposed by the council in terms of the appropriate provision of this Act, and the moneys thereby collected shall be applied to the elimination or reduction of the deficit concerned.

### **123 Banking accounts**

(1) A council shall open in its own name with one or more commercial banks such banking account or banking accounts as it considers necessary.

(2) Except as may be provided to the contrary in any other enactment or as may be permitted by the Minister, a council shall—

- (a) pay all its revenues into; and  
(b) meet all its expenses reflected in the council estimates from; the relevant

banking account opened in terms of subsection (1).

### **124 Borrowing powers**

(1) Subject to this Act, a council may borrow money from the State or such other source as the Minister, with the consent of the Minister responsible for finance, may approve, for any one or more of the following purposes—

- (a) the acquisition or construction of permanent undertakings or works;  
(b) the acquisition of immovable property or any right or interest therein;  
(c) the making of advances authorized by this Act or any other enactment;  
(d) the payment of compensation;  
(e) the liquidation of the principal moneys owing on account of any previous loan;  
(f) the relief of general distress occasioned by some calamity in the council area; (g) the acquisition of plant, equipment, vehicles and the like.

(2) A council shall not borrow money unless—

- (a) the expenditure is reflected in approved estimates and, where one exists, the district development plan; and  
(b) a resolution to borrow the money has been passed by a majority of the total membership of the council and the council chairman has not exercised a casting vote; and  
(c) the council has complied with subsection (3); and  
(d) the Minister has granted the council authority in terms of subsection (4) to borrow the money; and  
(e) the borrowing power has not been cancelled in terms of subsection (8); and  
(f) the council complies with any conditions fixed, by the Minister in terms of subsection (4).

(3) Whenever a council has resolved in terms of paragraph (b) of subsection (2) to borrow money, the council shall—

- (a) cause a notice to be published in two issues of a newspaper, stating—
  - (i) the general purposes for which money is to be borrowed and the amount of money required to be borrowed therefor; and
  - (ii) that any objections which ratepayers, taxpayers or voters wish to make must be lodged with the chief executive officer of the council within such period, being at least twenty-one days from the date of the last publication of the notice, as may be specified therein; and
  - (iii) that details of the proposed borrowing may be inspected at the office of the council; and
- (b) ensure that there is made available to interested persons, at the offices of the council, such information on the proposed borrowing as it considers necessary or as the Minister may direct; and
- (c) apply to the Minister for authority in terms of subsection (4) to borrow the money concerned:

Provided that, before applying to the Minister for borrowing power for the construction of any permanent undertakings or works, the council shall cause to be prepared such plans and specifications as from the nature of the construction are reasonably required and, in all cases, an estimate of the cost thereof; and

- (d) submit to the Minister with any application made in terms of paragraph (c), any objections that have been received within the period referred to in subparagraph (ii) of paragraph (a) together with the comments, if any, of the council thereon.

(4) On receipt of an application in terms of paragraph (b) of subsection (3), the Minister may approve the purpose concerned in whole or in part and grant the council authority to borrow the money applied for in whole or in part subject to such conditions as he may impose, including, without derogation from the generality of the foregoing, a condition limiting the period of validity of such authority.

(5) All money borrowed by a council shall be applied to the purpose for which it was borrowed and, if not immediately required for such purpose, may be invested in the manner provided in section *one hundred and thirty-one*.

(6) If the money borrowed by a council is not expended in full on the project for which it was borrowed, then the unexpended balance of such money shall be applied to—

- (a) the reduction of the amount borrowed; or
- (b) any purpose, other than the purpose referred to in paragraph (a), approved by the Minister.

(7) A council which has authority in terms of subsection (4) to borrow money shall, within three months of the end of each financial year, prepare and submit to the Minister a statement showing such borrowing powers as have not been fully utilized.

(8) Where a council has obtained a borrowing power in terms of subsection (4) which it has not exercised, the Minister may, after giving the council at least twelve months' notice of his intention to do so, cancel such borrowing power wholly or, if such borrowing power is by nature divisible, cancel any portion thereof.

### **125 Bank overdrafts**

A council may obtain advances from any commercial bank by way of overdraft in such amounts and on such conditions as the Minister, with the consent of the Minister responsible for finance, may approve, and section *one hundred and twenty-six* shall apply in all respects to such advances as if they were loans raised in terms of this Part.

### **126 Security for loans**

(1) All loans made to a council shall be charged and secured upon the assets and the income of the council and all such charges and securities shall rank equally without priority.

(2) Whenever a council has failed to pay any sum due by it on account of interest on any loan or the repayment of any loan by instalments or otherwise, the Minister may direct the council to remedy its default within a period of thirty days and, if the council fails to comply with such direction within such period, the Minister may—

- (a) direct the council to assess and impose a levy, rate, special rate, charge or rent within its council area sufficient to produce the sum due; and
- (b) if the council fails to impose the levy, rate, special rate, charge or rent referred to in paragraph (a) within a period of thirty days after the direction referred to in that paragraph, the Minister may himself impose such levy, rate, special rate, charge or rent as if he were the council:

Provided that, if the sum due relates exclusively to services or activities carried on for the benefit of one part of the council area, such levy, rate, special rate, charge or rent shall be imposed only within the part of the council area concerned.

(3) All moneys collected by means of a levy, rate, special rate, charge or rent in terms of subsection (2) shall be applied in payment or repayment, as the case may be, of the sum due.

## 127 Repayment of loans

A council shall provide annually for the repayment of loans by— (a) equal fixed instalments of principal and interest; or (b) equal fixed instalments of principal; or (c) such other method as the Minister may approve.

## 128 Capital development funds

(1) A council shall establish one or more capital development funds from which moneys shall be issued as advances repayable to such capital development funds— (a) for the purpose of financing capital expenditure; or (b) for the purpose of creating or replacing assets appropriate to the function or functions for which the capital development fund concerned was established:

Provided that, in the case of advances for the purchase of land, with or without buildings, or the construction of buildings, the council may resolve that such advances shall not be repayable to the capital development fund concerned.

(2) Any moneys in a capital development fund established in terms of subsection (1) which are not immediately required for advances referred to in subsection (1) shall be invested in accordance with section *one hundred and thirty-one*.

(3) There shall be paid into the appropriate capital development fund established in terms of subsection (1)— (a) such sums of money as the council concerned may from time to time determine; and

- (b) the capital sum due in respect of repayments of advances made from such capital development fund; and
- (c) the interest payable on advances made from such capital development fund, which interest shall not be less than six *per centum* per annum; and
- (d) the proceeds received by the council from the sale of any asset of a capital nature after the deduction from such proceeds of—

- (i) the repayment of any loan outstanding in respect of such asset; or
- (ii) the payment into an investment account of a sum which will, with accumulations by way of compound interest, be sufficient to redeem by due date the loan outstanding in respect of such asset:

Provided that the net proceeds may, with the consent of the Minister, be withheld for the purpose of meeting losses incurred in the sale of assets of a capital nature; and (e) the amount provided in the estimates—

- (i) drawn up and presented in terms of subsections (1) and (3) of section *one hundred and twentyone*; and
  - (ii) relating to the revenue of the council; for the purchase of any equipment, plant or vehicle, the costs of which will exceed one thousand dollars; and
- (f) out of revenue, such annual sums of money as are considered necessary to meet the costs of replacement of existing assets acquired from sources other than loan funds, which costs shall be determined by reference to the estimated length of life of such assets:

Provided that, whenever the auditor reports that the amounts set aside for the replacement of assets are inadequate, the Minister may direct the council concerned to pay into such capital development fund such additional amounts as he considers necessary.

(4) Where an advance has been made in terms of subsection (1)—

- (a) the advance shall be deemed to be due and owing to the capital development fund from which it was made and shall be repaid thereto over a period fixed by reference to the estimated length of life of the asset concerned; and
- (b) the council concerned may, subject to subsection (5), by resolution determine the amount of the advance, the period of repayment thereof, the rate of interest thereon and the conditions of repayment thereof:

Provided that such period of repayment shall not, without the consent of the Minister, exceed ten years. **129**

## Revenue reserves

(1) A council may establish one or more revenue reserves for general or specific purposes.

(2) There shall be appropriated to the revenue reserves of a council such amounts as the council may by resolution determine to transfer from accumulated revenue surpluses or from current revenue.

(3) A revenue reserve of a council shall not, without the consent of the Minister, be applied or used in any manner other than—

- (a) for the purpose for which the revenue reserve was established; or (b) by way of transfer to a capital development fund.

## 130 Housing account

(1) If the Minister so directs, a council shall establish in respect of all—

- (a) areas within the council area that are deemed to be local government areas by virtue of declarations in terms of section *four*; and
- (b) specified areas within the council area; one account, to be called the housing account:

Provided that, with the consent of the Minister, a council may establish separate housing accounts; in respect of any one or more such local government areas and additionally, or alternatively, specified areas.

- (2) There shall be credited to a housing account kept in terms of subsection (1)—
  - (a) unless otherwise specially provided for by any other law, all licence and other fees accruing under any law to the council in respect of dogs, cycles or other things kept in the local government areas or specified areas concerned or any business or trade carried on in those areas;
  - (b) all fees paid in terms of the Vehicle Registration and Licensing Act [*Chapter 13:14*] in respect of vehicles ordinarily kept at night in the local government areas or specified areas concerned;
  - (c) all rents, charges and other income of any kind derived in respect of the occupation or residence of persons in the local government areas or specified areas concerned, other than income derived from the sale of electricity which has been supplied, with the consent of and subject to any conditions imposed by the Minister, to consumers in terms of separate supply contracts entered into in terms of the Electricity Act [*Chapter 13:05*];
  - (d) all payments by the council for accommodation in the local government areas or specified areas concerned for its own employees, which payments shall not be less than the appropriate charges fixed in the relevant by-laws for the same standard of accommodation;
  - (e) any moneys borrowed in terms of section one *hundred and twenty-four* for any purpose for which the account may be used in terms of this section;
  - (f) any grants, gifts, contributions, donations, advances, subscriptions or bequests made to or in respect of the local government areas or specified areas concerned;
  - (g) such proportion of the surplus, if any, of revenue over expenditure accruing to the council in respect of the supply of water and electricity within the whole council area and any local government areas administered by it as is attributable to the supply of water and electricity within the local government areas or specified areas concerned;
  - (h) with the approval of the Minister, appropriations from the general funds of the council;
  - (i) any moneys received by the council in respect of the realization of any asset purchased from moneys held in the housing account or in respect of any other transaction relating to the moneys in the account;
  - (j) interest received by the council from the investment of moneys held in the housing account; (k) any other moneys that may be payable to the housing account.
- (3) Moneys in a housing account kept in terms of subsection (1) may be expended only on—
  - (a) direct costs incurred by the council in connection with the supervision and administration of the local government areas or specified areas concerned;
  - (b) the expenses incurred by the council in connection with the first election of members to an area board established for the local government areas concerned;
  - (c) the expenses incurred by the council in providing, developing and maintaining any buildings, works, services or other matters which are within the local government areas or specified areas concerned and solely for the benefit of the inhabitants of the areas, but excluding roads and employment bureaux; (d) the expenses incurred by the council in providing, developing and maintaining any roads which—
    - (i) are within the local government areas or specified areas concerned and solely for the benefit of the inhabitants of the areas; or
    - (ii) provide access to the specified areas or local government areas concerned; and which are declared by the Minister, by notice in writing to the council, to be roads to which the provisions of this paragraph shall apply;
  - (e) the acquisition by purchase or lease of land within the boundaries of the local government areas or specified areas concerned for the purposes of the areas or the development of the areas;
  - (f) charges made by the council for water, electricity, sanitation and other services rendered to the local government areas or specified areas concerned, not exceeding—
    - (i) in the case of any such service for which a tariff is fixed for recovery of charges from individual inhabitants, the appropriate charge for such service in respect of a similar type of property elsewhere within the council area;
    - (ii) in the case where electricity or water is supplied in bulk distribution at the expense of the housing account, the actual cost of such bulk supply as certified by the auditors of the council;

- (iii) in the case of any such service not referred to in subparagraph (i) or (ii), such amount as the Minister may approve;
- (g) if there is a deficit in an electricity or water account, a proportion of that deficit calculated in the same manner as the proportion of any surplus in that account is calculated in terms of paragraph (g) of subsection (2):

Provided that the proportion of any deficit referred to in this paragraph shall not be paid from the housing account where the supplies to the local government areas or specified areas concerned are provided in bulk and at cost as mentioned in subparagraph (ii) of paragraph (f);

- (h) such overhead charges of the council as may be approved by the Minister;
- (i) any costs incurred by the council in connection with the acquisition, construction or maintenance of buildings used in connection with the supervision and administration of the local government areas or specified areas concerned;
- (j) any expenditure incurred by the council in connection with the acquisition or construction and the maintenance of any hostel in the local government areas or specified areas concerned;
- (k) any costs incurred by the council in connection with a service which by this Act or any other law is authorized to be expended from the housing account;
- (l) any expenditure, loss or liability incurred by the council in connection with the housing account; (m) the cost of the audit of the housing account.

(4) The Minister may direct a council to eliminate or reduce any deficit in its housing account within such period as he may specify and, if the council fails to the satisfaction of the Minister to comply with any such direction, the Minister may, on behalf of the council, assess and levy any charge or impose any rent in respect of the local government areas or specified areas concerned for the purpose of eliminating or reducing the deficit.

### **131 Investment of moneys**

(1) If a council has in any account or fund moneys that are not immediately required to meet expenditure payable from the account or fund, the council shall, unless otherwise provided in this Act or any other enactment, hold such moneys as balances on current account with a commercial bank or shall invest such moneys in any one or more of the following ways—

- (a) balances or deposits with, or bills issued by, a commercial bank;
- (b) Treasury bills;
- (c) bills issued by the Reserve Bank of Zimbabwe on behalf of the Agricultural Marketing Authority established by the Agricultural Marketing Act [*Chapter 18:04*]; (d) locally registered securities which are issued by—
  - (i) the State or a municipal council; or
  - (ii) a statutory corporation established directly by a law in force in Zimbabwe; or which are guaranteed by the State;
- (e) deposits with the Post Office Savings Bank referred to in the Post Office Savings Bank Act [*Chapter 24:10*];
- (f) shares in or deposits with a building society;
- (g) deposits with the Treasury;
- (h) temporary advances to a capital account for a purpose for which the council has a borrowing power, pending the raising of the necessary loan;
- (i) loans to other local authorities;
- (j) in such other manner as the Minister, with the consent of the Minister responsible for finance, may approve.

(2) Where moneys have been invested in terms of subsection (1)—

- (a) any interest earned and any benefit received on the realization of such investment shall be credited; and
- (b) any loss incurred on the realization of such investment shall be debited; to the account or fund from which such investment was made.

(3) If a council has accepted any moneys in trust by virtue of a document of trust which directs how the moneys shall be invested or dealt with, the council shall invest or deal with the moneys as so directed.

(4) In subsection (3)—

“document of trust” means a document in terms of which—

- (a) the council is constituted the holder or trustee of any moneys; or
- (b) a bequest or donation of any moneys is made in favour of the council; and in which directions are given controlling the use by the council of such moneys.

### **132 Guarantees of loans to officers and employees**

(1) Subject to any regulations made in terms of section *one hundred and fifty-nine*, a council may undertake to guarantee, on such terms and conditions as it may fix, the repayment of a loan made to an officer or employee or to such an officer or employee and his spouse jointly— (a) by a building society; or

(b) by or from any other person or fund approved by the Minister; for the purpose of purchasing land and building a dwelling thereon or of building a dwelling on land owned by the officer or employee or his spouse or the officer or employee and his spouse jointly or of purchasing land and an existing dwelling thereon or of purchasing a dwelling.

(2) A council may, with the approval of the Minister, purchase any property in respect of which it has given a guarantee referred to in subsection (1) where it considers that the circumstances are such that it is necessary to purchase such property in order to protect the interests of the council.

### **133 Writing off of bad debts**

(1) Subject to subsection (2), a council may write off amounts owing to the council by any person if the council considers that—

(a) such amounts are irrecoverable; or

(b) the costs, difficulties or disadvantages of collecting such amounts outweigh the value thereof.

