

DIVISION OF POWERS AND FUNCTIONS

BETWEEN DISTRICT AND LOCAL MUNICIPALITIES

This is a report from the Municipal Demarcation Board and the Department of Provincial and Local Government on the process of division of functions and powers between district and local municipalities.

CURRENT POSITION

In the run-up to the recent local government election it was decided that, in order to ensure that the provision of services was not disrupted and that the transfer of staff was kept to a minimum, functions and powers were to be allocated by the Minister and provincial MECs along the following lines:

- category B municipalities would be authorised to administer the budgets of the Transitional Local Councils (TLCs) and the Transitional Rural Councils (TRCs); and
- category C municipalities would be authorised to administer the budgets of the district and regional services councils.

These authorisations have become known as the authorisations that were aimed at maintaining the status quo in respect of the governance functions stipulated in the Municipal Structures Act (Structures Act). These are the four 'national' functions (the functions of 84(1)(b), (c), (d) and (i), namely water, sewage, electricity and health), the other section 84(1) functions (all district functions, excluding the above-mentioned four), and the section 84(2) functions (all remaining local government functions).

The result of maintaining the status quo in respect of the division of powers and functions between district and local municipalities is that, where a disestablished local municipality performed a function (e.g. water) within its area, the newly established local municipality continues to perform that function, but only for the disestablished municipal area. This has resulted in a situation where in areas of certain local municipalities, specific functions (e.g. water) are being performed by different entities such as the new local municipality, the new district municipality or a water board.

Although this situation is not ideal, it has kept disruption of services to a minimum.

Presently, a number of problems are being experienced with the authorisations. Firstly, they have resulted in a state of uncertainty due to the fact that municipalities are anticipating, and in certain instances insisting, that the division of powers and functions be adjusted to comply with section 84 of the Structures Act. This uncertainty makes it difficult for municipalities to prepare a proper integrated development plan (IDP) or a long-term budget. It also complicates a number of transformation issues such as the finalisation of organograms. Furthermore, it has an adverse effect on the creditworthiness of municipalities seeking private sector funding for capital expenditure.

Secondly, a two-year delay in finalising the authorisations might allow the new officials to entrench the status quo and thereby make the allocation of powers and functions

based on capacity in 2002 almost impossible. Two years of cherry picking or systematically under-resourcing a function will inevitably result in the collapse of that function and its allocation elsewhere. This could be compounded through staff

remaining insecure about their futures, resulting in unnecessary resignations and low work morale.

Thirdly, there are practical problems such as the question as to what happens when the Department of Water Affairs and Forestry hands over water schemes to local government? Does the department give them to the district or local municipality? The transfer of category B functions currently being performed by provincial government or other agencies would be delayed. If they are transferred according to the status quo, they will require unbundling at a

later stage.

Fourthly, most wards now have more than one delivery agent within their boundaries, making it almost impossible to manage service delivery. This divided geographic responsibility will certainly cause conflict in councils and will prevent the use of scarce resources more equitably within a district. Furthermore, it is unclear how the equitable share will be calculated if there is such a divided geographic responsibility? Inevitably, equitable share funds would not be effectively utilised to serve poor areas.

Fifthly, there is a need to ensure that all functions are being performed. Therefore, they must all be allocated.

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APPROACH

The approach adopted by the Department of Provincial and Local Government (DPLG) and the Municipal Demarcation Board (the Board) allows for incremental transformation. This will allow for some capacity to be developed within the district municipality in order for it to absorb the functions in 2002. It will allow for municipalities without functions to be authorised accordingly. In terms of this approach, category B municipalities would have to move out of their comfort zones and begin delivering services to disadvantaged communities.

Determination of capacity by the Board

In terms of s 18 of the Municipal Structures Amendment Act, the MEC for local government in a province may, subject to the recommendation of the Board, authorise a local or district municipality to perform or exercise, in its area, the functions and powers listed in section 84(1) and (2) of the Structures Act, excluding the section 84(3) functions and powers.

The Board has recently conducted investigations at provincial and local level to: (i) update its database in order to be well placed to make recommendations for authorisations to the MECs; (ii) workshop with district and local municipalities different options for the allocation of functions and powers; and (iii) develop a consensus-based approach.

During this process a broad conceptual framework was developed for application across all municipalities. This involved dividing all category B and C municipalities into four categories. The four categories were arrived at in the following way: The Board considered two baseline indices for municipal capacity, namely the municipal income excluding electricity, and a ratio of the number of municipal employees per capita. Each of the indices is ranked accordingly for all category B municipalities: Following this, district and local municipalities were classified as follows:

Category Income excluding electricity

1	> 300 million per annum
2	100.1 – 300 million per annum
3	50.1 – 100 million per annum
4	15 – 50 million per annum
5	5.1 – 15 million per annum
6	< 5 million per annum

Category Employee per capita ratio

1	1–299
2	300–599
3	600–899
4	900–1499
5	> 1500
6	No staff

For category C municipalities, each of the following indices were ranked accordingly (see next column):

Category District municipality income

1	> 50 million
2–	30–49
3–	20–29
4–	10–19
5–	5–9
6	< 5 or no income

Category Employee per capita

1	< 1000
2–	1001–2000
3–	2001–5000
4–	5000–20000
5	> 20000
6	no employees

- Classification 1 – High capacity
- Classification 2 – Some capacity
- Classification 3 – Limited capacity
- Classification 4 – Very limited

Once the rankings or classifications were determined, the legal requirements for each municipal function were then applied.

