

CHAPTER 40:01
LOCAL GOVERNMENT (DISTRICT COUNCILS)

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Law 35, 1965,
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Act 31, 1971,
Act 13, 1973,
Act 27, 1973,
Act 17, 1983,
Act 15, 1998,
Act 10, 1999,
Act 1, 2000,
Act 7, 2001,
Act 18, 2004.

An Act to provide for the establishment of District Councils and to provide for matters incidental thereto or connected therewith.

[Date of Commencement: 31st December, 1965]

PART I
Preliminary (ss 1-3)

1. Short title

This Act may be cited as the Local Government (District Councils) Act.

2. Interpretation

In this Act, unless the context otherwise requires—

"**bye-law enforcement officer**" means an officer appointed under section 40B(1);

"**bye-law enforcement unit**" means a unit established under section 40A;

"**council**" means any District Council duly established under this Act.

3. Application

The provisions of this Act shall apply to all parts of Botswana except any area declared to be a city or a township in pursuance of the provisions of the Townships Act.

PART II
Establishment and Constitution of District Councils (ss 4-15)

4. Establishment of councils

The President may by order published in the *Gazette* establish District Councils in respect of such areas as he may think fit.

5. Councils to be bodies corporate

A council shall be a body corporate having the name by which it is established and capable of suing and of being sued under the said name.

6. Constitution of councils

(1) A council shall be constituted in such manner and shall consist of such number of members as may be provided by the order establishing it.

(2) The President may by order published in the *Gazette* vary an order establishing a council.

(3) Notwithstanding anything contained in the order establishing a council, any District Commissioner holding office within the area for which a council is established shall be an *ex officio* member of the council without voting rights but with all other rights enjoyed by members of the council.

7. Qualification for membership of council

(1) A person shall be qualified to become a member of a council if he is qualified, in terms of section 15, to vote in any election for members of the council and does not possess the disqualifications for membership of the National Assembly referred to in section 62 of the Constitution:

Provided that—

- (i) the order establishing a council may provide that for the purposes of this section no person shall be deemed to possess those disqualifications merely because he has applied for or has been granted a passport issued by or under the authority of the Government of any country prescribed for such purpose in the order; and
- (ii) no person shall be disqualified to become a member of a council other than an elected member merely because he is a member of the House of Chiefs.

(2) Subsection (1) shall not apply to any *ex officio* member.

8. Tenure of office

(1) Every elected member of a council shall, without prejudice to his re-election, retire from office on the day appointed for the taking of any poll which may become necessary at any general election to the council.

9. Vacation of seats

The seat of a member of a council, other than an *ex officio* member, shall become vacant—

- (a) upon his death;
- (b) if, without having obtained leave from the chairman, he absents himself from three consecutive ordinary meetings of the council;
- (c) if he is appointed to, or to act in, any office or place of profit in the gift or disposal of the council;
- (d) he has been declared insolvent or adjudged or otherwise declared bankrupt under the law in force in any part of the Commonwealth and has not been discharged, or has made a composition with his creditors and has not paid his debts in full;
- (e) (i) if he is sentenced by a court in any part of the Commonwealth to death or to imprisonment for a period exceeding six months, or, having been under suspended sentence for such a term imposed by such a court is ordered by the court to serve that sentence:

Provided that the Minister may at the request of the member from time to time extend for a period of 30 days his vacation of office under this paragraph, to enable the member to pursue any appeal in respect of his conviction or sentence, so, however, that extensions of time shall not exceed 90 days in the aggregate;

- (ii) if at any time before the member vacates his seat he is granted a free pardon or his conviction is set aside or his sentence is reduced to a period of imprisonment of less than six months, or some lesser punishment is instituted for such imprisonment, his seat shall not become vacant under the provisions of this paragraph;
- (f) if he ceases to hold the qualifications required by section 7;
- (g) if he ceases to reside in the area in respect of which the council has been established;
or
- (h) if he resigns by giving written notice to the council secretary.

10. Pecuniary interest of members

If a member of a council—

- (a) has a pecuniary interest, direct or indirect, in a contract or proposed contract or any other matter; and
- (b) is present at a meeting of a council at which the contract or other matter is the subject of consideration,

he shall at that meeting disclose his interest and, subject to the provisions of any standing order made under section 42, shall not take part in the consideration or discussion of, or vote on, any question relating to the contract or other matter, unless after such disclosure the council by a majority of the members present gives the member leave to take part or to vote.

11. Chairman of council

(1) Unless in the order establishing a council the President has appointed a chairman, either *ex officio* or by name, the chairman of a council shall be appointed by election of one of its members in accordance with any standing orders that may be made by the council under section 42.