(2) A council shall not write off a charge as defined in section *ninety-five* unless it has been in arrear for five years or more:

Provided that any such charge owed to the council by a company or an insolvent estate may be written off at any time after—

(a) the company has been wound up; or

(b) the account of the trustee of the insolvent estate has been confirmed by the Master of the High Court in terms of section 123 of the Insolvency Act [*Chapter 6:04*];

as the case may be.

### **134 Appointment of auditors**

(1) Subject to subsection (2), the accounts of every council shall be audited by a person appointed as auditor by the Urban Development Corporation established by the Urban Development Corporation Act [*Chapter 29:16*].

(2) Whenever the Minister considers it appropriate he may, with the approval of the Public Service Commission and after consultation with the council, appoint a member of the Public Service assisted by such other persons as may be designated by him—

(a) to act jointly with the auditor appointed in terms of subsection (1) in the audit of the accounts of the council; or

(b) to audit the accounts of the council for the financial year, in which case subsection (1) shall not apply to the council; or

(c) to audit particular accounts of the council, in which case an auditor appointed in terms of subsection (1) shall audit the balance of the council's accounts and his obligations and duties in terms of this Part will then be in relation to those accounts only.

### **135 Duties of councils re audit**

A council shall, for the purpose of an audit—

(a) cause to be produced to the auditor all relevant books, minute books, papers and writings in its possession; and

(b) not later than one hundred and twenty days after the end of each financial year or such later date as the Minister may approve, cause—

(i) the accounts of the council to be balanced to the end of such financial year; and

(ii) the accounts and balance sheets referred to in section *one hundred and twenty* to be laid before the auditor.

### **136 Powers and report of auditor**

(1) An auditor, in the exercise of his functions in terms of this Act, may—

(a) at any time and without notice examine any assets and records of the council concerned; and

(b) call upon any councillor, committee member, officer or employee of the council concerned for any explanation and information he may require, and the person so called upon shall, to the best of his ability and knowledge, provide such explanation and information; and

(c) make any interim or special report to the council concerned, in which event he shall submit a copy of such report to the Minister.

(3) Not later than sixty days after the receipt of the accounts referred to in paragraph (b) of section *one hundred and thirty-five* or such later date as the Minister may approve, an auditor shall make a report in writing—

(a) which shall contain statements as to whether or not, in his opinion, the balance sheets and accounts reflect fairly the financial affairs of the council and its transactions and the results of its trading; and (b) in which attention is drawn to—

- (i) any material deficiency or loss, whether resulting from misappropriation by, or the misconduct of, any person or otherwise; or
- (ii) any matter, other than a matter referred to in subparagraph (i), arising out of the audit which he considers to be of importance or special interest.

(4) If, from his examination of the accounts and records of a council, it appears to an auditor that— (a) proper books and records have not been kept; or

- (b) any significant expenditure brought to charge in such accounts is not supported by sufficient vouchers, authority or, if paid, proof of payment; or
- (c) any expenditure incurred by the council has not been provided for in duly approved estimates or supplementary estimates; or
- (d) reasonable precautions have not been taken to safeguard the assets of the council and to ensure the collection of all moneys due to it; or
- (e) separate accounts or funds required by or in terms of this Act or any other enactment have not been kept; or
- (f) payments due in respect of moneys borrowed, including moneys borrowed on bank overdraft, have not been made on due date; or
- (g) adequate provision has not been made for the repayment of loans as provided for in section *one hundred and twenty-seven* or the provisions of this Part relating to loans have not been complied with; or
- (h) the provisions of this Act or any other enactment relating to the transactions of the council as disclosed in its accounts and records have not been complied with; or
- (i) the amount set aside for the replacement of assets acquired from sources other than loan funds is inadequate; or
- (j) the accounting procedure of the council has not been such as to ensure that the value of the assets acquired from revenue has been fairly stated; or
- (k) internal control procedures have been unsatisfactory in any material respect; or
- (l) any moneys derived from a grant or held by the council in trust have not been spent in accordance with the conditions under which the grant or trust was made or created; or
- (m) the requirements and recommendations of the auditor have not been complied with and carried out; the auditor shall include in his report made in terms of subsection (3) a statement to that effect.

(5) An auditor shall transmit the audited balance sheets and accounts, together with his report in terms of subsection (3), to the council concerned and shall transmit a copy thereof to the Minister.

(6) Any comments of the Minister arising out of the documents referred to in subsection (5) which are forwarded to the council shall be deemed to form part of the report referred to in that subsection.

(7) Any person who—

- (a) upon being called upon in terms of subsection (1) for any explanation of information, fails or refuses to provide, to the best of his ability or knowledge, such explanation or information; or
- (b) threatens, resists, hinders or obstructs or uses abusive, insulting or obscene language towards or at, an auditor in the exercise of his functions;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001.]

### **137 Duty of council re accounts and report of auditor**

(1) Within thirty days after the chief executive officer of a council has received audited balance sheets and accounts and an auditor's report in terms of subsection (5) of section one *hundred thirty-six*, the finance committee of the council shall meet to consider them and, as soon as the finance committee has completed its consideration of the documents, whether at the same meeting or at an adjournment thereof, it shall submit a report thereon to the council.

(2) Within thirty days after the finance committee of a council has submitted its report to the council in terms of subsection (1), the council shall meet to consider the documents and report referred to in that subsection and, at the same meeting or at an adjournment thereof, shall—

- (a) if it considers that the accounts and balance sheets reflect fairly the financial affairs of the council and of its transactions and the results of its trading, certify them accordingly under the hand of the person presiding at such meeting; and

(b) if the auditor has reported on any irregularities, decide what action should be taken in regard to the matters reported on by the auditor and inform the auditor accordingly.

(3) When a meeting referred to in—

(a) subsection (1) is adjourned by a finance committee; or

(b) subsection (2) is adjourned by a council; the meeting shall be resumed as soon

as is possible in the circumstances.

(4) A council shall not go into committee when considering any documents or report in terms of subsection (2).

(5) A copy of the final accounts of a council, together with the auditor's report, shall be—

(a) kept by the chief executive officer at the offices of the council; and

(b) open for inspection by any person during office hours; and any person may take extracts and obtain copies from such documents and report at such charge as may be fixed by the council, which charge shall not exceed such amount, if any, as may be prescribed.

(6) A council shall, within fourteen days after the accounts and balance sheets have been certified in terms of paragraph (a) of subsection (2), submit—

(a) three copies thereof, together with the report of the auditor, to the Minister; and

(b) a statement of any decision taken by the council in terms of paragraph (b) of subsection (2).

### **138 Power of Minister to conduct financial inquiry**

(1) Without derogation from his powers under section *one hundred and fifty-four*, the Minister may appoint any person to examine the accounts and records of a council and shall give to the council and, if its auditor is not a member of the Public Service, to the auditor, not less than seven days' notice of such examination.

(2) A council shall cause to be produced to any person conducting an examination referred to in subsection

(1) all books, minute books and documents in its possession.

(3) A person appointed in terms of subsection (1) shall—

(a) for the purpose of his examination, have all the powers conferred on an auditor by this Part and subsections (3) and (10) to (12) of section *one hundred and fifty-four* shall apply, *mutatis mutandis*, in relation to such person as if references in those subsections to an investigator and an investigation were references to a person appointed in terms of subsection (1) and an examination referred to in that subsection, respectively; and

(b) report to the Minister in writing on his examination and send a copy of such report to the council and the auditor.

(4) The costs of an examination referred to in subsection (1) shall be paid by the council concerned.

## **PART XIV**

### **ALTERATION AND ABOLITION OF RURAL DISTRICT COUNCILS**

### **139 Alteration of councils and wards and abolition of councils**

(1) Subject to this Part, whenever the President considers it desirable he may, by proclamation in the *Gazette*, exercise all or any of the following powers—

(a) alter the name of a council;

(b) alter a council area by adding any area thereto and additionally, or alternatively, subtracting any area therefrom, and redefine the council area;

(c) alter the wards of a council area by adding any area thereto and additionally, or alternatively, subtracting any area therefrom;

(d) re-divide the council area into any number of wards;

(e) abolish a council;

(f) determine any question arising from any exercise of powers in terms of this subsection, and give directions relating to such determination.

(2) ...

[Subsection repealed by Act 23 of 1998]

(3) ...

[Subsection repealed by Act 23 of 1998]



## **140 Consultation before exercise of powers relating to alteration or abolition of councils or wards**

(1) Before the President exercises his powers in terms of section *one hundred and thirty-nine*, the Minister may appoint a commission from residents of the district concerned which shall, within six months or such longer or shorter period as the Minister may authorize or require, make recommendations to the Minister upon the proposed exercise of powers and, in particular, to the extent applicable— (a) the name of the council;

- (b) the extent to which the council area should be altered;
- (c) the number of wards within the council area, taking into account the land categories therein;
- (d) the number of councillors and the need for any of them to be appointed by the Minister;
- (e) the extent to which area committees should be established or abolished or their areas altered;
- (f) the need to alter the number and location of any offices of the council;
- (g) any alterations to the staff necessary to carry out the functions of the council and any committees thereof;
- (h) where it is proposed to include within the council area the whole or part of the area of any local authority the allocation or apportionment of the assets, liabilities and staff of such local authority, including the payment of any moneys and the protection of the rights of employees.

(2) Subject to subsection (3), if before the President exercises his powers in terms of section *one hundred and thirty-nine*, the Minister has not appointed a commission in terms of subsection (1), the Minister shall take such steps as are reasonably necessary to give residents of the area concerned notice of the proposal to exercise such powers and, in addition, shall cause a notice to be published in no fewer than three issues of a newspaper—

- (a) stating that it is proposed to recommend to the President that he should exercise such powers and setting out the nature of the proposals and, in particular, to the extent applicable—
  - (i) the proposed name of the council;
  - (ii) the proposed boundaries of the council;
  - (iii) the proposed boundaries of every ward which it is proposed to alter or create;
  - (iv) any apportionment between the council and any other local authority, or any transfer to any other local authority, of any property, assets and liabilities, including the payment of any moneys and the protection of the rights of employees;
  - (v) the nature of any powers proposed to be exercised in terms of subsection (3) of section *ten*; and
- (b) calling upon any person who wishes to make representations in relation to the proposals to lodge them with the Minister within the period stated in the notice, which period shall be at least thirty days from the date of the last publication of the notice.

(3) Where the exercise of any powers in terms of section *one hundred and thirty-nine* is the direct result of an alteration to the boundaries or name of a district in terms of section *six* and any question or matter referred to in subsection (1) or (2) has been—

- (a) reported upon by a commission appointed in terms of section (1) of section *seven*; or
- (b) specified in a notice published in terms of subsection (2) of section *seven*; it shall not be necessary for the Minister to appoint a commission in terms of subsection (1) to report upon that question or matter or for him to cause a notice to be published in terms of subsection (2) specifying that question or matter.

(4) When any recommendation is submitted to the President concerning the exercise of his powers in terms of section *one hundred and thirty-nine*, there shall be submitted to him together with the recommendation—

- (a) the report of the commission, if any, appointed in terms of subsection (1); or
- (b) the substance and number of the objections, if any, that have been lodged with the Minister in response to a notice in terms of subsection (2);

as the case may be, together with any comments the Minister may wish to make on the report or objections.

(5) After considering any report or objections submitted to him in terms of subsection (4) in relation to any proposal affecting the boundaries of a council area or any ward thereof, the President may, in the exercise of his powers in terms of section *one hundred and thirty-nine*, alter the boundaries to a greater or lesser extent, and it shall not be necessary for the Minister to reconvene any commission appointed in terms of subsection (4) or to appoint a further such commission, or to cause a further notice to be published in terms of subsection (2):

Provided that the President shall not include a greater area in any council area unless he is satisfied that there has been adequate consultation with every council, commission and local authority concerned and with the people living in the area concerned.

## **141 Continuation in office of councillors representing altered wards**

Where the President has in terms of section *one hundred and thirty-nine* altered the boundaries of one or more wards of a council area or re-divided a council area into wards, the Minister shall, by notice in the *Gazette*, determine—

- (a) whether or not any councillor whose ward or former ward has been affected by the alteration or redivision should remain in office; and
- (b) any question arising out of a determination in terms of paragraph (a); and give directions relating to any such determination.

#### **142 Incorporation of local authority areas into altered council areas**

Section *ten* shall apply, *mutatis mutandis*, whenever a council area is altered so as to incorporate an area which, immediately before the date of such alteration, was under the jurisdiction, control or management of another local authority.

#### **143 Powers exercisable on abolition of councils**

(1) Subject to subsection (2), where the President has abolished a council in terms of section *one hundred and thirty nine*, he may—

- (a) make such transfer, disposal or apportionment of any property, assets, rights and liabilities of the former council; and
- (b) by statutory instrument, give such directions as to—
  - (i) the suspension, repeal or application of any by-laws, rates, special rates, levies, charges, rents or taxes made or imposed by the former council; or
  - (ii) the application, non-application, suspension or modification wholly or partly of any provision of this Act or any other enactment; or
  - (iii) any other matter or thing whatsoever; and
- (c) do such other things; as the President considers necessary or desirable to ensure the proper dissolution of the council concerned or for the proper administration of the area concerned.

(2) Where the President has, in terms of subsection (1)—

- (a) transferred, disposed of or apportioned any property or assets to a local authority, the ownership of that property shall vest in the local authority with effect from such date as may be specified by the President and, in the case of immovable property, a Registrar of Deeds shall, at the request of the local authority, free of charge cause the name of the local authority to be substituted as the owner of the immovable property concerned in the appropriate register in the Deeds Registry and on the deeds relating to that property;
- (b) given any direction, any person to whom the direction has been given shall forthwith comply with it.

(3) The powers conferred by this section shall not derogate from the powers conferred on the President by paragraph (f) of subsection (1) of section *one hundred and thirty-nine*, but they shall not be exercised in any case in which section *ten* or section 10 of the Urban Councils Act [*Chapter 29:15*] applies.

### **PART XV**

#### **GENERAL**

#### **144 Exemption of councils, councillors, officers, employees and other persons from liability**

(1) No—

- (a) matter or thing done or omitted to be done or contract entered into by a council or any committee thereof; or
- (b) matter or thing done or omitted to be done by a councillor or a member of a committee or by an officer or employee or other person acting under the specific or general directions of a council or of a committee; shall subject any such councillor, member, officer, employee or other person in his personal capacity to any action, liability, claim or demand whatsoever, and any expenses incurred by the councillor, member, officer, employee or other person as a result of such action, claim or demand shall be paid by the council:

Provided that this section shall not indemnify any such councillor, member, officer, employee or person against any action, liability, claim or demand arising out of anything done or omitted to be done by him in bad faith, recklessly or in deliberate contravention of any provision of this Act.

(2) Neither a council nor any other person shall be liable for any nuisance or damage which is the inevitable consequence of the proper and essential conduct of any sewage farm or sewage disposal works established, maintained or carried out by the council in terms of this Act.

#### **145 Designated officers**

(1) Subject to the law relating to the Public Service, the Minister may appoint any person in the full-time employment of the State to be the designated officer of one or more councils.

(2) The designated officer of a council shall act in an advisory capacity towards the council and may attend and speak at any meeting of the council or any committee thereof but may not vote thereat.

(3) The Minister may at any time revoke any appointment made in terms of subsection (1).

#### **146 Appointment of public servants to be subject to laws relating to Public Service**

For the avoidance of doubt it is declared that, where a member of the Public Service is appointed in terms of this Act to hold any office or exercise any functions, such appointment shall be subject to the laws for the time being governing the Public Service.

#### **147 Copy of Act, regulations and by-laws to be available for inspection**

(1) A council shall ensure that a copy of—

- (a) this Act and any other Act referred to in this Act; and
- (b) any regulations and by-laws that have been made in terms of this Act or any other Act referred to in paragraph (a) and which are applicable within the council area; are available for inspection, free of charge, by any person at the offices of the council during office hours.

(2) A failure by a council to comply with subsection (1) shall not affect the validity or the application within the council area of any enactment.

#### **148 Effect of invalidity of elections on civil proceedings**

The invalidity of any election in terms of this Act shall not affect any civil proceedings by or against any council, but all such proceedings shall be tried and determined as if no such objection existed.

