

## **GNR.1015 of 12 July 1995: Regulations made under section 26D of the Water Act, 1956**

DEPARTMENT OF WATER AFFAIRS AND FORESTRY

as amended by

Notice	Government Gazette	Date
R.1117	16574	28 July 1995

The Minister of Water Affairs and Forestry has under the powers vested in him by section 26D of the Water Act, 1956 (Act No. 54 of 1956); made the regulations in the Schedule relating to the establishment, powers, duties and functions of local water supply and sanitation committees.

### SCHEDULE

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1. Definitions.—In these regulations—

“annual general meeting”, in relation to a committee, means a public meeting convened by the committee concerned for the purposes set out in regulation 11 (1);

“committee” shall have the meaning assigned thereto in section 26A of the Act;

“community” means a community occupying land for residential and related purposes, in respect of which no authority exists or a local authority having jurisdiction over that land is not able to render a water supply and sanitation service in respect of that community;

“Department” shall have the meaning assigned thereto in section 1 of the Act;

“Director-General” shall have the meaning assigned thereto in section 1 of the Act;

“effective notice”, in relation to a public meeting of a community convened for the purposes of these regulations, means written or oral notice of the date, time and venue of, and the issues to be dealt with at that meeting, given in a manner and at such, time in advance of the meeting, as is customarily accepted in that community as adequate notice of a public meeting;

“Minister” shall have the meaning assigned thereto in section 1 of the Act;

“public meeting”, in relation to a community, means a meeting of the members of that community convened for the purposes of these regulations by giving effective notice, which meeting shall be open for attendance by all persons resident in that community who are customarily accepted in that community as adults and at which every such adult present shall have the right to participate if the business dealt with at that meeting, including the right to cast a vote on any issue to be voted upon;

“Regional Director” means a Regional Director of the Department;

“special meeting”, in relation to a committee, means a public meeting convened by the committee concerned for the purposes set out in regulation (2);

“the Act” means the Water Act, 1956 (Act No. 54 of 1956);

“voluntary society” means any voluntary society with legal personality, including any other juristic person, having as its object or as one of its objects, the rendering or promoting of a service similar to a water supply and sanitation service to a community or any constituent part of a community; and

“water supply and sanitation service” shall have the meaning assigned thereto in section 26A of the Act.

2. Petitions by voluntary societies for the establishment of committees.—(1) Any voluntary society (hereinafter referred to as “the petitioning society”) may, in respect of the community with which it is involved, petition the Minister for the establishment of a committee.

(2) A petition under subregulation (1) shall be submitted in writing to the appropriate Regional Director under the signature of the chairperson of the petitioning society and shall be accompanied

by documentary proof of a resolution by the members of that society authorizing the submission of such a petition on behalf of that society.

(3) A petition under subregulation (1) shall contain—

- (a) a description of the community in question including an estimate of the present population of the community;
- (b) a description of the land occupied by the community in question and a statement on whether the land is situated within the area of jurisdiction of a local authority and if it is so situated, the reasons why the local authority concerned is not able to render the desired water supply and sanitation service;
- (c) a description of the prevailing conditions in the community with regard to the availability of access to members of the community to water suitable for use for basic domestic purposes and to basic sanitation facilities;
- (d) particulars (if available) of other existing voluntary societies (if any), formed to promote the rendering of a water supply and sanitation service in respect of that community or any constituent part thereof, including the names and addresses of any such societies and the names and addresses of any contact persons;
- (e) a statement on the proven support in the community for the petitioning society and its object and full particulars of the manner in which such support was demonstrated;
- (f) a copy of the petitioning society's constitution and in the event that the constitution has not been reduced to writing, an account of the events that resulted in the forming of the society and the accepted rules under which it functions; and
- (g) particulars of any water supply and sanitation service which is being rendered by the petitioning society and of any investigations conducted or planned by the petitioning society in connection with the rendering of such a service.