(2) A council, with the approval of the Minister, may pay an annual allowance to its chairman:

Provided that the allowance shall be payable without prejudice to his right to receive any other allowance payable to him as a councillor.

12. Vice-chairman

Every council shall elect one of its members to be vice-chairman of the council, in accordance with any standing orders that may be made under section 42, and anything authorized or required to be done by, with the approval of, or before the chairman may, in the absence or inability to act of the chairman, be done by, with the approval of, or before the vice-chairman.

13. Filling of vacancies

If the seat of a member of a council becomes vacant by virtue of any provision of this Act, the Copyright Government of Botswana

vacancy thus caused shall be filled in such manner as may be prescribed by the President in the order establishing the council; and a person who becomes a member of the council by virtue of this section shall have all the rights and privileges of, and be under the same obligations and liabilities as, the member whom he replaces.

14. Elections

The manner of election of members of a council shall be as prescribed in the order establishing the council.

15. Qualifications of voters

(1) Subject to subsection (2)—

- (a) any person who is registered as a voter for the purposes of elections of elected members of the National Assembly and enrolled in a voters roll prepared and certified in terms of the Electoral Act, for the area, or any part of the area in respect of which a council has been established, shall be entitled to vote in any election of members of the council;
- (b) any person who has attained the age of 18 years, who is lawfully resident in Botswana, and has been so resident for a continuous period of at least 12 months immediately preceding the date on which he applies for registration shall be entitled to register as a voter and, when registered and enrolled, to vote in any election of members of the council unless he is subject to any of the disqualifications set out in section 6(1)(b), (c) and (d) of the Electoral Act.

(2) A person—

- (a) shall not be qualified to vote in more than one area or part of one area in respect of which a council has been established;
- (b) shall be qualified to vote only in the area in which he resides; and

if that person has more than one place of residence he shall be qualified to vote only in the area where his principal residence is situated.

PART III ***Proceedings of Councils (ss 16-25)***

16. Chairmanship of meetings

(1) The chairman, or in his absence the vice-chairman, of a council shall preside at any meeting of the council.

(2) If both the chairman and the vice-chairman are absent from, or during, any meeting, the members of the council present shall elect one of themselves as temporary chairman during the absence of the chairman and vice-chairman.

17. Quorum

The presence of more than half of the members of a council shall constitute a quorum.

18. Voting at meetings

(1) All matters shall be determined by a majority of the votes of the members, other than any *ex officio* member, present at any meeting.

(2) The member presiding at any meeting shall have an original vote as a member of the council and a casting vote:

Provided that in any case where the member presiding is an *ex officio* member he shall have neither an original nor a casting vote.

19. Meetings of councils

(1) A council shall hold ordinary meetings at intervals of not more than three months, at such place and time as the council may from time to time determine.

(2) The chairman of a council may at any time, and shall at the request in writing of not less than one-third of the members of the council, call a special meeting.

(3) The notice of a special meeting shall specify the objects of the meeting, and no other business may be discussed at that meeting.

(4) The chairman of a council may adjourn any meeting of the council for any period not exceeding 14 days, and any business of the council conducted after the meeting has been so adjourned shall be of no effect.

20. Meetings to be public

Every meeting of a council, other than a meeting of a committee appointed by a council, or a committee of the whole council, shall be open to the press and the public:

Provided that the council may by a majority of members present order that the press or the public, or any member of the press or the public, shall withdraw.

21. Minutes to be kept

(1) Minutes of the proceedings of every meeting of a council and of every committee thereof shall be kept in English, and shall be regularly entered in a book kept for that purpose and shall be confirmed at the next ordinary meeting.

(2) Such minutes shall record the names of the members absent from, and of persons co-opted and present at, the meeting, and when signed by the chairman shall, unless the contrary is proved, be deemed to be a correct record of the proceedings of the meeting of which they purport to be the minutes.

22. When minutes confirmed, regularity deemed

When the minutes of the proceedings of any meeting of a council, or of a committee thereof, have been confirmed, such meeting shall, until the contrary is proved, be deemed to have been duly convened and held, and all the members present at that meeting shall be deemed to have been duly qualified and, where the proceedings so recorded are those of a committee, the committee shall, until the contrary is proved, be deemed to have been duly constituted, and to have had power to deal with the matters referred to in the minutes.

23. Minutes open for examination

The minutes of the proceedings of a council shall be at all reasonable times open for examination by any member of the public, and any such person may obtain a copy thereof, or an extract therefrom, on payment of such fee as may be prescribed by the council.