#### **149 Execution and authentication of documents**

Every order, notice, written contract or other document requiring execution or authentication by a council shall be sufficiently executed or authenticated if— (a) signed by—

- (i) the chairman of the council and by the chief executive officer or any other officer or employee duly authorized by the council; or
- (ii) any two or more councillors authorized by the council; or

(b) executed or authenticated in any other manner that may be prescribed in by-laws of the council; in the presence of such witnesses as may be required in terms of any law.

#### **150 Vesting of property in councils**

The property of and in all land, roads, lanes and buildings to which the residents of any urban land at any time have or acquire a common right shall be vested in the council within the area of which such urban land is situated.

#### **151 Recovery of unpaid levies, rates, rents and charges**

(1) Where any levy, rate, special rate, charge or rent imposed or made by a council in terms of this Act remains unpaid after the date on which it becomes due and payable, the council may recover it by action or other proceedings in the court of the magistrate within whose area of jurisdiction—

- (a) the person liable to pay the levy, rate, special rate, charge or rent resides or carries on business; or
- (b) the property in respect of which the levy, rate, special rate, charge or rent was imposed or made is situated, whether or not the person liable to pay the levy, rate, special rate, charge or rent resides or carries on business in the same area; and, notwithstanding anything contained in the Magistrates Court Act [Chapter 7:10], such court shall be competent to hear and determine the matter without limit of jurisdiction as to amount.

(2) If the person proceeded against in terms of subsection (1) cannot after diligent inquiry, be found, any summons or other process directed to him may be served on the person, if any, in occupation of any property in respect of which the levy, rate, special rate, charge or rent concerned was imposed or made.

#### **152 Books and records to be *prima facie* evidence**

In any proceeding for the recovery of any levy, rate, special rate, charge or rent or other moneys due and payable to a council, the books and records of the council or any document purporting to be an extract therefrom and to have been certified by the chief executive officer or other officer or employee authorized thereto by the council, shall be *prima facie* evidence of the amounts so due and payable.

#### **153 Minister to be furnished with reports**

The Minister may from time to time require a council to submit to him certified copies of records of its proceedings, statistics and other documents and such other information as he may consider necessary for the effective discharge of his duties and responsibilities in terms of this Act, and the council shall comply with any such requirement.

#### **154 Investigations by Minister**

(1) The Minister may, if he considers it necessary or desirable in the public interest, appoint one or more persons as investigators, together with such assistants and advisers as he may consider necessary, to investigate any matter which—

(a) relates to the good government of a council area or district; or (b) relates to or arises out of the affairs or conduct of—

- (i) a council or any of its committees; or
- (ii) any local authority concerned in any matter referred to in sections *eighty-two* to *eighty-five*;

and to report to him thereon.

(2) Every council, committee or local authority concerned and every councillor, member, officer and employee of such council committee or local authority shall, when requested to do so, submit to an investigator all information in its or his possession and produce to him and give him access to all books, documents, records, accounts and other sources of information of the council or local authority.

(3) For the purposes of an investigation in terms of subsection (1), it shall be lawful for the investigator, if the Minister so directs—

- (a) to hear and receive evidence upon oath, which oath he is hereby empowered to administer; and
- (b) by summons under his hand, to require such persons as he may think fit to appear personally before him at a time and place to be stated in such summons and to produce all such books and papers as may be necessary for the investigation.

(4) If it is intended that an investigator shall take evidence from members of the public, notice of the time and place at which evidence will be heard shall be given at the office of the council and any local authority concerned and in two issues of a newspaper.

(5) A statement given by any person to an investigator in the course of an investigation in terms of this section shall not be admissible in evidence in any court, except with the consent of all persons affected thereby or for the purposes of a prosecution under subsection (10), (11) or (12).

(6) The costs of an investigation in terms of subsection (1) shall be recovered by the Minister from the council or local authority concerned or, if there are two or more councils or local authorities concerned in the investigation, from the councils and local authorities concerned in such proportions as the Minister may determine.

(7) An investigator and his assistants and advisers appointed in terms of subsection (1) shall be paid such fees as the Minister may fix and such fees shall be included in the costs of the investigation referred to in subsection (6):

Provided that a member of the Public Service or an employee of any council or local authority concerned who is appointed to assist or advise the investigator shall not be paid any fees for such assistance or advice.

(8) If a person appointed by the Minister in terms of subsection (1) requires any facilities which the council or local authority concerned fails or refuses to provide, the Minister may direct the council or local authority, as the case may be, to provide such facilities and if the council or local authority fails to comply with such direction within such time as the Minister may require—

- (a) the Minister may, on behalf of the council or local authority, provide the facilities; and
- (b) any expenditure incurred by the Minister in providing such facilities may be recovered by the Minister by action in a competent court against the council or local authority, as the case may be, and the certificate of the Minister shall be *prima facie* evidence of the amount due by the council or local authority.

(9) An investigator appointed in terms of subsection (1), together with such assistants and advisers as may be necessary, shall for the purpose of the investigation have the same access to or over any property as employees of a council have in terms of section *seventy-seven*.

(10) Any councillor, member, officer or employee of a council, committee or local authority who—

- (a) refuses or fails to answer to the best of his ability any lawful question put to him by, or wilfully makes any false statement to, an investigator in the exercise of his functions in terms of this section; or
- (b) refuses or fails to comply to the best of his ability with any lawful requirement made by an investigator in the exercise of his functions in terms of this section;

shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001.]

(11) Any person who—

- (a) threatens, resists, hinders or obstructs, or uses abusive, insulting or obscene language towards or at, an investigator or any person referred to in subsection (1) while that investigator or other person is exercising his functions in terms of this section; or
- (b) falsely holds himself out to be an investigator or other person appointed in terms of subsection (1); (c) without lawful excuse, having been summoned in terms of subsection (3)—
  - (i) refuses or fails to attend in obedience to such summons; or
  - (ii) having so attended, refuses to be examined upon oath or to take the oath; or
  - (iii) having taken the oath, refuses to answer such questions as are lawfully put to him; or
  - (iv) refuses or fails to produce any books or papers he has been required to produce;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001.]

(12) Any person, who, having taken an oath under subsection (3), makes any false statement knowing it to be false or not reasonably believing it to be true, shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001.]

### **155 Minister may direct certain actions**

(1) The Minister may from time to time give a council such directions as he considers appropriate to ensure that the council, when constructing or repairing roads, dams or waterworks or carrying out any other activity, makes use of services provided by the State, any statutory corporation, the District Development Fund or any other agency of the Government.

(2) Where, in the opinion of the Minister, a council has failed to give effect to any duty whatsoever imposed upon it by this Act or any other enactment, he may after having given the council an opportunity to submit any representations it may wish to make in connection therewith, direct the council to take such action as he considers necessary within a time specified by him.

(3) Where a council fails to take action in accordance with a direction in terms of subsection (1) or (2), within the time specified, the Minister may, notwithstanding any other provision of this Act, take appropriate action on behalf of the council and recover the expenses incurred in connection therewith from the council.

(4) For the purposes of subsection (3), the Minister may do all or any of the following—

- (a) take action in a competent court for the recovery of any expenses incurred in terms of that subsection; or
- (b) declare that any income of the council shall be applied to the payment of any expenses incurred in terms of that subsection and appoint a receiver, who is hereby authorized to attach so much of such income as will meet such expenses; or
- (c) impose a levy, rate, special rate, charge or rent on any property or persons whatsoever within the council area for the purpose of recovering expenses incurred in terms of subsection (3), and such levy, rate, special rate, charge or rent shall be imposed in all respects as if it were a levy, rate, special rate, charge or rent imposed by the council concerned.

### **156 Minister may rectify omitted acts**

If any act or thing required to be done in terms of this Act is omitted to be done, or is not done in the manner or within the time so required, the Minister may order all such steps to be taken as in his opinion are necessary or desirable to rectify such act or thing, and such act or thing when done in terms of the said order shall be of the same force and effect as if originally done in accordance with the appropriate provision of this Act:

Provided that no person shall be deprived in terms of this section of any right which may have vested in him before the Minister makes an order in terms of this section.

### **157 Suspension and dismissal of councillors**

(1) Subject to this section, if the Minister has reasonable grounds for suspecting that a councillor— (a) has contravened any provision of the Prevention of Corruption Act [*Chapter 9:16*]; or

(b) has contravened section *forty-eight*; or

(c) has committed any offence involving dishonesty in connection with the funds or other property of the council; or

(d) has been responsible—

(i) through serious negligence, for the loss of any funds or property of the council; or

(ii) for gross mismanagement of the funds, property or affairs of the council; whether or not the councillor's responsibility is shared with other councillors or with any employees of the council; or

(e) has not relinquished office after his seat became vacant in terms of this Act; the Minister may, by written notice to the councillor and the council concerned, suspend the councillor from exercising all or any of his functions as a councillor in terms of this Act or any other enactment.

(2) Any allowance that is payable to councillors in terms of this Act shall continue to be paid to a councillor who has been suspended in terms of subsection (1) for so long as he remains a councillor, unless the Minister, by notice in writing to the council concerned, directs otherwise.

(3) As soon as is practicable after he has suspended a councillor in terms of subsection (1), and in any event within forty-five days, the Minister shall cause a thorough investigation to be conducted with all reasonable dispatch to determine whether or not the councillor has been guilty of any act, omission or conduct referred to in that subsection.

(4) If, following investigation, the Minister is satisfied that the grounds of suspicion on the basis of which he suspended a councillor in terms of subsection (1) have been established as fact, he may, by written notice to the council and the councillor concerned, dismiss the councillor, and the councillor's seat shall thereupon become vacant.

(5) A person who has been dismissed in terms of subsection (3) shall be disqualified from nomination or election as a councillor for a period of five years.

Section as substituted by section 14 of Act No. 21 of 1997.

### **158 Minister may appoint commissioner to act as council**

(1) If at any time—

(a) there are no councillors for a council area; or

(b) all the councillors for a council area are unable, for any cause whatsoever, to exercise all or some of their functions as councillors; the Minister may appoint one or more persons as commissioners, whether or not such persons are qualified to become councillors, to act as the council in accordance with this section.

(2) Subject to any directions the Minister may give him, a commissioner appointed for a council area in terms of subsection (1) shall exercise—

(a) all the functions of the council, where there are no councillors for the council area; or

(b) such of the functions of the councillors as they are unable to exercise, where there are councillors for the council area: Provided that—

(i) the commissioner shall not, without the approval of the Minister, exercise any power conferred on the council to impose levies or to alienate any land or interest in land or to increase any charge fixed or levied by the council or to fix any new charge;

(ii) where there are any councillors who are able to exercise some of their functions as councillors, the commissioner shall consult them before exercising any function.

(3) A commissioner appointed in terms of subsection (1) shall hold office during the pleasure of the Minister, but his office shall terminate—

(a) as soon as there are any councillors for the council area who are able to exercise all their functions as councillors; or

(b) at the expiration of a period of six months; whichever occurs sooner:

Provided that, if the period of six months expires within three months before the date of the next succeeding general election, the commissioner shall continue to hold office until such general election.

(4) Before the termination of office of a commissioner appointed in terms of subsection (1), otherwise than at a general election or in the circumstances referred to in paragraph (a) of subsection (3), the commissioner shall cause an election to be held on such date as may be fixed by the commissioner to fill the vacancies on the council as if they were special vacancies.

(5) If the Minister is satisfied that, after the termination of office of a commissioner appointed in terms of subsection (1), there will be no councillors for the council area who will be able to exercise all their functions, the Minister may re-appoint a commissioner in terms of subsection (1).

(6) On appointing as a commissioner in terms of this section a person who is not in the full-time employment of the State, the Minister may authorize the payment from the funds of the council to the commissioner, for so long as he holds office as such, of a monthly salary at such rate as the Minister may determine.

### **159 Regulations**

(1) Subject to this Act, the Minister may make regulations prescribing anything which in terms of this Act is required or permitted to be so prescribed or which, in his opinion, is necessary or convenient to be so prescribed for carrying out or giving effect to the provisions of this Act.

(2) Regulations made in terms of subsection (1) may provide for— (a) the enrolment of voters on any voters' roll;

(b) the noting, setting down, prosecution and determination of appeals in terms of section *twenty-two*, the period within which such appeals shall be noted, prosecuted and determined, the procedure of such appeals and the submission of a stated case by the magistrate for the opinion of a judge in chambers; (c) the conduct of elections, including in particular—

(i) the criteria and procedure for determining whether or not a person is ordinarily resident within any council area, ward or other area;

(ii) the forms to be used in relation to elections;

(iii) the precautions to be taken to ensure secrecy of voting;

(d) subject to section 17 of the Traditional Leaders Act [*Chapter 29:17*], the formation of neighbourhood development committees for the purposes of exercising such consultative and advisory functions as may be prescribed in the regulations;

[Paragraph amended by section 54 of Act 25 of 1998 and by section 142 of Act 13 of 2002]

- (e) the conduct of meetings of subcommittees, the keeping of minutes of such meetings, the manner in which members of subcommittees shall be elected or appointed, the qualifications and terms of office of such members and the persons by whom they shall be elected or appointed;
- (f) the conditions of service of officers and employees of councils, including in particular—
  - (i) the qualifications of such officers and employees for employment; (ii) the remuneration and allowances payable to such officers and employees;
  - (iii) the discipline, suspension and dismissal of such officers and employees:

Provided that the Minister shall consult the Public Service Commission and the Parastatals Commission before making regulations for the matters referred to in this paragraph;

- (g) the travelling and personal expense that may be paid by councils;
- (h) the fees that may be charged for copies or extracts of minutes;
- (i) the form of accounts, statements and reports to be prepared in terms of this Act, the manner in which information shall be set out in such accounts, statements and reports and the manner in which the life of assets shall be estimated;
- (j) the form of financial estimates, including supplementary estimates, to be prepared and the manner in which information shall be set out in such estimates;
- (k) the collection of revenue, the control of banking accounts and the procedure for authorizing payment of accounts, including the signing of cheques;
- (l) the procedure for calling for and dealing with tenders and placing contracts for the execution of work and the supply of goods or materials to councils or any committee;
- (m) the control of stores and stocktaking;
- (n) the conduct of audits;
- (o) the custody and preservation of moneys, securities and other property of councils or committees or for which councils or committees are responsible;
- (p) the reporting of losses of cash and assets;
- (q) the time and manner of applying for borrowing powers;
- (r) the encouragement of urban, economic and other development within areas declared to be development areas in terms of the Urban Development Corporation Act [*Chapter 29:16*].

(3) Without derogation from section 21 of the Interpretation Act [*Chapter 1:01*], regulations may be made in terms of subsection (1) so as to apply to a particular council or to councils generally or to specified classes of councils.

(4) Subject to section 16 of the Constitution, regulations in terms of subsection (1) providing for the conditions of service of officers and employees of councils may alter the conditions of service of existing officers and employees.

(5) Regulations in terms of subsection (1) may create offences and specify penalties therefor, but no such penalty shall exceed a fine of level three

[Subsection amended by section 4 of Act 22 of 2001.]

## **160 Obstruction and impersonation**

Any person who—

- (a) at a meeting of a council or a committee, creates a disturbance or uses insulting, abusive or obscene language; or
- (b) threatens, resists, hinders or obstructs a council or committee or any councillor or member of a committee or any person or contractor employed by a council, in the performance of anything which it or he, as the case may be, is empowered or required by or in terms of this Act to do; or
- (c) uses abusive, insulting or obscene language towards or at any person referred to in paragraph (b); or
- (d) falsely holds himself out to be a councillor or a member of a committee or an officer or employee or contractor of a council;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001.]

## **161 Refusal to obey orders, requirements or directions of Minister**

Any person who contravenes any order, requirement or direction which is given, made or issued by the Minister in terms of this Act and with which it is his duty to comply shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Section amended by section 4 of Act 22 of 2001.]

## 162 Conviction no bar to further proceedings

Where a person is convicted of an offence in terms of this Act or any by-law or regulation in terms of this Act involving a failure to perform any act, matter or thing, such conviction shall not—

- (a) exempt the convicted person from liability to perform the act, matter or thing required to be performed by him; or
- (b) prevent further proceedings, including a further criminal prosecution, from being instituted against him as a result of a continued failure to perform the act, matter or thing concerned.