3. Inquiry into and adjudication of the subject matter of petitions.—(1) The Regional Director shall cause a petition submitted in accordance with regulation 2, to be dealt with in accordance with these regulations by an officer of the Department or, on such terms and conditions as may be agreed upon, by any body or person designated by him or her.

(2) An officer, body or person referred to in subregulation (1) (hereinafter referred to as “the adjudicator”), shall inquire into and adjudicate the subject matter of the petition and may for this purpose—

- (a) call on the petitioning society to provide him or her with additional particulars to substantiate or amplify the subject matter of the petition, in which event the adjudicator may render such assistance to the petitioning society, as he or she may consider necessary under the circumstances; and

(b) conduct such further inquiries as he or she may consider necessary to substantiate or amplify the subject matter of the petition.

(3) On completion of the inquiries contemplated in subregulation (2), the adjudicator shall prepare and submit to the Regional Director, a report in which he or she shall—

(a) set out his or her findings on the subject matter of the petition;

(b) express a motivated opinion on the support enjoyed by the petitioning society and any other relevant voluntary society in that community; and

(c) identify any issue which in his or her opinion could detrimentally influence the efficient functioning of a committee if established as petitioned for and make recommendations with regard to any steps that in his or her opinion can be taken to eliminate or minimise such detrimental influence.

4. Consideration of petitions.—After considering a petition submitted in accordance with regulation 2 and the subsequent report by an adjudicator the Regional Director may—

(a) instruct the adjudicator to proceed with the consultation with the community in question required by section 26C (2) of the Act; or

(b) instruct the adjudicator to take such further steps as would in the opinion of the Regional Director promote a favourable decision on the petition after completion of such steps and on the resubmission of the adjudicator's report to him.

5. Consultation with communities.—(1) The adjudicator shall, in collaboration with the petitioning society and subject to the further provisions of this regulation, make the arrangements he or she considers necessary for the required consultation and consult with the community in question or with any constituency of the community and with such other bodies or persons as may have been determined by the Minister in terms of section 26C (2) of the Act, with regard to the matters referred to in the said section of the Act.

(2) In the process of conducting the consultation contemplated in this regulation, an adjudicator shall regularly report to an officer of the Department designated by the Director-General, on the manner in which any consultation and shall, through such officer, inform himself or herself of any views the Minister may hold with regard to any matter under consultation.

(3) An adjudicator shall, in the course of the consultation contemplated in this regulation, endeavour to have a draft constitution accepted in principle by the community concerned which shall to the fullest extent possible comply with the requirements set out in subregulation (4), which draft constitution is intended to serve as the constitution of the envisaged committee after its establishment.

(4) The draft constitution contemplated in subregulation (3) shall—

(a) state the object of the committee to be the rendering, in accordance with the provisions of any regulations made under section 26D of the Act, of a water supply and sanitation service in respect of the community in question, subject to any direction issued from time to time by the Minister in terms of section 26C (1) of the Act;

(b) state that subject to regulation 8 (3), the constitution may only be amended by a resolution to that effect, passed with a two-thirds majority at a special meeting;

(c) specify the number of members, which shall not be less than three, constituting the committee, of whom—

(i) not more than two may, on account of their technical, financial or other ability to assist the committee in the exercise or performance of its powers, duties and functions, be appointed by the elected members of the committee, which appointment shall require the approval of two-thirds of the elected members;

(ii) the remainder shall, except for the first election of members of the committee, only be elected at an annual general meeting or a special meeting, and of whom at least one-third shall be women;

(d) determine the qualifications for election as, the period of office of, and the vacating of their office as, members of the committee, and may provide a procedure for the filling of casual vacancies in a committee by the committee, pending the election of a person to fill the vacancy;

(e) require that the total amount of any remuneration or allowances paid to each member of the committee during a financial year, shall be shown in the financial statements of the committee for that financial year;

( f ) state that any member of the community shall at all reasonable times be entitled to inspect all the financial entries and supporting vouchers of the committee;