24. Committees

(1) Every council shall appoint a Finance Committee and an Education Committee, and may from time to time appoint such other committees, either of a general or special nature, consisting of such number of members as the council may think fit, for the purpose of transacting such business or performing any act or duty which in the judgment of the council would more conveniently be performed by means of a committee, and may delegate to any such committee such powers, except the power to make bye-laws and any power to raise money by rate or otherwise, as it may think fit.

(2) Unless in appointing any such committee the council has appointed one of the members as chairman thereof the committee shall elect one of the members as chairman thereof.

(3) In appointing members to the various Council Committees, the Council shall make appointments based on a cross sectional representation of all parties represented in the Council, with each member of the Council being appointed to at least one Committee.

(4) A council may revoke or amend any delegation made under subsection (1) and may attach conditions to such delegation, including general or particular directions, as to the manner in which any delegated power is to be exercised.

(5) A committee, other than a Finance Committee, may co-opt persons other than members of the committee, and such co-opted persons may take part in the proceedings of the committee, but shall not have the right to vote thereat.

25. Joint committees of two or more councils

A council may concur with any one or more other councils in appointing from among their respective members a joint committee of such councils for any purposes in which they are jointly interested, and may delegate to such joint committees, with or without restriction or conditions, any powers or functions of such councils relating to the purpose for which such joint committee was formed, except the power to make bye-laws or the power to raise money by rate or otherwise.

PART IV

Privilege of Immunity (ss 26-29)

26. Immunity from legal proceedings

No civil or criminal proceedings may be instituted against a member of a council for words spoken before, or written in a report to the council or to a committee thereof, or by reason of any matter brought by the member by petition, motion or otherwise.

27. Freedom from arrest

A member of a council is not liable to arrest—

- (a) for any civil debt whilst going to, attending at, or returning from, a meeting of the council or any committee thereof; or
- (b) within the precincts of the council while the council or a committee thereof is sitting, for any criminal offence without the consent of the chairman.

28. Exercise of process

No process issued by any court in the exercise of its jurisdiction shall be served or executed on a member of a council within the precincts of the council while the council is sitting.

29. Definition

In this Part—

"precincts of the council" means the chamber and offices of a council and any gallery or place provided for the use or accommodation of members of the public, and includes, while the council is sitting, the entire building in which the chamber of the council is situated, and any forecourt, yard, garden, enclosure or open space adjoining or appertaining to such building and used or provided for the purposes of the council

PART V *Staff (s 30)*

30 Appointment of employees

(1) Subject to the provisions of the Unified Local Government Service Act, a council shall appoint such employees as it may deem necessary.

(2) A council shall pay to its employees such emoluments as it may determine.

(3) The powers conferred upon the council by subsections (1) and (2) shall be exercised subject to the general or specific approval of the Minister.

PART VI *Powers and Duties of Councils (ss 31-43)*

31. Functions and general powers of councils

(1) The President may in the order establishing a council, and subject to such limitations and conditions as he may deem fit, provide that a council either shall be required to perform or may perform any of the functions set out in the First Schedule.

(2) Subject to the provisions of this Act, a council shall have power to do anything and enter into any transaction not unlawful which in its opinion is calculated to facilitate the proper discharge of any function conferred or imposed upon it by or under this Act or any other law, or which is incidental or conducive thereto.

32. General duties of councils

It shall be the duty of a council to perform the functions it is required to perform and otherwise exercise its powers so as to secure and promote the health, order and good government of the area for which it has been established.

33. Power to make bye-laws

A council may make bye-laws for the area in respect of which it has been established, or any part thereof, in respect of all such matters as it considers necessary or desirable for the maintenance of the health, safety and well-being of the inhabitants of that area or that part; and, without prejudice to the generality of the foregoing, may make bye-laws for all or any of the purposes set out in the First Schedule, and prescribing service and user fees set out in the Second Schedule.

(2) Such bye-laws may prescribe what licences or permits may be required thereunder, and may lay down the fees to be paid therefor, and may also prescribe the fees to be paid for any services to be rendered by the council.

(3) Any bye-law may require acts or things to be performed or done to the satisfaction of a prescribed person, and may empower a prescribed person to issue directions to any other person requiring acts or things to be done, imposing conditions and prescribing periods within or before which those acts or things shall be performed or done or those conditions shall be fulfilled.

34. Bye-laws to be submitted to Minister

(1) All bye-laws made by a council shall be submitted to the Minister for his approval, and no bye-laws shall be of any force or effect until the Minister has approved them and caused them to be published in the *Gazette*.

(2) In approving any bye-law which prescribes service and user fees for the services set out in the Second Schedule, the Minister shall act in consultation with the relevant Ministry.