## 163 Compensation for loss caused through offences

(1) Without derogation from the jurisdiction of the court conferred by any other law, where a court has convicted a person of an offence in terms of this Act or any by-law or regulation made in terms of this Act, the court may, on the application of a council or of the person conducting the prosecution acting on the instructions of a council and in addition to any other penalty which it may impose on the convicted person, forthwith award the council compensation for any damage or loss caused to the council by the commission of the offence.

(2) Notwithstanding anything contained in the Magistrates Court Act [*Chapter 7:10*], any magistrates court shall have jurisdiction to award compensation in terms of subsection (1) without limit as to amount.

(3) For the purpose of subsection (1), an offence shall be deemed to have caused damage to property if, in consequence of the offence, the council concerned is involved in any expenditure in connection with such property and the court, in awarding compensation in terms of that subsection, may regard the whole or any part of such expenditure as damage caused to such property.

(4) On the hearing of any application made in terms of subsection (1), the court may refer to the proceedings and evidence at the trial and may hear such further evidence, either *viva voce* or on affidavit, as may be tendered by the prosecutor and the person convicted.

(5) An award of compensation in terms of subsection (1) made by a court with jurisdiction in civil cases may, at the instance of the council concerned, be made a civil judgment of the court making the award by lodging with that court a copy of the award certified by the proper officer in such court, and thereupon the award shall be recorded and have the same effect as any civil judgment of that court.

(6) Any person against whom an award has been made in terms of subsection (1) shall not be liable at the suit of the council concerned to any other civil proceedings in respect of the injury or loss for which compensation has been awarded, other than proceedings taken to enforce the award.

## 164 Transitional provisions and savings

(1) All—

- (a) model by-laws made in terms of the Rural Council Act [*Chapter 211 of 1974*] and the District Councils Act [*Chapter 231 of 1974*]; and
- (b) regulations made in terms of the Rural Councils Act [*Chapter 211 of 1974*]; that were in force immediately before the 18th August, 1988, shall continue, on and after that date, to have force, *mutatis mutandis*, as if they had been made under the appropriate provision of this Act, and may be amended or repealed accordingly.

(2) If any person contravenes any provision of by-laws or regulations which were made in terms of the Rural Councils Act [*Chapter 211 of 1974*] or the District Councils Act [*Chapter 231 of 1974*] and which have been preserved in force by subsection (1) or by notice in terms of subsection (3) of section *ten*, he shall be guilty of an offence and, if no penalty is expressly provided therefor, shall be liable to a fine not exceeding level six.

[Subsection amended by section 4 of Act 22 of 2001.]

## 165 Construction of references in enactments

Unless the context otherwise indicates, a reference in any enactment to a rural council or a district council shall be construed as including a reference to a council established in terms of this Act.

### FIRST SCHEDULE (Section 71)

#### POWERS OF RURAL DISTRICT COUNCILS

##### ARRANGEMENT OF POWERS

1. Acquisition, maintenance, development and disposal of property.
2. Open spaces.
3. Recreational facilities.
4. Showgrounds.
5. Trees.
6. Conservation of natural resources.
7. Bush fires.
8. Fences.
9. Clearing of land.



10. Cultivation and farming.
11. Grazing.
12. Agricultural and other services.
13. Animal diseases.
14. Facilities for animals.
15. Fisheries.
16. Slaughter-houses.
17. Markets and agricultural and other produce.
18. Sale of products.
19. Manufacture and sale of mahewu.
20. Roads, bridges, dams, etc.
21. Parking.
22. Omnibuses.
23. Ferries.
24. Lighting.
25. Decorations and illuminations.
26. Advertising hoardings.
27. Drains, sewers and sewerage works.
28. Water.
29. Obstruction of water flow.
30. Pollution.
31. Public sanitary conveniences.
32. Effluent or refuse removal and treatment.
33. Control of pests.
34. Hospitals, clinics and health services.
35. Ambulances.
36. Fire brigades.
37. Crèches.
38. Maternity and child welfare services.
39. Family planning services.
40. Charitable institutions.
41. Maintenance allowances.
42. Funerals.
43. Grants to charities, sports etc.
44. Grants to other local authorities.
45. Educational institutions.
46. Youth centres.
47. Employment bureaux.
48. Libraries, museums, theatres, public halls, botanical and zoological gardens.
49. Orchestras and bands.
50. Aerodromes and helicopter stations.
51. Boats.
52. Publicity.
53. Public entertainment.
54. Allowances for councillors and members of committees.
55. Acting allowances.
56. Travelling expenses.
57. Courses for councillors, members of committees, officers and employees.
58. Loans to officers and employees for transport.
59. Congresses.
60. Subscriptions to associations.
61. Insurance.
62. Mementoes.
63. Coats of arms and seal.
64. Monuments, statues and relics.

*Acquisition, maintenance, development and disposal of property*

1. (1) To purchase, hire, construct or otherwise acquire such movable or immovable property as may be required by the council for any purposes of the council, including the provision of houses for officers and employees of the council, and to maintain, improve, develop, sell, exchange, let or otherwise dispose of the same:

Provided that, before any land is purchased or sold, or is let or hired for a period of ten years or more by a council—

(a) the intention to do so shall be advertised in a newspaper; and

(b) at least two weeks after the publication of such advertisement any objections which may have been received shall be referred to the council;

and no such purchase, sale or lease shall be transacted except upon a resolution of the council after the provisions of this subparagraph have been complied with.

(2) To acquire by voluntary purchase at a sale in execution, in pursuance of any judgment obtained by the council, any movable or immovable property within the council area.

*Open spaces*

2. To provide, lay out, adorn and maintain any open space under the control of the council.

*Recreational facilities*

3. (1) To provide and manage, on land under the control of the council, parks and other facilities for recreation, swimming or other sports, bathing, camping and caravanning and to do all things necessary or desirable in connection with the provision or operation of such facilities, including the provision of premises for the sale of food and drink.

(2) To let such facilities as are referred to in subparagraph (1) or any portion thereof or rights therein to any person, club or other body of persons.

*Showgrounds*

4. To provide, inside or outside the council area, showgrounds and facilities connected therewith and to do all thing necessary or desirable with regard to the provision of such showgrounds and facilities.

*Trees*

5. To plant, cultivate, trim or remove trees and shrubs on land under the control of the council and to trim or remove roots or branches which interfere with or are likely to interfere with any water main, electricity line, public or private drain or other works of the council. *Conservation of natural resources* 6. To take measures for the conservation or improvement of natural resources. *Bush fires* 7. To provide means for the control, extinguishing and prevention of bush fires. *Fences*

8. To provide for the fencing of public or common land and for the maintenance and repair of such fences.

9. With the consent of the Secretary of the Ministry responsible for the administration of such land enter upon any State land or, with the consent of the owner or person who has the charge or control thereof, upon any other land, and to clear or render such State or other land free from any growing or standing crop, vegetation, rubbish or other offensive or unwholesome matter or thing which—

- (a) is being or has been cultivated, grown or accumulated on the land without the consent of the State or owner or person who has the charge or control thereof, as the case may be; or  
(b) constitutes or is likely to constitute a fire hazard or a danger to public health or to the natural resources of the council area or is unsightly.

*Cultivation and farming*

10. To cultivate and farm land owned or controlled by the council which is not required for other purposes. *Grazing*

11. To permit the grazing of stock on land under the control of the council.

*Agricultural and other services*

12. To provide services for the improvement of agriculture, forestry, viticulture, horticulture and livestock. *Animal diseases* 13. To suppress and control the outbreak and spread of animal diseases.

*Facilities for animals*

14. To provide and maintain dipping tanks, fencing, outspans, stock pens and watering points.

*Fisheries* 15. To establish, promote and maintain fisheries and fish farms.

*Slaughter-houses*

16. To provide and operate, inside or outside the council area, public slaughter-houses, cold storage chambers and depots for the inspection of game and other carcasses.

*Markets and agricultural and other produce*

17. (1) To provide and operate, inside or outside the council area, facilities for the inspection, grading, storage and treatment of agricultural and other produce and to undertake any service for improving the marketing of such produce.

(2) To provide markets for the sale of agricultural and other produce, and carry on the business of dealing with agricultural and other produce at such markets or from mobile vans or other vehicles.

- (3) To let, on such terms and conditions as the council may determine, portions of such markets or stalls in such markets for— (a) the carrying on therein of the business of a cafe or restaurant; or  
(b) the sale by retail of agricultural and other produce; or  
(c) office accommodation for market agents; or  
(d) any other purpose approved by the Minister.

*Sale of products*

18. To sell any products or by-products resulting from the carrying on or operating of any of the works or undertakings which the council is authorized to carry on or operate.

*Manufacture and sale of mahewu*

19. To manufacture the drink commonly known as mahewu or maheu and to sell it in beerhalls and other outlets operated by the council in terms of the Liquor Act [*Chapter 14:12*].

*Roads bridges, dams, etc.*

20. (1) Subject to this Act and any other enactment, to provide and maintain, by itself or through any contractor or agent, roads, bridges, canals, reservoirs, dams, water courses, furrows and culverts.

(2) To name roads and streets and to number and renumber premises and buildings thereon and to require owners and occupiers of such premises and buildings to affix the number thereof in a conspicuous place and to renew it if it becomes defaced.

- (3) Roads, including bridges and culverts, may be provided and maintained in terms of subparagraph (1) outside the area of a council— (a) for access to or in connection with any facility or amenity provided or operated by the council; and (b) either solely by the council or jointly with any other local authority or with the State or any statutory body.

*Parking*

21. To provide and maintain parking places for motor vehicles on land acquired or specially set aside for the purpose.

*Omnibuses*

22. (1) With the consent of the Minister, to establish, acquire, contract for, maintain and carry on within the council area a service of omnibuses for the carriage of passengers and parcels and, in connection with any such service, to enter into an agreement with any person for

the establishment or acquisition of any such service or for the construction or laying down of any works for such service or for the equipment, maintenance, working or carrying out of any such service and to exercise any such powers either alone or in conjunction with any other person.

(2) To exercise the powers mentioned in subparagraph (1) in any area outside the council area with the consent of the local authority, if any, for such area or, if there is no such local authority, with the consent of the Minister.

(3) To grant subsidies to any person carrying on a service of omnibuses for the carriage of passengers and parcels inside the council area or partly inside and partly outside the council area.

#### *Ferries*

23. To establish, maintain and control ferries.

#### *Lighting*

24. Subject to the Electricity Act [*Chapter 13:05*], to provide for the lighting of streets, roads and public places within the council area.

#### *Decorations and illuminations* 25.

To provide and operate decorations and illuminations of roads and buildings.

#### *Advertising hoardings*

26. To provide advertising hoardings on property under the control of the council and to hire out space on such hoardings. *Drains, sewers and sewerage works*

27. (1) To make, construct, alter, keep clean and in repair, maintain and extend drains, sewers, combined drains and sewerage works, inside or outside the council area.

(2) To provide, undertake, carry out, maintain and extend, inside and outside the council area, any scheme of sewerage or drainage for the collection, conveyance or disposal of sewage or storm water within any part of the council area, together with all the necessary sewerage works, and to acquire all the necessary land and premises for the purpose.

(3) To make such sewers, drains, combined drains and sewerage works as may be necessary for effectively draining the whole or any portion of the council area and to carry any such sewers, drains, combined drains and sewerage works through, across or under any road, or under any cellar or vault which may be under the pavement or carriageway of any road, inside or outside the council area and into, through or under any land or premises whatsoever inside or outside the council area and, for this purpose, Parts III and V of the Land Acquisition Act [*Chapter 20:10*], shall apply, *mutatis mutandis*, in respect of any such works: Provided that—

(i) the council or any person duly authorized by it shall at all times have the right of access over and through such land or premises to any such sewers, drains, combined drains and sewerage works for the purposes of inspection, maintenance, alteration or repair; (ii) all such sewers, drains, combined drains and sewerage works shall be vested in the council.

(4) To alter, enlarge, divert, discontinue, close up or destroy any sewers, drains, combined drains or sewerage works under its control.

28. (1) Subject to the Water Act [*Chapter 20:22*], to provide and maintain for domestic, irrigation, industrial or mining purposes a sufficient supply of water for any inhabitants of the council area.

(2) To do all things necessary for inquiring into and investigating any proposed source of or any scheme for such supply.

(3) For the purposes of such supply and subject to the Water Act [*Chapter 20:22*], to acquire land and to acquire water rights and other rights, whether inside or outside the council area.

(4) Subject to the Water Act [*Chapter 20:22*], to establish, provide, carry out, carry on and maintain all the necessary waterworks inside or outside the council area for providing and maintaining and, if necessary, augmenting and improving such supply, and, for the said purposes, by agreement to take over or purchase from any person any existing waterworks and take over and exercise all or any rights, powers, duties and liabilities legally exercised by and possessed by such person in connection with such waterworks.

(5) To enter into and fulfil agreements with any other local authority or any person whatsoever for the purchase or sale of water, whether such water be required for domestic, irrigation or industrial purposes, and to lay down or extend outside the council area, subject to the terms of any such agreement, such water-mains and other works as may be necessary for conveying the water to the required point of distribution.

(6) Notwithstanding anything to the contrary contained in this Act or any agreement made thereunder, by resolution temporarily to restrict or discontinue within any position of the council area the supply of water without any reduction of or rebate on the charge made thereof.

(7) Where the council considers it necessary to do so in times of water shortage, to establish a scheme for the rationing or restricted use of water within urban land, which scheme may provide—

- (a) for the payment of a surcharge for use of water that is rationed or restricted;
- (b) for the apportionment of any surcharge amongst occupants of any building or group of buildings whose water supply is unmetered or jointly metered, whether or not such occupants have entered into an agreement with the council for the supply of water and irrespective of the quantity of water which such occupants may in fact have consumed;
- (c) for the installation of meters to measure the quantity of water consumed by individual occupants of any building or group of buildings;
- (d) for any matter referred to in paragraph 66 of the Second Schedule;
- (e) that any person who contravenes any provision of the scheme shall be guilty of an offence and liable to a fine not exceeding level six.

[Paragraph amended by section 4 of Act 22 of 2001.]

(8) Where a council has established a scheme referred to in subparagraph (7), the council shall give notice thereof in a newspaper and in any other way that the council considers convenient to bring the scheme to the notice of persons affected thereby, and as soon as possible after the establishment of the scheme, the council shall give notice thereof in the *Gazette*.

(9) No action shall on any ground whatsoever lie against a council in connection with any restriction or discontinuance effected in terms of subparagraph (6) or (7).

#### *Obstruction of water flow*

29. Subject to the Water Act [*Chapter 20:22*], to remove any obstruction, other than works constructed under the authority of any enactment, which interferes with the flow of any public stream.

#### *Pollution*

30. To do all things necessary to prevent pollution in any form, whether of water, the atmosphere or otherwise, including the power to require any person to take the necessary steps to achieve such purpose at the expense of such person and, on the failure of such person to comply with his duty in that regard, to take steps on his behalf at his expense.

*Public sanitary conveniences*

31. To provide public sanitary conveniences on land under the control of the council.

*Effluent or refuse removal and treatment*

32. (1) To provide and operate a service for removing and treating trade or other effluent, refuse and human waste for the council area or any portion thereof and to make the use of the service compulsory.

(2) To provide and operate a cleansing service for sewerage installations on private premises.

*Control of pests* 33. To take measures to control or exterminate insects, pests and vermin.

*Hospital, clinics and health services*

34. Subject to any other law, to provide and operate hospitals, clinics and dispensaries and to take any measures or provide any facilities which are considered necessary for the maintenance of health, including dental health.

*Ambulances*

35. To provide and operate an ambulance service inside the council area or any portion thereof or outside the council area.

*Fire brigades*

36. (1) To establish, equip and maintain fire brigades for the protection and saving of life and property in the case of fire or other emergency.

(2) To take any necessary precautions for the preservation of life or property during or after fires or other emergencies.

(3) To authorize any officer of a fire brigade or any other officer or employee of the council to enter any premises for any purpose mentioned in subparagraph (2) or for the purpose of obtaining access to and the use of water.

*Crèches*

37. To provide and operate crèches.

*Maternity and child welfare services*

38. To provide, operate or carry on services for the care and welfare of newly-born infants and for the giving of advice, guidance and instruction to expectant mothers and mothers of newly-born infants.

