

IMPLEMENTING THE NEW DIVISI

This is an edited version of a framework document, dated 11 October 2000 and prepared jointly by the Municipal Demarcation Board and the Department of Provincial and Local Government.

It provides a framework for the process of implementing the division of municipal powers and functions between local and district municipalities. This follows provisions in the Municipal Structures Amendment Act which, among other things, provide for the division of functions and powers in the period leading up to the elections.

This amendment was necessary because the adjustment of powers and functions of local and district municipalities could not be effected in respect of entities that do not exist. In addition, the concurrency of powers between district and local municipalities was considered problematic as it allowed for an unfettered exercise of district municipal powers by a local municipality in its area.

The amendment to the division of functions and powers now makes provision for the national Minister for Provincial and Local Government to authorise a local municipality to perform the functions of water, sewage, electricity and municipal health services or any aspect of such a function in its area. The MEC responsible for local government in a province - on recommendation from the Municipal Demarcation Board - may authorise a local or a district municipality to perform the remainder of the functions in section 84(1), with certain exceptions (see *LGL Bulletin* 2000(3) at p 14-15).

The initial authorisations before the elections, by either the Minister or the MEC, will be done with a view to ensure that there is a continued performance of a function or an exercise of a power in a particular area.

AUTHORISATIONS AND CONSEQUENCES

The powers of the Minister and the MEC to authorise local municipalities

to perform a function or any aspect thereof, are prescribed in section 84(3) of the Municipal Structures Act (MSA) and in Chapter 2, section 18 of the Structures Amendment Act. They can be summarised as follows:

Authorisations by the Minister

In terms of section 84(3) of the MSA, the Minister has the power to authorise a local municipality to perform a function (or any aspect thereof) mentioned in 84(1)(b), (c), (d) or (i). These are the district powers and functions related to water, sewage, electricity and health. The transfer of staff, assets, etc will follow such an authorisation.

Consequence

Where it is envisaged to be necessary for the continued performance of a function mentioned above in the area of a local municipality after the elections, that local must be identified and specifically authorised to perform a water, sewage, electricity or health function.

Authorisations by the MEC

Section 18 of the Structures Amendment Act gives the MEC the power to authorise a local municipality to perform a function of a nature described in 84(1)(e), (f), (g), (h), (j), (k), (l), (m) or (n) on a temporary basis provided the Demarcation Board makes such a recommendation. These are the district functions and powers related to waste disposal, roads, passenger transport, airports, fire fighting, fresh produce markets, abattoirs, cemeteries, crematoria, local tourism and public works. The transfer of staff, assets, etc will follow such an authorisation.

Consequence

Where it is envisaged to be necessary for the continued performance of a function mentioned above in the area

of a local or a district municipality after the elections, that local must be identified and specifically authorised to perform such a function. After a maximum period of two years, the authorisation will lapse and a local or district may continue with the performance of such function only after an adjustment in terms of section 85.

Adjustments

An adjustment of functions and powers in terms of section 85 can occur only after the elections and will take place on the basis of capacity. The functions of water, sewage, electricity and health services are specifically excluded from any adjustment.

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CAPACITY ASSESSMENTS TO DATE

The Demarcation Board has, in its demarcation of the outer boundaries of the new municipalities, made capacity assessments of these municipalities. The capacity assessments were to a certain extent hypothetical as they assessed potential capacity. They took into account the following:

Institutional capacity

The following three areas were identified as key to effectively classify institutional capacity of existing municipalities:

- management capacity;
- office support systems; and
- provision of core services.

The assessment was used to identify potential capacity for deployment into the newly demarcated district and local municipalities.

Financial capacity

The following elements were looked at in the assessment of financial capacity:

- financial and human resource capacity;

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- computer software in place and the audit status, etc;
- income base and extent of reliance on outside funding;
- main categories of expenditure of the municipalities; and
- financial position of municipalities at a given date.

ROLEPLAYERS AND THEIR RESPONSIBILITIES

The **Minister of Provincial and Local Government**, after consultation with the relevant line Minister, has to authorise specific local municipalities to perform any of the functions related to water, sewage, electricity and municipal health. It is suggested that such an authorisation should be premised on the necessity to ensure the continued performance of the function or the exercise of the power in that area. In order for such authorisations to take place, the following processes must be undertaken:

- identification of the local municipalities that must be authorised;
- identification of the function or the aspects of such functions that must be authorised;
- consultations with the cabinet members involved;
- consultations with other role players, such as SALGA and the MECs; and
- appropriate authorisation notices published a reasonable period before the elections.

The **MEC for local government** has to authorise specific local or district municipalities to perform any of the functions related to functions other than water, sewage, electricity and municipal health. It is suggested that such an authorisation should be premised on the necessity to ensure the continued performance of the function or the exercise of the power in that area. In order for such authorisations to take place, the following processes must be undertaken:

- identification of the local or district municipalities in the province that must be authorised;
- identification of the function or the aspects of such functions that must be authorised;
- motivating appropriate recommendations to the Demarcation Board;
- possible consultations with other role players, such as organised local government in the province; and
- appropriate authorisation notices a reasonable period before the elections.

The **Municipal Demarcation Board** has the authority to recommend an authorisation to the MEC in a province. Such a recommendation must have as its purpose the continued performance of a function or the exercise of a power in an area. It is suggested that it must take into account the ability of the existing municipalities in an area to perform a function or exercise a power. The Demarcation Board is also in a position to advise the Minister on appropriate authorisations in respect of local municipalities that may be authorised to perform water, sewage, electricity and municipal health functions. Such advice must have as its purpose the continued performance of a function or the exercise of a power in an area. It is suggested that it must take into account the ability of the existing municipalities in an area to perform a function or exercise a power.

The national departments of **Health, Water Affairs and Forestry, and Mineral and Energy Affairs** must, in endeavouring to participate in this process, undertake the following:

- identify a person or a group of persons to liaise with the Demarcation Board and the Minister;
- finalise policy positions on the division of the relevant functions between district and local municipalities;
- consult with the Department of Provincial and Local Government

on the finalisation of the policies mentioned above; and

- inform their Ministers of the process embarked upon.

The **Department of Finance** must, in endeavouring to participate in this process, undertake the following:

- identify a person or a group of persons to liaise with the Demarcation Board and the Minister of Provincial and Local Government;
- finalise policy positions on the implications on budgets and budgetary processes of the division on functions between district and local municipalities in terms of the amended Structures Act;
- consult with the Department of Provincial and Local Government (DPLG) on the finalisation of the above policies; and
- inform its Minister of the process embarked upon.

The **Auditor-General** must, in endeavouring to participate in this process, undertake the following:

- identify a person or a group of persons to liaise with the Demarcation Board and the Minister of Provincial and Local Government;
- finalise policy positions on the implications on budgets and budgetary processes of the division of functions between district and local municipalities in terms of the amended Structures Act;
- consult with the Department of Provincial and Local Government (DPLG) on the finalisation of the above mentioned policies;

Process and time frames

The Department of Provincial and Local Government has put in place processes and time frames to implement the new division of powers and functions before the elections.

Final publication of the division of functions and power was expected to take place on 24 November 2000.