35. Miscellaneous provisions regarding bye-laws

(1) The substance and effect of all bye-laws which are to be submitted to the Minister for approval shall, not less than four weeks before the submission, be communicated to the inhabitants of the area affected by posting notices on notice boards in the area, and by publication thereof at such public meetings as the council may determine.

(2) A copy of all bye-laws shall be kept by the council which made them in such manner as the Minister may prescribe, and any member of the public shall be entitled to a copy of such bye-laws upon payment of such fee as the council may determine.

(3) If any bye-law provides for the issue of any licence or permit, a refusal to issue such licence or permit shall be subject to an appeal to the Minister, in the manner prescribed by the Minister, whose decision shall be final.

36. Penalties in bye-laws

(1) Bye-laws may prescribe a penalty for any contravention thereof which shall not exceed a fine of P5000 or imprisonment for a term not exceeding two years, or both; and may prescribe different fines and different terms of imprisonment for successive or continuous contraventions; and may authorize any court on conviction of any person for contravention of the bye-laws to suspend or cancel any licence or permit issued to such person under such bye-laws.

(2) Bye-laws may provide that where a court convicts any person for any contravention thereof, or for failure to comply therewith, such court may, in addition to imposing any penalty prescribed therefor, order that any expense incurred by the council in consequence of the breach thereof, or caused by the failure of the offender to execute any work which he is directed thereby to execute, shall be paid by the convicted offender.

37. Bye-laws not to override other laws

Nothing contained in this Act shall be deemed to empower a council to make any bye-law overriding or derogating from the provisions of any other written law in force in Botswana.

38. Minister may make model bye-laws

(1) The Minister may cause to be made and published in the *Gazette* model bye-laws on any of the subjects on which a council is empowered to make bye-laws.

(2) Any council may adopt any such model bye-laws on any such subject on which it is authorized to make bye-laws, either in whole or in part, or with such variations as may seem to the council appropriate to the circumstances obtaining in the area in respect of which it is established.

(3) The adoption of model bye-laws by a council in pursuance of subsection (2) shall have effect for the purposes of this Act as the making of bye-laws by such council, except only that if such bye-laws are adopted in whole and without variation they shall not require the approval of the Minister under section 34 and section 35(1) shall have effect with the substitution for references to the submission of such bye-laws for approval of references to the submission of such bye-laws for publication.

39. The President may suspend bye-laws

If at any time in the opinion of the President it is in the interest of good local government or the maintenance of good order and security of the area or part thereof for which a council has been established or of Botswana, that the operation of any bye-law made by a council shall be

suspended, the President may by order published in the *Gazette* suspend such bye-law for a period not exceeding 60 days, and for that period may transfer the powers of the council relating to such bye-law to any person.

40. The President may make or amend bye-laws

The President may by order published in the *Gazette* make any bye-law which a council could make, and amend or revoke any bye-laws made by a council, if he considers the matter to be of importance and in the public interest:

Provided that he has requested the council in writing to make such a bye-law or amendment or revocation, and the council has not complied with such request at its first meeting after such request has been received.

40A. Bye-law enforcement units

There shall be a bye-law enforcement unit in every council to enforce bye-laws made by the council.

40B. Bye-law enforcement officers

(1) A bye-law enforcement unit shall consist of such number of bye-law enforcement officers as the council may determine and appoint.

(2) A council shall furnish every person appointed as a bye-law enforcement officer with an identity card stating that such person is duly appointed by the council for the purposes of enforcing bye-laws and such identity card shall be *prima facie* evidence of such appointment.

40C. Powers of arrest

(1) A bye-law enforcement officer may, without a warrant, arrest a person if he reasonably suspects that that person has contravened or is contravening a bye-law.

(2) A bye-law enforcement officer may use such force as is reasonable in the circumstances in effecting an arrest under this section; and for the purpose of effecting an arrest, enter and search any premises or place if he has reason to believe that there is in the premises or place a person who is to be arrested.

(3) A bye-law enforcement officer shall not enter any premises or place unless he has first stated that he is a bye-law enforcement officer and the purpose for which he seeks entry and produced his identity card to any person requesting its production.

40D. Powers of search

- (1) Where a bye-law enforcement officer has arrested a person under section 40C, he may—
- (a) search that person and the premises or place in which he was arrested; and
 - (b) seize and detain anything which he has reason to believe to be or to contain evidence of any contravention of a bye-law.

(2) A bye-law enforcement officer shall only search a person of the same sex as he.

40E. Procedure after arrest

A bye-law enforcement officer shall take any person arrested under section 40C as soon as is practicable to a police station, and such person shall be dealt with in accordance with the Criminal Procedure and Evidence Act.