*Family planning services*

39. To provide and operate or carry on services for child spacing and family planning.

*Charitable institutions*

40. To provide and operate public institutions or services for aged persons or mentally or physically handicapped persons or for any other charitable purpose or public orphanages.

*Maintenance allowances*

41. To provide maintenance allowances for aged persons, mentally or physically handicapped persons, orphans and indigent persons.

42. To provide funerals for indigent persons.

*Grants to charities, sports, etc.*

43. (1) Subject to subparagraph (2), to make grants of money or loans for the establishment, maintenance or support of—

(a) any organization or institution which is performing a function which the council itself is, by this Act or any other law, permitted to perform; or

(b) institutions such as—

(i) associations for the education of the public in road safety measures; or

(ii) musical and dramatic societies, scientific, literary and musical institutions, including institutions providing lectures on scientific, literary and other subjects; or

(iii) registered welfare organizations; or

(c) agricultural societies; or

(d) sporting or recreational bodies; or

(e) organizations for the protection of adults, children or animals against accident or cruelty; or

(f) organizations providing instruction in first aid, home or district nursing or any other matter relating to public health; or

(g) organizations for the education, welfare or recreation of members of the Police Force and Defence Forces, students and schoolchildren, including such movements as the Boy Scouts and the Girl Guides Associations and other youth movements; or

(h) prizes for schools or school-children; or

(i) prizes for training in defence of Zimbabwe; or

(j) measures for the relief of persons suffering from any disaster or widespread calamity; or

(k) the National Arts Council of Zimbabwe; or

(l) the National Trust of Zimbabwe, or

(m) the Trustees of the National Museums and Monuments of Zimbabwe in respect of the acquisition, restoration or maintenance of historical properties within the council area; or

(n) any university or college or any institute of adult education, whether inside or outside Zimbabwe, which is approved by the Minister responsible for education; or

(o) bursaries for students at institutions, whether inside or outside Zimbabwe, approved by the Minister responsible for education.

(2) A council shall not make any grant or loan in the exercise of the powers conferred by subparagraph (1) to an institution or organization which is conducted for profit or gain for any person, whether as a shareholder of a company or otherwise.

*Grants to other local authorities*

44. To make grants to other local authorities.

*Educational institutions*

45. Subject to any other enactment, to provide, operate and maintain schools and other educational institutions and facilities and amenities connected therewith and for such purposes to levy and collect fees and other charges.

*Youth centres*

46. To provide and operate youth centres and facilities or amenities connected therewith.

*Employment bureaux*

47. Subject to the Labour Relations Act [*Chapter 28:01*], to provide and operate employment bureaux.

*Libraries, museums, theatres, public halls, botanical and zoological gardens*

48. To provide and operate—

(a) public libraries, museums, including fine arts museums, and art galleries;

(b) theatres, public halls and public lecture rooms;

(c) aquaria and botanical and zoological gardens; and facilities or amenities connected therewith and to hire out the facilities referred to in subparagraph (b).

*Orchestras and bands* 49.

To provide and maintain orchestras or bands and to hire them out.

*Aerodromes and helicopter stations*

50. To provide, maintain and operate aerodromes and helicopter stations and facilities connected therewith.

*Boats* 51. To provide and operate boats and boating establishments.

*Publicity*

52. To advertise and give publicity to the amenities, attractions and advantages of the council area. *Public entertainment*

53. To incur expenditure necessary for the provision and acceptance of civic hospitality, civic presentations and civic courtesies and towards religious services, receptions, commemorations, celebrations, conferences, congresses, entertainments and functions of a civic, public or national character and to defray the expenses of the representation of the council on any such occasion. *Allowances for councillors and members of committees*

54. (1) Subject to subparagraph (2) with the approval of the Minister and in accordance with any resolution of the council, to pay to the councillors and to members of any committee a monthly personal allowance at a rate fixed by the council, not exceeding such sum as may be prescribed in regulations.

(2) A personal allowance in terms of subparagraph (1) shall not be paid to a person—

(a) in respect of the whole of any period of leave of absence from the council or committee, as the case may be, which exceeds a continuous period of thirty days;

(b) in circumstances where any resolution of the council prohibits such payment.

*Acting allowances*

55. With the approval of the Minister, to pay a councillor or any person who acts for the chief executive officer or any other officer or employee of the council during his absence, inability, or refusal of to perform his duties, such acting allowance as the council may in its discretion decide, not exceeding such sum as may be prescribed in regulations.

*Travelling expenses*

56. (1) Subject to subparagraph (3), to pay to councillors, officers and employees of the council and members of committees and persons representing the council such sums as may reasonably be necessary to cover travelling and subsistence expenses while on the business of, or representing, the council.

(2) Subject to subparagraph (3), to pay to persons interviewed for appointment to the employment of the council or travelling to take up employment with the council such sums as may reasonably be necessary to cover the travelling and subsistence expenses incurred by those persons in connection therewith.

(3) Sums paid in terms of subparagraph (1) or (2) shall not exceed such amounts as the Minister may prescribe in regulations.

*Courses for councillors, members of committees, officers and employees*

57. To provide, operate, support, promote or participate in courses of instruction, seminars and lectures for the purpose of improving the ability of councillors, members of any committee, officers and employees to carry out their functions. *Loans to officers and employees for transport*

58. To provide loans for officers of the council to enable them to purchase motor-vehicles necessary for the performance of their duties.

*Congresses*

59. To incur expenditure in connection with—

(a) the representation of the council at any congress or conference; or

(b) any deputation appointed by the council or on which the council is represented.

*Subscriptions to associations*

60. To pay subscription fees to associations established to protect the interests of local authorities or to render advice and service to local authorities.

*Insurance*

61. To insure, either through the funds of the council or through underwriters— (a) against losses, damages, risks or liabilities the council may incur; and

(b) councillors, members of any committee, officers and employees of the council and persons representing the council against any risk, while engaged upon the business of the council or otherwise.

*Mementoes*

62. To present mementoes to past councillors and members of committees.

*Coats of arms and seal*

63. To adopt a coat of arms or seal or both, which may be altered from time to time, and determine the use thereof.

*Monuments, statutes and relics*

64. (1) To provide public monuments and statues on land acquired, leased or set aside for the purpose.

(2) To undertake and carry on any scheme or work for improving facilities or amenities for the public in connection with any land or anything under the control of the council which is a monument or national monument or relic in terms of the National Museums and Monuments Act [*Chapter 25:11*]:

Provided that no work shall be undertaken in terms of this subparagraph without the consent in writing of the Director appointed in terms of section 14 of that Act and in accordance with such requirements as he may stipulate.

## **SECOND SCHEDULE (Section 88 and 89)**

### **MATTERS FOR WHICH RURAL DISTRICT COUNCILS MAY MAKE BY-LAWS**

#### **ARRANGEMENT OF MATTERS PART I**

##### **PROCEEDINGS OF COUNCIL AND FINANCIAL MATTERS**

1. Proceedings at meetings.
2. Disclosure of documents and publication of proceedings.
3. Financial.
4. Contracts.
5. Tenders.
6. Capital development funds.
7. Allowances for councillors and members of committees.

#### **PART II**

##### **CONTROLS OVER PROPERTY**

8. Protection of property controlled by council.
9. Protection of common property.
10. Vegetation.
11. Conservation of natural resources.
12. Congregation, entry and parking on property controlled by council.
13. Permits for certain activities on land controlled by council.
14. Removal of unauthorized buildings on land controlled by council.
15. Advertisements.
16. Depreciation of property.
17. Overcrowding.
18. Limitation and control of occupation and use of land or buildings.
19. Excavations.
20. Masts and poles.
21. Hedges and trees.
22. Fireplaces and chimneys.
23. Cooking and washing facilities.
24. Occupation or use of buildings.
25. Dangerous or neglected buildings.
26. Public buildings.
27. Fire-fighting equipment and fire-escapes.
28. Numbering of premises and buildings.

#### **PART III**

##### **PLANNING, CONSTRUCTION AND USE OF BUILDINGS AND STRUCTURES**

29. Interpretation in Part II.
30. Location and situation.
31. Plans, specifications and structural calculations.
32. Nature, design and appearance of buildings.
33. Drainage and sewerage provision.
34. Water supplies.
35. Materials and construction.
36. Conduct of building operations.
37. Inspections, samples and tests.
38. Temporary structures.
39. Use of buildings.
40. Completion of buildings.
41. Use of scaffolding, hoarding or protective devices.
42. Administration of by-laws relating to certain matters.
43. General.

#### **PART IV**

##### **ROADS AND TRAFFIC**

44. Work in vicinity of roads.
45. Scaffolding and decorations on roads.
46. Gatherings and noises in roads.
47. Prevention of use of pavements for unauthorized purposes.
48. Trees, shrubs, etc., in relation to roads and traffic.
49. Regulation of use of roads.

50. Naming of roads.
51. Obstruction of roads and other public places.
52. Processions and public meetings.
53. Driving of stock.
54. Parking of vehicles.
55. Loading and unloading.
56. Use of warning devices.
57. Regulating and licensing of cycles and certain other vehicles.
58. Taxi-cabs and omnibuses.
59. Drivers of taxi-cabs.
60. Omnibuses.

#### PART V

##### AMENITIES AND FACILITIES

61. Public sanitary conveniences.
62. Parks, recreation grounds, caravan parks, camping grounds, etc.
63. Boating establishments.
64. Fish and fishing.
65. Crèches.
66. General.
67. Pollution of water.
68. Wells and boreholes.

#### PART VI

##### WATER

66. General.
67. Pollution of water.
68. Wells and boreholes.

#### PART VII

##### SEWERAGE, EFFLUENT, THE DESTRUCTION OF INSECTS AND VERMIN AND THE REMOVAL OF REFUSE AND VEGETATION

69. Sewerage and drainage.
70. Sanitary fittings.
71. Effluent and refuse removal.
72. Cleansing of private sewers, roads and yards.
73. Crops, vegetation, rubbish and waste material.
74. Disease-carrying insects and vermin.
75. Noxious insects.

#### PART VIII

##### ANIMALS, BEES, REPTILES AND BIRDS

76. Keeping of animals, bees, reptiles and birds.
77. Public riding stables and kennels.
78. Dog tax.
79. Slaughter of animals and slaughter-houses.
80. Dipping tanks.
81. Stock pens.

#### PART IX

##### FOOD, FOOD PREMISES OR VEHICLES AND MARKETS

82. Sale and supply of food.
83. Premises, vehicles and employees.
84. Food introduced from outside council area or particular areas.
85. Market gardens.
86. Markets.

#### PART X

##### TRADES, OCCUPATIONS AND OTHER ACTIVITIES

87. Dangerous trades.
88. Employment bureaux and compulsory medical examination and treatment of workers.
89. Disinfection and fumigation.
90. Infectious diseases.
91. Hawkers and street vendors.
92. Electricians.
93. Plumbers and drain-layers.
94. Hairdressers, barbers and beauty salons.
95. Launderers, cleaners and dyers.
96. Funeral parlours and mortuaries.
97. Boarding-houses.
98. Public auctions.

99. Control of collections.

## PART XI

### NUISANCES

100. General.

101. Horns, bells, etc.

102. Use of loudspeakers.

103. Objectionable advertisements, etc.

## PART XII

### FUNCTIONS, PERFORMANCES, EVENTS AND AMUSEMENTS

104. Performances dangerous to the public.

105. Amusements.

106. Open-air events.

## PART XIII

### FIRES, COMBUSTIBLE MATERIAL AND EXPLOSIVES

107. Fires.

108. Bonfires and burning of rubbish.

109. Combustible or inflammable material and explosives.

## PART XIV

### GENERAL

110. Control of any service, institution or thing.

111. Inspections.

112. Charges.

113. Offences and penalties.

## PART I

### PROCEEDINGS OF COUNCILS AND FINANCIAL MATTERS

#### *Proceedings at meetings*

1. The regulation of the proceedings and the preserving of order at meetings of the council and committees, including provision for the suspension and exclusion of a councillor or member of a committee who disregards the authority of the chair or wilfully obstructs the business of the council or committee.

#### *Disclosure of documents and publication of proceedings*

2. (1) The prohibition or regulation of the disclosure of documents and records of the council.  
(2) The prohibition or regulation of the publication of the proceedings of any committee or of the council whilst in committee.  
(3) The punishment by suspension of any councillor or member of a committee who is guilty of a breach of any by-laws made in relation to a matter specified in subparagraph (1) or (2).

#### *Financial*

3. Subject to this Act and to regulations made in terms of section *one hundred and fifty-nine*, the regulation of the manner in which the finances of the council shall be controlled, including, without derogation from the generality of the foregoing, provision for—

- (a) ensuring the proper collection of income and the control of banking accounts and regulating the procedure for authorizing payments of accounts, including the signing of cheques; or
- (b) ensuring the proper custody and preservation of moneys, securities and other property; or
- (c) a procedure for the reporting of the loss or destruction of money or other assets or damage to assets; or (d) adequate control of stores and requiring and regulating the checking of stock. *Contracts*

4. Subject to section *seventy-nine* the regulation of the manner in which contracts shall be executed by or on behalf of the council.

*Tenders*  
5. Subject to section *eighty-four*, the regulation of the calling for, the submission of and the dealing with tenders and the placing of contracts for the execution of work for the council and the supply of goods or materials to the council.

#### *Capital development funds*

6. The regulation of the operation of any capital development fund established in terms of section *one hundred and twenty-eight*.

#### *Allowances for councillors and members of committees*

7. Subject to paragraph 54 of the First Schedule, providing for the payment of any allowances to councillors and members of committees and the circumstances in which such allowances shall not be payable.

## PART II

### CONTROLS OVER PROPERTY

#### *Protection of property controlled by council*

8. The protection of property under the control of the council and the prohibition of any interference therewith or the defacing thereof.

#### *Protection of common property*

9. Preventing damage to any property to which the inhabitants of the council area or any portion thereof have a common right and providing for the recovery of compensation for such damage.

#### *Vegetation*

10. The preservation of trees, shrubs and other vegetation on property under the control of the council and the prevention of injury to such vegetation.



*Conservation of natural resources 11.*

The preservation and conservation of natural resources.

*Congregation, entry and parking on property controlled by council*

12. (1) The prohibition or regulation of the congregation of persons on or in any land, building or premises under the control of the council.  
(2) The prohibition of—  
(a) the entry of persons on to any land, building or premises under the control of the council; or  
(b) the parking of motor and other vehicles on any land referred to in subparagraph (a); without the authority of the council.

*Permits for certain activities on land controlled by council*

13. The granting of permits in respect of property under the control of the council for—  
(a) the catching of fish; or  
(b) the hurting of game; or  
(c) the picking of wild flowers; or  
(d) the taking of bees or honey; or  
(e) the making of bricks; or  
(f) the digging or removal of sand, clay or gravel; or  
(g) the quarrying of stone; or  
(h) the cutting of firewood, brushwood or grass; or (i) the grazing of animals.

*Removal of unauthorized buildings on land controlled by council*

14. The removal of unauthorized buildings on land under the control of the council. *Advertisements*  
15. (1) The regulation of the erection, display and use of any advertisement or sign, and any apparatus, device or surface upon which an advertisement or sign is displayed or which is erected or intended for the display of advertisements.  
(2) The prohibition of the erection of hoardings which constitute a disfigurement of, or a source of annoyance to, the neighbourhood.  
(3) The prohibition or regulation, and the inspection, supervising and licensing, of the use and passage of advertising vans, sandwichboards, lanterns, flags, screens or other movable advertising devices.  
(4) The prohibition and removal of advertising signs and the like which, in the opinion of the council, are a danger to traffic.

*Depreciation of property*

16. The prohibition of—  
(a) the carrying out on land or in buildings of any work; or (b) the utilization of any land or buildings in a manner; which would be likely to depreciate or disfigure property, or to interfere with the convenience or comfort of the neighbours or with the amenities of the locality or to become a source of danger.

