

SECTION 12 NOTICES:

PREPARING MUNICIPAL CONSTITUTIONS

The establishment of 285 new municipalities is to come into effect on the day the forthcoming elections are held. The six metropolitan municipalities, 47 district municipalities and the 232 local municipalities are to be established in terms of “section 12 notices”. Section 12 of the Municipal Structures Act 117 of 1998 (MSA) requires that the MEC for local government issues a notice establishing each municipality in that province wherein the essential features of that municipality are specified. This notice can thus rightly be seen as the “constitution” of a new municipality.



Content of a section 12 notice

In a section 12 notice the following issues must be addressed:

- (a) the category of the municipality;
- (b) the type of the municipality;
- (c) the boundaries of the municipal area;
- (d) the name of the municipality;
- (e) the number of councillors;
- (f) the disestablishment of existing municipalities; and
- (g) the regulation of the legal, practical and other consequences of the total or partial disestablishment of existing municipalities, including the transfer of staff as well as the transfer of the assets and liabilities of the existing municipalities to the superceding municipality.

A number of issues may also be dealt with, but they are not mandatory:

- (a) which councillors may be designated as full-time;
- (b) any adjustments in the division of the functions and powers between local and district municipalities; and
- (c) any exemptions from certain provisions of the MSA.

Before an MEC can issue a section 12 notice, a number of laws and regulations dealing with specific aspects of the issues listed above need to be passed by the provincial and national governments.

Enabling laws and regulations

For a section 12 notice to be promulgated by an MEC, the following laws and regulations must be in place:

- **Provincial legislation on types -** Provincial legislation must determine

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for each category of municipality the different types of municipality (whether a collective executive system, an executive mayor, etc) that may be established. All provinces have adopted legislation to this effect and the usual pattern has been to reenact the full menu that is listed in sections 8, 9 and 10 of the MSA.

• National policy framework for the number of councillors -

The Minister must determine by notice in the *Government Gazette* the formula for determining the number of councillors of a municipal council (s 20(1)(a) MSA). This was done by the Minister on 5 April 2000. There is one formula for all metros. In Johannesburg - with 1,557 million registered voters - the number of councillors will be 216. For local municipalities there are different formulae depending on the size of the municipality. With less than 7 501 registered voters, the number is 5. There are two sliding scale formulae for municipalities between 7 500 and 100 001 registered voters, and municipalities with more than 100 000 voters. For district municipalities there are two formulae: one for municipalities with less than 100 001 registered voters and another where there are more than 100 000 voters. It should be borne in mind that the MECs may deviate from these formulae within the framework prescribed by the MSA.

• National Policy Framework for the Designation of Full-Time Councillors -

An MEC may determine which councillors may be full-time. This determination must be in accordance with a policy framework that the Minister may devise after consulting the MECs for local government. This has been done by the Minister who has issued such a policy framework in the *Government Gazette* on 5 April 2000. It provides that an MEC responsible for local government may determine that councillors who have been elected or appointed to the following offices may be designated as full-time:

Metropolitan (Category A) Municipality

- Speakers

- Members of the Executive Committee
- Executive Mayors
- Members of a Mayoral Committee, and
- Chairpersons of Subcouncils.

Local (Category B) Municipality

- Speakers of municipalities with 30 councillors or more
- Members of the Executive Committee of municipalities with 40 councillors or more
- Executive Mayors
- Members of Mayoral Committees.

District (Category C) Municipality

- Speakers
- Members of the Executive Committee
- Executive Mayors
- Members of Mayoral Committees.

By the middle of June the provinces had not yet finalised, within the national policy framework, which councillors could be full-time.

• National framework on exemptions from MSA -

MECs for local government may exempt a municipality from the provisions of certain sections of the MSA, but may do so only in terms of a policy framework determined by the Minister. By the middle of June, no such framework had yet been drafted by the Department of Provincial and Local Government.