40F. Search with warrant

(1) If it appears to a bye-law enforcement officer that there are reasonable grounds to believe that there is in any premises or place anything which is or contains evidence of a contravention of a bye-law, he may make an application on oath to a magistrate for a warrant to search such premises or place.

(2) If a magistrate to whom an application is made under subsection (1) is satisfied that there are reasonable grounds for suspecting that there is in the premises or place referred to in subsection (1), anything which is or contains evidence of a contravention of a bye-law, he may issue a warrant directing the bye-law enforcement officer to enter and search such premises or place and seize and detain anything which the bye-law enforcement officer has reason to believe to be or to contain evidence of any contravention of a bye-law.

40G. Search without warrant in certain cases

(1) Where a bye-law enforcement officer has reasonable cause to believe that there is in any premises or place anything which is evidence of a contravention of a bye-law or in respect of which a contravention of a bye-law is about to take place, is being conveyed, or is concealed or contained in any package in the premises or place, for the purpose of being conveyed, he may, without warrant, if he considers that the special exigencies of the case so require, enter and search the premises or place, and may seize and detain anything found in those premises or that place.

(2) The entry and search referred to in subsection (1) shall, as far as possible, be made in day time and in the presence of two or more respectable inhabitants of the locality in which the entry and search is made.

40H. Exercise of powers of search and seizure

In the exercise of the powers of search and seizure under section 40G, a bye-law enforcement officer may use such reasonable force as is necessary in the circumstances, and may be accompanied or assisted by such other persons as he considers necessary to assist him to enter into or upon any premises or place, as the case may be.

40I. Penalty for hindering or obstructing a bye-law enforcement officer

Any person who hinders or obstructs a bye-law enforcement officer in the performance of his duties under this Act shall be guilty of an offence and liable to a fine not exceeding P200 or to imprisonment for a term not exceeding one year, or to both.

40J. Imposition and collection of fines

(1) A bye-law enforcement officer may impose such fines for a contravention of a bye-law as a council may determine:

Provided that any fine determined by the council under this section shall not exceed P2000.

(2) A council shall directly collect any fines imposed by a bye-law enforcement officer and such fines shall accrue to the council concerned.

40K. Collection of debt

If any person who has been fined under section 40J fails within a stipulated period to pay the fine to the council, the council may recover the fine in a court of law as a civil debt.

41. Entry into contracts

A council shall not enter into any contract for the supply of any goods or materials or the execution of any works or the provision of any services, other than professional services, for or to the council except in the prescribed manner.

42. Power to make standing orders

A council shall make such standing orders as may be necessary for the conduct of its business; and, without prejudice to the generality of the foregoing, shall make standing orders for the following purposes—

- (a) the election of a chairman and vice-chairman of the council;
- (b) the regulation of the business and procedure of the council;
- (c) to ensure the punctuality of the attendance of the members at meetings, and to prevent meetings being held without adequate notice to members;
- (d) to maintain order and method in the despatch of business and in the conduct of meetings.

42A. Service and user fees

A council shall, by resolution, set service and user fees for the services set out in the Third Schedule hereto.

43. Rights of *ex officio* member

A council shall—

- (a) furnish an *ex officio* member with copies of agenda and minutes of all meetings that he attended or was entitled to attend;
- (b) make available for inspection by an *ex officio* member all records, accounts, documents, cash, stores and other property of the council;

- (c) hand over for inspection to such *ex officio* member such records, books and documents of the council as he may require for inspection.

PART VII

Revenues of Councils; Accounts and Audits (ss 44-52)

44. Revenues of councils

The revenues of a council shall consist of—

- (a) such tax as the council is authorized by law to collect from the inhabitants of the area in respect of which the council has been established;
- (b) such rates as the council is authorized by law to impose;
- (c) rents from property owned or administered by the council;
- (d) all moneys derived from licences or permits issued by the council and all taxes, dues and fees imposed under lawful authority by the council;
- (e) interest on investments;
- (f) such royalties as may by law be payable to or receivable by the council;
- (g) donations, contributions and endowments;
- (h) reimbursements;
- (i) such grants as the Government may make to the council;
- (j) any other moneys which may by law be paid to or received by the council.

45. General funds

(1) Every council shall establish and maintain a general fund and all moneys received by the council by way of revenue shall be paid into such fund, and all expenses incurred by the council in the execution of the powers and duties conferred upon it by or under the provisions of this Act shall be defrayed out of such fund.

(2) The Minister acting in accordance with the advice of the Minister of Finance and Development Planning may from time to time issue instructions with regard to the general management, supervision and control of general funds established under subsection (1).