(g) provide—

(i) for the election and the period of office of the chairperson and of any other functionary of the committee;

(ii) for the convening of and the quorum at meetings of the committee;

(iii) subject to regulation 9 (2), for the remuneration of, and the payment of allowances for expenses to, a member of the committee;

(iv) for the delegation or assignment of any power, duty or function entrusted to the committee by or under the Act or vested in the committee by its constitution, to the chairperson or other functionary of the committee or an officer or an employee of the committee;

(v) for the manner in which charges relating to the water supply and sanitation service rendered or to be rendered by the committee shall, subject to regulation 9

(1) ( j), be assessed, the persons from whom and the manner in which such charges shall be recovered and the steps that the committee may take on failure to pay such charges on time, including the payment of interest on outstanding charges;

(vi) for the manner in which any material or service required by the committee for or in connection with the rendering of a water supply and sanitation service shall be procured and for the acceptance of donations in kind or otherwise by the committee;

(vii) for the number of persons who shall constitute a quorum at any annual general meeting or special meeting; and

(viii) for the number of members of the community who may in terms of regulation 11 (2) request the committee to convene a special meeting and for the procedure at an annual general meeting and a special meeting.

(5) On conclusion of the consultation contemplated in this regulation to the satisfaction of the officer referred to in subregulation (2), the adjudicator shall prepare a report—

(a) on the manner in which the consultation was conducted and on the results of the consultation, dealing specifically with each of the issues referred to in section 26C (2) of the Act; and

(b) on his or her endeavours to prepare and have accepted the draft constitution contemplated in subregulation (3);

incorporating a copy of the draft constitution with a covering memorandum specifying any requirement of subregulation (4) which could not be complied with, and the reasons in his or her opinion for such non-compliance.

(6) The Director-General shall cause a petition submitted in accordance with regulation 2, together with the reports prepared in accordance with regulation 3 (3) and subregulation (5) of this regulation, to be submitted to the Minister.

6. Establishment of committees.—(1) After consideration of a petition submitted in accordance with regulation 2 and the reports prepared in accordance with regulations 3 (3) and 5 (5), the Minister may—

(a) accept the draft constitution notwithstanding the fact that in one or more respects it does not comply with the requirements set out in regulation 5(4); and

(b) subject to regulation (2), establish the committee by notice in the Gazette, which office shall—

(i) state the name assigned to the committee;

(ii) contain a description of the area of jurisdiction of the committee;

(iii) state that the constitution of the committee shall be the constitution certified in terms of regulation 8 (1); and

(iv) state that the committee shall for all purposes relating to the rendering of a water supply and sanitation service to the community in question, be deemed to be the legal successor of the petitioning society.

(2) If the Minister is not prepared to make a decision as provided for in subregulation (1), he or she may—

(a) cause such further steps to be taken as would in the opinion of the Minister promote a favourable decision on the petition after completion of such steps and on the resubmission of the petition to him or her; or

(b) refuse the petition, whereupon the petitioning society shall be notified of the Minister's decision and the reasons for the decision.

(3) The description of the area of jurisdiction of a committee contemplated in subregulation (1) (b) (ii) may be in terms of—

(a) references to cadastral properties; or

(b) references to natural features or man-made structures of such prominence and permanency, as would allow identification of the area of jurisdiction of the committee by members of the community in question.

7. Commencement of functioning of committees.—(1) Pursuant to the establishment of a committee, in accordance with regulation 6 (1), the Director-General shall, in collaboration with the petitioning society, cause a public meeting of the community in question to be convened and a meeting of the members of the petitioning society, to have such resolutions taken at that meetings as are necessary—

(i) to adopt, subject to regulation 8 (1), the draft constitution accepted by the Minister in terms of regulation 6 (1) (a), as the constitution of the committee;

(ii) to lawfully transfer all the relevant assets and liabilities of the petitioning society to the committee;

(iii) lawfully dissolve the petitioning society, if this is indicated,

and to elect the first members of the committee.