*Overcrowding*

17. The prevention of the overcrowding of any building and defining what constitutes such overcrowding.

*Limitation and control of occupation and use of land or buildings*

18. (1) Notwithstanding any other enactment, for regulating and controlling the occupation or use of accommodation which is occupied or used by, or which is designed or is intended for occupation or use by, employees, the number of persons who may occupy or use any land or buildings in the council area, for the summary eviction of any person occupying or using any land or building in contravention of the bylaws and the removal of any property, including any building or structure unlawfully erected, in connection with such eviction and for empowering the council to take measures to ensure compliance with the by-laws on the failure of any person to comply with his duty in that regard and to recover from such person any expenses incurred by the council in ensuring such compliance.  
(2) By-laws referred to in subparagraph (1) may provide that no compensation shall be payable in respect of property which is removed as referred to in that subparagraph and—  
(a) is destroyed and damaged in the course of such removal; or  
(b) is not claimed within a specified period of such removal and is destroyed.

*Excavations*

19. Requiring all holes, wells, pits, excavations and ponds on any private land not effectively fenced or enclosed to be filled in or to be adequately protected, and, on the failure of any person to do any act to comply with his duty in that regard, empowering the council to do the act at his expense.

*Masts and poles*

20. The regulation of the erection of masts or poles, the materials to be used and the painting thereof and the stays and other contrivances to be used in connection therewith.

*Hedges and trees*

21. (1) The regulation of the planting of hedges, the position of hedges and the plants which may be used for hedges.  
(2) Requiring owners of property to remove trees, shrubs or hedges which obstruct natural lighting in neighbouring properties, and, on the failure of any person to do any act to comply with his duty in that regard, empowering the council to do the act at his expense.

*Fireplaces and chimneys 22.*

The maintenance of fireplaces and chimneys.

*Cooking and washing facilities*

23. Ensuring that suitable and adequate accommodation and facilities for cooking and washing are provided and for ensuring and regulating the use of such accommodation and facilities.

*Occupation or use of buildings*

24. (1) The prohibition or regulation of the use of underground rooms for human habitation or occupation.  
(2) The closing of buildings or parts of building which are unfit for human habitation or occupation.  
(3) The prohibition of the use, except with the consent of the council, of any building in a manner other than that indicated on plans submitted to and approved by the council in connection with the construction thereof.  
(4) The closing of buildings the use and occupation of which have been prohibited.

- (5) The prohibition or regulation of the accommodation of employees in outbuildings other than those designed to accommodate persons.

*Dangerous or neglected buildings*

25. (1) Requiring the protection, securing, repair, alteration, renovation, maintenance, closure or demolition of buildings or works of any nature which—

- (a) are or show signs of becoming dangerous or unhealthy; or
- (b) have fallen into a ruinous or dilapidated condition; or
- (c) are likely to detract from the value or desirability of other properties in the neighbourhood; and, on the failure of any person to do any act to comply with his duty in that regard, empowering the council to do the act at his expense.

(2) Prohibiting the occupation or use of buildings or works referred to in subparagraph (1) until any work required to be done in respect of such buildings or works has been completed to the satisfaction of the council.

*Public buildings*

26. (1) The regulation and the inspection, supervising and licensing of—

- (a) churches, chapels and other public places of worship, not being dwelling-houses so used;
- (b) hospitals;
- (c) colleges, schools and universities;
- (d) cinemas, theatres, public halls, public billiard rooms, public hotel rooms and public restaurants;
- (e) buildings or premises, including any house, garden or other place, which are kept or used for dancing or other public entertainment of any kind or used for dance studios or schools of dancing;
- (f) any other public places of assembly having accommodation for more than fifty persons.

(2) The securing and keeping of places referred to in subparagraph (1) free from nuisance so as not to endanger the health or safety of persons reporting thereto or of members of the public generally.

(3) The provision in cinemas, theatres and public halls of—

- (a) mechanical means of ventilation; and
- (b) seating accommodation; and the regulation thereof.

(4) The prohibition of the use of buildings or premises referred to in subparagraph (1) which do not conform with the requirements of the by-laws.

(5) The regulation of public libraries, museums and art galleries and other services and facilities provided in connection therewith. *Fire-fighting equipment and fire-escapes*

27. Requiring the provision in any building of suitable and adequate fire-fighting equipment and, in the case of buildings with one or more storeys above the ground floor, the provision of suitable and adequate fire-escapes.

*Numbering of premises and buildings*

28. The numbering and renumbering of premises and buildings and imposition of duties and obligations in connection therewith upon the owners and occupiers of the premises and buildings.

PART III

PLANNING, CONSTRUCTION AND USE OF BUILDINGS AND STRUCTURES

*Interpretation in Part III*

29. In this Part—

“building” includes sewers, drainage works, swimming pools, walls, fences, masts, temporary platforms, grandstands and other structures, whether movable or immovable and above or below ground.

*Location and situation*

30. (1) Requiring the pointing out of boundaries or beacons and otherwise ascertaining the limits and identity of sites upon which buildings are constructed or to be constructed.

(2) The prohibition of the construction of buildings upon sites which are unstable, not readily susceptible to drainage, unhealthy or otherwise unsuitable for buildings.

(3) Regulating the position in which buildings may be constructed upon sites.

(4) Regulating the number of buildings which may be constructed upon sites.

(5) Regulating the level or elevation at which buildings may be constructed in relation to land adjoining sites or likely to be affected by the construction of buildings.

*Plans, specifications and structural calculations*

31. (1) The prohibition of the construction of any buildings without submitting plans, specifications and structural calculations to the council and having those plans, specifications and structural calculations approved by the council.

(2) The submission, form, consideration and custody of plans, specifications and structural calculations.

(3) The prohibition of the construction of buildings otherwise than in accordance with plans, specifications and structural calculations approved by the council.

(4) Controlling amendments to and departures from approved plans, specifications and structural calculations.

*Nature, design and appearance of buildings*

32. (1) Regulating the nature, design, appearance, height, ventilation, area, lighting and cubic content of buildings and the several parts thereof generally and according to where they are located or situated.

(2) The prohibition of the construction of buildings which may— (a) be insanitary, dangerous or unhealthy; or

(b) be objectionable, displeasing or unsuitable by virtue of the buildings themselves, the use to which they are to be put or their situation or surroundings; or

(c) depreciate the value or desirability of other properties in the neighbourhood or the neighbourhood itself; or (d) cause annoyance to the inhabitants in the neighbourhood.

(3) The prohibition or regulation of the fitting to buildings of clocks, awnings, flag poles, emblems, decorations and other fixtures or projections.

(4) The prohibition or regulation of encroachments upon, over and under roads or public places.

#### *Drainage and sewerage provision*

33. (1) Ensuring the provision of suitable and adequate toilet facilities, sewerage and drainage and sanitation and for enforcing and regulating the use thereof.
- (2) The provision and construction of drainage and sewerage for any premises.
  - (3) The prohibition or regulation of the construction of septic or conserving tanks, including provision for the conditions and specifications to which such tanks shall conform.
  - (4) The regulation of the construction and maintenance of private sewers and combined private sewers.
  - (5) The regulation of the nature and construction of sanitary fittings.

#### *Water supplies*

34. (1) Ensuring the provision of suitable and adequate supplies of water.
- (2) The regulation of the nature and construction of water fittings, including, without derogation from the generality of the foregoing—
    - (a) specifying the size, nature, materials and strength and the mode of arrangement, connection, disconnection, alteration and repair of the water fittings to be used;
    - (b) the stamping of water fittings to be used;
    - (c) prohibiting the use of water fittings which are not duly stamped or which are of such a nature or so arranged or connected as to cause or permit, or be likely to cause or permit, waste, undue consumption, misuse, erroneous measurement or contamination of water or reverberation of pipes;
    - (d) the testing and inspecting of water fittings.
  - (3) The determination and regulation of the design and places where, water connections may be made and the testing and inspecting of water connections.

#### *Materials and construction*

35. (1) The regulation of the excavation of land prior to the construction of buildings and the erection of supports and earthworks for the stability of buildings and convenient disposal of rainwater from a site.
- (2) The determination and regulation of the nature of the materials used in the construction of foundations, floors, walls, stairs, windows, doors, roofs, guttering, down-pipes, chimneys, drains and every other part of buildings.
  - (3) The determination and regulation of the design and structure of buildings so as to ensure that proper regard is paid to loads, stresses, forces, structural calculations and other considerations relevant to the stability and durability of buildings.

#### *Conduct of building operations*

36. (1) Regulating encroachments on, over or under, and interference with, roads or public places during building operations.
- (2) Requiring and regulating the erection and use of builders' sheds and temporary sanitary conveniences for persons engaged on the construction of buildings.
  - (3) Regulating, minimising and limiting disturbances caused by noisy, dirty or offensive operations.
  - (4) Requiring the clearing up or removal of rubble, materials and refuse so that building sites are left in a clean and tidy condition and, on the failure of any person to do any act to comply with his duty in that regard, empowering the council to do the act at his expense.

#### *Inspections, samples and tests*

37. (1) The inspection and testing of materials used for the construction of buildings and of work performed or being performed in the construction of buildings.
- (2) Ensuring that the approved plans, specifications and structural calculations are adhered to.
  - (3) The taking and removal of samples of materials.
  - (4) The allocation of costs of inspection and tests.

#### *Temporary structures*

38. (1) Determining buildings and classes of buildings which shall be subject to prohibition and control as temporary structures and regulating the construction and retention of temporary structures.
- (2) Requiring the demolition and removal of temporary structures.
    - (a) are constructed without permission; or
    - (b) become dangerous, unhealthy, dilapidated or unsightly; and on the failure of any person to do any act to comply with his duty in that regard, empowering the council to do the act at his expense.

#### *Use of buildings*

39. (1) Prohibiting the use or occupation of buildings or any part of buildings prior to completion to the satisfaction of the council.
- (2) Regulating the use of buildings, including prohibiting the use and occupation of buildings which—
    - (a) are constructed in contravention of plans, specifications and structural calculations approved by the council; or (b) do not conform with the requirements of the by-laws.
  - (3) Requiring the alteration or demolition of buildings which—
    - (a) are constructed in contravention of plans, specifications and structural calculations approved by the council; or
    - (b) do not conform with the requirements of the by-laws; and the removal of any rubble, materials and refuse and, on the failure of any person to do any act or comply with his duty in that regard, empowering the council to do the act at his expense.

#### *Completion of buildings*

40. (1) Ensuring that buildings, the construction of which has commenced, are completed.
- (2) Requiring uncompleted buildings to be demolished or otherwise rendered safe, tidy and as little offensive as possible and, on the failure of any person to do any act to comply with his duty in that regard, empowering the council to do the act at his expense.

#### *Use of scaffolding, hoarding or protective devices*

41. Requiring and regulating the erection, lighting and use of scaffolding, hoarding or protective devices during the construction, repair or demolition of any building.

#### *Administration of by-laws relating to certain matters*

42. (1) Establishing boards or tribunals and determining procedures whereby disputes between the council, builders, landowners and other persons concerning the implementation of by-laws relating to the construction, maintenance or use of buildings may be resolved.

(2) The relaxation or waiver of the provisions of by-laws relating to the construction, maintenance or use of buildings.

*General*

43. Regulating the situation, location, construction, maintenance and protection of all buildings, monuments, masts and other structures, whether of a permanent or temporary nature, in order to protect and ensure the safety, health, comfort and aesthetic pleasure of persons visiting, living, working or otherwise present in the council area or any portion thereof.

PART IV

ROADS AND TRAFFIC

*Work in vicinity of roads*

44. Requiring the owner of any land on which any work is or is about to be done which may damage any road—
- (a) to deposit with the council a sum of money as estimated by the council against the cost of repairing such damage; and
  - (b) to take such measures as the council may specify for securing the safety and convenience of persons using any roads or property in the vicinity of such work.

*Scaffolding and decorations on roads*

45. The regulation of—
- (a) decorations or illuminations; and
  - (b) scaffolding, hoarding and protective devices such as are referred to in paragraph 41; on or over roads.

*Gatherings and noises in roads*

46. (1) The regulation of performances, singing, dancing and gatherings in roads.  
(2) The regulation and prohibition of the use in roads of loudspeakers or other devices for the reproduction or amplification of sound.

*Prevention of use of pavements for unauthorized purposes*

47. (1) The prohibition of the use of vehicles, other than perambulators and invalid chairs, on any pavement, except for the purpose of crossing the same to or from any premises.  
(2) The prohibition of the use of any pavement— (a) for the display, storage or sale of goods; or (b) for any other purpose which is likely to encumber or obstruct the free passage along that pavement.

*Trees, shrubs, etc., in relation to roads and traffic*

48. (1) The prevention of trees and shrubs on private property from overhanging or encroaching upon, or the roots thereof protruding into or under, any road so as to damage any road or obstruct or endanger any user of such road and the measures to be taken for the removal thereof by the owner or by the council at the expense of the owner.  
(2) The prohibition of the erection of any wall or fence or the planting of any tree, shrub or hedge which, owing to its position in regard to any road or intersection of roads or for any other reason, constitutes a danger to traffic.  
(3) Requiring the removal lowering or trimming of any wall, fence, tree, shrub or hedge which, owing to its position in regard to any road or intersection of roads or for any other reason, constitutes a danger to traffic and, on the failure of any person to do any act to comply with his duty in that regard, empowering the council to do the act at his expense.

*Regulation of use of roads*

49. (1) The prohibition, restriction and regulation of the use of any road by—
- (a) vehicles generally or any particular class of vehicles for the purpose of controlling traffic; or
  - (b) notwithstanding anything contained in section 9 of the Road Traffic Act [*Chapter 13:11*], holders of learners licences.
- (2) The fixing of the maximum axle-load of any vehicle which may be permitted on any road.  
(3) The prohibition, restriction or regulation of the use of any road by animal-drawn vehicles.  
(4) The prohibition, restriction or regulation of the use of any road with a surface constructed of gravel, bitumen or other like material by vehicles which are not equipped with pneumatic tyres or by any other particular class of vehicles.  
(5) The prevention of damage to roads, including damage caused by the overloading of vehicles, having regard to the nature of such vehicles and the season of the year.

*Naming of roads* 50.

The naming of roads.

*Obstruction of roads and other public places* 51.

The prevention of the obstruction of any road or other public place.

*Processions and public meetings*

52. The regulation of processions and public meetings in roads and other public places.

*Driving of stock*

53. (1) The regulation of the driving or leading of stock on roads or on land under the control of the council.  
(2) The prohibition of the driving or leading of stock except along such routes and during such hours as may be specified in the by-laws.

*Parking of vehicles*

54. (1) The regulation and supervision of parking garages and parking places and of the use thereof and of parking meters or other devices for the control of the parking of vehicles.  
(2) The prohibition or regulation of the parking of vehicles in any road.

*Loading and unloading*

55. The conditions subject to which and the times at which articles may be loaded on to or unloaded from vehicles in any road.

*Use of warning devices*

56. The regulation of the use of hooters, horns or other such warning devices on any vehicle and the prohibition of their use during such hours and in such areas as may be specified in the by-laws.

*Regulation and licensing of cycles and certain other vehicles*

57. (1) In this paragraph—

“vehicle” means any cycle or other vehicle which is intended or adapted for use on roads, but does not include— (a)  
any motor vehicle;  
(b) any auto cycle;  
(c) any trailer;  
(d) any vehicle which is kept by a dealer for the purpose of sale only;  
(e) any vehicle which is used solely on a farm or mining location for farming or mining purposes.

- (2) The regulation of the use of any vehicle.
- (3) The licensing of any vehicle which is ordinarily kept within the council area.

*Taxi-cabs and omnibuses*

58. (1) The regulation of the use of taxi-cabs and omnibuses carrying passengers or parcels for hire or reward.
- (2) The fixing of the fares to be charged and the regulation of disputes as to fares in respect of taxi-cabs and omnibuses.
- (3) Ensuring generally the good and efficient working of any taxi-cab or omnibus service.

*Driving of taxi-cabs* 59.

The regulation and licensing of the drivers of taxi-cabs.

*Omnibuses*

60. (1) The regulation of any omnibus service.
- (2) The prohibition of the driver of any omnibus from—
  - (a) accepting any passenger while the vehicle is in motion or is stopped within or at any place other than a place set aside for the purpose; or
  - (b) permitting any person to use the omnibus or a portion of the omnibus in contravention of any law.

