

# Crossing the floor

## The rules of the game

**T**he President has signed a set of Bills into law that allow for crossing the floor. This article summarises the Bills insofar as they deal with councillors. The Bills amend parts of the Constitution and the Municipal Structures Act.

### Proportionality

The principle of proportionality in section 157 of the Constitution has been reworded to say that the electoral system must result, *in general*, in proportional representation.

### Schedule 6A

The first proposal included all the rules in a new section, 158A (see *LGL Bulletin* 2002(1) 14), to be inserted in the Constitution. It was argued in Parliament by, among others, the Community Law Centre, that the inclusion of so much detail in the Constitution is unwarranted. The rules are now in a separate schedule of the Constitution, Schedule 6A. An ordinary Act of Parliament can amend this Schedule.

## General rule

A party-aligned ward councillor can change party membership or become independent. A PR councillor of a local municipality or a district municipality can change party membership.

However, councillors can only change party membership (or become independent) if 10% of their party's total members simultaneously cease to be members. The same applies to parties merging or subdividing. This is to prevent individual defections and the instability and possibility of political corruption that go with them.

The Bill says that the fact that the 'receiving' party did not previously participate in an election does not matter.

A councillor may only cross the floor once during a window period (see below) by informing the Municipal Electoral Officer (MEO) in writing. The 'receiving' party must confirm with the MEO that it has accepted the new member. A party may only merge or subdivide once during a window period.

## Window period

The approved Bill reduces the number of window periods compared to the Bill that was tabled in Parliament. Crossing the floor, merging and subdividing is only possible:

- from 1–15 September of the second year after a general election; and
- from 1–15 September of the fourth year after a general election.

The reason for choosing September was that it comes after the annual adoption of municipal budgets in July. The floor-crossings will then not undermine the crucial budget-adoption process. There will be no window period in September this year as this part does not apply in 2002 (see below). The next window period will be in September 2004.

During a window period a party cannot suspend or terminate a councillor's membership or do anything that may cause a councillor to be disqualified from holding office.

## District representation

The initial Bill did not deal with the consequences of crossing the floor on district representation. The Community Law Centre argued in Parliament that this would have caused uncertainty and disproportional district representation. The Bill now states that a local council that has been affected by crossing the floor must, within 15 days after the window period has ended, re-appoint its representatives to the district council according to the procedures of Schedule 2 of the Municipal Structures Act. This means that an internal election of representatives to the district, presided over by the MEO, must be conducted in the local council.

Within 30 days after the window period has ended, all municipalities that were affected by defections, mergers or subdivisions must reconstitute all their structures and committees. The requirement of prior notice to remove an executive mayor, executive committee (member) or a speaker (ss 40, 53, 58 of the Structures Act) does not apply in that case.

An amendment to the Structures Act states that the speaker must convene a meeting to deal with these issues. It must be called within 7 days after the window period has ended or, in the case of a district council, after the new appointments have been completed.

Within 7 days after the window period, the Independent Electoral Commission (IEC) must publish a list of the parties, seats and councillors for each municipality that was affected.

## Transitional rule

In order to accommodate the current impasse within the Democratic Alliance, the Schedule

## key points

- Parliament has approved rules for crossing the floor.
- Party-aligned ward councillors and PR councillors can now change party membership:
  - during one of the two window periods, namely 1–15 September of the second year after a general election and 1–15 September of the fourth year after a general election; **but**
  - they must make up 10% of their party in the Council.
- Only during 2002, crossing the floor is allowed during the first 15 days after the law comes into operation. The 10% threshold does not apply.
- Local councils must re-appoint their district representatives if they were affected by defections and all affected municipalities must reconstitute their structures and committees.

**A local council that has been affected must re-appoint its representatives to the district council.**

includes transitional rules for the year 2002. Crossing the floor, merging and subdividing can take place during the first 15 days immediately after the Schedule came into operation (21st June 2002). The 10% threshold does not apply. During this period – and for this time only – a councillor can cross the floor as an individual,

without having to meet the 10% requirement. All the other rules and requirements, mentioned above, still apply.

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