46. Bank account and investments

(1) Every council shall open and maintain an account at a bank, and shall operate such account in such manner as may be prescribed.

(2) A council may obtain overdraft facilities from its bank:

Provided that no overdraft shall at any one time exceed in all an amount equal to one-third of the revenue (excluding grants) received by the council during the preceding financial year,

except with the written approval of the Minister acting in accordance with the advice of the Minister of Finance and Development Planning.

(2) A council may invest all or any part of its moneys in such manner as the Minister acting in accordance with the advice of the Minister of Finance and Development Planning may approve.

47. Borrowing powers

(1) A council may raise loans for such amounts, in such manner, for such purposes, and upon such conditions as the Minister acting in accordance with the advice of the Minister of Finance and Development Planning may in each case approve.

(2) Such loans shall be secured on the revenue and assets of the council.

(3) The interest for the time being payable in respect of any moneys borrowed by the council shall be a first charge on the revenue and assets comprising the security for such moneys.

48. Accounts and audit

(1) Every council shall cause true accounts to be kept in accordance with such instructions as may from time to time be issued by the Minister.

(2) Within three months from the end of each financial year, every council shall cause its accounts for the preceding financial year to be balanced and an annual statement or abstract of such accounts to be prepared and presented to the Auditor-General.

(3) Such accounts, with all books, vouchers and papers relating thereto, with a copy of such annual statement or abstract shall be audited by the Auditor-General, who shall carry out his duties in accordance with the provisions of section 124(2) of the Constitution of Botswana, and section 38 of the Finance and Audit Act.

(4) The Auditor-General shall complete the audit of accounts within twelve months of their submission to him.

(5) The Auditor-General's report and the audited statements shall be submitted to the—

- (i) Minister;
- (ii) Minister responsible for finance and development planning; and
- (iii) Chief Executive Officer, who shall cause the report and the audited statement to be tabled before the Full Council.

(6) The Council shall upon receipt of the report and audited statements, submit them to the Finance and General Purposes Committee which shall, together with the Council Management and Auditor-General, examine them in detail and shall report back with any recommendations to the Full Council.

(7) Every council shall, for a period of not less than one month prior to the audit of its accounts, and at such places as may be prescribed by the Minister, deposit for inspection the annual statement or abstract, and any person interested may without payment inspect such

documents.

(8) Such documents shall be further deposited for inspection within six months after the close of the financial year to which the accounts relate, or within two months of the receipt of the Auditor-General's report, whichever may be the earlier.

(9) A notice giving information of the dates when such documents will be available for inspection shall be posted at such places as the Minister may direct.

(10) Every council shall permit the Auditor-General to check any cash, and verify the existence of any investments or other assets in its possession and to have access to all its accounts and all books, vouchers and papers relating thereto.

49. Copies of statement and report to be supplied

A copy of such annual statement or abstract and of the Auditor-General's report shall be furnished to any inhabitant of the area upon payment of such fee, if any, not exceeding 20 thebe as may be fixed by resolution of the council.

50. Disallowance and surcharge

(1) The Chief Executive may make objection in writing to any item of expenditure, and shall report such objection to the Permanent Secretary.

(2) The Chief Executive shall disallow any such item of expenditure or any part of such item on the ground that the expenditure is wrongful or unreasonable or on any other ground, and the auditor may by order in writing surcharge any person as the person responsible for the payment of any such item having been made.

(3) If it appears to the Chief Executive that any failure to collect money due, or any loss of money or damage to the property of a council has occurred through the wilful or negligent or wrongful act of any member or employee of the council, he shall by order in writing surcharge the amount thereof on any member or employee who, in the opinion of the Chief Executive, is so responsible.

(4) On ordering such surcharge, the Chief Executive shall forthwith report in writing to the Permanent Secretary the details thereof, and the Permanent Secretary may confirm the surcharge or remit all or any portion thereof as he may deem fit.

(5) Any sums so surcharged on any person shall be deemed to be a debt due to the council.

51. Financial year

The financial year for every council shall be from 1st April to 31st March in the next succeeding year.

52. Annual estimates

(1) Every council shall, after considering a report from its Finance Committee, at least three months before the beginning of any financial year prepare and approve by resolution detailed

estimates of its revenue and expenditure for the forthcoming financial year, and shall submit such estimates together with a copy of such resolution for the approval of the Minister who may either approve the estimates as submitted, or disallow such estimates in whole or in part, or refer such estimates back to the council for further consideration.

(2) A council may in any financial year prepare and approve by resolution supplementary estimates of revenue and expenditure.