This approach resulted in two matrices, outlined below, to guide the assessment of where a municipal function is best undertaken. Each municipality would fall into a particular category in the matrix and the recommended allocation is provided for that position.

The matrices are set out below:

Section 84(1) possibilities – District functions

Capacity	Category C High	Category C Some	Category C Limited	Category C Very limited
Category B High*	C level	B and C level	B level	B level
Category B Some	C level	B and C level	B level	B level
Category B Limited	C level	C level	C level	C level
Category B Very limited	C level	C level	C level	C level

* Aspirant metro excluded – all functions should remain at the B level

Local municipal functions

Capacity	Category C High	Category C Some	Category C Limited	Category C Very limited
Category B High	B level	B level	B level	B level
Category B Some	B level	B level	B level	B level
Category B Limited	C level/B level	C level/B level	Some B and C level	Some B and C level
Category B Very limited	C level/B level	C level/B level	Some B and C level	Some B and C level

This framework has been applied to each municipality, taking cognisance of each function that is actually performed in that municipality (based on the Board's database). In this way, a national framework is applied in the context of local conditions in a consistent and even-handed way across the entire country. The recommendations that arise from this process take cognisance of legal factors, such as the MEC being able to issue an authorisation only if –

- the district municipality or the local municipality (as the case may be) cannot or does not perform the function or exercise the power in the relevant area; or
- for any reason, it is necessary to ensure the continued performance of the function or the exercise of the power in those areas; and
- the Board has recommended the authorisation (s 18(2) Structures Amendment Act).

Consequently, the Board has considered at least the following key questions, which are built into the conceptual framework:

- Are all the municipal functions being performed within each district area?
- Is the function being performed at a category B or C level?
- Where should the function be performed in terms of section 84?
- If the performance is currently not compliant with section 84, why not?
- What can be done to move toward compliance with the legislation?
- What are the consequences of compliance? For example, some category B municipalities rely on category C functions for resources. A narrowly focused reassignment of these functions and powers might lead to a collapse of functioning category B municipalities.

Approach taken by the Board

In applying the conceptual framework and while tempering it with submissions received from municipalities and provincial governments, the Board developed the following principles, which it used to arrive at its recommendations:

Principle 1:

There should no longer be any geographic split of functions. In other words, if a category B municipality performs a function, it should be for the entire area. This adjustment needs to be made because of the present confusion in situations where a category B municipality is responsible for a particular function only in the former TLC areas within its boundary. This creates problems in that a category B municipality might only have jurisdiction over part of a ward. The Board's view is that where a category B municipality is able to perform a function it should perform that function for the whole geographic area of the municipality.

Principle 2:

If a category C municipality has some capacity, it may perform a function for only some of the category Bs in an area but not necessarily for all.

Principle 3:

Some functions might need to be split with some aspects indicated for partial adjustments. The nature of the adjustments will still need to be decided.

Principle 4:

Where a function is not performed at all in a district municipality or local municipality it must be assigned to one or more municipalities.

Principle 5:

In the case of category B municipalities that were classified by the Board as 'aspirant metros', all functions should be allocated to these municipalities. They are: uMhlatuze, Buffalo City, Mangaung, Emfuleni, KZ 223 (Pietermaritzburg).

WAY FORWARD

'National' functions

The current position for the national functions as set out above should be retained for the municipal financial year beginning 1 July 2001 in order for –

- these powers and functions to be precisely defined;
- the implications of shifting these powers and functions between

category B and C municipalities to be assessed and quantified; and

- a policy framework for the devolution of both general and fiscal powers and functions to be finalised, thus ensuring an integrated approach.

'Provincial' powers and functions

The powers and functions listed in section 84(1), other than the four 'national' functions, are to be incrementally adjusted as consultations between the Board and the MECs continue. This adjustment must take place in line with a broad, national framework endorsed by the Minister and the MECs.

Proposal

The process of assigning the 'provincial' functions and powers will be done on an incremental basis and will start coming into effect from 1 July 2001.

Definitions

Some of the statutory definitions of powers and functions need clarification, particularly in terms of the authority of the different spheres of governance in relation to functions that are assigned to more than one sphere of governance. Such processes to clarify functions and powers will not allow for the reopening of policy issues that have already been settled.

Proposal

Within the next eight months, all definitions, whether they concern municipal powers and functions or those powers that are to be devolved to local government, must be clearly and explicitly defined.

Time frames

A three-phased approach over the short and medium term is proposed:

Phase: Phase 1

Time frame: Dec 2000–30 June 2001

Activity: Finalise section 18 authorisations, to be implemented as from 1 July 2001. Development of an integrated devolution process and framework. Analysis and assessment of capacity of B and C municipalities. Cost study and plan for unbundling budgets, staff and assets.