PART V  
AMENITIES AND FACILITIES

*Public sanitary conveniences*

61. The regulation of the use of public sanitary conveniences provided in terms of paragraph 31 of the First Schedule.

*Parks, recreation grounds, caravan parks, camping grounds, etc.*

62. The regulation of—
  - (a) parks, recreation, athletic and sports grounds, swimming baths and like places of public entertainment, pavilions, refreshment rooms and restaurants; and
  - (b) caravan parks, camping grounds, health or pleasure resorts, botanical or zoological gardens and any other accommodation, services, amenities and conveniences on land under the control of the council.

*Boating establishments*

63. The regulation and licensing of boating establishments and boats, whether for hire or otherwise, on waters under the control of the council.

*Fish and fishing*

64. Prohibiting or regulating the catching or killing of fish in dams, water sources, reservoirs and other water under the control of the council.

*Crèches*

65. The regulation and licensing of crèches.

PART VI

WATER

*General*

66. (1) Subject to the Water Act [*Chapter 20:22*], the regulation and rationing of the supply and distribution of water.
- (2) Without derogation from the generality of subparagraph (1), by-laws relating to matters referred to in that subparagraph may contain provision for all or any of the following—
  - (a) the maximum quantity of water that may be consumed on any specified premises during any specified period;
  - (b) the purposes for which, manner in which or periods during which water may not be used or supplied;
  - (c) empowering a court to terminate a lease on the grounds that the lessee has failed to comply with any written directions given to him by the lessor as to the use of water on the premises leased in a manner which contravenes the provisions of any by-laws and the ejection of any such lessee;
  - (d) generally for the protection from injury or injurious use of any water works, water mains, connections and fittings of the council;
  - (e) cutting off the supply of water, after not less than twenty-four hours' notice, on account of—
    - (i) failure to pay any charges which are due; or
    - (ii) the contravention of any by-laws relating to waste, misuse or contamination of water;
  - (f) providing for a scheme for the rationing or restricted use of water referred to in paragraph 28 of the First Schedule;
  - (g) subject to section *seventy-seven*, the inspection of consumers' premises at all reasonable times;
  - (h) the testing and inspection of water mains;
  - (i) fixing the duties of consumers in respect of meters and the settlement of disputes as to the amount of water supplied or tariff applicable.

*Pollution of water* 67.

The protection of any water from pollution.

*Wells and boreholes*

68. Subject to the Water Act [*Chapter 20:22*], the prohibition or regulation of— (a)  
the sinking, construction and extension of wells and boreholes; and
  - (b) the use of water obtained from wells or boreholes; and
  - (c) the interconnection of any well or borehole with the water mains or water supply of the council.

## PART VII

### SEWERAGE, EFFLUENT, THE DESTRUCTION OF INSECTS AND VERMIN AND THE REMOVAL OF REFUSE AND VEGETATION

#### *Sewerage and drainage*

69. (1) The closing of cess-pits and the removal or sealing or disused sewers.  
(2) The regulation of the use and protection from damage or injurious use of any system of sewerage and drainage and sewerage works.  
(3) The regulation of the use of septic or conserving tanks and the inspection and supervision of such tanks.  
(4) The prohibition or regulation of the discharge, directly or indirectly, of sewerage or other effluent or any solid, liquid or gas into any public stream, public sewer or public drain.

#### *Sanitary fittings*

70. (1) In this paragraph—  
“sanitary fitting” means any water closet, urinal, bidet, slopsink, bath, wash basin, sink, shower or other fitting of a like nature from which soil-water or waste water is disposed of into a soil pipe or waste pipe, as the case may be.  
(2) The prohibition of the use or occupation of premises where the required sanitary fittings are not provided.  
(3) The prohibition of the use of sanitary fittings which are defective or insanitary. *Effluent and refuse removal*
71. (1) The removal or disposal of—  
(a) human waste;  
(b) effluent, water or refuse, whether trade, domestic or otherwise;  
(c) decaying and other offensive or unhealthy matter; and requiring the use by persons of any system or undertaking provided by the council for the collection, removal or disposal thereof.  
(2) The specification of the type of container to be used by the owner or occupier of any premises for the storage of refuse pending removal and the supply of such type of container in circumstances where such containers are not provided in sufficient number or of adequate size or construction.  
(3) The regulation of the positions where containers referred to in subparagraph (2) shall be placed.  
(4) The prohibition or regulation of the arrangement, construction and siting of any building or appliance appertaining to the disposal of human waste or domestic or trade effluent.

#### *Cleansing of sewers, roads and yards*

72. The regulation of the cleansing and condition of sewers, private roads and yards common to two or more owners and the imposition of duties in respect thereof upon owners, occupiers and tenants.

#### *Crops, vegetation, rubbish and waste material*

73. (1) The prohibition or regulation of—  
(a) the cultivating, accumulating or existence on any land of any crop, vegetation, rubbish or unwholesome or offensive matter or thing which—  
(i) constitutes or is likely to constitute a fire hazard or a danger to public health or the natural resources of the council area; or  
(ii) is such that it may give rise to circumstances in which a danger to public safety or security may arise; or  
(iii) is unsightly in the area or locality;  
(b) the accumulating, dumping, depositing, abandoning or dropping on or in any road, street, sidewalk, drain, land, premises or place of rubbish or waste material of any description including, without derogation from the generality of the foregoing, machinery or vehicles or parts thereof.  
(2) The destruction of plants that are noxious weeds in terms of the Noxious Weeds Act [*Chapter 19:07*] and the prevention of the propagation of such weeds.  
(3) Requiring the removal or clearing of crops, vegetation, noxious weeds, rubbish, waste material or any unwholesome matter or thing referred to in subparagraph (1) or (2) and, on the failure of any person to do any act to comply with his duty in that regard, empowering the council to do the act at his expense.

#### *Disease-carrying insects and vermin*

74. (1) The destruction or extermination of disease-carrying insects and vermin.  
(2) The prevention of the keeping or breeding of rats and other vermin known to harbour or convey the infection of or cause any disease.

#### *Noxious insects*

75. (1) The destruction or extermination of locusts, mosquitoes, flies and other noxious insects.  
(2) The prevention or abatement of conditions permitting or favouring the breeding of insects referred to in subparagraph (1).  
(3) The supply by the council of poison and appliances for any purpose referred to in subparagraphs (1) and (2). PART VIII

## ANIMALS, BEES, REPTILES AND BIRDS

#### *Keeping of animals, bees, reptiles and birds*

76. (1) The prohibition, regulation or licensing of the keeping of any animals, bees, reptiles or birds.  
(2) The prohibition of the construction or use for the keeping of any animals, bees, reptiles or birds of any building, kennel, cage, hive or other structure which is unfit or undesirable therefor or objectionable by reason of its locality, construction, condition or manner of use.  
(3) Defining the areas or premises within which or in the neighbourhood of which bees or specified kinds of animals may not be kept.  
(4) The prohibition of the keeping or harbouring, with power to provide for the seizure and destruction, of animals, bees, reptiles or birds which are vicious, diseased or otherwise constitute a danger to the safety of human beings or other animals.  
(5) The seizure of animals which are found trespassing or straying and—  
(a) the sale, destruction or other disposal of such animals if not claimed within a reasonable period; or  
(b) the destruction of such animals if so diseased that they are prejudicial to the health or safety of human beings or other animals.  
(6) The prevention of the straying or wandering of animals or reptiles.

#### *Public riding stables and kennels*

77. (1) The regulation and licensing of public riding stables and kennels.

(2) The standards and minimum requirements for the construction, maintenance, conduct, good order, cleanliness, lighting and ventilation of premises used in connection with public riding stables or kennels, and the provision and maintenance of fittings or apparatus used in connection therewith.

*Dog tax*

78. The imposition, within any urban ward of the council area, of a tax on dogs of the age of six months or more. *Slaughter of animals and slaughter-houses*

79. (1) The prohibition or regulation of the slaughtering of animals, the establishment, locality, supervision, administration, operation and maintenance of slaughter-houses and the disposal of the waste products from slaughter-houses.

(2) Requiring and regulating the use of public slaughter-houses and stock-fairs established in connection therewith.

(3) Requiring and regulating the use of weigh bridges at slaughter-houses.

*Dipping tanks*

80. The regulation of the use of dipping tanks.

*Stock pens*

81. The regulation of the use of stock pens and the prohibition regulation or licensing of the use of private stock pens.

**PART IX**

**FOOD, FOOD PREMISES OR VEHICLES AND MARKETS**

*Sale and supply of food*

82. (1) The regulation of the sale, preparation, manufacture, keeping, storing, depositing, conveying, handling and exposure for sale of food, including pet food.

(2) The prevention of the sale, preparation, manufacture, keeping, storing, depositing, conveying or exposure for sale of food that is, in the opinion of a medical officer of health or health inspector, adulterated, unwholesome or diseased.

(3) The prohibition of the sale or supply of fresh meat obtained from cattle or other domestic livestock unless such cattle or other livestock have been slaughtered at a slaughter-house established or approved by the council.

(4) The prohibition of the supply to persons within the council area or any portion thereof of—

(a) meat of any description, including fish, pet food, game meat and poultry meat, which has not been inspected; or

(b) any carcass of or meat or viscera from horses, mules or donkeys slaughtered outside the council area or the portion thereof, as the case may be.

*Premises, vehicles and employees*

83. (1) The regulation, inspection and licensing of any premises in which food is sold, prepared, manufactured, stored, deposited or exposed for sale and the prevention of the use for such purposes of any premises that are unfit therefor.

(2) The standards and minimum requirements for the construction, maintenance, conduct, good order, cleanliness, lighting, ventilation, water supply, sanitary fittings and drainage of the premises referred to in subparagraph (1), and the provision of the requisite utensils, storage, refrigeration, equipment, furniture, linen, crockery, furnishings and storage, and the care and maintenance thereof.

(3) The specification of the goods or merchandise that may not be handled, stored, received or sold on premises referred to in subparagraph (1).

(4) The regulation, inspection and licensing of vehicles used for or in connection with the vending of food.

(5) The medical examination of any person employed in, or in connection with, the business of handling food.

*Food introduced from outside council area or particular areas*

84. The prohibition or regulation of the introduction, distribution or sale within the council area or any portion thereof of— (a) food which has been produced or prepared outside the council area or portion thereof, as the case may be; or

(b) meat or viscera from or carcasses of animals which have been slaughtered outside the council area or portion thereof, as the case may be;

unless compliance has been made with such conditions as may be specified in the by-laws.

*Market gardens*

85. (1) The regulation of the carrying on of any business whether inside or outside the council area, of a market garden or the growing of vegetables or fruit, the produce of which is intended for sale to members of the public within the council area or any portion thereof, and the storage and handling of such produce.

(2) The inspection of any land whereon any business referred to in subparagraph (1) is carried on and of any premises wherein produce referred to in that subparagraph is stored and of any vehicles or receptacles in which such produce is conveyed.

(3) The licensing of any person carrying on any business referred to in subparagraph (1).

*Markets*

86. (1) The regulation of markets and, without derogation from the generality of the foregoing, of— (a) public sales thereat; and

(b) the dues or charges payable in respect of goods submitted for sale at the markets; and (c) the licensing of persons authorized by the council to trade as market agents.

(2) The regulation of the cleansing, cleanliness, sanitation and good order of markets and places used for public sale and barter and of the cleanliness, purity and wholesomeness of any goods exposed for sale thereat.

**PART X**

**TRADE, OCCUPATIONS AND OTHER ACTIVITIES**

*Dangerous trades*

87. The regulation of the carrying on of offensive, unhealthy or dangerous trade or occupations for the purpose of safeguarding the health or safety of members of the public.

*Employment bureaux and compulsory medical examination and treatment of workers*

88. Subject to the Labour Relations Act [Chapter 28:01], the regulation of employment bureaux and the provision of compulsory medical examination and treatment, where necessary, of employees and work seekers.

*Disinfection and fumigation*

89. (1) The regulation, inspection and licensing of businesses carrying on disinfection, disinfestation or fumigation by cyanide or other means.

(2) The penalizing of persons who, after notice thereof, refuse, without reasonable grounds, to vacate any room occupied by them in any building where fumigation by cyanide or other means is to be carried out.

*Infectious diseases*

90. The prevention of the possible spread of infectious, contagious or noxious diseases by the carrying on of any business, trade or occupation.

*Hawkers and street vendors*

91. (1) In this paragraph—

“goods” means wares, merchandise, produce and, generally, corporeal movable things of any description;

“hawker” means any person who carries on the business of selling any goods while travelling about for the purpose from place to place with the goods, either on foot or with a vehicle, animal or carrier, but does not include— (a) a baker or his employee in respect of the sale of bread;

(b) the Dairy Marketing Board or a dairyman or its or his employee, as the case may be, in respect of the sale of milk;

(c) any person in respect of the sale of publications sponsored by the State or newspapers;

“public place” means any bridge, enclosure, foot-path, garden, open space, pavement, road, sanitary lane, sidewalk, square, sub-way or street of the nature of a thoroughfare vested in or controlled by the council and to which the public or any section of the public has access;

“sell” means to sell by retail or by wholesale and, in addition to its ordinary meaning, includes barter or exchange or offer or expose or prepare for sale;

“street vendor” means any person who sells goods from one or more fixed places in or on any public place but does not include any person in respect of the sale of publications sponsored by the State or newspapers.

(2) The regulation and licensing of hawkers and street vendors and persons who employ or engage hawkers or street vendors as servants or agents.

(3) The prohibition, regulation or inspection of the goods which may be sold by hawkers or street vendors.

(4) The prohibition of the carrying on of business by hawkers or street vendors except in specified areas.

(5) The specification of the times when or periods during which hawkers or street vendors may carry on business or allow goods to be exposed for sale at any one place.

*Electricians*

92. The examination and licensing of electricians and the prohibition of unlicensed persons from acting as electricians.

*Plumbers and drain-layers*

93. The examination and licensing of plumbers and drainlayers and the prohibition of unlicensed persons from carrying out plumbing or drain-laying work for the installation, alteration or repair of any system of water supply, sewerage or drainage. *Hairdressers, barbers and beauty salons*

94. (1) The regulation, inspection and licensing of any premises used for or in connection with the business of hairdressers, barbers or beauty salons and the prevention of the use for such purpose of any such premises as are unfit therefor.

(2) The standards and minimum requirements for the construction, maintenance, conduct, good order, cleanliness, lighting, ventilation, water supply, sanitary fittings and drainage of the premises referred to in subparagraph (1), and the provision of the requisite utensils, equipment, furniture, linen and furnishings, and the care and maintenance thereof.

(3) The medical examination of any person employed in or in connection with the business of hairdressers, barbers or beauty salons.

*Launderers, cleaners and dyers*

95. (1) The regulation, inspection and licensing of any premises used for or in connection with the business of launderers, cleaners or dyers and the prevention of the use for such purposes of any such premises as are unfit therefor.

(2) The standards and minimum requirements for the construction, maintenance, conduct, good order, cleanliness, lighting, ventilation, water supply, sanitary fittings and drainage of the premises referred to in subparagraph (1) and the provision of the requisite utensils and equipment, and the care and maintenance thereof.

(3) The medical examination of any person employed in or in connection with the business of launderers, cleaners or dyers.

*Funeral parlours and mortuaries*

96. The prohibition of the establishment of funeral parlours or mortuaries otherwise than in specified parts of the council area.

*Boarding-houses*

97. The regulation, inspection and licensing of hotels and of premises providing accommodation for boarders or lodgers not being members of the family of the owner or occupier of the premises.

*Public auctions*

98. The regulation and licensing of public auctions conducted otherwise than on premises for which a licence or permit in terms of the Tobacco Marketing and Levy Act [Chapter 18:20], or the Shop Licences Act [Chapter 14:17], has been issued, and the regulation and licensing of the trade or business carried on in connection with such auctions.

*Control of collections*

99. The prohibition, regulation or licensing of collections for the purpose of obtaining money or goods, and the prohibition of persons from so collecting without the consent of the council.

PART XI

NUISANCES

*General*

100. The prevention or suppression of any nuisance which is likely to interfere with the ordinary comfort, convenience, peace or quiet, or affect the rights, of the public or any section of the public.

*Horns, bells, etc.*

101. The prohibition or regulation of the use of horns, bells, loudspeakers and the like for the purpose of attracting customers or indicating the presence of vendors in the neighbourhood.



*Use of loud speakers*

102. The regulation or prohibition of the use of loudspeakers or other devices for the reproduction or amplification of sound in or upon properties where such reproduction or amplification is audible beyond the boundaries of such properties.