(2) in the event that the Director-General fails in his efforts to convene a meeting or to have a resolution referred to in subregulation (1) taken, he or she shall submit the matter to the Minister and the Minister may—

(a) revoke the notice referred to in regulation 6 (1) (b) by notice in the Gazette; or

(b) instruct the Director-General to have such further steps taken as would in the opinion of the Minister, result in compliance with the provisions of subregulation (1).

8. Constitutions of committees.—(1) An officer, of the Department designated for this purpose by the Director-General shall in respect of a committee established under regulation 6 (1), after the requirements of regulation 7 (1) have been complied with, issue a certificate under his hand certifying the establishment of the committee in terms of section 26C of the Act and certifying the constitution accepted by the Minister in terms of regulation 6 (1) (a), a copy of which shall be attached to the certificate, to be the constitution of the committee.

(2) The certificate referred to in subregulation (1) shall be handed to the chairperson of the committee for safekeeping by the committee.

(3) A resolution taken at a special meeting to amend the constitution contemplated in subregulation (1), with regard to a matter referred to in regulation 5 (4) (a), (b) or (c) (i) or (ii) or (g) (vii) or (viii), shall have no legal effect unless notice of the proposed amendment has been given in writing to the appropriate Regional Director by the committee concerned, at least 30 days in advance of the date determined for the special meeting at which the proposed amendment is to be considered by the community in question, and the committee has prior to the, said meeting been notified that the proposed amendment is acceptable to the Minister.

9. Powers of committees.—(1) A committee shall, subject to the provisions of the Act, these regulations and its constitution, have the power—

(a) to construct or otherwise acquire and to operate and maintain any water work or other facility for or in connection with the rendering of a water supply and sanitation service;

(b) to acquire a right to a supply of water for use for or in connection with the rendering of a water supply and sanitation service by the committee;

(c) to render a water supply and sanitation service subject to any direction issued by the Minister in terms of section 26C (1) of the Act;

(d) to undertake the supply of water to any person in accordance with a direction issued by the Minister under section 26C (3) of the Act;

(e) to prevent the unlawful abstraction of water from, or the unlawful use of any facility, provided by the committee for or in connection with the rendering of a water supply and sanitation service or from a supply of water contemplated in paragraph (d);

( f ) to prevent the waste or the unbeneficial use of water under the control of the committee;



(g) to appoint such employees as the committee may from time to time deem necessary at such salaries, wages or remuneration and with such rights, privileges and other conditions of service as the committee may determine;

(h) to procure the services of such agents, consultants and contractors as the committee may from time to time deem necessary;

(i) to hire, buy or otherwise acquire such movable or immovable property as the committee may deem necessary for the exercise or performance of its powers, duties and functions and to let, sell or otherwise dispose of property so acquired: Provided that immovable property shall not be bought or otherwise acquired or sold or otherwise disposed of except with the approval of the Minister;

(j) to assess charges at a uniform rate on a basis to be determined from time to time by the committee, in relation to the water supply and sanitation service rendered or to be rendered by the committee: Provided that such charges shall be assessed with due regard to the ability of the community concerned to afford such charges and that revenue resulting from such charges shall not exceed the cost incurred by the committee in the rendering of such service: Provided further that a committee may assess charges at different rates, having due regard to services rendered or contributions made in kind by members of the community, in connection with the rendering of a water supply and sanitation service;

(k) to write-off any charges assessed by it which the committee deems irrecoverable;

(l) to raise money by way of loans or an overdraft from its bankers: Provided that no loan shall be concluded by a committee except with the prior approval of the community by way of a resolution adopted at a special meeting.

(2) A member of a committee shall not—

(a) receive any salary, allowance, fee or reward for, on account of, or by reason of his or her being a member of the committee except such remuneration or allowances as are provided for in the constitution of the committee to cover expenses incurred by such a member in the performance of the duties of a member;

(b) enter into a contract with the committee, with a value exceeding R1 000 or have a direct interest in such a contract, except with the prior approval of the Regional Director.