(3) If the supplementary estimates include expenditure in excess of 10 per cent of an approved head under the annual estimates, or include expenditure not contained in the annual estimates or expenditure which cannot be met from revenue available to the council, the supplementary estimates, together with a copy of the resolution approving them, shall be submitted for the approval of the Minister, who may approve or disallow the supplementary estimates either wholly or in part.

(4) A council shall not, except with the prior approval of the Minister, incur any expenditure which has not been included in the estimates or supplementary estimates of the council, duly approved where necessary by the Minister, but may, after considering a report of its finance committee, and with the approval of the Minister, make re-allocations of any sum contained in such approved estimates:

Provided that any person designated for the purpose in writing by the Minister may, within such limits as the Minister may direct, approve re-allocations without reference to the Minister.

PART VIII

Establishment of the Local Authorities Public Accounts Committee (ss 53-58)

53. Establishment of Local Authorities Public Accounts Committee

(1) Subject to the laws governing the public service, the Minister may establish the Local Authorities Public Accounts Committee (hereinafter referred to as “the Committee”).

(2) The Committee shall be assisted in its functions by a secretariat comprising of such public officers from the ministry as the Minister may direct.

54. Functions of the Committee

The functions of the Committee shall be to—

(a) examine the accounts of every—

- (i) district council established under this Act;
- (ii) city, town and township authority established under the Township Act; and
- (iii) land board established under the Tribal Land Act,

which are required by written law to be presented to the Minister;

(b) examine the Auditor-General’s report and audited financial statements one month after

they have been presented before the Full Council or Board;

- (c) examine such other accounts as may be referred to it by the Minister; and
- (d) report the results of an examination under paragraphs (a), (b) and (c) to the Minister.

55. Membership to the Committee

(1) The Committee shall consist of seven persons appointed by the Minister, two of whom shall be Councillors in the local authorities.

(2) The members of the Committee shall be persons of good standing in the community and who possess substantial knowledge and experience in the areas of accounting and auditing, local authority financial and management systems or in other matters of a nature likely to assist the Committee in the discharge of its functions under the Act.

(3) The Minister shall appoint a Chairperson from among the members.

(4) The tenure of office of a member of the Committee shall be a period of not more than three years from the date of appointment:

Provided that a member shall be eligible for re-appointment at the expiry of the term of office if such re-appointment is in the interest of the service.

56. Proceedings of the Committee

The Committee shall meet at such times and at such places and proceed with such business in such manner as the Minister may direct.

57. Provision of evidence and advice

The Chief Executive shall provide the Committee with such evidence and advice, either documentary, oral or both, as may be required by the Committee.

58. Auditor-General and Director to attend meetings

The Auditor-General and the Director of Local Government and Development shall attend the meetings of the Committee and shall give advice on financial matters as may be required.

PART IX

Dissolution of Councils (ss 59-60)

59. The President may dissolve a council

Notwithstanding anything contained in this Act, the President may by order published in the *Gazette* dissolve any council, and thereupon all members thereof shall cease to hold office; and the President may thereupon by further order published in the *Gazette* appoint other persons to form a Commission, and every such Commission shall have the status of the council which has been dissolved, and may exercise all the powers and authorities vested in such council:

Provided that, before exercising the powers conferred by this section, the President may

direct such inquiry to be held as he may think necessary, and at any such inquiry the council in question or any member or any employee of such council, or any member of the public who has been assessed for any tax within the area of the council, or held liable to pay rates to the council shall be entitled to be heard.

60. Suspension of a member of a council

Notwithstanding any other provision contained in this Act, the Minister may by order published in the *Gazette* suspend any member, other than an *ex officio* member, of any council, and thereupon such member shall, during such suspension, cease to hold office; and the Minister may also declare the seat of any such member to be vacant.

PART X Miscellaneous (ss 61-65)

61. Power of entry

Any local government officer employed under the provisions of the Unified Local Government Service Act and any employee of a council, duly authorized for the purpose by the council in writing, may at all reasonable times enter into or upon land or premises within the area of the council or part thereof for which the council is established, for the purpose of carrying out any duty imposed by this Act and specified in such authorization.

62. Transfer of assets and liabilities of tribal treasury to council

(1) Upon the first establishment of a council in respect of any area—

- (a) all the assets of any tribal treasury established for, or for any part of, that area shall, by virtue of this subsection and without further formality, be transferred to and vest in that council, subject to all encumbrances to which the said assets or any of them are subject immediately prior to such transfer and vesting;
- (b) all the liabilities of any such tribal treasury shall, by virtue of this subsection and without further formality, be transferred to and be those of the council, and the tribal treasury shall cease to be subject to those liabilities.