*Objectionable advertisements, etc.*

103. The prohibition of the exhibition in any place to which the public has access, or exposure to public view, of any advertisement, placard, poster, engraving, picture, drawing, print or photograph of an indecent, obscene or objectionable character.

PART XII

FUNCTIONS, PERFORMANCES, EVENTS AND AMUSEMENTS

*Performances dangerous to the public*

104. The prohibition or regulation of performances considered by the council to be dangerous to spectators in any place to which the public has access.

*Amusements*

105. (1) The regulation and licensing of amusement caterers and the prohibition of such persons from carrying on their business in such areas and during such hours as are specified.

(2) The inspection of swings, roundabouts, switchbacks and installations of a like nature and all tents, structures and appliances provided for the amusement or recreation of the public, whether on public or private property, and the prohibition of the use of such as are, in the opinion of the council, unsafe or dangerous or which may tend to injure the health or destroy the comfort, reasonable peace and quiet, or affect the rights, of the inhabitants of the council area or any section thereof.

*Open-air events*

106. (1) The regulation of open-air events and functions and the prohibition of them in such areas and during such hours as are specified.

(2) The licensing of organizers of open-air events and functions and of the owners or occupiers of property on which such events or functions are held.

(3) The prohibition or regulation of the construction, erection, use and removal of temporary platforms, grandstands, seats and other structures for the accommodation of spectators at open-air events and functions.

(4) The requiring of the provision of adequate sanitary conveniences at open-air events and functions and regulating the nature, construction and mode of use of such sanitary conveniences.

PART XIII

FIRES, COMBUSTIBLE MATERIAL AND EXPLOSIVES

*Fires*

107. (1) Requiring the provision on land and in buildings of precautions against the outbreak and spread of fires and warning devices in connection therewith and regulating the maintenance, use and inspection thereof and the prevention of interference therewith.

(2) The prohibition of the obstruction of fire escapes, stairs, doors or other means available of exit from any building in the event of a fire.

(3) The conditions under which the council may permit the use of its fire brigade outside its area.

(4) The reporting of fires and the prohibition of—

- (a) interference with a fire brigade or appliances provided for or in connection with the extinguishing of fires; and (b) the giving of false alarms concerning fires.

(5) The prohibition of the use or occupation of buildings which constitute a fire hazard.

*Bonfires and burning of rubbish*

108. The prohibition or regulation of the burning of rubbish, trees bushes weeds or grass and of the making of bonfires.

*Combustible or inflammable material and explosives*

109. (1) In this paragraph—

“petroleum” means petrol or any other liquid which has a flash point in any apparatus specified in the by-laws for the purpose of this paragraph of sixty-five degrees Celsius or under.

(2) The regulation of the keeping of folder and other combustible stores or materials.

(3) The restriction of the sites which may be used for or in connection with, and the regulation of the size of stacks of, inflammable materials and the manner of stacking or storing such materials.

(4) The regulation of the generation or storage of any inflammable or explosive gas, and the construction, maintenance and use of apparatus connected therewith.

(5) The regulation and licensing of the storage of petroleum and the restriction of the sites therefor.

(6) The regulation of—

- (a) the construction and maintenance of places or storage;  
(b) the construction, maintenance and use of buildings and premises connected with the storage; of petroleum.

(7) The limitation of the quantities of petroleum which may be stored on any premises and the issue of permits regulating the quantities of petroleum which may be stored on any premises.

(8) The regulation, for the purposes of the prevention of fire or explosion, of the manner of use or conveyance and the nature of the conveyance of petroleum.

(9) The regulation of pumps, whether portable or otherwise, for petroleum and the sites therefor and use thereof, whether within the limits of any road or on private property.

(10) The prohibition or regulation of the use of fireworks and combustible articles.

PART XIV

GENERAL

*Control of any service, institution or thing*

110. The regulation of any service, institution or thing which the council is empowered to operate, carry out or do.

### *Inspections*

111. The regulation of any inspections or tests that may be carried out by or on behalf of the council. *Charges*
112. (1) Providing a tariff of charges which may be imposed by the council for any inspection carried out or service provided or any act, matter or thing done by the council in terms of this Act, including the requiring of a deposit in connection with any services provided by the council.
- (2) Fixing a scale of charges which may be imposed by the council in connection with the costs reasonably incurred in carrying out the removal, safe custody or disposal of, or in arranging for such removal, safe custody or disposal of, vehicles left in the circumstances mentioned in paragraph 26 of the Third Schedule to the Road Traffic Act [*Chapter 13:11*].
- (3) Fixing a scale of surcharges which may be imposed by the council for the use of water at a time when water is rationed or regulated in terms of paragraph 66.

### *Offences and penalties*

113. Providing for offences in respect of contraventions of by-laws and prescribing penalties therefor:

Provided that no such penalty shall exceed a fine of level five.

[Proviso substituted by section 4 of Act 22 of 2001.]

## **THIRD SCHEDULE (Sections 96 and 97)**

### SCALES OF DEVELOPMENT LEVIES AND SPECIAL DEVELOPMENT LEVIES

#### *Interpretation*

1. (1) In this Schedule

“domestic worker” means an individual employed in a single private household, or in a welfare establishment maintained by a welfare organization for its members or officers, for the purposes of rendering domestic services in and around the premises of such household or establishment;

“land levy” means a land development levy or a special land development levy;

“unit” means a unit of land levy fixed in terms of subsection (4) of section *ninety-six* or subsection (5) of section *ninety-seven*;

“skilled worker” means a person who—

- (a) holds a certificate of journeyman status issued or deemed to have been issued in terms of the Apprenticeship Training and Skilled Manpower Development Act [*Chapter 266 of 1974*]; or
- (b) holds a certificate of skilled worker qualification issued or deemed to have been issued in terms of section 44 of the Manpower Planning and Development Act [*Chapter 28:02*] or is entitled to be issued with such a certificate;

“worker” means any person who is employed to perform work, but does not include a skilled worker or a domestic worker.

- (2) Any expression which is used in this Schedule and to which a meaning has been given in Part XII shall have that meaning in this Schedule.

- (3) For the purposes of this Schedule—

- (a) workers employed by an owner of a mining location shall be deemed to include all workers employed for mining purposes on the mining location, whether by an independent contractor or not;
- (b) the daily average number of workers employed or deemed to be employed by the owner of a mining location in terms of subparagraph (a) during the period of three months immediately preceding the fixed date shall be deemed to be the number of workers so employed or deemed to be employed.

#### *Scales of land levy*

2. (1) Subject to this paragraph and paragraph 3, persons who are liable to pay a land levy shall pay it as follows—

- (a) an owner or permit holder referred to in paragraph (a), (d) or (f) of subsection (1) of section *one hundred and one* shall pay a land levy in respect of each area of land within the council area of which he is the owner or permit holder, as the case may be, in accordance with one of the scales set out in the Annexure appearing at the end of this Schedule adopted by the council in the financial year concerned—

- (b) an owner of a mining location referred to in paragraph (b) of subsection (1) of section *ninety-six* shall pay a land levy in respect of each mining location within the council area of which he is the owner, at whichever of the following rates is appropriate—

- (i) in the case of an owner of a mining location mining for gold, silver, platinum or precious stones— A. if he employs more than 5 but not more than 100 workers, 1 unit;  
B. if he employs more than 100 workers—  
I. for the first 100 workers, 1 unit;  
II. thereafter, for each 50 workers or part thereof, 1 unit;
- (ii) in the case of an owner of a mining location mining for base minerals as defined in the Mines and Minerals Act [*Chapter 21:05*]—

- A. if the output does not exceed 500 tonnes per annum, 1 unit;

- B. if the output exceeds 500 tonnes per annum—

- I. for the first 15 000 tonnes or part thereof, 2 units per 1000 tonnes or part thereof;

- II. for the next 25 000 tonnes or part thereof, 1 unit per 1000 tonnes or part thereof;

- III. for the next 25 000 tonnes or part thereof, 0,75 unit per 1000 tonnes or part thereof;

- IV. for the next 25 000 tonnes or part thereof, 0,5 unit per 1000 tonnes or part thereof; V.

- thereafter, for each 1000 tonnes, 0,25 unit per 1 000 tonnes or part thereof;

- (c) a licensed dealer shall, in respect of each premises from which he carries on his business as such, pay a land levy—

- (i) if he is the holder of one licence relating to premises, 2 units;

- (ii) if he is the holder of two or more licences relating to the same premises, 3 units;

- (d) a person who carries on a specified business and who is referred to in paragraph (e) of subsection (1) of section *ninety-six* shall, in respect of each specified business carried on by him on—

- (i) each area of land within the council area, pay a land levy of 5 units;

- (ii) any other rural land within the council area, pay a land levy of 5 units;

- (e) an owner of land referred to in paragraph (e) of subsection (1) of section *ninety-six* shall pay a land levy of 5 units in respect of each specified business carried on upon each area of land within the council area of which he is the owner.
- (2) In subparagraphs (a), (c), (d) and (e) of subparagraph (1)—  
“area of land” means, subject to subparagraph (3)—
- (a) a separate piece of land registered as such in a Deeds Registry; or
  - (b) land held by any person in accordance with the provisions of any agreement which entitles him on the fulfilment by him of the conditions prescribed by such agreement, to obtain transfer thereof; or
  - (c) land which is—
    - (i) the property of the State or of the Trustees of the Rhodes Estates; and
    - (ii) held by a person under an agreement of lease; or
  - (d) an unregistered subdivision of land referred to in subparagraph (a), (b) or (c) and approved by the Surveyor-General, which subdivision is held by a person under an agreement of lease:

Provided that the tax payable by an owner of an area of land referred to in subparagraph (a), (b) or (c) upon which there is such a subdivision shall be assessed by the council and paid by such owner in respect of both such subdivision and such area of land exclusive of such subdivision; or
  - (e) a portion of Communal Land that is occupied or used in terms of a permit issued in terms of section 9 of the Communal Land Act [*Chapter 20:04*].
- (3) If an owner of land leases land referred to in subparagraph (c) of the definition of “area of land” in subparagraph (2), which land is continuous with his own land, with an option to purchase such first-mentioned land, such first-mentioned land shall be deemed to be consolidated with and form part of his own land for the purpose of that definition.
- (4) A person who falls under more than one of subparagraphs (a) to (e) of subparagraph (1), whenever a land levy has been levied in relation to such subparagraphs, shall be liable to taxation under each such subparagraph.
- (5) For the purposes of subparagraphs (d) and (e) of subparagraph (1), where the same specified business is carried on by the same person upon separate portions of the same area of land or upon State land, a land levy shall be imposed only once in relation to such business in respect of such area of land or such State land in terms of that subparagraph (d) or (e), as the case may be. *Maximum and minimum land levies*
3. Notwithstanding any other provision of this Schedule, a council may determine that persons shall not in any one financial year pay—
- (a) a greater amount of land levy than such amount as may be fixed by the council; or
  - (b) a lesser amount of land levy than such amount as may be fixed by the council; and different maximum and minimum amounts may be fixed for each class of persons referred to in paragraphs (a) to (f) of subsection (1) of section *ninety-six*.

ANNEXURE

SCALES FOR PURPOSES OF PARAGRAPH 2 (1) (A)

<i>Scale</i>	<i>Tax payable</i>
<i>Scale 1</i>	
for each 100 hectares or part thereof.....	0,25 unit
<i>Scale 2</i>	
A. for each such area not exceeding 20 hectares .....	0,5 unit
B. for each such area exceeding 20 hectares	
I. for the first 1 600 hectares.....	1 unit per 400 hectares or part thereof
II. for the next 800 hectares or part thereof.....	0,6 unit per 400 hectares or part thereof
III. for the next 2 000 hectares or part thereof.....	0,3 unit per 400 hectares or part thereof
IV. for the next 4 000 hectares or part thereof.....	0,2 unit per 400 hectares or part thereof
V. for the next 4 000 hectares or part thereof.....	0,1 unit per 400 hectares or part thereof
VI. for the next 4 000 hectares or part thereof.....	0,2 unit per 400 hectares or part thereof
VII. for the next 8 000 hectares or part thereof.....	0,6 unit per 400 hectares or part thereof
VIII. for the next 16 000 hectares or part thereof.....	0,8 unit per 400 hectares or part thereof
IX. thereafter, for each 400 hectares or part thereof.....	1 unit

**FOURTH SCHEDULE**

SPECIAL UNIT TAX ON A1 AND A2 FARMS (SECTION 97A)

[Schedule inserted by Act 3 of 2009]

*1. Interpretation*

In this Schedule—

“Natural Region” means a Natural Region specified in section 3 of the Rural Land (Farm Sizes) Regulations, 1999, published in Statutory Instrument 419 of 1999, or any other law that may be substituted for those regulations;

“quarter” means a period of three months ending on the 31st March, 30th June, 30th September and 31st December in each year.

*2. Liability for and rate of special unit tax*

(1) Every lessee and every holder of an offer letter or land settlement permit in respect of a farm located in the Natural Region shown in the first column of the Annexure shall pay to the council within whose area the farm is situated the special unit tax indicated opposite thereto in the second column.

(2) Subsection (1) does not apply to the holder of an offer-letter who has not obtained vacant possession of the farm to which the offer letter relates:

Provided that such holder shall be deemed to have obtained vacant possession of the farm concerned if the previous owner or occupier of the farm has vacated it or no longer occupies it, whether or not the holder of the offer-letter actually occupies the farm himself or herself.

(3) If the holder of an offer-letter—

- (a) obtains the offer letter after the date of commencement of the Finance Act, 2009; or
- (b) is not, on or at any time after the date of commencement of the Finance Act, 2009, liable to pay special unit tax because he or she has not obtained vacant possession of the farm to which the offer letter relates; the full amount of special unit tax shall be payable in respect of the quarter during which he or she obtains such letter or obtains vacant possession of the farm, as the case may be.

### *3. Liability of joint occupiers*

If any farm is occupied or used in undivided shares by two or more persons, such holders or users shall for the purposes of paragraph 2—

- (a) be regarded as a single person; and
- (b) inform the council concerned which one of them will be liable for the payment of special unit tax and, if they fail so to inform such council, any special unit tax may be recovered from any one of them.

### *4. Calculation of special unit tax*

For the purpose of calculating the amount of special unit tax due in any quarter the appropriate amount indicated in the second column of the Annexure shall be divided by four and multiplied by the hectarage of the farm as indicated in the offer letter, land settlement permit or land settlement lease.

### *5. Unsurveyed farms*

(1) If a person occupies or uses any farm the area of which has not been ascertained by survey, the council concerned may estimate the area thereof for the purpose of assessing the special unit tax on such farm, and the area as so estimated shall be deemed to be the area of such farm until it has been ascertained by survey.

(2) If the area of a farm referred to in subsection (1) ascertained by survey is—

- (a) greater than the estimated area of such farm, the person concerned shall not be liable to pay retrospectively any additional special unit tax in respect of the excess; or
- (b) less than the estimated area of such farm, the council shall not be liable to refund any special unit tax in respect of the shortfall.

### *6. Additional sanction for non-payment of special unit tax*

(1) The Minister responsible for the Gazetted Land (Consequential Provisions) Act [*Chapter 20:28*] (No. 8 of 2006) shall, at the written request of the council concerned, cancel the offer letter of any holder thereof who fails for three consecutive quarters: to pay special unit tax to the council within whose area the farm referred to in the letter is situated:

Provided that if the holder of the offer-letter tenders payment of the full amount of special unit tax due within thirty days after receiving written notice of cancellation of his or her offer letter, the offer letter shall be deemed not to have been cancelled.

(2) The provisions of a land settlement lease or land settlement permit concerning the cancellation of the lease or permit shall apply where the lessee or permit-holder fails to pay any special unit tax.

## **ANNEXURE**

### RATES OF SPECIAL UNIT TAX

<i>Natural Region</i>	<i>Rental</i>
1	\$3 United States per hectare per annum
2	\$3 United States per hectare per annum
2a	\$3 United States per hectare per annum
2b	\$3 United States per hectare per annum
3	\$2 United States per hectare per annum
4	\$2 United States per hectare per annum
5	\$1 United States per hectare per annum

[Schedule inserted by Act 3 of 2009]