• National framework on the adjustments of powers -

Section 84 of the MSA determines the division of powers between a district municipality and the local municipalities falling within its area. This statutory division may be adjusted by the MEC where a municipality lacks the capacity to perform such powers. Any adjustment must, however, be made in terms of a nationally prescribed policy framework. The Department of Provincial and Local Government has not yet, by the middle of June, produced such a framework.

Facilitation Committees

Two key issues that must be addressed

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in every section 12 notice are the name of the new municipalities and the transitional arrangements regarding personnel, assets and liabilities. Advice on the name is best given by the Facilitation Committees set up for that municipality or district in which a local municipality falls. Likewise, the Facilitation Committees play a vital role in providing the MECs with information about how the difficult and complex task of determining the appropriate transfer of staff, assets and liabilities should also be done. The latter aspect can be very time consuming. This process is not made easier by the tight time frame within which the section 12 notices should be promulgated. In particular, every section 12 notice must be preceded by a lengthy consultation process.

Formal consultation process

Before issuing section 12 notices MECs must go through the following consultation process:

1. Notification of establishment process.

At the commencement of the process to establish a municipality, the MEC must give written notice of the proposed establishment to -

- (i) organised local government in the province, and
- (ii) any existing municipality that may be affected by the establishment of the municipality.

This requirement can be readily met by a notice published in the *Provincial Gazette*. This can be done as soon as the boundaries have been finalised.

2. Consultation with organised local government and existing municipalities.

Before publishing a section 12 notice, the MEC must consult with -

- (i) organised local government in the province, and
- (ii) any existing municipality that

may be affected by the establishment of the municipality.

This requirement will be met by publishing draft section 12 notices and communicating them to the parties concerned. The MEC must then consider all comments that are received and revise, if necessary, the section 12 notices.

3. Public comment.

After this consultation process has been completed, the MEC must publish the particulars of the proposed notices for public comment. The MEC must then consider all comments that are received and revise, if necessary, the section 12 notices.

Promulgation of section 12 notices

For the elections to be held on 1 November 2000, the Minister of Provincial and Local Government should at the latest proclaim that date by 31 August 2000. It is important that section 12 notices be issued prior to or at the same time as the proclamation of the election date.

First, once municipalities have been proclaimed, the public will have a clear idea of the new entities with regard to their name, type, number of councillors and the disestablishment of existing municipalities. In the run up to the election, clarity on these matters can only enhance public participation in the election process.

Second, the IEC will have a more defined entity to work with. It can immediately commence with the organising of the election, such as the printing of ballot papers.

Third, provinces, having to meet the 31 August 2000 deadline of promulgating section 12 notices, will be forced to ensure that the provincial Facilitation Committees meet, have a sense of urgency and make the necessary recommendation regarding at least the name of the to be established municipi-

palities and the type of municipality.

Two-phase section 12 notice

There are serious time constraints in meeting the 31 August deadline for comprehensive and complete section 12 notices. Such notices could be lengthy and complex documents if the details of transitional arrangement with regard to the transfer of staff, assets and liabilities are to be contained in them. Moreover, an extensive prior consultation process will be time consuming.

As it is of practical importance that section 12 notices be promulgated at the time of the calling of the election, it may be necessary to allow for a two-phased promulgation of such notices; a minimalist notice should at first be promulgated, which may, if necessary, be amended by a comprehensive notice before election day.

The section 12 notices promulgated by 31 August 2000 need only contain the bare minimum set out in sections 12 and 14 of the MSA. Apart from the name of the municipality all the other information is already available. In terms of the pro forma notice prepared by the Demarcation Board along with all provinces, all transitional arrangements can be dealt with in terms of general rules. If detailed transitional arrangements are to be made, a second section 12 notice can amend the first notice.

For the election to be called on 31 August a concerted effort is clearly required at both a political and administrative level. The Department of Provincial and Local Government and the Demarcation Board have undertaken to make available dedicated teams to assist provinces with the drafting of section 12 notices, should the need arise.

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