(2) All persons charged or concerned with the conduct of affairs of any council or tribal treasury shall execute all such deeds and other instruments and do all such other things including delivery of cash, moveable assets and documents, as are necessary to complete the vesting in a council pursuant to this section of any assets and liabilities of a tribal treasury.

63. Recovery of Government expenditure

(1) If the Government has expended public funds or incurred any liability as a result of a resolution of a council under which the council has undertaken to pay the Government a capital or recurrent contribution from its funds, the President may, if the council fails to make due payment in accordance with the provisions of such resolution, order that such payment be made from the funds of the council, and that any rate or tax necessary to produce the sum required shall be imposed upon and collected from the rateable or taxable inhabitants of the area or the

part thereof concerned.

(2) If the President is satisfied that a judgment for the payment of money has been given by a competent court against a council, or that for good and sufficient reason money is due from and payable by a council, and the council fails to make due payment, he may order that such payment be made from the funds of the council and that any rate or tax necessary to produce the sum required shall be imposed upon and collected from the rateable or taxable inhabitants of the area or the part thereof concerned.

63A. Powers of Minister to amend Schedules

The Minister may, by statutory instrument, amend the Schedules hereto.

64. Regulations

The Minister may make regulations prescribing anything required to be prescribed by this Act, and generally for carrying out the purposes and intent of this Act.

65. Power to supplement or vary Schedule

The President may by order published in the *Gazette* revoke, vary or amend the Schedule.

FIRST SCHEDULE

(Sections 31 and 33)

1. Education

To provide primary schools and other educational services in relation to primary education.

2. Health and sanitation

(1) To take steps in addition to those taken by any other authority to safeguard and promote public health and prevent the occurrence of, or to deal with, any outbreak or prevalence of any disease.

(2) To provide public lavatories.

3. Communications

To make, alter and maintain public roads, other than those the maintenance of which has been undertaken by the Government.

4. Water supplies

To provide public water supplies outside any area for which a Water Authority has been appointed by law.

5. General administration

(1) To establish, maintain and control markets.

(2) To establish, maintain and control recreation grounds, parks and other public places.

(3) To establish, maintain and control cemeteries and burial grounds.

(4) To provide services or assist in the provision of services giving relief from or attempting to avert any natural calamity.

(5) To assist associations existing for the promotion of recreation and sport, arts and crafts or for the welfare of children or young persons or for the relief and support of blind, infirm, indigent, aged or destitute persons.

6. Commercial

To enter into contracts or concessions for the sale of land or premises or of any interest therein.

7. Implementation of bye-laws

To carry into effect any bye-laws made by the council.

8. Council and staff

To secure the proper working of the council (and any committees thereof) and the welfare of its employees.

9. Regulatory and licensing powers

(1) To regulate and license donkey carts, bicycles, herbalists and brickmakers.

(2) To regulate, control and license the brewing, distribution and sale of traditional beer.

10. Abattoirs

To establish, maintain and operate abattoirs and to fix by bye-law reasonable fees, charges and tariffs in connection therewith, which may include charges for the inspection of carcasses.

11. Beer depots and beer halls

(1) To establish, maintain and operate beer depots and beer halls and to fix by bye-law reasonable prices, fees, charges and tariffs in connection therewith.

(2) For the purposes of this paragraph "beer depot" means premises where traditional beer is sold for consumption off the premises and "beer hall" means premises where traditional beer is sold for consumption on the premises.

SECOND SCHEDULE

(Sections 33(1) and 34(2))

Service and user fees to be prescribed by bye-law and to be approved by the Minister in consultation with the relevant Ministry:

| NO. | FEES |
|-----|--|
| 1 | Abattoir fees |
| 2 | Certificates of rights conversion fees |
| 3 | Clinic fees |
| 4 | Matimela or pound fees |
| 5 | Property rates |
| 6 | School fees |
| 7 | Trade licences |

THIRD SCHEDULE

(Section 42A)

| NO. | SERVICES |
|-----|--|
| 1. | Advertising signs |
| 2. | Cemetery services |
| 3. | Community services |
| 4. | Day care centre services |
| 5. | Hiring of classroom |
| 6. | Provision of markets or factory shells |
| 7. | Pest control services |
| 8. | Plan perusal and building control services |
| 9. | Plant hire services |
| 10. | Refuse removal services |
| 11. | Road reinstatement services |
| 12. | Sanitation services |
| 13. | Septic tank emptying services |
| 14. | Sewer connection services |
| 15. | Sewerage services |
| 16. | SHHA services |

17. Shrub and plant sale services
18. Stadia sport facilities
19. Staff house rentals
20. Stock sales commission
21. Surveys and plans services
22. Leasing of boreholes
23. Water connection services