(3) Nothing in subregulation (2) contained shall be construed as preventing a member of a committee from receiving such remuneration as may be agreed upon for services rendered by him or her otherwise than as a member, in connection with the administration of the committee's affairs: Provided that the total amount of such remuneration paid to each member of the committee during a financial year, shall be shown in the financial statements of the committee for that financial year.

10. Financial year, financial records and annual financial statements of committees.—(1) The financial year of a committee shall end on a date in each year as determined from time to time by the committee.

(2) A committee shall—

(a) open an account in the name of the committee with any bank contemplated in section 1 of the Banks Act, 1990 (Act No. 94 of 1990), and the committee may from time to time close such account and open another such account in which shall be deposited all money received by the committee and from which all payments by or on behalf of the committee, shall be made; and

(b) appoint a person as auditor of the committee: Provided that if the person is not registered as an accountant and auditor in terms of the Public Accountants and Auditors Act, 1991 (Act No. 80 of 1991), the appointment of such person shall be subject to the prior approval of the community in question, by way of a resolution adopted at an annual general meeting or a special meeting.

(3) A committee, shall cause full and correct entries to be made of all moneys received and expended by it as well as revenue due to the committee but not yet received and financial obligations incurred by the committee but not yet paid.

(4) A committee shall in respect of each financial year, cause financial statements to be prepared comprising a statement of income and expenditure for the financial year in question and a balance sheet of assets and liabilities reflecting the committee's financial position at the end of that financial year.

(5) The financial statements referred to in subregulation (4) shall—

(a) as soon as possible after the closing of the financial year to which they relate, be audited by the committee's auditor and for this purpose the auditor shall have access to all financial entries and supporting vouchers of the committee; and

(b) after certification by the committee's auditor as a reasonable reflection of the committee's financial transactions for, and the committee's financial position at the end of the financial year in question, be signed by two members of the committee designated by the committee, and submitted to the annual general meeting for confirmation.

11. Annual general meetings and special meetings of committees.—(1) A committee shall annually within four months after the end of the preceding financial year, convene an annual general meeting at which—

(a) the committee shall report on the activities of the committee during that financial year; and

(b) the financial statements of the committee for that financial year shall be submitted for confirmation.

(2) A committee may at any time if it deems it desirable, and shall whenever required to do so under any provision of these regulations or the constitution of the committee, convene a special meeting: Provided that if not less than the number of members of the community specified for this purpose in the committee's constitution, request the committee to convene a special meeting in order to debate any specified matter, the committee shall convene such meeting: Provided that the committee may refuse such request if during the preceding twelve months, a special meeting as convened at which the same or substantially the same matter was debated and dealt with.

12. Publication of by-laws of committees.—A copy of each by-law made by a committee regarding a matter referred to in—

(a) section 26E (a), (b), (d), (e) or ( f ) of the Act shall, during office hours, be open for inspection by any member of the community in question at the office of the committee or, in the case of a committee which does not have an office, on appointment be open for inspection at the place of residence of any member of the committee; and

(b) section 26E (c) of the Act, shall on his assumption of office as a member of the committee, be made available to such member.

13. Entry upon land.—(1) The chairperson of a committee and any person authorised thereto in writing by the chairperson may—

(a) after reasonable notice to the owner or occupier of any land, enter upon such land and perform thereon any act as may be necessary for the purpose of—

(i) complying with any provision of these regulations or the constitution or by-laws of the committee, or

(ii) making any enquiry, or undertaking any investigation, with a view to determining the feasibility of rendering a water supply and sanitation service;

(b) at any time enter upon any land for the purpose of ascertaining whether any provision of a by-law made under section 36E (a) or (b) is being complied with.

(2) In the exercise of a power under subregulation (1) (a), no building or enclosed space attached to a dwelling shall be entered upon, except with the consent of the occupier thereof.

14. Unlawful use of water supply and sanitation service.—No person shall—

(a) make use of a water supply and sanitation service rendered by a committee or of any facility provided by a committee for or in connection with such service;

(b) abstract any water under the control of a committee,

in contravention of any by-law of the committee made under section 26E (a) or (b) of the Act.

15. Attendance of meetings by officers of the Department and returns to be submitted to the Department.—(1) Any officer of the Department or, on such conditions as may be agreed upon, any other person, designated by the Director-General, shall be entitled to attend any meeting of a committee and any annual general meeting or special meeting and to participate in the business dealt with at such meeting but shall not be entitled to cast a vote on any matter.

(2) The chairperson of a committee shall cause—

(a) a copy of the financial statements signed by two members of the committee in accordance with regulation 10 (5) (b);

(b) a copy of the minutes of each annual general meeting and special meeting contemplated in regulation 11; and

(c) a copy of any by-law of the committee contemplated in regulation 12 and any amendment thereof,

to be submitted to the Regional Director within 21 days from the date on which it becomes available.

16. Investigation into the affairs of the committee by officers of the Department.—(1) The Minister may, in the event that—

(a) at an annual general meeting or a special meeting, the financial statements of the committee are not confirmed or, as the case may be, a motion of no confidence in a committee is accepted; or

(b) he or she is of the opinion that the powers, duties or functions of a committee are not properly exercised or performed, or that there is reason to suspect that a member or an officer or employee of a committee is conducting himself or herself improperly in the exercise or performance of his or her powers, duties or functions; or

(c) he or she is of the opinion that consideration should be given to the rendering of a water supply and sanitation service to the community in question by a local authority.

designate an officer of the Department or, on such terms and conditions as may be agreed upon, any other person, to investigate the affairs of the committee and to report to the Minister thereon.

(2) For the purposes of an investigation contemplated in subregulation (1), the officer or other person concerned shall have free and unhindered access to any property of the committee and to any books or other documents of the committee and he or she may make such enquiries or take such statements from any person as he or she deems necessary.

(3) If the Minister, after consideration of the report of an officer or other person contemplated in subregulation (1) and any representations made by the committee or the local authority in question or a member of that committee or of the community in question, is convinced that it is desirable, the Minister may—

(a) by notice in writing to all the members of that committee, terminate the period of office of any or all of the members with effect from a date mentioned in the notice and, in the event that the period of office of all the members is terminated, direct the Director-General to cause a public meeting of the community in question to be convened for the election of new members of that committee; or

(b) by notice in writing to the committee make known his intention to disestablish the committee in terms of section 26C (5) of the Act and his intentions regarding the future rendering of a water supply and sanitation service to the community in question as more fully provided for in regulation 17.

17. Winding up of the affairs of committees and disestablishment of committees.—(1) If the Minister gives notice under regulation 16 (3) (b) of his intention to disestablish a committee, the Director-General shall, by notice in writing to each member of the committee, terminate the period of office of all the members of the committee and, as the case may be—

(a) cause such steps to be taken as he or she deems necessary to enable the Minister to render or cause to be rendered under section 26B of the Act, the water supply and sanitation service being rendered by the committee, which steps may include the transfer to the state of any assets of the committee, in which event, the liabilities of the committee shall be met from funds appropriated by Parliament for the purpose; or

(b) cause such steps to be taken as he or she deems necessary, to terminate the water supply and sanitation service rendered by the committee and to arrange, in collaboration with all the creditors of the committee, for the liquidation of the assets of the committee to the best advantage of such creditors; or

(c) cause such steps to be taken as he or she deems necessary, to enable the local authority involved to tender the water supply and sanitation service rendered by the committee which steps shall include the transfer to and the take-over by the said local authority of all assets and liabilities of the committee.

(2) After complying with the requirements of subregulation (1), the committee shall in terms of section 26C (5) of the Act be disestablished by notice in the Gazette.